

In view of the Commission's transparency policy, the Commission is publishing the text of the EU-China Investment Agreement following the agreement in principle announced on 30 December 2020.

The text is published for information purposes only and may undergo further modifications as a result of the process of legal and technical revision, including of the final structure (such as numbering, sequencing, or titles of articles, or any duplication). However, in view of the growing public interest in the negotiations, the text is published at this stage of the negotiations for information purposes. This text is without prejudice to the final outcome of the agreement between the EU and China.

The text will be final upon signature. The agreement will become binding on the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement.

Section V Dispute Settlement

Article 1 Objective

The objective of this Section is to establish an effective and efficient mechanism for avoiding and settling any disputes between the Parties within the scope of application of this Section with a view to arriving at, where possible, a mutually agreed solution.

Article 2 Scope of application

This Section shall apply with respect to any dispute concerning the interpretation and application of the provisions of this Agreement (hereinafter referred to as 'covered provisions'), except as otherwise provided.

Article 3 Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 2 by entering into consultations in good faith with the aim of reaching a mutually agreed solution.
2. A Party shall seek consultations by means of a written request delivered to the other Party. The request for consultations shall set out the reasons for the request, including the identification of the measure at issue and an indication of the legal basis for the complaint, specifying the provisions referred to in Article 2 considered applicable.
 1. The Party to which the request for consultations is made shall reply to the request within 10 days after the date of its receipt. Consultations shall be held within 30 days after the date of receipt of the request, unless otherwise mutually agreed. Consultations shall be deemed concluded within 30 days after the date of receipt of the request, unless both Parties agree to continue consultations.

2. If the Party to which the request is made does not respond to the request for consultations within 10 days after its receipt, or if consultations are not held within the timeframes specified in paragraph 3, or if consultations have been concluded and no mutually agreed solution has been reached, the Party that requested the consultations may proceed directly to request the establishment of an arbitration panel.
3. Consultations shall take place in the territory of the Party to which the request is made, unless the Parties agree otherwise.
6. During consultations each Party shall provide sufficient factual information, so as to allow a full examination of how the measure at issue could affect the operation and application of this Agreement.
7. The consultations, and in particular all information disclosed and positions taken by the Parties during consultations, shall be confidential, and without prejudice to the rights of either Party in any further proceedings.

Article 4 Mediation

1. The Parties may at any time voluntarily agree to mediation with the aim to reach a mutually agreed solution regarding a measure alleged to adversely affect investment between the Parties. The mediation procedure may only be initiated by mutual agreement.
2. Upon initiation of the mediation procedure the Parties shall agree on the selection, tasks and powers of the mediator and on the rules governing the mediation procedure, including time-frame, termination and costs.
3. Unless the Parties agree otherwise, mediation proceedings shall be confidential. This concerns in particular positions taken and evidence obtained by the Parties during those proceedings and advice or proposed solutions by the mediator. However, any Party may disclose to the public that mediation is taking place. Mediation proceedings shall be without prejudice to the rights of either Party in any further or other proceedings.
4. The [Joint Committee] may at any time adopt rules on the initiation, conduct and termination of mediation and shall endeavour to adopt such rules within three years after the entry into force of this Agreement.

Article 5 Mutually Agreed Solution

1. The Parties may reach a mutually agreed solution to a dispute under this Section, or to certain claims thereof, at any time.
2. If a mutually agreed solution is reached during consultations, claims relating to the matters covered by the mutually agreed solution may not be submitted to arbitration under this Section.

3. If a mutually agreed solution is reached during the arbitration panel procedure or the mediation procedure, the Parties shall jointly notify that solution to the chairperson of the arbitration panel or the mediator. Upon such notification, the arbitration panel procedure or the mediation procedure, or where applicable the part of the procedure with respect to the claims covered by the mutually agreed solution, shall be terminated.
4. The disputing Parties shall abide by and comply with a mutually agreed solution reached under this Article without delay and in good faith. They shall take the measures necessary, if applicable, to implement the mutually agreed solution within the agreed time period.
5. Any measure taken to implement the mutually agreed solution shall be notified to the other Party, no later than at the expiry of the agreed time period.

Article 6 **Establishment of an Arbitration Panel**

1. If the Parties fail to resolve a dispute through consultations as provided for in Article 3(4), the Party that sought consultations may request in writing the establishment of an arbitration panel.
2. The complaining Party shall deliver the request to the other Party. The request shall indicate whether consultations were held, identify the specific measure at issue and briefly explain how that measure constitutes a breach of the covered provisions in a manner sufficient to present the legal basis for the complaint clearly. The arbitration panel is deemed established when the request is delivered to the other Party.

Article 7 **Composition of an Arbitration Panel**

1. An arbitration panel shall be composed of three panellists.
2. Within 10 days of the delivery of the written request for the establishment of an arbitration panel, the Parties shall consult in order to reach an agreement on the composition of the arbitration panel.
3. If the Parties are unable to agree on the composition of the arbitration panel within the time period set out in paragraph 2, each Party may appoint a panellist from the sub-list of that Party established under Article 8 within 5 days from the expiry of the time period set out in paragraph 2. If a Party fails to appoint a panellist from its sub-list within that time period, the complaining Party shall, within five days from the expiry of that time period, select by lot the panellist from the sub-list of that Party.
4. If the Parties are unable to agree on the chairperson of the arbitration panel within the time period set out in paragraph 2, the complaining Party shall, within five days of the

expiry of that time period select by lot the chairperson of the arbitration panel from the sub-list of chairpersons established under Article 8.

5. The date of composition of the arbitration panel shall be the date on which all three selected panellists have accepted their appointment according to the Rules of Procedure. Each Party shall make the date of composition of the arbitration panel publicly available without delay.
6. Should any of the lists provided for in Article 8 (Lists of Panellists) not be established or not contain sufficient names at the time a panellist or chairperson is to be selected by lot pursuant to paragraphs 3 or 4, the selection by lot shall be done in accordance with Rule 9 of the Rules of Procedure within the same time period of five days.

Article 8 **Lists of Panellists**

1. The Investment Committee shall, no later than six months after the entry into force of this Agreement, establish a list of at least 12 individuals who are willing and able to serve as panellists. The list shall be composed of three sub-lists:
 - (a) one sub-list of individuals established on the basis of proposals by the European Union;
 - (b) one sub-list of individuals established on the basis of proposals by China;
 - (c) one sub-list of individuals that are not nationals of either Party and who shall serve as chairperson to the arbitration panel.
2. Each sub-list shall include at least four individuals. The Investment Committee shall ensure that the list is always maintained at this level.
3. Panellists shall have specialised knowledge and expertise in law and international trade or investment. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the Code of Conduct annexed to this Agreement.
4. The Investment Committee may establish additional lists of individuals with knowledge and experience in specific sectors covered by this Agreement. Subject to the agreement of the Parties, such additional lists shall be used to compose the panel in accordance with the procedure set out in Article 7 of this Section.

Article 9 **Functions of the Arbitration Panel and Terms of Reference**

1. The arbitration panel:
 - (a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the covered provisions;
 - (b) should consult regularly with the Parties and provide adequate opportunities for the development of a mutually agreed solution.

2. Unless the Parties otherwise agree within 10 days from the date of the establishment of the arbitration panel, the terms of reference shall be:

“To examine, in the light of the relevant provisions of the Agreement invoked by the Parties, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 6, to make findings of facts and on the conformity of the measure(s) at issue with the covered provisions and to deliver a report in accordance with Article 12 [Decisions and Reports of the Arbitration Panel], including a recommendation, if relevant, to bring the measure into conformity with the Agreement.”

3. If the Parties agree on other terms of reference, they shall notify the agreed terms of reference to the arbitration panel as soon as it is composed.

Article 10 **Suspension or Termination of Proceedings**

1. At the request of the complaining party, the arbitration panel may, after giving the Parties an opportunity to comment, suspend its work at any time for a period not to exceed 12 months. At the request of both Parties, the panel shall suspend its work at any time for a period not to exceed 12 months.
2. The arbitration panel shall resume its work before the end of the suspension period at the written request of both Parties. The arbitration panel shall resume its work at the end of the suspension period at the request of the complaining Party if the suspension was requested by the complaining Party, or at the request of either Party if the suspension was requested by both Parties. The requesting Party shall deliver a notification to the other Party accordingly. If a Party does not request the resumption of the arbitration panel's work at the expiry of the suspension period, the authority of the arbitration panel shall lapse and the dispute settlement procedure shall be terminated. If the work of the arbitration panel is suspended, the relevant time periods under this Section shall be extended by the same period of time for which the work of the arbitration panel was suspended.
3. The Parties may agree to terminate the proceedings of an arbitration panel by notification to the arbitration panel.

Article 11 **Applicable Law and Rules of interpretation**

1. The arbitration panel shall decide the issues in dispute in accordance with this Agreement and interpret the provision of this Agreement in accordance with customary rules on interpretation of public international law, as codified in the Vienna Convention of the Law of Treaties.¹

¹ The panel shall also take into account relevant interpretations in reports of WTO panels and the Appellate Body adopted by the WTO Dispute Settlement Body relating to substantially equivalent obligations.

2. For greater certainty, paragraph 1 is without prejudice to any consideration of the domestic law of the Party complained against where it is relevant to the claim as a matter of fact.
3. The panel reports cannot add to or diminish the rights and obligations of the Parties under this Agreement.

Article 12

Decisions and Reports of the Arbitration Panel

1. The arbitration panel shall deliver an interim report to the Parties within 120 days after the date of composition of the panel. If the arbitration panel considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the arbitration panel plans to deliver its interim report. The arbitration panel shall, under no circumstances, deliver its interim report later than 150 days after the date of composition of the panel.
2. Each Party may deliver to the arbitration panel a written request to review precise aspects of the interim report within 10 days of its delivery. A Party may comment on the other Party's request within six days of the delivery of the request.
3. The arbitration panel shall deliver its final report to the Parties within 150 days of the date of composition of the arbitration panel. If the arbitration panel considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the arbitration panel plans to deliver its final report. The arbitration panel shall, under no circumstances, deliver its final report later than 180 days after the date of composition of the arbitration panel.
4. The final report shall include a discussion of any written request by the Parties on the interim report and clearly address the comments of the Parties. It shall set out the findings of facts, the applicability of the covered provisions and the basic rationale behind any findings and conclusions.
5. The arbitration panel shall make every effort to make its decisions by consensus. If the arbitration panel is unable to reach consensus, it shall decide by majority vote. In no case shall separate opinions of panellists be disclosed.
6. The report of the arbitration panel is final and has no binding force except between the Parties and in respect of the matter to which the report refers. Where an arbitration panel concludes that the Party complained against has acted inconsistently with the obligations of this Agreement, it shall recommend that the Party complained against bring the inconsistency into conformity with this Agreement. The decisions and reports of the arbitration panel shall be unconditionally accepted by the Parties. They shall not create any rights or obligations with respect to natural or legal persons.
7. Each Party shall make the final report and decisions of the arbitration panel pursuant to this Section publicly available no later than 15 days after their issuance to the Parties, subject to the protection of confidential information.

Article 13
Implementation of the Arbitration Panel's Report

1. Where the arbitration panel concludes that a Party has not complied with its obligations under this Agreement, the Party complained against shall take any measure necessary to promptly comply with the findings and conclusions in the final report in order to bring itself into compliance with the covered provisions.
2. The Party complained against shall, no later than 30 days after receipt of the final report, deliver a notification to the complaining Party of its intentions in respect of compliance, unless the Parties reach agreement on compensation or other mutually satisfactory solution.

Article 14
Reasonable Period of Time

1. If immediate compliance is not possible, the Party complained against shall, in the notification referred to in Article 13(2), set out the length of the reasonable period of time it will require for compliance, and the reasons for it. The Parties shall endeavour to agree on the reasonable period of time.
2. Where the Parties fail to agree on the reasonable period of time, either Party may, at the earliest 20 days after the receipt of the notification referred to in paragraph 1, request the original arbitration panel to determine the reasonable period of time.
3. The arbitration panel shall deliver its determination to the Parties within 30 days after the date of the receipt of the request.
4. The Party complained against shall deliver a written notification of its progress in complying with the final report to the complaining Party at least one month before the expiry of the reasonable period of time.
5. The reasonable period of time normally should not exceed 15 months from the date of issuance of the arbitration panel's final report. The Parties may agree to extend the reasonable period of time.

Article 15
Compliance Review

1. The Party complained against shall, no later than the date of expiry of the reasonable period of time, deliver a notification to the complaining Party of any measure that it has taken to comply with the final report.
2. Where there is disagreement as to the existence or consistency with the covered provisions of measures taken to comply with the final report, the complaining party may deliver a written request to the original arbitration panel to decide on the matter.
3. The arbitration panel shall deliver its report to the Parties within 50 days after the date of receipt of the request.

4. Articles 6, 7, 10, 11, 12.5, 12.6 and 12.7 shall apply, *mutatis mutandis*, to the procedure under this Article.

Article 16 **Temporary Remedies**

1. The Party complained against shall, on request by the complaining Party, enter into negotiations with the complaining Party, with a view to agreeing on a mutually acceptable compensation, if:
 - (a) the Party complained against delivers a notification to the complaining Party that it is not possible to comply with the final report; or
 - (b) the Party complained against fails to deliver a notification within the time-limit referred to in Article 13(2) or before the expiry of the reasonable period of time defined in accordance with Article 14; or
 - (c) the arbitration panel referred to in Article 15 finds that no measure taken to comply exists or that the measure taken to comply is inconsistent with the covered provisions.
2. If the Parties fail to reach an agreement on compensation within 30 days after the expiry of the reasonable period of time or the delivery of the panel report referred to in Article 15(3), or if the complaining Party does not make a request pursuant to paragraph 1, the complaining Party may deliver a written notification to the Party complained against that it intends to suspend the application of concessions or other obligations (hereinafter referred to as ‘obligations’) under the covered provisions. The notification shall specify the level and scope of the intended suspension of obligations.
3. The complaining Party may suspend the obligations 10 days after the date of delivery of the notification referred to in paragraph 2, unless the Party complained against made a request pursuant to paragraph 5.
4. The level of the suspension of obligations shall not exceed the level of the nullification or impairment caused by the violation. In considering what obligations to suspend:
 - (a) the complaining Party should first seek to suspend obligations in the same sector(s) as that affected by the measure that the arbitration panel has found to be inconsistent with the obligations under this Treaty; and
 - (b) if the complaining Party considers that it is not practicable or effective in inducing compliance to suspend obligations in the same sector(s), it may suspend obligations in other sectors.
5. If the Party complained against considers that the notified level of suspension of obligations exceeds the level equivalent to the nullification or impairment caused by the violation, it may deliver a written request to the original arbitration panel before the expiry of the 10 day period referred to in paragraph 3 to decide on the matter. If the arbitration panel cannot be established with its original members, it shall be composed in accordance with the procedures set out in Article 7. The arbitration panel shall deliver its decision to the Parties within 50 days from the date of the request, or if an arbitration panel cannot be established with its original members, from the date on which the last panellist is appointed. Obligations shall not be suspended until the arbitration panel has

delivered its decision. The suspension of obligations shall be consistent with this decision.

6. The suspension of obligations or the compensation referred to in this Article shall be temporary and shall not be applied after:
 - (a) the Parties have reached a mutually agreed solution pursuant to Article 5;
 - (b) the Parties have agreed that the measure taken to comply brings the Party complained against into conformity with the covered provisions; or
 - (c) any measure taken to comply which the arbitration panel has found to be inconsistent with the covered provisions has been withdrawn or amended so as to bring the Party complained against into conformity with those provisions.²

Article 17

Review of Any Measure Taken to Comply After the Adoption of Temporary Remedies

1. The Party complained against shall deliver a notification to the complaining Party of any measure it has taken to comply following the suspension of obligations or following the application of temporary compensation, as the case may be, together with a description of how the non-conformity has been removed.

2. If the complaining Party agrees that the notified measure brings the Party complained against into conformity with the covered provisions, it shall terminate the suspension of obligations promptly, and no later than 30 days after the delivery of the notification. In cases where compensation has been applied, the Party complained against is allowed to terminate the application of such compensation.

3. If the Parties do not reach an agreement on whether the notified measure brings the Party complained against into conformity with the covered provisions within 30 days from the date of the delivery of the notification pursuant to paragraph 1, the complaining Party shall refer the matter to the original arbitration panel to decide on the matter.

4. The arbitration panel shall deliver its report within 50 days after the referral of the matter by the complaining Party pursuant to paragraph 3. If the arbitration panel concludes that the measure taken to comply is in conformity with the covered provisions, the complaining Party shall promptly, and no later than 30 days after the delivery of the report, terminate the suspension of obligations and the party complained against is allowed to terminate any compensation. In case of partial compliance, the complaining Party shall adjust the level of suspension of obligations and the Party complained against may adjust the level of compensation in light of the arbitration panel report. The relevant procedures set out in Articles 16 and 17 apply *mutatis mutandis*.

Article 18

Rules of Procedure

Arbitration panel procedures shall be governed by this Section and the Annex on Rules of Procedure.

² For greater certainty, in case of disagreement on whether the withdrawn or amended measure brings the Party complained against into conformity with the covered provisions, Article 17 (Review of any measure taken to comply after the adoption of temporary remedies) applies.

Article 19 **Transparency**

1. Transparency of submissions and statements in the proceedings is governed by rule 38 in the Annex on Rules of Procedure.
2. Any hearing of the panel shall be open to the public unless otherwise provided in the Annex on Rules of Procedure, and subject to the conditions set out therein.
3. Natural or legal persons established in a Party may submit *amicus curiae* briefs to the panel in accordance with the Annex on Rules of Procedure.

Article 20 **Information and Technical Advice**

1. On request of a Party, or at its own initiative, the arbitration panel may seek any information and technical advice it deems appropriate from any source, including from the Parties.
2. The arbitration panel also has the right to seek the opinion of experts, as it deems appropriate. The arbitration panel shall consult the Parties before choosing such experts.
3. Any information and technical advice obtained by the arbitration panel under this Article shall be disclosed to the Parties and the Parties may provide comments on that information.

Article 21 **Choice of Forum**

1. When a dispute arises regarding a particular measure in alleged breach of an obligation under this Agreement and a substantially equivalent obligation under another international agreement to which both Parties are party, including the WTO Agreement, the Party seeking redress shall select the forum in which to settle the dispute.
2. Once a Party has selected the forum, the forum selected shall be used to the exclusion of other fora, unless that forum fails to make findings for procedural or jurisdictional reasons.
3. For the purposes of this Article, a forum is deemed to be selected:
 - (a) for dispute settlement procedures under this Section by a Party's request for the establishment of an arbitration panel in accordance with Article 6;
 - (b) for dispute settlement procedures under the WTO Agreement by a Party's request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO;
 - (c) for dispute settlement procedures under any other agreement in accordance with the relevant provisions of that agreement.

4. Nothing in this Agreement shall preclude a Party from suspending obligations authorised by the Dispute Settlement Body of the WTO or under the dispute settlement procedures of another international agreement to which the disputing Parties are party. The WTO Agreement or any other international agreement between the Parties shall not be invoked to preclude a Party from suspending obligations set out in the covered provisions pursuant to this Section.

Article 22
Time Periods

1. All time periods laid down in this Section shall be counted in calendar days from the day following the act to which they refer, unless otherwise specified.
2. Any time period referred to in this Section may be modified by mutual agreement of the Parties.
3. The arbitration panel may at any time propose to the Parties to modify any time period referred to in this Section, stating the reasons for the proposal.
4. In case of urgency, the arbitration panel may, at the request of a Party, reduce the time periods referred to in this Section.

Article 23
Annexes

The [institutional body to be defined] may modify the Annexes X (Rules of Procedure) and XX (Code of Conduct for Panellists and Mediators).