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## THE EU-CHINA STRATEGIC PARTNERSHIP AND THE CHALLENGES OF CULTURAL DIPLOMACY

Weronika Boruc\*

### **Introduction**

Culture is a significant element of the EU-China strategic partnership, as illustrated by its discussion in several joint policy papers<sup>1</sup>, as well as its presence in the structures of the EU-China dialogue architecture. However, there are still many issues that hamper the full realisation of an EU-China strategic partnership in the area of culture. This article analyses some of the main challenges impeding European cultural diplomacy in China. Cultural diplomacy is generally understood as “the exchange of ideas, information, art, and other aspects of culture among nations and their people to foster mutual understanding.”<sup>2</sup> Taking the example of the EU’s cultural diplomacy with China, the paper shows that the lack of cooperation between EU Member States, political tensions, structural differences, as well as the different modes of working are major impediments to the implementation of a common European cultural diplomacy.

Despite these obstacles the article also reveals a number of positive elements supporting the formulation of a European cultural diplomacy, which might point in the direction of a change of the EU’s approach towards third cultures and China in particular. In fact, it seems that the EU is replacing its tendency for “lecturing” with a greater willingness for listening to its partners. Against this background, the last part of the article will look at existing good practices of EU cultural diplomacy in China and proposes solutions for how to further strengthen them.

### **Lack of coordination between EU Member States**

One of the main obstacles to the successful formulation of a European cultural diplomacy lies in the very nature of the EU and the process of European integration. The EU can be described as an “unfinished political system” with an “uneven and arbitrary division of competences” between EU institutions and single Member States, resulting in complex policy processes in various policy fields.

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<sup>1</sup> Such as: Joint Declaration on EU-China Cultural Cooperation, Beijing, 30 November 2012; Joint Statement: *Deepening the EU-China Comprehensive Strategic Partnership for mutual benefit*, Brussels, 31 March 2014.

<sup>2</sup> Cynthia Schneider, “Culture Communicates: US Diplomacy That Works”, in: J. Melissen (ed.), *The New Public Diplomacy: Soft Power in International Relations*, Palgrave Macmillan, 2005, p. 147.

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Divergences between Member States' interests are especially important in the forging of the EU's soft power, since a coherent external strategy is "an obvious requirement for any political entity wanting to promote its values on the international scene"<sup>3</sup>. Hence, tensions between the EU and its individual Member States weaken the EU's overall influence. In the EU-China relations, these inconsistencies have sometimes been exploited by the Chinese government.<sup>4</sup>

In the field of culture, the EU only has so-called 'supporting' competences. Culture, therefore, remains the prerogative of single EU Member States and national governments, which are competing with each other "in the quest for the generation and maintenance of soft power."<sup>5</sup> Yet, from a broader perspective, individual projects of Member States' cultural institutes and embassies are generally bound to have much less impact than joint European projects. In particular, China's geographical vastness poses a challenge for European cultural diplomacy. In general, most EU Member States organise their own cultural activities in major Chinese cities such as Beijing or Shanghai. The lack of coordination leads to situations in which there are "too many EU Member States' cultural offers at the same time and in the same cities."<sup>6</sup> Moreover, with 1.3 billion Chinese people to reach out to, who are spread across the entire country, the activities of single EU Member States have only a limited scope and the absence of a common European cultural strategy therefore significantly diminishes the EU's influence.

**Culture versus Politics**

In Europe, government policies concerning culture are generally influenced by a political need to build, preserve, and strengthen the national identity of states. This pragmatic approach explains the use of culture as a tool of foreign policy. Cultural exchanges are treated as means for "winning friends and influencing people" from other countries.<sup>7</sup> However, in the eyes of partner countries of the European Union, the emphasis on promoting European values might look suspicious. Especially in countries with different political systems, advertising concepts such as democratisation is sometimes considered as "a self-serving interest" of the EU.<sup>8</sup>

Since culture can be a powerful medium for transmitting ideas, some experts have argued that the spread of Western culture in China is treated with mistrust by the Communist government and regarded as being overly

<sup>3</sup> Anna Michalski, "The EU as a Soft Power: the Force of Persuasion", in: J. Melissen (ed.), *The New Public Diplomacy: Soft Power in International Relations*, 2005, p. 141.

<sup>4</sup> Cf. Jing Men, "The EU and China: Mismatched Partners?", in: *Journal of Contemporary China*, No. 21, 2012, p. 348.

<sup>5</sup> Emil Brix, "European Coordination of External Cultural Policies", in: M. Mokre, J. Batora (ed.), *Culture and External Relations: Europe and Beyond*, 2011, pp. 161-162.

<sup>6</sup> Cf. European Parliament Directorate-General for Internal Policies. Policy Department B: Structural and Cohesion Policies, *The Potential for Cultural Exchanges between the European Union and Third Countries: The Case of China*, PE 419.097, 2009, p. 108.

<sup>7</sup> Emil Brix, *op. cit.*, p. 168.

<sup>8</sup> Mireia Paulo, Summary of Speech at the "EU-China Soft Power" Conference on 19 April 2013, in: *EU-China Observer*, Issue 2, 2013, p.41.

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politicised.<sup>9</sup> An official from the Chinese Ministry of Culture complained that Europeans “can tie anything and everything together with culture, politics, human rights and talk about them all in the same breath.”<sup>10</sup> According to him, such an approach makes mutual understanding impossible. Hence, using culture as a political instrument runs the risk of depriving the EU of its credibility. When cultural projects become just another means of public diplomacy, they might diminish the level of trust between people instead of contributing to mutual understanding.<sup>11</sup>

One of the important features characterising the Chinese cultural sector, and one that has created difficulties in the cultural relations between China and the EU, is censorship. In the framework of China’s cultural censorship, many art and media projects are considered as “politically sensitive” and artists or cultural organisations from abroad are often suspected of promoting values contradictory to those of the People’s Republic of China.<sup>12</sup> Due to the practice of censorship and the high level of alertness of government institutions, Chinese authorities are particularly aware of “the power of the arts and media to transport ideas, opinions and emotions.”<sup>13</sup>

The necessity of conforming to the requirements of censorship has an important influence on the cultural activities of European actors involved in China. In order to avoid complications, they need to practise “restraint and self-examination” from the very first stages of their planned projects.<sup>14</sup> Philip Lazare, a partner with an international law firm in Shanghai and an advisor in the field of media law, refers to this common practice as “toeing the line”.<sup>15</sup> This process of self-examination and reflection requires a sound knowledge of the specific requirements put forward by the different Chinese authorities – e.g., the State Administration of Radio, Film and TV (SARFT) and the General Administration of Press and Publication (GAPP) – concerning what may (or may not) be shown or published. However, the regulations concerning “illegal content” applying to media and cultural productions in China are not always easy to pinpoint. They refer to practices that “disrupt social harmony” or “harm social morality”, which can be broadly interpreted and applied to books and films that are considered politically neutral from a European point of view.

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<sup>9</sup> Werner Meissner, “Cultural Relations between China and the Member States of the European Union”, in: *The China Quarterly*, Vol. 169, 2002, p. 201.

<sup>10</sup> Chen Ping, interview, in: European Union National Institutes for Culture, *op. cit.*, p. 196.

<sup>11</sup> Jan Melissen, “The New Public Diplomacy: Between Theory and Practice”, in: J. Melissen (ed.), *op. cit.*, p. 23.

<sup>12</sup> Philip Lazare, “Law and the Cultural Sector: Issues for Foreign Artists and Companies Operating in China”, in: European Union National Institutes for Culture, *Europe – China Cultural Compass*, Goethe-Institut, 2011, p. 97.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, p. 96.

<sup>15</sup> *Ibid.*

**InBev-Baillet Latour Chair of  
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An important structural difference between the European and the Chinese cultural sector is its level of centralisation. European cultural institutions consider the Chinese procedures tiresome, obstructive, and unnecessarily convoluted as “many different documents are requested from the Chinese authorities to get a licence, and visa and customs clearance procedures are difficult and rigid.”<sup>16</sup> It is necessary to obtain approval on the level of ministries and other administrative bodies for all kinds of cultural activities, including the import of cultural works or signing partnership agreements with foreign institutions. Unsurprisingly, these “excessive bureaucratic controls” are making cultural cooperation between the EU and China more difficult.<sup>17</sup>

One of the consequences of the prevailing role of the Chinese bureaucracy is the restricted access to information for foreign actors. The layers of administration create barriers that can be very difficult to overcome, especially for those who lack familiarity with the complexity of the Chinese institutional system.

Another problem is the limited European resources in the area of culture. The EU Delegation in Beijing lacks both the human and financial resources necessary to carry out a European cultural diplomacy in China; in fact, European cultural projects are organised on a shoestring budget.<sup>18</sup> The lack of the EU's resources in the area of culture is particularly striking in comparison to China. The Chinese government plans to increase the budget for building up its soft power to 5 percent of its GDP in 2016.<sup>19</sup> This asymmetry between the EU's and China's cultural activities makes it more difficult for the EU to convey its message.

**Different modes of working**

Some difficulties are a natural consequence of the cultural differences between the West and the East, especially regarding the significance given to legal contracts. Europeans generally consider a signed contract as a finished and legally binding document – “setting down once and for all the mutual duties and rights of each party.”<sup>20</sup> Instead, for the Chinese it is possible to re-negotiate and modify provisions of a contract if both sides agree to do so.<sup>21</sup> This divergence might confuse European actors if they are not aware of it.

What also surprises the less experienced staff of Western cultural organisations is just how long it can take to implement cultural projects in

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<sup>16</sup> European Parliament Directorate-General for Internal Policies, Policy Department B: Structural and Cohesion Policies, *The Potential for Cultural Exchanges between the European Union and Third Countries: The Case of China*, PE 419.097, 2009, p. 98.

<sup>17</sup> KEA, *Mapping the Cultural and Creative Sectors in the EU and China: A Working Paper in support to the development of an EU-China Cultural and Creative Industries' platform*, Brussels, 2011, pp. 29, 37.

<sup>18</sup> *Preparatory Action on Culture in the EU's External Relations Conference-Discussion Paper*, 2014, p.12.

<sup>19</sup> Clingendael, *Culture and Understanding in China-Europe Relations – Conference Report*, Hague, 2013, p.7.

<sup>20</sup> *Ibid.*, p. 99.

<sup>21</sup> *Ibid.*



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China.<sup>22</sup> On the one hand, this is due to administrative complications. On the other hand, some experts argue that the very notion of time is different in Asia.<sup>23</sup> For instance, Chen Ping, a government officer responsible for working with European countries in the Chinese Ministry of Culture, criticised his European counterparts saying that planning is the “weak link” on their side, and that they “need to understand that a lot of things require a long lead time”<sup>24</sup>. He also urges that “Europeans must understand how Chinese people handle things. They also have to appreciate the habits, principles and methods of the Chinese.”<sup>25</sup>

An important principle governing cultural exchanges between China and third countries is reciprocity. If the Chinese authorities grant permission for an event to be organised in China, they expect the partner country to reciprocate with a similar agreement concerning a project of an equal scale.<sup>26</sup> For example, the first European Union Film Festival, organised jointly by the Delegation of the European Commission and the French Embassy in 2008, failed to obtain permission from the SARFT to show films in commercial theatres. The apparent motivation for the Chinese authorities’ refusal was that “the EU could not help China to organise reciprocally a Chinese Film Festival in at least three European countries.”<sup>27</sup>

**Conclusion**

The future prospects for EU cultural diplomacy in China should be considered in light of recent developments in the field of European external cultural relations, especially since the 2011 European Parliament Resolution on Cultural Dimensions of the EU’s External Actions<sup>28</sup>. The 2014 Preparatory Action on Culture<sup>29</sup> in the EU’s external relations can be considered another important step towards better European cultural diplomacy.

Some EU officials argue that the EU needs to avoid “lecturing and patronising” its partners.<sup>30</sup> According to Helga Trüpel, the Vice-Chair of the Culture and Education Committee of the European Parliament, the EU should think not in terms of cultural diplomacy, which is conducted top-down, but in terms of “cultural cooperation”, which would focus on reaching out to the non-governmental cultural organisations and civil society,<sup>31</sup> e.g. by co-curation of international projects. A stronger role of the NGOs in the EU

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<sup>22</sup> European Parliament Directorate-General for Internal Policies, *op. cit.*, p. 84.

<sup>23</sup> *Ibid.*,

<sup>24</sup> Chen Ping, interview, in: European Union National Institutes for Culture, *op. cit.*, p. 195.

<sup>25</sup> *Ibid.*

<sup>26</sup> European Parliament Directorate-General for Internal Policies, *op. cit.*, p. 13.

<sup>27</sup> *Ibid.*, p. 90.

<sup>28</sup> European Parliament, *Resolution on the Cultural Dimensions of the EU’s External Actions*, 2010/2161 (INI), 12 May 2011.

<sup>29</sup> Preparatory Action on Culture, retrieved 9 October 2014, <http://cultureinexternalrelations.eu/CE>.

<sup>30</sup> Pierre Vimont, Executive Secretary General of the European External Action Service, at: *Preparatory Action on Culture in the EU’s External Relations Conference*, 7 April 2014, Bozar, Brussels.

<sup>31</sup> Helga Trüpel, MEP, interview at Preparatory Action website, retrieved on 3 March 2014, <http://cultureinexternalrelations.eu/> (consulted on 30.03.2014).

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cultural relations could contribute to building trust between European and Chinese citizens.

Some changes to the functioning of the EU Delegations are also proposed. In the current situation, most of them have no structural organisation dedicated to maintaining cultural relations with the host country. Their work in this field depends on the "good will of particular individuals."<sup>32</sup> There is a general understanding that the EU Delegations need culturally competent personnel on the ground with responsibility for coordinating cultural relations.<sup>33</sup>

During the Preparatory Action Conference, the Commissioner for Education and Culture emphasised the need for a "smart complementarity", pooling of budgets, human resources, networks, and know-how. This strategy is especially important in times of financial crisis, when many national governments are trying to save money by spending less on cultural promotion.<sup>34</sup>

It should be emphasised that some of the Preparatory Action recommendations are already being implemented in China – such as the focus on the young generation and new media. The EU Delegation's activities can be regarded as exemplary in these fields, especially considering its limited resources for culture. With more attention given to culture in external relations nowadays, the future prospects for EU cultural diplomacy in China seem likely to expand even further, with a more coherent strategy and a more open approach.

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<sup>32</sup> *Preparatory Action on Culture in the EU's External Relations Conference - Discussion Paper*, 2014, p. 8.

<sup>33</sup> Prof. Yudhisthir Raj Isar, Team Leader of the Preparatory Action, at: *Preparatory Action on Culture in the EU's External Relations Conference*, 7<sup>th</sup> April 2014, Bozar, Brussels.

<sup>34</sup> Androulla Vassiliou, Commissioner for Education and Culture, at: *Preparatory Action on Culture in the EU's External Relations Conference*, 7 April 2014, Bozar, Brussels.





## THE RECENT EVOLUTION OF CHINA'S CLOTHING EXPORTS AND ITS IMPLICATIONS FOR THE EUROPEAN UNION

Stéphanie Dheur\*

### *Introduction*

By the end of 2014, China is expected to have become the world's largest economy. Trade has been a major contributor to the country's economic development and impressive growth. With more than 300 regional trade agreements and 30 percent of its labour force active in exporting activities, China has seen its share of the world output jump from 2 percent, when it opened up to international trade in the late seventies, to 13 percent in 2010.<sup>1</sup>

China would not have reached this position had it not fully embraced and dominated global supply chains. Thanks to the development of transportation and communication technologies, global supply chains expanded at a fast pace and have become a key component of corporate competitiveness. Companies have indeed recognised the benefits of sequencing their production process between different countries, in order to perform only the activities in which they have a competitive advantage while outsourcing the others.<sup>2</sup> But even more relevant than understanding the positioning of each country within their respective supply chain is the crucial importance of assessing at which stage of the supply chain the value is added. This offers a clear representation of each country's industrial and economic development and areas of specialisation. Yet, the continuous back and forth flow around the world of goods at different stages of completion has blurred the global picture of the real contribution of each stakeholder involved in the creation of the final product.<sup>3</sup> For decades, China has been regarded as "the factory of the world", being mainly involved in manufacturing and assembling, two activities that are minimal contributors in terms of added value. As a matter of fact, many people still consider Chinese exports to be of lower quality than their European counterparts.

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<sup>1</sup> OECD, "China in Focus: Lessons and Challenges", 2012, p.58, retrieved 19 April 2014, <http://www.oecd.org/china/50011051.pdf>.

<sup>2</sup> D.K. Elms & P. Low, "Global value chains in a changing world", 2013, p.xix, retrieved 28 April 2014, [http://www.wto.org/english/res\\_e/booksp\\_e/aid4tradeglobalvalue13\\_intro\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/aid4tradeglobalvalue13_intro_e.pdf); B. Hoekman, "Adding value", 2013, p.1, retrieved 28 April 2014, <http://www.imf.org/external/pubs/ft/fandd/2013/12/hoekman.htm>.

<sup>3</sup> Nowadays, about two thirds of products crossing international borders are intermediates; R. Baldwin & J. Lopez-Gonzalez, "Supply-chain trade: a portrait of global patterns and several testable hypotheses", 2013, p.13, retrieved 20 February 2014, <http://www.nber.org/papers/w18957>.

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Undeniably, the initial streams of China's exports consisted of labour intensive goods (e.g. toys, textiles, clothing, simple electronic assembly, etc.) and agricultural products. Over the years, there has, however, been a progressive decline in Chinese exports in light manufacturing and a rise in more elaborate products.<sup>4</sup> The current composition of the Chinese exports is particularly sophisticated: on the one hand, China has a much more elaborate export structure compared to countries with similar relative endowments (its export bundles are made up of many products commonly exported by the OECD countries) while, on the other hand, the unit values of Chinese exports are much lower than the ones of developed countries.<sup>5</sup>

Is this upsurge of activity in high-tech and telecom sectors and the sophistication of the Chinese export bundles a sign that China is climbing up the value chain? Not really, according to practical studies that assert that this phenomenon can be chiefly explained by China's extensive use of high value foreign intermediates and its significant involvement in processing trade.<sup>6,7</sup> The real technological upgrade of "genuine Chinese exports" in technology industries seems thus very limited.<sup>8</sup> But this reality is less clear-cut in the case of light manufacturing industries like clothing.

Looking at the clothing industry is particularly interesting for three reasons. Firstly, the clothing sector can be regarded as a supply chain in which developing countries like China are mainly involved in downstream labour-intensive activities (e.g. manufacturing, sewing and assembling) while developed countries like the European Union are more active in upstream capital-intensive activities (e.g. branding, retailing, merchandising) that represent the largest portion of the total value added (about 90 percent).<sup>9</sup>

Secondly, clothing is a dynamic and innovative industry. Design, R&D and branding are key competitive factors of the sector. European brands dominate the mid-end and high-end global markets whereas brands from developing countries dominate their mid-end to low-end local markets.<sup>10</sup>

Thirdly, the sector has progressively opened up since the late 1990s to completely fall under the general rules of the GATT on the 1<sup>st</sup> of January 2005.<sup>11</sup> The official dismantling of the last textile quotas led to a deepening of

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<sup>4</sup> D. Rodrik, "What's so special about China's exports?", 2006, p.4, retrieved 16 April 2014, <http://www.nber.org/papers/w11947>.

<sup>5</sup> P. Schott, "The relative sophistication of Chinese exports", 2006, p.2, retrieved 10 April 2014, <http://www.nber.org/papers/w12173>.

<sup>6</sup> R. Stehrer, "Accounting relations in Bilateral Value Added Trade", 2013, p.21, retrieved 14 March 2014, <http://ideas.repec.org/p/wii/wpaper/101.html>.

<sup>7</sup> M. Amiti & C. Freund, "The Anatomy of China's Export Growth", 2010, p.2, retrieved 22 April 2014, <http://ideas.repec.org/h/nbr/nberch/10451.html>.

<sup>8</sup> P. Havlik, O. Pindyuk & R. Stollinger, "Trade in Goods and Services between the EU and the BRICs", 2009, p. 26, retrieved 12 February 2014, <http://wiiw.ac.at/trade-in-goods-and-services-between-the-eu-and-the-brics-p-1959.html>.

<sup>9</sup> International Trade Center, "The Chinese market for clothing", 2011, p. 66-67, retrieved 19 April 2014,

[http://www.intracen.org/uploadedFiles/intracenorg/Content/Exporters/Sectors/Food\\_and\\_agri\\_business/Cotton/AssetPDF/China%20final%20technical%20document%20for%20print1.pdf](http://www.intracen.org/uploadedFiles/intracenorg/Content/Exporters/Sectors/Food_and_agri_business/Cotton/AssetPDF/China%20final%20technical%20document%20for%20print1.pdf)

<sup>10</sup> International Trade Center, *op.cit.*, p.67.

<sup>11</sup> In the period from 1974 to 1995, international trade in the clothing sector was regulated by the Multifibre Arrangement (MFA), a framework that mainly led to the development of national

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trade between the EU and China. With Chinese clothing firms massively flooding the European market with low quality clothes, the European Union experienced a surge in competitive pressure on its clothing products as there was an increasing price difference between European and Chinese products. China quickly became the largest producer and exporter of clothing;<sup>12</sup> in 2009, it accounted for 58 percent of the world textile and clothing trade and in 2013, it had more than 100,000 manufacturers and 10 million jobs linked to the garment industry.<sup>13</sup>

Based on the logic of the comparative advantage theory on quality-differentiated products and considering the EU and China's respective factors endowment, the international trade theory suggests that the EU would specialise in high value added clothes and China in the labour intensive low value added varieties. But to what extent can we assert that China is not also upgrading the quality of its clothes in order to cover the production of the former segment? If Chinese clothing firms are moving up the quality ladder in the clothing industry, they could represent a real threat for the European clothing companies.

This paper examines the evolution of the China and Europe clothing trade patterns from 2000 to 2012. The focus is particularly on the respective exports of the two partners to the European market (with Germany used as a proxy to draw broader conclusions on EU-China trade relations). Practically, it brings together three current methodologies that have yielded conflicting results in previous studies, and applies them to European trade in clothing. A single homogeneous data set (from UN COMTRADE) and coherent working assumptions are used to allow for comparison and to ensure greater consistency. The paper is structured around the following three quantitative case studies: (1) a relative quality analysis,<sup>14</sup> which examines the evolution of the volume and the relative unit values of the clothing products exported by both China and the EU-15 to Germany; (2) a segmented quality analysis, which refines the results obtained from the first method by focusing the analysis on the top 20 percent of clothing products, in terms of their export value to Germany, that cover 80 percent of the market; and (3) an intra-industry trade analysis<sup>15</sup>, which examines the evolution of the clothing import and export flows between China and the EU-15.<sup>16</sup>

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quotas. In 1995, the WTO Agreement on Textile and Clothing (ACT) entered into force and implemented the progressive elimination of those quotas. On the 1st of January 2005, the clothing sector completely fell under the general rules of the GATT; H.K. Nordas, "The Global Textile and Clothing Industry post the Agreement on Textiles and Clothing", 2004, retrieved 20 April 2014, [http://www.wto.org/english/res\\_e/booksp\\_e/discussion\\_papers5\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/discussion_papers5_e.pdf).

<sup>12</sup> China National Garments Association, "China, the garment king: a portrait", 2013, retrieved 26 April 2014, <http://www.cnga.org.cn/engl/news/View.asp?NewsID=42568>.

<sup>13</sup> International Trade Center, *op.cit.*, p.13.

<sup>14</sup> Based on H. Vandenbussche et al., "Moving up the Quality ladder? EU-China Trade Dynamics in Clothing", 2011, retrieved 2 February 2014, <http://sites.uclouvain.be/econ/DP/IRES/2011047.pdf>.

<sup>15</sup> Based on T. Ito & T. Okubo b, "New Aspects of Intra-industry Trade: evidence from EU-15 countries", 2011, retrieved 10 April 2014, <http://www.rieb.kobe-u.ac.jp/academic/ra/dp/English/DP2011-02.pdf>.

<sup>16</sup> For the complete development of the analysis see S. Dheur, *Has China moved up the quality ladder in the clothing industry since its entry into the WTO in 2001?*, 2014, pp.62.

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### *The Chinese clothing industry: a quantitative perspective*

For the analysis of the following three quantitative case studies the author relies on data from the United Nations Commodity Trade Statistics Database (UN COMTRADE). The commodities are classified according to a 6 digit Harmonised Coding and Description System (HS). To address the clothing industry, this paper uses the full list of the commodity codes belonging to the HS 61, 62 and 63. The case studies cover two different periods of trade relations between China and the EU<sup>17</sup>: the pre-crisis period from 2000 to 2008 and the post-crisis period from 2009 to 2012.

#### **1. Relative quality analysis**

The theoretical approach used for this first case study consists in comparing relative prices and quantities based on the following assumption: if the price of a low priced product increases and if the demand for this product increases at the same time, then one can conclude that the relative quality of the product increases as well. On the contrary, if the price of a highly priced product decreases together with the demand for this product, then this means that the relative quality of the product has decreased. This case study is based on the method developed by Vandenbussche, Di Comite, Rovegno and Viegelahn but in order to reflect China's trade relations with the EU, Germany is used as destination market (instead of the US).<sup>18</sup>

##### **1.1. Pre-crisis: from 2000 to 2008**

###### a. The export volume

In 2000, China's export volume of clothing to Germany represented 61 percent of the EU-15 exports to Germany and about 10 percent of the world exports to Germany. Over the next 8 years, the Chinese volume grew by 418 percent (i.e. a 52 percent annual increase) reaching, in 2008, 39 percent of the world exports (which had increased over the same period by 40 percent). We can see from figure 1 that, after the entry of China in the WTO in 2001, Chinese exports expanded drastically with a special situation in 2005-2006 (most likely linked to the so-called "bra wars"). During the same period, the EU-15 export volume decreased by 32 percent (i.e. a 4 percent annual drop).

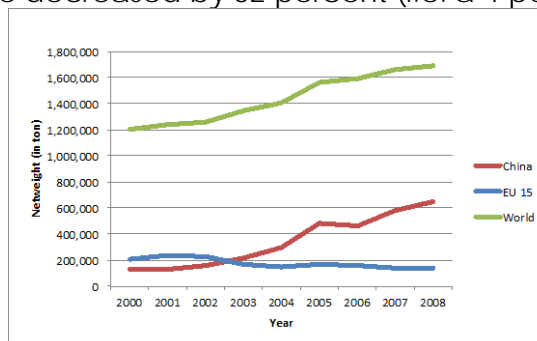


Figure 1 - Clothing exports in volume (tonnes) to Germany (2000-2008)

<sup>17</sup> The data used refers to the EU with 15 member states.

<sup>18</sup> H. Vandenbussche et al., *op.cit.*

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### b. The export value

Between 2000 and 2008, there was a 70 percent increase of the world export value. Put into perspective of the global 40 percent export increase in terms of volume, this indicates that the average unit price (per kilo) has increased over the period. Looking at figure 2, we notice major differences between China and the EU-15. Chinese export value increased by the same proportion compared to the volume (which indicates a stable average unit price). Conversely, EU-15 export value remained relatively constant over the 8 years, contrasting with the volume decrease. In terms of the world export share, China's share raised from 10 percent to 31 percent while the EU-15 moved downwards from 22 percent to 14 percent. Over this period, China managed to absorb 60 percent of the world export value increase.

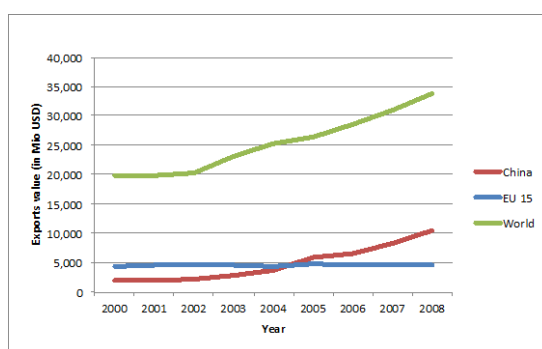


Figure 2 - Clothing exports in value (Mio USD) to Germany (2000-2008)

### c. The relative unit value

In 2000, the Chinese unit value of exports to Germany was at par with the world unit value and the EU-15 relative unit value was 50 percent higher than the Chinese relative unit value. From 2001 to 2005, the relative unit values of the two protagonists evolved in opposite directions: Chinese relative unit value dropped by 27 percent while the EU-15 relative unit value increased by 28 percent (see figure 3). As a result, the difference of the relative unit value kept on increasing between the EU-15 and China, reaching 160 percent in 2005. From 2005 to 2008, this gap remained constant.

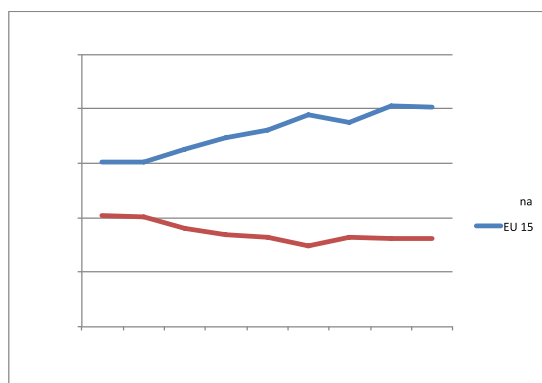


Figure 3 - Relative unit value of clothing exports to Germany (2000-2008)



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In conclusion, the data presented shows that in the pre-crisis period, between 2000 and 2008, the price of the low priced Chinese goods decreased, while the demand significantly increased. Thus, we may not conclude that the quality of Chinese clothes has improved over this period; this trend could however mean that the European exporters were losing cost competitiveness with respect to the Chinese exporters. This is consistent with the fact that European clothing producers have seen a surge of competition and a downward pressure on price following China's entry in the WTO but also the quota removal in 2005. This is linked to China's comparative advantage in labour intensive sectors and is illustrated by the huge difference of relative unit values between the two countries.<sup>19</sup> China's lower relative unit value can also be related to a negative terms-of-trade (increased volume of exports lowering export prices) or to improved productivity in China, exchange rate movements, shrinking profit margins, etc.

### 1.2. Post crisis: from 2009 to 2012

#### a. The export volume

As highlighted by figure 4, the post-crisis period shows a different pattern compared to the pre-crisis period. The overall world exports to Germany temporarily dropped in 2009 to further peak in 2011. They decreased again in 2012 to the same level as 2009. China followed the same trend but with a sharper decrease in 2012 (a 14 percent drop below the 2009 level). Interestingly, the EU-15 did not experience a drop in 2009 and kept on increasing its volume by 20 percent over the period (i.e. a 7 percent yearly average).

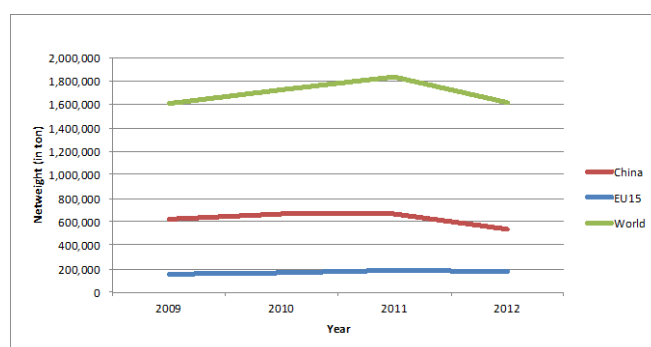


Figure 4 - Clothing exports in volume (tonnes) to Germany (2009-2012)

<sup>19</sup> G. Giovannetti & M. Sanfilippo, "China's competition and the export price strategies of developed countries", 2013, retrieved 4 April 2014, <http://www.nottingham.ac.uk/cpi/documents/working-papers/working-paper-7.pdf>.

P. Monfort, H. Vandenbussche & E. Forlani, "Chinese Competition and Skill-Upgrading in European Textiles: Firm-level Evidence", 2008, retrieved 16 March 2014, <https://lirias.kuleuven.be/bitstream/123456789/162553/1/Textiles>.



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### b. The export value

The world export value to Germany followed a similar cycle as the world export volume. However, as in the pre-crisis period, the world export value increased faster (+10 percent) than the world export volume (+1 percent). This implies that the average unit price (per kilo) has again increased over the period. Figure 5 indicates that both China and the EU-15 followed the same trend over 2009-2012. The EU-15 export value increased by 11 percent whereas China's export value increased by 6 percent. Comparing the export value variation with the export volume variation, we notice a major difference between the EU-15 and China: the EU-15 average unit price decreased over the period while China's average unit price increased. Both China and the EU-15 shares in the world export remain stable during the post-crisis period.

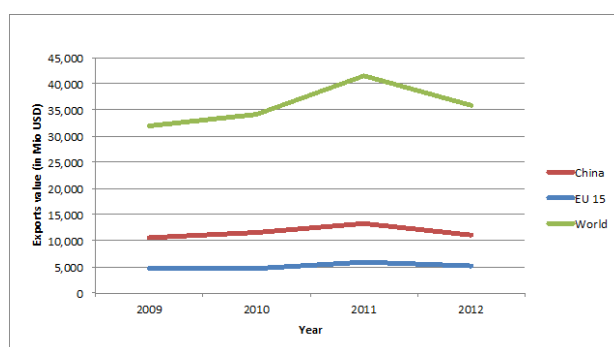


Figure 5 - Clothing exports in value (Mio USD) to Germany (2009-2012)

### c. The relative unit value

From 2009 to 2012, the relative unit values evolved in opposite directions. But this time, contrary to the pre-crisis period, the Chinese relative unit value increased by 11 percent compared to 2008 while the EU-15 relative unit value decreased in the same period by 20 percent, as can be seen in figure 6. As a result, the difference of the relative unit value decreased between the EU-15 and China, reaching 78 percent in 2012 (against 160 percent in 2005).

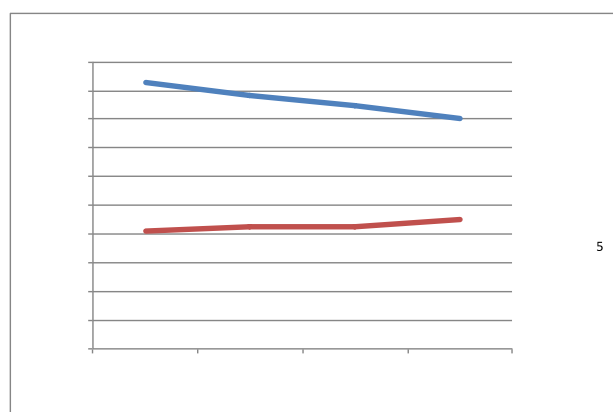


Figure 6 - Relative unit value of clothing exports to Germany (2009-2012)

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This illustrates, on the one hand, that the relative sales of Chinese products vis-à-vis EU-15 sales have somewhat decreased, and, on the other hand, that the Chinese relative unit values are increasing faster than the EU-15 relative unit values. The price of low priced Chinese goods increased between 2009 and 2012 while the demand slightly decreased. Again, as with the pre-crisis period, we cannot conclude that the quality of the Chinese products has been improved over this period. The trend depicted in the post-crisis period would however mean that European exporters have been improving their efficiency with respect to Chinese exporters. This would suggest that the effects of the crisis were not immediately felt in 2009 but rather 3 years after. Two additional factors that can explain China's increase of relative unit values are the intensified competition that it experienced with other labour-intensive countries in the clothing industry (like Bangladesh or Vietnam) and the constant growth of labour costs experienced by Chinese clothing firms (e.g. wage increase).

**2. Segmented quality analysis**

In order to fine tune the conclusions of the relative quality analysis, we looked at the composition of the export bundle and its evolution over time. For a given year and trading partner, we ranked (in decreasing order) the HS commodity codes according to their export value. On this basis, we selected the top ones that together contribute to 80 percent of the total export value of the trading partner (top export bundle). The selected products represent about 20 percent of the number of exported products (ranging from 17 percent to 25 percent).<sup>20</sup>

**2.1. Pre-crisis: from 2000 to 2008**

Figures 7 and 8 indicate that the number of products that account for 80 percent of the total export value stayed mostly stable for China (around 57 products), whereas this number continuously increased for the EU-15 over the same period (from 49 to 58 products) although the total number of products traded decreased between 2000 and 2008. The evolution of the original Chinese top 80 percent export bundle shows that, over 8 years, only 61 percent of the top products exported in 2000 still appeared in the top list in 2008. For the EU-15, they still represent 73 percent of the top products exported in 2000. By combining these two elements, we see that about one third of the products contained in the top 80 percent export bundle has changed over the period for both China (35 percent change) and the EU-15 (38 percent).

By comparing the top 80 percent export bundle between China and EU-15, we see that the number of common products evolved from 51 percent to 73 percent for China and from 61 percent to 69 percent for the EU-15. This suggests that progressively other products became more important in China's

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<sup>20</sup> We found out that the evolution of the relative unit value of the top 20 percent export products fully mirrors the overall evolution of the relative unit value of all products for both the EU-15 and China. This means that the impact of the remaining 80 percent of products is negligible on the global evolution of the relative unit value.

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export to Germany and China's bundle became relatively closer to the EU-15 one. This shows an increasing similarity and overlap of the top 80 percent export bundle between both trading partners.

Finally, we notice that the number of Chinese products in the top 80 percent export bundle whose unit value is bigger than EU-15, dropped steadily from 12 percent in 2000 to 0 percent at the end of the period. This could either reflect the lower quality of Chinese products or the ability of the country to produce cheaper goods.

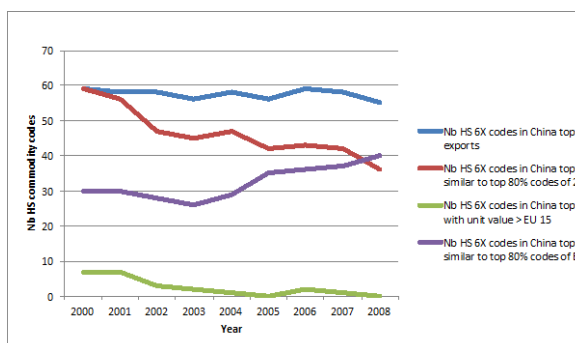


Figure 4 - Characteristics of HS commodity codes in China top 80 percent clothing exports to Germany (2000-2008)

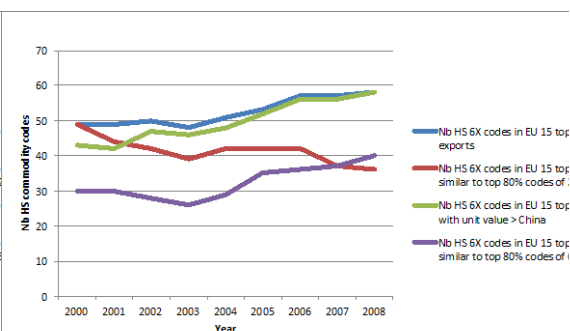


Figure 5 - Characteristics of HS commodity codes in EU-15 top 80 percent clothing exports to Germany (2000-2008)

### 2.2. Post-crisis: from 2009 to 2012

As for the pre-crisis period, figures 9 and 10 indicate that the number of products that account for 80 percent of the total export value remained stable for China (around 54 products) during the 2009-2012 period whereas this number further increased for EU-15 over the same period (from 62 to 66 products). The evolution of the original Chinese top 80 percent export bundle shows that, over 3 years, 85 percent of the top products exported in 2009 still appeared in the top list in 2012. For the EU-15, they represented 90 percent of the top products exported in 2000. By combining these two elements, we see that 15 percent of the products contained in the top 80 percent export bundle has changed over 2009-2012 for both China and EU-15.

By comparing the top 80 percent export bundle between China and EU-15, we see that, contrary to the pre-crisis period, the number of common products decreased for both China (from 81 percent to 76 percent) and for EU-15 (from 71 percent to 62 percent). This shows a decreasing overlap of the top 80 percent export bundle between both trading partners, whereas the overlap was increasing in the pre-crisis period. We do not really observe a drastic change of the composition of the export bundle of one of the two trading partners relative to the other.

Finally, we see that the number of Chinese products in the top 80 percent export bundle whose unit value is bigger than EU-15, stayed close to 0 percent over the period.

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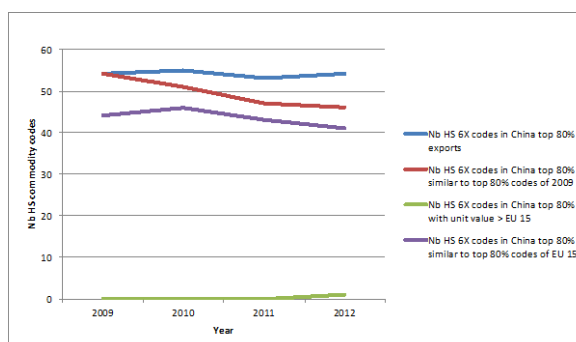


Figure 6 - Characteristics of HS commodity codes in China top 80 percent clothing exports to Germany (2009-2012)

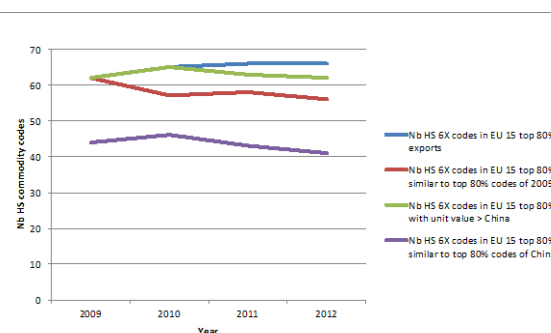


Figure 7 - Characteristics of HS commodity codes in EU-15 top 80 percent clothing exports to Germany (2009-2012)

### 3. Intra-industry trade analysis

Contrary to the two previous methods, the focus is put on Intra-industry trade (IIT) which, in our case, represents the two-way trade within the clothing sector between China and the EU-15. This research is inspired by Ito and Okubo,<sup>21</sup> who decompose the Gruble-Lloyd IIT index (GL IIT) into different components. The GL IIT index expresses the ratio of the overlap of export and import unit values of the same products for a given year. The index takes into account the respective weight of the traded product in the overall trade value. An index value of 1 (or 100 percent) indicates that the import and export values are at par. In order to take into account the unit price difference between exports (from China to the EU-15) and imports (from the EU-15 to China), the GL IIT index can be divided into two main categories according to the unit export and import price gap (ratio): the horizontal IIT (HIIT) and the vertical IIT (VIIT). The HIIT includes the products with a limited price gap, whereas the VIIT covers the products with a substantial price gap – either embodied by a significantly higher export price (upper side of VIIT) or by a significantly lower export price (lower side of VIIT).

#### 3.1. Pre-crisis: from 2000 to 2008

##### a. Chinese import and export value

Figure 11 shows that Chinese clothing exports to Europe were significantly higher than EU-15 exports to China. Chinese clothing imports from EU-15 represented less than 1 percent of the corresponding exports across the whole period. Both Chinese imports and exports have grown at a very large rate over 8 years and the year-by-year growth rate even increased over the years (see figure 12). However, the growth rate of Chinese exports (55 percent yearly average) was substantially lower than the growth rate of EU-15 exports to China (98 percent yearly average). So, the full opening of the

<sup>21</sup> Ito and Okubo, *op.cit.*

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bilateral trade (following China's entry in the WTO in 2001) has been beneficial to both parties and even more to the EU-15 (in terms of growth).

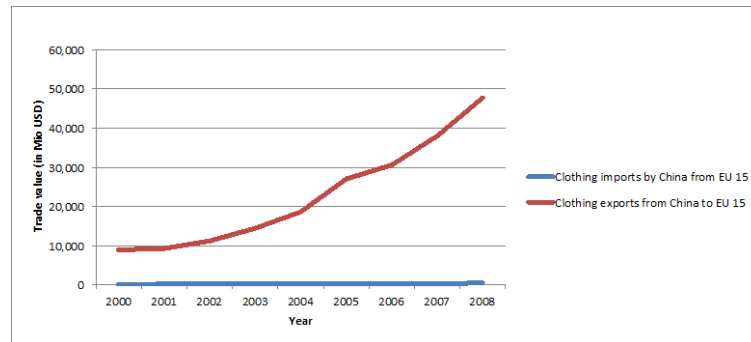


Figure 8 - Clothing trade in value (Mio USD) between China and EU-15 (2000-2008)

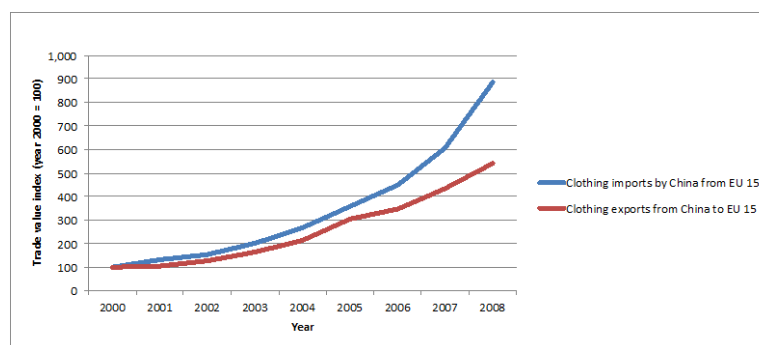


Figure 9 - Clothing trade in value trend (year 2000=100) between China and EU-15 (2000-2008)

### b. Intra-Industry trade indexes

The Grubel-Lloyd IIT index<sup>22</sup> between China and the EU-15 has evolved from 0.9 percent to 1.7 percent of the global clothing import and export value. Thanks to the extensive IIT Index, we measured that, during this period, the share of IIT product numbers increased from 83 percent to 97 percent. As shown in figure 13, the upper side of VIIT stayed flat, very close to 0 percent over the full period, while the lower side of VIIT converged to the GL IIT index value.

<sup>22</sup> Ito and Okubo, *op.cit.*

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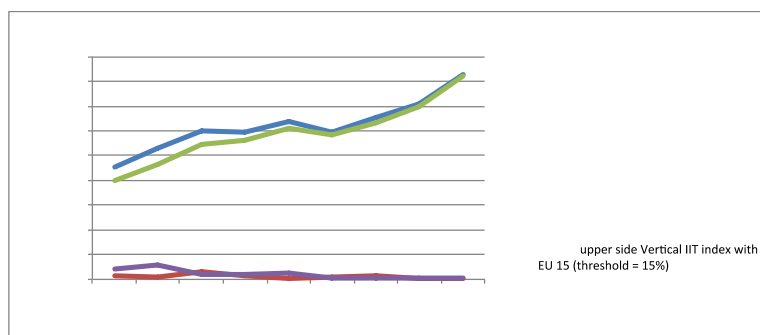


Figure 13 - Intra-Industry Trade indexes of clothing trade between China and EU-15 (2000-2008) (VIIT threshold = 15 percent)

Finally, figure 14 shows that the “unit value difference measure of IIT”<sup>23</sup> decreased from -0.34 to -0.71 over the 2000-2008 period. This further emphasises the growing downward trend of the export price compared to the import price in the clothing sector between China and the EU-15 in a period during which the overall trade volume increased drastically.

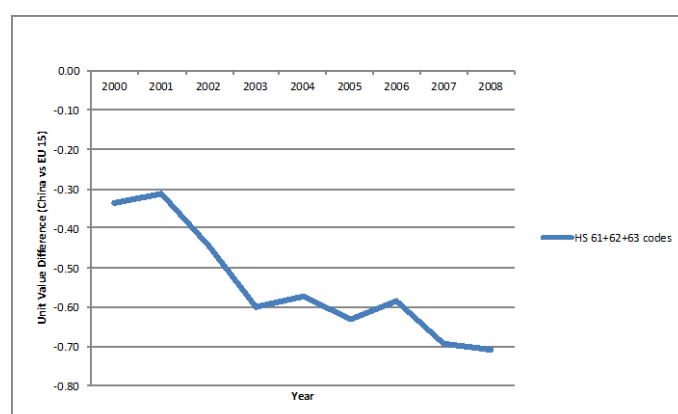


Figure 14 - Unit value difference measure of IIT for clothing trade between China and EU-15 (2000-2008)

### 3.3. Post crisis: from 2009 to 2012

#### a. Chinese import and export value

Similarly to the pre-crisis period, figure 15 shows that Chinese clothing exports to Europe were significantly higher than EU-15 exports to China. However, the Chinese clothing imports from the EU-15 represented, in 2012, 3 percent of the corresponding exports, whereas they represented less than 1 percent in the pre-crisis period. This significant evolution was driven by a 17 percent

<sup>23</sup> The “unit value difference measure of IIT” has been referred to by E. Baldwin as the IIT vertical specialisation index. This index “puts some weight on the unit value difference by trade values and on the magnitude of the overlap”; T. Ito & T. Okubo b, *op.cit.*



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reduction of the Chinese exports combined with an impressive rise of 126 percent (i.e. a 42 percent yearly increase on average – see figure 16) of the EU-15 exports to China. The decline of Chinese exports took place in 2012, nearly 4 years after the outbreak of the economic crisis.

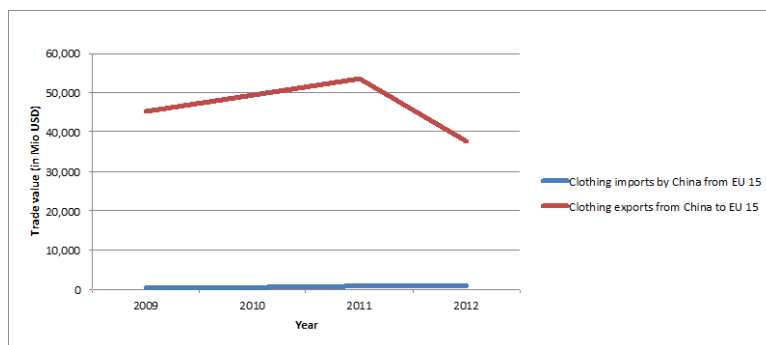


Figure 15 - Clothing trade in value (Mio USD) between China and EU-15 (2009-2012)

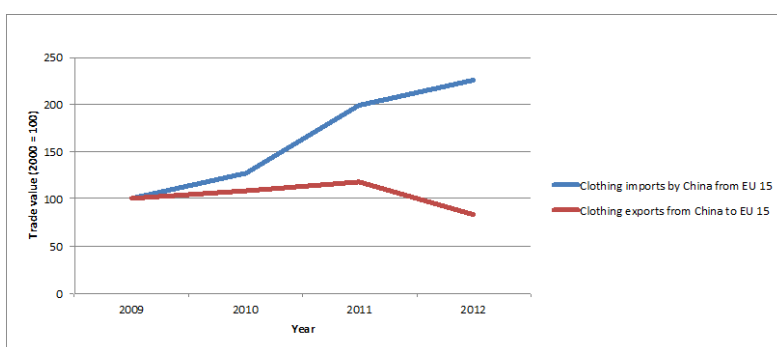


Figure 16 - Clothing trade in value trend (year 2009=100) between China and EU-15 (2009-2012)

### b. Intra-Industry trade indexes

As shown in figure 17, the GL IIT index between China and EU-15 has evolved from 1.9 percent to 4.6 percent of the global clothing import and export value over the 2009-2012 period. Compared to the pre-crisis period, this represents a sharp growth, driven by an increasing rate of EU-15 exports to China. As measured by the extensive IIT index, the share of IIT product numbers further increased from 97 percent (in 2008) to more than 99 percent in 2012, showing that both import and export products fully overlapped.

During the 2009-2012 period, the lower side of VIIT almost perfectly overlapped with the GL IIT index, bringing the HIIT and the upper side of VIIT down to 0 percent.

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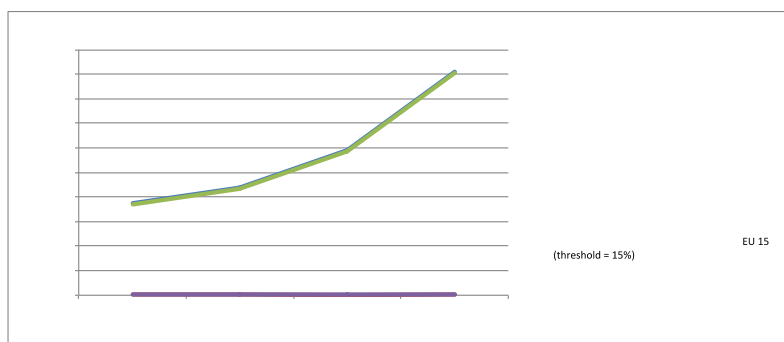


Figure 17 - Intra-Industry Trade indexes of clothing trade between China and EU-15 (2009-2012) (VIIT threshold = 15 percent)

Finally, figure 19 shows that in 2012 the “unit value difference measure of IIT” reached the same value as for 2008. This suggests that the downward trend of the export-import price ratio noticed in the pre-crisis period was stopped over the 2009-2012 period, while the overall trade volume decreased during the same period. So, this doesn’t indicate again a positive impact on the product quality.

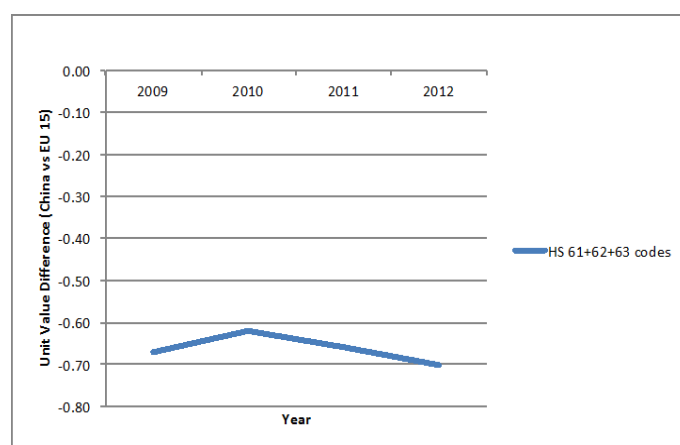


Figure 18 - Unit value difference measure of IIT for clothing trade between China and EU-15 (2009-2012)

### Conclusion

Not only did global supply chains transform the world, as many scholars are claiming,<sup>24</sup> but they also fundamentally metamorphosed China. Indeed, being involved in global supply chains has helped China to improve and diversify the content of its exports. From 2000 on, the volume of Chinese clothing exports to Europe increased drastically. For the first time, European clothing firms were clearly losing competitiveness, as the relative unit value of the Chinese exports to the European market was much lower than the European ones. Furthermore, it seems that the European clothing companies

<sup>24</sup> Elms & Low, *op.cit.*, p.13.

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improved their efficiency relative to the Chinese firms. At the same time, EU-China trade of clothes sharply increased from 2000 to 2012 with the large majority of European products being exported at a higher price. It is interesting to note that the value of the European exportations of clothes to China dramatically and constantly increased over this period showing that European firms also benefited from the opening of bilateral trade. Yet, the skill content of “genuine” Chinese exports has not substantially evolved over the years. This implies that the ubiquitous “Made in China” label is much less straightforward than we may commonly think, and should instead read “finally assembled in China”. As a matter of fact, Chinese companies continue to specialise in labour-intensive goods and the quality of their clothing exports has not fundamentally improved over the last decade.<sup>25</sup>

All this has been demonstrated in the three quantitative case studies developed in this paper. Through the relative quality analysis we could not conclude that the quality of Chinese exports to Germany, before or after the 2008 crisis, had increased compared to the EU-15. However, thanks to the segmented quality analysis, we can see that the Chinese export bundles had become increasingly similar to the European ones but that this trend changed after the crisis. Yet, in both scenarios, the relative unit values of the European core products were always higher than the relative unit values of the Chinese core products, confirming the results of the previous study. In the third analysis, we saw an increase of intra-industry trade between the two trade partners after the 2008 crisis, and we also saw that China had not moved up the quality ladder – either before or after the crisis. None of the case studies has provided us with any grounded evidence that China has moved up the quality ladder in the clothing industry since 2000.

However, different factors would imply that the situation is not so clear-cut. Although currently China might not be upgrading the quality of its textile industry, there are increasing signs that the country could shortly be able to develop the necessary capabilities to do so. However, a more practical and business-oriented study looking at the recent strategies pursued by a large sample of Chinese clothing firms is needed in order to give us further insights into the question.<sup>26</sup>

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<sup>25</sup> Havlik, Pindyuk & Stollinger, *op.cit.*, p.26-27.

<sup>26</sup> This short excerpt found on the official website of the Chinese national garments association about the potential of developing high end Chinese clothing brands might confirm this assumption and show the importance that the Chinese industry gives to moving up the quality ladder in the clothing industry: “As the industry develops and domestic demand grows, a number of original brands are growing fast, making breakthroughs in many fields such as product R&D, management, marketing [...]. Now the garment industry in China is undergoing a new wave of upgrading, changing their growth patterns, gaining pace in structural readjustment, deepening collaboration and innovation between the upstream and downstream players and building a modern industrial network [...]. The focus has so far been more on the copying of designs but this is slowly changing with manufacturers and domestic brands investing in original creations”. China National Garments Association, *op.cit.*



## THE ISSUE OF FOOD SAFETY IN EU-CHINA FOOD TRADE RELATIONS

Agathe Schibler\*

### *Introduction*

The growing emphasis attributed to food sanitation seems to highlight the importance of health protection as a sine qua non condition to ensure the safety of global food trade. This creates tensions between the need to protect life and health and the aim of fostering free and fair trade. The opposition between the two objectives becomes all the more important when looking at EU-China relations, where trade leads to an increasing interdependence between the two powers. Yet, as much as the EU and China need each other's food supplies, food sanitation has the potential to pose a serious challenge to their trade relations. In fact, trade barriers and political tensions are rather common in the field of agriculture and food trade. On the one hand, this can be explained by the fact that food safety is not yet an end in itself for China, but rather a means to achieve its commercial interests. On the other hand, the EU appears to be increasingly stringent about its food quality and safety requirements, and asymmetrical acknowledgements and respects of safety imperatives are at the heart of such frictions.

Therefore, this paper will start to look at the ways in which food safety can guarantee health protection. It will then examine how the disregard and misuse of food safety measures can damage EU-China trade relations by becoming an instrument of protectionism. The paper aims at analysing the way food safety requirements can lead to the construction of barriers to trade and how the absence of food sanitation standards and their application can increase the discrepancies in trade among the two powers.

### *Free Trade versus Food Safety*

The simultaneous pursuit of global food trade and health protection is not self-evident. From a purely economic point of view, when health protection slows down growth through the construction of protective barriers against unsafe products, it can even be considered as counterproductive. Indeed, trade is at the essence of Statehood. Abiding by international standards and norms regulating the features of food exchanges can, therefore, be considered as a challenge to the principle of State sovereignty. In that sense, the decision to allow or prevent the penetration of one product into a State should be a matter of national preference above all, especially when it is deemed harmful.

### *The EU and China: diverging priorities*

Almost all of the on-going Sino-European disagreements in the field of food and agriculture originate from the diverging priorities of the two powers. This

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explains why China and the EU have failed to establish a more comprehensive cooperation. Despite a common need to guarantee consumers' health through food safety, the EU and China do not give this the same level of priority.

In the EU, consumers' health is undoubtedly as important as trade policies, and can be considered as a primary objective. As mentioned in the current EU General Food Law (GFL), the driving force of the EU approach towards food sanitation is that market access is not granted to unsafe products, a principle that must apply "whether the food is produced within the European community or imported from third countries"<sup>1</sup>. The extensive and comprehensive framework on food safety has thus enabled the EU to ensure the quality of its food products without compromising its trade relations. Meanwhile, China has been moving on two fronts simultaneously: first, on the expansion of its international food trade, and second, on the completion of its food safety legal framework. Yet, China has not been able to achieve satisfactory results in either of the two fields: by not considering food safety as a pre-condition for food trade as the EU did, China has jeopardised the quality of its production and, thereby, its reputation as an exporting power. Furthermore, China's sanitary standards and laws are not stringent enough according to international requirements.

The absence of appropriate management of food safety requirements makes the export of certain categories of food products nearly impossible for China. Consequently, economic losses are frequent since "unsafe food results in lost exports".<sup>2</sup> Needless to say, the Chinese accession to the World Trade Organisation (WTO) in 2001 was something of a catalyser for China's increased abidance with international food sanitation regulations, the aim being to secure China's commercial power status. It guaranteed an *a minima* convergence towards international standards, ensuring smoother international trade, including with the EU. Nevertheless, internal reforms have been slow and insufficient. Yet, the major obstacle to fair food trade relations between the EU and China is not only the incomplete implementation of a legal framework on food safety. Trade barriers and political tensions continue to represent major obstacles to a deeper and more extensive cooperation; and food safety is not yet an end for China, but rather a means to achieve protectionist purposes, whereas the EU appears to be increasingly strict about its quality and safety requirements. Both powers are thereby raising justified and less justified barriers to trustworthy trade relations and to deeper cooperation.

The different ranking of priorities in the EU and in China has naturally led their relationship regarding food safety policies to be equated to an asymmetrical 'Master-Student' relationship. On the one hand, the EU uses its

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<sup>1</sup> Commission of the European Communities, *White Paper on Food Safety*, COM (1999)719 final, Brussels, 2000, para. 3.

<sup>2</sup> Global and Local, "Food Safety Around the World", Center for Science in the Public Interest, June 2005, p.3.



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relations with China as a window of opportunity to export its normative framework. On the other hand, China uses its status as a developing country to play the game of food safety to its own benefit. China often misuses food safety as a legal concept by raising protectionist barriers to trade, prioritising specific sectors instead of food sanitation *per se*.

*Superfluous and unjustified barriers: when protectionism and trade override health*

The *Codex Alimentarius*<sup>3</sup> recognises that “governments have the right to adopt regulations to protect human [...] health – including food safety regulations [...] – and to establish the levels of protection from risk they deem appropriate”.<sup>4</sup> By putting forward consumers’ health, both the EU and China managed to keep a reasonable amount of justified barriers to trade. This was done through preventive and safeguard measures, such as the one used by the European Commission in 2009, targeting dairy and infant formula as well as food and feed containing milk originating from China. These Sanitary and Phytosanitary (SPS) barriers are understandable: they are legitimate and proportionate with regard to the objective of public health. Yet, as Cheng argues, “while some of the SPS standards are legitimate and necessary [...] others are considered to be disguised forms of protection”, thereby instrumentalising the concept of food safety.<sup>5</sup>

Among the most serious SPS barriers to trade, those measures that are asymmetrical, non-science based and disproportionate are raising the level of distrust between the EU and China. The trustworthy character of Sino-European trade relations is thereby put in danger, notably when the reality of the imbalanced stages of advancement of their frameworks on food safety catches up with the Chinese efforts to converge, legally and politically, with international or European legal standards. China is generally more likely than the EU to raise unjustified barriers to trade to protect its market. Instead the EU is committed to international trade rules to the point of being respected for its legal framework worldwide. This latter example clearly puts the European and Chinese games in contrast. The fact that “the Chinese government has set up stricter standards for the products for which China has a competitive advantage”<sup>6</sup> and imposes quotas on imports that would directly compete with its domestic product<sup>7</sup> is a clear illustration of the order of priorities for Chinese authorities. An official of the European External Action Service (EEAS) explains this policy by the direct competition between foreign products and

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<sup>3</sup> Issued by the WTO Codex Alimentarius Commission established in 1963, the *Codex Alimentarius* is the international reference for food. It consists of international food standards, guidelines and recommendations, which aim to contribute to the safety, quality, and fairness of the international food trade.

<sup>4</sup> WTO *Sanitary and Phytosanitary Agreement*, “Provisions, Basic rights and Obligations”, Introductory part, 1995.

<sup>5</sup> F. Cheng, “Meeting SPS Standards: What Can China Do?”, *Food Policy for Developing Countries: Case Studies*, 2007, p.1.

<sup>6</sup> In other words, it imposes quotas on imports that would directly compete with its domestic products

<sup>7</sup> Y. Bian, “Les défis de la sécurité alimentaire en Chine”, *Perspectives Chinoises*, 82, March-April 2004, p.1.



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Chinese ones, and by the constantly increasing level of domestic and international distrust regarding the capacity of Chinese authorities to guarantee the safety of China's food production.<sup>8</sup> Food safety is, in that way, not used for its primary function, namely health protection, but to serve the country's trade interests.

A few 'EU-specific' trade barriers can illustrate the obstacles China sets to fair food trade relations with the EU. It often favours trade and trade protection rather than health by using legal grey areas and the absence of WTO ruling on certain issues as opportunities to bypass its obligations. For instance, China still does not consider the EU as a single entity and applies different standards and requirements to different European companies, depending on their country of origin. This means that, although all European products have to comply with the same standards and norms, China is restricting its imports according to their geographical origin within Europe. Similarly, each Member State has to negotiate specific protocols and certificates with China for each type of product. This different treatment and non-alignment of market access conditions is contrary to WTO rules but, since it is not sanctioned, benefits China. The audits and inspections operated by EU authorities have also been made difficult by China – they are not always welcome and their number is limited to four per year, except in cases of emergency, contrary to many developing countries where systematic and more regular controls are carried out without difficulty. Despite the official reason put forward by China regarding the limited means of its laboratories, "it is very difficult to understand why [other] countries can handle this, and a large country like China could not".<sup>9</sup> Likewise, one could also mention the absence of legal tools to protect EU food products with geographical indication – the ironic but sadly true story of a variety of Chinese ham, produced in the Chinese town of Parma and sold as Parma ham in China highlights the importance of traceability, licensing and labelling. The non-provision of licenses for food additives adds to the list of concerns for the EU. Such a list has been issued by the European Chamber of Commerce in China in its annual Position paper and has remained unchanged since 2006, hence witnessing no improvement despite official (including diplomatic) efforts for cooperation. The long-standing Chinese ban on EU and US beef and beef products due to the Bovine Spongiform Encephalopathy (BSE) outbreak is, in that sense, the most striking illustration of such misuse of the concept of food safety.<sup>10</sup> Its origins and protectionist characteristics are the focus of a case study developed in the subsequent part.

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<sup>8</sup> Interview with a European Commission official from the Directorate General for Agriculture (DG AGRI) conducted by the author, 17 February 2014.

<sup>9</sup> DG AGRI, *Delegation of the EU to China*, internal document, 2012.

<sup>10</sup> Bovine Spongiform Encephalopathy (BSE) is a "transmissible, fatal neuro-degenerative brain disease of cattle transmitted through the consumption of BSE-contaminated meat and bone meal supplements in cattle feed" (WTO definition). First diagnosed in the United Kingdom in 1986, the number of cases has decreased gradually since then. In 2012, 12 cases were diagnosed globally, 10 of which were within the EU.

**InBev-Baillet Latour Chair of  
European Union-China Relations*****The ban on EU beef and beef products: a legitimate fear of BSE?****Origins*

China started banning all beef and beef products imported from the EU in 2003. In doing so it has ignored the EU's abidance to the IOE (International Office of Epizootics, also known as the International Organisation for Animal Health) *Terrestrial Animal Health Code* assuring that products complying with their standards and norms were risk-free, for both human safety and animal health.<sup>11</sup> By not recognising that EU beef meets these requirements, China does not respect its international commitments regarding international food safety regulations. Indeed, since the mid-2000s, "22 conditions for entry, many of which were unrelated to the risk posed by BSE" have been set up, thereby raising trade barriers high enough to close the market to EU beef.<sup>12</sup>

The most unjustified character of these barriers to beef trade is that China has not provided any scientific justification to support its ban, nor has it "identified any of the administrative and regulatory steps necessary to lift the ban".<sup>13</sup> Furthermore, the Chinese notification and justifications to the WTO are now outdated.

*The absence of results despite diplomatic and scientific EU efforts*

Since 2006, the need to "encourage China to take into account international standards, the most important being for BSE and beef exports" so as to accelerate the "resumption of trade following the eradication of the disease" is very high on the EU food safety agenda.<sup>14</sup> To address this issue, continuous negotiations have been conducted between EU and Chinese officials, and the case has been raised at all levels, during bilateral dialogues, as well as in multilateral settings such as in the WTO SPS Committee and by constantly reporting the progress of diverse EU working groups on the issue. In 2013, the EU moved to a level of verbal injunction by "request[ing] China to align its risk assessment policy and legislation to follow the IOE guidelines".<sup>15</sup> Despite all efforts, Sino-European cooperation has failed to achieve much since the issue has now been hampering their food safety and trade relations for over 10 years.

However, keeping in mind the Chinese competitive advantage in beef production,<sup>16</sup> as well as the fact that the country is still self-sufficient in live

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<sup>11</sup> The International Office of Epizootics (IOE) *Terrestrial Animal Health Code* (the *Terrestrial Code*) sets out standards for the improvement of animal health and welfare and veterinary public health worldwide, including through standards for safe international trade in terrestrial animals (mammals, birds and bees) and their products.

Source: International Office of Epizootics (IOE), Official Website, retrieved 4 October 2014, <http://www.oie.int/about-us>.

<sup>12</sup> United States Trade Representative, "2013 Report on Sanitary and Phytosanitary Measures", p. 35.

<sup>13</sup> M. B. Kessler, *Trade Barriers and China*, New York, Nova Science Publisher, 2008, p.34.

<sup>14</sup> SPS MAAC, *China SPS export discussion paper*, Brussels, 3 August 2006.

<sup>15</sup> Directorate General for Health and Consumers, Official Website, retrieved 4 October 2014, [http://ec.europa.eu/dgs/health\\_consumer/index\\_en.htm](http://ec.europa.eu/dgs/health_consumer/index_en.htm).

<sup>16</sup> C. Chen, "China's Agricultural Trade After WTO Accession", *The Australian National University*, 2006, p.16.

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animals production, the hidden protectionist measures appear to be rather clear. The risks presented by the BSE virus vis-à-vis Chinese consumers in case of beef import into China, indeed presents the characteristics of an SPS barrier which conceals disguised barriers to trade for protectionist purposes. When asked about the possibility of lifting the barrier, a representative from the EEAS put forward structural conditions rather than legal ones: it is not the need to comply with the requirements of the International Office of Epizootics (IOE) that would bring China to resume its import of European beef, but rather the fact that its own beef production might soon be insufficient.<sup>17</sup> The demand for meat and dairy products is increasing in China as people's diets are evolving toward Western-like food consumption. The current origins of meat products in China (mainly Chinese and Australian) would have to be expanded and diversified.<sup>18</sup> The efforts of the EU to get China to abide by international standards are, therefore, useless because the lift of the barriers will only depend on China's own interest. In that sense, food safety is just being instrumentalised to the benefit of the Chinese side, where trade has so far taken precedence over an *a minima* health protection purpose.

**Conclusion**

As an official of the EEAS concluded, the origins of measures such as those mentioned above are rarely scientifically justified, but are surely politically or commercially driven.<sup>19</sup> They benefit Chinese products, as could happen in areas other than food safety. This becomes even more obvious when, as happens very often, the lift of such restrictive trade measures is monetised and used as leverage in return for European favours.<sup>20</sup> Since they are based on little scientific or legal grounds, these barriers are too elusive to be cooperatively addressed and lifted through administrative bodies, such as the WTO dispute settlement body.

Despite a clear Chinese willingness to reduce the imbalances in EU-China food trade relations, their existence is mainly due to food safety issues. They are inherent to the current discrepancies between China's domestic standards and international food safety requirements, as well as to China's reluctance to abide by legal commitments when these can harm its own interests. This proves the need for China to further develop its national legal framework on food safety in order to be able to ensure food hygiene in a more comprehensive manner, both at domestic and international level. In the meantime, the EU is increasingly stringent about its quality and safety requirements, which often exceed the Codex Alimentarius requirements. This makes it more difficult for Chinese products to enter the European market.

In addition to their deeply rooted responsibility to prevent unsafe food products to access their markets, European and Chinese authorities share other common objectives: the consolidation of their mutual trade relations and the rebuilding of their consumers' trust. Because Chinese food safety

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<sup>17</sup> Interview with an official from the EEAS conducted by the author, 3 April 2014.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*



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standards are still lagging behind, any EU-China convergence on such matters will inevitably arise from China's own domestic interests and situation, such as the need to address its alarming food safety management. In order to achieve greater Sino-European convergence in food safety standards, however, the EU needs to make particular efforts to ensure it is considered by China as "the right power" to follow, as opposed to the United States, which also presents a major market for Chinese exports.



## THE EU-CHINA SOLAR PANELS DISPUTE: An Analysis of the European and the Chinese Position

Marie-Sophie Seba\*

### Introduction

The solar panels dispute between the European Union and China had started as a mere trade issue – which both the EU and China are used to dealing with<sup>1</sup> – but it soon caused quite a row, as the titles of some news articles suggested: “Sabres sheathed. The EU and China have averted a trade war. Or have they?”; “EU China solar panel trade war looms”; or “Protectionist Shadows over Solar Power”.<sup>2</sup> The EU-China solar panels case rapidly gained magnitude, increasing tensions between the EU, China, and the Member States. On 6 September 2012, the European Commission initiated an anti-dumping investigation against Chinese solar panels exports to the EU market. In trade and competition policies, the EU has the exclusive competences according to the Treaties over the Member states. Therefore, the Commission is empowered to speak on behalf of the EU for trade and competition matters.<sup>3</sup> In the solar panels case, the Commission had a leading role, based on EU competences, and this may have created certain tensions with the Member States.

The solar panels case was finally concluded on 2 December 2013 – after fifteen months during which China and the EU had been fighting to find the most adequate and satisfactory settlement for both parties. This dispute cast a shadow over the dynamic EU-China trade relationship. But is China the great winner of this game or are the parties equally satisfied?

This article aims to elucidate why this trade conflict ended on such a compromising tone and to uncover the reasons behind the behaviour of both China and the European Commission. It looks at how the situation changed, from an alleged accusation of dumping<sup>4</sup> to a compromising settlement. It also questions to what extent the economic ties between the EU and China have been distorted by

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<sup>1</sup> Examples of EU-China disputes include: the textile dispute (or so-called “Bra Wars”), in 2005; the more recent, trade dispute over China’s rare earth export restrictions, in 2012; and the EU-China dispute on stainless steel seamless tubes, in 2012. EU-China trade disputes mainly concern anti-dumping, anti-subsidies or intellectual property rights issues.

<sup>2</sup> “Sabres sheathed. The EU and China have averted a trade war. Or have they?”, *TheEconomist.com*, Shanghai, 3 August 2013, retrieved 30 April 2014, <http://www.economist.com/news/china/21582581-eu-and-china-have-averted-trade-war-or-have-they-sabres-sheathed>; “EU China solar panel trade war looms”, *BBC.com*, 8 May 2013, retrieved 30 April 2014, <http://www.bbc.com/news/business-22445640>; J.Frankel, “Protectionist Shadows over Solar Power”, *Project Syndicate*, 1 August 2013, retrieved 30 April 2014, <http://www.project-syndicate.org/commentary/a-damaging-end-to-the-eu-china-dumping-dispute-by-jeffrey-frankel>.

<sup>3</sup> European Commission, “Council Regulation No. 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community”, *OJ EU*, L 343, 22 December 2009, p.51.

<sup>4</sup> European Commission, MEMO, “EU imposes provisional anti-dumping duties on Chinese solar panels”, Brussels, 4 June 2013.



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their unbalanced diplomatic relationship, caused by the influence of the EU Member States.

The paper is structured as follows: the first part gives a general overview of the evolution of the dispute. Then, the different actors involved in this case are analysed. In the third part, the focus is put on China's strategy *vis-à-vis* the EU and its Member States. Finally, the dispute is analysed as a 'three-level game' to understand why the Commission was significantly weakened. A deeper analysis of Robert Putnam's theory will help us better understand the course of the dispute and its impacts on the EU-China relationship.

***Dissecting the dispute***

Why have "silicon photovoltaic cells and wafers" caused such a stir within the European institutions? Three main reasons need to be mentioned. First, the solar panels dispute was considered as the biggest anti-dumping case that the European Commission had undertaken in terms of trade volume involved.<sup>5</sup> Second, this dispute touched on the issue of solar energy, which is closely related to the production and the use of so-called "green energy".<sup>6</sup> Both the EU 2020 Strategy, and China's 12<sup>th</sup> Five Year Plan have listed the transition towards green energy as dominant policy objectives.<sup>7</sup> Third, this dispute had become a high profile case, as it did not only involve China and the Commission, but also EU Member States, especially Germany.

According to Article 2(1) of the WTO Anti-Dumping agreement, a product is considered as being dumped "if the export price of the product exported from one country to another is less than the comparable price, in the course of trade, for the like product when destined for consumption in the exporting country."<sup>8</sup> Dumping products can lead to serious distortions of competition. In order to restore fair market conditions, anti-dumping duties can be considered. Several trade disputes between the EU and China have been settled within the multilateral WTO framework. Nevertheless, the solar panels case was solved in a bilateral framework since the two sides were able to reach an agreement.

On 25 July 2012, EU ProSun,<sup>9</sup> a platform bringing together European solar industries, asked the European Commission to launch an anti-dumping investigation into Chinese solar panel imports.<sup>10</sup> As it is mentioned on the website of EU ProSun, China was exporting solar panels<sup>11</sup> to the European market at prices below market value.<sup>12</sup> In immediate response to the EU's accusations, in November 2012, the Chinese Ministry of Commerce initiated both anti-dumping and anti-subsidies

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<sup>5</sup> Interview with an EU official, DG TRADE, European Commission, Brussels, 7 April 2014.

<sup>6</sup> There are three main green energy resources: solar, wind, hydro. Green energy sources are renewable sources of energy.

<sup>7</sup> National People's Congress, *China 12<sup>th</sup> Five-Year Plan (2011-2015)*, Beijing, 14 March 2011.

<sup>8</sup> GATT, *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade*, 1994.

<sup>9</sup> ProSun refers to Sustainable Solar Energy Initiative for Europe.

<sup>10</sup> European Commission, "Notice of Initiation of an anti-dumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components originating in the People's Republic of China", *Official Journal of the European Union* (OJ EU), C 269, 6 September 2012, p.5.

<sup>11</sup> Precisely, the product investigated is "crystalline silicon photovoltaic modules or panels and cells and wafers of the type used in crystalline silicon photovoltaic modules or panels", *ibid*.

<sup>12</sup> EU ProSun website, fact sheet, last access on 30 April 2014.



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investigations on solar-grade polysilicon exports from Europe to China.<sup>13</sup> In June 2013, the European Commission officially confirmed that China had been dumping solar panel products exported to the EU.<sup>14</sup> According to the Commission, Chinese solar panels exports have been sold at 88% under their normal market value.<sup>15</sup> Moreover, the EU's investigation attested that China's unfair trade practices have been significantly damaging the EU photovoltaic industry. Once the first findings of the investigation were published, the Commission could decide on provisional measures, which would be definitive after a vote by the Council. As a result, the Commission decided to impose anti-dumping duties at an average of 47.6%.<sup>16</sup> As a result of the Commission's provisional conclusions, China immediately launched anti-dumping and anti-subsidy investigations on the EU wine industry.<sup>17</sup> This reaction can be seen as a retaliatory measure and tensions escalated rapidly. However, in late July 2013, trade Commissioner De Gucht announced a totally different measure and declared that the Commission and China had agreed on a common solution of a price undertaking.<sup>18</sup> On 2 December 2013, the Council of the EU approved this measure. Chinese exporters have accepted the solution of a voluntary price undertaking, intended, indeed, to stop dumping solar panels exports to the EU and to respect a certain price below which they cannot go. For the companies that do not abide by this measure, they have had to pay the anti-dumping duties of 47.6% – as of 6<sup>th</sup> of December 2013.<sup>19</sup>

The definitive sanction has been far less damaging for China and its solar industries than the first provisional measures planned by the Commission. From the Commission's perspective, one may be surprised at such a compromising deal. It is even more striking in light of the similar trade conflict between China and the United States (US) in 2011-2012. The US terminated the dispute imposing heavy anti-dumping duties<sup>20</sup> on Chinese solar panels exports<sup>21</sup> and, based on the EU's investigation results one would have expected a similar reaction from the Commission. The paper will explore below the reasons why the Commission did not manage to impose heavy duties on Chinese exports and had to find a compromise.

***Analysing the EU's position: a complex interaction***

Initially, the solar panels dispute involved China and the EU (more precisely the European Commission). The latter acted according to EU law<sup>22</sup> to ensure fair trade relations with China and to protect its own market. The situation completely

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<sup>13</sup> Chinese Ministry of Commerce (MOFCOM), Announcement No.71 of 2012 on Filling for Anti-dumping Investigation against Polysilicon originated from the European Union, Beijing, 5 November 2012.

<sup>14</sup> European Commission, MEMO, 4 June 2013, *op. cit.*, p.2.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> "EU wine producers surprised by Chinese investigation", *China Daily*, 7 June 2013. Last access on 28 April 2014.

<sup>18</sup> European Commission, Press Release, "EC continues anti-subsidy investigation on solar panels from China without duties", Brussels, 7 August 2013.

<sup>19</sup> *Ibid.*

<sup>20</sup> The United States concluded the solar panels dispute with China – which occurred in 2011-12 – by imposing high tariffs on Chinese-made solar panels exports to the US, ranging from 24 per cent to 250 per cent.

<sup>21</sup> "U.S. tariffs on Chinese solar panels boomerang", *The Washington Post*, 12 August 2013.

<sup>22</sup> European Union, "Consolidated Version of the Treaty on the Functioning of the European Union of 13 December 2007", OJ EU, C115, 9 May 2008, articles 3(1)(e) and 207.

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changed once Member States' interests interacted with the dispute. Among the Member States, Germany is particularly concerned by solar energy and solar economy. This element is crucial given that the Commission can only impose provisional measures and that the final say belongs to the Council. Germany played a key role in the dispute. From an economic perspective, Germany's interests were at stake in this dispute as the country not only produces a large amount of solar panels, but also exports a lot of raw materials to China – the German and European leader being the chemical company Wacker Chemie. Germany and China have close economic and political ties, therefore, Germany's interest to protect its market and diplomatic relations with China have clearly influenced the settlement of the dispute. The 'German element' is strongly relevant as the dispute moved from a bilateral level to a multilateral one. The Commission had to deal not only with China but also with its own Member States. When Germany stepped in during the settlement, the Commission had been significantly weakened *vis-à-vis* China. Moreover, the latter did not wait too long before trying its usual strategy with the EU: *Divide et Impera*. By dealing with the Member States, and Germany in this case, rather than with the Commission, China managed to achieve its objectives and to play the game to its advantages.

***China's strategy: divide and rule***

The solar panel case is one of numerous examples of the 'divide and rule' strategy that China uses towards the EU, and it is probably the most instructive example. Not only did the evolution of the dispute and the compromising settlement undermine the Commission's credibility, but also China-Germany negotiations from below had pressured the Commission to make a soft application of EU competition law and to prefer a compromising settlement. It seemed that China and Chinese authorities tried every possible strategy to achieve their objectives and to protect its internal market. From retaliation to political manoeuvres with Member States, China has proven in this issue that it is in the top echelon of global players. Two reactions perfectly illustrate China's strategy: the investigation into solar-grade polysilicon exports to China<sup>23</sup>, and the investigation into the wine industry, targeting France and Italy, in particular.<sup>24</sup> Therefore, China had been exercising pressure on the EU from different sides, and in the end it worked out well – as always.

However, one may question whether China's EU strategy is sustainable. China's tit for tat policy could strongly undermine the EU-China relationship in the future, increasing trade and political tensions. The way the dispute was settled exposed the complexity of the relationship between the EU and China. Indeed, the EU-China trade relationship seems to be trapped in a vicious circle. As Fox and Godement underlined, China seems to treat "its relationship with the EU as a game of chess, with 27 [now 28] opponents crowding the other side of the board and squabbling about which piece to move."<sup>25</sup> Nevertheless, it is important to stress that China has adapted its strategy according to the structure of the EU. Even if the

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<sup>23</sup> It is important to note that the production of solar-grade polysilicon in Europe is mainly dominated by Wacker Chemie.

<sup>24</sup> "EU wine producers surprised by Chinese investigation", *China Daily*, 7 June 2013, retrieved 28 April 2014.

<sup>25</sup> Interview, Beijing, 6 June 2008, quoted in J Fox and F. Godement, "A Power Audit of EU-China Relations", *Policy Report*, European Council on Foreign Relations, 2009, p. 18.

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Commission would be more assertive towards China, the final decision in anti-dumping can only be voted by the Council. Indeed, China's specific attitude towards the EU should not be only perceived as an attempt to increase tensions between the EU and its Member states. As underlined in the *EU-China* report, *The next ten years*, China's strategy could also be China's attempt to adapt to the internal structure of the EU:

developing bilateral relations with MS is an integral part of the EU-China Comprehensive Strategic Partnership. It is not China that is trying to divide Europe or take advantage of Europe's debt crisis, but it is the European structure which determines the dual structure of China-European relations. The EU and Member States play different roles with different powers.<sup>26</sup>

***A three-level game: Was the Commission trapped?***

Bearing in mind the full picture of the EU-China solar panels dispute, we may consider the case and its impacts from a different angle. The different actors acted in a specific way for economic, legal, but mostly political motives. Robert Putnam's theory<sup>27</sup> helps us to apprehend the whole process underlying the dispute settlement. This theory analyses the interactions between the different actors, their level-playing field, and their respective win-sets. In this case, the structure is rather complex. We have two main actors: the Commission and China, both interacting on two different levels:

- Level I: International level (WTO rules, EU-China relationship);
- Level II: National level (Member States, regions, Industries).

According to Putnam, every actor has a certain win-set depending on three features: preferences, institutions and negotiator's strategies.<sup>28</sup>

From a general perspective, this dispute seems to be a two-level game as it met most of the criteria listed by Putnam. However, and this is EU specific, the Member States (level II) were anything but minor actors. The Commission was caught between China and the Member States, and could no longer keep a common position and a hard stance towards China. Both Member States and China strongly criticised the Commission.<sup>29</sup> Leading the negotiations on behalf of the EU, the Commission had to act in accordance with international trade law, despite the national economic interests of individual Member States. In practice, not only did the Commission have to negotiate with China, but it also had also to deal with 27 different interests.<sup>30</sup> In May 2013, the German Economy Minister Philipp Roesler used

<sup>26</sup> S. Islam, *EU-China: The next ten years*, Friends of Europe, 2013, p.42.

<sup>27</sup> R. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-level Games", *International Organization*, vol. 42, no. 3, 1998, p.434.

<sup>28</sup> Putnam, *op.cit.*, p.434.

<sup>29</sup> "De Gucht faces growing opposition over duties for Chinese solar panels", *EurActiv.com*, 28 May 2013, retrieved 30 April 2014, <http://www.euractiv.com/trade/de-gucht-faces-growing-oppositio-news-528076>.

<sup>30</sup> Croatia only integrated in the EU as of 1 July 2013, therefore I am not including this country in the dispute analysis.

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the words “grave mistake” and “trade conflict” to refer to the Commission’s provisional measures.<sup>31</sup> The Commission was criticised for being overly protectionist and too weak<sup>32</sup> *vis-à-vis* China and Member States. Using Putnam’s theory, it becomes clear that this dispute was not only trade-focused, and that political motives have driven the evolution of the game.

The solar panel case involved one of the main economic partners of the EU and *de facto* reopened old wounds concerning the legitimacy of EU trade defence instruments. Saying that the Commission was protectionist regarding this issue would be an overstatement, as the Institution only followed its legal prerogatives and complied with EU anti-dumping regulations.<sup>33</sup> As one official from DG Trade constantly emphasised: “We were abiding by the law”.<sup>34</sup> Moreover, from an economic perspective, anti-dumping duties were not a last resort to salvage the EU solar panels market, but they were necessary remedies to repair the injuries caused by China’s unfair trade practices. The EU solar panels market is still able to compete on the international market and to face foreign competition in a fair and balanced environment. Anti-dumping duties would have had the effect of rebalancing the international solar panels market and allowing the European solar industries to continue their business without facing tough and unfair competition from China. The use of the anti-dumping procedure was even more convenient as the Chinese market was on the decline.<sup>35</sup>

Generally speaking, and in the context of WTO and EU law, one would say that the Commission was not protectionist. However, it is evident that the Commission had to adapt its attitude for political reasons, moving away from a rule-based approach. One can observe that the Commission gave in to pressures from China and certain Member States. Between June and August 2012, the Commission abandoned the idea of duties to the benefit of a compromise with China. According to Erixon, the Commission “has stepped up farther away from a rule-based approach and decided to use the threat of full imposition of duties as a lever to get a negotiated outcome with [China].”<sup>36</sup> Although a trade war with China would have had terrible consequences for the EU economy, the Commission should have kept a rule-based approach towards China, imposing anti-dumping duties. Instead, the Commission appeared weak and pressured by Member States and China, as Erixon rightly highlighted: “Rather than politically charging its trade defence policy, the EU should depoliticise and discipline it.”<sup>37</sup>

However, given that the Commission cannot act like a country, one should reconsider its intervention. The institution has neither the legal authority nor the political influence to act firmly *vis-à-vis* China, but it could have played its game

<sup>31</sup> “German minister calls EU move on China solar ‘grave mistake’”, *EurActiv.com*, 20 May 2013.

<sup>32</sup> “De Gucht faces growing opposition over duties for Chinese solar panels”, *Euractiv.com*, 28<sup>th</sup> May 2013. Last access on 30 April 2014.

<sup>33</sup> European Commission, “Council Regulation No.1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community”, OJ EU, L 343, 22 December 2009, p.51.

<sup>34</sup> Interview with a Commission official, DG TRADE, Brussels, 7 April 2014.

<sup>35</sup> *Ibid.*

<sup>36</sup> F. Erixon, “Solar panels, Telecommunication equipment – and the “Modernisation” of EU Trade Defence Policy”, *European Centre for International Political Economy*, No.5, 2013, p.2.

<sup>37</sup> *Ibid.*



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differently, by acting more unified towards China in order to be able to impose anti-dumping duties, especially since it demonstrated that such duties were necessary.<sup>38</sup>

The final solution agreed upon by China and the EU primarily reflects the interests of certain European Member States rather than those of the injured industries. Therefore, one may not be surprised that a group of EU solar panels industries filed a complaint against the Commission in September 2013.<sup>39</sup>

**Concluding remarks**

Was there a winner in this dispute or did the game end in a draw? Even though China had a leg up on the Commission during the settlement of the dispute, one cannot consider China as the great winner. During the dispute, the Commission tried to defend the EU's market despite China's political manoeuvres. The result is mixed but the price undertaking is a good mechanism for the Commission to encourage China to play fairly in trade exports.

The EU-China solar panel dispute can be considered as a model in the framework of the EU-China relationship as it has provided further evidence of a common pattern in the partnership. Despite impressive progress and more than 50 bilateral dialogues, the relationship is still undermined by political tactics and internal weaknesses.

First, this case has exposed – once again – China's tit for tat policy *vis-à-vis* the EU. This policy has triggered many trade conflicts and underscores a true lack of understanding between the two partners. While playing this game, China has always been one step ahead of the EU and, more particularly, the Commission. However, this policy is not sustainable and politically strategic. Long-simmering trade tensions may have terrible impacts in the long term. China and the EU should consider a different approach in order to build a more sustainable and fruitful relationship. In this perspective, the much-criticised final outcome of a price undertaking may be a solution to some of these issues.

Second, the dispute has confirmed the lack of a common European position *vis-à-vis* China, due to the institutional gap between the Commission and single EU Member States. The case has shown that as long as European Member States want to have the final say in decisions related to trade disputes, the Commission will remain weak. In the end, the settlement of this dispute did not surprise anyone. However, the commitment and tenacity that the Commission showed during the negotiations may be seen as an evolution. Despite the Commission's failure to impose anti-dumping duties, it managed to agree on a price undertaking. This final decision should not be seen as a measure 'par défaut'. According to the Directorate-General for Trade of the Commission (DG Trade), implementing a price undertaking has been bringing Chinese companies and the European Commission closer.<sup>40</sup> Indeed, both parties have to discuss trade methods and fair practices. The price undertaking has been creating another channel of communication between China, Chinese companies and the EU, opening up new perspectives for better mutual understanding and trust between them. Through this measure, the

<sup>38</sup> European Commission, MEMO, "EU imposes provisional anti-dumping duties on Chinese solar panels", Brussels, 4 June 2013, p.2.

<sup>39</sup> European Union Court of Justice, Complaint T-507/13, "SolarWorld against Commission", 23 September 2013, OJ EU, C 325, 9 November 2013, p.50.

<sup>40</sup> Interview with a Commission official, DG TRADE, *op. cit.*





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DEPARTMENT OF EU INTERNATIONAL  
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Commission has regained certain influence *vis-à-vis* China, at least in relation to technical matters. The Commission may have lost the first round of the game, but it has managed to set the rules.