

ETUC Statement on EU-China Comprehensive Agreement on Investment

Adopted at the Executive Committee Meeting of 9th February 2021

The ETUC Executive Committee on 9 February 2021 considered the agreement in principle on the EU-China Comprehensive Agreement on Investment (CAI) announced on 30 December 2020¹, annexes to which are to be published later. This statement forms a first political assessment of the agreement. ETUC will consider the texts of the agreement further in due course.

Context

ETUC notes that the agreement was reached on the penultimate day of the rotating German EU Council Presidency, with the apparent aim for it to be signed during the French Council Presidency in the first half of 2022. ETUC criticises the European Commission, apparently under pressure from those member states, in reaching this agreement as a political mistake, particularly in a moment when renewed systematic and serious human rights violations happen, with grave concerns for the Uighur ethnic minority in the Xinjiang region of China and serious breaches of human rights in Hong Kong with the arbitrary arrest of trade unionists, journalists, academics and other pro-democracy activists. This is on top of a long and steady increase of repression of human rights in the rest of China and Tibet, including the installation of an unprecedented system of surveillance of the population. In addition, further coherence with the relaunch of the EU-US transatlantic agenda with the new US administration and the support of a rules-based multilateralism, with a central role for the ILO, should be foreseen to avoid another mis-timed assertiveness of the EU's 'open strategic autonomy'.

At the same time the EU should take the lead and develop a well-considered and careful global strategy on China that is infused with democratic values and human rights obligations. This is in particular important at a time when China is pursuing regional and bilateral trade agreements with other nations in the Asia-Pacific region, notably the Regional Comprehensive Economic Partnership (RCEP)², which may undermine such objectives in EU agreements, including GSP, that have an impact on both trade and investment.

CAI must support the 'open strategic autonomy' objective, guiding the EU's trade policy review as well as the EU Recovery Strategy, in order to strengthen the resilience of EU value chains and reduce their vulnerability. Furthermore, ETUC underlines the need for the terms of CAI to be considered in a coherent manner in the context of important EU policy initiatives, notably the Green Deal; the review of EU trade policy; the new industrial strategy for Europe; the latest EU FDI screening procedures; the provision for mandatory Human Rights due diligence and responsible business conduct; and the foreign subsidies White Paper, of which further assessment will be needed to clarify to what extent CAI addresses market access problems that have been harmful for EU industry for many years (e.g. mandatory joint ventures or forced technology transfer). The terms of CAI should also be considered in the context of the ongoing negotiations at the UN level on the international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. An

¹ <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2237>

² The RCEP is a free trade agreement between the Asia-Pacific nations of Australia, Brunei, Cambodia, China, Indonesia, Japan, Laos, Malaysia, Myanmar, New Zealand, the Philippines, Singapore, South Korea, Thailand, and Vietnam signed on 15 November 2020.

in-depth assessment of the impact of CAI on the EU economy and employment should be conducted once the texts will be available in detail, particularly with regard to inflowing investments to EU countries.

ETUC also stresses that the provisions referring to the Paris climate agreement and the UNFCCC are welcome but that much more efforts will be needed to drive investments towards climate neutral activities as well as to build a level-playing field when it comes to carbon pricing. Given the fact that current unbalance in carbon pricing regulation between EU and China creates a risk of unfair competition and carbon leakage, ETUC urges the EU to accelerate the introduction of a carbon border adjustment mechanism (CBAM) and to discuss this issue with China.

The EU must act respectfully and in coherence with the principles of the European Pillar of Social Rights (EPSR) and the EU Charter of Fundamental Rights. Public services must be further protected through limits in the CAI markets' opening provisions for sectors that may lead to further competition and pressure with existing public services such as the health sector.

Lack of transparency

ETUC strongly regrets that CAI discussions were conducted without transparency and consultation prior and throughout negotiations of all stakeholders including trade union organisations. ETUC urges that the social dialogue processes, involving a meaningful input by participants, be seized on the consideration of CAI and its implementation. This should include consultations on how to strengthen and develop productive capacity within the EU in strategically important sectors, infrastructures and technologies.

ETUC calls on governments and parliaments of the EU to start an in-depth democratic debate of such an important agreement, which is full of political implications and launch a transparent and widespread consultation of social partners also at national level.

Weak labour rights provisions

ETUC reaffirms that trade and investment partners need to show respect for fundamental ILO conventions as a precondition for any agreement. In the case of China, fundamental ILO standards are being abused – independent trade unions are banned, forced labour is used and there is widespread repression of trade unionists as well as other social activists. ETUC reiterates its request that ratification and implementation of ILO core labour standards should be a precondition for trade and investments negotiation. ETUC therefore calls on the European Commission not to conclude the agreement until China has ratified all fundamental ILO conventions or commits to ratification and implementation with a binding and enforceable timetable. In the event of non-compliance in a timely manner, there must be the possibility of economic consequences available as a last resort.

ETUC rejects any Sustainable Development Chapter that does not include all ILO core labour standards, and which would set even weaker requirements on Freedom of Association and Collective Bargaining than those of the EU-Vietnam Free Trade Agreement. ETUC is also concerned that such a retreat would encourage the Vietnamese authorities to delay the implementation of their FTA commitments with regard to legalising independent unions (albeit at company level) and further weaken the EU bargaining position in the region and in the rest of the world.

ETUC rejects the perennial position of China that differences in the Parties' respective levels of development should be taken into account when entering such an agreement: ILO Conventions apply to all parties equally and fundamental conventions remain universally applicable. ETUC calls on the Chinese authorities to act in line with the recommendations of the Committee of Freedom of Association of the ILO, following ITUC

complaints, notably its most recent report of October 2020³. ETUC also calls on the Chinese authorities to act in line with the recommendation of the United Nations Committee on Economic, Social and Cultural Rights⁴ which formally called on China to amend the Trade Union Act to allow workers to form independent trade unions, both within and outside the structure of the All-China Federation of Trade Unions (ACFTU); to consider the legal recognition of the right to strike; and to strongly and urgently consider withdrawing their declaration on article 8, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights (that nullifies the purpose of the article).

ETUC notes that the Commission has drawn attention to the conclusions of the Panel of Experts on the EU-Korea Free Trade Agreement as validating its approach to dispute settlement in cases of breaches of sustainable development commitments. However, the absence of economic consequences, in case recommendations by a Panel are not implemented by the parties, weakens the process substantially. In addition, the Report on Korea shows that the existence of a roadmap towards ratification of ILO Conventions is key to demonstrating the required "continued and sustained efforts". It is therefore crucial that such a roadmap be included in CAI.

ETUC demands

In relation to CAI's labour provisions, ETUC insists that:

- timetabled, verifiable and irreversible progress is set towards ratification of all four fundamental ILO Conventions not ratified by China, as a precondition to CAI ratification: C29 – Forced Labour 1930; C87 - Freedom of Association and Protection of the Right to Organise 1948; C98 - Right to Organise and Collective Bargaining 1949; and C105 - Abolition of Forced Labour Convention, 1957;
- concrete and verifiable measures must be put in place with careful monitoring of what is done rather than accepting what is promised. Verification should entail the visit of independent observers in collaboration with the local ILO Office;
- the CAI Sustainable Development Chapter's State-to-State dispute settlement mechanism should include any possible consequences in serious recurring cases and entail effective remedies;
- in the context of the forced labour issues, China should ratify the ILO Indigenous and Tribal Peoples Convention 169 (1989). More widely, China should stop the practices of forced labour through the disguised poverty alleviation, aid, and vocational training programs on the Uyghur population. We refer to the 2020 ITUC submission to the ILO Committee of Experts on the Application of Conventions and Recommendations under C122, C111, C26 which China has ratified regarding the imposed labour transfer program imposed on the Uighur population;
- labour inspection measures should be reviewed and strengthened in line with C182, as well as the elimination of child labour Conventions;
- there must be a ban on the importation into Europe of all goods produced by forced labour;
- it is unacceptable for a party to derogate from the commitment to enforce its labour laws citing as excuse "good faith" decisions regarding the allocation of resources with its priorities for enforcement of its labour laws;
- CAI Civil Society mechanisms should include representatives independent from the State, the Chinese Communist Party (CCP) and from the CCP-dependent ACFTU;
- issues relating to decent work, occupational health and safety, and protection of data privacy must be addressed;

³ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:4059166#C

⁴ See para 23, p.7 <https://www.refworld.org/publisher.CESCR.,CHN,53c77e524,0.html>

- on the EU side, claims submitted by representative organisations, notably trade unions, should be acted upon by the Chief Trade Enforcement Officer through appropriate and effective enforcement measures without delay, and followed-up in transparency with the complainants;
- independent social partner and Civil Society representatives should have access to the announced 'specific working group' on implementation that is to be established.

Corporate Social Responsibility

With regard to Corporate Social Responsibilities (CSR), ETUC notes the promotion of responsible business practices in the agreement, including by encouraging the voluntary uptake of guidelines and principles such as the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the OECD Guidelines for Multinational Enterprises. However, such guidelines and principles include respect of ILO Conventions on Freedom of Association and on Collective Bargaining which are not voluntary and that, in any event, CSR cannot and must not replace collective bargaining between independent social partners. Similarly, Corporate due diligence cannot and should not replace the responsibility of public authorities to make international human and labour rights respected by companies. It is highly unlikely, however, that European companies will be allowed to respect universal human rights standards if doing so is in violation of national law. In other words, given the laws and practices in China voluntary standards have severe limits and, under no circumstances can they be considered as replacements for ratification and implementation of ILO Conventions, especially on freedom of association and collective bargaining. Free collective bargaining facilitated by, but without interference from, the State is the best guarantee of worker rights and the peaceful resolution of conflict.

ETUC urges the issues to be brought for discussion in social dialogue structures at all levels. Companies should join in support of ratification, notably of Conventions 87, 98 and 29, if only so as to be able to fulfil their obligations such as those under the Guiding Principles and OECD Guidelines; as well as under national (for example France) and eventually European due diligence legislation.

Mobility of workers

With regard to provisions on entry and temporary stay of natural persons for business purposes (Services Mode 4), ETUC is strongly opposed to provisions foreseeing that parties should not set limitations in the form of numerical quotas or economic needs tests on the total number of natural persons that, in a specific sector, are allowed entry as business visitors for establishment purposes or that an investor may employ as intra-corporate transferees. ETUC does not see any room for commitments to any party that ignores fundamental labour rights. It stresses that all workers sent to and working in the EU must be protected by all applicable labour rights enshrined at EU and national level and benefit from all labour and social standards at the place of work.

Furthermore, ETUC is concerned about opportunities offered by these provisions for industrial espionage. It insists that screening in consultation with the social partners should be held, including at national level, on a set number of persons involved and their qualifications, particularly in relation to "specialists". Specific provisions should be included that guarantee and effective implementation of collective bargaining provisions and employment rights of transferees in the place of work, including decent wages, social security, the right to organise, to strike, and the union's right to access the workplace.