



# THE EU-CHINA COMPREHENSIVE AGREEMENT ON INVESTMENT

AN IN-DEPTH READING



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## An in-depth reading

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### Abstract

Striking a different note from most commentators on the EU-China Comprehensive Agreement on Investment (CAI), this paper finds that the Agreement does deliver on the EU's negotiation mandate. It notes that much criticism of the CAI surfaced before the provisional agreement was actually published.

This text-based analysis considers how the Agreement lifts the barriers to market access that European businesses have been confronted with, advances the EU's WTO reform agenda on a number of procedural requirements in a WTO-plus manner, and locks in the European Union's values under international commitments on sustainable development.

It does acknowledge, however, that reducing coal dependency will be a challenging undertaking for China, in view of the country's economic growth plans. And ratifying the ILO Forced Labour Conventions will be a long process due to the legislative changes involved. Even so, both commitments on 'non-trade issues' are legally-binding, which is a victory for the EU since such an approach to trade negotiations was inadmissible to China in the past.

As the Agreement does not solve all the trade issues the EU is facing vis-à-vis China, the EU should work with its allies and continue to engage with China to further address a number of WTO 'structural' disciplines. Also, since China's focus is now on basic research and its domestic market, the EU needs to accelerate its own technological advancement.

At the moment, the prospects of the European Parliament endorsing the Agreement look remote, especially following the sanctions China imposed on certain MEPs in March 2021. Sanctioning parliamentarians violates their parliamentary privilege and legal immunity to speak without fear or favour. China should therefore consider lifting these sanctions as soon as possible, as a first step towards relaunching the EU legislative process to ratify the CAI.

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## Introduction

Is it pointless to analyse the EU-China Comprehensive Agreement on Investment (CAI) when the prospects of its signature seem remote right now? The answer is no. Under the geopolitically charged reality we are living in, we should not lose sight of the CAI's merit.

The CAI has met with much criticism, mostly before the provisional agreement text was published on 22 January 2021. This centres on the allegedly [‘recycled’ market access commitments](#), China's [ongoing human rights violations](#), or the implications of the transatlantic partnership. Though it is understood that the text may be modified after legal scrubbing, etc., the key elements of the commitments have been made available and this paper will conduct a text-based analysis, starting from the CAI negotiation mandate concluded in 2013.

From the outset, as a *sui generis* agreement, the CAI has a much narrower coverage than the ‘conventional’ bilateral investment agreement we usually recognise.<sup>1</sup> Within this narrow scope, however, the CAI has breadth and depth in terms of market access. For example, thanks to the privileged opening up in China's manufacturing sector, including telecoms equipment (subject to equity caps), the CAI has elevated the EU onto an equal footing with the US after the latter obtained bilateral commitments from China in the financial sector under the 2020 US-China Economic and Trade Agreement (hereafter the Phase One Agreement). The CAI has also specified several WTO-plus commitments within the regulatory framework, such as extending the remit of the WTO Agreement on Trade-Related Investment Measures (TRIMs) from trade in goods to services and related investment activities with regard to the role of SOEs. From the point of view of the EU's WTO reform position at the time of CAI negotiations, the Agreement has made material the EU's agenda on procedural subjective matters, which had made little progress since 2018 when the EU set out its vision.

However, implementing the investment-related sustainable development commitments will be a challenging undertaking overall. The long judicial process of reforming China's penal system will hamper an expeditious ratification,<sup>2</sup> because in the first place China's overriding principle of “correction through labour and education” will have to be thoroughly rethought. Presently, based on China's Criminal Law and Prison Law, prisoners are subject to “punishment with reform” and “education with labour”, which is a combined correction system to transform them into law-abiding citizens. As a result, for China, ratifying the ILO Forced Labour Conventions is probably more of a judicial than a labour issue.

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<sup>1</sup> The scope of a conventional investment agreement usually takes a ‘negative list’ approach; therefore, all investment-related subject matter is covered unless explicitly carved out. For example, aside from ‘claims to money’, everything and anything concerning investment is within the scope of the Canada-China Agreement for the Promotion and Reciprocal Protection of Investments. It covers enterprise, shares, bonds, loans, intellectual property rights, and “tangible or intangible, movable or immovable, property and related property rights acquired or used for businesses purposes”, etc. The scope of the France-China Investment Agreement (2007) includes investments of all sorts, from movable and immovable property to concessions granted by law or contracts.

<sup>2</sup> Article 46 of China's Criminal Law states that criminals sentenced to fixed-term or life imprisonment, and who are able to work “shall do so to accept education and reform through labour”. Article 3 of China's Prison Law corresponds to this provision and stipulates that prisons shall “implement the principle of combining punishment with reform and combining education with labour” to transform prisoners into law-abiding citizens.

President Xi's pledges on environmental protection delivered in September 2020 – that China would aim to hit the CO<sub>2</sub> emissions peak before 2030 and achieve carbon neutrality by 2060 – will no doubt have injected much hope that China will meet its obligations under the CAI. Nonetheless, the obstacles that lie ahead, before China can reduce its dependence on coal for clean energy, should not be underestimated, given the fact that the country is the world's largest coal producer, accounting for nearly half of global production. It is noted that, in the 14th Five-Year Plan delivered at the 'two sessions' (Beijing, 4-11 March 2021),<sup>3</sup> Premier Li Keqiang refrained from setting a cap on carbon intensity for the next five years (2021-25) and from introducing a ban on building new coal-fired plants, which would have been a major step for promoting carbon reduction. Economic recovery post-Covid was speculated as a reason for this policy omission.

This paper will conduct an analysis, based on the [available Agreement text](#) published by the European Commission's DG Trade (as of 22 January 2020), and highlight the main points of the Agreement. Given the changing dynamics of EU-China trade relations that have taken place over the past few years, section 1 will examine the validity of the CAI negotiating mandate adopted in 2013. Section 2 focuses on the market liberalisation measures that the EU has obtained. It analyses the opening up of China's new energy vehicle (NEV) sector and EU businesses' potential participation in China's industrial strategies, such as the Made in China 2025 strategy and beyond. Section 3 explores the WTO-plus commitments that the EU has achieved in the regulatory areas, with a sequence of SOEs' conduct, industrial subsidy notification and forced technology transfer.

Section 4 concerns investment-related sustainable development and assesses the enforceability of the commitments on implementing the Paris Agreement on Climate Change, and on ratifying the ILO Forced Labour Conventions. For the latter, the assessment will draw inferences from the EU-Korea labour dispute case; and a possible scenario of conditioning the CAI's signature with ratification will also be examined. Before concluding, section 5 will argue that the EU ought to continue to collaborate with its allies to succeed in its WTO reform agenda. This is because the CAI has solved only a few WTO procedural regulatory issues. Some 'structural' matters are yet to be tackled, such as SOEs' role in commercial activities and the quality of notification submitted within the context of the Agreement of Subsidies and Countervailing Measures (ASCM). With China's recent emphasis on its domestic market and its ambition of finding 'alternatives' to core ICT technologies in particular, which are presently not in its hands, it would seem a logical choice for the EU to prioritise cooperation with the US on, for example, a Trade and Technology Council to strengthen transatlantic technological and industrial leadership.

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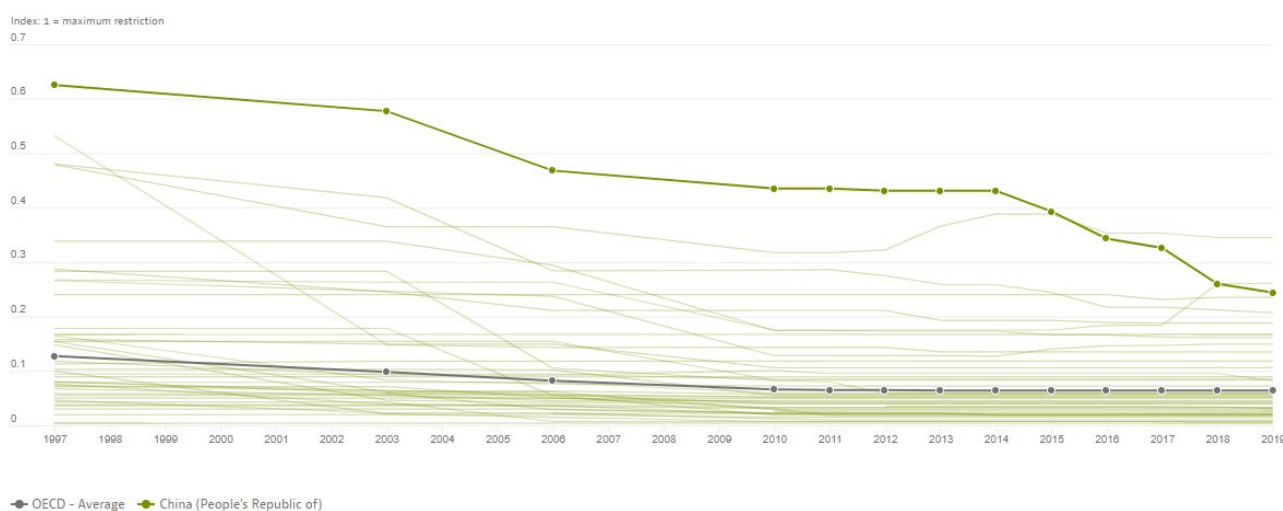
<sup>3</sup> The 'two sessions' refer to the annual meeting of the Chinese People's Political Consultative Conference (CPPCC) and the National People's Congress (NPC). The meeting is a window on the central government's priorities and plans for the coming year (<https://www.scmp.com/news/china/politics/article/3123587/two-sessions-2021-five-things-you-need-know-about-chinas>).

## 1. The validity of the CAI negotiating mandate

The EU's [CAI negotiation objectives](#) were adopted in 2013. These included achieving "...an enhanced protection of EU investments in China and *vice versa*, improved legal certainty regarding the treatment of EU investors in China, reduction of barriers to investing in China...". Seven years later, some may query whether the mandate still fits our time, since the dynamics of bilateral power play, trade, investment and geopolitical are much changed. However, it is the degree, rather than the [principal subjects](#) of bilateral trade and investment relations that has changed, including the lack of a level playing field in market access and the regulatory framework, for example, SOEs' role and industrial subsidies.

According to [OECD](#) data, China's Foreign Direct Investment Regulatory Restrictiveness Index (FDI RRI)<sup>4</sup> was reduced from 0.43 in 2013 to 0.24 in 2019 but remained much higher than the OECD average index of 0.06 (Figure 1) in the same year. Moreover, among the 45 countries surveyed in 2019, China's FDI restrictiveness ranked one of the highest, at 43rd (Figure 2). This illustrates the fact that the country's FDI regulations have become much more open today than they were in 2013. But they remain highly restrictive. This is also in comparison with the openness of the EU markets, where Austria<sup>5</sup> had the highest FDI RRI in 2019, although that was just 0.11, less than half of the restrictiveness that China had in the same year. This proves that the EU's CAI negotiation mandate to lift the barriers to market access stays relevant to date.

Figure 1. Total FDI Index China vs. OECD average (1997-2019)

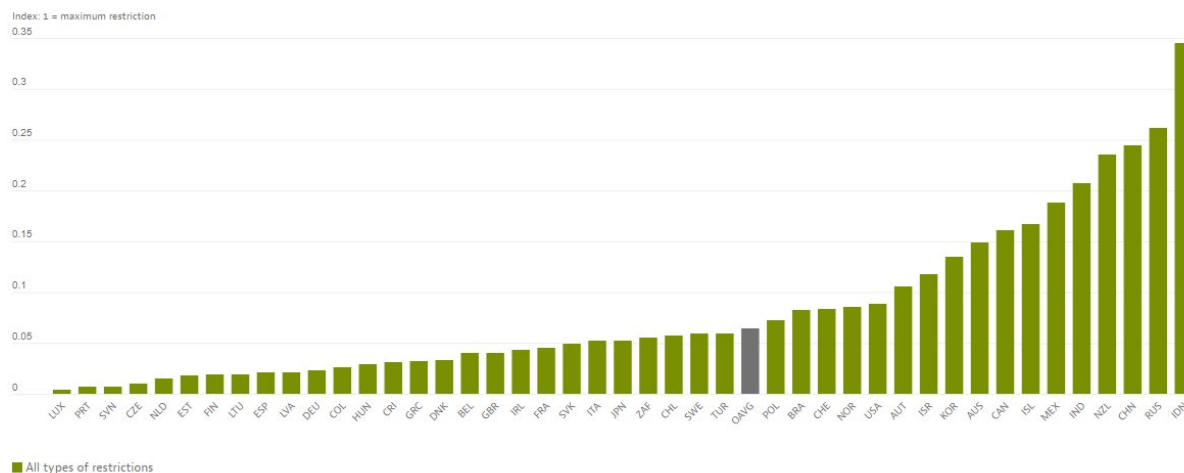


Source: OECD Going Digital Toolkit, based on the OECD FDI RRI database (<http://www.oecd.org/investment/fdiindex.htm>).

<sup>4</sup> The OECD FDI RRI measures four types of statutory restrictions on FDI: i) equity restrictions, ii) screening and prior approval, iii) key foreign personnel, and iv) other restrictions. The FDI RRI is a composite index that takes values between 0 and 1, with 1 being the most restrictive (<http://goingdigital.oecd.org/en/indicator/74>).

<sup>5</sup> EU member states Bulgaria, Croatia, Cyprus, Malta, and Romania were not among the 45 countries surveyed by the OECD.

Figure 2. Total FDI Index China vs. 45 countries surveyed in 2019



Source: OECD Going Digital Toolkit, based on the OECD FDI RRI database (<http://www.oecd.org/investment/fdiindex.htm>).

It is suggested that the CAI's conclusion may be the result of geopolitical considerations. The motivations could be from both sides. China might want to illustrate its shared interests with the EU<sup>6</sup> ahead of a strengthened transatlantic partnership between the EU and the Biden administration; and the EU might have wanted to seize the deal which satisfied its negotiating wishes in totality in market access, fair competition and sustainable development.<sup>7</sup> The EU might have been inclined to demonstrate its open strategic autonomy policy, too. The CAI's conclusion was nonetheless facilitated by China's Foreign Investment Law (FIL) (which entered into force on 1 January 2020), as well as the US-China Phase One Agreement (signed on 15 January 2020). But that is not a mere 'recycling' of commitments. **The provisions under the CAI go deeper, in terms of the degrees of commitments, and into more detail, and this makes China's often policy-like opening-up measures and the relevant WTO provisions, such as industrial subsidy notification, easier to implement.** Moreover, for compliance purposes the CAI includes the provisions of 'public scrutiny' with regard to, for instance, industry subsidies' notification. This arrangement means that China will be under a greater burden to discharge its responsibility, making the prospects for compliance more likely. More detailed provisions also bring legal certainties as far as implementation is concerned.

In the same breath, the CAI was concluded without the section on investment protection and dispute settlement, which may be seen as a departure from its negotiation mandate. The section is expected to come into being within two years of the CAI's signature.

Potentially, investment protection should reflect a modernised investment protection standard that aims for investor-to-state dispute settlement (ISDS) with an appeal mechanism, as well as the work undertaken in the context of the United Nations Commission on International Trade

<sup>6</sup> State Councillor and Foreign Minister Wang Yi Meets the Press, 8 March 2021, Chinese Ministry of Foreign Affairs ([https://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1859138.shtml](https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1859138.shtml)).

<sup>7</sup> T. Mitchell (2020), "European lobby group in China urges EU to sign Beijing deal", *Financial Times*, 24 December (<https://www.ft.com/content/e907b620-8ac2-4a16-9061-56520968a5d2>).

(UNCITRAL) on a Multilateral Investment Court. This will protect host states' 'right to regulate' and enable investors to seek compensation through an alternative route to an investment court, in cases of mistreatment and/or expropriation through a host state, while circumventing potentially biased host state courts.<sup>8</sup>

In this regard, the EU's objective remains to modernise and replace the existing member states' bilateral investment treaties (BITs) with China.<sup>9</sup> At the moment, the ISDS mechanism in the individual BITs that is enforced between the 26 EU member states (except Ireland)<sup>10</sup> and China should cover investment disputes arising from all provisions covered by a BIT. This is with the exception of several member states, including Hungary and Croatia, whose ISDS application has a narrower scope of coverage. One reason for this narrower coverage is that those BITs were concluded in the 1980s and 90s and have not been updated since. The state-to-state dispute settlement mechanism (DSM), and an institutional framework to monitor at pre-litigation phase, established at political level, are already in place, as can be seen from the Agreement text.

## 2. Market liberalisation

The EU is said to be content with having achieved "far-reaching" exclusive market access commitments in manufacturing, including telecom equipment (equity caps apply), that China has not granted to any other trading partners, including the US.<sup>11</sup> **The CAI provides the EU with exclusive access to the manufacturing sector of new energy vehicles (NEV).** This is a high commitment for market liberalisation<sup>12</sup> because China has been the world's largest NEV market since 2009, accounting for 55% of global NEV sales with an estimated [1.3 million sales of NEV](#)

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<sup>8</sup> European Commission (2013), Commission Staff Working Document Impact Assessment Report on the EU-CHINA Investment Relations, SWD(2013) 185 final, Brussels, 23.5.2013, pp. 49, 50, 65, and also Ecorys (2017), Sustainability Impact Assessment in support of an Investment Agreement between the European Union and the People's Republic of China, Final Report, p. 115.

<sup>9</sup> See <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2233>.

<sup>10</sup> Among the 25 BITs, ISDS has a limited scope of protection in the BITs concluded between China and the Czech Republic, Croatia, Hungary, Bulgaria, Poland, Italy, and Denmark respectively. Belgium and Luxembourg jointly concluded the BIT with China as Belgium-Luxembourg Economic Union (<https://investmentpolicy.unctad.org/international-investment-agreements/countries/42/china>). For a detailed comparison of the 25 BITs on substantive and procedural protection standards, see Annex 1.

<sup>11</sup> According to Sabine Weyand, Director General of EC DG Trade, the EU-China bilateral commitment on market access in manufacturing does not breach the WTO most-favoured nation (MFN) principle since there are no MFN commitments on investment in manufacturing, see [tradetalkspodcast.com](http://tradetalkspodcast.com) 148, The EU's new trade policy, with Sabine Weyand of DG Trade.

<sup>12</sup> This commitment comes with qualifications, nonetheless. By virtue of Paragraph 2 in 12W of China's Schedule of specific commitments and limitations on market access, a new independent investment project for pure NEV (which does not include business expansion into NEV of an existing automobile manufacturer in China) may only be established in a province if: 1) the utilisation rate of automobile capacity in such a province in the previous two years was higher than the average level of the same product category; and 2) the existing independent pure NEV investment projects of identical product categories by an enterprise in such a province have all been completed and the annual output has reached its constructed scale. But, based on Annex X of the Schedule, the qualifications won't apply if a new independent pure NEV investment project is more than \$1 billion (€0.83 billion).



[units in 2020](#). But at the same time, the European auto manufacturers' have complaints about the lack of national treatment overall.

In comparison, the Phase One Agreement lays out certain bilateral financial services measures that are arguably arranged bilaterally with the US on the basis of *quid pro quo*, such as insurance services.<sup>13</sup> This may be against the WTO principle of MFN treatment and be detrimental to EU financial service providers. It is likely that China has made the exclusive concession of opening up the manufacturing sector to remedy any possible detriment to the EU. China has set a target for NEV sales to reach a fifth of auto sales by 2025, so this market is expected to further [expand](#).

## 2.1 New Energy Vehicles

NEV is one of the 10 key sectors<sup>14</sup> under China's ambitious Made in China 2025 strategy. Favourable policies, such as the [New Energy Vehicle Industry Development Plan \(2021-2035\)](#), and public funds are helping China achieve its strategy of becoming the leading NEV manufacturer in the world by 2049. NEV is also a component of 'green infrastructure' under the Covid-recovery stimulus package. This will further facilitate domestic manufacturers to develop cutting-edge NEV technologies to 'demonstrate mastery' over development and manufacturing, and to build domestic brands that could succeed in global markets. Guaranteed by the CAI, European auto manufacturers participating in the NEV sector are also likely to benefit from these favourable conditions. Further opportunities in other manufacturing sectors, such as auto and aviation equipment, are likely to arise under China's Made in China 2025 strategy, helping EU manufacturers stay at the forefront of global competitiveness, as well as on market share.

**Opening up the NEV sector to EU businesses is also significant in relation to 'forced technology transfer'**, which is under Section III of the regulatory framework of the CAI. This is because the complaints lodged at the WTO in 2018 by the EU against this trade malpractice by China were entirely in the NEV sector. The CAI has redressed all of these, including licensing on market terms (analysis below).

## 2.2 Other measures for market liberalisation

Overall, the EU has achieved its negotiating objectives of liberalising the market (Section II), for example removing limitations or requirements on a few investment aspects, such as the number of enterprises and a specific type of entity or joint venture (JV) that a covered enterprise (investment) can operate, and abolishing performance requirement, including local

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<sup>13</sup> For example, on insurance services under the Phase One Agreement, Article 4.6.3 assures that it will consider expeditiously the requests submitted by Chinese institutions, including by China Reinsurance Group, on foreign equity cap in the life, pension, and health insurance sectors, and on business scope. A similar *quid pro quo* arrangement is also made in banking and e-payment, etc.

<sup>14</sup> The 10 key sectors are: robotics, new generation information technology, aviation and aerospace equipment, maritime equipment and hi-tech ships, railway transport, new energy and energy-saving vehicles, energy equipment, agricultural equipment, and new materials, <https://multimedia.scmp.com/news/china/article/made-in-China-2025/index.html>.

content requirement. The EU has also secured a series of regulatory assurances from China on the principles of non-discriminatory treatment and commercial considerations, impartiality, non-discrimination and independence of regulatory authorities, national treatment, and MFN treatment.<sup>15</sup>

The commitment to removing limitations or requirements and national treatment on, for example, the service sector of JVs (including the familiar complaint against the equity caps of a JV) is, in different ways, significant for both China and the EU. For China, this is a WTO-plus commitment to opening up the service sectors. The equity caps on the communication, data services, life insurance, securities sectors, etc., (be it 49 or 50%) that China imposed on JVs are notably in accordance with its WTO accession commitment on GATS schedule.<sup>16</sup> Lifting these requirements means that **China has adopted a WTO-plus approach in opening up its market.** This commitment has answered the longstanding pleas of EU businesses (and businesses from other WTO members) to give their operations in China a freer hand. A (Chinese) partner's unfavourable interference in their business decisions should now be a lot less likely.

At the same time, abolishing performance requirements, including local content requirement, is an additional instrument for eliminating the trade malpractice of forced technology transfer. Forced technology transfer is a trade malpractice, made effective through laws, regulations or other measures, that China committed to rectify at its WTO accession in 2001 (together with local content and export performance offset practices), but has not yet done so.<sup>17</sup> For example, the EU has been complaining that, under Item I(1) of the first paragraph of Annex I of the New Energy Vehicle Regulation,<sup>18</sup> foreign enterprises applying for access to the NEV market in China are generally required to set up a design and development institution exclusively for product design and manufacturing process development in China, which is tantamount to the performance requirement that should have been abolished.<sup>19</sup> Within the same context, there

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<sup>15</sup> The said liberalisation does not apply to audio-visual services, certain air transport services and auxiliary air services, activities supplied in the exercise of governmental authority and certain government procurement activities. Also, national treatment, MFN, and liberalisation in relation to “Senior Management, Boards of Directors and Entry of Personnel” do not apply to subsidies or grants provided by the Parties. For details, see Art.1 of Section II, Liberalisation of Investment.

<sup>16</sup> Working Party on the Accession of China, Communication from China, WT/ACC/SPEC/CHN/3, 21 December 2000.

<sup>17</sup> Accession of the People's Republic of China, WTO, WT/L/432, 23 November 2001, p. 16.

<sup>18</sup> The NEV Regulation refers to the New Energy Vehicle Production Enterprises and Product Admissions Regulations.

<sup>19</sup> This requirement is inconsistent with Paragraph 7.3 of China's WTO Accession Protocol and Paragraph 203 of the Working Party Report on China's Accession. Paragraph 7.3 of China's WTO Accession Protocol prescribes that distribution of import licences, or any other means of approval for importation, the right of importation or investment by national and sub-national authorities, is not conditioned on whether competing domestic suppliers of such products exist or on performance requirements of any kind, such as local content, offsets, the transfer of technology, export performance or the conduct of research and development in China. Paragraph 203 of the Working Party Report on China's Accession prescribes that: 1) the allocation, permission or rights for importation and investment would not be subject to secondary conditions covering, for example, the conduct of research, the provision of offsets or other forms of industrial compensation including specified types or volumes of business opportunities, the use of local inputs or the transfer of technology; 2) permission to invest, import licences, quotas and tariff rate quotas would be granted without regard to the existence of competing Chinese domestic suppliers; and 3) the freedom of contract of enterprises would be respected by China.

are also allegations that Chinese local authorities impose performance requirements on foreign auto manufacturers as a condition of access to and operating in the NEV market in China, for example being able to understand and master the technologies of NEV development and manufacturing.<sup>20</sup> As can be seen from its [request for consultation](#) under the WTO DSM, the EU is complaining that all these provisions are intended to leverage administrative procedure in order to induce technology transfer.<sup>21</sup> Because of China's market liberalisation commitments under the CAI, including those on "impartiality, non-discrimination and independence of regulatory authority" (also part of the EU's complaint against forced technology transfer submitted at the WTO Dispute Settlement Body), EU businesses' grievances are addressed in full, whether the requirement is for compliance purposes or to leverage market power to induce technology transfer.

### 3. A level playing field, with WTO-plus commitments and specific enforcement mechanism

#### 3.1 State-owned enterprises and industrial subsidy notification

**China extended the respective scope of its WTO commitments on SOEs' conduct and industrial subsidy notification, with additional enforcement tools.**

China reaffirmed that the operation model of its SOEs should be based on i) non-discriminatory treatment prescribed by Article XVII in GATT 1994, and ii) commercial considerations in relation to their activities, as it had done at the WTO accession,<sup>22</sup> in accordance with the TRIMs. But the CAI commitment has raised the stakes in two respects. First, it extends the obligation under the TRIMs from the goods to the service sector. Second, the commitment will be subject to the CAI DSM in case of breaches. This WTO-plus commitment tightens the grip on the SOEs' operation models, because the TRIMs appear soft on enforcement. In relation to transparency, as prescribed by Article 6 of the TRIMs, each WTO member is required to accord 'sympathetic consideration' to requests raised by another member for information-sharing and to afford adequate opportunity for consultation, for matters arising from the Agreement.

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<sup>20</sup> For example, the EU alleged that, under Item I(2), first paragraph, of Annex 1 of the NEV Regulation, enterprises applying for access to the NEV market in China are required to understand and master technologies pertinent to the development and manufacturing of NEVs. But such a requirement may be legitimate as a qualification requirement, or as a compliance requirement, before establishing an NEV investment.

<sup>21</sup> In these instances, the EU complained that the NEV Regulations have equally breached Paragraph 7.3 of China's Accession Protocol and Paragraph 203 of the Working Party Report. Other similar provisions, which may be interpreted as threshold tests rather than preconditions for investment are, for example, Item I(2), point (5). Under the same annex this prescribes that enterprises applying for access to the plug-in hybrid electric vehicle (PHEV) market are required to understand and master technologies of the control systems for engine and electromechanical coupling devices.

<sup>22</sup> For example, at the time of accession, China committed that its SOEs, including banks, should be run on a commercial basis and be responsible for their own profits and losses. See WTO (2001), Report of the Working Party on the Accession of China, WT/ACC/CHN/49, 1 October, pp. 8, 9, 34.

The above assessment on SOEs' operation may be extended to explain China's commitment on industrial subsidy notification<sup>23</sup> under the CAI, too. The two regulatory issues are related to each other because, over the past two decades, China has not been in full compliance with its commitment to "timely, specific and full subsidy notifications" pledged under the WTO ASCM, mainly for two reasons. One is that some SOEs, while being enterprises, also function to implement government policies. This has rendered the ASCM less effective, since it would become more difficult to pin down [actionable subsidies](#) for remedy purposes. Another reason is that, as [a WTO developing member](#),<sup>24</sup> China sometimes quotes capacity constraints as a reason for not discharging its responsibilities in full, including its responsibilities for notification and transparency.

Developing country or not, the scope of the industrial subsidy transparency requirements under the CAI covers the goods and [a few services sectors](#), including business, communication, environmental, financial, and health-related services. Moreover, **the transparency commitment will be subject to public scrutiny**, too, since the applicable subsidy information, such as legal basis, form, and amount, is required to publish on a "publicly accessible website", in accordance with Article 8.5, Sub-section 2 Transparency, Section III Regulatory Framework of the CAI. This commitment will be a greater burden of responsibility for China to discharge before the general public, which should add pressure, and therefore motivation, for best compliance. Additionally, industrial subsidies from each side will be subject to the other party's scrutiny at the governmental level, first for consultation, and then finding "a solution" in case of "a significant negative effect" (on an industrial subsidy). It is to be noted that both obligations, at public and governmental levels, will be in addition to the transparency obligations under the WTO ASCM. Such arrangement is understandable since the efforts in making the "notification and transparency" obligation more enforceable under the WTO ASCM are not [going forward](#) at multilateral level, nor at plurilateral level in the context of the Trilateral Trade Ministers' Cooperation among the EU, Japan and the US. One can imagine that the CAI obligations would be the best result that the EU could achieve in order to hold China accountable to its obligations, in addition to the EU's safeguards against distortions of [foreign subsidies](#) in the internal market.

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<sup>23</sup> For subsidies' notification obligations within the remit of the WTO ASCM, overall, China committed to notify any subsidy programme at all levels of government, including subsidies provided at provincial level and at lower administrative level, and in law or in fact. China also pledged that the information provided in notifications should be as specific as possible, and to progressively work towards full notification of subsidies as required by Article 25 of the ASCM and Annexes 5A and 5B of its Accession Protocol. See also Hu, W. (2019), "Industrial Subsidies, State-owned Enterprises and Market Distortions: Problems, Proposals and a Path Forward", Policy Brief, Institute for International Trade, the University of Adelaide, 5 December.

<sup>24</sup> Nonetheless, to reaffirm China's WTO developing member status, in December 2020, Zhang Xiangcheng, China's ambassador to the WTO, quoted a China-US Joint Communiqué issued on March 13, 1995, between the then Chinese Minister of Foreign Trade Madame Wu Yi and US Trade Representative Mickey Kantor. In paragraph 7, the Communiqué reads: "The United States and China will pursue China's WTO accession talks on a flexible, pragmatic basis and agree to address realistically the issue of China's developing country status on the basis of the Uruguay Round Agreement".

### 3.2 Forced technology transfer

As a longstanding trade malpractice, forced technology transfer encompasses two major issues. One is the ‘market for technology’ barter treatment when local governments incentivise technology transfer by offering foreign investors preference and opportunities in return. China pledged to eliminate this practice at the time of its WTO accession, but has not succeeded. Another issue is intellectual property (IP) rights holders’ freedom to contract, because it is alleged that they are often imposed with mandatory non-market-based contractual terms when transferring technology to Chinese local enterprises. This may result in foreign IP holders’ exclusive rights to exploit their IP rights being infringed. Besides, there is the issue of breach of confidence among civil servants when performing their administrative duties, for example by disclosing trade secrets when handling licensing contracts.

Under the CAI, China has committed to abolishing the malpractices on the above two fronts. Performance requirements, as mentioned above, are also prohibited, as is incentivising the transfer and licensing of technology, production processes and “other proprietary knowledge”. The CAI reiterates that transferring and licensing technology should be on a voluntary basis and on market terms. It is noted, however, that incentivising in the context of compliance requirement is admissible. Article 3.4 of Section II under the CAI (Liberalisation of Investment) thus provides a list of permissible activities, including providing a service, training or employing workers, or carrying out research and development in the territory of a party. The EU’s achievements are facilitated by the relevant provisions under China’s FIL and the US-China Phase One Agreement.<sup>25</sup> The national treatment on market access guaranteed by the CAI brings further assurance, with more details for certainties as far as implementation is concerned.

### 3.3 Standardisation

Standard-setting forms an independent article as a regulatory issue under the CAI. EU businesses’ complaints in this area focus on equal access and participation in standardisation work, transparency and notification (including notifications in the English language), market

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<sup>25</sup> Under the FIL, the tactic of ‘market for technology’ is prohibited, and the participation of foreign-invested enterprises (FIEs) in China’s national industrial and development policies and programmes is guaranteed (Art.9), and in public procurement activities in relation to goods and services (Art.16). IP holders’ freedom to contract and the confidentiality of business secrets are guaranteed for protection by Arts.22 and 23 of the FIL. The former affirms that the terms of technology transfer contracts should be market-based and negotiated on the principles of fairness and equity, parties’ freedom to contract must observe. Besides, no government agencies and civil servants shall exploit administrative procedures to force technology transfer. Art. 23 prohibits civil servants from disclosing or unlawfully providing to others trade secrets they learn at work. Moreover, neither discretion nor arbitration may be exercised by civil servants with regard to conditions of market access and exit. Governments and relevant agencies at all levels may not interfere in foreign-funded enterprises’ lawful economic activities. Article 2.1.3, Chapter 2 Technology Transfer of the Phase One Agreement has gone a step further in addition to the prohibitions prescribed by the FIL as mentioned above: China pledged to not support or direct the outbound FDI aimed at acquiring foreign technology by its industrial plans that create distortion.

access for foreign-invested testing, inspection and certification agencies, etc.<sup>26</sup> On goods standards, and with limited qualifications, Article 7 of Section III (Regulatory Framework) has guaranteed that covered enterprises of each party can participate in the development of standards in the central government bodies. In relation to local government and non-governmental standardisation bodies, each side shall recommend that covered enterprises from the other party be allowed to participate in standardisation and related conformity assessment procedures based on equal treatment. It is noted that the transparency requirement is equally to be implemented at public level, so that the issue of enforcement will be brought under greater public scrutiny, which is the same approach undertaken by the industrial subsidy notification requirement.

China's FIL has guaranteed foreign-invested enterprises (FIEs) equal access to standard-setting bodies, as well as their equal rights to participate in standard-setting, while transparency and social supervision on standard-setting are at the same time guaranteed by Art.15 of the FIL. But the provision reads more like a policy or a principle, so effective implementation is not certain. China's pledge under the CAI in the same regulatory areas is more detailed for certainty as far as enforcement is concerned, for example on the different right for participation in standard-setting in the central, the local and the non-governmental bodies, the domain where the relevant information, in accordance with the WTO TBT Agreement, should be disclosed for transparency.

**The level playing field on standard-setting achieved by the CAI not only addressed EU businesses' grievances; it could also provide a concrete step for them to take part in the Made in China 2025 strategy, where future standard-setting could be a contested area between Chinese and Western manufacturers.**<sup>27</sup> Focusing on the 10 key manufacturing sectors, the innovation-driven strategy is China's aspiration to become self-reliant on domestic equipment with new industrial standards, to substitute and replace the present technologies in these 10 sectors, while new global industrial standards could emerge as a result. Although China has already claimed a nascent edge on the world stage for some of the 10 sectors, such as the railway equipment industry, most are currently led by Western companies. But the Chinese manufacturers are catching up fast. For example, the agricultural equipment sector is currently led by [American and European manufacturers](#); however, five of the world's top 10 manufacturers are now from China. Based on the roadmap of the Made in China 2025 strategy, China has set its goals to become the world's biggest manufacturer in the [agricultural equipment sector](#) by 2025, and for automation technologies and equipment to reach advanced international standards. Recall that Phase 2 of Made in China 2025 is for China to rise to the intermediate level among the world's manufacturing powers by 2035; and in 2049 to become the leading manufacturer in the world in Phase 3. There is a legitimate question as to how different the potential Chinese standards would be, and whether foreign industries would

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<sup>26</sup> Standards and Conformity Assessment Working Group, European Business in China Position Paper 2020/2021, European Union Chamber of Commerce in China, pp. 128-39.

<sup>27</sup> See, for example, T. Ruhl (2020), "Technical standardisation, China and the future international order: a European perspective", Heinrich-Böll-Stiftung European Union, Brussels, February.

eventually have a chance to influence technological standardisation and retain their market access in China.<sup>28</sup>

#### 4. Sustainable development

In accordance with Article 21 of the Lisbon Treaty, the EU pursues its value-based trade policy and uses trade agreements and trade preference programmes as levers to promote its values around the world, such as sustainable development, human rights, multilateral cooperation, and good global governance. Following the publication of the Commission's trade strategy Trade for All in 2015, the EU values, or non-trade policy objectives, including 'sustainable development', have been recognised as 'trade relevant' for the EU. This means, in practice, that provisions concerning environment protection and labour protection must be an integral part of a trade agreement with third countries, and that EU standards, usually higher than those of the third countries concerned, must be promoted as a norm under the auspices of the relevant international commitments.<sup>29</sup> It is to be noted that committing itself to the EU's values in a trade agreement was previously inadmissible for China, as seen by the suspension of the EU-China partnership and cooperation agreement negotiations.<sup>30</sup> But this time it's different. China's commitment on sustainable development was said to be "[the last piece \(that\) fell into place](#)" before the CAI was concluded.

Aside from the ambitions, however, a few hurdles must be lifted before the specific commitments can come into being. For the EU, or more precisely the European Parliament, the hurdles seem rather political and for China, technical.

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<sup>28</sup> Nevertheless, Chinese manufacturers should understand that "a leader must have followers". Therefore, engaging present relevant industrial leaders would appear more sensible to settle a converging relationship between 'old' and 'new' systems, if any, in respect of industrial standardisation and conformity. It is to be noted, nonetheless, that the opposite is also happening. Chinese companies in Europe have been complaining that it was difficult for them to influence local standard-setting, although some Chinese manufacturing is already at the world's forefront, such as renewable energy. See Berger, Roland (2020), "Acting for Common Future", CCCEU 2020 Recommendation Report, p. 37.

<sup>29</sup> See W. Hu (2021), "A survey of the EU-China dialogue architecture: premise, structure, functions, and case studies", CEPS, Brussels, forthcoming. The research for this paper has been funded by RESPECT, an H2020 European Commission project under grant no. 770680.

<sup>30</sup> In 2007, negotiations on the EU-China Partnership and Cooperation Agreement (PCA) were launched, based on two pillars: political cooperation (e.g. democracy, human rights and governance), and trade and investment liberalisation. However, during the negotiations, divergent expectations between the two sides made progress difficult; for China, conducting 'political cooperation' by subscribing to the EU's values was a taboo. In the end, the PCA negotiations were discontinued, although a quarter of 22 chapters had been finalised on the trade and investment side and another quarter close to finalisation. For details, see J. Pelkmans, W. Hu et al (2018), *Tomorrow's Silk Road, Assessing an EU-China Free Trade Agreement*, CEPS and RLI, London, pp. 35-6, 243.

#### 4.1 The EU – the political hurdles

Human rights *per se* is arguably not within the mandate of the CAI negotiations.<sup>31</sup> However, some may argue that, by virtue of Article 21 of the Lisbon Treaty, EU's external trade policy is value-driven, and therefore human rights ought to be linked to the EU's trade agreement negotiations. In its 2021 resolution on the crackdown on democratic opposition in the Hong Kong Legislative Council, the European Parliament made it clear that it will take account of the human rights situation in China when endorsing the CAI. The prospects for the European Parliament to adopt the CAI consequently look remote, following China's retaliation against the EU sanctions (including blacklisting several EU parliamentarians) that had been imposed because of the country's alleged rights abuses in Xinjiang.

China's actions against parliamentarians, in Hong Kong or Brussels, are especially seen as an aggression because they violate parliamentarians' privilege, enjoyed in democracies, to express their opinions without fear or favour. Given the situation, **to enable the European Parliament to hold a debate on the CAI and for the EU legislative process to move forward, China should lift its sanctions against European parliamentarians expeditiously.**

#### 4.2 China – the technical hurdles

Two characteristics of the trade-related sustainable development commitments are worth mentioning before analysing the technical hurdles facing China. The first one is the 'right to regulate' in respect of environmental and labour protection, provided that domestic laws are in line with internationally recognised standards or agreements. The purpose of inserting the 'right to regulate' in the sustainable development chapter of a trade agreement is to ensure that public policy, i.e. a government's right to regulate, shall prevail against an investor's claim of business interests.<sup>32</sup> The second one is that, under Sub-section 4 on the Mechanism to Address Differences, any 'disagreement' on investment and labour protection will be addressed through a consultation mechanism. On this premise, an immediate question will be how effective the consultation would be in order to address 'disagreement', and subsequently the usefulness of the 'recommendations' of the 'final report' of the 'panel of experts' in times of disagreements between the parties, since Article 4 of Sub-section 4 omits it.

The [Panel Report on the EU-Korea Labour Dispute](#), released in January 2021, could help to answer the questions on enforcing the sustainable development commitments, especially as such commitments are often drafted in best-endeavour-type language, thus casting doubts on their enforceability. More precisely, since DG Trade has made it clear that the CAI is not in a

<sup>31</sup> Since 1995, the EU and China have discussed human rights issues through their annual Human Rights Dialogue. The EEAS and the EU Special Representative for Human Rights lead the Dialogue on the EU's side, and on the Chinese side it is the Deputy Director-General for International Organisation and Conference at the Ministry of Foreign Affairs.

<sup>32</sup> This safeguard of public policy shall be juxtaposed with a high level of investment protection, which is an EU practice, as seen in its free trade agreements (FTAs) concluded with Korea, Vietnam, Singapore, Canada, and Japan. See European Commission (2017), "Sustainability Impact Assessment (SIA) in support of an Investment Agreement between the European Union and the People's Republic of China", Final report, November, pp. 28-9.



position to dictate a deadline for China to ratify the ILO Forced Labour Conventions, as when to ratify is an ILO member's '[sovereign act](#)', the question of enforceability has become ever more pressing if China were to deliver this commitment at all (as well as on other sustainable development provisions, including implementing the Paris Convention).

#### 4.2.1 *The likelihood of ratifying the ILO Forced Labour Conventions*

On the one hand, although ratifying the ILO Forced Labour Conventions (No. 29 and No. 105) will be on China's "own initiative" with "continued and sustained efforts",<sup>33</sup> the commitment is legally binding. This assertion is confirmed by the Panel decision on the [EU-Korea labour dispute, which centres on Korea's ratifying the four outstanding](#) core ILO Conventions, including on forced labour. The Panel decided that the wording "... respect, promote and realize...", used in both Article 13.4.3 of the EU-Korea Free Trade Agreement (FTA) and Article 4 of Sub-section 3 of the EU-China CAI (Agreement text as of 22 January 2021), is legally binding.<sup>34</sup> Moreover, the provision that constitutes the "best endeavour", where parties "will make continued and sustained efforts towards ratifying", seen in the same Article in both trade agreements, is equally legally binding.<sup>35</sup>

On the other hand, the process for China to ratify the ILO core Conventions could be very long. At the same time, with reference to the Panel's findings,<sup>36</sup> the EU would be less likely to succeed in imposing milestones, let alone a deadline, or even levying a charge of breach against China, in accordance with the consultation mechanism. This is because a failure to ratify does not constitute a failure of compliance, as long as China is found to have made tangible and "continued and sustained efforts" (even though they may be slow) towards ratifying the core ILO Conventions, including the two core Forced Labour Conventions. In the case of the EU-Korea labour dispute, the Panel has found in Korea's favour in this respect because its government announced in 2017 that it would be submitting bills for the ratification of the three ILO Conventions (No. 87, freedom of association and protection of the right to organise, No. 98, collective bargaining, and No. 29, forced labour) to the National Assembly in May 2019. The bills were actually submitted in October 2019. As to the ILO Convention No. 105 on abolishing forced labour, the Panel acknowledged the different ratification approach that the Korean government has undertaken. It means a longer time for domestic discussions, since ratification

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<sup>33</sup> See Article 4 of Sub-section 3 on Investment and Labour of the EU-China Comprehensive Agreement on Investment ([https://trade.ec.europa.eu/doclib/docs/2021/january/tradoc\\_159346.pdf](https://trade.ec.europa.eu/doclib/docs/2021/january/tradoc_159346.pdf)).

<sup>34</sup> See Report of the Panel of Experts, Panel of Experts Proceeding Constituted under Article 13.15 of the EU-Korea Free Trade Agreement, 20 January 2021, pp. 28-40.

<sup>35</sup> See Report of the Panel of Experts, Panel of Experts Proceeding Constituted under Article 13.15 of the EU-Korea Free Trade Agreement, 20 January 2021, pp. 70-7.

<sup>36</sup> The Panel of the EU-Korea labour dispute did not agree with the EU that a party must "explore and mobilise all available measures in a similar manner and with similar intensity at all times in order to ratify the core ILO Conventions". Neither did the Panel find that the commitment of "continued and sustained efforts towards ratification" meant a specific target date or a particular milestone for the ratification process. Also, as the parties have agreed any specific target dates or discernible schedules for ratification, the Panel did not find Korea to be in breach of its commitment on ratifying the four ILO core Conventions. Moreover, Korea's failure to ratify does not constitute a failure to comply with its commitment under the EU-Korea FTA. See Report of the Panel of Experts, Panel of Experts Proceeding Constituted under Article 13.15 of the EU-Korea Free Trade Agreement, 20 January 2021, pp. 74-5.

involves the legislative changes in the penal system. The Panel also agreed with Korea that the duration of a ratification process alone cannot establish whether “continued and sustained efforts” were made.<sup>37</sup>

The Panel’s findings from the EU-Korea labour dispute should show that **China will be legally compelled to ratify the four outstanding ILO core Conventions, and that the ratification process may be subject to the scrutiny of a panel of experts if disagreement arises between China and the EU.** Subsequently, although it is its sovereign right as to when and how to ratify the Conventions in question, China must undertake “continued and sustained efforts towards ratification”. If not, it may be found in breach of its commitment.

#### 4.2.2 *Enforceability of a panel’s recommendations*

At this juncture, one may query the usefulness of a panel’s findings and recommendations following a ‘consultation’, given the fact that its usefulness is completely omitted under the CAI; in accordance with Article 13.15.2 of the EU-Korea FTA, albeit their ‘best efforts’, the parties are required to only “accommodate” a panel’s advice or recommendations for implementation. To ‘accommodate’, by definition, means to consider and be influenced by an opinion or a fact when deciding what to do. This arrangement lacks enforceability, as well as legal certainty as far as a complainant party is concerned. Moreover, with regard to the obligations of an ILO member, there is a discernable difference between Korea and China under their respective trade and investment agreements with the EU. Whereas Korea has committed to “respecting, promoting and realizing” the ILO principles concerning fundamental rights, etc, in its “laws and practices”, China is only obliged in the CAI to observe “good faith”, in the same manner and on the same ILO principles that China subscribed to as an ILO member. This leaves much uncertainty about the eventuality of ratification, not least because of the factual challenges that China is facing.

Unlike America’s correctional principle of “retribution, deterrence, incapacitation, and rehabilitation”,<sup>38</sup> for example, the Chinese orthodoxy of punishment through labour is accepted as a means of reforming and educating offenders,<sup>39</sup> and used to be administered in re-education camps and prisons. ‘Re-education through labour’ (RTL) was an [extrajudicial detention and punishment system against minor crimes and political dissidents, with a structure](#) characterised by long working hours and brutal conditions.<sup>40</sup> After decades of discussions, China officially<sup>41</sup> abolished RTL in December 2013. Some may suggest that

<sup>37</sup> See Report of the Panel of Experts, Panel of Experts Proceeding Constituted under Article 13.15 of the EU-Korea Free Trade Agreement, 20 January 2021, p. 77.

<sup>38</sup> C. Cook (2011), “The Chinese System of Corrections: Searching for Answers”, Government Law School, Albany Law School.

<sup>39</sup> H. Fu (2005), “Re-Education through Labour in Historical Perspective”, *The China Quarterly*, No. 184, pp. 811-830, Cambridge University Press, December.

<sup>40</sup> Prospects for Reforming China’s Reeducation Through Labor System, Congressional-Executive Commission on China, 5 September 2013.

<sup>41</sup> It is alleged that, since the abolition, other forms of extrajudicial detention have taken the place of “re-education through labour”. For example, in 2014 re-education facilities were created in Xinjiang targeting a wider context than minor crime and political dissidence – which were the reasons for first setting up the system in China in the

abolishing RTL could be leading to the abolition of the prison-labour system, but the causal link between the two is not apparent. Neither has the impact of the former on the latter been established, eight years on. To all intents and purposes, it is easier to abolish an administrative structure by issuing an administrative order than by amending a judicial structure that involves criminal penalty and procedure, as in the case of prison labour. Presently, prison labour is permissible under China's Criminal Law and the Prison Law, based on its correctional principle of 'correction through labour'. This being the case, **it can be foreseen that ratifying the ILO Forced Labour Conventions will be a long process due to the legislative changes involved, and in the first place the correctional principle must be thoroughly rethought.** As a precedent, the Panel Report of the EU-Korea labour dispute has acknowledged that 'legislative changes' is a valid argument for Korea to take a longer time to ratify the ILO Forced Labour Conventions, compared to the time it needed to ratify other outstanding ILO conventions. Besides, in China's case, prisons function as both correctional facilities and economic production centres in order to be financially self-sufficient.<sup>42</sup> Severing the financial means of the prison-labour structure will likely add another layer of complications, which could make the ratification process drag on for even longer.<sup>43</sup>

#### 4.2.3 *Conditioning the CAI signature on ratification?*

With the uncertainties and challenges of ratifying the two ILO Forced Labour Conventions, it seems reasonable to propose the idea of conditioning the CAI signature on China's ratification. This proposition is unlikely to take place.

As set out in the ILO [Guidance on Ratification](#), no ILO member state is forced to ratify any international labour Convention, but all ILO member states are held by the [Constitution](#) (Art.19 para5) to consider ratification of all up-to-date Conventions. As for the eight ILO core Conventions, the Guidance advises, and the CAI confirms, that all member States "must respect, promote and realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights set out in these Conventions". However, "all ILO member States should ratify all eight fundamental Conventions and the Protocol of 2014 to C29 (on the Forced Labour Convention) at the earliest possible stage".

As pointed out by the Panel of the EU-Korea labour dispute case, the commitment of "continued and sustained efforts towards ratification" imposes a standard of effort higher than "minimal steps or none at all" but does not require Korea "to explore and mobilise all measures available at all times". As an ongoing obligation, the commitment *per se* therefore affords a

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mid-1950s. By 2017, these had become the massive Xinjiang internment camps, holding 1–3 million people, utilising forced labour, and now recognised as re-education camps.

<sup>42</sup> Also, nearly every forced labour facility in China operates under the dual identity of its prison name as well as its commercial name. See S. Deckwitz (2012), "Gulag vs. Laogai: The Function of Forced Labour Camps in the Soviet Union and China", Utrecht University, p. 45, January.

<sup>43</sup> At the same time, it is reported that prisoners work long hours, often with no remuneration, bringing profitability to prisons and helping fund the operations of local and national governments. For details of the economic role of the prison-labour system, including export, see J. Dotson and T. Vanfleet (2014), "Prison Labor Exports from China and Implications for U.S. Policy", U.S.-China Economic and Security Review Commission Staff Research Report, pp. 4-10, July.

government freedom to select specific ways to make such ‘continued and sustained’ efforts. Following that, the duration of a ratification process is not a determinative, but a relevant, factor for establishing ‘continued and sustained efforts’ towards ratification.

On the above premise, **China, being an ILO member state, is obliged to ratify the ILO core Conventions, yet neither the EU nor other bodies can force China to ratify, including by using the CAI signature to leverage a ratification.** Having said that, as noted, thanks to the CAI China will now be compelled to make ‘continued and sustained’ efforts towards ratification, and China will be legally held accountable for this commitment.<sup>44</sup>

#### 4.2.4 Enforcing labour protection standards through EU legislation and private initiatives

In the same breath, it could be argued that such ‘continued and sustained’ efforts would probably be ‘too little and too late’ before China realises its commitment to ratification. It is to be noted that the Commission has been preparing [a legislative proposal](#) requiring EU companies to conduct due diligence on respect for human rights, including the rights of the child and fundamental freedoms, and on environmental rules, etc., through their supply chains. In February 2021 the European Parliament published a study calling for [a new EU instrument for import bans](#) on products related to severe human rights violations such as forced labour or child labour. So the EU is gearing up to enforce labour (and environmental) protection, in addition to those enforcement mechanisms embedded in trade agreements.

Private initiatives could also be a formidable factor in enforcing labour protection (although this could cause a business backlash in Chinese markets for deep historical, cultural and political reasons).<sup>45</sup> The Switzerland-based Better Cotton Initiative (BCI), for example, announced in March 2020 that it was [suspending cooperation](#) with the originally licensed farmers in Xinjiang during the 2020-21 cotton season over allegations of forced labour in the region. Then in August 2020, the BCI On-Product Mark<sup>46</sup> was revoked for all cotton products procured from Xinjiang until further notice.<sup>47</sup> But the fashion brands that supported this course then suffered a boycott. Around 25 March 2021, for example, just after China launched its retaliation against the EU’s sanctions imposed on the grounds of China’s alleged rights abuses in Xinjiang, it was reported that within 24 hours, the Swedish retailer H&M had been all but dropped from China’s

<sup>44</sup> Though most ILO members ratified all eight core Conventions, some, including Australia, Brunei, China, Korea, Vietnam, New Zealand, and the US selectively ratified only a few of them. The US only ratified two, forced labour (C105) and child labour (C182). Details of ratifications by country are available at [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:10011:::NO:10011:P10011\\_DISPLAY\\_BY,P10011\\_CONVENTION\\_TYPE\\_CODE:1,F](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:10011:::NO:10011:P10011_DISPLAY_BY,P10011_CONVENTION_TYPE_CODE:1,F).

<sup>45</sup> E. White (2021), “A playbook for navigating Asia’s culture wars”, *Financial Times*, 6 April.

<sup>46</sup> If there is a BCI ‘On-Product Mark’ on packaging, it means that the majority-cotton product one is buying is from a retailer or brand that is committed to sourcing Better Cotton and investing in BCI Farmers. To start using the mark, a member must be sourcing at least 10% of their cotton as Better Cotton, with a plan to increase this to at least 50% within five years. BCI had more than 1,840 members at the end of 2019 (<https://bettercotton.org/what-does-our-logo-mean/>).

<sup>47</sup> This revocation may be a result of the Xinjiang Supply Chain Business Advisor, issued in July 2020 by the US government, highlighting the risks and considerations for businesses with supply chain exposure to entities engaged in forced labour and other human rights abuse in Xinjiang and elsewhere in China ([www.state.gov/xinjiang-supply-chain-business-advisory/](http://www.state.gov/xinjiang-supply-chain-business-advisory/)).

digital platforms, including taxi-hailing services and map applications. Chinese consumers launched a boycott against the Western brands that stopped procuring cotton from Xinjiang. China is H&M's fourth-largest market behind Germany, the US and Britain, accounting for about [5% of 2020 revenue](#), which may look [small in percentage](#) but is still an important market. Being shut out of digital platforms will be damaging because [more than a fifth of shopping in China is conducted online](#).

#### 4.2.5 Environmental protection

The second component of sustainable development under the CAI is environmental protection, which is perhaps a less controversial area than labour protection. But the challenges for enforcement remain, although of a different type. China's commitments are twofold.

First, China has committed to implementing the UNFCCC and the Paris Agreement on Climate Change. This means that by 2030 at the latest: peak CO<sub>2</sub> emissions are reached; the carbon intensity of GDP is lowered by 60-65%, to below 2005 levels; the share of non-fossil energy carriers of the total primary energy supply is increased to around 20%; and its forest stock volume will be increased by 4.5 billion cubic metres, compared to 2005 levels.

Second, China has committed to set out its five-year action plans, known as Nationally Determined Contributions (NDC) under the Paris Agreement, to implement the aforementioned goals. Working on a five-year cycle since November 2016 when the Paris Agreement came into force, China missed its first NDC submission deadline in 2020.<sup>48</sup> With President Xi's renewed political pledge on carbon emissions peak by 2030 and neutrality by 2060, as delivered at the UN Assembly General in September 2020, and with the launch of its national carbon trading mechanism in January 2021,<sup>49</sup> it had been thought that China could deliver its Paris Agreement pledges more effectively, including the submission of its NDCs every five years. But the reality of the challenges should not be underestimated. At the 'two sessions' on 5 March 2021, China's Premier Li promised to draw up an action plan in 2021 for meeting the 2030 target for peak CO<sub>2</sub> emissions. He also promised to improve the energy mix and ease the country's dependence on fossil fuels. Over the 2021-25 period, China will aim to cut energy intensity by 13.5% and carbon intensity by 18%, [the same level as in the last five-year plan](#). However, Premier Li in his [Government Work Report](#) did not set [a cap on carbon intensity](#) in the 14th Five-Year Plan, as it was included in the previous 13th Work Report for the 2016-20 period.<sup>50</sup>

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<sup>48</sup> In accordance with the Paris Agreement, a participating party is obliged to submit its NDC every five years to set out an action plan to implement its pledges under the Paris Agreement, to communicate its plans to build resilience to adapt to the impacts of rising temperatures, and to set out its long-term low greenhouse gas-emission development strategies.

<sup>49</sup> The national carbon-trading mechanism is first applied to the 2,225 companies in the power generation sector. The next step of the mechanism is to apply it to other sectors, and to further tighten the allocation of emission allowances as the country forges ahead to establish a carbon-emission management mechanism with a national emission cap.

<sup>50</sup> For example, as part of its 13th Five-Year Plan, China sought to cap coal consumption at the national level at 4.1 billion tonnes by 2020, or to less than 58% of total energy consumption. See F. Teng (2018), "Coal transition in China: Options to move from coal cap to managed decline under an early emissions peaking scenario", IDDRI and

[The present Report \(2021-25\)](#) in the meantime refrained from setting a target for curbing coal power plants' capacity for the next five years, or from introducing a ban on building new coal-fired plants. Indeed, **many challenges lie ahead before China can achieve its goals under the Paris Agreement, so in reality the picture is best described as mixed.** While China has been the world's largest investor in renewable energy, domestic and abroad combined, since 2015, it also remains the world's largest emitter of greenhouse gases from fossil fuels<sup>51</sup> and industry (e.g. cement). As [the world's largest coal producer](#) (accounting for nearly half of global production), it continues to depend heavily on coal domestically and invest in it overseas.

Fossil fuels – mostly coal – account for about 90% of China's energy production and consumption. However, the government has been working to lower its reliance on coal and cut down overcapacity while expanding its renewable capacity and gradually switching from coal to gas as well as renewable energy sources.<sup>52</sup> To peak CO<sub>2</sub> emissions by 2030 is therefore to manage a coal transition.<sup>53</sup> Using the [Covid-19 recovery package](#) as a conduit, China announced that it would invest around CNY 17.5 trillion (€2.26 trillion) in 'new infrastructure' (e.g. [5G networks, charging stations for new energy vehicles](#)). However, it is also reported that the country will likely [ease the pressure on coal mines' closure](#) to meet the rising demand of energy for economic recovery post-Covid.<sup>54</sup> It is perhaps no surprise, therefore, that the 14th Five-Year Plan did not announce any measures for a coal consumption cap.

## 5. The EU's WTO reform agenda should continue

The WTO-plus commitments that the CAI concluded vis-à-vis China are among those disciplines that the EU targeted for [reform](#) in June 2018. But the process at multilateral level was stagnant until the CAI brought some progress at bilateral level, as mentioned above. Those commitments concern strengthened procedural compliance, which do not require revising the legal agreements, such as the ASCM. On the updated WTO reform agenda, published on 18 February 2021 as part of the Commission's trade policy review, the EU reiterated other trade disciplines,

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Climate Strategies ([www.iddri.org/sites/default/files/PDF/Publications/Catalogue%20iddri/Rapport/20180609\\_ReportCOAL\\_China\\_0.pdf](http://www.iddri.org/sites/default/files/PDF/Publications/Catalogue%20iddri/Rapport/20180609_ReportCOAL_China_0.pdf)).

<sup>51</sup> According to the National Bureau of Statistics, raw coal accounted for 68.8% of the energy production structure in 2019, while crude oil accounted for 6.9%, natural gas for 5.9%, and hydropower, nuclear power and wind power for 18.4%. See also Energy 2021 China, Global Legal Insights ([www.globallegalinsights.com/practice-areas/energy-laws-and-regulations/china](http://www.globallegalinsights.com/practice-areas/energy-laws-and-regulations/china)).

<sup>52</sup> For example, China's State Development and Investment Corporation pledged in 2019 to no longer invest in new thermal power plants, Bloomberg, "China state fund joins shift from coal power investments", March 2019 ([www.bloomberg.com/news/articles/2019-03-20/top-china-fund-sdic-joins-global-shift-away-from-coal-investment](http://www.bloomberg.com/news/articles/2019-03-20/top-china-fund-sdic-joins-global-shift-away-from-coal-investment)).

<sup>53</sup> Also see F. Teng (2018), "Coal transition in China: Options to move from coal cap to managed decline under an early emissions peaking scenario", IDDRI and Climate Strategies ([www.iddri.org/sites/default/files/PDF/Publications/Catalogue%20iddri/Rapport/20180609\\_ReportCOAL\\_China\\_0.pdf](http://www.iddri.org/sites/default/files/PDF/Publications/Catalogue%20iddri/Rapport/20180609_ReportCOAL_China_0.pdf)).

<sup>54</sup> It is reported that after lifting a previous construction ban on new coal plants in 2018, China has rolled back policies restricting new coal plants, permitting them in each of the past three years. By mid-2020 China had permitted more new coal-plant capacity than in 2018 and 2019 combined. This is going against the global shift away from coal (<https://climateactiontracker.org/countries/china/>).

including special and differential treatment, and e-commerce, which must be worked at in order to advance its WTO reform agenda.<sup>55</sup>

For example, in addition to industrial subsidy notification, the EU aims to reinforce the monitoring function of the WTO in relation to the quality of the notifications submitted. This proposition, in effect, follows the EU's concerns found in its Concept Paper on WTO modernisation, about the SOEs in their commercial activities. For example, in a case where an SOE functions as a 'public body' and grants a subsidy to a 'certain enterprise', the subsidy may become 'specific' and 'actionable', and the subsidy *per se* might cause trade-distortive effects and trigger the application of the ASCM. But this is a complex issue in terms of substance (e.g. 'public body'), and for the different interests involved concerning 'subsidies' (e.g. developed and developing members, the US, China etc.). So this effort has not been progressing at multilateral and plurilateral levels. There are two ways to capture the most trade-distortive types of subsidies more effectively. One is to expand the scope of prohibited subsidies, of which there are presently two under Article 3.1 of the ASCM.<sup>56</sup> Alternatively, and also related to SOEs' role, once the meaning of 'public body' is updated with clarity,<sup>57</sup> it will become easier to identify a 'specific subsidy' in order to examine the distortive effects caused, if any.

In January 2020 the EU-Japan-US Trilateral Trade Ministers' Cooperation took the first approach and agreed that [four more prohibited subsidies](#) should be added to Article 3.1 of the ASCM,<sup>58</sup> including unlimited guarantees, and certain direct forgiveness of debt.<sup>59</sup> Since then, no further news has been heard from the Trilateral trade ministers, owing to the change of the offices and the pandemic, although they were expected to undertake further work on identifying the scope of prohibitions and additional categories of unconditionally prohibited subsidies. The EU has, at the same time, adopted the regulation to curb distortive foreign subsidies in the single market, which, in the absence of any prospect of WTO reform, is a solution for the time being.

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<sup>55</sup> European Commission (2021), "Reforming the WTO towards a sustainable and effective multilateral trading system" ([https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc\\_159544.1329\\_EN\\_02.pdf](https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc_159544.1329_EN_02.pdf)).

<sup>56</sup> In accordance with Art.3.1 of the ASCM, subsidies contingent upon 1) export performance, and 2) domestic over imported goods are outright prohibited, respectively.

<sup>57</sup> To ascertain "SOEs in their commercial activities", it requires a reassessment of the meaning of "public body" in order to capture those SOEs with a dual identity that are operating as an enterprise and serving to roll out government industrial policies at the same time. Presently, "public body" is interpreted on a case-by-case basis. In accordance with prior WTO panel reports, "public body" is interpreted as an entity controlled by the government - but then government ownership and control alone does not make an entity a "public body". The entity must possess, exercise, or be vested with "governmental authority" and be performing a "governmental function", etc. See USTR, United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (DS379), and METI, Subsidies and Countervailing Measures.

<sup>58</sup> In accordance with Art. 3.1 of the ASCM, subsidies contingent upon 1) export performance, and 2) domestic over imported goods are prohibited outright, respectively.

<sup>59</sup> Another two prohibited subsidies included in the Trilateral trade ministers' proposal are 1) subsidies to an insolvent or ailing enterprise in the absence of a credible restructuring plan, and 2) subsidies to enterprises unable to obtain long-term financing or investment from independent commercial sources operating in sectors or industries in overcapacity. See Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union, Washington, D.C., 14 January 2020 ([https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc\\_158567.pdf](https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158567.pdf)).

However, as the world's largest trading entity and [a leader in advancing the rules-based multilateral trading system](#), the EU ought to continue working with China and its allies (despite their internal differences on some substantive WTO reform subjective matters)<sup>60</sup> for [a bilateral or a plurilateral arrangement](#). This would be a meaningful way forward to achieve its WTO reform agenda.

From the geopolitical view, concluding the CAI has made the EU's [shared political objective](#) with China material, but it is said to have "[stunned](#)" Washington, after the EU sidestepped Washington's plea for "[consultation and transparency](#)". Such a manoeuvre should not be a total surprise, since the EU's CAI negotiation mandate has been clear for the past seven years. At the same time, in line with the EU's 'Open Strategic Autonomy' policy approach, it wants to act on its own interests and values – working with others where it can, autonomously where it must. Nonetheless, as expected, the EU and the US shall [continue their cooperation](#) and the [EU-US Dialogue on China is one platform](#), since the Phase One Agreement and the CAI do not solve all the challenges arising from China's trade practices.

There are also challenges at EU-China bilateral level that may necessitate the EU collaborating with its allies. The EU has proposed establishing a joint [Trade and Technology Council](#) with the US to, among other things, protect critical technologies and strengthen transatlantic technological and industrial leadership. In this regard, the transatlantic cooperation would seem a sensible choice, in view of China's emphasis on its domestic market circulation, and its resolve to be self-sufficient in core technologies.

On technology and innovation, China is not yet a global top innovator, but it has great potential. Based on the WIPO Global Innovation Index 2020, the US was the world's third most innovative country (after Switzerland and Sweden), and China the 14th. Of the world's 10 most innovative economies, five are EU member states (Sweden, the Netherlands, Denmark, Finland, and Germany) (Figure 3).<sup>61</sup> However, China caught up at five times the EU's innovation performance

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<sup>60</sup> The EU and the US have diverging positions on how to update the meaning of "public body" in order to better capture SOEs in the context of industrial subsidy. The US, Mexico, Canada and others have sought to diverge from past Appellate Body (AB) jurisprudence (e.g. Article 22.1 of USMCA defining an SOE on whether a government directly or indirectly owns more than 50% of the share capital, etc.). But the EU and others have intended for clarification on a case-by-case basis, confined to the AB jurisprudence and the ASCM itself. Nonetheless, the EU and the US share similar views on reforming the DSM and the AB. For example, adjudicators should only take "precedent" into account when it is relevant, AB should limit its roles to addressing legal issues on appeal when necessary, and mandatory timelines should be strictly respected during the dispute settlement process. In the absence of a functioning dispute settlement body, the EU launched the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) as a contingency measure when the AB is in paralysis. So far, Australia, Canada, Mexico, New Zealand, Singapore, and China have sided with the EU in adopting the MPIA, while Japan, South Korea, and others have chosen to remain outside of the MPIA, along with the US. For the US, Robert Lighthizer, the former USTR, was heard advocating a single-stage process akin to commercial arbitration to replace the current two-tier system. For more details, see M. Wu (2020), "Managing the China Trade Challenge: Confronting the Limits of the WTO", Working Paper for the Penn Project on the Future of U.S.-China Relations; the EU's WTO Modernisation Concept Paper 2018: R. Lighthizer (2020), "How to Set World Trade Straight", *WSJ*, 20 August and European Commission (2021), Annex to the Trade Policy Review - An Open, Sustainable and Assertive Trade Policy, COM(2021) 66 final, Brussels, 18.2.2021, pp. 7-8.

<sup>61</sup> See WIPO Global Innovation Index 2020 ([www.wipo.int/publications/en/details.jsp?id=4514&plang=EN](http://www.wipo.int/publications/en/details.jsp?id=4514&plang=EN)).



growth rate between 2012 and 2019 – and it is predicted that the country will further close the innovation gap with Europe and likely overtake the US.<sup>62</sup>

Figure 3. Top 20 Global Innovation Index 2020 rankings

Country/Economy	Score (0–100)	Rank	Income	Rank	Region	Rank	Median 30.94
Switzerland	66.08	1	HI	1	EUR	1	
Sweden	62.47	2	HI	2	EUR	2	
United States of America	60.56	3	HI	3	NAC	1	
United Kingdom	59.78	4	HI	4	EUR	3	
Netherlands	58.76	5	HI	5	EUR	4	
Denmark	57.53	6	HI	6	EUR	5	
Finland	57.02	7	HI	7	EUR	6	
Singapore	56.61	8	HI	8	SEAO	1	
Germany	56.55	9	HI	9	EUR	7	
Republic of Korea	56.11	10	HI	10	SEAO	2	
Hong Kong, China	54.24	11	HI	11	SEAO	3	
France	53.66	12	HI	12	EUR	8	
Israel	53.55	13	HI	13	NAWA	1	
China	53.28	14	UM	1	SEAO	4	
Ireland	53.05	15	HI	14	EUR	9	
Japan	52.70	16	HI	15	SEAO	5	
Canada	52.26	17	HI	16	NAC	2	
Luxembourg	50.84	18	HI	17	EUR	10	
Austria	50.13	19	HI	18	EUR	11	
Norway	49.29	20	HI	19	EUR	12	

China will further raise the stakes on innovation, as seen by the [Dual Circulation Policy](#) that it first introduced in May 2020. Under the Policy, China will focus ever more on R&D and basic research, and aim for self-sufficiency, especially in core technologies, and products and services in the ICT sector, with more R&D funding.<sup>63</sup>

The country's current focus on basic research is logical.<sup>64</sup> Any breakthroughs will help China identify 'alternatives' so that it may break free from America's technological containment, and eventually turn around the present passive dependency on foreign core technologies. It is also understandable that in this whole exercise, market is indispensable for utilising any new

<sup>62</sup> See the Executive Summary of the European Innovation Scoreboard 2020 (<https://ec.europa.eu/docsroom/documents/41903>).

<sup>63</sup> Following the Dual Circulation Policy, on innovation, China's 14th Five-Year Plan has further pledged that, between 2021-25 China will increase total R&D spending by more than 7% annually and raise the share of basic research within total R&D spending to 8%. See Report on the Work of the Government, delivered by Li Keqiang, Premier of the State Council, at the Fourth Session of the 13th National People's Congress of the People's Republic of China, 5 March 2021. The new focus on basic research reflects the government's ambition to acquire breakthrough, and for developing an 'alternative', to eventually turn around the present dependency on foreign core technologies, but also to open new frontiers of science and technology. In this whole exercise, market is indispensable for utilising any new technologies once available. Therefore, some Chinese commentators called for China to delay in acceding to the WTO Government Procurement Agreement, so that the Chinese government procurement market, which can be as big as a "major European country", would be reserved for utilising such new technologies. See G. Ni (2018), "Develop core technology to break US high-tech monopoly", *People's Daily*, 26 July.

<sup>64</sup> Applied science is the use of the known scientific method and knowledge to solve real-world problems, to attain practical goals. In contrast, basic science focuses on discovering new knowledge and advancing scientific theories and laws that explain and predict events in the natural world. More details are available at: <https://www.formpl.us/blog/basic-applied-research>.

technologies once they become available. Having said that, all of this should be conducted without breaching China's international obligations, such as national treatment for market access, as well as those regulatory commitments, for example to "accede the WTO Government Procurement Agreement as soon as possible" that the country pledged at the time of its WTO accession. In this regard, however, uncertainty is looming, since the Dual Circulation Policy seems to have prioritised China's domestic market activities, including its expansion. There are also calls for China to delay WTO GPA accession in order to reserve its government procurement market for utilising future domestic technologies.<sup>65</sup> Confronted with all these considerations, **the EU's best solution would be to participate as much as possible in China's innovation-driven development, especially given the privileges afforded by the CAI.**<sup>66</sup> **At the same time, it needs to be resilient, to accelerate its own [technological advancement](#), and cooperate with allies to secure its global supply chains and market share.**<sup>67</sup>

## Conclusion

As a *sui generis* agreement, the CAI addresses EU businesses' grievances at bilateral level on investment relations with China, on barriers to market access and on several regulatory improvements for fairer competition. At multilateral level, the concessions that the EU obtained under the regulatory framework overlap with some of the trade disciplines that the EU aimed to modernise at the WTO. In this respect, the EU can thank the CAI for advancing its WTO reform agenda on procedural issues. Within the remit of China's commitments on sustainable development, although it is recognised that the enforcement process will be long and complex, China will be legally bound to honour its pledges in implementing the Paris Convention and ratify the ILO Forced Labour Conventions. On the latter, this is a considerable achievement for the EU. Its negotiating opponent is the world's second-largest economy and a 'systemic rival', so the EU's leverage for China to subscribe to the EU's value-based trade negotiations were thought limited, but on the CAI, this was not the case.<sup>68</sup>

On the EU's WTO reform agenda, rectifying the procedural issues through the CAI's conclusion is only the first step in that direction. The EU should work with China and other allies to further its agenda to remedy the WTO structural issues that will make the multilateral trading system more relevant in the changing world. At the same time, as a plurilateral approach, working with America and other allies looks a necessity for the EU, given the uncertainties arising from China's

<sup>65</sup> See G. Ni (2018), "Develop core technology to break US high-tech monopoly", *People's Daily*, 26 July.

<sup>66</sup> For example, by virtue of Annex I Entry 12 – Telecommunication Services of the CAI, certain services (e.g. internet data centre service, IP telephone service) are open to EU investors, though equity caps of either 49% or 50%, apply.

<sup>67</sup> The highest degree of reliance for the EU on Chinese inputs exists in textiles (46.2%), electrical equipment (46.1%) and electronic products (39.7%). See G. Grieger (2020), "China's economic recovery and dual circulation model", European Parliamentary Research Service, December, p. 10.

<sup>68</sup> After all, China is not a junior trade partner to the EU, unlike Vietnam, where it was easier for the EU to exert its influence. Perhaps the efforts were launched after the EU and Vietnam concluded their Partnership and Cooperation Agreement (entered into force in October 2016). Since the signature on 30 June 2019, Vietnam has already ratified two ILO core Conventions (right to organise and collective bargaining and abolishing forced labour) as pledged under the EU-Vietnam FTA; the country has one more ILO core Convention (freedom of association) to ratify.

new focus on its domestic market for expansion and possible reservation, and its ambition to identify 'alternatives' to foreign core technologies, especially those in the ICT sector.

In summary, the CAI's commitments meet the EU's every single wish, at least when based on its negotiating mandate (except investment protection, which will come later). The CAI will advance the EU's WTO reform agenda, which the EU would not otherwise have managed at multilateral level.

After the CAI was concluded in principle on 30 December 2020, the sustainable development section of the Agreement attracted much scepticism, especially on China's commitment to ratify the two ILO Forced Labour Conventions. Since China has submitted its sovereign right of ratification to a consultation mechanism with panel review, which demonstrates the country's resolve within the context, let's give it the benefit of the doubt, taking into consideration the time that the judicial process would require for amending its penal system. In the meantime, the EU is likely to enact its legislation to ban forced-labour imports, and there are also private initiatives that can achieve the same purpose. Hence, the possible 'damages' of a delayed ratification should be mitigated.

On these accounts, the Agreement should be signed as planned. However, before that can happen, China should first lift the sanctions against the members of the European Parliament to restore their parliamentary privilege. Only by doing this will the Parliament be able to undertake genuine debate on the merits of the CAI, taking into account China's alleged human rights abuses, as the members see fit. Only then can the Parliament decide whether the CAI is a path forward to improve bilateral trade relations and advance the EU's WTO reform agenda.

## Annex 1. Comparison of the 25 BITs between EU member states and China on substantive and procedural protection standards

EU MS	BIT / protocol (p) in force since	fair and equitable treatment (FET); unqualified FET, i.e. no reference to customary international law	post-establishment national treatment (NT)	NT limits: Chinese law/non-conforming measures	post-establishment most favoured nation clause (MFN)	national judicial review of expropriations	exceptions to the free transfer of funds	ISDS access for any dispute	ISDS access after Chinese administrative review ( <a href="#">law of 1999</a> )	provisions on local content and export performance	transparency
AT	<a href="#">1986</a>	✓	no	no	✓	✓	✓fec	no**	no	no	no
BE / LU	<a href="#">2009</a>	✓	✓	no	✓	no	no	✓	no	no	no
BG	<a href="#">1994</a>	✓	✓	✓	✓	✓	✓nl	no	no	no	no
	<a href="#">p2007</a>										
CY	<a href="#">2002</a>	✓	✓	no	✓	no	no	✓	✓	no	no
CZ	<a href="#">2006</a>	✓	✓	✓	✓	✓	✓fec	✓	✓	no	no
DE	<a href="#">2005</a>	✓	✓	✓	✓	✓	✓fec	✓	✓	no	no
DK	<a href="#">1985</a>	✓	no	no	✓	✓	✓nl	no	no	no	no
EE	<a href="#">1994</a>	✓	no	no	✓	no	✓nl	no	no	no	no
EL	<a href="#">1993</a>	✓	no	no	✓	no	✓nl	no, mutual consent	no	no	no
ES	<a href="#">2008</a>	✓	✓	✓	✓	✓	✓fec+bp	✓	✓	no	no
FI	<a href="#">2006</a>	✓	✓	✓	✓	✓	✓bp	✓	✓	✓	✓
FR	<a href="#">2010</a>	✓***	✓	✓nl	✓	no	✓fec+bp	✓	✓	no	no
IE	–	–	–	–	–	–	–	–	–	–	–
IT	<a href="#">1987</a>	✓	no	no	✓	✓	✓nl	no	no	no	no
HR	<a href="#">1994</a>	✓	no	no	✓	no	✓nl	no	no	no	no
HU	<a href="#">1993</a>	✓	no	no	✓	no	✓nl	no	no	no	no
LT	<a href="#">1994</a>	✓	no	no	✓	no	✓nl	no, only agreed disputes	no	no	no
LV	<a href="#">2006</a>	✓	✓	✓nl	✓	no	nl	✓	✓	no	✓
MT	<a href="#">2009</a>	✓	✓	✓nl	✓	no	nl	✓	✓	no	no
NL	<a href="#">2004</a>	✓	✓	✓	✓	✓	✓fec	✓	✓	no	no
PL	<a href="#">1989</a>	✓	no	no	✓	✓	✓nl	no	no	no	no
PT	<a href="#">2008</a>	✓	✓	✓	✓	✓	✓fec	✓	✓	no	no
RO	<a href="#">1995</a>	✓	no	no	✓	✓	✓nl	✓	no	no	no
	<a href="#">p2007</a>										
SE	<a href="#">1982</a>	✓	no	no	✓	no	✓nl	✓	✓	no	no
	<a href="#">p2004</a>										
SI	<a href="#">1995</a>	✓	✓ttep	✓nl	✓	no	✓nl	no	no	no	no
SK	<a href="#">1992</a>	no	✓	✓	✓	✓	✓fec+bp	✓	no	no	no
	<a href="#">p2005</a>										

Source: EPRS based on the UN Conference on Trade and Development (UNCTAD) [International Investment Agreements Navigator](#), with additional China-specific features.

Key: blue shading = more recent; grey shading: older; p = protocol; \* = AT-China BIT available only in German and not mapped by UNCTAD; \*\* = no means ISDS limited to the amount of the compensation for expropriation; \*\*\* = FR-China BIT refers to customary international law; ttep = to the extent possible, fec = capital transfer subject to Chinese [foreign exchange controls](#); bp = balance of payments difficulties; nl = national law, de facto meaning fec for China.