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Research Report

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FDI and sustainable development in the EU-China investment treaty: Neither high nor low, just realistic expectations

by

Julien Chaisse*

As discussed in a recent *Perspective*, the [EU-China Comprehensive Agreement on Investment](#) (CAI) constitutes a significant development in international economic policy. Its Section IV, “investment and sustainable development”, is particularly important for three main reasons:

- It is China’s first treaty with a sustainable development section. Under the CAI, China commits to effectively implement the ILO Conventions it has ratified; work toward the ratification of the ILO fundamental Conventions Nos. 87 and 98; make continued and sustained efforts to pursue ratification of the ILO fundamental Conventions on Forced Labour, Nos. 29 and 105; respect, promote and realize, in good faith and in accordance with the [ILO Constitution](#), the principles and fundamental rights of the [ILO fundamental Conventions](#) (thereby binding China to certain basic rights and principles of those unratified Conventions); and effectively implement the [UNFCCC](#) and the [Paris Agreement](#).
- It emphasizes regulatory cooperation, establishes Section-specific dispute-resolution procedures and allows the involvement of nongovernmental international organizations. The CAI provisions will permeate and seep into the Chinese regulatory systems and EU-China relations in the long run. The China-EU dialogue must continue and track improvements through an implementation/monitoring mechanism that entails regular political oversight.
- The provisions on cooperation and dialogue on environmental and labor issues are based on a “complementary-to-the-efforts” approach: the CAI confirms and locks them in for the future.

While critics have attacked the uncertain enforceability of this Section (because China [has not yet ratified all ILO conventions](#)), the CAI displays significant similarities with the recently concluded

EU-Korea, EU-Vietnam and EU-Japan Free Trade Agreements (FTA). Lessons can be derived from them.

For instance, Section IV(3), Article 4, of the CAI is identical to the EU-Korea FTA. In January 2021, the [Panel of Experts](#) under the latter treaty examined the requirement for “continued and sustained” efforts to ratify the fundamental ILO conventions. [The Panel ruled](#) that Korea has a legally binding and ongoing obligation to take steps toward the ratification of ILO Conventions. The obligation does not require any immediate legislative actions, but rather tangible and satisfactory steps in this direction. In their absence, the CAI would permit the establishment of “a Panel of Experts” to examine the matter and render a ruling that would be public and subject to follow-up consultations between the parties.

Section IV also introduces three major innovations with respect to sustainable development:

- The conclusion of the CAI negotiations does more for sustainable development than usual investment treaties (and much more than existing EU members states bilateral investment treaties with China): it provides for longitudinal monitoring that requires parties to co-operate by exchanging experiences and good practices related to virtually any aspect of sustainable development related policies.
- The CAI constitutes one additional component of the EU’s sophisticated global “toolbox” for dealing with China, which includes the WTO framework, ILO ongoing discussions, unilateral sanctions (e.g., the [EU Global Human Rights Sanctions Regime](#)), and legislation on corporate due diligence and accountability that seeks to end forced labor in supply chains by imposing tight control over EU companies operating in China. It [is being prepared by the EU](#), based on a few members states’ existing legislation and experience.
- Since Section IV is a major development for China, it will take time before we see the first effects in China (and on Chinese law). While the agreement is not ideal, China still commits for the first time to a number of obligations concerning sustainable development in a trade and investment agreement. Based on the Korea-EU relationship experience and considering that that treaty entered into force in 2015, one could expect changes in some key aspects of China’s regulation on labor and the environment in the coming years.

More remains to be done, and some key aspects of the EU’s international policy will have to be refined and sharpened:

- The sustainable development provisions should evolve from current “best effort” clauses (e.g., “take steps”) toward obligations of results, paired with mechanisms to assess their practical implementation.
- The binding character of international norms should be combined with enforcement mechanisms that could have two facets: on the one hand, sanctions based on the future EU corporate due diligence and corporate accountability regime; on the other hand, incentives to comply with, and enforce, agreed norms, as promoted by [France and the Netherlands 2020 non-paper on trade, social-economic effects and sustainable development](#).

- As part of upgrading the sustainable development provisions, it will be important to depoliticize potential disputes. Under the new [Single Entry Point](#), businesses can lodge complaints on alleged violations of sustainable development commitments in EU trade agreements. The use of this new mechanism by the private sector should be monitored.

CAI's Section IV on investment and sustainable development can become a major source of inspiration for a new generation of trade and investment treaties worldwide. New treaties must promote sustainable investment and increasingly seek to create permanent linkages with existing international environmental and labor norms. Investment and non-economic norms can reinforce each other. The path opened by the CAI, in the context of EU-China negotiations, should be further pursued by other countries and regions to ensure FDI contributes to sustainable economic growth.

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