



Columbia Center  
on Sustainable Investment

A JOINT CENTER OF COLUMBIA LAW SCHOOL  
AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY

## Columbia FDI Perspectives

Perspectives on topical foreign direct investment issues

Editor-in-Chief: Karl P. Sauvant ([Karl.Sauvant@law.columbia.edu](mailto:Karl.Sauvant@law.columbia.edu))

Managing Editor: Riccardo Loschi ([Riccardo.Loschi@columbia.edu](mailto:Riccardo.Loschi@columbia.edu))

*The Columbia FDI Perspectives are a forum for public debate. The views expressed by the authors do not reflect the opinions of CCSI or our partners and supporters.*

No. 323 January 24, 2022

### **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.

---

\* Julien Chaisse ([julien.chaisse@cityu.edu.hk](mailto:julien.chaisse@cityu.edu.hk)) is Professor of Law at City University of Hong Kong and President, Asia Pacific FDI Network ([www.fdi-forum.com](http://www.fdi-forum.com)). The author wishes to thank Matthieu Burnay, Threcy Lawrence Joboy, Sungjin Kang, Arjun Solanki, and Xu Qian for their constructive criticism, as well as Catherine Titi and two anonymous peer reviewers for their helpful peer reviews.

*The material in this Perspective may be reprinted if accompanied by the following acknowledgment: "Julien Chaisse, 'FDI and sustainable development in the EU-China investment treaty: Neither high nor low, just realistic expectations,' Columbia FDI Perspectives No. 323, January 24, 2022. Reprinted with permission from the Columbia Center on Sustainable Investment (<http://ccsi.columbia.edu>). A copy should kindly be sent to the Columbia Center on Sustainable Investment at [ccsi@law.columbia.edu](mailto:ccsi@law.columbia.edu).*

For further information, including information regarding submission to the *Perspectives*, please contact: Columbia Center on Sustainable Investment, Riccardo Loschi, [riccardo.loschi@columbia.edu](mailto:riccardo.loschi@columbia.edu).

The Columbia Center on Sustainable Investment (CCSI), a joint center of Columbia Law School and the Earth Institute at Columbia University, is a leading applied research center and forum dedicated to the study, practice and discussion of sustainable international investment. Our mission is to develop and disseminate practical approaches and solutions, as well as to analyze topical policy-oriented issues, in order to maximize the impact of international investment for sustainable development. The Center undertakes its mission through interdisciplinary research, advisory projects, multi-stakeholder dialogue, educational programs, and the development of resources and tools. For more information, visit us at <http://ccsi.columbia.edu>.

#### **Most recent Columbia FDI Perspectives**

- No. 322, Mohammad Saeed, "Implementing an Investment Facilitation Framework for Development: Lessons from the Trade Facilitation Agreement," Columbia FDI Perspectives, January 10, 2022
- No 321, Peter Muchlinski, "Promoting responsible business through the revised ILO Tripartite Declaration," Columbia FDI Perspectives, December 27, 2021
- No. 320, Daniela Gomez Altamirano, "Protecting FDI contributing to host countries' development: The rise of the "forgotten" Salini criterion as part of the definition of investment," Columbia FDI Perspectives, December 13, 2021
- No. 319, Matthew Stephenson, "Launching a program for investment partnerships," Columbia FDI Perspectives, November 29, 2021
- No. 318, Marian Ingrams, Thomas Mason and Joseph Wilde-Ramsing, "The OECD MNE Guidelines: Recent complaints on emerging issues show the need to revise standards on responsible business conduct," Columbia FDI Perspectives, November 15, 2021

All previous *FDI Perspectives* are available at <https://ccsi.columbia.edu/content/columbia-fdi-perspectives>.