

Mr. Karel De Gucht  
Member of the European  
Commission  
Commissioner for Trade  
European Commission  
Rue de la Loi, 200  
B - 1049 - Brussels

Brussels, 3 October 2011

**RE: European Services Industry's views on EU Investment Policy toward China**

Dear Commissioner,

The European services industry is supportive of the Commission's consultation process towards the formulation of EU-China investment policy and the European Services Forum Secretariat submitted its own comments last July and encouraged its members to participate directly. Given the importance of China as strategic partner, as well as the importance of this new policy for the EU and for our companies, a longer consultation period would have allowed more responses and deeper coordination on the substance.

China undoubtedly holds much potential that is yet to be realised, and it is clear that relatively low levels of bilateral investment, while trade continues to grow quickly, is one indicator of this untapped potential. Given the importance of investment in establishing services suppliers in new markets, the European services industry is keen to increase the levels and the security of investment between the EU and China. As such, the European Services Forum encourages, in principle, efforts to review the investment landscape and implement well-considered strategies to ensure that China is an open, secure and welcoming market for European investments.

We take a practical stance on EU policy options. We believe that it would, ultimately, be preferable to have one single EU investment agreement with the highest standard of protection. However, the approach adopted must be based on practical

considerations of strengthening commercial investment protection over and above the existing network of member state BITs. The approach must also not be based upon purely abstract notions of a single EU-China investment agreement.

Contrary to common belief and media headlines, EU investment in China is rather modest (€23.1 billion from 2007 till 2010 – 1.74% of the total)<sup>1</sup>. If we look at the EU FDI stocks in China (incl. Hong-Kong), the impressive €113.5 Billions represents only 4.6 % of extra EU FDI stocks at the end of 2005<sup>2</sup>. Similarly, and even if there are signals that indicate a shift towards an increase, Chinese investments in the European Union are at this stage quite low (4.1% of total Chinese outward FDI in 2005)<sup>3</sup>. It has to be noted that more than 65% of EU outward FDI are invested into the services sectors; and similarly more than 66% of Chinese outward investment is going to services sectors, but the majority goes to South East Asia and Latin America, not in the EU.

This relatively low level of annual outward and inward FDI as a percentage of total FDI, coupled with the fact that 26 out of 27 EU member states already have an investment protection agreement with China, suggests that the benefits and disadvantages of entering into negotiations should be well assessed.

Particularly important is the necessity that negotiations should not, in any case, diminish existing protection and should not be allowed to drag on for a long period of time. Furthermore, non-commercial issues, such as human rights, labour conditions, *etc...*, should not be introduced into the investment protection negotiations. They were not dealt with in the existing member state BITs and should not be part of a possible EU level agreement. These important issues are part of the negotiations of the Partnership and Cooperation Agreement or dealt with in the framework of international conventions like ILO, *etc.* They should not in any case interfere with investment protection.

While it is obviously a prerequisite that an EU-China investment agreement should ensure fair and equitable treatment to European investors, it is also important that there is a robust investor-to-state dispute settlement mechanism that incorporates a model which uses specific and time-limited procedures in decision making. This is vital for ensuring that companies' investments are truly protected and will promote business confidence.

The public consultation also extends questions to market access in terms of negotiating strong pre-establishment provisions. Clearly this is a very important issue for services companies who, often more than other types of exporters, require pre-establishment investment access to be competitive in their target markets. In general,

---

<sup>1</sup> Source : Eurostat Newsrelease - 94/2011 - 27 June 2011. If we include Hong Kong, the total EI outward FDI reaches €40.9 Billions from 2007 till 2010, i.e. 3% of the EU total .

<sup>2</sup> Source: Eurostat – EU FDI Yearbook 2008

<sup>3</sup> Source: China Ministry of Commerce. See: “China’s Outward FDI: Past and Future” - Leonard K. Cheng & Zihui Ma - July 2007

across services, there exists an unlevel playing field whereby European companies can face considerable and unfair barriers to establishing investment in China. The legal environment in which European companies are investing in China is sometimes unclear and should be made more legally secured. We therefore welcome the possibility of negotiating strong pre-establishment provisions, but consider there to be a strong need to deeply assess the practicalities of negotiating and implementing such policy and also a strong need to consider the possible effects of negotiating market access and investment protection on a general basis and also at a sector level.

The European Services Forum will continue to work with its members to assess how EU policy can best address the issues affecting European services companies' investments and trade opportunities within China. We will naturally be active in bringing this information to your attention.

We would again like to thank the Commission for initiating this process on a very important topic and we look forward to continued dialogue on the issue and on any subsequent findings from the consultation. We should be grateful if the Commission would take account of the European services industry's priorities in its dialogue with the Chinese authorities, notably at the China-EU Summit that will take place in Tianjin on 25 October 2011.

Yours sincerely,



Christoffer Taxell  
ESF Chairman

Cc: Mr. Jean-luc Demarty, Director General, DG Trade, European Commission