

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

[DEPARTURES]

> ■■■ BILATERAL INVESTMENT AGREEMENTS

1

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.

After agreement on the CAI's comprehensive scope in 2016, the parties moved on to specific text-based negotiations. At the 20th EU-China Summit in 2018, the parties exchanged market access offers for the first time. During the 19th round, the parties exchanged feedback on the market access offers. At the 21th EU-China Summit in 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. 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 sustainable development, competition-related issues, and state-owned enterprises (SOEs). The 25th round saw the second exchange of market access offers. Discussions on revised offers were held during the 26th to 29th rounds. The 30th and 31st rounds covered level-playing field issues, including disciplines on SOEs, transparency of subsidies and forced technology transfers. The 32nd round focused on sector-specific market access and the mechanism for addressing differences on sustainable development. Agenda items of the 33rd round were competition related issues, capital movements and transfers and entry and temporary stay of business visitors for establishment purposes and intra-corporate transferees. During the 34th round talks broadened to taxation matters and horizontal exceptions. The 35th round, scheduled for 7-11 December 2020, was extended to possibly reach a deal by the end of the year.

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 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 is 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 2013 resolution 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, 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;
- requested the Commission to complement its impact assessment by also evaluating the CAI's impact on human rights.

In its 2015 resolution on EU-China relations, the EP called for a sustainable development chapter with binding commitments to international labour and environmental standards. In its 2020 resolution on the EU-China geographical indications agreement, the EP called for the creation of a parliamentary dimension with regard to the CAI's implementation.

References:

- European Parliament, [Resolution of 9 October 2013 on the EU-China negotiations for a bilateral investment agreement](#), 2013/2674(RSP)
- 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)185
- 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, [Civil Society Dialogue on State of Play of the EU-China Investment Negotiations](#), 9 July 2020, [minutes](#) of 7 August 2020.
- European Commission, [EU-China Investment Agreement, Report of the 33rd round of negotiations for the EU-China Investment Agreement](#), per videoconference, 19-23 October 2020.
- European Commission, [EU-China Investment Agreement, Report of the 34th round of negotiations for the EU-China Investment Agreement](#), per videoconference, 16-20 November 2020.

Further reading:

- European Parliament, EPRS, [EU-China Comprehensive Agreement on Investment, Levelling the playing field with China](#), Briefing, September 2020.
- European Parliament, EPRS, [European Commission proposal on EU-China Investment Relations. Initial appraisal of a European Commission Impact Assessment](#), Briefing, December 2013.

For further information: Gisela Grieger, legislative-train@europarl.europa.eu

As of 18 December 2020.



RAPPOREUR
Iuliu WINKLER
INTA

HYPERLINK REFERENCES

- <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT TA P7-TA-2013-0411 0 DOC XML V0//EN>
- <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/civilsoc/meetdetails.cfm?meet=11567>
- https://trade.ec.europa.eu/doclib/docs/2020/august/tradoc_158914.pdf
- https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_159001.pdf
- https://trade.ec.europa.eu/doclib/docs/2020/november/tradoc_159097.pdf
- [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652066/EPRS_BRI\(2020\)652066_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652066/EPRS_BRI(2020)652066_EN.pdf)
- [http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JOIN_NT\(2013\)514077](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JOIN_NT(2013)514077)
- <mailto:legislative-train@europarl.europa.eu>