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The Effectiveness of the EU's China Policy: The Case of the Comprehensive Agreement on Investment (CAI)

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Abstract

There is a growing body of literature on the effectiveness of the external action of the European Union (EU), a concept which aims to understand if the EU is a power rather than simply assuming that it is. Against the backdrop of worsening EU-China relations, this paper examines the extent to which the EU's China policy has in recent years been effective and why.

Using the Comprehensive Agreement on Investment (CAI) as a case study, it employs a framework relying on a two-fold analytical process: the assessment of the EU's effectiveness, understood as 'purposive goal attainment', and its explanation. The EU's current compartmentalisation policy vis-à-vis China and the notion of *Wandel durch Handel* ('change through commerce') are also considered from the angle of an old debate in the EU's external action: the pursuit of economic interests vs. the promotion of values.

In the case of the CAI, the EU's degree of effectiveness was found to be overall high: the EU managed to achieve most of the economic goals it had set out to achieve with the agreement, while safeguarding the transatlantic relationship in light of the tensions between the United States and China. Moreover, the EU's action was highly instrumental for the achievement of these objectives. Yet when it comes to the linkage of human rights and political values to the CAI the EU performed poorly. Moreover, sustainable development is only present in the agreement with weak language. Self-evidently, the enforcement of the agreement – currently frozen by the European Parliament over a mutual exchange of diplomatic sanctions between the EU and China – will constitute its true litmus test.

However, if a broader perspective is taken to encompass more than one single policy area and goals beyond the CAI, the evaluation of the external effectiveness becomes more nuanced. The EU's compartmentalisation policy in the 2019 'Strategic Outlook' policy paper was found to be ineffective due to its constraints on the potential usage of the EU's trade policy as leverage and due to China's unwillingness to reciprocate a siloed approach, which helps explain some shortcomings in the EU's behaviour. The paper concludes that the EU's overall external action vis-à-vis China was inconsistent with its communication on the promotion of values.

Introduction: The Hurdles of Sino-European Relations

In a letter addressed to the European Council in April 2021, the European Commission's President Ursula von der Leyen and the High Representative of the Union for Foreign Affairs and Security Policy (HR/VP) Josep Borrell stated:

The reality is that the EU and China have fundamental divergences, be it about their economic systems and managing globalization, democracy and human rights, or on how to deal with third countries. These differences are set to remain for the foreseeable future and must not be brushed under the carpet.¹

These words are a reminder that relations between the European Union (EU) and China are currently going through their most unstable phase since the formal establishment of diplomatic relations in 1975. China's growing assertiveness, the burgeoning rivalry between Beijing and Washington, and the EU's fragile attempts at being a global actor constitute some of the ingredients for the recipe of tension and distrust which currently strains Sino-European relations. But it was not always like this.

In December 2001 China joined the World Trade Organisation (WTO), in a move which appeared to herald a liberalisation of China's regime and its integration into the multilateral rules-based order. On the Western side of Eurasia, an optimist and outward-looking EU echoed the *Zeitgeist* of Fukuyama's post-modern 'end of history' and felt hopeful about the Chinese trajectory. European ambitions aimed at supporting China's reform via an approach of *Wandel durch Handel* – the German expression which literally means 'change through commerce' – expressing the liberal idea that change and development can be achieved through an increased economic interconnectedness and the intensification of trade relations. The EU thus expected China's economic liberalisation to be accompanied by political reforms, and that improvements in the areas of the rule of law, freedom, civil society and human rights would eventually follow. Consequently, it steadfastly encouraged and tried to 'guide' China – though often in a frowned-upon 'pedagogic' fashion² – to play a more active role in global affairs.

However, while China has made some progress in economic and social reforms, its political system seems to have grown more authoritarian and assertive on the world stage, particularly following Xi Jinping's rise to power in 2013. The crackdown on human rights appears to be increasing alongside the deterioration of

¹ Stuart Lau, "EU Slams China's 'Authoritarian Shift' and Broken Economic Promises", *POLITICO*, 25 April 2021.

² Max R. Taylor, "China-EU Relations: Self-Censorship by EU Diplomats Is Commonplace", *The Conversation*, 26 May 2020b.

the rule of law and the curtailment of political rights.³ Prominent examples include the extra-judicial detention of Uyghurs in Xinjiang and their internment in 're-education' camps, the Chinese approach to Hong Kong and the National Security Law, and the Orwellian social credit system. At the same time, China grew to become one of the world's main economic and technological powerhouses. The Euro crisis, massive Chinese foreign direct investment (FDI) in European strategic sectors and Beijing's assertive 'Made in China 2025' policy cemented the EU's bitter realisation that China's liberalisation had not happened as hoped for. Instead, a reversal (or at least equalisation) of roles occurred between a weakened EU and an increasingly powerful China – clashing with Brussels' self-conception of 'normative power'.⁴

The continuous expansion of China's clout and the accumulation of divergences in various policy areas culminated in a shift of the EU's China policy. In March 2019, the EU released its Strategic Outlook policy paper on EU-China relations, where it started developing a more pragmatic 'whole-of-EU approach', albeit not across all sectors in an equal manner. Depending on the policy area, the Strategic Outlook's multi-pronged approach simultaneously classifies China as a "partner" (e.g. environment and climate change), an "economic competitor" (e.g. technology, trade and economy affairs) and a "systemic rival" (insomuch as China promotes an alternative model of governance).⁵ Given this flexibility, the idea of *Wandel durch Handel* has not been entirely put aside as the EU still believes that engagement with China and compartmentalisation are preferable to an expansion of 'systemic rivalry' to all policy areas. Compartmentalisation is understood here as the disentanglement of different policy areas (or at least the ability to reserve oneself that possibility at all times) in order to maintain operational autonomy of specific domains even when other policy areas might be at risk (e.g. continuing economic cooperation in spite of irreconcilable political divergences). In other words, "cooperate when you can, push back when you must".⁶

³ Anna Saarela, *A New Era in EU-China Relations: More Wide Ranging Strategic Cooperation?*, PE570.493, European Parliament, Brussels, 2018, 22.

⁴ Anna Michalski and Zhongqi Pan, "Role Dynamics in a Structured Relationship: The EU-China Strategic Partnership", *Journal of Common Market Studies* 55, no. 3 (2017): 623; Ian Manners, "Normative Power Europe: A Contradiction in Terms?", *Journal of Common Market Studies* 40, no. 2 (2002): 235–58.

⁵ European Commission and HR/VP, *EU-China - A Strategic Outlook*, JOIN(2019) 5 final, Brussels, 12 March 2019, 1.

⁶ Sven Biscop, "The EU and China: Sanctions, Signals, and Interests", *Security Policy Brief* 145 (2021): 2.

Given that the EU bases its external action on its 'constitutionally' enshrined principles (such as democracy, the rule of law, the indivisibility of human rights and fundamental freedoms⁷) and regularly claims to be a champion of universal values, the disparate conceptions in political values and human rights have long been among the 'thorniest' issues of EU-China relations.

At the same time, the EU is very interested in promoting the ever-expanding Sino-European economic relations and harvesting all the opportunities which China's massive domestic market has to offer. These poles create a divergence between the 'inalienable-values-EU' and the 'trade power Europe' which is particularly relevant considering the EU's discourse of wanting to export European values through trade.⁸ This also seems to contradict its compartmentalisation strategy, which limits the usage of trade and investment as a leverage to pursue other goals of external action. When compared to its previous policy papers on China, the EU's Strategic Outlook clearly displays a more realist stance – in line with the EU Global Strategy's "principled pragmatism" and the current Commission's ambitions of a geopolitical Europe.⁹

The effectiveness of the EU's China policy and the interaction between the EU's 'market power' and the pursuit of its core principles thus form the main focus of this paper.¹⁰ It poses the following question: to what extent has the EU's China policy been effective in the achievement of its goals and why? To that end, it employs an analytical framework to measure and explain the EU's external effectiveness.

Though not exclusively limited to it, the paper mostly uses the Comprehensive Agreement on Investment (CAI) as a case study. Although it is not yet legally binding, the selection of the CAI is justified by its tangibility and wide scope: 1) it is a bilateral agreement – unlike the majority of the EU's 'unilateral' China policy papers – which renders the analysis of both parties' interaction possible; 2) it is one of only a few documents on EU-China relations with concrete outputs; 3) it is the most ambitious

⁷ European Union, "Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union", *Official Journal of the European Union*, C 202/28, 7 June 2016, art. 21 TEU [hereafter "Lisbon"].

⁸ Ursula von der Leyen, *A Union That Strives for More - My Agenda for Europe: Political Guidelines for the Next European Commission 2019-2024*, Brussels, 16 July 2019, 17. The tension of 'inalienable-values-EU' vs. 'trade power Europe' refers to the age-old debate about the EU's conflict between the upholding of its core values and the pursuit of economic interests.

⁹ European Union, *A Global Strategy for the European Union's Foreign and Security Policy: Shared Vision, Common Action: A Stronger Europe*, Brussels, 2016.

¹⁰ 'Market Power Europe' refers to the clout which stems from the EU's trade power, or in Damro's words, the exercise of power "through the externalization of economic and social market-related policies and regulatory measures" (Chad Damro, "Market Power Europe", *Journal of European Public Policy* 19, no. 5 (2012): 1).

and broad deal to which both parties have agreed so far; and 4) given its comprehensive nature, it is plausible to conceive it as a platform around which the EU can strengthen the pursuit of its normative goals.¹¹

The goals of the EU regarding the CAI were primarily centred around three priorities: market access, level playing field and sustainable development. Broader goals included areas such as a prosperous transatlantic cooperation and bringing human rights and political values to the foreground of China Policy. While economic goals and the rekindling of transatlanticism were successful to a certain extent, the remaining objectives were not entirely met. The next section introduces the framework of analysis before the external effectiveness of the EU's China policy will be assessed and explained, i.e. which goals were (not) achieved and why. The final section draws some conclusions from the findings.

Analytical Framework

The concept of effectiveness is paramount to EU external action studies as it is linked to the notions of power and legitimacy. Whereas power depicts the capacity of bringing about effects, effectiveness concerns the actual conversion of that power into influence.¹² It is also particularly related to output legitimacy, in that EU policies which are deemed effective create a perception of a strong performance by EU institutions and, therefore, that the EU is legitimate.¹³

Although much research has been done in Foreign Policy Analysis on the internal side of foreign policy-making, a focus on the actual outcomes of those policies is still missing.¹⁴ Similarly, much attention has been devoted to the nature of the EU's presence without truly examining the actual effectiveness of its actions. Oftentimes, the question posed is 'what type of power is the EU?' (assuming the EU is a power) instead of 'is the EU a power?' in the first place.¹⁵ Bretherton and Niemann, among

¹¹ Other examples of Sino-European agreements include the Bilateral Aviation Safety Agreement (2019) and the Geographical Indications Agreement (2020) but their fairly limited purview would make them unfit for any possibility of using trade and investment as a leverage for the pursuit of other goals.

¹² Simon Schunz, *European Union Foreign Policy and Its Effects: A Longitudinal Study of the EU's Influence on the United Nations Climate Change Regime (1991-2009)* (Leuven: University of Leuven, 2010), 25.

¹³ Vivien A. Schmidt, "Democracy and Legitimacy in the European Union Revisited: Input, Output and 'Throughput'", *Political Studies* 61, no. 1 (2013): 10–12.

¹⁴ Simon Schunz, "Analysing the Effectiveness of European Union External Action", in *The European Union's External Action: Concepts, Approaches, Theories*, eds. Sieglinde Gstöhl and Simon Schunz (London: Red Globe Press, 2021), 135.

¹⁵ Arne Niemann and Charlotte Bretherton, "EU external policy at the crossroads: The challenge of actorness and effectiveness", *International Relations* 27, no. 3 (2013): 262–63.

others, have therefore called for a shift in focus from examining EU actorness to analysing its effectiveness.¹⁶

Schunz identifies two waves in the academic discussion of the concept of external effectiveness.¹⁷ The first one (2000-2010) focused primarily on multilateral contexts and introduced several new concepts to analyse EU effectiveness. The second one (since 2010) accepted the idea of effectiveness as 'goal achievement' and mainly zoomed in on refining its conceptualisation and explanation. It further added important concepts such as coherence, bargaining and persuasion.¹⁸ This paper defines effectiveness as the "purposive attainment of (external) objectives"¹⁹ and considers both 'purposiveness' and goal achievement as necessary conditions for the assessment of effectiveness.

This paper builds upon the analytical framework by Schunz and comprises two essential components: assessment and explanation. The first component ascertains whether the EU's external action vis-à-vis China was effective by establishing the 'degree of goal achievement' and drawing a correlation between the outputs and the EU's "purposive action".²⁰ This assessment comprises four steps.

First, to identify the EU's objectives vis-à-vis China means having a clear idea of what the EU's China policy goals were. This is, second, followed by an analysis of the match between the EU's objectives and its outputs, whose operationalisation is accomplished through a heuristic classification of the degree of match in 'strong', 'medium' and 'weak'. In Schunz's own words, "a necessary condition for the degree of EU external effectiveness to be strong is the achievement of all or most of its objectives in a specific context; for it to be medium, the EU needs to attain some of them; it is weak if the Union achieves few or none of its objectives".²¹ The third step consists in the tracing of EU external action, which allows for determining its purposiveness (what the EU does intentionally to attain an output) and instrumentality (the extent to which it was a decisive factor for the achievement of a certain output). The EU's action can thus be instrumental to a 'large extent' "in bringing about an output/outcome (when it was the main actor determining the final result of a

¹⁶ *Ibid.*

¹⁷ Schunz 2021, *op. cit.*, 3–7.

¹⁸ Eugénia Da Conceição-Heldt and Sophie Meunier, "Speaking with a single voice: Internal cohesiveness and external effectiveness of the EU in global governance", *Journal of European Public Policy* 21, no. 7 (2014): 963-974.

¹⁹ Schunz 2021, *op. cit.*, 1.

²⁰ *Ibid.*

²¹ *Ibid.*, 8–9.

process), somewhat instrumental (when it was one among various (f)actors), or not significant at all".²² In comparison to Schunz's framework application to an empirical case study of multilateral negotiations, the EU's instrumentality is expected to be higher in this study given the bilateral nature of EU-China relations. Fourth, the degree of EU external effectiveness will be determined through the combination of the two concepts. This last section will thus aggregate the assessments about the EU's degree of goal achievement and the instrumentality of its purposive action, thereby determining the extent of external effectiveness.

The second part of the framework seeks to explain the obtained degree of effectiveness by analysing factors at three levels of analysis, which can either enable or constrain EU external effectiveness. The analysis of the EU-internal level primarily looks at internal factors which help explain the attained degree of effectiveness, such as coherence, preparedness and capability (the EU's resources and instruments at its disposal along with its ability to engage with China²³). On the external level, the focus is on the degree of fit between the EU and China on a given issue or policy area – the degree of “closeness to and compatibility with, the positions of its interlocutors in external action settings”.²⁴ The effectiveness is expected to be higher when the EU's positions are considered conservative or moderate, and lower with more reformist stances. Lastly, the intersection between the EU's external action and its context deals with the EU's behaviour and engagement vis-à-vis China by examining how the EU matched its strategy and foreign policy instruments to the Chinese context. The following section approaches the identification of the EU's objectives, so as to later ascertain whether these were achieved or not.

²² *Ibid.*, 9.

²³ Christopher Hill, “The Capability-Expectations gap or conceptualizing Europe's international role”, *Journal of Common Market Studies* 31, no. 3 (1993): 315.

²⁴ Lisanne Groen, “Explaining European Union effectiveness (goal achievement) in the Convention on Biological Diversity: The importance of diplomatic engagement”, *International Environmental Agreements: Politics, Law and Economics* 19, no. 1 (2019): 75–83; Schunz 2021, *op. cit.*, 145.

Assessment of the EU's External Effectiveness

This section evaluates the degree of goal achievement in the four steps set out in the analytical framework.

Step 1: Identification of the EU's Objectives – Narrow and Broader Goals

In 2013 the Commission officially received the mandate from the Council to negotiate the CAI and in 2014 the first round of negotiations was launched. After almost seven years, three different Commission Colleges and 35 negotiation rounds, an agreement was reached in principle on 30 December 2020. The CAI must undergo a process of legal scrubbing and translation before it can be approved by the Council and ratified by the Parliament. This was intended to happen in early 2022 but the exchange of diplomatic sanctions between the EU and China in March 2021 over Beijing's repression of Uyghurs in Xinjiang and the subsequent freezing of the ratification procedure by the European Parliament two months later have put the CAI on hold for an indefinite period.

Considering the interaction between trade policy and other areas such as human rights and sustainable development, the EU's objectives will be examined through two layers: narrow and broader objectives. While the former pertain mostly to the achievement of specific CAI-related goals (e.g. the inclusion of sustainable development clauses in the agreement and the rebalancing of market access), broader objectives concern wider EU foreign policy goals, such as the objectives of EU China policy documents, the 'new EU-US agenda for global change' (2020) and the Trade Policy Review (2021).²⁵ This distinction contributes to a more nuanced understanding of effectiveness, insofar as a specific CAI objective can be achieved while being simultaneously inconsistent with broader goals. The more objectives match across different layers, the higher the effectiveness is likely to be, as such matching objectives can be regarded as a result of coordination and coherence.

Objectives regarding the CAI

Due to growing complaints from European companies about not being treated fairly in China, the EU's main initial objectives regarding the negotiation of an investment agreement involved rebalancing market access and levelling the playing field as ways to address the ongoing challenges *inter alia* related to forced technology

²⁵ European Commission and HR/VP, *A New EU-US Agenda for Global Change*, JOIN(2020) 22 final, Brussels, 2 December 2020; European Commission, *Trade Policy Review: An Open, Sustainable and Assertive Trade Policy*, COM(2021) 66 final, Brussels, 18 February 2021b.

transfer, forced joint-ventures, intellectual property rights, subsidies from state-owned enterprises (SOE).²⁶ China's unwillingness to reciprocate market access and to level the playing field, as well as the protection of its own domestic champions and its sheer size were all perceived by the EU as ingredients for a potential negative spillover effect in the global economy.²⁷ The CAI was thus seen as a tool to address these issues. In 2016, the EU and China agreed on the scope for the CAI, where the EU's negotiators saw sustainable development commitments from the Chinese part as a *sine qua non* requirement.²⁸ Investment protection also figured as an initial EU goal with the purpose of replacing the existing 25 national bilateral investment treaties (BITs) between EU member states and China. Lastly, there was also a very strong emphasis on agreeing to a proper enforcement mechanism.

Broader Objectives: EU-China Relations, Trade Policy and Transatlantic Relations

When it comes to the objectives for Sino-European relations, Brussels attaches great importance to "environmental, social, labour and human rights objectives".²⁹ Yet the recent hardening of the EU's stance vis-à-vis Beijing in the light of growing bilateral tensions introduced some caveats to that focus. Despite already denoting greater pragmatism, the 2016 document – "Elements for a New Strategy on China"³⁰ – still contained a somewhat hopeful and constructive language on China. It emphasised the promotion of universal values, the respect for the rule of law and the protection of human rights while clearly highlighting the primacy of values over mutual economic interests. Overall, there was still a tangible mentality of 'pushing' China to carry out reforms and the belief that *Wandel* (change) was attainable.

The 2019 Strategic Outlook, by contrast, heralds the development of a more "realistic, assertive and multi-faceted approach" triggered by the realisation that China was a fully-fledged global actor over which the EU could no longer hope to gain a strong influence.³¹ It still values engagement with China on sustainable development and human rights, but it explicitly recognises the overall deterioration of human, civil and political rights, particularly in Hong Kong and Xinjiang. Another

²⁶ European Commission, "EU-China Comprehensive Agreement on Investment: Memo (ppt)" (2021a), https://trade.ec.europa.eu/doclib/docs/2021/march/tradoc_159480.pdf, 6.

²⁷ European Commission and HR/VP 2019, *op. cit.*, 5.

²⁸ Interview 2 with official, European Commission, via videocall, April 2021.

²⁹ European Commission, *Impact Assessment Report on the EU-China Investment Relations*, SWD(2013) 185 final, Brussels, 23 May 2013, 20.

³⁰ European Commission and HR/VP, *Elements for a New EU Strategy on China*, JOIN(2016) 30 final, Brussels, 22 June 2016.

³¹ European Commission and HR/VP 2019, *op. cit.*, 1.

important aspect lies in the reiteration of the will to "use linkages across different policy areas and sectors in order to exert more leverage in pursuit of its objectives".³²

On a broader level, the EU's external action is bound by the Treaties to ensure consistency "between the different areas of its external action and between these and its other policies" and respect for its (aforementioned) principles.³³ The latter further inform the EU's common commercial policy, under which the CAI is subsumed.³⁴

On the interaction between trade policy and other goals, Commission President Ursula von der Leyen defended that "trade is not an end in itself. It is a means to deliver prosperity at home and to export our values across the world".³⁵ Within the same line of thought, the first sentence of the Trade Policy Review (2021) describes trade as "one of the EU's most powerful tools" which can harness the strength of the single market to support assertive external action, promote interests and policy objectives and ensure adherence to universal values.³⁶ Overall, much attention is drawn to the achievement of that synergy between different policy areas – particularly trade policy – to pursue geopolitical goals and a coherent European approach adhering to its principles of external action.

Regarding the transatlantic relationship – an indispensable cornerstone of EU foreign policy whose state either restricts or enhances the EU's leverage vis-à-vis China –, the negative effects of the Trump administration on EU-US relations together with its protectionist and confrontational stance had fuelled the European discussion on strategic autonomy. Though far from solving all extant tensions, the Biden administration has instilled new hope into the relationship. In December 2020, the Commission and the HR/VP published a joint Communication called "A New EU-US Agenda for Global Change" to rekindle that bond.³⁷ Both sides of the Atlantic take China's emergence as a global actor seriously and recognise common challenges to tackle, but there are still divergences. Preferring an active engagement approach, the EU is more likely to remain faithful to its strategic autonomy by not siding directly with the US and carving itself a third path. Notwithstanding, both agreed on the establishment of an EU-US dialogue on China (launched in October 2020 but given new life in March 2021).

³² *Ibid.*, 1.

³³ European Union, "Lisbon", *op.cit.*, art. 21 TEU para 3.

³⁴ *Ibid.*, C 202/140, art. 207 TFEU para.1; art. 21 TEU para 1 and 2.

³⁵ Leyen 2019, *op. cit.*, 17.

³⁶ European Commission 2021b, *op. cit.*, 1–6.

³⁷ European Commission and HR/VP 2020, *op. cit.*

Table 1 groups the objectives in different categories to allow for a clearer overview. It should be mentioned that their distribution according to scope is neither exhaustive nor exclusive, as it primarily intends to facilitate a structured analysis.

Table 1: Overview of the EU's objectives

		Objectives	
Scope	Narrow	<i>Economic goals:</i> <ul style="list-style-type: none"> • rebalancing market access • levelling playing field • investment protection 	<i>Sustainable development:</i> <ul style="list-style-type: none"> • sustainable development clauses in the agreement
	Broad	<i>Human rights/political values:</i> <ul style="list-style-type: none"> • issue-linkages across policy sectors • consistent and principle-based EU external action • mainstreaming human rights • exporting European values 	<i>Transatlantic cooperation:</i> <ul style="list-style-type: none"> • achieving a strong transatlantic relationship

Step 2: Matching Objectives with Outputs

This section analyses the extent to which the EU's China policy objectives were achieved by comparing them with the outputs.

Economic Goals – Level Playing Field and Market Access

The CAI had three main priority areas: level playing field, market access and sustainable development. When regarded in and of themselves, the goals of a more economic nature – level playing field and market access – seem to have been achieved to a large extent, given the number of concessions made by Beijing.³⁸ The balance of the concessions was clearly in favour of the EU, given that China (which already had close-to-unlimited access to European markets) mostly wanted to acquire legal certainty for its investors and safeguard the status quo.³⁹

The CAI will prohibit forced technology transfers, eliminate joint-venture requirements in various sectors, enhance market access conditions and achieve

³⁸ For a summary of the main concessions and commitments achieved in the CAI, see European Commission 2021a, *op. cit.*

³⁹ European Commission 2013, *op. cit.*, 21.

more transparency on state subsidies and SOEs.⁴⁰ Most of the market openings and commitments are foreseen in the services sector (e.g. financial services, insurance, private health, ICT, cloud services) but the main breakthrough relates to the manufacturing sector – particularly the automotive sector and basic materials – which constitutes more than half of the EU's total investment in China.⁴¹

Despite this EU 'success', there is also substantial criticism. It is debatable whether the CAI's accomplishments benefit companies of every size or only large European multinationals.⁴² For instance, there is not a 'one-size-fits-all' application: Beijing's commitment to unlimited market access in the electric car sector is bound to a 1€ bn investment threshold. This might benefit the top car-manufacturing companies but holds little importance for small and medium-sized enterprises, which cannot afford such amounts and would thus still have to engage in a joint-venture.⁴³ When it comes to dispute settlement, the state-state dispute settlement is the only currently existing system, making the private sector 'disappointed' with the absence of an investor-state dispute settlement (ISDS).⁴⁴ It also lacks coverage on several aspects about which the EU had frequently complained, such as industrial subsidies related to overcapacity problems (steel, aluminium, solar panels, etc.). Regarding investment protection, despite being part of the initial objectives, a decision was made to negotiate it separately within two years. Its inclusion would transform the CAI into a so-called mixed agreement, which would in turn trigger the need for its ratification in all member states' parliaments.⁴⁵

All in all, the Commission itself appears satisfied with the results as it considers that they are in line with the mandate, inasmuch as only investment protection had to be postponed. Furthermore, the CAI creates an institutional basis for political

⁴⁰ Grzegorz Stec and François Chimits, *CAI – Looking Beyond Market Openings*, MERICS, 1 April 2021.

⁴¹ European Commission, Directorate-General for Trade, "China" (2021), <https://ec.europa.eu/trade/policy/countries-and-regions/countries/china>.

⁴² Philippe Le Corre, *Europe's Tightrope Diplomacy on China*, Carnegie Endowment for International Peace, 24 March 2021, 3.

⁴³ Dana Heide *et al.*, "Peking bleibt im Vorteil – Und die EU-Kommission warnt vor überzogenen Erwartungen", *Handelsblatt*, 18 January 2021.

⁴⁴ Interview with Jakob Hanke Vela.

⁴⁵ Interview 1, with official, European Commission, via videocall, April 2021; Stec and Chimits 2021, *op. cit.*

consultation.⁴⁶ Even if the agreement is not as ambitious as it could have been, there is the general feeling – also among observers – that this deal is better than no deal.⁴⁷

Sustainable Development

Sustainable development is one of the areas which received the most criticism, primarily due to its controversial clauses on labour rights:

each Party shall make continued and sustained efforts on its own initiative to pursue ratification of the fundamental ILO Conventions No 29 and 105, if it has not yet ratified them. The Parties will also consider the ratification of the other Conventions that are classified as "up to date" by the ILO.⁴⁸

Though the inclusion of these clauses can already be interpreted as a sign towards the achievement of the desired output, the main challenge concerns their enforcement, as there are doubts about China's willingness to implement them. As it currently stands, there is no proper enforcement mechanism for the sustainability chapters (unlike the level playing field and market access chapters): in case of non-compliance by China, neither clauses allowing for treaty suspension nor are trade sanctions foreseen.⁴⁹ The CAI envisages but a 'quasi-judicial' procedure and a panel of experts in case of a lack of agreement, which has a merely consultative function with opinion-issuing powers.⁵⁰ The criticism arises thus from the fact that Trade and Sustainability Development (TSD) provisions are not linked to the general dispute settlement mechanism and are therefore considered 'toothless'.⁵¹

Another criticism is that due to the lack of milestones and its weak language, the CAI does not oblige China to achieve results but merely to demonstrate efforts towards their attainment. In fact, this very conclusion was deliberated by the panel of experts of the EU-South Korea Free Trade Agreement on a very similar clause: the commitment to make "continued and sustained efforts" towards ratification is just an

⁴⁶ Sebastian Płóciennik et al., *EU-China Comprehensive Agreement on Investment: Political and Economical Implications for the European Union*, The Polish Institute of International Affairs; Polish Economic Institute, Warsaw, 2021, 31.

⁴⁷ Interview 2, *op. cit.*

⁴⁸ European Commission, *EU-China Investment Negotiations: Section IV: Investment and Sustainable Development*, Brussels, 22 January 2021, 5.

⁴⁹ Płóciennik et al. 2021, *op. cit.*, 27.

⁵⁰ *Ibid.*, 29; Stec and Chimits 2021, *op. cit.*

⁵¹ Karolina Zurek, "From 'Trade and Sustainability' to 'Trade for Sustainability' in EU External Trade Policy" in *The European Union in a Changing World Order*, eds. Antonina Bakardjieva Engelbrekt et al. (Cham: Palgrave Macmillan, 2020), 128.

obligation of “best endeavours”.⁵² In other words, it does not compel the parties to attain results, but rather only to strive for them (obligation of conduct).

In sum, despite being included in the agreement (and even considering that an investment agreement cannot be expected to restructure an entire relationship), the sustainable development clauses fall short of being able to credibly expect any effect on Chinese behaviour in this domain.

Human Rights and Political Values

The CAI took a very passive stance by not taking the chance to address issues such as the mainstreaming of human rights and the export of European values. The Commission itself posits that the CAI is but one tool within the EU's toolbox,⁵³ yet the timing of the ‘agreement in principle’ on the agreement was controversial, given that it took place in a period in which China had been behaving increasingly assertively in Xinjiang and tightening its grip on Hong Kong's democratic system. Both the objectives of providing linkages between trade policy and human rights and exporting political values have thus faltered.

Transatlantic Cooperation

The timing of the agreement is further criticised for its perceived undermining of the transatlantic debate on China, as the EU concluded the agreement without ‘confiding’ with the US first, with critics arguing that a greater leverage could have been achieved if EU-US coordination had been closer.⁵⁴ Moreover, the CAI's ‘softness’ on the enforcement mechanisms, fundamental rights and freedom of speech and assembly (particularly relevant to the situation in Hong Kong) is argued to have undersigned Beijing's symbolic triumph of driving a wedge into the value-based transatlantic relationship by projecting an image of disunity.

By contrast, while the EU could have insisted on the idea of a renewed transatlantic cooperation, it also did not impair it. First, Beijing and Washington had already signed an investment agreement with a very similar scope (‘Phase One Deal’) in January 2020. Second, transatlantic communication is still active and the will to cooperate remains strong, as showcased by the launch of initiatives such as the Joint Technology Competition Policy Dialogue and the Trade and Technology

⁵² Panel of Experts Proceeding constituted under Article 13.15 of the EU-Korea Free Trade Agreement”, Report of the Panel of Experts, 20 January 2021, 74.

⁵³ European Commission 2021a, *op. cit.*, 6.

⁵⁴ Płóciennik *et al.* 2021, *op. cit.*, 30.

Council, as well as the end of both the Boeing-Airbus disputes and the tariffs clashes over steel and aluminium exports.

Assessment

Overall, despite some shortcomings on market access and the postponement of the investment protection's negotiations, the agreement was able to rebalance Sino-European economic relations by increasing their reciprocity. Furthermore, regardless of the hype around the lost opportunity for joint consultations *ex ante*, the conclusion of the CAI as an 'agreement in principle' did not damage the essence of transatlantic relations.

The areas of sustainable development as well as human rights and political values were arguably the ones in which provisions fell most short of the EU's desired outputs. On the former, the clauses included in the final agreement display a rather weak language and the provisions on the enforcement mechanism are arguably ineffective.⁵⁵ What is more, although the EU claims the CAI is but one tool in its toolbox – with the due diligence mechanism and global human rights sanctions regime primarily foreseen to promote European values⁵⁶ –, it failed to create any linkage between trade policy and values export, which its policy papers claimed to pursue. The shortcomings in both these areas effectively hinder the ability of the EU to project its values and the practices that it tries to incentivise other countries to abide by.

The degree of match between objectives and outputs can thus be considered as 'medium', given that the EU did attain some of its objectives with the CAI, particularly on the goals of an economic nature, which had been seen from the start as the essential ones.

Step 3: Tracing EU External Action

This section examines whether the EU's purposive action in the negotiations of the CAI was instrumental to the achievement of its objectives. The analysis involves the best attempt at a narrative reconstruction of the steps taken by the EU from objective-setting to the actual outputs, so as to determine which of them were "(co-)effectuated" by the EU and which ones were not.⁵⁷

⁵⁵ In comparison to other EU (trade) agreements, the CAI contains clauses of similar substance, but its language was made more palatable to the Chinese (Interview 1, *op. cit.*).

⁵⁶ European Commission 2021a, *op. cit.*, 6.

⁵⁷ Schunz 2021, *op. cit.*, 9.

The timing of the agreement raised some questions as to the assumed high level of the EU's ownership of the outputs. It was agreed in principle within a unique 'window of opportunity': the very end of Germany's Council Presidency and the transition period between Trump's and Biden's administrations. The assumption here would be that China would not have accepted the agreement and budged on previously blocked issues had it not been for this particular set of circumstances. It is these circumstances that allowed Beijing to symbolically 'come out on top' by appealing to the European 'strategic autonomy' and drive a wedge between the EU and the US. This would in turn mean that the EU's instrumentality was not high, as the output would not have been primarily caused by the EU's will. This assessment requires further discussion, which opposes two contrasting arguments.

One argument – defended by the European Commission – states that the deadline for the conclusion of the agreement had already been (jointly) set, namely the end of 2020. Therefore, when both parties decided to instil new impetus into the negotiations, they could not have foreseen the outcome of the US elections.⁵⁸ Moreover, Germany – a country with deep economic ties with China and one of the only member states with whom China shares a balanced trade relationship – played a crucial role in pushing this deal forward, due to the interests of its powerful industries and the Council Presidency.⁵⁹ The decision to postpone investment protection also seems to have been steered by the EU so as to avoid the potentially cumbersome processes of national ratification. Finally, the Commission's unwavering red lines on sustainable development – partly due to French pressure – were arguably instrumental for the introduction of the TSD chapter in the negotiations.⁶⁰

The counterargument is that the negotiations had been running for almost seven years and China only budged within this very narrow timeframe. Even as late as September 2020, there had not been significant advancements on some of the main issues such as sustainable development and market access.⁶¹ The Commission's position and requests had essentially not changed, yet suddenly the Chinese caved in with their commitments in early December – particularly on labour rights, sustainable development and climate change. Though this was partially because of the agreed deadline, the sudden change of mind could imply the existence of a

⁵⁸ Interview 1, *op. cit.*

⁵⁹ Le Corre 2021, *op. cit.*, 3.

⁶⁰ Interview 2, *op. cit.*

⁶¹ European Commission, *Report of the 32nd Round of Negotiations on the EU-China Comprehensive Agreement on Investment*, TRADE.B3/Ares(2020)5030686, Directorate-General for Trade, Brussels, 25 September 2020.

motive for China that was unrelated to the negotiations per se, namely that it saw the adoption of the CAI as a trade-off between an economic and a political win.⁶² It is reasonable to argue that Germany was crucial for the conclusion of the agreement, but it had started 'being crucial' in July 2020 and the 'critical juncture' happened only weeks after the US elections, hence giving weight to the argument of a lower instrumentality of EU action.

It is equally important to enquire whether the EU's purposive action was instrumental to the achievement of the CAI's precise provisions (the output), insofar as China had already enacted an FDI law in January 2020. This law seeks to promote FDI in China by spreading national treatment to most foreign enterprises and increasing transparency and accountability.⁶³ Additionally, China had already committed to opening its car market in 2018 by removing the limit on foreign ownership of automotive ventures in 2022.⁶⁴ In other words, why did the EU strive for the conclusion of the CAI when many of the sought-after openings would have anyhow materialised in its absence?

The conjecture that the agreement would not have happened without the Chinese change of strategy suggests that despite the EU's purposiveness, its action was not instrumental in achieving the output. Moreover, Berlin's central role in the conclusion of the agreement (with strong French support) and the inherent possibility of an only partial EU initiative, as well as a presumable redundancy in the attained market openings, lend weight to the assumption of a low instrumentality.

However, the reality is that the CAI is ultimately a bilateral deal among entities of comparable weight, which means that there is inevitably a strong ownership from both parties. Notwithstanding China's change of mind under that specific constellation of conditions, it is undeniable that the agreement was also concluded because the EU did not budge – particularly on the substance of sustainable development, albeit with weak language – and succeeded in maintaining its positions. Moreover, even if certain member states were not as interested in the CAI as Germany was, the position advanced by the EU is already a result of the compromise between the institutions and the member states, supporting the identification of a high degree of instrumentality. What is more, the fact that the EU

⁶² Le Corre 2021, *op. cit.*, 2;

⁶³ Tracy Wut and Scott Daniel Silverman, *China's Foreign Investment Law and Related Regulations Mark a New Era for Foreign Investment in China*, Baker McKenzie, 13 January 2021.

⁶⁴ Norihiko Shirouzu and Adam Jordan, "China to Open Auto Market as Trade Tensions Simmer", *Reuters Media*, 17 April 2018.

was, from both parties, the more interested one in concluding the agreement speaks in favour of the instrumentality of its action. Lastly, the counterargument to the potential redundancy of the CAI compared to intra-Chinese legal developments lies with the enforcement, tools and legal certainty which the CAI provides by virtue of being an international agreement with a dispute settlement mechanism.

Considering all the above and given that the EU represented an essential (f)actor for the attainment of the output, the EU's purposive action will be deemed as 'instrumental to a large extent'.

Step 4: Determining the Degree of EU External Effectiveness

This section aggregates the findings previously obtained. In step 2 EU goal achievement was found to be 'medium' and in step 3 the EU's purposive action was regarded as 'instrumental to a large extent'. By introducing and processing the findings on the heuristic scale proposed by Schunz (Table 2), the conclusion is that the EU's degree of external effectiveness is 'high'.

Table 2: Determining the Degree of EU External Effectiveness⁶⁵

		EU goal achievement (degree of input-output/outcome match)		
		High	Medium	Low
EU's purposive action was instrumental for output/outcome	... to a large extent	very high	high	low
	... to some extent	high	medium	low
	...to a limited extent	low	low to very low	very low

Though the findings indicate that the EU's effectiveness was high, they ought to be taken with a grain of salt. First, effectiveness is observed here through a specific lens, since the objectives were indeed achieved but at the assumed cost of being inconsistent with the promotion of human rights and political values. Second, an investment agreement cannot be expected to provide a fix for all issues in Sino-

⁶⁵ Adapted by the author from Schunz 2021, *op. cit.*, 10.

European relations. Third, the framework can be tweaked to accommodate for a more thorough analysis on bilateral relations between the EU and its counterpart.

Notwithstanding, one can extrapolate that the scope of the analysis is inversely correlated to the strength of the EU's performance. In other words, the broader the perspective through which the EU's course of action is seen (i.e. considering several policy areas and its overall strategic directions), the higher will be the likelihood of a weaker performance as a result of a low consistency with the remaining 'silos'. The lack of linkages within the EU's China policy are a corollary thereof. Conversely, a narrower view allows the researcher to concentrate on the outputs directly related to the case study. In this regard, the degree of effectiveness tends to be higher: here, most of the specific objectives of the EU were achieved as outputs in the CAI.

Explaining the EU's External Effectiveness

This section addresses the 'why' part of the research question by identifying the explanatory factors which can "enhance or decrease the likelihood of EU external effectiveness".⁶⁶ These are distributed on the three layers of analysis covered by the following sections – internal, external and intersection – which will also broaden the scope to a wider picture of EU-China relations (including the concepts of compartmentalisation and *Wandel durch Handel*).

EU Internal Factors Explaining the Degree of Effectiveness

At the EU-internal level the explanatory factors hinge on the concepts of 'capability' as well as (vertical and horizontal) coherence, which are essential for the effectiveness of a successful China policy. Vertical coherence is to be understood as the degree of unity between the EU and its member states,⁶⁷ whereas horizontal coherence is interpreted here as the consistency between different policy areas (unlike Gebhard's notion of coherence between different institutions and also between supranational and intergovernmental spheres).⁶⁸

⁶⁶ *Ibid.*, 11.

⁶⁷ Simon Nuttall, "Coherence and Consistency", in *International Relations and the European Union*, eds. Christopher Hill and Michael Smith (Oxford: Oxford University Press, 2005), 7.

⁶⁸ Carmen Gebhard, "The Problem of Coherence in the European Union's International Relations", in *International Relations and the European Union*, eds. Christopher Hill, Michael Smith and Sophie Vanhoonacker, 3rd ed. (Oxford: Oxford University Press, 2017), 129.

Vertical Coherence

In its 2020 Strategic Foresight Report, the EU asserted that “a lack of unity and coordination among Member States can, at times, limit the effectiveness and agility of action at EU level, which might enable foreign powers to apply divide-and-rule strategies”, juxtaposing the ability of third countries to take advantage of the EU's unique institutional system with a low level of internal coherence and coordination.⁶⁹ In international negotiations, the EU is generally more effective when it is internally cohesive.⁷⁰ In the context of EU-China relations there are precedents of both high and low coherence, as set out below.

One of the settings most commonly perceived as a symbol of incoherence is the ‘16+1’ group.⁷¹ Often regarded as a manifestation of Chinese *divide et impera* tactics by luring in Central and Eastern European countries with promises of FDI and development projects in their countries, this project has been recurrently criticised by EU institutions and some member states which see in it a potential threat to European unity. The trend here is that Chinese FDI in European countries can translate into domestic Sino-friendly politics or at least into a certain unwillingness to do anything which might ‘upset’ China (e.g. regarding the promotion of human rights or political values). This ‘purchase of influence’ might thus result in a lack of unity which impairs the formation of common positions in international fora. For instance, in 2017 the Chinese company Cosco acquired 51% of Greece's largest commercial for €280.5 million. Shortly thereafter, Athens blocked an otherwise unified European position at the United Nations Human Rights Council (UNHRC) during a motion over human rights violations in China.⁷² Some months before that, Hungary had also refused to sign a joint letter condemning China's torture of detained lawyers.⁷³ In April 2021, Budapest also blocked measures requiring unanimity which would have imposed a suspension of extradition treaties with mainland China.⁷⁴ It can thus be inferred that increasing economic interdependence between China and a certain member state (e.g.

⁶⁹ European Commission, *2020 Strategic Foresight Report: Strategic Foresight – Charting the Course Towards a More Resilient Europe*, COM(2020) 493 final, Brussels, 9 September 2020, 16.

⁷⁰ Eugénia Da Conceição-Heldt and Sophie Meunier 2014, *op. cit.*, 975.

⁷¹ The ‘16+1’ group is formed by 16 Central and Eastern European countries – from which 11 are EU member states – and China.

⁷² Helena Smith, “Greece Blocks EU's Criticism at UN of China's Human Rights Record”, *The Guardian*, 18 June 2017.

⁷³ Thorsten Benner and Jan Weidenfeld, “Europe, Don't Let China Divide and Conquer”, *POLITICO*, 18 March 2018.

⁷⁴ Finbarr Bermingham, “EU Drops Plans to Punish China over Hong Kong Electoral Reform”, *South China Morning Post*, 16 April 2021.

through an increasing inward FDI) is likely to correlate to the latter's poor performance on the promotion of human rights and core values.

This runs counter to the policies of compartmentalisation and *Wandel durch Handel*, inasmuch as the 'systemic rivalry' stance seems to be difficult to adopt (and ineffective) when paired with deepening economic interconnectedness between one or more member states (or the EU in general) and China. In fact, the growing Sino-European interdependence ensures that Beijing does not have to change, because the economic benefits are bound to come anyhow – in short, that there can be *Handel ohne Wandel*.

In the case of the CAI, despite internal criticism from some member states, their behaviour was not particularly hawkish, given that the CAI was largely considered as a German project.⁷⁵ Besides, the fact that the member states were involved in the negotiation process from the start – by giving the negotiation mandate to the Commission and in consultations during negotiations in the Council's Trade Policy Committee – inherently entails a minimum level of coherence. Even though episodes of disunity are common, the current overall trend in EU-China relations suggests a rising vertical coherence vis-à-vis China. For example, both the Strategic Outlook (2019) and the human rights sanctions imposed on China (2021) were unanimously endorsed by the Council. In a study reporting on each member state's preferred decision-making level for a China policy, the average of respondents stating they would prefer an 'all-EU' approach (instead of a national-only approach) was 69%.⁷⁶ This trend shows a growing European steadfastness in its China policy and speaks for a decent degree of vertical coherence, which enhances the likelihood of effective action.

Horizontal Coherence

Besides the notion of horizontal coherence as the coherence between different policy areas, Nuttall's differentiation of (horizontal) 'coherence' into two modalities is also taken into account. On the one hand, "neutral coherence" concerns the mere absence of contradiction between different policies, whereas "synergetic coherence" stands for the productive interaction between two policy areas linked to

⁷⁵ Le Corre 2021, *op. cit*; Matej Šimalčík, "China Investment Agreement and the Golden Calf of EU Unity", *EURACTIV*, 5 January 2021.

⁷⁶ The Coalition Explorer surveyed the opinions of more than 800 experts working on European policy in governments, academia, media and think-tanks (European Council on Foreign Relations, "EU Coalition Explorer" (2020), <https://www.ecfr.eu/eucoalitionexplorer>.)

a 'common purpose'.⁷⁷ The compartmentalisation in the EU's China policy tries to aim for neutral coherence under the rationale that different, compartmentalised policy areas can diverge to a certain degree from each other as long as they do not contradict each other. By contrast, there also seems to be a political will to have issue linkages with the purpose of promoting core European values, human rights, and sustainable development, which is in line with the notion of synergetic coherence.

On synergetic coherence between trade policy and foreign policy, Bossuyt *et al.* posit that it is "not likely to be established due to the constraining impact of institutional-ideational factors, more specifically the continuing institutional compartmentalisation and cross-pillar divides of the EU system of external action".⁷⁸ They argue that the Commission's Directorate-General (DG) Trade does not try to include goals from other policy areas in its scope of action, since it is predominantly focused on pursuing economic interests and gaining access to foreign markets rather than defending broader foreign policy objectives.⁷⁹ Though the 2015 'Trade for All' strategy was expected to bring more normative issues such as political values, human rights and sustainable development to the foreground of trade policy, said aims do not seem to have found expression in EU-China relations. It follows that the intention to produce synergies between different policy areas to achieve broader goals and common purposes is at odds with compartmentalisation and thus, a lower synergetic horizontal coherence can help explain shortcomings in EU China policy's performance.

External Factors Explaining the Degree of EU Effectiveness

According to Groen, the EU's external effectiveness increases when its "issue-specific bargaining power" is high and when its positions are more conservative (or at least moderate), that is, when it does not hold very reformist positions.⁸⁰

Due to its exclusive competence, trade policy is arguably the policy area where the EU finds its strongest bargaining power, which is further leveraged by its position as the world's largest trading bloc. Furthermore, the current shift in trade

⁷⁷ Nuttall 2005, *op. cit.*, 96–97.

⁷⁸ Fabienne Bossuyt, Jan Orbie, and Lotte Drieghe, "EU external policy coherence in the trade-foreign policy nexus: foreign policy through trade or strictly business?", *Journal of International Relations and Development* 23, no. 1 (2020): 47.

⁷⁹ *Ibid.*, 49.

⁸⁰ Lisanne Groen 2019, *op. cit.*, 6–7.

strategy – a more assertive approach striving for pragmatism and enforcement⁸¹ – could potentially increase its willingness to leverage its power. Thus, in theory, the EU's issue-specific bargaining power is high.

There are nevertheless two counterarguments: first, the EU's compartmentalising approach means it will be less inclined to employ trade policy as a bargaining chip for other purposes; second, China's own bargaining power is growing relative to the EU, given the EU's lower growth rate in comparison to China's (1.55% vs 5.95%⁸²), and Beijing's increased confidence restricts its willingness to cooperate, particularly on issues related to human rights and political values. Sino-European cooperation becomes increasingly limited to issues where China shows an explicit interest to learn from European experience (e.g. in legal affairs with economic implications).⁸³

When it comes to its positions, the EU's compartmentalisation policy and the recent 'hardening' trend render these 'moderate'. The growing awareness that the strategy of liberalising China through constructive engagement has not worked effectively – its authoritarian tendencies have rather grown, and its markets still remain relatively closed – and that China is a major force to reckon with, have made Brussels's positions more pragmatic.⁸⁴ This entails a downgrading of the ambition of previous objectives which consequently renders their achievement more feasible. It follows that, albeit dwindling, the EU's degree of effectiveness in the case of the CAI is enabled by its high bargaining power and its moderate positions and ideas.

Intersection – EU Foreign Policy in Context

This section attempts to understand the EU's approach to China: what did it undertake to deal with China's power, positions, ideas and interests, and what tools did it use? It will chiefly approach the role of sectoral dialogues in EU China policy (given their instrumentality for compartmentalisation, as they precisely allow both parties to treat each policy area differently) and the compartmentalisation policy's

⁸¹ Sieglinde Gstöhl, "The European Union's Trade Strategy in the Emerging Tripolar Structure with the United States and China", in *The Evolving Relationship Between China, the European Union and the United States of America*, eds. Jing Men, Simon Schunz and Duncan Freeman (Abingdon: Routledge, 2019).

⁸² World Bank, "GDP Growth (Annual %) - European Union, China" (2020), <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?end=2019&locations=EU-CN&start=1961&view=chart>.

⁸³ Tim N. Rühlig, "Political Values in EU-China Relations: Towards a 'Principled' or a 'Pragmatic' Approach?", in *Political Values in Europe-China Relations: ETNC Report* (2018), 93–94.

⁸⁴ *Ibid.*, 91.

relation to the CAI's outputs. The EU's effectiveness tends to be higher when it adapts its influence attempts to specifically address Beijing's positions and interests.

Sectoral Dialogues

Some of the EU's most tangible 'influence attempts' take place through the sectoral dialogues it maintains with Beijing. These constitute the main channels of institutional communication between both parties and are carried out by the respective Commission DGs, the European External Action Service (EEAS) and their Chinese counterparts.

The EU and China share over 70 specific and highly technical dialogues: the main focus here will be on the dialogues of human rights (HRD) and legal affairs (LAD). The quantity and complexity of these dialogues tends to prevent a unitary and coherent action on the part of the EU.⁸⁵ They are also ineffective in mitigating systemic differences, not just because discussions are very technical, but also because the autonomous approach of each dialogue leaves little room for issue linkages, allowing China to successfully contain issues like political values, human rights and rule of law in the respective dialogues in HRD and LAD without 'infecting others', which in turn hinders the dialogues' ability to present results.⁸⁶

To China's systematic obstruction and creation of a hostile environment for the promotion of human rights, Taylor adds "ineffective diplomatic approaches" within the HRD as another underlying cause of the EU's ineffectiveness in leveraging these dialogues.⁸⁷ This is not just due to China's high sensitivity when it comes to perceived foreign interference in domestic affairs, but also as a result of an often 'self-censored' EU approach.⁸⁸ For instance, EU officials in sectoral dialogues not inherently related to human rights (e.g. trade and energy) will refrain from mentioning sensitive issues (e.g. Hong Kong and Xinjiang) since they know this will allow them to get concessions and maintain cooperation.⁸⁹ This 'treading lightly' philosophy (often translating into EU acquiescence to Chinese priorities) can very well constitute a reason for the CAI's weak language on labour rights and sustainable development.

⁸⁵ *Ibid.*, 93; European Commission and HR/VP 2016, *op. cit.*

⁸⁶ Max R. Taylor 2020b, *op. cit.*

⁸⁷ Max R. Taylor, "Inside the EU–China Human Rights Dialogue: Assessing the practical delivery of the EU's normative power in a hostile environment", *Journal of European Integration*, 2020a, 6.

⁸⁸ Weinian Hu and Jacques Pelkmans, *Can Dialogues Advance EU-China Trade Relations?*, Centre for European Policy Studies (CEPS), 9 November 2020, 22.

⁸⁹ Max R. Taylor 2020a, *op. cit.*: 7.; Interview with Jakob Hanke Vela.

All in all, the HRD currently plays a mostly symbolic role under the 'yoke' of mutual economic priority.⁹⁰ From a trade angle, this complex set-up involving several dialogues appears to be a way to include complicated and sensitive questions into a dialogue where no concrete policies can be adopted, but lip service to values can be paid.

"It takes two to tango" – The Dynamics of Compartmentalisation

This section investigates whether a more siloed approach has contributed to a higher external effectiveness vis-à-vis China. Article 3 TEU posits that the EU "shall ensure consistency between the different areas of its external action and between these and its other policies".⁹¹ But how can the EU follow a compartmentalised policy while maintaining consistency between different areas of its external action, and how did this apply to the CAI's negotiations?

The Commission reckons that, despite not being errorproof, the EU's strategy of 'insulation' is the best way to deal with 'real-world China', entailing that neither the costly decoupling path nor the adoption of an uncomfortably confrontational posture are an option for the EU.⁹² However, even though the compartmentalisation strategy involves the categories of rivalry, competition and cooperation, oftentimes the focus seems to be on the latter two to the detriment of the systemic rivalry silo, as it was the case in the CAI.⁹³ This is a two-edged sword, as it can be argued that the EU is trying to intensify 'systemic rivalry' in Sino-European relations by imposing sanctions, freezing the CAI, and considering both the adoption of a 'due diligence mechanism' for European companies and the import ban on products involving forced labour (targeting supply chains resorting to Xinjiang products where Uyghur forced labour might be used). Yet most of these measures are either vague possibilities or are yet in their initial stages, and the sanctions were fairly limited as they only targeted four Chinese officials.

There is one essential corollary of the EU's compartmentalisation policy which is not commonly approached: the lack of reciprocity. How can such an approach work if China itself does not abide by an equally siloed approach?

⁹⁰ Thomas Christiansen, "A Liberal Institutional Perspective on China-EU Relations" in *China, the European Union, and the International Politics of Global Governance*, eds. Jianwei Wang and Weiqing Song (Basingstoke: Palgrave Macmillan, 2016), 42; Mikael Mattlin, "Dead on arrival: Normative EU policy towards China", *Asia Europe Journal* 10, 2-3 (2012): 189–90.

⁹¹ European Union, "Lisbon", *op.cit.*, art. 3 TEU, para 2.

⁹² Interview 1, *op. cit.*

⁹³ Płóciennik *et al.* 2021, *op. cit.*, 30.

Brussels tried to separate the CAI from the human rights sanctions imposed on China by prudently targeting four Chinese officials and one entity directly involved in human rights violations. Yet, Beijing retaliated asymmetrically and targeted academics, think-tanks, MEPs and the Political and Security Committee. As a result, most of the European Parliament's political groups are united against these sanctions and the agreement is currently frozen. Ultimately, the EU's compartmentalised measure triggered a fairly un compartmentalised response from China, which hints at a low level of effectiveness. Compartmentalisation effectiveness can be achieved arguably only when both parties agree on such a differentiated approach. The above example suggests that attempts to apply it unilaterally are unsuccessful.

This is because "China treats bilateral economic relations through a political lens and handles them instrumentally", i.e. it does not reciprocate the EU's compartmentalised approach.⁹⁴ In a press conference concerning the exchange of sanctions, the spokeswoman of the Chinese Ministry for Foreign Affairs said:

China, however, does not agree that the EU can have its cake and eat it by separating business from high politics. The European side cannot expect to, on the one hand, talk about cooperation and gain advantage while on the other hand harming China's interests with sanctions.⁹⁵

Thus, the inapplicability of the compartmentalisation policy seems to have lowered the EU's effectiveness vis-à-vis China. In the face of China's realist *Weltanschauung*, the EU's soft power is "relevant, but insufficient".⁹⁶ For the last years, Brussels has been employing methods of socialisation and persuasion to influence China, which appears to only understand conditionality. In the meanwhile, Beijing's disregard for socialisation and persuasion is progressively buttressed by its burgeoning clout.

The internal factors denoted a trend of increasing vertical coherence in the EU's China policy (increasing EU effectiveness) and a lack of synergetic horizontal coherence which help explain why some goals were attained and others were not. Regarding the external factors, the EU's high bargaining power and moderately ambitious positions and ideas (and the downgrading of these ambitions) rendered the objectives' achievement more feasible. Lastly, the intersection of these factors showed that sectoral dialogues mostly constitute an institutionalised path for

⁹⁴ Płóciennik *et al.* 2021, *op. cit.*, 14.

⁹⁵ Cited in Stuart Lau, Rym Momtaz, and Jakob H. Vela, "China's Hardline Turn Lifts Chances of Deeper EU-US Alliance", *POLITICO*, 23 March 2021

⁹⁶ Le Corre 2021, *op. cit.*, 4.

protecting interests from being contaminated by sensitive affairs and that the compartmentalisation policy was not successful, as it was not reciprocated.

Conclusion: The Future of the Sino-European Tug-of-War

With China's expanding clout in the world and the current worsening of Sino-European relations as a background, this paper set out to analyse the extent to which the EU's China policy had been effective and why. For that purpose, the CAI was chosen as the central case study.

The 'assessment' part of the analysis focused on the identification of the EU's objectives, the degree of goal achievement and the EU's instrumentality therein. The degree of match between objectives and outputs was seen as 'medium'. On the one hand, most of the goals of an economic nature were achieved, and both the market openings and the levelled playing field are expected to provide the EU with benefits in its investment dealings with China. On the other hand, the goals of introducing strong provisions on sustainable development fell short of expectations and the linkages between the agreement and human rights and political values are virtually non-existent. Though the outputs were reasonable, the agreement's enforcement will constitute the CAI's true litmus test – if it ever manages to leave the 'freezer' where it currently sits.

The EU's purposive action was assessed as 'instrumental to a large extent' to the achievement of its objectives, particularly due to the bilateral nature of Sino-European relations. All things considered, the EU was found to have had a 'high' degree of external effectiveness, especially when considering the CAI-specific goals.

These findings led to the conclusion that the scope of the analysis is inversely correlated to the evaluation of the EU's performance: a broader perspective (encompassing several policy areas and thus wider objectives) is likely to equate to an assumption of lower levels of effectiveness and consistency. *Mutatis mutandis*, narrower perspectives tend to focus on specific policy objectives which are easier to attain and, consequently, the EU's effectiveness is bound to be seen as higher.

The 'explaining' part of the study focused on examining the explanatory factors which influenced the EU's high degree of effectiveness. Within the EU-internal level, despite some instances of low vertical coherence, the current trend rather points towards more coherence and assertiveness vis-à-vis China. On horizontal coherence, there is a discrepancy between the EU's will to achieve a synergetic coherence and its practice of compartmentalisation. There is also a relation between

economic interconnectedness and an active promotion of values, in which the more interconnected a country (or the EU) is with China, the harder it becomes for it to criticise Beijing on sensitive issues, thus weakening the validity of *Wandel durch Handel*.

At the external level, the moderation of the EU's positions entails diminished ambition levels which, in turn, render the objectives' achievement more feasible.

The EU-China Sectoral Dialogues – particularly HRD – have become a depository of sensitive issues that allows progress to continue in other policy areas while stunting the formation of issue linkages. The compartmentalisation policy appears to be ineffective in the pursuit of human rights and core values, albeit more effective in accomplishing economic goals. At the very least, there is a severe inconsistency with the narrative of an EU that claims to champion human rights, universal values and sustainable development. Moreover, compartmentalisation cannot be effective if China does not reciprocate it.

This research faced some methodological challenges. For instance, the lack of a publicly accessible negotiating mandate and the fact that the reports of the negotiating rounds revealed virtually no details about the discussions' contents rendered it very hard to identify the EU's objectives and build a clear-cut 'narrative reconstruction' of the evolution of both parties' negotiating positions and interactions. Ultimately, the research was buttressed by a combination of document analysis and news reports collection woven together with relevant second literature and interviews.

The application of Schunz's framework worked well as most of the initially sketched research aims were able to find their answers. Notwithstanding, some aspects could be fine-tuned to accommodate for the EU's inherently greater instrumentality expected from a bilateral setting. Some suggestions include the addition of parameters which can measure both parties' size, (leverage) power and potential for weaponising the degree of interdependence. The higher their degree of asymmetry, the greater the leverage of one over the other will be.

Political developments in the EU's 'big two' can certainly influence Sino-European relations in the near future. Within the post-Merkel government coalition and under the Green Minister of Foreign Affairs Annalena Baerbock, German foreign policy is likely to treat China as a priority and to adopt a harder stance vis-à-vis Beijing

(despite Olaf Scholz's wish to remain within a more pragmatic course).⁹⁷ In France, despite Macron's active 'lobbying' for the CAI's success, there is a substantial probability that national elections will encourage him to position himself against it in order to ward off his reputation as 'neo-liberal' and 'globalist'.⁹⁸ In addition, France's longstanding advocacy of strategic autonomy for Europe, as well as the EU's commitment in leveraging financial and normative power as a counterweight to China are likely to intensify during the French Presidency of the Council.⁹⁹

The light at the end of the tunnel of EU-China relations grows dimmer as the scenario of thawing the CAI appears unlikely. Beijing still appears to be baffled at the EU's strategy of compartmentalisation classifying China simultaneously as a partner, competitor and rival, arguing that the EU's China policy suffers from "cognitive dissonance" and that the delays on the ratification of the CAI will hurt European long-term interests.¹⁰⁰ And while China shows no signs of wanting to lift its sanctions, the same could be said about the EU. It remains to be seen how this tug-of-war between Brussels and Beijing will play out and whether a Sino-European investment agreement will ever see the light of day. It will also be essential to see how the EU's Global Gateway launched in December 2021 will fare as an infrastructure investment programme designed to compete with China's own 'Belt and Road Initiative', and whether it will constitute a further source of tension between the EU and China.

All in all, the EU will have to find a way to navigate the challenges that juxtapose its close economic cooperation with China with its advocacy for human rights and universal values. This entails being aware of the limits of compartmentalisation, i.e. knowing that the application of this strategy is bound to be unsuccessful when unreciprocated. The awareness of the EU's own leverage vis-à-vis China must be balanced with the current Sino-European equilibrium either through a realisation that the EU currently has little power to influence China with its own tools and a subsequent adjustment of its global normative ambitions, or through 'stepping up its game' by potentially reducing mutual interdependence and allowing issue linkages between, for instance, human rights and trade policy.

⁹⁷ Fabian Kretschmer, "Ampelkoalition: Wie Geht Es Weiter Mit Der Deutschen China-Politik?", *Redaktionsnetzwerk Deutschland*, 7 December 2021

⁹⁸ Stec and Chimits 2021, *op. cit.*

⁹⁹ Pierre Morcos, "France's Shifting Relations with China", *War on the Rocks*, 4 January 2022

¹⁰⁰ Ministry of Foreign Affairs of the People's Republic of China, "State Councilor and Foreign Minister Wang Yi Gives Interview to Xinhua News Agency and China Media Group on International Situation and China's Diplomacy in 2021," 30 December 2021

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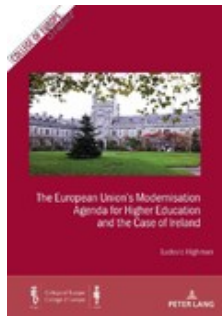
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