

# Drivers and issues of EU-China Negotiations for an Investment Agreement

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# Drivers of EU-China Negotiations for an Investment Agreement

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# Drivers of EU-China Negotiations for an Investment Agreement

Launched in Nov 2013, at the 16<sup>th</sup> EU-China Summit, 12 rounds of negotiation to date (the latest round was Sep 2016)

- Economic, political and legal drivers between and within EU and China
- Global economic governance



# ECONOMIC DRIVER

Among two of the three largest economies, two-way investment is “hardly satisfactory”

## **EU:**

- Increase EU competitiveness
- Contribute to the objectives of Europe 2020 Strategy: smart, sustainable and inclusive growth

## **China:**

- Smooth the path to more EU acquisitions and Chinese FDI in EU
- Boost stalled domestic reforms agenda

## **Business Perspective:**

- Stable, sound and predictable Host country
- Open, fairly regulated business environment
- EU investors enjoy a level playing field
- Chinese investors obtain uniform and optimal investment protection

*Building confidence in the legal certainty and high standards of protection*

# POLITICAL DRIVER

- Shifted role for China as both FDI recipient and provider
- Gained exclusive competence to the Union in the post-Lisbon era, first stand-alone EU BIT
- Entered 2nd decade of EU-China Comprehensive Strategic Partnership, established in 2003
- Shared interests and common challenges in China`s 12th five-year plan and the Europe 2020 strategy



# LEGAL DRIVER

- Chiefly trade-related 1985 EEC-China Trade and Economic Cooperation Agreement
- Uneven inheritance of 26 BITs between 27 out of 28 EU MS with China except Ireland
- A regulatory reform on foreign investment in China
- New developments of case law in investor-state dispute resolution
- Market access and investment liberalization-driven investment agreement



# IN THE CONTEXT OF GLOBAL ECONOMIC GOVERNANCE

- Respond to EU-Viet Nam FTA, (concluded), TTIP, RCEP, US-China BIT (under negotiations)
- Set stage on the subsequent agreements with or between other partners
- Active rule-making by EU and China in the period of uncertain US international trade policy
- Joint efforts to fight protectionism and lead further harmonization and liberalization on international investment policymaking



# THE BIT IN THE MAKING

- **EU** identified a comprehensive agreement on investment as “immediate priority”, signalling the possibility of a FTA with China
- **Chinese** PM Li made a strong appeal for EU-China investment treaty and called for a feasibility study for a FTA
- **Both sides:**

**Confirmed** strong interest in each other`s investment flagship initiatives, namely, Investment Plan for Europe and ‘One Belt, One Road’ initiative in 2015

**Agreed** an ambitious and comprehensive scope of the future investment deal in January 2016

- to improve market access opportunity
- to address key challenges of the regulatory environment
- to provide for a high and balanced level of protection
- include rules on environmental and labour-related dimensions of foreign investment.





# Issues of EU-China Negotiations for an Investment Agreement

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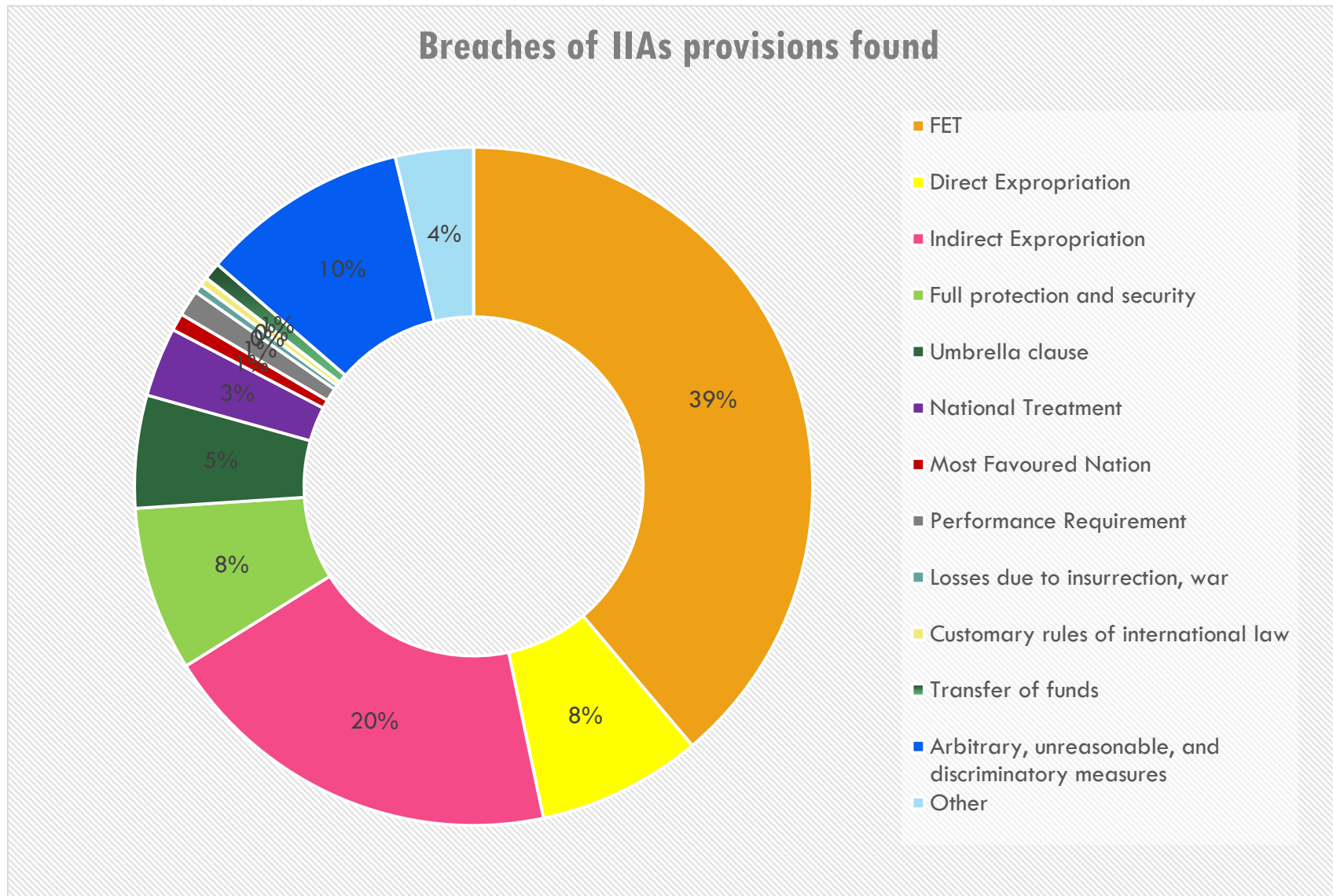


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# FOCUS



# FAIR AND EQUITABLE TREATMENT



# TAXATION

General  
Exception

Specific  
Exception

OECD BEPS



# TRANSPARENCY

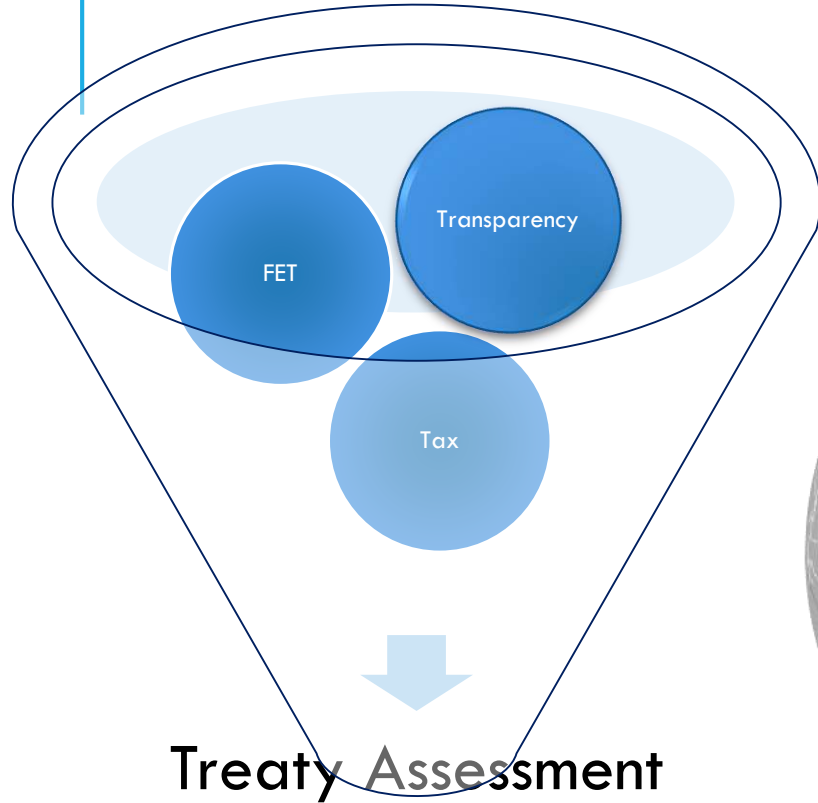


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# SIGNIFICANCE OF THE ISSUES



## The Project: Toward a Comprehensive EU-China Investment Agreement



## The Project: Toward a Comprehensive EU-China Investment Agreement

In the context of global fragmentation of the international investment regime, a BIT between China and the EU would be a seminal event, covering the investment activities of two billion people, and easily becoming one of the most influential international investment treaties in the world. Concluding such a treaty will require coordination and agreement among the positions of twenty-eight (for the time being) Member States of the European Union on one side, and China on the other: each one of them having different legal, cultural, political and economic traditions. In the light of global investment treaty-making practice and the race in which all countries are engaged to attract FDI, the conclusions reached by the parties will have significant influence even beyond China and the EU.

Our project aims at putting the EU-China Comprehensive Strategic Partnership in context, with a primary focus on the ongoing negotiations for a comprehensive EU-China investment agreement launched at the end of 2013. The project starts with a thorough analysis of the legal and policy foundation between the EU and China since the 1985 EU-China Trade and Cooperation Agreement; monitors new developments of the EU and China international investment law and policy; and identifies key drivers and challenges of the ongoing EU-China investment agreement negotiations. In the end, this project will contribute to a broad discussion of EU-China relations with in-depth legal and policy analysis.

### The Team

- [Prof. Chaisee](#)
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### Official Documents

- International legal framework
  - [1985 EEC-China Co-operation Agreement](#)
  - [New EU-China Partnership and Cooperation Agreement \(under negotiation\)](#)
  - [MOFCOM Bilateral Exchanges](#)
- EU
  - Treaties and Legislation
    - [Treaty on the European Union and Treaty on the Functioning of the European Union, consolidated versions](#)
    - [Regulation 912/2014 on financial responsibility in ISDS.pdf](#)
- European Commission
  - [Covington and Burling, Measures and Practices restraining FDI in China](#)
  - [EC Communication Elements for a new EU strategy on China](#)
  - [EC Public consultation Summary of contributions](#)
  - [EC Sustainability Impact Assessment final](#)
  - [EC Towards a more resp trade and inv policy](#)



A close-up photograph of two national flags. On the left is the flag of the People's Republic of China, featuring a red field with five golden-yellow stars. On the right is the flag of Malaysia, featuring a blue field with a golden-yellow crescent and a seven-pointed star. The two flags are positioned diagonally, meeting at a dark grey vertical line that runs down the center of the image. The text 'THANK YOU!' is centered over the Chinese flag, and 'Q&A' is centered over the Malaysian flag.

**THANK YOU!**

**Q&A**