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POLICY PAPER

Assessing the pros and cons of the EU-China comprehensive agreement on investment: an introduction to the special issue

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Abstract
The announcement of the China-EU Comprehensive Agreement on Investment (CAI) at the end of December 2020 triggered an intense debate. The deal has found many supporters inside Europe and in China—but also opposition coming from some European quarters and the USA. It is thus crucial to examine the pros and cons of CAI—an accord that if ratified would boost trade and investment relations between the EU and China as well as have profound implications for the USA which is actively working to create a common front with the European allies to counter Beijing's increased self-confidence and assertiveness.

The European Union (EU) and the People's Republic of China (PRC or simply China) reached a landmark agreement on investments on 30 December 2020, after 7 years and 35 rounds of negotiations. The signature of the Comprehensive Agreement on Investment (CAI) occurred on the occasion of the 45th anniversary of the establishment of diplomatic relations between China and the EU. However, this is not the end of the process which requires actual signature by China and the EU and ratification by the European Parliament.

The announcement of the deal triggered an intense debate. The CAI had found both supporters, but also opponents, inside Europe. It was hailed as a highly beneficial accord for world trade by China, and as a break-through in locking-in China's hitherto opening-up and its concessions in the areas of "market access", "level playing field" and "sustainable development" by the European Commission but met with harsh criticism from the USA, where the new Biden administration had yet to be inaugurated and saw in it a victory by China in trying to divide the transatlantic allies.

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The CAI is currently frozen due to the spat around the situation in Xinjiang, but the debate around it is far from being over. On 20 May 2021, the European Parliament voted—by an overwhelming majority—to suspend its ratification. The move came after Beijing had imposed retaliatory measures against EU members of Parliament for their support of sanctions against Beijing for its oppression of the Uighur population. The Chinese sanctions imposed in March 2021 on several European entities and political representatives, including five members of the European Parliament and the Subcommittee on Human Rights, were a retaliatory act in response to the EU decision to enact restrictive measures against four Chinese officials over human rights abuses against the Muslim Uyghur minority in the Xinjiang region.

The European Parliament's decision to freeze the CAI reflects growing disenchantment over the past years with China among European lawmakers who—following the sanctions—are determined to stand up more firmly to Beijing. Still, China remains Europe's second largest trading partner and vital engine of world growth, and any moves against Beijing could open the door to escalating economic retaliation—a prospect that may limit how far European governments and the European Commission are willing to go to pressure China. In fact, it is very likely that some EU governments will seek to resurrect the CAI, since many industrial associations across Europe support the deal, viewing it as an opportunity for European companies to enter and/or acquiring growing shares of the Chinese market.

This special issue aims to shed light on the pros and cons of a deal that if ratified would boost trade and investment relations between the EU and China as well as have profound implications for the USA which is actively working to create a common front with the European allies to counter Beijing's increased self-confidence and assertiveness.

Pros and cons

According to the Chinese government, the CAI is the first economic and trade agreement in which China has made commitments in the form of a negative list in all sectors, including services and non-services, demonstrating the country's determination to promote a wider, broader and deeper opening-up to the outside world. As Xiang Xia explains in his article: 'CAI marks a highly relevant step to meet the expectations of different sectors and should be cherished by both sides'. In Chinese eyes, the deal intends to further promote China-EU investment cooperation and, consequently, foreign direct investment inflows and outflows. More precisely, the CAI is a very important policy tool to attract FDI by creating a stable and predictable business environment. According to the Chinese Ministry of Commerce, the EU is China's third-largest source of FDI and fourth-largest destination for outward FDI in terms of bilateral FDI stocks.

In his article, Chen Xin maintains that the CAI is a balanced, high-level and mutually beneficial investment agreement. It does not only set up a new legal framework for China-EU economic and trade relations, but also provide stability for China-EU bilateral relations in an uncertain world under major changes.

Some Chinese scholars go even further as they consider CAI as a milestone that could possibly contribute to structural economic and even political changes in China. An aspect generally overlooked or downplayed in European debates. Xiaolin Duan and Xinning Song explain how the synergies generated by CAI, the domestic socioeconomic changes that it will bring and Chinese leaders' self-consciousness about the necessity of these changes may set the agenda of China's domestic reform, countering thus the predominant view in the West about the slow pace of reform in the country under Xi Jinping.

In a more sober assessment, members of the European business community in China maintain that the CAI makes marginal, though measurable, improvements in market access, recognizing that the biggest gains are the meaningful expansions of the provisions on a level-playing field for the thousands of European companies already in China, while setting a legal foundation at the EU-China level that is currently absent.

Inside Europe, the main proponents and drivers of the deal have been German Chancellor Angela Merkel and French President Emmanuel Macron. The latter had originally hoped to seal the deal with pomp by hosting Xi Jinping in Paris during France's Presidency of the European Council in Spring 2022. Following the Chinese sanctions and the freezing of the deal, both Germany and France have taken a step back, though their hopes about resurrection of the CAI have not disappeared. In early July 2021, in a videoconference between Merkel, Macron, and President Xi Jinping, the German Chancellor called for the EU and China to conclude their frozen investment agreement "as soon as possible".

As Reinhard Bütikofer explains in his article, the conclusion of CAI between Christmas and New Year´s Eve occurred because Chancellor Merkel agreed with Xi Jinping that the deal should be sealed before President-elect Biden came into office, and found support for that approach from President Macron. In the very final days before the agreement would be sealed, the German Chancellery was in political control on the European side. Reluctances and concerns that were voiced by a number of member states were downplayed. Poland, Italy, Spain, Sweden, Lithuania, Estonia, Belgium, the Netherlands and Luxemburg raised some critical points in the internal Council deliberations but at the end they did not stop the deal, in part because most of the demands were about clarifying certain points or securing certain interests in the final text and never a frontal opposition.

Debate about CAI within EU member states has been uneven. In a few countries, some voices have raised concerns about the content of the deal and its timing, while in others the CAI has gone largely unnoticed. Overall, EU member states' stance on CAI reflects their general policy towards China. In the last years, the majority of member states' attitude towards Beijing has hardened, due to China's growing assertiveness and diminished prospect for the country's liberalisation process. In 2017, the EU introduced a defense mechanism—the investment screening—clearly aimed at Chinese companies. Furthermore, EU member states' positions on CAI are not only dictated by their relationships with Beijing, but also by their level of strategic closeness and cooperation with the USA.

In her article, Justyna Szczudlik maintains that Poland agreed to the talks' conclusion due to the fact that the European Commission has the negotiation mandate, and, in that sense, there was no possibility to block the deal. Poland's position on CAI is twofold: open criticism during the acceleration of talks in December 2021—but a rather positive assessment after the deal's finalisation, with some differences within the government and mixed views from the opposition, worried that a deal rushed before Biden took office would weaken the transatlantic relationship.

Una Aleksandra Bērziņa-Čerenkova examines the debate inside the Baltic states of Estonia, Latvia, and Lithuania, arguing that initial skepticism and after discussions with Lithuania appearing to be the most visible opponent of CAI among the Baltic nations, all three eventually upheld the proposal. In her article, Bērziņa-Čerenkova investigates the roots of the Baltic position as a case study of inter-EU bargains, inspects what factors contributed to the Baltic position on the issue of CAI, presents the national pro- and counter-arguments to CAI along the domains of geopolitics, values, and economy, and brings up the dilemmas that remain unsolved.

In her analysis of the Italian debate on CAI, Francesca Ghiretti argues that the case of Italy presents an instance in which the issue rather than laying in the content of the agreement was identified in the process. Not only had Italy been marginalized by Germany and France in the process of the final negotiation that led to the conclusion of the deal, but also exponents from the government claimed that leading negotiators, amongst which France and Germany, ignored Italy's doubts about the CAI when these were raised. Overall, however, the Italian business community displayed a response to the agreement in line with that of the rest of the EU in its positive assessment of the outcome, indicating thus that the notion that CAI was mostly supported by German and French economic interests is misleading.

Precisely, in his article on Spain, Mario Esteban explains how Spanish elite's perceptions of the CAI are positive given its economic and normative prospects and its compatibility with Spain's policy objectives. Spanish Ministry officials and business representatives welcome the potential progress on market access, level-playing field, and sustainable development, as it would offer economic opportunities in the Chinese market and bilateral investment, without precluding increased monitoring of Chinese economic activities. The agreement is in line with their willingness to increase bilateral ties under a normative framework that defends Spanish interests and values. Spanish elites consider that it is compliant with Spain's and the European Union's strategies and characterization of China as a partner, competitor, and rival. According to Esteban, some political and private groups have expressed their opposition to the agreement, but their impact has been limited.

Françoise Nicolas examines the case of France. She also argues that French business circles tend to be a priori positive towards the CAI for the simple reason that the absence of an agreement could turn out to be costly for them, especially for companies that are heavily involved in China. As a result, they maintain a cautiously positive view while also stressing that the agreement falls short of their expectations with regards to several issues such as government procurement. As for French authorities, they share the European Commission's optimism and consider that the agreement represents a step forward and a sign of China's willingness to open-up further. While President Macron sees the glass as being half-full and praises Beijing for taking a step in the right direction, other political figures view it differently and doubt Beijing's ability to keep its words. The article of Nicolas also makes clear that the major objective of the CAI was to facilitate a rebalancing of the bilateral relationship by improving access for European companies to the Chinese market and leveling the playing field for them in China. While progress on the former is hard to deny, the situation is less rosy on the latter, and whether China will expeditiously implement its commitments remains an open question.

A look inside the deal—and its future

In his article, François Godement examines what has been won, or conceded in terms of market access by the two sides, including an assessment of changes of norms and rules, and the issue of a level-playing field. He also looks at the various means provided for implementation, dispute resolution and eventual remedies contained in the CAI.

According to the European Commission, China is deemed to have made commitments on various points of interest to the EU, including in the form of a negative list in all sectors and this is why EU officials assert that the agreement is "substantial" (a condition imposed by the EU to close a deal with China). On market access, progress is hard to deny: several sectors are now open to European investors, such as R&D in biological resources, telecommunication/cloud services, international maritime transport, or air transport-related services. By contrast, liberalisation commitments remain limited in agriculture, fisheries, mining, and energy. Also, several constraints imposed so far on European investors, such as quantitative restrictions, equity caps or joint venture requirements, are eliminated in a broader range of sectors (automotive, financial services, computer services, environmental services, or private hospitals in key Chinese cities, among others). This is progress, from a European perspective.

On leveling the playing field, the picture is less rosy: The major commitments relate to the discipline imposed on State-Owned-Enterprises (SOEs), transparency in subsidies, and the elimination of forced technology transfers, though China's track-record in implementation on all these issues raises doubts as to its ability to turn these promises into reality. The CAI makes explicit reference to the integration of environmental sustainability considerations in the bilateral investment relationship (with a reference to the implementation of the Paris Accord on climate change), as well as references to labor standards. The former addition is particularly noteworthy as this is the first time that China has agreed to such ambitious provisions with a trade partner. However, the two sides only commit to facilitating and encouraging investment in environmentally or climate-friendly goods and services generally without further binding provisions. The implementation of CAI—once adopted—will be the real testing ground of all these commitments. Yet, as mentioned, the deal still needs to be approved by the European Council and eventually ratified by the EU Parliament.

In his article written from a US perspective, Daniel Hamilton argues that the CAI is unlikely to survive in its current form, if it survives at all. According to the author, there is good reason to believe that the CAI is DOA—dead on arrival—due to EU sanctions and Chinese countersanctions related to China's persecution of its Uyghur minority; criticism of the negotiated agreement; and changing political calculations by Beijing and among EU member states.

In mid-July 2021, the members of the European Parliament underlined the conditions to be met before the legislative gives its consent to the CAI. The conditions have been listed in a draft report prepared by the foreign affairs committee of the European Parliament. Rapporteur was Hilde Vautmans, an MEP with the liberal Renew Europe group. The report—adopted by 58 votes in favour, 8 against with 4 abstentions—calls for using the CAI as a leverage instrument to improve the protection of human rights and support for civil society in China. The pre-ratification commitments listed in the report include a timetable for China's ratification and implementation of key labour laws and concrete measures towards putting an end to human rights violations against the Uyghur minority in the country. It also demands a recommitment by China to uphold its international commitments to Hong Kong. The report outlines six pillars on which the EU should build a new strategy to deal with China. Moreover, the report takes into consideration the new transatlantic climate on China made possible by the arrival of the Biden administration.

EU lawmakers are not the only ones who recently adopted initiatives to counter China. On 8 June 2021, the US Senate adopted the U.S. Innovation and Competition Act, a bipartisan legislation designed to counter China by investing roughly $250 billion in U.S. technology, science and research. The bill offers the Biden administration a host of recommendations for how to work with the European Union on trade, technology, export controls, investment screening and more. The Senate passed the legislation a week before President Joe Biden met with EU leaders in Brussels to repair transatlantic ties which had been severely damaged when former President Donald Trump was in office.

The U.S.-EU Summit Statement, issued on 15 June 2021, was largely devoted to China. A concrete outcome of the summit, the U.S.-EU Trade and Technology Council was formally launched with the aim to foster transatlantic cooperation on digital issues, technology and supply chains, as well as work on international standards development and support collaborative research efforts. The council will be composed of various working groups. For the U.S. side, Secretary of State Antony Blinken, Commerce Secretary Gina Raimondo and U.S. Trade Representative Katherine Tai will co-chair the council, while on the European side the co-chairs will be the EU Competition Commissioner Margrethe Vestager and EU Trade Commissioner Valdis Dombrovskis. It is to be seen whether this new set-up will initiate an era of cooperation between relatively equal partners, as the Europeans hope, or be mostly led, and determined, by the USA. The unilateral moves by the USA in its withdrawal from Afghanistan do not bode well in this regard.

What is certain is that, with transatlantic relations back on track after the Trump years, the eventual resurrection of the CAI in the months ahead will be the outcome of discussion between Beijing and Brussels, as well as between the EU and the USA. The conclusion of this special issue is that the deal has not been stopped by economics, but rather by politics. Therefore, only politics can resurrect the CAI.

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