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Master's Thesis of Suhyeon Kim

Realism and EU Trade Policy  
– European Strategic autonomy through the  
case of EU–China Comprehensive Agreement  
on Investment (CAI) –

현실주의와 EU 무역 정책:  
EU–중국 포괄적투자협정(CAI) 사례를 통한  
유럽의 전략적 자율성의 논의를 중심으로

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# Realism and EU Trade Policy

## European Strategic autonomy through the case of EU-China Comprehensive Agreement on Investment (CAI)

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이 논문을 석사 학위논문으로 제출함  
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# Abstract

The EU established the EU-China Comprehensive Strategic Partnership with China in 2003 with an action plan in earnest in 2013. One of the results from this partnership was an agreement called the EU-China Comprehensive Investment Agreement (CAI). It was agreed on December 30, 2020, after a seven-year agreement process. This investment deal has implications both economically and politically. Traditionally, the EU was perceived as the US's partner in containing China. However, due to this agreement, the EU's position has been perceived to have deviated from that of its ally, the US. In this context, this study examines the background and purpose of the EU-China Comprehensive Investment Agreement (CAI) and argues that this agreement is an extension of the EU's strategic autonomy from the perspective of realism, where the EU was driven by self-interest and power-maximisation in the negotiations of the CAI with China. The conclusion of this paper is that the EU's decision to negotiate the CAI and the concluded provisions of the text can be explained by the EU's desire to advance its own interests and projecting its power, in particular enhancing its industry competitiveness and enlarging its market access to China, as well as securing its place in the international stage, even at the cost of normative objectives.

Keyword : EU-China Comprehensive Agreement on Investment (CAI), EU Trade Policy, Strategic Autonomy, EU-China relations, Realism

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# **Chapter 1. Introduction**

## **1.1 Study Background**

The widening and deepening of EU-China bilateral relations has started since a treaty was signed in 1985, marking their official diplomatic ties, followed by the year 1998 in which they launched EU-China annual summit meetings. To upgrade EU-China relations, the EU launched a ‘comprehensive strategic partnership’ with China in 2003 (Men, 2012). It is based on the 1985 EU-China trade and cooperation agreement aimed at moving beyond sporadic trade issues to open new areas of cooperation. There are three pillars of high -level exchanges that support this partnership: economic, political and people-to-people dialogues from 2012.

EU-China relations were upgraded in 2013 when they put forward the ‘China-EU 2020 Strategic Agenda for Cooperation’, a goal-setting document containing a broad range of initiatives. Indeed, China wanted the EU to agree to initiate bilateral free trade agreement talks. Consequentially, the two strategic partners agreed to start negotiating on the EU-China Investment Agreement (CAI), and promised to work towards a full, comprehensive Free Trade Agreement (FTA) after the launch of the CAI as a result. Such initiatives were first contained in the EU-China 2020 Strategic Agenda for cooperation.

## **Trade and investment**

2. Negotiate and conclude a comprehensive EU-China Investment Agreement that covers issues of interest to either side, including investment protection and market access. [...]

3. Negotiating and concluding such a comprehensive EU-China Investment Agreement will convey both sides' joint commitment towards stronger cooperation [...] once the conditions are right, towards a deep and comprehensive FTA, *as a longer term perspective*.

**From Document on EU-China 2020 Strategic Agenda for Cooperation**  
(European External Action Service, 2013:5).

Both sides want closer economic ties, which is institutionalised in the document in the form of the bilateral investment agreement. This move can be explained by economic factors. First, since 2001 China's accession into the WTO, trade in goods significantly increased, mainly due to China's gradual economic liberalisation with opening up, albeit scrupulous. Their trade volume reached € 696 billion in 2021, compared to €113 billion in 2001, representing 16% of all EU trade in goods. (European Union 2006) Considering the EU's trade with the United States accounts for 15 per cent, China has proven to be the biggest trading partner of the EU (Destatis, 2022). The EU and China provide strategic markets for each other, where China offering 1.4 billion consumers in a thriving market and its rapidly growing business opportunities present the EU with a chance to compete and thrive. It brings positive consequences such as increased productivity spurred by a larger scale of operation, experts, innovation and global competitiveness. Through this deal, the EU also aims to curb and regulate Chinese investments by policy instruments put in the agreement, which would provide substantial



economic benefits for the EU. Second, following the ‘deep coma’ of the Doha Development Round in the mid-2000s and the financial crisis in 2007-2008, the EU has changed the course of its trade policy in that it no longer constrains itself from concluding regional and bilateral trade deals. In addition, considering the relative decline of Europe relative to the rising economies, in particular East-Asian countries, contributed to the incentives the EU has in order to use trade, rather than internal consumption, as the main motor of economic growth.

## **1.2 Purpose of Research**

The reasons behind the initiation of the CAI seem straightforward at first through the lens of the economy and international trade. However, in dark contrast, the European Parliament has vetoed the complete agreement by refusing to ratify the deal based on human rights-related sanctions vis-a-vis China after seven years of negotiations.

The puzzle this thesis is trying to investigate is, whether there are any other factors, apart from economic incentives, to explain the EU’s decision to strike an investment deal with China, and its behaviour during the negotiations, and the outcome. Since the inception of the negotiation rounds, the deal has come under severe criticism in Europe and among the EU’s key partners, not only targeted at the substance of the deal but also at the timing and political context. Through the agreement, the EU seems to send messages that they are willing to cooperate with China in terms of global economic governance, especially when the Trump administration was wrapped up in the trade war with China. The timing of the agreement has therefore attracted controversy as it has gravely complicated transatlantic cooperation with China and undermined the Biden administration’s policy toward China. China also has precarious human rights records that would

make any close cooperation with the EU very difficult, as the EU is often called the “normative power”. This prompts the question of why the EU has chosen this approach, despite arguably jeopardising its transatlantic cooperation and putting its normative image in danger. What other factors could explain the EU’s embarking on the investment agreement with China, and what could explain the negotiation dynamics and the outcome? This paper sets out to use Realism to explore the dynamics of the CAI.

The EU is increasingly behaving in realistic and strategic ways. Choosing China as a partner of a bilateral investment treaty and a future FTA can be a gesture of the EU being autonomous from the force previously confined to the EU action, namely the role of the US and its transatlantic alliance. The CAI was considered as a sign of weakening the EU-US transatlantic ties and the initiation and outcome of the EU-China CAI are thus considered by many observers as a manifestation of the EU’s freedom of choice in partner in order to pursue its interest. Indeed, the systemic stimuli, such as a redistribution of power, challenges in international norms and values, instrumentalisation, or even weaponisation of trade for geopolitical gains is increasingly making the EU rethink its position in the world. To borrow the European Parliament’s own words, the EU is “at risk of becoming a ‘playground’ for other global powers. [...] and alongside ‘soft power’, the EU needs to develop ‘hard power’ tools.” (European Parliament, 2020) Thus, international systemic pressures are exerting great influence on the EU’s evaluation of its interdependencies as risks of cooperation have begun to mount. The term that explains this emerging behaviour of the EU is called “strategic autonomy”.

The term “strategic autonomy” is a wide-ranging concept that spans across economy, security, technology and more. For many, such concept is not new. It has a history that stretches all the way back to twenty years to the Franco-British Saint-Malo Summit of 1998, which established the Common Security and Defence

Policy (Fiott, 2018). The significance of this summit and the creation of the CSDP were its statement that called for the EU to “have the capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so, in order to respond to international crises” (Joint Declaration, 1998:5). It is worth noting that current debates have increasingly expanded to economic and foreign policy. Even though there is no common consensus on the definition (Franke, U & Varma, T, 2018), the Council of the EU defined it as the “capacity to act autonomously when and where necessary and with partners wherever possible” (Council of the EU, 2016). Others state that strategic autonomy does not indicate a state’s decision to remain isolated or a binary choice of engagement and decoupling from alliances (Lippert et al., 2019), but rather the freedom to pursue and manage those partnerships and alliances itself (Helwig, 2020).

Therefore, the current international system should be considered in terms of other motivations the EU had regarding China. It is crucial to emphasise that the analysis of the EU’s trade strategic autonomy does not only offer a binary option of coupling or decoupling, cooperation or non-cooperation with the US. Rather, it reveals the grey areas the EU is increasingly finding itself in, to effectively handle its external interdependencies with third parties, in order to serve its interests.

This paper is thus divided into nine sections. After section 1 was devoted to introducing the puzzle that is being investigated in this study, section 2 provides an overview containing the literature on different theoretical perspectives analysing the EU’s foreign trade policy, introducing main theoretical framework, Neoclassical Realism, with identifying the independent variable and two intervening variables. Next, section 3 specifies the operationalization of Realism and presents the formulation of research questions. Section 4 outlines the method for the analysis. The subsequent section, section 5, will provide a brief but critical

overview of the CAI, exploring specific provisions relevant to this research. Section 6 will conduct the empirical probing of the case study to prove that the variables as mentioned earlier were influential throughout the policy outcome. Section 7 brings together the threads of our discussion. Finally, this paper concludes in section 8.

## **Section 2 Literature Review and theoretical discussion**

This section will give a summary of the current status on the analysis of the EU's foreign trade policy and roles of systemic determinants and in shaping the EU's mode of trade deal and its negotiations. This is followed by the justification of the chosen theory.

One of the big questions often dealt in the study of IR is the question of to what extent can internal or external factors situated in the international system influence an actor's behaviour, which will be translated into foreign policy results. This study focuses on Realism as a theoretical framework. Realism is a theory of international relations that highlights the importance of power and self-interest in shaping global politics. This theory posits that nation-states are the central actors in international affairs and are driven primarily by their own desires for power and security. Realists maintain that states aim to strengthen their own influence and protection, utilising various means such as diplomacy, alliances, and military force to achieve these goals.

In the context of the EU-China CAI, realism could be useful in number of ways:

- (1) Realism could be useful in explaining the motivations and actions of the EU and China. Both the EU and China are likely motivated

by their own self-interest and will seek to maximise their own power and security through the CAI. Realism would suggest that the EU and China will both be looking to secure the most favourable terms for themselves in the agreement, and that they may use a variety of tactics to achieve this goal, including negotiating, threatening, and making concessions.

- (2) Realism could also be useful in explaining the potential outcomes of the CAI. Realism would predict that the agreement will be shaped by the relative power of the EU and China and their respective national interests. If one side has significantly more power or is able to effectively advance its own interests, it is likely to emerge from the negotiations with a more favourable outcome.

Overall, realism can offer a useful lens through which to analyse the motivations and actions of the EU in the context of the CAI, as well as the potential outcomes of the agreement.

## **2.1 Literature Review on Realism in the EU Studies**

Classical and structural realism have been gaining ground in the studies of EU trade negotiations. Systemic explanations see EU trade policy affected and influenced by the structure of the international system of states. In the field of EU foreign policy, Adrian Price (2006) utilised structural factors to analyse the EU's foreign policy agenda. Against the backdrop of a rising China and increasingly evolving multipolarity, systemic pressures drove the EU's foreign policy-making to pragmatism and self-interest (Hyde-Price, 2006). To expand this logic to the EU foreign trade policy, Zimmermann (2007) looked at what explained the EU's

negotiations on China's and Russia's WTO accession and concluded that geo-economics and mercantilist considerations drove the EU in order to maximise EU wealth relative to other powers. In terms of the selection of a trade negotiation partner, Elsig & Dupont (2012) attempted to explain the EU-Korea trade deal through the lens of the transatlantic rivalry. They pointed out the systemic factor, the EU-US economic rivalry, as the main instrument to drum up support from the European Parliament. This competitiveness between the two Atlantic partners is factored into again by Sbragia (2010) to explain their competitive behaviours towards seeking access to lucrative emerging markets. Capling & Ravenhill (2013) and Poletti (2018) were also guided by a similar logic, where the new strategic shift of the US to Asia and its consequent containment strategy towards China explained the US's decision to enter TPP negotiations. In terms of the mode of trade agreement, Meissner (2018) developed the concept of "Commercial Realism" to examine EU trade policy from a realistic angle. The focus of the study is the EU's trade relations with Latin America and Association of Southeast Asian Nations, with additional comparisons drawn to other cases. She applied the concept of competition and rivalry with other major economic powers to explain the EU's behaviour when deciding what mode of trade agreements they pursue with countries, either inter-regional (comprehensive) or bilateral basis (selective trade agreements).

Overall, these systemic approaches point to the role played by geopolitical interests in explaining trade ties. It applies a realistic frame to the analysis of EU trade policy through comparative empirical analysis of systemic drivers of trade agreements.

## **2.2 Theoretical Framework**

Under the theoretical framework of realism, states are the main players in international relations and act in their own self-interest. The EU will therefore be motivated by their own self-interest in negotiating the CAI.

States attempt to increase their power and security under Realism. Realists hold that states aim to boost their own influence and protection and will use a variety of methods to achieve those goals. When it comes to the CAI, the EU will likely be attempting to maximise their own power and security through the agreement. Also, lack of central authority means that states must depend on their own power and resources to safeguard their interests. The CAI will be negotiated in this context of anarchy, and the EU will need to rely on their own power and resources to serve and fulfill their interests.

In addition, the distribution of power among states shapes international relations: Realism emphasises the role of power in shaping international relations. The relative power of the EU and China will likely shape the terms of the CAI and the outcome of the negotiations. Moreover, states pursue their own national interests: Realism suggests that states pursue their own national interests in international relations. The EU will likely have different national interests that they will seek to advance through the CAI.

Next section will produce research questions and hypotheses arising from the aforementioned theoretical framework.

## Section 3 Hypotheses and Operationalisation

In line with the theoretical framework, the following theoretically informed hypotheses shall be tested in this case study:

***H1: The EU is motivated by its own self-interest in seeking to negotiate and negotiating the CAI and will seek to maximise its own power and security through the agreement.***

This hypothesis can be tested by examining the EU's actions and statements during the negotiations, as well as the terms of the CAI that the EU ultimately agrees to. To operationalise this hypothesis, this study examines the EU's stated interests and objectives in the negotiations, as outlined in the EU's negotiating mandate and other official documents. This study also analyses the specific provisions of the CAI that relate to the EU's key interests, such as access to Chinese markets, investment protections, and intellectual property rights, to see if the EU was able to advance these interests through the agreement. Additionally, this study examines the actions and statements of key EU institutions during the negotiations to see if they are consistent with the hypothesis that the EU is motivated by its own self-interest.

***H2: The final terms of the CAI will be shaped by the relative power of the EU and China and the EU's ability to effectively advance its own interests.***

This hypothesis can be tested by examining the relative power of the EU and China and comparing the terms of the CAI to the EU's stated interests and objectives. It can also be tested by examining the outcome of the negotiations and comparing it to the EU's initial negotiating position. To operationalise the



hypothesis, this study assesses the relative power of the EU and China using a variety of measures, such as GDP, military spending, and global influence. This can be done through analysis of official data sources and other literature on the relative power of the EU and China.

The following research questions will be examined in the analysis section in order to test the proposed hypotheses.

1. What were the main objectives and priorities of the EU prior to the beginning of the negotiations with China?
2. How did the EU's negotiating position and concessions in the CAI negotiations reflect its own interests?
3. How did the final terms of the CAI reflect the EU's own interests?

## **Section 4 Method**

This paper will be using a qualitative approach in examining EU-China trade relations, particularly the Comprehensive Investment Agreement (CAI) as a single case.

A systemic assessment of the presence and/or absence of strategic considerations in the negotiations of the CAI involve a focus on three loci of motives: the initiation, process and outcome of the negotiations. Thus, in order to depict a holistic picture of the development of events, this study draws from different data sources to decouple the case study. In establishing the international environment and events that probed the EU to choose a certain position for their strategic advantage, it will establish a historical account of the international environment the EU was facing. It uses scholarly discussions, history books, think tank analysis, relevant journalism and official documents analysing the international events, in particular on US-EU transatlantic relations, rivalry, and the

rise of China vis-a-vis Europe. In assessing the EU's changing perception and strategy towards China, the European Commission's Strategic outlook, a landmark document to define the Union's China policy, published in 2016, 2019, and 2021 will be mainly used. The reason for the primary use of this data source is that it entails well-prepared statements reflecting the top EU trade decision-makers (the Commission) perceptions, judgments and policy intentions towards China. Moreover, the Commission's reports, the news articles and official documents regarding the negotiating conducts of the Commissions' Directorate-General for Trade, the European Parliament's resolutions and its vote counts on China and the CAI, parliamentary questions put forward to the Commission, EU-China official meeting logs and other official EU strategic discussions and the EU negotiators' interviews will be used to facilitate the proposed research questions regarding strategic choice, normative elements, and institutional dynamics. Regarding the timeline, even though it was in 2013 that the EU and China announced the negotiations for the CAI, the concept of EU-China's strategic partnership can be traced extensively leading up to the decision. Of course, the year 2003 is an important starting point because it was the beginning of a more structured relationship between the two partners since it was the year, on 30 October 2003 to be specific, that they first established the EU-China 'strategic partnership'. Moreover, it was also the year that events took place that, both internally and externally set the stage for future EU-China relations in the context of international affairs. Considering the changes in the behaviour of the EU as a reaction to the changes in international pressures, this study goes back to the early 2000s to situate the context in which the analysis takes place and demonstrate the systemic stimuli arising from the developments throughout the years that followed.

As a tool of qualitative analysis, this study will utilise the method of theory-guided process tracing (TGPT), which is defined by Alexander George and

Timothy Mckeown (1985) as a “method of within-case analysis to evaluate causal process” (George & Timothy, 1985:35). This method helps us uncover how the decision process is guided by and stimulated by chosen variables and translated into outcomes. By nature, the focus is on how events or situations unfold over time by providing effective snapshots of a chain of events. This allows us to deeply explore the case and unearth causal mechanisms at work. This suggests that this process does not aim to constitute precisely and universally applicable causal processes but rather identify how chosen variables have an effect within a single case via a close-up chain of events. This method of data analysis will help us shed light on how initial conditions can be translated into outcomes within the case of the CAI.

## **Section 5 The EU-China Comprehensive Investment Agreement (CAI)**

Before introducing the CAI, this section offers a brief explanation of the differences in characteristics between the CAI and FTA, the current status of the EU's CAI and FTA negotiations, followed by the characteristics of the CAI itself.

### **5.1 CAI and FTA**

There are several key differences in characteristics between the CAI and a FTA.

One key difference is the scope of the agreements. FTAs typically focus on reducing or eliminating tariffs on goods traded between the two parties, as well as establishing rules for trade in services and investment. In contrast, the CAI is a broader agreement that covers a wider range of issues, including access to markets, investment protections, intellectual property rights, and sustainable development.

Another difference is the level of detail and specificity of the agreements. FTAs often include detailed rules and provisions on a wide range of issues, such as tariff schedules, rules of origin, and technical regulations. In contrast, the CAI is generally less detailed and specific, with many of the provisions being more general and principles-based.

A third difference is the duration of the agreements. FTAs are typically long-term agreements that can remain in place for many years or even decades. In contrast, the CAI is a shorter-term agreement that is only intended to remain in place for a limited period of time.

Overall, the CAI is a broader, less detailed, and shorter-term agreement than an FTA, covering a wider range of issues and focusing on principles rather than specific rules and provisions.

## **5.2 The current status of the CAIs and FTAs by the EU**

The European Union (EU) has negotiated and concluded a number of Comprehensive Investment Agreements (CIAs) and Free Trade Agreements (FTAs) with various countries and regions around the world.

As of 2021, the EU has concluded the following CIAs:

1. EU-China CIA (concluded in 2021): This agreement covers a range of issues, including access to markets, investment protections, intellectual property rights, and sustainable development.
2. EU-Canada CIA (concluded in 2020): This agreement covers a range of issues, including access to markets, investment protections, and sustainable development. The agreement is significant because it establishes a framework for EU-Canada investment and aims to create a level playing field for EU companies in Canada.
3. EU-Japan CIA (concluded in 2020): This agreement covers a range of issues, including access to markets, investment protections, and sustainable development. The agreement is significant because it establishes a framework for EU-Japan investment and aims to create a level playing field for EU companies in Japan.
4. EU-Singapore CIA (concluded in 2019): This agreement covers a range of issues, including access to markets, investment protections, and sustainable development. The agreement is significant because it establishes a framework for EU-Singapore investment and aims to create a level playing field for EU companies in Singapore.

The EU has also concluded a number of FTAs with countries and regions around the world, including the following:

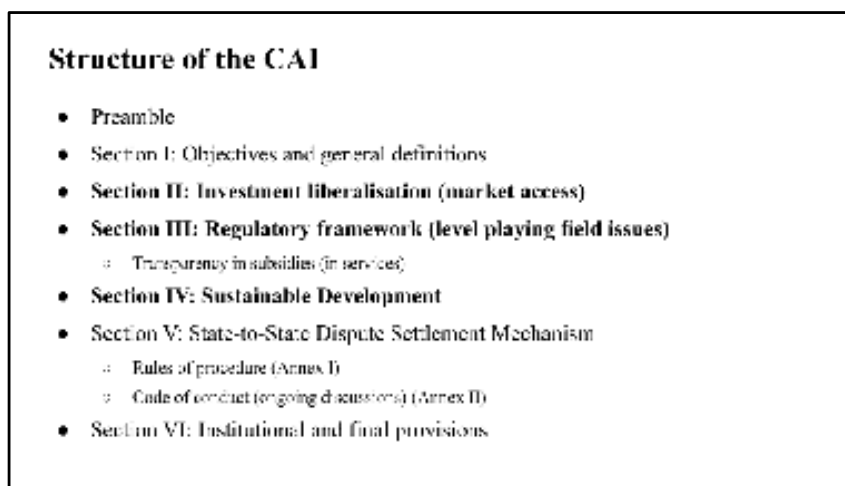
1. EU-United States FTA (concluded in 2021): This agreement focuses on reducing or eliminating tariffs on goods traded between the two parties, establishing rules for trade in services and investment.
2. EU-Canada FTA (concluded in 2017): This agreement focuses on reducing or eliminating tariffs on goods traded between the two parties, in addition to establishing rules for trade in services and investment.
3. EU-Japan FTA (concluded in 2017): This agreement focuses on reducing or eliminating tariffs on goods traded between the two parties, as well as establishing rules for trade in services and investment.

Overall, the EU has a strong network of trade and investment agreements with countries around the world, covering a wide range of issues and sectors.

### **5.3 CAI between the EU and China**

There are 25 bilateral Investment treaties (BITs) currently in effect between China and all EU Member States, with the exception of Ireland. The problem with these BITs is that they provide inconsistent investor protection and do not form a cohesive whole. Besides being outdated, bilateral provisions on investment liberalisation are not present, meaning market access provisions for investment are not included since the EU-China Agreement on Trade, and Economic Cooperation does not have such provisions. Moreover, some of these BITs were concluded and entered into force when China was in its inception phase of its economic opening to the world. Since China back then was the leading recipient of foreign investment, the focal point of these BITs was more towards the protection of foreign investment into China from European member states, rather than the other way around. Now the picture has drastically changed. According to the State Administration of Foreign Exchange (SAFE), China's outward FDI rose significantly, from \$1.9 billion in 2004 to \$101.9 billion in 2017. This was a result

of the “going global” strategy launched and led by the Chinese government in 2000, where, in particular, a great number of state-owned enterprises (SOEs) have engaged in FDI activities in the EU. In addition, the constant issues the EU had regarding the investment were lack of reciprocity in access to the Chinese market and the absence of a level playing field for EU investors in China. To address these challenges, the CAI thus aimed to build a legal framework for EU-China investment through replacing the 25 outdated BITs between EU Member states and China.



**Figure 3** Structure of the EU-China Comprehensive Investment Agreement

The Comprehensive Agreement on Investment (CAI) between the EU and China is a broad agreement that covers a range of issues related to investment between the two parties. Some of the key characteristics of the CAI include:

1. Access to markets: The CAI includes provisions on market access for EU companies in China, including in sectors such as manufacturing, services, and agriculture. The agreement also includes commitments from China to open up its market for EU companies in areas such as financial services, telecommunications, and energy.

2. Investment protections: The CAI includes provisions on investment protections for EU companies in China, including protections against expropriation, compensation for damages, and the right to free transfer of investments. The agreement also includes provisions on investor-state dispute settlement, which allows EU companies to bring disputes with the Chinese government to international arbitration.

3. Intellectual property rights: The CAI includes provisions on intellectual property rights, including protections for trademarks, copyrights, and patents. The agreement also includes commitments from China to improve its intellectual property regime, including by strengthening enforcement and providing greater access to the Chinese market for EU companies.

4. Sustainable development: The CAI includes provisions on sustainable development, including commitments from both parties to respect and promote sustainable development, as well as provisions on environmental and labour protections.

5. Financial aspects: The CAI includes provisions on financial aspects, including commitments from China to provide equal treatment to EU companies in the financial sector and to allow EU companies to participate in the financial sector on an equal footing with Chinese companies. The agreement also includes provisions on financial cooperation, including cooperation on financial regulation and supervision.

Overall, the CAI is a comprehensive agreement that covers a wide range of issues related to investment between the EU and China, including access to markets, investment protections, intellectual property rights, and sustainable development. The agreement includes specific provisions and legal terms on these issues, as well as financial aspects related to financial cooperation and the financial sector.



The limited space does not allow for a full and descriptive review of the CAI. Rightfully, not every section in the concluded agreement gave rise to major disagreements between the two partners. Thus, this paper selects three elements in the CAI, namely:

- (1) Market liberalisation in Section II
- (2) A level playing field in Section III
- (3) Investment and sustainable development in Section IV.

The rationales behind choosing the three specific areas are three-fold:

1. These three provisions gave rise to the major bones of contention where the conflicting interests and diverging positions from both sides marred the negotiation process.
2. Market liberalisation, not only does it lie at the heart of the negotiation, was also the element China had struck a deal with to address with the US through phase-one deal. In the context of the systemic pressure and transatlantic relations, the mandate and the outcome of this provision of the CAI between the EU and China can indicate the extent of their cooperation which then can be analysed to explore the systematic as well as economic drive.
3. Section IV, sustainable development is crucial in proving one of the hypotheses generated based on the normative intervening variable and providing an important indicator as to how much the EU had projected its normative aspirations through demands in the negotiations and manifested in the official text. Based on this rationale, this section goes through the crucial elements of the deal and makes an attempt to tie each into the hypothesis. The third element, investment and sustainable development in Section IV,

will be dealt with in the analysis section as it will serve as an important indicator to prove the normative hypothesis.

## **Section 6 Analysis**

### **6.1 Exploring the role of self-interest and power maximisation for the EU to launch the CAI negotiations with China (2003~2013)**

The end of the Cold War transformed the global system which was characterised by the bipolar between the USSR and the US, where the US came out on top as a hegemony. This was also the case with the EU-China relations, where the transatlantic relationship was always considered when formulating the EU's foreign and trade policy and where the frame of the Sino-EU relations did not deviate from the hegemony's course of actions, which constituted the international order. It was mainly because of the security guarantee provided by the US that to Europe, the US was more strategically and geopolitically important than China. However, with the relative power of the US declining and other powers rising, the US as a structural factor has changed.

Asian economies underwent significant transformation during the 2000s and logically drew European interest towards Asia in general. In particular, China has experienced rapid economic growth. As China's economic and political footprint has expanded rapidly, the EU decided to take one step forward from the existing institutional dialogue with China into a 'Strategic Partnership' which was first established on 30 October 2003. With the new Chinese leadership under Hu Jintao who rose to power the previous year, there were high hopes in the air on the EU side for a new impetus for cooperation. This development of the bilateral relationship to a 'Strategic Partnership' was significant for three reasons.

Firstly, it signalled the EU and China's converging view on the international stage. When the EU-China strategic partnership was first established on 30 October 2003, transatlantic relations were at their lowest ebb as the Iraq conflict put a strain on the NATO alliance. The US's invasion of Iraq, many NATO member states' failure to support the war, and strong political opposition revealed a widening gap of political values between Europe and America, power disparity, and post-war geopolitical realignments. The majority of the EU wanted to stay out of the military operations led by the US. As a result, the EU established the Common Foreign and Security Policy (CFSP), hailed often as a big step towards European strategic autonomy in defence, in December 2003, as its independent security strategy. The document setting out the CFSP placed a huge emphasis on multilateralism and listed potential strategic partners such as Japan, Canada, India, and most importantly China (European Council, 2003). Thus, against this backdrop of global concerns about the US 'unilateralism' under the Bush administration, this strategic partnership represented both sides' consensus on the world view where the EU and China "shared responsibilities in promoting global governance." (EU External Action Service, 2013).

Secondly, it shows the political ambition harboured by the EU to balance the U.S. and position itself as a global player with China's support. At the 6th Annual EU-China Summit on 30 October 2003, the EU and China concluded a new agreement on the joint development of Galileo, the EU-led global navigation satellite system. Its significance comes from the fact that Galileo was a direct alternative to the dominant American GPS, and the sheer volume of the Chinese investment and the nature of this partnership, techno-political ties that touch on aerospace and defence matters, mean that China was now the biggest and the most significant non-EU partner to the EU. It indeed induced concerns from the US and the EU's Asian allies. The events that compounded this concern was when the EU

had pledged to lift the arms embargo on China, which was imposed in response to the June 1989 Tiananmen Crackdown, on the basis of arguments from some EU member states that the embargo would hinder the progress of a strategic partnership with China. This deepening of the EU-China relations which promotes China in terms of space capabilities and power projection in the region came at a time when Beijing was perceived by the US as a potential space competitor and a rival (Casarini, 2011). Moreover, China made a commitment that it would diversify its foreign reserves out of the US dollar into the euro in 2002. The share of the euro amongst reserves indeed jumped from 5 % to more than 20% soon after (Sheng, 2011). This portfolio shift and the cooperation on the Galileo project signaled China's active support for euro and the EU's competitiveness in key technological sectors. It thus encouraged and prompted the EU to gain autonomy from Washington. From the perspective of China, this Sino-Europe strategic partnership would help cement the emerging power of their regime and more importantly set the right conditions for the multipolar system of an international system. For the EU, in particular for some key EU member states, their strategic partnership with China would yield effective tools used to challenge US primacy in key high-tech sectors as well as foreign affairs. Commercial interests hitherto present, the year 2003 was the lowest point of the transatlantic relations where the European allies' dissatisfaction with US unilateral attitudes in world affairs continuously grew, and China effectively driving a wedge between the Western allies. Thus, the EU's attempt to establish the comprehensive investment treaty, with the promise of a future comprehensive FTA, was brought about due to the strategic partnership that was mainly boosted and driven by different conceptions of global order across Atlantics and autonomous guidance.

Thirdly, the strategic partnership reflects the EU's optimism about China's successful transition. The timing of the partnership coincided with the EU's

enlargement strategy, where new eastern member states joined the EU in 2004 and 2007. As the accession involved improvements on rule-of-law issues, including chapters on rule-of-law issues such as judicial reform, fundamental rights, and freedom and security, there were hopes and expectations in the air. Those were that the successful, albeit arguably, transition of such member states could provide an exemplary model for China's opening up, in particular regarding the rule of law such as freedom of expression, religion and associations, as well as Civil and Political Rights. The strategic partnership document reflects this hope by gearing the EU's China policy towards "supporting China's transition to an open society based upon the rule of law and the respect for human rights." (EU External Action Service, 2003). The hopes Europe had about economic liberalisation for China when China joined the World Trade Organisation (WTO) in 2001 seemed to also have still carried over.

In the years that followed, in particular from 2003 to 2013 running up to the launch of the CAI negotiations, however, growing contentions between Europe and China have been brought about, especially in terms of human rights and unfair trade practices. Firstly, issues of unfair competition and intellectual property rights protection led the EU to take contractors on the project from China off mid-Galileo project. In addition, Chinese human rights abuses in Lhasa led the EU to boycott the Beijing Olympic Games opening ceremony in 2008. Thus, the EU-China strategic partnership was marred with contentions. Moreover, there was mounting criticism towards the EU's China policy, calling it a strategy of "unconditional engagement" (John & Francois, 2009:12). The critics argue that Europe is infested with a naive and anachronistic belief that China will want what the EU wants by granting China access to benefits across all areas through cooperation, while asking for little in return. Despite the growing disenchantment in the EU-China strategic

partnership, the landscape changed when the impetus for the close strategic partnership was hatched: The Euro crisis and China's strong support for the euro.

Even at its inception, China welcomed the euro as a counter-balance to the US dollar that would keep dollar unipolarity in check. When the Euro zone's sovereign debt crisis attracted widespread pessimism that the euro would not survive, China continuously bought massive European sovereign debt, mainly from Italy, Spain, Ireland, and Greece and publicly supported the euro's long-term consolidation. One researcher concluded that there is a noticeable correlation between the euro-dollar exchange rate and Chinese public support because Chinese public support and belief in the euro greatly shaped market perceptions (Iglesias, 2022). China thus stepped up its diversification of its holdings of foreign currency reserves from 2011, which by 2013, witnessed euro-denominated assets taking up about one third of China's total foreign currency reserves at 3.5 trillion dollars. China's rationale for this equivalent support for the euro can be of economic and financial considerations, say, Chinese desire to keep the euro's value strong for its export competitiveness in the Eurozone. Nevertheless, the years leading up to the launch of the CAI negotiations saw the period of the both 'strategic' partners recognising a common interest: the survival of the euro.

While their converging interests brought the two partners closer, the sticking issues remained: the EU's growing imbalances in trade with China. The EU's trade deficit with China continuously grew, amounting to €169 billion in 2008. Moreover, the rapidly rising influx of China's money and investment into the Euro-zone concerned many European countries as they did not have any means to track China's investment activities. The growing scepticism towards China, such as China's continuous unfair trade practices, imposing political restrictions and artificially maintaining a weak currency, resulted in the launch of the High-Level Economic and Trade Dialogue (HED) in Beijing in April 2008. Both partners

agreed to set the plans for effective and concrete means to advance trade and investment (The Ministry of Foreign Affairs of China, 2009). This provided a stepping stone to the launch of a comprehensive investment agreement in 2013.

This section has explored the EU-China strategic partnership from the early 2000s to prior to the launch of the CAI negotiations. At this point, one could rightfully ask, was the EU's decision to strike an investment agreement with China a complete deviation from the US in terms of its approach to China? Was it motivated by the EU's desire to secure a place in world politics by balancing against the US and seeking strategic autonomy with China as a partner in the early 2000s until 2013? It is thus important to consider one more context in which the Obama administration announced the shift of its foreign policy focus from Europe to Asia in November 2011. The US stepped up its engagement strategies with Asia, most notably with China. This forced the EU to choose a path: align with the US, compete, or find a middle ground. The EU's increasing engagement with China by launching the negotiations for the CAI was not so autonomous or deviant from the US. Rather, it could indicate that Europe was aligning with the US because the EU's initiation of negotiations came after the US agreed to negotiate the bilateral investment treaty with China. The same year prompted the European Commission to lay out in the staff working paper the two major problems arising from the EU-China investment relations. The lack of a level playing field for European investors and a comprehensive framework to address shortcomings were to be tackled under the comprehensive investment deal (European Commission, 2016). Washington's influence on Sino-EU ties cannot be put aside easily. However, even when the US-China antagonism and conflict proceeded, the EU persisted, which is considered a deviation from Washington's course of action. Drawing from the chronological analysis, the EU seemed to have been heavily motivated by the strategy of strategic autonomy coming from the systemic pressures mentioned

above. Their ties were enhanced by recognition of the common strategic interests induced by the structural stimuli, the role of the US. The US's unilateralism under the Bush administration and consequently weakened transatlantic ties over Iraq was met with China's timely support for Europe's aspirations for strategic autonomy, bringing their strategic partnership closer together.

In conclusion, the EU's decision to upgrade its relationship with China to a "Strategic Partnership" in 2003 was driven in part by a desire to balance against the US and position itself as a global player with China's support.

## **6.2 Exploring the role of self-interest and power maximisation during the CAI negotiations with China (2013~2020)**

During the negotiation rounds of the CAI, the US-China contentions were put to the front. The last thing Europe wanted was to get bogged down in this super power competition. Both the EU and the US are dedicated to making sure China acts as a responsible player in the global system, with emphasis on the rule of law and human rights. However, the string of evidence for the growing divergence has started to rise more recently, due to their different stakes and risks related with China. In other words, the evidence that the EU has started to seek self-interest and power maximising behaviours.

The US approach to the Indo-Pacific is mainly through keeping China in check as evident in the US Defence Strategic Guidance issued in 2012. It included the mission of keeping China off of the territorial claims and any possible confrontation by stationing US Marine Corps in the South China Sea and the Indian Ocean in Darwin, Australia (US Defence Strategic Guidance, 2012). It stands in dark contrast with Europe where China does not pose any direct or



indirect threat to territorial integrity to the continent of Europe. China is being increasingly perceived as an imminent threat in the eyes of the US, as China's assertiveness challenges America's leadership and US security interests in the Indo-Pacific. However, this geographically-induced divergence has spread to the political realm with the 2016 inauguration of Donald Trump as the 45th president of the US.

This new leadership of the US had added fuel to global uncertainty in which the EU has found itself in. The following US's retreat from multilateralism cast doubts on the future of 'Western' rules-based order. The US's withdrawal from the Paris Climate Agreement led the EU to question the US as a reliable partner in the fight for a sustainable future. The change in US trade policy meant the US has done a U-turn on a number of pre-existing trade practices, and the 'America First' rhetoric did not seem to regard human rights and democratic values as a high priority. The EU and China together had to face a different systemic environment rigged with increasing unilateralism and protectionism. Under the Trump administration, the US antagonised China in an attempt to carry out a containment strategy, threatened to withdraw the US security guarantee for Europe and imposed tariffs as a result of trade conflicts with Europe. The prime example of this is the quotation from then-chancellor Angela Merkel who said 'the era in which we could fully count on others is somewhat over' (Chhor, 2017) in response to the threat of auto tariffs up to 25% from the US on German cars such as Volkswagen, BMW and Mercedes-Benz parent Daimler. France, which ultimately uses the EU as a means to increase its clout and own sphere of influence, is a good example of undermining European trust in the transatlantic relationship and the EU's options going forward, when he declared "Europe is a master of its own destiny" (Cohen 2021). This is a sum of the concept of "Strategic autonomy" that has defined the EU's policy, including its interaction with China. The European Council defined

this concept in 2016 as the ‘capacity to act autonomously when and where necessary and with partners wherever possible’ (Council of the European Union 2016). In other words, the EU can construct its own destiny without depending on its long-term ally, the US. This is why even though the EU’s foreign trade decision to start negotiations for the CAI was following the US’s footsteps as the US itself was engaging in its own BITs with China, the EU persisted even when the US-China antagonism and conflict proceeded.

Perhaps faced with a common enemy, thus, the year 2018 was the year that propelled the EU and China to accelerate the pace of the negotiations. Despite persisting differences in core investment provisions, the evidence of acceleration first emerged at the 20th EU-China Summit of 16-17 July, amidst the US-China trade dispute and Trump's critique of the EU trade policy. It was significant because it was the occasion where they first exchanged offers on market access and made visible progress towards an agreement on Geographical Indications. Considering the issue of market access was the hurdle slowing down the progress of the negotiations, China’s concession indeed sped up the negotiations.

In addition, the EU and China’s joint effort to support multilateralism and globalisation was seen in the press statement by Donald Tusk, then-European Council President at the summit. In the statement, he divided the world order between “EU and China” and “US and Russia”, referring to the coming talk in Helsinki between Trump and Vladimir Putin (EEAS, 2018). He urged not to “start trade wars, which turned into hot conflicts” but instead to “bravely and responsibly reform the rules-based international order.”. This joint sentiment against the U.S was seen again in the Joint statement of the 20th EU-China Summit, where both sides are “strongly committed to resisting protectionism and US unilateralism” through WTO mechanisms (EEAS, 2020). In April 2019, both parties committed to conclude the CAI in 2020 at the 21st EU-China Summit. Before concluding the

agreement, 15 rounds of negotiations followed, twice as many as was the case in the preceding years, until they concluded negotiations in principle in late December 2020.

The timing of the deal has also been cited as evidence of the EU sending a clear message of pursuing its own interests and strategy to the US. Not waiting until the inauguration of Joe Biden for any possible coordination with the US could send a rather alienating signal for the transatlantic alliance. Indeed, it was a ‘window of opportunity’ to pursue its own self-interest, given that Biden and his team urged democracies to jointly tackle the China issue during his presidential campaign.

What’s worth noting is that the EU’s approach towards China as a strategic partner has seen a significant change from run-up to the launch of negotiations to during the negotiations and after. This is reflected in the European Commission issuing its current approach towards China in the strategic outlook joint communication of 12 March 2019. There are two interesting points that can be picked up in the document. The first one is the EU’s efforts to put an end to so-called “unconditional engagement.” This recognition of China as a ‘strategic rival’ and an ‘economic competitor’ is also in line with the course of actions taken by Germany and France. In 2021, after the CAI had concluded in principle, both countries reached out to India and other Asian countries and proposed a bilateral trade pact (The Economic Times, 2021). Both leaders, Angela Merkel and Emmanuel Macron, repeatedly asserted to country leaders that China is “a systemic rival” and “economic competitor”, as stated in the Union’s strategic outlook. This cautious and selective approach of the EU resembles the US’s approach, expressed in similar language under the Biden administration, whereby Washington will confront, compete, and cooperate with China depending on the issue. However, the EU is still seeking neither a strategic autonomy as the EU has never used

confrontational nor containment words in relations to China. The document is also tied in with the second interesting point in the document: the EU's pursuit of strategic autonomy through economic and investment issues. In the aftermath of the Pandemic, the EU has increasingly viewed that FDI screening and the protection of strategic assets as contributing to the strategic autonomy of the EU.

Thus, in the context of the renewed importance of investment regulations and policies as one of the key strategic autonomy strategies, the EU seems to have taken more assertive postures to China. It is carefully balancing a 'systemic rival' and 'strategic/negotiating partner' by closely cooperating with China to boost EU industrial competitiveness and strategic autonomy.

Another factor that comes into play within the framework of strategic autonomy is the EU's attempt to formulate its own strategy for the Indo-Pacific region. The argument is that the CAI can be seen as a tool that would raise the EU's stakes in the region by bolstering its own EU's indo-Pacific strategy. The formation of AUKUS amongst Australia, the UK and the US was announced in September 2021, aimed at counterbalancing Chinese influence in the Indo-Pacific area through closer security cooperation between the three states. This came as no surprise as it is evident in the change in the US assigning growing importance to the Indo-Pacific strategy, through the expansion of the operations of the Five Eyes Intelligence network amongst Australia, Canada, New Zealand, the UK and the US), and the strengthening of the Quadrilateral Security Dialogue known as the Quad (Australia, Japan, India and the US). This shift in the strategic importance placed by Washington can be an indicator of a relative demotion of the transatlantic alliance on the US's priorities. This drew fiery criticism especially from France, where the French government called AUKUS a "betrayal" and a "stab in the back" (George et al., 2021) as the participating countries showed a lack of consultation and coordination with the EU. They strongly urged the need for even

greater strategic autonomy in terms of military defence. This language has a very strong element of strategic autonomy when Emmanuel Macron, the French President, criticised the EU for being naive about US interests, which took a pivot to Asia. This stance was generally mirrored by other member states and at the same time at the announcement of AUKUS, the EU issued its “strategy for cooperation in the Indo-Pacific”. The document recognises the Indo-Pacific region as a centre stage for Europe’s economic and political future. Indeed, with the rise of China and the US’s declining hegemony and increasing unilateralism, the region has become a place which will shape the coming post-hegemonic world order (Morcos, 2021). In this light, the EU’s Indo-Pacific strategy reveals very interesting divergence from the US, thus an evidence of the EU’s increasing strategic autonomy. One of the obvious divergences would be that the EU does not perceive China as a direct military threat, even though it mentioned China’s assertive activity in the South China sea, it does not pose a territorial danger as much as it does to the US. Another divergence worth noticing is the EU’s emphasis on normative values: transboundary challenges such as good governance, human rights, and climate change were especially pointed out as the key areas of cooperation. The normative aspects are heavily integrated in the EU’s indo-pacific strategy document, especially concerning human rights abuses in China. Another divergence is that the EU does not follow the US’s assertive containment strategy towards China. According to the EU’s Indo-Pacific strategy document, the EU’s approach to the region is “one of cooperation not confrontation.” (High Representative of the Union for Foreign Affairs and Security Policy, 2021).

Going back to the point made earlier, the CAI could be a result of the EU’s diverging and growing Indo-Pacific strategy as a part of the strategic autonomy which is driven by self-interest. It is because the EU seeks ever closer partnership through bilateral agreements to promote trade, investment and regional

infrastructure, and China is one of the biggest players in the region. Given the weak role played by the EU in the Indo-Pacific region, building bilateral and multilateral partnerships serves the EU strategic autonomy of advancing EU interests. Josep Borrel, the foreign policy chief of the EU, argued that AUKUS revealed the “need for a common EU approach in a region of strategic interest” and urged that the EU “must survive on our own”, shedding lights on the reality in which the EU should strive not to be side-lined on the global stage, most pressingly in the Indo-Pacific region (Valerio, 2021).

Therefore, the EU is carefully balancing between geopolitics and economic interests. The case study of the CAI suggests that the EU has adopted its own strategic autonomy of pursuing EU-China rapprochement, trying to separate normative efforts from trading aspects. The US’s pivot to Asia and the formation of different security constellations, such as AUKUS, have eventually pushed Brussels to buttress its trade and investment relationship with China. The main themes in EU debates on China policy feature this aspect. Whereas France put heavy emphasis on the strategic autonomy in the political and security region, Germany advocated for market access and economic gains. Of course, such a conclusion is contingent on the future conduct of China, which will affect Brussels' perception of Beijing, either the Indo-Pacific partner, or strategic rival. As of now, it warrants credit that the CAI is a step towards the EU’s strategic autonomy because it is a manifestation, albeit not explicitly direct, of the EU’s desire to establish its own economic sovereignty without restraints stemming from the U.S.

Drawing from this analysis section, given the level of the US’s economic and political antagonism towards China, the EU is observed to have deviated from this direct and assertive containment strategy by seeking closer economic cooperation with China. This belief, that economic interests can be separated from its strategic interests, constitutes one of the elements of the EU’s strategic

autonomy. One could argue that the US struck a similar deal with Beijing, namely the Phase On Deal, where the US gained the same degree of market access in financial services. However, China's concession to market access in the manufacturing sector could imply that the EU has rejected economic decoupling with China that Washington has adopted, by allowing to lift restrictions on Chinese FDI in Europe in a broader scope.

### **6.3 How EU's self-interest and power maximisation were reflected in the negotiations and the outcomes of the CAI: trading off normative values for commercial gains**

It is important to consider the relative power dynamics between the EU and China when analysing the negotiations and outcomes of the Comprehensive Agreement on Investment (CAI).

In terms of GDP, China has consistently had a larger economy than the EU, with a GDP of approximately \$14 trillion in 2013 and \$27 trillion in 2020. The EU, on the other hand, had a GDP of around \$17 trillion in 2013 and \$20 trillion in 2020. (World Bank, 2020) While the EU has a larger GDP per capita, China's larger overall GDP can give it more bargaining power in negotiations. In terms of military spending, China's spending has consistently been higher than that of the EU. From 2013 to 2020, China's military spending ranged from \$180 billion to \$261 billion, while the EU's military spending ranged from \$195 billion to \$228 billion. (World Bank, 2021) This difference in military spending could also potentially impact the power dynamics in negotiations. In terms of global influence, both the EU and China have significant influence on the international stage. The EU is a major player in global governance and has significant economic and political power,

while China is a rising global power with a growing military presence and economic influence.

Overall, it is important to consider the relative power dynamics between the EU and China in order to fully understand the negotiations and outcomes of the CAI. While the EU has significant economic and political influence, China's larger GDP and military spending may give it more bargaining power in the negotiations.

The following section analyses the concluded text of the deal to study how much the EU's self-interest seeking and power maximising behaviour, as conditioned by their relative power, are reflected in the concessions and conclusions of the deal.

### **6.3.1 Market liberalisation and the treatment of State-owned enterprises (SOEs)**

What differentiates the CIA from other BITs is a heavy focus placed on investment liberalisation, a recent feature, an example being the North American Free Trade Agreement (NAFTA) that was not traditionally prevalent in investment treaties. One of the critical elements of investment liberalisation is market access, which determines the extent to which the party will open the domestic market to investors of the other party (Nicolaus, 2021). China has previously objected to the inclusion of any provisions that amounted to market liberalisation as it wanted to exercise its own regulatory power over the entry of foreign investments (Bickenbach et al., 2015). Indeed, China is ranked as the second most restrictive country for FDI in the world according to the OECD (OECD, 2017). Therefore, the issue of market access was of critical importance to the EU, demanding a negative list approach related to pre-entry national treatment of EU investors. The negative list approach means all sectors will be subject to liberalisation except those not listed. This is an important element in terms of economic perspective and in the



context of EU-China strategic partnership at large. First, Chinese investment in Europe is being treated with increasing suspicion. This fear is apparent amongst many in the EU, and the European Parliament, in its 2020 report, clearly stated that the Chinese focus on investment in technology sectors in the EU might bring about the consequences of the EU losing its technological edge and a possible threat to national security (Garcia-Herrero et al, 2020). Thus, China's concession to opening up on market access for EU investors in China might conciliate the EU, which will prove to be a positive drive behind bringing EU-China investment relations closer, as well as a future EU-China FTA that will follow. Second, China has its own interests in breaking down restrictions on FDI inflows (World Bank, 2012). A more liberal approach towards the foreign investment regime will initiate a gradual ideational change in China. The reformed-minded Chinese leadership is currently trying out a negative list approach to market access in the four Free Trade Zones of Tianjin, Shanghai, Fijian and Guangdong. The inclusion of a negative list approach and the adoption of a more liberal and open foreign investment regime in the CAI would help Chinese leaders gear up and commit to such a change in China in promoting China's FDI system. (Zhang, 2015).

Even though China was hesitant until the breakthrough in 2018, in the concluded text of the CAI, China has made a concession to market access under a positive list approach which means that only specifically listed sectors are subject to liberalisation. The sectors selected in the positive list are as follows:

- Manufacturing sector (chemicals, telecom equipment, health equipment and electric cars)
- Services sectors (financial services, international maritime transport and air transport-related services, cloud services, private healthcare, environmental services)

For example, China has agreed to lift joint venture requirements in the automotive sector and provide market access for electricity, hydrogen, and biofuel vehicles. In telecommunications/cloud services, China has committed itself to removing the investment ban, which will bring an equity cap to 50 per cent for EU investors. Regarding real estate services, advertising, repair for transport and environmental services and more, joint venture requirements are agreed to be lifted by China.

The significance of this is that this market access commitments, especially in manufacturing sectors, is China's first ever liberalisation provision that hasn't been granted to any other country, including the U.S. In particular, what draws attention is the liberalisation commitments in new energy vehicles (NEV). This sector is also listed in one of the sectors under the Made in China 2025 strategy. China's NEV market makes up more than half of the global market, projecting itself as the world's largest NEV market following China's 2009 initiatives called the Thousands of Vehicles, Tens of Cities (TVTC) programme. This commitment from Beijing is speculated to be the concession to cushion the possible damage that could be brought to the EU due to the Phase One US-China trade agreement in which financial services were liberalised for US companies (Financial Times, 2020). It means China decided to open its own financial services sector to US competition, as Chinese financial services are entitled to be subject to non-discriminatory regulatory treatment in the US. This decoupling in capital markets in China and the US meant that EU financial service providers will be put at disadvantage vis-a-vis US providers. Thus, China's concession of allowing market access in the manufacturing sector looks to be the measure taken to assuage the EU.

### **6.3.2 A level playing field and the treatment of State-owned enterprises (SOEs)**

Section III consists of level playing field issues, with provisions on (1) State-Owned Enterprises (SOEs), (2) transparency of subsidies, and (3) forced technology transfer. First, the regulation and treatment of SOEs also posed a sticky challenge in the negotiations. While China's socialist market economy and the important roles SOEs play across industries, the EU viewed Chinese SOEs as not fully committed to market principles, given the support received from the government distorted market efficiency. The European Commission crystallised its objective to tackle anti-competitive practices of SOEs in the BIT with China, preferably by limiting policies and measures that favour SOEs.

There are two obligations regarding SOEs. First, the concluded CAI would oblige SOEs to "act in accordance with commercial considerations and provide non-discriminatory treatment in their purchases and sales of goods and services." (European Commission, 2021). This was hailed by many observers in the EU as a considerable success but some argued that it was nothing new from what was already in China's WTO accession package. Second, it obliges China to provide "specific information to allow for the assessment of whether the behaviour of a specific enterprise complies with the agreed obligations." The second part, transparency of subsidies, is important because it serves as a step to address the distortive effects of subsidisation. The CAI not only imposes transparency obligations on subsidies in the services sectors, but it also sets up a two-stage consultation process between them to explore to what extent a subsidy might possibly hurt the investment interests of a party. Even though these provisions were built principally on the pre-existing WTO Agreement on Subsidies and Countervailing Measures, what set it apart was its widened scope of coverage from trade in goods to services. This has not been accomplished in the WTO. When it

comes to Forced technology transfers, which was one of the most acrimonious issues between the two parties, the concluded CAI set various rules (European Commission, 2021).

### **6.3.3 The labour rights and the environmental commitments**

Before discussing the EU's negotiating positions and concessions in the CAI negotiations and how they reflect its own self-interest and power maximisation, it is important to note that the EU is famously conceived as a normative actor. The EU's approach to achieve its normative agenda through trade was reinforced by the Lisbon Treaty. Article 21 and 3(5) TEU states that the EU pursues its value-based objectives such as human rights and sustainable development in its conduct of developing and implementing its foreign policies (Treaty of Lisbon, 2007). On top of the Lisbon Treaty, The 2015 'Trade for All' strategy by the European Commission ensured that EU trade policy is not just about interests but also values. The implication is that non-trade objectives should be built into a trade agreement the EU strikes with third countries.

Back in 2007, China withdrew from the EU-China Partnership and Cooperation Agreement (PCA) negotiations after conflicting with the EU regarding commitment to the EU's values regarding human rights and democracy under the pillar of political cooperation of the PCA (Pelkmans et al, 2018). It is worth stating that Human rights in itself is not necessarily within the mandate of the CAI negotiations. As mentioned above, the CAI was mainly to address (1) unequal market access, and (2) level the playing field through various measures. However, interviews with negotiators in the European Commission revealed that during the negotiations in 2016, they regarded sustainable development as an indispensable condition, an element without which the agreement could not be (Silva, 2022). This normative language by the EU is also apparent in the impact assessment report by

the European Commission in 2013 (European Commission, 2013). During the negotiations, the EU commissioned an independent consultant to write the Sustainability Impact Assessment on the CAI. What differentiates this from any other impact assessment is that this report expanded its scope of analysis by including the potential impacts of the provisions of the CAI on not only social and labour aspects and human rights (European Commission, 2018).

Regarding Human rights, the report found that even though CAI does not have exclusive human rights provisions, increased Chinese exposure to the EU's values will have a positive impact on the domestic reforms towards respecting human rights in China. These normative aspirations from Brussels from the CAI are also projected in 2016 through Joint communication from the Delegation of the EU to the People's Republic of China to the European Parliament and the Council. The statement proposed components for a new strategy on China, which showed grave concerns for the human rights abuses under China's authoritarian regime and emphasised that "the protection of human rights will be a core part of the EU's engagement with China" with other normative issues such as freedom of expression, association and religion and political accountability (European Commission, 2016).

In 2018, China made a positive gesture towards this constant normative rhetoric from the EU at the EU 20th Summit held in Beijing. China had put Liu Xia, a widow of Nobel Peace Prize winner and human rights activist in China, who constantly called for fundamental changes in China's political system, under house arrest and had rejected pleas to allow her to leave China. Amidst the CAI negotiations, the EU, in particular then-German Chancellor Angela Merkel, made several visits to her and Chinese premier Li Keqiang to raise grave human rights abuse issues. As a result, at the EU-China 20th Summit where the CAI issues were discussed, China finally allowed her to leave China and emigrate to

Germany. Then the question arises, to what extent was the EU driven by self-interest and power maximisation, instead of its traditionally normative stance?

Firstly, regarding the labour protection, under the CAI, China agreed to ‘make continued and sustained efforts on its own initiative’ to ratify the core ILO Conventions No 29 and 105 (European Commission and HR/VR 2019:12). This drew a substantial amount of criticism because of the issues of enforcement. Such language does not compel China to achieve results, but rather encourage them to merely work towards them, as it is stated as “best endeavours”. Apart from the weak commitment language, there is a complete absence of any form of a time-bound roadmap regarding the commitments to labour rights. This is a deviation from the EU, where such conditions with a clear deadline were included in the demands from the EU side in other bilateral agreements, such as in the EU-Vietnam FTA negotiations. Considering the enforcement mechanism exists for the market access commitments and the level playing field provisions, the level of enforcement remains weak. When non-compliance arises, the mechanism only provides the expert panel in addressing disagreements, which bears striking resemblance to the WTO panel procedure. The expert panel only serves a role of merely producing opinions and consultation. Thus, with the absence of clauses enabling suspension of the neither treaty nor trade sanctions (Płóciennik et al., 2021:27), the TSD section remains a major defect of the CAI. This came under even more severe criticism against the backdrop of China’s deteriorating conduct in the human rights domain: the aggravating situation of Muslim Uighurs in Xinjiang and strict control on Hong Kong’s democratic system. This inevitably attracted severe criticism from civil societies, as seen through the joint appeal from a group of 16 civil societies calling for the inclusion of a human rights clause in the CAI and the ratification of four ILO core conventions (C029-Forced Labour Convention: 087-Freedom of Association and Protection of the Right to Organise

Convention, C098-Right to Organise and Collective Bargaining Convention, and C105-Abolition of Forced Labour Convention) as a prerequisite of the agreement (ETUC, 2021). This is also reflected by the European Parliament's December 2020 resolution expressing grievous concerns towards forced labour and the situation of the Uyghur's in Xinjiang (European Parliament, 2020).

Second, China also committed to implementing the Paris Climate Agreement under the CAI, backed by Xi Jinping's pledge to achieve a carbon-neutral economy by 2060. However, it is considered toothless due to weak implementation provisions that include virtually no enforcement or remedial capacity. In fact, in the year the CAI was being concluded in principle, not only did China fail to meet the 2015 Paris Climate Agreement, China produced more coal than before the agreement.

The European Commission's Directorate-General (DG) Trade is often perceived as pursuing economic goals above anything else where the European Parliament is usually a vocal advocate for normative issues. This discrepancy within the institutions was apparent, whereas the Commission emphasised the benefits from the deal from a trade point of view. As the deal was largely considered a 'German project', the agreement could provide an effective tool for its export-driven economy. It could leave an important legacy at the end of Germany's presidency of the EU, whereas the EP scrutinised the deal from a political point of view. It is only natural as the EP is a representative body of elected politicians. Since the deal was concluded, the President of the EP received over 750 messages from EU citizens and civil societies, calling for the EP not to ratify the agreement over human rights abuse in China (EP Think Tank, 2022).

The divergence between the Commission and the EP arose already in the beginning of the negotiations. According to the first resolution issued by the EP on the EU-China negotiations for a bilateral investment agreement on 9 October 2013,

the EP pointed out a lack of Chinese's progress (if any) on "fundamental social and labour rights" as one of the causes of the trade imbalance and demanded the Commission and the Council to take human rights into consideration. It also strongly demanded the sustainable development section be included as a precondition for their nod to the agreement. It also called for the Commission to conduct an impact assessment of the CAI from a human rights perspective (European Parliament, 2013). Their concerns continued, which led them to issue another resolution in September 2018 on the state of EU-China relations whereby the EP expressed its continued concerns over the increased deterioration of human rights, citing examples of the situations in Uyghur, Kazakhs, and Tibetans. In particular with the CAI, the EP stressed on a number of occasions the respect for human rights. The June 2020 Resolution on the National Security Law for Hong Kong demanded that the Commission prioritise the human rights situation in China as it will be an element that their ratification would depend on (European Parliament, 2020a). When the negotiators, strongly driven by France, included a sustainable development chapter in the deal, the EP then demanded, in its resolution in December 2020, that "adequate commitments to respect international conventions against forced labour" must be included in the CAI.(European Parliament, 2020b). This hard stance on normative agenda repeats throughout the negotiations, including its January 2021 Resolution on Hong Kong (European Parliament, 2022). There were even in-fights within the EP over how far they should push China on labour rights. Some MEPs argued no ratification should be given in the case of China's non-ratification of the ILO conventions. Since the concluded deal contains very weak commitment language that binds China to make only "continued and sustained efforts" towards ratifying the ILO conventions, it indeed attracted severe criticism, especially from the centre-right European People's Party (EPP) and centre-left socialists and Democrats (S&D). They



strongly demanded China's signing on ILO conventions that end forced labour should be a pre-condition for ratification of the CAI (Lau, 2021). Even though resolutions issued by the EP on China are not legally binding, considering the empowerment of the Parliament, it should be enough for the negotiators to factor the Parliament's veto power into consideration. Indeed, the negotiators knew that the Sustainable Development part in section IV of the agreement would inevitably draw huge amounts of scrutiny. Despite the fact that the EP issued constant resolutions stressing human rights at every stage of the negotiations, the process and the outcome of the negotiations seemed to have been largely driven by national and corporate interests.

Another avenue for the EP to exert influence aside from resolutions is issuing parliamentary questions. Since the start of the negotiations from 2014 to 2019, one fourth of 759 parliamentary questions related to China was on human rights concerns such as Internet censorship and repression in China, China's plan to eliminate human rights experts, torture in Chinese prisons, the situation of Christians in China and so on. Most of the questions were directed towards a more broad EU-China strategic partnership. However, a considerable number of them were targeting the on-going CAI negotiations, demanding the EU's principles regarding human rights reflected in the investment negotiations with China (Parliamentary question, 2015).

Ultimately, the EP used its power to veto the agreement. The ratification from the EP was already in doubt from the moment the draft agreement was issued, as the EP's Committee on International Trade (INTA) started scrutinising the draft text from December 2020 till February 2021. While in-fights were going on within the Parliament about the sustainable development provisions, escalating situations in China in regards to forced labour and torture in Xinjiang, disappearance and sexual violence led to the targeted sanctions by the EP. This led to tit-for-tat

sanctions, where China imposed sanctions on ten European individuals, including MEPs and the Parliament's subcommittee on human rights. In the following month, the INTA called for the Commission "to use all the tools at its disposal and the debate around the CAI as leverage to improve the protection of human rights and support for civil society in China" in their opinion statement (European Parliament, 2021). Some MEPs also insisted that the Chinese government ratify and implement the ILO conventions, putting an end to forced labour. Even after the deal was frozen, MEPs demanded the entire investment agreement should be reviewed and reworked, citing weak conflict-resolution mechanisms that tackle the forced labour in China (Lau, 2021).

The role of the EP's possible veto did not seem to have affected the negotiators' demands and stance throughout the negotiations. The EU's behaviour during the negotiations were predominantly driven by self-interest (commercial gains) and power maximisation, as evidenced by the Commission's desire to delink human rights issues from trade and constantly silencing/ignoring the normative pressures from the EP.

## Chapter 7 Discussion

This section goes over how the analysis responds to the research question which drives the thesis.

***H1: The EU is motivated by its own self-interest in seeking to negotiate and negotiating the CAI and will seek to maximise its own power and security through the agreement.***

In the analysis, we have confirmed the increasingly diverging US-EU strategy towards China. Typically, the US employs "Power play" rationale which seeks maximum and exclusive control over potentially dangerous allies. China is

perceived as posing the most ominous threat to US security interests, which is reflected in the previous Trump administration and Joe Biden's. This is in direct contrast with the EU's approach, which is engaging China at the bilateral level. The CAI is an excellent case in point where Brussels upgraded its strategic partnership with Beijing, with the promise of a future FTA enshrined in the partnership agreement. Also the weakening trust in the US as a security guarantor and repulsion towards US unilateralism has pushed the EU to seek to follow its interest in its own way, by further developing and consolidating EU strategic autonomy.

In addition, the analysis has shown that the EU perceived China as a potential ally in advancing the EU's global competitiveness in key technological/industrial sectors through the CAI, which also would aid the EU in pursuing greater strategic autonomy from the US. There is no direct language of the EU regarding the US as a 'rival' or perceiving 'rivalry' with the US. However, it is fair, to a certain extent, to argue that the EU's desire to challenge US superiority in key high-tech and manufacturing industries played into the EU's decision to launch the CAI. Also the EU has perceived its own geopolitical strategic gains in the Indo-Pacific region by striking closer relationships with China in advancing its strategic autonomy in security realms. Therefore, Hypothesis 1 is confirmed.

***H2: The final terms of the CAI will be shaped by the relative power of the EU and China and the EU's ability to effectively advance its own interests.***

The relative power dynamics between the EU and China have played a significant role in the negotiation and the outcome of the CAI. As the EU and China have different levels of power and influence, the final terms of the CAI reflected this imbalance, where the EU leveraged its strengths and negotiated more favourable terms for itself, in particular the concessions the EU obtained from

China in market access and level playing field. However, when it comes to the sustainable environment section, the mode of enforcement and the language of commitments remain weak. The commitments significantly rely on the goodwill of the partners to make progress on the issues. Also, there is the absence of a proper state-to-state dispute settlement mechanism in the case of China's human rights violations and the language of commitment remained as a mere declaratory clause. Considering the rise of an 'assertive China' characterised by an anti-status quo power with alternative norms and policies that are largely anti-Western, alongside the constant flare-ups of blatant human rights abuses in China, the EU's normative power has been largely sacrificed to the Commission's economic agenda and the Strategic autonomy, where establishing an economic-political linkage with China is important in advancing the EU's global competitiveness, which addresses the exact imbalance between the relative power between the EU and China. Therefore, the second hypothesis stands.

## **Section 8 Conclusion**

This study examined the EU's trade policy decision with China, in particular the initiation, negotiations and the outcome of the EU-China Comprehensive Investment Agreement, under the lens of realism. The CAI has attracted criticism that such a deal damages the restoration of closer transatlantic ties and empowers China's authoritarian government in the middle of ongoing crackdowns and human rights issues in Xinjiang and Hong Kong.

Against this backdrop, this study's central puzzle was whether realism can explain the EU's decision to start negotiating an investment agreement and a future FTA with China as a strategic partner.

The central argument of this study is that the CAI can be seen as a reflection of an increased European strategy autonomy whose aim is to maximise its power and seek its interests.

The first part of the analysis situated the EU in the international background increasingly characterised by multiple poles of influences, divergence in transatlantic alliance in the foreign and security affairs, the perceived relative decline of the EU and the rising US-China competition. For the EU, deepening its strategic partnership with China serves its interests, not only economically driven (fostering the EU's global competitiveness) but also politically (promoting more autonomy from Washington). The second part brings in the concluded provisions of the text, concluding that the EU traded off its normative ambitions for self-interest and power maximisation. The main negotiators, the European Commission, actively attempted to delink normative issues from commercial gains such as market access and a level playing field in order to effectively address the imbalances in the relative power dynamics between the EU and China in the final text.

The EU-China trade relations are now deeply interwoven with the increasing friction in the field of human rights. As of now, the prospect for ratifying the CAI remains bleak and uncertain. The EU is standing at an important crossroads, navigating the turbulent sea with its strategic autonomy guiding its route.

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## 요약 (국문초록)

EU는 2003년 중국과 포괄적 전략적 동반자 관계(EU-China Comprehensive Strategic Partnership)를 수립하고 2013년 본격적으로 행동 계획을 상호 확립했다. 그 결과 중 하나인 EU-중국 포괄적 투자협정(EU-China Comprehensive Investment Agreement)은 7년의 합의 과정 끝에 2020년 12월 30일 원칙적 합의에 이르렀다. 이 합의는 경제적인 측면뿐 만 아니라 정치적으로도 시사점을 함축하고 있는데, EU는 미국의 중국 견제 파트너로 인식되어 있었으나 이번 협정의 결과로 EU의 입장이 동맹국인 미국과 다르다는 것을 반증한다. 본 연구는 이러한 문제의식 속에서 EU-중국 포괄적 투자협정(CAI)의 체결 배경과 목적을 검토하고 EU가 자기 이익과 국제사회에서 힘의 극대화를 이루기 위한 목적을 가지고 움직인다는 현실주의적 관점에서 이 협정이 EU 전략적 자율성의 연장선임을 현실주의 관점에서 살펴본다. 본 논문의 결론은 EU가 중국과 포괄적 투자협정(CAI)이 EU가 산업 경쟁력을 강화하고 중국에 대한 시장 접근을 확대하여 상업적 이익을 취함과 동시에 국제사회에서 전략적 자율성을 취함으로써 정치적 그리고 안보적 힘을 키우는 현실주의적 목적으로 설명이 가능하다는 것이다.

주요어: EU-중국 포괄적 투자협정(CAI), EU 무역정책, 전략적 자율성, EU-중국 국제관계, 현실주의