

Theresa Fallon, Director, Centre for Russia, Europe, Asia Studies, Brussels – Written evidence (TRC0027)

Implications of the China-EU Investment Deal

On December 30, 2020, the EU and China concluded in principle the negotiations for a Comprehensive Agreement on Investment (CAI).

Germany held the rotating presidency of the EU in the second half of 2020. Chancellor Merkel made it a priority to conclude the deal by the end of the German presidency. She was instrumental in persuading the other EU leaders to accept a deal that was beneficial for German industry, particularly its automotive sector, which has made substantial investments in China. Chinese entities have also acquired substantial stakes in German car companies (for instance, China's Geely is the largest investor in [Daimler AG](#) with just under 10% of shares). Germany's relative power within the EU has increased with the departure of the UK after Brexit.

For the EU, this deal was an opportunity to display its "strategic autonomy" in foreign relations before the new Biden administration took office.

For China, it was a way to drive a wedge between the EU and the United States. Beijing has encouraged EU to have an "open strategic autonomy."

What's in the CAI for the EU?

All EU member states except Ireland have already concluded bilateral investment treaties (BIT) with China. These agreements differ markedly from one another, but they all cover only the post-entry protection of investment, not market access. The CAI was also designed to unify this patchwork of BITs.

Agreed text of the agreement only concerns market access, with investment protection still left to negotiate for a future agreement.

Negotiations for the CAI were not easy: they started in 2013 and took 35 rounds of talks.

Agreement binds China's liberalization of investments and prevents backsliding on conditions of market access for EU companies.

It provides for the elimination of quantitative restrictions, equity caps, or joint venture requirements in a number of sectors.

In the automotive sector, China agreed to remove joint venture requirements and to grant market access for new energy vehicles.

In the health sector, China promised to eliminate joint venture requirements for private hospitals (of particular interest to France).

CAI will also facilitate EU market access in other sectors including R&D, telecommunication/cloud services, computer services, international maritime transport, air transport, and other services.

On financial services, market-opening provisions match those of the U.S.-China "Phase One" trade deal.

CAI also seeks to improve the level playing field for EU companies. To ensure that Chinese state-owned enterprises act in accordance with commercial criteria, it establishes the obligation for an enterprise to provide certain information and provides for transparency on subsidies in the services sectors.

To prevent the forced transfer of technology, the CAI forbids requirements to transfer technology to a joint venture partner and interference in contractual freedom in technology licensing.

Confidential business information collected by administrative bodies (for instance in the process of certification of a good or a service) will be protected from unauthorized disclosure. In addition, China will provide equal access to standard setting bodies for EU investors.

Despite these improvements in market access and a level playing field, however, Chinese treatment of EU FDI in China still falls short of the openness of the EU to Chinese investment.

The agreement calls for the implementation of the Paris Agreement on climate change.

Labour Rights

The European Commission stated that through the CAI China "commits to working towards the ratification of the outstanding ILO [International Labour Organization] fundamental Conventions and takes specific commitments in relation to the two ILO fundamental Conventions on forced labor that it has not ratified yet." The CAI does not entail any deadline for the ratification of these Conventions.

Political groups inside the European Parliament, including the European Green Party, have pointed out that this commitment is insufficient. Green Party member Reinhard Bueter, chair of the European Parliament's delegation for relations with China, promised to fight against the ratification of the CAI in the European Parliament.

European trade union leaders have also opposed the agreement because of the risk of social dumping, which artificially deflates the price of labor.

A Win for China

For China, the EU market is already open to investment with very few restrictions.

CAI will improve access to some manufacturing sectors and to the energy sector, including renewables, but will fall short of facilitating investment in nuclear energy.

European Commission stated, "EU sensitivities, such as in the field of energy, agriculture, fisheries, audio-visual, public services, etc. are all preserved in CAI." In addition, the EU FDI screening mechanism and the 5G toolbox are still standing.

Since the benefits of the Comprehensive Agreement for Investment for Chinese FDI to the EU are so limited, the advantages of the deal for China must lay elsewhere. In my opinion, they include three gains:

- 1.) The deal will preserve and encourage EU investment in China, to fuel China's economy and technological development.
- 2.) It will legitimize the regime in the eyes of domestic and international public opinion (despite recent behavior in Hong Kong, Taiwan, Xinjiang and elsewhere).
- 3.) Xi Jinping calculated that CAI could pre-empt policy coordination on China between the EU and the U.S. under the new Biden administration. However, Xi was disappointed when the EU coordinated its sanctions against China over Xinjiang with U.S., UK and Canada on 22 March 2021 (see below).

The deal was sufficiently important for Xi to intervene personally. Clearly, he considered this a strategic issue and sensed that the deal needed to be struck within the window of opportunity before the end of the German presidency of the EU Council and during the lull between the Trump and the Biden administrations.

[Poland and Italy have complained](#) publicly that Germany and France pushed the deal through before the end of year over the heads of the other member states.

In an unusual move former EU Commission President Juncker, and former EU Council President Tusk publicly criticized CAI.

Impact on Trans-Atlantic Relations

Many involved in European trade negotiations recognized Europe's frustration with the U.S. "Phase One" negotiations and feel that CAI brings them closer to parity with the United States.

Beijing tried to use both CAI and the [Regional Comprehensive Economic Partnership](#) to discourage a potential balancing coalition.

Chancellor Merkel's mandate ends in September 2021 and her successor may take a harder position on China. Other EU member states are also increasingly skeptical toward China.

Working together, U.S. and EU could focus on extracting real commitments from Beijing on increased market access, subsidies to state-owned enterprises, and respect for intellectual property.

On 22 March 2021, for the first time in thirty years, the EU decided to impose sanctions on China in connection with Uighur human rights issues. The EU acted in coordination with U.S., UK, and Canada. China reacted angrily. Xu Guixiang, a government spokesperson in Xinjiang, responded to the sanctions by making explicit comments on Germany's role in the Holocaust and atrocities by French forces in Algeria.

On the same day, Beijing announced [counter-sanctions](#) on the EU, which hit Members of the European Parliament (MEP), think tanks, diplomats, and scholars. These disproportionate counter-sanctions appeared to be designed to silence anyone who was critical of the PRC, but they had the unintended effect of pushing the EU closer to the U.S., as the EU needs U.S. support to face Chinese assertiveness.

On 24 March, China's Communist Youth League instigated a boycott of companies that chose not to source their cotton supplies from Xinjiang in order to avoid forced labor in their supply chains. The first company targeted was Sweden's H&M. Boycott also hit Nike, Adidas, Hugo Boss, Burberry, and others. Logos of these companies have been digitally removed from apparel worn by people on television programs in China. Companies have been de-platformed and some have lost their leases due to patriotic sentiments of their landlords.

The EU and the U.S. are due to discuss China in a summit in June, which is likely to lead to further policy coordination.

What's Next?

The sanctioning of five MEPs across the political spectrum on 22 March appeared counter-productive to China's goal of getting CAI ratified by the European Parliament (there is no need for ratification by the national parliaments of the EU member states).

Some MEPs declared that there will be no discussion of CAI until the sanctions are lifted. The discussion scheduled for 23 March on CAI in the European Parliament was cancelled. The [President of the European Parliament](#) declared that the EP was not "a punching bag" but fell short of announcing any measures to be taken on CAI.

The ratification process is planned to take around one year. On the EU side, after legal scrubbing, translation into all EU official languages and ratification by the European Parliament, the EU Council composed of Member States must adopt the formal decision of "concluding" the agreement. A lot can happen in a year. At present, CAI is a toxic topic but already phone calls were reportedly made by EU Commission President von der Leyen to MEPs to lobby on behalf of CAI, "as it is good for German business."

According to the [EU press statement on the CAI](#), "The EU will continue to conduct its policy towards China in line with the multi-faceted approach endorsed at the European Council on 1-2 October." There are three facets to this approach: China as a partner, China as a competitor, and China as a systemic rival, depending on the policy area in question. However, can these policy areas be held neatly separate?

In practice, it seems difficult to de-link trade and investment, where China is considered as a partner, from security and values, where China is a systemic rival. A [report](#) of the European Commission and the EU High Representative for Foreign Affairs and Security Policy to the European Council, leaked to the press in April 2021, cast doubts on this and called attention to China's increasingly assertive attitude.

On 19 April, the EU issued its [Indo-Pacific strategy](#). The strategy calls for cooperation with like-minded partners, but also stresses that the EU approach is "inclusive of all partners wishing to cooperate", based not only on "shared principles and values", but also on "mutual interest". It includes as a goal, "take further steps towards the Comprehensive Agreement on Investment with China". However, current trends seem

indicate that it will be difficult for the agreement to be ratified within the planned timeframe.

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