



**AEGIS Europe on the EU-China Comprehensive Agreement on Investment:  
Pre-conditions are needed for ratification**

AEGIS Europe is an industry alliance that brings together more than 20 European manufacturing associations from metals and ceramics to energy and transportation industries. We are committed to manufacturing in the EU. We seek a truly level playing field ensured by a rules-based free and fair international trade. Our members account for more than €500 billion in annual turnover, as well as for millions of jobs across the EU.

AEGIS Europe is a strong defender of free trade as long as trade is fair and according to international trade laws. However, the European Union cannot remain naïve to the distortions of non-market economic models, excessive subsidies, and the weaponisation of trade and state policies to promote national champions. In addition, it is essential for the EU's trade policy to mirror the fundamental values and standards of the Union, such as fair trade and open competition, high standards for health and safety, sustainability, protection of the environment and of workers.

\*\*\*

On 30 December 2020, the EU and China reached an agreement in principle on the Comprehensive Agreement on Investment (CAI). Back in November, AEGIS Europe raised concerns on the negotiating process and called on the European Commission to remain cautious, to be mindful of the pervasive distortions to all markets caused by China's trade policies and the persistent problems with enforcement that result from systemic differences. In January, these concerns have been reiterated in a letter to the European Commission and a press release.

Our concerns have been heightened now that the full text of the agreement has become accessible.

#### **AEGIS EUROPE'S AREAS OF CONCERN**

- **Scope: A missed opportunity to address pressing trade issues**

AEGIS Europe understands that while that CAI is not a free trade agreement, and therefore cannot address all issues related to China, we note, however, that its scope dates back to a mandate from 2013. Since then, some important issues have become even more pressing and are not be addressed in this agreement. In particular, it should have included more level playing field provisions to counter:

- Import substitution policies;
- Policies fuelling overcapacities that distort global markets<sup>1</sup>; and
- Government micromanagement of not only state-owned enterprises (SOEs) but of all enterprises.

As public procurement is excluded from the scope of the agreement, barriers faced by European companies in many sectors will persist in spite of potential liberalisation of investment.

- **Market access: A mixed picture**

In relation to market access, the EU obtained further and new market access openings and commitments such as the elimination of quantitative restrictions, equity caps or joint venture requirements in a number of sectors. However, apart from the question of enforcement of these commitments, AEGIS Europe would like to raise certain concerns, especially as regards manufacturing.

For some sectors, restrictions on investments have already been legally removed already by China. Yet, the pressure on the ground to have joint ventures and use Chinese ‘autonomous technology’ remains or even tends to increase. This is particularly the case of rail supply, which is highly dependent on public procurement procedures. Consequently, even though the agreement legally confirms *de jure* existing developments, there are doubts that it will improve the situation *de facto*.

For the steel sector, plagued by overcapacities, China’s schedule of commitments and reservations prohibits the increase of production capacity as well as the establishment of new independent iron smelting, steel smelting, or hot rolling enterprises in China. On the contrary, in the EU’s schedule there is no similar provision: the manufacture of basic metals and of fabricated metal products in the EU are not subject to reservations. In fact, investment liberalisation in Europe is already far advanced. If our understanding is correct, we fail to see how the agreement would substantially change the current situation.

- **Enforcement and dispute settlement: Legitimate doubts on a smooth process**

AEGIS Europe has some legitimate doubts on the future enforcement of the CAI at all government levels due to systemic differences between the EU’s market-driven economy and China’s state-led economy.

China has a dismal track record of massive WTO and EU trade law violations, resulting in substantial distortions to the global playing field. These distortions impact our opportunities to be active in China, our daily business in the EU and harm our exports to third country markets.

---

<sup>1</sup> As way of example, according to the latest OECD report on the developments in steelmaking capacity (March 2021), global steelmaking capacity increased in 2020 for the second year in a row. In particular, “*excess capacity pressures have emerged, and are getting worse, in regions that previously had strong steel demand and positive prospects for market growth. For instance, growing concerns in Southeast Asia loom as capacity growth outpaces demand, supported by foreign investment particularly from China.*” The problem of overcapacities is a major concern for the vast majority of the AEGIS Europe members, including those operating in downstream segment of the value chain, like the bicycles industry.

A good example of these doubts is transparency on subsidies: While the CAI presents commitments on transparency on subsidies in services as a major breakthrough, provisions already existed on transparency of subsidies on goods in the WTO. These existing commitments have not been respected. What makes the EU think that China will comply with these transparency obligations, even with a State-to-State dispute settlement system?

The CAI does not create an investor-state dispute settlement system which is the core element of most, if not all, bi-lateral investment treaties. It contains a commitment to pursue these negotiations within 2 years of the signature of the agreement, i.e. possibly until 2024 and without any guarantee that an agreement will be found on the basis of the work in the United Nations Commission on International Trade Law (UNCITRAL). Investment protection was indeed a major objective of the CAI.

- **CAI is not a silver bullet: Autonomous EU tools are crucial to achieve a level-playing field**

To the extent that the WTO framework is still inadequate, a strong EU toolbox of instruments to address unfair practices and maintain a level playing field is more essential than ever, especially in the context of the current COVID-19 crisis. The effective use of these instruments is critical for fostering public support in the Union to be more open to trade at home and abroad.

Therefore, AEGIS Europe strongly believes that the agreement should not affect the EU willingness to address distortions through other tools such as a reinforced foreign direct investment screening mechanism, an EU Instrument on Foreign Subsidies, an ambitious International Procurement Instrument (IPI), and the trade defence instruments. The CAI must not open the door for circumvention.

## **AEGIS EUROPE'S RECOMMENDATIONS**

Against this background, and taking into account the broader ongoing discussions on open strategic autonomy, **AEGIS Europe strongly recommends Member States and the European Parliament to ratify the CAI only if certain crucial pre-conditions are met.**

These pre-conditions relate to the **development of EU unilateral tools** that aim to provide an adequate level of protection against distortions of competition originating from China:

### ***1) Conclusion of the negotiations on an International Procurement Instrument (IPI)***

Negotiations on an IPI have been ongoing since 2012 and must be concluded as a matter of urgency. The instrument needs to be ambitious and efficient in order to support the opening of international procurement markets, especially as the current crisis could result in further protectionist measures and barriers for European companies abroad.

### ***2) Substantial progress in proposal(s) for an instrument on foreign subsidies***

The proposal(s) for an instrument on foreign subsidies, expected in Q2 2021, must display substantial progress both in Council and in the European Parliament in order to be adopted and implemented as quickly as possible. The European Commission acknowledged the

existence of a 'regulatory gap' in EU law with regard to foreign subsidies which distort financial flows that facilitate acquisitions of EU companies, distort bidding in public procurement procedures or in applications for EU financial support, or simply distort normal competition on the EU market. The future instrument on foreign subsidies represents a one-time opportunity for the EU to achieve a more effective level playing field for the years to come.

**3) *Substantial progress in a proposal on an anti-coercion instrument***

The potential instrument, for which a proposal is expected in 2021, is important to allow the EU to address practices by non-EU countries that seek to pressure the EU or its member countries into taking or withdrawing particular policy measures. It would empower the Commission, in specific situations of economic coercion, to take trade, investment or other restrictive measures towards the non-EU country exerting the pressure.

**4) *A proposal from the European Commission to strengthen the EU public procurement framework***

The European Commission should adopt a more strategic approach to the EU procurement framework. Provisions that currently fail to guarantee a level-playing field between European companies and their competitors from third countries should be both strengthened and operationalised, in particular exclusion of foreign bidders, abnormally low tenders, most economically advantageous tender principle or European localisation.

**5) *A clear roadmap from the European Commission on investment screening***

The Trade Policy Review states that the Commission will consider 'enhancing' the cooperation mechanism established by the FDI Screening Regulation. We are of the opinion that the existing provisions should indeed be further reinforced without delay. The role of the European Commission should be strengthened and the list of projects and programmes of Union interest updated to reflect the new issues the EU is facing. Finally, when it comes to assessing whether a foreign direct investment is likely to affect security or public order, Member States and the Commission should give particular attention to the degree of openness of the foreign investor's country of origin and to whether the investment can lead to a monopolistic structure or the control of a value chain.

**6) *Hard evidence of a commitment by China to comply with existing transparency and reporting rules on subsidies***

AEGIS Europe considers that the EU should not engage with China on new commitments until such time as China complies with existing commitments. These commitments that China has already signed up to, but not complied with, include: i) reporting on subsidies to the WTO; ii) allowing commercial considerations to determine prices; iii) to eliminate price fixing; iv) to eliminate export subsidies rather than increase them through programmes like the Belt and Road Initiative; v) to treat imported good equally with domestically produced goods.

**7) *Any proposal related to a due diligence mechanism aiming at tackling forced labour should be complemented by a mechanism allowing the EU to block imports of such products***