EU-CHINA OBSERVER

DEPARTMENT OF EU INTERNATIONAL RELATIONS AND DIPLOMACY STUDIES

"EXCHANGING IDEAS ON EU-CHINA RELATIONS: AN INTERDISCIPLINARY APPROACH"

College of Europe
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DEPARTMENT OF EU INTERNATIONAL RELATIONS AND DIPLOMACY STUDIES

Baillet Latour Chair of
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CONVERGENCE IN NAME, DIVERGENCE IN SUBSTANCE: A COMPARISON OF THE EU AND CHINA'S WTO REFORM PROPOSALS

DEAN CHEN

Introduction

Discussions about WTO reform is gaining momentum internationally. The EU and China, as heavyweights in international trade, merit attention of their respective WTO reform proposals. At the 2018 EU-China summit, the two sides agreed to establish a joint working group on WTO reform "to help it meet new challenges".[1] This article looks at the EU and China's WTO reform proposals, identifies similarities and differences, and assesses them taking into account the dynamics of EU-China-US relations. For the EU side, this article will mainly refer to the "Concept Paper – WTO Modernisation" published by the European Commission. For the Chinese side, it will mainly refer to the white paper published by China's State Council Information Office – "China and the WTO", China's Position Paper on WTO Reform published by the Ministry of Commerce[2], and China's proposals on WTO reform in the form of communication to WTO members dated 13 May 2019.[3] After a brief background introduction, three arguments will be presented. First, the EU and China's WTO reform proposals diverge more than converge. Second, the EU, the US and Japan have more convergent opinions on WTO reform. Third, the EU's WTO reform proposals are to a very large extent targeted towards China. Finally, the article gives an outlook of the future of the multilateral trading order and EU-China relations on WTO reform.

To understand the currently emerging proposals for WTO reform, one has to understand the reasons behind discussions of reforming the WTO. The WTO is experiencing probably the gravest crisis since its establishment. In all three of its pillars: rulemaking, trade policy review and dispute settlement (DS), the WTO is facing serious problems. Its members failed to conclude the Doha Round launched in 2001, leaving the WTO rulebook largely un-updated since 1995. While the world economy has undergone significant changes, WTO rules are increasingly outdated, and there are no rules on new areas such as e-commerce. On trade policy review, even the daily functioning of certain committees is severely hindered. For example, the percentage of members to the Agreement on Subsidies and Countervailing Measures that did not submit any subsidies notifications rose from 25 per cent in 1995 to 55 per cent in 2017.[4] On 27 August 2018, the US announced that it would block the reappointment of two of the three remaining judges of the WTO Appellate Body (AB), pushing it into crisis.[5] If no new judges are appointed by the end of 2019, the AB would be left with only one judge and no longer able to hear cases. Such developments are inseparable from the rise of protectionism worldwide as well as US-China and EU-US tensions.

The WTO is seen by both the EU and China as the cornerstone of the multilateral trading system and both are committed to uphold it.[6] It is based on this common understanding and the current crisis that the two sides have come together to cooperate on WTO reform. A joint vice-ministerial level joint working group on WTO reform was established in October 2018 and has held several meetings.[7] The two also co-sponsored communications and declarations on AB reform and e-commerce rules negotiations. Nevertheless, EU-China cooperation on WTO reform is also facing issues, which can be seen in their respective reform proposals.

The EU's and China's proposals: differences bigger than similarities

The EU's and China's WTO reform proposals are very different. The EU is most concerned about better detecting and disciplining "market-distorting" subsidies, state-owned enterprises (SOEs), reforming the self-designation of development status, strengthening trade policy transparency, increase flexibility in rulemaking and solving the AB crisis.[8] The key word is "level playing field" – the EU is demanding more responsibilities to be taken by other members and reciprocal transparency and market access. The EU also advocates for plurilateralism within multilateralism – willing members can negotiate agreements open to all members to join later and whose benefit will be available to all members on a Most-Favoured Nation basis.

China is most concerned about maintaining the consensus principle, addressing unilateralism and protectionism of developed members, safeguarding special and differential (S&D) treatment of developing members, preventing constraining rules on SOEs and subsidies, advancing rule-making in emerging areas in the world economy, and solving the AB crisis.[9] The consensus principle has been a fundamental element of the Doha Round. It has been especially insisted on by developing countries, since it is seen as a safeguard against developed countries steering the negotiations and shaping the rules to their own favour. Contrary to the EU's call for certain developing countries to renounce their S&D treatments, China believes that overly high agricultural subsidies of certain developed countries, including the EU's, are a major problem.[10] Contrary to the EU, China insists that self-designation of developing country status should be kept. This is not surprising since China has always designated itself as a developing country. Another point is that China insists its SOEs and subsidies are normal economic policies and should not be subject to pressure from the WTO.[11] In addition, China criticises the misuse and abuse of trade remedy measures, including anti-dumping and subsidies and countervailing measures.[12]

Comparing the two sides' proposals, there is limited agreement. Both the EU and China have an immediate and urgent interest in maintaining the WTO to ensure the predictability and stability of the multilateral trading order, and the AB concerns the survival of the WTO. On this question, the two face a common third party with divergent opinions – the US. The EU, China and other parties requested to circulate a paper on reforming the AB, in order to address the crisis of blocked nomination of AB judges [13] The two also agree that negotiations on new areas in trade should be brought up on the agenda, such as e-commerce and small and medium enterprises (SMEs). On improving the operational efficiency of some WTO committees, both sides mentioned the need to improve the compliance of notification. However, the emphasis is different: the EU stresses disclosing distortive industrial subsidies, while China highlights that developed members should lead by example and assist developing countries in fulfilling their obligations. On the most substantive issues, such as development status, industrial subsidies, SOEs, and intellectual property rights (IPR), the two sides have very different opinions.

EU-US-Japan: common concerns, different approaches

Compared to the many differences between the EU and China, the US, Japan and the EU share more common concerns and interests. This is evident in the joint statements of Presidents Trump and Juncker as well as in those of the three trade ministers. In the statement of 25 July 2018 after the Trump-Juncker meeting, the two presidents agreed to join forces to reform the WTO and tackle "unfair trading practices" such as "intellectual property theft, forced technology transfer, industrial subsidies, distortions created by SOEs and overcapacity".[14] In the trilateral ministerial statement, they agreed on improving transparency and notification as a priority, called for advanced members self-designating as developing countries to undertake full commitments in current and future negotiations.[15] They also agreed on the need to address "non-market-oriented" policies and "practices of third countries that lead to severe overcapacity…and undermine the proper functioning of international trade".[16] Such concerns echo with the EU's WTO reform proposals. The "triad", among others, co-sponsored a joint transparency and notification proposal to the Council for Trade in Goods in November 2018.[17] Although no specific countries were mentioned, the fact that the US brought a case against China on agricultural subsi-

CHINA BELIEVES THAT OVERLY HIGH AGRICULTURAL SUBSIDIES OF CERTAIN DEVELOPED COUNTRIES, INCLUDING THE EU'S, ARE A MAJOR PROBLEM

dies, claiming that China provided market price support for certain agricultural products and not complying with its commitments, falls in line with the triad's concerns about China's insufficient transparency of subsidies and non-compliance with notification obligations.[18] In addition, the EU and US pushed China to initiate disclosure of non-WTO notified subsidies.[19]

However, there are also differences between the EU and the US. While the US is taking a bilateral path to address China, pressuring it through tariffs and negotiating a trade deal bilaterally, the EU is trying to reform the multilateral system to address similar concerns. In addition, the US imposed tariffs on EU steel and aluminium using national security justifications and on EU agricultural products, and threatens to impose tariffs on EU cars.[20] Despite this, disagreements between the EU and the US do not prevent the two from working together to address China on issues like IPR and "non-market-oriented" policies, which relate to the key question of economic development models. While the EU and US diverge on the means, their ends are similar – bringing China in line with what they believe to be fair rules, which stem from their shared values and development models. In contrast, China is seen by the EU as a "systemic rival" with which it has fundamental differences in state-economy/society relations and development paradigms.

Common concerns of the EU, US and Japan are not a coincidence, as they have been longstanding. The EU's 2016 China policy paper called on China to "honour its WTO commitments to notify subsidies" and to "reform its state-led economy and let market forces naturally address the problem".[21] A key event attesting the EU's concern about China's economic system and trade practices is the Market Economy Status (MES) dispute. First of all, the EU refused to grant China MES based on concerns about inadequate reforms of subsidies, SOEs management structure, IPR protection, financial markets, etc.[22] After new trade defence instruments came into place, the Commission published a report on "significant distortions" in the Chinese economy, citing price distortions caused by non-market forces such as SOEs that are controlled and excessively influenced by the state, discrimination against foreign firms in various sectors and government procurement, and forced technology transfer, etc.[23] The recent Commission paper on the EU's China policy lists negotiations with China on stronger disciplines of industrial subsidies and elimination of forced technology transfers as priorities of WTO reform.[24] All of these concerns and proposals are embedded in the fundamental difference between the EU and China's economic systems. They are also related to the discourse of "level playing field" – the EU wants China to further open its market, ensure a fairer competition environment for EU businesses, in order to change the perceived unbalanced situation of Chinese businesses benefiting from freer European market while European businesses are facing many restrictions in the Chinese market. The fact that many of these concerns are also present in the EU's WTO reform proposal is a sign that China is a main target, although no specific countries were mentioned.

The way forward: working together where there are common interests

To conclude, although the EU and China converge in name on WTO reform, the substance and motivations are different. The EU wants to ensure the power vacuum created by the US's passive attitude towards the WTO is not filled by China only. It also wants to use WTO reform as a chance to address its many longstanding concerns vis-à-vis China about structural economic issues. Through enforcement of greater transparency of subsidies, it seeks to counter unfair competitive advantages of Chinese firms increasingly operating overseas. By tackling technology transfers, it attempts to safeguard its competitive advantage in technology. By pushing for graduation of more advanced economies from developing country status, it tries to push China to undertake more responsibilities in the international trading order. In contrast, China wants to safeguard its developing country status and its economic development model, and push for more concessions from developed countries on issues like agricultural subsidies and anti-dumping rules.

Considering the significant differences between China on the one hand, and the US, EU and Japan on the other, reforming the multilateral trading order will not be an easy task. The future of the WTO to a very large extent hinges on the following key questions. First, can it accommodate different economic models, from China's "Socialist Market Economy" to western-style free market economy? Second, can it successfully develop global rules governing new areas of the world economy such as the digital economy, and responding to pressing global issues such as sustainable development? Third, can WTO members constructively manage growing trade disputes worldwide, and garner enough momentum for WTO reform? Bearing these questions in mind, China, the EU and other committed parties need to further identify common grounds, make necessary compromises and work together wherever and whenever possible.

Capitalising on both the EU and China's commitment to preserving the multilateral trade order, there is possibility of further convergence and more substantial cooperation. In the joint statement of the 21st EU-China Summit, the two sides agreed to intensify "discussions with the aim of strengthening international rules on industrial subsidies" and that "there should not be forced transfer of technology".[25] This can be seen as a breakthrough in widening common ground, as it was the first time China publicly stated its willingness to work with the EU on this issue, thus showing its good will. Further synergies lie in reforming the AB, pushing for negotiations on topics such as e-commerce and SMEs. The EU and Canada reached an agreement on bilateral interim appeal arbitration arrangement based on existing WTO rules should the AB ceases to function after December 2019.[26] Such arrangement is also possible between the EU and China. The work on e-commerce and SMEs already began at the WTO Ministerial in 2018, and is gathering pace with the upcoming 2020 WTO Ministerial.

Since both the EU and China are strong supporters of the Paris Climate Agreement, a potential area of innovation is to mainstream sustainability into the WTO. For instance, regulation of harmful subsidies leading to overfishing and illegal, unreported and unregulated fishing has long been on the WTO agenda. China, with the world's largest distant-water fishing fleet and considerable fishing subsidies is increasingly under the spotlight.[27] Although slashing fishing subsidies could mean a serious blow to China's heavily subsidy-reliant fishing industry, the country has declared its willingness to reach a global agreement regulating fishing subsidies. As China seeks to demonstrate global leadership in sustainability, while hosting the 2020 Convention on Biodiversity Conference of the Parties, it is taking a more active stance on this issue. The EU is pursuing ambitious sustainability goals under the 2019 Marine Strategy Framework Directive and the Common Agricultural Policy reform beyond 2020. Although difficult compromises need to be made, this could well be an area for EU-China collaboration, aiming for a global agreement by the end of 2019.

At their 2019 Summit, G20 leaders agreed "to undertake necessary WTO reform with a sense of urgency".[28] However, to turn statements of principles into concrete progress, it is high time that willing parties take action. The EU and China can and should take a leading role in revitalising the multilateral trading order. ©

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PERCEPTIONS OF CHINA IN GERMANY

NICOLA HOOCHHAUSEN

Introduction

The importance of 'soft power' in global politics has been widely accepted by world leaders and academics.[1] It is defined by Nye as "getting others to want the outcomes that you want" and it is based on "the attraction of a country's culture, political ideas, and policies".[2] Many countries now actively brand their state in order to increase their soft power.[3] China, for example, promotes the narrative that its peaceful rise and development does not pose a threat to other nations, but is of benefit to them.[4]

However, this narrative has not caught on in Germany and public opinion towards China is rather the opposite. Germans perceive China and its influence in the world negatively. According to recent numbers, only 34 per cent of Germans view China favourably, but 53 per cent view it unfavourably.[5] Several studies conducted over the last decade by different polling institutes do not only confirm these statistics, but also allow for a comparison: only Russia is repeatedly perceived more negatively by Germans and few other European countries think worse of China than Germany does.[6] Following the argument of soft power, these negative opinions can hinder Beijing in conducting successful foreign policy and business with Germany.

Inversely, realising and understanding the negative perceptions of China also mat-ters for German decision makers. Awareness of their opinions and possible stereo-types towards China and how they are formed is key to successful policy-making.[7] Furthermore, understanding the perception of their electorate and the domestic media helps to anticipate the reaction to German policies regarding China.

This article aims to explain the negative perceptions of China in Germany. After a brief overview of Sino-Germany relations, it will outline three different explanatory approaches towards the negative German perceptions. While they each highlight a different aspect, they are mutually complementary in explaining the negative opinions of Germans towards China. The focus will then shift to the acquisition of the German robotics company Kuka by the Chinese group Midea in 2016. By applying the explanatory approaches to this case study, it will be shown how German perceptions of China have evolved in recent years – albeit not towards a more positive stance.

The hard facts of bilateral relations vs perceptions

Logic suggests that German perceptions of China are at least partially influenced by the reality of Sino-German relations. Hence, this paragraph will briefly highlight some hard facts about 'China in Germany'.

The most important aspect of the bilateral relationship is economic. China is Germany's biggest trading partner outside of the EU. The Sino-German trade volume amounts to €187 billion which is nearly 30 per cent of overall trade between China and the EU.[8] German direct investments in China amounted to €76 billion in 2016, while Chinese direct investments in Germany are estimated at around €13 billion. Considering this significant economic relationship, only relatively few Chinese live in Germany: 136,460 Chinese nationals lived in Germany in 2017; and an additional 180,000 Germans have Chinese heritage.[9] Furthermore, there are 20 Confucius Institutes in Germany.[10]

Despite the considerable bilateral economic relations, stereotypes and clichés dominate German perceptions of China: regardless of China's economic rise and political reforms in recent decades, many Germans still associate China with cheap mass-produced goods and Mao Zedong.[11] Furthermore, Germans struggle to classify China's political system: 33 percent believe it to be capitalist and 47 percent consider it a socialist system.[12] Despite Germans being able to name big Chinese companies such as Lenovo, Huawei and Alibaba,[13] this does not seem to change their overall (negative) perception of China.

Three attempts to explain German (mis)perceptions of China

How can we then explain these persistent stereotypes of China in Germany and the long-term trend of negative perceptions towards China? A study conducted by Huawei in 2016,[14] secondary literature and newspapers suggest several explanations. While the different explanatory approaches supplement each other, they also help to understand a recent turn in perceptions.

1. Disinterest and Structural Barriers

Michael Clauss, then German Ambassador to China, argues that the persistent stereotypes are due to a lack of interest among Germans to get to know China better.[15] Newspaper analysts confirm his argument of German disinterest.[16] However, Clauss softens his statement on German disinterest by exploring what causes it. He argues that both a language barrier and the 'Great Chinese Firewall' impede citizens of the two nations from getting to know each other better. This 'Great Chinese Firewall' refers to Beijing's censorship and monitoring of the internet, which leads to Germany's and China's youth using different social media applications, limiting globalisation on-line.[17] While both of those arguments, disinterest and structural barriers, can explain why clichés about China are not changing, they fail to give a reason for the long-term negative perceptions.

CHINA IS FUNDAMENTALLY DIFFERENT FROM THE WEST AND IT WILL STAY DIFFERENT

2. Thinking in Western terms and applying German values

In the Huawei poll, 55 per cent of German respondents confirmed that they per-ceive the Chinese culture as very "fremd", which translates to "alien, strange, for-eign".[18] This confirms the theory of Martin Jacques. He argues that the West misunder-stands China because it tries to make sense of it using Western terms and concepts. For example, the nature of the Chinese state and its relationship with society is very different from Western ideas of state and society and hence often misunderstood. According to Jacques, China is fundamentally different from the West and it will stay different, despite the widespread assumption that countries assimilate to Western norms while they develop.[19]

Jacques argument is shared by academics and journalists: Marc Steinau argues that German politicians and managers struggle to understand China's combination of communist state control and capitalistic companies, assuming that liberalism and democracy necessarily go hand in hand.[20] Margot Schüller, one of the authors of the Huawei study, argues that China's political system, which is regarded as unfavoura-ble by most Germans, is causing the negative image of China. Germans do not share the values and norms of that political system.[21]

Clauss also bases one of his explanatory approaches on values and the collective memory of German society. According to him, history has taught Germans the im-portance of the inviolability of human dignity. Hence, they are especially critical to-wards countries which do not respect human rights.[22] Polls reinforce his argument, as they show that Germans assess the human rights situation in China more critically than most countries around the world.[23]

3. Fear and 'the perception trap'

In his article "Perceptions of Asia in Europe" Bersick takes several of the above listed elements into account. He argues that the negative perception of China is based on "serious concerns generated by the systemic impact of the 'rise of China' and its unknown implications on the future of life and well-being of European individuals".[24] German magazines and newspapers perpetually re-peat stereotypes of China as the "yellow peril" or "spies", hence strengthening those stereotypes.[25] As the negative perception of China in Germany is a long-term trend, it is not linked to single events. While specific unfavourable events or disputable international behaviour of China may reinforce the negative perceptions, favourable events, such as the Olympics in Beijing, do not show a positive effect on Germany's perception.[26]

Bersick warns that these two elements, old stereotypes reinforced by new fear of rising China, lead to a 'perception trap' or vicious circle. The more successful and influential China grows in political and economic terms, the stronger the negative perceptions of China become in Germany and other EU countries.[27]

A case study: The Kuka acquisition

Many see the acquisition of the German robotics company Kuka by the Chinese group Midea in August 2016 as a turning point in perceptions of China in Germany.[28] Earlier Chinese acquisitions and investments in German companies went mostly unnoticed by the broad public. The Kuka case however was widely reported, because the company is seen as a forerunner of Germany's digital economy and part of a key industry to Germany's future.[29] Günther Oettinger, German EU commissioner, Sigmar Gabriel, Federal Minister for Economy at the time, and even Hans-Georg Maaßen, then head of Germany's federal office of internal security, made public statements about the case – all of them with a worried, negative overtone.[30]

Media, policy makers and academics quickly established the link between the prominent Kuka case and Beijing's 'Made in China 2025' strategy.[31] Researchers from the China think tank Merics write that "a transfer of knowledge from Kuka to Midea will harm Germany's position in the robotics industry".[32] Taking the larger picture into account, they argue that Germany is one of the countries most vulnerable to the 'Made in China 2025' strategy.[33]

The combined output of newspapers, academia and politicians changed German perceptions of China. The stereotype of China as the origin country of mass-produced cheap goods turned into a more negative vision. China is now portrayed as an economic superpower attacking German industries, buying up key companies and copying know-how. This turn confirms Bersick's argument. The fear of rising China with the acquisition of Kuka as a prominent case in point did not correct German stereotypes but rather built on them, reinforcing the negative perception of China.

One example of this updated China perception in Germany is a position paper published by the Federation of German Industry in January 2019.[34] The Federation describes China as a "systemic competitor" urging the German government to take a harder stance against China's assertive economic policies. Just a month earlier, Germany intensified its laws on foreign direct investment in order to protect security relevant businesses from espionage.[35] While this second tightening of the law since the Kuka acquisition applies to all non-EU countries and does not make a clear reference to China, it is seen by many as the answer of German lawmakers to Beijing's 'Made in China 2025' strategy and the acquisition of Kuka.

Conclusion

This essay has shown that several explanatory approaches shed light on different aspects of Germany's negative perception of China. First, disinterest and structural barriers, such as the 'Great Chinese Firewall' and language barriers, deter Germans from developing a more nuanced image of China. Second, Germans are very normative when assessing China, partly due to their distinct history. Using Western terms and applying German values when trying to make sense of China can explain some of the stereotypes and negative opinions. Third, the fear of a rising China reinforces already ingrained stereotypes and strengthens the negative opinions towards China.

CHINA IS NOW PORTRAYED AS AN ECONOMIC SUPERPOWER ATTACKING GERMAN INDUSTRIES

The acquisition of Kuka by the Chinese group Midea is a case in point. Extensive, mostly negative reporting in the media and public statements by politicians caused broad public attention. However, this did not lead to a correction of the old stereotype of China as a mass producer of cheap goods. Instead, the picture of China as a rising, aggressive economic rival was added to the already negative perceptions and stereotypes.

These findings are crucial for both Chinese and German stakeholders: German policy makers and businesspeople need to be aware of their negative perceptions of China and how they are formed. In return, China needs to understand perceptions in Germany to assess its soft power correctly. Furthermore, it needs to consider the impact of its economic and political rise on perceptions in Germany and Europe. While China aims to portray itself as a peaceful rising power, it is currently perceived as the opposite in Germany. ©

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EU-CHINA-AFRICA TRILATERAL COOPERATION A MISTAKE TO SHELVE OR AN INSTRUMENT TO RECONSIDER?

ENRICO PAOLO TORMEN

Introduction

In a world order increasingly characterised by significant multipolar dynamics, factors such as the gradual retreat of the US from the global stage and the relentless emergence of new centres of power are posing serious challenges to the foreign policy of the European Union (EU). As a consequence, the Union must continuously adapt its strategies to the pressure brought by this geopolitical tectonic shift.

A telling example of this effort is the EU's attempt to establish a trilateral cooperation with Africa and China. In order to adapt its traditional policies on Africa to a changing international setting and an increased Chinese engagement in the continent, in 2008 the EU tried to forge a trilateral dialogue. Yet, no concrete joint cooperation has so far been established.[1] The aim of this article is thus to analyse the main reasons why this project failed and to consider to what extent it would be useful to reconsider it in the future. As a result of this analysis, it will be argued that a revised future trilateral cooperation would represent a win-win strategy for all the actors involved, Especially in the field of development policies.

The Trilateral Cooperation

In order to understand why in 2008 the EU proposed a trilateral cooperation with China and Africa, it is necessary to briefly contextualise the relationships among these actors in that period. At the beginning of 2000s, the EU realised that the traditional strategies concerning Africa did not match with the occurring international changes and tried to establish a new common approach that can be summarized by the motto 'one Europe, one Africa'. The establishment of a bilateral region-to-region framework started with the organization of the first EU-Africa Summit in 2000 and culminated with the laying out of the 2007 Joint Africa-EU strategy. In this document the EU finally recognized China's rising importance in Africa and underlined the urgency to reinvent their relations.[2]

This new EU-Africa joint strategy must be considered against China's growing engagement in the African continent. Since the 2000s, Chinese activities in Africa increased dramatically due to comprehensive packages of trade, investments and loans with low interest rates that were offered to numerous African states.[3] China thus managed to shape its own international image as a post-colonial power willing to establish alternative development frameworks based on the principles of equality, sovereignty, non-interference and territorial integrity.[4] The importance of this new relations was reflected by the setting up of the Forum on China-Africa Cooperation and the publication by the European Commission of a policy paper on Africa in 2006.

As concerns the EU-China cooperation on Africa, in 2006 the EU published the communication EU-China: Closer partners, growing responsibilities, for a strategic partnership with China in which it acknowledged the necessity of establishing a structural cooperation with China on Africa's development.

Against this background, in 2007 the EU started to consider the idea of a trilateral cooperation. The main driving force behind this project was the European Commission. Interestingly, although the EU-China dialogue on Africa was a competence of DG RELEX, the trilateral cooperation was initiated by DG Development, which saw this new possible instrument as an opportunity to increase its importance within the Commission. In June 2007, the Commission organized a conference on this issue to convince the African and Chinese representatives of the benefits entailed in this new framework. The Commission then invited them to express their opinions on this possible form of dialogue through a questionnaire. After having received a vast majority of positive answers, in 2008 it finally published the communication The EU, Africa and China: Towards Trilateral Dialogue and Cooperation.[5]

The document recognizes that both the EU and China aim at ensuring a sustainable development for Africa and proposes four main sectors in which the three actors should cooperate together; peace and security, infrastructure, environment and natural resources, agriculture and food security.[6] Surprisingly, although the Council endorsed the proposal of the Commission in the same year, neither China nor Africa published any official statements endorsing the project. As a result, tangible consequences of this trilateral cooperation have yet to emerge.[7]

Why did it fail?

The trilateral development relationship between the EU, China and Africa exists in the context of their actual development policies, aid and also trade and investment flows. However, the efforts to achieve trilateral cooperation in this area have failed mainly as a consequence of internal and diplomatic factors in the EU and China. A first important element that contributed to the failure of the proposal concerns the lack of active participation of the African representatives. Indeed, the Commission failed to enter into contact with African diplomats during the shaping of the trilateral agenda and reached out to them only at the final stage of the process. On the other hand, the Commission had intense interactions with the Chinese representatives; Commissioner Louis Michel visited Beijing numerous times to discuss the future prospects of the alliance.[8] Hence, the African counterparts were given the impression that the final aim of the proposal was merely to set up a new instrument to exploit their territory in a more efficient way.[9]

The African discontent towards the proposal was also intensified by the EU choice to opt for a strategy of transformative engagement. This decision was perceived as an attempt of the EU to create a new window-dressing instrument based on old conditionalities designed to dictate to African countries how to interact with China.[10] For this reason, many African countries feared that a trilateral cooperation could undermine the positive characteristics of a relation with China based on the principle of non-interference and the so-called programs of aid without strings.[11] Another crucial hurdle was the lack of institutional consistency within the EU. Indeed, DG Development had to face a strong opposition from both the Commission and other institutions. Indeed, the project was criticized by the cabinet of the president of the Commission Barroso, DG RELEX, the European Parliament and the Council.[12] In particular, the Parliament described China as a competitor and claimed that the trilateral cooperation risked jeopardizing the EU's defence of democracy and human rights.[13] The discrepancies among institutions were reflected in the content of their official documents. For example, while the Commission proposed a more reciprocal form of dialogue towards China, the Council stated that even the relations with Beijing had to be based on a traditional transformative engagement. It goes without saying that this lack of coherence confused both the Chinese and African partners.

CHINA DOES NOT HAVE A SINGLE COMPETENT AUTHORITY RESPONSIBLE TO DEAL WITH THIS KIND OF COOPERATION

An additional obstacle was posed by the internal structure of the Chinese foreign policy-making system. Indeed, although the Chinese government is often described as monolithic, in reality it is composed by numerous institutions the interests of which can differ.[14] In particular, China does not have a single competent authority responsible to deal with this kind of cooperation; different departments of the Ministry of the Commerce are responsible for different areas of foreign relations with Africa. Hence, not only the EU had to deal with a development policy that is mainly based on economic interests, but it also lacked a natural Chinese partner to interact with.[15]

Future perspectives

It is beyond doubt that the growing Chinese engagement in Africa is posing a significant pressure on the three actors to find common grounds to work together. Hence, it is worth considering if there could be a window of opportunity to forge a trilateral dialogue in the future. The former paragraph has shown that the main reasons behind the failure of the project did not concern the nature of the project per se, but the way in which the EU developed it. As a consequence, in order to give to this strategy a real opportunity to be implemented, the EU should avoid adopting a pure Eurocentric point of view and should focus a new proposal based on the real needs of all the parties, also including the following considerations.

THE EU AND CHINA SHARE COMMON OBJECTIVES SUCH AS THE ACHIEVEMENT OF THE SUSTAINABLE DEVELOPMENT GOALS, THE PROMOTION OF A SUSTAINABLE ECONOMIC GROWTH, AND THE FIGHT AGAINST POVERTY

Firstly, it should be considered that the Lisbon Treaty created new actors and mechanisms, such as the EU External Action Service and the High Representative (HRVP), that could give a new impetus to this project. Indeed, being the responsible for coordinating all the EU's foreign policy tools, the HRVP has the potential to overcome those divisions within the European Commission that seriously hampered the 2008 negotiations. For example, in 2016 the HRVP managed to achieve a new foreign policy strategy on China which underlined the importance of a comprehensive cooperation between EU and China in Africa, especially in the field of security, environment, and economic development.[16] Moreover, in March 2019 the European Commission and the HRVP published a pivotal Joint Communication on EU-China relationship in which is stated that Africa represents a region of priority importance for the Union. Moreover, they also claimed that the Chinese major involvement in Africa represents a major opportunity to finally establish a trilateral cooperation.[17] It has to be noted that the new European Commission that will get into office in November 2019 represents another important possibility in this domain. Indeed, the new Commission should have the opportunity to reshape the partnership with China from the very first days, setting the dialogue on and with Africa as one of the priorities.

It has been stated that China bases its foreign policy on the principles of non-interference in other states' domestic affairs. Yet, in the last years this principle has started to become controversial for China as well. Having to defend the stability of its investments in Africa, China has a major interest in ensuring the political security of the African countries.[18] In other words, it needs to find a way to balance its will to shape an harmonious world and its international economic interests.[19] This could represent a major advantage for the EU given that its development policies are not based uniquely on economic interests but mainly on the sustainable development of the African continent. Moreover, the necessity of Chinese government to guarantee the safety of the African states could furtherly increase the opportunity for the EU and China to cooperate in peace keeping and security matters in the continent.

As underlined by the 2019 Joint Communication, the actors could establish a dialogue in the field of regional security challenges.[20] Yet, another example of a possible future cooperation concerns the fight against climate change, an area in which all the actors have a solid previous experience and share important interests. The German Development Institute underlined the many opportunities that these actors have to forge a future trilateral cooperation focused on African priorities in the field of renewable energy and under the framework of the Africa Renewable Energy Initiative – the first project concerning renewable energy owned and led by African actors. China and the EU should thus support the implementation of this initiative bearing in mind the lesson learned in 2008 and basing their activities on African needs and participation.[21]

Finally, Grimm and Hackenesch highlighted that there are a number of countries, such as Ethiopia, Ghana and Zambia, in which the Chinese strategy provides important resources in sectors that are not covered by EU policies.[22] This was recognised by the European Commission in its 2019 Joint Statement, where it underlined that "Chinese investments have contributed to the growth of many receiving economies".[23] Hence, although the EU and China clearly adopt different models of international aid, it would be wrong to consider them uniquely as competing models; they can also complement each other. Indeed, the EU and China share common objectives such as the achievement of the Sustainable Development Goals, the promotion of a sustainable economic growth, and the fight against poverty.[24] Furthermore, a number of scholars claimed that China does not aim at overthrowing the EU from Africa. On the contrary, China is trying to find a balance between the need to fulfil its interests and the necessity to protect its strategic partnership with the EU.[25]

Conclusions

New dynamics in global politics are dramatically modifying the way in which EU, China and Africa are interacting with each other. Although the EU failed to establish a trilateral cooperation in 2008, a strong need for these actors to find new patterns of cooperation still exists. Indeed, this article has shed some light on the lessons that the EU should learn from its first attempt and which are the many windows of opportunity that the three actors could exploit in order to forge a new form of dialogue.

On 16 April 2019, the author had the possibility to meet at the College of Europe Mr. Gao Mingbo, counsellor and head of the political section at the Mission of China to the EU, and ask his opinion about a possible trilateral cooperation. He stated that, despite a number of hurdles to overcome, there actually are good reasons to be optimistic about future developments in this field as long as the opinions of the recipient countries are fully respected. This article demonstrated that there actually are solid reasons to be positive about a future trilateral cooperation. In particular, it can be argued that the EU should seriously commit to promoting a comprehensive platform of interactions with China and Africa. As a first step, it could propose a dialogue in those domains in which the three actors share common interests and knowledge, such as the environment and security. It goes without saying that this new project should be based on the needs of all those involved, especially the African actors.

This would be a turning point for the three partners. Africa would finally have the possibility to participate in the shaping of the EU and China development agendas and enhance the prestige of its role in the international field. China would have the opportunity to expand its expertise in the field of development interacting with and learning from the EU, protect its investments in the African states, and actively promote a multipolar global system. Finally, the EU would have the occasion to tackle more efficiently the migration issue, deal with the Chinese engagement in a fruitful fashion and establish a new pattern to follow in dealing with rising powers in a multipolar world.

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PENDING NEGOTIATION TOPICS OF THE COMPREHENSIVE AGREEMENT ON INVESTMENT (CAI) BETWEEN THE EU AND THE PEOPLE'S REPUBLIC OF CHINA

MIGUEL WALTEREIT

Introduction

The European Union (EU) and the People's Republic of China (PRC) are the two geographical cornerstones of the Eurasian continent and the two largest trading powers in the world: China is the EU's second largest trading partner, while the EU is China's largest trading partner.[1] Negotiations on a Comprehensive Agreement on Investment (CAI) between the two actors were formally launched at the EU-China Summit in Beijing in November 2013 and began in 2014.[2]

This article aims at examining which of the CAI's negotiation topics are still outstanding and why negotiations in these fields are sluggish. First, the context and status of negotiations will be presented before explaining the objectives of the CAI. Open chapters and pending topics will then be analysed. Finally, the findings will be summarised in the conclusion.

Context and status of negotiations

An important area of EU-China relations is market access for investment and its subsequent protection. In recent decades China has concluded a dense network of international treaties designed to protect foreign investment, a trend many EU member states (MSs) followed, too. However, since the competence for investment protection in the EU was transferred from the MSs to the EU with the Treaty of Lisbon, a comprehensive investment protection agreement is currently being negotiated between the EU and the PRC.[3]

With the exception of Ireland, all EU MSs concluded investment protection agreements with the PRC in the past.[4] The CAI will replace the 27 existing bilateral investment treaties (BITs) with a single EU-China agreement taking advantage of the EU's exclusive competence for foreign direct investment gained with the entry into force of the Lisbon Treaty in 2009.

The possibilities of an investment protection agreement were examined starting in 2010 by a Joint EU-China Investment Task Force. A joint statement expressing the common interest in such an investment protection agreement was published in the context of the 15th EU-China Summit on 14 February 2012. On 18 October 2013, the Council adopted a negotiating mandate authorising the Commission to negotiate an investment protection agreement with the PRC on behalf of the EU.[5] The European Parliament, which must give its consent to the conclusion of an agreement,[6] already put forward its own ideas in a first resolution of October 2013, listing a number of points to be included in the negotiations, e.g. transparency obligations in particular for sovereign wealth funds and state-owned enterprises (SOEs), regulations on market access as well as on corporate social responsibility, the inclusion of environmental protection issues, etc.[7]

The existing investment agreements between the EU MSs and the PRC protect investors against unfair treatment, expropriation without compensation and discrimination. Uncertainties and costs of cross-border investment are reduced. Although the EU investment protection policy is currently still under development, it is foreseeable that there will be some considerable reorientations compared to the MSs' agreements with China. This can for instance be compared to the German-Chinese agreement of 2003.[8] While the European economy apparently hopes for a fundamental opening of the Chinese market from the agreement, the German side is focusing on investment protection, including dispute settlement, and the promotion of Chinese reform steps. The liberalisation of market access and the resulting increase in external obligations are intended to bring China's domestic law into line with international standards, as was the case after China's accession to the WTO in 2001.

CAI objectives

The CAI aims at creating a more level playing field for business along with new market opportunities for both sides by removing market access barriers to investment and increase investment protection in China and the EU. Furthermore, it targets at encouraging China to advance its economic reforms and giving the market a more decisive role. This way, the EU hopes to pave the way to broader trade ambitions under the right conditions.[9]

FUTURE EU AGREEMENTS SHOULD CREATE A STRONGER BALANCE BETWEEN EFFECTIVE INVESTOR RIGHTS ON THE ONE HAND AND STATE REGULATORY INTERESTS ON THE OTHER

A key objective of any future investment agreement between the EU and China is to maintain the protection already afforded to European investors by MSs' agreements with China. On the one hand, it is possible to build on the MSs' experience to date; on the other hand, it should be noted that various parties are calling for a fundamental reform of international investment protection law. The current international investment protection law is strongly criticised, among other things, for the indefinite principle of fair and equitable treatment and for the equally indefinite protection against indirect expropriations in the case of the possibility of investor-state arbitration proceedings. In particular, there are fears that the sovereign state could no longer have the possibility of unilateral regulatory measures from a general political point of view.[10]

In its negotiations, the European Commission must be guided by the negotiating mandate it has been given and, if necessary, by negotiating Council directives, as well as by the demands of the European Parliament, which must approve a future investment agreement with China. The latter, for example, calls for greater transparency, particularly with regard to state-controlled companies, the inclusion of general policy concerns (workers' rights, environmental protection standards, etc.), strong investor rights and a functioning investor-state dispute settlement mechanism.[11]

In the negotiating mandate as well as in more general announcements such as the Commission's Trade for All Communication, reference is made to the value-based approach of a future investment protection policy. Under no circumstances should investment agreements lead to reductions in environmental protection or occupational safety.[12] In addition, future EU agreements should create a stronger balance between effective investor rights on the one hand and state regulatory interests on the other.

Open chapters and pending topics

The latest round of negotiations was held in Beijing on 23-4 September 2019 and brought about tangible results regarding financial services, capital movements and national-treatment related commitments.[13] Moreover, both parties once again exchanged their views on sustainable development, especially regarding aspects of investment and environment.[14] However, no breakthrough could be achieved regarding the freedom of transfers and liberalisation of capital movement concerning foreign direct investment.[15] In the following, four other pending topics will be pointed out.

Intellectual property

Intellectual property rights are a major issue of dispute between the EU and China. European companies only have limited access to the Chinese market and must in many cases cooperate with local companies in the form of joint ventures in order to operate in the country, which makes it easier for the Chinese to access the know-how of their European partners.[16] At the same time, the freedom that Chinese companies enjoy in Europe led them to increase their takeovers to record levels in recent years, especially in Germany. As a result, in April 2018, the European Commission started examining the possibility of filing a case against China in the field of intellectual property with the

World Trade Organization (WTO), stressing the need for greater reform, transparency and openness in China based on a market economy, including excessive state intervention, overcapacity and practices in technology, intellectual property and innovation.[17]

Due to the ongoing CAI negotiations, the European Commission would rather avoid a confrontation with Beijing. However, since the dialogue with the Chinese authorities on the agreement is progressing so slowly, the EU executive decided to step up its response against China and replaced its request on 20 December 2018.[18] Regardless of the outcome of the EU's complaint with the WTO, it can be seen that a robust bilateral agreement would have to aim for China to enforce these rights more vigorously.

Steel overcapacity

China's problem of overcapacity is extensive and affects several sectors other than steel. The problem of overcapacity in a number of heavy industries is caused by state support for SOEs and some trade-distorting practices. The EU and China agree that steel overcapacity is a controversial topic and that it is a global challenge, which calls for a joint answer. Both have made promises to increase cooperation efforts in the Global Forum on Steel Excess Capacity, which has its origins in the G20 Hangzhou Summit Declaration from 2016. One year later, at the G20 meeting in November 2017, China agreed with other G20 partners to reduce overcapacity in the steel sector.[19] At the EU-China Business Summit in Beijing in 2018, President of the European Commission Jean-Claude Juncker appealed to the Chinese side to shoulder its responsibility, as the EU is already cooperating with the US and Japan on this matter.[20] However, so far, the issue of steel overcapacity has not been discussed in the 23 negotiation rounds and therefore might cause tensions during future negotiation rounds.

State-to-state dispute settlement

The 20th to 22nd rounds of EU-China investment agreement negotiations, which took place in Brussels and Beijing between February and July 2019, brought about some progress on investor-to-state dispute settlement, but did not show significant success on the issue of state-to-state dispute settlement.[21] During the 23rd round of negotiations in September 2019, considerable time was spend on the issue at a technical level and tangible progress was made.[22] However, no breakthrough has been achieved yet, which indicated how controversial this issue is.

Fair and equitable treatment and national treatment

As stated above, ensuring a level playing field is one of the primary objectives of the EU. European companies operating in China expect to benefit from the agreement to secure equal and fair treatment while it would ensure legal certainty for Chinese companies across the Single European Market.[23] Since there is great unease in the EU about Chinese SOEs engaging in unfair business practices on the European market, this is one of the major concerns of the EU, which was reiterated by the EU in its latest policy document regarding China[24] and the Joint Statement of their recent summit in April.[25]

Conclusion

The envisaged EU-China CAI should not only replace the existing bilateral investment agreements between China and the MSs, but also facilitate market access for investors, as China is one of the countries with the highest barriers to market entry for foreign investors in international comparison. SOEs and sovereign wealth funds play a special role in the Chinese economy and in foreign investment, which the European Parliament wants to see included in an agreement. Since national legal protection in the PRC must be seen as deficient, at least from a European perspective, an attempt is also being made to implement effective protection standards in the agreement, thus complying with the demands of the European Parliament and civil society and, at the same time, taking into account of state regulatory interests. It should therefore be considered to conclude an investment protection agreement with China directly applicable to both sides and, if necessary, being able to demand investment protection from national courts in this respect. It is questionable whether the Union's reform approaches to the investment protection system with regard to substantive protection standards, such as those introduced into the negotiations with the USA and Canada, can be applied to the future protection of investments in the PRC. The need to implement high protection standards comparable to existing agreements is due to the legal protection deficits that still exist in China.

On 12 March 2019, the European Commission published a joint communication to the European Parliament, the European Council and the Council of the EU called 'EU-China – A strategic outlook,' in which it states its aim to conclude the CAI as an "ambitious agreement"[26] in 2020. Due to the time pressure, on the EU-China Summit in June 2019 both parties established political mechanisms, which aim at discussing technical details before the negotiating round and reporting progress to leaders by the end of the year.[27,28] It therefore remains to be seen whether both sides will be able to agree on the outstanding issues in order to bring the sluggish negotiations to an end next year. This intention was recently confirmed in the joint statement of the last EU-China Summit on 9 April,[29] which underlines how serious both sides seem to be about a timely conclusion of the CAI. The 24th round of negotiations is currently scheduled for the first half of November.[30]

In any case, CAI negotiations mark a significant milestone in EU-China relations while they put EU legislative and policy instruments to the test. If both sides achieve to conclude negotiations by 2020, as two of the most important economic powers the EU and China could certainly usher in not only a new era in EU-China relations, but a new era in the global investment regime as such. In times where the USA openly challenges the global trade order, the successful conclusion of CAI negotiations would be an all the more notable sign and a powerful commitment against trade and investment barriers. ©

1 European Commission and the High Representative of the Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament, the European Council and the Council: EU-China – A Strategic Outlook, JOIN(2019) 5 final, Strasbourg, 12 March 2019, p. 1. [hereafter: JOIN(2019) 5 final] **2** Ibid, p. 4. **3** M. Bungenberg, "Das mögliche zukünftige EU-China-Investitionsschutzabkommen – Diskussionspunkte und Stolpersteine" ["The possible future EU-China investment protection agreement - discussion points and stumbling blocks"], in P.-C. Müller-Graff (ed.), Die Beziehungen zwischen der Europäischen Union und China [Relations between the European Union and China.], Baden-Baden, Nomos, 2017, p. 81. **4** Bungenberg, op. cit., p. 89. **5** Council of the European Union, "Council approves launch of investment talks with China", Press release 15001/13, Luxembourg, 18 October 2013. **6** European Union, Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Luxembourg, Publications Office of the European Union, 2016, art. 218. **7** European Parliament, Resolution of 9 October 2013 on the EU-China negotiations for a bilateral investment agreement, 2013/2674(RSP), Strasbourg, 9 October 2013 **8** Ibid., p. 91. **9** European External Action Service, "EU-China Relations", Factsheet, Brussels, 9 April 2019, p. 1. **10** Bungenberg, op. cit, p. 91. **11** Ibid, p. 92 **12** Ibid. **13** European Commission Directorate-General for Trade, Report of the 23rd round of negotiations for the EU-China Investment Agreement, Brussels, 25 September 2019. **14** Ibid. **15** Ibid. **16** JOIN(2019) 5 final, op. cit., p. 6. **17** World Trade Organization, China — Certain Measures on the Transfer of Technology. Summary of the dispute to date, DS549, 31 January 2019. **18** Ibid. **19** A. Saarela, "A new era in EU-China relations: more wide-ranging strategic cooperation?", European Parliament Directorate-General for External Policies – Policy Department, 19 July 2018, p. 8. **20** B. Rios, "EU-China summit boosts negotiations towards an investment agreement", Euractiv, 17 July 2018. **21** European Commission Directorate-General for Trade, op. cit. **22** Ibid. **23** JOIN(2019) 5 final, op. cit., p. 6. **24** Ibid., pp. 1, 3, 6. **25** European Council and Council of the European Union, "EU-China Summit Joint statement", Press release, Brussels, 9 April 2019. **26** Ibid. **27** European Council and Council of the European Union, op. cit. **28** European Commission Directorate-General for Trade, op. cit. **29** European Council and Council of the European Union, op. cit. **30** European Commission Directorate-General for Trade, op. cit.

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