Sustainability Impact Assessment (SIA) in support of an Investment Agreement between the European Union and the People's Republic of China

Interim Report

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List of abbreviations

ACFTU	All-China Federation of Trade Unions
ACIA	ASEAN Comprehensive Investment Agreement
AIA	ASEAN Investment Area
AMS	ASEAN Members
ASEAN	Association of Southeast Asian Nations
BITs	China's Bilateral Investment Treaties
BRIC	Brazil, Russia, India, China
CCA	Causal change analysis
CCCMC	China Chamber of Commerce of Metals Minerals and Chemicals Importers & Exporters
CCICED	China Council for International Cooperation
CCP	Chinese Communist Party
CEC	China Enterprise Confederation
CEDAW	Convention to Eliminate All Forms of Discrimination Against Women
CEFIC	European Chemical Industry Council
CETA	Comprehensive Economic and Trade Agreement
CGE	Computable General Equilibrium
CNPC	China National Petroleum Corporation
CRPD	Convention on the Rights of Persons with Disabilities
CSR	Corporate Social Responsibility
DSMs	Dispute Settlement Mechanisms
EC	European Commission
ECCG	European Consumer Consultative Group
ECHR	European Convention on Human Rights
EEC	European Economic Community
EESC	European Economic and Social Committee
EIB	European Investment Bank
EPSU	European Federation of Public Service Unions
EU	European Union
EUCCC	EU Chamber of Commerce in China
EUTN	EU trade newsletters
FATS	Foreign affiliates
FDI	Foreign direct investments
FET	Fair and equitable treatment
FIL	Foreign Investment Law
FTA	Free Trade Agreement
GC	Greater China
GPA	Government Procurement Agreement
GVC	Global Value Chain
ICCPR	International Covenant on Civil and Political Rights
ICS	Investment court system
ICSID	International Centre for Settlement of Investment Disputes
IGA	Investment Guarantee Agreements
IIAs	International Investment Agreements
ILO	International Labour Organization
IISD	International Institute for Sustainable Development
IPFSD	Investment Policy Framework for Sustainable Development
IP	Intellectual property

IPR	Intellectual property rights
ISDS	Investor-state dispute settlement
ISG	Inter-service Steering Group
JCCT	Joint Commission on Commerce and Trade
LCL	Labour Contract Law
LDC	Least-developed country
LIC	Low income country
MEE	Mining and Energy Extraction
MFN	Most-favoured-nation
MNEs	Multinational enterprises
MOFCOM	China's Ministry of Commerce
MS	Member States
NAFTA	North American Free Trade Agreement
NGO	Non-governmental organization
NHRI	National Human Rights Institution
NPC	National People's Congress
NT	National treatment
OECD	Organisation for Economic Co-operation and Development
OFDI	Outward FDI
OS&H	Occupational Safety & Health
PCA	Partnership and Cooperation Agreement
POE	Privately-owned enterprise
PRC	People's Republic of China
R&D	Research and development
RoW	Rest of World
RTL	Re-education through labour
SASAC	State-owned Assets Supervision and Administration Commission
SAWS	State Administration of Work Safety
S&ED	Strategic and Economic Dialogue
SIA	Sustainability Impact Assessment
SMEs	Small and medium enterprises
SOEs	State-owned enterprises
SPC	Special Protection Committee
SSDC	Sectoral Social Dialogue Committees
TAR	Tibet Autonomous Region
TFEU	Treaty on the Functioning of the European Union
TiVA	Trade in Value Added
TSIA	Trade Sustainability Impact Assessment
TTIP	Transatlantic Trade and Investment Partnership
TVE	Township and village enterprise
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
USD	United States Dollar
WIOD	World Input-Output Database
WTO	World Trade Organization
XUAR	Xinjiang Uighur Autonomous Region

Preface

In December 2015, the European Commission (DG Trade) awarded a contract to Ecorys and its consortium partners Oxford Intelligence, TNO and Reichwein China Consult to carry out a Sustainability Impact Assessment (SIA) in support of an Investment Agreement between the European Union and the People’s Republic of China. This document is the interim report for the study.

This interim report presents the first results of the overall analysis on the expected economic, social, human rights and environmental impacts of an investment agreement between the EU and China, as well as three in-depth sector studies. The results are based on a mix of quantitative and qualitative analyses, as well as stakeholder consultations. Results will be further complemented and refined in the remainder of the study.

The current report is based on the Terms of Reference, the Ecorys proposal that was submitted to DG Trade, the approach as further developed in the inception report, discussions with the Inter-service Steering Group, and stakeholder input received so far.

Ecorys is aware of the important role of this study for the negotiation process as it will provide direct inputs for the negotiators as well as recommendations and proposals for flanking measures to maximise the benefits of the proposed agreement and prevent or minimise potential negative impacts of the future agreement. Ecorys closely consults with the European Commission on the planning and scope of this study to ensure optimal input in the negotiation process.

We invite you to read our report, share it with other interested stakeholders, and to provide us with your comments, questions and suggestions, which will help us to further improve the quality of the study in the final phase.

The Ecorys SIA team

June 2017

Executive summary

Context and objective

Over the past decades, 27 out of 28 European Union (EU) Member States (MS) have signed Bilateral Investment Treaties (BITs) with China, providing for investment protection, but not for investment market access. Restrictions caused by investment barriers mean there is still significant untapped potential in investment flows between China and the EU.

Following an impact assessment carried out by the European Commission (EC) in October 2013, the EC received an authorisation from the European Council to enter into negotiations aimed at concluding an investment agreement between the EU and China. Negotiations were officially launched during the 16th EU-China Summit held on 21 November 2013 and the first round of negotiations took place in Beijing in January 2014.[1]

This document is the Interim Report for the Sustainability Impact Assessment (SIA) in support of an Investment Agreement between the EU and the People's Republic of China. This study explores the potential sustainability impacts of such an investment agreement to inform the negotiators.

The objective of the study is thus *"to assess how the investment provisions under negotiation could affect economic, social, human right and environmental issues in the EU and China and to make recommendations to maximise the benefits of the agreement and prevent or minimise potential negative impacts."*

In this interim report, we summarise our approach and conceptual framework as established during the inception phase, provide information on the baseline and change scenario (i.e. the situation without and with an investment agreement), and present the overall economic, social, human rights, and environmental assessments. Furthermore, the impact on three sectors is studied in more depth, being Transport Equipment, Mining and Energy Extraction, and Chemicals. The last chapters concern the stakeholder consultations and the planning and way forward.

Approach and conceptual framework

The overall approach to the entire SIA can be divided in three linked phases:

- Overall analysis of the sustainability impacts arising from a potential Investment Agreement between the EU and China;
- Analysis at sectoral level of the sustainability impacts arising from a potential Investment Agreement between the EU and China;
- Proposals for policy recommendations and accompanying measures.

Our approach is based on the two methodological elements of a SIA as described in the Terms of Reference (ToR) and the SIA Handbook[2]: 1) analysis of economic, social, human rights and environmental impacts; and 2) stakeholder consultations. These two elements are complementary and of equal importance. Hence, the sustainability assessments are characterised by both quantitative and qualitative elements and throughout the SIA, we engage in continuous feedback and consultation with key stakeholders to collect their input and to verify the results.

As indicated above, the EC carried out its own impact assessment of the EU-China Investment Agreement in 2013, which was partially based on a quantitative study prepared by Copenhagen Economics in 2012. This impact assessment is taken as a starting point for the analysis in this SIA. We focus on those issues that have either not been studied yet, need to be updated, or

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1 European Commission (2013, 19 November). *16th EU-China Summit Beijing.* Press Release, Brussels.
2 This SIA Handbook is available at: http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154464.PDF.

that come out as particularly important and warrant further analysis, thereby providing value added to the negotiators.

Background to the EU-China Investment Agreement

Before diving into the sustainability impacts of the future EU-China Investment Agreement, it is important to understand the context in which it takes place and what the agreement will entail. The comprehensive investment agreement between the EU and China that is currently being negotiated would be the EU's first ever stand-alone investment agreement covering both market access and investment protection and once concluded it will replace the 26 bilateral investment protection agreements currently in place between China and 27 EU Member States (all but Ireland). Areas covered by the Investment Agreement, currently under negotiation include investment market access and protection, a regulatory framework for investment, including transparency, licencing and authorisation procedures, sustainable development and dispute settlement. Regarding sustainable development, the future agreement will likely include rules on environmental and labour-related dimensions of foreign investment. The legal analysis has shown that the right to regulate is likely to be sufficiently protected under the future Investment Agreement.

Economic analysis

After having a look at the economic baseline, i.e. the inward and outward FDI flows and stocks of both China and the EU without an investment agreement, we assess the expected economic impact. While Copenhagen Economics (2012) already estimated increased investments of current EU investors in China and current Chinese investors in the EU, we find that there will potentially also be an interest from new EU and Chinese investors, including SMEs, to start investing in the partner country as a result of the Investment Agreement, given that certain barriers will be taken away and hence investment costs will be reduced. Increased EU investments in China are not expected to be at the expense of EU employment, and are more likely to contribute to the good performance of EU companies. Also, Chinese investments in the EU can contribute to economic growth and employment. Literature suggests that the impact of Chinese FDI on income generation in the EU host countries does not differ significantly from investments of other countries like the US or Japan. Furthermore, some positive productivity and market access spill-overs can be expected for SMEs, both in the EU and in China. The effects of the agreement on third countries, including developing countries, are expected to be very small. The modelling results from Copenhagen Economics (2012) do not allow for in-depth assessment at country and sector level for third countries, and we will therefore address this issue further in the in-depth sectoral analysis.

Social analysis

For both China and the EU, the social chapter starts with an analysis of the baseline situation both in the EU and China, describing the current legal framework regulating the labour market, the current situation and government policies in the field of employment, labour and other social policies, and institutions for labour market governance, with a particular focus on the labour inspectorate and social dialogue. Then it analyses the link between FDI and social impacts based on existing literature, paying special attention to the current practice of Chinese FDI in the EU and EU FDI in China. Finally, it makes a first step in providing insights on the potential impact of the investment agreement in the social field, taking into account the existence of MS BITs with China. This analysis shows that employment impacts are likely to be small (especially in the EU) but positive. With respect to sustainable development and labour provisions that are likely to be included in the EU-China agreement, there is still limited evidence on the effectiveness of such provisions as these provisions in trade and investment agreements are only relatively recent and have not yet been tested sufficiently, although they do seem to promote dialogue and co-operation on these matters. Some challenges in the specific context of China in this regard relate to the role of civil society and lower governance levels in this process. Political will is likely to be an important determinant. The impacts will be further elaborated in the next phase, with more inputs from civil society.

Human rights analysis

The Human Rights chapter includes a screening for key human rights that are likely to be impacted by the future investment agreement, and establishes a baseline scenario of the

current situation of the key identified relevant human rights in China and the EU, that sets the scenario where MNCs operate. Then it assesses the link between current FDI practices and human rights, looking specifically to Chinese FDI in Europe and EU FDI in China; and it identifies the potential impacts of the investment agreement, by stressing some of the potential impacts of specific provisions and of an increase in FDI. In terms of the baseline scenario, it is relevant to mention that the current BITs between EU Member States and China only cover investment protection without any reference to sustainable development. The first analysis based on what we know of the content of the future agreement based on a review of recent EU trade and investment agreements, shows that the agreement will include a chapter on sustainable development, but the responsibility to protect human rights of local populations, a concept that goes beyond the usual labour and environmental rights, is likely to be left with the states. In addition, as noted in the social analysis, involvement of civil society in monitoring the implementation of the agreement in China may be difficult due to severe limitations to freedom of expression and the control the government exerts over civil society organizations. Increased FDI that is likely to result from the agreement, as was found in the economic analysis, will also impact the human rights situation (e.g. through the promotion of Corporate Social Responsibility). The impact on specific human rights (both of investors and other groups in society) will be further elaborated in the next phase.

Environmental analysis

The environmental chapter of this interim report provides an overview of the selected issues for the environmental analysis, explains in detail the type of assessment carried out. The indicators used to show the environmental impacts of the Investment Agreement include climate change, efficient use of resources (renewable & non-renewable), quality of natural resources / pollution (water, soil, air, etc.), biodiversity, flora, fauna and landscapes, waste management, environmental risks, and animal welfare. Overall, the analysis shows very small but positive effects pointing to an improvement of overall macroeconomic environmental intensities as a result of the investment agreement.

In-depth sector studies

The three sectors that are studied in-depth in this interim report include Transport Equipment, Mining and Energy Extraction, and Chemicals. For these sectors, we describe the current situation, market access issues currently being encountered by both EU and Chinese MNEs, and the expected economic, social, human rights, and environmental impacts of the investment agreement for these sectors.

For both Transport Equipment and Chemicals, based on the Copenhagen Economics (2012) study, the expected change in output of the EU sector is very small but positive, while turnover of EU MNEs in China is expected to decrease. For Transport Equipment, employment in the EU MNEs in China will experience some relatively small increases or decreases, depending on the liberalisation scenario (i.e. modest or ambitious liberalisation, low or high spill-overs to third countries). At the EU level, low skilled and high skilled employees are expected to equally gain. The impact on employment in both EU MNEs in China and employment in the EU for the Chemicals sector is expected to be very minor but in line with turnover and output changes. The impacts for the Mining and Energy Extraction sector are expected to be negligible.

More information will be collected in the coming period to complement and validate the findings so far (mainly through stakeholder consultations). The impact on three more sectors will be studied in-depth in the final phase of this SIA. These are Processed Foods and Beverages, Communication and Electronic Equipment, and Finance and Insurance.

Stakeholder consultations

In order to complement the analyses listed above, the SIA team engages in continuous feedback and consultation with key stakeholders to collect their input and to verify the results. Consultations of stakeholders and dissemination of information takes place on a continuous basis. Main consultation activities consist of electronic consultation and dissemination (dedicated SIA website, electronic newsletters, social media, etc.), three Civil Society Dialogues for EU civil society, a SIA stakeholder workshop in Brussels that took place on the 5th of July 2016, personal interviews, and an online survey. Consultation and dissemination takes place both in the EU and in China, and directly feed into the various SIA analyses.

Way forward

Specific activities and steps forward for each part of the SIA are also included at the end of each chapter, and summarized in the final chapter of this interim report. The current interim phase runs from June 2016 to June 2017, and the final phase will start in June and run until October 2017. Dates of specific consultation activities are announced on the dedicated SIA website.

1. Approach and conceptual framework

1.1. Background and study objectives

Over the past decades, 27 European Union (EU) Member States (MS) have signed Bilateral Investment Treaties (BITs) with China, providing for investment protection, but not for market access.

Existing restrictions caused by investment barriers mean there is still significant untapped potential in investment flows between China and the EU. China accounts for just 2-3 percent of all European investments abroad, and while Chinese investments into Europe are increasing, this is from an even lower base.[3] Despite the fact that Europe is China's largest trading partner and China is Europe's second-largest trading partner, China has invested 50 percent more in Sub-Saharan Africa than in the EU and the EU has invested 20 times more in the United States than in China.[4]

Following an impact assessment carried out by the European Commission in 2013, based on a study prepared by Copenhagen Economics, in October 2013, the European Commission received authorisation from the European Council to enter into negotiations aimed at concluding an investment agreement between the EU and China.

Negotiations were officially launched during the 16th EU-China Summit held on 21 November 2013 and the first round of negotiations took place in Beijing in January 2014.[5] So far, eleven rounds of negotiations have taken place; the last one took place in Qingdao, China in the last week of June 2016.

The current Sustainability Impact Assessment (SIA) is performed in parallel with the ongoing negotiations and will update the findings from the Commission’s impact assessment from 2013 based on recent developments and the latest data and stakeholder views. It feeds into the negotiations so that its results can be taken into account in the negotiations and decision-making process. The specific objective of the SIA study is:

> “To assess how the investment provisions under negotiation could affect economic, social, human right and environmental issues in the EU and China and to make recommendations to maximise the benefits of the agreement and prevent or minimise potential negative impacts.”

In line with the guidelines from the second edition of the DG TRADE SIA Handbook[6], this SIA will consist of two complementary components that are of equal importance: (i) economic, social, human rights and environmental impacts; and (ii) stakeholder consultations for information gathering and dissemination.

1.2. Organisation of the study

The SIA is implemented by a consortium of Ecorys, TNO, Oxford Intelligence and Reichwein China Consult. These four partners bring in the following complementary expertise:

- **Ecorys**: its extensive experience with SIAs and investment-related projects, its track record in China, its strong networks for consultations and tested management structure and processes;
- **Oxford Intelligence**: deep knowledge of investment, its databases of FDI flows, and its large range of contacts with both investing companies and intermediary organisations;
- **TNO**: its databases and quantitative skills with respect to environmental analyses;

3 European Commission (2014). *Facts and Figures on EU-China trade. Did you know?.*
4 Malmström, C. (2015, 27 January). *China-EU Trade: Mutual Support for Growth & Jobs*. Speech, Brussels – Presentation of the EUCCC Position Paper 2014-2015.
5 European Commission (2013, 19 November). *16th EU-China Summit Beijing.* Press Release, Brussels.
6 This SIA Handbook is available at: http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154464.PDF.

- **Reichwein China Consult**: its long experience in working in China, including with foreign investors, its knowledge of the Chinese language, its networks and awareness of the issues and sensitivities in undertaking stakeholder consultations in China.

The experts that work on the study are introduced in the following table, together with the part of the study for which they are responsible. Ms Nora Plaisier is leading the economic team, Ms Marleen Catry Rueda is leading the social and HR team, and Dr. Evgueni Poliakov is leading the environmental team.

Table 1.1 Presentation of the SIA team

Name	Company	Main contributions to the report	Level
Richard Liebrechts	Oxford Intelligence	Team leader, overall oversight	Senior
Nora Plaisier	Ecorys	Chapter 3 & 7	Senior
Dr. Helen Coskeran	Oxford Intelligence	Chapter 3 & 7	Senior
Corine Besseling	Ecorys	Chapter 1, 2, 3, 7, 9, team coordinator	Junior
Stephanie Bouman	Ecorys	Chapter 2, 3, 7 & 8	Junior
Dr. Eric de Brabandere	Ecorys / Leiden University	Chapter 2, 4 & 5	Senior
Marleen Catry Rueda	Ecorys	Chapter 4 & 5	Senior
Malin Oud	Ecorys / Tracktwo	Chapter 4 & 5	Senior
Sophie Rohlfs	Ecorys	Chapter 4 & 5	Junior
Dr. Evgueni Poliakov	TNO	Chapter 6	Senior
Dr. Trond Husby	TNO	Chapter 6	Junior
Marieke Reichwein	Reichwein China Consult	Chapter 8	Senior
Shasha Wang	Reichwein China Consult	Chapter 8	Junior
Dr. Floor Timmons	Ecorys	Quality check on all chapters	Senior

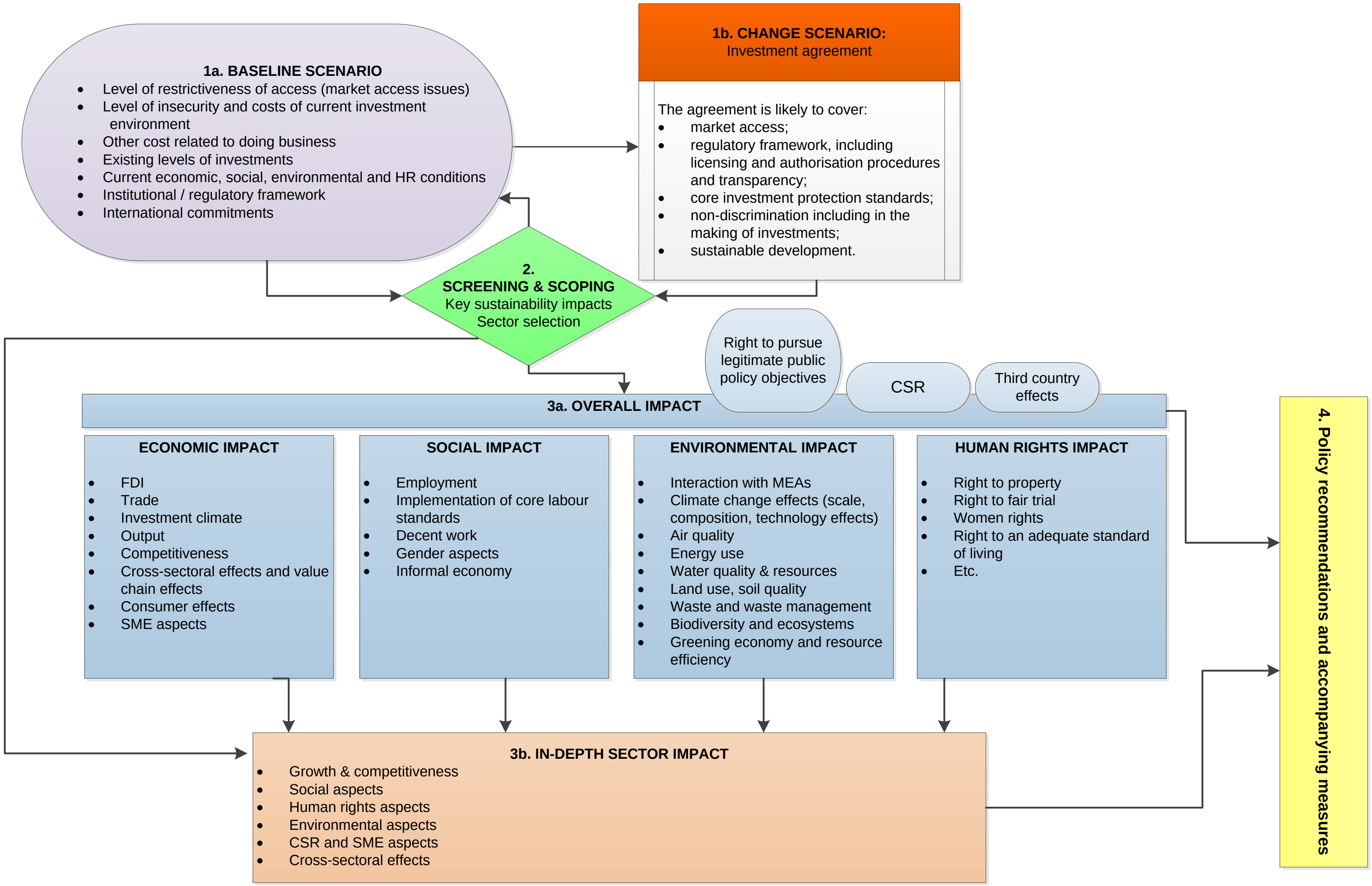
The SIA is implemented in close consultation with an Inter-service Steering Group (ISG), in which the following Commission Services participate: Trade (TRADE), Agriculture and Rural Development (AGRI), Budget (BUDG), Climate Action (CLIMA), Communications Networks, Content and Technology (CNECT), Competition (COMP), International Cooperation and Development (DEVCO), Education and Culture (EAC), Economic and Financial Affairs (ECFIN), European External Action Service (EEAS), Employment, Social Affairs and Inclusion (EMPL), Energy (ENER), Environment (ENV), Eurostat (ESTAT), Financial Stability, Financial Services and Capital Markets Union (FISMA), Service for Foreign Policy Instruments (FPI), Internal Market, Industry, Entrepreneurship and SMEs (GROW), Migration and Home Affairs (HOME), Justice and Consumers (JUST), Maritime Affairs and Fisheries (MARE), Mobility and Transport (MOVE), Research and Innovation (RTD), Health and Food Safety (SANTE), Secretariat-General (SG), Legal Service (SJ), and Taxation and Customs Union (TAXUD).

1.3. Approach

As mentioned in Section 1.1, the EC has already carried out an Impact Assessment of the possible EU-China Agreement on investment in 2013, which includes economic modelling as well as a quantitative and qualitative analysis of impacts. Therefore, our approach will take the EC's impact assessment as the basis and starting point, with a focus on compatibility of our study and the EC impact assessment, and add value by complementing the IA with additional analyses and recent information and data.

The exact steps and content of the analyses are detailed further in the next chapters of the Interim Report. Here we would like to highlight that the content of the overall analysis and sectorial analysis, as well as the policy recommendations, are based on the two main pillars of the SIA: robust analysis and a continuous consultation process. There is a continuous interaction between these two elements: stakeholder consultations can help in the identification of key issues and can provide both inputs for the analysis or provide feedback after the preliminary analysis. In the context of this study in particular, which is partly based on existing studies, we consider the consultations as key to help further expand and deepen the analysis. Figure 1.1 on the next page illustrates the steps and focus of our analysis.

Figure 1.1 Overall approach: steps and elements



As shown in Figure 1.1, our approach includes four steps, which are briefly outlined below.

Step 1: Establishing the baseline and change scenarios

In establishing the baseline for the sustainability impact assessment in terms of economic, social, environmental and human rights developments (i.e. the situation without an Investment Agreement), it is important that we take into account how the baseline may have changed since the Impact Assessment. The SIA should give an up-to-date overview of the current situation, taking into account the fact that 27 Member States currently have in place BITs with China, as well as the fact that both the EU and China have commitments under existing trade and investment agreements with third countries. With respect to investment protection, a number of developments have taken place at the EU policy level, demonstrated in the recently concluded negotiations for the EU investment agreements with Canada, Vietnam and Singapore as well as in the framework of the TTIP negotiations. Given the EU investment protection policy reforms, including the investment court system, the key elements of which are to be incorporated in ongoing negotiations, the likely impacts of the Investment Agreement between the EU and China have been assessed using publically available investment and sustainable development chapters from these agreements as benchmarks

Step 2: Screening for key sustainability issues associated with the agreement

Screening is a means to narrow down the measures which need to be assessed, identifying the key issues as well as the related individual elements of the policy initiative which should be focused on for further analysis. A screening exercise therefore has been an important first step in the analytical process of the SIA, as it aimed to identify *significant* sustainability impacts associated with the individual elements under negotiation, but also to select relevant sectors for further in-depth study. This exercise has built on findings from the Impact Assessment, on other studies of the EU-China investment agreement and on the literature on relevant cause- and effect relations related to investment agreements and FDI.

Based on the screening exercise we have been able to identify a number of key sustainability issues associated with the agreement. Building on the key issues, we have identified for each area (economic, social, human rights, environmental) main themes to be explored further during the analysis phase. This included the definition of relevant indicators, based on an assessment of available data and information and the extent to which these could be collected.

Step 3: Overall analysis and sectorial analysis

Our approach to the overall sustainability and sectorial analyses is summarised in the first sections of the following chapters. Here we would like to already highlight one specific aspect: the importance of cross-cutting issues. Cross-cutting issues are mentioned in the ToR under the overall analysis, as they are important to all or at least several sustainability dimensions. They include:

1. Corporate Social Responsibility (CSR), which clearly affects all sustainability areas, and is relevant both at the overall and sectorial level, in terms of impact but also interaction with existing policies and agreements in this area;
2. The right to regulate, which could be of relevance for all sustainability areas;
3. Third country effects: given the economic size of both partners, the agreement can have implications for third countries as well, particularly with respect to diversion of investments or a reconfiguration of global value chains, which will have economic implications but indirectly could also affect other sustainable development areas.

Step 4: Policy recommendations

As a final step in the study, we will formulate policy recommendations aimed at enhancing the positive impact of the agreement, while mitigating possible negative impacts. We will make a distinction between policy recommendations that can be taken up in the agreement and those that would need to be addressed outside the agreement, i.e. flanking policy measures, analysing their feasibility and estimating their cost and possible impact.

2. Background to the EU-China investment agreement

2.1. The baseline scenario: analysis of the context of the Investment Agreement

2.1.1. China's investment policy

Since the adoption of the open-door policy in 1978, China is one of the most important destination countries for foreign direct investment (FDI). In 2013, China hosted $124 billion of FDI, only the US hosted more FDI, worth of $188 billion. One year later China became the number one host country for FDI ($129 billion), followed by Hong Kong ($103 billion) and the US ($92 billion).[7] Several factors have contributed to this status, including notably its population and market size. China's policies to promote FDI have played an important role as well.[8] [9] The current leadership of president Xi Jinping is pursuing a more active and open policy in international economic affairs, although many of the promised reforms to open up to foreign investment and ensure a level playing field are yet to be materialised.

Legal framework

The basic framework of Chinese foreign investment laws consists of three laws, jointly referred to the 'Three Investment Laws', and three regulations, jointly referred to the 'Regulations of the Three Investment Laws'.[10] The Three Investment Laws have been promulgated between 1979 and 1988. The first foreign investment law was the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures, the second one was the Law of the People's Republic of China on Foreign-Capital Enterprises, and the third one was the Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures. For each of these laws the State Council promulgated a regulation to ensure the implementation.

In addition to the Three Investment Laws, China has also developed a large number of implementation regulations on foreign investment. All together these laws and regulations provide a relatively all encompassing legal environment for foreign investment practice in China.[11]

Catalogue for the Guidance of Foreign Investment

The legal framework described is supported by the Interim Provisions on Guiding Foreign Investment Direction, promulgated by the State Council in 2002.[12] These provisions state that the Guiding Catalogue and the Catalogue of Priority Industries for Foreign Investment in the Central-Western Region are to serve as the basic policies for reviewing, evaluating and approving foreign investment projects and enterprises.

The Catalogue divides foreign investment into three categories: (1) encouraged industries, for which the Chinese government is actively seeking foreign investments and for which investors are able to enjoy certain benefits such as tax incentive, cheaper land cost, simplified approval procedures or other favourable investment terms; (2) restricted industries, for which the Chinese government intends to impose restrictions such as

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7 UNCTAD, 'World Investment Report' (2015).

8 Xiao, J. (2015). How can a prospective China–EU BIT contribute to sustainable investment: in light of the UNCTAD Investment Policy Framework for Sustainable Development. *Journal of World Energy Law and Business*, No. 8(6).

9 Davies, K. (2013), "China Investment Policy: An Update", OECD Working Papers on International Investment, 2013/01, OECD Publishing.

10 Gao, X. & Jiang, H. (2014). Foreign Investment Laws and Policies in China: Historical views and current issues. Cranberra, Australia: ANU Press.

11 Gao, X. & Jiang, H. (2014). Foreign Investment Laws and Policies in China: Historical views and current issues. Cranberra, Australia: ANU Press.

12 Gao, X. & Jiang, H. (2014). Foreign Investment Laws and Policies in China: Historical views and current issues. Cranberra, Australia: ANU Press.

foreign shareholding ratios; and (3) prohibited industries, in which no foreign investment is allowed.[13] The industries not included in the Catalogue fall into a default fourth category: 'permitted' industries.

The latest version of the Catalogue, i.e. the "2015 Catalogue for the Guidance of Foreign Investment", lists 349 "encouraged", 38 "restricted" and 36 "prohibited" industries. As compared to the 2011 Catalogue, the "restricted" industry sectors have been significantly reduced from 79 to 38, and the "prohibited" sectors have also been slightly reduced from 38 to 36. The overall trend is therefore clearly towards greater openness and liberalization. The 2015 Catalogue tries to encourage more foreign investors to invest in modern agriculture, high technology, environment friendly industries and modern service industry as well as new clean energy industries. The category of prohibited industries usually covers industries concerning national policy or public security, such as gambling, on-line publishing, manufacture of tobacco products, and Chinese law consultation service.[14]

New Foreign Investment Law

The Chinese Government has initiated reforms to the current Investment Laws in order to bring more consistency and reduce uncertainties.[15] The goal of the new law, as defined by the Chinese administration, is to create a stable, transparent and predictable legal environment for foreign investors through restructuring the approval, supervision and governance mechanisms and to reduce administrative costs. On 19 January 2015 the MOFCOM released the draft Foreign Investment Law (Draft FIL) for public consultation, but no revised version of the law has been published so far following the comments received during this consultation phase. At the end of 2015 the Draft FIL was submitted to the Legislative Affairs Office at the State Council, which is a necessary step in the legislative process in China. On 2 March 2016, the MOFCOM announced that it plans to submit the draft for final approval to the National People's Congress, the country's legislative body, by the end of 2016.[16]

Once the Draft FIL is approved, it will replace the Three Investment Laws and will introduce the principle of national treatment applicable subject to exceptions included in a negative list which has not yet been published[17]. There will no longer be a need for foreign investors to apply for pre-approval from the Chinese government, unless the investment falls within the negative list, i.e. it falls within the industries marked as restricted or prohibited in the "2015 Catalogue for the Guidance of Foreign Investment". The negative list includes fields of investments that form exceptions to the general rule of approval.[18]

With the new Foreign Investment Law, the approval process of the Catalogue will change as well. Previously industries were marked as either being "encouraged", "restricted", or "prohibited". Under the Draft FIL, the category "encouraged" will be removed, which means that foreign investment in industries not included in the negative list will be considered as "encouraged", will not require additional approval and will be able to proceed directly to registration with the Administration of Industry and Commerce.

As regards national security, the draft FIL will extend the number of occasions in which a national security review could be carried out. Currently national security reviews are carried out when it concerns transactions related to acquiring control over Chinese companies by foreign investors. This can happen only in the case of certain sectors, i.e. transport, energy, the military sector, and infrastructure. The new provisions in the draft FIL would allow the government to conduct a national security review of any foreign investment that could damage China's national security.[19] Although large reforms have been made to the Chinese investment law, research shows that still a large number of

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[13] Stibbe News & Insights (2015). China's New Foreign Investment Guidance Catalogue enters into force today.
[14] Liao, W. (2015). *China's new Foreign Direct Investment Policy – Investing in China.* Spiegeler Attorneys-at-law.
[15] Simmons&Simmons Elexica (2016). *Status of the new Foreign Investment Law.*
[16] Nan, Z. & Zhe, Z. (2016). *Draft expected to ease foreign investment access.* China daily.
[17] De Brauw Blackstone Westbroek (2015). *New law brings changes to foreign investments in China.*
[18] De Brauw Blackstone Westbroek (2015). *New law brings changes to foreign investments in China.*
[19] Simmons&Simmons Elexica (2016). *Status of the new Foreign Investment Law.*

restraining measures and practices hinder foreign investors both pre- and post-establishment, as they favour domestic or state-owned investors.[20]

China's Five-Year plans

China's Five-Year plans set out policies for social development and economic growth, identify promising areas for investment, and indicate where governmental resources will be concentrated.[21] The Twelfth Five-Year Plan 2011-2015 emphasized that Chinese Government 'must actively employ a more proactive opening up strategy, constantly explore new areas and places to open up, expand and deepen the convergence of interests for all parties, improve the mechanism to better adapt to the development of an open economy, and effectively prevent risks, so as to promote development, reform and innovation by opening up'. It indicates that China will further promote economic reform and opening-up, reduce the limitations on foreign investment in China, promote the unification of laws regarding foreign and domestic investors, expand the opening-up of financial sectors and interior borders, accelerate the negotiation and signature of free-trade agreements and the construction of free-trade zones.[22]

By means of the Thirteenth Five-Year Plan 2016-2020, the Chinese Government will strive to increase innovation, achieve an economic growth target of 6.5 percent, open up the market more to foreign investors, create 10 million new urban jobs, and eliminate poverty.[23] The final text of the Thirteenth Five Year Plan has been made public on March 17, 2016. The text contains two sections on investment, i.e. inbound investment and outbound investment. Regarding the former the text states that China inter alia aims to:

- Improve the investment environment and reduce market restrictions in order to attract foreign investment;
- Fully implement pre-establishment national treatment to foreign investors;
- Change the positive list approach into a negative list approach;
- Further open up the services sector and monopolised sectors to foreign investment.[24]

Concerning outbound investment the plan encourages Chinese companies to invest overseas and further cooperate with foreign companies, as well as to integrate in the world supply and value chains.

2.1.2. EU's investment policy

In 1959, Germany was the first country to conclude a BIT, and ever since many countries around the world have followed.[25] With a total of 1,342 BITs into force up to date, the EU Member States together account for more than half of the bilateral investment agreements that are currently in force around the world (the world's total number of BITs in force equals 2,324).[26] The differences between the BITs signed are however large, potentially leading to an uneven playing field for EU companies investing abroad.

With the Lisbon Treaty coming into force on 1 December 2009, the competence on new investment agreements has shifted from the EU Member States to the EU.[27] The legal framework of free movement of capital is laid out in Chapter 4 of Title IV TFEU. Article 63

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[20] Covington & Burling LLP (2014), Measures and Practices Restraining Foreign Investment in China.
[21] APCO worldwide. *The 13th Five-Year Plan: Xi Jinping Reiterates his Vision for China.*
[22] Gao, X. & Jiang, H. (2014). Foreign Investment Laws and Policies in China: Historical views and current issues. Cranberra, Australia: ANU Press.
[23] APCO worldwide. *The 13th Five-Year Plan: Xi Jinping Reiterates his Vision for China.*
China Brain. Blueprint for the 13th Five-Year Plan for 2016-2020.
[24] China Brain. Blueprint for the 13th Five-Year Plan for 2016-2020.
[25] European Commission (2010). *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions.* Towards a comprehensive European international investment policy. Brussels.
[26] Unctad investment policy hub, BIT search criteria
[27] European Commission (2010). *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions.* Towards a comprehensive European international investment policy. Brussels.

TFEU prohibits all restrictions on the movement of capital between Member States and third countries, while the same prohibition exists in terms of payment flows. Through the ordinary legislative procedure, the EP and the Council are now in a position to adopt measures that shape the legal framework regarding investment.

On 9 January 2013, a new European regulation came into force[28], which clarifies how Member States and the EU will enforce existing Extra-EU BITs and negotiate new Extra-EU BITs that will replace existing BITs entered into force by Member States. It confirms the validity of existing Member States BITs until the EU decides to replace them. Regulation No. 1219/2012 grants legal security to the existing BITs between the Member States and third countries until they are replaced by EU-wide investment agreements. This Regulation also allows for the Commission to authorise Member States to open formal negotiations with a third country to amend or conclude a BIT under certain conditions.

Since the financial crisis, attracting FDI from the rest of the world has become one of the focus points of the EU. EU's investment policies aim to attract FDI by extending and deepening the single market, ensuring open and competitive markets inside and outside Europe, improving European and national regulation, and expanding and upgrading Europe's infrastructure and its scientific base. In its Communication "*Towards a comprehensive European international investment policy*" of July 2010, the European Commission has outlined its approach for the EU's future investment policy.[29] This policy is in line with the objectives of smart, sustainable and inclusive growth, set out in the Europe 2020 Strategy, and is confirmed and elaborated in the Council's Conclusions on a comprehensive European investment policy of October 2010, and EP's Resolution on the future European international investment policy of April 2011.[30]

During the TTIP negotiations the EU has tabled a new proposal for investment protection:

- No discrimination;
- Protection against unlawful expropriation;
- The possibility to transfer fund relating to an investment;
- A guarantee of fair and equitable treatment and physical security, defined through a closed list of situations that constitute a breach of such treatment;
- A commitment that governments will respect their own written contractual obligations towards an investor;
- A commitment to compensate in a non-discriminatory way for losses in certain circumstance linked to war or armed conflict.[31]

Other new aspects included are an explicit provision affirming the right to regulate, an investment court system consisting of 15 public appointed judges and the inclusion of an appeal mechanism.[32] The EU aims to replace the current investment dispute resolutions mechanism by the ICS. Currently it has already been included in the agreement with Canada (CETA) and Vietnam.[33]

In October 2015, the European Commission published a Communication for an updated trade and investment policy for the EU, entitled "Trade for all: Towards a more responsible trade and investment policy". The EU will seek to incorporate all of the principles set out in this policy document in its trade/investment initiatives and negotiations, but the extent to

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28 Regulation (EU) No 1219/2012 of the European Parliament and of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member states and third countries.

29 European Commission (2010). *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions.* Towards a comprehensive European international investment policy. Brussels.

30 European Commission (2015). *Investment.* DG Trade.

31 European Commission (2015). Reading guide to the ICS proposal

32 European Commission (2015). Proposal for investment protection and resolution of investment disputes.

33 European Commission (2016). CETA: EU and Canada agree on new approach on investment in trade agreement.

which future agreements will actually reflect these objectives will depend on outcome of specific negotiations.[34]

2.1.3. China's Bilateral Investment Treaties (BITs)

Since its first BIT signed in 1982, China has signed 146 BITs, of which 110 are actually in force.[35] To place these numbers in perspective, Germany is the only country in the world that concluded more BITs than China did. Most of these BITs have been signed with developing countries, which are mainly driven by resources needs, but which also show China's broad interests in strengthening diplomatic ties and its endeavour to improve investment conditions for Chinese investors abroad. Furthermore, China concluded many BITs with FDI-exporting countries, including all EU Member States but Ireland. Many of these BITs have initially been signed in the 1980s, but have been updated in the last decade.[36]

The differences between the various BITs concluded by China are significant and differ per period. The reason is that over the years the rationale behind China's international investment policy has been changing from attracting inward FDI to promoting outward FDI.[37] This is reflected in the shift from a restrictive to a legalised BIT approach,[38] which is a turning away from China's traditional stance toward international investment law that emphasized the host country's sovereign right of regulating foreign investments – a typical policy for FDI-importing countries.[39] The shift has resulted in higher levels of legal protection for both Chinese investors abroad and foreign investors in China. Both approaches are, however, based on the European approach, which provides investment protection in the post-establishment phase only and relies on open-ended treaty language. Already the first BITs that China concluded with EU Member States (e.g. Sweden in 1982, Denmark in 1985, and UK in 1986) included an ISDS mechanism for all provisions in the BIT. Although the provisions could differ per country, often they included provisions for fair and equitable treatment, expropriation, Most Favoured Nation, compensation for losses, subrogation and free transfer of funds.[40] The early BITs concluded by China already provided high protection standards, such as fair and equitable treatment (FET), and most-favoured-nation (MFN), but did not include national treatment. The latter has only been mentioned in the Chinese BIT with India, and the BITs singed afterwards.[41]

In 1982 Sweden was the first country to sign a BIT with China.[42] Other EU Member States followed quickly and, with the exception of Ireland, all EU Member States currently have a BIT with China. The differences between the BITs signed between China and the EU Member States can be significant, for example some BITs include an ISDS clause, while others do not.[43] This is a result of some BITs having been renewed after some time, while

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34 Killick et al. (2015). *The EU's new trade and investment policy in a nutshell.* Client Alert White & Case.

35 UNCTAD Investment Policy Hub (2016). *China Bilateral Investment Treaties (BITs).* International Investment Agreements Navigator.

36 Berger, A. (2013). *Investment Rules in Chinese Preferential Trade and Investment Agreements: Is China following the global trend towards comprehensive agreements?* Discussion Paper German Development Institute.

37 Berger, A. (2013). *Investment Rules in Chinese Preferential Trade and Investment Agreements: Is China following the global trend towards comprehensive agreements?* Discussion Paper German Development Institute.

38 A legalised BIT approach includes broad definitions of investment, comprehensive absolute and relative standards of treatment, provisions on the compensation for expropriation, and the free transfer of funds as well as unrestricted investor–state dispute settlement mechanisms.

39 Berger, A. (2010). The Politics of China's Investment Treaty-Making Program*,* German Development Institute. *The Politics of International Economic Law.* Cambridge University Press.

40 UNCTAD, text of the Chinese BIT with Sweden; UNCTAD, text of the Chinese BIT with Denmark; UNCTAD, text of the Chinese BIT with the UK.

41 Berger, A. (2013). *Investment Rules in Chinese Preferential Trade and Investment Agreements: Is China following the global trend towards comprehensive agreements?* Discussion Paper German Development Institute.

42 UNCTAD Investment Policy Hub (2016). *China Bilateral Investment Treaties (BITs).* International Investment Agreements Navigator.

43 Xiao, J. (2015). How can a prospective China-EU BIT contribute to sustainable development: in light of the UNCTAD Investment Policy Framework for Sustainable Development. *Journal of World Energy Law and Business,* Vol. 8, No. 6, pp. 521-541.

others have remained intact. Furthermore, none of the current BITs with Member States deals with market access for prospective investors.[44]

Most of China's newly signed investment agreements take into account recent developments and include some elements of UNCTAD's Investment Policy Framework for Sustainable Development (IPFSD) – for example the BITs recently concluded with Uzbekistan, Canada and Tanzania in respectively 2011, 2012 and 2013, but also the FTAs with the ASEAN countries and Colombia, Japan, Korea, Mexico, Peru and New Zealand.[45] However China's FTAs concluded with Switzerland and Iceland in 2013 do not automatically change their traditional 'restrictive' BITs concluded in the 1980s. While negotiating its BITs, China's own economic interests always form the basis for the negotiations, which explains why China's increase in outward FDI is accompanied by the shift to higher investment protection standards.

The fact that China has not yet signed a BIT with the United States makes clear that China's flexibility is not unlimited. After 17 months of preliminary talks, the start of negotiations was announced in June 2008.[46] In July 2013 China agreed to accept the US's pre-establishment coverage and negative list approach, and thus to remove behind-the-border barriers to market access, in order to continue negotiations. The exact BIT text is still under negotiation.

2.1.4. Other investment and trade treaties

China

In addition to the BITs, China has signed 20 other Agreements with investment provisions.[47] These include nine signed bilateral FTAs, one trilateral investment agreement, three special arrangements with areas that are part of Greater China or which China considers part of Greater China, four regional agreements and three other agreements. All of these agreements include investment provisions to foster inward and/or outward FDI in China.

With the China-EC Trade and Cooperation Agreement, signed in 1985, the European Economic Community (EEC) and China aim to promote trade, increase economic cooperation and encourage investment. Investments should be encouraged by creating a favourable climate by providing investment promotion and protection arrangements. With this agreement the parties granted each other most-favoured nation treatment. Although various agreements of this kind, amongst other the earlier mentioned BITs, had already been signed at the member state level in the late 1970s and 1980s, this was the EEC's first economic cooperation agreement with China on EC-level.[48] The Agreement replaced the agreement concluded between the EEC and the People's Republic of China in 1978 but was now extended to trade issues.

Once China became a member of WTO in 2001, it initiated talks with the ASEAN countries to form the world's largest free-trade zone in terms of population.[49] The establishment of the China-ASEAN free trade area aims to improve the economic development of the countries and to enhance the economic and trade relations between the countries. The leaders of both China and ASEAN Members (AMS) signed the Framework Agreement on China-ASEAN Comprehensive Economic Cooperation in November 2002. This was followed

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[44] European Commission (2013), Impact assessment report on the EU-China Investment Relations. Brussels, 23 May 2013, SWD(2013) 185 final.

[45] Berger, A. (2013). *Investment Rules in Chinese Preferential Trade and Investment Agreements: Is China following the global trend towards comprehensive agreements?* Discussion Paper German Development Institute.

[46] Berger, A. (2010). The Politics of China's Investment Treaty-Making Program, German Development Institute. The Politics of International Economic Law. Cambridge University Press.

[47] Xiao, J. (2015). How can a prospective China-EU BIT contribute to sustainable development: in light of the UNCTAD Investment Policy Framework for Sustainable Development. *Journal of World Energy Law and Business,* Vol. 8, No. 6, pp. 521-541.

[48] Dent, C.M. (2013). *The European Union and East Asia: An Economic Relationship.* Routledge, pp. 135-136.

[49] Hilpert, H.G. (2014). *China's Trade Policy, Dominance without the Will to Lead.* SWP Research Paper, Berlin.

by the signing of the Agreement on Trade in Goods of the China-ASEAN FTA in November 2004, the Agreement on Trade in Services in January 2007, and the Agreement on Investment in August 2009. The latter agreement entered into force in March 2012, called the ASEAN Comprehensive Investment Agreement (ACIA). It aims to create a free and open investment environment through the consolidation and expansion of existing agreements between the ASEAN member countries.[50] The ACIA replaces its precursor agreements: the ASEAN Investment Area (AIA) and the ASEAN Investment Guarantee Agreements (IGA). It is based on international best practices and covers almost all forms of investment, with liberalisation provisions covering the four main sectors of manufacturing, agriculture, fishery, mining and quarrying, as well as services incidental to these sectors.

A particular agreement is the trilateral investment agreement signed by China, Japan, and Korea in 2012. It entered into force in May 2014 and is the first legal framework between the three East Asian nations regarding investment. It aims to enhance and protect investments made trilaterally, whilst also paving the way for a potential FTA between China, Japan and Korea. The agreement’s rules are more ambitious than previous BITs signed by China, as it includes commitments on transparency regarding intellectual property rights, but also the protection of these rights. Furthermore, governments retain the right to take prudential measures related to financial services if they deem necessary. It also identifies international arbitration as the key dispute resolution mechanism for foreign investors.

Similar to the BITs, in all investment treaties China’s change in attitude to an increasing acceptance of more provisions open for Dispute Settlement Mechanisms (DSMs) is visible.[51] This means that there is a movement from a less legalized, traditional diplomatic approach to a more legalized model.

European Union

Since 2009, the European Commission has been responsible for International Investment Agreements (IIAs) and Free Trade Agreements (FTAs). Many of the FTAs concluded do also contain investment provisions. A selection of the countries with which the European Commission currently negotiates FTAs with investment chapters includes Japan and the US. Concluded negotiations of FTAs with investment chapters include agreements with Singapore, Canada, and Vietnam).[52]

The most comprehensive FTA currently under negotiation is TTIP, the Transatlantic Trade and Investment Partnership between the EU and the US. One of the chapters concerns investment market access and protection. The EU's reformed approach, developed within the context of the TTIP but being applied beyond, is to include an investment court system (ICS) in the agreement. Compared to the old system the new system, inter alia, includes a standing court with judges and random allocation of cases, as well as an appeal mechanism and will be more transparent. Additionally, article 2.1 of the textual proposal on investment protection mentions that the agreement shall not affect the parties’ right to regulate.[53] The EU has incorporated those reforms also in its text proposal to China.

[50] ASEAN (2013). *ACIA Final Text.*
[51] Toohey, L. et al. (2015). *China in the International Economic Order.* Cambridge University Press.
[52] http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf.
[53] http://trade.ec.europa.eu/doclib/docs/2015/november/tradoc_153955.pdf.

2.2. Description of the EU-China agreement (change scenario)

The comprehensive investment agreement will be the EU's first ever stand-alone investment agreement covering both market access and investment protection and once concluded it will replace the 26 bilateral investment protection agreements currently in place between China and 27 EU Member States.[54] Only one set of rules would thus apply.

During the ninth round that took place in Beijing between 12 and 15 January 2016, negotiators reached agreement on an ambitious and comprehensive scope for the Agreement – i.e. the topics to be addressed in the negotiations – and moved into specific text-based negotiations. The topics that are up for discussion range from investment market access and protection; a regulatory framework for investment, including transparency, licencing and authorisation procedures; sustainable development and dispute settlement. Important to note is that the future agreement will likely include rules on environmental and labour-related dimensions of foreign investment. It was reiterated that the Agreement should improve market access opportunities by establishing a genuine right to invest and by guaranteeing non-discriminatory treatment.[55]

According to DG TRADE, the specific aim is to conclude an agreement that will:

- Provide for new opportunities and improved conditions for access to the EU and Chinese markets for Chinese and EU investors respectively;
- Address key challenges of the regulatory environment, including those related to transparency, licensing and authorisation procedures;
- Establish certain guarantees regarding the treatment of EU investors in China and of Chinese investors in the EU, including protection against unfair and inequitable treatment, unlawful discrimination and unhindered transfer of capital and payments linked to an investment;
- Ensure a level playing field by pursuing, inter alia, non-discrimination as a general principle subject only to a limited number of clearly defined situations;
- Support to sustainable development initiatives by encouraging responsible investment and promoting core environmental and labour standards;
- Allow for the effective enforcement of commitments through investment dispute settlement mechanisms available to Contracting Parties and to investors.

The objective and key provisions of the agreement will be guided by the EU-Canada Comprehensive Economic and Trade Agreement (CETA)[56] and EU-Singapore Free Trade Agreement (FTA)[57], as well as by the EU text proposal for the Investment Chapter of the Transatlantic Trade and Investment Partnership (TTIP) with the US.[58]

Market access

The market access provisions in the envisaged EU-China investment agreement aim at facilitating market access by addressing both discriminatory and quantitative restrictions at the stage of making of investments.

Post-entry investment protection

China is already party to a large number of investment treaties with EU Member States. As highlighted in 1.3, the analysis of the impacts will be carried out based on investment

[54] Malmström, C. (2016, 28 January). China EU – A Partnership for Reform. Speech, Brussels – A joint BUSINESSEUROPE, EUCCC* and EUCBA* Event.
[55] European Commission (2016, February). Overview of FTA and other trade negotiations.
[56] http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf.
[57] http://trade.ec.europa.eu/doclib/press/index.cfm?id=961.
[58] http://trade.ec.europa.eu/doclib/docs/2015/september/tradoc_153807.pdf.

protection provisions included in agreements the EU has recently concluded or is currently negotiating with Canada, Singapore, Vietnam and the US.

The recent negotiations by the EU with Canada and the US have unambiguously and explicitly moved away from open-ended formulations of investment protection standards, and in particular the clauses on FET and expropriation. Article X(9) of the draft text of the CETA of 2014 enumerates the types of measures which can constitute a breach of FET. The list notably does not contain the '(legal) stability' and 'legitimate expectation' elements (although the 'legitimate expectation' element is included in Article X(9)(4) as an 'optional' element a tribunal may take into consideration), which have in the past resulted in findings that the regulatory acts of States, taken in the public interests, nonetheless amounted to violations of these standards. The recent draft of the TTIP includes, in the general provision on the right to regulate, the rule that "the provisions of this section shall not be interpreted as a commitment from a Party that it will not change the legal and regulatory framework, including in a manner that may negatively affect the operation of covered investments or the investor's expectations of profits."[59] Such wording is clear and unambiguous evidence of the intent of the parties to clarify the content of FET.

Similarly, the recent practice of the EU in respect of 'indirect expropriation' has been to make clear which measures taken by a State cannot amount to an indirect expropriation. This is done through the inclusion of the following phrase, such as in the November 2015 draft of the TTIP: "for greater certainty, except in the rare circumstance when the impact of a measure or series of measures is so severe in light of its purpose that it appears manifestly excessive, non-discriminatory measures of a Party that are designed and applied to protect legitimate policy objectives, such as the protection of public health, safety, environment or public morals, social or consumer protection or promotion and protection of cultural diversity do not constitute indirect expropriations."[60]

The inclusion of a general provision on the 'right to regulate' has as a main objective to give guidance in the interpretation of the investment protection standards. The right to regulate can be mentioned in the preamble of a treaty, in order to provide 'interpretative guidance' to arbitrators. The recently concluded EU-Vietnam and CETA and the TTIP draft all include a general and relatively detailed provision within the treaty which aims at confirming the right of the Parties to regulate for legitimate policy objectives and secondly, to ensure that the investment protection provisions will not be interpreted as a commitment from a Party that it will not change the legal and regulatory framework, including in a manner that may negatively affect the operation of covered investments or the investor's expectations of profits.

Transparency

Contemporary agreements like the EU-Singapore FTA, CETA and the EU-Vietnam FTA include provisions on transparent law-making. This mainly entails the requirement that measures affecting trade and investment between the parties must be developed and administered in a transparent manner, with due notice and opportunities for interested persons to submit their views before enactment.[61]

Sustainable Development

The EU agreements with Singapore, Vietnam and Canada all include articles on sustainable development, especially in the area of environmental and labour protection. These agreements include provisions whereby Parties commit not to reducing environmental protection and labour standards in order to attract investment and trade. Furthermore, the provisions in these agreements confirm the Parties' right to regulate their levels of environmental and labour protection, provided that domestic laws are in line with internationally recognised standards or agreements. In particular, the Parties commit to respect the core labour standards of the ILO and to effectively implement the ILO

[59] Article 2(2) Transatlantic Trade and Investment Partnership (TTIP) (12 November 2015), available at http://trade.ec.europa.eu/doclib/docs/2015/november/tradoc_153955.pdf.
[60] Annex I (3) TTIP.
[61] See EU-Singapore FTA Article 13.13 and Chapter 14; EU-Vietnam Chapter 18; CETA Chapter 27.

Conventions and Multilateral Environmental Agreements they have ratified. Lastly, the agreements also include cooperation on labour standards and environmental protection, for example in the form of exchanging best practices.[62]

The EU also aims to promote corporate social responsibility and responsible business conduct, and to foster adherence and implementation of internationally recognised guidelines and principles.

Dispute settlement

Investment agreements include, as enforcement mechanisms, a State to State dispute settlement mechanism as well as an Investor to State dispute settlement.

The envisaged EU-China investment agreement will include a dispute settlement mechanism for disputes between the EU and China. Today most existing investment agreements contain state to state dispute settlement provisions (very often providing for international arbitration) alongside investor-state dispute settlement clauses. As has been widely documented, state-state dispute settlement in traditional BITs which usually do not cover market access, is underused in contemporary investment law; only four known cases so far have been initiated through that type of provision.[63]

Typically, state-state dispute settlement is limited to disputes 'concerning the interpretation and application of this Agreement' (TTIP) or 'concerning the interpretation or application of the provisions of this Agreement' (CETA). However, two types of procedures may be brought under these dispute settlement clauses. First, such clauses allow the parties to the treaty to file a claim for general disputes arising out of different interpretations of certain treaty provisions. Secondly, disputes may also concern more traditional diplomatic protection claims where one of the parties brings a claim acting on behalf of foreign investors (see for instance the case of Italy vs. Cuba of 2003). In the latter scenario however, it has been argued that a diplomatic protection claim only can be made as long as no investor-state claim has been brought.[64]

As explained in Section 2.1.3, a significant number of BITs concluded by China before 1998 granted access to ISDS only for disputes about the amount of compensation for expropriation[65]; a policy which has since then shifted towards granting access for all investment disputes related to the investment protection provisions contained in the treaty, but is still present in several BITs between China an EU Member States. The inclusion of a dispute settlement mechanism (which the EU proposes to take the form of an ICS), which would replace the ISDS provisions in the current BITs with individual EU Member States, to ensure respect for the commitments under the treaty–has in principle limited impact on a State's regulatory activities. Indeed, such impact, or the regulatory changes one may expect following the signature of an investment treaty, in essence results from the substantive provisions, not from the dispute settlement provision. At the same time, there is a perception that the mere possibility of individual investors launch a claim against a host State, may result in States adapting their regulations in order to avoid such a claim, although this effect has never been proven in practice. The EU has addressed this concern, firstly, by drafting the investment protection standards in a clearly defined way in order to avoid excessive interpretations; secondly, by including a permanent Court System and an appeal mechanism which would ensure a consistent interpretation of the rules included in the treaty.

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[62] See EU-Singapore Chapter 13; CETA Chapter 22, Chapter 23 and Chapter 24; EU-Vietnam Chapter 15.

[63] https://www.iisd.org/sites/default/files/publications/best-practices-state-state-dispute-settlement-investment-treaties.pdf.

[64] https://www.iisd.org/sites/default/files/publications/best-practices-state-state-dispute-settlement-investment-treaties.pdf.

[65] See Organisation for Economic Co-operation and Development, 'Dispute settlement provisions in international investment agreements: A large sample survey ' (Investment Division, Directorate for Financial and Enterprise Affairs, Paris, France), pp. 12-13 available at http://www.oecd.org/investment/internationalinvestmentagreements/50291678.pdf. See also JR Weeramantry, and the UNCTAD database of existing BIT's available at http://investmentpolicyhub.unctad.org/IIA.

Impact on the right to pursue legitimate public policy objectives

The inclusion of a specific provision on the 'right to regulate' in the future EU-China investment agreement, on the one hand, and the specification in relation to the expropriation clause to the effect that non-discriminatory measures designed to protect legitimate policy objectives cannot constitute indirect expropriations, are expected to counter the fear that investment agreements reduce the States' policy space and the States' right to regulate. This is even more the case since the intention is to include a general article on the right to regulate, instead of the alternative of a mere mention in the preamble of the treaty. This is expected, therefore, not only to effectively confirm the right to regulate, but also provide interpretative guidance in the interpretation of the entire treaty and its provisions.

3. Economic analysis

3.1. Short introduction on the methodology

Before obtaining the mandate from the EU Member States to start negotiations with China, the European Commission prepared an extensive impact assessment, partly based on a study of Copenhagen Economics (2012) which includes Computable General Equilibrium (CGE) modelling. This impact assessment is taken as the base for the economic part of the current SIA and will further be referred to as the Impact Assessment.

To fully understand the impact of the Investment Agreement between China and the EU on bilateral investment, in section 3.2 we first set the scene against which the agreement will be implemented, encompassing historical trends in FDI flows, stocks and numbers of projects between the two regions while also examining data on foreign-controlled enterprises in a select number of member states. To establish this scenario and how it has evolved in recent years, we used data from UNCTAD, Eurostat and Oxford Intelligence's in-house database IPAWorld years (see Box 3.1). Before delving into these bilateral investment trends, we examined the current overall status of FDI in China, including the primary destinations of these investment and the most active sectors.

Box 3.1 Sources of FDI data

FDI data originating from China's Ministry of Commerce (MOFCOM) is prone to geographical, sector and volume biases due in particular to how activity by Chinese multinational enterprises (MNEs) is recorded. For example, if a Chinese MNE establishes an offshore holding company in a tax haven or offshore financial centre, this skews the data in favour of destinations that typically host such organisations notably Hong Kong, the Cayman Islands, the British Virgin Islands and, to a lesser extent, Luxembourg and the Netherlands. Therefore we used the following data sources to establish FDI trends between the EU and China:

- **EUROSTAT and UNCTAD**. Both databases measure various forms of FDI, including **flows and FDI stock values in Euros** at country level. A disadvantage of using FDI flows and stocks is that trends towards different locations are not as easily captured. This is because the amount of capital flowing into a country could sometimes be attributable to only a few large projects, rather than reflecting a major change in investors' behaviour overall. The Foreign Affiliates Statistics (FATS) from EUROSTAT provide information on the activities of foreign affiliates abroad.

- To complement these databases we made use of **Oxford Intelligence's in-house database IPAWorld**. IPAWorld is a database that keeps track of international **investment project announcements**, monitoring thousands of data sources on a daily basis. Data is collected at micro-level, on the basis of publicly available information and subsequently verified with the company involved. The data allows for comparison of locations at sub-national level and on the basis of project numbers rather than values, which allows us to establish if and where the above indicated disadvantage of using UNCTAD/Eurostat data could be an issue.

Against this background of the current economic situation, potential change can be mapped. In the change scenario of our economic analysis in section 3.3, we focus on reviewing the results from the Impact Assessment and supplementing them with more qualitative information (although we use quantitative information to the extent possible, e.g. from IPAWorld). This will be mainly based on literature review and stakeholder consultations. As several of the key topics may not have been studied extensively in the literature, we consider the stakeholder consultations as key.

3.2. Update of the economic background

3.2.1. FDI in China

While Chinese companies preferred greenfield investments over M&As as a means of entering EU markets throughout the 2000s, M&A activities have gained ground again in recent years. In 2012, 51 percent of Chinese investments in Europe concerned M&As, compared to 49 percent greenfield investments.[66] This development reflects a shift in investment motives for China's outward FDI, due to increasing participation by Chinese privately owned enterprises (POEs) in outward FDI.[67]

Among Chinese foreign investments, state-owned enterprises (SOEs) are rife and often used by government to pursue strategic needs, for instance to acquire primary commodities or resources to stimulate growth of the Chinese economy. They include industrial and service groups belonging to the State-owned Assets Supervision and Administration Commission's (SASAC) central and local administrations as well as sovereign wealth funds, insurance companies, venture capital firms, pension funds, research institutes and government departments and agencies. SOEs have tended to dominate Chinese outward FDI activities in the past because of their importance in the country's massive investments in resource extraction.

In contrast, privately-owned enterprises (POEs) are risk-averse and primarily attracted to large markets and strategic assets. These POEs make intensive use of tax havens and offshore financial centres in order to circumvent domestic restrictions and raise foreign capital.[68] These POEs – primarily active in machine tools, consumer electronics, telecom equipment, automotives and renewable energy – have gained increasing levels of government support in their outward FDI activities. Their outward FDI is driven by a search for new technology, well-known brands and efficient distribution channels. As a result, they have entered into larger transactions in recent years, constituting 41 percent of all Chinese M&As in 2014.[69]

Trends in Chinese FDI

FDI flowing into and out of China has increased in recent years. UNCTAD, for example, reports 136 billion USD FDI inflow and 127 billion USD FDI outflow for 2015, a significant jump from the previous year during which FDI inflows were USD 128 billion and outflows USD 123 billion.[70]

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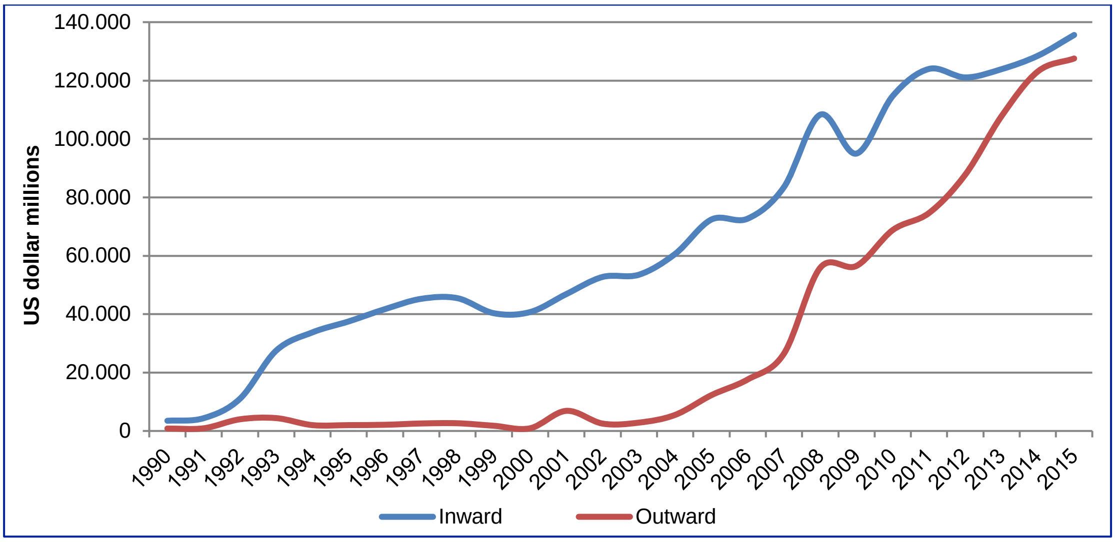
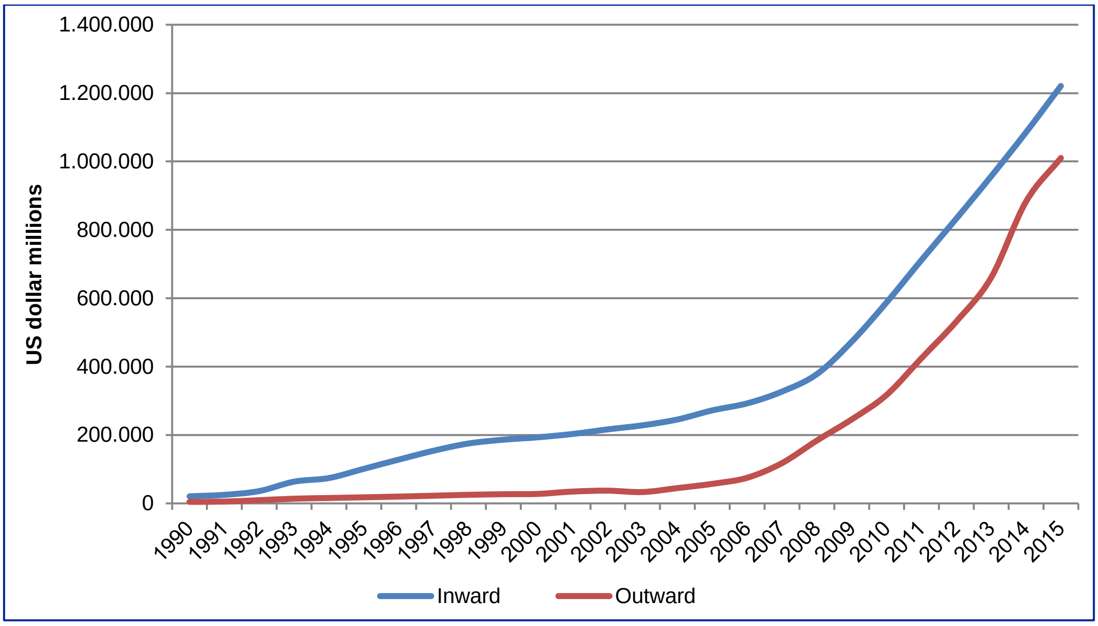
66 Milelli, C. and A. Sindzingre (2013), Chinese Outward Foreign Direct Investment in Developed and Developing Countries: Converging Characteristics?; Hanemann, T. and M. Huotari (June 2015), Chinese FDI in Europe and Germany. Preparing for a New Era of Chinese Capital.
67 KPMG China, China Outlook 2016. Available at: https://assets.kpmg.com/content/dam/kpmg/pdf/2016/03/china-outlook-2016.pdf
68 Sutherland, D. and J. Anderson (2015), "The Pitfalls of Using Foreign Direct Investment Data to Measure Chinese Multinational Enterprise Activity".
69 KPMG China (29 Jan 2015), China Outlook 2015.
70 UNCTAD (2015), World Investment Report 2015.

Figure 3.1 Chinese inward and outward FDI flows (1980-2015)



Source: UNCTAD.

Figure 3.2 Chinese inward and outward FDI stocks (1980-2015)



Source: UNCTAD.

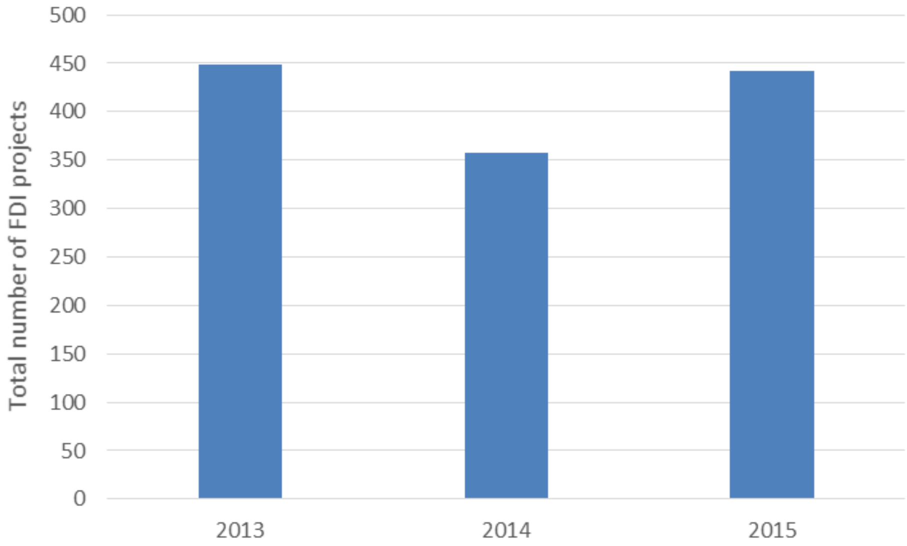
While inward FDI stocks in China have historically been larger than China's investment stocks abroad, as shown in Figure 3.2, it is expected that China will become a net investor in the coming years.[71] Namely, over a period from 2006 to 2015, the average annual growth rate of China's outward FDI has been significantly higher (23.5%) than the average annual growth rate of inward FDI (8.03%).[72]

IPAWorld data show China as the sixth-largest recipient of FDI projects in the world between 2013 and 2015. There was a slight dip in 2014, 2015 figures were more comparable to those observed in 2013.

[71] Source: National Bureau of Statistics of China, in: EY (March 2015), *Riding the Silk Road: China sees outbound investment boom*.

[72] KPMG China, China Outlook 2016. Available at: https://assets.kpmg.com/content/dam/kpmg/pdf/2016/03/china-outlook-2016.pdf

Figure 3.3 FDI into China from world (2013-2015), project numbers



Source: IPAWorld, Global Investment Monitor.

Based on IPAWorld data for the period 2013-2015, during this three-year period the main source of FDI projects has been the US. Germany is also responsible for a substantial amount of projects, followed by Japan and the UK. Other European countries playing an important role in inflows to China include France, Switzerland and the Netherlands, as shown in Table 3.1 below. As a comparison, shares of FDI flow values to China have been presented in the third column. In terms of flow values in 2012, Hong Kong (57%) and the British Virgin Islands (8%) were the largest sources of FDI into China.

Table 3.1 Top 10 sources of FDI projects into China

Origin country	Percentage of overall FDI projects into China (2013-2015)	Percentage of FDI flows into China, 2012
United States of America	30.6	1.9
Germany	13.3	0.9
Japan	7.1	5.1
United Kingdom	5.7	0.5
South Korea	3.2	2.1
Taiwan	3.2	1.8
France	3.2	0.6
Switzerland	2.9	0.0
Australia	2.2	n.a.
Netherlands	1.9	0.6

Source: IPAWorld (projects), UNCTAD (flows).

Destinations of Chinese outward FDI

As mentioned above, official Chinese government data on outward FDI are subject to significant bias in terms of destination due to the offshoring phenomenon.[73] In 2013, for example, these data show Hong Kong receiving 87 percent of all outward flows from China

[73] Milelli, C. and A. Sindzingre (2013), Chinese Outward Foreign Direct Investment in Developed and Developing Countries: Converging Characteristics?

to Asian countries while the British Virgin Islands and Cayman Islands received 92 percent of all outflows to Latin America; and Luxembourg received 37 percent of total FDI destined for Europe. In contrast, IPAWorld data shows the top 10 destinations for Chinese outward FDI between 2013 and 2015 to be as follows:

Table 3.2 Top 10 recipient countries of Chinese FDI (number of projects) (2013-2015)

Destination country	Percentage of projects of overall Chinese outward FDI, 2013-2015	Outward FDI flows (values), 2012
United Kingdom	10.5	3.2
Germany	9.8	0.9
United States of America	9.0	4.6
India	5.4	0.3
France	5.2	0.2
Brazil	3.1	0.2
Singapore	2.8	1.7
Spain	2.7	0.1
Belgium	2.4	0.1
Mexico	2.2	0.1

Source: IPAWorld (projects), UNCTAD (flows).

As a comparison, percentages of outward FDI flow values in 2012 have been added in the third column of Table 3.2.

When comparing Chinese outward FDI for each year between 2013 and 2015, the UK, Germany, France and Spain – along with the USA, India, Brazil and Singapore – appear consistently in the top 10. Other locations include the Netherlands, Belgium, Mexico and United Arab Emirates.

Table 3.3 Top 10 recipients of Chinese FDI (number of projects), 2013-2015

2013	2014	2015
United Kingdom	Germany	United Kingdom
Germany	United States of America	Germany
France	United Kingdom	United States of America
United States of America	France	India
India	India	France
Spain	Brazil	Brazil
Belgium	Singapore	Singapore
Brazil	Mexico	Spain
Singapore	Spain	Belgium
Netherlands	United Arab Emirates	Mexico

Source: IPAWorld.

In M&A activity, the aforementioned KPMG and EY reports both identified a new trend for Chinese MNEs that started to emerge in 2014, namely the diversification of investments in terms of both destination market and sector in order to move up the value chain. According to the reports, investments into developed countries are more often part of an agenda to 'access advanced technologies, established brands, extensive industry

experience and worldwide distribution networks'.[74] The change is evident in that nine of the ten top value M&A transactions involving Chinese MNEs were located in the US, Europe or Australia in 2014, whereas only four deals were located in these regions in 2010, though those destined for Australia may still be more resource-driven overall.

Main sectors in Chinese outward FDI

Recent Chinese outward FDI (OFDI) has thus shifted from resource-seeking activity to market- and intangible asset-seeking activities, evidenced by an increase in outflows directed to developed countries. Current government guidelines emphasize the following sectors for Chinese companies to pursue overseas:

- New energy;
- Energy conservation and environmental protection;
- Biotechnology such as drugs and medical devices;
- New materials;
- Information technology;
- Aerospace and telecom equipment manufacturing; and
- Clean energy vehicles as strategic.[75]

Between 2013 and 2015, the majority of Chinese greenfield outward FDI projects were in manufacturing (51.7 per cent), primarily automotives, followed by machinery and equipment, chemicals and computer equipment. Economic restructuring has also led to a more innovative, service-oriented focus with a private-capital driven economy.[76] Reflecting this, Chinese outward FDI has shifted towards high technology, agriculture and food, real estate, and services sectors. Investments in agriculture and food are driven by China's fear of limited natural resources in light of its burgeoning and ever-changing population – middle-class consumers are now showing a preference for Western cuisine and food safety, as well as closer relationships with neighbouring countries. In response, Chinese companies have started to acquire Western brands in order to offer these on the domestic market.

China's real estate market has recently been hit by tight credit conditions, stringent regulations, and short-term oversupply leading companies to seek potentially higher and more stable returns through FDI activities. Restrictions on outward FDI in this sector have also been relaxed somewhat by government. In manufacturing, Chinese investors are seeking to move up the value chain by investing in technology and innovation. Again, buying into Western companies is an effective way to achieve this objective.

The above sectoral trends are most evident in M&A data: only one of the top ten outbound M&A transactions was in mining in 2014, while in 2010 there were six oil and gas deals and one mining deal.[77] FDI project numbers between 2013 and 2015 also show a significant increase in beverages production, food products, crop and animal production, financial and IT-related services and telecommunications, management consultancy and other professional services activities.

3.2.2. Chinese investments in the EU

Historically, Chinese OFDI can be separated into three stages.[78] During the first stage (2001-2008), Chinese companies were propelled abroad by domestic deregulation, financial support, and China's accession to the WTO. During the second stage (2009-2012), the EU was hit by the financial and economic crisis and Chinese FDI brought liquidity to European companies as EU member states competed for Chinese FDI. In the

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74 KPMG 2015, p12.
75 Xufeng Jia, J. (15 May 2015), *Chinese ODI in Europe: Trends ad Implications for the EU.*
76 KPMG China (29 Jan 2015), *China Outlook 2015*.
77 Ibid.
78 Xufeng Jia, J. (15 May 2015), *Chinese ODI in Europe: Trends and Implications for the EU.*

third stage (2013 onwards), Chinese OFDI became more driven by investment diversification and market expansion needs.

Chinese companies view Europe as a whole as having several important advantages, namely its institutions (European Union); the single market economy, the Eurozone and the Schengen area allowing freedom of movement.[79] In addition, Europe is home to approximately 500 million high-income consumers; is politically stable with efficient infrastructure and a qualified labour force.

This appeal is reflected in both M&A and greenfield activities. Almost all Chinese M&As in Europe are acquisitions rather than mergers and the companies targeted are concentrated in a limited number of markets including the UK, Germany, France, Italy and the Netherlands.[80] Meanwhile, Greenfield projects generally involve the set-up of manufacturing bases to expand overseas production capacity, increase market share and avoid heavy import tariffs.[81]

The biggest economies in Europe - Germany, the UK and France – have received the largest share of Chinese outward investment.[82] IPAWorld data reveals that these three countries received more than 50 percent of cumulative investment from 2000 to 2014. Some member states have received a constant number of FDI projects (e.g. Portugal, Ireland, Italy) while others have become increasingly attractive for Chinese investors (particularly Eastern European markets). Based on the value of cumulative investments from 2000 to 2014 in Greenfield and M&A projects, the UK is outperforming all other EU countries in receiving Chinese outward FDI. Germany and France, in second and third place respectively, received only slightly more FDI combined than the UK. This was mainly due to investments in the real estate sector followed by agricultural and food manufacturing and energy.[83]

In terms of FDI stock, Eurostat reveals the following cumulative data for the EU28 and the EU MS that have the largest stock of Chinese FDI:

Table 3.4 Chinese FDI stock in the EU28, 2008-2012, million euros

	2008	2009	2010	2011	2012
EU 28	54,697	63,903	80,978	104,323	120,725
Germany	18,721	20,754	26,801	35,092	41,222
France	7,557	8,961	11,350	16,040	17,242
Italy	3,382	3,726	5,211	7,266	10,605
UK	4,799	5,006	6,692	7,586	8,699
Netherlands	5,099	6,510	5,738	6,011	6,715
Sweden	2,123	2,931	4,052	5,668	5,887
Spain	704	1,914	3,165	4,536	5,353
Denmark	1,781	2,222	2,744	3,112	3,797
Belgium	1,453	824	1,891	3,207	3,062
Austria	899	1,395	2,258	3,007	2,493
Finland	1,912	2,459	4,299	3,057	2,243

Source: Eurostat, EU direct investments, main indicators.

79 *Milelli, C. and A. Sindzingre (2013), Chinese Outward Foreign Direct Investment in Developed and Developing Countries: Converging Characteristics?, p. 14.*
80 Clegg, J. and H. Voss (2012), Chinese Overseas Direct Investment into the European Union.
81 Xufeng Jia, J. (15 May 2015), *Chinese ODI in Europe: Trends and Implications for the EU.*
82 Hanemann, T. and M. Huotari (June 2015), *Chinese FDI in Europe and Germany. Preparing for a New Era of Chinese Capital.*
83 Hanemann, T. and M. Huotari (June 2015), *Chinese FDI in Europe and Germany. Preparing for a New Era of Chinese Capital.*

Within this, Germany, France and Italy have the highest stock from Chinese FDI in recent years. The UK, Netherlands and Sweden also hold significant amounts. Digging down into the number of projects shows the UK dominating Germany and France, a factor which could be due to a higher number of small projects destined for the UK, and those destined for Germany and France being higher-value manufacturing projects.

Table 3.5 Chinese outward foreign direct investment by number of projects (1997-2015)

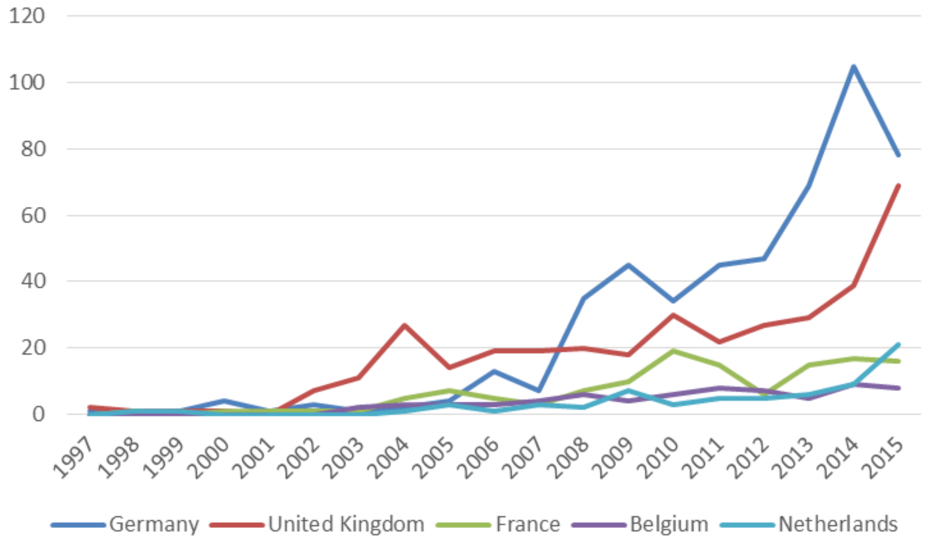
	'97	'98	'99	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13	'14	'15	Total
Germany	1		1	4	1	3	1	2	4	13	7	35	45	34	45	47	69	105	78	495
United Kingdom	2	1	1	1		7	11	27	14	19	19	20	18	30	22	27	29	39	69	356
France		1		1	1	1	1	5	7	5	3	7	10	19	15	6	15	17	16	130
Belgium							2	3	3	3	4	6	4	6	8	7	5	9	8	68
Netherlands		1	1					1	3	1	3	2	7	3	5	5	6	9	21	68
Russia				1			1	1	1	2	2	2	4	3	4		4	8	13	46
Denmark			1						2		1	3	2	1	2	5	7	12	5	41
Spain										1	4	4	4	4	9	2	3	4	4	39
Sweden					1		1	3	2	5	3	1	4	3	6	3	1	2	1	36
Italy								2	3	3		1	6	7	3	2	2	2	4	35
Hungary								1	2	1	6		3		4	3		6	3	29
Poland								1	1		2		1	1	4	2	4		2	18
Switzerland										1		2	1	3	3	1			5	16
Turkey													3		2	3	1	4	3	16
Czech Republic									1	2				1	4	1	1	1	3	14
Belarus																1		5	3	9
Portugal															2	3	1	2	1	9
Romania								1		2			1	1	3		1			9
Ireland												1	2				2	1	2	8
Bulgaria							1		1			2		1		1			1	7
Finland												1				3		2	1	7
Greece								1			1				1	1	3			7
Austria												1			1		1	2	1	6
Lithuania															1	1	1	1	2	6
Luxembourg															1	1		3		5
Serbia													1					2	1	4
Slovakia										1						1			2	4
Bosnia and Herzegovina					1											1	1			3
Norway														1	1			1		3
Slovenia																	1	1		2
Isle of Man																	1			1
Latvia																			1	1
Malta																			1	1
Ukraine								1												1

Source: IPA World, European Investment Monitor.

Overall, the above data shows the UK to be the recipient of most Chinese FDI projects between 1997 and 2015 followed by France and Germany. In terms of M&A transactions, EY also reports Germany to be the country with most Chinese transactions in Europe in 2013 and 2014, followed by the UK and France.[84] Chinese investors employ different strategies in different EU countries[85]. Alongside real estate, an important driver behind investments into the UK is market-seeking projects in agricultural and food manufacturing and energy – an example of the latter being China General Nuclear Power Corporation's investment in the nuclear power plant at Hinkley Point, Somerset which fits with the Chinese strategy of investing in energy. In contrast, intangible-asset seeking is the primary reason for Chinese companies to target Germany, France and Italy. In Eastern Europe, Chinese companies mainly seek to become involved in infrastructure projects.

The figure below shows how investments into the top EU Member States have fluctuated across time. Germany in particular has seen a significant increase in FDI project numbers, overtaking the UK as top recipient in 2008, while France saw a gradual increase until 2010 with figures experiencing more volatility since then.

Figure 3.4 FDI projects from China into top five EU Member States (1997-2015)



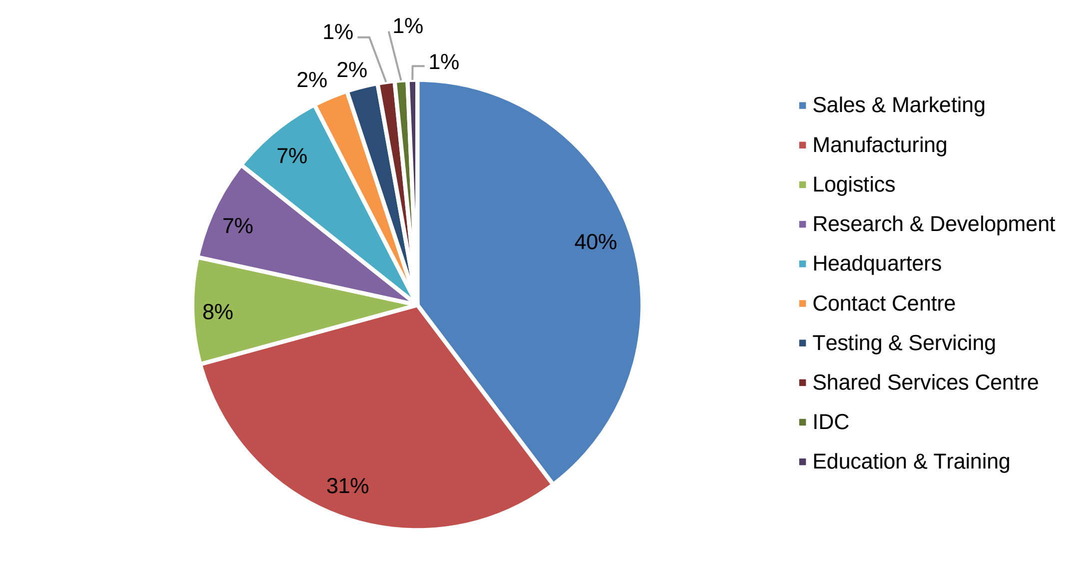
Source: IPAWorld, European Investment Monitor.

Turning to the sector make-up of investments, between 2000 and 2014, Chinese companies invested in a broad range of industries in Europe. By value, investments into utilities, fossil fuel assets and renewable energy projects were the clear leader (EUR 13 billion), while advanced manufacturing sectors including automotive (EUR 6 billion), machinery (EUR 4 billion), and information and communications technology (EUR 3 billion) also attracted substantial amounts of investment. Investments into the services sector concentrated on transportation (EUR 2 billion) and biotech and finance (EUR 3 billion combined). In line with shifting Chinese investment policies, the past two years have seen a heavy increase in Chinese outward FDI transactions in agriculture and food (EUR 5 billion) and commercial real estate (EUR 5 billion).[86]

When examining greenfield project numbers from China to the EU, manufacturing constitutes the highest recipient industry, specifically the machinery and electronics sectors. This is followed by finance and business services, most notably the software and business services sectors. When examining the activities behind FDI projects, most are in sales and marketing (40 percent) followed by manufacturing (31 percent).

84 EY (March 2015), *Riding the Silk Road: China sees outbound investment boom*.
85 Ibid.
86 Hanemann, T. and M. Huotari (June 2015), *Chinese FDI in Europe and Germany. Preparing for a New Era of Chinese Capital.*

Figure 3.5 FDI projects from China into EU Member States by activity



Source: IPAWorld.

As noted above, the geographical distribution of Chinese OFDI follows EU countries' strength in certain sectors. The UK and Germany are major recipients of Chinese capital in manufacturing (especially electronics and machinery) and finance and business services (in particular business services and financial intermediation). In France, Chinese investors have mainly invested in similar sectors, with the exception of food-related manufacturing projects which top those in electronics. Notable multiple investors from China into the EU between 1997 and 2015 have included Huawei Technologies (44 projects); data development company ZTE (18 projects); and the Bank of China (9 projects).

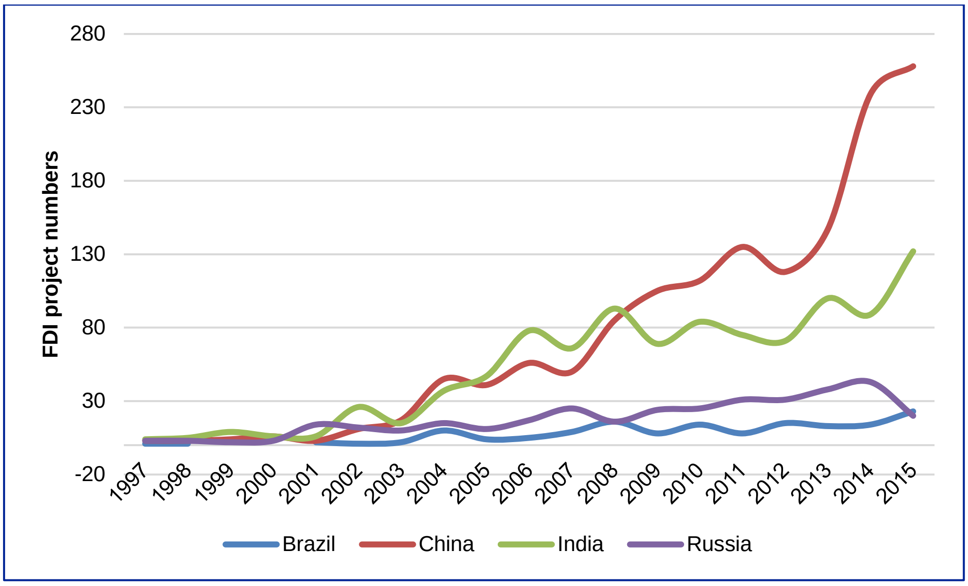
Turning to the rest of the BRICs and their investments in the EU, China is by far responsible for the most FDI projects between 1997 and 2015, followed by India, Russia and Brazil (see figure 3.6). This trend has been the same throughout the period, with the two Asian powers vying for the top spot and Russia and Brazil generally increasing (though oscillating) at a much lower volume. However, in terms of the value of the BRIC's FDI stock in the EU, China is no longer the main source of FDI. In 2012, the value of Brazilian FDI stock in the EU equalled €81 billion, whereas the Chinese FDI stock had a value of €27 billion. Over time the Brazilian and Russian FDI stock in the EU has grown much more than the Chinese FDI stock in the EU.

Table 3.5 BRICS FDI stock in the EU28, million euro

	2004	2005	2006	2007	2008	2009	2010	2011	2012
Brazil	3,273	8,119	14,603	41,097	52,345	63,862	90,376	94,129	81,085
Russia	5,570	12,117	14,578	24,591	29,967	46,859	50,375	56,947	75,345
China	1,739	1,211	3,576	4,681	5,590	5,884	6,111	20,362	27,428
India	584	2,502	2,289	4,619	6,200	5,457	7,295	11,028	8,864

Source: Eurostat, EU direct investments, main indicators.

Figure 3.6 FDI projects into the EU 28 from the BRICs (1997-2015)



Source: IPAWorld, European Investment Monitor.

Turning to data on foreign affiliates (FATS) for 2013, we see that China controls a significant proportion of foreign-controlled enterprises in Romania (16.7 percent) as well as the Netherlands (6 percent) and Poland (5.5 percent). Other member states in which Chinese-controlled foreign enterprises are well-represented include Hungary and Bulgaria. These shares are comparable to those of Canada and Japan, while the US controls by far the highest number of foreign enterprises in the member EU states presenting data at an average of 25.3 percent. These shares range from 4.3 percent in Slovenia up to 48.6 percent in the Netherlands.

Table 3.6 Number of foreign-controlled enterprises in EU member states (2013)

	Extra EU28	Canada	US	China	Japan	China's share of extra EU28 (%)
Bulgaria	3,945	37	406	164	33	4.2
Czech Republic	2,877	75	935	14	206	0.5
Denmark	1,308	19	504	10	83	0.8
Germany	10,799	266	3,445	261	959	2.4
Estonia	163	3	39	0	5	0.0
Greece	337	8	109	6	:	1.8
Spain	2,843	64	1,246	18	260	0.6
France	5,882	233	2,434	65	444	1.1
Croatia	931	12	89	19	2	2.0
Italy	4,802	73	2,015	113	366	2.4
Cyprus	137	:	17	:	:	
Latvia	2,374	14	181	14	9	0.6
Lithuania	959	19	156	26	8	2.7
Luxembourg	3,624	24	212	:	:	
Hungary	5,312	105	1,645	250	161	4.7
Malta	63	3	10	:	:	
Netherlands	5,264	147	2,560	315	537	6.0
Austria	2,542	70	462	33	74	1.3

	Extra EU28	Canada	US	China	Japan	China's share of extra EU28 (%)
Poland	1,483	36	581	82	120	5.5
Portugal	1,228	33	527	5	66	0.4
Romania	7,109	176	762	1,188	37	16.7
Slovenia	2,759	11	120	35	13	1.3
Slovakia	403	9	89	6	12	1.5

Source: Eurostat, FATS data (data not available for all EU member states).

Production value data for these foreign-controlled enterprises in the same year show that China's share of extra-EU foreign-controlled enterprises is negligible in most instances. Notable exceptions include Hungary where China controls 4.2 percent of foreign-controlled enterprises and Greece where this figure is 3.1 percent. Germany and Italy are the only other member states in which China controls over one percent of all foreign-controlled enterprises. These shares pale in comparison to the US which controls, for example, over 79 per cent of foreign-owned enterprises in Luxembourg down to 9.9 per cent in Latvia.

Table 3.7 Production value for foreign controlled enterprises in EU (2013)

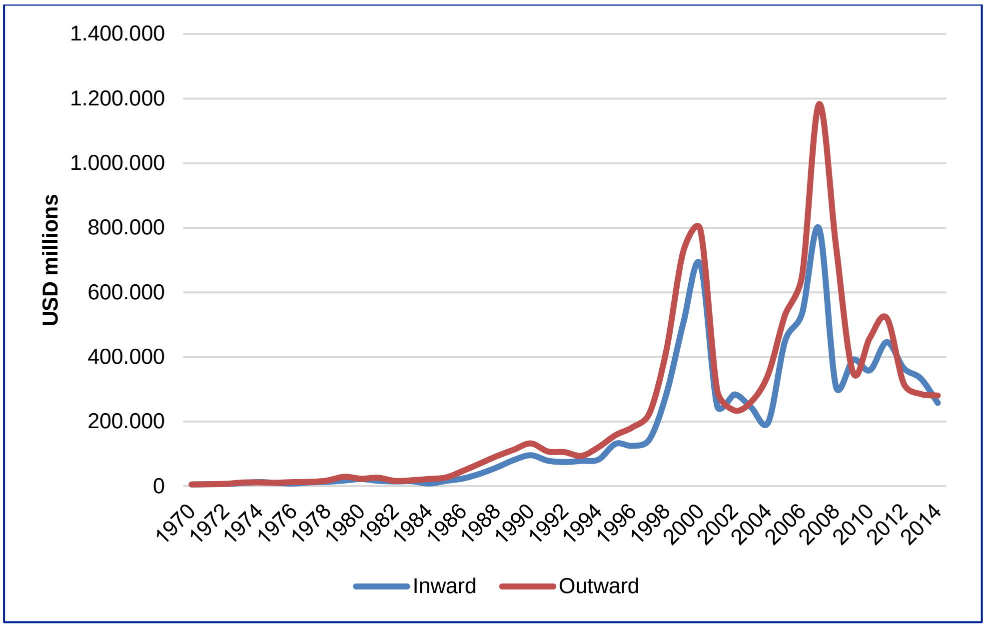
	Extra EU28	Canada	US	China	Japan	China's share of extra EU28 (%)
Bulgaria	9,788.4	140.5	1,226.2	34.0	246.9	0.4
Czech Republic	41,369.4	831.3	14,424.8	122.8	5,912.3	0.3
Denmark	25,924.8	229.8	10,810.3	210.6	1,276.2	0.8
Germany	433,881.1	13,133.7	176,226.5	6,710.1	33,075.6	1.5
Estonia	1,854.8	38.5	505.7	0.0	35.3	
Greece	3,168.6	75.1	996.6	99.0	:	3.1
Spain	100,259.0	1,836.4	45,566.6	256.6	8,371.6	0.3
France	180,974.8	4,499.7	105,670.1	:	12,466.1	
Croatia	1,501.7	6.4	248.6	2.3	:	0.2
Italy	153,884.2	1,891.3	80,837.9	1,568.9	10,409.8	1.0
Cyprus	781.8	:	111.6	:	:	
Latvia	2,458.4	8.5	243.7	0.6	14.3	0.0
Lithuania	3,625.6	129.3	735.0	4.3	30.9	0.1
Luxembourg	15,033.7	505.0	11,910.3	:	:	
Hungary	33,163.4	433.3	14,610.9	1,387.4	3,878.1	4.2
Netherlands	152,694.0	2,476.6	97,920.0	1,057.6	10,490.8	0.7
Austria	46,758.3	6,369.8	12,717.4	719.2	2,756.4	1.5
Poland	47,268.3	:	22,894.6	397.7	:	0.8
Portugal	11,741.0	576.2	:	43.5	866.4	0.4
Romania	14,628.0	345.0	4,440.5	114.1	1,935.3	0.8
Slovenia	3,557.2	22.3	804.5	2.6	85.1	0.1
Slovakia	18,320.4	61.0	4,432.6	133.0	267.9	0.7

Source: Eurostat, FATS data (data not available for all EU member states).

3.2.3. EU investment into China

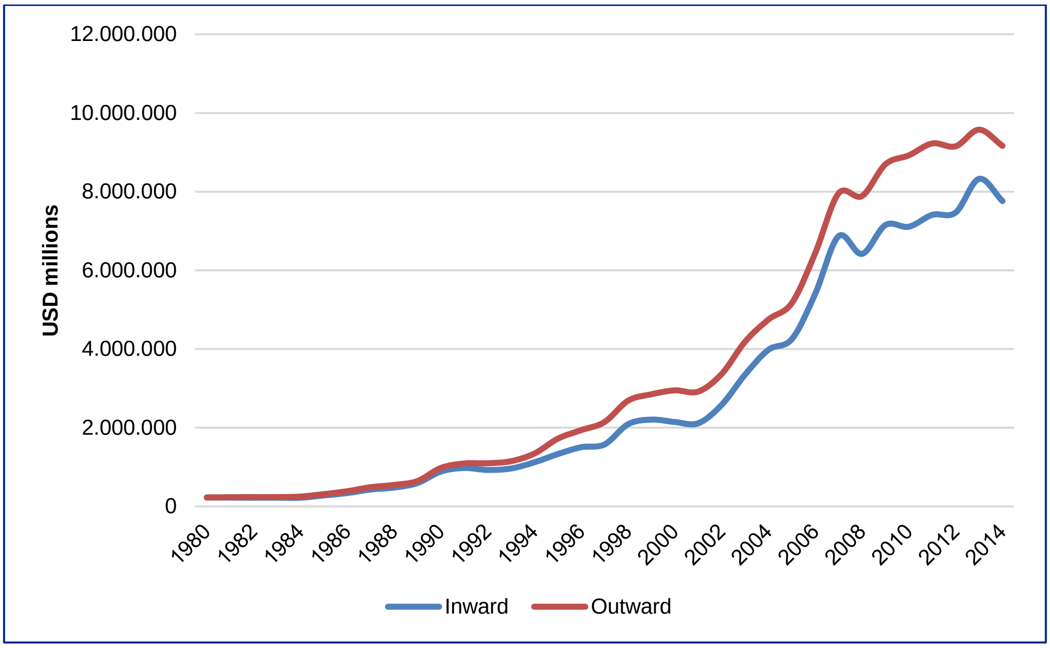
FDI flows to and from the EU are more balanced than in the case of China, with both in- and outflows experiencing peaks at the turn of the millennium and again in 2006-2008.

Figure 3.7 FDI inflows and outflows for EU28 (1970-2014)



Source: UNCTAD.

Figure 3.8 FDI inward and outward stocks for EU28 (1970-2014)



Source: UNCTAD.

Examining investment stemming from EU member states into China, Eurostat data on direct investment for 2013 and 2014 shows that FDI flows to China represented 3.2 percent of overall EU-28 FDI flows destined for outside of the EU in 2013 and 9.6 percent in 2014.

Table 3.8 Outward FDI flows from EU28 (2013 and 2014, million euros)

Territory	2013	2014
Extra-EU28	581,393.8	96,071.2
China	18,744.1	9195.9

Source: Eurostat.

Turning to net income from outward FDI (earnings generated by EU companies investing abroad), China represented 4.4 per cent of total FDI income in 2013 and 4.5 per cent in 2014.

Table 3.9 Net income from outward FDI from EU28 (2013 and 2014, million euros)

Territory	2013	2014
Extra-EU28	296,894.0	313,216.7
China	13,039.0	14,192.9

Source: Eurostat.

When examining project numbers, the largest investor by far between 2013 and 2015 was Germany, from which 35 percent of projects originated. The UK was responsible for 15 percent of projects and France and Switzerland were in joint third position, providing 8 percent of projects each.

Table 3.10 FDI projects from European countries to China (2013-2015)

Country	2013	2014	2015	Total
Germany	58	48	58	164
United Kingdom	16	23	31	70
France	20	5	14	39
Switzerland	12	12	12	36
Netherlands	8	8	7	23
Finland	8	9	4	21
Sweden	8	7	4	19
Italy	7	6	4	17
Austria	6	6	2	14
Denmark	4	2	3	9
Spain	1	2	5	8
Belgium	2	2	3	7
Ireland		3	2	5
Luxembourg	3	2		5
Iceland	3			3
Czech Republic	2			2
Cyprus		1		1
Estonia			1	1
Portugal			1	1
Total	161	145	156	462

Source: IPAWorld, Global Investment Monitor.
N.B. Data for 2015 are provisional.

When breaking this down into FDI stock per member state, Germany has been the main source of FDI between 2008 and 2012, followed by Sweden, France and the UK. For all four of these, FDI stock in China has increased significantly throughout the period. FDI

stock from Italy has also increased while that originating from Belgium and Ireland has seen a significant decline.

Table 3.11 EU FDI stock in China by Member State (2008-2012, million euros)[87]

Member State	2008	2009	2010	2011	2012
Austria	3	137	509	582	542
Belgium	204	-598	-1,285	-1,455	-271
Bulgaria	7	10	14	63	68
Croatia	1	1	0	0	0
Cyprus	2	:	:	1	:
Czech Republic	55	37	44	-33	-7
Denmark	406	342	517	603	725
Estonia	0	9	5	7	9
Finland	-24	-5	41	-28	39
France	244	339	356	1,686	1,443
Germany	564	652	860	1,238	1,525
Greece	:	:	:	-1	-2
Hungary	29	7	99	-25	65
Ireland	162	-109	-874	-256	-248
Italy	139	321	319	462	603
Latvia	0	0	1	0	0
Lithuania	2	2	2	2	1
Malta	3	2	4	9	11
Netherlands	128	86	269	180	:
Poland	240	131	226	317	219
Portugal	2	4	3	4	4
Romania	59	34	52	47	69
Slovakia	26	15	20	46	39
Slovenia	0	0	0	0	0
Sweden	46	35	1,022	:	3,549
United Kingdom	448	696	439	934	1,434

Source: Eurostat (data not available for all EU member states).

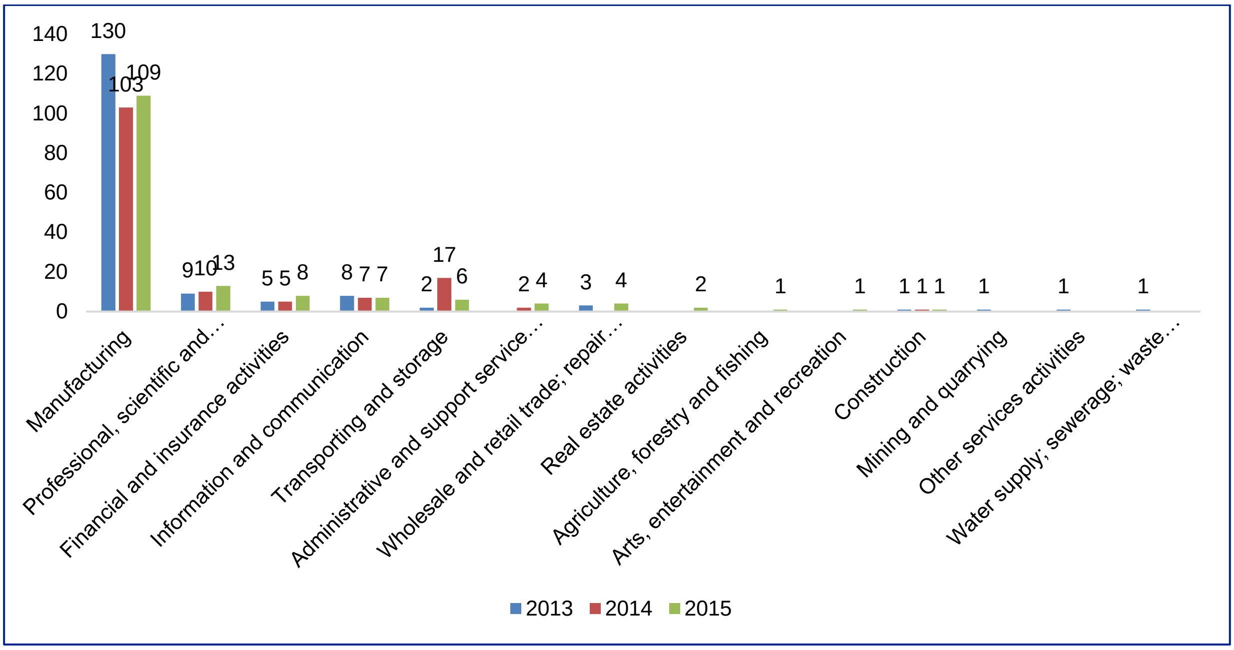
In line with figures for overall FDI into China, manufacturing projects dominate the investments originating from Europe (74 percent). Project numbers have reduced slightly from 2013 (130 projects) to 2014/2015 (103 and 109 projects, respectively). While automotives is the most represented sector at the national level, it comes second to chemicals when examining EU FDI projects alone, representing 23 percent of overall projects in the 2013-2015 period. In line with overall manufacturing projects, both sectors have declined during the three-year period.

In contrast, financial and professional services projects have increased during the period under scrutiny. Within financial services, these projects have mainly been concentrated in areas outside of pension and insurance activities, such as banking and asset management.

[87] For some Member States, the table shows negative FDI positions in China. Negative FDI positions can occur when the loans from the affiliates to parent companies exceed the loans and equity capital provided by the parents to the affiliates.

In professional services, management consultancy and legal and accounting services are the most-represented sub-sectors.

Figure 3.9 FDI projects from EU28 to China by sector (2013-2015)



Source: IPAWorld, Global Investment Monitor.
N.B. Data for 2015 are provisional.

Data on FDI stock by sector shows the increasing strength of EU FDI in services in recent years, driven mainly by financial services. Manufacturing has also seen a significant increase (driven mostly by vehicles and other transport equipment and metal/mechanical products), but not to the same extent.

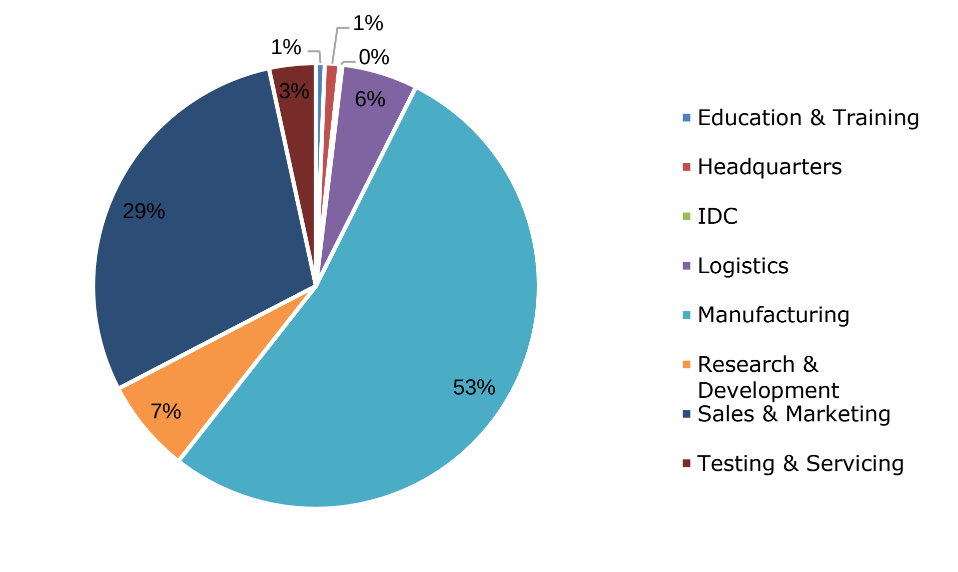
Table 3.12 EU FDI stock in China by sector in million euros (2010-2012, millions of euros)

	2010	2011	2012
Agriculture and fishing	17	10	21
Mining and quarrying	2.013	2.459	1.995
- Extraction of petroleum and gas	1.916	2.355	1.884
Manufacturing	39.697	55.147	60.425
- Food products	2.951	3.500	2.781
- Total textiles and wood activities	811	865	963
- Total rubber, petroleum, chemicals and plastic products	8.856	12.873	14.451
- Total metal and mechanical products	15.845	20.611	19.791
- Total machinery, computers, RTV and communication equipment	13.339	16.388	15.010
- Total vehicles and other transport equipment	7.184	11.745	17.020
- Other manufacturing	4.046	5.549	
Electricity, gas and water	34	877	873
Construction	251	630	690
Services	35.399	43.081	53.171

Source: Eurostat.

In terms of activities, most EU projects destined for China were in manufacturing, followed by sales and marketing, as displayed in the figure below.

Figure 3.10 FDI projects from EU into China by activity (2013-2015)



Source: IPAWorld.
N.B. Data for 2015 are provisional.

In terms of EU investment destined for outside of the EU, China has always played an important role. When examining EU investment into the BRICs countries, for example, China only just falls in second place to India between 2013 and 2015 (in terms of total FDI project numbers). FDI projects destined for Brazil and Russia have increased throughout the period, but fall far behind the two Asian powers. Manufacturing was the dominant industry for FDI projects to other BRICs as well: like China, most EU FDI projects into Brazil were in the chemicals sector while those destined for India were in automotives (in line with overall outward FDI). Manufacturing FDI projects going to Russia fall less definitively into one sector category: food products top the bill, followed in close succession by chemicals and non-metallic mineral production.

Table 3.6 Top 10 non-EU recipients of EU FDI, 2013-2015[88]

2013	2014	2015
United States of America	United States of America	United States of America
China	India	India
India	Brazil	China
Singapore	China	Brazil
Brazil	Singapore	Singapore
Russia	United Arab Emirates	United Arab Emirates
United Arab Emirates	Mexico	Mexico
Australia	Canada	Turkey
Turkey	Russia	Russia
Mexico	Turkey	Australia

Source: IPAWorld.
N.B. Data for 2015 are provisional.

88 In terms of FDI stock value data, the US was also the largest recipient in 2012, followed by Brazil, Canada and Russia (source: Eurostat).

In ASEAN, Singapore has been a major recipient of extra-EU FDI in recent years with Malaysia, Vietnam and Indonesia trailing far behind in second, third and fourth place, respectively. Manufacturing projects have constituted the main industry for FDI projects destined for Singapore, most notably in chemicals and chemical products, followed by machinery and equipment and pharmaceutical products. Projects in Vietnam and Malaysia similarly fell mainly into the manufacturing industry, with the former attracting primarily food manufacturing projects and the latter having a more even spread across sectors (machinery and equipment and automotives projects were slightly higher than other manufacturing projects). South Korea, while not in the top 10 recipient countries, has seen a 56 percent decline in the number of FDI projects originating in the EU28 between 2013 and 2015.

3.3. Economic impacts of the Investment Agreement

When assessing the economic impacts of the future Investment Agreement between the EU and China, we focus on reviewing the results from the Commission's Impact Assessment from 2013 and supplementing these with more qualitative information. We start with a review of the policy options and data of the Impact Assessment, to see whether the CGE modelling results from 2012 are still valid.

3.3.1. Analysis of modelling assumptions

Policy options

The baseline scenario for the Commissions Impact Assessment and the current SIA is not to conclude a new, separate agreement, but to continue with covering investment under the current Partnership and Cooperation Agreement (PCA) from 1985 and the BITs between China and individual EU Member States. This means that current levels of openness and legal certainty of the EU's and China's respective investment environments would remain the same. The study from Copenhagen Economics (2012) assessed several policy options to compare with this baseline scenario:

1. A comprehensive EU level investment protection agreement, replacing the existing BITs;
2. An agreement that combines investment protection with market access, but with a limited sectorial coverage and partial removal of investment barriers;
3. A comprehensive investment treaty providing investment protection and market access in more sectors than under option 2 and with a more comprehensive elimination of investment barriers.

The CGE model from Copenhagen Economics (2012) included a reciprocal and a unilateral scenario (where only China reduces FDI barriers), with different sub-scenarios for modest (option 2) and ambitious liberalisation (option 3)[89] and low and high spill-over effects to third countries.[90] This resulted in eight different modelling scenarios of the future agreement. The impact of improved investment access for European companies in China on FDI stocks were estimated with a gravity model.

Given the developments in the negotiations and the agreement of both partners on the scope of the future Investment Agreement, Policy Options 2 and 3 and corresponding CGE scenarios are best reflecting what should be the outcome of the negotiations, i.e. the reciprocal scenarios with improved market access through reduced investment barriers and restrictions on investment which hold back investments between the EU and China.

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89 In the modest liberalization scenario, it is assumed that the agreement will lead to a 3 percent reduction in the cost of the estimated barriers to investment. In the ambitious scenario, this reduction is assumed to be 10 percent.

90 Third countries might also gain from the EU-China investment agreement. For instance, generic changes in regulatory barriers may also yield improved market access for third countries. In the model of Copenhagen Economics (2012), the high spillover scenario assumes that 60 percent of any cost savings also accrue to third countries. The low spillover scenario assumes that only 10 percent of any cost savings accrue to third countries.

No sectors have been excluded yet from the negotiations, so there are no implications for the original sector level modelling results at this point. [91] Given that investment protection has been taken into account by Copenhagen Economics (2012), there are at this stage no reasons to interpret the modelling results differently.

Based on the above, in the remainder of this economic analysis and in the in-depth sector studies, we will include the four sub-scenarios under the reciprocal scenario, i.e. modest vs. ambitious liberalisation, and low spillovers vs. high spillovers. The modelling results presented in this report are all expected long term impacts.[92]

Data

Results from a CGE model could be less valid for interpretation after a few years, e.g. when the underlying base data could have been affected by major economic shocks, such as the recent financial and economic crisis. Though the modelling of Copenhagen Economics (2012) dates back to 2012 and used GTAP 8 which is benchmarked to 2007 data, in constructing the baseline used for the CGE simulation the authors used the most recent macroeconomic projections at that time. These projections did already include the impact of the global crisis. Therefore the modelling estimations of the relevant scenarios of the future EU-China Investment Agreement are considered to still be valid.

3.3.2. Modelling results

The expected impact of the agreement on FDI stocks as estimated by the gravity model of Copenhagen Economics (2012) is presented in Table 3.7 below. The table shows that a modest positive effect on FDI stocks can be expected in both a moderate and an ambitious liberalisation scenario.

Table 3.7 Investment liberalisation scenarios (reciprocal scenario, OLS estimator)

Scenario	Indicator	% change
Moderate	EU FDI stock in China	0.6
	Chinese FDI stock in the EU	0.3
Ambitious	EU FDI stock in China	1.9
	Chinese FDI stock in the EU	0.9

Source: European Commission Impact Assessment (2013).

Table 3.8 below shows that the reduction of the investment barriers is expected to lead to expanded operations of the existing Chinese affiliates of EU multinational enterprises (MNEs), increasing their turnover and labour force. Only the FDI stocks in the 'other goods' sector is expected to decrease, however employment of this sector is still expected to increase. It should be noted that there is almost no MNE activity reported in 'other goods' in China, and as such the estimated impacts are also negligible.

Table 3.8 Impact on EU MNEs in China (reciprocal scenario)

	Ambitious		Modest	
	Low SO	High SO	Low SO	High SO
Turnover in China (mln EUR)				
Manufacturing	1,175	686	348	205

[91] http://www.trade-sia.com/china/wp-content/uploads/sites/9/2016/06/SIA-EU-China-Minutes-Civil-Society-Dialogue-26-May-2016-final.pdf.

[92] In the context of the CGE model, long run means the moment after resources have been reallocated across sectors.

	Ambitious		Modest	
	Low SO	High SO	Low SO	High SO
Other goods	0	0	0	0
Services	508	226	151	69
Total	1,683	911	499	274
Employees in China				
Manufacturing	14.0	8.2	4.2	2.5
Other goods	0.0	0.0	0.0	0.0
Services	3.5	1.5	1.0	0.5
Total	17.5	9.7	5.2	2.9
FDI (% change in stocks)				
Manufacturing	2.41	1.27	0.71	0.38
Other goods	0.02	-0.32	0.01	-0.10
Services	0.96	0.29	0.29	0.09
Total	1.85	0.89	0.55	0.27

Source: European Commission Impact Assessment (2013).

The increased EU-China investment stocks are assumed to lead to an increase in trade activity, which will again impact the overall economy. Table 3.9 below presents the expected effect on exports of the EU to China and to the world for the different scenarios. Total EU exports are expected to be influenced positively, with the highest impact in the ambitious scenario with high spill-over effects. These increases are mainly driven by the manufacturing sector. With some exceptions for the 'other goods' sector in the scenarios with high spill-over effects, sectorial trade flows are also expected to be influenced positively. The large differences between spill-over scenarios in EU exports to the world are likely to result from higher third country demand in the case of high spill-over effects.

Table 3.9 Impact on EU exports (reciprocal scenario)

	Ambitious		Modest	
	Low SO	**High SO**	**Low SO**	**High SO**
EU exports to China, mln EUR				
Manufacturing (base EUR 75.5b)	1,833	1,071	543	321
Other goods (base EUR 1.6b)	1	-3	0	-1
Services (base EUR 19.7b)	191	85	57	26
Total	2,024	1,153	600	345
EU exports to the World, mln				
Manufacturing (EUR 1,057.2b)	1,963	4,530	573	1,344
Other goods (EUR 30.0b)	2	-7	0	-3
Services (EUR 401.2b)	214	384	64	109
Total	2,178	4,907	638	1,450

Source: European Commission Impact Assessment (2013).

Table 3.10 below presents more macro-economic effects for both the EU and China. The effects for both partners are positive for all four scenarios. For both the EU and China, the ambitious scenario is expected to result in higher benefits than the modest scenario. Also the scenarios with high spill-over effects to third countries yield more substantial benefits. In the extreme case of modest liberalisation and almost no spill-over effects to third countries, the effect of the agreement on the GDP of both the EU and China is almost negligible.

Table 3.10 Macro-economic effects (reciprocal scenario)

	Ambitious		Modest	
Indicator / region	Low SO	High SO	Low SO	High SO
Change in real income, % (based on welfare)				
EU	0.02	0.05	0.01	0.02
China	0.04	0.07	0.02	0.02
Change in consumer prices, %				
EU	-0.01	-0.05	0.00	-0.01
China	-0.02	-0.15	-0.01	-0.04
Change in total exports, %				
EU	0.05	0.12	0.02	0.03
China	0.18	0.11	0.05	0.03
Change in total imports, %				
EU	0.05	0.11	0.02	0.03
China	0.22	0.19	0.07	0.06

Source: European Commission Impact Assessment (2013).

For the macro-economic results for the EU, the estimated impacts of the Investment Agreement are larger when spill-over effects to third countries are also larger. According to Copenhagen Economics (2012), this effect is generated by better global demand conditions following the greater Chinese FDI liberalisation, as well as better supply conditions in China with greater spill-over effects.

3.3.3. Assessment of potential new investors entering the market

The quantitative analysis from Copenhagen Economics (2012) only captures the increase in operations of European firms that are already present in China and the resulting intensification of trade flows and impact on the overall economy (the intensive margin). The model does not capture the effect that new firms might enter the market (the extensive margin). The SIA attempts doing so by assessing the potential interest to invest in China of investors that have not invested yet before the conclusion of the Investment Agreement. This assessment is based on theoretical and empirical literature as well as stakeholder consultations.

Investment decisions of companies and resulting FDI flows are in theory affected by a number of factors. Next to the specific motives of investors to start investing abroad (i.e. market-seeking, natural resource-seeking, efficiency-seeking, and strategic asset-seeking motives) which are called the economic determinants, also the present business facilitation services and the policy framework for FDI in the host country are important determinants when selecting a location for their foreign investment. The existence of an Investment Agreement between the home and the host country falls under the latter determinant, together with for instance the economic, political and social stability. Hence the existence of an investment agreement is only one of many elements that potential new investors take into consideration for their investment decisions. This means that in theory concluding an investment agreement does not necessarily guarantee an increase in FDI flows generated by new investors entering the market, i.e. the extensive margin.[93] However, when it leads to an opening of sectors that were completely closed for foreign investment before, which may particularly be relevant for industries currently listed in the prohibited category of China's Foreign Investment Catalogue, the conclusion of an investment agreement could make a larger difference in terms of the potential of new investors entering the market.

93 UNCTAD (2014), *The impact of international investment agreements on FDI – An overview of empirical studies 1998-2014.*

Several econometric studies have assessed the relation and causal effect between investment agreements and FDI. The majority of these studies, including ones focussing on existing BITs of EU Member States with third countries[94], finds a significant positive relationship between the agreements and FDI. However, the content of the agreement matters, as does its status (signature, ratification, or entry into force). Regarding the content, especially investment agreements with national treatment clauses and agreements with pre-establishment clauses involving liberalisation of investor market access conditions turn out to have a positive effect on FDI flows. It is important however that the investment agreement is not only signed and ratified, but has also really entered into force, as only then it can significantly affect FDI.[95] [96]

The question is however whether this increased FDI as a result of an investment agreement is generated by existing investors or by new investors. Empirical research on German MNEs found that the increased FDI flows from an investment agreement do not only result from intensification of existing foreign investments, but also from an increased number of (new) investors on the host market (on average 10 percent increase in the number of German firms active in the host country).[97] Other research finds that the FDI impact of investment agreements results even primarily from the formation of new FDI relationships (the extensive margin) rather than from the expansion of existing ones (the intensive margin).[98]

The interest from potential new EU and Chinese companies to start investing in respectively China and the EU after the investment agreement still needs to be assessed in the next phase of this SIA. However, some impression of the sentiment can already be obtained from the experiences of current investors, which are likely to influence the decisions of new investors as well. Survey data from the EU Chamber of Commerce in China show that the sentiment among European investors in China has deteriorated recently. More than half of the 506 respondents indicate that doing business has become more difficult over time. 31% of the respondents is bearish about profitability and another 15% is concerned about company growth. 41% of the European companies are re-evaluating their operations in China, and planning to cut costs. On the other hand, 55% of companies indicate that they are likely to increase investments in China if the future EU-China investment agreement would grant greater market access. 39% of respondents sees a reduction in the general complexity of the regulatory environment as a priority to be addressed by the agreement.[99]

Although EU investors already present in China are not very positive about the current situation for doing business, given the positive statistical evidence on the effect of previous investment agreements on increased FDI from the extensive margin, it is likely that some new investors might enter both markets after the investment agreement between the EU and China has been signed and entered into force. This will in practice lead to slightly more positive effects than estimated by Copenhagen Economics (2012).

3.3.4. EU and Chinese FDI: types, actors and motives

To better understand the impact of the EU-China investment agreement, it is also important to understand current issues and trends with respect to the form of FDI, which is often depending on the type of investor and its motives.

As indicated in section 3.2, there has been a shift in Chinese foreign investments over the last two decades, with outward investments becoming increasingly important relative to inward investments. This trend is also observed in the EU: although Chinese investment

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94 Guerin (2010), *Do the European Union's Bilateral Investment Treaties Matter? The Way Forward After Lisbon.* CEPS Working Document No. 333.

95 By the end of 2013, only 77 per cent of concluded international investment agreements had entered into force.

96 UNCTAD (2014), *The impact of international investment agreements on FDI – An overview of empirical studies 1998-2014.*

97 Egger and Merlo (2012), *BITs Bite: An Anatomy of the Impact of Bilateral Investment Treaties on Multinational Firms.* The Scandinavian Journal of Economics, 114: 1240–1266.

98 Falvey and Foster-McGregor (2015), *North-South FDI and Bilateral Investment Treaties.* United Nations University.

99 EUCCC (2016), *European Business in China – Business Confidence Survey.* European Union Chamber of Commerce in China.

still accounts for a relatively small share of total inward FDI, its importance is increasing. The following summarises some of the findings in the literature, while drawing implications of these findings for the impact of an EU-China investment agreement.

With respect to outward investment flows of China, although in number they are smaller than inward investments, the average volume of Chinese investment abroad is relatively larger than FDI operated in China (USD 100 million versus USD 35 million).[100] This is mainly the result of the investments of State-Owned Enterprises (SOEs), which account for a large part of total FDI, while private entities usually invest smaller amounts. For the period 2000-2011, it is estimated that SOEs accounted for 72% and private companies 28% of the investment amount of Chinese companies in the EU. However, private companies account for a larger share of investment deals in terms of number of projects: 63% versus 37% by SOEs.[101]

The targeted sectors for outward investment also differ between SOEs and private enterprises. Public companies tend to focus more on infrastructure and the utility sector, whereas private companies focus more on new business opportunities and increasingly also on access to new technology (including managerial and commercial know-how). Chinese SMEs have also been active in outward FDI, and have invested in Eastern Europe, and in low-tech and labour-intensive manufacturing, also to distribute Chinese products. SOEs and larger private industrial groups focus more on Western Europe, and on access to technology and knowledge intensive services, next to market access.[102] [103]

The majority of outward FDI is in the form of greenfield investment, but both the number of deals and the amounts invested in Mergers and Acquisitions has been increasing over the last decade. Private companies often acquire EU SMEs, while generally SOEs target bigger companies to invest in, not always to gain full control but also as a profitable investment, as these SOEs tend to have high saving rates. Research suggests that when the motive for the Chinese outward FDI is accessing technical competences, investors prefer a partial over a full acquisition of a company (while at the same time many industry and country characteristics play a role in the decision), because of the prospective partner's dissimilar knowledge and highly specific resources, which would be more difficult to absorb in case of a full acquisition. Namely, in the latter case, top managers and employees may be less motivated to share knowledge or leave the company due to reorganisation.[104] Case study research in Germany suggests that Chinese investors want to develop long-term and mutually beneficial relationships in the local economy, and have a well-thought through strategy both for the pre- and post-investment stage, aiming to maintain key corporate assets and employee confidence.[105]

On the EU side, while in the early years mainly larger MNEs were attracted to China due to the low wage level, rising Chinese income levels over the last decades have made the domestic market growth potential a more important pull factor for investors. The low wage level is even disappearing as a main motive to invest in China.

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100 Apotheker, T., Barthélémy, S. and S.Lunven (2013) EU-China FDI in the 21st century: Who is ready for a "win-win" strategy?, paper presented at Conference on EU and the Emerging Powers, European Parliament, Brussels, 29-30 April 2013.

101 Hanemann and Rosen, 2012, China Invests in Europe, as cited in KPMG and Roland Berger Report (2013) Chinese outbound investment in the European Union, report prepared for European Union Chamber of Commerce in China.

102 Apotheker, T., Barthélémy, S. and S.Lunven (2013) EU-China FDI in the 21st century: Who is ready for a "win-win" strategy?, paper presented at Conference on EU and the Emerging Powers, European Parliament, Brussels, 29-30 April 2013.

103 Issues related to technology acquisition motive of Chinese OFDI and the potential risks related to it for the EU value chains will be further analysed in the next phase of the SIA.

104 L. Piscitello, R. Rabellotti, V.Giada Scalera (2014) Chinese and Indian M&As in Europe: The relationship between motive and ownership choice, CIRCLE Working paper 2014/3, Lund University.

105 Klossek, A.,Linke, B.M. and Nippa, M. (2012), 'Chinese enterprises in Germany: establishment modes and strategies to mitigate the liability of foreignness', Journal of World Business, and Knoerich, J. (2010), 'Gaining from the global ambitions of emerging economy enterprises: an analysis of the decision to sell a German firm to a Chinese acquirer', Journal of International management, 16, 177–91, as cited in J.Clegg. H. Voss (2012) Chinese Overseas Direct Investments in the European Union, Europe China Research and Advice Network, 2012.

The following table summarises the objectives and strategies of EU investors in China and Chinese investors in the EU and the potential risks for the EU.

Table 3.11 Key medium-term challenges for EU

	Objective, strategy of investors	Potential risks for the EU
EU FDI in China	• Decreasing interest to outsource low-skilled activity to China; • Growing motivation to tap the growing domestic market, particularly in healthcare, automotives, and consumer products.	• FDI catalogue orientations, restrictions vs openness; • Increasing competitiveness of Chinese companies; • Local partnership, IPR issues.
Chinese FDI in the EU:		
- SMEs	• A large number of investments: main destination in terms of number of operations, but small amounts invested; • Search for new business opportunities in low tech manufacturing and labour-intensive.	• Moderate risk for EU (small amounts invested and low tech manufacturing).
- New "champions"	• Improving their market position abroad, growing their competitiveness domestically, diversifying their activity, acquire new technologies.	• Actual or future competitors; • IPR issues.
- State-owned companies	• National interests; • Invest in knowledge-intensive economy to access and transfer technologies; • Invest in infrastructure, utility sectors.	• Increasing competitiveness, with the objective to move up in the supply chain; • Target sensitive sectors (such as the utility sectors).

Source: Apotheker, T., Barthélémy, S. and S.Lunven (2013) EU-China FDI in the 21st century: Who is ready for a "win-win" strategy?, paper presented at Conference on EU and the Emerging Powers, European Parliament, Brussels, 29-30 April 2013.

Barriers to investment

With respect to the level-playing field, a number of concerns have been raised. First it has been argued that Chinese companies (notably the SOEs) have access to cheaper sources of finance, which gives them an advantage over EU companies. Secondly, some sectors are not open to FDI or only to a limited extent. In the latter case joint ventures are often required, where the majority of shares must be owned by Chinese. Also technology transfers, local content requirements and administrative pre-approval restrict the flows of EU FDI into China.[106] Several of these barriers have been written down in the Foreign Investment Catalogue, which classifies sectors and subsectors in one of the following categories: encouraged, restricted, or prohibited. Although some sectors are classified as "encouraged" they do face investment barriers as well. Additional to the above mentioned barriers, China often states "national security" as a reason for restricting investments.[107] Important to mention is that the barriers to investment are much higher in China than in the EU. The OECD FDI restrictiveness index presented in Figure 3.11 shows that the difference between the level of restriction to FDI in the EU and China respectively, is

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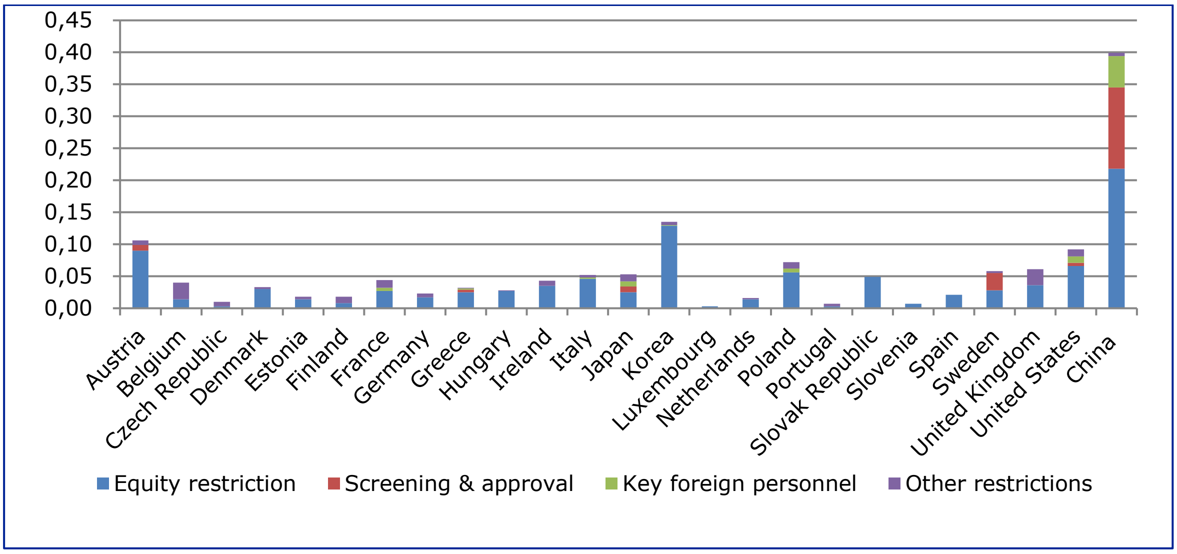
106 European Commission, 2015. [Trade and Investment barriers report]
107 Review of European studies, 2014. [EU-China economic relations: interactions and barriers].

significant. According to these OECD data, the restrictions in China are primarily related to restrictions on equity and to barriers related to screening and approval.

Figure 3.11 OECD FDI restrictiveness index for EU MS, China, Korea, Japan & US



Source: OECD.

These differences in barriers also have consequences for the potential impact of a future EU-China investment agreement. EU companies still have a lot to gain from China reducing its investment barriers, and equity restriction and screening approval-related barriers are the type of barriers that are likely to be addressed in an agreement. The most recent Business confidence survey in China of the EU Chamber of Commerce in China (EUCCC) shows that market access barriers and investment restrictions are still important challenges, as well as the unequal treatment between Chinese and EU companies. An unpredictable legislative environment is cited as the most significant regulatory barrier. These are also issues that are likely to be covered under the investment agreement.

If we look at the barriers facing Chinese investors in the EU, the relatively open market for Chinese FDI has also been confirmed in market research. Chinese investors mainly experience difficulties in the operating environment. In a survey, Chinese enterprises made recommendations to improve the operating environment, which relate to easier granting of visas and work permits to Chinese employees, allowing greater flexibility in labour laws, and asking for preferential policies to mitigate high costs and tax. Also other barriers like cultural differences affect Chinese investment in the EU.[108] While visa and work permits may be covered under the investment agreement, many of the other barriers are not likely to be addressed in an EU-China investment agreement. The investment agreement is therefore unlikely to make the EU market significantly more attractive for Chinese investors.

Impact of increased FDI on the EU and China

With respect to EU investment in China, we note that since low-wage levels are no longer a main motivation to invest in China, it has become less likely that EU investments in China will be at the expense of EU employment.[109] In contrast, it is becoming more likely that such investments contribute to the overall performance of EU companies, hence possibly even increasing turnover and employment opportunities in the EU. Research confirms that EU outward FDI has indeed made a positive and significant contribution to

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[108] KPMG and Roland Berger (2013) Chinese outbound investment in the European Union, report prepared for European Union Chamber of Commerce in China.

[109] This is consistent with the finding that the Copenhagen study does on average not find negative overall employment effects in the EU as a result of increased activity of EU MNEs in China.

EU firms' competitiveness in the form of higher productivity, however the impact on EU employment seems to have been limited so far, but is at least not negative.[110]

With respect to investments in the EU, Chinese investment can contribute to economic growth and employment. Two-way investment between the two countries will increase competitive pressures, which can have positive economic effects in terms of increased efficiency. The benefits for the host economy will depend on the type of FDI. If inward FDI is a takeover of an existing business, and this leads to rescuing this company and relations with its suppliers, which would have otherwise been lost, the FDI would prevent losses and thus generate positive effects. On the other hand, if the takeover would reduce the commercial opportunities for firms from the EU, then that would be a negative indirect effect of FDI in the host country.[111] Crowding out can in general take place because of two reasons: (i) domestic companies leave the market because affiliates of MNEs have higher efficiency and better product quality, and (ii) domestic companies leave the market as these foreign affiliates have better access to financial resources and/or engage in anticompetitive practices. Only in the latter case, the effect on welfare is negative as this does not necessarily contribute to higher overall efficiency and product quality in the long run.[112]

Although data on the performance of Chinese investors are still limited, analysis of the available data suggests that Chinese investments differ little from FDI from other countries (e.g. USA, Japan) in terms of its average level of income and employment generation in the EU host countries, which is reported to be substantial. In addition, it can help to create more economic linkages between the EU and China.[113] These impacts are likely to be similar for EU investments in China. Chinese companies involved in FDI (both the outward investors and the companies in China that receive EU FDI) may also benefit from knowledge transfers (e.g. technological, managerial and commercial knowledge) between parent company and foreign affiliate, hence leading to positive economic impacts of increased FDI. It should be noted that the extent to which the overall economy benefits, also depends on other policies.[114]

Recent experience has shown that Chinese investors can furthermore be an important source of capital during an economic crisis, which can help to strengthen EU companies and even governments (e.g. there have been Chinese investments in a Portuguese utility company, which helped to reduce government debt). At the same time, there may be risks related to Chinese acquisition of critical technologies in strategic economic sectors in the EU.[115] In addition, in theory there may be a risk that current intra-EU competition for attracting Chinese investment may lead to a race-to-the bottom, e.g. regarding fiscal policies and labour conditions (for the latter, see chapter 4). However, in practice a race to the bottom on tax matters is unlikely, given the EU's State aid control on the one hand and on the other hand the initiatives recently put in place, including on transparency of tax rulings, and avoidance of tax erosion base. These issues were also raised at the stakeholder workshop in July and will be further analysed for the final report.

3.3.5. Assessment of potential impact on SMEs

In this section, we will look at how (increased) FDI and an Investment Agreement might have an effect on SMEs in both the EU and China. Two channels can be identified: the

110 Copenhagen Economics (2010), *Impacts of EU outward FDI*. Report commissioned by The European Commission (DG Trade).

111 J.Clegg. H. Voss (2012) *Chinese Overseas Direct Investments in the European Union.* Europe China Research and Advice Network, 2012.

112 UK Essays (2013), *Negative Effects Of FDI In Host Countries Economics Essay.* November 2013.

113 J.Clegg. H. Voss (2012) *Chinese Overseas Direct Investments in the European Union,* Europe China Research and Advice Network, 2012.

114 E.g. Gasiorek at al (2013) find that the degree to which EU multinational in China source domestically depends on market access barriers and regulation, in Gasiorek et al (2014) China-EU Global Value Chains: who creates value, where and how. Growing linkages and opportunities.

115 See e.g. Mihaela Ciuchină (2013) Political Impact of Chinese Foreign Direct Investment (FDI) in the European Union (EU), Journal of Modern Accounting and Auditing, ISSN 1548-6583, December 2013, Vol. 9, No. 12, 1611-1618.

effect of FDI by SMEs themselves, and the effect of spill-overs from foreign MNEs on local SMEs.

SMEs investing abroad

The total number of EU SMEs investing outside the EU internal market is very small with only 2 percent of all SMEs doing so.[116] This means that the number of EU SMEs investing in China is even smaller. From a theoretical perspective, it can be explained why SMEs are less involved in internationalisation than large companies. For internationalisation, companies' productivity levels should be sufficiently high to overcome the fixed costs of exporting or FDI.[117] In general, productivity levels of larger companies are higher than those of smaller companies. SMEs have more limited (financial) resources and international contacts and often lack the requisite managerial knowledge about internationalisation. These limitations are seen as critical constraints to SME internationalisation.[118] This also holds in the case of outward FDI to China: European SMEs face particular difficulties when trying to invest in China, since they have only limited influence compared to multinationals. Furthermore, in 2013 an estimated 66 percent of EU SMEs considered access to finance as their biggest challenge when doing business in China.[119] Chinese SMEs on the other hand have been quite active in outward FDI already. In 2014, 70% of the Chinese companies investing abroad were estimated to be SMEs.[120] In the EU they have mainly concentrated in low-tech and labour-intensive manufacturing, with a focus on Eastern Europe. The main investment motive of these relatively small investors is to look for business opportunities and to avoid the Chinese saturated market.[121]

When the fixed costs of FDI decrease, for instance as a result of an Investment Agreement that increases transparency and legal certainty, more SMEs would in theory be able to overcome these fixed costs and start investing in the partner country. Namely, SMEs for which their productivity level in the past was not sufficiently high to overcome the costs, will potentially be interested to start with foreign investment given that costs have decreased.

Some empirical analysis suggests that public incentives to promote the investments of SMEs abroad are effective in enhancing the performance of the parent company in terms of turnover and productivity growth, especially when these support schemes are targeting smaller and younger firms.[122] Hence, in case of conclusion of an Investment Agreement, such support measures might further reap the benefits from the agreement.

Spill-over effects to local SMEs

Inward FDI can also be an important channel for the development of local SMEs. In MNEs, there might be a transfer of technologies and management skills from the parent firm to its affiliate in the host country of investment. These MNEs in the host country might have demonstration effects, but may also create (more) linkages between foreign and domestic firms through their suppliers or customer networks, or the movement of workers from the foreign to the local firm; this can lead to *productivity spill-over effects* to local companies and in particular SMEs.[123] However, in contrast to FDI from Japan and the US in the past, Chinese FDI into the EU is less likely to transfer new technologies and management skills,

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[116] European Commission (2015), *Internationalisation of Small and Medium-sized enterprises.* Flash Eurobarometer 421.

[117] Melitz (2003), Helpman (2004).

[118] OECD (2009), *Top Barriers and Drivers to SME Internationalisation.* Report by the OECD Working Party on SMEs and Entrepreneurship, OECD.

[119] ECFR (2015), *The European interest in an investment treaty with China.* European Council on Foreign Relations, Policy Brief, February 2015.

[120] Wang (2014), *Analysis on the Policies of FDI from SMEs about Chinese Out-going Strategy.* International Journal of Business Administration, Vol. 5, No. 6.

[121] EU SME Centre (2014), *Chinese Outward Foreign Direct Investment in the EU* – Opportunities and Challenges for European SMEs to Link into the Global Value Chain of Chinese Multinational Enterprises.

[122] Mariasole Bannò, Piscitello, and Varum (2014), *The Impact of Public Support on SMEs' Outward FDI: Evidence from Italy.* Journal of Small Business Management 2014 52(1), pp. 22–38.

[123] Tülüce and Doğan (2014), *The Impact of Foreign Direct Investments on SMEs' Development.* Social and Behavioral Sciences 150 (2014) 107 – 115.

as by contrast the motivation for Chinese firms to invest is often to learn themselves.[124] Other research confirms that there have indeed been inverse technological spill-over effects of China's outward FDI on parent companies in China.[125] However, the main source of technological transfer to China remains to be the US. France and the Netherlands are the most important EU Member States for technology transfer to China.[126]

Another type of potential spill-over effects on SMEs concerns *market access spill-overs*, which occur when the entry of multinational firms improves the access of local firms to export markets. [127] Information on foreign markets and networks could become more accessible to the domestic SMEs when they interact with the foreign multinational firms, for instance through subcontracting or a move of personnel. Research has found that Chinese affiliates located in EU Member States function as bridgeheads facilitating the internationalisation and market entry of EU companies, in particular SMEs, into China.[128]

Empirical analysis confirms that there are on average positive spill-overs from foreign MNEs on the performance of local Chinese firms. Significant differences are found in the performance and productivity of domestic firms with and without an engagement in a joint-venture with a foreign partner. However, it was also demonstrated that the extent to which domestic Chinese companies are able to absorb the technological knowledge depends in an important way on the origin of FDI. Foreign investments originating from Hong Kong, Macau and Taiwan tend to generate higher spill-over effects for local companies than investments originating from Europe, Canada and the US, as the cultural and linguistic connection facilitates cooperation with Chinese entrepreneurs and promotes the diffusion of technological know-how.[129] Other research on FDI spill-overs in China adds that the extent to which spill-over effects take place also depends on the sector and the economic characteristics of the region in which the investments take place.[130]

However, the presence of MNCs is not necessarily sufficient to enhance the growth of local SMEs. There is a need to support the linkages between MNCs and local firms, as SMEs might lack the absorptive capacity that is needed to able to learn from MNCs. Absorptive capacity is the ability of companies to identify, assimilate and exploit external knowledge, i.e. it is the capacity to benefit from technological spill-overs. Establishing policy instruments to support SMEs in developing their absorptive capacity could be relevant to reinforce the effects of the increased presence of MNCs as a result of the Investment Agreement.[131]

Furthermore, there is also the possibility of negative horizontal spill-overs to local SMEs. Namely, presence of MNEs could also lead to productivity and market share losses for local competitors of the MNEs in case these MNEs are successful in preventing leakage of their technology.[132] Evidence has shown that positive effects of the presence of MNEs on local SME development can be enhanced by targeted government programs that proactively encourage linkages between foreign affiliates of MNEs and domestic SMEs.[133]

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[124] ECRAN (2012), *Chinese overseas direct investment in the European Union.* Europe China Research and Advice Network. A project implemented by Steinbeis GmbH & Co. KG für Technologietransfer, funded by the European Commission.

[125] Huang, S. and Q.Wang (2009), *Reverse Technology Spillover from Outward FDI: The Case of China,* Proceedings of the International Conference on Management of e-Commerce and e-Government, pp. 550-553.

[126] JRC (2013), *International technology transfer between China and the rest of the world.* Joint Research Centre Technical Reports, Report EUR 25960 EN.

[127] Tülüce and Doğan (2014), *The Impact of Foreign Direct Investments on SMEs' Development.* Social and Behavioral Sciences 150 (2014) 107 – 115.

[128] ECRAN (2012), *Chinese overseas direct investment in the European Union.* Europe China Research and Advice Network. A project implemented by Steinbeis GmbH & Co. KG für Technologietransfer, funded by the European Commission.

[129] Abraham, F., Konings, J. and Slootmaekers, V. (2010), *FDI spillovers in the Chinese manufacturing sector.* Economics of Transition, 18: 143–182.

[130] Agarwal and Milner (2011), *FDI Spillovers in China.* GEP and School of Economics, University of Nottingham, February 2011.

[131] Lugemwa (2014), *Foreign direct investment and SME growth: Highlighting the need for absorptive capacity to support linkages between transnational corporations and SMEs in developing countries.* International Journal of Economics, Finance and Management Sciences, 2014; 2(4): 245-256.

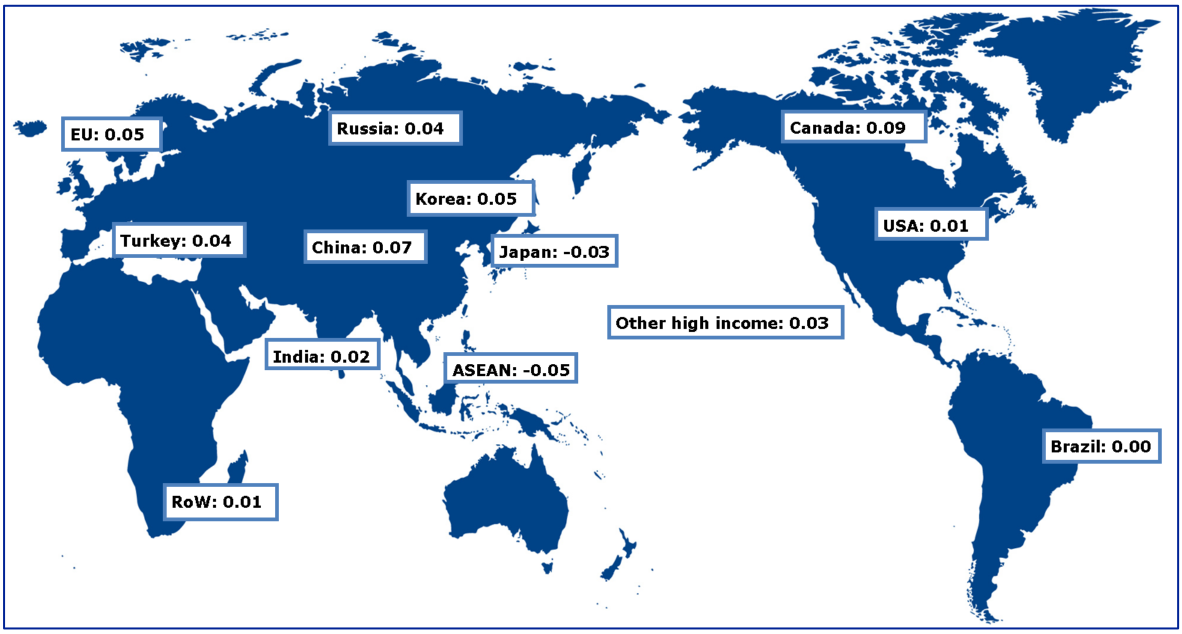
[132] Gerschewski (2013), *Do Local Firms Benefit from Foreign Direct Investment? An Analysis of Spillover Effects in Developing Countries.* Asian Social Science (2013), Vol. 9, No. 4.

[133] UNCTAD (2011), *Best Practices in Investment for Development. How to Create and Benefit from FDI-SME Linkages? Lessons from Malaysia and Singapore.* Investment Advisory Series, Series B, number 4.

3.3.6. Third country effects analysis

Copenhagen Economics (2012) also measured the effects on third countries. The results of this analysis show that, on aggregate the effects of the agreement on third countries is expected to be zero, under all scenarios. Looking at individual countries, the largest changes are observed in the most ambitious scenario, with reciprocal liberalisation and high spill-overs. The high spill-overs mean that the barriers to investment are reduced in a relatively non-discriminatory way, so that not only EU and Chinese investors gain, but also third countries have easier access to both the EU and Chinese markets. The results show that the gains are larger in the reciprocal scenario than under the unilateral scenario, suggesting that that the source of third country gains depends on the reduction in barriers to investment in the EU, rather than on changes in access conditions for China. The Figure below presents the expected changes in real income for third countries in a reciprocal ambitious liberalisation scenario, with high spill-over effects to third countries (i.e. the most extreme scenario) as modelled by Copenhagen Economics (2012). As can be observed from this figure, the effects for all countries/country groups are still very close to zero (all under 0.1 percent).

Figure 3.12 % Change in real income (ambitious reciprocal scenario, high spill-overs)



Source: European Commission Impact Assessment (2013).

Although third country effects are very small based on the analysis carried out by Copenhagen Economics (2012), this study only considered the impact of the agreement on a selection of countries and country groups (e.g. Rest of World (RoW), ASEAN). We are also interested in whether the agreement could have any significant effects on LDCs and poor and vulnerable economies in the region. We therefore look more closely at the effects of the agreement for these LDCs, as well as low income countries (LICs) to also include countries that are not an LDC but still very poor. This results in the following selection of countries: Bangladesh, Bhutan, Cambodia, Laos, Myanmar, Nepal and Vietnam.

We distinguish between two types of effects:

1) Investment diversion effect: the EU and China will increase their bilateral investments as a result of the agreement, which may be at the expense of investments in third countries;

2) Value chain effect: the increase or decrease of production in the EU or China as a result of the agreement will also impact trade flows and production of third countries.

Investment diversion effects

With respect to the investment diversion effect, we take the main motivations for FDI into account (resource seeking, market seeking, efficiency seeking, etc.). Based on these, we consider it unlikely that Chinese companies that would normally invest in LDCs and vulnerable countries will shift these investments to the EU as a result of the agreement, given the large differences between the EU and LDCs/vulnerable economies e.g. in terms of distance, cost structures, market demands, etc.. This may be different for EU companies investing in China, as there may be more similarities between China and LDC/vulnerable economies, for example in terms of cost structures. We therefore compare the EU outward investment stock and flows of to China with those of the identified LDCS and LICs.

Table 3.12 shows the EU outward FDI stock in the selected LDCs and LICs countries. It shows that investment levels are relatively modest in these countries, with Cambodia and Vietnam as the two countries with the highest levels.

Table 3.12 EU Direct Investment Position Abroad- Selected LDCs and LICs, mln. EUR, 2014

Destination country	FDI position (Mln EUR)
China	*144,214.9*
Bangladesh	517.7
Bhutan	21.2
Cambodia	1,628.5
Laos	357.8
Myanmar	273.9
Nepal	73.8
Vietnam	4,114.1

Source: Eurostat, Balance of Payments, International transactions, EU direct investment positions, breakdown by partner countries (BPM6).

The FDI positions should of course be viewed also in the context of the country, notably its economic size. UNCTAD provides data on the importance of the FDI inward stock as a share of GDP, as well as on the importance of EU investment in the total inward FDI stock, which is presented in Table 3.13. The table shows that inward FDI stocks are generally small, expressed as a share of GDP. FDI is relatively most important in Cambodia and Vietnam, and to a lesser extent in Laos and Myanmar. For the selected countries for which data is available (Bangladesh, Bhutan, Cambodia and Nepal), the table shows that the majority of inward FDI originates from countries in Asia, and the EU accounts for a relatively small part of total inward FDI stock.

Table 3.13 Inward FDI stocks: FDI as share of GDP and EU investments in total FDI, 2012

Destination country	Inward FDI stock as share of GDP	Share of EU in total inward FDI stock
Bangladesh	6.0	22.6
Bhutan	7.8	3.7
Cambodia	66.6	8.0
Laos	26.4	n.a.
Myanmar	26.2	n.a.
Nepal	2.4	8.6
Vietnam	46.8	n.a.

Source: UNCTAD, FDI statistics and bilateral FDI statistics.

The question is what these figures imply for the investment diversion effects on the selected LDCs and LICs. Based on the data presented above, inward FDI does not play a major role for their economy, and this is even more true when we only consider EU FDI. Cambodia and Vietnam are the two main exceptions, as the EU FDI outward stock in these countries is relatively large in value, and as FDI stocks are generally of higher significance in these two countries. For Laos and Myanmar, while EU inward FDI is relatively small in absolute terms, total FDI in these countries is relatively important. IPA world data suggest that in recent years (2013-2016) there are hardly any EU investors in Laos, but a relatively large number of investment projects in Myanmar (see Table 3.14 below).

Table 3.14 Number of EU investment projects in selected LDC/LICs, 2013-2016

Country	Number of EU investment projects	Main sectors (top 3)
Bhutan	No data	-
Bangladesh	6	Manufacturing (4)
Cambodia	5	Transport & storage (2)
Laos	1	Manufacturing (1)
Myanmar	24	Manufacturing (10), Finance and insurance (4), Professional, scientific and technical activities (3),Transporting and storage (3)
Nepal	2	Manufacturing (2)
Vietnam	61	Manufacturing (35), transporting and storage (9), financial and insurance (7)

Note: Main sectors only present top 3, but we only include sectors that have more than one project.
Source: IPA World.

To establish the effects in more detail, it is important to look at sectoral investment patterns. If China and (one of) the selected countries receive relatively more investments in the same sectors, these sectors are relatively attractive for foreign investors in both countries. As investment conditions improve as a result of the agreement, investors may divert some of their investments to China. Eurostat provides outward FDI by sector and country for the larger investment partners, but not for the selected LDCs and LICs in this study. IPA World does provide some information on EU investment in different sectors in these countries in recent years, although this database provides no information on the value of investments and the level of sector aggregation is relatively high. Table 3.14 above presents the number of EU investment projects and which sectors received most projects (in numbers).

The results show that especially the manufacturing sector dominates the number of investment projects. These sectors could risk investment diversion as a result of the Investment Agreement. At the same time, there are other considerations to take into account that limit the risk of investment diversion from the LDCs and LICs towards China:

- The decision of an investment location depends on many factors other than an investment agreement (e.g. political stability, availability of resources, fiscal conditions, cultural ties, etc.) and the relative importance of these factors can vary by sector;
- The EU has negotiated or is negotiating agreements that cover investment (protection) with Vietnam and Myanmar, implying that the relative shift in attractiveness of the Chinese market at the expense of these two countries is likely to be limited.
- China is said to be moving slowly away from low-tech manufacturing, which provides opportunities for low-end manufacturing centres in countries like Vietnam and Cambodia.134

[134] http://www.todayonline.com/world/asia/vietnam-big-winner-chinas-move-value-chain

The probability and significance of investment diversion is therefore difficult to predict. Much will depend on the exact content of the EU-China investment agreement. At this moment it is unclear what will be achieved in terms of market access under the agreement and to what extent the increased level of access may vary across sectors.

Value chain effects

In the past decades, there has been an increasing fragmentation of production processes, across international borders, facilitated by a decline in trade costs due to trade liberalization and the technological advancement of communications, logistics, shipping and transport, among other things. Production therefore increasingly takes place in so-called Global Value Chains (GVCs), and both EU and Chinese industries are strongly incorporated in such GVCs.

In this section, we look at the extent to which the selected LDCs and LICs are also part of the GVCs in which EU and/or Chinese companies operate. Any production and trade effects in China and the EU as a result of the investment agreement may potentially have effects on other companies (and countries) when they operate in the same value chains.

Research on GVC has received considerable attention over the past two decades. Although there is increasing data on global value chains, these usually do not cover LDCs and vulnerable economies. None of the selected countries are for example in the World Input-Output Database (WIOD). The OECD/WTO database on Trade in Value Added (TiVA) provides some information for two of the selected countries: Cambodia and Vietnam. Some important GVC indicators of these countries are highlighted in the table below.

Table 3.15 GVC indicators for Cambodia and Vietnam from the TiVA database, 2011

	Cambodia	Vietnam	Developing country average
GVC participation Index[135] (% share in total gross exports)	48.7	52.3	48.6
Forward participation[136]	11.9	16.0	23.1
Backward participation[137]	36.8	36.3	25.5
Forward GVC participation			
Top exporting industries in GVCs (% share in total exports of domestic inputs sent to third countries)	Transport and storage (18.0%) Agriculture (17.7%) Wholesale and retail trade (15.8%)	Mining (28.6%) Wholesale and retail trade (15.6%) Agriculture (12.7%)	
Top exporters of country's inputs through	China (16.5%)	China (21.5%)	

135 The GVC participation index is the sum of the foreign value added embodied in a country's exports and the value of inputs produced domestically that are used in other countries' exports, expressed as a percentage of gross exports.

136 Forward participation concerns the extent to which domestic firms supply intermediate goods and services for other countries' export activities (% of gross exports).

137 Backward participation is the use of foreign goods and services as inputs into the country's exports (% of gross exports).

GVCs (% share in total exports of domestic inputs sent to third countries)	Vietnam (11.8%) Thailand (10.3%)	South Korea (10.2%) Malaysia (10.1%)	
Backward GVC participation			
Top GVC-importing industries (% share in total foreign content of exports)	Textiles (64%) Transport and storage (11.3%) Wholesale and retail trade (10.7%)	Computer and electronic (17.5%) Textiles (11.3%) Food and beverages (8.4%)	
Top foreign inputs providers (% share in total foreign content of exports)	China (32.5%) Chinese Taipei (9.7%) United States (5.5%)	China (17.4%) Japan (10.1%) South Korea (8.0%)	

Source: OECD-WTO TiVA database.

As can be seen from the table, both countries have stronger GVC participation than the developing country average. Comparing data between 1995 and 2011 (not visible in the table above) shows there is a significant increase in the foreign value added share in exports, implying that a larger share of exports uses inputs from abroad. Both with respect to forward and backward GVC participation, China is the most important partner for Cambodia and Vietnam, both as importer of the inputs they produce for further processing elsewhere, and as a supplier inputs for further domestic production (see table 3.21).

If we look at the impact of the investment agreement on Cambodia on value chains, we are primarily interested in the forward GVC linkages, as these may affect the export opportunities of both Vietnam and Cambodia, depending on whether demand for these products is expected to increase or decrease.[138] The study of Copenhagen Economics (2012) does not report the impact of the agreement on Chinese imports by sector. It only provides the impact on output of EU MNEs in China. We cannot draw strong conclusions from these figures, first, because they only provide very partial information, and secondly, because it is not known which sectors are the main consumers of the top GVC export sectors of Cambodia and Vietnam.

Literature research on this topic has provided limited additional insights. Although we found literature on global value chains in the region, we did not find literature that specifically goes into the significance of value chain relations between China and the selected countries and at sectoral level.[139] The literature does confirm that GVC participation of most of the selected countries mentioned above is less than their Southeast Asian neighbours.[140, 141] Furthermore, World Bank research suggests that China is increasingly substituting domestic for imported materials in its exports, across all industries.[142]

At this stage, value chain effects on LDCs and LICs in the region as a result of the future Investment Agreement appear to be limited, based on the small third country effects

138 Backward linkages can of course also affect the GVC activity of the two countries, e.g. if Chinese imports become much more expensive, but the effect will be more indirect.

139 Most research either provides a more qualitative analysis (e.g. focusing on the influence of policies on participation in GVCs) or uses the same data sources.

140 Richard Pomfret* and Patricia Sourdin Global Value-Chains and Connectivity in Developing Asia with application to the Central and West Asian region, ADB Working Paper Series on Regional Economic Integration, No. 142 November 2014.

141 OECD (2015), *Participation of developing countries in global value chains. Implications for Trade and Trade-Related Policies.*

142 Kee and Tang (2015), *Domestic Value Added in Exports. Theory and Firm Evidence from China.* Development Research Group, Trade and International Integration Team, November 2015.

estimated by Copenhagen Economics (2012). Additional analysis for specific LDC/LICs has generated limited additional insights, except that for Cambodia and Vietnam, China is an important partner in Global Value Chains. To gain further insights into third country effects, we will have a closer look at the role of third countries in the global value chains that are relevant for the sectors selected for an in-depth assessment. Given that the CGE results of Copenhagen Economics (2012) do not report the impact of the agreement on overall sectoral output in China nor on sectoral imports into China, further quantitative analysis cannot provide detailed insights into the GVC effects and therefore this analysis will largely be qualitative.

3.4. Activities for the next phase

The previous sections will be further complemented and finalised in the next phase of the SIA. This will mainly be done by adding qualitative insights to verify the current findings, mainly through stakeholder consultations. Especially the stakeholder workshop, bilateral interviews and the online survey are expected to provide the SIA team with valuable information for the economic impact assessment. For example, through these channels we can assess the interest of EU companies (including SMEs) to invest in China, and the same for Chinese companies with international ambitions. Also, issues related to technology acquisition motive of Chinese OFDI and the potential risks related to it for the EU value chains will be further analysed in the next phase of the SIA. After the analysis is completed, conclusions and policy recommendations for the economic analysis will be formulated.

4. Social analysis

4.1. Introduction

The inception report identified a selected number of key relevant issues that would be the focus of the SIA, based on the preliminary information available. The assessment focusses on a qualitative analysis, based on existing – scarce - literature on the social impact of foreign direct investment and inputs from stakeholders. The impacts on employment and wages are part of the economic analysis.

At the time of finalising the interim report, the process of consultation with stakeholders was almost concluded.[143] This chapter intends to identify a number of social issues that are likely to be relevant within the context of the investment agreement based on the perceptions of stakeholders and experts, without aiming at being conclusive yet.[144] Further consultation will allow a better reflection of the gender-differentiated impact of the future agreement, on which existing literature is very scarce.

A number of observations were made in the inception phase. While the definition of employment conditions differs across studies, the literature appears to suggest that MNEs have a relatively low tendency to export labour practices to their foreign affiliates, tending instead to adapt to local practices (see below).[145] Furthermore a recent review of literature stresses that the effect of OFDI can be positive or negative, depending partly on the quality of institutions of the host economy. Among the factors that might exacerbate any potential negative impact are the lack of an efficient implementation system, the ambiguity of regulations and policies, and conflict in the political system.[146]

Based on these observations, a starting point of the analysis is to set the baseline scenario for the key indicators identified in the inception report (section 4.2). This will include:

- The legal framework regulating the labour market;
- Government policies in the field of employment, labour and other social policies;
- Institutions for labour market governance, with a particular focus on the labour inspectorate and social dialogue.

Section 4.3 will try to establish a link between FDI and social impacts, paying special attention to the practice of Chinese FDI in the EU and EU FDI in China.

We will end this chapter by providing some insights on the potential impact of the investment agreement in the social field, waiting to further elaborate and complete the analysis with the views of stakeholders in the final SIA report (section 4.4).

Please note that there is a separate chapter on the human right’s impacts (chapter 5).

4.2. Baseline scenario of key sustainability issues

General framework for social rights

China

After three decades of unprecedented economic growth, China is facing a new phase of development in which social policy issues are taking centre stage in the national dialogue.

143 This interim report was submitted right after the on-line survey had been concluded, when meetings with stakeholders were at the final phase and when the workshop with stakeholders had been held in Brussels in July 2017.

144 The on-line survey, a key source of inputs to assess the social and human rights impacts, had received only a low number of responses.

145 See: The impact of foreign direct investment on wages and working conditions, Background report of the OECD-ILO Conference on Corporate Social Responsibility, 2004, page 22; or OECD (2008) The Social Impact of Foreign Direct Investment, OECD Policy Brief, July 2008.

146 International Institute for Sustainable Development (2016), Sustainability Impacts of Chinese Outward Direct Investment: A Review of the Literature.

Its social policies are at a turning point as it shifts to a middle-income country and as a new welfare state emerges.

According to Lee (2009), China has seen a rapid increase of industrial and employment relations' developments in the 2000s with the development or revision of eleven major labour laws and industrial relations structures[147]. These include the revision of Provisions on Prohibition of Child Labour in 2002, Regulations on Work Injury Insurance in 2003, Regulations on Labour and Social Security Inspection in 2004, Regulations on Annual Paid Leave of Employees in 2007, Regulations on Employment Promotion for Disabled Persons in 2007, and Special Rules on Labour Protection of Female Employees in 2012.

In 2008, which marked the 30th anniversary of economic reform (1978-2008), China introduced a series of high profile labour and social legislation. This included the Labour Contract Law that is currently the primary source of labour law in China (see box below). The law tried to respond to a situation where millions of workers in the private sector lacked employment contracts - and the benefits associated with it.[148] Other new laws were the Employment Promotion Law, and the Labour Dispute Mediation and Arbitration Law. This signalled China's entry into a new phase of economic and social development. The Standing Committee of the National People's Congress (NPC) adopted the long-awaited Social Insurance Law of the PRC in 2010, heralding the formation of a legal system of labour relations in China.[149]

All these changes have also a number of associated challenges, such as the widening of income inequalities; more diverse needs of vulnerable groups – particularly those who face difficulty finding work - and the need to train more high-skilled workers to remain competitive within the global economy. [150] In addition, efforts to assist rural migrant workers seeking jobs in urban areas need to be improved.

China has ratified four out of the eight fundamental ILO conventions – the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child labour Convention, 1999 (No. 182). The Country has also ratified two governance conventions, the Employment Policy Convention, 1964 (No. 122) and the Tripartite Consultation (International labour Standards), 1976 (No. 144).

The Labour Contract Law[151]

The Labour Contract Law (LCL) of the People's Republic of China is the primary source of labour law and went into effect on January 1 2008. The LCL aimed at improving job security for employees, specifying that those employees who have completed two fixed terms with the same employer be automatically granted open-ended terms of employment, protecting them from being dismissed without good reason. The law also requires employers to contribute to employees' social security accounts and sets wage standards for employees on probation and working overtime.

The Standing Committee of the National People's Congress amended the law with effect on July 1 2013, intended to provide better protection to workers employed by labour dispatching agencies. These agencies must have a minimum registered capital, permanent business premises and facilities, and internal dispatch rules that are compliant with the relevant laws and administrative regulations. Labour providers must also apply to labour authorities for the requisite permits. In accordance with the "equal pay for equal work" principle (which falls under the amendments to Article 63 of the LCL), the

147 Lee, Chang Hee (2009), *Industrial relations and collective bargaining in China*, International Labour Office, Industrial and Employment Relations Department. Geneva, ILO, 2009.
148 Ibid, Lee (2009)
149 Ibid, Lee (2009)
150 Ibid, Lee (2009).
151 The full text of the law is available at : http://www.npc.gov.cn/englishnpc/Law/2009-02/20/content_1471106.htm

dispatched worker shall receive the same pay as that received by a worker of the accepting entity in a similar position.

The LCL contains special provisions on collective agreements and, for the first time, it stipulates that in administrative areas below county level, collective agreements applicable to the whole industry or whole area may be concluded between the Trade Union and representatives of the employers in the industries of construction, mining, catering services, etc. The Labour Law provides for a collective contract within the enterprise.

The law has attracted significant public attention. During the 30-day period allowed to solicit public comment on the draft labour contract law, the NPC received a total of 191,000 comments, which was the highest number received in law-related consultation processes.

Source: Casale, Giuseppe; Zhu, Changyou (2013), Labour administration reforms in China, International Labour Office. - Geneva: ILO, 2013

EU

The EU's social objectives were set out in article 3 of the Treaty on European Union. These include the objectives of 'promoting the well-being of its peoples' (clause 1); 'aiming at full employment and social progress' (clause 3); and the principle that '[the Union] shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child' (clause 3). Article 9 of the Treaty on the Functioning of the European Union (TFEU), known as the horizontal social clause, states that 'in defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health'. [152]

The entry into force of the Lisbon Treaty also gave binding effect to the 'Charter of Fundamental Rights', which recognises a range of personal, civil, political, economic and social rights of EU citizens and residents, and enshrines them into EU law. The Charter contains 54 articles, grouped into seven chapters (dignity; freedoms; equality; solidarity; citizens' rights; justice; and general provisions). A number of these rights are directly relevant to labour law and working conditions and inform the EU's action in this field. However the development and implementation of social policies remain the responsibility of Member States.[153]

The EU is also committed to promoting the ILO's 'Decent Work Agenda' to promote fundamental rights at work, encourage decent employment opportunities, enhance social protection and strengthen social dialogue on work-related issues.[154] All EU Member States have ratified the ILO core labour Conventions on freedom of association and the right to collective bargaining, the elimination of forced and compulsory labour, the abolition of child labour, and the elimination of discrimination at the workplace. They have also ratified the ILO 'governance Conventions' on labour inspection, employment policy and tripartite consultations, as well as a considerable number of other ILO Conventions.[155]

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[152] *Labour law and working conditions. Social Europe guide;* Volume 6, European Commission Directorate-General for Employment, Social Affairs and Inclusion; February 2014 (page 9).

[153] Ibid, European Commission (2014).

[154] Ibid, European Commission (2014)

[155] For further information on ratification see : http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11001:0::NO:::

a) Employment

China

As noted in the ILO Decent Work Country Programme for China 2010-2015, the Government of China has established two top priorities in the field of labour: employment and social protection.

At the end of 2015, China had a total economically active population of 802.4 million with a labour force participation rate in 2014 of 78% for men and 64% for women.[156] The number of employed people was 767.04 million, including 371 million people employed in urban areas and the rest employed in rural areas. [157]

Recent ILO research concludes that, even if it is difficult to see the transformation at the aggregate level in a credible manner because of data capture problems, the employment situation in China has transformed for the better in the recent high-growth decades. The transformation is visible in the positive relationship between the rising share of regular employment in total employment and changing levels of per capita GDP.[158] The research notes that the factors behind "the improvement of the employment situation stem from the sequenced policy shifts in the country's sectoral economic growth strategies on the one hand, and the removal of constraints on the physical movement of labour on the other." The analysis shows that it is both economic growth, which is the outcome of sectoral growth strategies, and the simultaneous management of available labour flows, that have brought about the improvement in the employment situation in China. At the same time, poverty has declined and real wages have risen.[159]

Future challenges from an employment perspective, according to the research, are the surplus of labour in the economy, rising unemployment and the incidence of non-regular employment – still high and being urbanised. Demand for high skills from upcoming and newer enterprises may not allow some of these persons to be easily reabsorbed into new jobs.[160]

In the ILO Decent Work Country Programme (DWCP) for China the government acknowledged the need to create jobs in urban areas, and estimated that 24 to 25 million new job opportunities would be needed in urban areas each year from 2011 to 2015 - a little more than the number in the previous five years, above the 11 million jobs that can be created each year based on the current economic structure. Moreover, in the process of industrial restructuring and technology upgrading, the structural problem of mismatch between the labour supply and demand has become prominent. The employment of rural migrants, youth, and other disadvantaged groups have posed challenges to achieving the target of full employment. [161]

The ILO DWCP for China identifies another major challenge which affects the rights of migrant workers. As a result of the rapid industrialization and urbanization in China, approximately 250 million rural migrants are currently employed in non-agricultural sectors in towns and cities, many of whom work without labour contracts or social benefits. Private and small businesses are increasing in number but, for a variety of reasons, the labour contract system is not being implemented efficiently. In addition,

[156] Source : World Bank : http://data.worldbank.org/indicator/.
[157] China's changing labour conditions, Sara Hsu, The Diplomat, 6 February 2015.
[158] According to the ILO research, in 1990, regular employment in China was around 265 million and non-regular employment was close to 383 million. In a matter of two decades, regular employment in China increased to nearly 480 million and non-regular employment was down to 285 million in 2011, this is, an increase of regular employment of around 132 million persons. The ILO researcher calls it "the great Chinese employment transformation".
[159] Majid, Nomaan (2015), The great employment transformation in China; International Labour Office, Employment Policy Department, Employment and Labour Market Policies Branch. - Geneva: ILO, 2015 (Employment working paper; No. 195)
[160] Ibid, Majid, N., (2015)
[161] Decent Work Country programme for China 2010-2015, ILO.

malpractice in labour dispatch is rife in the labour market and the situation must be addressed to avoid advantage being taken of loopholes in the law. [162]

EU

Over the past decade, there has been a decline in manufacturing jobs in a significant number of European countries, which has partly been associated with an observed decline in the employment share of middle-skilled and middle-waged occupations. Simultaneously, the incidence of workers with temporary and part-time contracts has increased considerably – often involuntarily – with the risk of poverty among these workers being on average two to three times higher than for permanent and full-time employees.[163]

In 2015 the employment rate in the EU reached 70.1 %. As a result, the distance to the Europe 2020 employment target of 75 % narrowed to 4.9 percentage points. Increases in the employment rate, especially for women, older workers and young people, are needed to compensate for the expected decline of the working-age population (aged 20 to 64) by 4.3 million people by 2020.[164]

Young people aged 15 to 29, non-EU citizens and people with low educational attainment are some of the most disadvantaged groups on the labour market, exhibiting low employment rates. Women, especially those aged 55 to 64, and older people in general still have considerably lower employment rates than men and younger groups, respectively. Unemployment of young people, people with low educational levels and non-EU citizens was particularly high.[165]

Traditional work patterns are being challenged by an increase in the diversity of non-standard forms of employment, and new forms of work are emerging that are blurring the boundary between dependent employment and self-employment. The result is a need for increased legal clarity on workers' employment status and employers' responsibility.[166]

b) Working conditions

Better and stronger labour market governance is closely linked to fair working conditions as one of the essential requirements of decent work. Such working conditions include decent wages, working time (e.g. hours of work, rest and leave periods) or physical conditions and mental demands that exist in the workplace.[167] Main institutions for labour market governance are labour law, labour administration and industrial relations systems, including social dialogue, wages setting mechanisms, collective bargaining and institutions for labour-management relations.

China

Over the past two decades, wages in China have been rising steadily.[168] China's real wage growth in urban units remained in double digits for most of the 2000s until 2009, but its pace has slowed down with the recent cooling of the Chinese economy. China's average real wage in urban units and private enterprises grew 6.2 per cent in 2014, down from 8.8 per cent in 2013 and 11.3 per cent in 2009.

China has a large number of workers employed in manufacturing. Wages have been converging across sub-sectors of urban manufacturing units over the past decade, as those with lower wages witnessed higher wage growth. Real wages in manufacturing have grown by 176 per cent on average between 2003 and 2013. In particular, low-wage sectors have

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[162] Ibid, ILO.
[163] Building a social pillar for European Convergence, Studies on Growth with Equity, ILO, 2016.
[164] Europe 2020 Indicators- Employment, Eurostat.
[165] Ibid, Eurostat.
[166] Ibid, ILO (2016)
[167] http://www.ilo.org/global/topics/working-conditions/lang--en/index.htm
[168] ILO: Global Wage Report 2014/15 (Geneva, 2015), mentioned in Wages, productivity and labour share in China, Research Note, ILO Regional Office for Asia and the Pacific, April 2016.

witnessed higher wage growth. These include textiles (242 per cent), furniture (210 per cent), processing of timber and wood (227 per cent) and food processing (216 per cent).[169]

The poverty ratio has also declined from 88% in 1981 to 11% in 2010.[170] In 2015, about 60% of Chinese workers were middle class.[171] Rising wages have thus contributed to reducing poverty and expanding the middle class.[172]

According to the China Labour Bulletin, workers have become better organized and employers in many sectors have been forced to pay higher wages in order to recruit and retain staff.[173]

Minimum wages, that play an important role in reducing inequalities, have been regularly raised in all provinces. Average minimum wages increased by 120% between 2004 and 2014, at a compound annual growth rate of 8.4%. However, this growth was slower than the real wage growth in urban units, which was 10.4% per annum over the same period.[174] According to the China Labour Bulletin, the minimum wage in China has never been a living wage, and employees on the minimum wage usually have to rely on excessive overtime and production bonuses just to get by.[175]

As for other working conditions, China has been the focus of much attention by labour-related NGOs, often in the framework of social audits. These have focused mostly on factories supplying for western brands.[176]

The NGO China Labour Watch has been documenting working conditions in factories producing for big electronic brands, toy factories, cookware factories, textile sweatshops and big retailers in the US. The NGO acknowledges that labour conditions in the Pearl River Delta in the Guangdong province – the top receiver of FDI in China- "have somewhat improved in recent years but remain devastatingly brutal, characterized by long hours, unsafe workplaces and restricted freedom of association, and are in blatant violation of Chinese and international labour law".[177]

The China labour bulletin acknowledges that China has a well established legislation for working hours and the payment of wages, but many workers are forced to work excessive overtime, are not fully compensated for overtime, and are not paid in full or on a regular basis. According to the NGO, disregard of the law is particularly rampant in the construction industry, where the vast majority of workers do not have a formal employment contract, do not get paid overtime or holidays, and are only paid in full when the project is completed or just prior to the Lunar New Year. Workers in the non-formal economy; day labourers, individual service providers and the self-employed, likewise, have little protection against excessive working hours or being cheated out of their wages. There is a danger that the statutory working hours will be further eroded as the service sector gradually becomes the dominant force in the labour market.[178] Increasing collective protests in China might be an indicator of dissatisfaction of workers with employment and working conditions (see below).

According to the China Labour Bulletin, interviewed in preparation of the Interim Report, a major drawback in the application of the law in Chinese enterprises is the provision of social insurance as foreseen in the law. This is also the case for EU enterprises based in

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169 Wages, Productivity and Labour Share in China, Research Note, Regional Economic and Social Analysis Unit (RESA), ILO Regional Office for Asia and the Pacific, 2016.
170 World Bank: Poverty and Equity Database, mentioned in ILO (2016). Refers to poverty headcount ratio at $1.90 a day (2011 PPP) (% of population)
171 World Bank: Poverty and Equity Database, mentioned in ILO (2016). Refers to poverty headcount ratio at $1.90 a day (2011 PPP) (% of population)
172 Wages, Productivity and Labour Share in China, Research Note, Regional Economic and Social Analysis Unit (RESA), ILO Regional Office for Asia and the Pacific, 2016.
173 China labour Bulletin, http://www.clb.org.hk/content/wages-and-employment
174 Ibid, ILO (2016).
175 Ibid.
176 See the work of the Fair Labour Association, China Labour Watch or the Fair Wear Foundation.
177 China Labour Watch : http://www.chinalabourwatch.org/report/35.
178 See http://www.clb.org.hk/content/wages-and-employment#%E2%80%8BWorking%20hours%20and%20payment%20of%20wages

China. Employers tend to pay the contribution based on the basic salary, and not the actual salary received by the worker. In the view of the officer interviewed, rather than the law, the problem is its application. It largely depends on the willingness of local authorities to effectively control practice at the workplace.

An association of universities, civil society organizations and responsible businesses also noted that working conditions had improved, although social insurance and improper working hours remained major challenges.[179]

Enforcement of labour laws falls under the responsibility of the labour and social security bureaus at or above the county level.[180] The law also provides that, where the All China Federation of Trade Unions (ACFTU) finds an employer in violation of the regulation, it has the power to demand that the relevant local labour bureaus deal with the case. Companies that violate occupational, safety and health regulations face various penalties, including suspension of business operations or cancellation of business certificates and licenses. "Although creative strategies by some multinational purchasers provided new approaches to reducing the incidence of labour violations in supplier factories, insufficient government oversight of supplier factories continued to contribute to poor working conditions."[181]

Some reports also highlight the high percentage of informal employment, estimates of the share of urban workers employed informally ranged from 19.9% to 37.2% depending on the definition used.[182] Especially migrant workers and women are engaged in informal employment.

EU

Working conditions in the European Union have been extensively analysed by the European Foundation for the Improvement of Living and Working Conditions (EUROFOUND) through the European Working Conditions Survey[183]. The surveys, conducted every five years, focus on employment status, working time duration and organisation, work organisation, learning and training, physical and psychosocial risk factors, health and safety, work-life balance, worker participation, earnings and financial security, as well as work and health. The results of the 2015 Survey that interviewed 43,000 workers in 35 different countries were not yet available at the time of drafting this report.

Based on the 2010 survey data, the report on the quality of jobs[184] concluded that job insecurity became a particularly salient issue with the onset of the global economic crisis in the latter half of 2008, especially among young people. It concluded that 20% of jobs are of poor quality, concentrated in establishments with fewer than five employees, and in the private sector. They were also more prevalent in countries with lower levels of GDP per capita.

Research undertaken by Eurofound with data from Eurostat found large variations in the level of nominal hourly wages and salaries across European countries. Belgium, Denmark and Luxembourg top the list while Bulgaria, Lithuania and Romania are among those with the lowest pay levels in the EU. Only a limited convergence of pay level between low-pay and high-pay countries was observed over the last seven years (2009–2015).[185]

According to the Eurofound report, the countries that saw the highest growth in nominal hourly wage were Bulgaria, Estonia and Slovakia, while Cyprus and Greece were the only two countries observing a decrease compared to 2008. In terms of real collectively agreed

179 Skype interview with Huizen Qian, Fair Labour Association, 7 June 2014.
180 China (Includes Tibet, Hong Kong and Macau) 2013 Human Rights Report, Bureau of Democracy, Human Rights and Labor United States Department of State,
181 Ibid, Department of State.

183 https://www.eurofound.europa.eu/surveys/european-working-conditions-surveys/sixth-european-working-conditions-survey-2015
184 Trends in job quality in Europe, Eurofound, Publications Office of the European Union, Luxembourg 2012.
185 Eurofound (2016), Developments in working life in Europe 2015, EurWORK annual review, Publications Office of the European Union, Luxembourg.

pay, in 2015 the majority of observed countries (9 out of 12) surpassed the pre-crisis pay level. Malta, the Netherlands and the UK were the only countries where collectively agreed pay increases did not fully compensate for decreases that took place after 2008.[186]

During 2015 and as per 1 January 2016, minimum wages were not increased in Belgium, Germany (where minimum wage was introduced in 2015), Greece, Luxembourg and Slovenia. In Belgium and Greece, no change has taken place since 2012.[187]

Working time in the EU must meet the minimum standards applicable throughout the EU as set in the EU's Working Time Directive (2003/88/EC).[188] Amongst other requirements, the Directive limits weekly working hours to 48 hours on average, including any overtime; a minimum daily rest period of 11 consecutive hours in every 24; a rest break during working hours if the worker is on duty for longer than 6 hours; paid annual leave of at least 4 weeks per year and extra protection for night work. The Directive also sets out special rules on working hours for workers in a limited number of sectors, including doctors in training, offshore workers, sea fishing workers and people working in urban passenger transport. (There are separate directives on working hours for certain workers in specific transport sectors.)[189]

The European Commission is currently reviewing Directive 2003/88/EC through a 2-stage consultation of EU-level workers' and employers' representatives and a detailed impact assessment.

c) Freedom of association and collective bargaining

China

While the country has made unprecedented progress over the past three decades in terms of overall social and economic development, including the development of the system of labour administration covering labour law reforms, employment promotion, social security and labour relations, in the field of industrial relations China's law and practice on freedom of association are not compliant with ILO standards.[190] Chinese workers are not free to form or join trade unions of their own choosing[191] and the right to strike is not protected by the law. China's Trade Union Law requires that all union activity be approved by and organized under that ACFTU, an organization under the direction of the Chinese Communist Party and the government.[192]

The necessary conditions for freedom of association are democracy and respect for civil liberties. [193] And civil liberties are essential for the normal functioning of trade union rights, and include freedom of opinion and expression, freedom of assembly, the right to freedom of security of the person from arbitrary arrest and detention and the right to a fair trial by an independent and impartial tribunal.[194]

In its 2015 Country report on Human Rights practices, the US Department of State notes that the law allows for collective wage bargaining for workers in all types of enterprises. It

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186 Ibid, Eurofound (2016).
187 Ibid, Eurofound (2016).
188 Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.
189 http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205
190 China has not ratified the two fundamental ILO conventions on freedom of association and the right to collective bargaining (Nos. 87 and 98), nor the International Covenant on Civil and Political Rights, signed by China in 1998.
191 The Network of Chinese Human Rights Defenders and a Coalition of NGOs, Report Submitted to the Committee on Economic, Social and Cultural Rights for Its Review at the 52nd Session of the Second Report by the People's Republic of China on Its Implementation of the International Covenant on Economic, Social and Cultural Rights, April 2014, 4, para. 15.
192 RC Trade Union Law [Zhonghua renmin gongheguo gonghui fa], passed and effective 3 April 92, amended 27 October 01, arts. 9–12; Constitution of the Chinese Trade Unions [Zhongguo gonghui zhangcheng], adopted 26 September 03, amended 21 October 08, arts. 9, 11.
193 Freedom of Association, Workers' Activities Programme, International Training Centre of the ILO (ITCILO), Turin.
194 Resolution concerning trade union rights and their relation to civil liberties, International Labour Conference, 54th Session, Geneva, 1970.

further provides for industrial sector-wide or regional collective contracts, and enterprise-level collective contracts were generally compulsory throughout the country. Regulations require a union to gather input from workers prior to consultation with management and to submit collective contracts to workers or their congress for approval. There is no legal obligation for employers to negotiate or to bargain in good faith, and some employers refuse to do so.[195]

According to Lee, China has accelerated industrial relations institution building, which includes the promotion of collective bargaining. Collective bargaining coverage has risen rapidly since the early 2000s. "Considering that the concept of collective bargaining was virtually unknown till the early 1990s in China, this is remarkable progress." [196]

While there are no reliable data on strikes, according to the China Labour Bulletin[197] there has been a noticeable increase in the number of strikes and worker protests across all industry sectors and all regions of China. The Organisation's own record of strikes[198] displays 1379 incidents in 2014 and 2775 strikes in 2015.

The current system of dispute settlement is designed for individual labour disputes and, according to the CLB, the authorities try to breakdown collective cases into individual plaintiffs. Of the 669,062 cases accepted by labour disputes arbitration committees (LDACs) in 2013, only 6,783 were collective cases, which featured 218,521 workers in total, an average of 32 workers per collective case.[199] But most collective labour disputes in China involve a lot more than 32 workers, and typically range from around one hundred to a few thousand, although numbers sometimes exceed ten thousand. These disputes are hardly ever resolved within the official dispute resolution system. Moreover, because there is no formal system for collective bargaining in China and little or no effective trade union representation at the vast majority of enterprises where strikes occur, according to the CLB workers generally organise themselves in an informal manner.[200]

An official from the CLB interviewed for the preparation of the SIA noted that nowadays, collective agreements signed at the plant level tend to be an outcome of collective disputes. They arise spontaneously when a group of workers organise and form a workers' committee - with no intervention of the ACFTU - with the aim of engaging in negotiations and reaching an agreement with the employer. These agreements are considered to be genuine collective agreements. The workers committee has no institutional continuity, in the sense that it is created to solve the dispute at stake and dissolved afterwards, not becoming the employer's counterpart to discuss other issues at the workplace. These strikes often arise for the non-payment of lay off benefits.[201]

Economic and political opportunities such as labour shortage, new labour laws, and new media openness in China create a climate for workers to be more assertive in their demands, as noted in Elfstrom and Kuruvulla (2012).[202]

EU

Voluntary, free collective bargaining between employees' representatives, on the one side, and employers' organisations, on the other, is a fundamental element of European industrial relations. It exists throughout the EU, albeit in different forms, on different

[195] Country Reports for Human Rights Practices 2015: China; Bureau of Democracy, Human Rights and Labour, US Department of State.
[196] Lee, C.H. (2009), Industrial relations and collective bargaining in China, Working Paper no. 7, Industrial and Employment Relations Department, International Labour Office, Geneva, 2009.
[197] http://www.clb.org.hk/
[198] CLB Strike Map.
[199] China's labour Dispute Resolution System, China Labour Bulletin.
[200] Ibid, China Labour Bulletin.
[201] Skype interview with Geoffrey Crothall, China Labour Bulletin, 22 June 2016.
[202] The Changing Nature of labour Unrest in China, Elfstrom, Manfred and Kuruvulla, Sarosh, Paper prepared for the International Labour and Employment Relations Conference, Philadephia, 2012.

levels, and with varying relevance for the regulation of wages and living and working conditions.

According to research undertaken by the European Commission, the change in the economic situation that has occurred since the beginning of the financial crisis is clearly the main contextual factor influencing recent developments in industrial relations in Europe. [203] Growth in employment has generally remained sluggish, with labour markets reflecting the levels of spare capacity in the economy. Record youth unemployment rates in some countries (Spain and Greece), shifts in the structure of employment across different occupational groups and sectors, an increase in temporary employment and the spread of alternative forms of employment have combined to create a new socioeconomic environment, changing the context for industrial relations. There has been growing pressure towards decentralised bargaining and limiting extension mechanisms, together with a decline in trade union density, slowing in later years.[204]

In spite of these recent changes, EU workers enjoy high collective bargaining coverage, with coverage levels around 60%, although declining in recent years.

d) Discrimination on the grounds of gender, health (HIV/AIDS), migration, registration, disability and age

China

Equality in employment is expressly contained in Article 33 of the Constitution, that stresses that all citizens are equal before the law.

The Employment Promotion Law of the People's Republic of China and the Labour Law of the People's Republic of China include provisions that ensure basic principles of employment equality. The law expressly restricts any employment discrimination against women, ethnic minorities, disabled people, carriers of epidemic pathogens or rural workers.

Other laws and government policies designed to promote employment equality include a 2005 amendment to the Law on the Protection of Rights and Interests of Women that added a prohibition of sexual harassment. The 2005 regulations by the Ministry of Personnel established that people with HIV should not be prohibited from civil service positions if tests can show they are not contagious. The 2007 Regulation of Employment for People with Disabilities required all enterprises to set aside at least 1.5 per cent of their workforce for disabled workers. In addition to multiple measures to relax "hukou" (see below) restrictions, the State Council issued directives in 2003 and 2006 urging local governments to eliminate discriminatory restrictions on migrant workers. A 2007 Opinion by the Ministry of Labour and Social Security declared that it was illegal to discriminate against people with HIV in employment, except for jobs where laws specifically excluded them. The 2008 Employment Promotion Law was an attempt to solve some of the deficiencies in existing anti-discrimination legislation and establish a broad statement of principle on employment equality.[205] However, in the China Labour Bulletin's view, the vagueness of the law and a lack of implementing regulations mean that many courts and arbitration committees refused to hear employment discrimination cases, especially if the discrimination occurred prior to the establishment of a labour relationship between the plaintiff and the employer.[206]

According to the China Labour Bulletin, forms of workplace discrimination in China include gender discrimination, sexual harassment, age limits on female employees, ethnic and religious discrimination, discrimination against workers with HBV and HIV, discrimination based on sexual orientation, family planning discrimination, discrimination against workers

[203] Industrial Relaitons in Europe, 2014, DG Employment.
[204] Ibid, DG Employment.
[205] Laws and regulations related to employment discrimination, China Labour Bulletin.
[206] Workplace Discrimination, China Labour Bulletin.

with physical and mental disabilities and the household registration system or hukou (see Chapter 5).[207]

Human Rights Watch has also pointed at widespread discrimination in employment on the grounds of gender, age and ethnicity. According to the organization, women continue to face systemic discrimination on issues ranging from employment to sexual harassment.[208] Workplace policies also discriminate on the basis of test results for HIV/AIDs and hepatitis. Discrimination occurs during all stages of employment from application, hiring, work assignment, compensation and benefits, to promotion and termination of employment. Discrimination of migrant workers has also been reported by various organizations. The registration system (hukou) denies migrant workers access to the full range of social benefits, including health care, pensions and disability programs, on an equal basis with local residents.[209]

EU

The adoption of the Employment Equality Directive[210] in 2000, in addition to the Racial Equality Directive [211], extended the protection against discrimination provided under EU law, which had previously been developed on gender matters. By explicitly obliging the Member States to prohibit discrimination in employment on the grounds of religion or belief, age, disability and sexual orientation, the general principles set out in the Treaties - as well as international law -became more effective, and some minimum standards are now common throughout Europe.[212]

In spite of the Directive and the national transpositions, gender discrimination in pay is persistent. The average gender pay gap – average earning per hour- in the European Union is 16,3%[213] and the average gender overall earnings gap – the difference between the overall annual earnings between women and men- in the EU is 41,1%.[214]

According to the 2015 Eurobarometer, discrimination on the grounds of ethnic origin continues to be regarded as the most widespread form of discrimination in the EU (64%), followed by discrimination on the basis of sexual orientation (58%), gender identity (56%), religion or belief (50%), disability (50%), age (being over 55 years old, 42%) and gender (37%).

e) Income distribution

China

China has made remarkable progress in reducing poverty, but according to recent research[215], this achievement has been accompanied by widening income disparities. Research presented in January 2016 revealed that the country has one of the world's highest levels of income inequality, with the richest 1 per cent of households owning a third of the country's wealth. The poorest 25 per cent of Chinese households own just 1 per cent of the country's total wealth, the study found.[216] China's Gini coefficient for

207 China Labour Bulletin.
208 World Report 2016, Human Rights Watch.
209 Ibid, Human Rights Watch (2016)
210 The text of the Directive is available at : http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3Ac10823
211 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
212 The Employment Equality Directive, European Implementation Assessment, European Parliament, February 2016.
213 Eurostat 2013.
214 Eurostat, 2010.
215 Growing (Un)equal: Fiscal Policy and Income Inequality in China and BRIC+, Serhan Cevik and Carolina Correa-Caro, IMF Working Paper 15/68, International Monetary Fund, 2015.
216 The research was undertaken by the Institute of Social Science, University of Peking, and reported by the Financial Times (China income inequality among world's worst, 14 January 2016) and The Diplomat (Report: China's 1 Percent Owns 1/3 of Wealth, 15 January 2016)

income, a widely used measure of inequality was 0.49 in 2012, according to the report. [217] The World Bank considers a coefficient above 0.40 to represent severe income inequality.

An IMF paper identified fiscal policy as having played an important role through the impact of taxes and transfers on income distribution. [218] The authors found that China's tax-to-GDP ratio almost doubled over the past two decades to 19 per cent, but remained significantly below the OECD average of about 35 per cent. This effectively sets a limit on public expenditure, including redistributive measures. Furthermore, China's system of taxation distributes the tax burden in a regressive manner across income groups, largely because China collects more than half of its revenues from indirect taxes: personal income taxes amount to 6 per cent of total tax revenues, while indirect taxes on goods and services account for over 50 per cent of total tax revenues.[219] Although China has a progressive personal income tax rate schedule with a top rate of 45 per cent, its broad tax brackets and generous allowance schedule diminish the effective progressivity of the tax regime, resulting in a very low ratio of personal income taxes to indirect taxes. [220]

While government spending has grown from 18 per cent of GDP in 1990 to 29 per cent in 2013, it is still significantly below the OECD average of 45 per cent.[221] According to the IMF, the increase in government spending is largely due to higher outlays to infrastructure investment and public administration, while social protection and healthcare accounts for only about 6 per cent of GDP (compared to an average of 15 per cent in OECD countries and 9 per cent in upper-middle income countries). In other words, excluding social protection and healthcare, China's non-redistributive government spending is comparable to that in OECD countries.[222]

EU

In Europe, there were also wide inequalities in the distribution of income in 2014: a population-weighted average of national figures for each of the individual EU Member States shows that the top 20 % of the population received 5.2 times as much income as the bottom 20 %. This ratio varied considerably across the EU Member States, from 3.5 in the Czech Republic, to more than 6.0 in Lithuania, Portugal, Latvia, Greece, Estonia, Spain and Bulgaria, peaking at 7.2 in Romania.[223]

In the EU, the value of the Gini coefficient in 2012 ranged from 0.24 (in Slovakia and Slovenia) to 0.35 (in Bulgaria and Latvia). Other countries at the top of the ranking were Lithuania, Portugal, Greece and Romania with Gini indices around 0.34. At the bottom of the country ranking, the Czech Republic, Sweden, and the Netherlands have Gini coefficients that are only slightly higher than Slovenia's (between 0.24 and 0.25). Other countries can be broadly divided into two groups, with the UK, Ireland, Luxembourg, France, some of the Southern European countries and the EU13 countries having Gini coefficients of between 0.30 and 0.33, and other EU15 countries together with Malta and Hungary having values of between 0.25 and 0.30.[224]

[217] Among the world's 25 largest countries by population for which the World Bank tracks Gini data, only South Africa and Brazil are higher at 0.63 and 0.53, respectively. The figure for the US is 0.41, while Germany is 0.3.
[218] Growing (Un)equal: Fiscal Policy and Income Inequality in China and BRIC+, Serhan Cevik and Carolina Correa-Caro, IMF Working Paper 15/68, International Monetary Fund, 2015.
[219] Ibid, IMF (2015).
[220] Ibid.,IMF.
[221] Ibid, IMF.
[222] Ibid., IMF.
[223] Eurostat, Income distribution statistics, February 2016.
[224] Research findings - Social Situation Monitor - Income inequality in EU countries, Employment,Social Affairs and Inclusion.

f) Governance, participation and good administration: Institutions for labour market governance.

Labour inspection

China

Since 2004 China has been engaged in the reform of its inspection system. In 2009, the ILO undertook an assessment[225] of the labour inspectorate with the aim of providing recommendations to improve its efficiency. While the system had made "impressive progress in a short time", such as the creation of a central authority in 2008, there were also great differences and imbalances between different provinces, municipalities and even districts/counties, in particular concerning the organization of labour inspection at operational (local) levels. Other challenges related to the absence of a national labour inspection policy, the status, roles, funding, authorities and qualifications of the labour inspectors, the inefficient communication channels between the operational level and the higher authorities, the lack of an enforcement policy and the lack of a development plan for the labour inspectorate were also highlighted. The ILO recommended the preparation of a Labour Inspection law in line with the provisions of ILO Convention on Labour Inspection, 1947 (No. 81), a convention that China has not ratified.[226]

Inspection personnel was clearly insufficient in all jurisdictions. The labour inspectorate was *de facto* only covering urban employees, and still not fully covering migrant workers, the informal sector, or agricultural workers.[227]

At the time of the preparation of the ILO recommendations, the government was engaged in the development of a medium to long term Development Plan for the Labour Inspection System and an administrative reform to unify the inspection system nation-wide.

Certain authors have highlighted the increasing role of labour legislation in regulating labour relations in the context of the country's transition to a market economy and the 2007 landmark with the introduction of major pieces of legislation, but have criticised its implementation, which is considered weak. [228]

EU

The key role of the labour inspectorate in labour market governance in the EU was emphasized by the Resolution adopted by the European Parliament in 2014 on effective labour inspections as a strategy to improve working conditions in Europe.[229] The Resolution, called for the independence of the labour inspectorate, stresses the importance of drawing up national action plans for strengthening labour inspection mechanisms (…) in view of the added value of effective labour inspections in underpinning social cohesion and, in general, consolidating justice at the workplace. It points out that labour inspectorates have a vital role to play in prevention and monitoring and also help to enhance expertise and information provision at company level. In addition, it urges the Member States to increase the staffing levels of, and the resources available to, their labour inspectorates and to meet the target of one inspector for every 10 000 workers, as recommended by the ILO. Finally, it calls on Member States to impose more severe penalties on firms that fail to comply with their obligations concerning fundamental rights (salaries, working hours and

[225] For a summary of recommendations see : www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@lab_admin/documents/genericdocument/wcms_119310.pdf.

[226] Priority recommendations made by the ILO can be consulted at: www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@lab_admin/documents/genericdocument/wcms_119319.pdf.

[227] The situation reported in the provinces was of 1 inspector for between 30.000 and 37.000 workers. The ILO recommended not only including all workers in all employing units and all sectors of activity, but also achieving a standard of 1 inspector for 15.000 employees. The scarcity of personnel also affected the central authority, the Labour Inspection Bureau, with only 15 officials to cover a population of 1,3 billion.

[228] Labour inspection in contemporary China: Like the Anglo-Saxon model, but different, Wenjia Zhuang and Kinglun Ngok, International Labour Review, Vol. 153 (2014), No. 4.

[229] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0012+0+DOC+XML+V0//EN.

OHS) and considers that the penalties in such cases must be effective, proportionate and dissuasive.

The Resolution calls on the Member States to strengthen their inspection systems as this should be an essential part of national plans to respond to the economic crisis; points out that labour inspections play a vital role by verifying that legislation in force is fully implemented as well as by ensuring that especially vulnerable workers are covered and protected.

In the context of the financial crisis that hit Europe since 2009, undeclared work has become highly topical, as well as new forms of employment relationships. With layoffs, rising unemployment and increased cost pressure on businesses, the number of workers in undeclared situations will still rise. This translates into more precarious jobs and lower protection for workers. This implies that labour inspectorates need to focus more on monitoring, preventing and acting against undeclared work. Strengthening labour inspection systems is therefore an integral part of responding to the crisis.[230]

Aware of this challenge in the European labour market, the European Parliament called on national labour inspectorates and other relevant authorities to draw up action plans to combat undeclared work, covering all forms of abuse pertaining to employment and self-employment. It also underlines that undeclared work, if not properly dealt with, threatens to undermine the EU’s ability to meet its employment targets for more and better jobs and stronger growth.

All EU countries have ratified the ILO Labour Inspection Convention, 1947 (No. 81).

A report[231] prepared for the European Public Services Union to analyse the labour inspectorates of fifteen countries,[232] found that while ensuring compliance with health and safety and other employment conditions is a common task of labour inspectors, there were country differences with regard to whether restructuring, social security contributions or undeclared work are part of the remit of labour inspectors. The number of labour inspectors was found to be more often than not insufficient,[233] putting at risk the very efficiency of their work, which, in the face of globalisation and deregulation of the labour market, had become more complex and demanding. Staff shortages were further compounded by the impact of the crisis adding more work to an already overburdened public administration. In 5 of the surveyed countries, the resources and numbers of labour inspectorates have been further reduced. Yet as a result of the crisis, the workload has increased with more restructuring cases to deal with.

The impact of the economic crisis on the working and employment conditions and its impact on the work of the labour inspectorate in Europe are also addressed by the ILO.[234] The global economic crisis has had a significant social impact on all levels ranging from a rise in unemployment and job rotation to an increase in precarious contracts and fragmented or disguised forms of employment. The crisis has also led to a decline in the number of accidents and their frequency and in an increase in stress at work, psychological disorders, cardiovascular disease and more prolonged inability to work. The crisis has also led to cuts in investment in the training for workers and the purchase and maintenance of equipment. It has also resulted in a fall in the number of legal migrant workers which has consequently, wreaked havoc on the labour market.

Data available from Eurostat in 2009 (mentioned in the ESPU report) indicate that the number of workers per labour inspector ranged from more than 22,000 workers per labour inspector in Belgium to around 4,000 in Greece. In the UK, there were approximately 20,000 workers per labour inspector, 15,000 in the Czech Republic, 10,000 in Germany,

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230 Labour inspection in Europe: undeclared work, migration, trafficking. Geneva, ILO, 2010.
231 A mapping report on Labour Inspection Services in 15 European countries. A SYNDEX report for the European Federation of Public Service Unions (EPSU), 2015.
232 Belgium, Czech Republic, Denmark, France, Germany, Greece, Hungary, Italy, Latvia, Poland, Rumania, Russia, Spain, the UK and Ukraine.
233 To reach this conclusion the report examines statistics for EU countries only.
234 Labour inspection in Europe: Challenges and achievements in selected countries, including in times of crisis, Mari Luz Vega, ILO, Geneva, 2011.

12,000 in France, 11,000 in Spain, 9,500 in Poland, 9,000 in Latvia, 6,500 in Italy, 5,300 in Hungary, 5,200 in Denmark, 4,500 in Romania and some 4,000 in Greece.

Social dialogue

China

Since 2001, China has made impressive progress in institutionalizing tripartite consultation mechanisms at various levels, from central down to district/county. These consultation mechanisms are designed to coordinate labour relations among the tripartite partners – labour administration, ACFTU and Chines Enterprise Confederation (CEC) at corresponding levels – and spread good practices through social dialogue. It appears, however, that there is no institutionalized tripartite social dialogue on L&SS (or OS&H) inspection policy formulation and related issues, though involvement of social partners – primarily ACFTU but also, with less frequency, organisations of employers and businesses – takes place when the labour inspectorate carries out special campaigns with specific targets, for example, wage arrears.

Europe

Social dialogue in EU countries is a well-established practice that takes place in a variety of forms, from institutionalised social dialogue in the form of socio economic councils or bipartite bodies to ad-hoc agreements to cope with issues ranging from labour law reforms, employment or vocational training. According to recent ILO research[235] in EU 28 countries, half of the national social dialogue structures in half of the EU countries suffered during the crisis. However, from 2013 onwards when the crisis eased, social dialogue recovered but not in all countries. Trends in the countries observed also highlight the mounting pressure for labour market reform, which often weakened social protection policies. The report also highlighted that countries where social dialogue has proven more resilient had done better in weathering the crisis.

4.3. Impact of the Investment Agreement between the EU and China

The investment agreement between the EU and China currently being negotiated will replace the existing BITs between China and European countries. In this regard, the social impact of the new agreement will predictably stem from:

- Impact of labour-related provisions in the agreement;
- Changes in the government’s approach to social rights – also impacting on the existing framework- as a result of increasing international exposure, transparency and openness;
- Impact on employment and social standards as a result of increased FDI associated with improved market access.

Impact of labour-related provisions contained in the investment agreement

In order to assess the potential social impact of the agreement we will take as reference the sustainable development chapters that have been included in in recently negotiated EU FTAs, e.g. with Canada, Singapore or Vietnam.

The EU-Canada Comprehensive Economic and Trade Agreement (CETA) includes chapters directly addressing to the social dimension: a chapter on Trade and Sustainable Development and a chapter on Trade and Labour, as well as a chapter on Transparency.

[235] Post-crisis social dialogue : Good practice EU-28, International Training Centre, ILO, Turin, 2016.

The FTA between the EU and Singapore and the FTA between the EU and Vietnam include a Chapter on Trade and Sustainable Development and a chapter on Transparency.

All three agreements include similar provisions in their trade and sustainable development chapters. The parties recall a number of international agreements in the social and environmental field and recognise that economic development, social development and environmental protection are independent and mutually reinforcing components of sustainable development. The parties reaffirm their commitment to promoting sustainable development through enhanced coordination of their policies, promote dialogue and cooperation, enhance enforcement of their respective labour and environmental laws and promote full use of instruments such as stakeholder consultation in the regulation of trade, labour and environmental issues.

The agreements recognise the right of each party to regulate labour issues, by setting its labour priorities, establishing its levels of labour protection and by adopting or modifying its laws and policies accordingly in a manner consistent with its international labour commitments. These provisions might provide a safeguard for states against claims from investors whenever public policy initiatives clash with the interests of the investors.

The parties shall ensure that their labour law and practices embody and provide protection for the four ILO fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. This provision is complemented in CETA, the EU-Singapore and the EU-Vietnam FTA by the commitment of the parties to effectively implementing the ILO Conventions that both parties have ratified respectively.. Whether these provisions might promote changes in the protection of basic rights will be a matter to be discussed with stakeholders during the consultation process.

Other obligations in the field of labour, according to the provisions of other FTAs, might include respect for the health and safety of the workers, upholding levels of protection, and in the case of CETA also ensuring enforcement and compliance procedures through effective labour inspection and ensuring access of workers to judicial remedy.

The provisions FTAs mentioned encourage a public debate with and among non-state actors for the definition of policies that may lead to the adoption of labour law and standards by its public authorities, and promote public awareness of its labour law standards.

Sustainability provisions might also foresee the establishment of institutional structures to discuss matters covered by the sustainable chapters of the agreement and promote transparency, consultations with the civil society and public participation. Such structures might increase transparency on labour and sustainable issues in the host countries and improve governance and social dialogue. The social impact will largely depend on the scope and composition of the bodies, considering the specific contexts of the host countries, as some stakeholders have noted.[236]

Finally, the FTAs between the EU and Canada, the EU and Singapore, and the EU and Vietnam contain specific chapters that ensure transparency on new regulation affecting economic operators. The parties shall ensure transparency and access of interested parties to such measures, and timely explain their objective and rationale. These transparency procedures also apply to any measures of general application aimed at protecting the environment or labour conditions which may affect trade and investment. This should serve to provide reasonable opportunities for interested persons to comment on such proposed measures; and endeavour to take into account the comments received from interested persons. Transparency procedures may have an effect on the quality of governance, increase national and international exposure and, as a result, promote changes in the social field. Some stakeholders consulted were sceptical though on international exposure as a driver

[236] ICFTU, Amnesty International and the EU Chamber of Commerce in China.

for social change in China. National security was mentioned as the major driving force for the enactment of legislation in recent years.

Likewise, provisions on consultation with civil society, transparency and exchange of information and cooperation between the two parties to the agreement might also be included in the agreement.

Changes to employment and social standards as a result of increased FDI

This section reviews existing literature and documentation on the current relationship between FDI and sustainability and social impacts [237] and incorporates the outcome of the consultations held with stakeholders..

As noted in the inception report, while the impact of trade agreements on social issues has been analysed to a certain extent, existing literature on the social impact of FDI with the exception of impacts on employment and wages is scarce, focuses on impacts on less developed countries and is largely based on case studies, making generalizations very difficult.

Substantive research on the social impact of FDI took place mostly in the first decade of the 2000s. The work points at FDI as an important factor in improving living standards for workers, basically through wages, with little effect on other working conditions.

Impacts on employment

According to Haneman and Rosen,[238] unlike trade, direct investment is unlikely to be associated with negative effects on employment: greenfield projects by definition create work that was not there before, and acquisitions are hard to move and often entail turning around a firm that might have gone under. The authors tried to quantify employment creation of Chinese investment in Europe, counting around 45,000 EU jobs. Their assessment included jobs preserved through mergers and acquisitions of enterprises at risk. Adding in firms that China finances through non-majority direct investment stakes "would swell this figure by several tens of thousands."[239] These figures are low compared to the total EU labour force of 240 million and also, compared to jobs created by FDI from other major economies. But Chinese investment is still in its early stages.

An expected positive impact of the investment agreement on employment was also an outcome of the EU-Investment Study prepared by Copenhagen Economics in 2012.[240] According to the study, labour demand will not be negatively affected by inward FDI. as Chinese FDI in the EU increases, employment should be expected to go up. With regards to outward FDI investment, the study highlighted that the impact on employment was not self-evident. Even in cases where outward investments led to a decline in employment in the short run, longer run effects may actually save jobs and increase overall employment.

Haneman and Rosen's research of 2006[241] and research from OECD in 2003[242] found that employment increases when foreign MNEs establish a foreign affiliate in a EU country. The impact of inward FDI on job creation may differ depending on the type of investment. Greenfield investments may have larger job-creating impacts than mergers and acquisitions, although even in this case jobs impact may still occur as the foreign investment may make the entity more productive and better enable it to compete globally.

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[237] While the agreement is not limited to MNEs, as it covers SMEs and individual investors as well, literature on the impacts mainly focuses on MNEs. Consultation with stakeholders will cover MNEs and SMEs to the extent possible.

[238] Haneman, T. and Rosen H., D., (2012) China Invests in Europe, Rhodium Group June 2012.

[239] Ibid, Haneman and Rosen.

[240] EU-China Investment Study, Final Report, June 2012, Copenhagen Economics, pp. 101 and 104-106.

[241] Study on FDI and Regional Development, Copenhagen Economics, 2006.

[242] Measures of restrictions on Inward foreign direct investment for OECD countries, OECD Economic Studies 36, OECD, 2003.

In its EU-Investment Study, Copenhagen Economics also found that the number of people employed in Chinese owned enterprises in the EU was relatively small. However, as Chinese FDI in the EU increases, employment should also be expected to go up.

The study also noted that one of the main worries about EU outward FDI and international sourcing is the potential negative effect on employment. When EU firms choose to invest abroad it may be at the expense of investment at home, but the alternative to investing abroad might also be not to invest at all. The study concluded that even in cases where outward investments led to a decline in employment in the short run, longer run effects could actually save jobs and increase overall employment.

Impacts on wages

A literature review conducted by the OECD[243] seems to be conclusive in that MNEs are able to provide higher wages and, possibly, better working conditions than their local counterparts "because of their higher productivity, explained by greater technological know-how and modern management practices that allows them to compete effectively in foreign markets and to offset the cost of coordinating activities across different countries." Foreign-domestic pay differences are particularly important in the context of developing countries and the positive wage effects more pronounced in emerging economies. Furthermore, according to the study, the positive impact of FDI resides primarily in better job opportunities for new employees, rather than better pay for workers who stay in firms that happen to change ownership. This may reflect more competitive conditions in the market for new hires that allow new employees to more widely share the productivity advantages of MNEs. In the longer term, however, one would expect the positive effects to spread across the entire workforce, as large pay disparities between new and old workers within firms are unlikely to be sustainable.[244]

Complementary OECD research noted that MNEs may pay higher average wages only to the extent that they employ a more skilled workforce or must compensate workers for undesirable differences in the characteristics of jobs such as lower job security.[245] But in the presence of certain market failures MNEs could also offer better pay and working conditions than domestic firms to individuals with similar characteristics doing similar jobs to attempt to reduce turnover and motivate the workforce.[246]

Other research[247] links the impact of MNEs and working conditions to the labour supply conditions in the host country and the human resource management policies of the firm.

Wage differences are also explained by hiring employees with more observable and unobservable skills.[248] Wages also grow more rapidly in foreign-owned firms, suggesting that they may provide more specific training or other on-the-job learning opportunities than host-country firms. Even after controlling for these factors, however, studies still find foreign-affiliate paying premiums (in the order of about 3%–5%). These premiums may reflect differences in management quality between foreign and domestic firms.[249]

Inputs from stakeholders consulted were not conclusive on whether EU firms on China or Chinese firms in Europe offered different wages than their counterparts.

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243 The Social Impact of Foreign Direct Investment, Policy Brief, OECD, 2008.
244 Ibid, OECD (2008)
245 The Impact of Foreign Direct Investment on Wages and Working Conditions, Background report for the OECD-ILO Conference on Corporate Social Responsibility, 2008, page 14.
246 Ibid, OECD-ILO (2008)
247 Policy Priorities for International Trade and Jobs, OECD, 2012.
248 Foreign firms, domestic Wages, Nikolaj Malchow- Møller, James R Markusen, Bertel Schjerning, The Scandinavian Journal of Economics, 2013/4/1, pages 292-335.
249 Flanagan, R.J. and Khor, N. (2014), Globalizations and the Qualoty of Asian and Non-Asian Jobs, Asian Development Review

Impacts on working conditions

The question whether MNEs also promote improvements in other aspects of workers' employment conditions, such as training, working hours and job stability, is more complex and the existing evidence is scarce. A number of studies have attempted to characterise employment conditions in MNEs and analyse its determinants. Literature appears to suggest that MNEs have a relatively low tendency to export labour practices to their foreign affiliates, tending instead to adapt to local practices.

OECD analysis suggests that, in contrast to wages, non-wage working conditions do not necessarily improve following a foreign takeover, and even when they do, it is not clear whether these effects derive from a centralised policy to maintain high labour standards or merely reflect the optimal responses by MNEs to local conditions.[250]

Research using survey data on management and work-life balance practices for over 700 medium-sized firms in the US, UK, Germany and France found that US MNEs export management practices but not work- life balance practices.[251] Work comparing labour practices in domestic and foreign affiliates of a single US firm in different countries also found that US firms adapt their labour practices to host country conditions to an important extent.[252]

Other research work notes that the impact of a multinational company on working conditions in a host country depends on the extent to which it must compete with other MNEs or host country firms for its workers and on the local elasticity of labour supply. Working conditions in MNEs were not always better than domestic, and in particular working hours were been found to be longer in foreign-owned firms. [253]

Stakeholdels consulted indicated that working conditions in EU firms in China seemed to be better than their Chinese counterparts[254] as a result of HR policies brought by the top management from the country of origin. Issues mentioned included better compensation packages, a better working environment where workers are able and expected to express themselves at work, a good balance between work and life, higher autonomy art work and better training. It is also more likely that EU firms in China might properly compensate workers for overtime. All these seem to result in lower employee turnover in EU firms, according to interviewees. These HR practices – and the resulting decrease in turnover - might have a spill-over effect on Chinese HR practices.

Impact on Labour relations

As it is the case for working conditions, research is scarce – mainly based on study cases- and does not allow being conclusive on the impact of EU or Chinese labour relations practices in China and the EU. Interviews with stakeholders have provided an insight of some of the possible impacts of an increase of FDI on labour relations.

The 'country of origin' effect is widely discussed in the literature and this holds that MNEs' approach to industrial relations and human rights management in their subsidiaries will conform to their home country practices and policies.[255] This is apparent in a number of studies, particularly with US MNEs showing lower frequency of union recognition than

[250] Ibid, OECD, 2008.
[251] Bloom et al. (2008)
[252] The Impact of Foreign Direct Investment on Wages and Working Conditions, Background report for the OECD-ILO Conference on Corporate Social Responsibility, 2008, page 14.
[253] Flanagan, R.J. and Khor, N. (2014), Globalizations and the Qualoty of Asian and Non-Asian Jobs, Asian Development Review
[254] EU Chamber of Commerce in China, Amnesty International and China Labour Bulletin.
[255] Professor Raymond Markey & Katherine Ravenswood (2009), The Effects of Foreign Direct Investment and Multinational Enterprises on the areas covered by the 1977 MNE Declaration of the ILO A Global Holistic Scan, ILO; see also Lavelle, J. (2008). Charting the contours of union recognition in foreign-owned MNCs: Survey evidence from the Republic of Ireland. Irish Journal of Management, 29(1), 45-63.

MNEs based in other countries. The consequences of the 'country of origin' effect will vary, clearly, according to the home country.[256]

Some research has been undertaken on the impact of Chinese FDI or workers and organised labour in Europe. Based on interviews with works councils and union representatives in Germany, France and the Netherlands, the work concludes that representatives have "a cautiously optimistic view of Chinese investors as no more or less threatening to organised labour than other investors".[257]

Stakeholders consulted appeared to agree on the positive impact that EU FDI could have on labour relations in China. Well-run European companies seem to have no strikes or fewer strikes and have a workers' committee for consultative purposes. While no genuine collective bargaining exists – as a result of the limitations of freedom of association - some forms of bargaining are emerging as a result of collective conflict. In some cases, workers elect their own representatives outside the influence of the ACFTU and engage in some form of negotiation with the management. This might result in an ad-hoc agreement, after which the workers' structure is dissolved.

[256] Flanagan, R.J. and Khor, N. (2014), Globalizations and the Quality of Asian and Non-Asian Jobs, Asian Development Review.

[257] Chinese Investment and European labour: Should workers fear Chinese FDI? Brian Burgoon and Damian Raess, Aisia Europe Journal, March 2014, Volume 12, Issue 1, pp 179-197.

5. Human rights analysis

5.1. Short introduction on the methodology

In order to assess the human rights impact of the investment agreement between the EU and China, the factors that determine a human rights situation in a specific country need to be determined, to subsequently analyse whether the investment agreement is likely to influence those factors.

Recent research undertaken by the Danish Institute of Human Rights concludes that among the most decisive mechanisms that influence the protection of the rights of the individual as well as those regional and international mechanisms and instruments entrusted to make human rights a reality, are historical, political, legal, economic, social, cultural, religious, ethnical and technological factors.[258]

For this analysis and while inputs from the key stakeholders are being gathered [259] we could expect that the investment agreement could influence the following factors that, in turn, could impact human rights:

1. Political factors: the States have a role in ratifying and promoting ratification of basic human rights conventions, and in developing policies, legal and an institutional frameworks conducive to the respect of human rights; investment or trade agreements can become a driving force for political change by increasing international exposure and transparency on the human rights situation in a given country;
2. Legal factors: As a result of provisions included in the investment agreement, Government might enact laws and regulations in full compliance with international standards on human rights; government can also set transnational mechanisms to solve disputes ensuring the right to an effective remedy and to a fair trial for, at least, the holders of economic rights;
3. Economic factors: the increased flow of FDI impacts can potentially have a human rights impact – positive or negative- by changing living standards of the working population and the population affected by the investment; this impact is likely to be linked to the human rights approach and policies of the governments and the transnational enterprises.

Research on the specific mechanisms through which an investment agreement impacts human rights is scarce, in spite of the increasing number of bilateral investment agreements signed in recent years. In an early stage of the process of gathering inputs from the key stakeholders, we will base this preliminary analysis in a review of the existing literature on FDI, investment agreements and reports from UN bodies, government institutions, human rights organizations and other organizations from the civil society. Based on this information, the section will comprise:

- A **screening for key human rights possibly impacted by the proposed investment agreement**; it will include which particular measures under consideration have the potential for significant human rights impacts and which specific human rights would be likely to be affected, both directly and indirectly;.
- Establish a **baseline scenario** of the current situation of the key identified relevant human rights in China and the EU, that sets the scenario where MNEs operate; this includes a description of the legal frameworks and public policies that will shed light on the current commitment of Chinese and EU governments to realize human rights;
- Identify what **potential impacts could the investment agreement have**, basically through two channels:

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258 Report on factors which enable or hinder the protection of human rights, Eva Maria Lassen (editor), Monika Mayrhofer, Peter Vedel Kessing, Hans-Otto Sano, Daniel García San José, Rikke Frank Jørgensen, The Danish Institute for Human Rights, 2014. Paper developed under the FRAME Project, European Commission.

259 At the time of drafting the report, consultations with stakeholders had not yet taken place.

- **An increase of FDI flows**: for this, the link between FDI and human rights will be explored, and any evidence on the experience of the impact of human rights of EU investment in China and Chinese investment in Europe will be presented**;** as noted, at this stage of the process, this information will be based on existing literature and documentation;
- **The impact of the provisions of the agreement**, to the extent these imply a change compared to existing BITs between China and European Countries.

As the investment agreement is still being negotiated, other recently negotiated agreements, such as CETA, the EU-Singapore FTA and the EU-Vietnam FTA, will be taken as the basis for this preliminary analysis as these also include investment and sustainable development provisions.

5.2. Screening for key HR impacts

In line with the Commission's guidelines, we begin the assessment by identifying the measures which could have the potential for significant human rights' impacts, as well as by outlining the key human rights' issues. We have identified below the human rights potentially affected by measures included in the proposed investment agreement, on the assumption that the EU-China investment agreement implies a changed scenario with regards to the existing bilateral investment agreements currently in force between China and European countries. An overview of these identified human rights is presented in the table below. In the current and next phase of the study we consider in more depth these identified human rights for which the impact of the agreement, whether direct or indirect, is expected to be major or significant, as presented in the table below. Impacts on labour-related human rights will be examined in the social chapter of the SIA. Also, the final selection of human rights can still be extended if our research and consultations point to the relevance of other human rights. For now, and in the absence of evidence to the contrary, human rights such as right to life, liberty and security, etc. are deemed not to be significantly impacted, directly or indirectly, by the current scope of the investment agreement and have therefore not been included in the said table.

As an investment agreement, the EU-China agreement is likely to affect not only the rights of individuals, but also of businesses. That legal persons[260] – corporations and associations- enjoy certain human rights under the European Convention on Human Rights is well established in the case-law of the European Court of Human Rights.[261] Obviously, not all human rights contained in the European Convention on Human Rights apply to legal persons. However, rights recognized as applicable to corporations are, for instance the right to fair trial (Art. 6), the right to freedom of expression (Art. 10), freedom of association (Art. 11) and the right to property (Article 1 of Protocol 1). Also, since the Article 14 on non-discrimination is not formulated by reference to any specific subject, it has also been held that it applies to corporations.[262] Article 8 on the right to privacy has also been considered applicable to corporations, yet has attracted much criticism.[263]

Applying recognized rights to corporations however is very specific to the European Convention. Under the International Covenant on Civil and Political Rights (ICCPR), legal persons are not explicitly given protection and are not entitled to file a claim to the Human Rights Committee. The ICCPR has clearly been drafted to protect the rights of natural persons only. Yet, it has also been argued that certain provisions are formulated broadly

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260 In jurisprudence, a natural person is a human being with its own legal personality, as opposed to a legal person, that may be a public or a private organization.

261 See Michael K. Addo, 'The Corporation as Victim of Human Rights Violations', in Michael K. Addo (ed.) *Human Rights Standards and the Responsibility of Transnational Corporations* (Kluwer, 1999), pp. 192-95 and Julian G. Ku, 'The Limits of Corporate Rights Under International Law', 12(2) Chicago Journal of International Law (2012), pp. 729-754.

262 See Julian G. Ku, 'The Limits of Corporate Rights Under International Law', 12(2) Chicago Journal of International Law (2012), p. 747 and Winfried H.A.M. van den Muijsenbergh and Sam Rezai, 'Corporations and the European Convention on Human Rights', 25 Global Business & Development Law Journal (2010), p. 49.

263 Winfried H.A.M. van den Muijsenbergh and Sam Rezai, 'Corporations and the European Convention on Human Rights', 25 Global Business & Development Law Journal (2010), p. 50.

enough as to cover rights of legal persons, but the practice shows that the Committee will often require a link with a natural person.[264]

The analysis in Table 5.1 is based on the assumption that the EU-China investment agreement will include investment protection provisions similar to those included in the trade and investment agreements the EU has already negotiated with Canada and is currently negotiating with the United States.

[264] Sarah Joseph and Adam Fletcher, 'Scope of application', in Daniel Moeckli, Sangeeta Shah, and Sandesh Sivakumaran (eds.), International Human Rights Law (Oxford University Press, 2014), p. 122 and Julian G. Ku, 'The Limits of Corporate Rights Under International Law', 12(2) Chicago Journal of International Law (2012), p. 750.

Table 5.1 Key human rights to be assessed

Human Rights at Stake[265]	Right recognized in	Relation to foreign investment	Clauses/provisions in the investment agreement generating the impact	Potential impact
Right to property	Universal Declaration of Human Rights, Art. 17 Charter of Fundamental Rights of the EU, Art. 17 European Convention on Human Rights, Article 1 Protocol 1	Direct	• Investment liberalization provisions, including non-discrimination; • Protection against unlawful expropriation; • Fair and equitable treatment; • Transfer of capital.	• Positive impact on the protection of property rights of EU investors in China; • Possible negative effects of the grant of property rights to foreign investors in violation of the land rights of the local population/indigenous peoples' rights.
Right to an effective remedy and to a fair trial	Universal Declaration of Human Rights, Art. 7, 8, 10 and 11 Charter of Fundamental Rights of the EU, Art. 47 European Convention on Human Rights, Article 6	Direct	• Protection against unlawful expropriation; • Fair and equitable treatment; • Investment dispute settlement provisions; • Transparency provisions.	Access to international remedies for violation of the treaty protection provisions, and transparency provisions, because of the requirement of due notice for measures affecting trade and investment and opportunities for interested persons to submit their views before enactment thereof, are conducive to an enhanced respect for the right to a fair trial for investors. This may in turn positively impact the rights/law in the host State.
Non-discrimination[266]	Universal Declaration of Human Rights, Art. 2 and 7 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Direct	• Investment liberalization provisions; • Fair and equitable treatment; • MFN clause; • National treatment clause; • Investment dispute settlement provisions.	Positive impact on the position of EU investors in China through the various provisions provided from the non-discriminatory treatment of foreign investors, both in general and in relation to other investors (domestic and third-country). The effect on the situation in the host State may expected to be positive, because the treaty provisions may promote the general

265 The human rights in relation to the workplace, including the rights of migrant workers is covered in section 4 'Social analysis'.
266 The specific non-discrimination provisions in relation to the workplace are dealt with in section 4 'Social Analysis'.

Human Rights at Stake[265]	Right recognized in	Relation to foreign investment	Clauses/provisions in the investment agreement generating the impact	Potential impact
	International Convention on the Elimination of All Forms of Racial Discrimination (CERD): International Covenant on Civil and Political Rights, Art 26 ILO Declaration on Fundamental Principles and Rights at Work Charter of Fundamental Rights of the EU, Art. 17 European Convention on Human Rights, Article 14			respect for the rule of non-discrimination, but at the same time, investment protection may result in a discrimination of national investors compared to foreign investors in one single host economy, if the international protection offered in the investment agreement exceeds the protection under domestic or international law of national investors of the host economy.
Freedom of association and freedom of expression[267]	Universal Declaration of Human Rights, Art. 19 and 20 International Covenant on Civil and Political Rights, Art. 19 ILO Declaration on Fundamental Principles and Rights at Work Charter of Fundamental Rights of the EU, Art. 11 European Convention on Human Rights, Art. 10	Indirect	• Investment liberalization provisions; • Investment protection provisions; • Transparency provisions.	The rights to freedoms of association and expression are not directly covered by investment treaties. However, through various investment protection provisions, such rights may be positively impacted in the host economy. First, investment protection provisions may provide protection against acts of the host State which would seek to curtail (the exercise of) these rights. Second, because of investment liberalization provisions the (increased) presence of foreign investors may have a positive effect on the respect of these rights in the host State, and especially EU investors in China

[267] According to Article 19 UDHR, 'this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'

Human Rights at Stake[265]	Right recognized in	Relation to foreign investment	Clauses/provisions in the investment agreement generating the impact	Potential impact
				which have a strong tradition in upholding the freedom of expression and association and guaranteeing the exercise of these rights by their employees. Transparency provisions, because of the requirement of due notice for measures affecting trade and investment and opportunities for interested persons to submit their views before enactment thereof, also may be conducive towards and enhanced respect of the freedom of expression. The specific application of the freedom of association and freedom of expression in relation to the workplace are dealt with in section 4 'Social Analysis'.
Prohibition of forced labour and child labour – absolute right from which no derogation is allowed	Convention on the rights of the child, Art. 32 ILO Conventions 29, 105, 138 and 182 ILO Declaration on Fundamental Principles and Rights at Work Charter of Fundamental Rights of the EU, Art. 32 European Convention on Human Rights, Art. 4	Direct / Indirect	• Investment liberalization provisions; • Investment protection provisions; • Sustainable development provisions.	The various investment protection provisions and the presence of foreign investors may have a positive effect on the respect of these prohibition rights in the host State. It has indeed been argued and shown that child labour deters FDI by slowing down economic development and hence the presence of foreign investors and attracting FDI (through the investment liberalization provisions) may have a positive effect on the prohibition of child labour. At the same time, it has also been argued that the existence of child labour in fact attracts foreign investment because it would, amongst others, increase the competitiveness of the foreign investor, yet the validity of this assertion has been

Human Rights at Stake[265]	Right recognized in	Relation to foreign investment	Clauses/provisions in the investment agreement generating the impact	Potential impact
				contested.[268] The specific issue of forced labour is discussed in detail in chapter 4 of this report.
Rights of indigenous peoples	UN Declaration on the rights of indigenous peoples ILO Convention 169	Direct	• Fair and equitable treatment; • Protection against unlawful expropriation; • MFN clause; • National treatment clause.	The grant and recognition of property rights to foreign investors may amount to a violation of the certain rights of the local population/indigenous peoples' rights, notably their land rights and their right to practise and revitalize their cultural traditions and customs, and their right to manifest, practise, develop and teach their spiritual and religious traditions customs and ceremonies. This, however, is not automatic (see also 'Right to Property'). At the same time, indigenous peoples may also themselves benefit, as investors from protection of their land rights. For the non-discrimination provisions in relation of indigenous peoples, see 'Non-discrimination'.
Right to an adequate standard of living and the right to health[269]	Universal Declaration of Human Rights, Art. 25 International Covenant on Economic, Social and Cultural Rights, Art. 11-12	Indirect	• investment liberalization provisions.	The presence of foreign investors and their contribution to economic growth and economic and social development may positively impact the right to an adequate standard of living of the local population.

268 Sebastian Braun, Core Labour Standards and FDI: Friends or Foes? The Case of Child Labour, SFB 649 Discussion Paper 2006-014, Available at http://edoc.hu-berlin.de/series/sfb-649-papers/2006-14/PDF/14.pdf.

269 According to Art. 25 UDHR, the adequate standard of living is by reference to 'the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control'.

Human Rights at Stake[265]	Right recognized in	Relation to foreign investment	Clauses/provisions in the investment agreement generating the impact	Potential impact
Right to privacy and protection of personal data	Universal Declaration of Human Rights, Art. 12 Charter of Fundamental Rights of the EU, Art. 8 European Convention on Human Rights, Art. 8	Indirect	• investment liberalisation provisions	Through certain investment liberalisation provisions, the right to privacy and protection of personal data may be guaranteed for foreign investors. This in turn may, through the presence of foreign investors, have a positive effect on the respect of this right in the host State.

5.3. Baseline scenario

General framework of human rights in China

The Chinese landscape with respect to human rights has seen significant changes in recent years. In 2004, China amended its 1982 constitution aiming at guaranteeing private property ownership and human rights. In 1998, China signed the International Covenant on Civil and Political Rights (ICCPR), though China has not yet ratified it. In 2009, China released its first National Human Rights Action Plan. In this plan, China promised to increase safeguards for civil and political rights and pledged to protect its citizens from torture, ensure fair trials, and guarantee the rights of its citizens to participate in government and question government policies. These promises were subsequently reaffirmed in China's 2012 National Human Rights Action Plan.[270] The same year China amended its Criminal Procedure Law to include, among other things, a exclusionary rule prohibiting the introduction of confession evidence when it is the product of torture.

Other reforms include the abolition of one form of arbitrary detention, known as re-education through labour (RTL), and changes to the household registration system.[271]

Amnesty International, while acknowledging gaps in these protections, welcomed the National Human Rights Action Plan, stating that it "signals the growing importance the Chinese authorities place on the protection of human rights and the adherence to international human rights standards."[272] Box 5.1 provides an overview of China's ratification of UN HR treaties and reservations expressed.

Serious human rights challenges still remain and have been recorded by human rights organizations[273]. These include restrictions to freedom of expression, limitations in access to justice or discrimination against women, minorities or persons with disabilities.

[270] Available at http://news.xinhuanet.com/english/china/2012-06/11/c_131645029.htm.
[271] World Report 2014: China, Events of 2013, Human Rights Watch.
[272] The Emergence of Private Property Law in China and Its Impact on Human Rights, Dr. Mark D. Kielsgard & Dr. Lei Chen, 2014.
[273] Such as Human Rights Watch and Amnesty International.

Box 5.1 China's record on ratifications of UN HR treaties and on reservations expressed

At this stage[274], Chinas has signed and ratified or acceded to six (6) UN Human Rights Treaties[275], and two (2) additional protocols to the Convention on the Rights of the Child[276]. It has also signed but not ratified the International Covenant on Civil and Political Rights.

It has expressed reservations on all treaties it has signed and ratified or acceded to, with the exception of the 'Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Convention on the Rights of Persons with Disabilities'.

These reservations or declarations often concern the fact that China does not recognize the prior signing and ratification of the convention by the Taiwan authorities in the name of China, which are thus considered by China to be 'illegal and null and void'[277], or withholds consent to the dispute settlement clause in the treaty and/or the competence of the special Committee established under that treaty.[278] These reservations are permitted in the relevant treaties.

Only in relation to the International Covenant on Economic, Social and Cultural Rights (ICSESCR), the Convention on the Rights of the Child (CRC) and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, have substantive reservations been made. In relation to the ICESCR, China declared that, in relation to Article 8.1 (a) (the right of everyone to form trade unions and join the trade union of his choice), that such right needs to be 'consistent with the relevant provisions of the Constitution of the People's Republic of China, Trade Union Law of the People's Republic of China and Labour Law of the People's Republic of China'. In relation to the CRC, China declared that it will apply article 6 (States Parties recognize that every child has the inherent right to life) to the extent that it accords with the provisions concerning family planning of the Constitution of the People's Republic of China and the Law of Minor Children of the People's Republic of China.[279]

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict contains a declaration confirming that the minimum age for citizens voluntarily entering the Armed Forces of the People's Republic of China is 17 years of age, and contains several safeguard measures China is applying in implementing that provision. These reservations are permitted since the ICESCR and the Optional Protocol on the involvement of children in armed conflict do not prohibit reservations, and the CRC likewise except if they are contrary to the object and purpose of the treaty.

[274] The status of ratification is based on the information at http://indicators.ohchr.org/.

[275] The International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Persons with Disabilities, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[276] The Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography.

[277] Declaration to the Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Economic, Social and Cultural Rights.

[278] Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

[279] For information on reservations and optional protocols see http://indicators.ohchr.org/.

General framework of human rights in the EU

Human dignity, freedom, democracy, equality, the rule of law and respect for human rights are values embedded in the EU treaties. Fundamental rights are guaranteed nationally by the constitutions of individual countries and at EU level by the **EU Charter of Fundamental Rights** (adopted in 2000 and binding on EU countries since 2009), a clear and strong statement of EU citizens' rights. The Charter is consistent with the European Convention on Human Rights (ECHR), which has been ratified by all EU countries.[280]

On 12 June 2012 the European Council adopted an EU Strategic Framework on Human Rights and Democracy, to guide the EU's engagement in years to come. On July 2015, the Council adopted a new Action Plan on Human Rights and Democracy for the period 2015-2019, reaffirming the European Union's commitment to promote and protect human rights and to support democracy worldwide.[281]

a) Right to property

China

On 16 March 2007 China passed the Property Rights Law.[282] Effective from October 1, 2007, this comprehensive legislation on property establishes a framework of property rights protection, including protection for movable property and real estate (immovable property). The Law addresses the establishment, alteration, transfer, and elimination of property-related ownership rights, and the registration and delivery of movable and real property rights.

The legislation aimed to strengthen private property rights for private businesses and individuals, giving them the same legal protection for their property as the state. In China individuals cannot privately own land. They obtain a transferable-land use rights for a number of years and can own residential houses and apartments on the land. The 2007 legislation includes protection for homebuyers by automatically renewing the 70 year term for urban land use right used for residential construction.[283] The law addresses forced expropriation and details the basis on which compensation is to be made, linking compensation for urban expropriation to market value. Compensation for suspension of production or business caused by dismantling non-residential houses is also addressed. The law allows for recovery of lost profits for businesses facing expropriation, in addition to other compensation. [284]

In addition to the new Property Rights Law, local legislatures and governments also enact their own regulations and rules to regulate foreign investments in their areas, in accordance with national laws and policies.

EU

European human rights law recognises the right to peaceful enjoyment of property, makes deprivation of possessions subject to certain conditions, and recognises that States can balance the right to peaceful possession of property against the public interest.

The European Convention on Human Rights in Protocol 1, article 1, acknowledges a right for natural and legal persons to "peaceful enjoyment of his possessions", subject to the "general interest or to secure the payment of taxes".

The ECHR has interpreted "possessions" to include not only tangible property, but also economic interests, contractual agreements with economic value, compensation claims against the state and public law related claims such as pensions. The ECHR has held that the right to property is not absolute and states have a wide degree of discretion to limit the rights.

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280 Human Rights, Topics of the European Union, European Union.
281 Ibid, European Union.
282 The law is available at: http://www.npc.gov.cn/englishnpc/Law/2009-02/20/content_1471118.htm
283 Wong, V. (2014), Land and Policy Reform in China : Dealing with Forced Expropriation and the Dual Land Tenure System, Centre of Comparative and Public Law, University of Hong Kong.
284 Ibid, Wong (2014).

The Right to Property is addressed in Article 17 of the Charter of Fundamental Rights of the European Union. The article recognises the right of everyone "to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest. Intellectual property shall also be protected.

b) Right to an effective remedy and to a fair trial

China

In recent years China has undertaken major changes to its legal framework. In 1996 the country went through a major reform with the issuing of the 1996 Criminal Procedure Law (CPL). The CPL was designed to provide greater legal protection to the accused, enhance the role of defence lawyers, curb the discretionary powers of police and prosecutors and define a new role for judges as neutral adjudicators. The reform aimed to guarantee greater rights to legal representation and include other measures intended to protect the right to a fair trial and to strengthen the role of lawyers.

EU investors in China and Chinese investors in the EU are protected by BITs signed between China and all European countries with the exception of Ireland. The agreements include clauses to solve treaty claims in relation to the investment protection standards contained in the treaty between an investor and the host state through arbitration. In certain treaties, dispute settlement clauses are limited to claims regarding compensation for expropriation. Access to international remedies for violation of protection provisions of these treaties is conducive to an enhanced respect for the right to a fair trial for investors. This may in turn positively impact the right in the host State.

Representatives from the EU Chamber of Commerce in China interviewed for the preparation of this report declared that they were not aware of any European Union firm established in China using the dispute settlement mechanisms as foreseen in the BITs.[285] In their view, only those enterprises with plans to leave the country would invoke the dispute resolution mechanism in a claim against the Chinese government.

The European business and legal community welcomed the commitment set by the Chinese leadership to advance the rule of law, as set in the Fourth Plenum's *Decision on Major Issues Concerning Comprehensively Advancing the Rule of Law*, issued in October 2014. "However, quick and resolute implementation of concrete measures—especially measures to reduce 'red tape' and reform the judicial system—are still needed to establish European businesses' confidence in the Chinese legal system and address the regulatory challenges that hamper China's economic development."[286]

The most recent Position Paper, issued in September 2016, recommends the Chinese government to eliminate restrictions for foreign legal services to practice Chinese law, to adopt regulations that encourage fair enforcement of anti-monopoly law and to continue working towards greater transparency and strengthening the rule of law.[287] Other reported challenges refer to lower courts being susceptible to outside influence.[288]

Judges in China have administrative ranks and are managed as administrative officials. The People's Congress at its various levels (national, local) is in charge of their appointment, dismissal, transfer, and promotion.[289]

[285] Public available information seems to confirm indeed to have been no cases initiated by EU investors against China, on the basis of an international investment agreement (see and). The two known ICSID case brought against China were initiated by Malaysian and Korean investors.
[286] Position Paper 2015/2016, Horizontal Issues.
[287] European Business in China Position Paper 2016/2017, EU Chamber of Comemce in China, 2016.
[288] See 2016 Investment Climate Statement: China, Bureau of Economic and Business Affairs, US Department of State; "China's top court urges judicial independence, end to interference", Reuters, 29 October 2013.
[289] 2014 Investment Climate Statement: China, US Department of State, 2014.

In the view of the European Chamber of Commerce in China, China needs to do more to increase investors' trust in its judicial system.[290] Improved rule of law has been identified by European industry as the top potential driver for China's future economic growth.[291]

A description of mediation and arbitration mechanisms has been provided by the US Department of State. According to its 2016 Investment Climate Statement for China, Chinese officials typically urge firms to resolve disputes through informal conciliation. If formal mediation is necessary, Chinese parties and the authorities typically promote arbitration over litigation. Many contracts prescribe arbitration by the China International Economic and Trade Arbitration Commission (CIETAC). The CIETAC, according to the Investment Climate Statement, is China's most widely utilized arbitral institutions to settle international commercial disputes. Some foreign parties have obtained favourable rulings from CIETAC, while others have questioned CIETAC's procedures and effectiveness. Other arbitration commissions and institutions exist and are usually affiliated with the government at the provincial or municipal level. For contracts involving at least one foreign party, offshore arbitration may be adopted. Arbitration awards are not always enforced by Chinese local courts. Investors may appeal to higher courts in such cases.[292]

EU

As it is the case in China, up to March 2015 Chinese investors in Europe had not used the dispute settlement procedures for treaty-related claims against the host states provided in the existing BITs signed between China and EU countries.[293]

In view of the little reliance on investor-state dispute settlement as provided by the existing agreements, we could presume that investment disputes are either absent or are settled through the use of local mechanisms. By contrast to restrictions placed in China on foreign lawyers and foreign law firms operating in China, Chinese law firms are allowed to offer local legal services when establishing their offices in Europe, as they face no restrictions to access the European legal service market.[294] Such legal services however are mostly restricted to offering consultancy services. A Chinese lawyer in principle is not allowed to represent clients and/or plead cases before domestic courts unless he or she is admitted to the local or national bar under the conditions laid down in a specific country.[295]

In the EU, complaints before the European Court of Human Rights[296] on the application of the fundamental right of access to justice, which is recognized for individuals as well as for enterprises, focus on delays in the resolution of the cases in courts.[297] Research undertaken by the European Agency for Fundamental Rights found that excessively short time limits for bringing a claim in order to initiate judicial proceedings, restrictive conditions for legal standing (including absence or rigid application of public interest complaint rules which are usually limited to environmental cases) as well as undue delays, represent major obstacles for individuals when accessing justice in the domestic courts of individual Member States.

Regarding the use of mediation in commercial disputes, Directive 2008/52/EC[298] on certain aspects of mediation in civil and commercial matters sought to facilitate access to alternative dispute resolution (ADR) and to promote the amicable settlement of disputes, by encouraging the use of mediation and by ensuring a sound relationship between mediation and judicial proceedings. It applies to cross-border disputes in civil and commercial matters and had to be transposed into national law by 21 May 2011.

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[290] European Business in China Position Paper 2016/2017, EU Chamber of Commerce in China, 2016.
[291] Ibid, EU Chamber of Commerce in China.
[292] 2016 Investment Climate Statement: China, Bureau of Economic and Business Affairs, US Department of State.
[293] See Investor-to-State Dispute Settlement (ISDS) Some facts and figures, European Commission, March 2015.
[294] European Business in China Position Paper 2016/2017, EU Chamber of Commerce in China, 2016.
[295] See for example, in the case of France: http://cnb.avocat.fr/Being-a-Lawyer-in-France-Accessing-the-Legal-Profession_a1735.html.
[296] Access to Justice in Europe: An overview of challenges and opportunities, European Agency for Fundamental Rights, 2010.
[297] The Right to a Fair Trial: effective remedy for excessively lengthy proceedings (Articles 6 and 13 ECHR), Martin Kuijer, 28 February 2013, Cracow, Poland, EJTN Seminar 'Effective Remedies, Lengthy Proceedings and Access to Justice in the EU.
[298] The text of the Directive is available at : http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32008L0052

A recent evaluation by the European Commission on the application of the Directive[299] found that by raising awareness of the advantages of mediation amongst national legislators, the implementation of the Mediation Directive has had a significant impact on the legislation of several Member States, an impact that varies according to the pre-existing level of their national mediation systems. According to the report, "where the transposition of the Directive triggered the adoption of substantial changes to the existing mediation framework or the introduction of a comprehensive mediation system, an important step forward in promoting access to alternative dispute resolution and achieving a balanced relationship between mediation and judicial proceedings has been made." Certain difficulties were also identified concerning the functioning of the national mediation systems in practice. These difficulties were mainly related to the lack of a mediation "culture" in Member States, insufficient knowledge of how to deal with cross-border cases, the low level of awareness of mediation and the functioning of the quality control mechanisms for mediators.

c) Non-discrimination

China

There is no specific anti-discrimination law in China. However certain general anti-discrimination provisions are included in the Constitution and in various laws and regulations, such as the Law on the Protection of Women's Rights and Interests, the Employment Promotion Law and the Law of the People's Republic of China on the Protection of Disabled Persons.[300]

Besides discrimination in employment, addressed in Chapter 4, discrimination based on the system of households registration system or hukou has been a matter of concern for the Chinese government and human rights organizations. Under the household registration system, each town and city issues its domestic passports which gives residents access to social welfare services in that jurisdiction but not in others. With massive migration from rural to urban areas as a result of economic development, many migrant workers and their families lost their basic rights to housing, healthcare and education. This has occurred even though many cities have relaxed conditions for access to those rights.

EU

The Treaty of Lisbon strengthens EU commitment towards combating discrimination. Equality is recognised as a founding value of the European Union (Article 1a) and combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation is established as one of the aims of its policies and activities.

European non-discrimination law, as constituted by the EU non-discrimination directives, and Article 14 and Protocol 12 to the European Convention on Human Rights, prohibits discrimination across a range of contexts and a range of grounds, including sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Equality is also addressed in articles 20 to 26 of the Charter of Fundamental Rights of the European Union.

In the EU, non-discrimination law was introduced by the Employment Equality Directive[301], confined to the field of employment. With the introduction of the Racial Equality Directive in 2000 this sphere was widened to include access to goods and services, and access to the State welfare system, out of the conviction that in order to guarantee equality in the workplace it was also necessary to ensure equality in other areas, which can have an impact on employment. The 2004 Gender Goods and Services Directive was then introduced in order to expand the scope of equality on the grounds of sex to goods and services. Negotiations on the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (the Equal Treatment Directive) have been ongoing

299 Report from the Commission to the European Parliament, the Council and the European economic and social committee on the application of Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters, European Commission, Brussels, 26.8.2016, COM(2016) 542 final.

300 Guide to Discrimination Law in the PRC, Mayer Brown JSM.

301301 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

since 2008.[302] Discrimination on these grounds are currently prohibited at the EU level only in the areas of employment, occupation and vocational training under the Employment Equality Directive.

d) Freedom of expression

China

According to Article 35 of the Chinese Constitution, citizens enjoy freedom of speech, of the press, of assembly, of association, of procession, and of demonstration. The law provides for freedom of peaceful assembly, but the law stipulates that such activities may not challenge "party leadership" or infringe upon the "interests of the state." Protests against the political system or national leaders are prohibited, and authorities deny permits and suppress demonstrations involving the expression of dissenting political views.[303] The law provides for freedom of speech in China, but human rights and civil society organizations have denounced the government's tight control of printed, broadcast and electronic media.

According to Freedom House,[304] in 2015 authorities censored and manipulated the press and the Internet, particularly around sensitive anniversaries. The 2015 country report on China reports journalists being subjected to physical attack, harassment, and intimidation when reporting on sensitive topics. According to PEN America, Chinese writers continue to be censored, harassed, imprisoned, and even declared missing throughout the country.[305]

According to Amnesty International's Annual Report 2015/2016, government control over the Internet, mass media and academia and "freedom of religion continued to be systematically stifled".[306]

In April 2016 the Government passed the Foreign NGO Management Law that will come into effect in January 2017. The law stipulates that any group wishing to operate in China must register with public security officials. Foreign NGOs must refrain from engaging in political or religious activities or acting in a way that damages "China's national interests" or "ethnic unity".[307] Criminal measures can be taken against any individual who is directly responsible for a foreign NGO found to have engaged in activities that "split the country or damage national unity or subvert the state". The law also gives authorities the power to ban any NGO found to have "violated Chinese regulations" from operating in China for five years. Foreign NGOs in China will only be permitted to use bank accounts registered with public security officials.[308] Article 1 of the law states that the Law "is drafted in order to regulate and guide activities conducted by foreign NGOs within mainland China, safeguard their lawful rights and interests, and promote exchanges and cooperation."[309]

According to human rights organizations, the new law will have severe consequences for freedom of expression, peaceful assembly and association, which are already sharply curtailed under existing laws and policies, and will constitute a real threat for the work of independent NGOs.[310] UN Special Rapporteurs on freedoms of peaceful assembly and association; on human rights defenders, and on freedom of expression, called on the Chinese authorities to repeal the Law fearing "that the excessively broad and vague provisions, and administrative discretion given to the authorities in regulating the work of foreign NGOs can be wielded as tools to intimidate, and even suppress, dissenting views and opinions in the country".[311]

302 See Implementing the principle of equal treatment between persons, Complementary Impact Assessment of the proposed Horizontal Directive on Equal Treatment, European Parliamentary Rsearch Service, 2012.
303 Ibid,Amnesty International.
304 China, Country report, Freedom of the press 2015. Freedom House.
305 The Freedom To Write, China, PEN America.
306 Annual report 2015/2016, Amnesty International.
307 China passes law imposing security controls on foreign NGOs, The Guardian, 28 April 2016.
308 Ibid, The Guardian.
309 The full text of the law can be accessed at : http://chinalawtranslate.com/2016-foreign-ngo-law/?lang=en
310 China: Scrap Foreign NGO law aimed at choking civil society, Amnesty International. 28 April 2016; China: Repeal Overseas NGO Law & Protect Freedom of Association, Chinese Human Rights Defenders, 28 April 2016.
311 China: Newly adopted Foreign NGO Law should be repealed, UN experts urge, Office of the High Commissioner, United Nations, Human Rights, 3 May 2016.

The law has also been a subject of concern by the European Union Chamber of Commerce in China expressing particular challenges as it might affect partnerships between businesses and NGOs.[312]

According to an Amnesty International official interviewed for the preparation of the Sustainability Impact Assessment,[313] the expansion of investment in China by foreign companies in the field of information and communications technology could put them at risk of contributing to certain types of violation, particularly those relating to freedom of expression and the suppression of dissenting voices.

EU

The right to Freedom of Expression and information is recognised in the Charter of Fundamental Rights of the European Union (Article 10). It includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The Charter also explicitly recognises the freedom and pluralism of the media.

In May 2014 the European Union Foreign Affairs Council adopted the EU Human Rights Guidelines on Freedom of Expression Online and Offline.[314] The guidelines pay substantive consideration to whistleblowers by supporting legislation that provides protection for those who expose the misconduct of others, as well as promoting legal protections for journalists' rights to not having to disclose their sources. The guidelines also provide guidance on the prevention of violations to freedom of opinion and expression and how officials and staff should react when these violations occur.[315]

Concerns on press freedom in terms of media pluralism have been expressed by the High Level Group on Media Freedom and Pluralism regarding concentration of media ownership. The European Parliament has also expressed concern at the lack of transparency in media ownership in Europe and has called on the Commission to propose concrete measures to safeguard media pluralism.[316]

According to Human Rights Watch, recent challenges to the implementation of freedom of expression in Europe relate to the extension of the government's emergency powers in France after terrorist attacks and the reform of the criminal code and a new public security law in Spain.[317]

e) Prohibition of forced labour and child labour

China

The law prohibits the employment of children under 16. It refers to workers between the ages of 16 and 18 as "juvenile workers" and prohibits them from engaging in certain forms of dangerous work, including in mines. The penalty for employing children under 16 in hazardous labour or for excessively long hours ranges from three to seven years' imprisonment. China has ratified the ILO Minimum Age Convention, 1973 (No. 138) on 28 April 1999, and the Worst Forms of Child Labour Convention, 1999 (No. 182) on 8 August 2002.

The Chinese government does not publish statistics on child labour. The labour inspectorate is mandated to enforce the labour law, which outlaws child labour and sanctions violations. No cases of child labour found by the labour inspectorate have been reported to the ILO. In 2014, the ILO urged the government to be more transparent about inspection methodology and measures in place to prevent collusion between employers and inspectors.[318]

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312 European Chamber Submitted Comments on Draft Foreign NGO Management Law.
313 The Skype interview with Joshua Rosensweig and William Nee, officials at Amnesty International in Hong Kong took place on 28 June 2016.
314 The guidelines are available at : http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142549.pdf
315 EU adopts new guidelines on freedom of expression, Index on Censorship, 15 may 2014; EU Human Rights Guidelines on Freedom of Expression Online and Offline.
316 Press Freedom in the EU, Legal Framework and Challenges, Briefing, European Parliement, April 2015.
317 World Report 2016, European Union Events 2015, Human Rights Watch.
318 C138 - Observation (Committee of Experts on the Application of Conventions and Recommendations, CEACR) - adopted 2014, published 104th ILC session (2015). ILO.

In spite of the lack of official data, the China Labour Bulletin, mentioning information appeared in the media, noted that child labour was concentrated primarily in electronics, plastics, garment, shoe and toy manufacturing, as well as the food and beverage industry.[319]

ILO research undertaken by the China National Textile and Apparel Council with ILO support reviewed, based on a survey, the conditions of interns in the textile and apparel industry. The research found that 52.1 per cent of interns in work-study programs worked under conditions that did not meet national minimum standards and that 14.8 per cent were subject to involuntary or coercive work.[320]

There are no official data on forced labour in China. The ILO provides an estimate of aggregate data for the entire Asia-Pacific Region.[321]

EU

The Charter of Fundamental Rights of the European Union (Article 32) prohibits child labour and establishes that minimum age of admission to employment may not be lower than the minimum school-leaving age. Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

According to ILO estimates on forced labour and human trafficking in the European Union, 880,000 people were in forced labour in the EU Member states in 2014. 30% of these labourers were estimated to be victims of forced sexual exploitation and 70% of forced labour exploitation. Women constituted the clear majority of victims (58%). The ILO analysis showed that agriculture, domestic work, manufacturing and construction were the main sectors where forced labour was found in the EU, although many of the victims were also forced into illicit or informal activities such as forced begging.[322]

In 2012, the EU put in place the Strategy towards the Eradication of Trafficking in Human Beings 2012-2016,[323] focusing on concrete actions to support and complement the implementation of EU legislation on trafficking in human beings, namely the Directive 2011/36/EU- whose deadline for transposition was 6 April 2013.[324]

Regarding child labour in Europe, according to the Commissioner for Human Rights, "there are strong indications that child labour remains a serious problem and that it might be increasing in the wake of the economic crisis."[325] Many of the children working across Europe have extremely hazardous occupations in agriculture, construction, small factories or on the street. "Governments urgently need to pay specific attention to the problems of child labour, to investigate, collect data and monitor. Most countries have adequate legislation but fail to monitor actual practices."[326]

f) Rights of Indigenous peoples

China

China officially recognizes 55 ethnic minority groups within China in addition to the Han majority. Non-Han ethnic groups, such as the Tibetans, the Mongolians, the Hui among others, have a

319 Small Hands; A survey report of Child labour in China, China Labour Bulletin, 2007.
320 Labour protection of interns in Chinese textile and apparel enterprises / ILO DWT for East and South-East Asia and the Pacific; ILO Country Office for China and Mongolia; China National Textile and Apparel Council. – Beijing: ILO/CNTAC, 2014.
321 See http://www.ilo.org/asia/areas/child-labour/lang--en/index.htm
322 ILO Global estimates of forced labour, Results and Methodology, International Labour Office, 2012.
323 Available at: https://ec.europa.eu/anti-trafficking/eu-policy/new-european-strategy-2012-2016_en
324 The text of the Directice is available at : https://ec.europa.eu/anti-trafficking/legislation-and-case-law-eu-legislation-criminal-law/directive-201136eu_en
325 Child Labour in Europe : a persisting challenge, Commissioner for Human Rights, Council of Europe.
326 Ibid, Council of Europe.

combined population of about 113.79 millions, accounting for 8.49 percent of the total population of China.[327]

China's Constitution[328] and laws[329] guarantee equal rights to all ethnic groups in China and help promote ethnic minority groups' economic and cultural development.. The Constitution guarantees certain autonomous political rights for national minorities. These “regional autonomies” include political and economic autonomy as well as the freedom to use and develop their own language and educational and cultural rights.[330]. In addition, the Chinese government has provided preferential economic development and aid to areas where ethnic minorities live.

According to the State Council of China, since the implementation of China’s opening and reform policy, the central government has increased investment in minority areas and accelerated their opening to the outside world, resulting in an upsurge of economic development in these areas.[331] Forced resettlement linked to mining infrastructure and hydropower has been reported in Inner Mongolia[332] and Tibet.[333] Ethnic discrimination has been denounced by human rights organizations. [334]

EU

The Treaty of the European Union[335] itself can be considered to cover the rights of indigenous people. Article 2 states that the “Union is founded on the value of respect for human dignity [..], equality […] and respect for human rights, including the rights of persons belonging to minorities.” EU support to Indigenous Peoples is based on the UN Declaration on the Rights of Indigenous Peoples 2007, which sets out the individual and collective rights.

The EU has been active on indigenous peoples’ issues since the late 1990s. The new Development Cooperation Instrument (DCI) regulation for the period 2014 to 2020 prioritizes the fight against poverty and supports inclusive growth. The EU has committed itself to maintaining indigenous peoples as a focus of attention given their disadvantage in all societies. To achieve these goals, for example, the programme 'Global Public Goods and Challenges' (GPGC) will support specific activities including the promotion of social and cultural values of the indigenous peoples following the 2007 UN Declaration on the Rights of Indigenous Peoples, and support for and initiatives aimed at protecting their rights and enhancing their livelihoods.[336]

g) Right to an adequate standard of living and the right to health

China

The right to an adequate standard of living recognized as a human right[337] is understood to establish a minimum entitlement to food, clothing and housing at an adequate level.

China has made dramatic progress in reducing poverty over the past three decades. According to the World Bank, more than 500 million people were lifted out of poverty as China’s poverty rate fell from 88 percent in 1981 to 6.5 percent in 2012, as measured by the percentage of people living on the equivalent of US$1.90 or less per day in 2011 purchasing price parity terms. [338] World Bank extrapolations suggest that the percentage of the population living below the international poverty line continued to fall to 4.1 per cent in 2014. Substantial progress has

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327 Zhiyi, Zhu (2014), Legal Protection of the Cultures of Ethnic Minorities in China, Cross-cultural Communicaton

328 Article 4 of the Chinese Constitution : http://en.people.cn/constitution/constitution.html

329 Including the 1984 Regional AutonomyLaw, the Cvil Procedure Law, the Criminal Procedure law, the Administrative Procedure Law and the Organic Law of the People’s Courts.

330 Wu, Xiaohui (2014), From Assimilation to Autonomy: Realizing Ethnic Minority Rights in China's National Autonomous Regions, Chinese Journal of International Law, Oxford Journals, Volume 13, Issue 1, pp. 55-90.

331 See : http://english.gov.cn/archive/china_abc/2014/09/02/content_281474985266355.htm

332 See The Independent, 16 April 2013.

333 Tibetans displaced within region 'amid rampant mining', BBC News, 13 December 2013.

334 Amnesty International and Human Rights Watch have reported repressive policies against ethnic minorities in Tibet and Xinjiang autonomous regions. In the latter, involving the Uyghur ethnic minority. The Congressional Executive Commisison on China has reported job discrimination against ethnic minorities in Xinjiang.

335 OJ2008/C 115/01, available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=EN

336 International Cooperation and Development, European Commission.

337 The right to an adequate standard of living is enshrined in Article 25 of the Universal Declaration of Human Rights (UDHR) and Article 11 of the International Covenant on Economic, Social and Cultural Rights.

338 China: Overview, The World Bank, 2016.

also been made in human development indicators, contributing to global efforts to achieve the Millennium Development Goals. [339]

Rapid growth and urbanization have been central to China's poverty reduction in the past 25 years, as have a number of reforms, including the opening of the economy to global trade and investment, the World Bank states. [340] Other factors influencing this success have been attention to antipoverty programs, improved access to social services and the establishment of a comprehensive social protection system. The Dibao program, which provides cash to China's needy, is the backbone of the system and the largest program of its kind in the world.[341] On the other hand, as a recent Asia Development Bank paper points out, changes in the housing system in recent decades - with the removal of house supply responsibility from the State and the transformation of urban housing from a welfare good to a commodity- "the Chinese post-reform urban housing system has failed to meet general housing needs, especially those of rural-to-urban migrants."[342] The rising housing affordability crisis in the urban areas has constituted a major threat to the future sustainability of urbanization in China."[343]

According to Amnesty International, the 2011 Regulations on the Expropriation of Houses on State-owned Land and Compensation were a step towards protecting China's urban residents from forced evictions – particularly amid the preparations of the Beijing Olympics- and included several positive provisions. [344] However, in the organization's view, the implementation of these regulations has been poor, and the regulations do not provide protection to tenants or rural residents.[345]

In relation to the right to health, the Chinese Constitution stipulates that "the state develops medical and health services, promotes modern medicine and traditional Chinese medicine, all for the protection of the people's health."[346] The government has undertaken significant reforms to expand availability and access of the health care system, which is overseen by the Ministry of Health of the State Council.

By 2008, China's leaders initiated major reforms, committed to providing affordable basic health care to all Chinese people by 2020. By 2012, a government-subsidized insurance system provided 95% of the population with modest but comprehensive health coverage. China also launched an effort to create a primary care system, including an extensive nationwide network of clinics. The 2008 reforms are still in progress, and in 2012, the leadership announced that they would invite private investors to own up to 20% of China's hospitals by 2015[347].

The government focus has shifted from developing the economy to offering public services aimed at improving the living standard of the population. Recently the Chinese government significantly increased its financial support to farmers and rural areas. Funds were transferred from the central government to provincial governments in the middle and western parts of China for the development of the rural and urban medical insurance system.[348]

EU

The EU's Charter of Fundamental Rights recognises a range of personal, civil, political, economic and social rights of EU citizens and residents, enshrining them in EU law. The Charter does not include a specific right to housing, but there is an important right to housing assistance in Article 34.3: In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national

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[339] Ibid, The World Bank, 2016.
[340] Results Profile : China Poverty Reduction, The World Bank,
[341] A Safety Net for China's Urban Poor, The World Bank, 16 November 2015.
[342] Chen, J. 2016. Housing System and Urbanization in the People's Republic of China. ADBI Working Paper 602. Tokyo: Asian Development Bank Institute.
[343] Ibid, Chen, J. (2014).
[344] Ending forced evictions in law and practice: a thematic submission to the United Nations Committee on Economic, Social and Cultural Rights, Amnesty International, May 2013.
[345] Ibid, Amnesty International.
[346] Medical Health Services in China, Embassy of the Peopes' Republic of China in the United States of America.
[347] David Blumenthal and William Hsiao (2015), Lessons from East Asia: China's rapid evolving health care system, New England Journal of Medicine, April 2015.
[348] Hu, Shanlian, Universal coverage and health financing from China's perspective, Bulletin of the World Health Organization, Volume 86, Number 11, November, 817-908.

laws and practices. The incorporation of this Charter into the Treaty of Lisbon gives legal effect to the "right to social and housing assistance" across Europe.

In 2010, EU Member States committed to reach targeted improvements to a set of five headline indicators including social outcomes, under the Europe 2020 strategy framework.[349] One of the five targets is to reduce the number of people at risk of poverty or social exclusion (AROPE) by 20 million by 2020. According to recent analysis based on EU-SILC, the AROPE rate in the 28 EU Member States (EU-28) continued to decrease slightly in 2014 to 24.4%, down from 24.5% in 2013 and 24.7% in 2012. Nevertheless, the EU-28 AROPE rate was still slightly higher in 2014 than in 2008 (23.8%).[350] In the period prior to the economic crisis, there was a steady decrease in the number of people AROPE. The percentage of the EU-27 population at risk of poverty or social exclusion fell from 25.7% (124.3 million) in 2005 to 23.7% (116.4 million) in 2008 (baseline year for the Europe 2020 target). There was a further fall reported in 2009 to 23.2% (114.3 million). However, the impact of the global financial crisis has reversed the downward trend and led to a rise in the numbers at risk to 24.8% by 2012 (123.1 million), a rise of 6.7 million people since 2008.[351] Universal access to health services is a commitment made by all European Union Member States. Despite overall improvements in health, differences remain, not only between Member States, but within each country between different sections of the population according to socioeconomic status, place of residence, ethnic group and gender – and these gaps are widening.[352]

h) Right to privacy and protection of personal data

China

According to a recent analysis published by the European Parliament, China does not have a general data protection act but traces of data protection may be found in a multitude of sector-specific legal instruments.[353] Data protection provisions may be found in its Criminal and Civil law as well as in a number of instruments released by China's second-highest legislative organ, the Standing Committee of its National People's Congress(SC-NPC) and by the Chinese Ministry of Industry and Information Technology (MIIT). In fact, the SC-NPC 2012 Decision constitutes the de facto data protection standard in China today, according to the report. "A combined reading of all these provisions leads to a suggestion of a "cumulative effect" that characterizes the Chinese approach to data protection today."[354]

Data protection in China today, the report highlights, is aimed at the individual as consumer. However, the protection of the right to privacy may fare far better under current Chinese law. The right to privacy-where however "privacy" is perceived differently in China than in Europe -is enshrined in basic Chinese law, ultimately connected to the right to dignity, a distinction of rights not clear in EU law.[355]

EU

The right to the protection of personal data is explicitly recognised by Article 8 of the EU's Charter of Fundamental Rights[356] and by the Lisbon Treaty. The Treaty provides a legal basis for rules on data protection for all activities within the scope of EU law under Article 16 of the Treaty on the Functioning of the European Union[357].

Under EU law, personal data can only be gathered legally under strict conditions, for a legitimate purpose. Furthermore, persons or organisations which collect and manage personal

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349 Europe 2020, A European Strategy for smart, sustainable and inclusive growth.
350 Poverty and Social Exclusion, European Semester Thematic Fiche, November 2015.
351 Putting the fight against poverty and social exclusion at the heart of the EU agenda: A contribution to the Mid-Term Review of the Europe 2020 Strategy, Hugh Frazer Anne-Catherine Guio, Eric Marlier, Bart Vanhercke, Terry Ward, Observatoire Social Européen, October 2014.
352 European Commission, Directorate-General for Employment, Social Policy and Equal Opportunities (2010) Joint report on social protection and social inclusion 2010.
353 The Data Protection Regime in China, In-Depth Anaylsis for the LIBE Committee, Directorate General for Internal Policies, European Parliament, 2015.
354 Ibid, Directorate General for Internal Policies. European Parliament
355 Ibid, Directorate General for Internal Policies. European Parliament
356 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0001:0016:EN:PDF
357 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:EN:PDF

information must protect it from misuse and must respect certain rights of the data owners which are guaranteed by EU law.[358]

The 1995 Data Protection Directive[359] consolidated the EU data protection model. But European regulation entered into a second generation of regulations with the recent reform of data protection rules in the EU that have been enshrined in a new Regulation[360] and a Directive[361] that came into force on 24 May 2016. The objective of this new set of rules is to give citizens back control over of their personal data, and to simplify the regulatory environment for business. The reform focuses on reinforcing individuals' rights –such a easier access to personal data-, strengthening the EU internal market, ensuring stronger enforcement of the rules –by strengthening independent data protection authorities with the capacity to impose fines for violation of EU rules-, streamlining international transfers of personal data and setting global data protection standards. Once transposed into national legislations it is expected they will raise the data protection threshold even higher.

i) CSR

China

According to the report of the meeting "Sustainable Business and Investment in the Global Context: Rights, Risks and responsibilities" held in Beijing in 2013,[362] there have been many developments in the corporate social responsibility (CSR) sphere in China, encompassing issues related to the environment, corruption, labour rights, philanthropy and other aspects of human rights. A number of actors, both public and private, have proactively taken steps to encourage business to fulfil their corporate responsibilities and as a result, in 2012 over 2,000 Chinese companies were publishing CSR or sustainability reports, compared to 19 in 2006. Many of these reports include issues related to human rights standards and responsibilities.[363]

The same report highlights the steps taken by the Chinese government that has begun to encourage responsible practices by Chinese firms. Initiatives taken include issuing the "Guidelines to the State-owned Enterprises on Fulfilling Corporate Social Responsibilities". On its side, the China Banking Regulatory Commission has formulated the Green Credit Guidelines to encourage banking institutions to focus on green credits and fend off environmental and social risks. Environmental laws, labour contract laws, land administration laws have also been amended to better protect people's rights. According to the report, many NGOs question the extent that they will be enforced.[364]

CSR in State-owned enterprises became mandatory in 2013, the report states, and all companies listed on the Shenzhen Stock Exchange must publish a CSR report. The China Chamber of Commerce of Metals Minerals and Chemicals Importers & Exporters (CCCMC) has also made a call to observe the UN Guiding Principles in its Guidelines for Social Responsibility in Outbound Mining Investment.

EU

In the European Union, the Commission has been actively promoting CSR and encouraging enterprises to adhere to international guidelines and principles.

358 Protection of Personal Data, web page of the European Commission

359 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

360 Regulation of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

361 Directive on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data and repealing Council Framework Decision 2008/977/JHA.

362 Report of the Conference Business Executives Conference – Sustainable Business and Investment in the Global Context: Rights, Risks and Responsibilities, organised by the Global Business Initiative, ", 16 April 2013, Beijing, China": http://www.global-business-initiative.org/work/china/.

363 Ibid, Global Business Initiative on Human Rights (2013).

364 Ibid, Global Business Initiative on Human Rights (2013).

The EU's policy is built on an agenda for action that includes improving and tracking levels of trust in business, improving self and co-regulation processes, enhancing market rewards for CSR and improving company disclosure of social and environmental information. In this specific area, Directive 2013/34/EU of the European Parliament on non-financial and diversity information by certain large companies, [365] introduced measures that will strengthen the transparency and accountability of approximately 6.000 companies in the EU. Once transposed in all countries, large companies with more than 500 employees will be required to report on environmental, social and employee-related human rights, anti-corruption and bribery matters and required to describe their business model, outcomes and risks of the policies on the above topics, and the diversity policy applied for management and supervisory bodies.

The commission has also endorsed the UN Guiding Principles on Business and Human Rights, produced guidelines for small and medium-sized companies (SMEs) and supported projects to pilot a multi-stakeholder approach to CSR in specific sectors.

In a further step to promote the human rights approach following the adoption of the Guiding Principles on Business and Human Rights in 2011, the Commission issued a Communication on a "Renewed EU strategy 2011-2014 for Corporate Social Responsibility" inviting the Member States[366] to produce business and human rights action plans. At the time of drafting this report, seven Member Stets had adopted national plans on business and human rights.

According to the Communication, the "EU also aims to promote corporate social responsibility and responsible business conduct, and to foster adherence and implementation of internationally recognised guidelines and principles." As such, recent trade agreements have made specific reference to social responsibility practices. As an example, the EU-Singapore Free Trade Agreement makes explicit reference to social responsibility practices by stating that "When promoting trade and investment, the Parties should make special efforts to promote corporate social responsibility practices which are adopted on a voluntary basis. In this regard, each Party shall refer to relevant internationally accepted principles, standards or guidelines that it has agreed or acceded to, such as the Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises, the UN Global Compact, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The Parties commit to exchanging information and cooperating on promoting corporate social responsibility".[367] Both the UN Global Compact and the OECD Guidelines for Multinational Enterprises include the obligation of enterprises to respect human rights.

5.4. Potential impacts of the investment agreement on human rights

A first preliminary remark on the potential impact of foreign investments on human rights should be made, as noted in the inception report. First, the investment agreement between the EU and China is envisaged as an agreement combining elements of investment protection and market access provisions, unlike traditional (EU Member State) investment agreements which focus only on the protection of foreign investment (as has been the practice of European States over the past decades). And while investment protection provisions will most probably achieve more sophistication, the impact of the new agreement will most probably stem from market access provisions leading to investment liberalization.

Secondly, the potential human rights impact of an EU-China investment agreement will be visible both in China and the EU as host states of foreign investment. An investment agreement, being generally 'intended to stimulate mutually-beneficial business activity'[368], has a general impact on the human rights situations in both regions. First, respect for human rights obligations - and the rule of law more generally -, is paramount in order to achieve economic and social growth and development. In its 2013 World Development Report, the World Bank

[365] Non financial Reporting, Banking and Finance, European Commission.

[366] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A renewed EU strategy 2011-14 for Corporate Social Responsibility, Brussels, 25.10.2011 COM(2011) 681 final, European Commission.

[367] Chapter 13, EU-Singapore Free Trade Agreement.

[368] Preamble, Comprehensive Economic and Trade Agreement (CETA), Consolidated CETA Text (26 September 2014), available at http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf.

noted that 'the rule of law includes protection of property rights and also the progressive realization of rights at work, to avoid a situation where growth coexists with unacceptable forms of employment.'[369]

The conclusion of an investment agreement is expected to have a general positive impact on the situation of the foreign investors, notably through the guarantees foreseen in investment protection provisions, such as the provision of investment-related dispute settlement mechanisms. But, as noted above, the new agreement will replace existing BITs between China and EU countries, and therefore investment protection might will bring substantive changes to the existing legal framework in a harmonious way for all EU investors in China. Consultations with business and experts should provide more information on whether investment protection will improve compared to the current BITs in place.

It is important to clarify that the investment agreement between the EU and China is, at the time of writing this report, in the process of negotiation, and thus the exact content of the text is not yet publicly available. The analysis of the potential impact of the agreement will be based on previous agreements signed by the EU, such as the CETA.

If the agreement follows previous patterns, while the agreement might not include specific human rights provisions, it might contain preambular language reaffirming the attachment of the parties to democracy and fundamental rights and recognising the importance of international security, democracy, human rights and the role of law for the development of international cooperation. This preambular language does not by itself compel foreign investors or states but it provides interpretative guidance for the implementation of the agreement.

Potential impact of an increase of FDI flows as a result of market access provisions

As noted earlier in this report[370], the inclusion of market access provisions in the investment agreement, reducing investment barriers, is expected to lead to expanded operations of the existing Chinese affiliates of EU multinational enterprises (MNEs), increasing their turnover and labour force as well as lead to additional FDI.

The work intends to identify some of the possible positive or negative impacts of increased investment flows based on the perceptions of stakeholders and experts. This perception is currently being gathered in its final stage. The outcome of the exercise, to be included in the forthcoming final report, will be the identifications of a set of human rights that are likely to be affected by an increased investment and describe the mechanisms and the framework that enable and condition those impacts.

The review of existing reports and literature that was conducted as part of this SIA points at the existence of a link between an increase of FDI flows and the practice of some human rights, with specific sectoral impacts. But literature tends to focus on employment and wages – analysed earlier in the social section- and address human rights impacts in less developed countries, with weak governance and high risk of negative impacts.

In the absence of relevant literature and awaiting the inputs from stakeholders we can presume that human rights impacts – either positive or negative- will largely depend on:

- The existing laws and policies in the host countries to protect human rights
- The capacity to implement these rights
- The CSR and human rights policies and practices of foreign investors

The baseline scenario provided an insight of the existing frameworks for human rights in China and the EU, including laws and policies. It also addressed some of the challenges in implementation with regards to the identified human rights at stake. Interviews with stakeholders are enquiring to what extent the investment agreement might contribute to modify and improve the existing legal frameworks and their implementation. Potential drivers for changes in human rights frameworks could include increased transparency and participation in the process of law-making and increased exposure of the given country to international scrutiny.

369 Ibid.
370 See section 3.3.3.

The inclusion of market access provisions can have an effective and direct impact on the human rights situation in the host state because of the foreign influence on and control over the management of investments held abroad. Differentiated human rights approaches of investors could have a positive or negative impact on human rights in the host country.

While the existing level of protection of human rights in the host state remains a strong determinant of human rights impacts, we could presume that a favourable outcome is likely to occur in situations where the foreign investors are from States in which the human rights situation is better than that which subsists in the host State. MNCs might integrate human rights principles as part of their corporate culture and reflected them in their global CSR and human rights policies and practices. This assumption and the existing practice in the host countries has been the subject for discussion with key stakeholders. Interviews are helping to determine –with the limitations expressed above- whether investors adapt their CSR and human right practices to the contexts of the host countries or whether they have general policies with standards applied globally.

Out of the interviews it emerged a general understanding that European firms – particularly large ones - operating in China establish global CSR practices of higher standards than those implemented by Chinese firms in the country, although it seems that there might be flaws in their application, particularly when it comes to the supply chain. CSR practice of EU firms in China, including information disclosure, might have a positive spillover effect on Chinese firms operating in China and abroad.

International exposure has also been a factor triggering a change in CSR policies in Chinese firms. This has also encouraged the government authorities to rethink its policies.

Some emerging practice of undertaking human rights risk assessment has also been reported, although human rights experts based in China stressed that this practice is anecdotic and incomplete.

Potential impact of the agreement on specific human rights

Potential human rights impact of specific provisions in the agreement could include:

- The impact of the creation of institutional mechanisms to oversee the implementation of the sustainable provisions of the agreement on labour and environment that are likely to be created could have a spill-over effect also to address other social issues; these institutional mechanisms might provide a space for participation of the civil society organizations established in the territory; these mechanisms, as stated in recently signed FTAs, "shall promote a balanced representation of relevant interests, including independent representative employers, unions, labour and business organisations, environmental groups, as well as other relevant civil society organisations as appropriate"; the effectiveness of these mechanisms will largely depend on the scope and composition of the bodies, considering the specific contexts of the host countries.

- The impact of the inclusion of sustainability clauses, as recent free trade and investment agreements signed between the EU and third parties[371] include a Trade and Sustainable Development Chapter, focussed fundamentally on labour and the environment; these provisions include the recognition and obligation to respect the rights contained in multilateral standards and agreements; the obligation to ensure transparency and to promote public participation and public information might positively impact the right to freedom of expression.

- General liberalization investment provisions and the resulting increased presence of foreign investors and their contribution to economic growth and economic and social development may positively impact access to an adequate standard of living of the local population, particularly if wages are positively affected by foreign investment.

[371] See the EU-Singapore Free Trade Agreement, Chapter 13; the Economic and Trade Agreement (CETA) signed between the EU and Canada, Chapters 22, 23 and 24; and the EU-Vietnam Free Trade Agreement, Chapter 15.

- Under the EU's reformed approach on investment protection, the EU also proposes a distinct provision on the right to regulate, which reaffirms the capacity of states to adopt measures in pursuit of public policy objectives; these provisions might protect the rights of the population whenever public policies have a risk of affecting the economic interests of investors and have a positive impact on human rights.

Consultation with stakeholders is digging into these issues aiming at assessing how an increase of FDI is likely to impact human rights. Consultations are focussing on the following issues:

(i) What have been the main impacts of EU and Chinese FDI on human rights and how are they currently being addressed by MNCs and by public authorities?
(ii) What has been the practice of MNCs in the field of CSR; do companies follow a human rights approach in line with the Guiding Principles on Business and Human Rights? And,
(iii) What has been the role of the EU and Chinese governments in promoting responsible businesses and mitigate negative human rights impacts?

6. Environmental analysis

6.1. Short introduction on the methodology

The relation between international trade and environmental impacts has received much attention in research and policy. While international trade and investment has been referred to by the European Investment Bank as a catalyst for climate change action[372], protection of the environment and economic growth are often seen as competing aims.[373] In order to assess these environmental impacts of the future Investment Agreement between the EU and China, environmental impact indicators have been selected, among existing lists of indicators as defined by relevant international organisations. In this chapter we provide an overview of the selected issues for the environmental analysis, we explain in detail the type of assessment carried out and we list the indicators which will be used to show the environmental impacts of the Investment Agreement.

As a basis for screening for key sustainability issues, we have used the EU Better Regulation Toolbox (#16 – Identification/screening of impacts), complemented with other environmental indicators such as OECD Key environmental indicators and the EEA's environmental indicators. Generally, the key indicators which should be screened objectively in order to identify all potentially important impacts from an agreement on these indicators (positive/negative, direct/indirect, intended/unintended as well as short-/long-term effects) include:

- Climate change;
- Efficient use of resources (renewable & non-renewable);
- Quality of natural resources / pollution (water, soil, air, etc.);
- Biodiversity, flora, fauna and landscapes;
- Waste management;
- Environmental risks;
- Animal welfare.

To analyse and understand historical changes in economic, environmental or socio-economic indicators, it is useful to assess the driving forces or determinants that underlie these changes. One technique for decomposing indicator changes at the sector level is structural decomposition analysis (SDA). In this SIA, the SDA model has been used to analyse changes in indicators such as energy use and CO_2-emissions. The changes in these variables are decomposed into determinants such as scale (final demand), structural and technology effects.[374]

The main advantage of the SDA model is that it uses the economic input-output (IO) model that is based on input-output coefficients and final demand per sector.

SDA can assess the final demand (**scale**) effect, i.e. the effect associated with the shift in final demand for products from each sector; the effect of the changes in the intermediate input **structure** (the so-called Leontief effect[375]) and the **technology effect** associated with the change of technology on the sectoral level leading to the change in environmental damage per unit output (which is also called the intensity effect).

Table 6.1 depicts a simplified structure of the data for a 2-sector economy, extended by an environmental extended account related to an indicator (e.g. energy use indicator or CO2 emission indicator) which is coupled to the model:

372 Finance for climate action, http://www.eib.org/attachments/thematic/climate_action_en.pdf.
373 Protecting the environment and economic growth: trade-off or growth-enhancing structural adjustment?, http://ec.europa.eu/economy_finance/publications/publication7726_en.pdf.
374 Rutger Hoekstraa, Jeroen C.J.M. van den Bergh (2003) "Comparing structural decomposition analysis and index", Energy Economics Volume 25, Issue 1, Pages 39–64 http://www.sciencedirect.com/science/article/pii/S0140988302000592.
375 Miller, Ronald E., and Peter D. Blair. Input-output analysis: foundations and extensions. Cambridge University Press, 2009.

Table 6.1 Example of IO table used in SDA

Monetary accounts					
	Sector 1	Sector 2	Final demand	Output	Environmental indicator
Sector 1	z_{11}	z_{12}	y_1	x_1	e_1
Sector 2	z_{21}	z_{22}	y_2	x_2	e_2

An example of a SDA is provided by Hu et al. (2016).[376] The input-output model in their SDA is based on the technical coefficients $A_{ij} = \frac{z_{ij}}{x_j}$ and final demand y_j per sector. The matrix of technological coefficients in an n-sector economy is: $A = [\mathrm{A}_{ij}]_{n \times n}$

The standard matrix representation of an input-output model then reads as:

(1) $$X = (\mathrm{I} - \mathrm{A})^{-1} \cdot \mathrm{Y},$$

where $X = (\mathrm{x}_j)$ is the vector of production (output) in all sectors, $Y = (\mathrm{y}_j)$ is the vector of final demand ($j = 1, 2, ..., n$), and I is the identity matrix.

The energy use (E) and air emission from the economic sectors (B) can be expressed as follows[377] assuming that all the determinant factors are independent from each other:

(2) $$E = E^{\mathrm{int}} \cdot (\mathrm{I} - \mathrm{A}) \cdot \mathrm{Y},$$

where $E^{\mathrm{int}} = (e_j^{\mathrm{int}})$ is the energy intensity vector (i.e. energy use per unit of output) with $e_j = \frac{m_j}{x_j}$ for $j = 1, ..., n$.

From Equation (2) we can derive:

(3) $$\Delta E = E_{effect}^{\mathrm{int}} + L_{effect} + Y_{effect}.$$

Here $E_{effect}^{\mathrm{int}}$ captures the *Energy Intensity effect* or direct effect that is the effect that a change in the energy use per unit of monetary output has on energy consumption. An improvement of energy efficiency in the economic sectors results in $E_{effect}^{\mathrm{int}} < 0$.

The component L_{effect} captures the so-called *Leontief effect* or spill-over effect, which analyses the impact on the energy consumption due to a change in the use of monetary input per unit of

[376] Hu, Jinxue, Moghayer, Saeed, Poliakov Evgueni (2016) 'DRIVERS OF CHANGES IN THE ENERGY USE AND CO2 EMISSIONS IN THE UK AND THE NETHERLANDS', TNO Working Paper Series.

[377] For simplicity only the mathematical formulation for the energy use indicator is presented. The same formula is used for the emission.

output in the economy. $L_{effect} < 0$ corresponds with a reduction in the use of monetary input per unit of output.

The term Y_{effect} is defined as *final demand effect* which can be interpreted as a *rebound effect* as a result of technological changes and innovations, which describes the effect of a shift in, for instance, final energy use.

WIOD: World Input Output Database

The data-set used for the SDA in this SIA is WIOD - a global, detailed Multi-regional Input Output database. The international input-output table can be used for the analysis of the environmental impacts associated with the final consumption of product groups.[378]

Indicators

WIOD allows for a calculation of indicators such as carbon footprint, water footprint, land footprint and material footprint, on sectoral and aggregate level. Moreover, WIOD also contains three physical layers (energy, water and materials) as well as a long list of environmental extensions like emissions, resources and material extensions. Indicators which typically can be calculated directly from the data available in WIOD include: emissions to the air; GHG emissions; use of energy; water; resource use and land use.

6.2. Baseline scenario (situation without Investment Agreement)

In the EU China Joint Statement on Climate Change, adopted on 29 June 2015, the EU and China committed to development of cost-effective low-carbon economy, reaffirming their pledges to implement the United Nations Framework on Climate Change. On 6 March 2015, the EU submitted its Intended Nationally Determined Contribution (INDC) to the UNFCCC, formally putting forward a binding, economy-wide target of at least 40% domestic greenhouse gas emissions reductions below 1990 levels by 2030. Moreover, the EU's GHG target forms a so called 20-20-20 package: 20 percent decrease in GHG emission, requires a 20 percent share of renewable energy in gross final energy consumption and a 20 percent improvement in energy efficiency. Finally, the EU has set a long-term GHG emission reduction target of 80%-95% in 2050. On 30 June 2015, China submitted its INDC, including the target to peak CO2 emissions by 2030 at the latest, lower the carbon intensity of GDP by 60% to 65% below 2005 levels by 2030, increase the share of non-fossil energy carriers of the total primary energy supply to around 20% by that time, and increase its forest stock volume by 4.5 billion cubic metres, compared to 2005 levels. The potential interaction between the future investment agreement and relevant multilateral environmental agreements, such as the UNFCCC, is a key component of the environmental analysis in this SIA. Therefore, the environmental analysis pays particular attention to the potential impacts of the investment agreement on sustainability issues covered by multilateral environmental agreements such as the UNFCCC.

In recent years, China implemented policies to address climate change, reduce greenhouse gas (GHD) emissions and transform its economy toward a low-carbon and sustainability. The policies China has set respond both to global efforts concerning climate change and China's own restructuring of its economic production and consumption patterns. China is on the path to outperform it policy targets. The EU is also on track concerning the renewable energy and GHG reduction targets for 2020 based on the current policies. However, more is needed to reach the energy efficiency target of 2020 and to reach the targets in later years.

China is the largest global exporter, transforming materials and goods from other nations, combining them with Chinese resources and manufacturing products, and exporting products

378 Timmer, M. P., Dietzenbacher, E., Los, B., Stehrer, R. and de Vries, G. J. (2015), An Illustrated User Guide to the World Input–Output Database: the Case of Global Automotive Production, Review of International Economics., 23: 575–605.

across the globe. The magnitude of environmental impacts associated with China's exports has global implications, for example in terms of global GHG emissions. Research on the environmental impact of China's role in the global economy has focused on energy, CO2, air pollutants, and water issues. Recently, Chinese officials have shown greater awareness of energy use, as well as of both air and water pollution, and they are speaking out more frequently on issues of land use and solid waste. Moreover, erosion and restoration of arable land for farming has increased interest in Chinese land use and with the implementation of sweeping food waste reduction policies by the Chinese government, there has also been increasing media attention on solid waste management and material flows.

The EU have committed to halting biodiversity loss in the EU by 2020 and protecting, assessing and restoring biodiversity and ecosystem services in the EU by 2050.[379] The Biodiversity strategy for 2020 specifically targets: conserving and restoring nature; maintaining and enhancing ecosystems and their services; ensuring the sustainability of agriculture and forestry; ensuring sustainable use of fisheries resources; combating invasive alien species; addressing the global biodiversity crisis. The Chinese government is also increasingly recognising threats to biodiversity in China. The recent National Biodiversity Conservation Strategy and Action Plan lists the following strategic goals: effective control of the declining trend of biodiversity in key areas (short-term); control of biodiversity decline and loss (mid-term); effective protection of biodiversity in China (long-term).[380]

6.3. Environmental impacts of the Investment Agreement

Here we carry out a complete SDA or input-output decomposition analysis is carried out for decomposition of the changes in the absolute value of the indicators "energy consumption" and "CO2 emissions" 2000-2009.

For the decomposition of the China energy and CO2 emission indicator we use the statistical method proposed by Dietzenbacher and Los (1998)[381]. Table 6.2 shows the total (decomposed) effect for energy and the exports from China to the EU (given here both in volume and percent).

Table 6.2 SDA of changes in energy and CO2 emissions in China

	Technology effect	Structural spillover effect	Export (scale) effect	Change
Energy (TJ)	-2,333,500 (-51.2%)	1,366,958 (30.0%)	5,549,723 (121.7%)	4,559.566
CO2 emissions (kt)	-154,771 (-66.3%)	90,968 (38.9%)	297,416 (127.3%)	233,576

We see there had been an improvement in energy efficiency in the Chinese economic sectors. A similar, but slightly higher effect has been observed for CO2 emmissions. This means that the emission intensity of the economy has improved (i.e. decreased) faster than the energy intensity. The increase in energy use and emissions can be explained mostly by the increase in export demand. In Figure 6.2, we can see that the export effect is also caused by a change in sectoral structure. We see large effects for the manufacturing and trade sector. Although the total structural spill-over effect is positive, this effect can become negative on the sectoral level in some cases. A negative spillover effect is mostly observed for the services sectors.

379 Biodiversity strategy for 2020, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:ev0029.

380 China National Biodiversity Conservation Strategy and Action Plan, https://www.cbd.int/doc/world/cn/cn-nbsap-v2-en.pdf.

381 E. Dietzenbacher, B. Los, "Structural decomposition techniques: Sense and sensitivity". Economic Systems Research, 10 (1998), 307-323.

Figure 6.1 Changes in energy footprint (final energy use in TJ) per sector. Columns represent the contribution of each factor (technology, spill-over and export effect) to the change

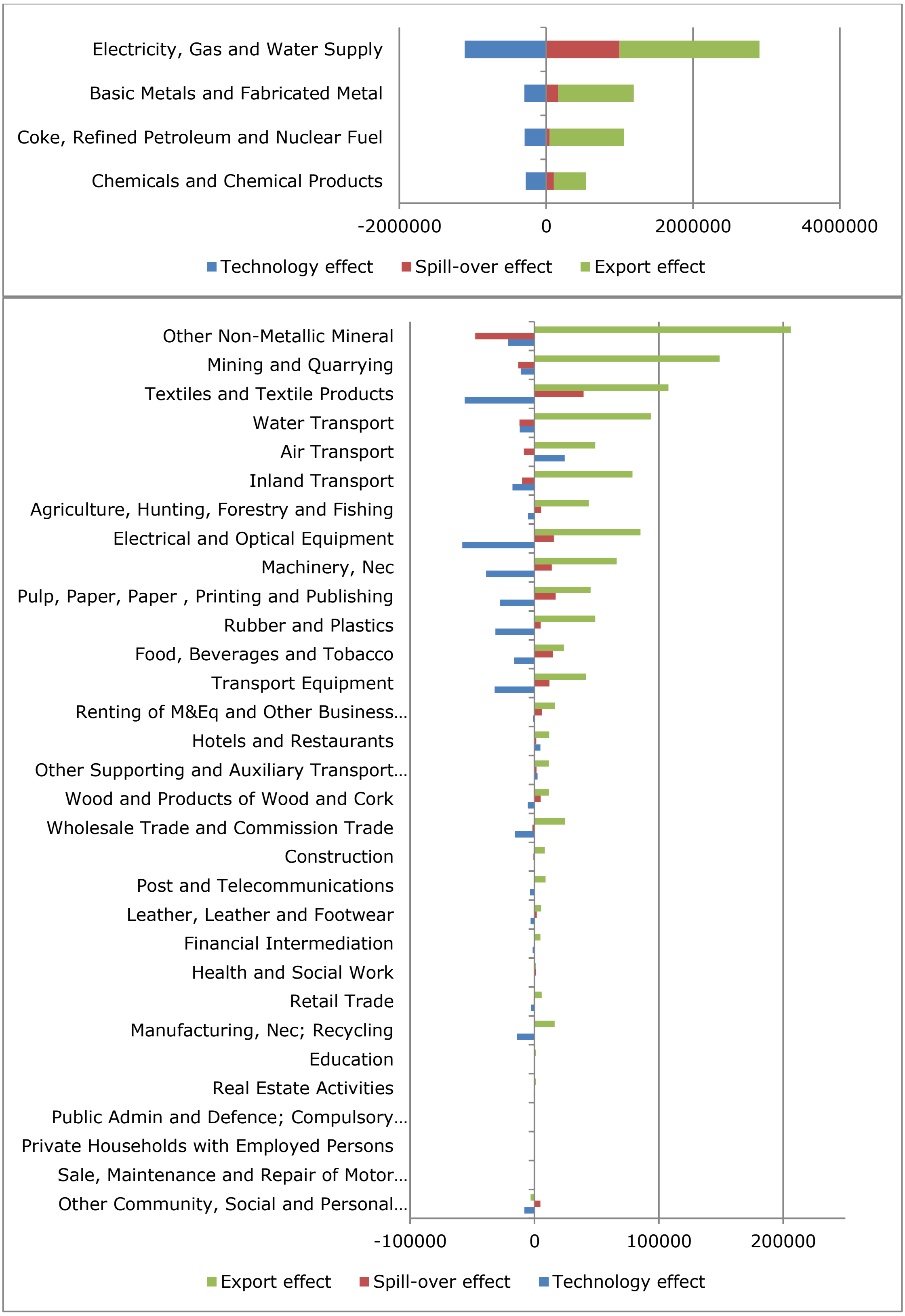
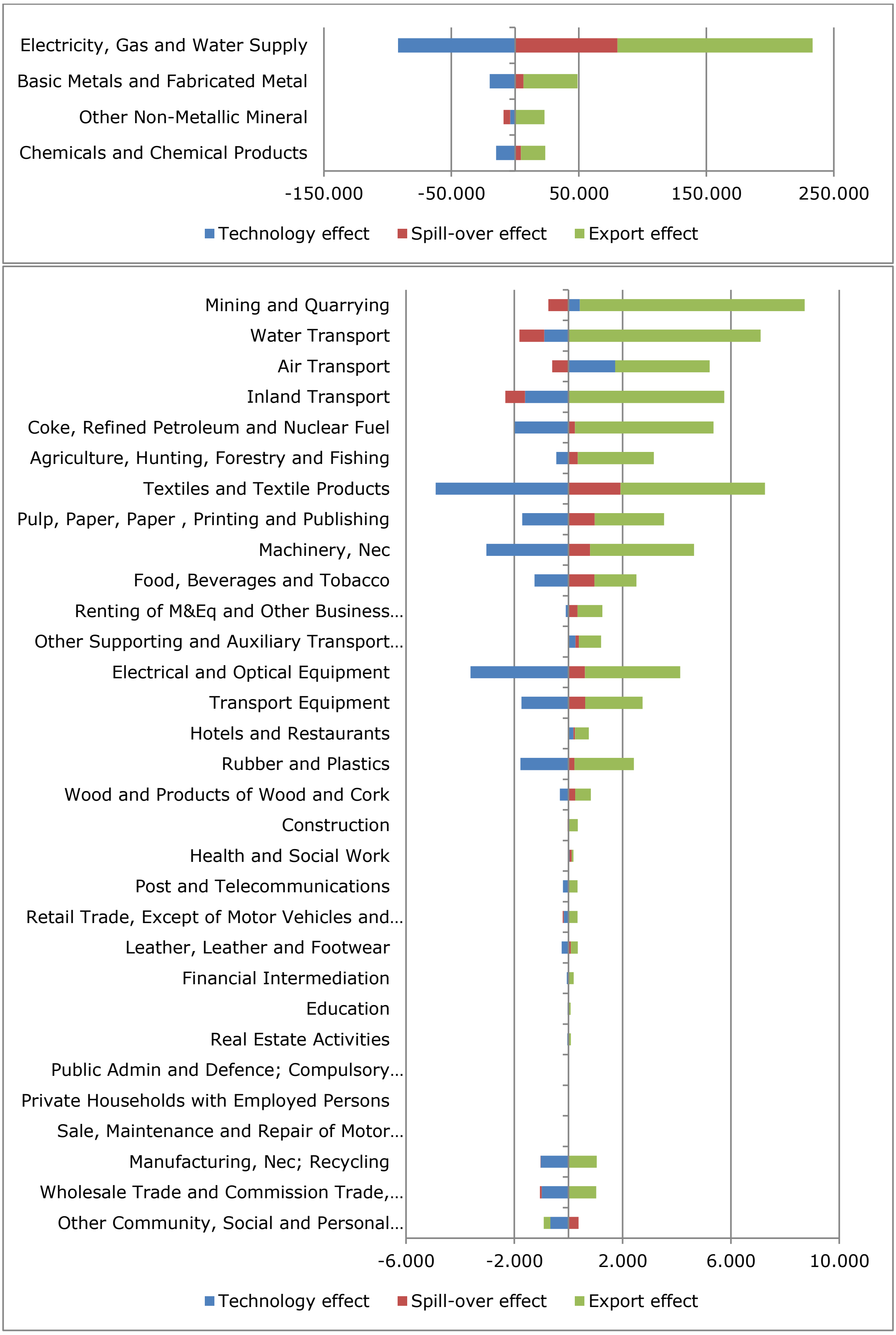


Figure 6.2 changes in CO_2 footprint (CO_2 output in kt) per sector. Columns represent the contribution of each factor (technology, spill-over and export effect)



Identification of relevant environmental challenges for the EU-China Investment Agreement is based on the study by Copenhagen Economics which supported the previous impact assessment done by the Commission and supported by a review of the relevant literature. Stakeholder consultations carried out in the course of this study form an additional valuable source of information.

The study carried out by Copenhagen Economics found that, overall, EU MNEs would expand their production and activity in China by increasing the stock of FDI as a result of an Investment Agreement. Negative environmental impacts could occur if, for example, investments are primarily directed at pollution-intensive industries. However, the results from the study do not suggest that increased FDI will have substantial negative environmental impacts.

Next, we calculate the expected changes in intensity of several environmental indicators caused by the investment agreement. The approach is as follows. First we determine the impact of the investment agreement on sectoral output in China. These estimates were obtained from the EU-China investment study by Copenhagen Economics[382].

Table 6.3 shows the impact of the investment agreement on sectoral output in China under reciprocal scenario with flexible labour supply.

Next, we calculate the new values of environmental indicators as the result of the investment agreement, for each of the following indicators: Energy, Carbon dioxide, Water use, Land use, Material use, Biomass forestry, Methane (CH4), Nitrous oxides (N2O, NOX), Sulphur oxides (SOX). We use the current sectoral environmental intensity coefficients to calculate the new values of the environmental indicators. Finally, we aggregate all sectors and calculate the new macroeconomic environmental intensities. We report the percent changes in the intensities as the results of the investment agreement for the whole economy (Table 6.4) and for the part of the economy which is affected by the investment agreement (

382 Copenhagen Economics (2012). "EU-CHINA INVESTMENT STUDY", Final Report, Impact Assessment Report carried out for EC DG Trade.

Table 6.5).

Table 6.4 shows small negative change in all environmental intensities for the whole economy while

Table 6.5 shows small positive change for only the subset of sectors which are affected by the investment agreement. The negatives in the first table turn into positives in the second table, because of the mathematical effect of the unaffected sectors lowering the overall intensities. In any case, we can interpret the effects of the agreement as very small.

Table 6.6 gives the evidence of the sectors exerting the most influence on the change of environmental intensities. Sector Chemicals and chemical products contributes the most to declining environmental intensities, because the agreement tends to have a negative effect on the investment in this sector. Hence, less output means less pollution. Basic metals provide the highest positive impact (an increase) for energy and water use and transport gives the highest positive effect for all emissions to the air, including carbon dioxide. Land use, materials and biomass forestry are entirely unaffected by the agreement, because these indicators pertain to the following sectors:

- Land use – only agriculture;
- Materials – only to agriculture and mining;
- Biomass forestry – only to forestry, hunting and fishing.

On the whole, the analysis shows very small effects pointing to the improvement of overall macroeconomic environmental intensities. The analysis is based on the constant environmental intensities. However, a question exists whether the increase of the FDI could lead to the relaxation of the environmental regulations in the host country thus putting the pressure towards the creation of the pollution havens and increasing the environmental intensities. Literature suggests that this should not necessarily be the case, and foreign investment can lead to an improvement in environmental situation. For instance, Cole et al.[383] link the changes in environmental policies with the institutional arrangements in the host country. If the degree of corruptibility is sufficiently high (low), FDI leads to less (more) stringent environmental policy, and FDI thus contributes to (mitigates) the creation of a pollution haven.

In case of China, the influx of foreign investment is unlikely to lead to the relaxation of environmental requirements. Literature evidence points to a positive impact of foreign direct investment on environmental quality in China[384]. In this case, our assessment of the environmental impact can be viewed even more positively.

Table 6.3. Impact of the investment agreement on sectoral output in China (under reciprocal scenario with flexible labour supply), in million euros

Sector	Modest Low spillovers	Modest High spillovers	Ambitious Low spillovers	Ambitious High spillovers
Agriculture, Hunting, Forestry and Fishing	0,00	0,00	0,00	0,00
Mining and Quarrying	0,00	0,00	0,00	0,00
Food, Beverages and Tobacco	0,00	-0,39	0,00	0,00
Textiles and Textile Products	0,00	-0,33	0,00	0,00
Leather, Leather and Footwear	0,00	-0,08	0,00	0,00
Wood and Products of Wood and Cork	0,00	-0,08	0,00	0,00

[383] Cole, Matthew A., Robert J. R. Elliott and Per G. Fredriksson (2006). "Endogenous Pollution Havens: Does FDI Influence Environmental Regulations?", Scand. J. of Economics 108(1), 157–178.

[384] BAO, QUN, YUANYUAN CHEN and LIGANG SONG (2010). "Foreign direct investment and environmental pollution in China: a simultaneous equations estimation", Environment and Development Economics 16: 71–92; YANG, Wan-ping, Yang YANG and Jie XU (2008). "The impact of foreign trade and FDI on environmental pollution", China-USA Business Review, Volume 7, No.12 (Serial No.66); Berna Kirkulak, Bin Qiu, Wei Yin, (2011) "The impact of FDI on air quality: evidence from China", Journal of Chinese Economic and Foreign Trade Studies, Vol. 4 Iss. 2, pp.81 – 98.

Sector	Modest Low spillovers	Modest High spillovers	Ambitious Low spillovers	Ambitious High spillovers
Pulp, Paper, Paper, Printing and Publishing	0,00	-0,12	0,00	0,00
Coke, Refined Petroleum and Nuclear Fuel	0,00	-2,00	0,00	-1,00
Chemicals and Chemical Products	-1,32	-55,23	-0,66	-15,78
Rubber and Plastics	-0,68	-28,77	-0,34	-8,22
Other Non-Metallic Mineral	0,00	0,00	0,00	0,00
Basic Metals and Fabricated Metal	588,93	428,48	175,04	129,46
Machinery, Nec	170,00	120,00	51,00	36,00
Electrical and Optical Equipment	372,00	270,00	109,00	78,00
Transport Equipment	5,00	-54,00	2,00	-16,00
Manufacturing, Nec; Recycling	57,07	41,52	16,96	12,54
Electricity, Gas and Water Supply	0,00	0,00	0,00	0,00
Construction	0,00	0,00	0,00	0,00
Sale, Maintenance and Repair of Motor Vehicles	0,00	0,00	0,00	0,00
Wholesale Trade and Commission Trade	-4,14	-114,34	-0,83	-33,14
Retail Trade	-0,86	-23,66	-0,17	-6,86
Hotels and Restaurants	0,00	0,00	0,00	0,00
Inland Transport	103,44	56,90	31,09	17,60
Water Transport	40,62	22,35	12,21	6,91
Air Transport	15,76	8,67	4,74	2,68
Other Supporting and Auxiliary Transport Activities	25,95	14,28	7,80	4,42
Post and Telecommunications	48,20	26,51	14,49	8,20
Financial Intermediation	100,31	55,18	30,15	17,07
Real Estate Activities	86,10	47,36	25,88	14,65
Renting products and Other Business Activities	108,62	59,75	32,65	18,48

Sector	Modest Low spillovers	Modest High spillovers	Ambitious Low spillovers	Ambitious High spillovers
Public Admin and Defence; Compulsory Social Security	0,00	0,00	0,00	0,00
Education	0,00	0,00	0,00	0,00
Health and Social Work	0,00	0,00	0,00	0,00
Other Community, Social and Personal Services	0,00	0,00	0,00	0,00
Agriculture, Hunting, Forestry and Fishing	0,00	0,00	0,00	0,00
Mining and Quarrying	0,00	0,00	0,00	0,00
Total	**1715,00**	**872,00**	**511,00**	**265,00**

Table 6.4 Change is China's environmental intensities caused by the investment agreement

(Total economy)	Modest Low spillovers	Modest High spillovers	Ambitious Low spillovers	Ambitious High spillovers
Energy	-0.01%	0.00%	0.00%	0.00%
CO2	-0.02%	0.00%	-0.01%	0.00%
CH4	-0.054%	-0.027%	-0.016%	-0.027%
N2O	-0.053%	-0.029%	-0.016%	-0.029%
NOX	-0.025%	-0.011%	-0.008%	-0.011%
SOX	-0.041%	-0.020%	-0.012%	-0.020%
Water use	-0.03%	-0.01%	-0.01%	-0.01%
Land use	-0.05%	-0.03%	-0.02%	-0.03%
Material	-0.05%	-0.03%	-0.02%	-0.03%
Biomass forestry	-0.05%	-0.03%	-0.02%	-0.03%

Table 6.5 Change in China's environmental intensities caused by the investment agreement, only considering effected sectors.

(Only affected sectors)	Modest Low spillovers	Modest High spillovers	Ambitious Low spillovers	Ambitious High spillovers
Energy	0.06%	0.05%	0.02%	0.02%
CO2	0.05%	0.05%	0.01%	0.05%
CH4	0.00%	0.00%	0.00%	0.00%
N2O	-0.09%	-0.07%	-0.03%	-0.07%
NOX	0.02%	0.02%	0.01%	0.02%
SOX	0.04%	0.04%	0.01%	0.04%
Water use	0.05%	0.05%	0.02%	0.05%
Land use	0.00%	0.00%	0.00%	0.00%
Material	0.00%	0.00%	0.00%	0.00%
Biomass forestry	0.00%	0.00%	0.00%	0.00%

Table 6.6

(only affected sectors)	largest effect (positive)	largest effect (negative)
Energy	Basic Metals and Fabricated Metal	Chemicals and Chemical Products
CO2	Air Transport (but also Water and Land Transport)	Chemicals and Chemical Products
CH4	Other Supporting and Auxiliary Transport Activities	Chemicals and Chemical Products
N2O	Air Transport (but also Water and Land)	Chemicals and Chemical Products
NOX	Other Supporting and Auxiliary Transport Activities	Chemicals and Chemical Products
SOX	Retail Trade	Chemicals and Chemical Products
Water use	Basic Metals and Fabricated Metal	Chemicals and Chemical Products
Land use	None	None
Material	None	None
Biomass forestry	None	None

Using the results from the quantitative assessment on land- and resources we can conclude that the investment agreement will not directly affect biodiversity (since the effects on land use and biomass forestry are negligible). Animal welfare is also likely to be unaffected, since agriculture, forestry and hunting are unlikely to attract additional foreign investment.

In terms of sustainable consumption and production, FDI has the potential to deliver at least three types of greening effects due to technological spill-over: transfer of clean technologies; technology leapfrogging; spill-over to domestic firms. The Impact Assessment report on the EU-China investment Relations found that it was unlikely that Chinese investment in the EU would lead to significant technological spill-over, while European FDI in China promotes and should continue to promote technological spill-over.[385] China's 12th Five-Year Plan for National Economic and Social Development (2011-2015) stipulated a number of ambitious targets for green investments aimed at tackling significant environmental challenges.[386][387] A draft of the 13th Five-Year plan, unveiled in March 2016, suggests that China aims to strengthen its ambitions in the environmental domain in the period 2016-2020.[388]

Next we repeat the same procedure for evaluating the possible effects of the agreement on the EU. First, we use the results from the Copenhagen Economics study on the output of the EU sectors. Then we apply the environmental indicators for each EU Member State (except Croatia due to data availability) to evaluate the average environmental intensity per EU sector. Combining the two, we calculate the likely impact of the agreement on the total EU environmental intensities per environmental indicator. The results show a very small negative change in the intensity of each environmental indicator (except for energy and Nitrous oxide for modest low spillovers scenario). The decrease of environmental intensities means that environmentally intensive sectors will grow slower than environmentally extensive sectors thus lessening the overall environmental pressure per one euro of output.

Table 6.7 Change in EU's environmental intensities caused by the investment agreement (reciprocal scenario with flexible labour supply)

Environmental indicator	Modest Low spillovers	Modest High spillovers	Ambitious Low spillovers	Ambitious High spillovers
Energy	0.100%	-0.791%	-0.033%	-0.245%
CO2	-0.281%	-0.797%	-0.153%	-0.797%
CH4	-0.371%	-1.680%	-0.225%	-1.680%
N2O	0.176%	-0.735%	-0.065%	-0.735%
NOX	-0.035%	-1.372%	-0.128%	-1.372%
SOX	-0.211%	-0.015%	-0.101%	-0.015%
Water use	-0.694%	-3.771%	-0.492%	-3.771%
Land use	-0.128%	-0.361%	-0.330%	-0.361%
Material use	-0.077%	-0.140%	-0.252%	-0.140%
Biomass forestry	-0.128%	-0.361%	-0.330%	-0.361%

[385] IMPACT ASSESSMENT REPORT ON THE EU-CHINA INVESTMENT RELATIONS, http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2013/swd_2013_0185_en.pdf.
[386] China's Pathway to a Green Economy, http://www.unep.org/greeneconomy/AdvisoryServices/China/tabid/56270/Default.aspx.
[387] CHINA'S GREEN LONG MARCH, http://www.unep.org/greeneconomy/Portals/88/Research%20Products/China%20synthesis%20report_FINAL_low%20res_22nov.pdf.
[388] China's 13th Five Year Plan offers no hope for coal markets, further suppressing CO2 emissions, http://www.carbontracker.org/china-five-year-plan-coal-co2-emissions-renewables/.

6.4. Stakeholder views

We carried out stakeholder survey and interviews regarding the attitudes of the environmental organisations based in China and the EU towards the environmental situation in China and the EU and the possible impact of this investment agreement. The respondents acknowledge the environmental situation in China as problematic in the following aspects: ecosystems and biodiversity, air pollution, water use and treatment, natural resource use, waste treatment, climate change mitigation, climate change adaptation and greening the economy. For comparison purposes, we have also asked the same questions regarding the environmental situation in the EU with respect to the same characteristics. Most respondent judged the situation in the EU as favourable, except one who acknowledged problems, albeit less pronounced than in China, in all above aspects.

Regarding the investment agreement, the respondents admitted that they have few or no information on its details. The prevailing views on the expected impact of the agreement on China (except a present unawareness of the direction of impact in some respondents) is generally positive, namely on natural resource use, waste treatment, climate change mitigation and greening the economy. The respondents expect the EU companies to apply more environmentally friendly technologies than currently in use in China after the conclusion of this agreement. On the negative side, there are concerns that regulatory enforcement in China may be weak. In addition, the relocation of production from the EU to China may increase the global environmental footprint, because the technologies applied will be more environmentally friendly that currently in use in China but at the same time less environmentally friendly than currently in use in the EU. .

Regarding the impact of the agreement on the EU, the respondents expect no change or have no opinion on the possible impact.

6.5. Activities for the next phase

In the next phase of the study, the environmental impact assessment will be further expanded with the following activities:

- Include information collected from further stakeholder consultations, including results from the stakeholder workshop and additional interviews;
- Extend the analysis of the impact of the agreement to waste generation and recycling.

7. Sector studies

7.1. Screening and scoping

In additional to the overall analysis this study also analyses in-depth the potential impact of the investment agreement on six sectors. The sectors have been selected during the inception phase by means of a screening and scoping exercise. The study team has looked at three different criteria for selecting the sectors:

- Size of EU's outward FDI (extra EU and into China);
- Sectors that are likely to attract large amounts of EU investments in China in the near future;
- Labour intensity and potential impact on labour;

The preliminary sector selection has been open for discussion, and was presented during the Civil Society Dialogue meeting in May to the stakeholders. Based on the above criteria and the feedback received from both stakeholders and the Inter-service Steering Group the following six sectors have been selected for in-depth analyses:

- Transport equipment (including motor vehicles and other transport equipment);
- Mining and energy extraction;
- Chemicals;
- Processed foods and beverages;
- Finance and insurance;
- Communication and electronic equipment.

The first three sectors are analysed in the current interim phase of the study and are included in this report, the latter three will be analysed in the final phase of the study. It should be noted that the results and findings of the sector studies presented in the Interim Report will be validated and expanded in the final phase - especially as regards the sections on market access barriers and expected impacts; the update will be based on the outcomes from the stakeholder workshop, the online survey and additional interviews. In other words the results presented here are still preliminary.

Outline of the sector studies

The sector studies will be analysed in four different steps. The first step covers a description of the baseline of the sector concerning its size, investment, social situation, environmental situation etc.. The baseline analysis will mainly draw on Eurostat data, making use of the NACE production classification code, as well as a literature review and industry reports.

In a second step in the analysis we will discuss the market access issues and other challenges the industry faces when investing in the partner country. For this step the team conducts a literature review, and draws on survey results, outcomes of the workshop and interviews with stakeholders.

After the description of the current situation we will present and discuss the potential economic, social, human rights and environmental impacts of the investment agreement. The impact assessment carried out by the European Commission and Copenhagen Economics will form the basis for this step. As explained earlier we will only consider the four different reciprocal scenarios, which are further detailed below.

Table 7.1 Reciprocal scenarios

Ambitious scenario		Less ambitious scenario	
High spill-overs	Low spill-overs	High spill-overs	Low spill-overs
Low spill-overs	10 percent of any cost savings also accrue to third countries		
High spill-overs	60 percent of any cost savings also accrue to third countries		
Less ambitious	3 percent reduction in the cost of the estimated barriers to investment		
Ambitious	10 percent reduction in the cost of the estimated barriers to investment		

Source: EC impact assessment 2013.

As a fourth and final step the study team will formulate policy recommendations and flanking measures for each sector. This will be done in the final phase of the study.

It should be noted that the baseline presented in this study is not the baseline used for the modelling of the expected impacts of the investment agreement. The data used in the baselines for the sector studies come from Eurostat's databases, while the data used for the modelling baseline are derived from the GTAP database. When presenting the sector studies, the team has tried to create as much overlap between the GTAP and NACE sectors as possible. The table below shows the GTAP and NACE codes that we will use for the first three sector studies.

Table 7.2 Sector definition and correspondence

Sector	GTAP nr.	GTAP name	NACE code	NACE name
Transport equipment	38	Motor vehicles and parts: cars, lorries, trailers and semi-trailers	C29	Manufacture of motor vehicles and (semi) trailers
	39	Other Transport Equipment: Manufacture of other transport equipment	C30	Other transport equipment (incl. manufacture of boats and ships, railway locomotives, air and spacecraft, military fighting vehicles, and other transport equipment not specified elsewhere)
Mining and energy extraction	15	Coal: mining and agglomeration of hard coal, lignite and peat	B05	Mining of coal and lignite
	16	Oil: extraction of crude petroleum and natural gas (part), service activities incidental to oil and gas extraction excluding surveying (part)	B06	Extraction of crude petroleum and natural gas
	17	Gas: extraction of crude petroleum and natural gas (part), service activities incidental to oil and gas extraction excluding surveying (part)		
	18	Other Mining: mining of metal ores, uranium,	B07 B08	Mining of metal ores Other mining and quarrying

Sector	GTAP nr.	GTAP name	NACE code	NACE name
		gems. other mining and quarrying		
Chemicals	32	Petroleum, coal products	C19	Manufacture of coke and refined petroleum products
	33	Chemical Rubber Products: basic chemicals, other chemical products, rubber and plastics products, pharmaceuticals	C20	Manufacture of chemicals and chemical products
			C22	Manufacture of rubber and plastic products

7.2. Sector study Transport Equipment

7.2.1. Baseline

The transport equipment sector as discussed in this section consists of two subsectors namely (1) the manufacture of motor vehicles, trailers and semi-trailers, and (2) the manufacture of other transport equipment. The latter consists of the following:

- Building of ships and boats;
- Manufacture of railway locomotives and rolling stock;
- Manufacture of air and spacecraft;
- Manufacture of military fighting vehicles;
- Manufacture of transport equipment not specified elsewhere.

For the description of the baseline we make use of Eurostat data, where the manufacture of motor vehicles and of other transport equipment are indicated by product classification NACE C29 and C30 respectively.

Description of the EU sector

In 2014 the EU transport equipment sector consisted of 33,916 firms, generating a total turnover of 1,089 billion euro. Almost 60 percent of the firms are active in the manufacture of motor vehicles and (semi) trailers, responsible for more than 80 percent of the turnover generated. Also in terms of value added and the number of employees the manufacture of motor vehicles and (semi) trailers is more important than the manufacture of other transport equipment. For comparison in 2013, 2.3 million employees were working in the manufacture of motor vehicles and (semi) trailers, whereas 0.7 million employees were working in the manufacture of other transport equipment. As for value added, the manufacture of other transport equipment created value of 54 billion euro, compared to 158 billion euro in the manufacture of motor vehicles and (semi) trailers.

When comparing the EU manufacture of motor vehicles and (semi) trailers with other manufacturing sectors, we see that it is the second largest sector in terms of turnover, generating 13 percent of total manufacturing turnover, and the fourth largest sector in terms of employees, employing 8 percent of all workers in manufacturing. The other transport equipment sector is slightly less important, generating 3 percent of total manufacturing turnover and employing 3 percent of all workers in manufacturing.[389]

[389] Eurostat, SBS – industry and construction data.

Within the EU, the United Kingdom, France, and Germany are the most important countries in terms of number of enterprises and turnover for both manufacture of motor vehicles and (semi) trailers and manufacture of other transport equipment.

Table 7.3 presents the relevant values for the two EU sectors over time. The number of enterprises in the manufacture of motor vehicles has decreased over the past decade: of the 21,350 enterprises in 2006 only 19,516 remained in 2014. Turnover and valued added both saw a decrease in the crisis period, but their values quickly increased again and are now higher than before the crisis. The number of employees also saw a significant drop in 2009 and is only slowly recovering. In contrast to the manufacture of motor vehicles and (semi) trailers, the number of enterprises in the manufacture of other transport equipment has been growing from 13,000 in 2006 to 14,400 in 2014. Turnover also increased over the same period, from 140 billion euro to 188 billion euro. The number of employees and value added both saw a small drop during the crisis period but recovered more quickly than within the manufacture of motor vehicles and (semi) trailers to pre-crisis levels.

Table 7.3 Structure of the EU transport equipment sector

EU[390]	2006	2007	2008	2009	2010	2011	2012	2013	2014
Manufacture of motor vehicles, trailers and semi-trailers									
Number of enterprises	21,350	21,440	21,059	19,700	20,525	20,000	19,500	19,300	19,516
Turnover (billion €)	788	-	800	625	741	840	847	867	901
Value added (billion €)	144	150	-	99	141	154	150	158	-
Number of employees (*1000)	2,425	2,450	2,401	2,197	2,154	2,222	2,276	2,285	-
Manufacture of other transport equipment									
Number of enterprises	13,000	13,332	14,105	14,000	14,300	14,400	14,000	13,800	14,400
Turnover (billion €)	140	152	-	159	163	162	175	178	188
Value added (billion €)	40	45	50	43	46	47	51	54	-
Number of employees (*1000)	712	726	738	733	694	698	697	705	-

Source: Eurostat, SBS – industry and construction.

When looking in more detail at the manufacture of other transport equipment (Table 7.4), we see that the building of ships and boats clearly stands out in terms of number of enterprises. The sector is made up of 8,071 enterprises compared to 832 for manufacture of railway and locomotives, and 1,864 for manufacture of air and spacecraft. However in terms of turnover, value added and number of employees, the manufacture of air and spacecraft is much bigger. In 2013 they generated a turnover and value added of respectively 111 and 36 billion euro, about 4 times as much as in the other two sectors. They employed over 360 thousand employees compared to 168 in building of ships and boats, and 107 in manufacture of railway and locomotives.

Table 7.4 Detailed structure of the EU other transport equipment sector

EU[391]	2008	2009	2010	2011	2012	2013	2014
Building of ships and boats							

390 Until 2010 the numbers present the data for EU27, from 2011 onwards the data are presented for EU28.
391 Until 2010 the numbers present the data for EU27, from 2011 onwards the data are presented for EU28.

EU[391]	2008	2009	2010	2011	2012	2013	2014
Number of enterprises	9,000	8,685	8,678	8,777	8,251	7,862	8,071
Turnover (billion €)	43	36	37	34	33	31	34
Value added (million €)	9,656	7,734	8,774	8,900	8,633	8,096	-
Number of employees (*1000)	210	201	176	179	169	168	-
Manufacture of railway and locomotives							
Number of enterprises	654	864	856	782	794	714	832
Turnover (billion €)	21	21	22	22	23	21	24
Value added (million €)	6,724	6,094	6,304	5,479	6,252	6,332	-
Number of employees (*1000)	112	107	103	106	107	107	-
Manufacture of air and spacecraft							
Number of enterprises	-	1,440	1,481	1,530	1,626	1,784	1,864
Turnover (billion €)	89	87	89	92	104	111	115
Value added (million €)	28,538	25,927	27,658	29,349	32,821	35,739	-
Number of employees (*1000)	343	353	343	342	351	361	-

Source: Eurostat, SBS – industry and construction.

Eurostat data for the building of ships and boats sector presented in the above tables only concern the construction of vessels. The maritime technology industry, however, encompasses much more. In addition to the construction of a vessel, shipbuilding also concerns the design, repair and maintenance services, including the complete supply chain of systems, equipment and services supported by research and educational institutions.[392] When taking the full industry in consideration, the figures for turnover and number of jobs are respectively €91 billion, and 500,000, according to SEA Europe. When indirect employment is also included the number of jobs in the industry equals 900,000.[393] When comparing this with the above tables, we see that Eurostat captures only one third of the industry.

Table 7.5 presents the number of enterprises and turnover for the different size groups within the transport equipment sector for the year 2013. Within the manufacture other transport equipment the numbers are also split out for the three largest sub-groups.[394] The majority of enterprises present in both the manufacture of motor vehicles and (semi) trailers and the manufacture of other transport equipment are small enterprises with 0-9 employees (66 and 79 percent of SME firms[395] respectively). While the number of firms for the other size classes decrease with the size class in the manufacture of other transport equipment, it remains more or less equal (around 2000 enterprises) within the manufacture of motor vehicles and (semi) trailers. In terms of turnover the differences between the manufacture of motor vehicles and (semi) trailers and the manufacture of other transport equipment are much larger. For the

392 Interview SEA Europe + SEA Europe and IndustriAll 2014 study – Evolution of supply, employment and skills in the European Maritime Technology sector.

393 Idem

394 Please note, since the data is not shown for the manufacture of military vehicles and other transport equipment not specified elsewhere, the values for the three sub-groups do not sum up to the total for other transport equipment.

395 This is the share of all SME enterprises (0-250 employees) within the sector and not of the total firms within the sector, which includes also 250 and more employees.

manufacture of motor vehicles and (semi) trailers, 75 percent of turnover is generated by the firms with 50-249 employees (53 billion euro) and only a very small share by the firms with 0-19 employees. Also for the manufacture for other transport equipment the majority of turnover – 61 percent (16 billion euro) – is generated by the firms with 50-249 employees. Both in terms of number of enterprises and turnover the sub-group of building of ships and boats stands out in all size classes. They have over six thousands firms that employ 0-9 persons, whereas the manufacture of railways and spacecraft have respectively 318 and 1,094.

Table 7.5 SMEs in the EU transport sector, 2013

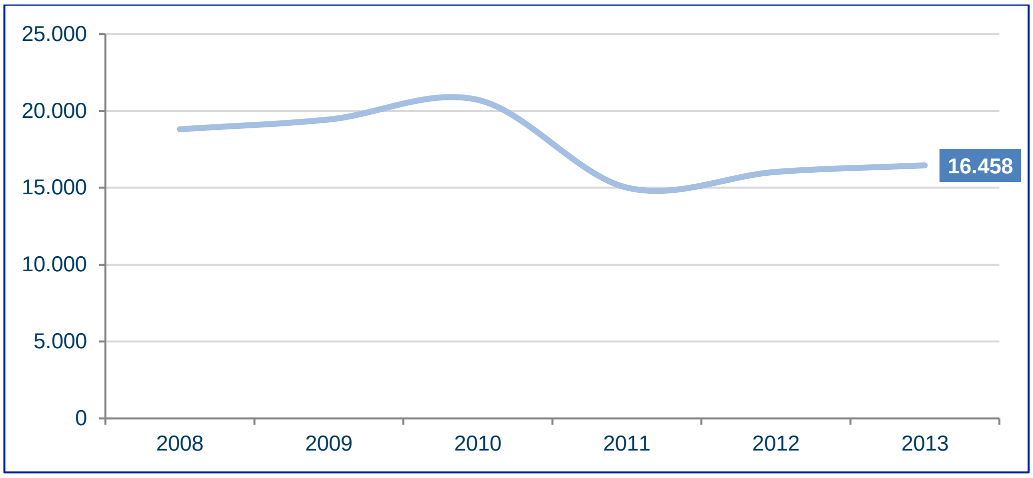
	Sub-sector	0-9 employees	10-19 employees	20-49 employees	50-249 employees
Number of enterprises	Manufacture of motor vehicles, trailers and semi-trailers	12,000	2,000	1,910	2,229
	Manufacture of other transport equipment	10,553	1,100	870	840
	*Building of ships and boats**	*6,538*	*575*	*397*	*262*
	Manufacture of railway locomotives and rolling stock	*318*	*84*	*81*	*143*
	Manufacture of air and spacecraft and related machinery	*1,094*	*132*	*143*	*244*
Turnover (million €)	Manufacture of motor vehicles, trailers and semi-trailers	4,426	3,632	9,880	53,243
	Manufacture of other transport equipment	4,008	2,243	4,238	16,192
	*Building of ships and boats**	*1,522*	*1,061*	*1,804*	*5,528*
	Manufacture of railway locomotives and rolling stock	*148*	*166*	*340*	*2,504*
	Manufacture of air and spacecraft and related machinery	*1,506*	*331*	*628*	*4,616*

* Since Eurostat captures only a part of the maritime technology industry, the real numbers are likely to be higher.
Source: Eurostat, SBS SMEs.

The Chinese industry

In 2013 the Chines transport equipment sector counted 16,458 enterprises, 11,559 were manufacturers of motor vehicles and (semi) trailers, and 4,859 were manufactures of other transport equipment. From 2008 till 2013 the number of enterprises has decreased by 2,350 where the largest decrease could be found in 2011.

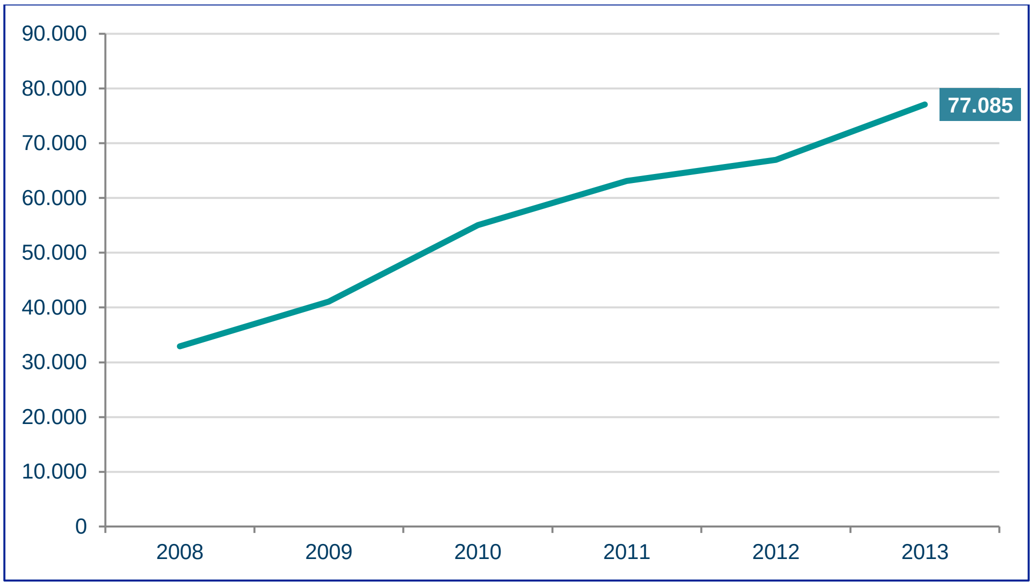
Figure 7.1 Number of enterprises



Source: China statistical yearbook.

Figure 7.2 presents the revenue generated from principle business. In 2008 it equalled 32,913 and increased by 134 percent to 77,085 in 2013. Of the total revenue generated in 2013, 79 percent was created by the manufacture of motor vehicles and (semi) trailers, the other 21 percent was created by the manufacture of other transport equipment. From both graphs we can see that the number of enterprises has been decreasing for the period 2008-2013 while the revenues have been increasing. A possible explanation for this could be increased efficiency in the production of transport equipment. For the manufacture of motor vehicles and (semi) trailers the average increase in units produced equalled 15.1 percent for the period of 2007 till 2014.[396]

Figure 7.2 Revenue from principle business, 100 million yuan

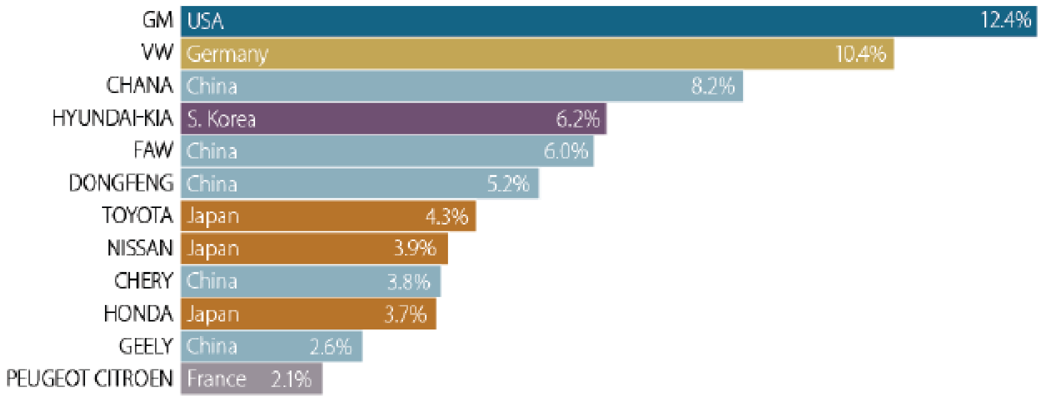


Source: China statistical yearbook.

When looking at the different motor vehicle companies present in China we see that larger share of the market is taken up by foreign brands. American and German brands take the first two places with a 12.4 percent and a 10.4 percent share respectively. Also South Korean and Japanese brands take up a significant share of the Chinese market.

396 IBISWorld industry report, auto parts manufacturing in China, 2016.

Figure 7.3 Major Vehicle Manufacturers in China, 2010



Source: Ward's Auto InfoBank.

Foreign Direct Investment

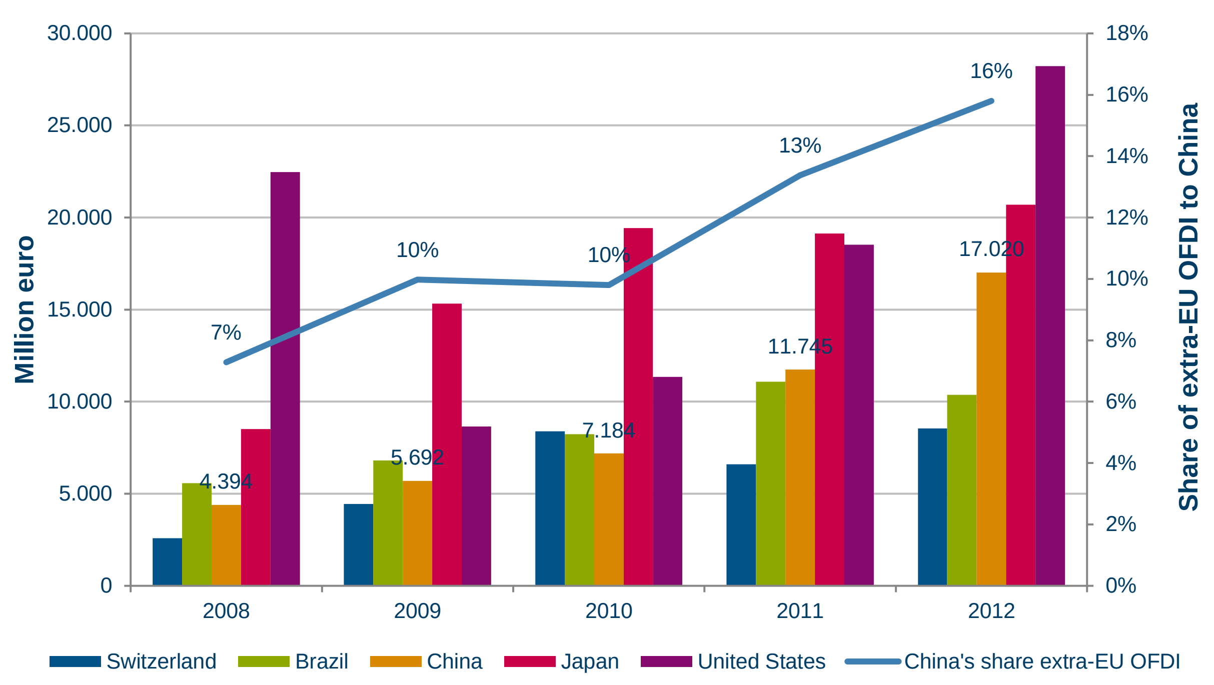
Figure 7.4 presents the top 5 countries with the largest EU OFDI stock over time and the share of extra-EU OFDI directed to China for EU the transport equipment sector. In 2012 the total extra-EU OFDI stock was 108 billion euro, of which 26 percent (28.2 billion euro) was taken up by the United States. The EU OFDI stock in China equalled 17.0 billion euro in 2012, 16 percent of total extra-EU OFDI.

Although the US had the largest share of extra-EU OFDI stock in 2012, it has not been the number one destination for the three years prior to 2012. In addition, the stock of extra-EU OFDI has not increased much here compared to 2008 (22.5 billion euro), whereas Japan and China are rapidly coming closer and accounting for a larger share of the extra-EU OFDI stock.

We would like to stress that the numbers in the below figures and table present the FDI values for the total transport equipment sector. They could be slightly different for the different sub-sectors. For example, China and Brazil are import investments partners of the EU for the maritime technology industry, whereas Switzerland and Russia and less important.[397]

[397] Interview SEA Europe

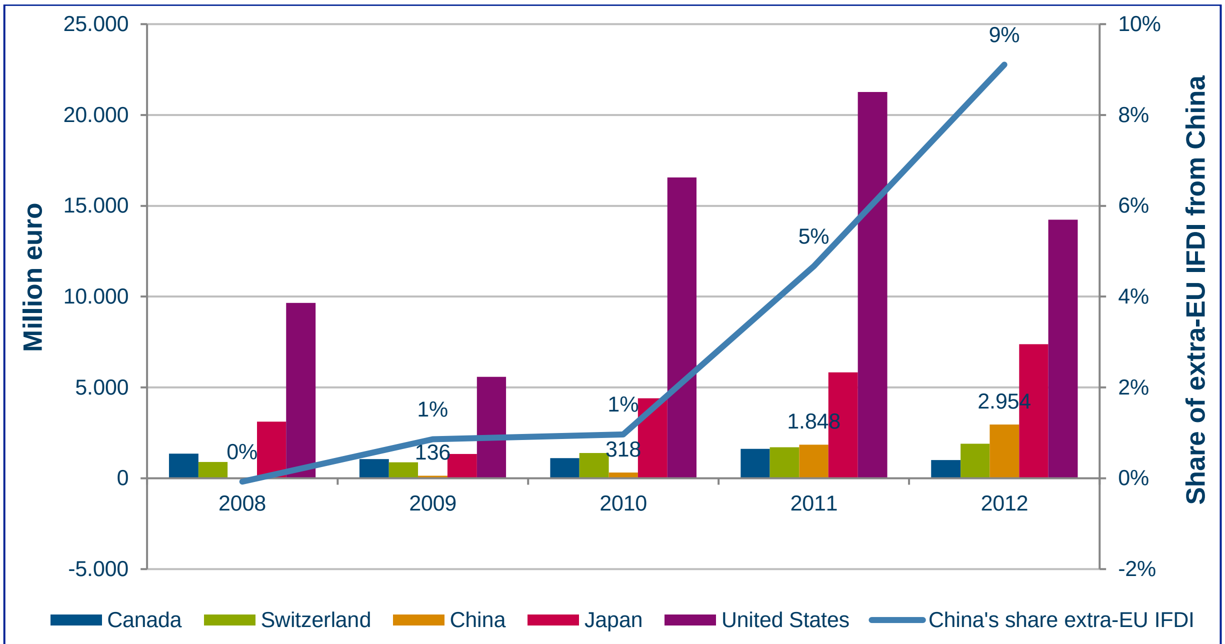
Figure 7.4 Extra-EU outward FDI stock, transport equipment sector (million euro)



Source: Eurostat, EU direct investment position.

The stock of extra-EU inward investment (foreign FDI flowing into the EU from outside the EU) is much smaller than the extra-EU OFDI stock. Also here the United States, Japan and China form the top three countries, this time as origins of FDI. In 2012 these three countries invested respectively 14.2, 7.4 and 3.0 billion euro in the EU. As the figure below shows, the amount of inward FDI stock from the US has been fluctuating significantly from 2008 till 2012, while the inward FDI stock from Japan and especially China has been increasing. Though the US still remains the dominant source of foreign FDI flowing into the EU.

Figure 7.5 Extra EU inward FDI stock, transport equipment sector (million euro)



Source: Eurostat, EU direct investment position.

The two tables below present the extra-EU OFDI flows and the extra-EU inward FDI flows for the years 2008 till 2012 for the transport equipment sector. In 2012 the largest amount of extra-EU outward FDI flows equalled 4,113 million euro and was destined to China. The other top destinations for extra-EU OFDI flows were Switzerland, Russia, Brazil and India. The extra-EU OFDI flows to China and Brazil have grown over time, while OFDI flows to the other three destinations have fluctuated.

When looking at the incoming extra-EU FDI flows, China is the second most important source country, with a value of 820 million euro. The largest amount of extra-EU inward FDI flows in 2012 came from the US (88.9 billion euro). The other top source countries are Japan, Switzerland, and Hong Kong. For all countries the amount of the FDI flows has been fluctuating significantly.

Table 7.6 Extra EU outward FDI flows, transport equipment sector (million euro)

EU[398]	2008	2009	2010	2011	2012
China	189	1,095	1,565	2,718	4,113
Switzerland	163	-53	5,222	-1,936	1,893
Russia	2,297	-782	189	656	1,356
Brazil	-345	350	403	444	1,085
India	650	317	178	552	866

Source: Eurostat, EU direct investment position.

Table 7.7 Extra EU inward FDI flows, transport equipment sector (million euro)

EU[399]	2008	2009	2010	2011	2012
United States	146	-856	3,401	-1,217	8,916
China	140	69	116	-143	820
Japan	72	-72	-20	111	107
Switzerland	183	502	534	794	73
Hong Kong	-95	-18	-3	7	49

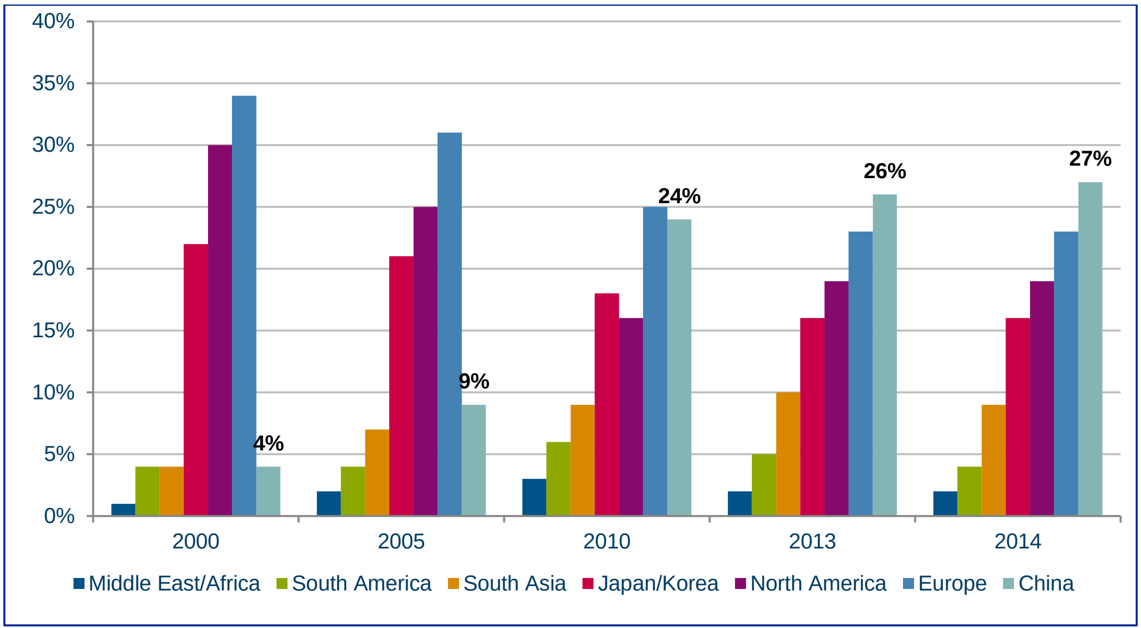
Source: Eurostat, EU direct investment flows.

International perspective

Over the past fifteen years China has significantly increased its market position in terms of total motor vehicle production. In 2000 China produced only 4 percent of global output as did South-America and South-Asia. The EU and North-America were the top producers with respectively around 34 and 30 percent of world production. Within ten years, however, China managed to surpass Japan/Korea and North-America, and produced only slightly less than the EU. By 2013 China had become the global market leader and in 2014 its share of global production stood at 27 percent. The EU and North-America come second with on average 23 and 18 percent. Thus, while China has improved its position in the world market, the EU, North-America and Japan/Korea have all lost market share.

398 Until 2010 the numbers present the data for EU27, from 2011 onwards the data are presented for EU28.
399 Until 2010 the numbers present the data for EU27, from 2011 onwards the data are presented for EU28.

Figure 7.6 share of world production of motor vehicles



Source: ACEA pocket guide 2015-2016.

In terms of trade, China is the fifth most important source country for EU motor vehicle imports. According to ACEA the EU imported almost 242 thousand vehicles from China in 2015, which equals 7.9 percent of all motor vehicles imported by the EU. This has been a significant increase compared to the previous years, when Chinese exports ranged from 171 thousand to 198 thousand units. The countries that exported more to the EU are Turkey (27.5 percent), Japan, South Korea, and the US.[400] Concerning EU motor vehicles exports, China is the third most important destination country of the EU. The first and second most important export destinations of the EU are the US and Turkey. In 2015, 7.6 percent of the EU's total motor vehicle exports was destined for China, worth of 473 thousand units. This is a significant decrease compared to the previous year; EU exports to China equalled 614 thousand units. Although the difference with the US is still significantly large, China and Turkey have constantly switched second and third places during the period 2010-2015.[401]

From the perspective of China, the EU is the most important source country for motor vehicles imports, followed by Japan and the US. The EU SME Centre also reported EU exports of motor vehicles to China of more than 600 thousand units (638 thousand).[402]

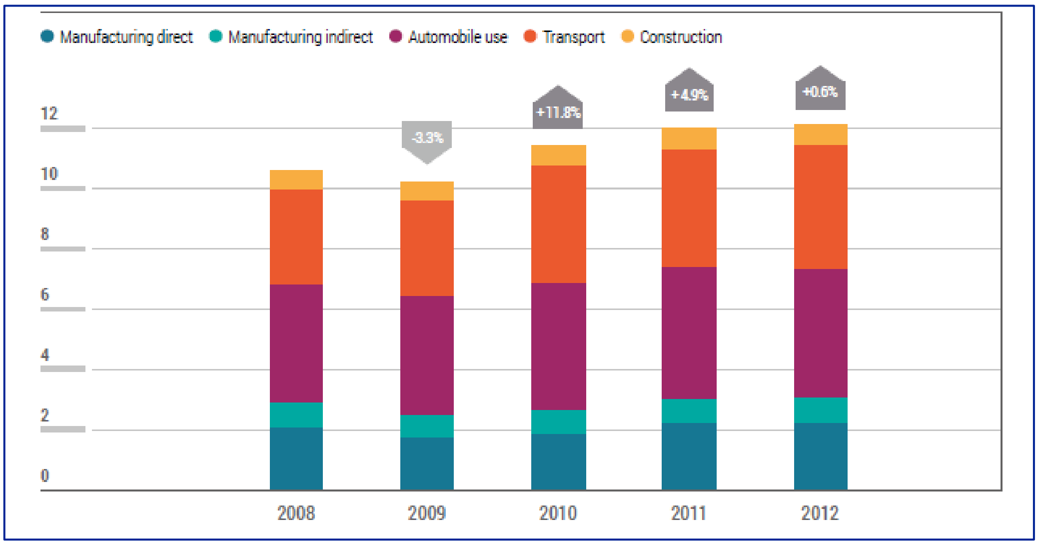
The EU Maritime Technology industry is very globally oriented and active on the world market. A study by Balance Technology Consulting identified 11,495 companies in 73 different countries. About 51 percent of these companies represent the EU28 (31 percent represents Asia). The top ten countries represent about 75 percent of all companies worldwide. Six of these countries are part of the EU28, the other four countries are China, the US, Korea, and Japan.[403] According to SEA Europe, the industry is very globally oriented. About 80 percent of the supplies is exported to the world market. When looking at China, this market forms both a threat and an opportunity to the EU. China is currently the most important shipbuilding nation in the world. Hence an opportunity for the EU in terms of export market or investments. At the same time, China aims to expand its market and to enter also the value added part of the industry, a niche market where the EU is currently the market leader. Their aim to increase their market share in this niche market could form a threat to the EU.[404]

[400] ACEA pocket guide 2015/2016.
[401] Idem.
[402] EU SME Centre and China Britain Business Council, 2015. The automotive market in China
[403] Balance Technology Consulting, 2014. Competitive position and future opportunities of the European Maritime Supplies industry.
[404] Interview with SEA Europe

Social baseline

As indicated above there were 0.7 million employees working in the manufacture of other transport equipment in 2012. This number has remained more or less stable over the past eight year. Within the manufacture of motor vehicles and (semi) trailers industry 2.3 million persons are employed. This number has slightly increased over time. These 2.3 million employees work in direct jobs created by the sector. However, according to ACEA there are another 9.8 million indirect jobs linked to the manufacture of motor vehicles and (semi) trailers. As can be seen from the figure below the indirect jobs in the EU sector come from supplies manufacturing such as tyres or electrical motors, from the retail and repair of automobile, (land) transport and construction of roads, tunnels and bridges.

Figure 7.1 EU automotive employment, in million units



Source: ACEA pocket guide 2015/2016.

Although the number of jobs was more or less stable over the past years, the type of jobs has changed significantly due to the increased automation in the sector, requiring many employees to retrain.

In China, the automotive industry employed 2.2 million persons in 2010. The reported working conditions are however not similar to the EU. According to a paper by Lu Zang (2015) workers in the automotive industry face heavy workloads, working hours from ten to twelve hours per shift and excessive over time.[405] The total number of cars produced increased from 2 million in 2000 to 18 million in 2010, while the number of employees only increased from 1,8 million to 2.2 million. Many firms have changed permanent or long term worker's contracts in short term, renewable contracts. The use of more temporary workers has reduced the labour cost significantly. Additional to the long working hours, Chinese workers get only little paid. Their hourly wages are about 30 to 50 percent lower than for Mexican autoworkers.[406] Still their salary is about 30 percent higher than the average salary for urban manufacturing workers in China.

Environmental baseline issues

The below table shows the emission of air pollutants in the EU transport equipment sector. The manufacture of motor vehicles and (semi) trailers is emitting much more air pollutants than the manufacture of other transport equipment. This is not surprising given the respective sizes of these two sub-sectors.

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405 https://www.researchgate.net/publication/270582457_The_Chinese_Auto_Industry_Challenges_and_opportunities_for_management_and_labor.

406 Idem.

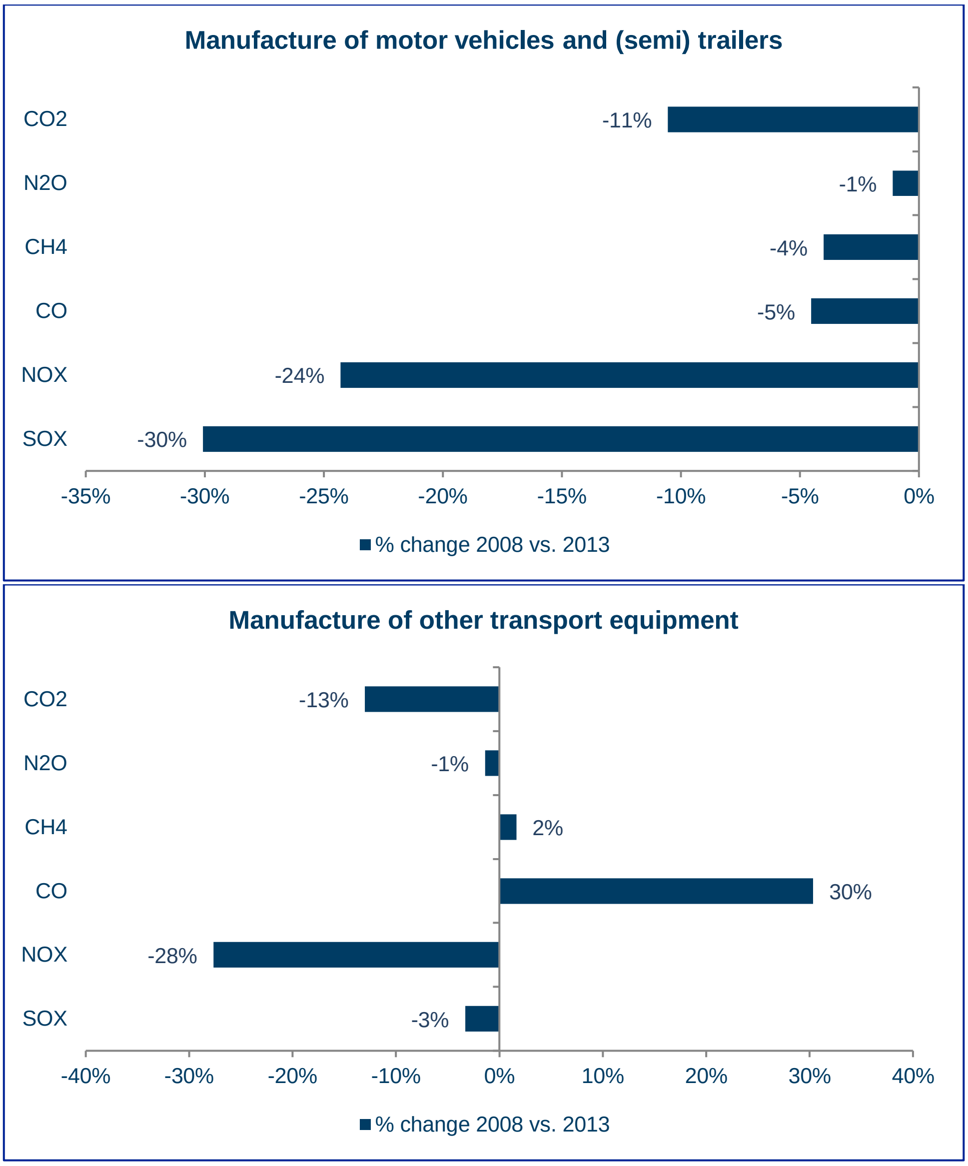
Table 7.8 air pollution of the EU transport equipment sector, 2013[407]

	Sulphur Oxides	Nitrogen Oxides	Carbon Monoxide	Methane	Nitrous Oxide	Carbon Dioxide
Manufacture of motor vehicles, trailers and semi-trailers	4,708	23,600	20,005	1,728	271	11,036
Manufacture of other transport equipment	1,490	6,052	6,379	918	71	2,691

Source: Eurostat, environment and energy.

The emission of the different air pollutants has decreased over time, although more so for the manufacture of motor vehicles and (semi) trailers than for other transport equipment. The former saw a decrease in all air pollutants with the largest decrease for CO2 emissions (30 percent), while for the manufacture of other transport equipment the emissions of methane and carbon monoxide went up.

Figure 7.2 Change in air pollution of the EU sector



Source: Eurostat, environment and energy.

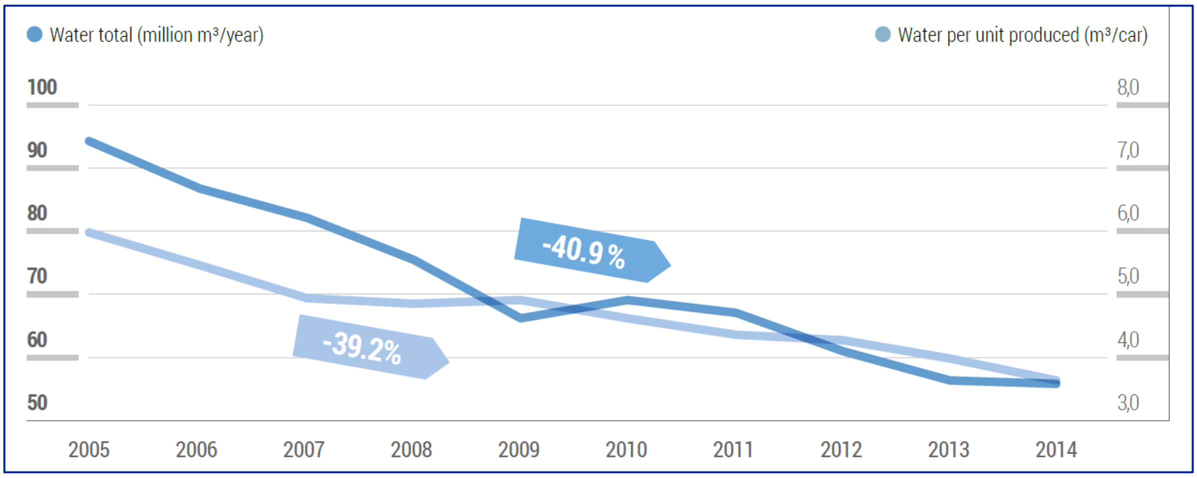
407 Except for CO2 emissions all pollutants are displayed in tons, CO2 is displayed in thousand tons.

The manufacture of motor vehicles has reduced its environmental pollution not only in terms of the emission of air pollutants but also in terms of waste production and water use. Over a period of ten years the sector managed to reduce its waste in production by 5.4 percent from around 1.4 ton per year to slightly more than 1.3 ton per year. In addition water use in the production process has decreased from almost 100 million m^3 per year to around 35 million m^3 per year.

Figure 7.3 Waste of EU manufacture of passenger cars (million tonnes)

Source: ACEA pocket guide 2015-2016.

Figure 7.4 Water use in production of EU manufacture of passenger cars (million M^3)



Source: ACEA – The automobile industry pocket guide 2015-2016.

In China the transport equipment sector emitted 67 MT CO2 in 2008. In comparison with other manufacturing sectors, the transport equipment sector emits relatively little CO2 (2 percent of total manufacturing CO2 emissions).[408]

7.2.2. Market access issues

The Chinese Foreign Investment Industries Guidance Catalogue (FDI Catalogue) categorises different industrial sectors as encouraged, restricted or prohibited when it comes to FDI. It should be noted that although a sector is classified as encouraged, it does not mean that this sector is free of investment barriers when investing in China, but that companies in such sectors can benefit from simpler approval procedures. On the 2015 list of the FDI Catalogue, four elements of the manufacture of motor vehicles are listed as encouraged and one element has

[408] Lu, H., Price, L. 2012. China's Industrial Carbon Dioxide emissions in manufacturing subsectors and in selected provinces.

been listed as restricted. The restricted element concerns the "manufacture of auto vehicle, special vehicle and motorcycle", where the shares of Chinese partners shall not be lower than 50%.[409] For the other transport equipment sector, nineteen elements are categorised as encouraged and one is categorised as restricted. The restricted element concerns "repairing, designing and manufacturing of a ship" where the Chinese partner shall hold the majority of the votes.[410] Both sectors are not mentioned on the list of prohibited FDI. Compared to the 2011 version of the catalogue, two elements of the transport equipment sector have been moved from the restricted category to the permitted category, namely railway freight transport companies, and cross-border automobile transport companies.[411] These guidelines are also seen as a source of uncertainty. According to SEA Europe the guidelines are updated based on the need and strategy of the Chinese government. Consequently restrictions and conditions per sector can change each time the guidelines are updated.[412]

Additional to the FDI Catalogue of the Ministry of Commerce, the sector faces other barriers to investment. From these barriers the most burdensome are: government practices, foreign ownership restrictions and Intellectual Property (IP) infringements.[413] Due to inter alia local protection or close ties between Chinese companies and local governments, there is currently a lack of a level playing field between Chinese and foreign companies. This has also been reported in the Copenhagen Economics impact assessment, which indicates that the enforcement of environmental and labour requirements is more strict in foreign companies compared to Chinese.[414] A study by the US Congressional Research Service also highlights the IPR issue in the sector. It mentions that "China's independent carmakers have variously been accused of using reverse engineering and copying of foreign brands and models in pursuit of growth."[415] Also SEA Europe has indicated that their members have reported IRP violations.[416]

With regards to the manufacture of motor vehicles, the European Automobile Manufacturer's Association has confirmed that the joint venture requirement is the most burdensome investment barrier for automobile companies investing in China.[417] However, the lack of transparency forms also a significant barrier.

Within the Maritime Technology Industry, a substantial problem is the lack of transparency and the lack of written regulations. Many members of SEA Europe that invest in China mentioned barriers to investment that have officially not been written in down China.[418] This is a significant issue, as these barriers do not appear when companies do their research on investing in China, but once the company invests in China they are told about certain investment barriers by the Chinese companies. A very burdensome barrier concerns the Scrapping & New building subsidy program. In order to receive the subsidy, the share of local marine equipment must be at least 70 percent. The term "local" has limited interpretation space, sales offices of foreign suppliers in China are not qualified as local, the same applies to foreign owned manufacturing companies established in China. Since marine engines represent about 40 percent of the value of the ship, EU engine producers can never sell their engines to these ships, regardless of where they are based. This requirement has not been written down, but foreign companies were told these restrictions stem from internal communications.[419] Foreign invested life-saving equipment companies are not able to provide their services on Chinese flagged ships, even if this company is located in China. This can only be provided to foreign flagged vessels that enter Chinese ports or shipyards. EU companies in China also face unofficial policies by big state owned shipyards (on top of official policies on local content rules) aiming at a 100 percent local content for equipment, and face also difficulties in transferring payments out of China. [420]

Another issue in the Maritime Technology Industry is the joint venture requirement. Given the lack of expertise for the design and/or production of equipment, Chinese firms are eager to have joint ventures with European companies. According to SEA Europe, the Chinese aim to

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409 Catalogue for the Guidance of Foreign Investment Industries (Amended in 2015).
410 Catalogue for the Guidance of Foreign Investment Industries (Amended in 2015).
411 MinterEllison, China's Foreign Investment Industries Guidance Catalogue (2015).
412 SEA Europe position paper on EU-China investment agreement, 2015
413 Future Opportunities and Challenges in EU-China Trade and Investment Relations 2006-2010 (2007).
414 Copenhagen Economics, 2012. EU-China Investment Study.
415 Rachel Tang, 2012. China's auto sector development and policies: issues and implications.
416 Interview with SEA Europe
417 Stakeholder workshop, 5 July 2016, input ACEA
418 Stakeholder workshop, 5 July 2016, input Netherland Maritime Technology
SEA Europe position paper on EU-China investment agreement, 2015
419 Idem
420 Interview with SEA Europe

have a cooperation period that is long enough for them to acquire the relevant know how, but at the same short enough so they can soon apply the knowledge themselves and no longer need the European company. When an European company prefers to sell the final product that is essential to a Chinese shipyard instead of cooperating in the production process, the European firm experiences all kind of troubles like for example payment delays, demands for extra installation, and non-payment for these services. In this way the Chinese shipyard hopes that the next time the EU firm will enter in a joint venture.[421]

7.2.3. Impact assessment

In this section we will discuss the potential long run impacts of the future investment agreement. We will focus only on the reciprocal scenarios. Within the reciprocal scenario we will look at both an ambitious and less ambitious scenarios as well as both low spill-over and high spill-overs. As indicated earlier, these impacts results stem from the CGE modelling[422] conducted by Copenhagen Economics and will be complemented with input from the stakeholder survey, the stakeholder workshop, and interviews.

Economic impacts

Table 7.9 shows that expected impact on output of the EU sector is small, but positive. In the most ambitious scenario the EU motor vehicle sector is expected to see an increase of 0.7 percent in output and the EU other transport equipment sector an increase of 0.5 percent. For both sectors the impacts are about ten times higher when high spill-overs are assumed compared to low spill-overs.

Table 7.9 Impact on EU output

	Ambitious		Less Ambitious	
	Low spill-overs	High spill-overs	Low spill-overs	High spill-overs
Manufacture of motor vehicles and (semi) trailers	0.07%	0.70%	0.02%	0.21%
Manufacture of other transport equipment	0.04%	0.48%	0.01%	0.14%

Source: Copenhagen economics 2012, flexible labour closure.

Contrary to the EU output of the two sub-sectors, the turnover of the current EU MNE's in China is expected to decrease for both motor vehicles and other transport equipment, with respectively 8 and 46 million euro in the most ambitious scenario (i.e. ambitious and high spill-overs). The decrease in turnover is lower for the other three less ambitious scenarios. For motor vehicles, turnover of EU MNEs in China is expected to increase when low spill-overs are assumed instead of high spill-overs.

If current barriers to investment in China are removed it is likely that this could also benefit countries other than the EU (hence the spill-overs). For example increased transparency in regulation applies to all, and not solely to EU investors. When looking again at Table 7.10 we see that with low spill-overs the EU MNEs in the motor vehicle sector will gain, and with high spill-overs will lose out. For other transport equipment, the losses for EU MNEs will be the smallest with low spill-overs. It is possible that the EU MNEs currently operating in China might face increased competition (from investors from other countries) and lose some of the market share and see a slight decrease in their turnover.

Table 7.10 Impact on EU MNEs turnover in China (million euro)

	Ambitious	Less Ambitious

[421] Interview with SEA Europe

[422] At sector level, the modelling includes the expected impact on output and employment of the EU sector and turnover and employment of EU MNEs in China.

	Low spill-overs	High spill-overs	Low spill-overs	High spill-overs
Manufacture of motor vehicles and (semi) trailers	19	-8	6	-2
Manufacture of other transport equipment	-14	-46	-4	-14

Source: Copenhagen economics 2012, flexible labour closure.

ACEA considers that the main investment barrier in the automotive industry is represented by the 50 percent equity cap requirement for establishing joint ventures. The possible – although challenging – removal of this requirement may be hard to quantify in terms of increased investment. Nevertheless, they support the removal of investment restrictions in the automotive sector in China, so that their members may increase their investments in China on the basis of perceived market developments with or without Chinese joint venture partners.[423]

As for the Maritime Technology industry, the sector could benefit if the investment agreement would tackle the transparency issue or even address the investment barriers that are currently not formally written down. This could not only be beneficial for investment, but also for the production of the sector. For example, as indicated above, the share of local marine equipment must be at least 70 percent in new build ships in order to receive a subsidy. Since engines often already make up 40 percent of a ship, EU companies cannot supply their engines to new ships and boats in case the builders of these ships and boats like to receive the subsidy. If this local content requirement is lowered or removed, the builders of ships and boats can now also use EU engines and still be able to receive the subsidy. Although there might be several sensitive issues within the sector, SEA Europe has indicated that they expected larger impacts than the modelling results of Copenhagen Economics as presented in Tables 7.9 and 7.10. A possible explanation for this is that the data in the CGE model likely only captures the construction part of the shipbuilding industry. Stakeholders have indicated that they do not think it likely that the investment agreement will result in increased investments in the EU. The EU market is already open to Chinese investments and does not have significant investment barriers. As indicated above, this is not the case for EU companies investing in China. Consequently EU stakeholders hope that the investment agreement will result in a level playing field for EU investors.[424]

Social impacts

In terms of employment in EU MNEs in China, some relatively small increases or decreases are expected depending on the scenario. For the most ambitious scenario employment is expected to decrease by 100 and 400 employees in the motor vehicles and other transport equipment sectors respectively. When looking at the other scenarios we see that employment is expected not to change in the less ambitious scenario with high spill-overs and will increase by 100 and 200 employees when low spill-overs are assumed for respectively the less ambitious and ambitious scenario. In the other transport equipment sector we expect no changes in employment in the less ambitious scenario with low spill-overs and a decrease of 100 employees in the other two scenarios.

Table 7.11 Impact on EU MNEs employment in China (thousand)

	Ambitious		Less Ambitious	
	Low spill-overs	High spill-overs	Low spill-overs	High spill-overs
Manufacture of motor vehicles and (semi) trailers	0.2	-0.1	0.1	0.0
Manufacture of other transport equipment	-0.1	-0.4	0.0	-0.1

Source: Copenhagen economics 2012, flexible labour closure.

[423] Stakeholder workshop, 5 July 2016
[424] Idem

At the EU level, low skilled and high skilled employees are expected to equally gain within their respective sectors. The expected increases in employment are 0.6 percent in the motor vehicles sector and 0.4 percent in the other transport equipment sector.

Table 7.12 Impact on EU employment by skill type

	Share of total employment	Ambitious scenario, high spill-overs	
		Low skilled	High skilled
Manufacture of motor vehicles and (semi) trailers	3%	0.6%	0.6%
Manufacture of other transport equipment	1%	0.4%	0.4%

Source: Copenhagen economics 2012, flexible labour closure.

The employment impacts both for EU MNEs in China and for the EU sector as a whole follow the turnover/output impacts.

Although the modelling does not provide any impacts on employment in China, it is likely that the agreement will lead to some small increases in employment. In the case of other transport equipment, a reduction of barriers to investment could result in more companies investing, establishing in China. As these companies need employment, it is likely that part of total employment will consist of Chinese employees.

Environmental impacts

The Copenhagen Economics impact assessment did not model any environmental impacts at sector level. In this SIA we have conducted an additional environmental impact analysis at sector level. The estimations are based on baseline values, intensity coefficients and expected output changes, and thus present only the scale effect and not the composition or technique effect.[425] The results are presented below.

Since the expected changes in the emission of air pollutants and energy are directly linked to the expected changes in output, an increase in output will automatically result in an increase in the emission of air pollutants and energy use, and vice versa a decrease in output will automatically result in a decrease in these indicators. Within the EU the emissions of all five air pollutants are expected to increase. The largest increases are expected in the ambitious scenario with high spill-overs. The less ambitious scenario with low spill-overs would cause a much smaller increase in the emission of air pollutants and energy use. The expected impacts for China are however much smaller than for the EU, with even a decrease in the emission of air pollutants and energy in the two scenarios with high spill-overs.

Table 7.13 Environmental impact in the EU, transport equipment, reciprocal scenario

	Ambitious		Less Ambitious	
	Low spill-overs	High spill-overs	Low spill-overs	High spill-overs
CO2 (kt)	6.8	83.8	1.9	24.6
CH4 (kt)	1.6	19.8	0.5	5.8
N2O (kt)	0.2	2.6	0.1	0.7
NOx (kt)	14.3	175.8	4.0	51.6
SOx (kt)	3.4	42.3	1.0	12.4
Energy use (TJ)	158.9	1,955.9	44.8	574.5

425 More details about the estimations can be found in Chapter 6.

Source: Author's calculations, flexible labour closure

Table 7.14 Environmental impact in China, transport equipment, reciprocal scenario

	Ambitious		**Less Ambitious**	
	Low spill-overs	High spill-overs	Low spill-overs	High spill-overs
CO2 (kt)	1.5	-16.4	0.6	-4.9
CH4 (kt)	0.2	-1.9	0.1	-0.6
N2O (kt)	0.0	-0.4	0.0	-0.1
NOx (kt)	4.5	-48.8	1.8	-14.5
SOx (kt)	3.7	-39.9	1.5	-11.8
Energy use (TJ)	32.4	-349.8	13.0	-103.6

Source: Author's calculations, flexible labour closure.

Since these tables only show the scale effect of the environmental impact, we cannot say what the total impact would be. Generally speaking the technique effect results in a decrease in the emission of air pollutants whereas the composition effect can be either positive or negative. The overall impact will depend on which of these three effects dominates. Additional to these numbers, the EC impact assessment mentions that it is not likely that environmental standards will be lowered in order to attract investments, as this has not been experienced significantly in the past.

7.3. Sector study Mining and Energy Extraction

7.3.1. Baseline

This case study covers the Mining and Energy Extraction (MEE) sector of the economy. It consists of the following subsectors; Mining of coal and lignite (NACE B5), Extraction of crude petroleum and natural gas (NACE B6), Mining of metal ores (NACE B7), Other mining and quarrying (NACE B8), and Mining support service activities (NACE B9). It is important to note from the outset that this sector does not cover activities such as downstream processing of oil, or any other manufacturing processes for that matter. Rather, the range of goods that are covered by these MEE products include natural gas and metal ores such as iron ore and rare-earth minerals. This latter group of products is especially relevant in light of this SIA, as China is said to be responsible for the production of 16 out of 20 materials from the EU Critical Raw Materials List (COM(2014) 297 of the 26th of May 20154), including close to 90 percent of the global rare-earth mineral production. It has recently lifted its export quotas for various minerals, after having lost two WTO dispute cases[426], though the rare-earth and other minerals sector remains closed for foreign investments.[427]

The global MEE sector

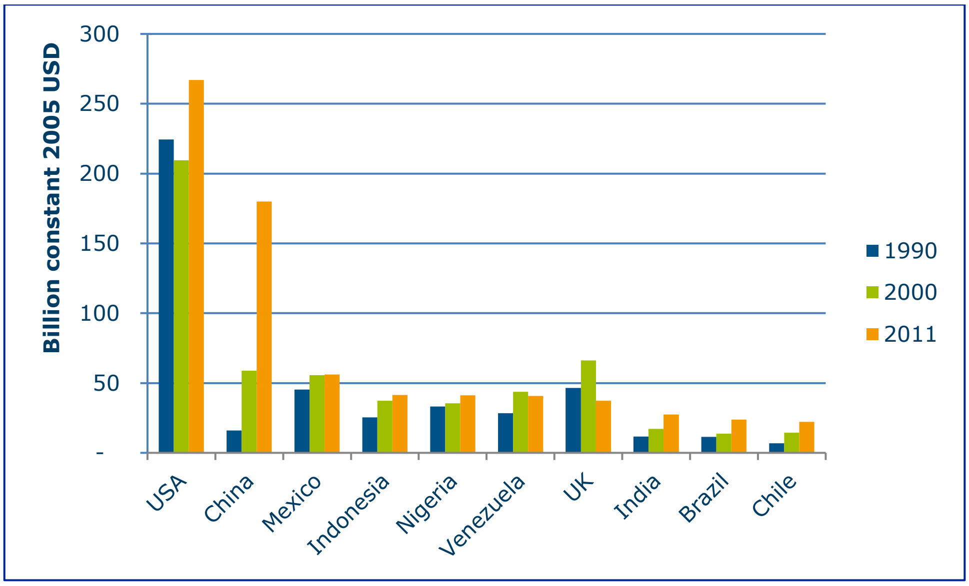
Figure 7.5 displays the value added in constant 2005 USD for a number of countries in the MEE sector. Unfortunately, this economy-wide dataset only covers 41 countries, such that large MEE producing countries, notably Australia are missing. Among these 41 countries, the USA has been the most important producer (in terms of value added) of MEE products in all three reported years, but the rise of China is noteworthy. Whereas the value added in this sector in China was a little over 15 billion in 1990, it is now more than ten times as high. The MEE sector

[426] A new WTO dispute on a number of other minerals is currently on-going.

[427] Wall Street Journal of Jan. 5, 2015. *China Ends Rare-Earth Minerals Export Quotas.* Accessed on June 17, 2016. http://www.wsj.com/articles/china-ends-rare-earth-minerals-export-quotas-1420441285.

in other countries such as Indonesia, Nigeria, India, Brazil and Chile has also expanded in the two decades between 1990 and 2011. More recent data is not publically available.

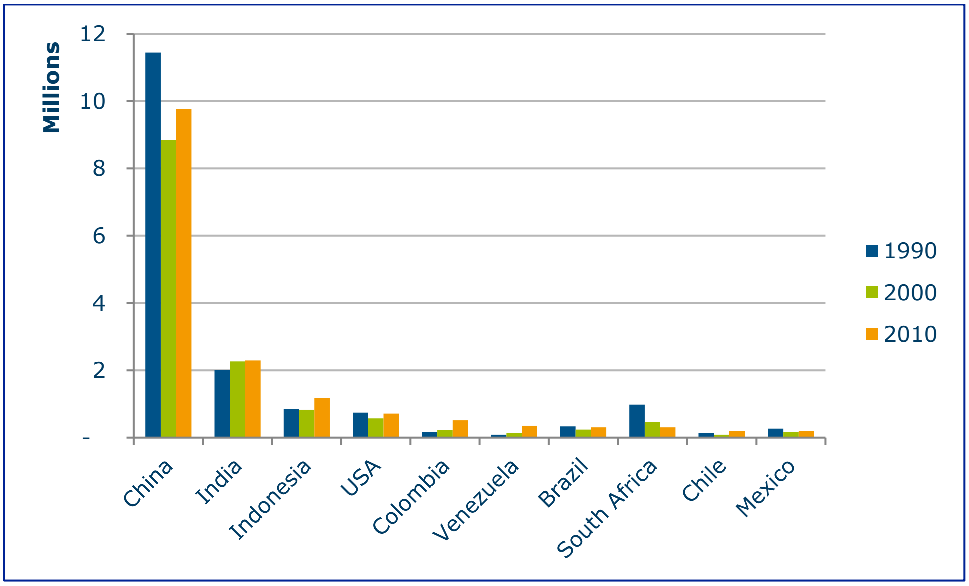
Figure 7.5 Value added (constant 2005 USD) in mining & quarrying, selected countries



Source: GGDC 10-sector Database (http://www.rug.nl/research/ggdc/data/10-sector-database). Data reported for 41 countries only, selected countries are the top 10 largest 2011 values. For 2011 data: 2010 for USA, China and 2009 for UK, 2009. Values converted from 2005 constant LCU to USD through Worldbank 2005 exchange rates. Ecorys calculations.

Employment data in the MEE sector over time is presented in Figure 7.6. China is still by far the country with the largest number of workers in the sector (9.75 million as of 2010), however, there are about 2 million fewer people employed in the MEE sector than in 1990. Other large countries in terms of employment are India, and to a lesser extent Indonesia and the USA. Whereas in 1990 roughly a million people were employed in the South African MEE sector, this number has dropped significantly in the two decades after.

Figure 7.6 Number of workers in mining & quarrying, selected countries

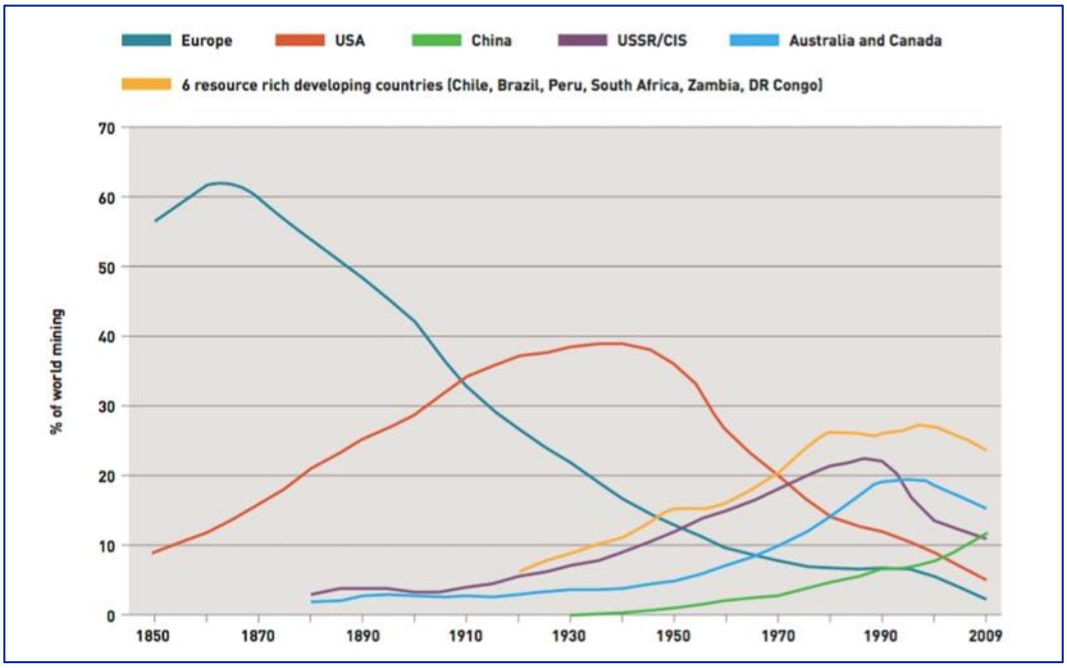


Source: GGDC 10-sector Database (http://www.rug.nl/research/ggdc/data/10-sector-database). Data reported for 41 countries only, selected countries are the top 10 largest 2010 values. Ecorys calculations.

One of the sub-activities that fall under the header of MEE is metal mining. Figure 7.7 shows the respective shares of a number of countries/regions in the world output. While Europe was the leading region for most of the nineteenth century, the USA took over this position at the start of WWI and maintained it until 1970. Lately, China has overtaken both Europe and the USA in

terms of market share, and is now the second most important country in metal mining (just after Australia).[428]

Figure 7.7 Share of metal mining in world output, from 1850 until 2009



Source: Raw Materials Group, Stockholm, Sweden, as reported in *Trends in the mining and metals industry* by the International Council on Mining and Metals (http://www.icmm.com/document/4441).

The EU MEE sector

In terms of employment and number of enterprises, the EU MEE sector has lost some ground over the last decade, as Table 7.13 shows. The number of enterprises has hovered around 20,000 in the EU28, most of them active in NACE 08; other mining and quarrying. The number of people employed in the sector has decreased by some 20 percent between 2007 and 2014 for the MEE sector as a whole (NACE B). The turnover has been remarkably stable during that time period, at around 250 billion euros every year. The annual total value added of the MEE sector in the EU has not yet regained its pre-crisis levels, though the value added as a share of turnover has remained relatively stable. Most of the value added is generated by activities under NACE 06; extraction of crude petroleum and natural gas.

Table 7.13 Enterprise statistics for the European Union, NACE B, B06 and

Subsector/indicator	2007	2008	2009	2010	2011	2012	2013
Mining and quarrying (NACE B)							
Number of employees	690,000	660,500	627,700	602,000	605,000	602,300	572,000
Number of enterprises	21,100	20,000	20,000	20,100	19,700	19,000	19,000
Turnover (mln EUR)	240,000	253,220	190.649	220,000	252,000	260,221	250,540
Value added (mln EUR)	94,000	101,614	71,754	84,200	92,000	85,903	78,459

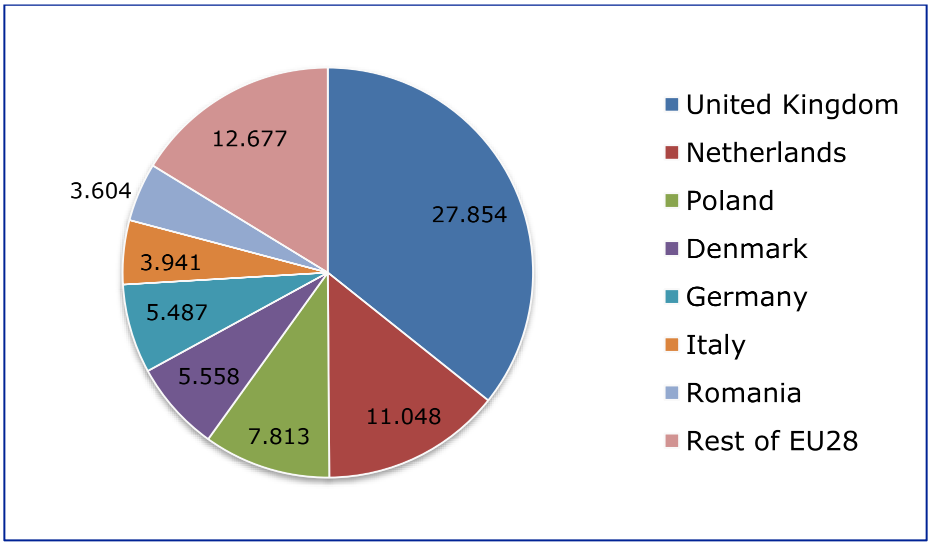
428 Trends in the mining and metals industry by the International Council on Mining and Metals. Accessed on June 18, 2016 http://www.icmm.com/document/4441.

Subsector/indicator	2007	2008	2009	2010	2011	2012	2013
Extraction of crude petroleum and natural gas (NACE B06)							
Number of employees	78,900	78,800	74,500	73,000	78,300	79,100	76,900
Number of enterprises	343	309	290	310	384	395	416
Turnover (mln EUR)	156,709	172,477	124,395	142,705	172,310	181,263	172,599
Value added (mln EUR)	58,412	64,201	42,757	50,010	55,802	51,011	46,199
Other mining and quarrying (NACE 08)							
Number of employees	240,200	229,500	210,600	202,700	202,100	200,000	185,300
Number of enterprises	18,939	18,064	n.a.	17,963	17,000	16,841	16,000
Turnover (mln EUR)	42,095	41,203	33,408	34,282	36,789	35,053	36,422
Value added (mln EUR)	14,878	14,747	11,723	11,377	12,241	11,364	11,856

Source: Eurostat Structural Business Statistics. 2007-2010 data are EU27, 2011-2014 are EU28.

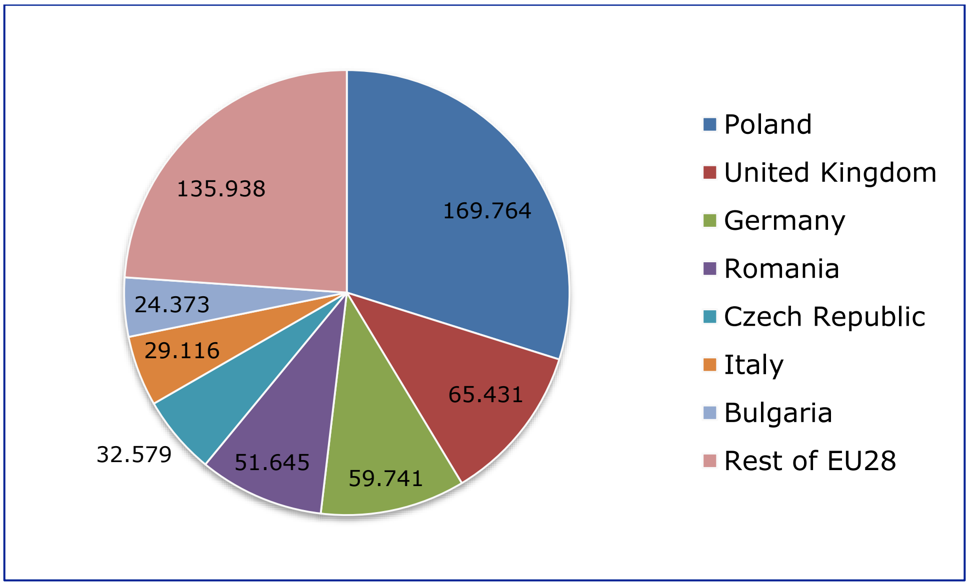
Together, the UK and the Netherlands make up around half of the 80 billion euro of value added generated in the EU MEE sector in 2013. Figure 7.8 displays the eight largest MS in terms of value added within the MEE sector, where 5 MS account for almost two-third of the total value added in the sector. It is therefore a relatively concentrated sector within the EU, with most value added in northwest Europe and Poland. In terms of total employment within the MEE sector, Figure 7.9 show that the Netherlands and Denmark drop out of the top 8, indicating that the value added in these two countries is predominantly created by non-labour intensive activities such as the extraction of natural gas. In Poland, the UK, Germany and Romania on the other hand, a large number of people is employed in the MEE sector. Most of the labour intensive, low-value added mineral extraction activities take place in Eastern Europe, where the value added per employee is significantly lower than in Western Europe.

Figure 7.8 Value added at factor cost, per EU MS in 2013, million euros



Source: Eurostat. NACE code B. Ecorys calculations.

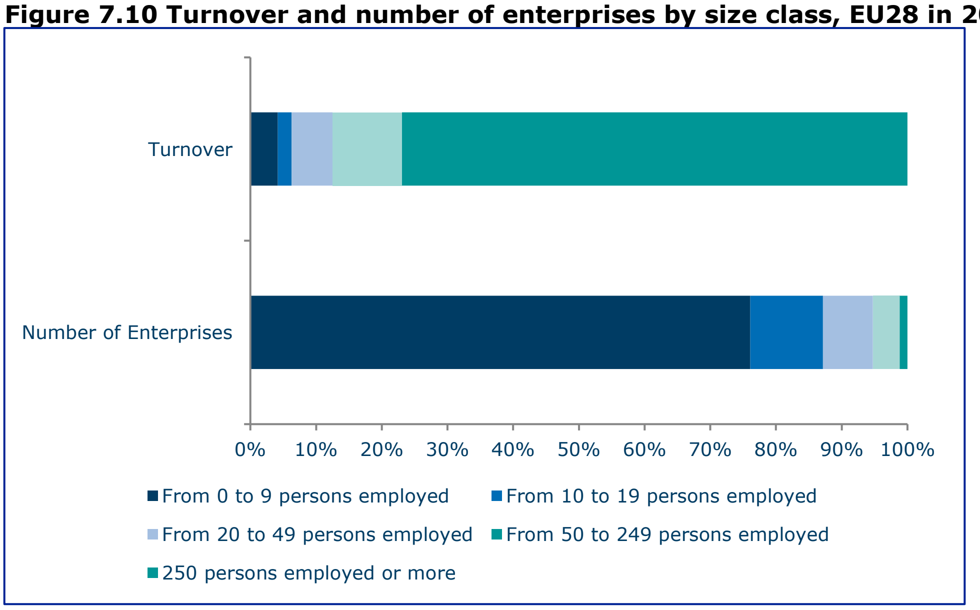
Figure 7.9 Number of employees in MEE sector, per EU MS in 2013



Source: Eurostat. NACE code B. Ecorys calculations.

The sector is characterized, as virtually every other sector in the economy, by the distribution of number of enterprises and turnover among the different size classes as displayed in Figure 7.10. Roughly 75 percent of the enterprises has less than 10 employees, whereas only 1.2 percent is classified as a large enterprise. These 240 large enterprises in the EU, however, account for two-thirds of the total turnover in the sector.

Figure 7.10 Turnover and number of enterprises by size class, EU28 in 2013



Source: Eurostat. NACE code B. Ecorys calculations.

The Chinese MEE sector

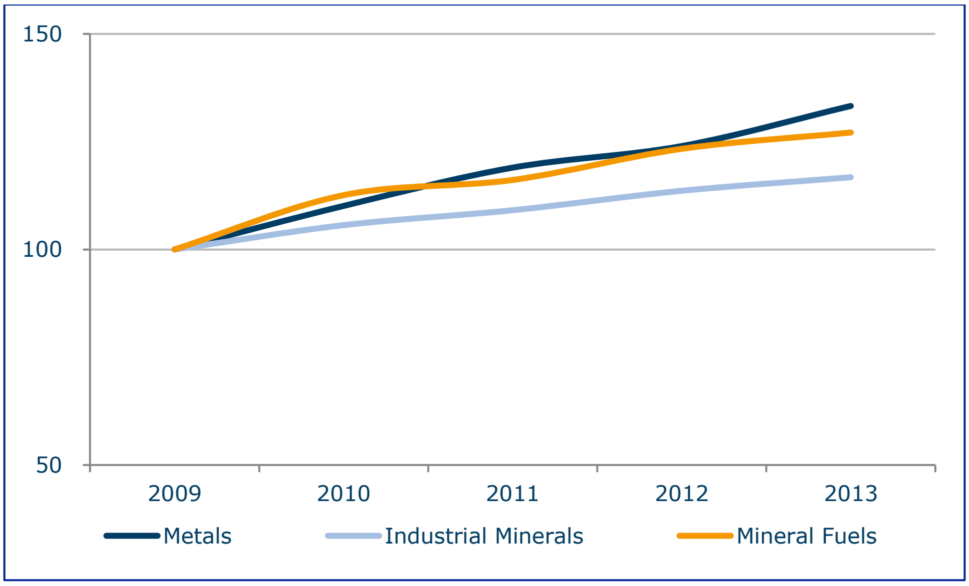
The functioning and even existence of the MEE sector in a country is obviously highly dependent on the presence natural resources. In China, these resources are not distributed equally among the three main regions. The Eastern Region, which covers the provinces that border the sea, has a relative shortage of such resources (both energy and mineral). The Central Region, on the other hand, contains more than half of the total Chinese resources of crude oil and crude coal. It

is therefore the main source of energy resources in China. Mineral resources are predominantly present in the Western Region of China, where it is one of the pillars of the economy.[429]

The general economic growth of the Chinese economy has had an obvious impact on the MEE sector in China. According to the National Bureau of Statistics, roughly 6.4 million workers were employed in the "Mining" sector in 2013 (which has a narrower definition than the data used in Figure 7.6, hence the lower figure). These workers earned a higher average annual salary than the average salary for the entire economy; 60,000 Yuan (approx. 8,100 EUR) for workers in the MEE sector versus 52,000 Yuan (approx. 7,000 EUR) as the economy average.[430] In 2003, MEE sector employees earned just below the national average. The additional sector-specific demand for labour was larger than the increase in labour demand for the economy as a whole, thus pushing wages upwards.[431]

China is now the second largest producer of non-fuel MEE products, after Australia. It is likely that China will overtake Australia in the next years, as the sector's output grew by 555% between 2000 and 2010, some 220 percentage points over Australia's growth rate during that decade.[432] Since 2010, however, the growth of the production output in China seems to be levelling off, in response to the general slowdown of the Chinese economy. On the basis of Chinese production data gathered through the US Geological Survey[433], Figure 7.11 shows that Chinese production of metal ores has expanded by 33 percent between 2009 and 2013, more so than mineral fuels (25 percent) or industrial minerals (17 percent).

Figure 7.11 Production of MEE products in China, 2009 = 100



Source: US Geological Survey (USGS) Data. Ecorys calculations. Unweighted average of the index figures for each of the reported MEE sector products listed in the Annex of the USGS.

Foreign Direct Investment in the MEE sector

Investment in the MEE sector from the EU28 perspective is fairly unilateral. Member States tend to have significant FDI positions in the MEE sector in many other countries, including the USA and resource-rich countries such as Canada and Brazil. The total of outward FDI in the MEE sector in 2012 amounted to EUR 226 billion. Investment positions in the EU from third countries

429 A Guide to Investment in China's Mineral Industry (2012). Chinese Academy of Land and Resource Economics. http://www.chinaminingtj.org/ru/document/A_Guide_to_Investment_in_China's_Mineral_Industry(2012).pdf.

430 National Bureau of Statistics of China: 2014 edition: http://www.stats.gov.cn/tjsj/ndsj/2014/indexeh.htm. Accessed tables 4-4 and 4-7 on June 18, 2016.

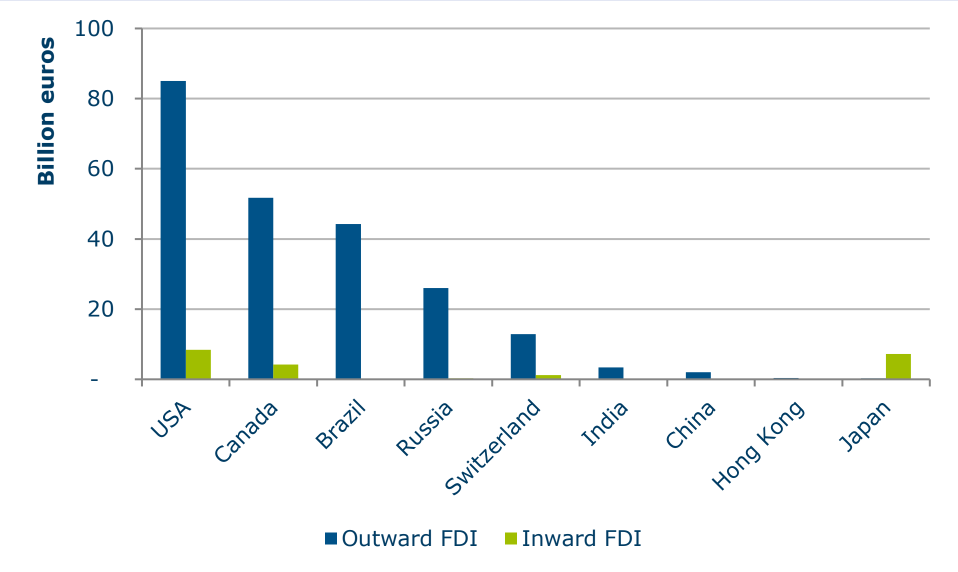
431 National Bureau of Statistics of China: 2006 edition: http://www.stats.gov.cn/tjsj/ndsj/2006/indexeh.htm. Accessed table 5-24 on June 18, 2016.

432 International Council on Mining & Metals (2012). The role of mining in national economies. http://www.icmm.com/document/4440.

433 2012 Minerals Yearbook of the USGS, by Pui-Kwan Tse. *The Mineral Industry in China 2013.*

are much more limited. Other than the USA, Canada and Japan, no country has invested more than EUR 1.5 billion in 2012.

Figure 7.12 EU28 Direct Investment positions in MEE sector, selected countries in 2012



Source: Eurostat data. Ecorys calculations. China is China (except for Hong Kong).

EU-China FDI relations in the MEE sector are also heavily skewed in one direction. As can be seen in Table 7.14 the EU has FDI positions of around 2 billion in the Chinese MEE sector, which is relatively small compared to EU MEE FDI positions elsewhere. It is likely that the investment barriers introduced below are the main driver of this result. More recent data than 2013 is not yet available, but the investment position has increased by more than 50 percent in the last 6 years for which it is reported. Chinese investment in the EU28 MEE sector is only marginal, with positions ranging from 3 to 101 million euros between 2008 and 2012.

Table 7.14 Chinese FDI positions from EU28 perspective, in million euros.

Direction	2008	2009	2010	2011	2012	2013
Outward FDI	1 042	1 025	2 013	2 459	1 995	1 571
Inward FDI	5	3	101	15	16	N.A.

Source: Eurostat data. Ecorys calculations. China is China (except for Hong Kong).

Social issues

The MEE sector has created large benefits to the Chinese economy, where the coal industry has powered the industrial base that now ships its goods all across the globe. However, a number of important drawbacks need to be mentioned. The MEE sector is a resource-intensive sector, leading to high emission levels and excessive demand for land and water. The environmental impact of the MEE sector will be discussed below, but we will first introduce some social issues related to the development of the MEE sector in China.

There are a number of channels through which the MEE sector affects social issues and creates social impact.[434] The first one deals with the high demand for land and water. In order to develop a site on which mining activities can take place, land (residential or agricultural) may

[434] The Climate and Finance Policy Centre, Greenovation Hub (2014). China's Mining Industry at Home and Overseas: Development, Impacts and Regulation. Accessible here: http://www.ghub.org/cfc_en/wp-content/uploads/sites/2/2014/11/China-Mining-at-Home-and-Overseas_Main-report2_EN.pdf (Accessed on June 19, 2016).

need to be expropriated. It can also lead to the erosion of arable land, creating local food insecurity.

Secondly, most MEE sector activities require chemicals at some point in the process. Without strict safety regulations, this may have adverse health effects for the local communities that can suffer from the contaminated water sources. Other safety concerns related to the development of a mining site may also affect the local communities, where negative health effects as a result of pollution will hamper economic development.

Thirdly, upon completion of the resource, the local economy may suffer if it has focused too much on this single activity. Once the MEE activities cease, many workers will become unemployed. In 2011, there were 69 such 'resource depleted' cities in China.[435] A similar impact comes from fluctuations in the global commodity prices, when volatility and insecurity can be a barrier for private investments in housing, education and health.

Most tellingly, and most severely, the working conditions in the MEE sector are an important issue to address. Mining accidents all over the world often make the headline of the news, China is no exception, as it makes these headlines more frequently than other countries.[436] However, according to the (official) statistics, the MEE sector has reduced the number of fatalities in the last decade. As Figure 7.13 reflects, there were some 7,000 fatalities in 2002, whereas a decade later the number approached 1,000. The coal mines have become safer over time, though some argue that the official statistics underreport the actual deaths.[437]

Figure 7.13 Number of coal mine deaths in China over time

Source: 2000-2011 data comes from http://news.sina.com.cn/c/2012-02-27/131424010277.shtml, 2012-2014 data comes from http://www.rfa.org/english/commentaries/energy_watch/china-coal-deaths-03162015103452.html.

Environmental issues

As mentioned above, the MEE sector is very resource-intensive, as large amounts of water and electricity are necessary at various points in the extraction process. The heavy dependence on water can possibly have adverse effects on the groundwater resources, as some 70% of the Chinese coal mines are located in water-scarce regions. Moreover, the use of chemicals in the mining and processing stages may have a negative impact on the environment as well.

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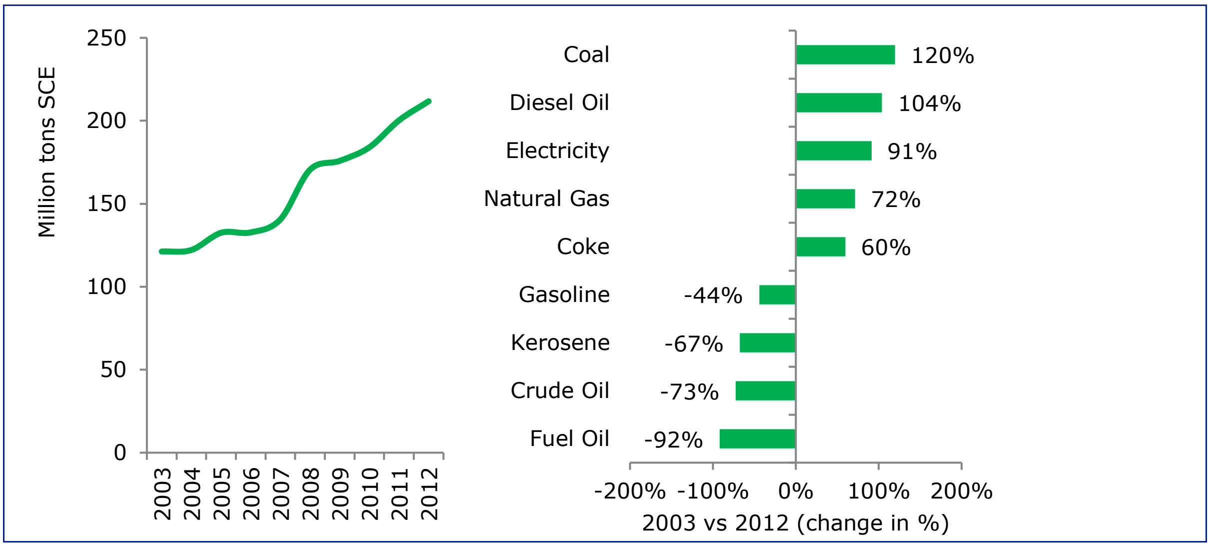
435 National Development and Reform Commission of China, as in Greenovation Hub (2014).
436 For instance, the Guardian in 2014 (https://www.theguardian.com/world/2014/jun/04/china-coal-mine-accident-kills-22), and the New York Times in 2015 http://www.nytimes.com/2015/12/18/world/asia/china-coal-mine-explosion.html?_r=0).
437 China Cuts Coal Mine Deaths, But Count in Doubt (2015). http://www.rfa.org/english/commentaries/energy_watch/china-coal-deaths-03162015103452.html (Accessed on June 20, 2016).

Especially if the toxic waste that comes from this chemical use is not properly disposed of, it may become an environmental hazard.[438]

Figure 7.14 displays the energy use in the Chinese MEE sector between 2003 and 2012. The total energy use of the MEE sector has been consistently rising, and almost doubled between 2003 and 2012. In part, this is due to the expanded output of the MEE sector. At a more detailed level, especially the use of coal, diesel, and electricity has increased over that period to power the MEE activities.

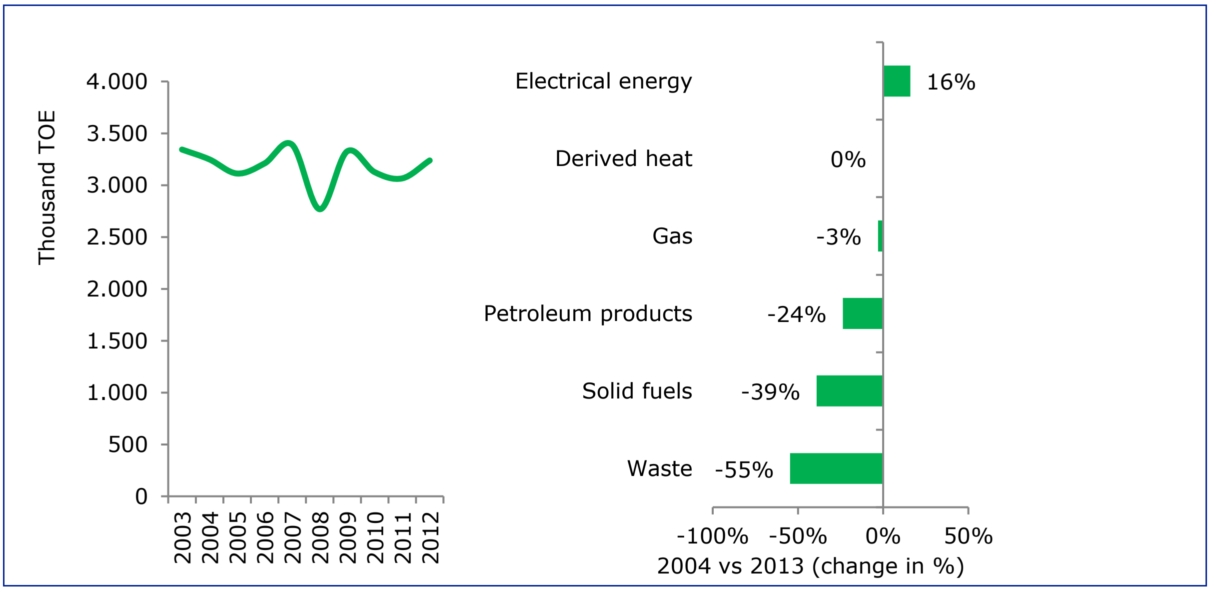
Figure 7.14 Energy use in the Chinese MEE sector, 2003-2012



Source: National Bureau of Statistics of China, Ecorys calculations. SCE is standard coal equivalent.

The European MEE sector has maintained a similar level of energy consumption throughout the decade between 2004 and 2013, despite the sharp decrease in 2008. Looking at a more detailed level, electrical energy accounts for almost half of the total energy consumption. The share of electrical energy has increased by 16 percent during the decade under consideration. Renewable energy sources are still an insignificant source of energy in the EU MEE sector.

Figure 7.15 Energy use in the EU MEE sector, 2004-2013



Source: Eurostat, Ecorys calculations. TOE is ton oil equivalent.

[438] The Climate and Finance Policy Centre, Greenovation Hub (2014). China's Mining Industry at Home and Overseas: Development, Impacts and Regulation.

Shale gas

One area of the MEE sector with severe environmental impact is shale gas. The extraction of shale gas can be considered an economic success in the US, whereas the European Union is more reluctant in exploiting this potential.[439] Shale gas extraction has to be seen in light of severe environmental costs, many of which are documented elsewhere.[440] While long-term social and environmental impact effects have yet to be studied, shale gas has been met with divergent political acceptance within the EU. France and Poland are predicted to have the largest reserves, but have opposing views on the development of shale gas activities. France (amongst a number of other MS) has placed a ban on fracking in 2011, whereas Poland first moved towards more investments in the shale gas sector, though this trend has recently reversed.[441]

In China, shale gas is seen by the government as a timely substitute for coal. It has therefore allowed foreign investors to join forces with Chinese firms in the exploration of shale gas extraction activities. In recent months, Royal Dutch Shell has withdrawn from the Chinese market due to disappointing drilling results, whereas BP has decided to invest.[442] The environmental implications of large scale shale gas extraction in China (largest estimated reserves in the world; 1115 trillion cubic feet[443]) have yet to be determined.

Challenges faced by the sector

The dependence on fossil fuels is one of the main challenges faced by the Chinese MEE sector. Adverse effects from volatile prices on the global market as well as the environmental degradation that goes hand-in-hand with the use of fossil fuels have guided Chinese policy through its 12th Five-Year Plan. Moreover, the government aims to further consolidate small coal mining companies and shut down outdated ones. The aim was to reduce the number of companies by about 60 percent, with the top 10 largest companies accounting for around 66 percent of the market.[444]

Among the challenges in the EU, the aging workforce that is active in the MEE sector was mentioned as one of the socio-economic challenges.[445] In a recent EU28 competitiveness assessment of the MEE sector, it was found that while the regulatory framework allows for a stable investment climate, it is also very complex and unevenly implemented across the EU28. Private sector encouragement is also lacking, vis-à-vis third countries, a trend that is also visible in R&D investments. On the other hand, a well-developed infrastructure and transport network, as well as a strong focus on social and environmental protection places the EU MEE sector on a sustainable path for the future.[446]

7.3.2. Market access issues

The MEE sector FDI landscape in China is largely unidirectional. There are very few European companies investing in Chinese mines, in line with the low value of outward EU28 stock in China in Table 7.14. The large players on the global market prefer to sell their products extracted

439 http://energy.gov/sites/prod/files/2013/04/f0/shale_gas_challenges_surface_impacts.pdf.
440 A list of EU studies can be found here; http://ec.europa.eu/environment/integration/energy/uff_studies_en.htm, including a recommendation to Member States; http://ec.europa.eu/environment/integration/energy/unconventional_en.htm
441 European Parliament Brief from December 2014. Accessed on June 23, 2016. http://www.europarl.europa.eu/RegData/etudes/BRIE/2014/542167/EPRS_BRI(2014)542167_REV1_EN.pdf.
442 Bloomberg news article on April 1, 2016. http://www.bloomberg.com/news/articles/2016-04-01/bp-taking-a-bet-on-china-s-shale-gas-while-shell-backs-out.
443 Energy Information Administration (2015). Accessed on June 24, 2016. http://www.eia.gov/analysis/studies/worldshalegas/.
444 PWC (2012) China's Mining Sector. Accessed on June 20, 2016: https://www.pwc.com/id/en/asia-school-of-mines/assets/chinas-mining-sector_benson-wong.pdf.
445 Solutions to Mining Industry Risk Challenges. Accessed on June 24, 2016. https://www.marsh.com/us/industries/mining-metals-minerals-insurance/solutions-to-mining-risk-challenges.html.
446 Study on the Competitiveness of the EU Primary and Secondary Mineral Raw Materials Sectors. Accessed on July 15, 2016. http://bookshop.europa.eu/en/study-on-the-competitiveness-of-the-eu-primary-and-secondary-mineral-raw-materials-sectors-pbET0215302/

abroad to meet the large demand within China, as opposed to developing mining activities inside China.[447]

Within the MEE sector, foreign investment is encouraged in some sectors, and restricted or prohibited in others. For instance, it is encouraged to foreigners to invest in the development of new technologies that make mining more efficient, and shale gas exploitation is also among the 'open' sectors.[448] On the other hand, there is a large number of closed sub-sectors. Special and scare coal, precious metals, precious non-metals, radioactive mineral products and rare earth metals are all excluded from foreign investment decisions. Exploring, mining and dressing of these MEE products is restricted or downright forbidden.[449] In the Copenhagen Economics (2012) EU-China Investment Study, these restrictions were also identified and listed as 'very' or 'extremely' important. Market access barriers often take the form of required contractual joint ventures, or the requirement for the Chinese partner to hold the majority of the shares. Tendering procedures require a license that is only granted upon a sufficient degree of local personnel, capital, equipment and experience.[450] In an attempt to remove the export restrictions on these raw materials through the WTO, the EU proposed to develop a dispute settlement panel that would examine these Chinese policies.[451] This panel was then established in November 2016 by the Dispute Settlement Body (DSB) of the WTO, tasked to look into the potential violation of China of WTO rules.[452] The decision on the validity of the Chinese export restrictions will have an impact on potential investments in the sector by EU companies, as well as the security of supply for EU industry.

Should the Chinese market be opened, either through this investment agreement or as an autonomous decision of the Chinese government, the European mining and energy companies are very well positioned to benefit from such a move. EU companies tend to be more environmentally sound and technologically more advanced, and are thus able to meet the requirements of the M&Q sector in the future.

More market access issues may be identified through stakeholder consultation in a later phase of this SIA.

7.3.3. Impact assessment

In the impact assessment conducted by Copenhagen Economics in 2012, not all CGE output tables contained the MEE sector. For instance, the impact on EU companies in China was not split out for the MEE sector. Table 7.15 and Table 7.16 present the findings for the MEE sector that were available. The impact on EU output in case of an ambitious agreement with high spill-overs presents the only impact figure that is different from 0. In this case, the output of MEE in the EU28 is expected to increase by a mere 0.01 percent. In any other scenario, there will be no impact on output. Similarly, Copenhagen Economics also presented the impact on EU employment, which is also (close to) none. Therefore, the combination of small inward FDI positions from China to the EU, and negligible impact from the CGE model leads to the conclusion that the EU MEE sector will hardly be affected by the investment treaty. Unless domestic policy changes as a consequence of the investment agreement, potential for new entrants is also likely to be limited.

Table 7.15 Impact on EU output (reciprocal, flexible labour supply), in percent

	Ambitious	Modest

447 KPMG (2006). Going for Gold: China as a Global Mining Player. Accessed on June 20, 2016: https://www.kpmg.com/CN/en/IssuesAndInsights/ArticlesPublications/Documents/China-mining-200611.pdf.
448 RVO (2016). Mining industry in China Accessed on June 20, 2016: https://www.rvo.nl/sites/default/files/2016/06/Mining-industry-in-China%202016.pdf.
449 PWC (2012) China's Mining Sector. Accessed on June 20, 2016: https://www.pwc.com/id/en/asia-school-of-mines/assets/chinas-mining-sector_benson-wong.pdf.
450 Copenhagen Economics (2012). EU-China Investment Study Annex. DG Trade study.
451 European Commission DG Trade (2016). EU files WTO panel request against Chinese export restrictions on raw materials. Accessed on June 16, 2017 http://trade.ec.europa.eu/doclib/press/index.cfm?id=1566
452 World Trade Organization (2016). Second panel established in dispute over Chinese export restrictions on raw materials. Accessed on June 16, 2017: https://www.wto.org/english/news_e/news16_e/dsb_23nov16_e.htm

	Low SO	High SO	Low SO	High SO
Mining and Energy Extraction	0.00	0.01	0.00	0.00

Source: Copenhagen Economics (2012).

Table 7.16 Impact on EU employment by skill type (reciprocal ambitious, high spill-overs), in percent

		Less skilled		More skilled	
	Share of total	Fixed closure	Flex closure	Fixed closure	Flex closure
Mining and Energy Extraction	0	0.0	0.0	0.0	0.0

Source: Copenhagen Economics (2012).

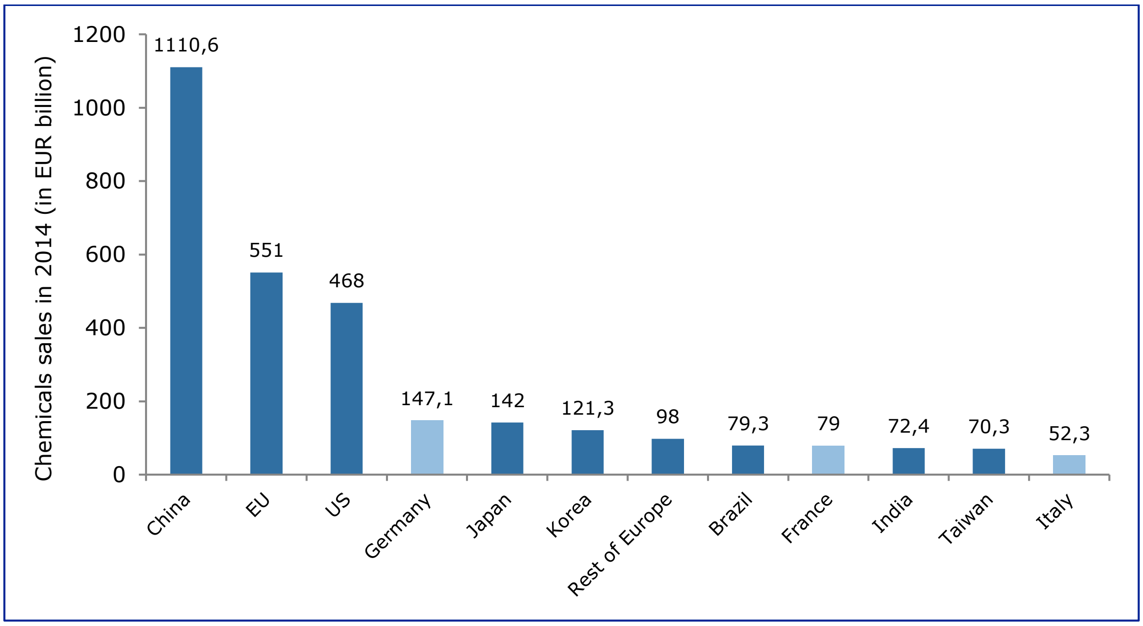
7.4. Sector study Chemicals

7.4.1. Baseline

The chemicals sector to be studied in more depth as part of this SIA consists of the following subsectors: manufacturing of coke and refined petroleum products (NACE C19), the manufacturing of chemicals and chemical products (NACE C20), and the manufacturing of rubber and plastic products (NACE C22). Specific examples of chemical products included are agrochemicals like fertilisers and pesticides, paints, consumer chemicals like soap and detergents, explosives, glues, and man-made fibres.

Before we zoom in on the chemicals sectors in the EU and China specifically, we first have a look at the global picture. Figure 7.16 below presents the breakdown of total chemicals sales in 2014 by country. While in 2004 the EU was still the world's leader in chemical sales with 31 percent of total sales, China is currently by far the largest seller of chemical products, followed at distance by the EU and the US. Within the EU, Germany, France and Italy are the largest players (see light blue bars).[453]

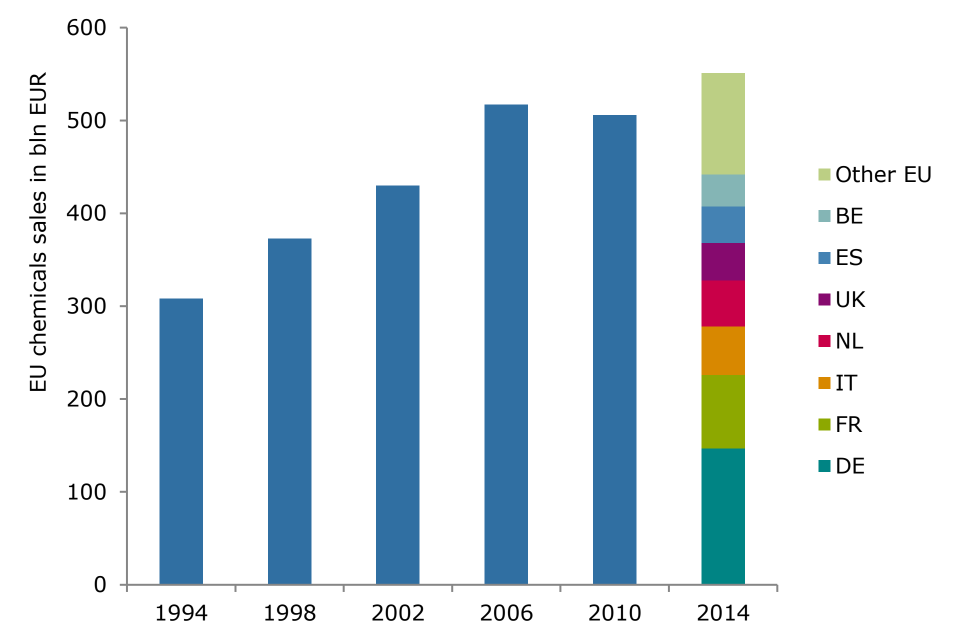
Figure 7.16 World chemicals sales in 2014 by country (in bln EUR)[454]



Source: European Chemical Industry Council (CEFIC), 2016.

453 CEFIC (2016), The European Chemical Industry. Facts & Figures 2016.
454 Data exclude pharmaceuticals. Rest of Europe covers Switzerland, Norway, Turkey, Russia, and Ukraine.

Figure 7.17 EU chemicals sales over time (in bln EUR)



Source: European Chemical Industry Council (CEFIC), 2016. Data excl. pharmaceuticals.

Figure 7.17 above shows that the sales of the EU chemicals industry have steadily increased over time. However, in 1994 the EU's market share was still 32.2 percent, while in 2014 this decreased to 17 percent, as the growth of world's chemicals sales has outpaced EU sales.

Between 2004 and 2014, the EU chemicals sector had an average annual growth rate of 0.4 percent. For China, this rate was 13.2 percent, thereby also significantly outpacing other emerging markets like Korea (3.6), India (3.4), Russia (2.6) and Brazil (1.2).[455]

Of the total EU sales, the percentage of chemicals sold outside the EU increased from 19 percent in 2004 to 25 percent in 2014, while the majority is still sold on the EU internal market. Traditionally, the EU has a trade surplus in extra-EU chemicals trade, although the surplus has been declining in the past years. After the US, China is the EU's second largest trading partner for chemicals, receiving 8 percent of EU chemicals exports.[456]

Size and development of the EU's chemicals sector

Table 7.17 below presents some basic statistics for the chemicals sector in the European Union. In terms of employment and enterprises, the manufacturing of rubber and plastic products is the largest subsector, while coke and refined petroleum products is smallest. The latter however shows the largest turnover figures for some of the years presented.

Table 7.17 Enterprise statistics for the European Union, NACE C19, C20 & C22[457]

Subsector / indicator	2005	2008	2009	2010	2011	2012	2013	2014
Manufacture of chemicals and chemical products								
Number of employees	1,272,700	1,200,000	1,160,000	1,140,000	1,200,000	n.a.	1,100,000	n.a.
Number of enterprises	29,080	28,580	28,263	28,611	28,208	28,320	28,329	28,662
Turnover (mln EUR)	460,836	n.a.	417,000	490,000	n.a.	n.a.	n.a.	533,743

455 CEFIC (2016), The European Chemical Industry. Facts & Figures 2016.
456 CEFIC (2016), The European Chemical Industry. Facts & Figures 2016.
457 C19 - Manufacture of coke and refined petroleum products, C20 - Manufacture of chemicals and chemical products, C22 - Manufacture of rubber and plastic products.

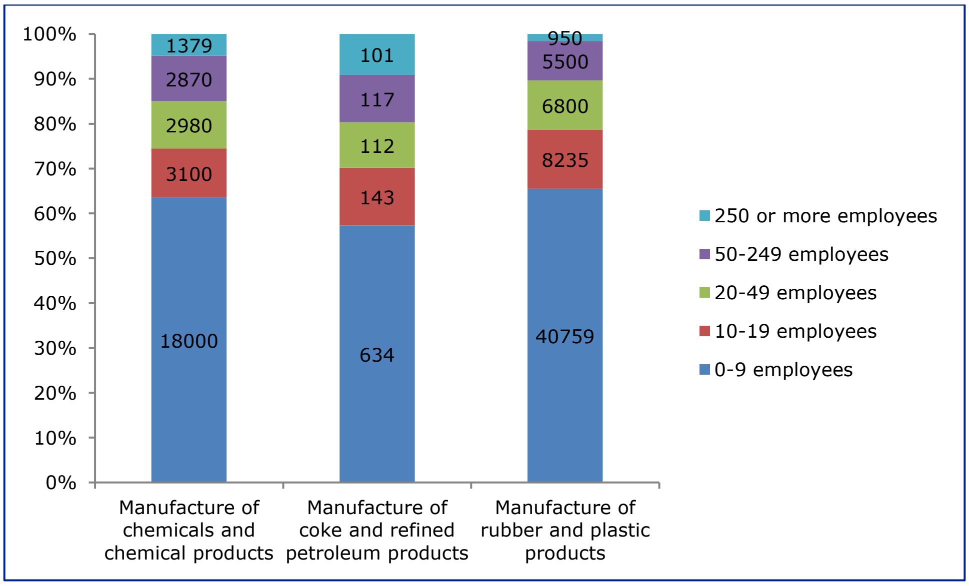
Value added (mln EUR)	n.a.	n.a.	91,600	111,000	110,000	110,000	110,000	n.a.
Manufacture of coke and refined petroleum products								
Number of employees	158,600	138,900	132,100	128,300	124,900	126,700	118,800	n.a.
Number of enterprises	1,128	1,200	1,194	1,120	1,114	1,153	1,108	1,091
Turnover (mln EUR)	508,606	567,423	390,493	500,187	608,649	685,390	606,177	519,748
Value added (mln EUR)	47,937	19,597	15,104	23,514	20,194	21,250	13,547	n.a.
Manufacture of rubber and plastic products								
Number of employees	1,737,700	1,716,100	1,581,000	1,564,400	1,611,100	1,581,000	1,586,300	n.a.
Number of enterprises	67,227	66,385	64,494	65,756	65,107	63,360	62,182	61,885
Turnover (mln EUR)	300,000	285,658	238,676	270,760	300,000	290,000	290,000	300,212
Value added (mln EUR)	80,000	80,406	70,526	77,435	82,000	80,000	82,000	n.a.

Source: Eurostat. N.B. Data for 2007-2010 are for EU27, data for 2011-2014 are for EU28.

Employment in all three subsectors has decreased over time. From 1997 to 2014, direct employment in the EU chemicals sector has on average decreased by 1.7 percent per year. In the same period, labour costs per employee increased significantly, but also labour productivity in the sector increased by 2.3 percent annually.[458]

The size distribution of firms in the chemicals sector is illustrated in the figure below. Clearly in the chemicals sector the vast majority of companies (97%) falls into the SME category (less than 250 employees). The size distribution is relatively equal between the three subsectors in the chemicals sector.

Figure 7.18 Number of firms per chemicals sub-sector in the EU (by firm size, 2013)

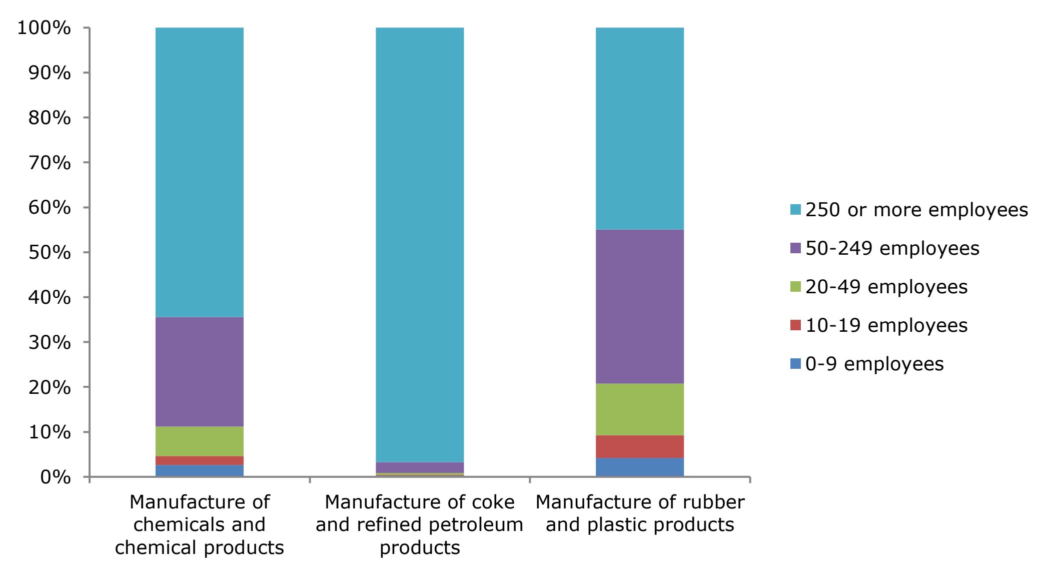


Source: Eurostat.

Despite the large number of SMEs, in the EU chemicals sector only one quarter (26 percent) of the turnover is generated by SMEs. The share of turnover for the three subsectors is presented in Figure 7.19 below. Especially in the manufacturing of coke and refined petroleum products, the vast majority of turnover is generated by large companies.

458 CEFIC (2016), The European Chemical Industry. Facts & Figures 2016.

Figure 7.19 Share of SMEs in the EU chemical industry's total turnover (%) (2013)

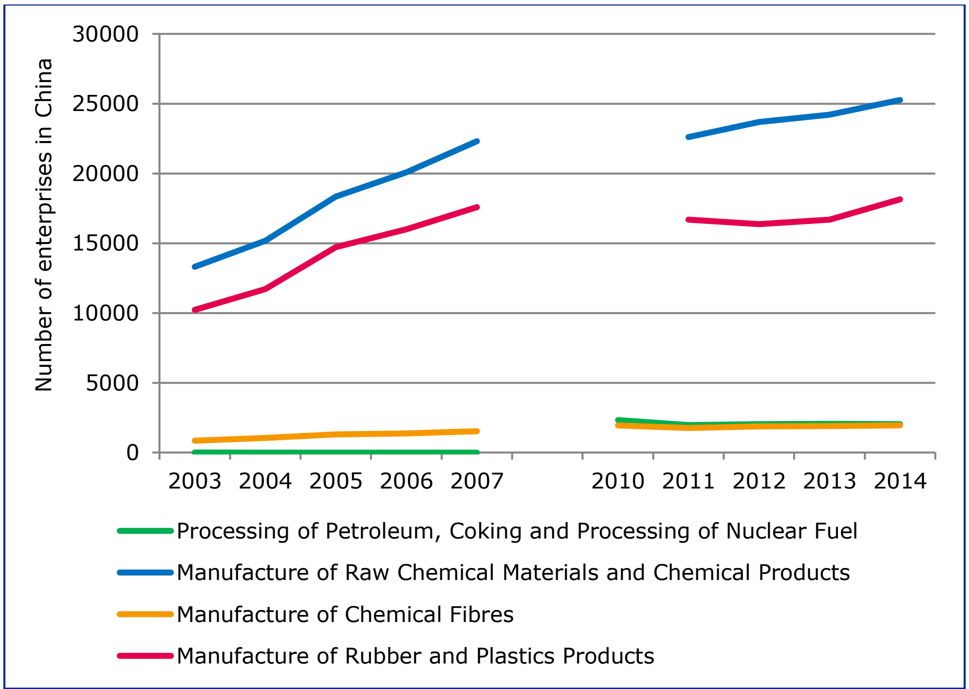


Source: Eurostat.

Size and development of the Chinese chemicals sector

The chemical industry is one of the most valuable sectors of the Chinese economy. It contributes for one-tenth of the country's GDP, and its output value reaches outstanding double-digit yearly growth rates as high as 32.6% in 2011.[459] Figure 7.20 and Figure 7.21 below present the number of enterprises and revenues for subsectors of the chemicals sector in China over time. In the past decade, the Chinese chemicals sector has expanded significantly. In 2010, the output of China's chemical sector exceeded the output of the chemical sector of the US for the first time.[460]

Figure 7.20 Number of chemical enterprises in China

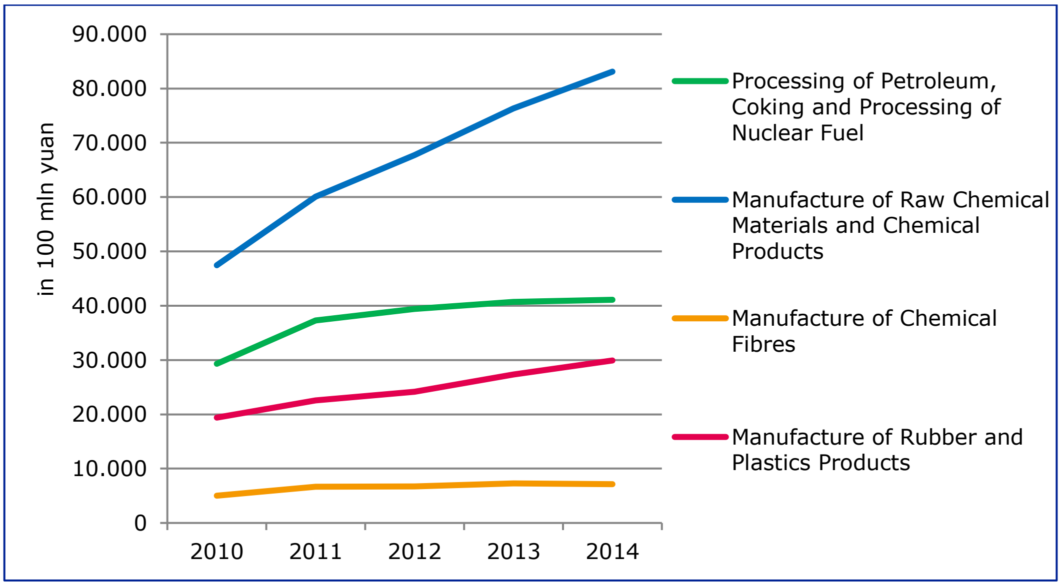


[459] KPMG (2011), *China's Chemical Industry: The New Forces Driving Change.*

[460] KPMG (2013), China's chemical industry. Quest for sustainable growth provides ample opportunities for the chemical industry.

Source: All China Data Center, China Statistical Yearbooks 2010-2014.

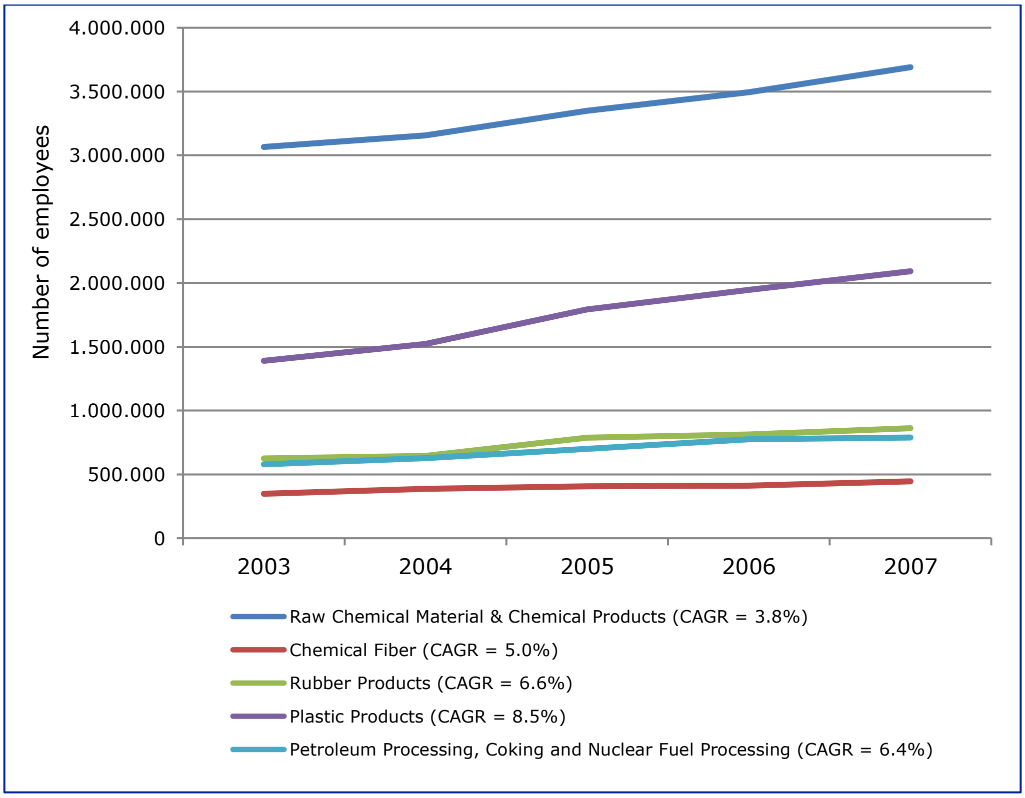
Figure 7.21 Revenues from principle business in China



Source: China Statistical Yearbooks 2010-2014.

Also employment in the Chinese chemicals subsectors has steadily increased over time as presented in Figure 7.22 below. Although no recent data is available at this stage, it is likely that in recent years employment has developed in line with developments in enterprises and revenues.

Figure 7.22 Employment of Chinese chemicals sectors



Source: All China Data Center.

With an ambitious industrial policy strategy for the Chinese chemicals sector, as outlined in the 13th Five-Year-Plan, China is planning to bring the sector to the next stage of development in the coming years.[461] The 12th Five-Year-Plan as approved in 2011 and effective from 2015 already endeavoured to increase China's self-sufficiency in chemicals and improve the domestic sector's access to modern technology, secure international access to raw materials, and provide Chinese state-owned enterprises (SOEs) with privileged access to important raw materials and energy.[462]

Chinese chemical companies receive regulatory and subsidy support from the government, with the aim to catch up with the rest of the world in terms of technology and technical capabilities. Despite the fact that economic growth in China is slowing down, the long-term growth prospects for the chemicals sector in China remain high. The industry is slowly moving away from low value commodity products towards specialty chemical segments. The increased demand for high-end sophisticated products and advanced materials results from China's move towards a consumption-led economy. MNEs in China, which are currently still leading in product innovation and development, are expected to face increased competition from domestic Chinese players in this higher end segment. By 2020, China is expected to contribute almost 50 percent of the world's chemical market.[463] [464]

Investment flows between the EU and China

The following table shows the extra-EU foreign investment positions in the chemicals sector. China ranks fifth as EU FDI host, after the US, Switzerland, Canada and Brazil. There is an increasing trend in EU FDI stock in China. China is an interesting location for foreign investors as China's chemicals market will soon represent one third of global demand. While in the past chemical MNEs in China were mainly investing to produce for Chinese demand, this shifted after MNEs were permitted to enter China to generate export sales and China became more and more integrated into the world economy. However labour costs in China are rising while quality and productivity of labour varies, and there is competition from growing SOEs that receive government support.[465]

Table 7.18 EU28 investment positions abroad, in million Euros, NACE C19, C20 & C22

Country	2010	2011	2012
United States	41,742	100,389	106,314
Switzerland	32,018	51,411	54,202
Canada	23,374	25,091	24,140
Brazil	13,790	20,308	21,289
China (except Hong Kong)	7,662	11,158	12,087
Japan	6,936	6,574	6,089
Hong Kong	993	6,148	6,069
Russia	5,091	5,528	5,186
India	2,381	3,459	3,003

Source: Eurostat.

The following table shows the investment positions of third countries in the EU chemicals sector. Nine non-EU countries invest the EU chemicals sector (the same as the host countries of extra-EU investments in chemicals). Switzerland and the US are by far the main investors; Chinese investors play a less important role here. Asia remains the main investment destination for Chinese chemicals MNEs, however acquisitions in North America and Europe have increased in

[461] CEFIC (2016), The European Chemical Industry. Facts & Figures 2016.
[462] ATKearny (2012), China's chemical industry: Flying blind?
[463] Solidiance (2015), New chemical era in China. What is happening and how to remain competitive.
[464] KPMG (2013), China's chemical industry. Quest for sustainable growth provides ample opportunities for the chemical industry.
[465] AT Kearny (2012), China's chemical industry: Flying blind?

the last few years.[466] According to the China Petroleum and Chemical Industry Federation (CPCIF), Chinese chemical companies are very interested to invest more in the EU in the near future.

Table 7.19 Investment positions in the EU28, in million Euros, NACE C19, C20 & C22

Country	2010	2011	2012
Switzerland	40,463	43,603	41,768
United States	99,510	43,152	38,974
Japan	9,016	5,870	5,514
Canada	1,194	1,195	1,695
Russia	1,946	343	382
China (except Hong Kong)	48	13	163
Hong Kong	136	42	74
India	-2	17	16
Brazil	50	39	-24

Source: Eurostat.

The tables below present the investment flows from and to the EU Chemicals sector. The largest flows of EU chemicals FDI take place from and to the US, Switzerland and Japan.

Table 7.20 EU28 investment flows abroad, in million Euros, NACE C19, C20 & C22

Country	2010	2011	2012
Brazil	757	4,150	2,466
Canada	667	1,991	-349
China (except Hong Kong)	589	990	932
Hong Kong	41	-87	163
India	95	192	-247
Japan	2,799	-1,370	-40
Russia	13	264	442
Switzerland	32,567	5,248	-5,180
United States	3,109	40,191	1,186

Source: Eurostat.

Table 7.21 Investment flows into the EU, in million Euros, NACE C19, C20 & C22

Country	2010	2011	2012
Brazil	313	82	-42
Canada	-323	-91	-115
China (except Hong Kong)	388	-98	79
Hong Kong	-79	3	-2
India	-3	-2	-5
Japan	1,129	847	79
Russia	-44	-1,751	-49
Switzerland	3,543	11,219	-1,782
United States	14,860	-585	-1,790

[466] KPMG (2013), China's chemical industry. Quest for sustainable growth provides ample opportunities for the chemical industry.

Source: Eurostat.

Capital investments and R&D spending

Capital investment in the EU chemicals sector, for example in existing infrastructure and new production facilities, is important to secure the future development of the sector. In 2014, the EU chemicals industry invested EUR 18.6 bln, but capital spending in absolute terms has decreased annually on average by 0.6 percent since 1997. In 2004, investments by EU chemical companies still represented 33.6 percent of the total amount spent by the eight major chemical investing countries, while in 2014 this rate had decreased to 13.6 percent. Furthermore, the capital spending intensity (the ratio of capital spending to sales) has on average decreased by 2.8 percent annually between 1997 and 2014.

Between 2008 and 2013, investments of major chemical companies from the EU seem to have shifted from the EU itself to third countries, suggesting that the EU environment has become less attractive for EU chemical companies.

When looking at the chemicals industry in China, we observe the opposite development. Since 2004, capital spending in the sector has increased from EUR 10.5 bln in 2004 to EUR 76.5 bln in 2014, thereby currently representing half of the total amount invested in the eight main chemicals countries in terms of capital spending. Capital spending intensity increased from 6.9 percent in 2004 to 7.8 percent in 2014.

Another important determinant of the future of the chemicals sector is investment in research and development (R&D). R&D spending by the EU chemicals sector gradually increased from EUR 7.5 bln in 1992 to EUR 8.9 bln in 2014. However, R&D spending intensity (R&D spending as a percentage of sales) slowly decreased from 2.6 percent in 1992 to 1.6 percent in 2014, though there was an upward trend between 2011-2014.

R&D spending by the Chinese chemicals sector increased from EUR 1.5 bln in 2004 to EUR 9.1 bln in 2014. In China, R&D spending intensity also decreased, from 1.1 percent in 2004 to 0.8 percent in 2014, thereby remaining far below intensity levels from other major chemicals countries like the US and Japan.[467]

Challenges faced by the sector

The EU chemicals sector is a globally competing energy-intensive sector. Any changes in energy costs in the EU relative to third countries have a potential impact on the sector's competitiveness. The shale gas revolution in the US is said to be currently affecting the chemicals sector in the EU, as the availability of energy and feedstock from shale gas provides the chemicals industry in the US with a significant competitive advantage.[468] Also China is exploring shale gas opportunities, though circumstances for digging are less advantageous than in the US (difficult-to-access hilly terrain and much deeper).[469]

According to the industry, a second factor that strongly affects the profitability of the chemicals sector in the EU is the increasing cost of legislation. Regulatory costs in the chemicals sector, for example related to industrial emissions and workers safety, represent on average 12 percent of total value added, but they vary per subsector. For instance, regulatory costs in the agrochemicals subsector account for 23.2 percent of its value added, but only for 2.7 percent in plastics manufacturing.[470] However, no uncontested proof is found that EU chemicals regulations are much more expensive than e.g. regulations in US or other developed countries.

Also in China, the chemicals sector is affected by the costs of energy and raw materials. Prices are rising and are highly volatile. The effects are different for Chinese SOEs and multinationals. Access to oil is tightly controlled by the Chinese government. The SOEs often have preferential access to energy and raw materials. Secondly, for them it is easier to deal with supply

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[467] CEFIC (2016), The European Chemical Industry. Facts & Figures 2016.
[468] Deloitte (2013), The shale gas revolution and its impact on the chemical industry in the Netherlands.
[469] KPMG (2013), China's chemical industry. Quest for sustainable growth provides ample opportunities for the chemical industry.
[470] CEFIC (2016), The European Chemical Industry. Facts & Figures 2016.

shortages and price changes because of their better access to capital. Multinational companies that are profit-driven need to pass on price increases much faster to their end customers, while Chinese SOEs have less pressure to do so.[471]

Social and HR issues

As shown in Table 7.17 above, the EU chemicals sector employs over 2.8 mln people, of which more than half is employed by the manufacturing of rubber and plastic products subsector. The number of indirect jobs generated by the EU chemicals sector is estimated to be up to three times higher. However, employment in all three chemical subsectors is decreasing over time. From 1997 to 2014, direct employment in the EU chemicals sector has on average decreased by 1.7 percent per year. In the same period, labour costs per employee increased significantly, but also labour productivity in the sector increased by 2.3 percent annually.[472]

Wages and salaries in the chemicals sector are slightly higher than the manufacturing average in the EU, which most likely relates to the higher value added and skill levels provided by the chemicals labour force.[473]

Given the potential health and safety risks related to both production processes in the chemicals sector and the products produced – implying potential risks in handling, transport, storage and use of these products – health and safety issues are paramount in the chemicals sector. Therefore, the industry is subject to strict regulations in this area, both related to risks at work and those for the general public. Examples of regulations are REACH Regulation on registration of all chemicals manufactured and used through which the industry has to demonstrate safety of intended uses[474], the CLP Regulation on providing hazard and precautionary advice to all users of chemicals by classification and labelling of all chemical substances and mixtures[475], and the OSH Framework Directive legislation on occupational health and safety[476]. In addition, voluntary industry initiatives such as the global initiative 'Responsible Care' promote chemicals safety[477].

In China, employment in the chemicals sector has steadily increased as shown in Figure 7.22. In the past decade, there has been a shift of jobs moving from state-owned enterprises to new types of companies, like private companies or joint ventures with foreign companies. This trend is expected to be continuing.[478]

Health and safety in China’s chemicals sector are not known for their high standards. However health and safety issues have received increased attention in the Chinese chemicals sector after some large accidents in recent years, including the tragic explosions in the chemical storage facility in the port of Tianjin on 12 August 2015 and the very recent explosions in the chemical factory of Dangyang that took place in August 2016.[479] [480] It is said that between 2009 and 2014, more than 4,000 people were killed in around 3,600 accidents involving hazardous chemicals in China.[481] In 2014, the Chinese chemicals sector joined the Responsible Care initiative to improve safety and environmental standards, after urges from western companies present in China.[482]

In contrast to what we observe for chemical workers in the EU, in China the wage level in the chemicals sector is below average. In 2008, chemical production workers had an annual income of 21,835 Chinese yuan, which is less than the national average of 24,721 yuan.[483]

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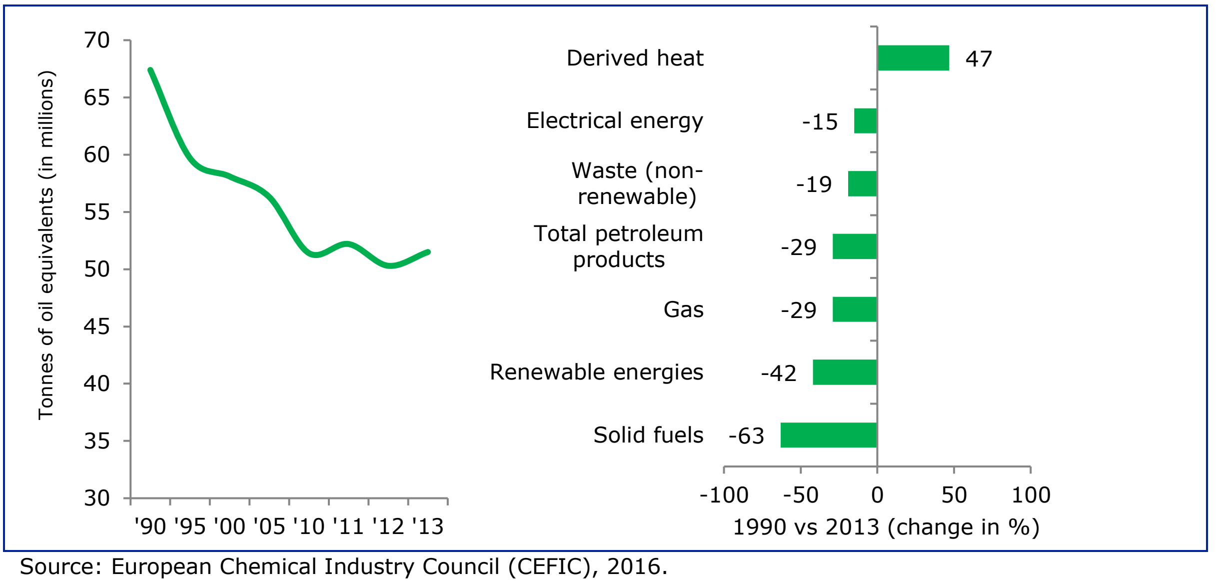
471 ATKearny (2012), China’s chemical industry: Flying blind?
472 CEFIC (2016), The European Chemical Industry. Facts & Figures 2016.
473 CEFIC (2016), The European Chemical Industry. Facts & Figures 2016.
474 http://ec.europa.eu/growth/sectors/chemicals/reach/index_en.htm.
475 http://ec.europa.eu/growth/sectors/chemicals/classification-labelling/index_en.htm.
476 https://osha.europa.eu/en/legislation/directives/the-osh-framework-directive/the-osh-framework-directive-introduction.
477 http://www.icca-chem.org/en/Home/Responsible-care/.
478 ILO (2011), Restructuring, employment and social dialogue in the chemicals and pharmaceutical industries.
479 http://www.bbc.com/news/world-asia-china-33844084.
480 http://www.nu.nl/buitenland/4305422/zeker-21-doden-bij-explosie-chemische-fabriek-china.html
481 http://www.reuters.com/article/us-tianjin-blast-safety-idUSKCN0QT04L20150824.
482 https://chemicalwatch.com/37351/three-hundred-ceos-in-china-sign-responsible-care-charter.
483 ILO (2011), Restructuring, employment and social dialogue in the chemicals and pharmaceutical industries.

Chemicals and the environment

The EU chemicals sector is doing a good job in terms of fuel and energy consumption. Although energy is an important input, the use of fuel and power has been reduced significantly over time, despite the considerable increase in production (see Figure 7.23 below).

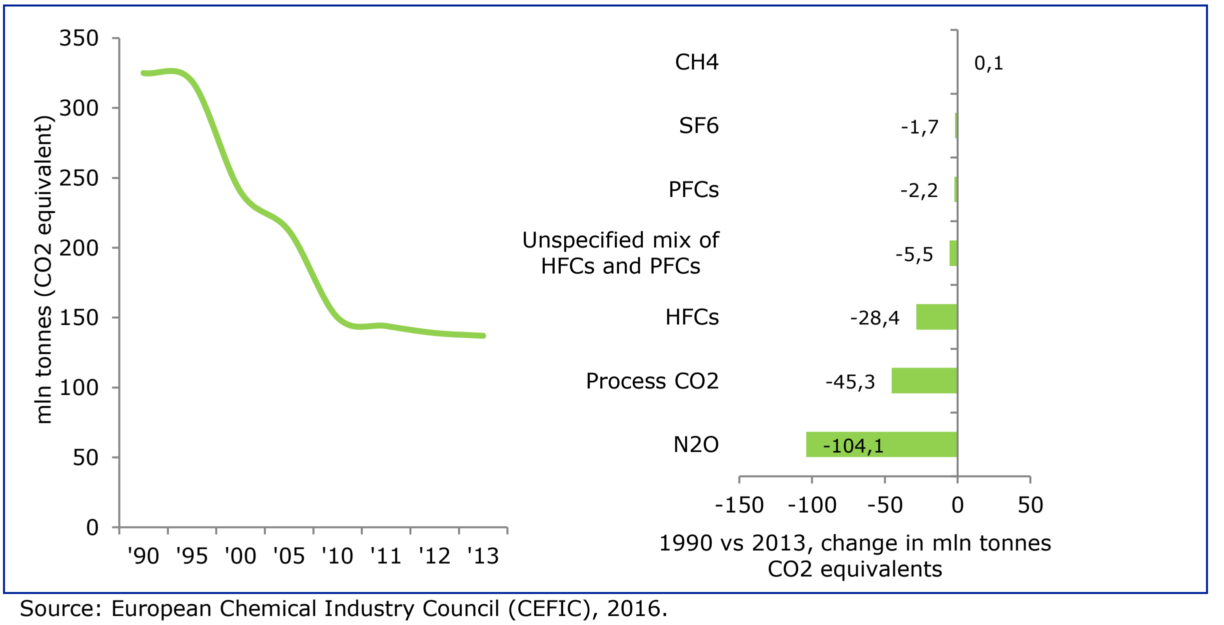
Figure 7.23 Fuel and energy use in the EU chemicals sector (incl. pharmaceuticals)



Source: European Chemical Industry Council (CEFIC), 2016.

Also the emission of greenhouse gases by the EU chemicals sector has decreased significantly over time, as presented in Figure 7.24 below. The decline is related to the increased use of less carbon-intensive fuels, cleaner technologies increased energy efficiency and waste recycling processes.[484] Much of the observed decline in emissions is caused by the decreased emissions of nitrous oxide (N2O), as shown in the right part of the figure.

Figure 7.24 GHG emissions of the EU chemicals sector



Source: European Chemical Industry Council (CEFIC), 2016.

[484] CEFIC (2016), The European Chemical Industry. Facts & Figures 2016.

China has several regulations on industrial chemicals in place, which aim to limit the environmental pressure, for instance MEP Order 7 “The Measures for Environmental Management of New Substances”; and MEP Order 22 “The Measures for Environmental Administration Registration of Hazardous Chemicals”. The former is of a similar type of the EU REACH regulation and is also known as "China REACH".[485]

Due to the risky materials employed and produced in the sector, there is a justifiable concern for its eventual repercussions on the environment. Despite the regulations, the Chinese chemicals sector is seen as one of the major contributors to water and soil pollution. Especially riverside plants are a leading source of pollution of China's rivers and lakes, of which a majority is said to be contaminated, which poses an important threat to the health of the Chinese population.[486] [487] [488]

Air pollution is also one of the greatest concerns in China[489], which is mainly caused by large emissions of greenhouse gasses (GHG) of which CO_2 is the main component. Due to the use of coal in the production process of chemicals, CO_2 is either employed for combustion, or it is generated through the manufacturing. The expanding Chinese chemical industry determines more than 11% of the national production of CO_2. Most of these emissions (roughly 60%) are determined by six chemicals: coal-based ammonia, calcium carbide, caustic soda, coal-based methanol, sodium carbonate, and yellow phosphorus. In particular, the first three products are the largest contributors. Therefore, the chemical sub-sectors producing these products have priority in the process of pollution abatement.[490]

To the purpose of pollution abatement, good business practices arising from an adequate environmental corporate social responsibility are necessary. The industrial structure of chemicals in China outlines two different realities. On one side, the sector is characterised by a considerable, although not prevailing, share of foreign MNEs. On the other side, highly fragmented Chinese companies attempt to erode the market share of foreign competitors. These two types of enterprises in general own different views with respect to sustainability and low-polluting production process. The generally higher technological standards employed by foreign MNEs often ensure the compliance of international environmental standards at a low cost, whereas the less efficient technology used by Chinese chemical producers hinders the production of chemicals with the same standards.[491]

Nevertheless, recent trends show that the environmental corporate social responsibility is being gradually instilled into the Chinese management. This is actively promoted by the government, which has conducted regulations and legislation for a greener chemical production, and that has earmarked substantial funds to implement sustainability goals.[492] The direct intervention of the government reaches the point that industrial policy is used to eliminate polluting production, either by closing those enterprises using low-technology, or by forcing them to upgrade their production. If this practice is going to persist, one can expect that in spite of the initial disadvantage for local firms, the future will show their catching up with foreign MNEs.

7.4.2. Market access issues

Despite the fact that there are interesting investment opportunities for foreign investors in the Chinese chemical’s industry, MNEs do face some challenges when they start or expand operations in China. Next to difficulties in finding the right partners for acquisition or partnership and a lack of skilled managers in the chemicals sector, MNEs are subject to different rules than domestic companies. For instance, the procedure for establishing a legal entity differs for MNEs that produce for exports and those that focus mainly on domestic distribution. This also holds for tax procedures. Complying with China’s tightening regulatory environment provides significant costs for foreign companies, for example regulations and procedures related to registration, evaluation and authorization of hazardous chemicals, or related to the imports of manufacturing chemicals, or the testing of newly developed chemicals in government-

485 http://www.chemsafetypro.com/Topics/China/Overview_of_Chemical_Regulations_in_China.html.
486 http://www.worldwatch.org/chinas-rivers-frontlines-chemical-wastes.
487 http://www.voanews.com/content/pollution-scare-exposes-chinas-oversight-in-harzardous-chemicals/3291943.html.
488 https://www.rt.com/news/china-water-pollution-cancer-346/.
489 http://www.worldbank.org/en/news/press-release/2016/03/22/world-bank-to-support-chinas-war-on-air-pollution
490 Zhu et al. (2010), *CO2 Emissions and Reduction Potential in China’s Chemical Industry.* Energy, 35(12), 4663-4670.
491 KPMG (2011), *China’s Chemical Industry: The New Forces Driving Change.*
492 KPMG (2011), *China’s Chemical Industry: The New Forces Driving Change.*

authorized laboratories.[493] According to stakeholders in China, the local governments in China are currently very hesitant to allow foreign investment in the field of chemicals. Often the approval decisions are postponed by the officials. Furthermore, documents of the chemicals regulation in China are published in Chinese and official English translations are not available, which provides another challenge for EU companies.[494]

The table below summarizes how the playing field for MNEs versus local Chinese chemicals companies is influenced by Chinese government policies. Although these issues might not all officially be market access issues, they might influence the decisions of new investors considering investing abroad.

Table 7.22 Differences in the playing field for MNEs vs. Chinese chemicals companies

Financial support	Commodity pricing	Regulations
• Direct subsidies to SOEs to offset refining losses, for example; • Financing to SOEs, but not to privately owned organisations or MNEs; • R&D funding to domestic chemical companies; • Preferential loans to SOEs from state-owned banks.	• Oil import and wholesale market. Non-transparent award of import licenses and restrictions on oil product depot ownership affect multinationals; • Price of oil products. Adjusted crude oil price variation is 4 percent during a continuous period of 22 days. No resemblance to open market; may disadvantage multinational exposed to global oil price fluctuations.	• Environmental and safety laws. Existing laws applied inconsistently and often to multinationals' disadvantages; • Toxic chemicals. MNEs must register toxic chemicals at USD 10,000 per certificate; does not apply to domestic producers; • Local content. Indigenous innovation regulations require government procurement to favour Chinese intellectual property products.

Source: ATKearny (2012).

However, executives from chemical multinationals in China have indicated that the ease of doing business in China is improving in the sense that protection of intellectual property is improving and their understanding of and connection with local government authorities is developing.[495]

Chinese chemical MNEs that would like to invest in one of the EU Member States need to comply with EU regulations, including the aforementioned REACH, CLP and OSH. Chemical-specific investment barriers for entering the EU market as identified by Copenhagen Economics (2012) are mainly related to approvals or licences and include:

- Approvals or licences: Investment shall be subjected to close scrutiny before approval and strict supervision after approval by the competent government authorities;
- Approvals or licences: Non-EEA citizens or companies should first obtain prior approval from the Finnish government or inform the competent authorities before they can invest in chemicals.[496]

[493] PwC (2011), New opportunities in China for the chemicals industry: What foreign investors need to know.
[494] http://www.actagroup.com/practices/chemical-regulation-in-china.
[495] ATKearny (2012), China's chemical industry: Flying blind?
[496] More market access issues may be identified through stakeholder consultation in a later phase of this SIA.

Furthermore, stakeholders from China indicated that the number of approvals needed from both the EU Member State governments as well as from the EC are numerous. It also takes time for the Chinese investor to agree with EU stakeholders on working conditions.[497]

7.4.3. Impact assessment

To assess the impact of the future Investment Agreement between the EU and China on the chemicals sector in both countries, we take the results of the CGE model of Copenhagen Economics (2012) as a base. This CGE modelling specified results for two relevant subsectors, being (i) chemicals, rubber, plastics products, and (ii) petroleum and coal products. It should be noted that the former includes pharmaceutical products.

Economic impacts

The table below presents the impact of the future Investment Agreement on turnover of EU companies in China as modelled by Copenhagen Economics (2012). Although market access barriers will decrease as a result of the agreement, the model predicts that EU MNEs that are already present in China would experience some very small adverse effects in the long run. The reasons for these adverse effects will be further explored in the next phase of the SIA. Next to general equilibrium effects within the model, one potential explanation for this could be that competition from the domestic Chinese chemicals sector increases, as this sector expands, or new MNEs enter the market and take over some production. In the scenario with high spill-over effects to third countries, the effects for MNEs in the chemicals, rubber and plastics manufacturing are expected to be more pronounced.

Table 7.23 Impact on turnover of EU MNEs in China (mln EUR)

	Ambitious		Modest	
	Low SO	High SO	Low SO	High SO
chemicals, rubber, plastics	-2	-84	-1	-24
petrochemicals	0	-2	0	-1

Source: Copenhagen Economics (2012). Reciprocal scenario with flexible labour supply.

The table below presents the expected impact of the future Investment Agreement on output in the chemicals sectors in the EU. This effect is expected to be slightly positive, with some minor differences in modelling scenarios.

Table 7.24 Impact on EU Output

	Ambitious		Modest	
	Low SO	High SO	Low SO	High SO
chemicals, rubber, plastics	0.09	0.07	0.03	0.03
petrochemicals	0.02	0.05	0.01	0.01

Source: Copenhagen Economics (2012). Reciprocal scenario with flexible labour supply.

Social and HR impacts

In line with the expected impact of the Investment Agreement on turnover of MNEs in China, the labour force of these companies is also expected to be affected negatively, although expected impacts are negligible in most scenarios.

Table 7.25 Impact on employment of EU MNEs in China (thousands)

	Ambitious		Modest	
	Low SO	High SO	Low SO	High SO
chemicals, rubber, plastics	0.0	-1.0	0.0	-0.3
petrochemicals	0.0	0.0	0.0	0.0

497 Source: interview China Petroleum and Chemical Industry Federation (CPCIF).

Source: Copenhagen Economics (2012). Reciprocal scenario with flexible labour supply.

The modelled impact on EU employment is also negligible. There is still a small difference in outcomes of modelling scenarios for chemicals, rubbers and plastics (fixed labour supply vs. flexible labour supply).

Table 7.26 Impact on EU employment by skill type (% change)

		Less skilled		More skilled	
	Share of total	Fixed closure	Flex closure	Fixed closure	Flex closure
chemicals, rubber, plastics	3%	0.1%	0.0%	0.1%	0.0%
petrochemicals	0%	0.0%	0.0%	0.0%	0.0%

Source: Copenhagen Economics (2012). Reciprocal ambitious scenario with high spill-overs.

Environmental impacts

As part of this SIA we have conducted an additional environmental impact analysis at sector level. The estimations are based on baseline values, intensity coefficients and expected output changes that result from the modelling done for Chapter 6.[498] The results for both the EU and China are presented in the two tables below.

Table 7.27 % Change in environmental indicators for the EU (CO2, CH4, N2O, NOX, SOX, and energy use)

	Ambitious		Modest	
	Low SO	High SO	Low SO	High SO
chemicals, rubber, plastics	0.04%	0.04%	0.03%	0.01%
petrochemicals	0.02%	0.05%	0.01%	0.01%

Source: Author's calculations. Reciprocal scenario with flexible labour supply.

Table 7.28 % Change in environmental indicators for China (CO2, CH4, N2O, NOX, SOX, and energy use)

	Ambitious		Modest	
	Low SO	High SO	Low SO	High SO
chemicals, rubber, plastics	0.00%	-0.04%	0.00%	-0.01%
petrochemicals	0.00%	0.00%	0.00%	0.00%

Source: Author's calculations. Reciprocal scenario with flexible labour supply.

Since the expected changes in the emission of air pollutants and energy are directly linked to the expected changes in output, an increase in output will result in an increase in the emission of air pollutants and energy use, and vice versa a decrease in output will automatically result in a decrease in these indicators.

As shown in Table 7.27, within the EU the emissions of all five air pollutants and energy use are expected to increase. Expected increases are larger in the ambitious scenarios compared to the results obtained in the modest liberalisation scenarios. The expected impacts for the environmental indicators in China are of a different direction negative (i.e. a reduction in emissions and energy use), although very small in relative terms. The relative decrease in the emission of air pollutants and energy for chemicals, rubbers and plastics in the two liberalisation scenarios with high spill-overs is slightly more significant.

[498] More details about the estimations and model specifications can be found in Chapter 6.

The overall environmental analysis in the previous chapter concluded that among all sectors, the chemicals sector in China is expected to contribute the most to declining environmental intensities in terms of energy, CO_2, CH_4, N_2O, NO_X, SO_X, and water use.

8. Stakeholder consultations

In this chapter we present our approach to the stakeholder consultations, which we conduct throughout the study. The stakeholder identification and stakeholder plan have already been outlined in the Inception Report, however for the sake of completeness we summarize them here again (section 8.1 and 8.2). In section 8.3 we present all the tools we use to consult widely and the consultation activities we have done until now. The future consultations activities are presented in section 8.4. Finally the potential risks to effective consultation in the context of this study - and how to mitigate these - are discussed in section 8.5.

8.1. Stakeholder identification

In order to have a balanced list of stakeholders, we have identified stakeholders in the area of business, labour and social issues, human rights, environmental issues, and other relevant areas (e.g. academia). The stakeholder list thus includes e.g. government representatives, businesses, trade unions, NGOs, academia and think tanks. As stakeholder identification is an ongoing process, we have drawn up a preliminary and non-exhaustive stakeholder list, which can be found in Annex A. The list will be updated and expanded during the course of the study. The consultation team aims to create a stakeholder list that is balanced and includes all different types of stakeholders. The table below provides an overview of the number of stakeholders and categories that are currently included in our list. As indicated this list is constantly updated and expanded.

Table 8.1 Number of stakeholders per category, per region (June 2017)

Category	EU	China
Business	172	82
Social	46	16
Human rights	10	6
Environmental	24	14
Academia / Think tank	14	17
Other	5	15
Total	**271**	**150**

The stakeholder list is for example used to send out newsletters or invitations for events and interviews. Stakeholders that wish to be included in the stakeholder list can send an email to sia-china@ecorys.com.

8.2. Consultation plan

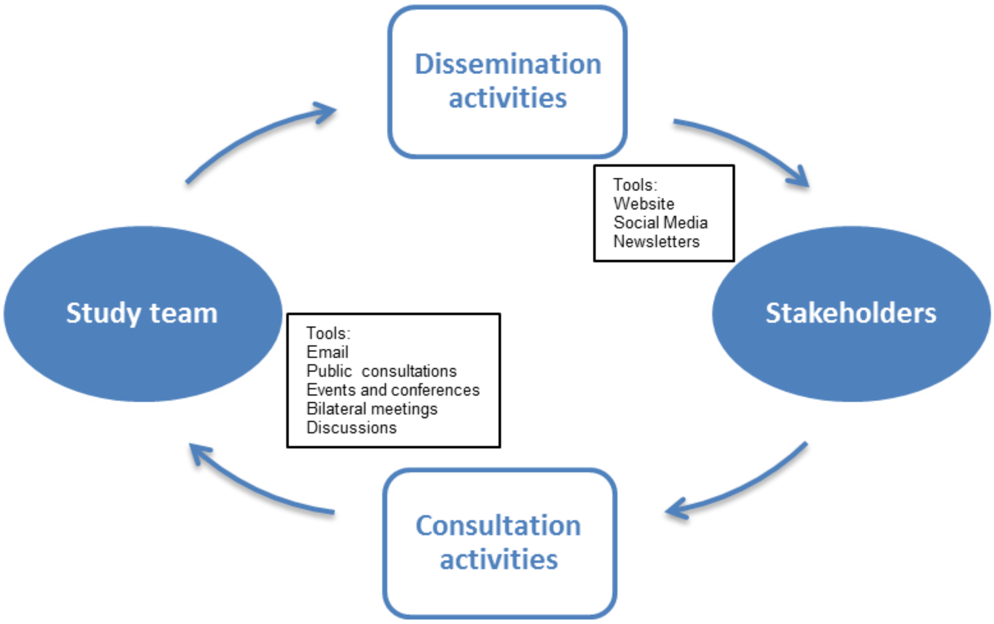
Stakeholder consultations are a crucial part of this SIA, and as outlined in the Handbook for Trade SIAs[499] the stakeholder consultations serve three main objectives:

- To actively engage with all interested parties in order to reflect their experiences, priorities and concerns on the future EU-China investment agreement;
- To contribute to the transparency of this SIA study on the EU-China investment agreement;
- To help identify priority areas and key issues in the trade negotiations.

[499] http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154464.PDF.

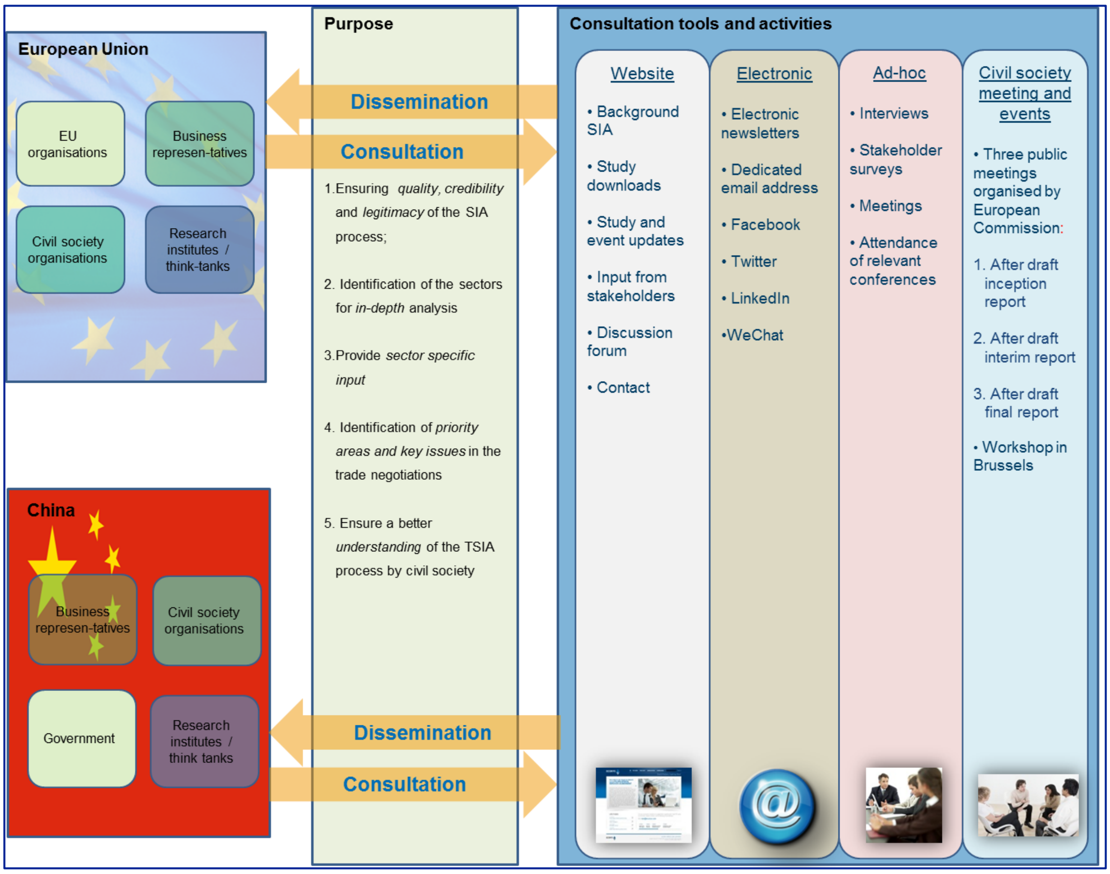
The stakeholder consultations will consist of two main types of activities: dissemination and consultation activities. The dissemination activities are aimed at informing all stakeholders in a timely manner about the study and its findings. This includes background information on the study, updates on the timeline, workshops and Civil Society Dialogues, requests for input and also sharing the draft and final versions of the different study reports. The consultation activities are aimed at receiving information from all stakeholders rather than providing it. The information to be obtained from stakeholders concerns feedback on the three draft reports (inception, interim, and final report) and specific inputs for the sector selection and case studies, as well as any other inputs that stakeholders may wish to provide during the study. We encourage stakeholders to contact us at all times and phases of the study. A schematic overview of these two main activities and the actors involved is presented in Figure 8.1.

Figure 8.1 Schematic overview of the activities and actors involved



The different tools used for the dissemination and consultation activities are discussed in the following section, but are already shortly presented in Figure 8.2 below. In addition to the different tools, the figure provides a more detailed overview of the consultation process and its purposes.

Figure 8.2 Consultation process



Although the stakeholder consultations are held throughout the study, not all activities are performed at the same time. For example the website, email address, Facebook, Twitter and LinkedIn accounts are active during the whole study period. The newsletters will be sent out at important stages of the study, e.g. publication of a draft or final report**.** Five newsletters have already been sent out. The ad hoc consultations are also held throughout the full study period, although the stakeholder survey will close in time for the results to be fully integrated in the study. After the publication of each of the three reports Civil Society Dialogues are held in Brussels and a one day workshop was organised in Brussels as well during the interim phase.

8.3. Consultation tools

In this section we will discuss the different tools that enable us to conduct the stakeholder consultations during the course of study.

8.3.1. Website

During the inception phase we have created a website dedicated to this SIA. A screenshot of the website is provided below. The website can be accessed via the following link: www.trade-sia.com/china. The website serves as the main dissemination platform where stakeholders can find information about the study. More specifically the website includes:

- A home page with an introduction to the study;
- A section where the approach to the study and methodology used are explained;
- An introduction to the EU-China Investment Agreement;
- Timeline of the study;
- Upcoming events like the Civil Society Dialogues and the workshop;
- Information about the consortium and its experts;
- News items on the progress of the study and updates on events;
- Link to the stakeholder survey;

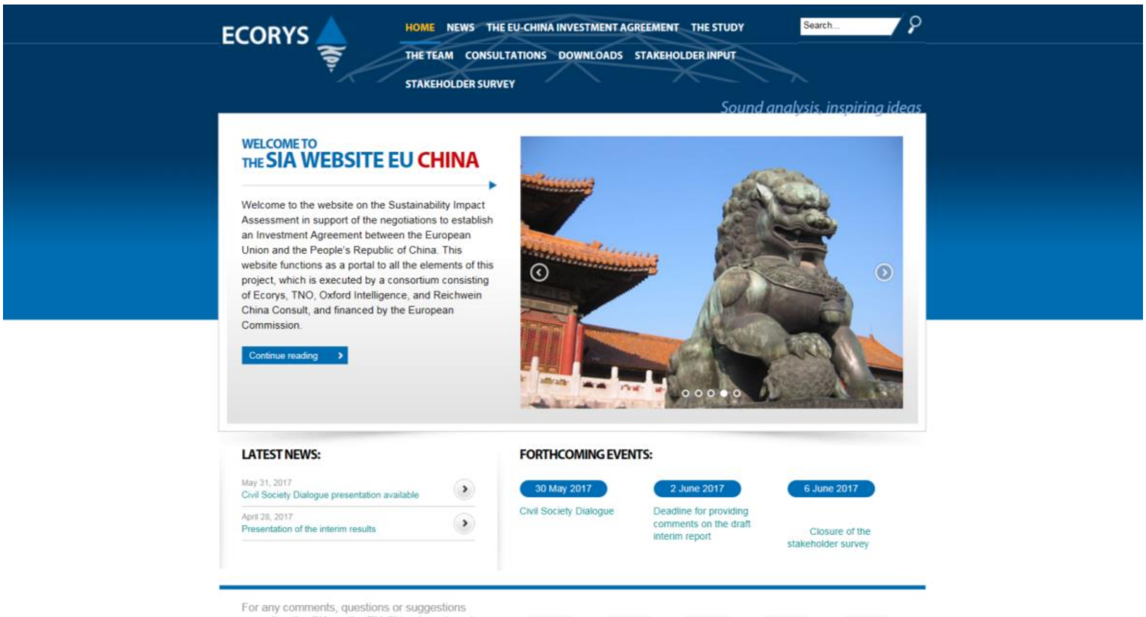
- Download section with the (draft) reports, minutes of the Civil Society Dialogues and other material related to the study;
- A section with all the inputs received from stakeholders (unless stakeholder wish that their contributions will not be made public);
- A discussion forum;
- Contact details and contact form.

The website is thus used to share information about the study approach with stakeholders as well as information concerning the timing of the deliverables, Civil Society Dialogues and the workshop. In addition, the (draft) inception, interim and final report, newsletters, presentations and minutes of the Civil Society Dialogues are published on the website. As outlined in the Handbook for Trade SIAs, the website will remain available for two more years after the finalisation of the study, so that the study reports and other relevant information will still be available for all interested stakeholders. Up to date the website has been visited more than 500 times, with peak times around the stakeholder workshop and the launch of the stakeholder survey.

Up to date we have – additionally to the background information on the SIA and the investment agreement, and the timeline - shared the following with the stakeholders via our website:

- Terms of Reference;
- Five newsletters;
- Draft and revised Inception Report;
- Draft Interim Report;
- Presentation and minutes of the Civil Society Dialogues;
- Invitation to the stakeholder workshop;
- Presentation and meeting report of the stakeholder workshop;
- QR code for the WeChat account;
- Stakeholder survey, English and Chinese version.

Figure 8.3 The SIA China website



8.3.2. Electronic communication and social media

While the website will be the main tool for the dissemination of study results and for informing stakeholders on any news concerning the study and its context, the tools below will help to maximise the outreach and increase the number and type of stakeholders reached.

Email address

During the inception phase we have set up an email account dedicated to this SIA (sia-china@ecorys.com). The email address is used to disseminate newsletters and invitations for the Civil Society Dialogues, but also to receive questions, comments, feedback or input from stakeholders concerning the study. The consultation team maintains a log of all the emails received as well as the outgoing emails (see Annex B)[500]. Since the beginning of the study the consultation team has been compiling a mailing list of stakeholders. This list is non exhaustive and will be continuously expanded during the course of the study. Stakeholders can email or otherwise contact us to be included on this list.

Up to date we have received 65 emails from different stakeholders, containing position papers, requests to be included in the mailing list, questions and input for the Inception Report. The consultations team has sent out several emails which include:

- The newsletters;
- Requests for feedback on the draft Reports;
- Invitation to the Workshop and a reminder;
- Presentation and meeting report of the stakeholder workshop;
- Request to fill in the stakeholder survey.

Newsletters

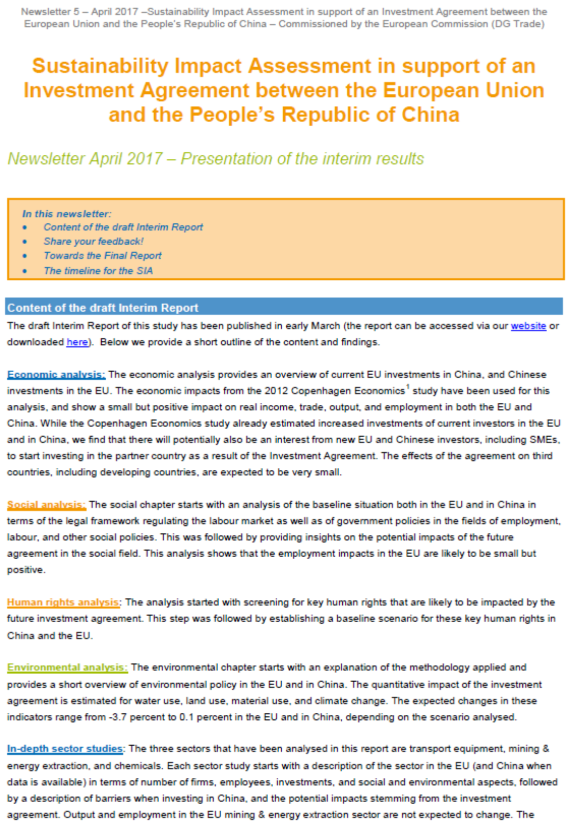
The newsletters are also an important tool for dissemination. The aim of the newsletters is to:

- update stakeholders about the timeline and progress of the study;
- inform stakeholders about upcoming Civil Society Dialogues;
- inform stakeholders about the publication of the (draft) reports;
- request stakeholders for input and/or feedback (e.g. the survey).

Up to date we have sent out five newsletters. The first newsletter has been sent out at the start of the study to the stakeholders based on our mailing list. The aim of this newsletter was to introduce stakeholders to the study and to inform them about the approach and timeline. A second newsletter has been sent out after the online publication of the draft Inception Report. By means of this newsletter the study team has shared the link to the draft Inception Report and invited stakeholders to attend the first Civil Society Dialogue meeting and to provide comments and feedback on the first draft report. The third newsletter aimed at reminding the stakeholders about the upcoming workshop and shared the final Inception Report. The fourth newsletter invited stakeholders to fill the survey, and shared the workshop report and link to the SIA-China WeChat account. The latest newsletter informed stakeholders about the publication of the draft Interim Report and invited them to provide feedback. The newsletters have also been shared via the website, Facebook, Twitter, LinkedIn, and WeChat, in order to increase the number of stakeholders reached. Additional newsletters will be sent at the main stages in the study, e.g. at the publication of the (draft) reports and when stakeholder input and/or feedback is requested.

500 Practical issues like e.g. a request to be included in the stakeholder mailing list are not presented in the Annex.

Figure 8.4 Fifth newsletter



Newsletter 5 – April 2017 –Sustainability Impact Assessment in support of an Investment Agreement between the European Union and the People's Republic of China – Commissioned by the European Commission (DG Trade)

Sustainability Impact Assessment in support of an Investment Agreement between the European Union and the People's Republic of China

Newsletter April 2017 – Presentation of the interim results

In this newsletter:
- *Content of the draft Interim Report*
- *Share your feedback!*
- *Towards the Final Report*
- *The timeline for the SIA*

Content of the draft Interim Report

The draft Interim Report of this study has been published in early March (the report can be accessed via our website or downloaded here). Below we provide a short outline of the content and findings.

Economic analysis: The economic analysis provides an overview of current EU investments in China, and Chinese investments in the EU. The economic impacts from the 2012 Copenhagen Economics[1] study have been used for this analysis, and show a small but positive impact on real income, trade, output, and employment in both the EU and China. While the Copenhagen Economics study already estimated increased investments of current investors in the EU and in China, we find that there will potentially also be an interest from new EU and Chinese investors, including SMEs, to start investing in the partner country as a result of the Investment Agreement. The effects of the agreement on third countries, including developing countries, are expected to be very small.

Social analysis: The social chapter starts with an analysis of the baseline situation both in the EU and in China in terms of the legal framework regulating the labour market as well as of government policies in the fields of employment, labour, and other social policies. This was followed by providing insights on the potential impacts of the future agreement in the social field. This analysis shows that the employment impacts in the EU are likely to be small but positive.

Human rights analysis: The analysis started with screening for key human rights that are likely to be impacted by the future investment agreement. This step was followed by establishing a baseline scenario for these key human rights in China and the EU.

Environmental analysis: The environmental chapter starts with an explanation of the methodology applied and provides a short overview of environmental policy in the EU and in China. The quantitative impact of the investment agreement is estimated for water use, land use, material use, and climate change. The expected changes in these indicators range from -3.7 percent to 0.1 percent in the EU and in China, depending on the scenario analysed.

In-depth sector studies: The three sectors that have been analysed in this report are transport equipment, mining & energy extraction, and chemicals. Each sector study starts with a description of the sector in the EU (and China when data is available) in terms of number of firms, employees, investments, and social and environmental aspects, followed by a description of barriers when investing in China, and the potential impacts stemming from the investment agreement. Output and employment in the EU mining & energy extraction sector are not expected to change. The

Facebook[501]

The consultation team has created a Facebook account during the inception phase. The Facebook account can be seen as an extension of the website and a means of reaching a (potential) different type of stakeholders. It contains a short introduction to the study and the EU-China Investment Agreement. All the updates shared via the website are also shared via Facebook. Often we make a reference to the website, e.g. when (draft) reports or other documents are published on the website.

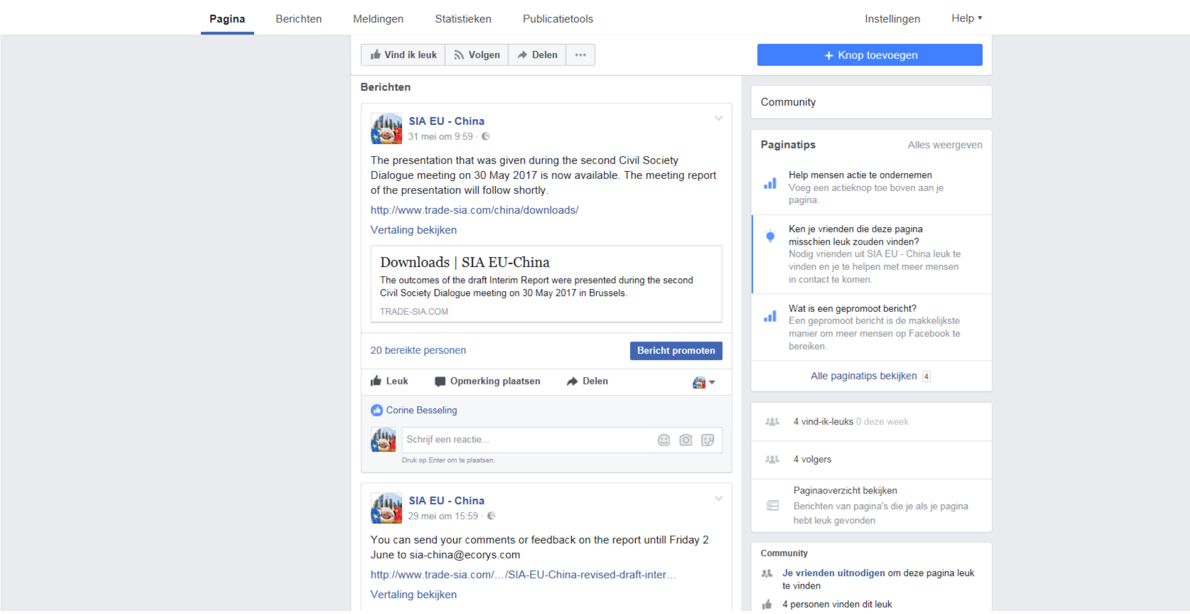
Up to date we have shared the following via our Facebook account:

- Introduction to the study;
- Link to the website;
- Newsletters;
- Draft Reports;
- Request for feedback on the draft Reports;
- Request for attendance of the Civil Society Dialogues;
- Presentation of the Civil Society Dialogues;
- Invitation to the stakeholder workshop;
- QR code for the WeChat account
- Presentation and meeting report of the stakeholder workshop;
- Link to the stakeholder survey, English and Chinese.

501 Weibo is the Chinese version of Facebook. Since Facebook is blocked in China and we want to reach Chinese stakeholders as well, we planned to also make use of this social media tool. After several struggles the consultation team has managed to create also a Weibo account. However, just having the account did not allow us to post messages with study updates on Weibo. Additional registration and payment was needed to fully activate our account. Given the little knowledge and awareness in China of the investment agreement, we have not pursued the additional registration requirements and payment to finalise our account.

Up to date the SIA-China Facebook pages has received 4 likes and has an average reach of 14 persons per message. The study team has not yet received any feedback or input from stakeholders via the Facebook account.

Figure 8.5 The SIA China Facebook page



Twitter

Another tool that is used to reach out to stakeholders is the @EcorysTrade Twitter account. Via this tool we can not only inform stakeholders about the publication of the (draft) reports, the survey, or upcoming Civil Society Dialogues, but also re-tweet tweets from e.g. the European Commission or the European Parliament concerning updates on the EU-China Investment Agreement. Stakeholders can "follow" our account in order to view the posts the consultation team has made. In our Tweets we will also make use of hashtags like e.g. #China or #investment so that persons interested in, or searching for these topics will be able to view the posts as well.

Up to date we have shared the following information via our Twitter account:

- Link to the SIA China website and Facebook;
- Publication of the draft and revised Inception Report;
- Publication of the draft Interim Report
- Request for feedback on the draft Reports;
- Request to attend the Civil Society Dialogues;
- Presentation of the Civil Society Dialogues;
- Workshop invitation;
- Newsletters;
- Presentation and meeting report of the stakeholder workshop;
- QR code for the WeChat account;
- Link to stakeholder survey.

Up to date the Ecorys Trade Twitter account is being followed by 52 persons/organisations. No input or feedback has been received from stakeholders via this media. This is however not surprising since one would only have 140 characters to share their feedback, input or concerns with regard to the study. However, our tweets on the draft reports, upcoming Civil Society Dialogues, and the survey, have been liked or retweeted several times by other persons/organisations.

Figure 8.6 The Ecorys Trade Twitter

WeChat

Since Twitter has been blocked in China we make use of WeChat, which is the Chinese version of Twitter. The consultations team is pleased to announce that the SIA EU-China account is finally approved by WeChat. Just like the other social media tools, the account contains information about the study and the link to the SIA-China website. The same information that has been shared via e.g. our Facebook and Twitter account has also been shared via our WeChat account. The screenshot below shows the QR code stakeholders can scan in order to follow the SIA-China WeChat account. The QR code has also been shared with stakeholders via the website, Facebook, Twitter, and LinkedIn account, and was also included in the fourth newsletter.

Figure 8.7 WeChat QR code

It should be noted that currently Chinese users of WeChat do not have access to WeChat official accounts registered outside of China. In contrast, non-Chinese WeChat users have access to both Chinese and non-Chinese official accounts.[502] This might however change in the future. Although Chinese users might currently not be able to view our account, there is still the potential of reaching Chinese stakeholders. Since this is a Chinese social media tool, it is likely that many persons with a link to China make use of it and could potentially also promulgate the study.

[502] http://blog.grata.co/register-wechat-official-account/.

Like with Twitter, we will use this tool to share with stakeholders the links to the different reports as well as the links to the stakeholder survey and newsletters. Stakeholders also have the opportunity to react or share thoughts by means of this tool.

LinkedIn

A last tool that was set up in the inception phase is a LinkedIn page. As for the other tools, the aim of the LinkedIn page is to inform stakeholders about the study and share information and updates about the progress of the study. The newsletters as well as the (draft) reports will be disseminated via this tool as well.

Up to date we have shared the following information via the LinkedIn account:

- Newsletters;
- Draft and revised Inception Report;
- Draft Interim Report
- Presentation of the first CSD;
- Minutes of the first CSD;
- Invitation to the workshop;
- Presentation and meeting report of the stakeholder workshop;
- QR code for the WeChat account;
- Link to the stakeholder survey.

Up to date the study team has not yet received any comments or feedback from stakeholders via the LinkedIn account. The study team has experienced (also with other projects) that the LinkedIn account is the consultation tool least used by stakeholders to obtain information about the study or to provide feedback and/or input.

8.3.3. Ad hoc consultations

Ad-hoc consultation activities such as interviews, meetings, and questionnaires are an excellent way of obtaining detailed and specific input from selected stakeholders and experts. While these are relatively time consuming activities, they can provide valuable additional and in-depth insights. We use such ad-hoc consultation tools as often as possible and aim to combine them with other tools such as conferences and public meetings.

Interviews, meetings and conferences/events

The consortium will conduct at least 40 interviews or one-to-one meetings in order to encourage detailed discussions on the negotiations and the potential sustainability impacts of the investment agreement. Conducting interviews is a useful way to obtain more detailed and focused input from stakeholders. As not all potential impacts of the investment agreement can be assessed by modelling, the interviews will complement the quantitative analyses. The interviews are balanced out over the different analyses, i.e. overall economic analysis, overall social analysis, human rights analysis, environmental analysis, and the sectoral analyses. While conducting these interviews the consortium will strive to create a balanced representation of stakeholders and topics covered. This includes *inter alia* representatives of the selected sectors, human right organisations, international organisations, relevant Ministries, or major NGOs. The interviews will be held both in the EU and in China. Having a local consultation team on the ground in China has the advantage of also conducting interviews with Chinese stakeholders that are not fluent in English.

The interviews are conducted during the interim and final phase of study. So far, 46 have stakeholders have been contacted for an interview – both in the EU and in China – and up to date 26 interviews have taken place. Stakeholders have often indicated that they are not aware of the agreement (mainly Chinese stakeholders) or that they currently don’t focus on the investment agreement, but rather on the market economy status (mainly European Stakeholders). The study team is still reaching out to stakeholders for additional interviews.

When possible and relevant, members of the consortium will attend conferences and/or events related to the investment agreement (other than organised by the contractor). These events are not only an opportunity to present the SIA to a wider public but also to hear the opinion of

different stakeholders and to engage in discussion with them. The consultation team has contacted the Sector Social Dialogue Committee (SSDC) on future relevant conferences or events members of the study team could attend. On the fifth of July 2016 two members of the study team (the economic expert and the social expert) have attended part of the EU social dialogue's Liaison Forum meeting in Brussels. During this Forum they shortly presented the study and its approach – with a special focus on the social analysis – to the stakeholders. Unfortunately there was no active engagement from stakeholders during the meeting. After the publication of the draft Interim Report the SSDC has been asked to share our report with the participants of last year's meeting and to ask them for feedback. Up to date no feedback has been received from the participants.

The study team has also reached out to the European Economic and Social Committee (EESC) to check for upcoming events related to the investment agreement, and for additional stakeholders to be included in the mailing list. At the time they were not aware or any upcoming events related to the study or the agreement, but they indicated that they will inform us once they are aware of such an event. At the same time, we have included them in our mailing list to keep them updated about the study progress.

In addition to the SSDC and the EESC, the European Consumer Consultative Group (ECCG) and several of their members have also been included in our mailing list and have been contacted for an interview or to provide input to the study. Another overarching organisation which asked to be updated about the study was the National Human Rights Institution (NHRI).[503] Since there is no human rights institution for China, the study team has contacted the Asia Pacific human rights institution.

Stakeholder survey

Surveys are an excellent way of posing specific and tailored questions to selected recipients. The consultation team has been working on the online questionnaire which was open to all stakeholders during the interim phase of the study.[504] Although the survey was open to all interested stakeholders, certain questions were more targeted towards specific stakeholders (for example regarding SMEs, or environmental issues) in order to obtain better and detailed information on certain issues. They survey was available in English and Chinese.

The survey has been shared via a personal link with all stakeholders in our mailing list.[505] An open link to the survey has been posted on the project website, Facebook account, Twitter account, LinkedIn account, and WeChat account. To increase the response rate, the survey has also been shared via the EU Trade Newsletter and the DG Grow Enterprise Europe Network. In addition, the tweet about the survey has been 'pinned' on our Twitter account. This means that this specific tweet will always be the first one visible, even if you have shared new tweets at a later stage. Several persons/organisations have liked and/or retweeted our tweets with regard to the stakeholder survey (amongst others China in the News, and Iberchina). We have also sent an additional email to some larger stakeholder organisations with the request to share the survey amongst their members. Business Europe, Sea Europe, and Euromines have confirmed that they have shared the survey among their members. Reminders to fill in the survey have been sent via email, and have been posted on the website and social media.

The response rates to the surveys are presented in Table 8.2. Stakeholders that have not finished the survey can be classified in two groups: 1) stakeholders that have opened the survey but who have not answered a single question, and 2) stakeholders that have opened the survey and have answered part of the questions. The survey outcomes will be included in the different chapters of the report.

Table 8.2 Survey response rate

	Started	Finished
Survey targeted at business and business associations (incl. SME focus)	187	36

503 The SIA handbook indicates that the SSDC, the EESC, the ECCG, and the NHRI should be contacted or updated on the study progress.
504 The survey was open from July 2016 till May 2017.
505 460 stakeholders have received a personal email and link to fill out the survey.

Survey targeted at social/human rights organisations and trade unions	16	10
Survey targeted at environmental organisations	6	2
General survey targeted at individuals or other organisations	21	9

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8.3.4. Civil society meetings

Civil Society Dialogues

During the course of the study the consortium will hold three so-called Civil Society Dialogue meetings. These Civil Society Dialogue meetings take place after the online publication of the draft inception, draft interim and draft final reports in Brussels. During these meetings we present the SIA methodological approach and findings of the study, hold open discussions with interested stakeholders and give them the opportunity to provide feedback and input. At each stage we present and explain the work completed and ask for constructive feedback on (parts of) our work. Ecorys drafts a report containing the minutes from each public meeting and publishes this together with the presentation on the dedicated website in order to allow other stakeholders who could not attend the meetings to follow the issues and discussions – and possibly comment as well.

All stakeholders are informed about the public meetings in a timely manner. The public meetings are announced not just through the above media and our own newsletters, but also through the EU trade newsletters (EUTN). If considered useful, we could also provide specific other information and updates through the EUTN. This would of course always be presented and discussed in advance with the SIA Inter-service Steering Group.

The first Civil Society Dialogue meeting took place on Thursday 26 May 2016 in Brussels. The consortium presented the draft Inception Report and encouraged all stakeholders to share their comments and feedback on the report with the study team. The presentation and meeting report are published on the SIA EU-China website (and the link has been shared via the different social media tools) so that the stakeholders who were not able to attend meeting will also have access to the presentation and the minutes. The draft Interim Report was presented on Tuesday 30 May 2017. Also during this meeting the stakeholders had the opportunity to provide comments or feedback on the report.

Stakeholder workshop

The inclusion of a workshop in the study represents the most effective and efficient way to contact and involve stakeholders in the process in a genuine and comprehensive consultation. Although stakeholders will be involved in the process during the Civil Society Dialogues, these meetings typically cover a broad range of topics since all the work done so far is presented and discussed. During a workshop the focus lies on one or more specific topics which enables us to receive more specific and focussed input and feedback from stakeholders. The objective of the workshop is to share our first results, to obtain further inputs and to engage with stakeholders in discussion, both for the key sustainability issues and for the in-depth sector analyses.

On Tuesday 5 July the consortium has held the stakeholder workshop in NH Hotel Carrefour de L'Europe, in Brussels. The stakeholder workshop was first announced during the Civil Society Dialogue on May 26. All stakeholders have received an update about the date and place of the workshop several weeks in advance via email and received the official invitation with the full workshop details shortly after. In order the increase the outreach to stakeholders, the workshop invitation has also been shared via the website, Facebook, Twitter, and LinkedIn account. Two reminders have been sent out to the stakeholders, one directly via email and one indirectly via the June Newsletter. Also the British Chamber of Commerce in China had posted the workshop invitation on their website.

The workshop consisted of three different rounds with parallel sessions. During the first session the social and environmental roundtables were held. The second session consisted of the

roundtables on mining and energy extraction, transport equipment, and chemicals. The manufacture of food/beverages, finance and insurance, and communication and electronic equipment roundtables were held in the third session. Prior to the different roundtables, the study team introduced the study and its approach to the workshop participants as well as the aim of the workshop. All sessions started with a presentation by one of the study team members concerning the preliminary analysis that has been conducted and the preliminary findings regarding the potential impact from the investment agreement. The greater part of the sessions was dedicated to discussing these results with the participants and obtaining their views, experiences and opinions.

In order to ensure transparency and allow non-attendees to follow up on the workshop, a workshop report has been published on the website together with the presentations of the different sessions. The workshop report includes the timetable of the workshop, the minutes of each session and the list of participants. All the feedback and findings will feed into the study and the final SIA report. The workshop report and the presentations have been shared with all the participants via email, but also with the non-attendees via the different social media tools.

Providing feedback or input to the study is not limited to the workshop (or Civil Society Dialogues) only. Stakeholders are at all times welcome to share their feedback, thoughts, input or experience with regards to the study and the investment agreement, either via email (sia-china@ecorys.com) or via the other media tools (Facebook, LinkedIn, Twitter, WeChat).

8.4. Future consultation activities

As already indicated the stakeholder consultation is not a one-time activity, but is done throughout the entire the study period. The stakeholder consultation activities that will be conducted (or continued) during the remainder of the study are:

- Expanding the current stakeholder list;
- Updating the website and social media tools;
- Analysing the information obtained through the online stakeholder survey;
- Continuing the interviews;
- If relevant, attending events related to the EU China investment agreement;
- Civil Society Dialogue on the draft Final Report.

8.5. Risk assessment

As indicated above, given the stakeholder landscape in China, the stakeholder consultations in this study require even more attention than they do in most other Trade SIAs, as potential risks to the plan are higher. In the table below we present these potential consultation risks and how the consortium plans to mitigate them.

Table 8.3 Potential risks and mitigation approach.

Potential risk	Consortium's mitigation approach
The risk of not developing the consultation process sufficiently in general and thus running a risk of lack of legitimacy of the study.	The extensive experience of the consortium in conducting (T)SIAs has taught us that the consultation process is a key aspect of the study. It has also provided us with experience in raising interest from and actively involving civil society, including through the use of social media. Local experts, co-operation with some key stakeholders and electronic communication play a key role in the process.
The risk of a limited outreach to Chinese stakeholders due to Chinese stakeholder landscape.	The consortium has a local consultation team on the ground in order to ensure sufficient outreach and consultation in China as well. Additionally we will make use of Chinese social media that are equivalent to Facebook and Twitter.

Potential risk	Consortium's mitigation approach
The risk of an unbalanced mix of stakeholders.	Given the fact that civil society and particular certain segments of civil society (e.g. social partners) as well as the concept of (genuine) stakeholder consultations are relatively different in China from the "Western approach" it is possible that certain stakeholder groups will be under-represented. We will make sure to keep a close eye on the composition of our stakeholder database and if we find there is an imbalance in representation of different groups, we will make extra efforts to reach this group in particular.
The risk of not receiving a sufficient large response rate to the stakeholder survey, which would reduce the significance of the results.	The consortium has extensive experience with conducting surveys. In order to ensure a sufficiently high response rate the invitation and link to fill in the survey will be shared via all the different tools above, as well as by our local consultant on the ground in order to maximise outreach. In addition we will ask overarching organisations to share the survey with their all their members. Finally reminders will be sent out.

9. Way forward and planning

9.1. Planning

The Sustainability Impact Assessment consists of three phases:

1. Inception period: January - May 2016;
2. Interim phase: June 2016 – June 2017 (current phase);
3. Final phase: June 2017 - October 2017.

The main activities to be conducted in the final SIA phase include:

- Conducting three more in-depth sector studies (Manufacture of foods and beverages; Communication and electronic equipment; Finance and insurance);
- Complementing and validating the findings from the overall sustainability analyses and first three sector studies with further stakeholder input, to be obtained from amongst others the online survey, bilateral interviews and the stakeholder workshop;
- Formulating conclusions and policy recommendations for all parts of the SIA.

The timing of specific activities (e.g. publication of reports, Civil Society Dialogues, workshop, etc.) is announced on the dedicated SIA website (www.trade-sia.com/china).

9.2. Content of future deliverables

The table below outlines the content of the future deliverables of the study: the final SIA report and the Briefing Document.

Table 9.1 Content of the future deliverables

Report	Content
Final report	• An abstract of no more than 200 words; • A short executive summary in which the final results of the study are presented; • A description of the methodology used; • Outcomes and results of the Sustainability Impact Assessment, of both the overall analysis and in-depth sector analyses; • An overview of the activities related to consultation and dissemination and their results, in particular: - Outline of contacts with stakeholders (including social partners and other targeted consultations); - Summary of comments and suggestions received (via e-mail, website comment function, ordinary mail, meetings etc.) and how these were taken up by the study team; - Minutes of the workshop in Brussels and of the civil society dialogue meetings held in Brussels outlining key stakeholder positions and points of views with an indication how their views have been taken into account by the study team, the programmes and list of participants; - Evidence of attendance of the participants of the workshop in Brussels; - Overview of the SIA website use / visits. • Conclusions; • Proposals for flanking measures and policy recommendations; • References and key resources. The final report will have a maximum of 200 pages, excluding annexes.
Executive summaries	The executive summary from the Final Report will also be available as a separate document of maximum six pages. It will be translated in three languages: English, French and standard Chinese.

Report	Content
Briefing document	The final report will be accompanied by a briefing document of maximum two pages, which will describe: • the objectives, scope and purpose of the SIA; • the main trade and investment measures identified for impact analysis; • the liberalisation scenarios considered; • other key assumptions and hypotheses; • the most significant economic, social, environmental and human rights impacts identified; • the most important complementary policy measures recommended in order to minimise negative impacts and maximise positive impacts of the investment measures proposed; • the sources of evidence, and the qualitative and quantitative evidence-gathering techniques used and reported; • details of the representative consultation process undertaken for the SIA; • limitations in the design or the execution of the SIA in meeting the project aims and objectives; • suggestions (where relevant) of issues or aspects for further investigation, including ex post analysis of the impacts of any agreement reached at the conclusion of negotiations.

Annex A: Stakeholder list (preliminary)

EU stakeholders

Stakeholder	Type of organisation
AeroSpace and Defence (ASD)	Business
AHK Greater China (in Germany)	Business
Apex-Brasil Brussels Europe	Business
Aqua Publica Europea	Business
Association Européenne du Commerce de Fruits et Légumes de l'UE (EUCOFEL)	Business
Association for Financial Markets in Europe	Business
Association of European Heating Industry	Business
Association of Mutual Insureres and Insurance Cooperatives in Europe (AMICE)	Business
ASTM International	Business
Austrian Federal Economic Chamber	Business
Bankenverband	Business
Belgian-Chinese Chamber of Commerce (BCECC) (China)	Business
Belgian-Chinese Chamber of Commerce (BCECC) (EU)	Business
British Chamber of Commerce in China	Business
British Insurance Brokers' Association	Business
Brussels Enterprises Commerce and Industry (BECI)	Business
Brussels Invest & Export	Business
Bundesverband der Deutschen Industrie	Business
Bundesverband der Hersteller und Importeure von Automobil-Service Ausrüstungen	Business
Bundesverband Digitale Wirtschaft (BVDW)	Business
Bundesvereinigung der Deutschen Ernährungsindustrie	Business
BUSINESSEUROPE	Business
CEFIC	Business
CEI BOIS	Business
CELCAA	Business
Central Europe Energy Partners (CEEP)	Business
CEOC International	Business
Cerame Unie	Business
Chamber of Commerce and Industry Germany	Business
Chamber of Commerce Austria	Business
Chamber of Commerce France	Business
Chamber of Commerce UK	Business
China-Britain Business Council	Business
China-Italy Chamber of Commerce	Business
China-Poland Chamber of Commerce of Industry and Commerce	Business
Coceral	Business
Comitato Elettrotecnico Italiano (CEI)	Business
Comité Européen des Enterprises Vins	Business
Committee for European Construction Equipment	Business

Stakeholder	Type of organisation
Confédération Européenne des Associations de Petites et Moyennes Entreprises	Business
Confederation of Danish Enterprises	Business
Confederation of European Recycle Industries	Business
Council of European Employers of the Metal, Engineering and Technology-Based Industries	Business
Czech China Business Council	Business
Danish Agriculture and Food Council	Business
Danish Chamber of Commerce in China	Business
Danish Export Association	Business
Danish ICT and Electronics Association	Business
Danish Pharmaceutical Industry Association	Business
Danish Shipowners Association	Business
DIGITALEUROPE	Business
Dutch Chinese Chamber of Commerce (DCCC)	Business
Dutch Produce Association	Business
ECCIA - European Culture and Creative Industries Alliance	Business
ETRMA-European Tyre & Rubber Manufacturers' Association	Business
EU SME centre	Business
EU - China Business Association (EUCBA)	Business
EU - China IPR SME Helpdesk	Business
Eucomed	Business
EUnited Robotics	Business
EURALARM	Business
Euratex	Business
Euroalliages	Business
EUROCHAMBRES – Association of European Chambers of Commerce and Industry	Business
EuroCommerce	Business
Eurometal	Business
Eurometaux	Business
Europe China Commercial Union (ECCU)	Business
European Alluminium	Business
European Assocation of Automotive suppliers (CLEPA)	Business
European Association for Bioindustries	Business
European Association of Chemical Distributors	Business
European Association of Craft, Small and Medium-Sized Enterprises (UEAPME)	Business
EUROPEAN ASSOCIATION OF DAIRY TRADE	Business
European Association of Fashion retailers	Business
European Association of Mining Industries	Business
European Association of the Machine Tool Industries	Business
European Automobile Manufacture's Association (ACEA)	Business
European Banking Federation	Business
European Biodiesel Board	Business
European Branded Clothing Alliance (EBCA)	Business
European Chemical Industry Council	Business

Stakeholder	Type of organisation
European Construction Industry Federation	Business
European Container Glass Federation (FEVE)	Business
European Coordination Committee of Radiological, Electromedical and Healthcare IT Industry (COCIR)	Business
European Coordination of Independent Producers (CEPI)	Business
European Dairy Association aisbl	Business
European Engineering Industries Association (ORGALIME)	Business
European Family Businesses	Business
European Farmers (CopaCogeca)	Business
European Federation for Construction Chemicals	Business
European Federation for Print and Digital Communication (INTERGRAF)	Business
European Federation of Biotechnology Section of Applied Biocatalysis	Business
European Federation of Pharmaceutical Industries and Associations	Business
European Furniture Industries Confederation (EFIC)	Business
European Generics Association	Business
European Industrial Gases Association	Business
European Lime Association (EULA)	Business
European Milk Board	Business
European Organisation for Security	Business
European Organization of the Sawmill Industry (EOS)	Business
European Plastics Convertors	Business
European Public Real Estate Association (EPRA)	Business
European Services Forum (ESF)	Business
European Services Strategy Unit (funded)	Business
European Security Transport Association (ESTA)	Business
European Ships and Maritime Equipment Association (SEA)	Business
European Small Business Alliance (ESBA)	Business
European Smoking Tobacco Association	Business
European Social Insurance Platform (ESIP)	Business
European Telecommunications Standards Institute	Business
European Textile Collectivities Association	Business
European Union of Wholesale with Eggs, Egg Products, Poultry and Game	Business
Eurospace - Trade association of the European space industry	Business
Executive Committee of Foreign Investment Companies (ECFIC)	Business
Fair Trade Advocacy Office (FTAO)	Business
FAMAB Association Direct Business Communications	Business
Federazione Nazionale Imprese Elettrotecniche ed Elettroniche	Business
Finance Watch	Business
FoodDrinkEurope	Business
FoodServiceEurope	Business
Foreign Trade Association	Business
Forum for European fresh fruits and vegetables chain	Business
FuelsEurope	Business
German Electrical and Electronic Manufacturers' Association	Business

Stakeholder	Type of organisation
German Insurance Association (GDV), European Office	Business
GIRP - European Association of Pharmaceutical Full-time wholesalers	Business
Glass for Europe	Business
Handelsverband Lebensmittel (BVLH)	Business
Hellenic-Chinese Chamber (HCC)	Business
IG Metal	Business
IMA Europe - Industrial Minerals Association	Business
Independent Retail Europe	Business
Insurance Europe	Business
International Association of Oil & Gas Producers	Business
Italian Federation of the chemical industry	Business
Le Cercle de L'industrie	Business
Mining Association of the United Kingdom	Business
Nederlandse Zuivel Organisatie (NZO)	Business
Netcomm	Business
Netherlands Maritime Technology	Business
Society of Motor Manufacturers and Traders (SMMT)	Business
Spanish Chamber of Commerce in China	Business
Starch Europe	Business
Swedish Chamber of Commerce in China (Shanghai)	Business
Swedish Chamber of Commerce in China (Beijing)	Business
The European Union Chamber of Commerce in China	Business
The French Chamber of Commerce and Industry in China	Business
TOYOTA	Business
Toys Industries of Europe	Business
UNIFE	Business
Union Française du Commerce Chimique (UFCC)	Business
Union nationale des producteurs de granulats	Business
Verband der Automobilindustrie	Business
Verband der Chemischen Industrie	Business
Verband der Elektrotechnik	Business
Verband Deutscher Maschinen- und Anlagenbau (VDMA)	Business
Amnesty International	Social
APRODEV	Social
Association of Mutual Insurers and Insurance Cooperatives in Europe (AMICE)	Social
Bureau Européen des Unions de Consommateurs (BEUC)	Social
Consumer International	Social
EurEau	Social
Euro Coop - European Community of Consumer Cooperatives	Social
Eurocadres	Social
Eurogas	Social
European Association for Coal and Lignite (Euracoal)	Social
European Association for the Co-ordination of Consumer Representation in Standardisation	Social
European Association of Cooperative Banks (EACB)	Social

Stakeholder	Type of organisation
European Association of Electrical Contractors	Social
European Centre of Employers and Enterprises providing Public Services (CEEP)	Social
European Chemical Employers Group	Social
European Committee of Sugar Manufacturers (CEFS)	Social
European Community of Shipowners Association (ECSA)	Social
European Confederation of Executives and Managerial Staff (CEC)	Social
European Confederation of the Footwear Industry (CEC)	Social
European Council of Civil Engineers	Social
European Economic and Social Committee	Social
European Federation for Industry and Manufacturing workers	Social
European Federation of Building and Woodworkers (EFBWW)	Social
European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT)	Social
European Federation of Journalists	Social
European Federation of Public Service Unions (EPSU)	Social
European Generic and Biosimilar Medicines Association (EGA)	Social
European Heart Network (EHN)	Social
European Industrial Minerals Association (IMA-Europe)	Social
European Public Health Alliance (EPHA)	Social
European Savings Banks Group (ESBG)	Social
European Skippers Organisation (ESO)	Social
European Steel Association (Eurofer)	Social
European Telecommunications Network Operator's Association (ETNO)	Social
European Trade Union Committee for Education (ETUCE)	Social
European Trade Union Confederation (ETUC)	Social
European trade union federation for services and communication	Social
European Transport Workers' Federation (ETF)	Social
Federation Public Service of Health, Food, Chain Safety and Environment	Social
Health Action International (HAI) Europe	Social
Health Action Partnership International	Social
Health and Trade Network	Social
ILO Regional Office for Europe	Social
International Federation of Insurance Intermediaries (BIPAR)	Social
International Organisation of Employers	Social
International Road Transport Union (IRU)	Social
International Trade Union Confederation (ITUC)	Social
Medicines Sans Frontières (MSF)	Social
NHS European Office	Social
Oxfam Solidarité	Social
Platform of European Social NGOs	Social
Standing Committee of European Doctors (CPME)	Social
The European Association of Hospital Pharmacists (EAHP)	Social
Transparency International Liaison Office to the European Union	Social
UNI Europa	Social

Stakeholder	Type of organisation
Union of the Electricity Industry (EURELECTRIC)	Social
Union to Union	Social
European Digital Rights	Human rights
Good Electronics	Human rights
High Commission for Human Rights (HCHR)	Human rights
Human Rights Watch	Human rights
International Federation for Human Rights (FIDH)	Human rights
London Mining Network	Human rights
Swedwatch	Human rights
The Danish institute for human rights	Human rights
The Global Business Initiative on Business and Human Rights (GBI)	Human rights
The Institute for Human Rights and Business (IHRB)	Human rights
Bellona Europa	Environmental
CCAP-EU	Environmental
Centre for International Environmental Law (CIEL)	Environmental
Client Earth	Environmental
Compassion in World Farming	Environmental
Confederation of European Paper Industries (CEPI)	Environmental
Eurogroup for Animals	Environmental
EuropaBio	Environmental
European Alliance of Companies for Energy Efficiency in Buildings	Environmental
European Council for an Energy Efficient Economy	Environmental
European Environmental Bureau (EEB)	Environmental
European Federation of Clean Air and Environmental Protection Associations	Environmental
European Renewable Energies Federation	Environmental
European Technology Platform for Sustainable Chemistry	Environmental
European Water Association (EWA)	Environmental
Fédération Européenne des Activités de la Dépollution et de l'Environnement	Environmental
Friends of the Earth Europe	Environmental
Greenpeace	Environmental
International Fund for Animal Welfare (IFAW)	Environmental
International Institute for Sustainable Development	Environmental
International Network for Sustainable Energy	Environmental
Transport and Environment (European Federation for Transport and Environment)	Environmental
WWF EU	Environmental
Central European Institute of Technology	Academia / Think tank
Centre for European Policy Studies (CEPS)	Academia / Think tank
Commons Network	Academia / Think tank
European Association of Research and Technology Organisations	Academia / Think tank
European Factories of the future and research association	Academia / Think tank
European Policy Centre (EPC)	Academia / Think tank
European Regions Research and Innovation Network	Academia / Think tank
European Risk Forum	Academia / Think tank

Stakeholder	Type of organisation
European Technology Platform for Advanced Engineering Materials and Technologies (EUMAT)	Academia / Think tank
Greenovate! Europe EEIG	Academia / Think tank
New Economics Foundation (NEF)	Academia / Think tank
Quaker Council for European Affairs	Academia / Think tank
SOMO	Academia / Think tank
University of Essex, Essex Business and Human Rights Project	Academia / Think tank
EU Delegation to China	Other
European patent office	Other
Interel Public Affairs	Other
Kiel Center for Eurasion Economic Law	Other
Transitiegroep Stroopwafel	Other

Chinese stakeholders

Stakeholder	Type of organisation
AHK Greater China	Business
All-China Federation of Industry and Commerce (ACFIC)	Business
Association of China rare earth industry	Business
Beijing Investment Promotion Office	Business
Caijing Magazine	Business
Caixin Media Group/China Media Foundation	Business
China agriculture machinery distribution association	Business
China air transport association	Business
China animal agriculture	Business
China association for medical devices industry	Business
China Association of Automobile Manufacturers (CAAM)	Business
China Association of Enterprises with Foreign Investment (CAEFI)	Business
China association of pharmaceutical commerce	Business
China banking association	Business
China Beverage Industry Association	Business
China carbon industrial association	Business
China Chamber of Commerce of Metals, Minerals & Chemical Importers & Exporters (CCCMC)	Business
China Chamber of International Commerce (CCIC)	Business
China chemical fibres association	Business
China Citic Bank	Business
China construction industry association	Business
China construction machinery association	Business
China Cotton association	Business
China Crop Protection Industry Association （CCPIA)	Business
China Cultural Industry Association	Business
China dairy industry association	Business
China dyeing and printing association	Business
China electrical equipment industrial association	Business
China Electronic Materials Industry Association	Business
China Electronic Production Equipment Industry Association	Business
China electronics enterprises association	Business
China electronics materials industry association	Business
China Enterprise Confederation (CEC)	Business
China enterprise federation	Business
China federation of logistics and purchasing	Business
China fisheries association	Business
China Foreign Trade Centre (CFTC)	Business
China grain association	Business
China heavy machinery industry association	Business
China household electrical appliance association	Business
China instrument manufactures association	Business
China international contractors association	Business
China International Fair for Investment & Trade	Business
China international freight forwarders association	Business

Stakeholder	Type of organisation
China Investment Corporation	Business
China iron and steel association	Business
China Leather Industry Association	Business
China machinery industry federation	Business
China Medical Biotech Association (CMBA)	Business
China Medicinal Biotechnology association	Business
China metallurgical construction association	Business
China Mining Association (CMA)	Business
China national association of chemical construction enterprises	Business
China national textile and apparel council	Business
China Nitrogen Fertilizer Industry Association (CNFIA)	Business
China non-ferrous metals industry association	Business
China Nonwovens & Industrial Textiles Association (CNITA)	Business
China optics and optoelectronics manufactures association	Business
China Petroleum & Petrochemical Equipment Industry Association (CPEIA)	Business
China Petroleum and Chemical Corporation (Sinopec)	Business
China Pharmaceutical Industry Association (CPIA)	Business
China Plastics Machinery Industry Association	Business
China Plastics Processing Industry Association	Business
China Renewable Energy Industries Association	Business
China textile commerce association	Business
Chinese Centre for the Promotion of International Trade (CCPIT)	Business
Chinese Centre for the Promotion of International Trade Beijing Sub-council	Business
Chinese Federation for Corporate Social Responsibility (CFCSR)	Business
Chinese Mission to European Union	Business
Corporate Social Responsibility Asia (CSR)	Business
Dairy association of China	Business
EU SME centre	Business
EU-China Business Association (EUCBA)	Business
Hong Kong Confederation of Trade Unions	Business
Insurance association of China	Business
Securities association of China	Business
All-China Federation of Trade Unions (ACFTU)	Social
All-China Women's Federation	Social
Asia Monitor Resource Centre (AMRC)	Social
China Association for NGO Cooperation (CANGO)	Social
China Consumers Association	Social
China CSR Map (access point for local and international CSR-related projects)	Social
China Development Bank	Social
China Development Brief (access point for local and international NGO’s and civil society)	Social
China Dialogue	Social
China Disabled Persons' Federation	Social
China Labour Bulletin	Social
China Labour Watch	Social

Stakeholder	Type of organisation
Chinese Federation of Labour - Public Services Union (CFL-PSU)	Social
Ethical Trading Initiative (Hong Kong Branch)	Social
Fair Labour Association	Social
ILO Country Office for China and Mongolia	Social
Amnesty International, Regional Office	Human rights
China human rights - China Society for Human Rights Studies	Human rights
China human rights defenders (CHRD)	Human rights
Chinese Human Rights Defenders (CHRD)	Human rights
Human Rights in China (HRIC)	Human rights
Human Rights Watch	Human rights
The Center for Child Rights and Corporate Social Responsibility (CCR CSR)	Human rights
China Business Council for Sustainable Development (CBCSD)	Environmental
China Civil Climate Action Network	Environmental
China Water Risk	Environmental
Friends Of Nature, Beijing	Environmental
Global Witness	Environmental
Green Camel Bell	Environmental
Green Watershed	Environmental
Greenkeepers	Environmental
Greenpeace East Asia	Environmental
Institute of Public and Environmental Affairs (IPE)	Environmental
International Ecological Safety Collaborative Organization (IESCO)	Environmental
WWF, Beijing	Environmental
Yunnan Environment Development Institute	Environmental
Beijing Arbitration Commission	Legal
China International Economic and Trade Arbitration Commission	Legal
Global Law Office	Legal
Grandall Law Firm	Legal
Carnegie-Tsinghua Centre (Centre for Global Policy)	Academia / Think tank
China Academy of Arbitration Law	Academia / Think tank
China Academy of Social Sciences	Academia / Think tank
China Centre for Overseas Social and Philosophical Theories (CCOSPT)	Academia / Think tank
China Europe International Business School	Academia / Think tank
China Institute for Reform and Development (CIRD)	Academia / Think tank
China Institute of Industrial Relations (CIIR)	Academia / Think tank
Chinese Academy of Social Science	Academia / Think tank
EU-Asia Centre	Academia / Think tank
European Studies Centre (Renmin University, Peking University)	Academia / Think tank
Heinrich Böll Foundation, Beijing	Academia / Think tank
Institute for Population and Labour Economics	Academia / Think tank
Institute of World Economics & Politics, Chinese Academy of Social Science	Academia / Think tank
Laogai Research Foundation	Academia / Think tank
Official Statistical Bureau	Academia / Think tank
Peking University	Academia / Think tank
Renmin University, School of labour and Human Resources	Academia / Think tank
China National Non-Profit Organisation Service Centre, Bejing	Other
Food and Drug Administration China	Other
General Administration of Quality Supervision, Inspection and Quarantine	Other
International Department of Chinese Ministry of Finance	Other
Ministry of Agriculture	Other
Ministry of Commerce	Other
Ministry of Human Recourses and Social Security (MOHRSS)	Other
Ministry of Information and Technology	Other

Stakeholder	Type of organisation
State Administration of Industries and Trade	Other
State Administration of Radio, Film and Television	Other
Business Sustainable Compliance Initiative (Hong Kong Branch)	

Annex B: Stakeholder email log[506]

Organisation	Email received	Response Ecorys study team
SEA Europe	SEA Europe shared its position paper on EU-China Investment Agreement.	Ecorys thanked SEA Europe for sharing their position paper with the study team.
European Trade Union Confederation	ETUC referred to their study on the investment negotiations with China https://www.etuc.org/publications/china-investment-policy-consequences-workers#.Vta9JPnhDcs	Ecorys thanked ETUC for sharing their study the SIA China study team.
Independent Retail Europe	Independent Retail Europe indicated that their members find the Chinese market relatively open for retailers. So far they have never had complaints from any of their members present in China concerning accessibility of the Chinese market.	Ecorys thanked Independent Retail Europe for sharing this information with the study team
Foreign Trade Association	FTA requested to be included in the stakeholder list. They indicated that they do not have comments on the inception report but would like to comment at later stage on the economic and sustainable development impacts. They also referred to a recent study conduct by CEPS, an impact assessment of a possible EU-China free trade agreement.	Ecorys answered that they will include FTA in the stakeholder list, and thanked FTA for referring to the study conducted by CEPS.
Transitiegroep Stroopwafel	Transitiegroep Stroopwafel shared its feedback on the human rights chapter.	Ecorys thanked Transitiegroep Stroopwafel for its feedback and indicated that they will share it with the human rights expert.
FIDH	FIDH requested more information about the upcoming workshop and indicated that they found the dissemination of the workshop very poor, as it was only displayed on the website.	Ecorys indicated that stakeholders have received a "save the date" notification for the workshop via email, which is indeed also displayed on the website. The study team is finalising the last details for the workshop, afterwards stakeholders will be invited via email, and all information will be available on the website and the other social media tools.

506 Not all emails are included in this table, as some are only an indication of stakeholders not attending the workshop, a request to be removed from the stakeholder list or a request to be included in the stakeholder list.

Organisation	Email received	Response Ecorys study team
European Economic and Social Committee	The EESC had a look at the stakeholder list and indicated that they were missing EPRA, the European Public Real Estate Association, based in Brussels. They indicated that they are currently not aware of any events relevant to the study or the investment agreement.	Ecorys indicated that they will add EPRA to their stakeholder list.
FIDH	FIDH indicated that they will forward the workshop information to other stakeholders interested in human rights issues.	Ecorys answered that they would appreciate this.
China-Britain Business Council	China-Britain Business Council requested more information about the stakeholder workshop, in order to share it on their website.	Ecorys shared the information and indicated that they very much appreciated this.
European Construction Industry Federation	They asked why construction was not selected as one of the sectors for in-depth analysis, and whether it was relevant for them to attend the stakeholder workshop.	Ecorys referred to the inception report, where the sector selection and screening and scoping exercise where conducted. Regarding the workshop, Ecorys indicated that there will be no separate session on construction, but that the European Construction Industry Federation was always welcome to share their thoughts regarding any of the other sectors studies or the sustainable development chapters.
Business Europe	Business Europe asked when the workshop presentation would be online.	Ecorys indicated that workshop presentation was now available on the website and that a short meeting report would follow shortly.
ACEA	ACEA suggested some improvements regarding their statements made in the workshop meeting report.	Ecorys indicated that they have adjusted the meeting report.
UNIFE	Request to share a PDF version of the stakeholder survey, so that they can better prepare the questions.	Ecorys shared a PDF version of the survey, but requested them to still fill in the survey via check market and not via the PDF, since this would make it harder to process the inputs.
European Economic and Social Committee	The EESC indicated that they are a European Body and can therefore not fill in the survey for either business or social associations. They asked whether it was possible to adapt the survey for a wider range of stakeholders.	Ecorys shared the link the general survey, which is available for stakeholders who do not represent a company, business, social, human rights or environmental organisation.

Organisation	Email received	Response Ecorys study team
Independent Retail Europe	Independent Retail Europe indicated that even though some of their members invest in China, they do not cover this issue for their members.	
Starch Europe	Request to share a PDF version of the stakeholder survey.	Ecorys shared a PDF version of the survey, but requested them to still fill in the survey via check market and not via the PDF, since this would make it harder to process the inputs.
Austrian Federal Economic Chamber	Request to share a PDF version of the stakeholder survey.	Ecorys shared a PDF version of the survey, but requested them to still fill in the survey via checkmarket and not via the PDF, since this would make it harder to process the inputs.
EFPIA	Request to share a PDF version of the stakeholder survey.	Ecorys shared a PDF version of the survey, but requested them to still fill in the survey via checkmarket and not via the PDF, since this would make it harder to process the inputs.
BDI – Federation of German Industries	Request to share a PDF version of the stakeholder survey.	Ecorys shared a PDF version of the survey, but requested them to still fill in the survey via checkmarket and not via the PDF, since this would make it harder to process the inputs.
MEDEF	Request to share a PDF version of the stakeholder survey.	Ecorys shared a PDF version of the survey, but requested them to still fill in the survey via checkmarket and not via the PDF, since this would make it harder to process the inputs.
MEDEF	They pointed out a small mistake/typo in the stakeholder survey.	Ecorys thanked them for spotting this and corrected the mistake/typo.
Bundesverband der Deutschen Industrie e.V.	The stakeholder survey did not seem to have stored their full answers. They have sent their full answers via email.	Ecorys thanked for this and indicated that they will take their full answers into account when analysing the survey outcomes.
Eurofer	They asked whether it was possible to have a print out of their answers to the survey before submitting in order to share with their members.	Ecorys answered that it is not possible the print out their answers before submitting. Ecorys shared a pdf version of the survey questions so they could consult with their members.
CEFIC	They had problems with accessing the stakeholder survey.	Ecorys shared the link to the stakeholder survey via mail.

Organisation	Email received	Response Ecorys study team
DIHK - Deutscher Industrie- und Handelskammertag e.V	They shared their position paper and answers to the survey.	Ecorys thanked for the input.
European Association of Chemical Distributors (Fecc)	Request to share a PDF version of the stakeholder survey.	Ecorys shared a PDF version of the survey, but requested them to still fill in the survey via checkmarket and not via the PDF, since this would make it harder to process the inputs.
Eurocord	They indicated that one of the links on the SIA China website incorrect.	Ecorys thanked for spotting this and has corrected the mistake.
Euroalliages	They asked whether the presentation of the second civil society dialogue meeting will be posted online.	Ecorys indicated that the presentation would be available one day after the meeting.
ACEA	Provided feedback on the draft Interim Report. It concerned a rephrasing of their input from the stakeholder workshop.	Ecorys thanked for their feedback and indicated that they will adjust the section accordingly.

Annex C: Minutes from the Civil Society Dialogue meeting on the draft Inception Report, 26 May 2016

CIVIL SOCIETY DIALOGUE

MEETING ON THE TRADE SIA IN SUPPORT OF AN INVESTMENT AGREEMENT BETWEEN THE EUROPEAN UNION AND THE PEOPLE'S REPUBLIC OF CHINA, DRAFT INCEPTION REPORT

Date: 26 May 2016

Time: 14:30 – 16:30

Location: Jenkins room, Charlemagne Building, Rue de la Loi 170, Brussels

Lead speakers

- Ms Alexandra Koutoglidou (AK), Investment Negotiator for China, Investment Unit, Directorate-General for Trade;
- Ms Delphine Sallard (DS), Head of the Evaluation Unit, Directorate-General for Trade;
- Mr Joao Pereira (JP), Evaluation Co-ordinator, Evaluation Unit, Directorate-General for Trade;
- Ms Silvia Formentini (SF), Trade and Sustainable Development Unit, Directorate-General for Trade;
- Mr Richard Liebrechts (RL), Team Leader, Oxford Intelligence;
- Dr. Evgueni Poliakov (EP), Senior Environmental Expert;
- Ms Nora Plaisier (NP), Senior Economic Expert, Ecorys;
- Ms Stephanie Bouman (SB), Junior Economic Expert, Ecorys;
- Ms Corine Besseling (CB), Project Coordinator, Ecorys.

Moderator

Ms Montserrat Gago (MG), Co-ordinator relations with civil society, Information, Communication and Civil Society Unit, Directorate-General for Trade.

Panel Presentation

The Commission (AK) provided a summary on the state of play of the negotiations between the EU and China on the investment agreement. The investment agreement with China will be the first ever stand alone investment agreement, which covers both market access and investment protection. The agreement is broader and comprehensive than the investment agreement with Myanmar, which covered only investment protection. The negotiations with China officially started in November 2013. Up to this point there have been 10 negotiation rounds in both Brussels and Beijing. The discussions in the first year of the negotiations mainly concerned the conceptual design and the negotiation approach to follow. After the ninth round both partners have agreed on the scope of the future agreement. As indicated the agreement will go beyond a typical investment agreement, for example also market access, licencing procedures and sustainable development are being discussed. For investment protection, the Investment Court System proposal that was tabled in the TTIP negotiations is also proposed in the current

negotiations with China. The 11th round of negotiations will be held in the last week of June in China.

The Ecorys study team presented the draft Inception Report. The report gives an introduction to the EU – China investment agreement and the current investment policies in the EU and in China. The approach taken to assess the expected economic, social, human rights and environmental impacts of the agreement has been laid out in this report. Additionally the screening and scoping exercise for the preliminary selection of the six sectors for in-depth analyses has been conducted. The final chapters in the report concern the stakeholder consultation plan and the timing and planning of the study. The Ecorys study team indicated that a stakeholder workshop will be held in early July, where the sustainable development analyses and sectors studies will be discussed.

Ecorys welcomed all stakeholders to provide any input, feedback, or comments on the current and future reports. The draft inception report and presentation can be found on the download section of the SIA China website - www.trade-sia.com/china. Comments on the draft Inception Report can be submitted until the 5th of June.

Discussion Highlights / Questions and Replies

International Federation for Human Rights is of the opinion that there are other human rights that should be assessed besides the ones mentioned in the report. FIDH will send more detailed comments where this is further explained. For the human rights that will be assessed, non discrimination and equality need to be taken into account. One cannot assume that when investors are protected, women are also protected, this would bias the results. Furthermore, freedom of expression is not the same as access to information. FIDH also asked whether there will be a workshop in China.

Ecorys (RL) answered that there will be no workshop in China. Nevertheless, Chinese stakeholders will be consulted, e.g. through interviews and the survey with the help of the local partner in China It has never been the intention of the study team to be biased and the report shall be revised in case the text suggests this.

The Commission (DS) added that the Commission specified in the terms of reference for this SIA that a workshop should be organised in Brussels, as this was considered to be most useful for the study.

Ships and Maritime Equipment Association asked whether boats are included in the sectors selected for in-depth analysis. They also asked whether all stakeholder input will be published. Furthermore, the association highly recommends the use of WeChat, which is very popular among Chinese businesses.

Ecorys (SB) answered that boats are not included as a separate sector for in-depth analysis, but boats are included as one of the subsectors in the transport equipment sector study. Concerning the publication of stakeholder input Ecorys answered that all input received from stakeholders will be made public, unless stakeholders specifically indicate to have reservations. Ecorys is currently in the process of getting a WeChat account.

Association des Constructeurs Européens d'Automobiles asked whether Ecorys will look at different scenarios as for example the content of the current BITs could differ per country, and specific barriers could differ per sector.

Ecorys (NP) answered that the study team does not call it scenarios, but will look in each of the sectors studies at the sector-specific barriers and what a reduction of these may entail.

Organisation for Sustainable Development asked Ecorys how the social and environmental analyses will be linked to each other. Additionally it is mentioned that the criteria for the sector selection were limited to FDI data and labour intensity, and asks whether Ecorys will also look at social, human rights and environmental issues. It was also asked whether the impact on human rights (or other aspects) in third countries like Laos and Cambodia would be assessed. The Commission is asked whether there is a hierarchy in negotiation objectives (e.g. investment protection vs. sustainable development).

Ecorys (NP) answered that for some of the methods used, the impacts of different analyses will be automatically linked. For example, the environmental analyses build on the results of the economic model in the impact assessment. In other cases, we will make use of causal chain analysis to link the different types of impact. With respect to the selection of sector studies, the team has used the selection criteria as outlined in the ToR. For the actual analysis the team will for each sector look at all types of impacts (economic, social, human rights and environmental impact). The assessment of effects on third countries will be part of the economic analysis where amongst others investment diversion effects will be looked at. The SIA team will also identify possible global value chain effects in the in-depth sector studies to assess the potential effects on third countries.

The Commission (DS) answered that from the perspective of the negotiators it is not the intention to create a hierarchy in objectives.

AeroSpace and Defence Industries Association of Europe asks the Commission why IPR is not included in the scope of the negotiations. Secondly, it is asked if the potential decision of China to join the TPP will influence the current negotiations with the EU.

German Chamber of Commerce asked the Commission how China reacted to the ICS proposal.

The Commission (AK) answered that there will indeed not be a separate IPR chapter in the agreement like in FTAs, but intellectual property would be covered as an asset that constitutes investment. If China were indeed to join the TPP, COM would not see at this stage how could that influence the ongoing negotiations. China has not given a reaction on the ICS proposal yet as they are still analysing the proposal.

European Economic and Social Committee indicated that they would like to be consulted by the study team concerning stakeholder consultation. The EESC suggested Ecorys to have a look at a new publication of the ILO on labour rights indicators (released on 27 April 2016).

Ecorys (RL) answered the SIA team will contact EESC within short and that it will have a look at the labour rights indicators.

The Commission (MG) concluded the meeting by thanking the participants for their interest and active participation. Further comments and feedback on the report can be sent to the Ecorys team at sia-china@ecorys.com until Sunday 5 June.

Annex D: Invitation to the stakeholder workshop

Background information

The EU China Investment Agreement

Over the past decades, 27 European Union (EU) Member States (MS) have signed Bilateral Investment Treaties (BITs) with China, providing for investment protection, but not for investment market access. Restrictions caused by investment barriers mean there is still significant untapped potential in investment flows between China and the EU. During the 16th EU-China Summit held on 21 November 2013 the negotiations for a stand alone investment agreement between the EU and China were launched. This future investment agreement will replace the current BITs.

Specifically, the aim of the negotiations is to conclude an agreement that will:

- Provide for new opportunities and improved conditions for access to the EU and Chinese markets for Chinese and EU investors respectively;
- Address key challenges of the regulatory environment, including those related to transparency, licensing and authorisation procedures
- Establish certain guarantees regarding the treatment of EU investors in China and of Chinese investors in the EU, including protection against unfair and inequitable treatment, unlawful discrimination and unhindered transfer of capital and payments linked to an investment;
- Ensure a level playing field by pursuing, inter alia, non-discrimination as a general principle subject only to a limited number of clearly defined situations;
- Support to sustainable development initiatives by encouraging responsible investment and promoting core environmental and labour standards;
- Allow for the effective enforcement of commitments through investment dispute settlement mechanisms available to Contracting Parties and to investors.

Once concluded, the agreement is expected to increase bilateral investment flows by tackling barriers to the making of an investment and by providing for a fair, transparent and predictable legal framework for investors in the EU and in China.

The present study

In the context described above, the European Commission contracted Ecorys and its consortium partners to carry out a Sustainability Impact Assessment (SIA) in support of an Investment Agreement between the European Union and the People’s Republic of China.

The overall approach to the entire SIA can be divided in three linked phases:

- Overall analysis of the sustainability impacts arising from the negotiations of an Investment Agreement between the EU and China;
- Sectoral SIA analysis for the Investment Agreement between the EU and China;
- Proposals for policy recommendations and accompanying measures.

Our approach is based on the two standard and equally important methodological elements of a SIA: 1) analysis of the economic, social, human rights and environmental impacts; and 2) stakeholder consultations. The sustainability assessments are characterised by both quantitative and qualitative elements and throughout the SIA, we will engage in continuous feedback and consultation with key stakeholders to collect their input and to verify the results.

The Inception Report of the study - which outlined the different methodological approaches taken in order to assess the potential impacts of the investment agreement, and the stakeholder consultation plan - has been completed and is published on the website dedicated to this study (www.trade-sia.com/china). In the interim phase of this study the team will conduct the overall economic, social, human rights and environmental impacts, as well as the first part of the in-depth sectoral analyses.

Invitation to the stakeholder workshop

As described above, stakeholder consultations form an important element of the SIA, as these can provide important inputs and feedback into the study. Therefore, on the 5th of July 2016, a stakeholder workshop will be organised in Brussels. Hereby we would like to invite you to participate in this workshop. Your presence and inputs will be valuable for the study and much appreciated. On the next pages, you will find the practical information about this workshop, including the workshop objectives and programme.

More information

If you would like to read more about the future Investment Agreement and the SIA study, including the methodologies and team, please visit our website www.trade-sia.com/china, join our social media channels, or send an email to sia-china@ecorys.com.

sia-china@ecorys.com

www.trade-sia.com/china

SIA EU-China

@EcorysTrade

Workshop in Brussels on 5 July 2016

Aim of the workshop

The general objectives of the workshop are to:

- Inform stakeholders about the objectives, methodology and results of the study;
- Promote an interactive dialogue between different players in order to feed the study with comments from civil society.

More specifically, the workshop aims to:

- Explain more about the future EU-China Investment Agreement;
- Discuss the preliminary results of the Interim Report (results of quantitative and qualitative analyses, etc.) with European and international stakeholders and gather their views, comments and assessments on these results.
- Obtain inputs for the next stage of the study, which will include finalisation of the overall and sectoral analysis and providing policy recommendations and flanking measures.

The workshop will take place in the form of roundtable discussions, each starting with an introduction by one of the SIA team members. The audience will be invited to ask questions, provide comments and additional inputs and provoke discussion and debate. Participants will be invited to give a one-minute pitch at the start of each session to introduce themselves and present their main inputs and comments and indicate the specific topics of interest regarding the impact of the agreement.

Participants

Stakeholders invited for the workshop include representatives of a variety of stakeholder groups in order to obtain a balanced view. They include private sector associations, including chambers of commerce; trade and business associations; Small and medium-sized enterprises and their associations/organisations; Non-governmental social, human rights, and environmental organisations; academia; think tanks; trade unions, etc.

Date and venue

Date: Tuesday 5 July 2016

Time: 11:00 – 16:45

Location: HOTEL NH Brussels Carrefour de l'Europe

Rue Marche aux Herbes 110

B-1000 Brussels

Belgium

Language

The workshop will use English as working language.

Registration for the workshop

Please confirm your participation by filling out the registration form on www.trade-sia.com/china/workshop or send an email to sia-china@ecorys.com. We kindly request you to inform us which rounds you would like to attend and whether you will come alone, if you will bring a colleague, or if you will send a replacement.

The registration of the workshop closes on the 3rd of July 2016. Participation in the workshop is free of charge. Coffee and tea will be provided. For participants residing outside Brussels, travel costs can be reimbursed under certain conditions. For more information on this, please consult the SIA team (sia-china@ecorys.com).

Agenda of the workshop

Below you find the agenda of the workshop. Please note that this is a preliminary version, which may still be subject to some minor changes.

Time	Session
11:00 – 11:30	Registration and coffee
11:30 – 12.00	Opening Introduction of the team and the study The EU-China Investment Agreement Aim of the workshop
Round 1	
12:00 – 13:30	Roundtable on Social and Human Rights impacts Update on the preliminary study findings and main issues to discuss Q&A and discussion on the results
12:00 – 13:30	Roundtable on Environmental impacts Update on the preliminary study findings and main issues to discuss Q&A and discussion on the results
13:30 – 14:15	Lunch
Round 2	
14:15 – 15:15	Sectoral session – Impact on Mining and energy extraction Presentation of the preliminary study findings Q&A and discussion on the results
14:15 – 15:15	Sectoral session – Impact on Transport equipment (including motor vehicles and other transport) Presentation of the preliminary study findings Q&A and discussion on the results
14:15 – 15:15	Sectoral session – Impact on Chemicals Presentation of the preliminary study findings Q&A and discussion on the results
Round 3	
15:15 – 16:15	Sectoral session – Impact on Processed foods and beverages Presentation of the preliminary study findings Q&A and discussion on the results
15:15 – 16:15	Sectoral session – Impact on Communication and electronic equipment Presentation of the preliminary study findings Q&A and discussion on the results
15:15 – 16:15	Sectoral session – Impact on Finance and insurance Presentation of the preliminary study findings Q&A and discussion on the results
16:15 – 16:45	Wrap up, conclusion and way forward

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