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'First time China has accepted any regulation on workers' rights'

Is the EU-China investment deal a success story? An interview with European Parliament trade negotiator Bernd Lange

Read this interview in German.

Just a few days before the end of 2020, the European Union and China reached a breakthrough in the protracted negotiations for the Comprehensive Agreement on Investment (CAI). After years of slow progress and long delays, the sudden agreement came to the surprise of many observers. Was it really all that unexpected, though?

Well, we weren't caught completely by surprise. Having said that, even just a few weeks prior to the announcement, it certainly didn't look like everything would happen so quickly. We shouldn't forget, however, that a joint political declaration does not mean that negotiations have been concluded. The text of the agreement we are now examining in the European Parliament is by no means final; in fact, a lot of points are still up for discussion.

What is the actual substance of this investment deal?

In general, the deal is about market access for European investors. The status quo is that China has far more barriers than the European market. As part of this agreement, China will open up its service sector to European investors to a higher degree than it currently does under the General Agreement on Trade in Services (GATS) of the World Trade Organisation (TWO). For instance, China will offer better access to financial, environmental and IT services, as well as to the construction and maritime shipping sectors. There will also be improved access to manufacturing – for example in the automotive, transportation, and telecommunications sectors; chemicals and textiles, too. Some areas, such as audio-visual services, are specifically excluded from the agreement.

Another aspect of the deal is creating a "level playing field" between European and Chinese companies. At the core this is about a set of rules to prevent the forced transfer of technology, including a ban on investment conditions which require investors to provide technology. This will put a stop to a range of practices such as forcing companies to set up joint-ventures with Chinese partners, placing requirements on research facilities to be localised to China and imposing direct or indirect obligations to licence technology in order to enter the Chinese market.

Then, there is regulation to protect confidential commercial information collected by the authorities and to prevent discrimination against European investors by Chinese state-owned companies. Further, the agreement includes the cornerstones for rules on sustainable development, with obligations to ratify International Labour Organisation (ILO) Norm 105, the Abolition of Forced Labour Convention.

After all the delays, why were the talks concluded at this very moment? Did substantial progress happen or was it more about symbolism?

After seven years, 35 rounds of negotiations and talks being put on ice again and again, the Chinese side suddenly moved its positions far closer to ours in the final weeks. This leads me to believe the there was an executive decision taken at the top of the Beijing hierarchy and that those leading the Chinese negotiation team were instructed to modify their positions accordingly. There could be all manner of reasons for this: the incoming Biden administration has already indicated that it wishes to work more with the EU than against it, for instance, and Beijing will without doubt have taken note. China will certainly have reassessed how it needs to position itself in this new context.

Another reason for the shift could be the fact that China needs foreign investment – and, hence, needs to offer as stable and transparent a market environment as possible. Singing an investment deal with the EU sends a strong signal in this regard.

It is worth pointing out that, for all the difficulties we have with China, it is a key economic partner for the EU – and a political one, too. Brussels and Beijing share the view that it is in both of our interests to take a proactive approach to shaping our bilateral relationship. And then of course there is the fact that the German EU presidency came to an end and that it served the Chancellor Angela Merkel. I would imagine this gave some extra impetus on the home stretch.

In the past, the EU's demands have been clear: better access to the Chinese market for European companies; improved protections for foreign investment; and more rights for Chinese workers. Would you say that the assurances given by Beijing satisfy these demands – or has the EU softened its positions? After all, even the Confederation of European Businesses is sceptical about the extent to which China will actually make hard-and-fast concessions here.

The agreement deals with all of these questions. But as there is not yet a final version of the text, I'm cautious about forming conclusive judgements of it just yet. From a purely economic point of view, the agreement certainly seems to offer a lot for European investors: market access, transparency, legal protections. What is more, it is the first time that China has accepted any regulation on workers' rights at all. If you compare the EU-China agreement to Phase 1 of the US-China deal, for instance, or to the new RCEP free-trade agreement in Asia-Pacific, there are absolutely no rules on labour and employment. We as a parliament will now analyse in detail whether the rules in the CAI are far-reaching enough and whether there are mechanisms to ensure that they are implemented – i.e. whether the mechanisms have teeth. This analysis will take some time – and may well lead to us requiring improvements in order to approve the agreement.

In the US, Joe Biden has just been inaugurated as president. It seems that his approach will be to move closer to the EU in order to exert pressure on China. Yet the EU has, in announcing CAI, quite publically given him the cold shoulder. Seen from Brussels, is Beijing now more important than Washington?

I don't think there are any grounds to see it that way – and the Americans don't, either. Quite to the contrary, they agree with us that it will be a matter of priority to re-endow the transatlantic relationship with a positive agenda. The CAI is something I see as part of a joint strategy insofar as, in many cases, US companies, too, will benefit from its provisions. It is simply the case that the results of the EU-China talks were ripe for a political declaration. And many of the areas in which the US criticised China in its most recent enquiry are dealt with in CAI.

What is more, there are several other areas in which we work closely with the US to set out common interests *vis-à-vis* China and anchor them in the framework of the WTO: these include intellectual property and data protection, where we are seeking joint agreement. To secure systemic change in China, pressure needs to come from a broad coalition of states and, as such, we will seek to build up close contact with the incoming Biden Administration. At the same time, the EU will clearly define European interests and go about ensuring

that they are protected.

In addition to improved economic relations, CAI also makes provision for much closer cooperation in the areas of climate goals and sustainable development. What will the effects of the agreement be in practice?

At present, there is a strong focus on the provisions in CAI against forced labour. At the end of last year, the European Parliament adopted a resolution on the situation in Xinjiang which references what are, in part, genuinely inhumane conditions for the province's population. The investment agreement with China simply has to offer us some leverage here even if it won't, in and of itself, change the political system as a whole. I consider it important to see this agreement as part of a comprehensive China strategy, however, in which unilateral instruments such as sanctions against abuses of human rights play a clear role, as does planned legislation to impose a duty of care on companies in their supply chains.

When it comes to joint efforts to slow climate change, CAI is by no means silent. It explicitly underscores the commitment both parties have entered into to implement the Paris Accord and states that investments to protect the climate and lead to the development of climate-neutral products and services should be encouraged. This is an area in which cooperation is emphasised and, now that China has also set clear goals for reaching climate-neutrality, there is a range of areas in which European and Chinese companies can work together: renewable energy, energy efficiency, climate-neutral technology.

The European Parliament has yet to approve the agreement. Do you see any obstacles?

We are right at the beginning of a long process: the end of this process will be a vote in the European Parliament on the text of the deal. In the months leading up to this, we will be examining the agreement in detail, talking to experts in the spheres of business, academia and civil society, as well as, of course, observing developments in China. In the end, the Parliament will decide based on what it has learned in this time.

What I can tell you is that only a good deal that provides lasting access to the Chinese market, while giving us effective leverage to anchor and then enforce sustainability goals will find a majority in the European Parliament. Developments in the area of human rights are certain to play an important role in how the Parliament views the deal. At this point, I am working on the assumption that there will be further demands in respect of sustainability undertakings, a concrete

timetable and mechanisms to ensure compliance. Now that there has been a political declaration, the text will require technical revisions in any case, which are likely to take until February or March. Then it will need to be translated and undergo legal due diligence. As such, it is unlikely to be ready for signature much before the end of the year. That is when the ratification process in the European Parliament will begin.

This interview was conducted by Claudia Detsch.



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