



EU-China Comprehensive Agreement on Investment

The Agreement in Principle

30 December 2020

This document summarises the results of the negotiations between the EU and China following the agreement in principle in December 2020. The agreement in principle is based on a text that still requires technical work. Any agreement referred to in this text is to be considered ad referendum.

This is not a legal text.

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** Structure is indicative and regroups subjects to facilitate presentation.*

1) Preamble and general provisions

In the Preamble, both sides have agreed among other things, to reaffirm the commitment to the Charter of the United Nations (26 June 1945), having regard to the principles articulated in the Universal Declaration of Human Rights (10 December 1948). In addition, both sides have agreed to promote investment in a manner supporting high levels of environmental and labour rights' protection, including fighting against climate change and forced labour.

This part also contains a number of provisions that apply horizontally, such as the objectives of the agreement, the reaffirmation of the Parties' right to regulate to achieve legitimate policy objectives (such as protection of public health, social services, or privacy and data) and the list of definitions of concepts used throughout the Agreement.

2) Market access and investment liberalisation section

The text contains obligations on Market Access, National Treatment and Most-Favoured-Nation Treatment as well as a list of prohibited Performance Requirements (i.e. conditions to investment that the Parties cannot impose, such as local content requirements, technology transfers requirements, or R&D targets. It also contains commitments (not to impose nationality requirements) as regards Senior Management and Board of Directors.

Some sectors are specifically excluded from the scope of this section: audio-visual services, air transport services (other than specific auxiliary air services), and activities in the exercise of governmental authority. Government procurement is not covered. Neither are subsidies (other than for the purpose of the disciplines on Performance Requirements).

For the scheduling of liberalisation commitments the Agreement follows a negative listing approach in specific Annexes for National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors and Performance requirements ("schedules"). This means that the Parties commit not to discriminate (for example, not to impose foreign investment bans, joint venture requirements or nationality requirements) across sectors, unless a specific reservation is included to that end in the schedule of commitments.

For Market Access (i.e. obligation not to impose quantitative restrictions such as limiting the number of licenses or branches, reserving monopoly rights or imposing economic needs test) the listing is positive. This means that both sides take commitments not to impose quantitative restrictions only to the extent that the given sectors and the level of commitment are included in the relevant schedule. The schedules are presented in Annexes to the Agreement.

The binding of the liberalisation commitments is done in a dynamic way ("ratcheting") which means that any future relaxation of existing restrictive measures included in the schedules will be automatically bound.

For a summary of the main commitments, please consult [the memo](#).

In general terms, on the EU side, the services market is already open and largely committed in GATS. Beyond these commitments, the EU binds some additional market access (notably, in the manufacturing sector). The policy space in the sensitive sectors (such as energy infrastructure, agriculture, fisheries, mining or public services, etc.) is well preserved. This means that insensitive areas the EU does not bind its actual level of openness (even if no particular restrictions currently exist on the ground) but maintains its policy space.

To rebalance the current asymmetry in market access conditions and levels of commitment, China is making important GATS plus commitments, notably, in financial services, environmental services, computer services, construction services, auxiliary air transport and international maritime transport services, largely reflecting its autonomous level of liberalisation. China will also commit to market openings in the area of private healthcare, new energy vehicles, cloud services, as well as computer reservation systems beyond its current level of autonomous liberalisation. In non-services sectors, China is making comprehensive commitments in the manufacturing sector as well as (limited) commitments in agriculture, fisheries, mining and energy. The commitments and openings in the services sectors will not only benefit the EU but also others by virtue of MFN rules in WTO (GATS).

With regard to entry and temporary stay, the employees of foreign investors, managers and specialists of EU or Chinese companies will be allowed to work up to three years in their subsidiaries in the other Party, without restrictions such as labour market tests or quotas. Representatives of EU or Chinese investors will be allowed to visit freely prior to making an investment.

3) Level playing field related commitments

State Owned Enterprises

The Agreement will require state-owned enterprises to act in accordance with commercial considerations and not to discriminate in their purchases and sales of goods or services. These disciplines cover a broadly defined category of ‘state-owned enterprises’, which includes entities controlled by the state through minority ownership or legal title, as well as state-designated monopolies or entities vested with special rights or privileges. The rules aim to improve the level playing field between public and private companies. This should contribute to fairer competition on the market and have a favourable effect on investor confidence.

The Agreement will include specific transparency rules, including to obligation of the Parties to provide, upon request, information to allow for the assessment of whether the behaviour of a specific entity (or group of entities) complies with the agreed obligations.

Forced technology transfers

The Agreement will lay very clear rules against forced transfers of technology, such as the prohibition of several types of investment requirements that compel transfer of technology, as well as prohibitions to, directly or indirectly, interfere in contractual freedom in technology licencing. These rules would also include disciplines on protection of confidential business information collected by administrative bodies from unauthorised disclosure.

Transparency of subsidies

The Agreement will complement the transparency requirements as set out in the existing multilateral rules on subsidies related to goods by imposing transparency obligations on subsidies related to services. A specific consultation procedure will apply requiring either side to engage in consultations in order to provide additional information on any subsidies that could have a negative effect on the investment interests of the other side and to seek to address such negative effects.

4) Domestic regulation

These provisions will ensure that licensing and qualification requirements and procedures are publicly available, easily understandable, and reasonable so that they do not act as a barrier to investment. The relevant provisions are inspired by similar provisions in the GATS and the ongoing multilateral process (Joint initiative on Services Domestic Regulation).

5) Transparency and standard setting

The Agreement will include a comprehensive set of transparency rules for regulatory and administrative measures enhancing legal certainty and predictability, as well as on procedural fairness and the right to judicial review, including in competition law cases.

In addition, the Agreement will provide for equal access of the companies to standard setting bodies of the other Party (including to technical committees in sectors related to semiconductors, ICT and telecommunication).

6) Financial services

The financial services related provisions contain specific definitions, exceptions and disciplines on new financial services, self-regulatory organisations, payment and clearing systems and transparency. They are necessary to address specificities of the financial services sector and complement market access and national treatment disciplines.

7) Sustainable Development and related mechanism to address differences

This part of the Agreement includes all of the key elements of the EU approach to sustainable development. Notably, the Agreement will provide for:

- commitments not to lower the standards of labour and environmental protection in order to attract investment;
- commitments to effectively implement the Multilateral Environmental Agreements – including the UN Framework Convention on Climate Change and the Paris Agreement;
- commitments to effectively implement the ratified ILO Conventions;
- commitment to work towards ratification of the outstanding ILO fundamental Conventions; in particular, commitment to make continued and sustained efforts to pursue the ratification of the ILO fundamental Conventions on forced labour;
- commitment to promote the uptake of Corporate Social Responsibility by business;
- a dedicated institutional set-up, including mechanisms for the involvement of civil society in the implementation of the sustainable development provisions;
- a tailored mechanism to address differences related to the implementation of the sustainable development commitments, including government consultations, recourse to an independent panel of experts and publication of a report on the basis of which the Parties shall discuss the measures to address the matter.

8) State to State Dispute Settlement Mechanism

The relevant provisions provide for:

- An effective, efficient and transparent mechanism for avoiding and settling disputes between the Parties in relation to violation complaints.

- A two steps approach based on consultations (and the possibility of mediation) to try to reach a mutually agreed solution and, in the absence of a solution, the recourse to an arbitration panel procedure.
- Specific rules for the establishment and composition of the arbitration panel, including requirements for highly qualified, experienced and independent panellists subject to high ethical standards.
- Streamlined and clearly defined compliance and post-compliance stages of the proceedings (including retaliation).
- Rules of Procedure for the Panel, which contain detailed rules on the panel proceedings and an elaborated Code of Conduct for the panellists (under discussions) in order to ensure their full independence and impartiality.

9) Institutional and final provisions

This part of the Agreement will establish an institutional framework to ensure effective monitoring of the implementation of the Agreement. The institutional oversight (Investment Committee) will be established at the level of Vice Premier for China and of Executive Vice President for the EU. The implementation mechanism will ensure involvement of civil society (through regular dialogues), enhance information sharing between the Parties, as well as include a possibility to call on short notice ad hoc meetings of the co-chairs of the Investment Committee to address urgent matters related to the implementation of the Agreement. A specific working group to monitor and discuss implementation of the provisions on sustainable development will be also established.

The Agreement will be complemented by a set of horizontally applicable exceptions based on the WTO approach consisting of general exceptions, security exceptions, taxation article, balance of payments safeguards, as well as carve out for prudential measures to protect integrity and stability of the financial systems.

The Agreement also includes a commitment by both sides to pursue the negotiations on investment protection and investment dispute settlement within 2 years of the signature of the Agreement. The common objective is to work towards modernised investment protection standards and a dispute settlement that takes into account the work undertaken in the context of UNCITRAL on a Multilateral Investment Court.