

WORKING PAPER

Eu-China Comprehensive Agreement on Investment - Great Opportunity for Mutual Sustainable Development

Duško DIMITRIJEVIĆ

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Szerkesztésért felelős személy: Chen Xin

Kiadásért felelős személy: Feng Zhongping



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Duško DIMITRIJEVIĆ Ph.D.¹

Abstract

Following the entry into force of the Lisbon Treaty in 2009, the issue FDI has shifted from state competence to exclusive EU competence as part of its common trade policy. In line with the new situation, the EU has launched negotiations to reach fairer solutions on free trade with China. Considering China not only its most important trading partner, but also a systemic rival whose investments in critical assets, technologies and infrastructure carry certain security risks, the EU agreed with China at the end of 2020 to conclude an *EU-China Comprehensive Agreement on Investment* (CAI). The CAI should complete existing bilateral trade agreements, thus bringing greater legal certainty and thus a healthier economic environment within the EU, as well as freer and more equal access of European investors to the Chinese market, while providing adequate legal guarantees on national treatment and abolition of quantitative and capital constraints. Consequently, equalizing business conditions and establishing new rules for investments of state-owned Chinese companies in the EU, while respecting international labor, technological and environmental standards, could lead to the improvement of mutual trade relations. Starting from the above assumption, the author of the study believes that it is possible to find appropriate solutions that would reduce the risks caused by political disputes that led to the suspension of the CAI ratification process, to the detriment of legitimate interests to achieve mutually sustainable economic development. In this regard, the study presents the legal, political and economic arguments that support this opinion.

Key words: *EU, China, CAI, mutual sustainable development, risks*

¹ Professorial Fellow, Institute of International Politics and Economics, Belgrade. Email: dimitrijevicd@diplomacy.bg.ac.rs.

Introduction

The People's Republic of China (China) established official relations with the European Community (EC) in 1975. Before that, China gradually established diplomatic relations with certain Western countries, first with the Nordic states (with Sweden in 1950, and soon after with Denmark and Finland and Norway), then with Great Britain and the Netherlands in 1954, with France in 1964, with Italy in 1970, with Belgium in 1971, and finally with West Germany and Luxembourg in 1972 (Babić, 2010, Sandschneider, 2002). Consistently adhering to the principles of respect for sovereignty and integrity, non-aggression, non-interference in internal affairs, equality and mutual benefit, as well as peaceful coexistence in its foreign policy, China has managed to develop diplomatic relations with other European countries that have complementary economies, but which do not have the same political systems nor do they accept the Chinese political-ideological orientation. This “harmony without uniformity” has opened new opportunities for the development and expansion of bilateral relations based on mutual benefit and economic cooperation (Keith, 2009; Baijie, 2014; Dimitrijević, 2020). Developing and deepening relations with the EC, as the largest supranational organization that brings together the largest number of economically developed countries in the world, has thus become a permanent commitment of China. With the conclusion of the first Trade Agreement with the European Economic Community (EEC) in 1978, with a non-preferential nature and most-favored-nation treatment clause, China has resolutely expressed its desire to embark on the path of cooperation and implementation of economic reforms (International Legal Materials, 1978). The conclusion of the Textile Agreement next year, as well as bringing China into the Generalized System of Preferences (GSP), seemed very encouraging in that sense. Significant progress in mutual economic relations with the EEC was achieved with the conclusion of the Agreement on Trade and Economic Cooperation in 1985 (Official Journal, 1985). At the political level, the improvement of mutual relations came after the European Parliament formed a delegation for the improvement of inter-parliamentary cooperation with China in the late 1980s (European Parliament, 2021). However, after the Tiananmen events in June 1989, the EEC severed ties with China by imposing sanctions on it. Although the political crisis was quickly overcome through diplomacy, the arms export embargo remained a constant in Sino-European relations (as did occasional political tensions arising from domestic political issues in China over the status of Taiwan, Hong Kong and Tibet). This, of course, did not hinder the development of relations between China and the EEC in various areas, from providing technical assistance in agriculture, training of interpreters, to new activities in information technology,

energy, science and technology, business management and biotechnology. After the end of the Cold War and the collapse of the Soviet Union, Deng Xiaoping's ideas about structural economic reforms and China's *Policy of Opening-up* to the world began to materialize with incredible speed. Through their implementation, China has been able to solve its many internal problems related to the movement of goods, labor and capital by forming special economic zones in coastal provinces, open coastal cities and eastern comprehensive development zones (Hongyuan, Yun & Qifa, 2012, p. 128).² This development of the internal economic situation, with a sharp jump in mutual trade, which has tripled since the conclusion of the Agreement on Trade and Economic Cooperation, was a good sign for the European Union (EU) as the legal successor of the EC to start a political dialogue with China in 1994. With the adoption of the Communication “Towards a New Asia Strategy”, regular annual summits began to strengthen trade and political ties (European Commission, 1994). Following the established strategic directions for the development of cooperation with China, the EU adopted the Communication “A Long Term Policy for China-Europe Relations” next year, in which it is emphasized that this cooperation is the cornerstone for its foreign policy activities on a global scale (European Commission, 1995). In a new Communication adopted in 1998, the EU seeks to further improve relations with China, taking into account its progressive economic development and its much more assertive and responsible role in foreign policy developments at the regional and global levels. In this regard, the EU seeks to set priorities for a new and comprehensive partnership with China (European Commission, 1998). However, it should be noted that the development of these relations did not proceed in a straight line. Thus, although a comprehensive partnership with China should in principle cover different political and economic areas, it has not been fully realized because over time the cooperation has focused on specific aspects of overall bilateral relations (peace and security, prosperity, sustainable development and people-to-people exchange).

It is important to note that China is at the very beginning of the 21st century, carried out deeper economic reforms in order to achieve balanced internal development. By adopting the concept of a market economy and implementing a regional development strategies (the

² According to Deng's proposal from May 1984, the CPC Central Committee decided to designate 14 coastal port cities to open to foreign investment and trade – Tianjin, Shanghai, Dalian, Qinhuangdao, Yantai, Qingdao, Lianyungang, Nantong, Ningbo, Wenzhou, Fuzhou, Guangzhou, Zhanjiang and Beihai. In February 1985, the CPC Central Committee decided to open the Yangtze River Delta, the Pearl River Delta and the Triangle Area of Southern Fujian, Xiamen and Quanzhou to be coastal economic open areas.

“Develop the West“, “Revitalize the Northeast“ and “Rise of Central China“), China has largely achieved the goals of comprehensive economic reforms and the rapid opening of its internal market. This was particularly evident in the period after China's accession to the World Trade Organization (WTO) in 2001. This period represents a period of great change since China opened up in all its economic sectors, expanding and deepening its ties with the world, allowing it to have greater influence on foreign direct investment, as well as to strengthen its own export-oriented trade and overseas investment. This progressive development of China has led to the improvement of economic relations with the EU and enabled the strengthening of their political ties. After the EU expressed new European governance goals in its White Paper, it inspired the Chinese leadership to raise Sino-European relations to status of “full partnership” (Ministry of Foreign Affairs of the PRC, 2003; European Commission, 2001). By accepting China’s new role in international economic order, the EU has formulated its relations with China as “global partnership” (European Commission 2001). A little later, in 2003, the EU promoted the same relations as a “maturing partnership” (European Commission 2003). In order to create a more favorable international environment for the development of its economy, China, respecting the interests of the EU, drew attention to its position on raising China-EU relations to the level of “comprehensive strategic partnership” (Research Group of the Institute of European Studies, 2008; Ministry of Foreign Affairs of the PRC, 2003). For the EU, however, the status in these mutual relations gradually gained the form of “changing relations” (Brown, 2021). However, despite the changes resulting from the deteriorating international environment, good economic relations have paved the way for the establishment of an important inter-states platform - the High Level Economic and Trade Dialogue in 2007. Through this Dialogue both parties achieved a higher level of cooperation which is defined by the Chinese side for “relations between civilized partners” (Ministry of Foreign Affairs of the PRC, 2014). In 2013, China and the EU announced their strategic development plans with the potential to achieve “win-win” results and promote a comprehensive strategic partnership in the next decade. For that purpose, first after joint consultations, the *Strategic Agenda for Cooperation between the EU and China 2020* was agreed, in which was expressed the intention to further strengthen mutual relations through meetings at the highest and sectoral level (Delegation of the European Union to China, 2013). This approach has led to the rationalization of EU-China relations on a reciprocal basis based on a positive partnership plan together with “constructive management of differences” (European Commission 2016). However, it could not address the serious economic threats posed by the global economic crisis and internal social tensions. These threats are manifested through lack of driving force and demand, constant turbulence in the financial market and a

constant decline in international trade (Yongliang, 2017, p. 56). These problems, along with the introduction of trade protectionist measures, have set aside exports and foreign direct investment as China's leading model of economic development and cooperation with the EU. Given the difficult business conditions in the world, China has tried to improve or preserve existing markets, including the EU market, with a new strategic approach defined through a new foreign policy doctrine, whose personification has become a strategy for the development of the “New Silk Road”. Given the difficult business conditions that were not limited exclusively to the EU, but also to the overall world economy, China tried to improve or preserve existing markets by introducing a new model of development motivated primarily by technological innovation and competitiveness in new industries. The new economic model required a holistic approach in geostrategic planning and implementation of reform measures. Striving to be a driver of global economic growth and a significant factor in the *Global Governance System*, China has defined its new foreign policy doctrine on development strategy. It symbolically called it the “New Silk Road” according to the historical model of ancient times, formally shaping it with political initiatives: “Silk Road Economic Belt” and the “21st Century Maritime Silk Road” (*Belt and Road Initiative*) (Dimitrijević, Jokanović, 2016; Ministry of Foreign Affairs of the PRC, 2013). The new development strategy is based on the ideas of common and peaceful coexistence, “win-win” cooperation and comprehensive, balanced and sustainable development (Petrović Piroćanac, 2013). The strategy is complementary to China's global economic strategy and Policies of “Going Out” and “Bringing in”, which should enable faster flow of goods, services, labor and capital. It also supports regional integration processes that contribute to economic globalization and greater connectivity between different regions of the world and that accelerates the development of global supply, industrial and value chains (Dimitrijević, 2018; Yi, 2015). Hence, the achievement of these goals should contribute to greater integration between China and the EU. This conclusion is indicated by a special program document of the National Development and Reform Commission and the Chinese Ministry of Foreign Affairs and the Ministry of Trade, published under the title “Vision and Action” from 2015, which defines the development plans of the “New Silk Road” strategy, which includes guidelines for opening and improving economic, financial, cultural, scientific and technological cooperation with countries in Asia, Africa and Europe (National Development and Reform Commission, Ministry of Foreign Affairs and Ministry of Commerce of the People’s Republic of China, 2015). The foreign policy reorientation on the basis of the new development strategy was at the same time supplemented by the reform program act *Made in China 2025*, which, together with the [Thirteenth](#) and [Fourteenth Five-year Plans](#), envisaged the reorientation of

Chinese production into a world-competitive economic activity (Zenglein & Holzmann, 2019). This strategic transformation of China's development concept led to reactions from the EU, which in 2016, in the *Joint Communication on the elements of the new EU strategy on China*, tried to redefine its position towards a comprehensive strategic partnership. (European Commission, 2016). Thus, accepting that the EU-China 2020 Strategic Agenda played an important role in the development of the EU-China strategic partnership in the previous period, the EU stated that there is a need for it to have its own strategy with which to put its interests first in mutual relations. That strategy should promote “universal values based on a positive partnership plan together with constructive management of differences”. Strengthening relations with China therefore presupposes the involvement of the EU in the reform process, which can result in mutual benefits in economic, trade and investment, social, environmental and other areas. Also, strengthening mutual relations requires reciprocity, a level playing field and fair competition in all areas of cooperation, including the promotion of public goods, sustainable development and international security. Elements of the new EU strategy towards China should include respect for the rule of law and human rights, increasing cohesion and efficiency in mutual relations, as well as encouraging the development of infrastructure, trade, investment and digital connectivity as the main means of cooperation with the entire Eurasian continent. Accordingly, cooperation under the Chinese *One Belt, One Road Initiative* should meet the declared objectives of China's “opening policy”, which includes the duty to comply with international market rules (including EU market standards), in order to benefit all parties and countries involved in the initiative (Council of the European Union, 2016). In order to bring its "Vision and Action" closer to the EU, China has officially promoted a “comprehensive strategic partnership” in 2018. The main purpose of promoting a partnership with the EU for a “comprehensive” was a reflection of its global policy by which China generally seeks to improve its relations with the world. These relations are motivated by the achievement of reciprocal benefits, which is basically the position of the EU, since the EU insists on establishing a solid and fair basis for further development of mutual political and economic relations (Xinhuanet, 2018). However, after the outbreak of the Covid-19 pandemic, which led to the destabilization of the world economic order, the EU reopened issues related to achieving a level playing field with China. During 2019, the EU adopted a new Communication: *EU-China - a Strategic Outlook*, in which China is identified not only as an important economic partner and market competitor, but also as a “systemic rival” whose investments in critical

assets, technologies and infrastructure carry with it certain security risks (European Commission, 2019; Dimitrijević, 2021).³

From the previous analysis on the development of mutual relations between the EU and China, one could ask for a moment, whether these relations are adequately formulated in the mentioned strategic acts and whether they reflect different understandings of the international reality? Essentially, with these acts, both sides showed readiness to strengthen mutual ties, but they also showed similarity with the international reality through different foreign policy treatment of mutual relations. This approach leads to the conclusion that China and the EU did not have opposite perceptions of reality, but harmonized their relations with their foreign policy goals and economic policies, which otherwise determine their orientation in contemporary international relations. Both sides have developed their partnership, their trade, economic, political and other cooperation, thus solving global problems that pose a challenge to the growing “New World Order” (NGO). Strengthening mutual relations therefore did not have a harmonious path. The reasons for that are primarily geopolitical in nature. Thus, the EU has relied on the United States and its unipolar post-Cold War order for years. The mutual frictions between these two strategic partners followed at a time when their own geo-economic interests prevailed in cooperation with China, due to which the United States introduced certain protectionist measures to the EU (Egger, 2021, p. 6). Since then, the EU has increasingly focused on building multilateralism in the international order, adopting Common Foreign and Trade Policy measures that suit its interests. On the other hand, China did not rely on the United States, but pursued its foreign policy independently, cultivating friendly relations with all countries that accept the principles of peaceful coexistence. Its attitude towards the great powers is based on “the absence of conflict, mutual respect, mutual benefit and cooperation” (Ćinmin, 2015, p.118; Buzan, 2004). China's new foreign policy conception includes multipolarity that can lead to balanced and peaceful development of international relations (*Peace Development Policy*), which means the realization of a Chinese development model harmonized with the process of globalization (Berkofski, 2006, p. 112; Jiabao, 2007; Perlo-Freemen, 2014).

³ Reacting in order to protect its own economic interests, the EU already in March 2019, adopted Regulation 2019/454, which established a framework for the screening of foreign direct investments (FDI) into the EU. The implementation of this legal framework began on 11 October 2020 through existing and newly established control mechanisms. Given that the screening of FDI entails appropriate deviations from normal trade practices, its implementation should be balanced between a non-discriminatory and predictable business environment and a flexible and transparently established control system.

Finally, different approaches in formulating the development of mutual relations between China and EU should not mean that both sides do not have the ability to overcome the existing political and economic differences that evidently exist. The author of this study believes that the parties could achieve positive results in the development of mutual relations through constructive dialogue and gradual synchronization of common interests at the regional and global level. After all, the following analysis of the principle text of the EU-China Comprehensive Investment Agreement (CAI), published by the Commission on 30 December 2020, speaks in favor of such considerations.

Comprehensive Investment Agreement - A Major Pillar of Deepening and Rebalancing EU-China Economic Relations

The dynamics of bilateral cooperation between the EU and China, as mentioned above, took place mainly at the political and economic level. However, it should be noted that the dynamics at the economic level was still a slightly higher priority in the development of mutual relations, because it reflected the specific material interests of both parties as well as the achieved economic interdependence which, according to the prevailing neoliberal concept of international relations was supposed to lead to stability international order and to the building of welfare societies (Dugis, 2018; Amal, 2021). This is all the more so if we take into account that the Chinese economy today can be measured in size with the EU economy, and that China's economic growth is the fastest in the world, which enables China to become the world's largest economic power in the next decade. Hence, it is understandable that increasing the EU's business relations with China would help strengthen the economic growth of the EU member states themselves, which is not negligible if we know that China has a large number of opportunities for economic investment in a market of over 1.4 billion inhabitants, which provides great advantages. These extraordinary advantages are also discussed in the current statistical data, according to which China, at the end of 2020, surpassed the United States and Great Britain, becoming the EU's main trade partner (Euractiv, 2020. December 3). On the other hand, EU as not changed its status as China's largest trading partner, mainly in exports of goods, and to a lesser extent in exports of services. Within total trade flows, China has a surplus in goods-trade with the EU, while the EU has a surplus in trade in services and foreign investment with China. In the last decade, these EU investments in China amounted to around 148 billion EUR, while Chinese foreign investments in the EU amounted to around 117 billion EUR

(European Commission, 2021). However, this aspect of bilateral economic relations remains relatively undeveloped. About half of the EU's foreign direct investment in China goes to the manufacturing sector, while investment in the financial and service sectors has remained unsatisfactory for the EU economy. On the other hand, Chinese foreign investments are widespread in EU member states and are largely in line with the size of their economies. All these inequalities in mutual investment business, along with the limits of access to the Chinese market and insufficiently regulated protection of foreign investors, certainly affected the dynamics of investment cooperation, which is why the two sides reached the preliminary text of the *China-EU Comprehensive Agreement on Investment (CAI)*, after seven years of exhaustive negotiations (European Commission, 2020).

Current scope of the CAI

Given that the text of the CAI was published in the phase of mutual negotiations between the EU and China, it has a preliminary character. The text is subject to further modification and amendment until the moment of ratification, i.e. until confirmed by the contracting parties in accordance with their legislation. From the moment of entry into force, the CAI will have an international legal form that will bind the contracting parties for an indefinite period. In terms of content, CAI has a comprehensive character and in many ways surpasses the so far concluded agreements on foreign investments in the world. Although the final text of the CAI has not been ratified, the fact is that it regulates various areas of investment business that were previously regulated by numerous bilateral investment agreements (BIT's). These previously concluded BIT's should not be replaced or terminated by CAI. Namely, the CAI in the final provisions of Part Six envisages that it will remain an integral part of the overall bilateral relations regulated by the Agreement on Trade and Economic Cooperation or the future Framework Agreement. Hence, it could be argued that replacing earlier BIT's with the CAI would not contribute to greater legal certainty, and thus a healthier economic environment necessary to meet the objectives of the EU's Common Trade Policy.⁴ In this sense, the CAI has a very ambitious goal as it needs to further open the Chinese market beyond WTO commitments (Egger, 2021, p. 3). This, of course, does not exclude the rights and obligations of China and the EU under the WTO Agreement (the Marrakesh Agreement Establishing the World Trade Organization of 1994),

⁴ It should be taken into account that after the entry into force of the Lisbon Treaty on 1 December 2009, investment issues passed from state competence to the exclusive competence of the EU as part of its Common Trade Policy. The EU has acquired the authority to conclude new investment agreements and at the same time has accepted shared responsibility in relation to disputes that may arise from non-execution of BIT's previously concluded by member states.

and other multilateral, regional and bilateral agreements and arrangements to which they are signatories.

Preamble

According to the text contained in Preamble, the parties of the CAI are committed to fulfilling the international legal obligations contained in the UN Charter, the Universal Declaration of Human Rights and other acts of general international law. On this basis, the parties are committed to strengthening their economic, trade and investment cooperation, which implies a high level of protection of environmental and labor rights, including the fight against climate change and forced labor. In this regard, the implementation of the envisaged agreed obligations can deepen EU-China economic relations based on openness, reciprocity and mutual benefit, ensuring non-discrimination, a level playing field, transparency and a predictable investment environment based on corporate social responsibility or responsible business conduct. Recognizing the right of the parties to adopt and implement measures to achieve legitimate public policy objectives, the CAI imposes obligations on them to establish clear and mutually beneficial rules that reduce or remove obstacles to mutual investment.

Section I: Objectives and general definitions

In Section I, the CAI standardizes objectives and sets out definitions of terms used throughout its text. The goals are explained through the reaffirmation of WTO commitments and through a commitment to creating a better climate to facilitate and develop mutual trade and investment. In this regard, the necessary arrangements for investment liberalization are established. In order to achieve legitimate policy objectives, the CAI reaffirms the right of the parties to regulate in their territories public health, social services, public education, security and environmental policies, including the fight against climate change, public morality, social security or consumer protection, privacy and data protection or the promotion and protection of cultural diversity.

Section II: Liberalization of investment

In the Section II, the CAI regulates investment liberalization issues. This specifically refers to requirements, measures or actions related to the establishment or operation of

companies of the contracting parties in their territories (Performance Requirements and regulation regarding Senior Management and Boards of Directors). Exceptions are made in principle for governmental activities and specifically for audio-visual services, air transport services and auxiliary air services. The rules on liberalization do not apply to any measure of a contracting party in connection with the state procurement of goods or services purchased for state purposes and not for commercial purposes. Given the existing sectoral divisions, the CAI guarantees free access to the markets in a way that neither party will not adopt or maintain restrictions relating to the number of enterprises that may perform certain economic activities, the number of employees in those enterprises, the total value of their transactions or assets and the requirement to form a particular type of legal entity or to make joint ventures. This is very important since the issue of equal (non-discriminatory) treatment of European investment companies in the Chinese market has been one of the key issues in mutual negotiations. With the achieved solution, European companies will be able to invest in various Chinese economic sectors (for example, in the automotive, chemical, machinery, agricultural and food industries, energy, financial, health and environmental sectors, air and maritime transport, telecommunications, research and the development sector, etc.). This could lead to a significant overflow of capital which can effectively affect the development of other branches of the economy of both sides. The CAI, regardless of China's domestic policy the guarantees “minimum standards” on national treatment (Article 4), and most favored nation treatment (Article 5), while at the same time establishing the so-called “negative lists” for all production and service activities, which is in line with the solutions contained in the latest China’s Foreign Investment Law, effective from 2020. Consequently, the envisaged contractual solutions eliminate not only quantitative, but also capital constraints, which open the possibility for joint investments in strategically important industries. This approach equalizes the conditions and establishes new rules for investments of state-owned Chinese companies in the EU. Furthermore, there are obligations regarding the transparency of granting state subsidies to Chinese companies present on the European market, which according to CAI imply fulfillment of the conditions specified in the WTO Agreement on Subsidies and Countervailing Measures (ASCM), regardless of whether subsidies are granted companies operating exclusively in the service sectors. In addition, there is also the responsibility of these companies regarding the prohibition of forced technology transfer and compliance with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) contained in Annex 1C to the WTO Agreement which binds all WTO members.

Section III: Regulatory framework

In the Section III, the CAI refers to the regulatory framework, i.e. on the rules on the establishment and operation of enterprises according to the domestic legislative framework of the contracting parties. In this regard, the conditions related to the licensing and qualification procedures for persons performing business activities have been developed. This part excludes sectors in which free market access is not accepted and in which they do not comply with the national treatment clause, reserves for existing and future measures (Annexes I and II), and provisions for specific categories of persons (business visitors and intra-corporate transferees). The Section III contains a general obligation of transparency. Thus, each contracting party shall ensure that its laws, regulations, administrative guidelines, procedures, court and administrative decisions of general application in relation to any matter covered by the CAI are promptly published or otherwise made publicly available in a manner that allows interested parties and the other side to get acquainted with them. Impartial application of this obligation implies consistent application of the stated measures at the internal administrative level, as well as enabling the so-called “covered enterprises” and investors of the parties to participate in the procedure to the extent that the nature of the procedure and domestic regulations allow it. By a special subsection of the Section III, the CAI regulates the provision of financial services in the territories of the contracting parties, without prejudice to the possibility for the parties to introduce certain restrictive measures in accordance with the Annexes. Thus, notwithstanding any other provision of the CAI, neither contracting party shall be prevented from adopting or maintaining measures for prudential reasons, including the protection of investors, depositors, policyholders or persons to whom the financial service provider owes a fiduciary duty, or to ensure integrity and the stability of the financial system (Prudential carve-out). Of course, where such measures would not comply with the provisions of the CAI, they should not be used as a means of circumventing contractual obligations. Otherwise, there is an obligation of transparent information regarding the performance of financial activities. There is also an obligation to exchange information regarding the fulfillment of tax obligations. In this regard, the parties agreed to comply with international standards for regulation and supervision and to combat tax evasion and avoidance in the financial services sector (standards of the G20, the Financial Stability Board - FSB, the Basel Committee on Banking Supervision - BCBS, the International the Association of Insurance Supervisors - IAIS, the International Organization of Securities - IOSCO, the Financial Action Task Force - FATF and the Global Forum on Transparency and Information Exchange for Tax Purposes).

Section IV: Investment and sustainable development

The Section IV of the CAI is dedicated to investment and sustainable development. It first calls on the contracting parties in general terms to comply with the international standards contained therein the Agenda 21 on Environment and Development of 1992, the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, the International Labor Organization (ILO) Declaration on Social Justice for a Fair Globalization of 2008 and the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled: “The Future We Want”, the UN 2030 Agenda for Sustainable Development and its Sustainable Development Goals. It then reaffirms their commitment to promoting investment development in a way that contributes to the goal of sustainable development, for the benefit of present and future generations. These commitments imply their acceptance of the fact that economic development, social development and environmental protection (through so-called “green growth”), are interdependent and mutually reinforcing dimensions of sustainable development. Issues regulated by this part of the CAI range from socially responsible business or responsible business conduct, which takes into account high levels of environmental protection and labor rights. Encouraging the achievement of the goals of sustainable development, the contracting parties are invited, in other words, to accept on a voluntary basis the good business practices contained or inspired by the Guiding Principles on Business and Human Rights (Cotula, 2021, p. 363). As far as environmental protection is concerned, according to the CAI, it also includes compliance with obligations related to climate change covered by international conventions such as the Framework Convention on Climate Change - UNFCCC and in the Paris Agreement (European Commission, 2016, 2020). The protection of labor rights, on the other hand, encompasses all international legal standards contained in the ILO Declaration on Fundamental Principles and Rights at Work and its fundamental Conventions. Given that China has not ratified some of these conventions relating to forced labor, freedom of association and the protection of the right to organize, collective bargaining and the abolition of forced labor, the EU expects China to do so soon. (ILO, 2021). In line with their commitments under the Decent Work Agenda, the 2008 ILO Declaration on Social Justice for Fair Globalization and the ILO Declaration on the Centennial of Labor for 2019, both sides should align their national investment policies to achieve the goals of sustainable development. In a separate subsection of Section IV, the CAI regulates “mechanism to address differences”

that include mutual consultations, mutually agreed solutions, expert Panel mediations, Follow-up Consultations, and *Amicus Curiae* procedures.

Section V: Dispute Settlement

In Section V, the CAI regulates the dispute settlement between China and EU.⁵ Thus, although the two sides formally resolved their earlier misunderstandings regarding trade competition and investment rivalry, the CAI did not completely eliminate all the reasons that burden mutual economic relations. In this regard, the CAI establishes effective mechanisms for avoiding and settling any disputes between the parties within with a view to arriving at, where possible, a mutually agreed solution on the interpretation and application of its provisions unless otherwise provided (Article 2). The provisions of this part of the CAI provide for the usual possibilities of peaceful settlement of disputes, i.e. reaching such an agreement through mutual consultations in good faith, through mediation, mutually agreed solution, through the formation of an arbitration panel, whose procedure is regulated in detail by the provisions of this part and the Annex on Rules of Procedure. It is important to note that the CAI provides that the arbitral panel will render its decisions in accordance with its provisions, and that their interpretation will be in accordance with the usual rules on the interpretation of public international law, as codified in the Vienna Convention of the Law of Treaties. Also, the tribunal will take into account relevant interpretations in the reports of the WTO panel and the Appellate Body adopted by the WTO Dispute Settlement Body in relation to substantially equivalent obligations. In cases where there is a dispute over a measure of alleged breach of obligations under the CAI and essentially equivalent to an obligation under another international agreement to which both parties are signatories, including the WTO Agreement, the party seeking compensation shall choose a forum to resolve dispute.

Section VI: Institutional and final provisions

In Section VI, the CAI covers the institutional provisions that provide for the establishment of the Investment Committee which co-chairing the joint co-chair of the European-Chinese Economic and Trade Dialogue (HED) established between the European

⁵ The CAI does not contain an Investor-State Dispute Settlement (ISDS) clause. Although this clause has been incorporated into some earlier BIT's concluded by EU member states, it considers that it is not in line with EU law and cannot take legal effect after the entry into force of the Lisbon Treaty.

Commission and the State Council of China at the level of Vice President. The purpose of this Committee is essentially to supervise the implementation and application of the CAI not only in the domain of investment but also in terms of sustainable development. For the purpose of its regular functioning, the Investment Committee may make recommendations and adopt binding interpretations, including considerations related to amendments to the CAI. It can also adopt mutually agreed solutions reached in a mediation procedure and adopt decisions to facilitate the conduct of the proceedings of the panel of experts. In particular, it may delegate responsibilities to the Working Group on Investment established by the provisions of the CAI, and delegate responsibilities to other bodies. In the event of the application of new members to the EU, the Investment Committee would examine the effects of such accession on the CAI. It may decide on any necessary adjustment or transition measures to be approved in accordance with each party's internal legal procedures. This CAI Section also overlooks the establishment of the Working Group on Sustainable Development whose task is to help the development of this area in relations between China and the EU. In general, the provisions of Section VI emphasize the importance of transparency, dialogue and openness, which could optimally contribute to the implementation of CAI provisions. With regard to reaching a special agreement on investment protection and investment dispute resolution, the parties agreed to continue consideration of the most effective solutions based on state-of-the-art provisions in the field of investment dispute resolution, taking into account progress in structural reform of investment dispute resolution in the context of the UN Commission for International Trade Law (UNCITRAL) (Dimitrijević, 2019).⁶ Finally, the CAI provides for the possibility of general exceptions through introducing restrictive measures provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustified discrimination or a disguised restriction on investment liberalization.⁷

⁶ It should be noted that under the auspices of UNCITRAL, the adoption of the Convention on the Multilateral Investment Court is currently being negotiated. If international political circumstances allow, the future Convention could in a direct way regulate the entire matter of resolving disputes arising from bilateral and multilateral investment agreements.

⁷ These are, *in concerto*, measures necessary to protect public morals or preserve public order, life or health of humans, animals or plants, in order to ensure compliance with laws which are not contrary to the provisions of the CAI, including those relating to the prevention of misleading and false practices or dealing with the consequences of breach of contract, protecting the privacy of individuals and protecting the confidentiality of individual records and accounts or security.

Conclusion

Relations between the China and the EU have been of global strategic importance from the very beginning. China has always highly valued the role and influence of the EU in regional and international affairs. It supported the process of European integration and the constructive role that the EU has at the international level. From the first days of its existence, China's foreign policy has been committed to maintaining world peace and democratizing international relations, which were, after all, the EU's foreign policy aspirations. Good political and economic relations between the EU and China have over time led to the establishment of various forms of strategic partnership. The importance of establishing a strategic partnership between the EU and China has had positive effects on optimizing their foreign policy position in international relations and to strengthen their trade and investment ties. Given the fact that the movement of capital in the world is inconceivable without foreign direct investment, and that investment alongside international trade is one of the key factors in globalizing the world economy and regional integration, it is clear why the EU and China, after a long series of painstaking negotiations, agreed on the text of the CAI. With this international legal instrument, the two sides should create better conditions for more balanced economic cooperation, to stimulate and increase their investments and trade transactions. In an effort to improve access to its market and provide a better investment environment in a complex trade relationship with the United States, China has managed to balance its relationship with the EU through the CAI, although the EU itself has been under constant United States pressure during the negotiation process. Both sides have thus managed to eliminate some of the negative effects caused by ongoing political tensions with the United States (Veselý, 2020). Finally, the analysis of the CAI indicates that the economic relations between China and the EU complement each other and that they have great potential for even greater development. This can be an incredibly good opportunity to transpose these relations into “mutually sustainable development” in a systematic and harmonized way in the future. In order for that to really happen, it is necessary to harmonize the existing partnership relations in the coming period and, in a sense, permanently work on eliminating differences, deepening mutual trust and expanding the scope of cooperation based on the search for common interests. Finally, in this regard, the imminent ratification of the CAI would send a significant message to the world that the EU and China are ready to improve the global economic environment in the interests of developing a common future and achieving sustainable economic development.

List of references

1. Agreement on Trade and Economic Cooperation between the European Economic Community and the People's Republic of China, *Official Journal*, L 250, 19.9.1985.
2. Amal, M. (2021, February). EU-China Comprehensive Agreement on Investment (CAI): Looking through the European Union's perspective, retrieved from: https://www.researchgate.net/publication/349570071_EU-China_Comprehensive_Agreement_on_Investment_CAI_Looking_through_the_European_Union%27s_perspective Accessed 21.09.2021.
3. Babić, B. (2010). Odnosi Kine i Evropske unije: geoekonomska osovina u razvoju. [China-European Union relations: a developing geoeconomic axis]. *Međunarodni problemi*, 62(3), 418-462.
4. Baijie, A. (2014, May 28). Peaceful coexistence a cornerstone of foreign policy, *China Daily*, retrieved from: http://www.chinadaily.com.cn/kindle/2014-05/28/content_17547189.htm. Accessed 7.09.2020.
5. Berkofsky, A. (2006). The EU-China strategic partnership: rhetoric versus reality, in: Marcin Zaborowski (ed.), *Facing China's rise: Guidelines for an EU strategy*, Institute for the Security Studies, European Union, Paris.
6. Brown, K. (2021). The EU and China in 2021: Separate Discourses, Similar or Different Aims? *The Asan Forum*, April – June, (9)2.
7. Buzan, B. (2004). *The United States and the Great Powers*, Polity Press, Cambridge.
8. Ćinmin, Č. (2015). *Diplomatija savremene Kine [Contemporary China's Diplomacy]*. Albatros plus, Beograd.
9. Cotula, L. (2021). EU–China Comprehensive Agreement on Investment: An Appraisal of its Sustainable Development Section. *Business and Human Rights Journal*, 6, 363.
10. Council of the European Union (2016, July 18). Council conclusions EU Strategy on China, 11252/16.
11. Delegation of the European Union to China (2013). EU-China 2020 Strategic Agenda for Cooperation, retrieved from: https://eeas.europa.eu/delegations/china/15398/eu-china-2020-strategic-agenda-cooperation_bs. Accessed 21.09.2021.
12. Dimitrijević, D. (2018). China's New Silk Road: the Opportunity for Peaceful World Development", in: S. Chizhikov, A. Dmitriev, B. Kabyliniski (Eds.), *Development of Trade in Modern World: Inovation and Challenges*, Saint-Petersburg, Russian Academy of National Economy and Public Administration, North West Institute of Management, Publishing House NWIM.
13. Dimitrijević, D. (2019). Regulatorni okvir Evropske unije za strane investicije, u: Sanja Jelisavac Trošić (ed.), *Regulatorni okvir Evropske unije za strane investicije*. [European Union regulatory framework for foreign investments, in: Sanja Jelisavac Trošić (ed.), *European Union regulatory framework for foreign investments*]. Beograd, Institut za međunarodnu politiku i privredu.
14. Dimitrijević, D. (2020). Contemporary Relations of Serbia and China in a Changing World, in: Ana Jović Lazić, Alex Troude (eds.), *Security Challenges and the Place of the Balkans and Serbia in a Changing World*, Institute of International Politics and Economics; Faculty of Security Studies, Belgrade.
15. Dimitrijević, D. (2021). Primena pravnog okvira Evropske unije za proveru stranih direktnih investicija u vreme pandemije covid-19 [Implementation of the European

Union legal framework for the screening of foreign direct investments during the Covid-19 pandemic]. *Evropsko zakonodavstvo*, 20(75), 5-20.

16. Dimitrijević, D., Jakanović, N. (2016). China's 'New Silk Road' Development Strategy. *Review of International Affairs*, 2016, 1161.

17. Dugis, V. (2018). Neoliberalisme, in: Dugis, Vinsensio (ed.), *Teori Hubungan Internasional (Perspektif-perspektif Klasik)*, Surabaya, Airlangga University Press.

18. Egger, P.H. (2021). Putting the China-EU comprehensive agreement on investment in context. *China Economic Journal*, retrieved from: <https://doi.org/10.1080/17538963.2021.1933057>. Accessed 01.09.2021.

19. Euractiv (2020, December 3). China edges past US as Europe's top trade partner, retrieved from: <https://www.euractiv.com/section/economy-jobs/news/china-edges-past-us-as-europes-top-trade-partner/> Accessed 21.09.2021.

20. European Commission. (1994, July 13). Communication from the Commission to the Council towards a New Asia Strategy, COM/94/314 /final.

21. European Commission. (1995, May, 5). Communication from the Commission - A Long Term Policy for China-Europe Relations, COM/95/279/final.

22. European Commission. (1998, March, 25). Communication from the Commission - Building a comprehensive partnership with China, COM/98/0181/final.

23. European Commission. (2001, October 12). European governance - A White Paper, COM/2001/0428 final, *Official Journal*, L 287.

24. European Commission. (2001, September 4). **Communication from the Commission - Europe and Asia: A Strategic Framework for Enhanced Partnerships, COM/2001/0469 final.**

25. European Commission. (2003, September 10). Commission Policy Paper for Transmission to the Council and the European Parliament - A maturing partnership – shared interests and challenges in EU-China relations, COM (2003) 533 final.

26. European Commission (2016, June 22). Joint Communication to the European Parliament and the Council: Elements for a new EU strategy on China, retrieved from: https://eeas.europa.eu/archives/docs/china/docs/joint_communication_to_the_european_parliament_and_the_council_-_elements_for_a_new_eu_strategy_on_china.pdf. Accessed 18.07.2021.

27. European Commission (2016, November 22). Next steps for a sustainable European future, European - action for sustainability”, European Commission Communication, COM (2016) 739 final.

28. European Commission (2019, March 12). Joint Communication to the European Parliament, the European Council and the Council: EU-China – A Strategic Outlook, JOIN (2019) 5 final.

29. European Commission (2020, March 3). Europe 2020: A strategy for smart, sustainable and inclusive growth, European Commission Communication, COM (2010)2020.

30. European Commission (2021). EU-China Comprehensive Agreement on Investment, Key Facts and Figures, retrieved from: https://trade.ec.europa.eu/doclib/docs/2021/march/tradoc_159481.pdf. Accessed 02.09.2021.

31. European Commission (2021, December 30). EU-China Comprehensive Agreement on Investment, retrieved from: https://trade.ec.europa.eu/doclib/docs/2020/december/tradoc_159242.pdf. Accessed 01.02.2021.

32. European Economic Community - People's Republic of China: Trade Agreement, *International Legal Materials*, 1978, 17(6), 1459-1462.

33. *European Parliament (2021). D-CN: Delegation for relations with the People's Republic of China*, retrieved from: <https://web.archive.org/web/20191013052016/https://www.europarl.europa.eu/delegations/en/d-cn/about/introduction> Accessed 20.09.2021. Accessed 7.09.2021.
34. Hongyuan, L., Yun, G., Qifa, S. (2012). *China's Road*, Beijing, Huangshan Publishing House.
35. ILO (2021) Up-to-date Conventions and Protocols not ratified by China, retrieved from: https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:103404. Accessed 7.09.2021.
36. Jiabao, W. (2007, February 27). Our Historical Tasks at the Primary Stage of Socialism and Several Issues Concerning China's foreign Policy. *People's Daily*.
37. Keith, R. C. (2009). *China from the Inside Out: Fitting the People's Republic into the World*, London. Pluto Press.
38. Ministry of Foreign Affairs of the PRC (2003). China's EU Policy Paper" retrieved from: https://www.fmprc.gov.cn/mfa_eng/topics_665678/ceupp_665916/t27708.shtml. Accessed 09.09.2020
39. Ministry of Foreign Affairs of the PRC (2013, August 26). Joint statement by the Republic of Serbia and the People's Republic of China on deepening the strategic partnership. Beijing retrieved from: https://www.fmprc.gov.cn/mfa_eng/wjw_663304/zzjg_663340/xos_664404/gjlb_664408/3260_664742/3262_664746/t1069919.shtml. Accessed 11.01.2020.
40. Ministry of Foreign Affairs of the PRC (2014, April 1). Xi Jinping's Speech at the College of the Europe, 2014, retrieved from: https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/zyjh_665391/t1144230.shtml. Accessed 12.07.2020.
41. National Development and Reform Commission, Ministry of Foreign Affairs and Ministry of Commerce of the People's Republic of China. (2015, March 28). Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road", Beijing, retrieved from: http://en.ndrc.gov.cn/newsrelease/201503/t20150330_669367.html. Accessed 08.03.2016
42. Perlo-Freeman, S. (2014, March 31). [Deciphering China's latest defence budget figures. Stockholm, SIPRI](https://www.sipri.org/node/377), retrieved from: <https://www.sipri.org/node/377>. Accessed 22.03.2021.
43. Petrović Piroćanac, Z. (2014). The World and a Chinese Non-alignment Strategy of Governance and Development-Brief Survey, in: *Global Trends and China in the Coming Decade - Contemporary World Multilateral Dialogue 2013*, Beijing, China Centre for Contemporary World Studies, China Foundation for Peace and Development, China Energy Fund Committee.
44. Research Group of the Institute of European Studies of the China Academy of Social Sciences, China. (2008). EU Relations in 2008, retrieved from: <http://ies.cass.cn/en/articles/other/200908051>. Accessed 05.09.2018.
45. Sandschneider, E. (2002). China's Diplomatic Relations with the States of Europe. *The China Quarterly*, 33-44.
46. Veselý, J. (2020). New Generation of Investment Treaties: The Potential of EU-China Comprehensive Agreement on Investment. *BRICS Chambers of Commerce & Industry*, retrieved from:

https://www.researchgate.net/publication/340551953_New_Generation_of_Investment_Treaties_The_Potential_of_EU-China_Comprehensive_Agreement_on_Investment. Accessed 21.09.2021.

47. Xinhuanet (2018, December 18). China's Policy Paper on the European Union, retrieved from: http://www.xinhuanet.com/english/2018-12/18/c_137681829.htm, Accessed 28.12.2020.

48. Yi, H. (2015, March 20). China's 'One Belt/One Road' Policy Is Open to All Nations, *Executive Intelligence Review*.

49. Yongliang, L. (2017). The Global Significance of the Belt and Road Initiative, *International Understanding*, CAFIU, Beijing, 2(2).

50. Zenglein, M.J., Holzmann, A. (2019). Evolving Made in China 2025, China's industrial policy in the quest for global tech leadership. *Merics*, 8.