



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2012)

Opinion

Title **DG TRADE - Impact Assessment on the EU-China Investment Relationship**

(draft version of 6 June 2012)*

(A) Context

The Lisbon Treaty provides for the EU to contribute to the progressive abolition of restrictions on foreign direct investment while upholding and promoting its values and interests and contributing to, inter alia, sustainable development, free and fair trade, eradication of poverty and the protection of human rights. Art. 3(1)(e), 206, 207 TFEU confer exclusive competence to the EU in the field of foreign direct investment. Trade and investment are a crucial component of the triple growth objective of the Europe 2020 Strategy. The Commission Communication of July 2010 "Towards a comprehensive European international investment policy" identifies China as a potential partner for an investment agreement, given the shortcomings of the current legal framework and climate for investment between the EU and China. After agreement between Commission President Barroso and Chinese Prime Minister Wen Jiabao to look into ways of deepening and enhancing the bilateral investment relationship, Commissioner De Gucht and the Chinese Trade Minister Chen Deming launched a Joint EU-China Investment Taskforce in May 2010 to study options for enhancing bilateral investment and evaluate the desirability and feasibility of potential negotiations of an EU-China investment agreement. This impact assessment analyses the underlying problems in the current EU-China investment relationship, the different options to address these and their impacts.

(B) Overall assessment

The report provides a comprehensive overview of the main issues at stake in upcoming negotiations on an EU-China Investment Agreement, but stills needs to be improved in a number of respects. Firstly, the problem definition should more clearly set out the main problems under the baseline scenario, i.e. maintaining the current situation with separate Bilateral Investment Treaties (BITs), provide more concrete evidence on the economic and employment impacts of the existing situation of asymmetric market access, including investments by state-owned enterprises. Secondly, the report should explain more clearly why certain options have been discarded, and assess a number of alternative options in greater depth to complement the quantitative assessment of the preferred option 3 (combining investment protection with market access). Thirdly, the report should indicate how robust and significant the results of the model simulations are and should compare a broader set of alternative options. Finally, it should improve the transparency and accessibility of the underlying analytical work, and the presentation of different stakeholder views throughout the report.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

(C) Main recommendations for improvements

(1) Strengthen the problem definition. The problem definition should more clearly set out the main problems under the baseline scenario, i.e. maintaining the current situation with separate BITs. While the report identifies a broad range of relevant issues, not all of them are systematically addressed throughout the analysis. The problem section should provide more concrete evidence regarding the economic and employment impacts in the EU of the existing situation of asymmetric market access, and on the extent of investments in sensitive or strategic sectors. It should also discuss in more detail to what extent investments of state-owned enterprises currently lead to competitive distortions. In discussing the currently missing elements in the existing BITs the report should emphasise the problems under the existing bilateral arrangements to ensure respect for and effective implementation of social and environmental standards, and upholding standards of corporate social responsibility. The report would benefit from describing the development of FDI trends (if possible by type of investment and sector) and providing more information on restrictiveness issues. The report should also address any compliance issues relating to the current BITs which could be more effectively addressed in an EU-China investment agreement. The baseline scenario should better take up the narrative of the problem definition. It should outline the opportunity costs of the foregone possibilities for expansion and growth and should expand more on the problems, needs and ambitions of relevant stakeholder groups with regard to the current fragmented arrangement. The intervention logic should be strengthened by ensuring coherence between the issues that are addressed in the EU's operational objectives and those that have been identified and analysed in the problem definition. In this context, the text should clarify whether China's objectives also cover extended market access through pre-establishment and/or to services sectors or not.

(2) Improve the presentation and discussion of the options. The report should provide a more balanced presentation of the various alternative options. In view of the considerable space devoted to the analysis of the preferred option, an effort should be made to strengthen the discussion of the most relevant alternatives. The report should also address the extent to which any of these options can be expected to attain the operational objectives. This will also strengthen the argument by giving a more adequate idea of the fall-back position that would result from a failure to agree on a more ambitious negotiation mandate. The discussion on the integration of social and environmental standards in the negotiations and their role for EU-China investment relations should be strengthened..

(3) Better assess and compare impacts. In the presentation of the modelling results the report should clearly indicate how robust and significant the projections are, and explain how conservative the modelling assumptions have been. In this context, the report should present – where possible - factual evidence on both short- and long-term effects, e.g. of relocation activities, on employment or productivity. It should also be more candid about the relatively weak evidence on the relationship between the existence of investment treaties and concrete investment flows. For a more balanced overall assessment the discussion of the impacts of a number of alternative options should be strengthened. The report should better assess how well each option may achieve the objectives defined. Even where it is difficult to present quantitative results the report should nevertheless make an effort to provide a more comprehensive qualitative assessment for the most relevant alternatives. Estimates or indications of expected employment impacts should be presented for all sectors identified in the problem definition, including construction and renewable energies. The expected environmental impacts should be discussed in greater detail. The report should present a more balanced conclusion on these impacts, given the

high level of uncertainty of the modelling results.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report

(D) Procedure and presentation

The report should improve the transparency and accessibility of the underlying analytical work, by providing links or attaching an Annex with elements of the relevant background study that can be made public. It should also provide more complete references to published studies that support the arguments presented (e.g. regarding social standards and human rights) or present diverging views. It should improve the visibility of stakeholder input and the results of the business survey, and show existing differences in views in a more balanced manner throughout the report. The overview and full analysis of stakeholder replies should be attached to the report.

(E) IAB scrutiny process

Reference number	2012/TRADE/003
External expertise used	No
Date of IAB meeting	4 July 2012