

Abstract

The purpose of my thesis is to analyse Bilateral Investment Treaties between the EU and China. The question that passes through the entire work is whether there is indeed a homogeneous relationship in FDI between the EU and China as a whole, or whether the practice is rather different relationship with the EU members with some common and different elements. I have chosen the theme of this thesis because I am interested in investment relations, and China is a very attractive destination for the investment, that has from a European point of view its specific features.

The thesis is composed of six chapters. In the chapter one I decided to take historical approach by researching the needs and motivations that inspired and influenced the emergence of the BIT program between the EU and China. From a historical approach to the development of FDI in China is obvious that the policy of FDI in China follows the national interests of China. From the beginning FDI was an unwanted tool for China that did not correspond with national policy, however it provided the necessary capital. Over time, China has changed its approach from receiving investment indiscriminately into the consistent direction of flow of FDI into desired sectors.

The second chapter provides an analytical view of the current legal framework for FDI coming into China from the EU. It consists of three parts: the right for entering China's FDI, which determines whether and under what conditions China accepts FDI into a particular business sector, the second part of EU law, which aims primarily to support the outbound investment and contains only minimal number of provisions restricting outgoing FDI, the third part are the sources of international law relating to direct EU investment in China, led by the BIT.

The third chapter examines what types of investments in China and the criteria used by foreign investors of their choice. The most commonly used form of investment in China are WFE, ECJ and CJV. Despite significant differences in choice of form of investment does not affect the requirements for investment in specific sectors economically. For example, if is required a minimum participation of domestic investors, then it must be maintained in all forms of FIE.

The fourth chapter focuses on the admission of investment in China and its comparison agreement the BIT between the EU Member States and China. In this

regard, all BITs between the EU and China have agreed to admit the investment clause, which establishes a general obligation to admit investments in accordance with national law. Chinese law requires an individual permit for each incoming foreign investment, and therefore each FIP must go through the approval process.

Comparison of BITs of EU States and China, I conducted mainly in the fifth chapter and at the agreed standards of treatment. In all BITs state have relatively similar standards with laid down by the fair and equitable treatment and MFN. However, there is no consensus on the interpretation of the FET, because European countries tend to interpret the FET based on international law, while China consider the law to interpret domestic law FET host country. In contrast, the MFN principle is firmly anchored rule between the EU and China has the same interpretation of both parties. Unlike FET and MFN, where it would seem that the EU Member States entered into a similar BIT, has only 13 EU Member States agreed with China standard of national treatment and only 12 standard non-discriminatory treatment. It is also obvious in the formulation of NT development, while in older NT BIT was conditional on compliance with national law, new BIT contrary exists in some cases expressed in the log commitment China will take active steps to eliminate all national legislative measures that might be contrary to application of NT.

Bilateral Investment Treaties between the twenty-six Member States of the European Union and China certainly do not form a homogeneous relationship, but *de facto* they are individual agreements between China and individual EU member states with significant differences. Looking at the negotiations on the conclusion of BIT between the U.S. and the EU is evident in the sixth chapter, a major U.S. pressure to eliminate frequent exceptions that China requires a consistent and also protect their own interests both in the field of national security and strategic sectors. This can be an inspiration for the EU, often arranged in BIT exemption only for the Chinese side for subsequent negotiations on the BIT.