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EU Policy-Making in a Changing World Order: The case of the EU-China Bilateral Investment Agreement

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Abstract

At present, the EU Institutions are confronted with two major challenges regarding its external trade policy.. Internally, established day-to-day policy-making procedures are challenged by the changes in competencies by the Treaty of Lisbon, creating new rooms for maneuver and informal processes between Institutions and policy-makers. Externally, perceived global power shifts – with the (re-)emergence of China at the forefront - demand increasing attention. This research analyzes the negotiations over a Bilateral Investment Agreement (BIA) with China as a case study of how the EU deals with these challenges in its external trade and investment policy - a Community competence. Instead of exclusively focusing on formal procedures and official interests around the negotiation process, this contribution will rather take the informal processes between the Institutions and policy-makers into account. The research, based on interviews and other material gained through extensive fieldwork in Brussels, applies an interpretive approach to economic and trade relations, thereby providing a more nuanced understanding of how policy-making processes are evolving within the European Institutions, as well as on the EU's response towards China.

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1. Introduction

Scholars and practitioners alike consider global power shifts, most notably the (re-)emergence of China, to be constitutive for the global order in the 21st Century. Within this context, the European Union as the “world’s largest unified market and trading bloc”¹ is developing its actorness and the European Institutions are developing responses to these perceived power shifts. With the Treaty of Lisbon (ToL) coming into effect in 2007, policy-making processes are at the same time changing within the EU Institutions. Hence, the EU institutions are confronted with internal and external challenges in their trade policy-making. While most analysis on EU-China relations focus on the outward-oriented, or external dimension of EU-policymaking, this paper aims to provide a nuanced discussion of EU policy-making towards China taking both internal and external dimensions of the policy-making process into account. This paper therefore discusses both how policy-making processes are evolving within and between the EU Institutions after the ToL, as well as how the EU is responding to China in its trade and investment policy.

Internally, the European project as a whole is being contested, most recently through the UK’s “Brexit” referendum – a win for the less-integration camp. Aside from the question of more or less integration, the European Institutions are facing challenges by integration processes that have formally already taken place. Despite the lengthy and conflictual process, including negative referenda in France and the Netherlands, the Treaty of Lisbon (ToL) finally came into effect in 2007. The formal provisions of the Treaty of Lisbon are now being translated into policy-making practices. The three most salient changes for this research include, (i) the integration of trade as part of EU foreign policy, (ii) the inclusion of investment as a community competence, and, (iii) the increase of competency of the European Parliament (EP) through the Ordinary Legislative Procedure (OLP). As the effectiveness of EU external policies is more related to the existence of established decision-making procedures and shared expectations of key decision-makers than formal competence², this article focuses on the translation of these formal changes into policy-making practices.

Externally, the increasing global economic integration has led to an increase in trade and investment flows among the EU and its trading partners, with China accounting for the largest share over the past decade.³ The political management of these trade flows is a Community

¹ K. E. Smith 2014, 21

² Woolcock 2010

³ European Commission 2014a

competence under the Common Commercial Policy (CCP). However, due to the perceived ongoing global power shifts, policy-makers in the European Institutions are developing their approach towards trading partners that are rapidly gaining economic weight. In particular China is perceived as challenging the EU in trade and investment relations, for example in the negotiations over a Partnership and Cooperation Agreement that stalled in 2011⁴ or in the solar panel dispute in 2012⁵. Currently the EU is negotiating a Bilateral Investment Agreement (BIA) with China.

Trade policy has always been a core competency of the EU and, due to its market size and the volume of trade it generates, foreign trade negotiations are often considered the most important and consequential manifestation of the EU as a global actor⁶. Since the establishment of the European Communities by the Treaty of Rome in 1957, Common Commercial Policy has been a keystone of the functioning of European integration. The Treaty of Rome already initiated the liberalization of international exchange of goods, designated the Commission – still the central actor in EU trade policy – as the sole negotiator for the Member States, and Common Commercial Policy as an exclusive Community competence. Subsequently, the Treaties of Amsterdam (1997) and Nice (2000), as well as Lisbon (2007), broadened the scope of the EU's trade powers over the Member States, ultimately also giving the EU full competence in services, intellectual property rights (IPR), and, foreign direct investment (FDI).

Despite the obvious challenges of this research, the perceived power-shifts as well as the negotiation process over the BIA being ongoing processes, this paper demonstrates the value of taking a more nuanced approach to the study of contemporary EU-China relations. The main questions addressed are: how does the EU deal with the outlined internal and external challenges? What are the common and evolving practices within the institutions? How does the EU respond to China in its trade and investment policy?

Answering these questions, this paper argues that in order to understand EU policy-making towards China, we need to take both the internal and the outward-oriented, or external dimensions into account. Taking the example of the negotiation process over a bilateral investment agreement, it will show how the EU Institutions have contributed to the often-cited, perceived sudden and profound shift in EU-China relations. Internally, the evolving

⁴ Colin 2010; M. Smith and Xie 2010

⁵ Chen 2015; Plasschaert 2016

⁶ Dür and Zimmermann 2007

policy-making process in the Institutions, in particular through the strengthened role of the ‘political’ body, the European Parliament, may contribute to the shift in the Commission’s approach. Differentiating itself from the EP, the Commission shifted from openly calling for political change in China to less political and presumably technical issues of trade and investment. In the outward-oriented or external policy dimension, this supports the EU’s strategy of presenting China as deviating from rational economic logic by invoking the idea of “neutral markets”, which in turn again justifies policy change in China.

The remainder of this paper will proceed as follows: The following section will take a closer look at the literature in the field and the approaches taken, demonstrating the lack of studies incorporating internal and external factors to EU policy-making, in particular from an interpretive approach. The third section will analyze the internal and external dimension of policy-making towards China within the context of the negotiation process of the BIA based on primary data gathered through extensive fieldwork in Brussels. Finally, the conclusion aims to summarize the findings and point to further areas of research.

2. Literature Review

Despite the key function of the CCP for the EU and the constantly evolving competence of the EU Institutions in this field, the literature on European trade policy and, in particular its role in trade negotiations, remains insufficient. While the formal changes induced by the Treaties have received abundant attention, and, although the institutions produce large numbers of policy papers, these often contain little that could illuminate internal decision-making processes⁷. It therefore seems even more surprising that the actual policy-making processes within the institutions have not received sufficient attention. Furthermore, the literature remains separated between those studying EU policy-making in its internal dimension, and those focusing on the policy-positions, i.e. the outward-oriented (external) dimension. This contrasts with my fieldwork data, in which policy-makers in the EU Institutions emphasized the importance of understanding the internal policy-making dimension in order to be able to explain EU policy-making and -positions. Hence, academic studies seem to neglect what policy-makers on the ground consider important.

⁷ Dür and Zimmermann 2007

This article presents a contribution to filling this gap by taking both the internal and external dimension into account. Policy outcomes cannot always be directly and causally linked to the policy-making processes and structures and, as da Conceição-Heldt shows, internal cohesiveness is not necessarily a sufficient condition for EU external effectiveness⁸. Nevertheless, formal and informal processes do play an important role and need to be taken into account in conjuncture. For instance, the division of competence between the EU Institutions and their enactment can help explain the often-critiqued lack of policy coherence in EU China policy.

The literature on EU-China relations mainly relates to traditional International Political Economy (IPE) perspectives. These publications paint a liberal account of China's rise, in which it is the EU's task to integrate China into existing rules and institutions.⁹ While China is depicted as rising, its counterpart, the EU (or more often the US), is described as declining. In particular realists contend that China poses a threat to European interests and therefore should be contained.¹⁰ For Men, frictions in EU-China trade and economic relations persist because of the growing trade imbalance, China's growing assertiveness and differing interests between the EU and China.¹¹

However, these perspectives do not seem able to explain the profound and seemingly sudden shifts in the EU-China relationship over the last decade. This scholarship often portrays particular economic actions, policies, or rules as the product of fairly obvious rational responses to clear environments and neglect the internal policy-making processes within the European Institutions. Smith in contrast discusses EU policy-making towards China in terms of framing, negotiation and management.¹² Smith concludes that the EU devoted a lot of attention to framing the relationship in terms of discourse and rhetoric, thereby responding to changes in internal conditions. However, Smith also finds a disconnect between the EU's rhetorical commitment and its pragmatic management of the EU-China trade relationship, but which is not explained further. Literature that demonstrates how material factors interact with and are dependent on ideas and beliefs are still lacking. For example, Pan shows how China and Europe interpret the same political concepts such as sovereignty, democracy,

⁸ da Conceição-Heldt 2014

⁹ See for instance Hutton 2008, Kagan 2003

¹⁰ See for instance Breslin 2013, Smith 2013

¹¹ Men 2012

¹² M. Smith 2016

multilateralism, or, global governance and how their interpretations impact their handling of various issues, for instance the Strategic Partnership.¹³

Finally, the bulk of (positivist) literature on China and EU-China relations treats China as something made of observable facts and hence assuming an ultimately knowable Chinese reality. In contrast, this paper contends that actors attach meanings to their counterparts and the economic contexts. Only a few studies take the social construction of policy and policy environments into account and for instance demonstrate how certain representations of China, e.g. China as a threat and China's assertiveness, have been (deliberately) framed as such and thereby expose mechanisms of social construction of "Chinese reality".¹⁴ Similarly, trade and investment are not simply technical matters, but their implementation raises a number of other questions such as questions of political authority.¹⁵ The argument here is that the content of different ideas gain political influence as competing interpretations of optimal policy and the dominance of one idea over the other has important policy ramifications.¹⁶ Hence, trade and investment relations as politics are performed through classification and differentiation, through interactions such as negotiations over trade policy and are enacted through social arrangements known as international relations. This necessitates the investigation of ideas, which make it possible to understand the situational features around EU trade towards China in a particular manner that require a particular sort of policy response.

Therefore, this research is approached through interpretive policy analysis. Interpretive policy analysis enables the researcher to take all aspects of activities, ways of reacting and daily discourse of research participants into account and makes use of representations and common understandings and concepts of research participants. This paper in particular aims to shed light on the informal processes between the different institutions and policy-makers within the negotiation process over a Bilateral Investment Agreement between the EU and China. Thereby this approach, based on interviews and other material gained through extensive fieldwork in Brussels, offers a more nuanced understanding of EU-China relations.

¹³ Z. Pan 2012

¹⁴ See for instance C. Pan 2012; Turner 2013; Gompert, Binnendijk, and Lin 2014 and Jerdén 2014

¹⁵ M. Smith 2016, 11

¹⁶ Goldstein 1988, 182

3. From human rights and democracy to apolitical economy and neutral markets

The following section will examine the empirical data mainly consisting of interview material¹⁷ with policy-makers in Brussels and policy documents issued by the EU Institutions. The analysis is based on interpretive policy analysis, which combines the close reading and inductive coding of policy-relevant texts and other types of documents, formal and conversational interviewing, and participant observation. The first part of the empirical analysis outlines the approach of EU policy-makers and EU policy towards China over time in order to better understand the shift in EU-China relations from around 2006 onwards. In this shift, the EU Institutions, in particular the Commission, change their focus from political and contentious issues of China's internal policies towards supposedly pragmatic and less political issues of trade and investment.

The second part will discuss the negotiation process of the Bilateral Investment Agreement, which, despite the perceived challenges within the relationship, is seen as an important milestone. It will on the one hand include an analysis of the informal policy-making processes within the EU Institutions, outlining common and evolving practices in EU trade policy-making towards China, in particular between the Commission, the EEAS, and the European Parliament.. On the other hand it will discuss the EU's approach in its trade and investment policy towards China in this context. It thereby exemplifies how the EU's approach towards China has changed in its rhetoric, whereas the underlying idea of the necessity of a certain change in China persists. In particular, representing China as deviating from rational economic logic by invoking the idea of "neutral markets" serve as justification for policy change in China.

3.1. EU policy-making towards China

Since the 1970s, China has in line with its economic growth, increased its interactions in terms of trade and in international fora, as well as reformed domestically. This process is also known as "Reform and Opening Up" and often titled China's rise or re-emergence. In this context, policy-makers in the European Institutions and elsewhere expected China's economic growth and integration into the capitalist liberal order to lead to democratization and economic liberalization. EU policy papers, such as the Commission's Asia Strategy "Towards

¹⁷ Most of the interviews were conducted personally from November 2015 to January 2016 in Brussels.

a New Asia” (1995), the China policy papers “A Long-Term Policy for EU-China Relations” (1995), and “EU-China Relations: A Maturing Partnership” (2003), explicitly stated these expectations and focused on supporting China’s domestic reforms of society and politics.¹⁸ Policy-makers believed that this process could be influenced and supported by the EU due to its own experiences, simultaneously enhancing the EU’s international role and influence. For instance, in 2000, Romano Prodi, then President of the European Commission, stated that Europe needed to project its model of society into the wider world,¹⁹ reflecting the idea of the EU as a normative, civilian and soft power.²⁰

Following this notion of the EU as a normative power, the EU aimed at supporting China’s domestic transformation, i.e. developing the rule of law, safe guarding human rights, a pluralistic society and more recently promoting a sustainable environment and market economy – overall supporting “meaningful change” in different policy areas.²¹ Bengtsson and Elgström show how this approach stems from the EU’s self-conception, implemented through economical and technical assistance to third countries and the discursive framing of concepts such as development and security.²² EU policy-makers for instance expected that political and economic support, such as the EU’s support for ‘early’ admission of China to the WTO, would translate into political leverage. However, the expected political spillover did not materialize and instead China increasingly openly objected the interference in its internal affairs.

When the Strategic Partnership Agreement was signed in 2003, the belief in China’s development according to EU expectations still persisted. The Strategic Partnership is considered a major milestone and the following years are often labeled “honeymoon-period” in EU-China relations. Due to the EU’s Eastern enlargement in 2004, the EU became China’s largest trading partner. China’s 2003 policy paper on the EU reads: “The common ground between China and the EU far outweighs their disagreements.”²³ This seems to have been the general feeling among policy-makers also in the EU, as both sides placed great expectations in the further development of the relationship. In addition to the EU’s support for China’s entry into the WTO, strategic dialogues furthermore aimed at promoting standards and

¹⁸ Callahan 2009

¹⁹ Prodi 2000

²⁰ Men and Balducci 2010

²¹ Cottey and Gottwald 2008

²² Bengtsson and Elgström 2011

²³ Ministry of Foreign Affairs, PRC 2013

institutions, “the nuts and bolts of economic reform that promise[d] to spur the anticipated spillover into capitalist democracy”²⁴.

But from around 2006 onwards, regarding the overall relationship as well as in particular in the field of trade and investment, conflicts have increased between the EU and China. The comments now spoke of “sudden shifts” and challenges in the EU-China relationship that culminated in the failure of the negotiations over a Partnership and Cooperation Agreement (PCA). Regarding trade, Smith (2016) describes these tensions today as a conflict between the dependency on cheap manufactured products from China and the need to defend EU producers.²⁵ Mainly realist globally focused explanations range from China’s increased negotiating power owing to its growing economic weight²⁶ to explanations assuming a larger agenda, i.e., China’s strive for hegemony in the international order²⁷. However, despite the increasing negative perception of China among policy-makers and the general public, practical cooperation continued increasing. This section will take a closer look at how this impression arose.

Around this time, the Commission acknowledged that its expectations were not being met. Policy-makers realized not only that Chinese and European policy-makers had different understandings of concepts such as sovereignty, human rights, multilateralism and global governance, but that disagreement was also growing on how to practically implement the Strategic Partnership on the basis of common objectives.²⁸ Particular incidents that strained the (high-level) relationship were meetings of European leaders with the Dalai Lama and the increasing European criticism over China’s human rights conduct, in particular within the context of the 2008 Summer Olympics in Beijing. Perhaps less visible were disagreements about China’s market economy, the EU’s growing trade deficit, intellectual property rights, market access and dumping and subsidies, although these issues became more salient over time.

At the same time, the impact of the 2008 financial crisis was clearly felt in Europe, whereas the Chinese economy continued to grow. Hence, China’s share of EU exports increased.²⁹ Despite the growing acknowledgement of differences in understandings of central concepts to

²⁴ Callahan 2009, 142

²⁵ M. Smith 2016, 7

²⁶ Breslin 2013; M. Smith 2013

²⁷ Mearsheimer 2006; Scobell and Harold 2013

²⁸ Z. Pan 2012

²⁹ European Commission 2014a

the relationship, the interdependence in trade and economic issues increased. This interdependence and the EU's increasing trade deficit with China has not gone unnoticed from the public eye. In line with the increasing overall negative perception of China, the perception of China as a competitor equally increased.³⁰

On a practical level, in 2007, the EU and China launched negotiations over a Partnership and Cooperation Agreement, which was seen as the next big step after the Strategic Partnership. The PCA would have presented a substantial trade agreement, updating economic relations, which until today are still based on the EC Trade and Economic Cooperation Agreement of 1985.³¹ The PCA negotiations included a wide range of issues, not only of economic nature but also clauses regarding human rights, sustainability and the environment. However, "the negotiations have been stalled in 2011 due to divergences between the mandates and expectations of the parties".³²

Within this context the Commission's rhetorical approach towards China gradually changed, already visible in the 2006 policy paper, which considerably de-emphasized human rights in comparison to earlier policy papers.³³ Instead, the 2006 policy paper mentioned "growing responsibilities" of and competition from China.³⁴ Furthermore, in 2008, former EU trade Commissioner Mandelson admitted that the EU "will not be able to dictate the solutions to China's problems"³⁵. Similarly, in 2010, former High Representative for Foreign Affairs and Security Policy Catherine Ashton, admitted that the EU could do little to change the Chinese society.³⁶ The emphasis was hence shifted from China's internal reforms to China's external conduct. As will be demonstrated in the following, the EU's official focus shifted from these political and contentious issues of China's internal policies towards supposedly pragmatic and less political issues in EU-China relations, namely trade. In the words of Mergenthaler, presumably the "pragmatic problem-solving character of trade relations spilled over to the conduct of EU foreign policy"³⁷.

As noted above, even though negative perceptions increased, and despite the cancellation of events such as the 2008 EU-China Summit following a meeting between the French President

³⁰ Bersick 2010; Huawei 2012; Huawei, GI, and TN 2014; Brown 2014; Huawei et al. 2016

³¹ Fritsche 2016; Thelle, Sunesen, and Francois 2012, 11

³² European Commission 2016a

³³ Mattlin 2009

³⁴ European Commission 2006

³⁵ Mandelson 2008

³⁶ Rettman 2010

³⁷ Mergenthaler 2015, 26

Sarkozy and the Dalai Lama, practical cooperation continued to increase after the proclaimed end of the “honeymoon period”. Even the failure of the PCA negotiations did not seem to present a significant obstacle to the day-to-day relationship.³⁸ The here presented rhetorical shift will be exemplified in the following section in terms of policy-making practices and the EU’s approach towards China in the context of the negotiations over the BIA.

3.2. Internal and external dimensions of the BIA negotiations

“And to use a technical analogy [you could see the policy-making process as] a pipeline or sewer and the process that gets whatever it is, gold, water, through the system. It has to do with dynamics, with movements in the pipeline. You know, are there hoops and junk and rubbish in it that will make it clog, is it actually moving in some ways we didn’t see [...] The EU-China BIA is a good case study in how this flow of liquid has changed based on the Treaties, based on politicians, based on power politics, based on the structure of EU-China relations.” (Administrator, European Parliament 2015)

As a new approach after the failed PCA negotiations, the EU and China launched negotiations over a Bilateral Investment Agreement in 2012. When concluded, it will be the first stand-alone investment agreement after the Lisbon Treaty came into force, hence the first such agreement negotiated as a Community agreement by the European Union. At the same time, the EU-China BIA is one of the priorities of the EU’s 2015 trade and investment strategy “Trade for All”.³⁹ While the economic relationship between the EU and China is historically focused on trade in goods, investments remain comparably low. The agreement aims at the progressive liberalization of investment and the elimination of restrictions for investors to each other’s markets, as well as to provide transparency, legal certainty and market access⁴⁰. The BIA is also seen as an opportunity to revive the stagnated relationship between the EU and China on a substantial level. The BIA would, when concluded, be the first agreement between the EU and China since the Strategic Partnership was concluded in 2003.

³⁸ M. Smith 2016

³⁹ European Commission 2015

⁴⁰ European Commission 2014c; European Commission 2014b; Godement and Stanzel 2015

Internal Dimension

The following part of the analysis looks at policy-making processes that are evolving in the European Institutions. These are based on the fact, that the Treaty of Lisbon strengthened the Community competence regarding trade and investment policy via the member states. As the EU-China BIA is the first stand-alone investment treaty negotiated by the EU Institutions since the ToL has come into effect, it can be regarded as a test case in which policy-makers are still developing their practices. As this section will show, taking the internal policy-making processes between the Institutions into account, adds to the understanding of the EU's approach towards China, as these may affect policy-outcomes, in particular regarding policy coherence.

These practices can play out in different ways. The most frequently mentioned and highly valued by my interview partners, are practices evolving through the increased role of the European Parliament:

“When I first came here ten years ago and discovered this [preoccupation with competence], oh my god, it can stop every discussion. And the number of meetings I've been in where someone, usually a German lawyer, begins with that. And I understand that. But just because it is necessary doesn't make it sufficient and doesn't make it all-explanatory. So I think it is much better that you see it as a foundation, a building block and not as the beginning and end of a discussion.”⁴¹

While the Treaty of Lisbon and the Interinstitutional Agreement formally outline the competencies of the Institutions, these documents are not all-encompassing. Therefore, a constant power-struggle is visible between in the policy-making processes between the Institutions. In the context of the BIA negotiations, the Commission formally takes the lead. The Commission has received the formal negotiating directives adopted by the Council and is now responsible for carrying out the negotiations with its Chinese counterpart. Within the Commission, DG Trade is in charge of this process. Apart from the negotiation events itself, meetings are organized before each round to inform and consult with all relevant services, Directorate Generals (DGs) and the European External Action Service (EEAS)⁴². In contrast, the EEAS “follows” the file. The EEAS's “role is to understand the messaging and how to weave this messaging into the normal political process [...], which for instance happens in the

⁴¹ Administrator, European Parliament 2016b

⁴² The European External Actions Service (EEAS) is the EU's diplomatic service. It was created by the ToL and brings together expertise from EU and national diplomatic services. It is responsible for running the EU Delegations and Offices and representing the EU and its citizens globally. The EEAS carries out the foreign policy that is determined by the Council. It does not have a formal role in the policy-making process.

strategic dialogues.”⁴³ The EEAS coordinates activities and “makes them compatible”⁴⁴ and is consulted by DG Trade. This consultation usually takes place through informal contact between the staff of the Institutions. The EEAS does not have a formal role in the policy-making process, and in contrast to the Council and the Parliament, no veto power.

Similar to the EEAS, the EP follows the process, but has no formal way of directly influencing the negotiations. According to the ToL, the Parliament has the right to be informed at all stages of the negotiations and under the Ordinary Legislative Procedure (OLP) needs to consent to the final agreement. However, the EP is demanding more access and closer involvement. An often cited view is that the EP has become a much more credible veto power since rejecting the Anti-Counterfeiting Trade Agreement (ACTA) in 2012 and therefore is taken more seriously by the Commission. However, the stigma of the EP as a nuisance to practical policy-making because of its political nature remains and it is therefore not always regarded as a fully-fledged and important Institution in the policy-making process.⁴⁵

The internal struggles over competence are enacted through information flows. While the Parliament has the right to be informed on all stages of the negotiation process of the BIA by the Commission, in practice, this seems to be the case for only a very limited group of people. According to the Commission,

“At the end of each negotiating round, the Commission shares a report with both the Council and the European Parliament. It also attends the INTA Monitoring Group on China, where it informs on the state of play of the negotiations.”⁴⁶

However, in the case of restricted documents – as on ongoing trade negotiations – information may be dispersed only to a selected group, such as INTA’s Chairman, the Deputy Chairs and the Coordinators.⁴⁷ This leads to the impression of excluded parties that there is a lack of transparency and the flow of information towards the Parliament to be insufficient.⁴⁸ Even though the Commission seems to be pushing for a swift conclusion of the agreement, to date very little discussion has actually taken place in the Parliament. Despite Parliament vote on the final agreement, it seems to be common that the EP is not involved in the negotiation but

⁴³ Administrator, EEAS 2015b

⁴⁴ Administrator, EEAS 2015a

⁴⁵ Administrator, European Commission, DG MOVE 2015

⁴⁶ Malmström 2016

⁴⁷ Administrator, European Parliament 2016a

⁴⁸ Assistant to MEP, European Parliament 2015; Administrator, European Parliament 2015b

only at the end of the process.⁴⁹ Hence, this example demonstrates how practices have not yet evolved in a way that the Parliament is fully regarded as included in the processes.

The Council, through a special committee, is also informed by the Commission on the progress of the negotiations. However, the role of the Council has not changed through the Treaty of Lisbon, it has always been a substantial part of the decision-making process. The Council furthermore has, aside from the high-level meetings of heads of state, little visibility and does not seem to be seeking more visibility on the working-level.⁵⁰

In contrast, the EP is strengthening its public voice. Therefore, the Commission remains cautious in its information policy regarding the specifics of the negotiations out of concerns for data leaks⁵¹, as well as out of the practice of presumably distinguishing between politics and technical issues of trade, as will be discussed in more detail below. As the EP is made up of politicians in contrast to the bureaucracy, Members of the European Parliament (MEPs) “have the luxury of taking [...] the more extreme positions that the Commission and Member States cannot”⁵². This may even lead to other DGs and services approaching Parliament staff with suggestions.⁵³ However, this also means that issues that according to the Commission are purely technical, can become easily politicized⁵⁴ when they come under the scrutiny of MEPs.

One effect of these internal challenges is the often-criticized lack of policy coherence. Even though it is clear that the EU is not a unitary actor, it is acknowledged that the EU could strengthen its bargaining position, if it spoke with one voice adopted a coherent policy.⁵⁵

From an outsider perspective this would mean that any of the Institutions, when in charge of a paper or policy on China, would incorporate this into the larger EU strategy. This however is not the case, also because of power plays within the EP. For instance, within the EP, in December 2015 the Committee on Foreign Affairs (AFET) prepared a report on EU-China relations, which referenced trade relations with China and in particular the BIA. However, issues concerning trade and investment with China conceptually fall under the remit of the Committee on International Trade (INTA). Even though one could perceive this to be a minor breach and it may seem like a good idea to enhance policy coherence, it is perceived to

⁴⁹ Assistant to MEP, European Parliament 2015

⁵⁰ Administrator, Council of the European Union 2015

⁵¹ For instance in the negotiations of the Transatlantic Trade and Investment Treaty (TTIP) between the EU and the USA, negotiation texts have been leaked to the public.

⁵² Administrator, European Parliament 2016b

⁵³ Administrator, European Parliament 2015a

⁵⁴ Head of Unit, DG Trade, European Commission 2015

⁵⁵ Algieri 1999; da Conceição-Heldt 2014; Marangoni and Raube 2014

possibly have wider implications that go beyond mere “office politics”, as foreign policy is intergovernmental – ultimately decided by the Member States – whereas trade policy is a Community competence.⁵⁶ Hence, fear is expressed that this practice could have larger effects on the division of power between the EU Institutions and the Member States. At the same time this example demonstrates how the structures and formal competencies can on the one hand constrain policy-making, while on the other hand, may in practice, be disregarded.

Even though the lack of policy-coherence seen as an impediment to the effectiveness and power projection of the EU, it allows the various institutions to play different roles as will be described in the following. It therefore has implications for how the EU responds to China and for the EU’s China policies, i.e the outward-oriented or external dimension.

External Dimension

The EU maintains a self-image of an open and transparent formal policy-making process and more informal process of consolidating the interests of the different EU institutions. Especially in trade and investment negotiations the extent of transparency is currently being publicly debated,⁵⁷ however, not in the context of the BIA. On the one hand, as previously outlined, interview partners in the European Parliament feel sidelined in the negotiation process due to the lack of access to information. On the other hand, the BIA is discussed as a purely technical issue by the Commission that is not linked to other policy. The discourse thereby excludes discussion on presumably political issues, in particular discussions on China. In the context of the BIA, my interview partners were particularly careful to avoid political language and markedly resorted to very narrow definitions:

“The negotiation of an investment agreement basically implies pursuit for improved market access for investors, protection for existing investments, improves the overall regulatory environment, dispute settlement and sustainable development disciplines, transparency. So this is an agreement that is focused on investment, so it has a concrete scope, but on the other hand it addresses a significant part of our economic relationship with China to the extent that investment is not as high in numbers as trade in goods

⁵⁶ Administrator, European Parliament 2016a

⁵⁷ Current negotiation processes that are being criticized for their lack of transparency are in particular the negotiations over the TTIP between the EU and the US, but also the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, as well as the Trade in Services Agreement (TISA) negotiated between 23 Members of the WTO.

is. So the expectation is that after this agreement, we are going to resolve investment growth in the two countries, improve market access also for EU investors.”⁵⁸

While on the one hand the apolitical language might reflect ideological battles within the EU institutions and aims to exclude the “political” body, the Parliament, it feigns impartiality and supports the arguments for change in China’s economic environment without explicitly making them about China, on the other. However, the economic goals of the BIA can only be reached if the problems (in China) are addressed:

“If we have already, which is the case, identified, that investors for example have difficulties operating an investment in China because the rules are not transparent enough, because there are many complicated procedures, there is not enough legal certainty, obligations are not enforced, then the investment agreement can address of these problems.”⁵⁹

These technical and legal criteria are outlined in international treaty texts and are based on the belief of a certain structure of the market. This is clearly visible in the Commission’s 2016 Joint Communication to the European Parliament and the Council “Elements of a new EU Strategy on China”:

“However, EU-China relations must also deal with the reality that China is a one-party system with a state-dominated model of capitalism [...] In the medium term, China needs to reform its state-led economy and let market forces naturally address the problem”.⁶⁰

This demonstrates the belief in a certain kind of economic system, which is organized by liberal market forces. This statement, according to which the market can “naturally address” China’s problem, additionally demonstrates a belief in the market as neutral and therefore less political, as well as the belief that open markets are the key to economic growth – something generally interpreted as positive. Despite the official discourse turning away from demands of political domestic change in China as previously stated in policy documents and towards issues of trade and investment that are regarded as technical and less political issues, within these issues, the expectations that China must change in a certain way remains essentially the same. Hence, by taking liberal economic theory as common reference, EU policy-makers can resort to the presumably neutral arena of economics, avoiding an open clash of political norms. Alternative approaches, such as by Zhang and Peck, in contrast show how “capitalism with

⁵⁸ Administrator, European Commission 2015

⁵⁹ Administrator, European Commission 2015

⁶⁰ European Commission 2016b, 7

Chinese characteristics” defies certain logics and characteristics of ‘conventional’ understandings of capitalism.⁶¹

However, for the EU Institutions, in particular the Commission, resorting to these economic beliefs lets China appear as irrational, common sense then allows calling for the desired policy change in China. This denies past and recent changes and developments in different sectors and locations within the Chinese economy as the goal seems to be shifting over time.

The BIA negotiations are equally closely linked to ideas of reforms and change within China and the paradigm of open markets. However, the open market also has its limits, at least regarding the EU’s own market. This raises the question how the interest of opening China’s market and economy on the one hand, is balanced with the protection of the EU’s own industries on the other. This essentially touches upon the issue of who makes the rules and decides when protection and when opening up are appropriate, when a measure is considered as protectionist and when as a matter of defense. A second, related priority for the investment negotiations is establishing a level playing field. This includes the restriction of ‘unfair’ competition practices of the Chinese government.⁶² The important issue here is that these ideas of ‘free’ and ‘fair’ trade depend on the definition of legitimate interests and are not given but are built on economic values and norms of how the global trading system is organized. They furthermore highlight that the conditions that are necessary to participate in the global trade system today are linked to demands for change in China’s economic system.

4. Conclusion

This paper argued that in order to better understand EU policy-making towards China, we need to take into account internal as well as external dimensions of policy-making in the EU Institutions. It has addressed the main questions how does the EU deal with the outlined internal and external challenges? What are the common and evolving practices within the institutions? And, how does the EU respond to China in its trade and investment policy? Taking the example of the negotiation process over a Bilateral Investment Agreement, it showed how the EU Institutions have contributed to the shift in EU-China relations. Internally, the evolving policy-making process in the Institutions, in particular through the strengthened role of the ‘political’ body, the Parliament, may contribute to the shift in the Commission’s

⁶¹ Peck and Zhang 2013; Zhang and Peck 2016

⁶² Iuliu Winkler, MEP (EPP), European Parliament 2016; European Commission 2016b, 6

approach. Differentiating itself from the EP, it shifted from openly calling for political change in China to resorting to less political and presumably technical issues of trade and investment. In the outward-oriented or external policy dimension, this supports the EU's strategy of presenting China as deviating from rational economic logic by invoking the idea of "neutral markets", which in turn again justifies policy change in China.

As this paper could only offer preliminary insights, further research might take a closer look at particular representations of China in the EU Institutions. In addition, as the perceived power-shifts in the global order are continuing and the processes in the EU Institutions are at the same time further evolving, this paper could only present a spotlight on these issues today. Another approach might investigate the response of China towards the EU from this perspective. A third approach taking this research a step further, might comprise comparative studies, analyzing to what extent this shift in the EU's approach may or may not be unique to China in comparison to other important trading partners.

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