



Investment agreement between EU and China



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Introduction to the Comprehensive Agreement on Investment between EU and China

The European Union (EU) and China are two of the biggest trading parties in the world. China is the EU's second-biggest trading partner behind the United States, and the EU is China's biggest trading partner. Today, the legal framework for investments between the EU and China is generally based on 25 bilateral investment treaties (BITs) which have been signed by EU member states and China. The bilateral investment treaties differ considerably in scope, but they all cover only the post-entry protection of investment. They do not include provisions on market access for the pre-entry phase (pre-entry national treatment) to ensure that foreign investors have the same market access as domestic investors.

Based on this and other matters, the 25 bilateral investment treaties in force are regarded as outdated and not reflecting recent developments in the investment policies of EU and China, shifts in the bilateral and international investment relations and geopolitical changes.

Under the Lisbon Treaty (2009), the EU obtained exclusive competence for foreign direct investment in the EU. The EU is committed to use this competence to further strengthen its trading relations with China by replacing the 25 bilateral investment treaties in force with a uniform legal framework which goes beyond the usual investment protection dimension to cover also market access.

Based on this, in 2012, the EU and China agreed to initiate negotiations for an EU-China Comprehensive Agreement on Investment (CAI). In 2013, the European Commission published an impact assessment on the EU-China investment relations accompanied by a recommendation for a Council Decisions authorising the opening of negotiations of an EU-China CAI. In 2014, the first round of negotiations for an EU-China CAI commenced. In

2016, the parties agreed on the scope of the CAI and moved on to specific text-based negotiations. On 30 December 2020, the EU and China concluded in principle the negotiations for a final CAI.

The purpose of the CAI is to improve investment for European and Chinese investors by creating new opportunities and improved conditions for access to the EU and Chinese markets for Chinese and EU investors. Among other matters, this is to be improved by creating investments rights for and guaranteeing non-discrimination of European and Chinese investors, improving transparency, licencing and authorisation procedures and setting rules on environmental and labour-related aspects of foreign investment.

The conclusion in principle of the negotiations is a first step in the process. Deliberations for the adoption and ratification of the CAI are yet to take place before the CAI enters into force.

Market access and invest liberalisation

Among other matters, the CAI contains obligations on market access. This means that the EU and China have agreed not to impose quantitative restrictions on investments in certain sectors, such as limiting the number of licences or branches, reserving monopoly rights or imposing economic needs test. The sectors covered are listed in the CAI. Therefore, the EU and China take commitments not to impose quantitative restrictions only to the extent that the given sectors and the level of commitment are listed in the CAI.

The EU has a principle policy of openness of its market to foreign direct investment (FDI). In general, the market in the EU is already open and committed for services sectors under the General Agreement on Trade in Services (GATS). China has only made limited commitments under the GATS.

Under the CAI, China has made significant commitments in relation to market access in its manufacturing sector. This is the first time China has committed to market access in this sector with a trade partner. Manufacturing is one of the most important sectors for EU investment in China as it covers more than half of the total EU investment in China. China's commitments in this sector include production of cars (traditional and new energy vehicles), chemicals, telecoms equipment and health equipment etc.

China has also made commitments in relation to several services sectors, including, among others, cloud services, financial services, private healthcare, environmental services, international maritime transport and air transport-related services. In the sectors covered by the CAI, European businesses are to gain certainty and predictability for their operations as China will no longer be able to prohibit access or introduce new discriminatory practices.

Improving level playing field

The CAI also contains obligations in relation to state-owned enterprises. The CAI seeks to discipline the use of state-owned enterprises by requiring them to act in accordance with commercial considerations and not to discriminate in their purchases and sales of goods and services.

Furthermore, the CAI imposes transparency obligations on subsidies in the services sectors. In relation thereto, China has committed to be obliged to share information and engage in consultations to provide additional

information on specific subsidies which may have a negative effect on the investment interests of the EU and seek to address such negative effects.

The CAI also contains provisions prohibiting forced transfer of technology. These includes, for example, prohibition of several types of investment requirements which compel transfer of technology and prohibitions to interfere in contractual freedom in technology licensing.

Moreover, the CAI imposes obligations in relation to transparency, licencing and authorisation procedures. In relation thereto, China has committed to guarantee equal access to standard setting bodies for European companies, enhance predictability in authorisations and provide stronger legal certainty through transparency rules for regulatory and administrative measures and procedural fairness and right to judicial review.

Value-based investment relationship

The CAI generally binds the EU and China into a value-based investment relationship which is based on sustainable development principles. This entails, among others, that the parties commit not to lower their standards of protection in the areas of labour and environment and to respect their international obligations under relevant treaties.

In relation thereto, China has generally committed to respect International Labour Organisation (ILO) principles and to effectively implement the ratified ILO conventions, including especially in relation to the ILO fundamental conventions on forced labour. China has also committed to effectively implement the Paris Climate Agreement.

Dispute settlement and monitoring mechanisms

Under the CAI, the EU and China have agreed to an enforcement mechanism in the form of a state-to-state dispute settlement. The EU and China have also agreed to a monitoring mechanism to be performed at political level by the executive vice president in the EU and the vice premier in China.

Further information and assistance

DLA Piper's lawyers with expertise in areas and matters comprised or affected by the Comprehensive Agreement on Investment between the EU and China are available to assist with all legal matters in relation thereto.

Further information, newsletters and guides on international investment and trade and related matters are available at the internet pages of DLA Piper, including www.dlapiper.com. See for example:

[Multi-jurisdiction guide for screening of foreign investments](#)

[Bill on act on screening of foreign direct investments in Denmark](#)

[Increased focus on foreign direct investments in Denmark](#)

[China investment services](#)

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