

# CHINA INVESTMENT POLICY

## CONSEQUENCES FOR WORKERS



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# China investment policy **CONSEQUENCES FOR WORKERS**

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# Foreword

After eight rounds of discussions during 2015, the European Union (EU) and the People's Republic of China (PRC) decided to engage in "substantive negotiations" towards an EU-China Investment Agreement based on a draft combined text, starting early in the New Year 2016.

This is a propitious time for the publication of the Syndex study, which will help inform European trade unions about the state of play in the economic relations between two of the major world players and feed their discussions towards elaborating ETUC policy on the issues.

These discussions take place in a specific geopolitical context. The United States has, together with eleven other countries on the Pacific rim, just agreed a Trans-Pacific Partnership (TPP) which, if and when ratified by its parties, will pose a significant challenge to the PRC which is excluded from it. At the same time, negotiations are continuing between the EU and US on a Transatlantic Trade and Investment Partnership (TTIP) – the conclusion of which is also finely balanced given the US Presidential electoral cycle in particular.

This context may explain reports that the PRC is seeking to accelerate the pace of negotiations with the EU and that certain European politicians have been prompted to believe that China would be ready to make more concessions than expected.

The ETUC strongly warns against any delusion based on a perceived Chinese weakness currently. As the study shows, China's expansionary policies are part of a long-term strategy. For example, President Xi Jinping's 'Chinese Dream' initiative, covering a broad spectrum of policies including trade and investment, is set in a vision extending to 2049. China's "One Belt, One Road" and New Silk and Maritime Silk Road Initiatives demonstrate a global view that is wider than trade and encompasses political and security considerations.

Chinese investment decisions are highly regulated, coordinated, and approved centrally. All this is in stark contrast to the short-term mercantilist approach of the EU and its Member States who compete rather than coordinate and leave it to individual companies to decide where and how to invest, while supporting them.

The ETUC opposes the extension of Market Economy Status (MES) to China. It would be a grave mistake for the EU to bow to pressure to do so now in exchange for concessions in the context of the Bilateral Investment Treaty (BIT) negotiations, which could well prove illusory in any event, while putting some three million jobs at risk in highly import-sensitive industries in Europe. It is quite clear that China doesn't meet the EU's MES criteria – that are themselves weak compared to those applied by the US which in particular include free collective bargaining considerations, unlike the EU's. The current dumping of Chinese products on the European market must also be dealt-with urgently.

The European Parliament in its resolution of 16 December 2015 on EU-China relations, called for a fully-fledged sustainable development chapter to be included in any BIT, which provides for binding commitments with respect to ILO human rights labour standards. As with all such treaties we insist that breaches of those commitments should attract economic consequences. In addition to the Core standards, China should ratify and fully implement other key conventions, notably on occupational health and safety and particularly regarding coal mines, given its horrific record.

The absence of freedom of association in China is a major issue for the ETUC and progress in the investment discussions must be made contingent on immediate moves towards allowing workers to organise and bargain freely and independently. European companies operating in China should give a lead in facilitating free elections of worker

representatives for collective bargaining and health and safety purposes. Relying on the official All China Federation of Trade Unions, the only "trade union" organisation allowed to operate in China, to fulfil such roles is not currently an option, given that organisation's organic links with the Communist Party of China. The ETUC is concerned that NGOs in China are currently having to take the place of independent trade unions due to the lack of freedom of association. But they cannot be a permanent substitute for real independent trade unions. The current crack-down on labour NGOs accused of "disturbing social order" by the authorities is another source of serious concern, as is the increasing interference by the mainland authorities in Hong Kong, which the ETUC has condemned as showing that the PRC authorities could not be trusted to keep their engagements.

A number of ETUC national affiliates have worked in China and their experiences, together with those of the European Trade Union Federations and their associated Global Union Federations, and of the ILO Bureau on Workers' Activities (ACTRAV), as well as the International Trade Union Confederation, can assist in our further consideration of the issues.

No discussion of investment treaties can ignore the issue of Investor-State Dispute Settlement, which is an issue of major concern for the ETUC in the context of the TTIP negotiations. In the case of the US, no BITs exist with any of the major EU countries (the only ones in place are with nine Central and Eastern European countries which agreed them prior to their EU accession). However, all EU countries except Ireland have BITs in force with China, the vast majority of which include some form of dispute settlement mechanism for investors.

According to UNCTAD, one case involved a Chinese investor: Ping An, against an EU country: Belgium. The claim arose out of the Government's bailout, and subsequent nationalisation and sale to a third party, of Fortis in which the claimants had invested, in the context of the 2008 financial crisis. The case was found in favour of the state. There are no cases involving EU investors in China. It might be noted that the European Parliament underlined increasing complaints by European companies that they are "victims of capricious regulation and discrimination".

One can only speculate over why they do not take advantage of ISDS mechanisms available to them, and whether replacing those national agreements by an EU arrangement would help. The ETUC will consider further the dispute settlement issue, also in the context of the Commission's proposals for an International Court System.

The EU-China negotiations are of great importance to Europe's trade unions – indeed to all our citizens. While the Commission has shown some commitment to transparency, notably in its "Trade for All" Communication and in relation to the TTIP negotiations, little concrete information so far has been released in connection with the talks with the PRC. It is imperative for more openness in this context to help build trust and understanding. An indication of the contents of the "combined text" would be a good start.

It is clear that 2016 will be a crucial year for EU-China economic relations. The ETUC is keen that an informed debate take place on the range of issues that arise, as a basis for a European trade union campaign to defend and create decent jobs in Europe. The publication of this report is an important step towards that objective and I urge not only our members, but also deciders at European and national level to read it carefully.



**Luca Visentini**

General Secretary,  
European Trade Union Confederation

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# Introduction

At the 16th European Union-China Summit, held on 21 November 2013, the launch of negotiations for a comprehensive European Union-China Investment Agreement was announced. These negotiations form part of a broader European Union (EU) strategy for securing EU engagement in growth markets. Based on the Lisbon Treaty of 2007, the European Commission has the exclusive competence on common commercial and investment policy, namely the negotiation of Free Trade and Investment Agreements with the major emerging markets. According to the Commission, such an agreement would thus help move from a situation that encompasses 26 separate national investment protection agreements to a single set of standards across the Union and thus put an end to “race to the bottom”<sup>1</sup>, measures by which Member States have engaged to attract Chinese Foreign Direct Investment (FDI).

Concerning the negotiation with China, DG Trade points out: “The Agreement will provide for the progressive liberalisation of investment and the elimination of restrictions for investors entering each other’s market. It will provide a simpler and more secure legal framework for investors of both sides by securing predictable long-term access to EU and Chinese markets respectively, and will offer strong protection to investors and their investments”<sup>2</sup>. Indeed, the Commission is particularly interested in rebalancing the current situation whereby European investors face discrimination against local companies in China while Chinese investors in Europe are treated like any other investor (especially in a context of rising Chinese investments in Europe). However, the EU does not wish to negotiate on trade issues. This negotiation will aim for a standalone agreement on investment.

Furthermore, such an agreement could be an opportunity to address at least two other issues contributing to an unbalanced relationship with China. First, the EU faces the growing economic global player that is China with its own weak European industrial strategy. As the dismantling of the European solar panels industry has shown, the lack of anticipation and coordination of European countries at the sectoral level has proven ineffective faces with a Chinese state-driven strategy and as a result has led to many job losses in Europe.

This issue is all the more relevant in the context of current discussions about whether China should or should not be granted market economy status (MES). As a matter of fact, by achieving MES, China could even more easily develop its policy of selling overcapacities on the European market, as is currently the case for steel and aluminium, which puts at risk thousands of jobs in Europe. The MES issue may be used as blackmail towards the EU in the frame to the current negotiation on investment.

Moreover, the EU could emphasize the core role of labour standards and human rights that are the cornerstone of democratic stability, economic and social justice – principles on which the European model is based – and which contrast sharply to the current situation in China. Beijing has ratified only four out of the eight core ILO labour Conventions, whilst Chinese trade unions have to be affiliated to the ACFTU and any effort to establish independent unions is suppressed<sup>3</sup>. In Europe, alarming reports on labour conditions in China have not only raised concerns about labour conditions in China; they have also fuelled fear among public opinion that Chinese investors would export bad labour relations to Europe.

So far, however, industrial policy and labour rights do not appear as central themes in the current negotiation process. Against this background, there is a risk of lacking consistency between the EU’s external policy objectives and its investment policy towards China.

This negotiation may be hampered by the democratic deficits of China and the weakness of the EU industrial strategy; the two negotiators do not play according to the same rules. Will the EU institutions sacrifice European values and labour rights for the benefit of business? Will China open up to a more inclusive policy as regards workers representatives’ roles and international labour standards? How can the trade union movement influence this negotiation and, if need be, oppose a bad agreement?

The following report explores the relationship between the EU and China regarding investments but also provides insights from a labour and international policy perspective. By doing so, it aims at providing insights into the economic, social and political dynamics underlying the negotiation process. Finally, it intends to help identify concrete measures that could enable labour and employment issues to be given full consideration in an investment treaty.

Based on the most recent and reliable figures available, the report starts with an assessment of Chinese investments in Europe and European investments in China (Chapter 1). It then presents China’s (Chapter 2) and Europe’s (Chapter 3) international strategies, before providing information about the ongoing negotiation process of a EU-China investment treaty (Chapter 4). The last chapter (Chapter 5) provides case study-based evidence on investment and labour dynamics at sectorial and company level in both Europe and China.

## METHODOLOGY

The following report draws on material collected both through desk research and interviews. Figures on investments mainly stem from the most recent study on this topic (Baker & McKenzie, 2015). The presentation of China’s international and social policy is mainly based on desk research, enhanced by interviews with European and Chinese academics. Despite Syndex requests, no interviews could be arranged with Chinese policymakers, business and trade union officials. For a better understanding of the negotiation process, interviews have also been carried out with DG Trade and DG Employment. Case studies are based on desk research combining existing academic research and news reports. Interviews with several union officials could be arranged for the case study on the construction sector, dockers and with BusinessEurope and ETUC. The analysis of industrial relations dynamics in China is based on existing academic research and observations/ interviews with labour activists from different “labour NGOs” during a fellowship conducted at China Labour Bulletin in 2014. Both the general and the case-study analysis have also benefited from participation in conferences and workshops.

We thank all interviewees who kindly accepted to offer their time and share their useful knowledge for the purposes of this study.

<sup>1</sup> Currently, in competing to receive FDI, national and sub-national level governments have adopted various schemes, including tax exemptions and welcome schemes.

<sup>2</sup> <http://ec.europa.eu/trade/policy/countries-and-regions/countries/china/>, 5th January 2016.

<sup>3</sup> Most recently, in December 2015, 18 Chinese labour activists from the Guangdong region were arrested in what Amnesty International call an “unprecedented and coordinated attack” <http://www.theguardian.com/world/2015/dec/10/china-labour-rights-crackdown>, 5th January 2016.

**CHAPTER 1**  
**INVESTMENT TRENDS**  
**EUROPE-CHINA**

## Key points

- There has been a recent inversion in investment trends: In 2011, EU companies invested almost € 18 billion in China, with Chinese FDI into the EU amounting to less than € 4 billion. In 2014, China's FDI to the EU amounted to USD 18 billion, whereas the EU's FDI to China amounted to USD 8 billion.
- Whereas the EU is one of the top five investors in China, the share of Chinese inbound FDI to the EU is only a few per cent. Nevertheless, Chinese investments in the EU have been more analysed than EU investments in China.
- With the financial crisis Europe has become a privileged target of Chinese FDI.
- Western Europe, where many sectorial leaders with a technology advantage are located, is where most Chinese investments are concentrated. However, Chinese investors also target opportunities arising from the privatisation of State-related industries such as utilities and transportation infrastructure, in countries like Portugal or Greece. Eastern European economies still play a comparably small role, accounting for just 8% of total investment value from 2000-2014.
- Over the entire period of 2000-2014, State-owned companies and sovereign entities accounted for the majority of investment value, though financial investors (including private and State-owned funds) have emerged as important players in the China outbound space.
- More recently, Chinese investment targets have diversified beyond an early focus on technology, infrastructure and heavy industry. Chinese firms are now growing in strength outside the goods manufacturing sector, namely in real estate, agriculture and food, infrastructure or financial services.
- Changing position of Chinese companies in global value chains and the evolution of China's policy framework for outbound FDI: falling investment in resources was thus balanced by new interest in other sectors, as commercial motivation to invest abroad increased and continued efforts to liberalise outbound FDI rules have broadened the base of overseas investors.
- For years Germany was the principal European investor in China, but France assumed the leading role in 2015. China's automotive and chemical sectors have received most EU FDI, with recent data (from the first quarter 2015) suggesting that an increasing share of EU investment is devoted to consumer products.
- Business surveys among both Chinese and European companies about investment conditions for foreigners in China and Europe suggests that Chinese investors generally consider Europe as a more favourable region for investments than any other part of the world, whereas European ones feel discriminated against Chinese companies.

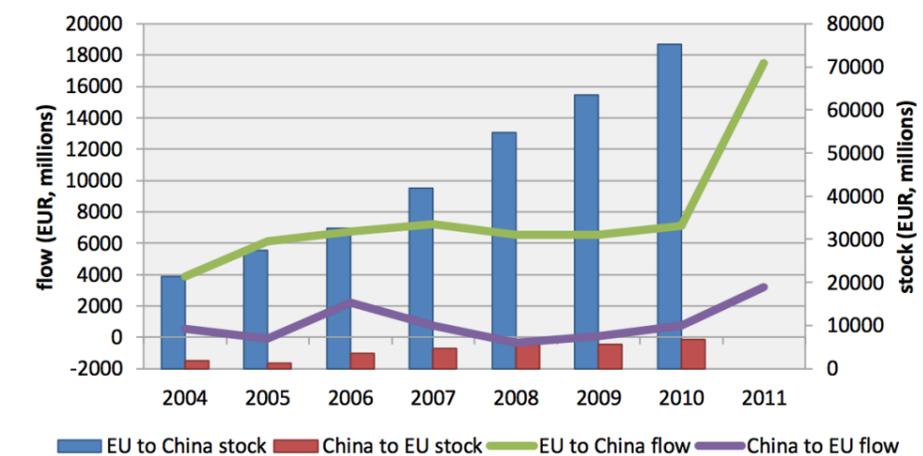
## 1. A RECENT INVERSION OF INVESTMENT TRENDS

Since the 1990s, under the effect of the Chinese market reform, there has been a continuous flow of EU foreign direct investments (FDI) to China. In the period 2004-2011, EU to China investment flows have been on an annual average level of € 6-7 billion and increased sharply to almost €18 billion in 2011.

In the same period, FDI from China to Europe has remained much lower: almost inexistent in 2004 and 2005, it reached € 2 billion in 2006, and then decreased again. Despite first signs of an upward trend of Chinese FDI in Europe, a huge gap remained in 2011: EU companies invested almost € 18 billion in China, with Chinese FDI into the EU amounting to less than € 4 billion.

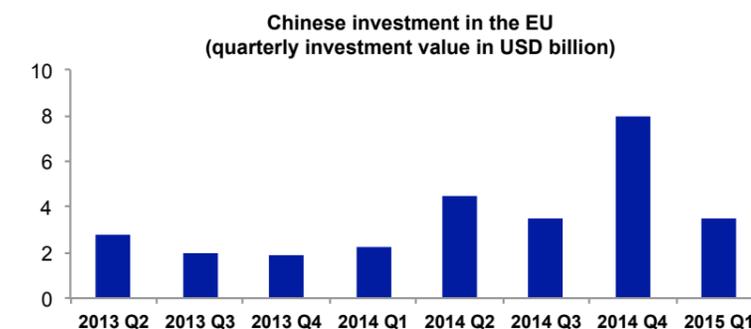
As the latest estimates suggest, the China-EU relationship concerning investment levels now seems inverted. In 2014, China's FDI to the EU amounted to USD 18 billion, whereas the EU's FDI to China amounted to USD 8 billion.

Figure 1. FDI EU-China (stock and flow<sup>4</sup>), 2004-2011



Source: Eurochamber, 2013

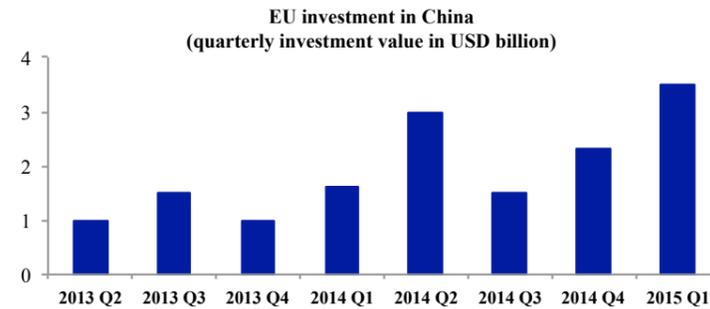
Figure 2. Chinese FDI to EU



Source: "Trade and economic relations with China", European Parliament, 2015.

<sup>4</sup> FDI flows consist of the net sales of shares and loans to the parent company plus the parent firm's share of the affiliate's reinvested earnings plus total net intra-company loans (short and long-term) provided by the parent company. FDI stocks refer to the value of fixed assets and the value of current assets and investments, excluding amounts due from the parent, less liabilities to third parties.

Figure 3. EU FDI to China



Source: "Trade and economic relations with China", European Parliament, 2015.

According to the European Commission<sup>5</sup>, in 2012 Chinese investments into the EU accounted for 2.6 % of total foreign direct investment flows into the EU (up from 1.0 % the year before). By contrast, the share of total EU flows of FDI into China stays at a steady 20% of all inward FDI, which makes the EU's combined 28 Member States one of the top 5 FDI providers to China along with Taiwan, Hong Kong, the USA and Japan.

## 2. FOCUS ON CHINESE FDI IN EUROPE

According to Chinese Government data<sup>6</sup>, only 5% went to Europe during the period 2004-2010. 72% of FDI went to Asia during the same period<sup>7</sup>. However, analysts agree that with the financial crisis Europe has become a privileged target of Chinese FDI. From 2011 onwards, European countries started to welcome Chinese investors as a means to compensate for both the lack of public liquidity and private companies' difficulties in gaining access to credit.

At the same time, in line with Beijing's international development policy, restrictions on overseas FDI for Chinese companies have progressively been removed. Buying technology appears as one of the main rationales of China's new investment policy.

As a result, Western Europe, where many sectoral leaders with a technology advantage are located, is where most Chinese investments are concentrated in Europe. In addition, Chinese companies have diversified their investments over the time.

### 2.1. Historically very low, Chinese FDI in Europe have been skyrocketing since 2011

Almost non-existent in 2000, Chinese investment flows to Europe reached \$ 10 million in 2011 and \$ 18 million in 2014. Over the period 2000-2014, the majority of Chinese investments in the EU have targeted greenfield projects and the expansion of existing facilities (70% of all transactions). However, in terms of investment volume, the bulk of investment can be attributed to acquisitions (86% of total value), as M&A deals are generally more capital-intensive than greenfield projects and expansions.

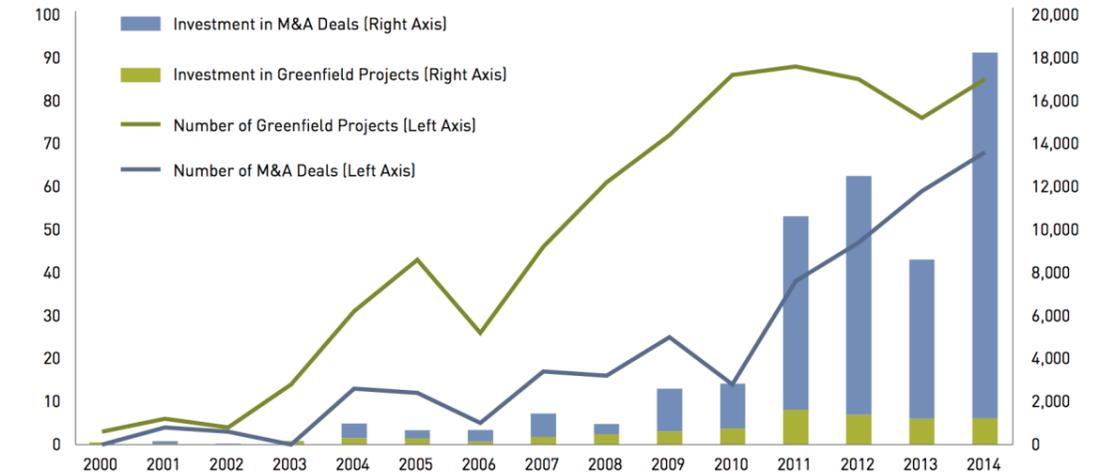
With the growing average value of greenfield projects over the last four years, there seems to be a new trend: according to Baker and McKenzie (2015), Chinese companies have begun to invest in greenfield projects with significant capital expenditures, including research and development (R&D) centres, food processing facilities, real estate developments, and machinery production. This provides further confirmation of the structural expansion of Chinese investors in Europe.

<sup>5</sup> European Commission, "Facts and Figures on EU-China trade", March 2014.

<sup>6</sup> Quoted in Eurochamber, 2013.

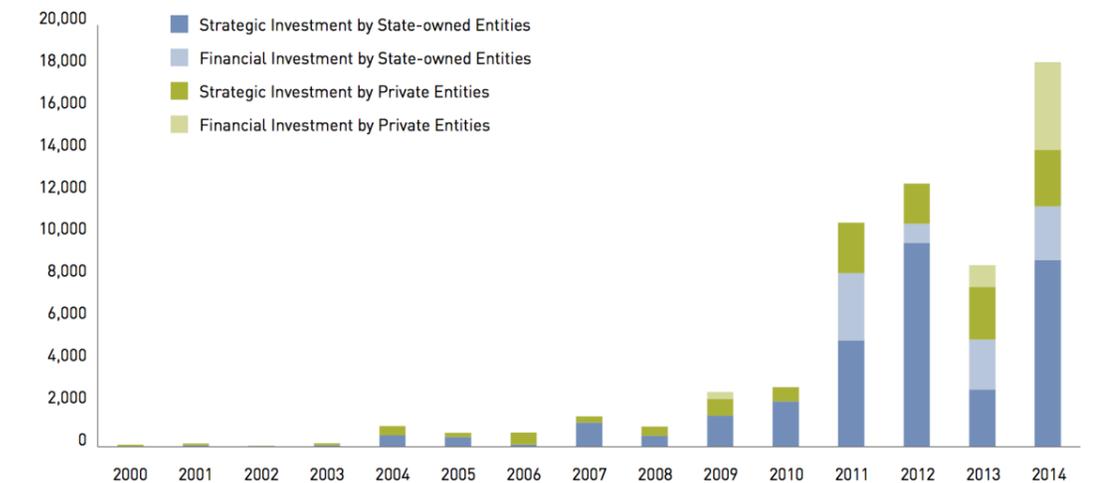
<sup>7</sup> However, with 87% of investments to Asia going to Hong-Kong, it is likely that a significant part of "Asian investments" are rerouted elsewhere.

Figure 4. Chinese FDI in Europe, by entry mode



Source: Baker & McKenzie (2015)

Figure 5. Chinese FDI in Europe, by type of investor



Source: Baker & McKenzie (2015)

Over the entire period of 2000-2014, State-owned companies and sovereign entities accounted for the majority of investment value (69%), as they dominate capital-intensive industries in China. Privately owned companies account for only 31% of the total money invested.

Also, strategic investors<sup>8</sup> accounted for the vast majority of deals and deal value. However, in the past two years, financial investors have emerged as important players in the China outbound space, including private and State-owned funds.

The evolving mix of Chinese investors in Europe reflects the diversity and recent changes in the corporate landscape in China or sovereign entities.

<sup>8</sup> "Strategic investors" refer to "real economy companies that are making long-term investments to exploit advantages, access markets, or increase competitiveness", whereas financial investors are "companies and funds that invest primarily for financial returns", Baker & McKenzie, 2015, p. 34.

## 2.2. Beyond new trends, investments are concentrated in the biggest and most advanced EU economies

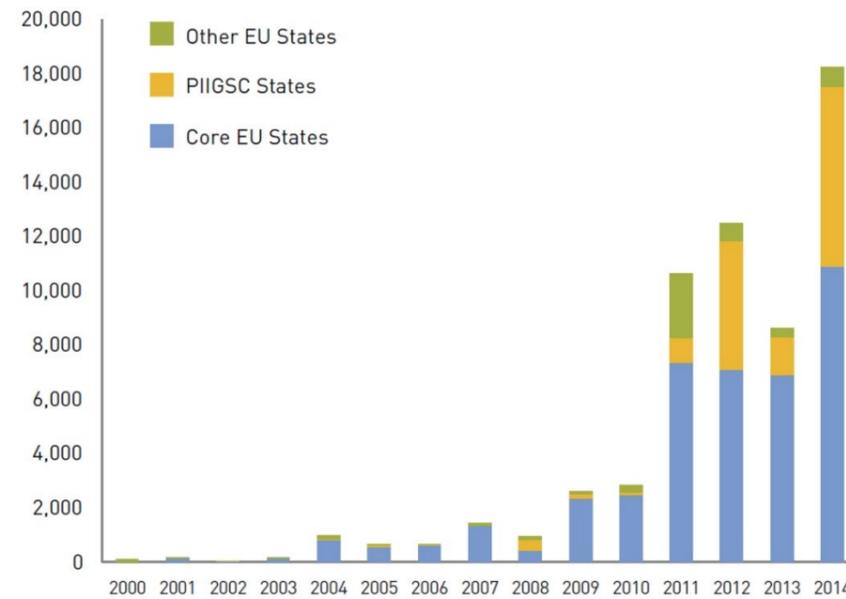
From 2000-2014, investments reached out to all European countries, but were concentrated in the biggest and most advanced economies such as Germany, France, the UK and Italy (figure 6). In 2014, 9 out of 28 EU-countries, (Austria, Belgium, Denmark, France, Germany, Luxembourg, Netherlands, Sweden and the UK) received more than half of Chinese FDI. But before 2011, those same countries concentrated 77% of Chinese investments.

However, there is evidence for changing trends due to shifting Chinese interests and emerging opportunities on the European side.

Chinese investors increasingly deployed capital in economies that were severely affected by the financial crisis. For instance, the share of Portugal, Ireland, Italy, Greece, Spain, and Cyprus in total Chinese inbound EU investment grew from 8% in 2009-2011 to 33% in 2012-2014. In particular, Chinese investors targeted opportunities arising from the privatisation of State-related industries such as utilities and transportation infrastructure.

The new Member States in Eastern Europe also somewhat increased their share of total inbound FDI from China in recent years, mainly under the effect of megadeals. Nevertheless, Eastern European economies still play a comparably small role, accounting for just 8% of total investment value from 2000-2014.

Figure 6. Chinese FDI in Europe, by country group<sup>9</sup>



Source: Baker & McKenzie, 2015

<sup>9</sup> "Core EU States" refers to Austria, Belgium, Denmark, France, Germany, Luxembourg, Netherlands, Sweden, and the UK. "PIIGSC States" refers to Portugal, Ireland, Italy, Greece, Spain and Cyprus. "Other EU States" refers to Bulgaria, Croatia, Czech Republic, Estonia, Finland, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, and Slovenia.

Table 1. Top five EU countries in terms of Chinese investments, 2000-2014: ranking, investment volume and factors<sup>10</sup>

COUNTRY	INVESTMENT AMOUNT	FACTORS	MAJOR DEALS
UK	\$ 16 billion	London as a world financial centre real estate boom UK-based companies with valuable consumer assets	Weetabix, Pizza Express
Germany	\$ 8.5 billion	attractiveness for advanced manufacturing activities privately-owned SMEs exchange technology in return for Chinese market access	Putzmeister, KION, KSM Castings
France	\$ 8 billion	- mature industries - recent readiness of the French government to sell strategic stakes to Chinese state companies and sovereign entities	GDF Suez Peugeot Alcatel? Rhodia Silicones?
Portugal	\$ 6.7 billion	- Chinese participation in the privatisation of State assets in the financial sector and utilities	Caixa Seguros e Saude Energias de Portugal Redes Energéticas Nacionais SGPS
Italy	\$ 5.6 billion	- \$ 2.8 billion stake in China's State Grid in CDP Reti (2014) - Italian assets in industrial equipment and machinery, transportation equipment, food and luxury goods	CDP Reti CIFA, Ansaldo Ferretti Salov Raffaele Caruso

From a country perspective, there are clear differences within the EU over the period 2000-2014 and 5 categories of country groups can be distinguished.

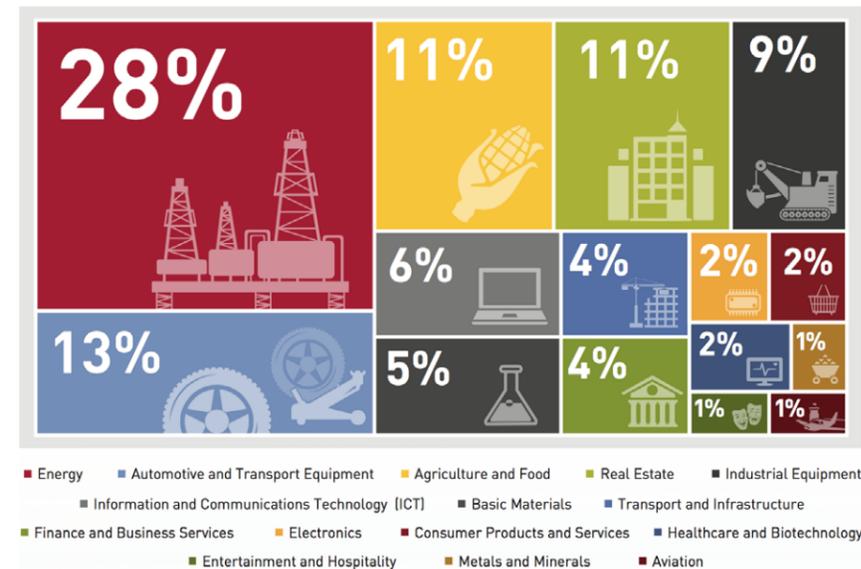
- The top five countries concentrating Chinese investments are the UK, Germany, France, Portugal and Italy.
- Following these five leading countries, a group of five economies have each attracted between \$ 1-5 billion of investment for the period 2000-2014: the Netherlands; Hungary; Sweden; Spain; and Belgium.
- A third group including Romania; Austria; Luxembourg; Poland; and Greece attracted deals worth between \$ 500 and \$ 1 billion.
- Lower levels of Chinese investment can be found in Bulgaria, Czech Republic, Denmark, Finland, and Ireland, with between \$ 100 and 500 million each.
- The rest of the EU-28 attracted less than \$ 100 million of investment each, including Malta, Slovakia, Lithuania, Cyprus, Estonia, Slovenia, Croatia, and Latvia.

<sup>10</sup> Baker & McKenzie, 2015.

### 2.3. Towards a diversification of targeted industries

The \$ 61 billion of cumulative Chinese EU investment in the period of 2000-2014 is spread across a wide range of industries. The top recipients of Chinese capital were<sup>11</sup>:

Figure 7. Chinese investments in the EU, by industry, cumulative 2000-2014



Source: Baker & McKenzie, 2015.

- energy sector (\$ 17 billion)
- automotive (\$ 8 billion)
- agriculture and food (\$ 7 billion)
- real estate (\$ 6 billion)
- industrial equipment (\$ 5 billion)
- information and communications technology (\$ 3.5 billion)
- basic materials (\$ 3.1 billion)
- transport and infrastructure (\$ 2.4 billion) and finance and business services (\$ 2.4 billion)

More recently, Chinese investment targets have diversified beyond an early focus on technology, infrastructure and heavy industry. Chinese firms are now growing in strength outside the goods manufacturing sector, namely in:

- **Real estate** is emerging as a new target of Chinese investments. From virtually zero before 2013, investment in European real estate surged to \$ 2.8 billion in 2013 and \$ 3 billion in 2014. There are several factors underpinning this investment boom: pressure on developers to diversify away from a slowing domestic market; the desire of institutional investors to deploy capital in low-risk assets globally; and the take-off in the overseas Chinese population and travellers contributed to this property investment boom;
- **Agriculture and food**, with several large acquisitions motivated by access to supply chains, European know-how, quality control, technology, and brands in order to double down on the fast growing domestic demand and Chinese consumer market;
- **Transportation and infrastructure** also reached more than \$ 2.4 billion in 2014. Growth in Chinese outbound tourism along with the continued expansion of bilateral trade also fuelled investments in commercial airlines and other transportation services;
- Chinese **financial institutions** are gearing up for overseas expansion as domestic financial liberalisation and growing two-way capital flows increasingly require an international presence.

<sup>11</sup> Split by type of energy: fossil fuel extraction (\$7 billion), utilities (\$7 billion) and renewable energy (\$3 billion).

Baker & McKenzie identifies an evolution of the industry mix over the period 2000-2014 reflecting the **changing position of Chinese companies in global value chains and the evolution of China's policy framework for outbound FDI**:

- Prior to 2011: EU market entry was primarily motivated by trade facilitation considerations and the desire to access technology in a few sectors with catch-up ambitions such as automotive and industrial equipment.
- 2011-2012: the appetite for technology and other competitiveness-enhancing assets spread to other sectors including information and communications technology. However, the main driver of ballooning investment in those two years was a buying spree by China's State-owned companies, spending a combined \$ 11 billion on European mining companies, energy assets, and utilities.
- 2013 and 2014: Chinese spending on energy and materials shrink to \$ 5 billion for both years combined as companies' appetite was shaken by sweeping changes to the resource-intensive growth model, a fierce anti-corruption campaign (which led to the detention of several executives at major SOEs responsible for overseas expansion) and changes in the European energy markets (such as the deep cuts in feed-in tariffs for renewable energy).

Falling investment in resources was thus balanced by new interest in other sectors, as commercial motivation to invest abroad increased and continued efforts to liberalise outbound FDI rules have broadened the base of overseas investors in addition to giving both private companies and institutional investors a greater weight in China's overseas investment.

#### Perception of the EU investment environment by Chinese investors: Findings of a Eurochamber survey (2013)<sup>12</sup>

The EU is perceived as a stable investment environment with strong technologies, skilled labour and a transparent legal environment. In addition, it is a large consumer market in itself for the goods and services of Chinese enterprises. Most Chinese enterprises who have invested in Europe to date are looking to invest there in order to pursue the region as a sales market.

The EU's investment environment is generally regarded as being similar to other major developed regions by Chinese investors, yet is perceived as slightly more favourable than North America and Southeast Asia. Obstacles in the investment approval process were reported but it was stressed that opposition to Chinese investment on the grounds of national security is rare in the EU, especially in comparison to other major developed regions.

Chinese enterprises are increasingly looking to acquire certain technologies, skills and brands, in line with the goals of the 12th Five-Year Plan. Chinese enterprises felt it would be useful if the EU could communicate more clearly which sectors are open to foreign investment and which are not, and even suggested that an EU equivalent of the Chinese Foreign Investment Catalogue (i.e. the list of sectors open to FDI) would be useful.

Key obstacles to operating in the EU are related to:

- 1/ human resource: this includes obtaining visas and work permits for Chinese employees, dealing with labour laws, costs and cultural differences in management style;
- 2/ a lack of internationally experienced Chinese talents, an issue affecting Chinese ODI globally;
- 3/ understanding various operating regulations such as tax laws;
- 4/ the sometimes negative perception of Chinese enterprise in Europe.

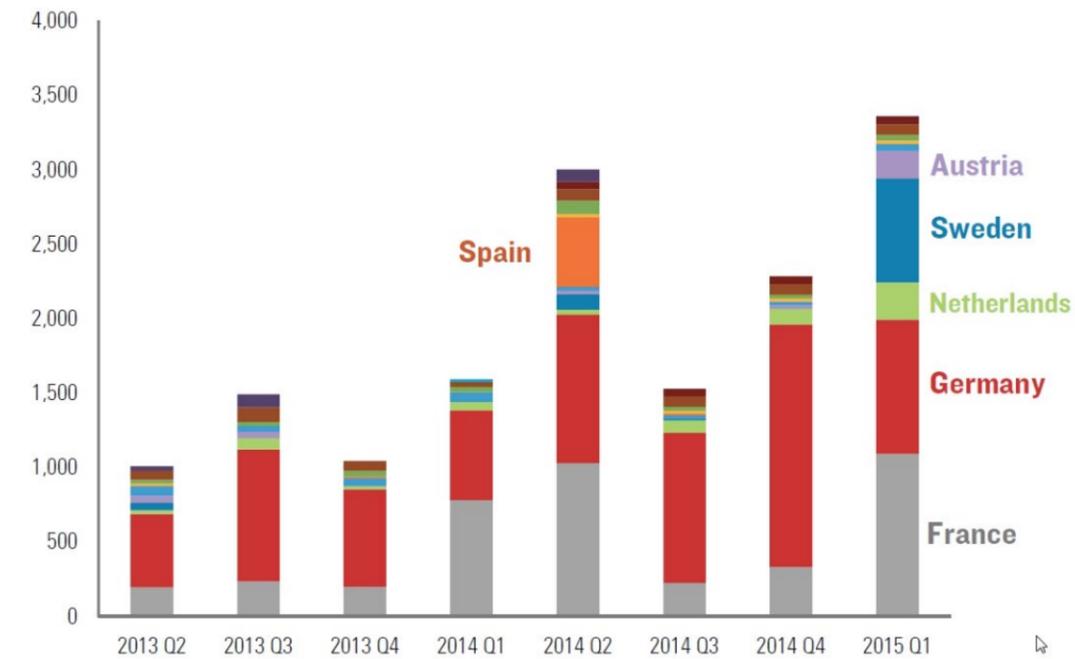
<sup>12</sup> EUROPEAN UNION CHAMBER OF COMMERCE IN CHINA (2013)

### 3. FOCUS ON EU FDI IN CHINA

According to the European Commission, the EU is one of the top five investors in China, along with Taiwan, Hong Kong, the USA and Japan<sup>13</sup>.

According to the latest estimates, European companies invested an average of \$ 2 billion per quarter in China in 2014. In the 1st quarter 2015, this amount climbed substantially, to \$ 3.5 billion.

Figure 8. EU FDI in China, by country group (quarterly investment value in million USD)

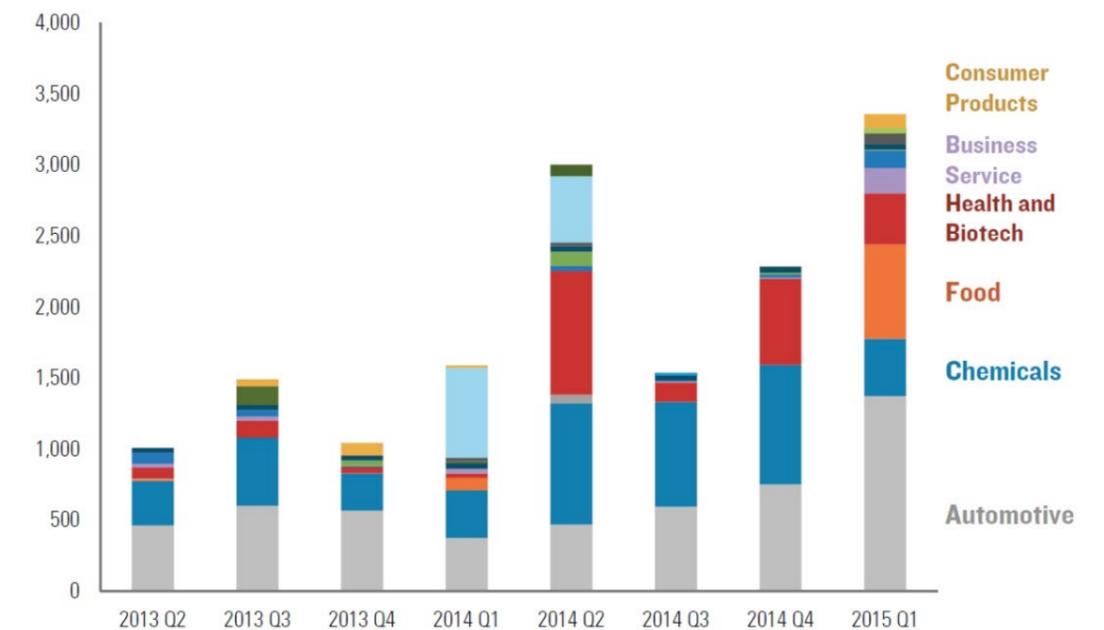


Source: BARONE, B. and BENDINI, R. (2015b).

For years Germany was the principal European investor in China, but France assumed the leading role in 2015.

China's automotive and chemical sectors have received most EU FDI, with recent data (from the first quarter 2015) suggesting that an increasing share of EU investment is devoted to consumer products.

Figure 9. EU FDI in China, by industry (quarterly investment value in million USD)



Source: BARONE, B. and BENDINI, R. (2015b).

#### European companies' perception of the Chinese business environment: main findings from the European Chamber "Business Confidence Survey, 2015"

The three main regulatory obstacles to doing business in China for European companies are: the unpredictable legislative environment; administrative issues; and discretionary enforcement of regulations. However, the ongoing anti-corruption campaign is largely support by European investors.

A vast majority of companies perceive that foreign-invested enterprises tend to receive unfavourable treatment compared to domestic Chinese firms in their respective industries. Also, they consider that the ongoing reform agenda has not helped to address this. The vast majority of European companies would be more likely to increase investment in China if greater market access were to be afforded.

European companies would contribute more to the Chinese economy if they were to feel more secure from the threat of technology transfer attempts, were afforded better protection under China's intellectual property rights laws and had improved internet access.

Against the background of the current economic slowdown, European companies show concern about business perspectives in China. 56% – down from 86% two years ago – are planning to expand their China business. Most of them are planning employee lay-offs.

<sup>13</sup> EU trade, Facts and figures on EU-China trade, March 2014.

**CHAPTER 2**  
**BEIJING'S INTERNATIONAL**  
**DEVELOPMENT STRATEGY**

## Key points

- Beijing's interest in an investment treaty with the EU is part of a wider strategy to rebalance both the domestic economy and China's place in global markets. This strategy is based on the "New Normal" discourse and the "Going Global" policy.
- The economic crisis has also hit China: its growth rate reached a climax in 2007 (14,2%) and then fell with global demand down to 6.8% in the first quarter of 2015. China's lower growth after 2007 is mainly due to the sharp fall in global demand resulting in lower Chinese export volumes. Against this backdrop, domestic consumption and the service industry have become a relatively more important driver for growth.
- The proportion of people living in absolute poverty in China has significantly dropped since Beijing launched its market reforms (1979). However, the fast and all the more impressive economic development has come hand in hand with social domestic issues such as regional and social disparities, environmental concerns, consumer protection and also low food safety
- Considering that single digit growth is the "New Normal", Beijing's economic strategy is shifting from exports towards consumption-driven growth. Several reforms and plans have been launched on consumer law, food safety, energy efficiency, social security, land-reform ...Plans to reforms State-owned enterprise and financial markets are under discussion.
- At the same time, Beijing is putting greater emphasis on international economic opportunities by updating the "Going Global" strategy initiated in 1999. A variety of support schemes has been set up by the Chinese government to support Chinese business abroad: development plans for international infrastructure networks ("One Belt, One Road", "New Silk Road", "Maritime Silk Road"); financial resources to international projects (China Investment Corporation, Asian Infrastructure Investment Bank, Silk Road Fund); negotiation of free trade agreements (not only with neighbour countries, but all over the globe).
- Support for outbound FDI is regulated by Beijing namely through an approval process that differs depending on whether the enterprise is privately or state owned. Whether it is approved at local, provincial or national level depends on the size of the investment.
- The next Five-Year-Plan (2016-2020) should give more policy details about Beijing's strategy concerning both domestic and international investments.

## 1. DOMESTIC ISSUES AND BEIJING'S "NEW NORMAL" STRATEGY

China has recently broken two economic records. In 2013, the country became the world's largest trading power, accounting for over 10% of global trade. In 2014, it recorded the world's largest economic output in "purchasing power parity" (PPP)<sup>14</sup>, surpassing the USA that had been the global economic leader for decades. However, in 2015, for the first time, China announced that it would not surpass its annual growth forecast of 6.8% and Beijing has even considered the risk of not reaching it.

Since then, there has been a large debate about whether the world is witnessing the first signs of a slow collapse of the Chinese economy or whether China would pursue its development, but in a less rapid way.

Without doubt, it is too early to know which scenario will happen and answers can only be speculative. However, if one considers Beijing's recent policy announcements, it appears that China has chosen a path: The Chinese government has called China's lower growth the "New Normal".

### 1.1. Less growth and high debt

China's economic slowdown has been widely covered by the media in the past year, but the evolution of GDP growth rates show that those have almost constantly fallen since the economic crisis of 2007 (figure 10). **China's growth rate reached a climax in 2007 (14,2%) and then fell with global demand down to 6.8% in the first quarter of 2015.** This fall is expected to continue over the coming years, though to a lesser extent: estimates target a growth rate of 6% by 2018.

Figure 10. China's GDP growth (%)

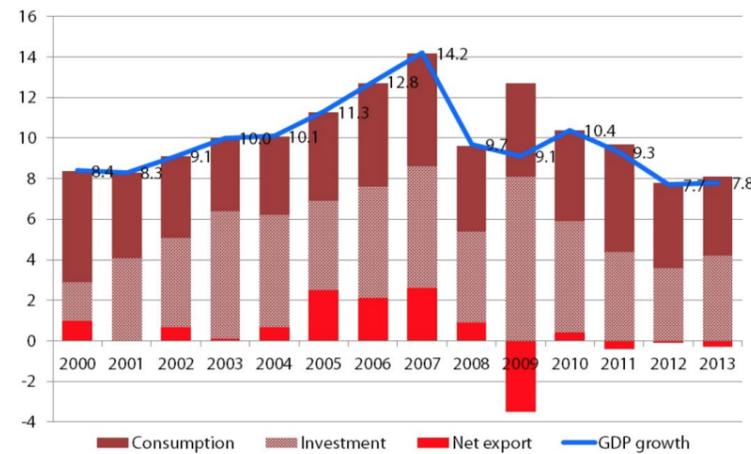


Source: "China: Economic outlook 2015", European Parliament (2015), p. 5.

China's lower growth after 2007 is mainly due to the sharp fall in global demand resulting in lower Chinese export volumes (Figure 11). On the other hand, increases in local consumption have been very modest. Investment has been largely sustained by infrastructure, but since 2012, investments in real estate and manufacturing have shrunk significantly.

<sup>14</sup> PPP takes into account differences in prices for goods and services across countries. According to IMF, China's GDP in PPP reached \$ 17.6 trillion in 2014, slightly over the \$ 17.4 trillion of the United States.

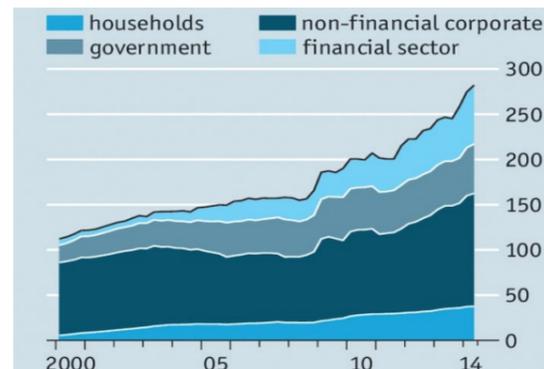
Figure 11. Contribution to China's GDP growth



Source: BARONE, B. and BENDINI, R. (2015a), p. 5

Urban development has largely contributed to China's recent growth. However, it has been partly driven by local government strategies aimed at financing their spending by selling land rights (in many cases after having expropriated farmers). This has fuelled a distortion between real estate supply and demand and led to the phenomenon of new build ghost cities or areas that every China traveller comes across. Urbanisation has also been accompanied by a growing level of public debt, mainly generated by local governments borrowing to finance local infrastructure. In 2014, China's debt reached 282% of GDP, i.e. almost four times as much as in 2008.

Figure 12. China's debt as % of GDP



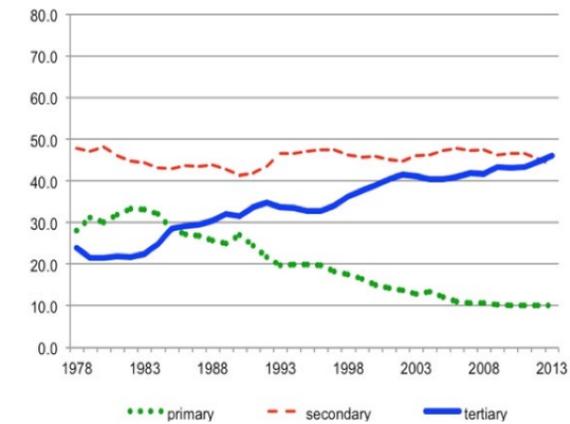
Source: BARONE, B. and BENDINI, R. (2015a), p. 11.

A contraction in the property market together with overcapacities in several industries (metals, mining, heavy industry) and falling import prices indicate that the Chinese economy is at risk of deflation. The government's policy of cutting interest rates (four times in 2015) to mitigate effects of lower growth, declining prices and higher debt has not led to a change the current economic trends<sup>15</sup>.

Against this backdrop, domestic consumption has become a relatively more important driver for growth. The emergence of a large middle class (also linked to China's urbanisation) first fuelled the consumption of manufactured goods. It recently also brought a higher demand for services, such as tourism, financial, private healthcare and private education services.

<sup>15</sup> Interestingly, Beijing's financial policies - namely control over interest rates - have privileged the corporate sector over households, and state-owned enterprises (SOEs) over small private firms. B. Barone and R. Bendini (2015a) point at a "de facto tax on households" (p. 12).

Figure 13. Sector contribution to GDP (% of GDP)



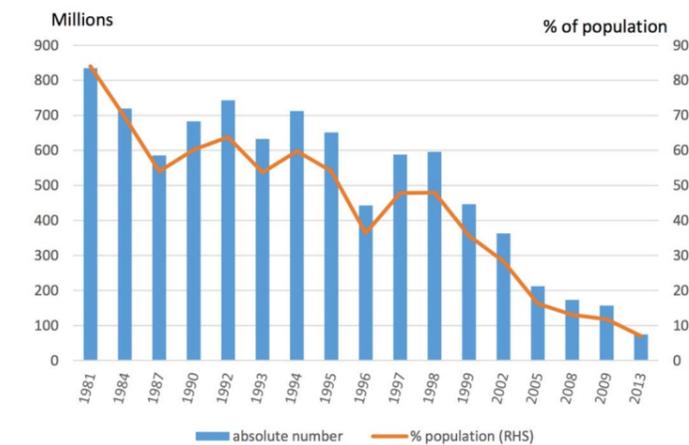
Source: BARONE, B. and BENDINI, R. (2015a), p. 8

This is also reflected in a shift in the relevance of different sectors. Indeed, in 2013, the services sector overtook industry as the major economic sector. Services in China still count for a smaller part of the economy than in many developed countries (60 % vs. 46% of GDP in China). Nevertheless, the service sector is growing quickly and there still seems to be a large growth margin.

## 1.2. Social disparities

The proportion of people living in absolute poverty in China has significantly dropped since Beijing launched its market reforms (1979). However, the fast and all the more impressive economic development has come hand in hand with social domestic issues.

Figure 14. Percentage of Chinese living in extreme poverty<sup>16</sup>

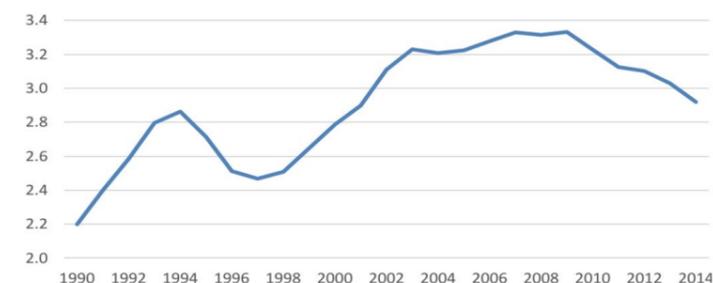


Source: BARONE, B. and BENDINI, R. (2015a), p. 4

Indeed, gains from economic growth over the past three decades did not reach the whole Chinese population. Huge social disparities have appeared across regions and between urbanised and rural parts of China, and also between coastal Eastern China and Western Inner China. The annual income of urban households is on average three times higher than that of rural families.

<sup>16</sup> Defined as living on less than USD 1.25 per capita in "purchasing power parity" terms.

Figure 15. Urban-to-rural income ratio



Source: BARONE, B. and BENDINI, R. (2015a), p. 13

Moreover, within cities huge disparities exist between urban “official” and “unofficial” residents. The latter lack the so called “hukou”, the residence permit for the city they live in and mainly consist of rural people who moved to the city in search of work. Referred to as “migrant workers”, they do not have access to the public services that people who have a hukou do. It is estimated that four in ten urban residents lack the local hukou.

### The Hukou – history, issues and reform plans

China’s household registration system has been in place since 1958, making registration compulsory and restricting inner country mobility. It has been used as a policy tool for re-allocating the population in rural and urban areas.

With the economic reform mobility restrictions were loosened but the hukou system has remained untouched. The migration of hundreds of thousands of people leaving rural areas to find work in the cities has created second-class citizens earning lower wages and denied social services. In 2014, Beijing announced plans to reform the hukou system but no details are known as yet.

Generally speaking, fast growing urbanisation has led to a development situation today that is considered to be unsustainable. The main negative aspects of China’s fast development are the well-known environmental concerns, consumer protection and also low food safety<sup>17</sup>.

### 1.3. Growing concern for new quality services

Against the background of both economic and social issues, the Chinese government has come up with a **new approach to development** aimed at shifting the economy from an investment and labour-intensive driven export economy to one based on domestic consumption and services. By doing so, Beijing promotes a development that is people centred and **addresses people’s demand for a better quality of life. But it also aims to shift the economy from exports towards consumption-driven growth**, knowing that single digit growth is considered by President Xi Jinping to be the “New Normal”.

This new strategy can be traced back to 2007 when, after almost two decades of double-digit growth, Premier Wen Jibao described China’s growth strategy as “unbalanced, uncoordinated and unsustainable”<sup>18</sup>. In 2013, the Central Committee of the Communist Party of China adopted a framework for reform, namely its “Decisions on Some Major Issues Concerning Comprehensively Deepening the Reform” (“The Decisions”).

<sup>17</sup> The growing middle-class that is boosting consumption has also become very sensitive to consumer protection, calling for stricter safety standards and more efficient enforcement. After several scandals (contaminated milk, gutter oil in restaurants ...), Chinese consider food safety as one of the main problems.

<sup>18</sup> BARONE, B. and BENDINI, R. (2015b), p. 18.

Several reforms and plans have since been launched to address social and economic issues:

- In March 2014, a new **consumer law** entered into force. Retailers will be obliged to take back sold goods within seven days. Online purchases can be sent back with no reasons required from the buyer. Consumer data protection is improved and class-action lawsuits made easier to file.
- A new **food safety law** is planned for 1st October 2015. This new legislation has been elaborated with the support of EU officials. The Commission actively cooperates with China on food safety in the framework of the China Consultation and Cooperation Mechanism. In 2010, three joint working groups have been set up for pharmaceuticals, medical services and cosmetics.
- In March 2014, the government launched the “National new-type urbanisation plan” for 2014-2020. It supports **energy efficiency enhancing industries** and consumer services. It also considers regional disparities by targeting the needs of western regions. The implementation of this plan is, however, expected to be a long-term effort.
- A **social-security** reform is under discussion and should be adopted in 2017. There are currently ongoing debates on proposals to raise the retirement age, adapt women’s retirement age to that of men and align public social security schemes to private sector ones.
- A **land reform** has been announced in order to enable landholders to sell to private buyers, without first selling to local governments.
- Discussions are still ongoing about a **reform of state-owned enterprises (SOEs)**. SOEs should be opened up to private capital, but only in non-strategic sectors. Thus far, provincial governments disagree about which sectors should be considered strategic or not<sup>19</sup>.
- Aimed at better integrating the world’s financial markets, Beijing has started to liberalise **financial markets**. One of the measures was to open up domestic capital markets to foreigners. Easier access to credit has however recently led to a bubble in the Shanghai stock market. Government’s recent intervention to counteract stock market falls showed a discrepancy between financial liberalisation in theory and practice. But it also reflected Beijing’s willingness to save from ruin many small individual middle-class investors, who often borrow a lot of money in order to invest in the stock market.

A major limitation to any reform in China appears to be effectiveness. Interestingly, only 45% of European Companies considered *The Decisions* as an opportunity for their companies<sup>20</sup>.

## 2. ACCELERATING “GOING GLOBAL”: BEIJING’S INTERNATIONAL STRATEGY

With economic growth slowing down, Beijing is putting greater emphasis on international economic opportunities. This strategy is not new, but has recently concentrated more efforts. The “Going Global” strategy dates back to 1999 and was aimed at rebalancing the trade relationship between China and the world, fostering Chinese investments abroad at a time when China had plenty of foreign reserves, but also with a view to prepare China for international competition in its domestic market as a result of opening up to foreign companies at global champion level, against the background of WTO membership (in 2001). To do so, Beijing offered Chinese companies different forms of support to help them settle overseas, export activities and mitigate commercial risks. Recently, Beijing has announced a new rationale behind its “Going Global strategy”: compensate domestic economic slowdown by international economic development. The following gives an insight into the variety of support schemes that the Chinese government has set up recently to support Chinese business abroad. One can distinguish between three main types of scheme, respectively aimed at building infrastructure, providing financial resources and negotiating access to markets.

<sup>19</sup> Aviation, power and telecommunications are considered strategic by the central Beijing government. The Shanghai government’s point of view is more restrictive, whereas the Guangdong’s one is open to wide privatisation.

<sup>20</sup> Business Europe (2015), p. 15

## 2.1. Build international infrastructure networks

For years now, China has financed infrastructure projects in developing countries in exchange for preferential clauses benefitting Chinese companies with respect to gaining access to local markets and resources (e.g. raw materials). This strategy has mainly concerned Africa and South America and was subsequently extended, in the aftermath of the 2007 economic crisis, to Europe and Asian neighbour countries.

More recently, Beijing has multiplied its international efforts in order to compensate for its domestic economic slowdown and overcapacities. In 2013, the government thus launched its new development strategy entitled "One Belt, One Road" (OBOR). The idea is the following: build a large infrastructure network to connect markets and thus enable more trade and tourism. It comprises two development plans based on two different trade routes:

- The **New Silk Road Economic Belt**, connecting China to Europe by train, through Central and Western Asia;
- The **Maritime Silk Road**, connecting China to Europe by boat, through Southeast Asia and the Middle East.

Figure 16. "One Belt, One Road": map



Source: <http://www.globaltimes.cn/content/917943.shtml>, 24/11/2015

## 2.2. Provide financial resources to international projects

All major Chinese companies are under state control, be it directly through the companies' ownership status or more indirectly through close links between company management and the Party. The Government can thus play an important role in funding company development strategies in accordance with its policy goals. This is also true when it comes to international investment strategies. Indeed, as reported by Eurochamber (2011), it is estimated that State owned enterprise (SOEs) accounted for 72% and private owned enterprise (POEs) 28% of total investment for the period 2000-2011.

China's sovereign wealth fund, the **China Investment Corporation** created in 2011, also plays a central role in Beijing's international investment policy.

Moreover, in order to finance its international infrastructure projects Beijing has recently launched two funding schemes, mainly for the purposes of financing the OBOR project:

- The **Asian Infrastructure Investment Bank (AIIB)**. A Chinese-led multilateral financial institution that will fund investments in Asia. The creation of a Bank of Development as an alternative to the US-led Asian Development Bank (ADB) was announced at the Durban Summit in 2013. To that end, in 2014 22 Asian Countries signed a Memorandum of Understanding. Since then, participation has been opened to non-Asian countries, among them several EU Member States.
- A \$ 40 billion **Silk Road Fund**.

## 2.3. Open to foreign investment

Beijing has multiplied announcements on lifting restrictions for foreign investments in China. On 19 January 2015, the Ministry of Commerce issued a draft "Foreign Investment Law" which would replace three existing laws: the Foreign Invested Company Law; the Sino-Foreign Cooperative Joint Venture Law; and the Sino-Foreign Cooperative Equity Law. The new law would shorten the list<sup>21</sup> of areas where foreign investments are not granted "national treatment". In March 2015, the National People's Congress released a draft of the new list<sup>22</sup>. The number of restricted areas for foreign investment would fall from 79 to 35. Foreign investments in steelmaking, papermaking, automobile, electronics production, liquor making, subway construction and e-commerce should thus be granted "national treatment".

## 2.4. FDI strategy supported by Five-Year-Plan

The Chinese Government seeks to use outward FDI as a tool to advance the domestic economic development and enhance international integration. In the **12th Five-Year Plan (2011-2015)** that comes to an end this year, the Chinese Government has put in place a number of targets relating to overseas FDI<sup>23</sup>. These include:

- ODI was planned to increase at an annual rate of 17% and will total USD 150 billion in 2015;
- The total amount of China's overseas contracted projects was planned to reach USD 180 billion and turnover will be USD 120 billion by 2015, with an annual growth rate of 6%;
- 550,000 Chinese nationals were planned to work overseas during 2012, with the total number being over one million by the end of 2015.

A 2012 release from the National Development Reform Commission's (NDRC)<sup>24</sup> listed some of the benefits that they see from increased Chinese ODI. This includes:

- **Acquiring certain resources that China lacks**, namely oil, gas and mineral resources and reserves;
- **Acquiring more advanced technologies** (such as electronic information, biological medicine, new materials and new energy, as well as advanced equipment manufacturing projects and management experience);
- **Entering overseas markets** to increase sales and move lower-end manufacturing to other developing markets;
- **Improved international relations**.

<sup>21</sup> This list was first established in 1995.

<sup>22</sup> <http://english.caixin.com/2015-03-05/100788416.html>, 25/11/2015.

<sup>23</sup> EUROPEAN UNION CHAMBER OF COMMERCE IN CHINA (2013), p. 7.

<sup>24</sup> Ibid.

### Approval process for Chinese outbound FDI

The approval process for Chinese outbound investments differs depending on whether the enterprise is privately or state owned. Whether it is approved at local, provincial or national level depends on the size of the investment.

National Development Reform Commission's (NDRC)<sup>25</sup> approval is required for investments over USD 300 million in resources sectors or over USD 100 million in non-resources sectors. For investments below these levels, provincial level Development Reform Commission approval is sufficient. When the NDRC receives an application it takes five business days to decide whether or not to accept the application. If it is accepted, it will be approved or rejected within 20 business days.

The Chinese investor will then need to seek the approval of MOFCOM, the body responsible for administering and supervising overseas investment. MOFCOM approval will also be subject to a preliminary examination by provincial level MOFCOM, taking an additional ten business days.

After obtaining NDRC and MOFCOM approval, an application is made to SAFE for the transfer of foreign currency funds overseas. This is usually the last step in the approval process and takes up to two weeks.

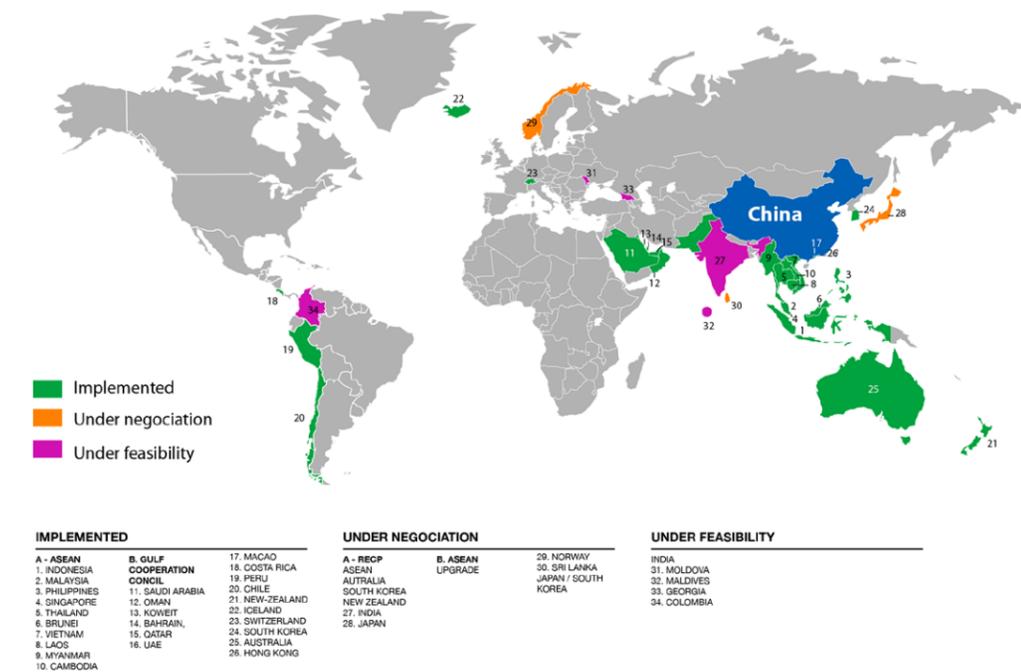
Additional approval from the State Council is also required where investment is in countries or regions which do not have a formal diplomatic relationship with China, are on a list of international sanctions or where a war or riot is taking place, or where investment is destined for an industry of a sensitive nature.

If the enterprise making the investment originates from an industry with its own specific regulator then it is possible that additional approval will also be required from that body.

### 2.5. Negotiate market access

Besides its political and diplomatic efforts to gain Market Economy Status (MES), China is pursuing its ambition to become a world trade leader by implementing a comprehensive **free trade agreement (FTA) strategy**.

Figure 17. Countries covered or targeted by China's free trade agreements



Source: BARONE, B. and BENDINI, R. (2015b), p. 7.

The map above shows that China's free trade agreement strategy does not only cover close neighbour countries, but also extends all over the globe: from Asia (ASEAN) to South America (Costa Rica, Peru, Chile); the Gulf countries<sup>26</sup>; and Australia.

Switzerland and Iceland are the only European countries covered by an FTA. Presently, negotiations are ongoing with Norway.

The latest FTA concluded is with Australian (17/07/2015). It is considered as a successful new step in China's global trade strategy.

Despite tensions with Tokyo, negotiations were opened with Japan and the Republic of Korea in 2012. If concluded, this treaty could be the first step towards a northeast Asia FTA that also could compete with the EU and NAFTA.

<sup>25</sup> NDRC is an agency under the Chinese State Council, which has broad administrative and planning control over the Chinese economy. For instance, it is responsible for submitting a national economic plan to the National People's Congress.

<sup>26</sup> Xi Jinping was personally involved in the negotiation of this treaty, considered particularly important to ensure China's development through access to oil.

**CHAPTER 3**  
**THE EU'S INTERNATIONAL**  
**INVESTMENT STRATEGY**

### Key points

- The Commission does not see any issue regarding the impact of outward investment on European aggregate employment, even if it is accepted that some sectors may suffer.
- The criterion to select countries where to foster Foreign Direct Investment is simple: the EU should follow European investor's objectives. There is no industrial policy rationale.
- ILO conventions should be promoted and their ratification encouraged
- Domestic labour law should not be undermined for competitive objectives. However, the "Better regulation" approach may bring the EU to breach existing FTA/ IAA agreements.
- CSR is seen as an opportunity by the Commission in the EU/ China negotiation frame to push for in-depth commitments. However, CSR can also weaken the overall "sustainable development and trade" Chapter if it merely consists of exchanging good practices.
- Non-financial information: a new EU Directive was adopted in 2014 and will be operational in 2017. More transparency can be expected from Chinese and European companies in future.
- Participation of civil society and social partners: good agreements have been signed in the past (EU-Cariforum, EU-Korea) to ensure their participation after the agreement was signed.
- New forms of coordination with all levels of workers participation (S.D., EWC, ...) are still missing. The quantity of forums is high but the quality of participation could be improved thanks to better articulation and communication channels.

According to the 2015 communication titled "*trade for all: towards a more responsible trade and investment policy*", the Commission attempts to answer the massive recent protests expressed by trade unions, citizens and some politicians, particularly on the TTIP negotiations. In this document, the Commission declares its intention to promote an "**ambitious and innovative sustainable development chapter in all trade and investment agreements**" negotiation.

Interestingly, in conjunction with several chapters that touch upon the supply chain issue, the Commission again only points at **occupational health and safety as a priority objective** and to a lesser extent decent working conditions. The innovative side of the Communication, that recalls the three pillars quoted above, lays with the intention of **interlinking trade policy instruments to aid and cooperation actions in partner countries with the aim of addressing labour rights and environmental protection (GSP, sustainable development chapters)**.

However, **no sanctions are envisaged** as they are deemed to be counterproductive by the Commission. Several authors consider that, without anticipating on the impact of the new "trade and sustainable development chapter", the latter is a real opportunity for better monitoring by civil society<sup>27</sup>. The European Economic and Social Committee (EESC) calls for<sup>28</sup> additional elements to be included into "sustainable development chapters" under negotiation or to be negotiated, such as **socially responsible investing**, as embodied in the United Nations-supported Principles for Responsible Investment (UNPRI).

### 1. FROM A BILATERAL TO A EU-LEVEL APPROACH

The EU competence, and especially the Commission's role on trade and investment regarding the exclusive competence on common commercial policy, is largely based on the 2007 Lisbon Treaty and developed through the "**Europe 2020: a strategy for smart, sustainable and inclusive growth**" Communication (2010).

The Communication lists several multilateral traditional activities and also some innovative action areas such as trade opening initiatives for sectors of the future ("green" products and technologies, high-tech products and services) and international standardisation, in particular in growth areas. It launches the formalisation of high-level strategic dialogues with key partners to discuss key issues ranging from market access, regulatory framework, global imbalances, energy and climate change, access to raw materials, global poverty, education and development and highlights the High Level Economic Dialogue with China.

These fundamental evolutions into EU integration are the stepping stone for a newly integrated policy described in the Communication and titled "**Towards a comprehensive European international investment policy**"<sup>29</sup>, in addition to the Regulation for establishing transitional arrangements for bilateral investments between Members States and third countries.

This second Communication is much more precise regarding common objectives compared to previous institutional documents as it defines the **criteria to foster Foreign Direct Investment**<sup>30</sup> (portfolio investments are not the main target of the document) on the basis of core statements:

- There is no measurable negative impact on aggregate employment, it says. However the Commission recognises that, "if the aggregate balance is positive, negative effects may of course arise on a sector specific, geographical and/ or individual basis." This issue is addressed again in the 2013 social impact assessment as described below.
- Differences between Bilateral Investment Treaties negotiated by Members States with third countries lead to uneven playing fields. Additionally, these BITs relate only to "post entry" or "post admission" investors. The EU wants to improve market access conditions for EU investors.

<sup>27</sup> What social face to the new EU trade agreements? Beyond the "soft" approach, ETUI Policy brief, n°13/2015. Lore Van Den Putte, Jan Orbie, Fabienne Bossuyt, Deborah Martens, Ferdi De Ville.

<sup>28</sup> "Role for sustainable development and civil society involvement in stand-alone EU investment agreements with third countries", EESC Opinion, 29/03/2015.

<sup>29</sup> COM(2010) 343 final dated 7/7/2010.

<sup>30</sup> FDI are defined as any foreign investment which serves to establish lasting and direct links with the undertaking that capital is made available in order to carry out an economic activity.

- A one size fits all model for investment agreements with third countries is not relevant, country specific elements and previous BITs need to be taken into consideration.
- The selection of partner countries is based on a rather simplistic approach: “the Union should go where its investors would like to go, just like it should pave their way abroad, through the liberalisation of investments flows.”
- The Commission recalls the need for coherence with other policies. As far as the social field is concerned, only decent work and occupational health and safety are referred to. Even if the list is not exhaustive, this shows a serious limitation regarding the potential of social dialogue / collective bargaining.
- Finally, the institution states that generally speaking, the Union's external action should be guided by the rule of law, human rights and sustainable development; It recommends the OECD guidelines for multinational enterprises as a means to “help balance the rights and responsibilities of investors”.
- Surprisingly, there are no direct references to the ILO Conventions in the text.

## 2. MAIN CHARACTERISTICS OF THE LABOUR ENTRY POINTS IN THE NEGOTIATION

### 2.1. International labour standards

The EU policy on sustainable development is again based on 3 pillars regarding international labour rules. These pillars, which are similar for Free Trade Agreements and for International Investment Agreements negotiations, are the following:

- The ILO core labour conventions;<sup>31</sup>
- The ratified conventions;
- The progress for additional ratifications.

### 2.2. Domestic labour law

Once an agreement is adopted, the parties cannot disregard their respective labour laws and social protections systems. The objective is to prevent a race to the bottom at the expense of workers' rights. This is both a “non-dumping” and “no regression clause”.

It is important to highlight that the EU policy on “Better Regulation” can potentially violate this pillar of trade and investment negotiations by dismantling the *acquis communautaire*. This is particularly true if this process ends up undermining occupational health and safety provisions or measures linked to decent work, the two main targets of trade negotiations. If one party to an International Free Trade and /or Investment Agreement does not keep the same level of legal protection, the agreement would be breached. The sustainable impact assessment will therefore be an opportunity to draw attention to the issue of legal uncertainty in the EU and thereby to the attention of the foreign negotiators.

### The EU / Canada FTA example of “non-dumping clause”

Article 4: Upholding levels of protection 1. The Parties recognise that it is inappropriate to encourage trade or investment by lowering the levels of protection embodied in domestic labour law and standards. 2. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its labour law, as an encouragement for trade or the establishment, acquisition, expansion or retention of an investment or an investor in its territory. 3. A Party shall not fail to effectively enforce its labour law, through a sustained or recurring course of action or inaction, as an encouragement for trade or investment.

### 2.3. Corporate Social Responsibility

This is the most recently adopted pillar. It consists of a detailed set of provisions on the promotion of international standards (UN, ILO, OECD) via the company level.

Several Free Trade Agreements do refer to CSR in their respective “Sustainable Development Chapter” but with different wordings. The Commission may push for the “Singapore practice” (see frame) although this may be difficult to achieve because China may not accept any reference to the OECD guidelines for multinational companies (see above). In addition, the industrial relations between Singapore “social partners” and the ones in China have little in common.

Regarding CSR, the European Commission is preparing a new Communication for mid 2016. The former Communication of 2011 is now partly outdated as it was adopted in the action of the financial and economic crisis and because the legislative background has improved with regard to the adoption of the 2014 Directive<sup>32</sup> regarding non-financial statements (certain large undertakings should prepare a non-financial statement containing information relating to at least environmental matters, social and employee-related matters, respect for human rights, anti-corruption and bribery matters). This directive is being transposed into EU national legislations by 6 December 2016 and will cover approximately 6,000 companies with more than 500 workers in addition to their supply chain, operating inside and outside the EU, and also, indirectly, Chinese companies owning assets in Europe in these companies.

In 2009, a UNCTAD report on foreign investment raised the question of developing guidelines on corporate economic development contributions. The report stresses that “this issue becomes all the more important in view of the increased use of public-private partnerships as a means of investing in and operating major projects in developing countries. In this scenario, a private investor would become directly involved in the provision of public services and infrastructure.”

Another interesting question in this context is whether in future IIA negotiations, a reference to existing international instruments on investor responsibility should be made. According to UNCTAD “there are continuous demands of establishing binding obligations for foreign investors in IIAs. This would be a considerable challenge, not least because voluntary guidelines [...] are formulated in a much too vague manner as to make them usable as a legally binding instrument. Further, the imposition of affirmative international obligations on investors may be regarded by host states as inconsistent with a policy of promoting inward investment flows. For example, the requirement of a development contribution could undercut a host state's efforts to attract foreign investment through tax incentives.” Incentives are sometimes deemed to act as a competitive disadvantage for developing countries, particularly in the same region.

<sup>31</sup> Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Forced Labour Convention, 1930 (No. 29), Abolition of Forced Labour Convention, 1957 (No. 105), Minimum Age Convention, 1973 (No. 138), Worst Forms of Child Labour Convention, 1999 (No. 182), Equal Remuneration Convention, 1951, (No. 100), Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

<sup>32</sup> DIRECTIVE 2014/95/EU of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

### The Chinese approach to CSR<sup>33</sup>

Against the background of growing international concern about social and environmental conditions of China's growth, Beijing has progressively introduced CSR into its political discourse.

However, the Chinese approach to CSR fundamentally differs from the European and international approaches. First, **the very concept of stakeholders is totally absent from the Chinese definition of CSR.** As a matter of fact, CSR policy is government-driven only.

Secondly, **Human Rights Protection is excluded** from the Chinese CSR provisions.

However,

- Since 2005, Beijing has introduced a set of CSR guidelines including, for instance, publicly-listed companies in the Shenzhen and Shanghai stock markets that are obliged to publish a CSR report;
- State-owned enterprises are invited to publish a CSR-report;
- For the last 10 years, the China National Textile and Apparel Council (CNTAC, the national industry Federation) has been authorised to launch a CSR standards for the textile industry (standard CSC 9000T), which is the Chinese version of ISO14001.

The Chinese authorities do not consider CSR as a voluntary pathway. Those companies that do not apply the CSR rules may end up on a black list and have restricted access to bank loans or no possibility to enter the Stock Exchange.

The debate on the added value of CSR in global instruments has passed by fluctuations over the last 15 years. The OECD guidelines have played a considerable role in this debate and their revision in 2011 reinforces their utilisation and their impact on the attitude to be adopted by Governments towards multinational companies.

### The TTIP input

The current negotiations between the EU and the USA are under scrutiny. Thanks, to a large extent, to the trade union movement, the European Commission has significantly reinforced its proposals regarding the "Sustainable Development" chapter which was made public on 6 November 2015. The labour aspects are listed in detail, including questions related to wages and working hours "to ensure a minimum living wage", as well as the right to join a union and negotiate collective agreements.

However, the proposals on CSR (article 20- Corporate Social Responsibility and responsible business conduct) could water down the whole chapter on sustainable development as they are drafted with a rather anachronistic mind-set. The text insists on the voluntary approach of CSR. The Commission seems to forget that governments are legally responsible for the actual implementation of the main CSR instruments, such as the OECD guidelines and the ILO Tripartite Declaration, and that they should set up the relevant tools to ensure this implementation. The Commission may be more imaginative by referring to more recent concepts such as "due diligence"<sup>34</sup> that puts the burden on companies to prove that before doing business they have adopted an overall and pro-active approach to avoid so called "adverse impact" risks for society (see below).

The text does not remind multinational companies of their obligations to abide by the law but simply anticipates possible (probably financial) support to multinational companies for actions in favour of responsible business. Finally, the Commission proposals rely simply on promotion, exchange of information and good practices to reinforce CSR.

### The Chinese "due diligence" guidelines for responsible mineral supply chains

In December 2015, The China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters (CCCMC) adopted guidelines addressed to all Chinese companies in the sector in order to "observe the implementation of the UN Guiding principles on Business and Human Rights during the entire life-cycle of the mining project", meaning the entire supply chain. The CCCMC has cooperated closely with the OECD in preparing the guidelines. The guideline set up a process to avoid: a) risks of contributing to conflict and serious human rights abuses; and b) serious misconduct in environmental, social and ethical issues. They cover the security of workers, including their equipment and facilities. They also foresee to inform and involve stakeholders, including NGOs and local communities (though trade unions are not mentioned, in principle they are not excluded either as the list is not exhaustive).

### 2.4. Participation of civil society and social partners

On the basis of a handful of Free Trade agreements, the participative process can be described as being composed of two interlinked platforms: a **domestic advisory group** for each party to the agreement composed of social partners and environmental organisations; and a transnational "civil society dialogue or consultative committee", that meets every year, acting in the frame of the Committee on trade and sustainable development composed of both signatory parties to the agreement.

According to Prof. Lorand Bartels<sup>35</sup>, "*the best established of civil groups is the EU-Cariforum Consultative Committee, which has the status of an organ of the agreement. This Consultative Committee has direct access to the principal Joint Council, providing it with recommendations after consultation or on its own initiative. In addition, the Consultative Committee receives the reports of the Committees of Experts tasked with resolving disputes on the implementation of the labour and environment obligations.*<sup>36</sup> *The mandate of the Consultative Committee is to promote dialogue and cooperation 'encompass[ing] all economic, social and environmental aspects of the relations between the [parties], as they arise in the context of the implementation of this Agreement.*<sup>37</sup>".

The author also points to the similarity with the **EU/ Korea Free Trade Agreement** although this agreement does not authorise the advisory group to discuss the implementation as a whole but only the "sustainable development" chapter. However, under this agreement, the EU domestic advisory group called on former Commissioner Karel de Gucht to initiate government consultations, who decided to give primacy to the transnational consultative body.

The EESC<sup>38</sup> also believes it is crucial that all trade/ investment negotiations and agreements henceforth include a monitoring mechanism which involves civil society and social partners, as the only way to guarantee that honouring of commitments and the risks and opportunities presented by the opening-up of trade in terms of sustainable development be monitored. The EESC considers that a new mechanism has to be found. It suggests an "extension of the EU-China Round Table, on which the **EESC and the China Economic and Social Council are equally represented**, or another dialogue mechanism tailored for the relevant country-specific social circumstances, should offer the best way forward". Finally, the EESC refers to the EU social dialogue that has been institutionalised.

<sup>33</sup> This section is based on Morice-Morand (2013).

<sup>34</sup> Due diligence is defined by the OECD guidelines for multinational companies as "a process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems."

<sup>35</sup> "The role of civil society in monitoring free trade agreements", not dated.

<sup>36</sup> Article 189(6) and Article 195(6) of the EU-Cariforum agreement.

<sup>37</sup> Article 232(1) of the EU-Cariforum agreement.

<sup>38</sup> Sustainability impact assessments (SIA) and EU trade policy, EESC Opinion, 05/05/2011.

In Europe, social dialogue at national and cross border level is well structured (intersectoral, sectoral or sub-sectoral, and company level) even if poorly articulated. In addition to the ETUC and BusinessEurope/ CEEP/ UEAPME thematic negotiations, **there are 66 European social dialogue sectoral committees and 1,048 active European Works Councils** or similar bodies. The trade and investment issues regarding their social impact are regrettably seldom taken on board but in exceptional circumstances. This was the case regarding the 2013 Bangladesh Rana Plaza disaster (1,127 deaths). On that occasion, several EWCs such as Carrefour, H&M, national and European sectoral social dialogues such as textile and commerce proved their capacity to react by debating or adopting decisions regarding risk prevention across the supply chain.

In parallel, the **European Chamber of Commerce** in Beijing has set up a CSR Forum. Established in 2005, it comprises more than 200 member companies covering a wide range of different business units, including marketing and communications, manufacturing, branding, public relations, community relations, corporate governance and compliance, human resources, environment, and health and safety. The forum also fosters CSR communication and collaboration between European Union Chamber members and Chinese government agencies or professional organisations. The European Chamber of Commerce is an organisation with a core structure of 43 Working Groups and Fora representing European business in China. This organisation claims to involve local society through NGOs.

Moreover, according to the European Strategic Partnership Observatory, the **EU and China have set up 51 sectoral dialogues** (not all of them meet regularly like the Sustainable task force that has been on hold since 2009).

Finally, the UNO comprises many levels of dialogue and expertise, at central level (global compact, human rights committee) and its organisations (ILO, FAO, WHO, ...).

In conclusion, the number of fora for debate and decision-making is huge. Should EU authorities decide to adopt a more systematic approach, and keeping in mind that non-democratic countries may not be easy counterpart negotiators to share this, significant improvements regarding the participation of civil society and social partners could be achieved in **qualitative terms** through better articulation and communication channels.

Authors, experts and observers are not able to say today whether trade and investment agreements are a factor of changing working conditions and employment but the "trade and sustainable development chapter" could certainly become a driver for more democracy and civil society control.

### **The EU / Singapore Free trade agreement as a new EU reference for negotiations with developing countries: chapter 13 on trade and sustainable development**

*Art. 13.11 (4): EU/ Singapore agreement*

*"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".*

The absence of independent social partners is a key challenge in the negotiation with China, whereas the EU/Canada negotiators could agree that "the Parties recognize the importance of social dialogue on labour matters among workers and employers, and their respective organizations, and governments, and commit to the promotion of such dialogue in their territories" (trade and labour Chapter).

The Commission, with the EESC support, may push for the recognition of the OECD guidelines for multinational companies as a norm of reference for implementation of the EU/ China future agreement regarding sustainable development. China is not an OECD member, but it is entitled to subscribe to the "OECD Declaration and Decisions on International Investment and Multinational Enterprises" which encompass the guidelines.

Would the country accept this internationally recognised reference? In this case, it would involve setting up a national contact point in Beijing: would it be open to civil society and "social partners"? This seems rather difficult because there is no autonomy of social partners yet in China. Nevertheless, the Chinese National Contact Point would be under pressure to cooperate with both other contact points and the OECD Secretariat, in addition to the BIAC and TUAC (for additional information, the Chapter on CSR regarding cooperation on OECD guidelines on minerals supply chain). Could a new window for transnational cooperation to be opened with the creation of European contact point?

Would Chinese companies provide accurate information to European national contact points? Would European companies provide accurate information to a Chinese national contact point? Would complaints raised in EU countries against Chinese companies be delocalised in China?

The CSR and OECD guidelines could be used as a way to partially circumvent the consequences of the absence of social dialogue in China or as a starting point to expand the culture of social dialogue like in other countries where justice and democracy are weak.

**CHAPTER 4**  
**THE EU-CHINA INVESTMENT**  
**TREATY NEGOTIATION**

### Key points

- The EU and China have regular contacts since 1985. Their joint work is based on 3 pillars: the high-level strategic dialogue for security issues, the high-level People to People dialogue for education, culture and youth, and finally the High-level economic and trade dialogue.
- The European Commission and the Chinese government also signed a Memorandum of Understanding on the EU-China Connectivity Platform to promote cooperation in areas such as infrastructure, equipment, technologies and standards.
- The EU-China Strategic Agenda for cooperation covers a “social progress” chapter, that lists many issues like social security, employment, health and safety at work and decent work. However, no concrete actions are planned.
- The negotiation for an agreement on investment started in 2013. The negotiation can take up to 10 years to be concluded. The objective is to replace the 26 Bilateral Investment Treaties signed by EU Member States and China in the past in order to facilitate investment flows. These already existing BITs do not satisfy fundamental criteria: absence of non regression clause against standards lowering to attract FDI, no reference to internationally recognised standards on CSR, no provisions regarding questions over state-owned enterprises, subsidies and performance requirements including forced technology transfer.
- A Sustainability Impact Assessment, a trade specific tool, is going to be launched by the Commission during the negotiation process. The mathematical simulation processes used can be questioned as regards social and environmental cohesion. In order to improve their influence on the process, stakeholder’s participation could be reinforced by an access to initial, on going and post evaluations.
- The negotiation on investment could become hostage of the debate on the Market Economy Status of China, which could potentially cause heavy job losses in Europe.
- The negotiation will cover the issue of Investors and State Dispute Settlements (ISDS). China has always been supportive of the ISDS approach.

### 1. EU-CHINA STRATEGIC PARTNERSHIP

The EU-China Strategic Partnership, which has developed on the basis of the 1985 EU-China trade and cooperation agreement, has grown to include foreign affairs, security matters and international challenges such as climate change and global economy governance.

The 17th EU-China summit was held on 29th June 2015. These **bilateral summits are normally held annually**.

Three high-level ‘pillars’ feed into the summit for the leaders to give overall direction:

- **High-Level Strategic Dialogue;** The scope of the EU-China political dialogue has gradually broadened to cover issues ranging from non-proliferation to the security situation in Asia, from global warming to the fight against illegal migration and trafficking in human beings. Chinese and European leaders have agreed that there is great potential to expand further this dialogue, and in 2010 a new high-level dialogue on strategic and foreign policy issues was established between the EU High Representative for Foreign and Security Policy/Vice President of the Commission and her counterpart in the Chinese State Council.
- **High-Level People-to-People Dialogue:** Over the last decade the EU and China have been closely cooperating in the areas of education and training, culture, multilingualism and youth. Cooperation consisted of regular policy dialogues at government level, as well as concrete outputs in terms of joint projects and events. Since 2012, all these activities have been integrated under the EU-China High Level People-to-People Dialogue (HPPD), the third pillar of EU-China relations, complementing the other two pillars. The HPPD is the overarching mechanism which accommodates all EU-China joint initiatives in the field of people to people exchanges. These initiatives stem from the conclusions of leaders’ dialogues and senior officials’ meetings where long-term objectives are set, best practice is exchanged and areas for future cooperation are explored. The HPPD should help build mutual trust and consolidate intercultural understanding between the EU and China.
- **High Level Economic and Trade Dialogue:** at the last meeting on 28 September 2015 Vice-Premier Ma Kai informed Commission Vice-President Jyrki Katainen that **China will contribute to the Commission’s € 315 billion Investment Plan for Europe**. China is the first non-EU country to announce its contribution to the Plan.

In addition to this announcement, the two sides agreed to set up a **joint working group** to increase cooperation between the EU and China on all aspects of investment. The working group will include experts from China’s Silk Road Fund, the Commission, and the European Investment Bank (EIB). The EIB, the Commission’s strategic partner in the Investment Plan, was also represented at the Summit in Beijing.

The European Commission and the Chinese government also signed a Memorandum of Understanding on the **EU-China Connectivity Platform** to enhance synergies between China’s “One Belt One Road» initiative and the EU’s connectivity initiatives such as the Trans-European Transport Network policy. The Platform will promote cooperation in areas such as infrastructure, equipment, technologies and standards. It is supposed to create multiple business opportunities and promote employment, growth and development for both sides, and it will be done in cooperation with the EIB.

Finally, the EU encouraged deepened collaboration between China and the **European Bank for Reconstruction and Development (EBRD)**, including the examination of a possible membership in the EBRD in line with its rules.

Over 60 regular high level and senior officials’ dialogues –on important foreign policy areas as well as technical topics such as industrial policy, education, customs, nuclear energy and consumer protection– underpin those three pillars.

## EU-China Strategic Agenda for Cooperation: Social Progress

The two parties commit to:

- *“Reinforce dialogue on social policies; promote social security and social cohesion, full and quality employment, occupational safety and health, and decent work, so as to address a number of challenges such as youth employment, social welfare, social assistance, demographic ageing, as well as migration flows and cross-country mobility.*
- *Jointly implement the EU-China Social Protection Reform Project and the EU-China Occupational Safety and Health Project in High Risk Industries, and make better use of the existing dialogue mechanisms.*
- *Enhance cooperation with the International Labour Organisation, in order to further promote the decent work agenda.*
- *Expand dialogue and exchange in the field of health, including through cooperation with the World Health Organisation, especially the cooperation in antimicrobial resistance, e-health, prevention of cancer and regulatory dialogue on pharmaceuticals, with a view to ensuring the health and safety of citizens.*
- *Expand dialogue and exchange concerning the rights of persons with disabilities according to the UN Convention on the Rights of Persons with Disabilities (UN CRPD) in order to advance inclusion, counteract discrimination and remove barriers.”*

## 2. THE INTERNATIONAL INVESTMENT AGREEMENT NEGOTIATION

The negotiations started in 2013 and officially cover investment protection, market access and other elements further facilitating investment. Seven rounds have been held since the beginning of the negotiations and a couple more should have taken place by the end of 2015. By early 2016 at the latest, a first proposal will be on the negotiation table although, in the beginning, the document will more likely be a memorandum of understanding between the parties.

This text will be composed of 3 columns, the European views, the Chinese views and a third column of common understanding. Both negotiators are in the phase of verifying that language and concepts are defined similarly in order to avoid misunderstandings and traps. Nevertheless, some first elements may also be agreed promptly. According to DG trade officials, the negotiation will last from 2 or 3 years (best case scenario) up to 10 years. Negotiators aim to draft a 20 pages document, much shorter than normal trade agreements that can be longer than 1,000 pages. Contrary to trade agreements, and despite the fact that the Chinese (local) government(s) refuse to liberalise certain highly capitalistic sectors, there is currently no list of priority sectors on the EU negotiators side, for the time being.

Prior to this, extensive preparatory work has been carried out. Four “technical meetings” have taken place among trade experts, in addition to multiple EU interinstitutional meetings and 6 months negotiations among EU national representatives and EU institutions representatives. Furthermore, 3 high level meetings between China and the EU have helped identify the negotiation scope.

## 2.1. An International Investment Agreement skeleton

Without anticipating the form of the EU China agreement, here are some topics usually covered by this kind of agreement:

- Non-discrimination: general principles of fair and equitable / equal treatment between countries and representatives (see Commission Communication “Towards a comprehensive European International investment policy” for more detail);
- Full protection and security of investors (*including return on investment*);
- An investor-to-state dispute settlement that can be invoked with regard to all provisions under the agreement (*after the exhaustion of local procedures in several countries*);
- A possible new element since it was recently developed in Free Trade Agreements: a chapter on Sustainable Development.

## 2.2. Assessment of negotiations

At the 7 October 2015 EU / China joint Committee (that forms part of an annual dialogue at ministerial level based on the 1985 Agreement on Trade and Economic Cooperation between the European Economic Community and China) that assessed the negotiations development, Commissioner Malmström underlined *“the importance of strengthening the rule of law and independent judiciary system, allowing lawyers to operate freely and independently, supporting the work of foreign business and citizens.”*

Referring to the importance of **digital society** for business operating in China, she asked her Chinese counterpart *“to contribute to making the internet a vehicle for freedom of expression and free trade. We are getting clarity as regards the scope of our future deal”,* Commissioner Malmström said. *“However, more efforts are still needed to address all obstacles to investment between the EU and China, and to ensure a fair, open and transparent regulatory environment for investors on both sides.”*

According to DG Trade officials, the future agreement is not a “specific” one. Although China is not a trade partner like any other, the Commission does not adapt its negotiation process and its policies to this particular country. However, the future agreement is to be a “stand alone agreement” in the same vein as the recently signed Singapore agreement except that it is limited to investment. Although China is openly pushing for a Free Trade Agreement, the EU is not in favour for the time being.

## 2.3. Impact assessments

In total, 3 impact assessments will be achieved regarding a possible agreement between EU and China as explained below. However, the Commission may carry out an “analysis of consequences” before an agreement is signed and consequently submitted to the European Council and Parliament<sup>39</sup>.

In 2008, the Commission ordered the **Trade Sustainability Impact Assessment of the Negotiations of a Partnership and Cooperation Agreement between the EU and China**. The report, drafted by independent experts, stated that *“Whilst the comparative advantage of Europe’s more advanced economies is well matched to the emergence of the Chinese economy, other Member States, notably those in Southern and Central Europe, are relatively worse placed and at a higher risk of seeing a delocalisation of jobs as a result of low-cost Chinese imports.”* This statement was not eluded by the Commission in its position paper the following year.

In 2013, the European Commission carried out an **impact assessment to support its Recommendation to the Council to adopt a Decision to open negotiations between China and the EU for an investment agreement**. This document does not foresee any major negative impact of an investment agreement between China and the EU as regards employment trends in Europe.

<sup>39</sup> “Once negotiations are concluded and before signature, we will prepare for the Parliament and Council an analysis of the consequences of the proposed deal for the EU. Finally, to help monitor the impacts of existing EU trade agreements, we will be carrying out ex post evaluation on a more systematic basis.” Trade, Growth and World Affairs Trade Policy as a core component of the EU’s 2020 strategy, COM/2010/0612 final.

The document shows that each EU Member State (except Ireland) have already negotiated with China to secure investments flows.

Looking back at the members states negotiations with China, trends can be divided into two moments:

- **Pre-1998 BITs:** Agreements signed before 1998 lack important provisions guaranteeing substantive and procedural protection of foreign investment, or contain significant reservations. These **11 BITs** have lower standards of protection than the “new” generation of BITs and thus these 11 Member States would stand to benefit most from a uniform high standard of protection.
- **Post-1998 BITs:** Agreements signed after 1998 benefited from China’s “going out” policy and include stronger investment protection provisions. These **14 BITs** generally contain all standard provisions found in recent BIT practice.

At the same time though, these agreements are not uniform either.

What is missing in the BITs? According to the Commission staff working document in relation to the impact assessment report on the EU-China investment relations (2013):

- No current Member State BITs with China include a clause preventing attraction of FDI through a non-lowering of standards (e.g. environmental, labour laws) by the parties to the agreement. This is something not currently contained in any MS BIT with China.
- No current BIT includes a reference to the issue of corporate social responsibility or the OECD *Guidelines on Multinational Enterprises (China is not an OECD Member and does not wish to voluntarily follow its codes)*.
- No current BIT includes comprehensive provisions regarding questions over state-owned enterprises, subsidies and performance requirements including forced technology transfer. *(This is an issue regarding public-procurements too)*.

In 2016, the European Commission will launch the **sustainability impact assessment** of the potential agreement. This is a **trade-specific tool** for supporting trade negotiations, which provides the Commission with an in-depth analysis of the potential economic, social, human rights, and environmental consequences of ongoing trade negotiations, and gives an opportunity to stakeholders in both the EU and the partner countries to share their views with negotiators. In Europe, the general public consultations are often criticised by trade unions that play a particular role as social partners. In the case of China, it remains to be seen who will be the stakeholders involved and what level of independence from government can be reached.

In order to ensure that the system is in line with sustainable development objectives, the EESC recommends for instance that Sustainable Impact assessments:

- form part of an ex-ante, in-itinere and ex-post evaluation-;
- be coordinated with the preliminary impact assessment effected prior to the negotiation mandate and carried out in useful time;
- prioritise the detection of social and environmental risks;
- place the emphasis on a more specific, detailed assessment based on sectors or households.

In this opinion, the EESC points out the methodology endorsed by the Commission regarding analysis and scenarios: In Sustainable Impact Assessments, the widespread use of mathematical simulation models, such as calculable general equilibrium models designed to assess the effectiveness rather than the social and environmental impact of macroeconomic policies, tends to give considerable weight to economic assessments. According to EESC, “*the results of modelling presented in SIAs are often intuitive, without any real informative value for negotiators or stakeholders, since they do not indicate significant or sufficiently targeted impacts. As a result of the absence or shortage of reliable statistics in the informal sector, the SIA does not take sufficient account of the possible impact [on sectors].*” This is also applicable to the 2013 impact assessment that anticipates no significant impact on employment trends from the future agreement.

These assessments are carried out during negotiations because they can last almost a decade in some cases. Therefore, a preliminary assessment would quickly become outdated. A sustainability impact assessment report can also influence negotiators especially if stakeholders mobilise their respective organisations. This depends to a large extent on the level of transparency, often weak or non-existent, provided by the parties to the negotiation.

## 2.4. ISDS and the right to regulate

**The EU is negotiating an investment agreement with China, which will include a chapter on the settlement of disputes between investors and the state: State of play.**

### ***Settlement mechanisms of investors and State investment disputes***

European policies are designed to favour investments contribution to the economic recovery. The EU is already both the main origin and the first destination for foreign direct investment (FDI).

The between investors and states disputes settlement (ISDS) is a mechanism in an international investment agreement that ensures compliance with the commitments made by signatory countries for investment protection. At present, the EU Member States are signatories of almost half of all international investment agreements worldwide (roughly 1,400 to 3,000). Virtually all include provisions for the protection of investments and settlement of investor-State disputes. This mechanism enables the resolution of disputes when an investor considers that a State has violated its obligations under an international investment agreement.

The annual analysis of ISDS cases in 2014 conducted by UNCTAD shows that: “*The two types of acts of public authorities the most contested by investors in 2014 were, firstly, the termination of the contract or concession or alleged violations of such agreements (at least nine cases) and the withdrawal or refusal of licenses or permits (at least six cases).*”

It is mostly investors from EU Member States that use ISDS. They launched 327 procedures in total, which corresponds to more than 50% of cases brought. They originate from nearly all EU Member States (with the exception of Estonia, Slovakia, Romania, Bulgaria, Malta and Ireland).

Overall, investors from the Netherlands, the UK, Germany, France, Spain and Italy have introduced 236 cases, or 72% of total cases from the EU and 39% of all ISDS cases globally.

The proceedings against EU Member States seldom originate from investors located in countries outside the EU.

In 2014, the EU signed a free trade agreement with Canada and Singapore, launched negotiations with the USA, Vietnam, Japan, Thailand, Malaysia, Morocco and India, all of which integrate a chapter on the protection of investments.

This is a significant change from the free trade treaties with South Korea, Peru, and Colombia, where only the Central American agreement included clauses on investment.

A more comprehensive approach was introduced at the conclusion of free trade economic agreements negotiations with Canada and Singapore in 2014. **The objective of this rebalancing was to reconcile the right of private investors and the recognition of the host state regulatory autonomy legitimacy to pursue general interest objectives through to public policy.**

### ***The example of the free trade agreement negotiated between the EU and Canada***

The agreement with Canada reaffirms a number of principles such as:

- The right of signatory states to regulate and achieve the legitimate objectives of their policy, such as the protection of public health, safety, environment and morality, as well as the promotion and protection of cultural diversity.
- The definition of essential concepts such as “fair and equitable treatment” and “indirect expropriation”.
- The prohibition of “forum shopping” which consists of seeking the most advantageous arrangement on the basis of which to initiate the ISDS procedure.
- The introduction of a full transparency obligation in the arbitration process whereby stakeholders (NGOs, trade unions) may also submit comments.
- The existence of a code of conduct for arbitrators to ensure the absence of conflicts of interest.
- Provide for unsuccessful claimants to pay the costs of the proceedings in accordance with the “the loser pays” principle.
- The possibility to create an appeal mechanism.
- The prohibition to engage proceedings simultaneously in both international and national level.

On several occasions, private firms have challenged the right of states to legislate, regulate in form and in substance; this is unacceptable for sovereign democratic societies in the administration of justice in its different components.

### ***Enhanced approaches to circumvent the anti-democratic nature of arbitration tribunals***

Following the debates surrounding the negotiations between the US and the EU for the transatlantic trade and investment partnership, a consultation was launched by the European Commission in early 2015.

Several issues for improvement have been listed in order to weaken strong opposition who consider the existence of a dispute resolution mechanism as an “abomination for democracy” (see ETUC/ AFL-CIO joint declaration).

Similarly, in May 2015 the French authorities submitted to the European Commission several proposals on improving the provisions on investment protection and dispute resolution in future EU agreements. These proposals are based on four main areas:

- I. Preserve the States’ right to regulate: the investment protection should not give rise to interpretations that may compromise legitimate and democratic public choice;
- II. Create a new institutional framework: a new permanent court for EU Treaties is required for reviewing arbitral awards and managing the appointment of arbitrators. This court will constitute the backbone of a future multilateral permanent court;
- III. Strengthen ethics of referees and improve the functioning and transparency of arbitral proceedings;
- IV. Clarify the relationship between arbitration and local jurisdictions.

This is a multilateral mechanism with an appeal mechanism chaired by ordinary judges, as a permanent court but a full part to specialised investment issues may appear, in connection with the current trade and investment negotiations, although China has always been very much supportive of the ISDS approach.

### **2.5. China: economy recognised as market economy?**

On accession to the WTO in 2001, China was offered the recognition of market economy status by the end of 2016, provided it would have met the following requirements:

- Legislative and regulatory transparency;
- Non-discrimination in public tenders;
- Tax Non-discrimination;
- Elimination of tariff and technical barriers to trade;
- Public enterprise management autonomy;
- Respect for intellectual property.

Both ETUC and BusinessEurope agree that the MES recognition is not automatic but should be waterproofed on the basis of the criteria listed above. The ETUC and its affiliated industry federation IndustriALL Europe are against the MES for China because they anticipate an immediate negative impact on investment in Europe and would prevent job creation. According to the ETUC, “*a unilateral decision (from the EU) could lead to a flood of cheap imports into the EU as a result of trade deflection*”<sup>40</sup>. Manufacturing would suffer most while several EU governments intend to re-industrialise their national economic growth. In addition, ETUC believes that free collective bargaining should be an additional criterion of evaluation.

BusinessEurope does not officially reject MES for China although they published a list of pre conditions, which involve that the EU should oppose MES<sup>41</sup>. The employers organisation affiliates are split: some of them would be delighted to produce at lower costs thanks to cheap imports from China, whereas other affiliates fear to collapse, incapable of competing with these new imports. Additionally, BusinessEurope has given membership to key Chinese players like the ITC multinational company Huawei, a decision that may increase the difficulty of internal decision-making. BusinessEurope asks an impact assessment and is in favour of maintaining trade defence instruments in place.

The advantage of this status for China involves the further liberalisation of its trade: anti-dumping and anti-subsidy duties to which it is regularly condemned by the EU will be calculated by reference to the Chinese prices and not in relation to prices of a third country. Concretely, for example, where Chinese products are today subject to a 30% mark up; in future they would not be increased by more than 5%. In other words, the prospect of MES Market Economy Status, would only encourage China to sell its excess capacity in Europe during a downturn; this was the case in the steel and aluminium sectors in 2015.

<sup>40</sup> ETUC position on granting Market Economy Status to china, 17 DEC 2015

<sup>41</sup> BusinessEurope position paper, China’s Market Economy Status, December 2015

**CHAPTER 5**  
**EMPLOYMENT AND LABOUR**  
**DYNAMICS AT SECTOR AND**  
**COMPANY LEVEL**

**Key points (dynamics in Europe)**

- Case study evidence suggests that there is no monolithic Chinese strategy concerning both investments and industrial relations when overtaking business in the EU. The dynamics of labour relations depend on a complex set of factors including China's investment strategy, sector specificities and the degree of institutionalisation of industrial relations.
- Where industrial relations are already fragile, because of subcontracting practices like in the construction/ infrastructure sector or because of greenfield investments like in telecommunication or electronics, Chinese investors take advantage of the situation to implement a labour low-cost strategy, avoiding unions, dividing workers or even use their own Chinese labour force.
- In the examined cases, Chinese investors also often benefit from the absence of public intervention when seeking for access to the EU market: in the UK, China is stepping into the breach of public funding with no visibility about job security; public agreements provide for restricted use of local labour force, but only in small proportion and in the case of Polish A2 Highway the Commission has rejected a joint union-business organisation claim for unfair competition.
- When Chinese investors are interested in access to technology and quality production, industrial relations strategies appear different, especially when public authorities and unions participate in negotiating the transactions. Recent Chinese investments in major French milk-production companies should for instance lead to job creation, whereas the takeover of German machinery leaders has been framed by agreements securing future employment and investments.

**Key points (dynamics in China)**

- Since its economic reform in 1978, the Chinese government has built a legal framework that became necessary in order to organise labour relations between private employers and employees. However, the existing framework is not adapted to resolve the growing number of collective labour disputes. There is no freedom of association and there is only one legally-mandated trade union, namely the All-China Federation of Trade Unions (ACFTU).
- Worker protests are commonplace across the whole of China and have been rising continuously since 2011, and sharply since 2014. These trends reflect growing social issues which are accompanying economic slowdown. Workers' demands underlying labour protests show that they first deal with the economic improvement of working conditions but then shift towards demands for a voice and democratic representation.
- Against the background of a strike wave that started at the Honda Foshan plant, trade union reform and the improvement of the collective consultation system became priorities for the ACFTU and the Government. The Guangdong region has been very proactive in supporting collective bargaining. In 2010, the Guangdong government published a first draft aimed at creating a system by which workers could compel an employer to negotiate over workplace issues without first resorting to a strike. However, the Guangdong regulation that became effective on January 1<sup>st</sup> 2015 backed off from these reforms. This suggests that the vivid debate in China about whether to introduce collective bargaining provisions in the Chinese labour law has for now been in favour of reform opponents.
- Foreign business associations are also held responsible for the loss of content between the draft and the effective collective bargaining regulation. The European Union Chamber of Commerce in China who had expressed concern in 2008 that the Labour Contract Law would increase labour costs did not express any official position on the collective bargaining regulation.
- Foreign unions have recently launched innovative initiatives to strengthen union cooperation with Chinese unionists at company level.

- In the absence of freedom of association, grass-root labour activism in China has developed through NGOs, which play a crucial but problematic role in the development of collective bargaining. NGOs are key in educating the workforce and expanding the capacity for independent bargaining to emerge. However, attempts by NGOs to evolve towards independent unions with their own governance structure and bargaining agenda or to reform the ACFTU from bottom-up are threatened in their very existence: Besides Beijing's plan to tighten control over NGOs, recent crackdown over several well-known NGO labour activists show how fragile the development of grass-root collective bargaining is in the absence of freedom of association.

**1. CASE STUDY EVIDENCE FROM CHINESE INVESTMENTS IN EUROPE****1.1. Invest to get market access and benefit from fragile industrial relations settings*****Infrastructure: Chinese companies stepping into the breach with their own labour force*****EU-China Strategic Agenda for Cooperation: INFRASTRUCTURES**

The two parties commit to:

- *Strengthen cooperation in developing smart, upgraded and fully interconnected infrastructure systems. Expand cooperation in interoperability of seamless supply chain logistics networks between Asia and Europe, maritime markets and routes, rail services, logistics, safety, and energy efficiency.*
- *Actively explore models of infrastructure cooperation, including project bonds, project shareholding, joint contracting and co-financing, and further coordinate the cooperation among China, the EU and its Member States."*

The dock of Malta built in 2008 by CCCC. This dock is 360m in long and 42m wide, and its water depth is 12.5m.



source: <http://www.chec.bj.cn>

**Who are the Chinese construction companies?**

The top 7 companies identified by BWI<sup>42</sup> have similar profiles: giant players in China and in the world (Asia, Africa, Latin America and to some extent U.S. and Canada), they control high level construction technology. They are state owned companies but they all endorsed a company statute between 2005 and 2011. Part of their shares are listed on the Chinese stock exchanges. Their activity in Europe remains underdeveloped compared to other areas but is steadily growing in central and eastern European countries and more recently in the UK.

42 BWI report "the Great Leap Outward: Chinese construction companies in the global market and BWI engagement" (2013).

NAME	CHARACTERISES
China Railway Group Ltd, CRG (China Railway Engineering Corporation)	<p>The major shareholder of the company is the state owned <a href="#">China Railway Engineering Corporation</a> (CRECG). The company is also listed on the Shanghai and Hong Kong stock exchanges and is the owner of the COVEC subsidiary (see Polish case).</p> <p>By revenue, CREC is the largest construction company in the world in the 2012 <a href="#">Engineering News-Record</a> "Top 225 Global Contractors" and ranks No.71 among all multinationals in the <a href="#">Fortune</a> Global 500.</p>
China Railway Construction Corporation Ltd, CRCC (China Railway Construction Cooperation)	<p>Just behind CRG, the company CRCC has around 10,000 employees and is growing internationally. CRCC has now established its leadership position in project design and construction fields in plateau railways, high-speed railways, highways, bridges, tunnels and urban rail traffic.</p> <p>According to its website, "Under the leadership of the Chairman and Party Secretary Meng Fengchao and the President Zhang Zongyan, CRCC is striding forwards towards the goal of "China's construction industry leader, the world's most competitive large construction group."</p>
China Communications Construction Corporation, Ltd, CCCC	<p>The latest data quoted by the company regarding employees is approx. 113,000 in 2009. The company is specialised in building ports, terminals, roads, bridges, railways, tunnels, civil work design and construction, capital dredging and reclamation dredging, container cranes, heavy marine machineries, large steel structures and road machinery manufacturing, and international project contracting, import and export trading services. It is the largest port construction and design company in China. Its objective is to grow international operations to 30/40% of total revenues by 2017.</p>
Metallurgical Corporation of China, MCC (China Metallurgical Group Company)	<p>This company is the largest manufacture of steel structures and a key player regarding the number of homes built. MCC is investing significantly into mining operations.</p>
China State Construction and Engineering Corporation Group, CSCEC	<p>China Construction is China's largest construction and real estate conglomerate and its biggest building work contractor. It is the largest transnational construction company in the developing world and the top home builder in the world, taking the long lead of China's international contracting business. China Construction is well known globally for undertaking super high-rise, grand scale, cutting-edge and novel projects. It has built up a great number of landmark projects in China and around the world. However, CSCEC has never run activities in Europe.</p>
Sinohydro Corporation (Sinohydro) / Power Construction Corporation of China (Power China)	<p>About 25% of its revenues come from international contracts. In 2013, Power had 728 projects in 81 countries. Most of its activities focus on hydro power, thermal power and transport infrastructures including energy. The company is active in eastern Europe (Uzbekistan, Kazakhstan, Rep. of Serbia, Poland, ...)</p>

### Chinese investors stepping into the breach of public funding: the case of the UK

A 2014 study by Pinsent Masons and the Centre for Economics and Business Research (CEBR)<sup>43</sup> states that Chinese investments in the UK should be multiplied by six between today and 2025. The report presents the Chinese investments capacity as a potential game-changer for the British economy and particularly to the sector: if Chinese outbound investment increases by 8.1% for 2014 – 2025 as forecasted, \$ 169 billion dollars would flow from China to UK's infrastructure and real estate between today and 2025 (including approximately \$ 67 million for energy infrastructure and \$ 39 million for transport and other infrastructure).

The researchers nevertheless point out that the UK infrastructure state of play is bad (rank 27 according to the 2014-2015 World Economic Forum Global Competitiveness report) and that both the governing authorities and the British administration have great difficulties in setting up construction projects on a mid-term basis. Skills shortages would also hamper the construction sector expansion in the country. Several experts agree upon the finding that this sector is undercapitalised and that fresh money would be more than welcome. The UK construction sector finds it difficult to respond to long term construction plans whereas Chinese companies, with the support of state-owned mother companies, have no difficulties in finding the material and financial means needed. Therefore, in future British companies from the construction sector that are willing to apply for public works might become increasingly compelled to set up joint ventures with foreign companies (including European companies).

Several economists express their doubts regarding the capacity of the British economy to continue absorbing so much surplus Chinese cash<sup>44</sup> (UK is ranked number three regarding China's outflows). Thus far, Chinese investment focuses rather on acquiring equity in property and businesses. EFBWW confirms that the initial Chinese strategy in the UK, if not in Europe, is to enter the confidential business world of business boards comprised of directors and administrators.

In the UK, the consequences of Chinese investments raise some doubts in terms of public debate:

- Immigration has become a very controversial issue. The recent election outcomes, the growth of UKIP in the polls and the tabloids scary pictures of refugees hiding in Calais have a strong impact on decisions. The "importation" of Chinese workers, together with the construction contracts, is also rejected for the deflationary effect on wages.
- Further public infrastructure would require further public funding. The British budget is slowly recovering after long and painful austerity measures. Some voices say that only the decentralisation of public spending would seem to enable the economy to relaunch through massive investment.
- However, the bill would still have to be paid back to Chinese companies: several experts suggest as possible solutions privatising the highways, increasing taxes or raising the energy prices. The London Thames Water company, for instance, will increase water prices for consumers in order to finance the 25 km long Thames Tideway Tunnel.

### UK-Unions oppose Chinese investors in nuclear power and claim for public funding

After long negotiations<sup>45</sup>, France's EDF and China General Nuclear Power Corporation will be the two parties to a consortium chosen by the UK government to ensure the construction of a £ 24bn nuclear power station in the UK at Hinkley Point in Somerset. The Chinese state owned company is appointed one third of the contract total value. Hinkley Point will also be backed by up to £ 17bn of UK government loan guarantees. The plant would deliver 7% of the UK's electricity. According to The Guardian newspaper "the plant has been promised £ 92 per megawatt hour (MWh) for 35 years, double today's average wholesale electricity price, with any shortfall being paid by consumers via household energy bills."

<sup>43</sup> "China invest West: can Chinese investment be a game changer for UK infrastructure?" issued 29/10/2014.

<sup>44</sup> "What would the UK do with \$ 169bn from China?" By David Rogers, 05/11/2014, [www.globalconstructionreview.com](http://www.globalconstructionreview.com)

<sup>45</sup> "China to take one-third stake in £ 24bn Hinkley nuclear power station", The Guardian, 20/10/2015.

According to Alan Jeffery, a spokesman for the Stop Hinkley Campaign which officially started in 2008, 20,000 jobs are at risk in the renewable energy industry.

GMB is in favour of the construction of new nuclear power plants but has denounced on several occasions UK Government plans to give the go ahead for a Chinese nuclear reactor in Essex, in return for Chinese funding for new nuclear stations at Hinkley Point C and Sizewell. Gary Smith, GMB National Secretary for energy raised serious concerns<sup>46</sup> regarding the Chinese “know-how” and the UK government decisions: “GMB and people in this country will not tolerate thousands of Chinese workers being brought over to assemble and build the Chinese reactor on the cheap. We will not tolerate a betrayal of the interests of manufacturing and construction workers in the UK by the Tories.”

GMB consider that the Nuclear Decommissioning Authority should be re-tasked and renamed the Nuclear Development Authority and be given the authority to borrow the money on the capital markets in order to partner EDF in Hinkley and Sizewell. This will be cheaper for consumers and will avoid unnecessary safety fears in the UK.

### **Public agreements provide for restricted use of local labour force**

In 2015, CHEC (China Harbour Engineering Company) was named preferred bidder for the \$ 460 million contract to build the dam for the world's first tidal lagoon power plant, in Swansea, Wales (UK). CHEC has agreed with the British public authorities in the contract that only half of the contract value must be spent on British workers and suppliers, leaving the other half open to Chinese firms and workers.

#### **The Swansea tidal lagoon project**



Source: subseaworldnews.com

CHEC has 10,000 employees in 80 countries and belongs to the state-owned China Communication Construction Company (C.C.C.C.).

This is the second largest project win for a Chinese company in this country: in 2013, Beijing Construction Engineering group was appointed to help build the £ 800 million Manchester Airport city scheme, with UK firm Carillon in the frame of a 50/50 joint venture.

Similarly, the agreement between CCCC (China Communications Construction Company) and the Government of Montenegro to build the Corridor XI Project Bar – Boljare highway states that the main contractor is obliged to hire local companies for only 30% of the works.

The project aimed at building 41 km of highway (Section Smokovac-Uvac-Matasevo) started in May 2015. It is financed by a Chinese EXIM loan to the Government of Montenegro (85%) and 15% of the Government's own financing. It is the most expensive infrastructure project in Montenegro and it will cost 809 million Euros.

### **Taking benefit from sectoral subcontracting practices: the Piraeus Port case**

COSCO was the winner (2009) in a bidding process (2008) for the acquisition of the biggest part of the Container Terminal of Piraeus Port Authority (PPA) and more precisely of Pier II.

Pier I was constructed on the basis of Piraeus Port Authority-PPA own funds and is still under its management and control. Pier III is under construction and already for sale.

Piraeus is a key destination and link in the Chinese “new Silk Road” or “maritime road”, established thanks to unfair competition: the pressure on working conditions and extensive use of atypical work.

China Ocean Shipping Company, known as COSCO, is a Chinese shipping and logistics services supplier company. It is a government-owned company of the People's Republic of China. It owns more than 130 vessels (with a capacity of 600,000 twenty-foot equivalent units (TEU)) and calls on over a thousand ports worldwide. It ranks as the sixth largest in number of container ships and ninth largest in aggregate container volume in the world. In 2012, it was among China's biggest 15 companies.

COSCO officially took over the control and management of Pier II in June 2010 after almost two years of mobilisation, demonstrations and strikes by the unions in PPA. Following the establishment of COSCO, from the outset the dockers addressed the pressing problem of deterioration of labour rights and conditions.



According to the concession agreement and the relevant law, there were no concrete plans concerning labour issues and no obligations on COSCO. The only reference was that the party granting the concession must fulfil the national labour legislation. This is a very general reference allowing COSCO to use any flexible employment scheme in the Terminal. Consequently, COSCO decided to operate and employ dockers through a complex system of subcontractors. Piraeus Container Terminal-PCT (a subsidiary company of COSCO in Piraeus) directly employs approximately only 200 employees, who mainly work in administration jobs. The 600 to 700 workers not employed by COSCO are hired by those subcontractors with flexible and casual schemes. They receive 10 to 15 working days per month, on the basis of individual agreements (there is no collective bargaining agreement), they are not paid extra indemnities for working night shifts, Saturdays or Sundays and holidays. There is no specific register of the dockers, no regulation for the organisation of work (number of dockers per gang, etc.) and no specific health and safety regulation.

According to the dockers union, the main subcontractor in the Terminal is a company called DIAKINISIS Port Ltd, a subsidiary company of DIAKINISIS SA (a logistics company) and DIAKINISIS (CY) Port Ltd which are subsidiary companies of ELGEKA that is an intermediary for all kinds of services to companies.

According to the Union members, who lament the lack of support from public authorities and labour inspection, COSCO avoids any responsibility concerning employees and has strategically decided to use this complex system of subcontractors.

46 <http://www.gmb.org.uk/newsroom/no-to-chinese-nuclear-reactor-in-essex>

In recent years the unions in PPA have succeeded in establishing strong collective agreements and regulations for work and health and safety, a situation that is radically different from the COSCO Terminal. On 18 July 2014, workers in the COSCO Terminal organised a spontaneous 24 hours strike in order to push their demands for better labour rights and this action concluded in the creation of a union. The union at COSCO Terminal is still weak and has not yet succeeded in reaching a collective agreement or any other kind of improvement of working conditions in the Terminal.

Of course, the low level of both labour costs and conditions in the COSCO Terminal is affecting competition between COSCO and PPA, which in turn puts further pressure on rights and conditions at PPA. Two years have passed since the previous government decided to sell-off the majority shares of PPA (I and III). COSCO wishes to acquire these two areas and has an advantage because of its presence in Piraeus Port. Should the entire Piraeus Port be privatised, it could give birth to a huge private monopoly based in Piraeus.

### ***The Commission rejects a claim for unfair competition: the case of Polish A2 Highway***

As part of preparations to host the Euro cup football matches in 2012, the Polish government decided to interlink several cities with new highways. The Chinese state owned company Covec was selected to build parts of the A2 highway between Warsaw and Berlin, on the basis of a bid that was 30 per cent lower than other companies<sup>47</sup>.

To defend its bid, Covec put forward its two main strengths: a) immediate access to financial and material resources and engines thanks to the state owned Consortium it belongs to; and b) a cheap workforce from China that could travel to Poland, where there is regrettably currently no collective agreement in the construction sector to help raise labour standards.

The employers EIC (European International Contractors) and FIEC (European Construction Industry Federation) reacted strongly in this regard. In 2009, EIC and FIEC jointly officially requested clarifications from the European Parliament, the European Commission, the European Investment Bank and the President of the Council about the single market development regarding third countries access. Their objective was to utilise the contract signed between the Polish contracting authorities and Covec as a showcase of unfair competition in the sector.

### **In 2012, the EFBWW also joined the claim.**

They denounced the fact that the Chinese company benefited from Chinese public funding, Covec being part of a state owned construction consortium belonging to the Chinese railway.

**They indirectly raised the fact that it would be impossible for Covec to respect the labour and tax law because their bid was abnormally low.**

Finally, they noted that the highway was to a large extent paid by Poland thanks to a European Investment Bank loan and they fed the controversy about Europe funding low standards state-own foreign companies (in principle state aid is forbidden for EU Member States) with European public money for economic activities that would not create any jobs in Europe.

**Several European institutions rejected having competence on the matter.** The EIB answered that the public procurement directive offered sufficient protection and that local courts had already rejected the complaints from the European construction companies.

The European Commission declared that:

- The public procurements are open to companies from all countries members of the WTO who are members of the GPA (World Trade Organisation - Government Procurement Agreement). Nevertheless, other countries such as China can access these procurements on an ad hoc basis.
- No concrete answer was given regarding foreign companies benefitting from public funding in their country of origin ("under discussion in the WTO").
- The public procurement directive was deemed to offer sufficient protection to EU stakeholders regarding abnormally low bids.
- The possibility of resorting to workers from third countries in order to perform public contracts is related to each Member State's immigration and employment legislation presently in force. This is not the EU's field of competence.
- There are two stages in the process: first, the bid should only be assessed on the public procurement criteria and second, if a contract cannot be achieved without breaking the law, it must be cancelled.

In summary, the Commission says that the law offers sufficient protection, with one exception regarding foreign companies benefitting from public funding in their country of origin. In reality, at that time, the Commission was already negotiating reciprocity of access to markets with China via a bilateral agreement and probably did not want to undermine the process.

According to EFBWW, right from the beginning of the construction works, problems emerged on the construction site. Covec tried to transfer part of the work to local suppliers who had to refuse because of the poor conditions in the initial contract. The Chinese company then decided to ask the Polish authorities to provide employment and residence permits for Chinese workers. The Polish authorities accepted "only" 500 vs. the 800 the Chinese company asked for.

Finally, the Polish government realised that the works would never be ready on time and decided to cancel the contract.

In its 2014 annual report, Covec's mother company CRG states that after negotiation, they paid back a significant amount of money to the Polish public authorities in 2015.

### **Trade unions' views on China's international development in construction**

Chinese construction companies are a growing challenge for trade unions around the world. Chinese companies are not open to social dialogue and BWI (Building and Wood Worker's International) has no affiliated member to support a coordinated approach in their country of origin. Additionally, the usual multilateral development banks are not involved in the funding of projects, therefore procurement guidelines do not necessarily apply.

According to BWI<sup>48</sup>, construction companies develop their activities on the basis of bilateral or sub regional agreements signed with public authorities: they cover loan agreements, technical support and some form of cultural exchange. The agreements focus on transport, electricity, energy and extraction including oil and minerals. These agreements are based on substantial financial support from China Exim (China Export-import Bank) and CDB (China Development Bank) both being state owned banks supporting the "going out" strategy set up in 2005 by the Chinese authorities.

<sup>47</sup> Since it mainly covers service contracts, the construction sector is not a case of foreign direct investment. However, dynamics underpinning contracts with Chinese companies appear relevant for a better understanding of China's international development strategy and Chinese companies' labour relations strategy.

<sup>48</sup> BWI report "the Great Leap Outward: Chinese construction companies in the global market and BWI engagement" (2013).

Outside Europe, BWI raises several issues regarding the breaches of labour law and collective agreements (no respect for health and safety measures, no payment of minimum wages and overtime rates of pay) and regrets anti-union behaviour. However, in several African countries, trade unions successfully organised construction workers and even signed collective agreements. Chinese companies do not necessarily behave the same way in all countries where they operate. This difference may depend on the local authority's policy culture regarding workers' rights and freedom of association.

According to EFBWW (European Federation of Building and Wood Workers), it is extremely difficult for trade unions to investigate working conditions in construction sites operated by Chinese companies in Europe. Sites are closed to the public and sometimes hidden by wooden or metal panels. Chinese workers on the site do not always speak foreign languages and are extremely difficult to organise in a trade union.

EFBWW denounces the lack of transparency of agreements signed between China and individual EU member's states: according to the union, these agreements constitute the legal basis to provide sectorial access for foreign companies and they include clauses regarding taxation and workforce.

The European federation points at the posting directive 96/71/EC and at the more recent directive 2014/66/EU of 15 May 2014 with respect to the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer. The latter authorises the venue of managers, "specialists" and trainee employees with university degrees for periods of one year up to three years maximum.

Recital 15 however states that "each Member State should be responsible for checking the remuneration granted to the intra-corporate transferees during their stay on its territory. That is intended to protect workers and guarantee fair competition between undertakings established in a Member State and those established in a third country, as it ensures that the latter will not be able to benefit from lower labour standards in order to gain any competitive advantage."

In theory, third country workers are entitled to equal treatment regarding pay, working conditions, sickness, invalidity, ageing, death pensions, occupational accidents and diseases. Only public housing and to some extent parental benefits are restricted.

In practice, according to EFBWW, concerns do exist regarding the actual social security benefits: workers do not benefit from EU social security schemes, they remain under the country of origin scheme when bilateral agreements so decide. According to EFBWW, third country social security schemes, when they exist, are much cheaper and less efficient, and therefore provide an unfair competitive advantage to the benefit of third country companies.

### **Greenfield investments and lack of institutionalised industrial relations**

#### **Huawei in Europe: a case of union absence<sup>49</sup>**

Huawei is a leading Chinese telecommunication company that in recent years has quickly conquered the European market. In 2004, Huawei won its first major contract in Europe with the Dutch mobile operator Telfort. In 2005, the alliance with British Telecom was another major step as it marked its first supplier arrangement with a first-tier network carrier. By the end of 2007, Huawei was able to secure contracts with all first-tier network operators in Europe. In 2015, 50% of the European 4G networks market was provided by Huawei.

The company is employee owned, however ownership structure details have still not been made public. Huawei employs 150,000 people worldwide, of whom around 45% (67,500 people) work in R&D. Most of the R&D personnel are thus employed in China and India, where wages are lower than in Europe or North America. In Europe, Huawei employs 9,900 people. The company has built up a set of activities ranging from R&D, technical assistance centres, training centres, sales branches, logistic centres and country-level spare parts centres. Driven by knowledge seeking strategies as well as the need to facilitate market entry, since 2000 Huawei has developed a European innovation network which currently comprises 1,200 researchers working in 18 R&D centres based in 10 European countries<sup>50</sup>.

All but one of its European R&D centres are greenfield investments. Thus, the company does not have to take into account pre-existing labour relations. There is scarce information on labour relations at Huawei's operations. It is only reported that there are no works councils and no collective agreement at Huawei's R&D centres in Germany. According to Gamble and Smith<sup>51</sup>, Huawei is known for its strategy to build longer-term relations between workers (hence the shared ownership), its limited use of agency workers and an investment policy in skills and training. Regarding collective representation and employee participation in decision making it is however assumed that, based on its practice in China, Huawei lacks transparency and formal policies towards employee relations and rather promotes an autocratic management style.

#### **Foxconn in the Czech Republic: a case of taking advantage of workers' divisions<sup>52</sup>**

The world's largest electronics contract manufacturer is best known for being the main assembler of Apple products and also for the extremely bad working conditions at its mainland Chinese factories. Although Foxconn is a Taiwanese-owned firm, with its manufacturing headquarters and the bulk of its factories located in China, it is commonly understood as the very symbol of labour management in China. Foxconn employs around 1 million people in 32 factories throughout China in addition to 200 more factories located around the world. In the European Union, since 2000 Foxconn has opened two factories in the Czech Republic.

A recent study of labour relations at the Czech Foxconn plant shows how the company takes advantage of local industrial relations resulting in work and employment practices similar to those found on its Chinese plants.

Foxconn employs around 5,000-6,000 people in the Pardubice plant and 2,000-3,000 workers in the Kutna Hora plant. 40% of the workforce is directly employed by Foxconn, the vast majority being temporary agency workers. The latest are mainly not Czech nationals, but from neighbouring countries such as Slovakia, Poland, Romania and Bulgaria. The monthly wage is around € 600-700 for Foxconn employees, thus above the Czech minimum wage (330€), but below the net average wage (€ 700-750). Agency workers earn €400-500 per month, depending on the amount of hours worked.

Foxconn puts in place different strategies specific to location and workforce composition that enable it to pursue a low-cost labour strategy. By recurring on a massive scale to temporary work agencies, Foxconn uses workforce as an adjustment tool as part of a just-in-time approach. The role of international temporary work agencies merits further mention: they offer a comprehensive management of migrant labour that encompasses recruitment and selection in country of origin, cross-border transportation, work and living arrangements, and repatriation to the countries of origin during periods of low production. In the same spirit of labour on demand, Foxconn also recurs to an "hour-bank system." As in mainland China, migrant workers are housed in dormitories, so that the employer has total control over labour<sup>53</sup>. Moreover, as in China, Foxconn benefited from the Czech Republic's tax incentives for foreign investors.

Against this strategy of using a complex workforce composition, mixing a high level of temporary agency workers and a large range of migrant workers from different countries, the union (belonging to the Metalworkers Federation KOVO) is not able to build solidarity among workers. Temporary agency workers, even more so migrant workers, are de facto excluded from any collective interest representation, which in turn leaves space for the management to implement its low-cost strategy.

<sup>50</sup> Huawei has R&D centres in Sweden, Germany, France, Ireland, Italy, Belgium, Denmark, the UK, Finland and Russia.

<sup>51</sup> "What do we know? Exploring Work and Employment in Chinese Overseas MNCs", China Seminar, Nottingham University, 19 February 2014, <https://www.nottingham.ac.uk/chinese/news-events/china-seminar-series.aspx>, 03/12/2015.

<sup>52</sup> This section is based on Andrijasevic and Seccheto (forth. 2016).

<sup>53</sup> Whereas dormitories are located on site in China, they are off-site in the Czech case.

<sup>49</sup> The following section is based on Pawlicki, June 2015.

## 1.2. Investing in quality production... and in labour

### *The dairy sector: a case of job creation*

#### EU-China Strategic Agenda for Cooperation: Agriculture and Food

The two parties commit to:

*Design concrete projects ensuring food security and safety, coordinating urban and rural development, building environmentally-friendly agricultural systems while ensuring the quality and safety of agricultural products. With regard to food safety, intensify cooperation with the objective to protect consumer health, recognising the importance of food safety as a key element for consumer health, sound food markets, economic development and social welfare, highlighting the continuous and already fruitful cooperation between the EU and China on food safety, and underlining that risk analysis should form the foundation of any food safety policy, laws and regulations.*

*With the view to enhance win-win research and innovation cooperation in the field of food, agriculture and biotechnology, the EU and China will collaborate closely using their respective research and innovation programmes in order to develop joint initiatives of common interest, including potential joint calls for proposals, twinning activities, joint labs, researchers' exchanges and seminars.*

Following several scandals of deadly food poisoning in China, including that of melanin, Chinese manufacturers are launching new production facilities, notably in France, beyond scientific and technical cooperation.

Thus, the Normandy Isigny Sainte-Mère cooperative benefits from the construction of a drying tower by means of a joint investment from Isigny (45 million euros) and Biostime, a Chinese company (20 million euros); it has been completed and must be accompanied, according to the group communication, by the creation of a hundred jobs. Another example, "Les Maîtres Laitiers du Cotentin", Cotentin Dairy Masters, will also build a new drying tower for the Chinese market. The partner is Synutra (as in the Sodiaal / Carhaix project), but the partnership is not capital intensive. It is a trading partnership, with a long agreement of 11 years.

The Chinese company Synutra is building the largest industrial construction presently in progress in Brittany, France, and a region that has been facing economic difficulties for a long time. Synutra intends to gain back Chinese consumers' confidence by turning to off-shore production. The company initially invested 100 million euros and will add up to 61 million yet to produce milk powder for Chinese infants and canned packaging<sup>54</sup>.

Synutra International, through its subsidiaries in China, employs 12,000 employees in six plants. Its distribution network consists of 700 distributors, 700 wholesalers and 27,000 retailers. The company is the 9th biggest Chinese brand infant milk powder but only has only a 1% share of the baby food market. In 2012, Sodiaal, the leading French dairy cooperative and fifth biggest worldwide, signed an agreement with Synutra International, a company specialising in the distribution of baby food. It was concluded that Synutra resume operations in the old Carhaix factory, which will produce milk powders for the Chinese market.

Synutra founder, chairman and chief executive officer, Liang Zhang, holds approximately 62.8% of the common stock through a company owned by his wife, as of March 31, 2015. Equity funds own part of the other stocks.

This project incorporates over 14 hectares of land, 38,000 square meters of buildings, 25 km of underground networks, 44,000 m of concrete and drying towers to 49 m high.<sup>55</sup>

The building of an outstanding production site, which began there just two years, has been entrusted to the French group Idec. The company had to build a plant capable of processing millions of litres of milk per year into 60,000 tons of the highest quality powder. The entire production will be sold to the Chinese market.

Between 250 workers and 400 building workers per day, depending on the construction phase, are currently working on the building site. The plant construction should be completed by the end of 2015. The official launch of the plant is scheduled for January 9, 2016.

For the region, the economic impact is obviously huge. The Chinese plant and its future canning unit will initially employ about 250 people but additional jobs are already envisaged. Indeed, the mayor of Carhaix recently signed a new building permit for the installation of a laboratory and administrative services for Synutra, which were not foreseen at the start. A bridge will be built to connect the plant to these future buildings.

The needs of the Chinese market are huge. Synutra already needs more than 285 million litres of milk annually; there is talk of 600 million litres.

The organisation "Young farmers in Britain" welcomed this unexpected opening, at a time when many European producers had been protesting in Brussels, by means of tractor blockades, against the end of milk quotas in Europe. This investment is seen as an opportunity but also as a recognition of the quality expertise which can be relied upon to attract new foreign buyers.

However, some producers<sup>56</sup> fear that local prices are under pressure and that Synutra, given its local weight, negotiates prices that reach those highly volatile world prices. Indeed, there has recently been a collapse of milk prices on the world market: the sector having anticipated a surge in demand that has not materialised, resulting in the current trends of large overproduction and price decreases.

#### **Negotiated business and labour conditions: the case of technology seeking acquisitions in Germany**

A study conducted by the Hans Böckler Stiftung (Emons, 2013) on recent Chinese investment strategies in German industry provides evidence of cases where business and labour relations between Chinese investors and the German employees and their representatives are negotiated<sup>57</sup>.

What these cases have in common is that they are all so called "hidden champions"<sup>58</sup> of the sector that experienced economic difficulties, sometimes ironically because of the emergence of new Chinese entrants. These companies can become interesting, indeed easy targets for powerful Chinese investors interested in technology know-how.

Contrary to the commonly held belief that Chinese M&A in Europe results in technology transfer from Europe to China, the study points out that the investors' strategies consist of pursuing and often developing the existing business in Germany<sup>59</sup>. Existing plants in Germany are not transferred and even benefit from investments. This suggests a shift in the mind-set of Chinese investors who not only consider low-cost production but also know-how as a key factor for international development. In the context of technology driven acquisitions, Chinese investors seem to consider that know-how cannot easily be transferred from one country to another.

<sup>54</sup> "Le rêve chinois des laitiers Bretons" 14/01/2015, confederationpaysanne.fr

<sup>57</sup> The study looks at three cases in the machinery industry: Putzmeister acquired by the Sany Group in 2013, Waldrich Coburg acquired by Beijing Nr. 1 Machine Tool Plant in 2005 and Dürrkopp Adler acquired by the SGSB group in 2004.

<sup>58</sup> "Hidden champion" refers to SMEs that are global leaders in their business segment.

<sup>59</sup> This strategy is known as the "Haier strategy". This Chinese household appliance company has become famous for its strategy of building a quality brand through international cooperation with technology leaders.

<sup>54</sup> Company annual report Filed 06/12/15 for the Period Ending 03/31/15.

<sup>55</sup> Dominique Morva, 06/05/2015, Letelegramme.fr

### From suspicion to bargaining: the case of the acquisition of Putzmeister by Sany

The German producer of concrete pumps was acquired by the Chinese giant Sany Group in 2013. At that time, Putzmeister had a turnover of 575 million € and employed around 1,200 workers in Germany, in two locations. For its concrete pump business, the Sany Group employed 70,000 employees in 150 countries, and reached a global sales level of 5 billion €. Sany Group is managed by Liang Wengen, China's richest business man who joined the Government's Central Committee in 2012.

This Chinese investor was very interested in the know-how and reputation of the "Made in Germany" company, at a time when Putzmeister was suffering from decreasing sales due to its inability to access the Chinese market. Sany acquired 90% of Putzmeister's capital and the remaining 10% was bought by CITIC-Group (China International Trust and Investment Corporation), a state-owned investment fund.

Employees did not welcome the deal as they were afraid of its conditions. They organised many protests and Putzmeister made it into the media headlines. The metal workers union IG Metall managed to negotiate an agreement to secure employment until 2020. No redundancies are allowed if production was relocated elsewhere. In the event of an economic crisis, alternative tools (reduced working time, training ...) to redundancies should be studied. The Group has to offer trainees a proper employment contract. The number of agency workers should not be higher than 7% of the total workforce. Moreover, the agreement provides business guarantees for Putzmeister: it will address all markets, but the Chinese market and its production will remain in Germany.

According to the union representatives, "Sany is a better solution than a Hedgefund."

However, it is stated that the acquisition process lacks transparency and that employee representatives seldom know whom to contact in the Chinese company. Moreover, there is evidence for technology transfer based on German employees training Chinese employees or design plans and patents being transferred to the mother company in China. However, one should bear in mind that these are not China-specific issues, as they are quite common in this kind of transaction.

Regarding labour relations, interestingly, the study shows that German employee representatives often manage to influence the new investors' decisions. Indeed, agreements have been signed securing employment levels, governance structures (namely the German employee representation and co-decision system "Mitbestimmung") and investments. For instance, in the case of Waldrich Coburg, sales increased from 63 million € in 2005 to 75 million € in 2006. Furthermore, the employment level rose from 500 people in 2005 to 700 in 2007. The reported cases reveal, moreover, that the acquired companies remain relatively autonomous at the operational level: either local management is maintained and reports directly to China or Chinese management representative is sent to the plant only to ensure the connection with the Chinese headquarters. Finally, Chinese investors often invest highly in the newly acquired company, both in R&D and in production capacities. In some cases these investments form part of the negotiated agreement in the aftermath of the takeover.

Nevertheless, concerns remain about whether this path-dependant strategy would resist to changing economic conditions in the Chinese market (Emons, 2015). Will the German plants continue to benefit from a sustainable investment strategy if the business in China comes into trouble and employment issues emerge in China? Takeovers by Chinese investors are too recent to draw long term conclusions on the sustainability of the strongly institutionalised German system of industrial relations. However, the HBS study sheds a more differentiated light on the impact of Chinese investments on labour relations in Europe.

### "Learning by buying": Chinese investors' learning process in HR management

Recent analyses point at an emerging learning process among Chinese managers about the management of labour relations and more specifically industrial relations<sup>60</sup>. During the first wave of international development, mainly in developing countries, labour relations were ignored by state-owned companies used to "harmonious" industrial relations in China. Unwilling to deal with workers' protests, Chinese investors faced economic and reputation issues. In order to be better prepared for the second wave of FDI, namely in Europe, the Chinese central government initiated a learning process about industrial relations which can be summarised as follows:

- *Before*: subsidiaries managed almost exclusively by Chinese executives; hard-line position on employment issues; government authorities as the target group of public relations activities.
- *After*: subsidiaries managed almost exclusively by local executives; interaction with employee representatives; proactive measures to improve reputation.

## 2. LABOUR RELATIONS DYNAMICS IN CHINA: TOWARDS COLLECTIVE BARGAINING?

There is currently a vivid debate in China about whether to introduce collective bargaining provisions in the Chinese labour law. As they are actors in the European model of industrial relations, one might expect European companies to be drivers for improving labour relations when they settle in China. As a matter of fact, little is known about both individual and collective labour rights and practice in European joint-venture companies operating in China. However, recent studies show that European business in China is not supportive of recent trends towards an improvement of individual and collective labour rights (Chan and Hui, 2014).

### Recent union initiatives to set up dialogue with Chinese unionists

In 2014, the ILO's bureau for Workers Activities (ILO-ACTRAV) and the All-china Federation of Trade Unions (ACFTU) have signed a Memorandum of Understanding to establish cooperation with a view to strengthen the technical capacities of union leaders and activists in China. Its capacity building program involves different European trade unions.

Two recent innovative initiatives have been launched by sectorial unions to strengthen union cooperation with Chinese unionists at company level.

The 2015 annual forum of the German Chemical Industry Union (IG BCE) addressed the how German unionists could support Chinese workers in strengthening labour rights<sup>61</sup>. The participants focused on the following questions: what are labour relations like in China? Are there already any contacts between German and Chinese employee representatives? Who are the relevant partners for cooperation in China, knowing that ACFTU does not coincide with the German understanding of democratic labour standards? What is IG BCE's strategy concerning labour in China?

According to IG BCE, German companies in the chemical industry employ round 42,000 people in China, with 9,000 based at BASF and over 13,000 at Bayer AG.

Cooperation between German and Chinese representatives was reported by the chair of the combined works council from Bayer AG. In 2009, trade union elections were organised and the German works council representatives first met the Chinese representatives in 2011. The same year, a seminar was organised about the German model of industrial relations and a Chinese delegation was invited to participate in a European Works Council meeting. Since then, employee representatives from both countries have been in email contact and hold meetings together.

<sup>60</sup> Bian, Zhagreb 2015

<sup>61</sup> [https://www.igbce.de/mitglieder/igbce-aktuell/10-15/branchenforum-chemie-2015/109584\\_03/12/2015](https://www.igbce.de/mitglieder/igbce-aktuell/10-15/branchenforum-chemie-2015/109584_03/12/2015).

As a result of this forum, IG BCE decided to set up a China competence team in charge of building a cooperation network between German and Chinese employee representatives in German chemical companies.

Similarly, in November 2015, IndustriALL Global Union held its first automotive workshops in China. Union and company representatives from Volkswagen, BMW, Daimler, Honda, Toyota and AB Volvo as well as union officials from Germany, Sweden, Canada and Japan took part in the workshops. As IndustriALL points out, the “purpose of the workshops is to develop co-operation with Chinese trade unionists at the plant level, to exchange experiences, and to get a better knowledge about union work”<sup>62</sup>.

This section discusses the most recent trends in collective labour relations in China. It starts with giving insights about the growing number of strikes in China which point at a discrepancy between existing labour laws based on individual rights and the very collective nature of industrial disputes (2.1.). It then analyses emerging practices of collective bargaining and the policy debate they have triggered (2.2.), focusing on the key role NGOs play in recent industrial relations development in China (2.3.).

## 2.1. Collective labour disputes are growing

### *A mostly individual-rights based labour law*

Since its economic reform in 1978, the Chinese government has built a legal framework that became necessary in order to organise labour relations between private employers and employees<sup>63</sup>. This set of rights is primarily individual in its scope.

Workers’ rights in China are set out primarily in the 1994 Labour Law, the 1992 Trade Union Law (amended 2001), the 2008 Labour Contract Law (amended 2013), the 2008 Labour Dispute Mediation and Arbitration Law and the 2008 Employment Promotion Law. Individual employees have the right to an employment contract, a minimum wage, a 40-hour working week with fixed overtime rates, social insurance covering pensions, healthcare, unemployment, work injuries and maternity, severance pay in the event of contract termination, equal pay for equal work, and protection against workplace discrimination.

### **The minimum wage**

The minimum wage is determined by individual regional governments under guidelines established in 2004 by the national government. Regional governments take into account local living costs, local wages and the overall supply and demand for labour in calculating monthly and hourly minimum wage levels. As a result, there is considerable regional variation in minimum wage levels across China. The highest monthly minimum wage in 2015 was in Shenzhen (2,030 yuan), roughly double the minimum wage in the poorer rural districts of inland China. The minimum wage is usually adjusted every year, although local governments are not legally required to do so.

Under China’s current Five- Year-Plan (2011-2015), the minimum wage is set to increase at an average rate of 13% per year and eventually reach 40% of the average wage in each region<sup>64</sup>.

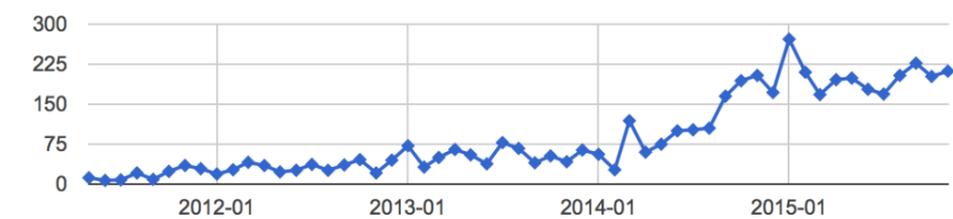
Workers also have the right to form an enterprise trade union, and the enterprise union committee has to be consulted by management before any major changes to workers’ pay and conditions are made. However, there is no freedom of association and there is only one legally-mandated trade union, namely the All-China Federation of Trade Unions (ACFTU). All enterprise trade unions have to be affiliated to the ACFTU via a hierarchical network of local and regional union federations. The ACFTU is the world’s largest trade union, with (according to official figures) around 288 million members in 2.78 million grassroots trade unions. The ACFTU is primarily under the control and direction of the Chinese Communist Party<sup>65</sup>.

The right to strike was removed from the 1982 PRC Constitution as part of Deng Xiaoping’s “modernizing” reforms. However, there is no legal prohibition against workers taking strike action.

### **Shifting labour disputes: from wages to a collective voice**

As can be seen from CLB’s strike map<sup>66</sup>, strikes and worker protests are commonplace across the whole of China and have been rising continuously since 2011, and sharply since 2014. In 2011, 10-35 strikes were recorded every month by CLB, and 30-75 strikes every month during 2013. For the year 2014, CLB reported 60 to 200 monthly strikes. Since the beginning of 2015, 200 strikes are recorded on average every month. These trends reflect growing social issues which are accompanying economic slowdown. They also point at the lack of a collective regulation mechanism for labour relations in China.

Figure 18. The evolution of the number of workers’ protests in China (2012-2015)<sup>67</sup>



Strikes are reported in all industry sectors, but manufacturing represents the biggest part of the recorded strikes.

62 “Industriall holds its first automotive workshops in China”, IndustriALL Europe website

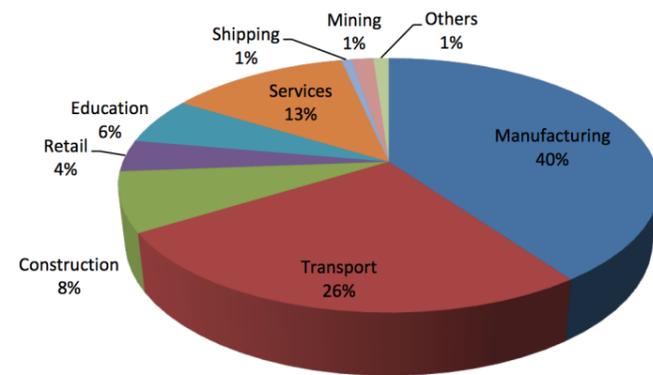
63 Under the planned economy, workers made up a relatively small proportion of China’s largely rural population and had a so-called job for life with a wide range of welfare benefits. During the 1990s some 30 million state-owned enterprise employees were laid off, while the urban job market opened up to hundreds of millions of rural migrant workers. The Chinese government gradually abdicated its power in labour relations to business owners, and workers were employed on terms and conditions largely dictated by the employer.

64 CLB’s Resource Centre: [http://www.clb.org.hk/en/view-resource-centre-content/100206\\_03/12/2015](http://www.clb.org.hk/en/view-resource-centre-content/100206_03/12/2015).

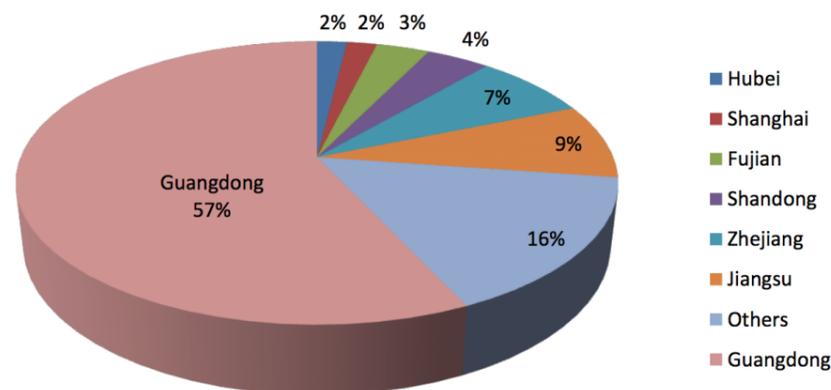
65 Any attempt to establish an independent trade union movement is seen by the Party as a political threat. The only time in the history of the People’s Republic of China (PRC) that an independent union was established was the short-lived Beijing Workers’ Autonomous Federation in 1989. The BWAFF was declared an illegal organisation and disbanded in the wake of the military crackdown in Beijing on 4 June 1989.

66 <http://maps.clb.org.hk/strikes/en>

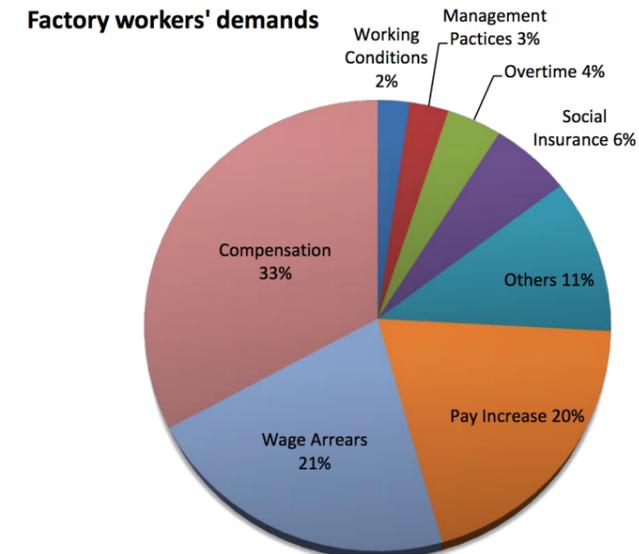
67 <http://maps.clb.org.hk/strikes/en>, 26/11/2015

Figure 19. The distribution of workers protests in China by industry (2011-2013)<sup>68</sup>

Between 2011 and 2013, the bulk of China's factory protests occurred in the manufacturing heartland of **Guangdong**, and especially in the **Pearl River Delta** area. There were 267 incidents in Guangdong, some 57% of the total. Factory protests were also concentrated in the coastal provinces of Jiangsu, Zhejiang, Shandong and Fujian, i.e. in the economically developed areas of China (see chapter 2).

Figure 20. Factory workers' protest by region (2011-2013)<sup>69</sup>

The most common demands of workers during these protests were related to the economic problems in the manufacturing sector. Demands for compensation (following mergers and relocations), wage arrears and pay increases, for example, accounted for about three-quarters of all the demands recorded on the strike map, while many other demands were related to the cost-cutting measures adopted by factory managers, such as the reduction of benefits, subsidies and allowances and the non-payment of overtime.

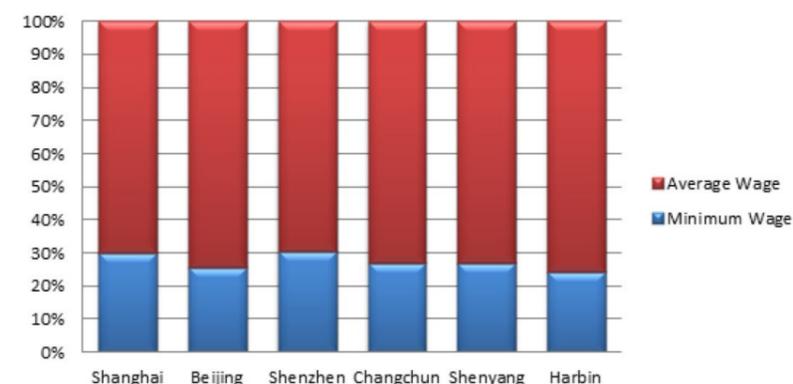
Figure 21. Factory workers' demands (2011-2013)<sup>70</sup>

One of the most notable aspects of the **compensation demands** made by workers in this period was that, in many cases, they asked for a higher rate of compensation than that mandated by the *Labour Contract Law*, which states that employees who are laid off should be compensated one month's salary for every year of service.

Although **wages** for factory workers have increased by around 50% on average since mid-2010, for many production line workers, wages are still far too low. National government guidelines stipulate that the minimum wage should be at least 40% of the local average wage. In reality, the minimum wage is usually only between 20 and 35% of the average wage, barely enough to cover accommodation, transport and food costs. Workers on the minimum wage, including most production line workers, unskilled labourers, shop workers etc. have to rely on overtime, bonuses and subsidies in order to make a living wage. As a consequence, if the employer cancels or reduces overtime, bonuses and other benefits, low paid workers will often demand immediate restoration. Another important factor in the pay disputes logged by CLB is the wage disparity among ordinary workers, senior staff and managers. Largely because of their own low pay levels, production line workers are acutely sensitised to any move that might increase the already substantial gap among them, senior employees and management.

68 "Searching for the Union: the workers' movement in China 2011-2013", China Labour Bulletin, February 2014.  
69 *ibid.*

70 *ibid.*

Figure 22. Minimum wage as a percentage of the average wage in selected cities in 2015<sup>71</sup>

**Social insurance** represents a relatively small but important development. With the number of young people entering the workforce declining, factories are recruiting older workers and retaining them for longer periods. As workers enter their mid-thirties and forties, many start to pay more attention to health insurance and pensions. This, combined with recent reforms that make it easier for migrant workers to access social insurance funds, has led to more workers seeking the payment of premiums dating back several years, even decades.

More recently strikes relating to **agency work** were reported. The *Labour Contract Law* of 2008 was designed to ensure that all workers in China had a legally-binding contract with their employer. The *Labour Contract Law* further states that agency labour can only be used to fill temporary, auxiliary, or substitute positions but employers regularly use labour agency workers for long-term and key positions. Moreover, employers often pay agency workers lower wages and accord fewer benefits than regular employees, contravening the principle of equal pay for equal work. By 2011, the ACFTU estimated that the number of agency workers in China had already reached 60 million.

As reported by CLB, the question of **how to protect worker representatives from management reprisals** was one of the key issues for factory workers during this period. It is important to note here that although it is not illegal to go on strike in China, the right to strike is not protected under the Constitution and employers can often use the provisions of the *Labour Contract Law* to dismiss strike leaders. Occasionally, workers will be arrested after taking part in strike action but they are always charged with public order offences rather than with taking part in a strike per se. A more common occurrence is for strike leaders to be dismissed by management for alleged violations of the company rule book either during the strike or a few months afterwards in a process known in China as “settling scores after the harvest is gathered”. Article 39, Paragraph 2 of the *Labour Contract Law* stipulates that employers can terminate the labour contracts of those who seriously violate company regulations. Workers who are dismissed for organising strikes and protests can seek arbitration or file a lawsuit against their employer for unfair dismissal. However, the financial cost and time needed in such legal proceedings means only the most determined workers will adopt this approach. Union officials, however, are entitled to legal protection whilst carrying out their duties in promoting and defending workers’ rights.

Another demand occurring in the event of labour protests is the **call for grass-root union elections**. The majority of enterprise trade unions are controlled by management and represent the interests of management. Only very occasionally will an enterprise trade union actually support workers against management, as was the case at the Walmart store in the central city of Changde in April 2014. There are 1.15 million full-time trade union officials employed in various federation and committee offices across China. They are essentially government bureaucrats with little understanding of the needs of workers or how to represent them in negotiations with management. The ACFTU still sees itself as bridge or mediator between workers and management rather than as a voice of the workers.

An analysis of the workers’ demands underlying labour protests show that they first deal with the economic improvement of working conditions but then shift towards demands for a voice and democratic representation. This is because an existing “*incongruity between the individual rights-based legal framework and the collective interest-based nature of industrial disputes*” (Chan and Hui, 2013, p. 17). Collective action thus shifts from bargaining on working conditions to the very right to collective bargaining.

## 2.2. Emerging practice of and debate on collective bargaining

One of the most consistent factors in strikes and protests is the one-sided nature of labour relations in China. With the development of the market economy in the 1990s, labour and capital emerged as separate entities with distinct interests. Although Beijing has set up an individual rights-based legal framework, workers’ collective rights to organise, strike and bargain have been neglected. Thus the existing framework is not adapted to resolve the growing number of collective labour disputes.

Nevertheless, Chinese workers’ collective action pushes Beijing to reconsider its labour relations approach, both in theory and in practice. Indeed, there are many examples of Chinese union/party/government officials participating in company level collective bargaining. Furthermore, **China has engaged in a debate about introducing a legal framework for collective bargaining**.

Chan and Hui (2013) describe how growing labour protests have triggered “collective bargaining by riot”, a practice they distinguish from the merely formal “collective consultation” that is commonly practiced in China.

“Collective consultation” (*jiti xieshang*)— rather than “collective bargaining” (*jiti tanpan*) is the dominant expression in China for collective labour provisions, as in the Trade Union Law of 1992 (revised in 2001), the Labour Law of 1994 and the Labour Contract Law of 2008. As a matter of fact, Chinese labour law does not totally lack collective rights. However, Chan and Hui (2013) stress that **collective consultation as presently practiced fundamentally differs from collective bargaining as it is understood in the Western definition and has largely remained a formality**. In most of the cases reported, collective consultation would not emerge from the workers and their representatives, but result from whatever is proposed by management, and workers would not actively participate in the consultation. Moreover, collective consultation would rarely involve wage negotiations.

The reasons for government and/or management led collective consultation are related to the **ambivalent role trade unions play in China**. On the one hand, workplace trade unions are under the leadership of the ACFTU, i.e. subject to the CCP’s control. On the other hand, they often have interlinked interests with management and in several cases form part of the management. As a result “*representing and protecting worker’s interests is never at the top of the unions’ agendas, even though they have come under growing pressure from the party-state to mediate the escalating labour conflicts*” (Chan and Hui, 2013, p.7).

Against this background, workers willing to claim their interests have to bypass the union and resort to strike action<sup>72</sup>. As during the strike wave of 2010 initiated by the Honda plant in Foshan, this can result in **negotiation under the pressure of collective action**, a form of negotiation known as “**collective bargaining by riot**”.

71 CLB’s Resource Centre: [http://www.clb.org.hk/en/view-resource-centre-content/100205\\_03/12/2015](http://www.clb.org.hk/en/view-resource-centre-content/100205_03/12/2015).

72 It is often stressed that the new generation of migrant workers have been less tolerant of unfairness and injustice, and are more ready to take action to advance their rights (Chan and Hui, 2013; Froissard, 2014).

### Honda Foshan: from “collective bargaining by riot” to “party-state-led collective bargaining”<sup>73</sup>?

In May 2010, 1,800 workers of the Honda plant in Foshan went on strike for 17 days, demanding a wage increase of 800 yuan for both workers and students, and democratic reform of trade unions. Management first resorted to intimidation by firing two activists and pushing interns to sign a document pledging they would not lead, organise or participate in any strikes. Despite these threats, the strike continued.

Management made two proposals concerning wage increases, but the workers considered the offers insufficient. The workplace trade union did not provide any support to the workers. On the contrary, it tried to stop the strike by using violence and beating striking workers.

As a result of this escalation of violence, the head of the company called for democratic elections. 30 elected strike representatives then participated in wage bargaining, with the presence of labour bureau officers, local government representatives, the chairman of the enterprise trade union and the head of management. An agreement was reached to raise workers’ wages from 1,544 to 2,044 yuan and intern students’ wages from 900 to 1,500 yuan.

However, the ad-hoc system of employee representation and wage bargaining did not lead to an entire structural reform of labour relations as called for by the workers. ACFTU provincial representatives refused to remove the trade union chair that had supported management during the strike. The trade union officials agreed to organise elections but direct participation of workers in those elections was limited to the division, i.e. the first level of representation<sup>74</sup>, and workers were excluded from the election of the enterprise trade union officials. Moreover, it was reported that candidanship was manipulated and as a result many newly elected enterprise union officials pertain to management.

Regarding negotiations, new wage bargaining took place, with a strong participation of state representatives such as the provincial or city-level trade unions.

Against the background of a strike wave that started at the Honda Foshan plant<sup>75</sup>, trade union reform and the improvement of the collective consultation system became priorities for the ACFTU and the Government. In June 2010, the ACFTU published a document entitled “Reinforcing the building of workplace trade unions and giving them full play.” This document called for trade union elections in accordance with the law and for effective implementation of the labour law provisions. In August 2010, the Guangdong provincial government and Shenzhen City issued second drafts<sup>76</sup> of collective consultation reforms. In addition, 13 provinces published documents to promote collective wage bargaining.

There is also evidence for a stronger involvement of state representatives (be it government, party or trade union representatives at provincial or city-level) in company level labour relations. Chan and Hui (2013) identify the recent changes in company industrial relations in China as a shift from “formal collective consultation” to “collective bargaining by riot” under the pressure of strike action resulting in “state-led collective bargaining”, because it is not the power of workers’ associations that drives the employers to the bargaining table, but the political power of the CCP. They thus stress that the **Government is not supporting “worker led collective bargaining” in the sense of the Industrial Democracy mechanism that was theorised in the 19th Century by the Webbs and which has become a main pillar of the European model of industrial relations.** Because of the State making the presumption that more direct worker participation would lead to political instability, recent developments in workplace industrial relations in China have not led to any open debate either on the right to freedom of association or on the right to strike.

73 Chan and Hui (2013).

74 There were seven departments in the plant, each consisting of four or five divisions. Workers were allowed to take part in the election at division level only.

75 The Honda strike has had a significant effect on labour activism in China, both at local and national level. In the weeks following this strike, strikes leading to collective bargaining were observed on another Honda plant (Zhongshan), on several automotive plants (Hyundai, Toyota, Ford and BMW suppliers) and on foreign-owned electronic factories. Analysts agree on the Government’s interest to curtail strikes by winning economic concessions from companies.

76 Guangdong’s “Regulations on the democratic management of enterprises” and Shenzhen’s “Collective consultation ordinance”. First drafts were published two years before, but were abandoned because of strong opposition from business associations.

Interestingly however, the emerging practice of wage negotiation has led to a negotiation on the rules of negotiation itself. The current shift in discourse from the dominant “collective consultation” to the term “collective bargaining” reveals a **real paradigm shift in the way the CCP envisages labour relations** (Froissard, 2014). The term “collective bargaining” reflects the very acceptance of negotiations between employers and employees. This implies the recognition of conflicting labour relations (Edwards, 2004) which differs from the historical CCP’s approach of “harmonious” labour relations. Furthermore, when thought through, it paves the way towards different forms of representation and conflict regulation<sup>77</sup>.

Yet, the pursuit of this shift towards more workers’ participation also depends on management’s strategy. Interestingly, Chan and Hui (2014) point out **another force of opposition against improved collective bargaining provisions in China: overseas business associations.** As matter of fact, many overseas business associations opposed the Guangdong “Regulations” and the Shenzhen “Ordinance”. In Hong Kong, over 40 business associations published petitions of opposition in the newspapers<sup>78</sup>. The American Chamber of Commerce in South China and the Japanese External Trade Organisation in Hong Kong published a position paper addressed to the Guangdong government opposing the legislation. As a consequence, despite Beijing’s determination, discussions of the two proposed laws have been stopped.

The European Union Chamber of Commerce in China expressed concern in 2008 that the Labour Contract Law would increase labour costs (Chan and Hui, 2014). Concerning the Guangdong and Shenzhen collective bargaining statutory instruments, the European Chamber did not express an official position.

### *European business associations’ positions on Chinese collective bargaining laws*<sup>79</sup>

While the European Chamber did not express any official position, national business associations made the following statement concerning the Guangdong and Shenzhen collective bargaining law proposal:

The French Chamber and Embassy appeared “fairly unconcerned”;

The German Chamber in Southern China did not express any official position but thought the laws “would probably not have affected German firms much, since they are used to unions and strict labour laws in their home country”;

The Swedish Embassy supported the draft collective bargaining laws stating that “the labour market in China is strange and volatile; laws do not ensure a functional labour market, and collective bargaining is a means to stabilise the labour market”.

The Benelux Chamber of Commerce expressed no official position, but both pros and cons were mentioned by interviewees: “on the one hand, the instruments would help to avoid strikes and maintain social peace but, on the other, they would give workers the right to fix salaries”.

### **2.3. A crucial but problematic role of NGOs in the development of collective bargaining**

The term “collective bargaining” was first introduced at the beginning of the 2000s by labour NGOs based in Hong Kong and in the Pearl River Delta (Froissard, 2014)<sup>80</sup>. Together with the law firm Laowei in Shenzhen they also founded an Internet site (2010) and a review dedicated to collective bargaining (2011)<sup>81</sup>. Since 2010, one or two fora are held every year gathering union officials, lawyers, scholars and NGOs.

77 Despite efforts, no interviews could unfortunately be arranged with ACFTU officials.

78 <http://www.dlb.org.hk/en/content/no-more-delay-urgent-task-implementing-collective-bargaining-guangdong>, 03/12/2015.

79 Chan and Hui, 2014.

80 It is thus not surprising that Guangdong and Shenzhen are among the drivers of collective bargaining provisions in China.

81 Respectively, China Collective Bargaining Forum and Collective Bargaining Research.

Labour NGOs emerged in the 1990s to provide support to migrant workers excluded from social rights and union representation, and have since grown and multiplied. Froissard (2014) has counted over forty labour NGOs in the Pearl River Delta, ten in Beijing and five in the Yangtze Delta, but only seven in total that promote collective bargaining. The NGOs promoting collective bargaining are all located in the Pearl River Delta. They gather former workers' leaders and social workers and are funded by foreign NGOs. Froissard (2014) stresses that these NGOs survive in a grey zone: China does not allow people to organise autonomously, yet NGOs respond to a demand that the official Chinese institutions are not able to cover: "considered dangerous by the state that fears they could start a revolution, NGOs have become essential to the state".

Since their origins, NGOs have diversified their activities. First specialised in the defence of individual labour rights they are now promoting collective rights. Their role now mainly consists in giving workers support to organise elections or negotiate with employers. By doing so, NGOs – which are not elected entities – stress that they do not pretend to substitute trade unions. NGOs often call the official union to provide support for workers.

### **The Guangdong Code of Collective Bargaining: The lost content on the way from draft to regulation**

Despite fierce business opposition two years earlier, the Guangdong Government adopted a Code of Collective bargaining in September 2014. According to labour specialists the final regulation that was adopted differs substantially from the initial draft. Back in 2010, the first draft was aimed at creating a system by which workers could compel an employer to negotiate over workplace issues without first resorting to a strike<sup>82</sup>. Fines were authorised against employers who refused to negotiate, withheld information or negotiated in bad faith. Most significantly, if the employer's unreasonable actions caused a work stoppage or slowdown, employees could not be fired for participating in such an action.

However, the Guangdong regulation that became effective on January 1<sup>st</sup> 2015 backed off from these reforms - and is thus unlikely to trigger collective bargaining. The final regulation raised the threshold for workers to demand negotiations and removed any possible penalties against employers. When negotiations break down due to the employer bargaining in bad faith, the regulation provides no protection to workers who strike in response. In this event, the local government is instructed to call on the relevant agencies, including the police, to resolve it.

In practice, NGOs' first role consists of informing workers about their rights, i.e. the existing labour law framework that they often are not aware of. During their training sessions, NGOs insist that the existing law is a minimum provision and that workers are entitled to ask for more. They then help workers to transform a bench of people into an organised group. To do so, NGOs teach workers how to organise elections, based on spontaneous applications. Elections are held either in the workers' dormitory or in the NGO's office. Elected representatives will then distribute among themselves the different tasks they need to do: inform and organise workers, negotiate with the employer, media coverage. NGOs will also help representatives to build a strategy by prioritising their demands and developing a set of actions aimed at putting pressure on the employer. Sometimes a workers' fund will be set up to cover expenses for food, travel, phone etc.

Social media play an important role in organising collective action<sup>83</sup>. For workers, it is a way to inform people about their struggle, in particular all the workers in their plant but also beyond the plant's walls, especially the local authorities. For the NGOs, social media help them to keep in touch with workers.

Based on this joint experience with grass-root workers, in 2013 NGO activists published a Code of Collective Bargaining<sup>84</sup> that draws on all past negotiation practice. This text has been published on the Internet and submitted to provincial and national Government.

### **Beijing's plans towards a tight control of NGOs**

On May 5 2015, the Chinese government released for public comment the Foreign/Overseas Non-Governmental Organisations Management Law of the People's Republic of China (Second Review Draft)<sup>85</sup>. It is commonly considered by foreign analysts, that if enacted and implemented in its current form, both Chinese civil society and international engagement with it will be considerably degraded.

The draft law would require foreign NGOs to accept a high level of state oversight and control over all their activities by public security authorities and Chinese professional supervisory units. The proposed regime threatens to harm China's interests by cutting off significant resources, expertise, and civil society support.

It is also considered that the spirit and substantive provisions of the draft are consistent with the intensifying trend of broadened crackdowns on domestic civil society since President Xi Jinping assumed power in 2013<sup>86</sup>.

In the absence of freedom of association, grass-root labour activism in China has developed through NGOs. Those play an important role in educating the workforce and expanding the capacity for independent bargaining to emerge. Not being unions themselves, they can help workers build genuine unions by supporting grass-root elections within ACFTU or by transforming themselves into democratically organised workers' organisations. However, attempts by NGOs to evolve towards independent unions with their own governance structure and bargaining agenda or to reform the ACFTU from bottom-up have recently faced a new kind of opposition by Beijing when several well-known NGO labour activists were arrested or disappeared and denied access to lawyers and families. Those recent events are a reminder, if needed, that in the absence of freedom of association true collective bargaining remains a wishful thought.

82 <http://www.clb.org.hk/en/sites/default/files/File/A%20Code%20of%20Collective%20Bargaining.pdf>, 03/12/2015.

83 [http://www.clb.org.hk/en/sites/default/files/File/research\\_reports/searching%20for%20the%20union%201.pdf](http://www.clb.org.hk/en/sites/default/files/File/research_reports/searching%20for%20the%20union%201.pdf), 03/12/2015.

84 For a full text English version, see <http://www.clb.org.hk/en/sites/default/files/File/A%20Code%20of%20Collective%20Bargaining.pdf>, 03/12/2015.

85 <http://chinadevelopmentbrief.cn/articles/cdb-english-translation-of-the-overseas-ngo-management-law-second-draft/>, 03/12/2015.

86 <http://www.hricchina.org/en/legal-resources/hric-law-note-draft-law-foreign-ngos-undermines-chinese-civil-society-and-chinas>, 03/12/2015.

# Conclusion and recommendations

When comparing the EU and China in matters of investments, governance, international policy and industrial relations models, it appears that the differences could not be bigger: whereas the EU represents an important share of FDI in China, Chinese investment levels represent only a small portion of FDI in Europe. However, Chinese investments in Europe have been skyrocketing since 2014, whereas EU-companies express more timid investment plans in China. Moreover, China has set up an international development strategy – in a context of economic downturn – aimed at both expanding Chinese business overseas and buying technology and competences required for its new domestic quality and service based strategy. The negotiation of the investment agreement with the EU has to be understood as part of this wider strategy that is also implemented with Beijing’s financial support. The EU, on the contrary, does not seem to have an encompassing negotiating strategy towards China: in the absence of European business and industrial policy, the negotiation is led in a quite legalistic approach focused on general technical solutions. The EU does intend to integrate specific provisions on human rights, but labour rights and employment do not appear as core points. This is all the more problematic as there is an emerging domestic debate in China on whether to adopt industrial relations schemes such as collective bargaining that are core to the European model.

Regarding Chinese investors / companies’ behaviour, there appears to be little difference when compared to their American and Western European counterparts. In short, when there is no alternative they generally follow the rules and respect trade unions when investing. When weak trade unions and little collective bargaining comprise the background landscape, no social dialogue or worker participation is sought. In recent years, Chinese managers have passed through difficult times in Latin America and Africa. The outstanding work carried out by ACTRAV-ILO Offices in these regions is a reference: it demonstrates that trade unions have the possibility to successfully challenge powerful Chinese companies in order to protect their rights and gain respect.

It has yet to be seen whether an EU-China investment treaty could be an opportunity for the EU to develop a common strategy towards China. More in depth case studies at company/ sectorial level would be needed to better understand the concrete implications/ factors of investment strategies and their impact on labor relations, both in China and Europe.

Nevertheless, the report implicitly suggests in which fields measures could be taken to influence the Europe-China relationship to move towards a more employment and labor focused approach. The following sets out recommendations for a different approach to EU-China investment relations.

## Fighting “clichés”

### Set of conclusions 1

- Chinese investments are not just “bad” or “good” investments although they are feared by certain citizens and businesses in Europe and welcomed by some politicians (Juncker plan).
- Governments and local authorities in EU sign agreements with Chinese companies, under state control or guidance that are often kept secret although they impact on public spending and have major employment implications.
- Chinese investment can create or protect employment.
- They can also lead to technology and production transfer outside Europe and cause negative restructurings in Europe.

### Set of conclusions 2

- Chinese investors adapt to the local environment like other foreign investors. European and American companies do not behave better than the Chinese when they operate in Central and Eastern Europe for instance, or in certain sectors.
- The state of labour law and the quality of industrial relations in the country and sector of destination is fundamental.

### Recommendations

1. Chinese investment should not be discriminated against but treated on the basis of reciprocity. Any EU/ China investment treaty should improve the protection of the EU economy against potential abuses of “financial” dominant positions (access to credit from public financial bodies) or “Trojan horses”.
2. EU Member States or local authorities should be more transparent regarding bilateral agreements with Chinese companies wishing to invest in their country. They should consult relevant stakeholders including trade unions.
3. Trade union negotiating, organising and recruitment strategies are fundamental.
4. These strategies can be shaped to Chinese companies, building on experiences from European trade unions already dealing with Chinese companies as well as the experiences of African and Latin-American trade unions gathered by Actrav.

## The difference between EU and Chinese investments

### Set of conclusions 3

- However, Chinese companies are “unfair competitors” because they benefit from substantial financial loans in conditions that are not granted to EU companies by European finance institutions and indeed may be illegal under EU “state aid” provisions.

### Recommendations

5. Transparency on both sides is a central condition before moving towards an investment treaty.
6. The debate on public procurement and on state owned companies should urgently be pushed forward at the WTO level before the negotiation is concluded between EU and China.
7. The role of the E.I.B. should be enhanced regarding trade and investment.

## The negotiation

### Set of conclusions 4

- China’s strategic approach regarding sectors and economic development is clear and well-shaped. The EU is in difficulty because of the absence of industrial policy in its shy economic governance. The EU looks naive in the current negotiation although it does well to reject opening discussions on Trade.

### Set of conclusions 5

- The current negotiation is different from others, notably because of the absence of independent trade union organizations in China. Hence, the EU is pushing for the recognition of CSR and the OECD guidelines for multinationals as remedies to cover labour issues.
- At the same time, there are forces within China (also within the Party-State) defending a pragmatic approach to collective bargaining against the background of growing social discontent, while seeking to guard against any politicisation of workers’ organisations.
- Some positive steps have been taken (thanks to capacity building programs of some trade unions organisations) in order to separate the trade union role from the employers’ role, also taking into account some first attempts of ACFTU to engage in autonomous collective bargaining practices for instance on wages and labour conditions in some firms.

### Recommendations

8. The EU should be more transparent in regards to the current negotiations.
9. The EU should adopt a more strategic approach regarding investment, both in China and in the EU.
10. The EU should urgently set up hearings with each sector social partners in order to adopt its sectoral/ industrial objectives.
11. The EU should seek to engage on the issues, also involving EU social partners. CSR can be a useful way to start a discussion democratic process at company level. New methods like the one related to the “due diligence” concept could be further promoted to improve companies accountability.
12. However, CSR should not be used to circumvent collective bargaining that is a fundamental right of workers and as economic stabiliser.
13. Social dialogue and collective bargaining belong to the “acquis social communautaire” and should also be promoted as a best practice approach.
14. New tools should be used: non financial statements Directive and Socially responsible investing (UNPRI).
15. The role of the GUFs is fundamental in this section.

## The negotiation

### Set of conclusions 6

- The involvement of stakeholders may be more limited than in previous FTAs.

### Recommendations

16. Ratification and full implementation of core ILO Conventions should be included in any investment agreement. Violations should be subject to a stringent dispute settlement procedure, leading to economic consequences as a last resort.
17. Best practice regarding stakeholders’ involvement as in the EU-Cariforum and EU-Korea FTAs should be sought, while recognising that the lack of independence of the Chinese unions and employers’ organisations would severely limit the value of any joint EU-China forum.
18. Better articulation should be found with existing workers participation levels (EWCs, SD Committees) and with official EU/ China sectoral dialogues.

### The sustainability impact assessment

#### Set of conclusions 7

- The widespread use of mathematical simulation models do not provide sufficiently targeted information to negotiators.

#### Recommendations

19. The transparency of negotiations is an issue. Social partners and European Sectoral Social Dialogue committees should be better involved in SIAs.
20. During the SIA process, the ETUC could raise the issue of “better regulation” that can potentially breach the future agreement and others.

### What about chinese workers?

#### Set of conclusions 8

- The rights to strike and collective bargaining are interdependent. In China, slight improvements in worker’s representation and collective bargaining rights are a step in the right direction but without independent trade unions and the right to strike, little progress can be expected.

#### Recommendations

21. The Chinese government should recognise the right of workers to form trade unions of their own choosing.
22. European companies operating in China should encourage transparent election processes at the workplace and collective bargaining.
23. They should allow legitimate European and Chinese workers representatives to exchange and dialogue with each other.
24. The EU should include the right to strike and to collective bargaining in a sustainable development Chapter.

### What about chinese workers?

#### Set of conclusions 9

- There is a lack of information about labour relations inside European companies in China.
- Several European trade unions have started organizing visits to their Chinese colleagues at company level.

#### Recommendations

25. The ETUC should request all affiliated organisations to report on their contacts and activities with Chinese organisations with a view to helping coordinate them.
26. This could in the longer term help build a network of employee representatives at company level, organize joint-training sessions for Chinese and European company level representatives...
27. The ACTRAV pluriannual programme on capacity building which involves different EU trade unions and the TUAC activities in China on OECD Guidelines for Multinationals could be further supported and taken into consideration in future initiatives.
28. The setting up of independent Health and Safety Committees at workplace level could be a first step in enabling meaningful worker representation.
29. Scholars show that Chinese investors are in a learning process concerning Human Resources management. What role can ETUC / ETUI play in influencing this learning towards a better understanding and practice of collective bargaining?

### What next?

#### Set of conclusions 10

- The Chinese and European economies are slowing down. Less outward investment or even cuts can be expected.
- The participation of China to the Juncker plan of 315 billion euros will impact the European economy but what sectors?
- The Market Economy Status debate is putting pressure on the negotiation. Both ETUC and BusinessEurope reject the recognition of MES to China.

#### Recommendations

30. The economic downturn is leading to increasing Chinese “dumping”, eg steel. China does not meet Market Economy Status and this should not be placed on the table in the investment agreement negotiations.
31. More sector focus should be given to the current negotiations. The involvement of ETUFs and GUFs is critical at this stage.
32. The ETUC, if possible with employers, is entitled to consultation for clarifications on the development of the Juncker plan.

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The ETUC is the voice of workers and represents 45 million members from 89 trade union organisations in 39 European countries, plus 10 European Trade Union Federations.