



EU-CHINA COMPREHENSIVE AGREEMENT ON INVESTMENT (CAI): IMPROVEMENTS IN INVESTMENT CONDITIONS FOR EUROPEAN MEDIUM-SIZED ENTERPRISES

After 7 years and 35 rounds of talks, at the end of 2020 Chinese and European leaders announced that the parties have completed negotiations on EU-China Comprehensive Agreement on Investment (CAI).

The CAI will be the most ambitious agreement that China has ever concluded with a third country. This agreement will ensure that EU investors achieve better access to and better competitive conditions on the fast growing Chinese market.

This investment agreement focuses on four parts: (1) **market access**, (2) **competition condition**, (3) **sustainable development**, (4) **monitoring mechanism and dispute settlement**.

This will also result in an improvement in the framework conditions for direct investment in China for European medium-sized enterprises.

In the following, we will introduce the four parts in further detail.

I. IN WHICH AREAS IS MARKET ACCESS FACILITATED?

The EU has negotiated further and new market access openings and market access commitments for the scope of the CAI. This covers, inter alia, the following business area, which is

traditionally occupied by medium-sized companies:

- 1) **Manufacturing Sector:** China has made comprehensive commitments to market opening (f. e. Chemicals, health technology, telecommunication device, transportation) with only very limited exclusions.
- 2) **Automotive Sector:** Chinas has agreed to remove and phase out restrictive joint venture requirements. The process of market access for new energy vehicles will be simplified.
- 3) **IT Services:** China has agreed to allow market access for IT services. In addition, regulations for caps on shareholdings, which exist for value-added telecommunications services, are not to be applied to online services in the fields of finance, logistics, medicine, etc.
- 4) **R&D (biological resources):** China has agreed not to introduce new restrictions and to give to the EU any lifting of current restriction in this area that may happen in the future.
- 5) **Services for Business:** China will eliminate restrictive joint venture requirements in real estate services, rental and leasing services, transportation repair and



maintenance, advertising, management consulting, and translation services

- 6) **Environmental Services:** China will eliminate restrictive joint venture requirements in the areas of wastewater, noise abatement, waste management, nature and landscape protection, and sanitation.
- 7) **Construction Services:** China will remove project restrictions currently provided for in “GATS-Obligations”.

II. HOW WILL THE CONDITIONS OF COMPETITION BE IMPROVED?

In order to improve the conditions of competition, CAI seeks to regulate the **activities of state-owned / state-funded enterprises** in China (“SOEs”). In particular, this involves requiring SOEs to act in accordance with market standards and not to discriminate against foreign market participants in their sales and purchases of goods or services.

In order to close one of the significant gaps to the WTO regulations, China commits to **improve the transparency of subsidies** not only in the industrial sector, but also in the service sector. In this context, a consultation mechanism will be established to gather the necessary information to assess the impact of specific subsidies on EU investment interests and to challenge any negative effects.

China is committed to **preventing coerced technology transfer**. This includes prohibiting various types of investment requirements, such as requiring technology transfer to a Chinese joint venture partner, government interference with freedom of contract in technology licensing, and improving protection of confidential business information and trade secrets.

China will grant EU companies **equal access to rule-making committees** and ensure improved transparency, predictability, and fairness in admissions to these committees.

III. WHAT ARE THE CORE ISSUES OF SUSTAINABLE DEVELOPMENT?

For the first time, China anchors sustainable development as a principle in its investment relationship with the EU. To this end, regulations in the areas of **environmental protection, labor protection and corporate social responsibility** will be agreed in the CAI. This applies in particular to the following points:

With regard to environmental protection, China undertakes to effectively implement the Paris Agreement.

With regard to labor protection, China assures that it will work toward ratification of the International Labor Organization (ILO-) Convention. In this regard, concrete commitments are made to the fundamental ILO conventions with regard to the prohibition of coerced labor.

IV. HOW IS THE IMPLEMENTATION OF THE CAI MONITORED?

To ensure the implementation of the CAI in practice, the EU and China have agreed on an implementation and enforcement mechanism, including an intergovernmental dispute settlement mechanism. In addition, a monitoring mechanism will be established at the political level.

V. WHAT IMPACT WILL THE CAI HAVE ON INVESTMENT FROM THE EU IN CHINA?

The CAI will enhance protection and reduce barriers to bilateral investment, which will



improve market access for EU companies in China. This is an attractive opportunity for EU investors to take advantage of the benefits created by the CAI to expand into the Chinese market, which continues to grow, especially at a time when China's economy is recovering rapidly from the COVID-19 pandemic.

Following the conclusion of negotiations on the key elements of the CAI between China and the EU, legal drafting of the text of the agreement will now take place. The European Commission estimates that the signing and ratification of the agreement could be completed in 2022.

Schindhelm Allianz, in particular with its offices in Shanghai and Taicang, has been advising clients on market entry and direct investment in China for more than a decade. If you have any questions regarding CAI or market entry in China, our advisors will be pleased to assist you at any time.

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