One Belt One Road & Arbitration

Investment protection for OBOR projects in Europe

Vienna, Palais Hansen Kempinski

28th September 2018

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What you should unterstand from the lecture:

→ Status of BIT protection between European States and China

→ Negotiations for new BIT China – EU going on

→ EU intern legal situation with new BIT´s

2018

40th anniversary of China's reform and opening up.

5th year since the " Belt and Road" Initiative (BRI) being announced and steadily implemented.

Wang Chengjie, Vice-Chairman and Secretary-General of CIETAC **16 September 2018**

I. Status of Investment Treaties between China and the EC Member states

- "Open door policy" adopted in the late 1970s – attracting foreign investment = top priority. Going abroad on political agenda only from 2001 on!
- More than 130 BIT´s concluded, 108 BIT´s in Force, [investmentpolicyhub.unctad.org, 23.09.2018]
- BIT are in force as of the date provided in the treaty, no internal ratification needed in/by China!

For statistics in China by MOFCOM (Ministry of Commerce), Department of Foreign Trade, foreign investment is divided in two categories:

1. Foreign direct investment (FDI) – includes equity joint ventures, contractual joint ventures, wholly foreign owned enterprise, holding companies with foreign investment, joint explorations and others.
2. Other foreign investment (OFD) – includes shares, international lease, compensation trade and processing an assembling

I. Status of Investment Treaties between China and the EC Member states

- 1998: Policy change – "Going abroad" strategy
- 2001: "Going abroad" strategy for the first time in the Outline of the Tenth Five Year Plan for National Economy and Social Development.
- 2013: OBOR initiative unveiled by Xi Jinping in September and October 2013 during visits to Kazakhstan and Indonesia, thereafter promoted by Premier Li Keqiang during state visits to Asia and Europe

UNCTAD 2017 World investment Report (figures from 2016):

(Mio USD)	Investment Inflow	Investment Outflow
World	1 746 423	1 452 463
European Union	566 234	470 351
China	244 853	246 116
United States	391 104	299 003

China biggest holder of US Government debts ($ 21 trillion total – China $ 1.184 trillion)

[Data update: 13.09.2018 US Dept. of Treasury]

I. Status of Investment Treaties between China and the EC Member states

Investment regime in China:

One-by-One appoval system

for foreign direct investment (not for portfolio investment).

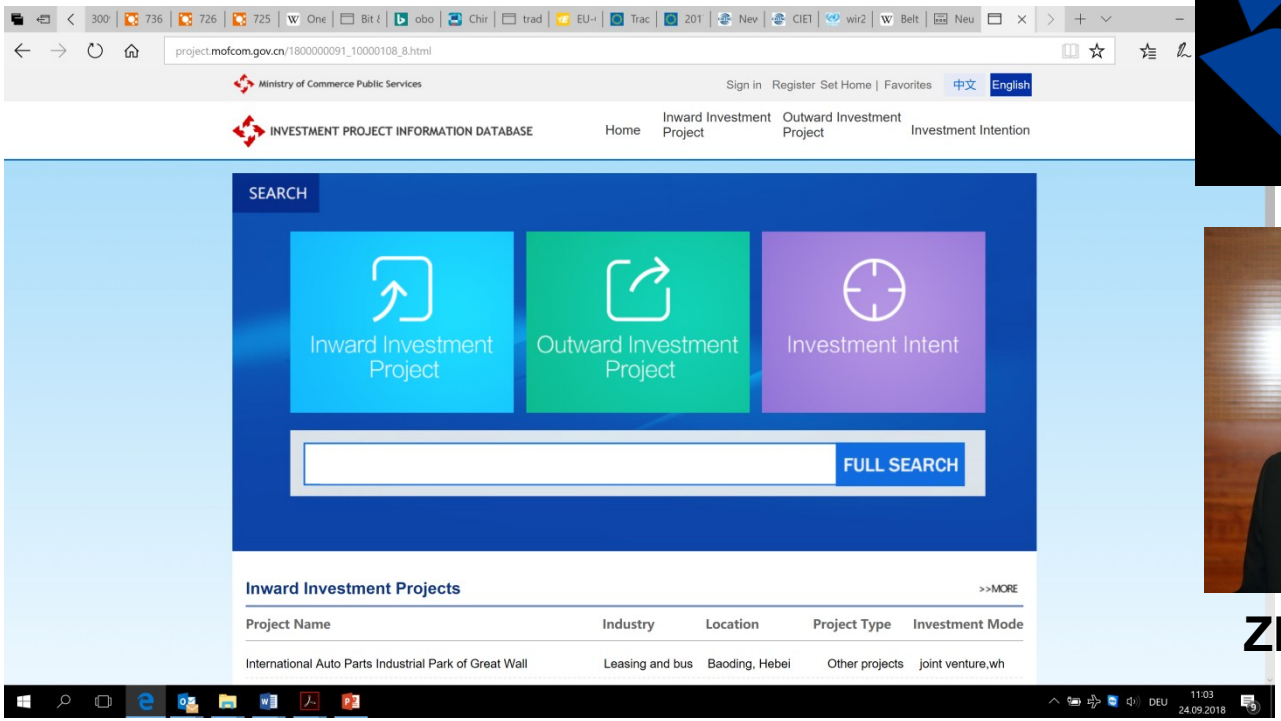
Instruments:

→ Investment Guidance 2002

→ Guiding Catalogue of Industries for Foreign Investment

I. Status of Investment Treaties between China and the EC Member states

Investment regime in China:



Zhong Shan

钟山

I. Status of Investment Treaties between China and the EC Member states

3 Generations of Model BIT´s :

1980´s: Version I, amended end of the 1980´s

Early 1990´s: Version II

Late 1990´s: Version III – allowed international arbitration of all disputes and not just

the question of quantum.

I. Status of Investment Treaties between China and the EC Member states

3 Generations of Model BIT´s :

t=terminated	Contractual Partners in the European Union and Europe (in force [Year])
1980´s (Version I)	Austria (1986), Bel-Lux (1986t), Czech (1992t), Denmark (1985), Finland (1986t), France (1985t), Germany (1985t), Italy (1987), Netherlands (1987t), Norway (1985), Poland (1989), Russian Federation (1991t), Schweden (1982), Switzerland (1987t),
e1990´s (Version II)	Albanien (1995), Croatia (1994), Estonia (1994), Greece (1993), Hungary (1993, Iceland (1997), Lithuania (1994), Marcedonia (1997), Romania (1995), Slovakia (1992), Slovenia (1995), Spain (1993t), Turkey (1994tbt), Ukraine (1993), UK (1996)
l1990´s (Version III)	Bel-Lux (2009), Bosnien (2005), Cyprus (2002), Czech (2006), Finland (2006), France (2010), Germany (2005), Latvia (2006), Malta (2009), Netherlands (2004), Russian Federation (2009), Spain (2008), Switzerland (2010), Turkey (2015signed)

I. Status of Investment Treaties between China and the EC Member states

3 Generations of Model BIT´s :

Usual Provisions of a CHINA BIT and some examples of differences:

Preamble (sometimes with interpretation criteria)

Art 1: Investment definition: different wording used, since BIT with Japan and Korea (2012) US Model BIT used /lasting economic relation, exercise influence, p.ex. China-ASEAN confirms the investment covers construction right, Build-Operate and Transfer (BOT) and Build-Operate and Own (BOO), China – Mexico excludes certain types of transaction p.ex. claims to money arising from sale of goods → consequences for trade financing?).

Investor: SAR/Hong Kong/Macao special situation (HKG 40% of investment, own BIT´s (18!) but HKG seeat qualifies also as Chinese investor). Chinese who settles abroad and obtains other nationality looses automatically CN citizenship.

Art 2: Promotion and Protection of Investments

I. Status of Investment Treaties between China and the EC Member states

3 Generations of Model BIT´s :

Usual Provisions of a CHINA BIT and some examples of differences:

Art 3 Treatment of Investment: Version 1 of BIT contained no national treatment clause! Version 2 only a „best endeavours“ or soft NT provision (Wenhua Shan, Norah Gallagher in Chester Brown, OUP, p. 160).

Art 4 Expropriation: standard BIT avoids to state the principle of compensation as „prompt, adequate and effective compensation“. BIT version 3: Tribunal has to decide which recognized prinziples of valuation apply (cf. World Bank Guidelines on the Treatement of Foreign Direct Investment).

Art 5 Compensation for Damages and Losses: Difference between Version 1-3: V3 grant National Treatement in addition to Most-Favored-Nation Treatement.

Art 6 Repatriation on Investments and Returns

Art 7 Subrogation

Art 8/9 Dispute Settlement: Version 1-2 ad hoc tribunal only for amount of compensation of expropriation (since Tza Yap Shum vs Peri ICSID Case No ARB/07/6 competence of tribunal also to review expropriation)

Art 10/11/12/13: Other Obligations, Application, Consultations, Entry into Force, Duration, Termination.

I. Status of Investment Treaties between China and the EC Member states

3 Generations of Model BIT´s :

Disputes:

1. Claimant´s from China/Hong Kong (ICSID)

Case No.	Claimant(s)	Respondent(s)	Status
ADHOC/17/1	Sanum Investments Limited	Lao People's Democratic Republic	Pending
ARB/15/41	Standard Chartered Bank (Hong Kong) Limited	United Republic of Tanzania	Pending
ARB/14/30	Beijing Urban Construction Group Co. Ltd.	Republic of Yemen	Concluded
ARB/12/29	Ping An Life Insurance Company of China, Limited and Ping An Insurance (Group) Company of China, Limited	Kingdom of Belgium	Concluded
ARB/10/20	Standard Chartered Bank (Hong Kong) Limited	Tanzania Electric Supply Company Limited	Concluded
ARB/84/3	Southern Pacific Properties (Middle East) Limited	Arab Republic of Egypt	Concluded
ARB/07/6	Tza Yap Shum	Republic of Peru	Concluded

Comparison: Claimant´s from EU: 377 of 702 cases in ICSID database (non including ad hoc, SCC, ICC).

I. Status of Investment Treaties between China and the EC Member states

3 Generations of Model BIT´s :

Disputes:

1. Claims against China/Hong Kong (ICSID)

Case No.	Claimant(s)	Respondent(s)	Status
ARB/17/19	Hela Schwarz GmbH	People's Republic of China	Pending
ARB/14/25	Ansung Housing Co., Ltd.	People's Republic of China	Concluded
ARB/11/15	Ekran Berhad	People's Republic of China	Concluded

Ekran Berhad v People's Republic of China (ICSID Case No. ARB/11/15) was brought by a Malaysian investor. It was quickly suspended and eventually settled.

Ansung Housing Co., Ltd. v People's Republic of China (ICSID Case No. ARB/14/25), was commenced by Ansung Housing Co. Ltd (Ansung), a South Korean investor. It has been dismissed by an ICSID Tribunal in its early stages on the basis that the claim was brought out of time. The Ansung award provides useful guidance on when an arbitral tribunal can dismiss an investor claim on a summary basis for being "manifestly without merit", how limitation periods under investment treaties work, and the scope of "most favoured nation" clauses.

Hela Schwarz (ICSID Case No. ARB/17/19): Production facility demolished by local authority ordered land seizure. Arbitral Tribunal did not issue order to stop this.

Comparison: Claimant´s from EU: 129 of 702 cases in ICSID database (non including ad hoc, SCC, ICC).

II. ECJ Judgement 6.3.2018 "Achmea"

Main argument: The fiduciary duty of the Member States to comply with EC law prevents them to enter into an agreement which excludes the exclusive competence of the ECJ to give binding interpretations of the EC-law.

Commercial Arbitration: Is to be seen differently, because of free will of the parties to submit to arbitral tribunals, and state court review of violations of mandatory EC-law (as stated in ECOSWISS) is sufficient.

History before:

18.5.2015 EU Commission demands termination of intra-EU-BIT´s from Austria, Netherlands, Romania, Slovakia and Schweden

Italy and Ireland terminated the intra-EU BIT´s already

Micula vs. Romania (ICSID award ARB/05/20 vs Romania; EUC 2015/1470, T624/15)

EU-Singapore BIT: ECJ Opinion 2/15 – rendered 16.5.2017

ECJ against Austria, Schweden, Finland Rs C-205/06, Rs C-249/06, Rs C-118/07

II. ECJ Judgement 6.3.2018 "Achmea"
Free movement of capital vs. EU-sanctions and BIT´s : ECJ Rs 205/06, 249/06, 118/07

32. It is common ground that the agreements at issue do not contain any provision reserving such possibilities for the Community to restrict movements of funds connected with investments. It is therefore necessary to examine whether the Republic of Austria was, for that reason, under an obligation to take the appropriate steps to which the second paragraph of Article 307 EC refers.

33. Under the first paragraph of Article 307 EC, the rights and obligations arising from an agreement concluded before the date of accession of a Member State between it and a third country are not affected by the provisions of the Treaty. The purpose of that provision is to make it clear, in accordance with the principles of international law, that application of the Treaty is not to affect the duty of the Member State concerned to respect the rights of third countries under a prior agreement and to perform its obligations thereunder (see Case 812/79 *Burgoa* [1980] ECR 2787, paragraph 8; Case C-84/98 *Commission* v *Portugal* [2000] ECR I-5215, paragraph 53; and Case C-216/01 *Budějovický Budvar* [2003] ECR I-13617, paragraphs 144 and 145).

34. The second paragraph of Article 307 EC obliges the Member States to take all appropriate steps to eliminate incompatibilities with Community law which have been established in agreements concluded prior to their accession. Under that provision, the Member States are required, where necessary, to assist each other to that end and, where appropriate, to adopt a common attitude.

II. ECJ Judgement 6.3.2018 "Achmea"
Free movement of capital vs. EU-sanctions and BIT´s : ECJ Rs 205/06, 249/06, 118/07

35. The provisions of Articles 57(2) EC, 59 EC and 60(1) EC confer on the Council the power to restrict, in certain specific circumstances, movements of capital and payments between Member States and third countries.

36. In order to ensure the effectiveness of those provisions, measures restricting the free movement of capital must be capable, where adopted by the Council, of being applied immediately with regard to the States to which they relate, which may include some of the States which have signed one of the agreements at issue with the Republic of Austria.

Ruling:

On those grounds, the Court (Grand Chamber) hereby:

Declares that, by not having taken appropriate steps to eliminate incompatibilities concerning the provisions on transfer of capital contained in the investment agreements entered into with the Republic of Korea, the Republic of Cape Verde, the People's Republic of China, Malaysia, the Russian Federation and the Republic of Turkey, the Republic of Austria has failed to fulfil its obligations under the second paragraph of Article 307 EC;

II. ECJ Judgement 6.3.2018 "Achmea"

EU-Singapore BIT: ECJ Opinion 2/15 – rendered 16.5.2017

The Free Trade Agreement between the European Union and the Republic of Singapore falls within the exclusive competence of the European Union, with the exception of the following provisions, which fall within a competence shared between the European Union and the Member States:

– the provisions of Section A (Investment Protection) of Chapter 9 (Investment) of that agreement, in so far as they relate to non-direct investment between the European Union and the Republic of Singapore;

– the provisions of Section B (Investor-State Dispute Settlement) of Chapter 9; and

– the provisions of Chapters 1 (Objectives and General Definitions), 14 (Transparency), 15 (Dispute Settlement between the Parties), 16 (Mediation Mechanism) and 17 (Institutional, General and Final Provisions) of that agreement, in so far as those provisions relate to the provisions of Chapter 9 and to the extent that the latter fall within a competence shared between the European Union and the Member States.

II. ECJ Judgement 6.3.2018 "Achmea"

ECJ Rs C-284/16 vom 6.3.2018

34. EU law is thus based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the EU is founded, as stated in Article 2 TEU. That premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised, and therefore that the law of the EU that implements them will be respected. It is precisely in that context that the Member States are obliged, by reason inter alia of the principle of sincere cooperation set out in the first subparagraph of Article 4(3) TEU, to ensure in their respective territories the application of and respect for EU law, and to take for those purposes any appropriate measure, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the EU (Opinion 2/13 (Accession of the EU to the ECHR) of 18 December 2014, EU:C:2014:2454, paragraphs 168 and 173 and the case-law cited).

35. In order to ensure that the specific characteristics and the autonomy of the EU legal order are preserved, the Treaties have established a judicial system intended to ensure consistency and uniformity in the interpretation of EU law (Opinion 2/13 (Accession of the EU to the ECHR) of 18 December 2014, EU:C:2014:2454, paragraph 174).

II. ECJ Judgement 6.3.2018 "Achmea"

ECJ Rs C 284/16 vom 6.3.2018

48. However, the arbitral tribunal at issue in the main proceedings is not such a court common to a number of Member States, comparable to the Benelux Court of Justice. Whereas the Benelux Court has the task of ensuring that the legal rules common to the three Benelux States are applied uniformly, and the procedure before it is a step in the proceedings before the national courts leading to definitive interpretations of common Benelux legal rules, the arbitral tribunal at issue in the main proceedings does not have any such links with the judicial systems of the Member States (see, to that effect, judgment of 14 June 2011, *Miles and Others*, C-196/09, EU:C:2011:388, paragraph 41).

54. It is true that, in relation to commercial arbitration, the Court has held that the requirements of efficient arbitration proceedings justify the review of arbitral awards by the courts of the Member States being limited in scope, provided that the fundamental provisions of EU law can be examined in the course of that review and, if necessary, be the subject of a reference to the Court for a preliminary ruling (see, to that effect, judgments of 1 June 1999, *Eco Swiss*, C-126/97, EU:C:1999:269, paragraphs 35, 36 and 40, and of 26 October 2006, *Mostaza Claro*, C-168/05, EU:C:2006:675, paragraphs 34 to 39).

II. ECJ Judgement 6.3.2018 "Achmea"

ECJ Rs C 284/16 vom 6.3.2018

55. However, arbitration proceedings such as those referred to in Article 8 of the BIT are different from commercial arbitration proceedings. While the latter originate in the freely expressed wishes of the parties, the former derive from a treaty by which Member States agree to remove from the jurisdiction of their own courts, and hence from the system of judicial remedies which the second subparagraph of Article 19(1) TEU requires them to establish in the fields covered by EU law (see, to that effect, judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraph 34), disputes which may concern the application or interpretation of EU law. In those circumstances, the considerations set out in the preceding paragraph relating to commercial arbitration cannot be applied to arbitration proceedings such as those referred to in Article 8 of the BIT.

57. It is true that, according to settled case-law of the Court, an international agreement providing for the establishment of a court responsible for the interpretation of its provisions and whose decisions are binding on the institutions, including the Court of Justice, is not in principle incompatible with EU law. The competence of the EU in the field of international relations and its capacity to conclude international agreements necessarily entail the power to submit to the decisions of a court which is created or designated by such agreements as regards the interpretation and application of their provisions, provided that the autonomy of the EU and its legal order is respected (see, to that effect, Opinion 1/91 (EEA Agreement — I) of 14 December 1991, EU:C:1991:490, paragraphs 40 and 70; Opinion 1/09 (Agreement creating a unified patent litigation system) of 8 March 2011, EU:C:2011:123, paragraphs 74 and 76; and Opinion 2/13 (Accession of the EU to the ECHR) of 18 December 2014, EU:C:2014:2454, paragraphs 182 and 183).

II. ECJ Judgement 6.3.2018 "Achmea"

ECJ Rs C 284/16 vom 6.3.2018

58. In the present case, however, apart from the fact that the disputes falling within the jurisdiction of the arbitral tribunal referred to in Article 8 of the BIT may relate to the interpretation both of that agreement and of EU law, the possibility of submitting those disputes to a body which is not part of the judicial system of the EU is provided for by an agreement which was concluded not by the EU but by Member States. Article 8 of the BIT is such as to call into question not only the principle of mutual trust between the Member States but also the preservation of the particular nature of the law established by the Treaties, ensured by the preliminary ruling procedure provided for in Article 267 TFEU, and is not therefore compatible with the principle of sincere cooperation referred to in paragraph 34 above.

59. In those circumstances, Article 8 of the BIT has an adverse effect on the autonomy of EU law.

Ruling:

Articles 267 and 344 TFEU must be interpreted as precluding a provision in an international agreement concluded between Member States, such as Article 8 of the Agreement on encouragement and reciprocal protection of investments between the Kingdom of the Netherlands and the Czech and Slovak Federative Republic, under which an investor from one of those Member States may, in the event of a dispute concerning investments in the other Member State, bring proceedings against the latter Member State before an arbitral tribunal whose jurisdiction that Member State has undertaken to accept.

III. "After Achmea" arbitration BIT awards against EC member states

MASDAR SOLAR & WIND COOPERATIEF U.A. vs Spain ICSID ARB/14/1

Tribunal: President John Beechey, Gary Born, Brigitte Stern

Award dated 16 May 2018;

Basis: Energy Charter Treaty, Tribunal on page 91ff: EU is also party to ECT, no consequence from Achmea

Novenergia II - Energy & Environment (SCA) vs Spain SCC 2015/063

Tribunal: President Johan Sidklev (SWE), Prof. Antonio Crivellano (ITA), Judge Juez Bernardo Sepúlveda-Amor (Mex)

Award dated 15 Februar 2018;

Basis: Energy Charter Treaty, Tribunal on page 94ff: EU is also party to ECT, no consequence from Achmea

Enforcement blocked in Schweden, also pending in the US

IV. Hold on CETA

Only the part for which the EU has sole competence is in force provisionally!

Belgium: Application to the ECJ 1/17 (Abl. C. 284/16 dated 13.10.2017)

→ **no submissions currently available to public.**

Germany: Procedure before the Constitutional Court 2 BvR 1823/16

→ **www.ceta-verfassungsbeschwerde.de**

Austria: President Van der Bellen refuses to sign law approving Austria´s consent, unless ECJ has given opinion 1/17.

IV. Hold on CETA

Belgium: Application to the ECJ 1/17 (Abl. C. 284/16 dated 13.10.2017)

1) **The exclusive competence of the CJEU to provide the definitive interpretation of European Union law**

→ The investment court system (ICS) in CETA does not provide for an obligation/right of the investment court to preliminary decisions of the ECJ (what contradicts Achmea) but would make the ICS no party-independent forum

2) **The general principle of equality and the 'practical effect' requirement of European Union law**

3) **The right of access to the courts**

4) **The right to an independent and impartial judiciary**

- the conditions regarding the remuneration of the members of the Tribunal and the Appeals Body.
- the appointment of members of the Tribunal and the Appeals Body.
- the release of members of the Tribunal and the Appeals Body.
- the guidelines of the *International Bar Association* regarding conflicts of interest in international arbitration and the introduction of a code of conduct for the members of the Tribunal and the Appeals Body the external professional activities related to investment disputes of members of the Tribunal and the Appeals Body.

V. The new BIT policy of the EU Commission

COM (2018) 547/2 Protection of intra-EU investment

Paradigma/Credo: EU-law protects investments sufficiently

i) the Treaty rules establishing those freedoms;
ii) the Charter of Fundamental Rights of the European Union ("Charter");
iii) the general principles of Union law; and
iv) extensive sector-specific legislation covering areas such as financial services, transport, energy, telecommunications, public procurement, professional qualifications, intellectual property or company law.

→ Commission gives examples in the COM , including out-of-court mechanisme and quotes also Francovich and Köbler – but the ECJ does not award damages itself, Köbler did not get damages awarded by local court

Achmea: implies that all investor-State arbitration clauses in intra-EU BITS are inapplicable and that any arbitration tribunal established on the basis of such clauses lacks jurisdiction due to the absence of a valid arbitration agreement. (quote from page 4)

Is this all true only for intra EU-BIT´s? What if a non-EU investor rises a claim against a member state under an existing BIT? Referral to the ECJ takes 18 months to years! Judges appointed on recommendation of member states?

VI. Recent BIT´s concluded between the EC and Japan

→ **No ISDS in the trade agreement (classic arbitration clause!)**

→ **Economic Partnership Agreement signed 17. Juli 2018**

→ **European Parliament has to consent in December 2018 for that the agreement will come in force!**

Remark: Japan is the 2nd biggest creditor of US Government debts: < 1 trillion USD!

VII. Further work on ISDS

UNCITRAL Working Group III

Investor-State Dispute Settlement Reform

→ Actual task: Constitution of ISDS /appointment of arbitrators

→ First paper by Michel Potestá and Gabriela Kauffmann-Kohler

problems: experts in public international law (university teachers but not commercial law experts)

appointment by intergovernmental treaty body

payment and exclusivity of work for the tribunal

36th session 29 October – 2 November 2018, Vienna (www.uncitral.org)

→ Open: appeal mechanism and details of legal reasons to grant

VIII. CIETAC Investment rules and the new Investment Arbitrator Panel

Secretary-General and Vice-Chairman Wang Chengjie introduced the process of the formulation of CIETAC's Panel of International Investment Arbitrators. **16 September 2018**

VIII. CIETAC Investment rules and the new Investment Arbitrator Panel

72 Members chosen

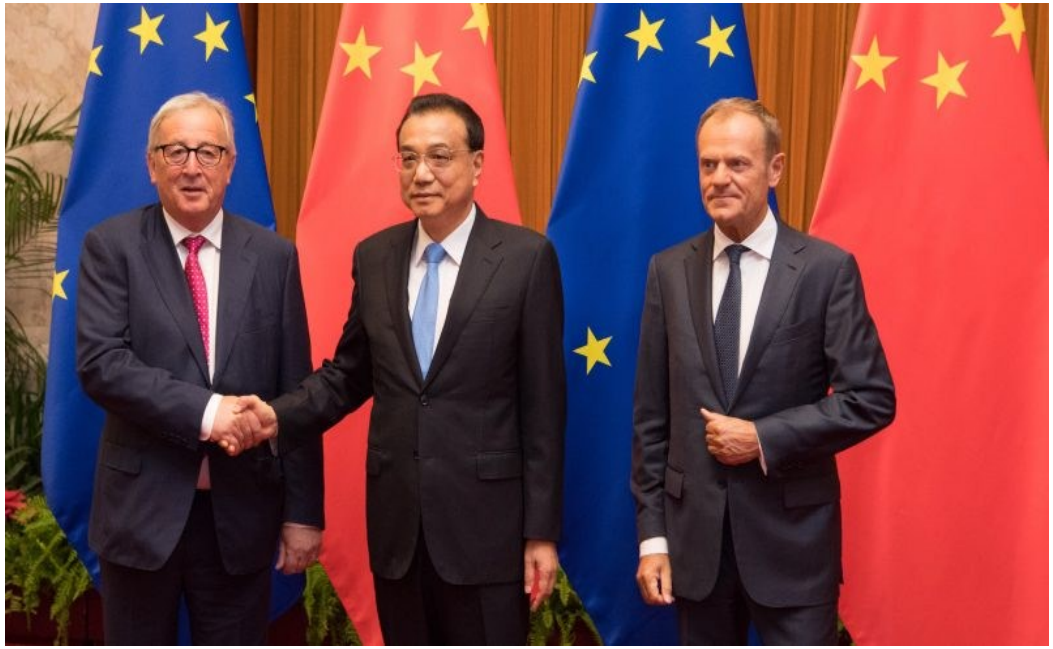
2/3 Foreigners

CIETAC Investment arbitration rules in Force since 2017 [www.cietac.org]

IX. BIT negotiations between China and the EU

- **EU-RPC Investment Agreement**
  - **The 16th EU-PRC Summit, Beijing, November 2013: negotiations on an investment agreement began.**
  - **The eighth round of negotiations concluded on 4 December 2015 with the agreement to produce a text which would push the negotiations on to a more convincing and effective stage.**
  - **The EU-PRC Investment Agreement will unite the present 26 bilateral agreements safeguarding investments between the EU Member States and the PRC in one single agreement. Both parties hope to improve bilateral economic and trade cooperation by opening up the markets in both directions.**
  - **For the PRC – as appears on the website of the Mission of the PRC to the EU – the EU-PRC agreement is apparently an important opportunity to deepen the reform process by making the Chinese economy more open to foreign investors.**
  - **The agreement aims to:**
- **provide for new opportunities and improved conditions for access to the EU and Chinese markets for Chinese and EU investors respectively;**
- **address key challenges of the regulatory environment, including those related to transparency, licensing and authorisation procedures;**
- **establish certain guarantees regarding the treatment of EU investors in China and of Chinese investors in the EU, including protection against unfair and inequitable treatment, unlawful discrimination and unhindered transfer of capital and payments linked to an investment;**
- **support to sustainable development initiatives by encouraging responsible investment and promoting core environmental and labour standards;**
- **allow for the effective enforcement of commitments through investment dispute settlement mechanisms available to Contracting Parties and to investors.**

IX. BIT negotiations between China and the EU



The President of the European Commission, Jean-Claude Juncker, the premier of the State Council of China Li Keqiang and the President of the European Coucil Donald Tusk, during the EU-China summit in Beijing **16 July 2018**

IX. BIT negotiations between China and the EU

- The European Union and China agreed to enhance market access and investment and to speed up negotiations over geographical indications during a leaders' summit in Beijing on Monday (16 July). But EU leaders indicated they wanted to see China's promises translated into action.

- China "will significantly raise its market access and reduce the tariffs rates for goods that are needed for Chinese companies and consumers," Li Keqiang, the premier of the State Council of China told the press after the one-day EU-China summit.

- Europe's investment in China is going down as investors worry about regulatory and administrative burden for foreign companies in the country. Monday's EU and China 20th summit aimed to move forward on how to lessen them.

16 July 2018

→ cf.: EC-Commission Paper: Elements for a new strategy on China [Join (2016) 30 final, 22.6.2016]

X. Conclusions:

EU-China 2020 Strategic Agenda for Cooperation is a core document to understand the common policy goals.

Covington & Burling LLP Assessing "**National Treatment**" as a Basis for Securing Market Access Under a Comprehensive Agreement on Investment with the PRC Prepared for the European Commission Directorate-General for Trade (July 2015) gives a professional insight what a new BIT/Trade Agreement can mean for the investment relations between EU-China and describes the actual practice of market regulations in China.

MERICS paper on China: EU-China FDI Working towards Reciprocity in investment relations (update 3, Mai 2018) shows some of the actual problems to be solved.

European Think-Tank Network on China (ETNC) Report 2017 **Chinese Investment in Europe,** A Country-Level Approach, 172p, December 2017, explains the actual status of Chinese investments in the EU member states.

X. Conclusions:

- 3 Generations of BIT´s in 28 single BIT contract are a difficult basis.
- The ongoing intra-BIT and EU/Memberstate kompetenz discussion is burdensome from investor´s perspective and very likely to swap over to BIT´s with non EU-Memberstate.
- The ISDS is new, the practice is as unclear as the appeal remedy and the position of the ECJ and questions of the preliminary ruling mechanism.
- **To overcome several obstacles a new agreement between the EU and CHINA is absolutely welcome, and urgently needed by both economies!**

Thank you your attention!

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