

JOINT APPEAL ON THE INCLUSION OF ENFORCEABLE HUMAN RIGHTS CLAUSES IN THE EU-CHINA COMPREHENSIVE AGREEMENT ON INVESTMENT

To the attention of:

Commissioner for Trade, Mr. Valdis Dombrovskis

President of the European Council, Mr. Charles Michel

President of the European Commission, Mrs. Ursula von der Leyen

President of the European Parliament, Mr. David Sassoli

High Representative of the Union for Foreign Affairs and Security Policy, Mr. Josep Borrell

Members of the European Parliament

13 January 2021

On December 30, 2020, the European Commission announced an agreement in principle on the EU-China Comprehensive Agreement on Investment (CAI). Launch of negotiations on CAI were announced at the 16th EU-China Summit in November 2013. Since then, the number of reports of gross human rights abuses taking place within China have been steeply on the rise. The People's Republic of China has consistently denied entry to independent international monitoring mechanisms charged with investigating these reported violations. Moreover, the direct violation of international treaty provisions relating to the status and governance of Hong Kong shows a growing disregard towards multilateral agreements.

These concerns have been publicly shared by a majority of EU Member States in the [Joint Statement on the Human Rights Situation in Xinjiang and the Recent Developments in Hong Kong](#), delivered by Germany on behalf of 39 Countries to the United Nations General Assembly in New York on October 6, 2020.

Furthermore, as stipulated under Article 21 of the Treaty on the European Union, the external action of the EU, and thus the common commercial policy, has to be guided by the principles which it seeks to advance in the wider world including democracy, rule of law and the universality of human rights. Thus, any final investment agreement will have to be consistent with the EU's policies and due consideration must be given to maintaining the balance between the priority of investors and the human rights of people in China.

Therefore, it is with grave concern that we note that by the time the European Commission published its [Sustainability Impact Assessment](#) of the impact of a likely EU-China investment partnership in May 2018, any mention of the inclusion of a human rights clause had been

dropped. Early insights into the agreement on principle reached at the end of 2020 do not appear to include stronger provisions. Instead, the Sustainability Impact Assessment conceded that any positive human rights impact of the EU-China investment partnership would largely depend on: the existing laws and policies in the host countries to protect human rights; the capacity to implement these rights; the Corporate Social Responsibility and human rights policies and practices of foreign investors.

It appears evident from declarations subscribed to by EU Member States themselves, as well as the increasing reports of gross human rights violations, that the current policy climate in the People's Republic of China does not allow for such a positive impact. Furthermore, the reports of forced labour schemes may pose a direct risk for European investors of direct or indirect exposure to such schemes, rendering them complicit and vulnerable to possible legal liability.

In view of this, the European Commission's Sustainability Impact Assessment's conclusion that an investment agreement may present a net positive for human rights without the inclusion of a human rights clause runs counter to its obligations under Article 21 of the Treaty on the European Union.

It also sends a signal that the European Union will push for closer cooperation regardless of the scale and severity of human rights abuses carried out by the Chinese Communist Party, even when Beijing is in direct and open violation of international treaties and continues to refuse to allow international monitoring of the human rights situation.

This would stand in direct contrast to the European Parliament's "[non-legislative Resolution on the proposal for a Council decision on the conclusion of the agreement between the European Union and the Government of the People's Republic of China on cooperation on, and protection of, geographical indications of November 11, 2020](#)". This Resolution makes direct reference to the ongoing negotiations on CAI when it states that the European Parliament:

- "Stresses that respect for human rights is a pre-requisite for engaging in trade and investment relations with the EU and urges China to comply with international obligations and commit to respecting human rights, in particular in view of the ongoing negotiation of the bilateral investment agreement; is deeply concerned by the reported exploitation and detention of Uighur people in factories in China".
- "Urges both parties to cooperate constructively [...] to [...] meaningful progress, in particular on the ongoing negotiation of the bilateral investment agreement but also on corporate social responsibility, the achievement of the Sustainable Development Goals, and the fight against climate change in line with the Paris Agreement."
- "Recalls the need for significant and ambitious progress in the negotiations on the EU-China Comprehensive Agreement on Investment, in order to address the current market asymmetries; underlines the importance of including an ambitious chapter on trade and sustainable development to protect human rights, including core labour standards, promote sustainable development and fight against climate change in line with the Paris Agreement; emphasises that ensuring the level playing field, reciprocity and non-discriminatory treatment of the respective parties and their business

communities, citizens and civil society are key; urges the parties to improve transparency and to establish a parliamentary dimension with regard to the implementation of the agreement.”

The European Parliament, with an overwhelming majority, reiterated its stance following new reports on the use of forced labour in its [Resolution of 17 December 2020 on forced labour and the situation of the Uyghurs in the Xinjiang Uyghur Autonomous Region](#).

It is evident therefore the European Union has a Treaty obligation, as well as a moral duty, to stand by its founding principles of democracy, rules of law and the universality of human rights in its negotiations with the People’s Republic of China. This is an obligation not only to the people suffering oppression and gross human rights violations, but also to uphold the international rules-based order.

We therefore call upon the Members of the European Parliament and other responsible European institutions to implement all of the following minimum conditions prior to ratification:

1. Ensure China ratifies core human rights convention before entering in the agreement, mainly the ICCPR, and core ILO conventions ([C029 - Forced Labour Convention, 1930 \(No. 29\)](#) [C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#) [C098 - Right to Organise and Collective Bargaining Convention, 1949 \(No. 98\)](#) [C105 - Abolition of Forced Labour Convention, 1957 \(No. 105\)](#))
2. Include strong and enforceable human rights clauses, negotiated as follows to include:
 - a. A clause specifying that the parties are obliged to respect human rights, as defined by the international customary law and international conventions and that this respect is an essential element of the agreement, allowing parties to take any appropriate measures including the suspension of the agreement, or part of, in case of violations
 - b. A Trade and Sustainable Development (TSD) chapter that recognises the obligations of States and the responsibilities of corporations and investors under the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. This chapter should require that the provisions of the agreement be read in consistency with these international instruments, in addition to further international instruments detailing the specific obligations of States under international human rights law, as well as any future treaties or instruments relating to human rights and business enterprises.
 - c. A TSD chapter that moreover contains clauses that reaffirm the obligations of State parties to protect human rights, as set out in international law. This chapter should include the regulation of companies and the provision of effective access to remedies and tribunals when they violate human rights or cause or contribute to harm. It should require concrete commitments regarding human rights due diligence to be made by businesses, and it should commit to document positive and negative impacts of business behaviour on the implementation of the agreement and the realisation of human rights.

- d. A TSD chapter that uses binding language, providing for effective enforcement mechanisms in case of violation including the possibility for the parties to seize a State-to-State dispute settlement mechanism
- e. The creation of an EU Domestic Advisory Group (DAGs) expressly provided with the task of monitoring the implementation of the agreement, and tasked with dealing with specific and individual cases. Their rapid instatement and independence should be guaranteed. The civil society organisations included in the Group should include human rights defenders. DAGs should be provided with adequate resources to investigate issues. They should have the power to bring their own complaints before an independent adjudicatory body.
- f. A provision barring foreign investors from the protection of the investment chapter where there is sufficient evidence of direct or indirect violation of their own national laws and their international human rights obligations and responsibilities, both their own and those of the State in which they operate
- g. Monitoring and complaint mechanisms that can monitor the impacts of the agreements on human rights, facilitate the populations' access to appropriate remedies, and offer guarantees of non-repetition. The mechanism must be able to be accessed directly by the populations and individuals whose human rights are affected or are likely to be affected as well as by their representative(s) and the organisations whose object is to protect human rights. The monitoring and complaint mechanism must offer procedural guarantees for its effectiveness and for the proper administration of any problems encountered. It must effectively rule on the requests submitted to it and justify its decisions. This monitoring and complaint mechanism must be able to be operational from the entry into force of the agreement and meet various criteria of efficiency and accessibility (in terms of independence, accessibility, transparency).

As a matter of transparency and participatory process, we would like to have the opportunity to receive the details of the human rights clauses negotiated.

SIGNING ORGANISATIONS (ALPHABETICAL ORDER)

CSW (Christian Solidarity Worldwide)

ETUC European Trade Union Confederation - Confédération Européenne des Syndicats

FIDH (International Federation for Human Rights)

Federazione italiana Diritti Umani

Global Committee for the Rule of Law "Marco Pannella"

Hong Kong Watch

HRIC (Human Rights in China)

IndustriAll Europe

ICT (International Campaign for Tibet)

ISHR (International Service for Human Rights)

ITUC (International Trade Union Confederation)

Nonviolent Radical Party, Transnational Transparty

Society for Threatened Peoples International

Uyghur Center for Human Rights and Democracy

Uyghur Human Rights Project

World Uyghur Congress