EU-CHINA COMPREHENSIVE AGREEMENT ON INVESTMENT (EU-CHINA CAI)

[DEPARTURES]

> BILATERAL INVESTMENT AGREEMENTS

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CONTENT

Background and state of play

At the 15th EU-China Summit in February 2012 agreement was reached to launch negotiations for an EU-China Comprehensive Agreement on Investment (CAI). In May 2013 the European Commission published an impact assessment on the EU-China investment relations accompanying a recommendation for a Council Decision authorising the opening of negotiations of an EU-China CAI. In October 2013 the Council adopted the negotiating mandate for the Commission and in November 2013 the launch of negotiations was announced at the 16th EU-China Summit. The first round of talks took place in January 2014.

Following agreement on the CAI's comprehensive scope in January 2016, the parties moved on to specific text-based negotiations. At the 20th EU-China Summit on 16 July 2018, the parties exchanged market access offers for the first time. During the 19th round on 29 and 30 October 2018, the parties among others exchanged feedback on the market access offers. At the 21th EU-China Summit on 9 April 2019, the EU and China committed to achieving in the course of 2019 the decisive progress required for the conclusion of an ambitious agreement in 2020 and to taking stock of progress by the end of 2019. Major topics discussed at the 21th to 25th rounds include disciplines on financial services, capital transfer, national treatment-related commitments, state-to-state dispute settlement, investment-related issues concerning sustainable development, competition-related issues, and state-owned enterprises. The 25th round saw the second exchange of market access offers. Detailed discussions on the revised offers were held during the 26th round in January 2020 and were continued during the 27th and 28th rounds in March and April 2020. Talks covered disciplines regarding investment liberalisation and a level playing field with a focus on state-owned enterprises (SOEs). The next round is scheduled to take place between 25 and 29 May 2020.

The EU's general objective is to use the exclusive competence for foreign direct investment it gained with the entry into force of the 2009 Lisbon Treaty to replace the bilateral investment treaties (BITs) all EU Member States except Ireland have concluded with China by a single EU-China CAI which takes into account the latest developments in EU investment policy as set out inter alia in the 2015 Trade for All communication. Existing BITs differ considerably in scope, but they all cover only the post-entry protection of investment. They do not include market access provisions for the pre-entry phase (pre-entry national treatment) to ensure that foreign investors have the same market access as domestic investors. The EU-China CAI has been conceived as a stand-alone investment agreement that does not include trade issues. Its scope will go beyond the usual investment protection dimension to cover also market access. The EU's specific aim is to conclude a CAI that will:

- provide for new opportunities and improved conditions for access to the EU and Chinese markets for Chinese and EU investors;
- address key challenges of the regulatory environment, including those related to transparency, licensing and authorisation procedures;
- establish 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;
- ensure a level playing field by pursuing, inter alia, non-discrimination as a general principle subject to a limited number of clearly defined situations;
- 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 the contracting Parties and to investors.

European Council/Council position

The Council Conclusions on the EU Strategy on China of 18 July 2016 state that a CAI "is the EU's main priority towards deepening and rebalancing its economic relationship with China. The Council believes that more ambitious reforms in China towards liberalising its economy, reducing the role of the state-owned sector, and creating a level-playing field for business would open new market opportunities." In June and in October 2017 the European Council called "on the Commission and the Council to ... take forward the debate on how to enhance reciprocity in the fields of public procurement and investment."

Position of the European Parliament

In its resolution of October 2013 on the EU-China negotiations for a bilateral investment agreement the EP among others

- stressed the need for the highest possible level of transparency in the negotiations as one of the preconditions for EP consent to the outcome of the negotiations;
- urged the Commission to negotiate an ambitious and balanced CAI that seeks to improve market access for EU investors in China and vice versa, in order to increase the reciprocal capital flows and to guarantee transparency as regards the governance of state-owned enterprises and private companies;
- pointed to the need to address Chinese interventionist industrial policies, ambiguities in the substance and the application of laws and regulations;
- recalled that China recently set up a security review mechanism to scrutinise foreign investment and stressed that both parties may use such mechanisms on legitimate grounds;
- requested the Commission to complement its impact assessment by also evaluating the CAI's impact on human rights.

In its resolution of December 2015 on EU-China relations, the EP called for a sustainable development chapter to be included in the CAI containing binding commitments to international labour and environmental standards.

References:

- European Commission, Recommendation for a Council Decision authorising the opening of negotiations on an investment agreement between the European Union and the People's Republic of China, COM(2013)297.
- European Commission, Impact Assessment Report on the EU-China Investment Relations, SWD(2013)18.
- European Commission, Civil Society Dialogue, Meeting on sustainable impact assessment in support of an investment agreement between the European Union and the People's Republic of China, 2 October 2017.
- European Commission, Sustainability Impact Assessment (SIA) in support of an Investment Agreement between the European Union and the People's Republic of China, Final report, November 2017, and European Commission Position Paper [on the SIA], May 2018.
- European Commission, EU-China Investment Agreement, Report of the 26th round of negotiations for the EU-China Investment Agreement, Brussels, 16-17 and 20-21 January 2020.
- European Commission, EU-China Investment Agreement, Report of the 27th round of negotiations for the EU-China Investment Agreement, per videoconference, 3-6 March 2020.
- European Commission, EU-China Investment Agreement, Report of the 28th round of negotiations for the EU-China Investment Agreement, per videoconference, 20-24 April 2020.
- European Parliament, Resolution of 9 October 2013 on the EU-China negotiations for a bilateral investment agreement, 2013/2674(RSP).

Further reading:

- European Parliament, EPRS, *EU-China bilateral investment agreement*, At a Glance, October 2013
- European parliament, EPRS, *European Commission proposal on EU-China Investment Relations. Initial appraisal of a European Commission Impact Assessment*, Briefing, December 2013

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HYPERLINK REFERENCES

- https://ec.europa.eu/transparency/regdoc/rep/1/2013/EN/1-2013-297-EN-F1-1.PDF
- http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2013/swd_2013_0185_en.pdf
- http://trade.ec.europa.eu/doclib/docs/2017/october/tradoc_156324.pdf
- http://trade.ec.europa.eu/doclib/docs/2018/may/tradoc_156862.pdf
- http://trade.ec.europa.eu/doclib/docs/2018/may/tradoc_156863.pdf
- https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158597.pdf
- https://trade.ec.europa.eu/doclib/docs/2020/march/tradoc_158663.pdf
- European Commission, EU-China Investment Agreement, Report of the 28th round of negotiations for the EU-China Investment Agreement, per videoconference, 20-24 April 2020
- http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT TA P7-TA-2013-0411 0 DOC XML V0//EN
- http://www.europarl.europa.eu/thinktank/en/document.html?reference=LDM_BRI(2013)130642
- http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JOIN_NT(2013)514077
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