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Plenary sitting

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B7-0439/2013

MOTION FOR A RESOLUTION

to wind up the debate on the statement by the Commission

pursuant to Rule 110(2) of the Rules of Procedure

on the EU-China negotiations for a bilateral investment agreement
(2013/2674(RSP))

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United in diversity

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B7-0439/2013

**European Parliament resolution on the EU-China negotiations for a bilateral investment agreement
(2013/2674(RSP))**

The European Parliament,

- having regard to Articles 2, 3, 6 and 21 of the Treaty on European Union,
- having regard to Articles 153, 191, 207 and 218 of the Treaty on the Functioning of the European Union,
- having regard to Articles 12, 21, 28, 29, 31 and 32 of the Charter of Fundamental Rights of the European Union,
- having regard to the EU Strategic Framework and Action Plan on Human Rights and Democracy of 25 June 2012,
- having regard to the Protocol on the Accession of the People's Republic of China to the World Trade Organisation of 23 November 2001,
- having regard to its resolution of 23 May 2012 on 'EU and China: Unbalanced Trade?'¹ and to the report of July 2011 by its Directorate-General for External Policies on trade and economic relations with China,
- having regard to its resolution of 14 March 2013 on EU-China relations²,
- having regard to the joint statement issued on the occasion of the 13th EU-China Summit held in Brussels on 20 September 2012,
- having regard to the Commission communication entitled 'Trade, Growth and World Affairs – Trade Policy as a core component of the EU's 2020 strategy' (COM(2010)0612) and to Parliament's resolution of 27 September 2011 on a new trade policy for Europe under the Europe 2020 strategy³,
- having regard to the generally accepted principles and practices (GAPP) known as the Santiago Principles, which were adopted in October 2008 by the International Monetary Fund's International Working Group of Sovereign Wealth Funds,
- having regard to its resolution of 6 April 2011 on the future European international investment policy⁴,

¹ OJ C 264 E, 13.9.2013, p. 33.

² Texts adopted, P7_TA(2013)0097.

³ OJ C 56 E, 26.2.2013, p. 87.

⁴ OJ C 296 E, 2.10.2012, p. 34.

- having regard to its resolutions of 25 November 2010 on corporate social responsibility in international trade agreements¹, on human rights, social and environmental standards in international trade agreements² and on international trade policy in the context of climate change imperatives³,
 - having regard to the Commission communication entitled ‘EU – China: Closer partners, growing responsibilities’ (COM(2006)0631) and its accompanying policy paper ‘Competition and Partnership – A policy paper on EU-China trade and investment’ (COM(2006)0632),
 - having regard to its resolution of 5 February 2009 on enhancing the role of European SMEs in international trade⁴,
 - having regard to its recent decision introducing publishing requirements for extractive and logging industries concerning their payments to governments,
 - having regard to the joint statement of the 14th EU-China Summit, held in February 2012 in Beijing, on launching negotiations on a bilateral investment agreement,
 - having regard to Rule 110(2) of its Rules of Procedure,
- A. whereas trade between the EU and China has been growing rapidly and continuously in the last three decades, reaching a peak of total trade of EUR 433.8 billion in 2012, and whereas the imbalance in bilateral trade has been in China’s favour since 1997; whereas this trade deficit amounted to EUR 146 billion in 2012, compared with EUR 49 billion in 2000;
- B. whereas the EU’s foreign investment stock in China in 2011 amounted to EUR 102 billion, while China’s foreign investment stock in the EU in the same year amounted to EUR 15 billion; whereas in 2006 China’s foreign investment stock in the EU amounted to only EUR 3.5 billion;
- C. whereas the Treaty of Lisbon made foreign direct investment (FDI) an exclusive competence of the Union;
- D. whereas 26 EU Member States have individual bilateral investment agreements in force with China; whereas those agreements generally have no or poor provisions in the area of sustainable development and on countries’ right to regulate;
- E. whereas the development goals expressed in China’s 12th five-year plan and the Europe 2020 strategy, respectively, include a large number of shared interests and common challenges, in such areas as environmental protection, sustainable and balanced development and climate change; whereas a higher level of integration and technological exchange between the EU and the Chinese economies could lead to synergies and mutual benefits;

¹ OJ C 99 E, 3.4.2012, p. 101.

² OJ C 99 E, 3.4.2012, p. 31.

³ OJ C 99 E, 3.4.2012, p. 94.

⁴ OJ C 67 E, 18.3.2010, p. 101.

- F. whereas the envisaged inclusion of market access in an investment agreement with China could contribute to deepening bilateral economic cooperation geared towards facing such common challenges; whereas, however, both parties should be allowed to exclude certain sectors from market access commitments on the basis of public policy considerations;
- G. whereas the EU has not yet developed a sustainable long-term industrial policy that would be a driver for its offensive and defensive interests in the framework of its new foreign investment policy;
- H. whereas, especially given that the negotiation of this investment agreement may generate public concern, the highest possible levels of transparency and involvement of civil society are required;
- I. whereas investors must comply with the laws of the host country in order to be covered by the protection of an investment agreement concluded by the EU;
- J. whereas the poor implementation or non-implementation by China of certain fundamental social and labour rights and of internationally recognised environmental standards has contributed to the present imbalance in trade flows between the EU and China, which could even be exacerbated by deepened investment relations if progress is not achieved in the implementation of those rights and standards; whereas the investment agreement should therefore not have the effect of further lowering social and environmental standards in China, but should, on the contrary, contribute to the improvement thereof as a precondition, thus leading to a more balanced and mutually beneficial trade and investment relationship;
- K. whereas an investment agreement should also include investor duties, in particular with regard to respect for trade unions and other labour rights, transparency and protection of the environment, as defined in domestic laws and in international conventions and agreements to which both the EU and China are parties; whereas the proposed investment agreement should not cover investments in specially created zones that allow the circumvention of labour rights and standards and other legal requirements;
- L. whereas the Commission and the Council have committed to ensuring that EU investment policy takes account of the principles and objectives of the Union's external action, including human rights, and have committed to delivering as from 2013;
- M. whereas the Commission's impact assessment regarding an EU-China investment agreement included a human rights dimension only marginally; whereas a trade sustainability impact assessment was completed in 2007 in relation to a partnership and cooperation agreement;
- N. whereas EU-China trade and investment relations will need to be better matched by an adequate enhancement of political relations and the promotion of the fundamental values upon which the EU was founded, with regard in particular to respect for human rights, support for democracy and consolidation of the rule of law, in compliance with the principles set out in the general provisions on the Union's external action as enshrined in the Treaty of Lisbon;

- O. whereas, therefore, an investment agreement with China should also contribute to upgrading the EU-China political dialogue with a view to keeping political and economic relations on a parallel track of ambition, in accordance with the spirit of the Strategic Partnership;
- P. whereas investors and investments should strive, through their management policies and practices, to contribute to the development objectives of the host states and local levels of government where the investment is located;
- Q. whereas there is clear evidence that decisions of arbitral tribunals under existing investment protection agreements have frequently ignored the host state's obligations under international treaties concerning human rights, labour rights and protection of the environment, and have forced host states to pay compensation for acts which seek to implement those obligations but which also have the incidental effect of reducing foreign investors' profits;
1. Welcomes the strengthening of economic relations between the EU and China; calls on the EU and on China to pursue a relationship of partnership and mutual benefits rather than engaging in one based on fierce competition and confrontation;
 2. Recalls that China has witnessed relentless economic development during the last 30 years; stresses, however, that this is now posing very important challenges which are threatening the achievement of sustainable development in the long run and the capability to avoid environmental catastrophes;
 3. Recalls that a security review mechanism for scrutinising foreign investment was recently set up in China and that the use of such mechanisms by both parties may be based on legitimate grounds; points out that the EU and China may have legitimate public policy concerns that justify total or partial exclusion of some sectors from foreign investment;
 4. Encourages the exclusion of certain of the EU's strategic sectors from Chinese investors; recalls, however, that the EU has not yet developed a fully-fledged industrial policy and that a first step in that direction would be the setting-up of a body tasked with the supervision of foreign investment in strategic sectors, similar to the Committee on Foreign Investment (CFIUS) in the US;
 5. Requests that in this agreement, as in the case of the other trade commitments into which the EU has entered, foreign investment in public services should be limited;
 6. Points out that the main form in which foreign companies are allowed to set up in China is through joint ventures, and that this has, among other things, incentivised the export of polluting technologies to China; is convinced that more flexible forms of access to the Chinese market would favour a greater level of integration of the European and Chinese economies on the basis of a more strategic approach to economic cooperation that is oriented towards the most advanced environment-friendly technology and innovation;
 7. Underlines the importance of establishing, through this agreement, the preconditions for fair competition between the EU and China; recommends, therefore, that the Commission negotiate strong and binding provisions on transparency and fair competition so that a

level playing-field also applies to state-owned enterprises and sovereign wealth funds' investment practices;

8. Stresses that nothing in the agreement should prevent the parties from defining and implementing policies for the promotion and protection of cultural diversity; requests, therefore, that the agreement should not include commitments covering audiovisual services;
9. Stresses that nothing in an investment agreement should reduce the policy space of the parties and their capability to legislate in order to pursue legitimate public policy purposes; emphasises that guaranteeing the rule of law for all EU and Chinese investors and citizens must remain the priority;
10. Notes that an investment protection agreement should include clear definitions of the investment to be protected and that speculative forms of investment should not be covered;
11. Considers that provisions on disputes over investment protection should not in any way extend to any part of the agreement covering market access;
12. Considers that the investment agreement with China should be based on the following standards:
 - non-discrimination (national treatment and most-favoured-nation treatment);
 - reference to customary international law;
 - prohibition of manifest arbitrariness in decision-making;
 - prohibition of the denial of justice and of disregard for the fundamental principles of due process;
 - the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings, in accordance with the principle of due process embodied in the world's principal legal systems;
 - prohibition of abusive treatment of investors, including coercion, duress and harassment;
 - protection against direct expropriation, and allowing for adequate compensation for any damage incurred in the event of expropriation;
13. Stresses that the notion of fair and equitable treatment (FET) in the investment agreement should be based on the standards outlined in paragraph 12;
14. Considers that provisions on capital transfers should be in line with the prudential regulations of both parties in order to prevent balance-of-payments instability;
15. Stresses that investment agreements concluded by the EU must not be in contradiction with the fundamental values which the EU aims to promote through its external policies

and, to that end, must not undermine the capacity for public intervention, in particular when pursuing public policy objectives such as social and environmental criteria, human rights, security, workers' and consumers' rights, public health and safety, industrial policy and cultural diversity; calls for the inclusion of the respective specific clauses, on a binding basis, in the agreement;

16. Calls for a clause providing that investors shall be subject to national legislation and civil actions for liability in the judicial process of either their home or host state, in particular for acts or decisions made in relation to their investment where such acts or decisions lead to significant environmental damage, personal injuries or loss of life in the host state;
17. Insists on the need for the agreement to include an obligation for foreign investors to comply with EU data protection standards;
18. Requests the inclusion of an 'international obligation clause' in the agreement, providing that obligations regarding the protection of investments must be read subject to all parties' obligations under international treaties and customary international law, in particular concerning human rights, labour rights and protection of the environment; requests, therefore, that the investment agreement should not curtail progress with regard to the ratification and full implementation of international human rights, International Labour Organisation (ILO) conventions and multilateral environmental agreements by both parties;
19. Expresses its deep concern regarding the level of discretion of international arbitrators to make a broad interpretation of investor protection clauses, thereby leading to the ruling-out of legitimate public regulations;
20. Takes the view that the agreement should include the principle of exhaustion of all local judicial remedies in the event of disputes before recourse is had to state-to-state dispute-settlement procedures, and that it should not provide for an investor-to-state dispute-settlement mechanism (ISDS), in accordance with the overall purposes to which an investment agreement should contribute; also takes the view that the agreement should include a provision allowing any third party with a stake in a dispute that has been referred to an arbitral tribunal to intervene in the proceedings and to seek appropriate remedies;
21. Stresses that observance of human and social rights is essential in cooperation between the EU and China; underlines the importance of compliance with and rapid implementation of all ILO rules, including the right to freely form independent trade unions; supports the pursuit of decent pay and working conditions; stresses the importance of better supply-chain control with regard to working conditions;
22. Stresses that a precondition for the conclusion of the agreement is the inclusion of a strong and binding commitment by the parties to sustainable and inclusive development, in its economic, social and environmental dimensions and in relation to investment, in order to build up a more balanced trade and investment relationship between the EU and China that is not based mainly on low labour costs, poor labour protection and poor environmental standards in China;

23. Stresses that the agreement must promote investment which is sustainable and inclusive, and respects the environment, particularly in the area of extractive industries, and encourages good-quality working conditions in the enterprises targeted by the investment;
24. Asks the Member States to ensure, through adequate monitoring mechanisms, that foreign investors respect EU social and environmental norms and preserve jobs when they invest in EU companies;
25. Reiterates its call for a binding corporate social responsibility clause, in line with the UN Guiding Principles on Business and Human Rights, the ILO Tripartite Declaration on Multinational Enterprises and Social Policy and the OECD Guidelines for Multinational Enterprises, as well as binding commitments on social and environmental clauses, as part of a fully fledged sustainable development chapter that is subject to a dispute-settlement mechanism; calls on both parties to implement a sustainable and inclusive investment strategy that includes an efficient assessment mechanism for public authorities to evaluate the social and environmental impact of foreign investment;
26. Recognises the Commission's endeavours to include human rights aspects in its impact assessment, as it is obliged to do under the EU Strategic Framework and Action Plan on Human Rights and Democracy; is, however, of the opinion that the Commission needs to carry out further work on a more thorough human rights impact assessment in order to comply with Parliament's request, in its resolution of 25 November 2010 on human rights and social and environmental standards in international trade agreements¹, for 'comprehensible trade indicators based on human rights and on environmental and social standards', and in line with the guidance prepared by the UN rapporteurs on the right to food, which calls for the use of human rights impact assessment ('Guiding Principles on Human Rights Impact Assessment of Trade and Investment Agreements');
27. Calls on the Commission to update the sustainability impact assessment carried out in 2007 in the framework of the negotiations for a partnership and cooperation agreement, in order to reflect the significant changes in, and increased relevance and size of, the Chinese economy, as well as China's increased environmental vulnerability, these being developments that have occurred over the last six years;
28. Insists that the agreement should include a binding clause which prohibits the watering-down of social and environmental legislation in order to attract investment, and ensures that neither party may fail to effectively enforce the relevant legislation through a sustained or recurring course of action or inaction, as an encouragement for the establishment, acquisition, expansion or retention of an investment in its territory;
29. Expresses its view that, once concluded, a EU-China investment agreement would replace all existing bilateral investment agreements between individual EU Member States and China;
30. Instructs its President to forward this resolution to the Council and the Commission.

¹ OJ C 99 E, 3.4.2012, p. 31.