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TAIWAN'S OUTWARD FOREIGN DIRECT INVESTMENT (OFDI) INTO THE EUROPEAN UNION AND ITS MEMBER STATES

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Introduction

The European Union is a *sui generis* construction, by which the 28 Member States (MS) are united in a still unfolding process of political and economic integration. A process, which despite its slow progression, is unprecedented in the world. As a customs union, the import duties on trade in goods and services amongst the MS have been eliminated progressively, and there have been great advances in policy areas such as the free movement of people and the freedom of establishing businesses throughout the 28 MS. Much progress is yet to be made in the integration of the economic union throughout the different MS. There are still various hindrances to the establishment of various services but, apart from legally sanctioned agreements towards fuller integration, the jurisprudence of the European Court of Justice, tasked with respect of the non discrimination rule, contributes to the construction of a genuine economic union.

In market terms, the European Union must be subdivided by the Euro-countries and those which retain their national currency. Already in the early days of the European Community, the issue whether a monetary union was conceivable or had to await a much deeper economic integrated fabric had been mooted in some circles. In 1979, a 'European Monetary System' was set up, with the aim to attain more stability in the inter-exchange markets. However, such plans did not come to fruition until the signing of the Maastricht treaty in 1992, which laid out the foundation of the monetary union. On 1 January 1999, the new currency, in the physical form of banknotes and in digital form in banknotes, was proclaimed and was effectively used by citizens of the MS which chose to join the Euro system.

After adopting the Euro, many of the countries experienced a very high level of economic growth. However, when the international financial crisis erupted in 2008, it unleashed the banking and the associated sovereign debt crises. As a consequence several Euro member countries had to intervene to salvage some of their banks. The EU authorities, especially those in the Euro-area, were faced with the task to adopt fast action in some critical situations, such as the one experienced in Greece. This has led to a reformulation of a stronger version of the Stability Pact, with which MS are now subjected to strict prescriptions about their budgetary policies, and which forces MS to consult with the Commission their annual budgets before submitting them to their national legislative bodies. Furthermore, there has been a 'banking union' established in the Euro-area, for which a specialized department of the European Central Bank (ECB) will oversee the activities of the most important banks, interconnected through foreign affiliates. The measures adopted have helped tackle some of the structural deficiencies of the Euro, and have insured that the Euro continues to function as a major international currency.

Chapter 1. General investment policy of the European Union: evolution and impact on Taiwan's investment strategies?

1.1 General trends in FDI: where is the EU standing

The Foreign Direct Investment (FDI) is a category of international investment that reflects the objective of acquiring a lasting interest by a resident entity (direct investor), in an enterprise or entity (direct investment enterprise) operating in an economy other than that of the direct investor.[1] Such lasting interest involves the existence of a long-term relationship between the direct investor and the direct investment enterprise, and a significant degree of influence (not necessarily overall control) on the management of the resulting from the direct or indirect ownership of at least 10 per cent of the voting power.

The European Union (EU) is one of the chief players in global FDI, in terms of both inward and outward FDI. In this first chapter, a brief overview of the current general investment policy of the EU will be presented. The aim of this chapter is to highlight and analyse the current general investment policy of the European Union, as well as current trends in global investment. The first part of this chapter presents the general trends in FDI in the European Union in the past fourteen years. The second part focuses on the establishment of a common EU approach in FDI. Finally, the third part gives an overview of the EU as an attractive FDI destination.

FDI is among the key sources that build up a country's Gross Domestic Product (GDP) and is a key element to stimulate economic growth. Historically, the EU has long been one of the main actors in terms of both inward and outward FDI flows, generating and attracting much of the global FDI. Between 2000 and 2008, the EU was the main beneficiary of two boom cycles in FDI flows, which thus became fundamental in developing its operations on the global markets. Such prominent role reflected not only the potential and size of the single market, but also its openness to FDI, the economic integration among its Member States (MS) and the ability of European companies to successfully compete in different business sectors on foreign markets.[2]

However, in recent years, international FDI trends have undergone a structural shift in favour of emerging markets, following the protracted global economic recession and debt crisis in the EU. These two events have indeed dramatically reduced the amount of FDI inflows into the EU: in 2007 before the economic recession the FDI flows into the 25 MS peaked at almost USD 600 billion. However, this value dropped by half already in 2008 after the US subprime market crashed, and continued to decline steadily in 2009 and 2010 (Figure 1).[3] Outward FDI flows have

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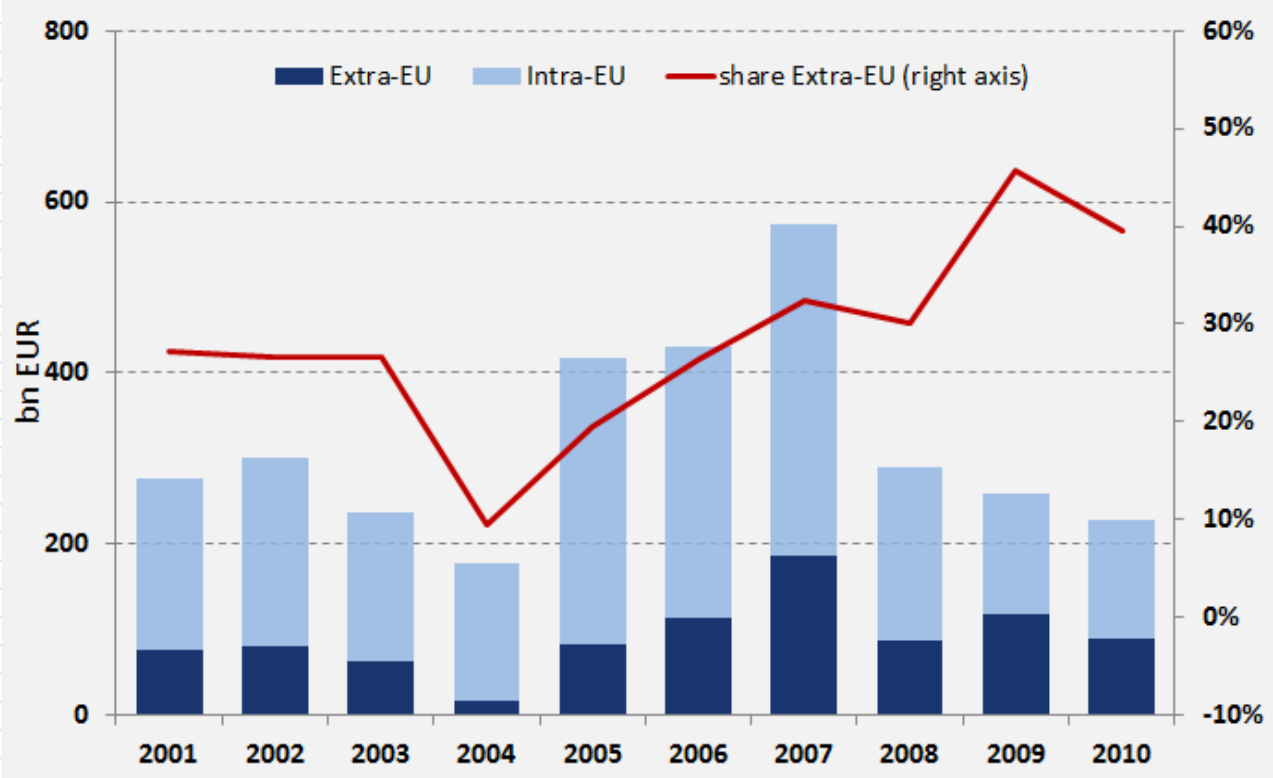
[1] Organization for Economic Cooperation and Development. (2014). Foreign Direct Investment (FDI) Statistics - OECD Data, Analysis and Forecasts.

[2] European Commission. (2013). *European Competitiveness Report 2013*. Retrieved from http://ec.europa.eu/enterprise/policies/industrial-competitiveness/competitiveness-analysis/european-competitiveness-report/files/eu-2013-eur-comp-rep_en.pdf

[3] EUobserver. (2013). *Europe's new challenge: Eroding foreign investment*. Retrieved from http://euobserver.com/opinion/121553 . Also see: UNCTAD. (2013). *World Investment Report (WIR) 2013*. Retrieved from http://unctad.org/en/publicationslibrary/wir2013_en.pdf

also dropped considerably, and have been accompanied by a shift to non-EU markets (*e.g.* China, India, South Korea and Singapore). Subsequently, the EU alone accounted for almost two thirds of the global FDI decline in the timeframe 2008-2010.

Figure 1: EU-27 FDI inflows in 2001-2010 in EUR billion (*Note*: EU is considered EU-25 for 2001-2003 and EU-27 for 2004-2010. EU inflows are calculated as the sum of all Member States. Intra-EU flows to Luxembourg are corrected downwards by 90 per cent, to exclude activities of the Special Purpose Entities. Extra-EU flows exclude offshore centres)



Source: Eurostat, calculation of the Vienna Institute for International Economic Studies

In 2011 the downward trend continued, and by 2012 FDI inflows into the EU contracted by 42 per cent. Among EU Member States, Belgium and Germany saw the sharpest declines in FDI inflows. In particular Belgium – the largest EU recipient of FDI – accounted for much of the fall with a drop of more than USD 100 billion, due to an aggravated volatilisation in the transfer of funds by transnational companies to manage their retained earnings and inflated transactions of special purpose entities (SPEs). Again in 2012, a consistent part of the drop in FDI into the EU was attributable to contracted in- and out-flows of Belgium, as they decreased respectively from USD 103 billion in 2011 to USD -1.6 billion in 2012, and from USD 82 billion in 2011 to USD 15 billion in 2012.

In addition to Belgium, also FDI inflows to Germany witnessed a substantial decline, dropping from USD 49 billion in 2011 to USD 6.6 billion in 2012, due to divestments.[4] FDI outflows to the Southern European countries also shrunk, due to

[4] UNCTAD. (2013). *World Investment Report (WIR) 2013.*

lingering effects of financial and sovereign debt crises. In the four most affected EU countries – Greece, Italy, Portugal, and Spain – FDI inflows more than halved from 2011 and the downward trend continued in 2012.[5] A number of EU countries have nonetheless controlled the descending trends: the United Kingdom, for instance, saw its FDI inflows rising by 22 per cent in 2011, and inflows to the Czech Republic hit their peak level since 2005. Also inflows to Hungary hit a historical record high and Ireland saw a doubling of inflows with a revival of transnational companies' activities.[6]

After the sharp fall in 2011 and 2012, FDI flows in the EU recovered in 2013, albeit marginally and only in some Member States. FDI inflows reached USD 566 billion in 2013, rising 9 per cent over 2012. Whilst outflows accounted for USD 857 billion, almost unchanged from a year earlier. It must be noticed that in the EU FDI flows fluctuated considerably from 2012 to 2013, and reversed in some cases the previous general trends. For instance Germany – one of the most decline-hit countries in the EU – saw its inflows more than doubling in 2013, from USD 13 billion in 2012 to USD 27 billion. In contrast, inflows to France dropped by 80 per cent to USD 5 billion, and inflows to the United Kingdom – one of the less severely hit countries in the first cycle – plummeted by 19 per cent to USD 37 billion.[7] Regionally, nevertheless, both inflows and outflows remained still at half of the peak level in 2007.[8]

FDI flows are also a widely accepted source of stimulus to rejuvenate and "re-energise" national economies. In case of enduring economic crisis, such as that of the EU, foreign investments can fuel new capital into stagnating economies and re-ignite growth. This is why the EU is making attracting FDI a core priority of its economic agenda these days, trying to ease its investment policy and making its economic environment more appealing to the eyes of foreign investors. Short- and long-term measures to attract FDI have so far included two relevant structural reforms: one, the formulation of a common EU approach and policy in the field of FDI, and second, negotiations of Free Trade Agreements (FTAs) with prioritized countries and regional blocs including the US, Mainland China, India, Mercosur, ASEAN and the Russian Federation.

1.2 A common EU approach to FDI

International regulations on FDI can contribute to improve the business climate, increasing legal certainty for investors, and reducing the perceived risk to invest. Nevertheless, although a global multilateral approach is considered preferable to manage FDI flows, states have not yet been able to agree on a single, global FDIs policy, and FDI are still largely managed through Bilateral Investment Agreements (BIAs). This has caused a range of differences with regard to the negotiation of BIAs, and consequently to the management of FDI flows.

[5] Humphrey, J., Schmitz, H. (2002). How does insertion in global value chains affect upgrading in industrial clusters?, *Regional Studies*, Vol. 36., No.9. pp. 1017–1027 cited in UNCTAD, 2013
[6] UNCTAD. (2013). *World Investment Report (WIR) 2013.*
[7] UNCTAD. (2014). *World Investment Report (WIR) 2014*. Retrieved from http://unctad.org/en/publicationslibrary/wir2014_en.pdf
[8] *Ibid.*

EU Member States have over 1400 BIAs relating in part or entirely to FDI with third countries. Consequently, the uncoordinated voice of the EU on FDI resulted in a limited global influence on international investment regimes, despite it being the largest trading entity and principal destination for FDI. This also affected the competitiveness and productivity of the EU's individual firms and countries. FDI flows also depend on a broad range of factors such as: the political and macro-economic conditions of a country or region, the infrastructure situation and human capital, as well as domestic policies and bureaucratic environment. Domestic reforms appear then crucial to promote and attract FDI flows and its effectiveness and reliability is strengthened when backed by international agreements. Ensuring the regulatory framework will remain stable, transparent and non-discriminatory.

The decision to eventually harmonise the structure of all BIAs, in order to promote a more consistent and comprehensive approach to investment, as well as to increase the EU's impact on the international FDI pattern and overall competitiveness was made with the 2007 Lisbon Treaty – entered into force on 1 December 2009 – which outlined the guidelines of the current general investment policy of the EU. In accordance with the Lisbon Treaty, the scope of the Common Commercial Policy (CCP) has been extended to encompass FDI, giving the EU exclusive competence in this area. The objective of a common policy was to increase FDI inflows and outflows in order to enhance the EU global competitive situation and economic growth.

The EU talking with one voice in FDI policy as it does in trade, and negotiating on the basis of a shared policy platform, would ensure greater coherence and balance to investment; and increased its influence over international investment agreements, as well as the competitiveness of EU companies and countries. The greater bargaining power of a single negotiating actor would enable the EU to gain better access third countries' markets, while better protecting its investors. In the past, MS's policies and BIAs established different standards, rules and procedures in the field of FDI management, protection and post-establishment treatment. The new EU investment policy will facilitate the harmonisation of standards and procedures: lowering costs for EU and foreign shareholders, and increasing free resources for value-adding operations within the European market. The EU has not yet developed a single model for agreements on FDI. Instead, it offered to adapt investment provisions to the negotiation contexts and partner countries. This helps to maintain certain flexibility in negotiations, while maximising outcomes for both sides.

The newly envisaged EU general investment policy enhances the EU competitiveness also as a host economy for FDI inflows from foreign investors. Making the EU market as a whole more accessible, attractive and competitive; while maintaining an open investment environment. Until now foreign investors had to base their investment activities in the EU on a specific BIA with a single MS. On the other hand, the new EU general investment approach will outline a series of common standards for inward FDI that will limit investment competition distortions and stabilize the single market.

Furthermore, to secure investment and make the EU market more stable, the general EU investment policy strives to include improved protection measures. The

majority of BIAs contained just basic protection standards and mechanisms. As a result, they were often unfitting to apply to complex environments such as the European market, as they did not integrate contemporary concerns. To overcome such issues, there is an effort towards strengthening the traditional components of BIAs:

- The non-discrimination between domestic and third-country investors that guarantees a fundamental standard in the EU and in international law;
- A Fair and Equitable Treatment (FET) that ensures that all investors enjoy a basic level of protection no matter the treatment granted to other investors (is complementary to non-discrimination);
- The prohibition of unlawful expropriation of investment (also featured already in many EU Member States' legislation and in the European Convention on Human Rights);
- The free transfer of funds.

Moreover, the new BIAs may move beyond these traditional components and expand their scope towards other realms such as environment protection, labour standards, and Corporate Social Responsibility (CSR).

In line with these modifications, the European Commission (EC) has become responsible for the development of a single, comprehensive international investment policy on behalf of the EU. As well as becoming responsible for the identification of the main factors, both long- and short-term, which will set the future EU FDI operations and strategies. In particular, the prospective agenda includes two objectives: stronger engagement to large and emerging markets, and a sharper focus on trade barriers.

Taiwan is also assuming a growing importance in the short-term investment strategy of the EU. Taiwan has a pivotal role in the production and supply chains in the Asian region, and a rapidly expanding trade relationship with Mainland China, enhancing the possibility of triangular trade with the EU. This makes the island an important partner, with a strong potential to develop bilateral trade. In late 2013, a resolution of the European Parliament urged the EC to start negotiations with Taiwan over an agreement on investment protection and market access, so as to enhance the legal framework for investment and increase the volume and quality of bilateral FDI flows. The EU is a significant investor into Taiwan, with FDI totalling USD 31.9 billion, accounting for 26.3 per cent of all FDI into Taiwan. The signing of a comprehensive investment treaty, would be reciprocally beneficial, as the EU's and Taiwan's economic assets match each other well. In particular, the greatest benefits from a possible agreement on investment would most likely concern FDI flows and technology transfers in the Information and Communication Technology (ICT) industry, as a highly capital and technology intensive industry and most important part of Taiwan's manufacturing sector.

1.3 The EU's attractiveness to investors

At first glance, the current situation of the EU's economy might not be the most appealing to foreign investors, given the prolonged economic recession and drawn-out sovereign debt crisis. Nonetheless, despite the drop in FDI flows and recent descending trends, international indicators started signalling in late 2013 and beginning of 2014 an improvement in the Euro-area, with regard to investment and economic growth. Elements that for a long time have made the EU a privileged and attractive location for foreign investment are making Member States appealing to foreign investors once again. These advantages include receptive FDI regulation policies, a highly educated workforce and high productivity levels of firms. Provided the economy recovers with improved domestic demand and a new, comprehensive range of mechanisms and higher standards for FDI protection. Member States would become again highly attractive targets for FDI.

In 2013, Bank of America Merrill Lynch encouraged stockholders to invest in the EU, setting a list of seven reasons to buy Eurozone stocks, which are reported and further analysed below:[9]

1. The EU's economic activity is improving, contradicting the economists' very low prospects. Indeed, the Manufacturing Purchasing Manager's Index (PMI) revealed that, in 2013, 14 out of the 16 EU countries that reported for the PMI experienced an expansion in their manufacturing activities.[10]
2. Credit creation in the Eurozone also shows gradual recovery. The 2014 ECB Bank Lending Survey confirmed a stabilisation in bank credit conditions for EU enterprises and households.[11]
3. Financial stress in the Eurozone continues to remain below the levels seen in the past few years. While reasons of concern regarding tensions in sovereign debt markets remain, international experts believe financial stress in the EU has mostly moved to a "known unknown", with less shock factors on markets and economic activities.[12] In its 2014 Financial Stability Review of financial sector risks, the ECB said financial stress indicators remain low and stable in the Eurozone.[13]
4. Corporate earnings are recovering and are expected to grow significantly in 2014, prompting a general better economic performance.[14]
5. Analysts' valuations of the EU's assets and firms are becoming very attractive for investors. The June 2014 MSCI (Morgan Stanley Capital International) Europe Index shows a growing trend across the developed markets countries in the EU.

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[9] NASDAQ. (2013). *7 Reasons to Invest in Europe Now: Credit Suisse and BofA Merrill*. Retrieved from: http://www.nasdaq.com/article/7-reasons-to-invest-in-europe-now-credit-suisse-and-bofa-merrill-cm259569

[10] International Business Times. (2014). *Europe Flash Composite PMI Data For March Show Services And Manufacturing Sectors In France Expand While Contracting In Germany; Euro Zone Expands For Ninth Straight Month*. Retrieved from: http://www.ibtimes.com/europe-flash-composite-pmi-data-march-show-services-manufacturing-sectors-france-expand-while

[11] European Central Bank. (2014). *The 2014 Euro Area Lending Survey*.

[12] *Ibid.*

[13] European Central Bank. (2014). *Financial Stability Report 2014*.

[14] Alpha Now – Thomson Reuters. (2014). *European Corporate Earnings Expected To Return To Growth*. Retrieved from:http://alphanow.thomsonreuters.com/2014/02/european-corporate-earnings-expected-return-growth/

6. Eurozone equity evaluations are improving as the financial crisis fades and economic conditions normalise. Until late 2011, equity funds in the EU were considered a no-go by most foreign investors and remained under-owned. Better macro data for the Euro area over the last two years, however, have sparkled a surge in investor interest in the EU, which could likely reverse the underperformance of the region's equities. Data from EPFR Global revealed that in 2013 inflows into EU equity funds hit a record high at USD 53,5 billion, and they keep holding solid attraction.[15]
7. EU FDI stocks have historically outperformed when United States bond yields rise. According to the Organisation for Economic Cooperation and Development's (OECD) 2014 Investment Outlook and forecasts by Credit Suisse economists and analysts, there is a lot of potential earnings growth in the EU from the on-going US recovery, defined as "a very youthful expansion". Analysts foresee a steadily higher growth of US Treasury yields as the US economy improves from current levels and as the US economic growth pulls up the EU's activity, the latter's equities are expected to be on an uptrend in forthcoming months.[16]

1. 4 Trade Barriers

Because of its strong position in the ICT sector and strong growth rates, Taiwanese companies do not tend to find much difficulty in trading and investing in Europe. However, there have been some cases on the Trade Bureau of the European Commission involving Taiwanese companies in their investigations. Currently, the European Commission has only one case against Taiwan regarding the dumping of stainless steel fasteners. The investigation for this case initiated in 2013 and involved also Mainland China, the resolution is expected to be published in August 2014.

The European Union has filed up to 11 different anti-dumping cases which have involved Taiwanese companies in their investigations. For seven different cases, after the resolution of the investigation, no sanctions were imposed. One complaint was retired in a case concerning stainless steel fittings. There have only been three cases involving Taiwan for which there have been provisional measures imposed on products. One case filed on peroxodisulphates investigated several countries, including Taiwan, however, at the resolution of the case only Mainland China was sanctioned. Similarly, in a case regarding polyester yarn, Mainland China, the Republic of Korea and Taiwan were investigated but sanctions were only applied to Mainland China. Preventative measures were applied for the case previously mentioned on stainless steel fasteners, however, we will need to await to further know the definitive measures imposed to Taiwanese products.[17]

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[15] Stafford, Thomas (2014, April 8). Eurozone equity prized again as crisis recedes. *Business Day Live*. Retrieved from http://www.bdlive.co.za/markets/2014/04/08/eurozone-equity-prized-again-as-crisis-recedes

[16] Credit Suisse. (2014). *Q2-Investor Call: CS Prime Select Trust (Lux) Global Equities Long/Short*. https://www.credit-suisse.com/media/am/docs/ch/hedge-strategies/discussion-paper-global-equities.pdf

[17] European Commission. (2014). *Case R576 - Stainless steel fasteners and parts thereof.* Retrieved from http://trade.ec.europa.eu/tdi/case_details.cfm?ref=ong&id=1964&sta=21&en=24&page=2&c_order=date&c_order_dir=Down

There may well an emerging tendency to include Taiwan in anti-dumping and anti-subsidy actions which 'Western' firms lodge with their competent authorities. Thus, in the summer of 2013, the EU and Mainland China came to an agreement in an already long simmering conflict about solar panel imports into the EU. The ProSun group of EU producers, led by the German firm Solar World has decided to contest the Commission's decision at the European Court of Justice. It also rekindled its complaints in the US, now addressing them against Mainland China and Taiwan, arguing that firms from the Mainland, in response to the anti-dumping levy, had diverted their production and export platform to Taiwan. One should nonetheless notice that Solar World, which at some point in the earlier days was amongst the world's leading firms, has remained combative: it has spearheaded complaints by producers in the USA and later in the EU. But at the same time in the EU another grouping, consisting mainly of importers of solar panels and of installers of solar equipment, opposed the Pro Sun position.[18] [19]

There has been an anti-trust case concerning the fixing of prices on LCD screens used for computers and televisions for a period extending from 2001 to 2006 for which the EU fined Taiwanese and Korean firms for an estimated USD 850 million.[20]

In terms of trade barriers, it appears that the main difficulties are the different product standards and labelling schemes. Ambiguity on product standards due to a lack of harmonisation between Taiwan and the EU or on the labelling of issues have already caused some issues between both Taiwan and the EU relating to certain ICT products, which is further discussed more in detail in chapter 3.1.4. Furthermore, when negotiating a BIA/FTA Taiwan and the EU should push for procedures of mutual recognition for testing methods and product technical standards in order to reduce barriers for trade and reduce costs of multiple product testing.[21]

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[18] PR Newswire. (2014). *EU ProSun claims massive violation of EU trade deal by chinese solar manufacturers*. Retrieved from http://www.prnewswire.co.uk/news-releases/eu-prosun-claims-massive-violation-of-eu-trade-deal-by-chinese-solar-manufacturers-261985521.html

[19] Ali-Oettinger, Samsiah. (2013, June 3). AFASE starts petition against import duties; EU ProSun responds. *PV Magazine*. Retrieved from http://www.pv-magazine.com/news/details/beitrag/afase-starts-petition-against-import-duties-eu-prosun-responds-updated_100011565/#axzz3H3uUVEQv

[20] BBC. (2010). *S Korea and Taiwan firms fined by EU for price cartel.* Retrieved from http://www.bbc.co.uk/news/world-asia-pacific-11955623

[21] European Commission. (2010). *CONSULTATIONS FTP Reply – Government of Taiwan (a).* Retrieved from http://trade.ec.europa.eu/doclib/docs/2010/september/tradoc_146573.pdf

Chapter 2: Strategic considerations for EU firms to invest in Taiwan

2.1 EU Global Europe Strategy

In 2006 the European Commission published the Global Europe Communication, in which the EC highlighted their interest in opening their market and engaging further with other parts of the world in order to expand their international outreach in world markets. Within this communication the Commission already signalled its strategy of establishing several FTAs in order to gain better access into international markets, amongst them they targeted ASEAN (Association of Southeast Asian Nations), Korea, and India. Regarding Mainland China, the EC argues that "[it] is the single greatest test of Europe's capacity to make globalisation an opportunity for jobs and growth. Europe must get [Mainland] China right, as an opportunity, a challenge, and prospective partner."[22]

The only FTA in Asia to be finalised was the one with South Korea. Having been negotiated since 2007, after eight formal rounds of talks the agreement was finalized in October 2009. The agreement has been applied since 1 July 2011, when all the stages of approval in the EU legislative process were completed. This is the most ambitious FTA the EU has developed, in which the two partners have agreed to eliminate 98.7 per cent of duties in terms of trade value over a period of 5 years, and also extensive liberalisation of trade in services such as telecommunications, financial and legal services.[23] The EU also aimed to establish an FTA with ASEAN in 2007, however in 2009 after seven negotiation rounds, both sides decided to halt the negotiations "in order to reflect on the appropriate format of future negotiations."[24] After this failed attempt of developing an interregional FTA, the EU commenced negotiations with individual ASEAN member states. In December 2012 an FTA with Singapore, the EU's largest trading partner in ASEAN, was completed. Although it is yet to come into force. Other FTA negotiations between the EU and ASEAN members include Malaysia, Vietnam and Thailand.[25]

In 2013 the EU made further efforts in their outreach to Asian markets by initiating the negotiations for an FTA with Japan, addressing issues such as non-tariff trade barriers and further liberalisation of both economies.

One of the recurring main issues the EU faces when negotiating FTAs with other countries in Asia is Intellectual Property Rights (IPR). This is due to the rapid development of technological industries within Asia, which in many cases are in direct competition or may even surpass the capabilities of European companies. The EU recognizes within the Europe 2020 Framework that its capabilities within new technologies sector is not as competitive as those in the United States or some

[22] European Commission. (2014). *GLOBAL EUROPE Competing In The World*. Retrieved from http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130376.pdf
[23] European Commission. (2011*). The EU-Korea Free Trade Agreement in Practice.* Retrieved from http://trade.ec.europa.eu/doclib/docs/2011/october/tradoc_148303.pdf
[24] European Commission. (2014). Free Trade Agreements. Retrieved from http://ec.europa.eu/enterprise/policies/international/facilitating-trade/free-trade/index_en.htm
[25] Khandekar, G. (2014). *Mapping EU ASEAN Relations*. Retrieved from http://www.fride.org/publication/1183/mapping-eu-asean-relations

East Asian nations.[26] In a follow up report on the Europe 2020 strategy, the World Economic Forum argues that the "EU is increasingly falling behind globally in building the digital infrastructure and innovative capacity that would allow its economies to unlock new sources of growth."[27] The EU has based its Europe 2020 strategy on the three axes of: smart growth, sustainable growth and inclusive growth. Proposed efforts on the development of a smart economy, rely on the setting of targets such as investing three per cent of EU's GDP in Research and Development (R&D) or transforming energy efficiency and making a shift towards renewables.

2.2 Geo-Strategic Importance

The EU has successfully completed its FTA negotiations with South Korea and Singapore, although it has not been able to replicate these results with other countries on the Asian continent. Which leads to the question: Is it time to assess the potential of a BIA with Taiwan? From a geo-strategic perspective, Taiwan is perceived as a highly attractive investment partner for the EU. First, Taiwan enjoys an advantageous location only 180 kilometres off the coast of Mainland China, in between the East China Sea and the South China Sea. As one of the four Asian tigers, it has experienced high growth rates over the past five decades and is now an advanced industrial economy with a highly skilled workforce and a prospering high tech sector. Additionally, both the EU and Taiwan are members of the WTO and maintain multilateral discussions on issues of world trade.

A report by the European Centre for International Political Economy (ECIPE) concludes that investments in Taiwan could help EU companies gain better market access and raise their profile in Asia.[28] Taiwan is a particularly attractive investment partner for European companies given its strategic relation with Mainland China after the implementation of the ECFA, which makes Taiwan a gateway for investment. Taiwanese subsidiaries of multinational companies are no longer exposed to restrictions on FDI's into Mainland China, could provide opportunities for trilateral cooperation. Furthermore, Taiwan is at the heart of the Asian supply chains and plays a critical role, particularly in the ICT sector. These two factors make Taiwan an attractive location for high-value production in supply chains and as a high-value hub[29] between Europe and Mainland China, a situation in which these three different economies can benefit and take value from. By teaming up with a Taiwanese partner, EU firms could benefit from the former's closer economic ties with Mainland China, as well as its acquaintance with the culture and the environment for business in Mainland China. Taiwan, on the other hand, could benefit from its intermediary role through the voluminous investment streams that would otherwise bypass Taiwan. Such forms of trilateral trade or investment could for example result from joint initiatives of Taiwanese and EU firms towards the market scene in Mainland China.

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[26] European Commission. (2012). *Europe 2020: Europe's Growth Strategy*. Retrieved from http://ec.europa.eu/europe2020/pdf/europe_2020_explained.pdf

[27] World Economic Forum. (2014). *The Europe 2020 Competitiveness Report Building a More Competitive Europe. 2014 Edition*. Retrieved from http://www3.weforum.org/docs/WEF_Europe2020_CompetitivenessReport_2014.pdf

[28] Dreyer, I., Erixon, F., Lee-Makiyama, H., & Sally, R. (2010). *Beyond geopolitics – the case for a free trade accord between Europe and Taiwan.* European Centre for International Political Economy.

[29] Dreyer et al. *Beyond Geopolitics – the Case for a Free Trade Accord Between Europe and Taiwan.*

There is one main argument used to prevent open discussions about an EU-Taiwan BIA/FTA: the one-China policy. The EU recognises the one-China policy, and given the magnitude of relations with Mainland China as the EU's main source of imports and second trading partner, it is understandable that the EU is cautious to engage in actions that could hamper their relationship. However, as argued by experts in the field, "the One China policy has not stopped [Mainland] China itself from doing a FTA with Taiwan".[30] Other countries with which the EU already have FTAs or are engaging in negotiations, such as Singapore, Korea, and Japan; have already started negotiations with Taiwan for FTAs and BIAs. Singapore completed its negotiations and implemented the agreement in 2013; and there are increasing expectations for an upcoming announcement on the date of signature of the Taiwan-Korea FTA.[31] How to address a Taiwan BIA/FTA under the context of the one-China policy may be a delicate situation, but it is important to highlight that they are both members of the WTO and have pre-existing agreements and on-going negotiations under the umbrella of the organisation.

The European Council approved a mandate in 2005 to initiate negotiations on a Partnership and Cooperation Agreement with Mainland China and in 2013 the Council gave its authorization to the EC to launch negotiations for a BIA.[32] At the time of writing, they have already completed three rounds of negotiations for the agreement, however there are some issues which may prove to be difficult to reach consensus, such as intellectual property rights or labour standards. The European Commission recognizes on its website that "at high levels of trade irritants occur, and the EU remains firm on the need for [Mainland] China to comply with its international commitments"[33].

Although there is commitment on both sides for this agreement to advance negotiations, it may take some time to achieve the desired results and it would be interesting to explore other avenues. One of these possibilities would relate to the use of triangular trade mechanisms. "Some EU businesses, in particular in the ICT industry, are already reaping the benefits of indirect market access."[34] European businesses already make use of the ECFA between Taiwan and Mainland China as a gateway into the Chinese market, therefore it makes logical sense for the EU to not only negotiate a BIA with Mainland China, but also with Taiwan in order to provide support for its companies already operating there.

2.3 Taiwan's ICT Sector

Taiwan has scored an outstanding performance in the ICT sector, having started its ascendency already decades ago and as a spearhead in its export-oriented economic growth strategy. Many Taiwanese firms are still in the vanguard of the

[30] Euractiv. (2012). *Rethinking Taiwan: How the EU should follow China into a trade agreement.* Retrieved from http://www.euractiv.com/global-europe/rethinking-taiwan-eu-follow-chin-analysis-516443
[31] Wei, K. (2014, September 29). Taiwan, S. Korea may sign investment treaty 'soon'. China Post. Retrieved from http://www.chinapost.com.tw/taiwan/intl-community/2014/09/29/418282/Taiwan-S.htm
[32] European Commission. (2014). *Overview of FTA and Other Trade Negotiations.* Retrieved from http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf
[33] European Commission (2014). *Countries and Regions: China.* Retrieved from http://ec.europa.eu/trade/policy/countries-and-regions/countries/china/
[34] Euractiv. *Rethinking Taiwan: How the EU should follow China into a trade agreement.*

world's ICT sector, manifestly one of rapid growth and vast potential. Taiwan's technological knowhow in the ICT sector and its highly skilled human resources could make the country a high priority strategic partner for the EU during decades to come. As mentioned in the previous chapter, the EU is increasingly falling behind in the hi-tech sector and needs to look for collaboration with countries that are more competitive in this field. A bilateral investment agreement would facilitate closer cooperation between the ICT sectors of both actors. Taiwan, being one of the world's leading hardware producers, could therefore be seen as a potential long-term partner for the EU that could help to boost its competitiveness in the ICT sector. The subsectors of semiconductors, optoelectronics, electric components, and advanced machinery, designed for electrical equipment production, stand out in particular as areas that could see the most gain from reaffirmed investment ties.

So far, four facets of the ICT sector in Taiwan have stood out, namely (a) the emphasis on the production of hardware; (b) the predominant role of comparatively small and medium-sized companies which contrasts with Taiwan's direct regional competitors; (c) much of the output managed by Taiwanese firms is in fact outsourced to Mainland China; and (d) related with the previous factor, Taiwanese firms often act as original equipment manufacturers (OEM) for large firms with well-known brands and items. Provided they can enlist the orders of such large clients, the OEM firms do not incur marketing risks, but they must be able to attain a high volume of output, as their profit margins are thin. Having a strong reputation as a hardware producer Taiwan, however, still has potential in the field of software applications – by joint investments in that sector, Taiwan and Europe could both benefit from the development of Taiwan's software sector. Signing a BIA would result in further reduction of non-tariff barriers, and perhaps most importantly, it would offer additional protection of intellectual property rights, thus prompting further investment in R&D, innovation, and software development.

Facing a difficult geo-political position and intensifying competition, recent opinions have been voiced in Taiwan and elsewhere, stating that Taiwanese firms will face a complex predicament in preserving their presently excellent competitiveness.[35] These critical notes revolve around the observation that hardware, and laptop production in particular, is no longer the most dynamic subsector of the ICT realm, but innovative devices, services, and software development have taken over the leading role.

Recently, the supply side of the ICT sector has become viewed as a modularised and tiered structure consisting of three layers: (a) networked element providers; (b) operators of fixed and mobile networks; and (c) platform, content and application providers. The last layer is found to be the most R&D intensive.[36] Hence, Taiwan risks of losing out in the tough competition in the ICT ecosystem.[37] The Taiwanese authorities are conscious of these less favourable factors, and the

[35] BBC (2013). *Taiwan's struggle to become an innovation leader*. Retrieved from http://www.bbc.com/future/story/20130918-taiwans-rocky-road-to-innovation

[36] Veugelers, R., (2012). *New ICT sectors: platforms for European growth?* Bruegel Policy Contribution 2012/14. Retrived from http://www.bruegel.org/publications/publication-detail/publication/745-new-ict-sectors-platforms-for-european-growth/

[37] Yee, A., (2014). *For the internet age, Taiwan's ICT industry needs a new model.* East Asia Forum. Retrieved from http://www.eastasiaforum.org/2014/02/25/for-the-internet-age-taiwans-ict-industry-needs-a-new-model/

need for corrective measures. This observation is consonant with the finding in ECIPE's already cited 2010 paper, whereby Taiwan is advised to improve its less satisfactory position in the service sectors. The challenge for Taiwan is a serious one, but so far that county has shown a remarkable resilience in its adaptation to rapidly changing circumstances, that are bound to further prevail in the ICT sector. Thus, a recent tally of the top 20 semiconductor sales leaders in the world reveals volatile changes in market shares, with four Taiwanese firms in the group, and Intel and Samsung leading in the top positions.[38]

The assessment of Taiwan's ICT industry suggests that the country should seek ways to improve its output and export performances by having its firms teaming up with counterparts elsewhere. Would the EU provide promising linking-up opportunities for Taiwanese enterprises eager to enhance their performances? According to the ECIPE report, bilateral services trade between the EU and Taiwan is well below its potential and "Taiwan needs to diversify strongly into services, including ICT services."[39] The signing of a BIA between the EU and Taiwan could enhance investment in the ICT service sectors and would facilitate knowledge transfer in diverse sectors as R&D, hardware design, and product marketing. This would boost much needed innovation both in the EU and Taiwan. Innovation in services is especially alarming for Taiwan as the EU's services exports to Hong Kong and South Korea are almost the double of EU services exports to Taiwan. If Taiwan moves toward a liberalisation of the service sector and creates a more favourable business environment for this sector, there is much potential for investments and trade. In particular in the categories of ICT and R&D services a broad range of opportunities for EU-Taiwan collaboration exists.

In the above cited paper, Veugelers finds evidence that innovation in Europe faces regulatory barriers.

> "In-depth analysis of some specific new emerging ICT sectors shows that the problem in Europe appears not to be so much in the generation of new ideas, but rather in bringing ideas successfully to market. Among the barriers are the lack of a single digital market, fragmented intellectual property regimes, lack of an entrepreneurial culture, limited access to risk capital and an absence of ICT clusters"[40].

Hopefully, efforts by the EU Commission may result in a more common positioning, as, for example, in the field of renewable energies. As against this, the opportunities and the initiatives in the ICT sectors should not be underrated considering that Europe provides 20 per cent of the world's electronics industry equipment and materials, as reminded in a recent article in The Economist. Admittedly, "microprocessors and memory chips are mass-produced mainly in Asia and America" but "Europe's semi-conductor industry is often underestimated".[41] The same source adds "the trick to increasing market share […] is to expand what Europe does best and collaborate cross-borders."[42]

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[38] IC Insights (2014), *McClean Report.*
[39] Dreyer et al. *Beyond Geopolitics – the Case for a Free Trade Accord Between Europe and Taiwan.*
[40] Veugelers, R., *New ICT sectors: platforms for European growth?* p. 1.
[41] The Economist. (2014) *European chipmakers fighting back.* Retrieved from http://www.economist.com/news/business/21625887-specialisation-and-new-technologies-may-put-europe-map-again-fighting-back
[42] *Ibid.*

Moreover, Taiwan's strong comparative advantage in the ICT sector[43] is becoming more interesting for the EU, as it seeks to reach its 2020 goals of smart growth, sustainable growth and inclusive growth. For example, Taiwan could play an important role in Europe's growing quest for clean technology. Most importantly, Taiwan has become a prominent producer in the field of solar energy, without apparently having been hit by a fatal financial disaster, as has happened in the USA, Mainland China and Germany.

It can be concluded that, from the vantage point of EU business, Taiwan's geo-strategic importance makes the country a highly attractive investment partner with a notable potential for bilateral cooperation in the R&D, the ICT and the Clean Technology sector, as well as in other sectors.

2.4 Domino Effect for Investment Agreements

The completion of a BIA between the EU and Taiwan could have a positive effect on the negotiation power of both the EU and Taiwan in their FTA negotiation processes with other countries. Taiwan is seeking to participate in the Trans-Pacific Partnership (TPP) negotiations, one of the most important regional trade agreements (RTA) that are being negotiated in the 21st century. Recent reports suggest that key TPP members would welcome Taiwan's participation, contingent on the approval of the 12 pre-existing participants of the negotiations: United States, Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.[44]

Europe is attempting to achieve better investment and trade conditions with the United States through the Transatlantic Trade and Investment Partnership (TTIP) negotiations. This leaves room for mutual assistance and empowerment, meaning that the EU could use this as an entry point to the centre of Asian supply chains and Taiwan could use their BIA as a springboard for further BIAs or even FTAs with other countries. A 1993 study by Richard Baldwin shows that the completion of regional investment or trade agreements often cause a domino effect[45], as other countries seek to be included in newly arising trade partnerships. In 2010, Baldwin and Jaimovich presented further empirical evidence of the contagious effect of FTAs and other bilateral or multilateral trade and investment agreements.[46]

The EU recently finished negotiations with Canada for an FTA and is currently negotiating FTAs with India, Japan, individual ASEAN countries, Mercosur, and with the United States within the framework of the TTIP.[47] The EU and Russia have

[43] Dreyer et al. *Beyond Geopolitics – the Case for a Free Trade Accord Between Europe and Taiwan.*
[44] The China Post. (2014). *US welcomes Taiwan membership in TPP if island fulfills criteria: diplomat.* Retrieved from http://www.chinapost.com.tw/taiwan/foreign-affairs/2014/03/01/401777/US-welcomes.htm
[45] Baldwin, R. (1993). A Domino Theory of Regionalism. *University of Geneva*. Retrieved from http://graduateinstitute.ch/files/live/sites/iheid/files/sites/ctei/shared/CTEI/Baldwin/Publications/Chapters/Regionalism/dom_old.pdf
[46] Baldwin, R. and Jaimovich, D. (2010). Contagious FTAs: New evidence on the domino theory of regionalism. *VOX.* Retrieved from http://www.voxeu.org/article/contagious-ftas-new-evidence-domino-theory-regionalism.
[47] European Commission. (2014). Overview of FTA and Other Trade Negotiations. Retrieved from http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf.

engaged in negotiations for an FTA, however, given recent events the future of these negotiations remains uncertain.[48] Taiwan has become proactive since its World Trade Organisation (WTO) accession in 2002[49] in world trade. Having signed several agreements with Latin American and Caribbean countries; and after the ECFA, finalizing agreements with Singapore and New Zealand, and engaging in negotiations with the United States,[50] South Korea[51] and individual members of ASEAN.[52] An EU-Taiwan BIA could therefore have a positive influence on other on-going bilateral trade and investment negotiations, by inducing a domino effect.

2.5 Normative Power Similarities

Normative power similarities of EU countries and Taiwan on a political as well as an economic level are another factor in making the country an interesting investment destination for EU companies.

On a political level, Taiwan shares many characteristics with EU countries and thus offers a very secure and familiar investment environment for EU businesses. Taiwan has an efficient representative democratic system, low corruption levels, freedom of press and a generally stable political situation.

On an economic level, Taiwan's open market economy has attracted many foreign investors in the past decades. In the Index of Economic Freedom[53] Taiwan ranks 17th, just between Luxembourg and Germany. The country furthermore enjoys a high regulatory efficiency with a business freedom of 93.9 per cent and a reliable rule of law. Since Taiwan's accession to the WTO in 2002 the country has further liberalised its economy and established a well-developed legal and commercial infrastructure in the private sector. Although state involvement still remains relatively high, government spending has considerably decreased in the past.

In conclusion, it can be said that Taiwan provides a very familiar and reliable investment environment for European companies from a political and economic point of view. Considering all those similarities and strategic windows of opportunity, EU-Taiwan cooperation is still well below its potential, which leaves room for further enhancement. There is much potential for EU investments in Taiwan, as the risk of doing business in Taiwan is relatively low for European companies thanks to the similar political and economic environment. European companies can furthermore form joint ventures with Taiwanese firms, so as to overcome initial problems arising from cultural discrepancies.

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[48] European Commission. (2014). *Countries and Regions: Russia*. Retrieved from http://ec.europa.eu/trade/policy/countries-and-regions/countries/russia/

[49] Rosen, H.D., Lardy, N. (2004). *US-Taiwan Free Trade Agreement Prospects.* Retrieved from: https://ideas.repec.org/b/iie/ppress/pa73.html

[50] *Ibid.*

[51] The China Post. *US welcomes Taiwan membership in TPP if island fulfils criteria: diplomat*

[52] Minh, T. (n.d.). *Towards an FTA between Taiwan and ASEAN: Opportunities and Approaches.* Vietnam Academy of Social Sciences. Retrieved from http://www.aseancenter.org.tw/upload/files/OUTLOOK002_03.pdf.

[53] Heritage Foundation. (2014). *Index of Economic Freedom - Taiwan*. Retrieved from http://www.heritage.org/index/country/taiwan.

Chapter 3: Strategic Considerations For Taiwanese Firms to Invest in the EU

3.1 Constraints and Opportunities for Taiwanese OFDI

3.1.1 A wide single market

The European Union is composed by the different economies of the 28 MS, within which the internal customs duties have been abolished, as well as a high number of non-tariff barriers. However, the members of the EU have remained as separate economic entities. The result is a market comprising 503 million[54] inhabitants in an economy characterised by high per capita incomes. Thus a Taiwanese company that establishes a subsidiary within the individual EU MS extends its potential outreach to the European market as a whole.

Despite being a single market, the European market is by no means homogenous. The most notable division within the European market can be found between the Euro area, composed by 18 MS, and those MS which have kept their own national currencies. The countries which have not adopted the Euro tend to belong to the new additions of the European community, whose level of economic development does not yet qualify them to join the Euro. Although this is not the case for countries such as Slovenia, Cyprus, Malta, Slovakia, Estonia and Latvia, who have joined the Euro afterwards, and for Lithuania who will also adopt the currency this in 2015. However, there are other countries that have opted out of joining the single currency system due to concerns about losing their national sovereignty, as in the case of the United Kingdom and Denmark. For a Taiwanese company, when exploring the different alternatives for setting up an FDI in the EU, it must consider the practicality of setting-up its investment within the Euro-area, operating within a more stable currency with wide international strength.

3.1.2 Supranational and national sets of regulations in the EU

Taiwanese firms should take into account the different variables in legislation and the set of regulations when seeking to set up an FDI project in the EU. Most of the variables to be weighed concern the 28 different sets of national regulations of the different MS. Such option will be shaped by basic economic considerations and the assessment of different regulatory parameters concerning the type of products the firms wish to bring to the market. The company will also have to evaluate the best entry mode into the market, by comparing the different types of companies and legal entities that best fits their purposes, with special focus on initial levels of investment required or the liability of the owners. Furthermore, an investor who sets up a company in one or several of the EU MS will have to deal with working in different national sets of rules and operating within the different languages of the EU. There are 24 official languages in the EU, and this might signify an added cost in translations for firms wishing to operate simultaneously in several MS.

[54] Data retrieved from EUROSTAT. (2014).

When coming to invest in Europe or set up an affiliate, one of the main variables to be taken into account is the currency in which the FDI would be operating. The market potential of the Euro-group is significantly larger than that of non-Euro members. The exchange-rate risk, which is inherent in international trade, is more manageable for the Euro, since it carries strong international weight alongside other currencies such as the US dollar or the Chinese RMB. As mentioned in the previous section of this chapter, the rest of currencies within the EU tend to appear weaker by comparison because they typically belong to the new members of the EU which are still in the process of developing their economies to match those of older, more advanced economies of the EU; with the exception of the British Pound Sterling.

It has been observed from the results yielded by the quantitative analysis, that a significant portion of Taiwanese FDI into Europe is within the ICT industry and other high-tech manufacturing sectors. Taiwanese firms within this sector would therefore need to consider the availability of a qualified workforce that matches their needs.

3.1.3 Access to Funding and Financial Aid

Funding for companies can take place throughout different levels of the EU and MS apparatus. Policies conducted at the EU level, the national and regional level all address different needs and have different purposes. There appears to be a larger support for larger firms as opposed to Small and Medium Enterprises (SMEs), national enterprises or multinationals. As highlighted by the European Competitiveness Report 2013, the companies most likely to receive public support are those in higher-tech industries participating in joint R&D projects, or those which are exporting firms and have a larger turnover.[55]

3.1.4 Relations in the World Trade Organization

Relations within the World Trade Organization (WTO) are on a good standing. There is only one case directly related to Taiwan and the EU. The complaint was filed by Taiwan on 12 June 2008 when Taiwan requested consultations with the European Communities due to claims that the EU was not upholding its commitments under the Information Technology Agreement (ITA), concluded at the Singapore Ministerial Conference of 1996, to provide duty free treatment for certain products. Subsequently both the Unites States and Japan joined the consultations, followed by Mainland China, regarding European measures of tariff classification, and consequent tariff treatment for certain information technology products. The products at issue included flat panel display devices, set-top boxes that have a communication function and multifunctional digital machines. On 18 August 2008 the United States, Japan and Taiwan requested the establishment of a panel. The representatives of Taiwan stated their concern "about some ambiguity and lack of clarity with the measures adopted by the European Union."[56] Two years after the initial request for a panel, the panel circulated their reports on 16 August 2010 in

[55] European Commission. (2013). *European Competitiveness Report 2013. Towards knowledge driven industrialization.*
[56] World Trade Organization. (2011). *EC – IT PRODUCTS1.* Retrieved from http://www.wto.org/english/tratop_e/dispu_e/cases_e/1pagesum_e/ds377sum_e.pdf

which it found that the "EU failed to publish promptly the explanatory notes related to the classification of certain STBCs [set-top boxes which have a communication function], so as to enable governments and traders to become acquainted with them."[57] The panel also found some inconsistencies in the EU's performance concerning their obligations to the General Agreement on Tariffs and Trade (GATT) of 1994, breaching Articles II:1(a), II:1(b), X:1 and X:2.[58] These issues were then to be amended by the EU under their commitments to the WTO on an agreed timeline following the WTO protocol.

Interactions amongst the both however have not been blemished by this aforementioned case. The European Economic and Trade office describes their relationship with Taiwan within the WTO as a "structured dialogue",[59] Referring to the meetings held in their annual consultations regarding trade policy issues, and considering their obligations under the WTO and issues of bilateral importance. There are four technical working groups that meet during these consultations, considering intellectual property rights, technical barriers to trade, pharmaceutical, and sanitary and phyto-sanitary rules.

Furthermore, both parties are involved in the negotiations of the Trade In Services Agreement (TISA) which will involve over 23 WTO members, who together combine over 70 per cent of world services trade. This agreement builds upon the already existing General Agreement on Trade and Services (GATS). The EU is very keen on having this agreement follow through because as they have expressed "it will create growth and jobs"[60]. The EU on their website further expands on the need to promote TISA given that "the EU is the world's largest exporter of services with tens of millions of jobs throughout Europe in the services sector". It is therefore aligned with the goals of the EU to disseminate such agreements since it will potentially expand inward flows of investment to their economy and also allow European companies to expand outside of the single market.

Both parties are heavily entwined within the WTO framework, also collaborating on the plurilateral negotiations on an Environmental Goods agreement which was formally launched on 8 July 2014.[61] This agreement involves 14 WTO members including the European Union, Taiwan, Mainland China, the Republic of Korea, Singapore and the United States. The 14 members involved in negotiations account for 86 per cent of global environmental goods.[62] Such an agreement does not solely pursue the advancement of international trade, but as Director-General of the WTO, Roberto Azevêdo points out, they "remain conscious of the positive role that trade can play in environmental protection."[63] The success of such agreement would further advance the EU and Taiwan's aligned interests. The EU under the Europe 2020 strategy aims to improve its environmental impact and to meet its global

[57] World Trade Organization, *EC – IT PRODUCTS1*
[58] World Trade Organization. (2011). *European Communities and its Member States — Tariff Treatment of Certain Information Technology Products.* Retrieved from http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds377_e.htm
[59] European Commission. (2014). EU-Taiwan Fact file 2014. Retrieved from http://eeas.europa.eu/delegations/taiwan/documents/more_info/eufactfile2014a.pdf
[60] European Commission. (2014). *In Focus – Trade in Services Agreement (TISA).* Retrieved from http://ec.europa.eu/trade/policy/in-focus/tisa/
[61] World Trade Organization. (2014). *Azevêdo welcomes launch of plurilateral environmental goods negotiations.* Retrieved from http://www.wto.org/english/news_e/news14_e/envir_08jul14_e.htm
[62] World Trade Organization. *Azevêdo welcomes launch of plurilateral environmental goods negotiations.*
[63] *Ibid.*

emissions targets in the fight against climate change, and Taiwan as well has policies aimed to mitigate their environmental effect, and is also a strong worldwide competitor in renewable energy technology.[64]

3.2 Regional Differences of OFDI attractiveness in the EU

3.2.1 Taxation

Within the European Union, each MS operates with its own corporate profits tax, to which every foreign multinational enterprise, its affiliates, subsidiaries and branches must comply. There are two main tax treatment complications for foreign enterprises: First, not only the host country, but also the home country of the parent company exercises the right to impose taxes on the profits of the affiliate; but only as far as those profits are remitted to the parent company. Generally applied international mechanisms reduce the oppressive international tax duplication that would otherwise appear. The spread of fragmented value adding chains moves top tax specialists to advocate thorough revamping of the prevailing conventions about international taxation.

Secondly, the substantial flows of goods and services that are internal to multinational enterprises (MNE) has prompted the enactment of a complex set of regulations by a growing number of national governments that aim at preventing or correcting the tax minimisation opportunities, which manipulations of the prices attributed to those internal payments would achieve. Although the (anti) 'transfer pricing' rules adopted by a growing number of states are patterned along a basic OECD model, they differ in their details. States in the ensuing bilateral contests tend to defend the positions that favour them. Moreover the corrective measures of the states are grounded on the basic principle that the internal prices practiced within the MNE should be monitored under reference to the price that would prevail in a market between unaffiliated parties. The derivation of such open market price is often problematic considering that many internally traded intermediate goods are specific to the MNE itself, and that the prosperity of firms today depends largely on intangible assets, such as brands, whose evaluation is laborious. The OECD and the EU have established guidelines that achieve some harmonisation in the 'transfer pricing' rules yet, for all the reasons just mentioned, the 'transfer pricing' area is reportedly the most complicated area of MNE taxation.

Regarding European taxation, two things must be taken into account. First, the attempt of establishing a supranational Common Consolidated Corporate Tax Base, in which countries operating in several EU MS could have the possibility of operating under one European taxation system. Meaning that a company or qualifying group of companies could compute their taxable income according to one EU system, as opposed to calculating their taxes according to the national rules of all the countries in which they have a base of operations.[65] However, it must be mentioned that the working group responsible for the establishment of this policy has not held a meeting since 2008 (as of 8 August 2014, according to the data

[64] World Economic Forum. (2014). *The Europe 2020 Competitiveness Report Building a More Competitive Europe. 2014 Edition*.

[65] European Commission. (2014). *Common Tax Base*. Retrieved from http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/index_en.htm

provided by the European Commission). Therefore, it can be assumed that this policy will not be implemented in the near future.

The second item of relevance regarding European taxation is the recent efforts by the EU to crack down on tax fraud and evasion. In the aftermath of the financial crises tax haven jurisdictions have been led to substantially rein in on the facilities they offered so far. In the "Action Plan to strengthen the fight against tax fraud and tax evasion"[66] several measures were announced regarding the digital exchange of relevant data between the Foreign Investors Councils (FICs) in the EU and the pooling of efforts between MS to trace money flows and tax evasion.

The EU is a competitive market, which offers many fiscal incentives for foreign companies wishing to establish operations, including fiscal incentives that are compatible with internationally agreed tax principles. A great example is the Netherlands, where according to this study, 204 Taiwanese companies have set up holdings companies to manage subsidiary operations across Europe. Firms using the *Besloten Vennootschap* (BV) structure, the Dutch version of a private liability company, benefit from a zero per cent tax rate on dividends and interests as well as royalties received from a qualifying subsidiary located in another MS of the EU. Furthermore, companies from Taiwan operating in the Netherlands in R&D projects get to benefit from the new Dutch IP Innovation Box, from which they receive further tax benefits for the development of new patents.

4. Conclusion: Towards a EU-Taiwan Bilateral Investment Agreement

This final chapter draws insights and conclusions from the preceding analysis. In particular, it explores the benefits that be reaped by the partners at hand, Taiwan and the EU, from a Bilateral Investment Treaty. The EU is not only Taiwan's 4th largest market, but is also its largest source of foreign investment. Within Asia, Taiwan is the EU's 7th largest trading partner, as well as the 19th worldwide.[67]

Taiwanese exports to the EU have remained stable in the past decade, while European exports to Taiwan experienced a moderate increase, contributing to a healthier trade balance over time. A BIA could therefore spark the thriving potential of increased economic cooperation by way of the added benefits of reducing non-tariff barriers and cementing intellectual property rights protection mechanisms. According to the Business Environment Risk Intelligence report, Taiwan ranks highly as an investment destination, with its prospects persisting to grow over the next couple of years.[68] The Taiwan-EU relationship is still underexplored.

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[66] European Commission. (2012). *COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL: An Action Plan to strengthen the fight against tax fraud and tax evasion.* Retrieved from http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_fraud_evasion/com_2012_722_en.pdf

[67] European Commission. (2014). *European Union Trade in Goods with Taiwan.* Retrieved from: http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113452.pdf

[68] Taiwan Today. (2013). *BERI rates Taiwan 4th globally for investment.* Retrieved from: http://taiwantoday.tw/ct.asp?xItem=200945&ctNode=421

The latest report by United Nations Conference on Trade and Development (UNCTAD) enumerated not less than 3,236 International Investment Agreements (IIA), which are predominantly shaped as BIAs.[69] This study alongside a policy report from the European Parliament highlights the proliferation of such agreements.[70]

Taiwan had no previous agreements with individual member states of the EU. However, as part of President Ma's flagship initiative to expand Taiwan's position in the global market, Taipei is expanding its pursuit of international trade and investment treaties. As a result it recently finalised agreements with New Zealand, Japan, and Singapore and is looking towards the US, South Korea, and other Asian States. Furthermore, Taiwan already had a presence in Latin America and has FTAs with Panama, Guatemala, Nicaragua, El Salvador, and Honduras.[71] This shows that Taiwan already has competence in the area of FDI negotiations to conclude a BIA with the EU.

In practice, the distinction regarding specific agreements on FDI between BIAs and FTAs is not clear-cut. The scope for both categories of agreements is not well defined. FTAs increasingly include provisions on FDI matters, while BITs, when negotiated separately, tend to encompass items that extend beyond the usual contents of such agreements by including some provisions for trade. In general a BIA would encompass the following points:

- Reduction on investment restrictions and barriers to market entry.
- Equal treatment with domestic enterprises
- Regulation mechanisms to protect investments and increase transparency
- Guarantee the free movement across the foreign exchange of funds
- Setting up a common framework dispute settlement mechanisms
- Opening up new markets for trade and investment in products and services

The above issues are already handled well in the EU-Taiwan investment relations and with the signing of a BIA, the two parties can solidify their already positive relations. Taiwan ranks highly in numerous reports in terms of its investment environment and global competitiveness.[72] As a result, the above factors would make the negotiations for a BIA quite feasible and easy. As many of the products involved in the bilateral trade do have a strong market appeal, and are most often fairly high value and are focused on ICT and energy, there is potential for increased cooperation in R&D and for investment in the service sector element of the surrounding product development. The focus on high value added sectors provides an incentive to develop a sophisticated intellectual property right (IPR) safeguards to be included in the BIA.

[69] UNCTAD. (2014). *World Investment Report (WIR) 2014*.
[70] *Ibid.* Also see European Parliament. (2014). *Comparing international trade policies: the EU, United States and Japanese PTA strategies*. Policy Department, Directorate-general for External Policies.
[71] Bilaterals.org. (2014). *Taiwan.* Retrieved from: bilaterals.org/?-Taiwan-&lang=a
[72] World Economic Forum. (2014). *Global Competitiveness Report 2013-2014.* Retrieved from: http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf

As evidenced by previously cited[73] research, an additional benefit of a BIA between the EU and Taiwan would be the market access to Mainland China provided by the framework of the ECFA. European companies are already benefiting of Taiwan's central position in Asian supply lines: "ECFA in its current state covers only 20 per cent of Taiwan's exports to China, but would cover half of EU's existing exports to Taiwan, enabling some re-exports into China". [74] A key sector for European companies that fall under the scope of the ECFA is ICT. Furthermore there is potential for opening the services sector on both sides in order to create tighter collaboration and increase investment flows.

Given similarities in the EU and Taiwan's development level and technological sophistication, they strive to achieve comparable goals in renewable energies and information technologies. As outlined in the Digital Agenda and Horizon 2020, increased investment in the fields of R&D and cutting edge technologies can help better position the EU's competitiveness. With the EU lagging behind global technological powerhouses, strengthened ties with Taiwanese companies could yield benefits for European technological hubs.[75]

[73] Dreyer et al. *Beyond Geopolitics – the Case for a Free Trade Accord Between Europe and Taiwan.* Also see: Euractive. *Rethinking Taiwan: How the EU should follow China into a trade agreement.*
[74] Euractive. *Rethinking Taiwan: How the EU should follow China into a trade agreement.*
[75] European Commission. (2010). *A Digital Agenda for Europe.* Retrieved from: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC0245R%2801%29&from=EN. Also see: European Commission. (2011). *Horizon 2020 – The Framework Programme for Research and Innovation.* Retrieved from: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0808&from=EN

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