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CHINA-V4 TRADE AND INVESTMENT REGIME
A CZECH PERSPECTIVE

Current Trends and Perspectives in Development of China-V4 Trade and Investment.

12-14 March 2014

Bratislava

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Trade&Investment Regime

Besides gradual creation of the free trade area for industrial goods and elimination of quantitative restrictions in agriculture, the European Agreement had following main features:

- implementing the national regime for trade in services,
- creating conditions for free movement of capital and workers,
- legal and technical norms' and standards' harmonization,
- further broad cooperation in economic and political area.

Table 1: Trade Relations between the Czech Republic and EU, 1985-2004 (million USD and % of total trade)

Trade Flow	1985		1995		2004	
	mil. USD	%	mil. USD	%	mil. USD	%
Exports	6 617,0	46,90	13 974,3	81,35	46 559,7	85,43
Imports	7 839,7	50,48	17 597,9	76,60	55 623,6	79,89

Source: UNCTAD (2007), (Hnát, Cihelková, 2007)

Trade&Investment Regime

Table 2: Visegrad Countries Trade with Developed Europe (EU-15 plus EFTA-4), 1985-2004 (million USD and % in total trade)

Country	1985		1995		2004	
	mil. USD	%	mil. USD	%	mil. USD	%
Imports						
Czech Republic	**5 259,3**	**42,88**	**17 597,9**	**76,6**	**55 623,6**	**79,89**
Hungary	3 941,4	47,9	11 015,1	71,14	43 540,1	73,2
Poland	5 210,3	41,23	21 512,8	74,06	66 644,7	76,83
Slovakia	..	..	6 756,4	70,03	23 609,8	82,64
Exports						
Czech Republic	**4 534,7**	**39,83**	**13 974,3**	**81,35**	**46 559,7**	**85,43**
Hungary	3 447,5	40,36	9 371,3	72,86	44 302,4	80,87
Poland	5 052,8	42,15	18 045,0	78,82	50 371,7	80,23
Slovakia	..	..	7 230,1	84,28	21 693,6	86,18

Source: UNCTAD (2007), (Hnát, Cihelková, 2007)

Trade&Investment Regime

Alongside with the trade liberalization, also the foreign investment regime of the Czech Republic has been largely governed by its reintegration to Western organization, too.

"As part of its accession to the **Organization of Economic Cooperation and Development (OECD)** in December 1995, the Czech Republic agreed to meet, with a few exceptions, the OECD's standards for equal treatment of foreign and domestic investors, and on restrictions on special investment incentives."

Only in some sectors of services, foreign investment remained restricted or controlled by that time (WTO, 2001). Based upon the OECD membership, **National treatment of foreign affiliates** became the basic rule of law in the Czech Republic and other CEE countries, which later acceded the OECD; moreover, EU association restricted the space for discriminatory policies and require that equal rights are given to domestic and foreign firms (UNCTAD, 2003: 20).

The regime remained quite straightforward in spite of the introduction of official policy on foreign **investment incentives in 1998** and its adjustment in 2000.

BITs and DTTs

All CEE countries are also members of **MIGA,** thereby allowing access to a multilateral mechanism for insurance against non-commercial risks in these countries. Finally, many CEE countries have become members of WTO. Consequently, they are parties to the three main WTO investment-related agreements, the **General Agreement on Trade in Services (GATS),** the **Agreement on Trade-related Investment Measures (TRIMs)** and the Agreement on **Trade related aspects of Intellectual Property Rights (TRIPS)** (UNCTAD, 2003: 23-24).

CEE countries have concluded an increasing number of Bilateral Investment Treaties (BITs) and double taxation treaties (DTTs) with most of their important partner countries. CEE countries had concluded a total of 693 BITs during 1990s and early 2000s. Of these, 116 (12%) were concluded between themselves, 297 (31%) with the developed countries, mostly with members of the EU, and 280 (29%) with developing countries (UNCTAD, 2003: 23-24).

BITs and DTTs - China

As far as DTT treaties between China and the Czech Republic are concerned, the recent DTT has been ratified in 2011 and it came into effect on 1 January 2012, replacing the previous DTT from 1987. The treaty stipulates the following withholding tax rates for dividends and interest income (Unicredit, 2011):

- (a) Dividends: 10%, resp. 5% if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
- (b) Interest: 7.5%, reps. 0% if interest is paid to the government, local state authority, central bank of the other contracting state or to a financial institution fully-owned by the government.

BITs and DTTs - China

Based upon UNCTAD (2014a) database, original BIT between the Czech Republic and the People's Republic of China, was signed by the Government of the Czech and Slovak Federal Republic on December 4th, 1991 in Beijing. It was replaced by current agreement signed on December 8, 2005. It calls for **national and most-favoured-nation treatment in investment,** even though in respect of the People's Republic of China, there are exceptions for any existing non-conforming measures maintained within its territory provided that future amendments do not increase the non-conformity of such measures and China will take all appropriate steps in order to progressively remove the non-conforming measures (UNCATD, 2014a).

Dispute settlement:

- (a) the competent court of the Contracting Party which is the party to the dispute;
- (b) the International Centre for Settlement of Investment Disputes (ICSID)
- (c) an ad hoc arbitral tribunal, unless otherwise agreed upon by the parties to the dispute, to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

BITs – EU criticism

EU critically asses that even these new generation BITs are missing in certain cases important elements:

- provisions granting national treatment, the principle of giving third country investors the same treatment as one's own investors and their investments, are currently weak in a majority of BITs;
- while all contain a "Most Favoured Nation"25 (MFN) clause, unlimited MFN treatment is only guaranteed in eight agreements, excluding the one with Czech Republic;
- investor-to-state dispute settlement arbitration is subordinated to the exhaustion of local review procedures, even if it is limited to a period of three months.

BITs – EU criticism

EU critically asses that even these new generation BITs are missing in certain cases important elements:

- provisions granting national treatment are currently weak in a majority of BITs;
- unlimited MFN treatment is only guaranteed in eight agreements, excluding the one with Czech Republic;
- investor-to-state dispute settlement arbitration is subordinated to the exhaustion of local review procedures, even if it is limited to a period of three months.

EU investment policy promotes the integration of these clauses that are currently absent in all Member State agreements with China and are only present in some other BITs into EU investment agreements (European Commission, 2013: 16):

- no current Member State BITs with China, includes clause preventing attraction of FDI through a non-lowering of standards (e.g. environmental, labor laws) by the parties to the agreement;
- no current BIT includes a reference to the issue of corporate social responsibility or the OECD Guidelines on Multinational Enterprises;
- no current BIT includes comprehensive provisions regarding questions over state-owned enterprises, subsidies and performance requirements including forced technology transfer.

EU plans

Based upon the EU's exclusive competence for the common commercial policy and through Article 206, "the Unions shall contribute to progressive abolition of restrictions on (…) foreign direct investment". Article 207 (1) sets out the need for uniform principles including for FDI and liberalisation measures. With respect to future EU-China investment relations, the EU's general policy objectives translate into (Commission, 2013: 20):

- improving legal certainty regarding treatment of EU investors in China,
- improving the protection of EU investments in China,
- reducing barriers to investing in China,
- increasing bilateral FDI flows.

EU plans

Table 3: EU's Operational Objectives in EU-China Negotiation
Source: European Commission (2013: 20-21).

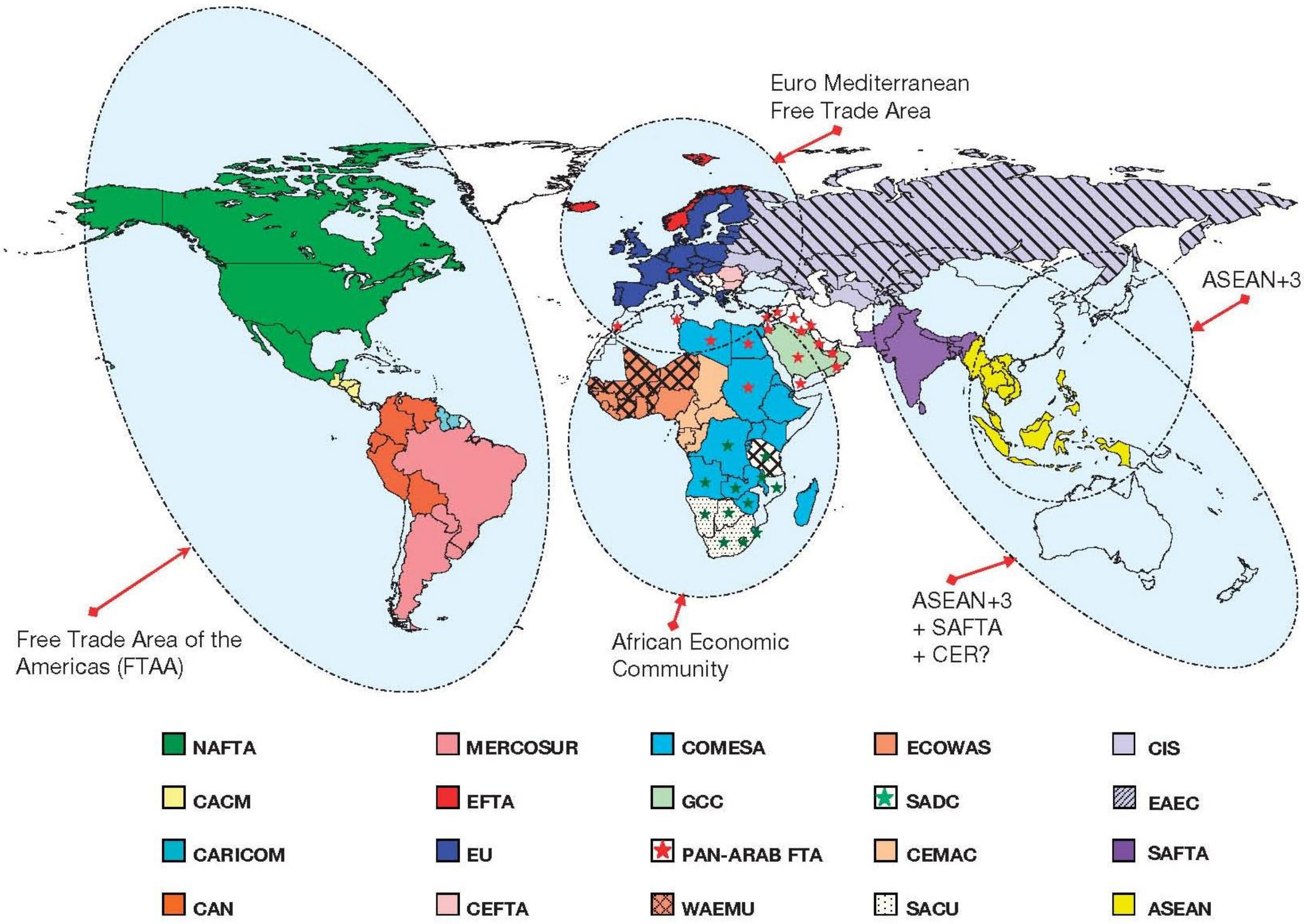
1.	Provide EU investors better market access and effective non-discrimination for investments (both before and after establishment)
2.	Increase the transparency and predictability of controls or screening of European investment into China
3.	Seek the highest possible level of uniform standards of legal protection and certainty for European investors in China
4.	Ensure that investment protection standards include strong protection of intellectual property rights
5.	Seek to increase Europe's attractiveness as a destination for Chinese foreign direct investment by offering a uniform European standard of protection to Chinese investors
6.	Increase transparency
7.	Ensure the creation of enquiry points and one-stop shops designed to provide specific information and to respond promptly to questions and enquiries by investors regarding the operation of the Agreement,
8.	Seek to improve the competitiveness of EU companies investing in China and ensure a more level playing field to remedy the advantages enjoyed by Chinese state owned enterprises
9.	Ensure the right of the parties to take measures necessary to achieve legitimate public policy objectives including e.g. environmental, social, labour and human rights objectives
10.	Seek to ensure that domestic laws and policies provide for high levels of environmental and labour standards
11.	Seek to include a reference to obligations of investors' regarding corporate social responsibility
12.	Ensure the enforcement of any agreed rules through adequate dispute settlement including access to out of Court arbitration.

EU plans

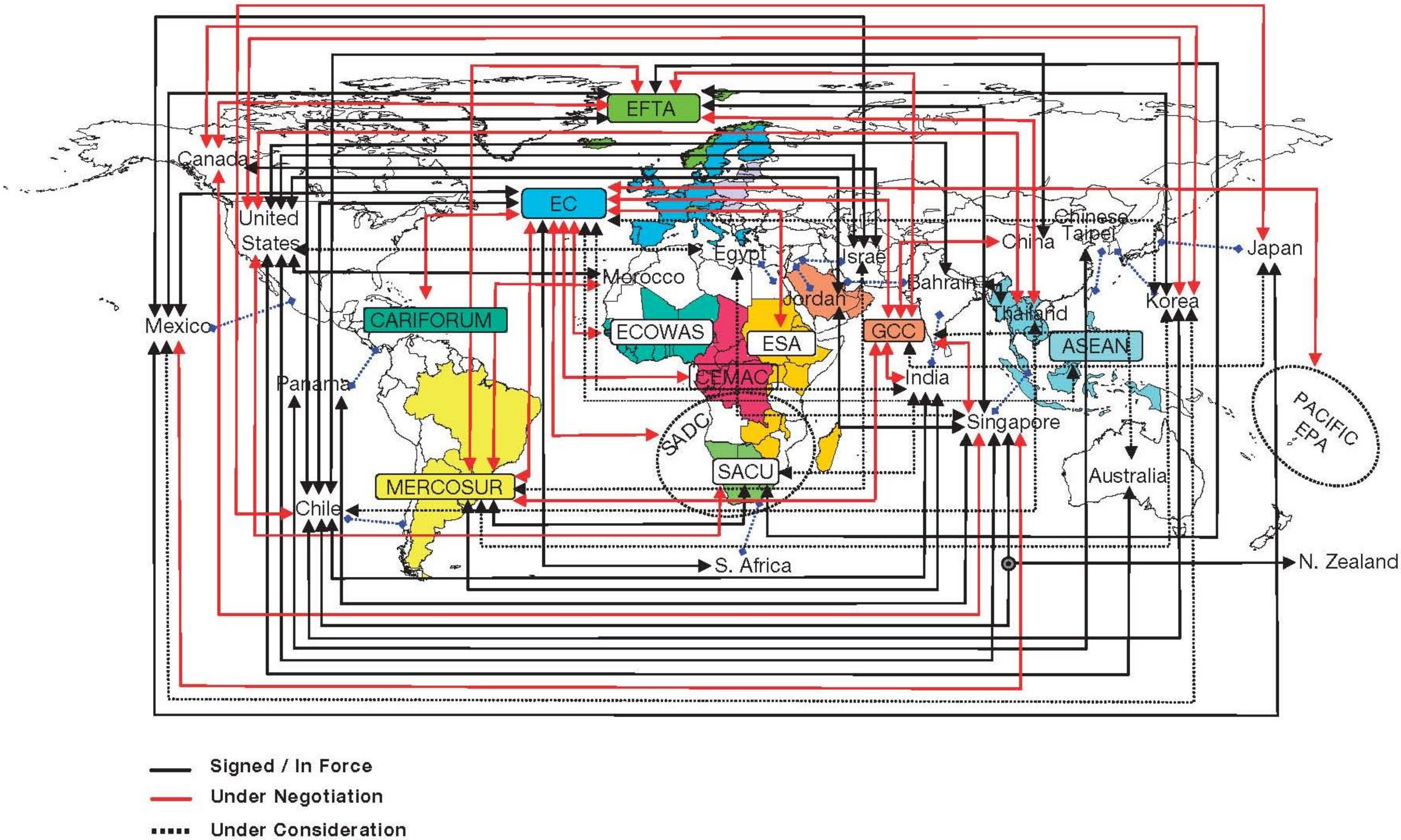
Table 4: EU's Operational Objectives in EU-China Negotiation
Source: European Commission (2013: 22).

1.	Baseline scenario: No agreement – continue with the status quo
2.	EU Commission recommendation for negotiating directives for standalone investment protection agreement
3.	EU Commission recommendation for negotiating directives for an agreement combining investment protection with market access
4.	EU Commission recommendation for modifying the existing negotiating directives for the PCA to include investment protection
5.	Seek a comprehensive FTA with China rather than pursuing a sectoral agreement

Map F
Establishment of Regional Trading Blocks



Map E
Cross Regional RTAs as of December 2006



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Thank you for your kind attention!

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