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1.10.2013

B7-0436/2013

## **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))

**Vital Moreira, Helmut Scholz**

on behalf of the Committee on International Trade

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*United in diversity*

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**B7-0436/2013**

**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?’<sup>1</sup> 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 relations<sup>2</sup>,
- 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 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 strategy<sup>3</sup>,
- having regard to its resolution of 13 December 2011 on trade and investment barriers<sup>4</sup>,

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<sup>1</sup> OJ C 264 E, 13.9.2013, p. 33.

<sup>2</sup> Texts adopted, P7\_TA(2013)0097.

<sup>3</sup> OJ C 56 E, 26.2.2013, p. 87.

<sup>4</sup> OJ C 168 E, 14.6.2013, p. 1.

- having regard to its resolution of 6 April 2011 on the future European international investment policy<sup>1</sup>,
  - having regard to its resolutions of 25 November 2010 on corporate social responsibility in international trade agreements<sup>2</sup>, on human rights, social and environmental standards in international trade agreements<sup>3</sup> and on international trade policy in the context of climate change imperatives<sup>4</sup>,
  - 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 trade<sup>5</sup>,
  - having regard to its recent decision introducing publishing requirements for extractive and logging industries concerning their payments to governments,
  - having regard to the joint decision by the EU and China, taken at the 14th EU-China Summit held in February 2012 in Beijing, to launch 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 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;

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<sup>1</sup> OJ C 296 E, 2.10.2012, p. 34.

<sup>2</sup> OJ C 99 E, 3.4.2012, p. 101.

<sup>3</sup> OJ C 99 E, 3.4.2012, p. 31.

<sup>4</sup> OJ C 99 E, 3.4.2012, p. 94.

<sup>5</sup> OJ C 67 E, 18.3.2010, p. 101.

- E. whereas even with a rise in labour costs of 10 % per annum in recent years, China is still among the top three markets worldwide for investment;
- F. 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; whereas a higher level of integration and technological exchange between the EU and the Chinese economies could lead to synergies and mutual benefits;
- G. whereas there should be a level playing-field for public and private companies;
- H. whereas this investment agreement is the first to be negotiated by the EU on the basis of its overall competence following the entry into force of the Treaty of Lisbon; whereas the negotiations on this investment agreement, including market access, have the potential to generate great interest as well as possible public concern, and should therefore be conducted with the highest possible level of transparency in order to enable the necessary parliamentary oversight, thus fulfilling one of the preconditions for the necessary consent of the European Parliament to the outcome of the negotiations;
- I. whereas investors must comply with both the laws of the host country and the provisions of any agreement concluded by the EU and China once it enters into force in order to benefit fully from the best possible protection of their investments;
- J. whereas the poor implementation or non-implementation by China of certain fundamental social and labour rights and environmental standards, which are, however, internationally recognised, are among the causes of the present imbalance in trade flows between the EU and China, which could be even further exacerbated by deeper 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, leading to a more balanced and mutually beneficial trade and investment relationship;
- K. whereas an investment agreement should also include investor obligations, including with regard to respect for trade union and other labour rights, transparency and protection of the environment, as defined in the law of each of the two parties, and should be concluded in compliance with World Trade Organisation (WTO) rules and other relevant international agreements and core conventions signed and ratified by the parties; whereas investment agreements should not cover investments in specially created zones that provide for the circumvention of labour rights and standards and other legal requirements;
- L. whereas goods for export to the EU which are produced in forced labour camps, such as under the Re-education through Labour (RTL) system, generally known by the name Laogai, should not benefit from investments made under this bilateral investment agreement;
- M. 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;

- N. whereas, since an investment agreement with China would substantially upgrade EU-China economic relations, it should also make a contribution to upgrading the EU-China political dialogue, notably on such issues as human rights – in the framework of an effective and results-oriented human rights dialogue – and the rule of law, with a view to keeping political and economic relations on a parallel track, in accordance with the spirit of the Strategic Partnership;
- O. whereas investors and investments should strive, through their management policies and practices, to be in line with the development objectives of the host states and local levels of government where the investment is located;
1. Welcomes the strengthening of economic relations between the EU and China; calls on the EU and on China to pursue a well-balanced relationship of partnership, regular high-level dialogue, and mutual benefits rather than engaging in confrontational competition;
  2. Points out that China, having acceded to the WTO in 2001, should place more emphasis on liberalising its trade and opening its market in order to ensure a more level playing-field, and should accelerate removal of the artificial impediments that companies face in accessing the Chinese market;
  3. Notes that European enterprises deplore the existence of numerous tariff and non-tariff barriers to the Chinese market, such as certain forms of discrimination against foreign operators, as well as the complexity of the tariff structure and the technical barriers to trade;
  4. Welcomes the inclusion of market access in the negotiating mandate; believes that a reassurance on the part of China that market access will be included in the negotiations should constitute a precondition for launching them;
  5. Stresses the need to explicitly include both FDI and portfolio investments in the negotiating process;
  6. Notes that Chinese enterprises perceive the Union generally as a stable investment environment, but deplore what they see as the EU's remaining export subsidies for European agricultural products and the existence of certain trade barriers to the EU market, such as technical obstacles to trade and barriers erected to block third-country investment in certain Member States, and that they are calling for the removal of the remaining unjustified barriers and the facilitation of investment in the Member States; recalls, however, that a security review mechanism to scrutinise foreign investments 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 security concerns that justify total or partial exclusion of some sectors from foreign investment on a temporary or long-term basis;
  7. Points out that currently the main form in which foreign companies are allowed to set up in China is through joint ventures, which are often associated with the transfer of strategic technologies that promote China's competitive development to the detriment of European industry; is convinced that further openness on the part of China towards other legal

regulations allowing foreign investors to set up, combined with due protection of intellectual property rights (IPRs), industrial property, brands and geographical indications of products, is crucial and would be mutually beneficial, as well as fostering a greater degree of integration of the European and Chinese economies on the basis of a more strategic approach to economic cooperation that is oriented, among other things, towards environment-friendly technology and innovation;

8. Is convinced that better protection of IPRs and effective implementation of related rules in China would greatly promote the objective of the EU and of other foreign investors of investing, sharing new technological capabilities and updating existing technologies in that country, in particular with regard to environmentally sound technologies;
9. Welcomes the efforts made by the Chinese authorities to improve respect for IPRs since China's accession to the WTO, but still deplors their inadequate protection in China and considers regrettable the lack of specific means available to European businesses, particularly SMEs, to counter IPR infringements effectively;
10. Is concerned about the unreliability of China's judicial system, which fails to enforce contractual obligations, and about the lack of transparency and uniformity in the application of the regulatory regime governing investments;
11. Urges the Commission to negotiate an ambitious and balanced EU-China investment agreement that seeks to create a better environment for EU investors in China and vice versa, including improved access to the market, in order to increase the level of reciprocal capital flows and guarantee transparency regarding governance of companies, both state-owned and private, which invest within the partner economy; recommends the Organisation for Economic Cooperation and Development (OECD) guidelines on corporate governance as a reference document; insists also on better law enforcement in order to ensure fair competition between public and private actors, curtail corruption and enhance the legal certainty and predictability of the business climate in China;
12. Underlines the importance of establishing, through this agreement, the preconditions for fair competition between the EU and China; recommends, to this end, 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;
13. Calls for the agreement currently being negotiated to cover both market access and investor protection;
14. Stresses that nothing in the investment agreement should reduce the policy space of the parties and their capability to legislate in order to pursue legitimate and justified public policy purposes while trying not to nullify the benefits accruing from the commitments of the parties; emphasises that guaranteeing the rule of law for all EU and Chinese investors and citizens must remain the priority;
15. Calls on the Commission to ensure full transparency with regard to sovereign wealth funds;

16. Notes that a clear timeframe of negotiations should be established, and reasonable and meaningful transitional periods considered;
17. Considers that the investment agreement with China should be based on best practices drawn from Member States' experiences, contribute to greater coherence and include the following standards:
  - non-discrimination (national treatment and most-favoured-nation treatment for investors and investments in like circumstances);
  - prohibition of manifest arbitrariness in decision-making;
  - prohibition of the denial of justice and 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 and indirect expropriation, and allowing for adequate compensation for any damage incurred in the event of expropriation;
  - respect for the principle of legality in connection with nationalisations;
18. Reaffirms that with a view to the successful conclusion of the negotiations, quality must always prevail over speed;
19. Notes that the investment protection agreement should include clear definitions of the investment and investor to be protected, and that purely speculative forms of investment should not be protected;
20. Calls for the agreement to be compatible with multilateral obligations under the General Agreement on Trade in Services (GATS) so as to fulfil the criteria for an economic integration agreement;
21. Welcomes the fact that the expected improvement in legal certainty will help SMEs to invest abroad, and stresses that SMEs' voice must be heard during the negotiations (including through the involvement of the EU's new SME Centre in China, the EU's IPR SME Helpdesk and the EU Chamber of Commerce in China), so that the agreement to be concluded fosters the internationalisation of those SMEs that are willing to access the other party's market;
22. Stresses that a precondition for the conclusion of the agreement should be the inclusion of a strong 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 and poor environmental standards in China;

23. Stresses that investment agreements concluded by the EU must respect the capacity for public intervention, in particular when pursuing public policy objectives such as social and environmental criteria, human rights, the fight against counterfeiting, security, workers' and consumers' rights, public health and safety, industrial policy and cultural diversity; calls for the inclusion of the respective specific clauses in the agreement, provided that such measures do not nullify the benefits accruing from the commitments made by the parties;
24. Requests that in this agreement, as in the case of the other trade commitments into which the EU has entered, protecting public services should remain a key principle;
25. Underlines the fact that the future development of the EU-China investment agreement must be based on mutual trust and full compliance with WTO obligations; deplors the huge levels of public subsidisation of certain sectors with growth potential, including solar panels, and calls on the Commission to ensure that the injurious effects of such dumping and subsidisation are completely removed in order to speed up the negotiations;
26. Recommends, with regard to market access, that both parties commit to appropriate phasing-in periods and transitional arrangements for certain sectors in order to ease the path to full or partial liberalisation therein; acknowledges also that both parties may not be able to make commitments in certain sectors; calls, in this context, for the exclusion of cultural and audiovisual services from the negotiations on market access, in line with the relevant provisions of the EU Treaties; stresses the need to address interventionist industrial policies, inadequate protection of IPRs, ambiguities in the substance and the application of the rules, and other non-tariff and technical barriers to trade;
27. Considers that, since it is difficult to access Chinese markets owing to the preponderance of state-run companies, the agreement must, if it is to be balanced, be viewed as a key opportunity to establish a level playing-field for both state-run and private-sector companies;
28. Stresses the need for the agreement to ensure the EU's capability to exclude certain strategic sectors from Chinese investors;
29. Stresses that the agreement should allow the parties, and in the case of the EU, its individual Member States, to define and implement key policies for the promotion and protection of cultural diversity;
30. 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;
31. Calls for a clause stating that an investor shall provide a potential host state party with any information that party may require concerning the investment in question, for purposes of decision-making in relation to the investment or solely for statistical purposes, while the state party shall protect any confidential business information from any disclosure liable to prejudice the competitive position of the investor or the investment;

32. Stresses the need for the future agreement to include provisions on the transparency and governance of state-run companies and sovereign wealth funds, based on the Santiago Principles, which were adopted under the auspices of the IMF and define the principles applicable to the governance and institutional structure of sovereign wealth funds and to the transparency of their investment strategies;
33. Reiterates its call for an effective corporate social responsibility clause in line with the UN Guiding Principles on Business and Human Rights; affirms that investors should, respectively, apply the ILO Tripartite Declaration on Multinational Enterprises and Social Policy and the OECD Guidelines for Multinational Enterprises, as well as specific or sectoral international standards of responsible practice where these exist; calls for binding 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 a corporate social responsibility clause with concrete guidelines for investors, as well as an efficient assessment methodology for public authorities overseeing the resulting investments in terms of their social and environmental impact;
34. Stresses that the agreement must oblige Chinese investors in the EU to comply with European social standards and social dialogue arrangements;
35. Underlines the need for the EU-China bilateral investment agreement to deliver on both sustainable growth and job creation, and to foster synergies and positive spill-over effects with other regional trade and investment agreements to which the EU or China is a party;
36. Calls on the Commission to complement its impact assessment by also assessing the impact of the EU-China investment agreement on human rights, as it has committed to do under the Strategic Framework and Action Plan on Human Rights and Democracy;
37. Takes the view that the agreement must include a provision stating that all investors are obliged to comply fully with the law of the host party at the local, regional, national and, where applicable, supranational level, and that investors failing to respect the rule of law shall be subject to civil actions for liability in the judicial process of the relevant jurisdiction for any unlawful acts or decisions made in relation to the investment, in particular in cases where such acts or decisions lead to significant environmental damage, personal injuries or loss of life;
38. Insists that the agreement should include a 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;
39. Insists that the EU-China bilateral investment agreement must comply with the EU *acquis*, including the social and environmental legislation in force, and that neither party may fail to effectively enforce its legislation in these areas, so that all provisions of this agreement encourage the lawful establishment, acquisition, expansion or retention of an investment in the respective territory of both parties, and foster best entrepreneurial practices and business fair play;

40. Insists on the need for the agreement to require compliance by foreign investors with EU data protection standards;
41. 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; demands that the arbitrators appointed by the parties in the context of a dispute be independent and impartial, and that the arbitration provided follow a code of conduct based on the rules adopted by the UN Commission on International Trade Law (UNCITRAL), on those of the International Centre for Settlement of Investment Disputes (ICSID) or on any other international agreements and standards recognised and agreed to by the parties;
42. Considers that the agreement should include, as a key priority, effective state-to-state and investor-to-state dispute settlement mechanisms in order, on the one hand, to prevent frivolous claims from leading to unjustified arbitration, and, on the other, to ensure that all investors have access to a fair trial, followed by enforcement of all arbitration awards without delay;
43. Takes the view that the agreement should provide for state-to-state dispute settlement procedures and for investor-state dispute settlement mechanisms that are set within a suitable legal framework and subject to strict transparency criteria;
44. Calls for the EU and China jointly to establish an early-warning mechanism in order to give themselves a chance to solve proactively any incipient dispute on trade or investment at the earliest possible stage using all appropriate measures, including soft power and trade diplomacy;
45. Considers also that the agreement should include provisions for out-of-court dispute settlement in order to foster swift, affordable and amicable dispute resolution between parties that freely decide to have recourse to it;
46. Suggests that precise definitions of flexible dispute-settlement mechanisms such as mediation be provided in the agreement as regards, for example, the duration, cost and implementation of the solutions agreed by the parties;
47. Expresses its view that, once concluded and fully ratified, an EU-China investment agreement would replace all existing bilateral investment agreements between individual EU Member States and China, in line with Union law;
48. Recommends that negotiations be opened only on condition that formal approval has first been given by China's State Council for market access to be included in the investment agreement;
49. Instructs its President to forward this resolution to the Council and the Commission.