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# WORKING PAPERS

RSCAS 2020/46  
Robert Schuman Centre for Advanced Studies  
Global Governance Programme-406

EU-China Trade-Related Dialogues, a first assessment

Weinian Hu and Jacques Pelkmans



European University Institute

**Robert Schuman Centre for Advanced Studies**

Global Governance Programme

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EUI Working Paper **RSCAS** 2020/46

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ISSN 1028-3625

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Published in July 2020 by the European University Institute.  
Badia Fiesolana, via dei Roccettini 9  
I – 50014 San Domenico di Fiesole (FI)  
Italy

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## **Abstract**

EU/China bilateral trade policy is largely conducted via a myriad of ‘trade-related’ Dialogues, nearly 50. Both the sheer quantity and the scope are conspicuous. We undertake a first attempt to map and assess these EU/China Dialogues, as far as is possible given the lack of transparency and paucity of hard data. We identify seven functions of the Dialogues. Four key questions are posed: (1) can the web of bilateral Dialogues be seen as an ‘unbundled’ FTA? (not really) ; (2) can Dialogues improve or delay market access? (if not about applied tariffs, both can be found, but easier access may well dominate because of the ‘lesser restrictions’ approach via Chinese reforms stimulated via Dialogues) ; (3) can Dialogues stimulate ‘sustainable development’, both socially and in environment & climate ? (yes, in both) ; (4) can Dialogues address ‘systemic differences’ ? (surely not directly, but in roundabout ways via reforms, selectively).

## **Keywords**

EU-China trade policy; EU-China economic cooperation; sustainable development; bilateral dialogues





## 1. Aim and structure\*

China and the EU cooperate under a ‘comprehensive and strategic partnership’ since 2003. More than in any other bilateral relationship, whether for China or the EU, the partnership is delivered by relying on an architecture of bilateral dialogues. The dialogues have become so prominent that more systematic knowledge of them, if not a first tentative assessment, seems imperative for a better understanding of EU-China relations in general and EU trade and investment policy in particular.

The present RESPECT WP paper constitutes a first attempt to characterise and tentatively assess the EU -China Dialogues. The underlying data and references mainly originate from a survey by Hu (2020, forthcoming), although we hasten to add that much data is simply lacking and transparency is low. Our work is conducted in the framework of the EU-funded Horizon 2020 project: Realising Europe’s soft power in external cooperation and trade (RESPECT) <sup>1</sup>. We focus on the ‘trade-related’ bilateral dialogues conducted between the EU and China because RESPECT is about EU trade and investment policy and its possible effectiveness in pursuing so-called ‘non-trade issues’ <sup>2</sup>. This focus is nevertheless still very broad as it concerns - dependent on where the line is drawn - several dozens of Dialogues up to as much as around 50 ones ! The other two categories of Dialogues under the overall EU-China Dialogue Architecture are either ‘political’ (including foreign policy, cyber security and human rights) or fall under ‘people-to-people’ Dialogues. Together these two categories add up to less than 20 Dialogues. Formally, the trade-related Dialogues fall under a pillar called ‘economic and sectoral Dialogue’, so presumably a little broader than trade and investment policy as such. Studying EU/China Dialogues can be regarded as relevant for at least two reasons. One is that the EU and China have no bilateral preferential trade agreement,<sup>3</sup> except the EU-China Agreement on the Cooperation on, and Protection of, Geographical Indications, concluded in November 2019. Dialogues may well be seen as a kind of partial or incomplete substitute of the typical and regular consultations FTAs (or customs unions) tend to give rise to. The other reason is that trade-related Dialogues are considered by many of those involved or interested in EU trade policy as relatively effective in promoting NPTOs compared to e.g. trade agreements (!) and technical assistance <sup>4</sup>.

The structure of this RESPECT WP is as follows. First, the question is addressed whether the EU/China Dialogues are special when compared to bilateral or plurilateral Dialogues with other EU trading partners. The special nature has to do with context and drivers. Second, a ‘mapping’ of EU/China Dialogues is provided based on three criteria: (i) institutional; (ii) substance, especially whether they are ‘trade-related’ and /or concern ‘non-trade issues’; (iii) their (many) functions in bilateral commercial diplomacy. Third, four different questions are asked about their possible effectiveness, namely whether Dialogues can be considered as tantamount to an ‘unbundled’ FTA, whether one can find actual or potential effects on market access (whether via reforms – normally MFN-based – or via bilateral consultations as customary in the WTO when trade frictions arise or mimicking a FTA via committees, here Dialogues), what Dialogues can achieve for the pursuit of sustainable development and, finally, whether they can help in reducing ‘systemic differences’. The third question, on sustainable

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\* This contribution is supported by the RESPECT project under Horizon-2020, grant no. 770 680. The authors gratefully acknowledge comments on a first draft from RESPECT colleagues at the EUI meeting in Florence on 31 May 2019 and on an extended version on 20 January 2020 at the RESPECT seminar at CEPS.

<sup>1</sup> See <https://respect.eui.eu/> for a full explanation of the project

<sup>2</sup> In RESPECT, these are called NTPOs, non-trade-policy objectives.

<sup>3</sup> There is a 1985 non-preferential trade agreement, but this arose because China at the time was not yet a GATT member.

<sup>4</sup> As shown by Fiorini, Hoekman, Relaisson & Yildirim (2019) reporting on the RESPECT Survey instrument of stakeholders in EU trade policy in the EU and outside, p. 13 and p. 24. The sample of respondents includes officials, NGOs, think-tanks, persons from large and small businesses, trade unions, international organisations and trade and/or investment promotion agencies.

development, will be kept rather short as two separate papers are in process on its environmental/climate and on its labour/social pillars <sup>5</sup>. Section 5 concludes.

## 2. Why are EU/China Dialogues so special ?

Bilateral Dialogues are routine for many trading partners all over the world, be it with or without a FTA or customs union. Indeed, commercial or wider economic cooperation – including Dialogues - can be found bilaterally, multilaterally or plurilaterally , in the framework of the G-20, under various UN agencies or organs, in the framework of EU/ACP relations, and otherwise <sup>6</sup>. In this respect, the China/EU Dialogues are ‘special’ for at least two reasons. One is that China wanted to ‘open up’ to the world economy, especially following the 1985 EU/China (non-preferential) Trade Agreement. At the time China was not a GATT member. The EU supported the opening-up process with discussions and suggestions on market-oriented reforms, later with projects and funding too, helping China to go through the complicated and possibly painful transition process away from a rigid top-down planned economy. An interesting feature was that China took a different approach than Central Europe in this transition process: initially it did not or barely privatize SOEs, but, instead, gave economic and regulatory freedom for private companies to grow and for farmers to assume private initiatives. The upshot was a gradual and relatively painless process, with high growth primarily in the private sector and retail, up to the mid-1990s. The other reason is that the EU strongly favoured WTO membership for China, be it of course on conditions of deeper and more far-reaching reforms leading to a successful transition to a market economy. This second ground also influenced to a considerable degree the Dialogues structure after the mid-1990s. However, these deeper reforms (also under pressure of other WTO members) were far more radical and pushed through in a short period, resulting in truly massive lay-offs of workers from SOEs during the late 1990s. Besides the ‘special’ nature of EU-China Dialogues, there are other reasons – not so special but important motives nonetheless – and these are listed in Table 1.

For the EU, it should be realized that trade-related Dialogues mainly occur at the EU level because the EU level is competent for trade policy <sup>7</sup>. However, several EU Member States also have Dialogues with China, individually or as a group, not to speak of the 17+1 cooperation with China (in Central and Eastern Europe). Such Dialogues at Member State’s level typically deal with infrastructure investments or connectivity, technology, research programmes, specific exchanges such as education, or are linked to a country’s special capabilities. Where one should draw the line about these being ‘trade-related’ or not is far from easy, but there are clear EU-law driven constraints and obligations ( like non-discrimination, free movement, national treatment, etc.) which always remain relevant <sup>8</sup>.

For today, why then are the EU/China Dialogues special? The short answer is provided in the first three items in Table 1 and will be elaborated below. Three more reasons in Table 1 also explain why the EU and China have so many Dialogues but they are not ‘special’ or unique compared to other bilateral relationships. The contextual background of the many Dialogues is a direct function of the permanent preference – for both partners – to reform (in) China and to facilitate a smoother transition against the backdrop of the country’s WTO accession. These are the first two reasons in Table 1. This preoccupation to reform is a powerful motive since more than 25 years ago (when the first cooperation projects, the predecessor of Dialogues, emerged) and is unlikely to melt away soon. Of course, over time China developed very rapidly. Nowadays, China has become an equal partner <sup>9</sup> and has made great strides on its way towards a functioning market-economy.

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<sup>5</sup> See resp. Pelkmans (2020) and Hu & Pelkmans (2020) forthcoming

<sup>6</sup> Like in the OECD, ASEM and APEC, for example.

<sup>7</sup> And since 2010 (Lisbon treaty) also for direct investment outside the EU

<sup>8</sup> See e.g. Blockmans & Hu (2019) in connection to the linkages with the BRI (Belt & Road Initiative).

<sup>9</sup> Whereas initially, there was a donor/recipient relationship in many Dialogues and related programmes.

**Table 1**  
**EU-China Dialogues : ‘special’ and other motives**

	<b>context</b>		<b>drivers</b>
1.	EU-China bilateral negotiations on China’s WTO accession	1.	EU’s assistance to China to deliver its far-reaching accession commitments dismantling the then existing societal structure insofar as this was a function of SOEs and their services
2.	Reform imperative for transition process and economic openness	2.	Reform imperative, in various strategic and implementation forms
3.	Size of China & phenomenal economic growth  Being the most populous country in the world, with phenomenal economic catch-up growth is in-and-by-itself ‘special’ indeed	3.	China looking to EU to support the adoption or ‘importation’ of EU approaches thought helpful for development, domestic economic and social regulation, environmental questions, technical support and issues of implementation and enforcement
4.	Partnership (at first), later : Comprehensive and Strategic Partnership	4.	EU keen to link to dynamic East Asia, since 1994, and even more after the 2006 Global Europe EU trade paper
5.	Global challenges necessitating common approaches by large players	5.	China and EU identifying ‘shared’ agenda’s and interests, also in international arena’s
6.	Ties and common membership in plurilateral (e.g. ASEM ; G20) and multilateral organisations (WTO)	6.	A common drive, given these pluri/multilateral opportunities, to develop substance to the (Comprehensive & Strategic) partnership

Inevitably, the permanent issue of reform, and the societal changes ensuing from it, remains a key part of the context but equally forms a leading driver for much of what is discussed or organized or even agreed via Dialogues.

### **2.1 Contextual elements**

One can be a little more specific about both context and drivers. With respect to *context*, one can distinguish four elements apart from reform and from regular and WTO-plus commitments of China when joining the WTO.

One is China’s size and phenomenal growth for over two decades, the third item in Table 1. The only other trading partner equally big and growing rapidly (though speeding up later than China) is India, but, both in terms of GDP and weight in bilateral as well as world trade, India is still far behind.

The second element consists of the manifest desire of both partners to cooperate in many areas, once China had clearly decided to integrate gradually into the world economy. This preference was expressed at first in the 1998 EU/China Partnership, upgraded to a ‘‘Comprehensive and Strategic Partnership’’

[CSP] in 2003<sup>10</sup>. Of course, the CSP stretches much wider, including the other two pillars of Dialogues. The CSP has proven to be more than just a slogan or diplomatic label. The two partners regularly refer to CSP as valuable even when there are occasional frictions but just as often when new Dialogues are added. Indeed, the effectiveness of a Dialogue is welcome and essential simply because many dialogues deliver their respective political ambition with concrete projects which come with contractual deliverables. Nevertheless, what is critical in all cases is that cooperative channels exist, always remain open and are used with flexibility, either formally or informally, or both at the same time – this is seen as a permanent confirmation of the CSP which has a value in and by itself in the longer run commitment reflecting emerging trust.

The third element of context consists in the global challenges, necessitating common approaches by large players. Most countries in the world are concerned about global challenges but there are only few truly large players. The EU has been keen to involve China much more in assuming greater responsibilities at global level. China was initially perhaps more focused on (re)establishing its leadership among the developing countries, after the Cultural Revolution and amidst the initial reform stages transitioning from a socialist to a socialist market economy with Chinese characteristics. China opted to adopt its ancient wisdom of “lying low, biding your time”, declining obligations going beyond those of developing countries. A soft breakthrough in this respect might have been China’s membership of APEC (since 1990) and – with Europe – of ASEM (started in 1996). Though for different purposes, both are more like networks, led by regular summits. This is due, in part, to typical East Asian approaches and, in particular, that of ASEAN<sup>11</sup>. But, for ASEM, the multilateral dialogue structure was established to promote greater mutual understanding between political leaders, governments and peoples in Asia and Europe. Therefore, by 1996 it fitted China’s aspiration to be a participant in broader international groupings, going beyond the developing arena consisting of friends from LDCs from Africa, Asia and Latin America<sup>12</sup>. Also, at the stage where China was in the 1990s, both APEC and ASEM were ideal fora to familiarize itself with intense trade and wider economic cooperation with its most important trading partners, yet without hard legal obligations and, more in ASEM’s case, an evolving process of dialogues<sup>13</sup>. To some extent in APEC but especially in ASEM, Dialogues are frequently used on a myriad of subjects to facilitate mutual understanding among all ASEM members<sup>14</sup>. ASEM initiatives, frequently policy-related events, aim for maximum participation of all members. Being big or small, developed or developing, Asia or Europe, full participation and equal partnership remain ASEM’s strengths which are attractive attributes especially for smaller and developing partners. After all, the purpose of the dialogue process is to understand each other better. This characteristic of inclusiveness offers one reason for the ever-growing ASEM membership. ASEM initiatives are organised along the themes of political, economic and people-to-people exchange, similar to the EU/China CSP. Global political, economic and trade challenges are frequently addressed for mutual understanding purposes therefore usually in rather general non-committing terms. Therefore, the dialogues were ideal for China to get acquainted with different perspectives and working methods of partners. Though dialogues among ASEM partners and bilaterally between the EU and China sound similar, their motives are different. ASEM dialogues do not aim for hard deliverables, which is not the purpose of the dialogue process anyway. But for the EU-China dialogues, save for those dialogues in search for political impetus, such as the bilateral annual High-Level Economic & Sectoral Dialogue,

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<sup>10</sup> Even though the ‘strategic partnership’ with China is remarkable, the EU has a total of 10 strategic partnerships.

<sup>11</sup> See for instance Pelkmans (1999) on these approaches and Pelkmans & Shinkai (1998) on APEC and Europe.

<sup>12</sup> In this respect, it might have played a role that the Cold war was over in the 1990s.

<sup>13</sup> APEC is different from ASEM in that the former is a trade-related group, which eventually pursued voluntary trade liberalization objectives, be it with very distant deadlines (like Bogor 2020). ASEM covers all kinds of economic cooperation, often by means of Dialogues, but does not particularly strive after trade policy changes, whether voluntary or legally agreed. See Pelkmans & Hu (2014) for extensive analysis of what ASEM does and does not do, and how effective it is.

<sup>14</sup> Details of all ASEM Dialogues up to 2014 are found in Pelkmans & Hu (2014).

concrete and often contractual deliverables through implementing projects are frequently specified explicitly. Of course, such projects may or may not lead to or stimulate the reduction of bilateral trade or investment frictions and/or help to approximate the respective regulatory approaches including enforcement. There is another difference too: ASEM dialogues are region-to-region and multilateral, while the EU-China dialogues are bilateral.

The fourth element is about a coordinated role in the international arena. The swift rise of China prompted an increasing role in international organisations with, after a delay, gradually greater responsibilities. This is true for the WTO (although China began at first by ‘lying low’ in Geneva and during most of the lengthy Doha Round), the G-20 (coming up with the 2008/9 financial and economic crisis), in the UNFCCC climate framework and in the UN at large. The EU and China rightly see themselves as large players in these settings, their various dialogues provide a platform for policy coordination – one of the functions of bilateral dialogue, indeed – and can extend their bilateral commitments to international level. This element of context is therefore more recent. With greater prosperity and improved human development in China, approximation or convergence of socio-economic, financial stability and/or trade and investment objectives may well emerge to some extent of course. Thus, on occasion, the partners attempt to use their Dialogues as a stepping stone for their cooperation in world fora.

## **2.2 Drivers of EU/China Dialogues**

The principal initial driver, with continued relevance today, is *economic reform* in China. In fact, economic openness in general and a functioning and open market economy in particular do not naturally arise from a planned economy. The transition towards a market economy in Central and Eastern Europe during the 1990s amounted to a thunderous shock followed by a painful adjustment for many in the economy. Perhaps ‘reform’ is an understatement for Central and Eastern Europe and a wholesale ‘transition’ is a more appropriate term.

China’s reform path away from the strictly planned socialist economy was perhaps a natural course after the devastating Cultural Revolution. Later, however, once China had become a successful exporter, it became an imperative in the light of the desired WTO membership which is only open for market economies or transitional economies. The transition from an all-encompassing rigidly planned economy to a market economy brought with it the dismantling of a societal structure built around SOEs and their many social services such as education and social protection. This dismantling was a most painful process for SOE workers and many ordinary citizens as well as to the leadership. The scale of the lay-offs in the second half of the 1990s was daunting, probably somewhere between 30 and 40 million workers<sup>15</sup>! Given where China was coming from, reform measures had to go quite far, more precisely, market-oriented trade policies had to meet the demands of the members of the WTO in negotiations, bilaterally and multilaterally. A striking illustration of these ambitions is provided by the avalanche of new laws introduced in China: as an integral part of the multilateral WTO negotiating process China submitted altogether 2300 pieces of legislation for review.<sup>16</sup> These legislative changes amounted to a formidable challenge.

China’s transition began by first affording farmers and SOEs a degree of autonomy and free economic initiative. Very soon thereafter, private enterprise was introduced, a completely new form of enterprise under communism, alongside SOEs. These breakthrough reforms, followed quickly by introducing ingredients of market economy, such as tenured employment contracts, mixed structure of

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<sup>15</sup> More detail about this huge labour and SOE adjustment in the late 1990s is summarized in Hu & Pelkmans (2020), forthcoming

<sup>16</sup> See Bratanov D., presentation on An Overview of the WTO Accession Process, WTO Accessions Division. Available at [https://www.wto.org/english/thewto\\_e/acc\\_e/day\\_1\\_an\\_overview\\_of\\_the\\_wto\\_accession\\_process\\_dimitar\\_bratnov.pdf](https://www.wto.org/english/thewto_e/acc_e/day_1_an_overview_of_the_wto_accession_process_dimitar_bratnov.pdf) (last accessed 22 November 2019).

remuneration by including a bonus scheme, disposable rights for assets, and many other aspects provided a departure from the rigid structure of the socialist economy. Subsequently, negotiating WTO accession for one and a half decades provided guidance to steer reform towards a market economy, as expected by the multilateral trading system. It should be noted that, in order to help mitigate the social impact of SOEs reforms, such as massive layoffs, the EU and China established several bilateral dialogues on non-trade issues to share EU's experience with China, for example on [un]employment policies and social protection (cf. Hu & Pelkmans, 2020). Ever since, the reform imperative has been central to the EU/China relationship<sup>17</sup>.

The reform issue is still prevalent today, but of course not in the same form. Moreover, China's reform process seems to have reached an impasse, at least in the view of many observers, although the country has still not fully implemented its WTO accession commitments. This impasse is the more painful because of China's own pledges on a number of occasions, in particular, after President Xi came into power. It is useful to note, however, that much of the reform debate in China – led by the government and the Party – is less about the further shift towards a properly functioning market economy<sup>18</sup> and more about the structural shift to greater domestic consumption, more emphasis on services and the systematic increase of domestic value-added in global value chains for Chinese enterprises. In other words, a new growth model is pursued replacing the emphasis on heavy and polluting industries and export-led growth dominated by assembly and relatively little value-added. Nonetheless, although 'reform' has several 'faces' and this has influenced the type of Dialogues established, part of the range of Dialogues on trade and investment have been structured around the WTO trade agreements. In a number of cases, reform inside China and WTO-related issues were combined in some Dialogues as the former can be a prior condition for the latter. New WTO-related bilateral dialogues have been established on more sensitive issues, such as the dialogues on state aid and on ocean affairs (including fisheries). The former was first established in 2017 for better regulation purposes, but - knowing the considerable frustration in the EU with the scale of industrial subsidies and the avoidance of serious reporting and notification in the WTO – it is obvious that the platform would be used for the WTO subsidy issues<sup>19</sup>. Going beyond specific bilateral subsidy cases, the entire subsidy question (prompted by China but also for other WTO partners) has since become a discipline for WTO reform. It is also one of the major issues in the EU /China bilateral Working Group on WTO reform initiated in late 2018. The Ocean Dialogue was established in 2015 as a platform to approximate policies aiming to eliminate IUU (illegal, unreported and unregulated) fishing, undertake initiatives in international fora, the implementation of the EU Catch Certification Scheme and exchange on alleged and confirmed IUU fishing activities. Notably, the fight against subsidies contributing to IUU fishing and precise subsidies reporting within the meaning of Art.25.3 of the WTO Agreement on Subsidies and Countervailing Measures are two critical components of the ongoing WTO fisheries subsidies agreement negotiation, where China and the EU are key players.

Four other drivers contribute to the large number of Dialogues. The first one – on *development needs* in a wide sense - overlaps to some extent with reform but was initially much wider, given development needs and a search for capacity building. China was looking to the EU for adopting or learning from or 'importing' EU approaches on certain aspects ever since 1994/5 (EU's new Asia strategy and EU's first China policy paper<sup>20</sup>). This driver initially caused Dialogues to look more like development cooperation programmes, with funding and technical support, besides training and in-depth exchanges on EU

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<sup>17</sup> And of course, to relations with many other WTO partners, led by the US and Japan, as well

<sup>18</sup> One should acknowledge that many academics and think-tanks in China still do emphasize that market-driven reforms are necessary for China in order to retain a high growth rate, and indeed in order to support the 'new growth model' as well.

<sup>19</sup> Unlike many years ago, the EU has also become more vigilant in subsidy and countervailing duty cases, including vis a vis China. This is likely to become more systematic with the White Paper of June 2020 on foreign subsidies, see [www.ec.europa.eu/competition/international/overview/foreign\\_subsidies\\_white\\_paper.pdf](http://www.ec.europa.eu/competition/international/overview/foreign_subsidies_white_paper.pdf)

<sup>20</sup> The first ever European Commission strategy paper on EU/China was published in 1995: 'A long term policy for China-Europe relations', COM (1995) 279

policies such as agriculture, IPR law and enforcement, industrial products & WTO / TBT Consultation, energy policy, prevention and controls of animal diseases, but (later) also social security programmes and competition policy.

Second, the wake-up call in the EU's 1994 New Asia Strategy<sup>21</sup> urged the Union to widen and deepen its engagement with Asia, especially East Asia. This was echoed with even greater vigour following the 2006 Global Europe trade policy in which the EU vowed to promote a faster and more comprehensive trade liberalisation within the framework of its bilateral relations,<sup>22</sup> the EU pursued wider and deeper linkages with dynamic East Asia, especially but not solely in trade and investment. This was also stimulated by the initial success of APEC during the 1990s, the full taking-off of the ASEM (at political leaders' level and after the Asia-Europe Foundation was established to implement political ambitions at civil society in all ASEM partner countries) and China's first EU strategy paper of 2003.<sup>23</sup> In 'Global Europe', a seven-years moratorium<sup>24</sup> on concluding new FTAs was dropped and EU FTAs with dynamic East Asian countries were prioritized. In 2007 and 2008 the EU initiated talks on FTAs with Korea and ASEAN. Already in 2006, the China/EU summit decided to start negotiations on a PCA ( a Political and Cooperation Agreement) as a better structured framework for Dialogues and support programmes. Of course, a PCA is *not* a FTA but in effect many aspects of bilateral trade dialogues may well fit into the table of chapters of a modern FTA (often related with technical or market regulation, as well as horizontal issues such as public procurement and intellectual property protection), with hindsight. However, (EU) PCAs also have political components and a human rights clause – usually with the option of sanctions such as the suspension of the agreement - which clearly were a bridge too far for China. It is also likely (though little of this has been published) that the regulatory ambition and the proposed degrees of binding amounted to too high hurdles – certainly at that stage – for China. In 2011 the PCA negotiations were terminated, but several elements led to separate negotiations, such as protection of geographical indications [Hu (2018)], concluded in November 2019, and the CAI ( the Comprehensive Agreement on Investment) due to be concluded in 2020. Moreover, several aspects of the PCA were continued in a range of EU/China Dialogues, including more aspects of sustainable development.

The ambition to deepen economic and trade cooperation nonetheless led Chinese leaders to call for a bilateral free trade agreement (FTA), presumably a shallow one, as China's leaders seemed to imply (PM Li in 2012 and president Xi in 2014 in Bruges at the College of Europe)<sup>25</sup>. However, both leaders refrained from providing any detail. In the Joint EU-China Summit Statement in 2014 and 2015, respectively, the idea of a future FTA was mentioned, conditioned though by the EU and without any further detail. As time went by, though China's FTA wish persists, the EU became less interested. Ever since 2015, the EU subjected the FTA idea to two prior conditions: first an ambitious conclusion of the CAI; secondly continued and ambitious 'reforms' in China. These two conditions create a wedge between other East Asian countries having meanwhile concluded FTAs with the EU (Korea, Japan, Singapore, Vietnam) or begun negotiations on a FTA<sup>26</sup>, and China.

The third driver for having Dialogues with China consists of 'shared' or complementary agenda's, both bilaterally and globally, in economic/trade/investment questions and other areas. In relatively soft

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<sup>21</sup> See Towards a New Asia Strategy, COM(94) 314 final, Brussels, 13.07.1994.

<sup>22</sup> See Global Europe: Competing in the world, COM(2006) 567 final, Brussels, 4.10.2006.

<sup>23</sup> See <http://www.chinamission.be/eng/zywj/zywd/t1623330.htm> (last accessed 9 September 2019).

<sup>24</sup> The EU had imposed on itself a moratorium on new FTAs in 1999, so as to give multilateralism (the Doha Round) a better chance. No other WTO partner joined the moratorium so that it became pointless.

<sup>25</sup> In any event, thus far China has not concluded or even aspired to conclude a 'deep and comprehensive' FTA with any one of its 16 FTA partners. All its FTAs are shallow. Only in the cases of FTAs with Korea (not yet in force) and Australia, there are 'endeavours' to go beyond it in marginal ways.

<sup>26</sup> Four ASEAN countries : Malaysia, Thailand, the Philippines and Indonesia. However, it should be noted that three of these negotiations are stuck at the moment; the one with Indonesia is under stress due to palm oil.

ways China and the EU have shared approaches in ASEM and in some instances in the G-20. It is not the purpose of the present paper to assess these joint agenda's, merely to note that the intense and broad Dialogue structure and the annual bilateral summits render it much easier to support common agenda's and approaches where desired<sup>27</sup>. This stretches much wider than trade-related Dialogue areas e.g. China and the EU have cooperated closely in the Gulf region with maritime defence ships against local piracy.

The fourth driver is common membership of international organisations and respected networks such as ASEM, WTO and specific technical and sectoral organizations (e.g. ILO and various MEAs). Common memberships and obligations in international organisations render the related Dialogues far easier to conduct effectively, if only because there is considerable and uncontroversial common legal and policy ground. A combination of the third and fourth driver is the bilateral WG on WTO reform started in 2018, even though (too) little publicity about results has been generated other than a common view on the Dispute Settlement Mechanism. The rapprochement between the EU and China with respect to sustainable development has been greatly helped by overlapping memberships of China and the EU in the ILO and a series of MEAs (see Pelkmans, 2020 and Hu & Pelkmans, 2020).

### 3. Mapping EU/China Dialogues

Mapping the EU-China Dialogues is possibly useful but also complicated due to the proliferation over time and the organic growth without an explicit strategy or (published) guidelines to do so. The authors have been unable to trace a publication policy by the European Commission or the EEAS about the EU/China Dialogues, with some Dialogues operating without any publicity, and other ones with some or regular minutes or press releases<sup>28</sup>. Sometimes, conferences or other activities provide an opportunity to observe what is going on, although this is totally ad-hoc. 'Mapping' is therefore a cumbersome exercise and the certainty about the completeness of a survey remains an illusion<sup>29</sup>. Figure 1 is an adapted version of a flowchart published by the EEAS in 2015<sup>30</sup>. It is largely the same flowchart but has added some new dialogues, whilst slightly simplifying the presentation so as to bring out the focus on the second pillar: 'economic & trade'.

The mapping of Dialogues is based on three criteria: first, institutional, organisational and hierarchy characteristics ; second, categories having 'trade and investment' substance relevant for RESPECT; third, by seven distinct functions Dialogues (can) have.

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<sup>27</sup> In the RESPECT project, the contribution by Bernard Hoekman & Rorden Wilkinson (2020) on G-20 cooperation assesses G-20 cooperation and the EU role in it.

<sup>28</sup> In Farnell & Crookes (2016) it is confirmed that much of the EU/China Dialogues remains unpublished. "Both sides would maintain that confidentiality is a precondition for a frank exchange of views and that greater transparency of these discussions might lead to more defensiveness" (p. 172). John Farnell is a former high official of the European Commission.

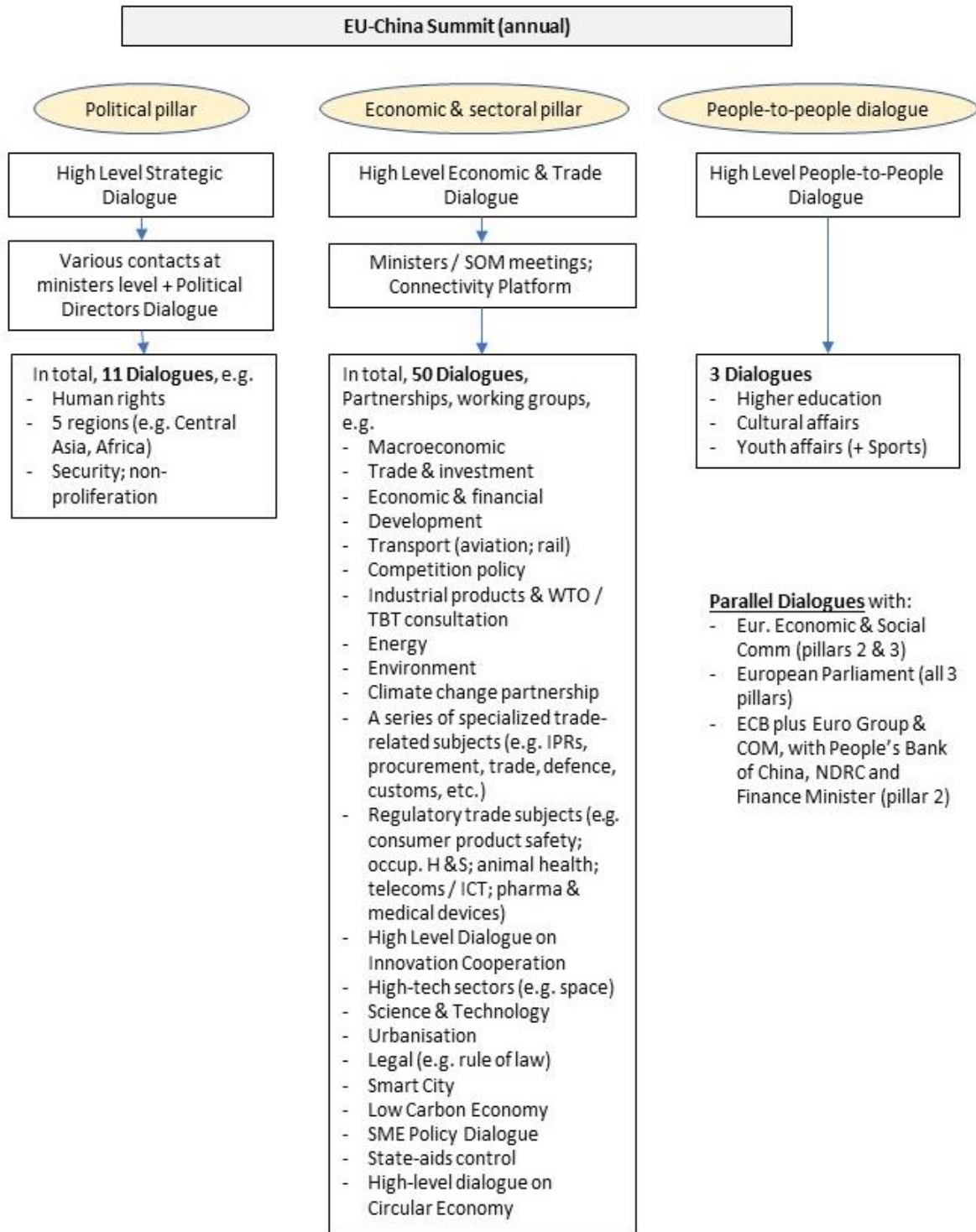
<sup>29</sup> As is clear from the survey in Hu (2020).

<sup>30</sup> See [https://eeas.europa.eu/sites/eeas/files/2015\\_november\\_eu-china\\_dialogue\\_architecture.jpg](https://eeas.europa.eu/sites/eeas/files/2015_november_eu-china_dialogue_architecture.jpg)



Figure 1

EU-China Dialogue Architecture & Hierarchy



### 3.1 Institutional aspects of EU/China Dialogues

Deliverables of dialogues are summarised by the annual China-EU summit which sometimes also announces the respective work programme or the next step<sup>31</sup>. The many implementing projects pursuing the different objectives of dialogues render the bilateral comprehensive strategic partnership concrete and substantive. The summit, in turn, supports the dialogues with political blessing. ‘Below’ the Summit, there are several very broad High-Level Dialogues at the level of the Commission Vice President and China’s Vice Premier, supported in turn by top officials meetings. A special case is the bilateral Connectivity Platform prompted by the Belt and Road Initiative (BRI), only initiated in 2015, which is conducted at the political level and with working group meetings among experts, therefore more result oriented. This has been accomplished by proposing to connect the TEN-Ts (Trans-European Networks for transport) with the BRI and to identify potential TEN-T projects with a financial deficit which could attract financing from 3rd parties<sup>32</sup>, while the BRI could be a source. There are around 50 substantive Dialogues in the second pillar, at various levels ranging from a High Level one on innovation cooperation, or a special ‘partnership’ (on ‘climate change’) to Dialogues between specialized departments as well as ‘working parties’ and committees. Some dialogues are conducted both at political and working party levels simultaneously. Overall, it would seem that the entire ‘conglomerate’ of Dialogues is highly decentralized, where form is a function of substance and the variable demand for detail.

### 3.2 Mapping Dialogues by categories of ‘substance’

The focus of this paper is on pillar 2, on ‘economic and sectoral dialogues, including trade and investment’ given the purpose of the RESPECT framework. Other Dialogues do not matter for this purpose except perhaps that on ‘human rights’. There are two possible reasons for this. First, between the EU and China the political or conceptual distance on human rights can occasionally cause frictions and these can have a chilling effect on Dialogues or even on the Summit itself, though less so in recent years. Second, although the human rights Dialogue has always been part and parcel of the political dialogues under pillar 1, the EU has also begun to include human rights as an element of ‘sustainable development’<sup>33</sup>. However, unlike in the (failed) PCA talks, which intended to include a ‘human rights clause’ with the option of suspension of the PCA in some extreme instances, human rights as part of sustainable development are not accompanied by any threat of sanctions but rather by consultation and persuasion.

Given the large number of economic & trade Dialogues, it is necessary to first identify which Dialogues are ‘trade-related’ or indeed ‘trade-policy-related’. In Figure 2, we distinguish directly trade-relevant and indirectly trade-relevant, allowing yet another category comprising 12 Dialogues which *might* at times be trade-relevant, besides the special Connectivity Platform which surely is trade-relevant (but heavily infrastructure oriented).

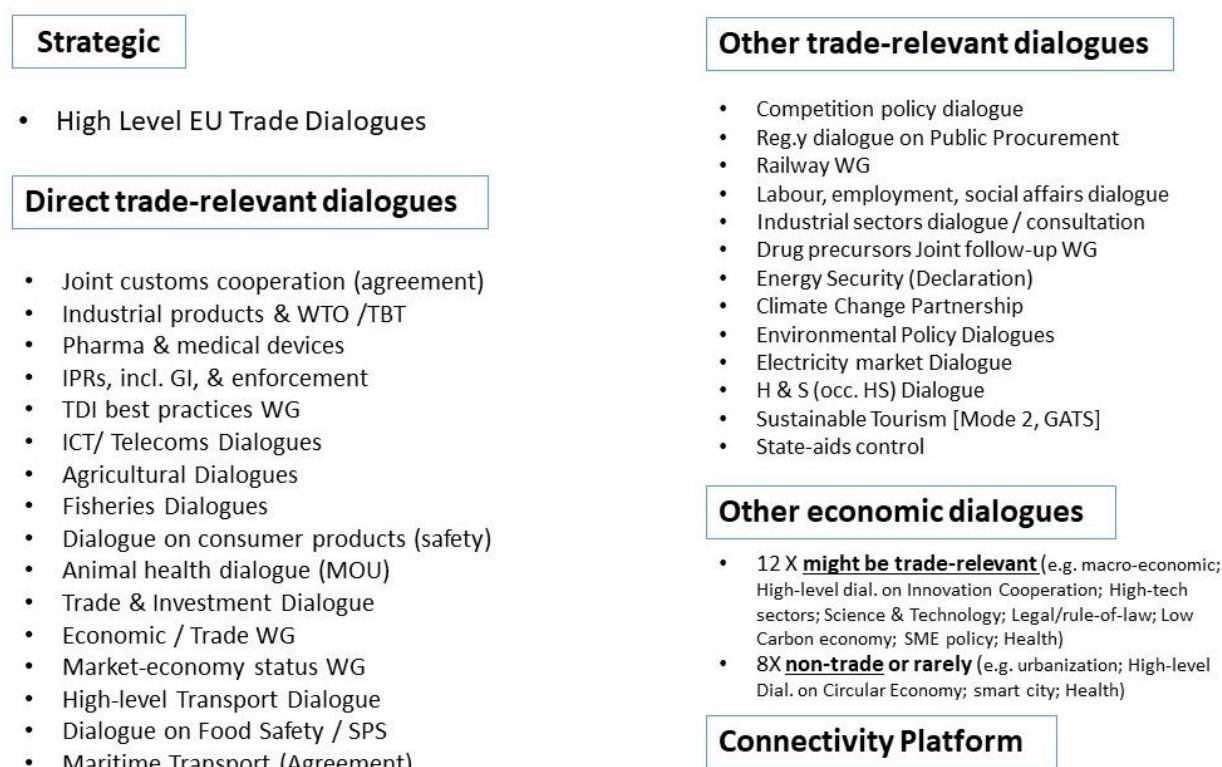
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<sup>31</sup> Often with links to work plans.

<sup>32</sup> See Projects presented under the EU-China Connectivity Platform, available at [https://ec.europa.eu/transport/themes/international/eu-china-connectivity-platform\\_en](https://ec.europa.eu/transport/themes/international/eu-china-connectivity-platform_en) (last accessed 16 March 2020).

<sup>33</sup> See for instance the 2016 EU Handbook on SIAs, the Sustainable Development Impact Assessment of trade and investment agreements. The 2017 SIA of the CAI deals with human rights, for example.

**Figure 2**  
**Mapping trade-related EU/China Dialogues**



No less than 16 Dialogues are directly trade-relevant and another 13 have indirect trade relevance<sup>34</sup>. In addition, another 12 of the 20 remaining economic Dialogues *might* have trade-relevance on occasions, such as the macro-economic Dialogue, the one on high-tech sectors, the legal one (e.g. on the rule of law) and the low-carbon economy. And there is the increasingly important Connectivity Platform with its emphasis on infrastructure (rail, air, road, digital connectivity), technical standards, customs facilitation and regulatory issues which dictates that the operation of the BRI in the EU must respect the Single Market rules. In short, there is a widespread bilateral ‘web’ of EU/China Dialogues including some which would not normally be considered as a form of trade policy but which matters for bilateral and multilateral trade and investment.

### 3.3 Mapping by functions of Dialogues

The difficulty in mapping the EU-China dialogues architecture is that, through organic growth, dialogues may generate new dialogues when, for example, the importance or coverage of a single issue increased so much that it might engender other new Dialogues in their own right. Such organic development can take place across the various competences of the Directorate-Generals at the Commission, and the whole structure appears complicated. Nevertheless, it would seem possible to identify no less than seven functions of the Dialogues, as summarised in Table 2.

<sup>34</sup> Arguably, public procurement is a border case between the two categories.

**Table 2**  
**Seven functions of EU / China Trade Dialogues**

1.		Exchange of information, better understanding and mutual (policy) learning
2.		Capacity building
	2.1	Project-based activities to tackle challenges and for mutual learning
	2.2	Exchange of staff & close cooperation between agencies/services
	2.3	Capacity building & implementation support
3.		Trade-policy-related consultations, pre-negotiations and coordination for international fora
	3.1	Joint efforts/'undertakings' in multilateral / international cooperation
	3.2	Technical consultation on (many) bilateral trade & investment aspects
	3.3	Identifying solutions to issues of mutual interest e.g. preparing technical negotiations or agreeing on MoUs

Table 2 has to be read having in mind the enormous changes in the economic, social, legal, institutional and technical capabilities of China over the (say) 25 years of the Dialogue process. One prominent difference between the 1990s and today is that the EU is no longer a donor and China not a traditional recipient. Moreover, China's capacity in legislation and technicality of requirements has made tremendous progress over the past decades, indeed so much so that the country has much to offer for the EU to learn as well. The contrast over time matters when inspecting the three main functions in item 2. However, this does not mean that functions under item 2 are no longer exercised – they are but much more like the cooperation between (say) two mature economies as equal partners. Under item 2.1, for example, funding is nowadays often provided both by the EU and China. Joint agenda-setting has also become more of a common exercise, though China would perhaps prefer to be able to exert more influence on this. Not only China has changed over time, so has the EU – though less spectacularly - whether in policy priorities or in deepening or improving a range of policies relevant to trade and investment.

Based on Hu (2020), it is instructive to provide some examples under the various items in Table 2. Under item 1 (exchange of information, etc.), a permanent feature has been domestic reforms in China. Following WTO accession of China in 2001, and the commitment in the Accession Protocol to be a signatory of the plurilateral GPA (Government Procurement Agreement), a better understanding of the Chinese tradition in public procurement – at first, of course under the planning system – constitutes another example. As set out in some detail in Pelkmans, Hu, Francois et al (2018, ch. 12), the Chinese public procurement approach was dictated initially not by freer trade but by a search for greater budget disciplines, clarity of obligations (and accountability) of officials and transparency at central and regional levels. The notion that public procurement is tantamount to a market, let alone a market open for foreign companies, was alien to Chinese practices though that does not mean China's public procurement has been closed to foreign companies. In fact, more on an *ad hoc* basis, over the past decades many foreign companies have acquired public procurement contracts in China, whether on goods, services and works, for example even including aircraft leasing and nuclear plant construction. These types of contracts amounted to Chinese sourcing of hi-tech goods and services or specialised knowledge. China's 2001 commitment to join the WTO GPA "as soon as possible" has changed this but more in terms of intentions than factual opening up, at least not as expected and as the EU wishes to see it. There is fragmented information on exchange of information on several other aspects under item 1 but little precise and hard data is available.

Under item 2 intense and sustained activity in many areas has been reported. Examples under 2.1 include mutual access to funding, publications and research under the High Level Dialogue on Innovation Cooperation, a big and diversified programme of capacity-building called the China-EU Trade project, the opening of the China window in the Erasmus Mundus programme and early common

initiatives in higher education which has led to the establishment of the the China-Europe International Business School and the Europe-China Law School. Item 2.2 (personnel exchanges) was an exercise more often used in the early days of bilateral cooperation. For example, secondment took place between China's national intellectual property office and the European patent office. Between the Commission DG Trade and its Chinese counterpart, one famous intern was Wang Shouwen, presently vice trade minister and China's deputy international trade representative. With respect to item 2.3 (capacity building, etc.), one can mention a successful chain of IPR programmes (since 2004, including working group meetings with stakeholders), detailed technical support and training for verification and controls of animal diseases in many Chinese harbours, direct collaboration between DG Sanco and their Chinese counterparts on safety of consumer goods imported from China <sup>35</sup>, and highly specific implementation support for the customs followed by more intensified cooperation. Such intensified cooperation included, for example, enhancing supply chain security and facilitation for reliable traders where the mechanism of Smart and Secure Trade Lanes was launched in 2006 in order to test the security measures applied to shipments and containers throughout the journey, but also the facilitation of better data exchange as well as mutual recognition on key customs issues.

Under item 3 of Table 2 (to identify solutions to challenges), activity has increased significantly over time, ever since China's membership of the WTO and even more so after China's economic strength had increased and the country became a leading world trader. As far as the common efforts in international cooperation is concerned (3.1), examples include the joint long-run support of ITER (nuclear fission) now established in France, the bilateral Working Group on WTO reform initiated in 2018, the sensitive collaboration with China in the Global Steel Forum <sup>36</sup> and close cooperation in the run-up for the 2015 Paris Climate treaty and in the Climate Change Partnership. As far as item 3.2 (technical consultations on specifics of trade policy in the wider sense) is concerned, many of the often highly technical subjects in Figure 2 under 'direct-trade-relevant' can be mentioned. Of course, it is known that the preparations for negotiations do not always work out as for instance is the case with the 'market economy' status under EU trade defence. And, since, by virtue of Section 15(d) of its WTO Accession Protocol, China was not confirmed as a market economy by the EU and as the old methodology for dumping margin calculation expired after 15 years after China's WTO accession, in December 2017, the EU updated its methodology by using undistorted benchmarks to determine the 'normal value' of the product. This applies to all WTO Members where "significant market distortions" are found. In other words, the notions of a market or non-market economy are not employed. What is relevant is evidence on 'significant distortions'. The new regulation has not been recognized by China as WTO-consistent and a formal complaint was lodged to the WTO Dispute Settlement Body. China's complaints focused on the new methodology that the EU has undertaken pertaining to the determination of normal value for "non-market economy" countries in anti-dumping proceedings involving products from China. A panel was established subsequently. Nonetheless, on 7 May 2019, the Panel received a request from China to suspend the Panel's work in the proceedings <sup>37</sup> until further notice. More recently, the EU has intensified pressure holding essentially that China causes 'systemic trade issues' which have to be addressed urgently<sup>38</sup>. Indeed, if comparing between trade frictions now and then, the sense of urgency is looming larger over bilateral trade relations and seems to dominate the bilateral trade dialogues. The Dialogue system may well discuss these questions (presumably in the High Level Dialogue) but resolution is still far off. Finally, the work on the Chinese membership of the GPA (under item 3.1) is also bilaterally discussed, with dialogues at different levels, before China submitted its initial GPA offer in 2007. At the moment, none of the 16 FTAs that China has concluded comprises public

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<sup>35</sup> Linked to the RAPEX alert system, fed by the EU and its Member States. Risky products are traced back to Chinese producers with the help of the authorities and remedies are proposed.

<sup>36</sup> Unfortunately, China left the Steel Forum in the autumn of 2019. It should be noted that, according to the OECD Economic Survey of China (2019, p.15), China's steel production capacity decreased just by a modest 9.8% over 2014-17.

<sup>37</sup> In European Union – Measures related to Price Comparison Methodologies (WT/DS516)

<sup>38</sup> See Pelkmans (2018) for an analysis of the systemic trade issues with China.

procurement in any form, though it seems that a chapter on government procurement is admitted to the ASEAN/China-led RCEP<sup>39</sup>. In China's latest GPA offer submitted in late 2019, new government entities are listed which means they will be required to open their public tenders to foreign competition. The list includes some at the level of China's autonomous regions and 16 SOEs. Apparently, all construction and services are now covered by the latest offer as well as sectors, such as postal services and transportation, including railways and highways. In addition, China announced lower threshold values for the proposed goods and services offered.<sup>40</sup> But this offer still fell short of expectations of GPA parties and remained deficient because in a number of critical areas (incl. thresholds, entity coverage and exclusions), the openness was still not commensurate with what GPA parties offered.<sup>41</sup> Therefore, China's GPA offer will need to be further improved.

#### 4. Querying about the effects of trade-related Dialogues

We shall pose four questions about the actual or possible effects of these Dialogues and answer them to the best of our ability and information<sup>42</sup>.

##### 4.1 Can the web of Dialogues be seen as an 'unbundled' FTA'?

Given Figures 1 and 2 and the many examples mentioned, and given the considerable follow-up of the failure of an ambitious, partly trade-related PCA in the form of more Dialogues, one may ask the question whether the web of (trade-related) Dialogues serves as an 'unbundled' FTA, without a formal treaty. Of course the history of a number of trade-related Dialogues goes back to the run up of China's WTO accession, therefore these areas covered coincide with the WTO trade disciplines. The notion of an 'unbundled' FTA is not as strange as it might sound. ASEAN long pursued market integration without a treaty and even the ASEAN Charter agreed in 2009 has extremely light forms of binding<sup>43</sup>. Moreover, a modern FTA usually has a series of chapters covering very similar grounds as the EU/China Dialogues do, quite a few of which are initially moulded after the trade areas covered by the various WTO agreements China acceded to. In addition, it is good to remember that at least China proposed a FTA as early as 2012 (PM Li) which might be read as a judgment that the Dialogues can support a good deal of the technical presentation of such a major undertaking. On the other hand, the number of EU-China dialogues has increased, organically, over the years reflecting the closer bilateral relations over a broad spectrum of policy areas.

Nevertheless, the answer to this first query of an 'unbundled FTA' is : *not really*. In fact, neither the EU nor China has set a China-EU FTA as an objective in any formal way. The suggestions by Premier Li in 2012 and President Xi in 2014 amounted to no more than a couple of sentences, without even the slightest detail<sup>44</sup>. 'Exploring' an FTA led to its mentioning in two successive Summit Statements, after which it was no longer included though this could also be a consequence of the cancelation of the bilateral Summit in 2016 due to their political fallout, among which over the disputes in the South China

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<sup>39</sup> Not yet published or concluded.

<sup>40</sup> In 2019 this is 18 years after the WTO Accession Protocol in which the GPA membership commitment is specified. China has made 6 earlier offers to the GPA countries but the last one was in 2014.

<sup>41</sup> See 2019 Report to Congress on China's WTO Compliance, United States Trade Representative March 2020, at p.38.

<sup>42</sup> The authors will organize interviews with experts from both sides, in order to obtain some degree of verification of the answers in this first draft. This is postponed due to corona-related restrictions.

<sup>43</sup> See Pelkmans (2016) and Cremona, Kleimann, Larik, Lee & Venneson (2017). Stronger, ASEAN has concluded a series of FTAs, although the AFTA is a FTA itself, without common trade policy powers like in the EU.

<sup>44</sup> How crucial it is to provide at least some detail on the scope and ambition of the FTA is shown and elaborated in our book (Pelkmans, Hu, Francois et al, 2018) which discusses at length a 'deep and comprehensive' FTA between the EU and China.

Sea between China and the Philippines and the EU's support to the UNCLOS' decision in the Philippines' favour. Subsequently, the EU sets two conditions before a FTA may appear on the agenda, as mentioned before. The first condition on concluding an ambitious CAI would seem to be within reach in 2020; the second condition on China's continued and 'deep' reforms so as to arrive at a functioning market economy still seems to be mainly a promise, even though highly selected progress can be observed<sup>45</sup> - so far the harvest in the bilateral relationship predominantly yields open-ended discussions. For one, to reform China's trade laws, practices and acts so as to be WTO-compatible (if not WTO-plus) – as the direction for continued reforms – may only succeed if relevant WTO disciplines are reformed, too, to become updated and more effective. This is bound to be a long-drawn-out exercise. Therefore, EU's condition on "continued reforms" looks more like a subtle decline of China's FTA plea, for the time being. Domestically, China has launched a series of reform initiatives, ever since the November 2013 Third Plenum, but suspicions of weak or delayed implementation linger on. China and the EU might therefore consider using the many Dialogues as a conduit to deepen reforms, constituting a quasi-official approach to accomplish many of the provisions otherwise belonging to a deep and comprehensive FTA.

However, this view suffers from too severe shortcomings. Dialogues are too often uncoordinated, even when properly within the competence of respective EU institutions. They are also frequently 'bottom-up', unlike in a FTA strategy. At the same time, the modern EU FTAs nowadays are 'deep and comprehensive' which means that a good deal of their substance is 'regulatory'. It so happens that most issues in the trade-related Dialogues are regulatory in nature, too, simply because a good deal of the initial architecture of Dialogues was modelled after the various subject matters of WTO agreements. What is difficult to assess from afar (and from what is publicly known) is whether and in how far today's regulatory EU/China Dialogues are actually capable of improving EU companies' market access for goods and services in China (see also 4.2 below). Therefore, the authors are unsure but doubtful whether or not the web of Dialogues serves as an 'unbundled' or fragmented FTA piece-by-piece, without a treaty.

## **4.2 Can Dialogues improve or delay market access ?**

### 4.2.1 The general picture

Here the picture would seem to be mixed and requires careful discussion. Given the many functions of Dialogues, some have (over time) been helpful in at least five ways. First, dialogues have contributed to align domestic laws in China with the WTO laws, and, more importantly, enabled the delivery of China's WTO commitments on trade and investment. Examples include IPRs, competition law, the law on technical standardisation. Second, they have helped to strengthen enforcement, sometimes in a very concrete and 'hands-on' fashion (e.g. DG SANCO and Chinese consumer protection authorities close cooperation to trace producers of overly risky goods and approach them). Third, the EU has helped to bolster various types of technical controls, or supporting their convergence with international practices and/or making them identical inside the large Chinese market (e.g. in harbours) so as to level the playing field. This has been particularly the case with SPS-type controls, which is surely one driver of the rapid increase of EU food exports to China over the years. Fourth, dialogues have helped or stimulated the opening up in specific fields, notably in air transport and to a lesser extent in maritime transport. Fifth, in some cases, the EU has used dialogues to stimulate Chinese authorities to reduce *intra*-Chinese market fragmentation and uncertainty. This exercise is especially useful to help China levelling domestic markets after certain SOEs' monopolies were abolished, and the commercial roles of multi-layered

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<sup>45</sup> This is not only the inference of the EU [(JOIN (2019) 5 of 12 March 2019, EU-China - a strategic outlook], it is also clear from leading and detailed sources such as Lardy (2019) and the extremely detailed 'European Business in China Position Paper 2019/2020' published in 2019 in Beijing, [www.europeanchamber.com.cn](http://www.europeanchamber.com.cn) .

administration in the markets were (supposed to be) relinquished. The establishment of a new market system was imperative, but not necessarily equal or equivalent in the various provinces.

#### 4.2.2. Tariffs and tariff-rate quotes are dealt with in Geneva

Classical market access with the help of duties <sup>46</sup> levied at the border is of course *not* the subject of EU/China dialogues, of which the initial purpose was to assist China in delivering its WTO commitments, and for a smooth transit from a centrally planned to a market economy.<sup>47</sup> Tariffs and tariff-rate quotas (TRQs) are left to the WTO agreements or to eventual FTA negotiations, not to dialogues. Also, given China's active unilateral (applied) tariff policy, as set out in some detail in Pelkmans, Hu, Francois et al (2018), any attempt to improve market access via EU/China dialogues in other ways is bound to remain at best very partial and its effectiveness for EU exporters a priori unclear. Since market access to China is, on the whole, far more restricted than Chinese access to the EU <sup>48</sup>, the dialogues cannot but be a weak and questionable instrument for this purpose. Moreover, there are still numerous Chinese restrictions on incoming FDI and the post-establishment business options, again something that Chinese FDI in the EU hardly encounters as the EU regime is amongst the most liberal in the world according to the OECD FDI restrictiveness index.

Market access is also influenced by trade defence measures. It should be noted (see Figure 2) that two closely related topics used to have their own EU/China dialogues: trade defence such as anti-dumping and countervailing duties <sup>49</sup>, and the 'market economy status'. For China, there can be no doubt that EU trade defence has been a serious problem for at least a decade or more, even when the total trade value affected is barely more than 1 % of bilateral goods trade. In the period 1995 – 2014 China was targeted by the EU for anti-dumping case initiations for on average some 28 % - the highest share amongst trading partners - but (when taking A.D. measures in force) the China share of all A.D. measures of the EU quickly rose after 2001 to reach 47 % in 2014<sup>50</sup>. In 2018, however, the share of A.D. measures in force hitting Chinese exporters to the EU (as a percentage of all measures for all trading partners) reached an extremely high 71 % (85 of 120)<sup>51</sup>, in part due to the steel crisis in China. Plurilaterally this was also addressed in the Global Steel Forum. Additional sensitivity emerged because China had firmly counted on the 'market economy status' clause in EU anti-dumping to be removed, as legally required by the WTO Accession Protocol by December 2016. This cannot be discussed in the present context but the practical effect of this clause [more precisely, when 'market economy status' would not be granted in an A.D. case] was that the A.D. duties imposed by the EU would tend to be some 15 % – 20 % higher. The EU replaced this clause by a reform where market-based comparison of relevant prices would not be accepted for purposes of A.D. cases if export companies operate from an economy with 'significant distortions'. A special EU/China dialogue was established to enable extensive bilateral discussions but as far as the authors know, to little avail<sup>52</sup>.

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<sup>46</sup> Or tariff rate quotas in agriculture

<sup>47</sup> Although it might be discussed at the highest level dialogues, but this is not reported.

<sup>48</sup> See for detail in many aspects of tariffs and regulation, Pelkmans, Hu et al, 2018, op. cit

<sup>49</sup> Safeguard measures also fall under trade defence but these are very rare in the EU (in contrast to the US).

<sup>50</sup> See Pelkmans, Hu et al, op. cit., p. 80. See also Yalcin et al (2016). In numbers, the US and India had even more A. D. cases against China in force at the time.

<sup>51</sup> See Annex O of SWD(2019)141 of 29 March 2019, 37th annual report of EU's anti-dumping, accompanying the main report; see [www.trade.ec.europa.eu/doclib/docs/march/tradoc\\_157811.pdf](http://www.trade.ec.europa.eu/doclib/docs/march/tradoc_157811.pdf). The 38th EU anti-dumping report (April 2020) shows that this extremely high targetting of China has stayed the same : 86 measures of a total of 121. See SWD (2020) 71 of 30 April 2020 [www.trade.ec.europa.eu/doclib/docs/2020/may/tradoc\\_158734.PDF](http://www.trade.ec.europa.eu/doclib/docs/2020/may/tradoc_158734.PDF), Annex O.

<sup>52</sup> As noted, China filed a WTO case against the EU in the light of some clauses in the new EU regulation.



#### 4.2.3 Market access as a result of reforms

‘Effective market access’ was attempted in other dialogues with, so it seems, modest success. The Chinese reforms the EU has typically been interested in, tend to have the effect of facilitating effective market access in various ways. Many of these issues are complex and cannot possibly be dealt with here in an analytically satisfactory fashion. The crux often was (and is) to render sectors or interventions more ‘market oriented’ (e.g. fewer restrictions in services), thereby facilitating ‘ordinary’ competition inside China between foreign companies and local ones, whether SOEs or private firms. Although the lesser restrictions approach has worked to some degree, be it at a slow pace, it cannot easily be attributed to EU/China dialogues as such. Rather, the dialogues may have stimulated the debates inside the Chinese government and helped the government overcome resistance from protected companies, not seldomly SOEs. The EU has also tried to suggest alternative solutions which would be less or not restrictive. Another permanent reform issue in dialogues has been the EU insistence on removing the privileges for certain Chinese SOEs. In doing so, effective market access in a range of sectors would surely improve. But there is little doubt that one of the major ‘systemic’ differences between China and market economies is precisely found here. As a consequence, China has been anything but forthcoming on this ‘reform issue’ even in informal dialogues.

Since 2013, with President Xi Jinping in charge, SOEs have become *more* important and have received increasing support. Two major examples demonstrate this. One is that SASAC (large SOEs) and Central Huijin (for financial institutions) act as regulator and operator. As Lardy (2019) has shown, the increased support to SOEs clearly is at the cost of loans extended to private firms. Whereas the share of loans (to non-financial enterprises) to private enterprises in China fell from an average of some 52 % over the years 2010 – 2013 to a mere 11 % in 2016, that of SOEs shot up from 35 % in 2013 to no less than 83 % in 2016. No wonder the rate of investment of SOEs reacted by a rise (after a delay of 2 years) as off 2015 from 32 % to 37 % in 2017. Also the growth of Chinese industrial output attributable to SOEs (fallen to a very low rate of 2 % by 2015 !) shows a hike to 7 % by mid-2018<sup>53</sup>. The other example is found in Chinese competition policy. The AML of 2007 is largely based on EU competition rules, a result of intense collaboration under joint projects and an active dialogue of the kinds specified in Table 2 as 2.1 and 2.3. But these rules are not applied to SOEs, especially not when mergers are at stake. It is well-known that SOEs are far less profitable than private Chinese companies. Some SOEs are ‘zombies’, which could not persist in a competitive market economy. Such SOEs typically never die but are kept afloat with murky subsidies and other special arrangements. Eventually, such SOEs are forced to merge with other SOEs. The notion that either they die (possibly with a good social plan) or are bought up by private enterprises (whether Chinese or foreign) and restructured, is so far alien to the Chinese regime. In a period of barely 2 years, SASAC (administering the biggest SOEs in China) listed no less than twelve bilateral mergers, all of large to very large SOEs<sup>54</sup>. Not only does this practice violate core principles of a market economy, it ignores the very essence of the AML and may well create or strengthen dominance, a leading reason to forbid or condition the merger. There is a considerable risk that formal entry, when liberalized, cannot be exploited by EU enterprises in the Chinese market in the presence of so much market power.

These features show in no uncertain terms that, despite the significant influence the EU has had on Chinese competition law and its officials, the dialogue proved futile in the face of a determined regime eager to bolster the role of SOEs in China.

Yet another reform strongly and repeatedly advocated by the EU is about various aspects of investment access and, more generally, about extending ‘national treatment’ to EU (or foreign) investors. Here the EU business community in China – usually prudent – began to complain aloud about what was called the Chinese fairy-tale of ‘unfulfilled promises’. In the Baoa forum of 2018, president

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<sup>53</sup> Growth of industrial output attributable to private firms fell almost linearly from 25 % in 2005 to 7 % in 2018.

<sup>54</sup> See [www.sasac.gov.cn](http://www.sasac.gov.cn) and Lardy (2019) for details; the period referred to is June 2015 to August 2017.

Xi promised once again that national treatment would be extended to all foreign investors. Only in the April 2019 EU/China Summit, however, this promise was becoming more concrete in the framework of the CAI negotiations. If the CAI would succeed and be ratified, it would surely be a monumental achievement. No other country (e.g. the US began such negotiations 5 year earlier) has so far accomplished this. Since the EU is a major player, one may regard this possible success as a firmer change towards greater market orientation, but this is at present still speculative.

There is much talk and indeed considerable policy friction about China's tactics of 'forced technology transfer' for (e.g. EU) companies interested in investing in China. But to the authors this is more an investment issue. Ever since the early days of China's opening-up, the mentality of Chinese officials was to seek 'deals' in the "market for technology", for example, foreign companies' parting with technology in exchange for market access in China, or, using technology transfer in exchange for favourable treatment, for example reduced fees for land leasing or a waiver of utility charges (this does not mean that Chinese companies do not pay for new technologies, China is in fact one of the biggest buyers of technologies.) This tactic was detected long ago and according to China's WTO Accession Protocol, China pledged to eliminate or bring into conformity with the WTO Agreement all special trade arrangements, including barter trade arrangements as specified in the Protocol.<sup>55</sup> In Annex 1 of the Protocol, China pledged to abolish technology transfer requirements in order to comply with the WTO Trade-related Investment Measures (TRIMs), but that is only with regard to trade in goods. At the same time, for example, the subsidies provided for preferential income tax treatment to enterprises transferring technologies must be notified in accordance with Article 25 of the Agreement on Subsidies and Countervailing Duties.<sup>56</sup> The EU (with Japan) at long last joined the US in its complaint China — Certain Measures Concerning the Protection of Intellectual Property Rights (DS542) that was eventually submitted to the WTO in March 2018.<sup>57</sup> The EU also lodged its own complaint against China on forced technology transfer.<sup>58</sup> Since the Sino-America trade war started, China has made attempts to rectify the bad practice, as seen in its new Foreign Investment Law (Art.24). It is also addressed in the US-China Economic and Trade Agreement from January 2020.

A range of other reforms possibly stimulated and helped by EU/China dialogues consists in more technical reforms which nonetheless are critical for 'effective market access'. Two important examples include technical standardisation and IPRs. As described in some detail in Pelkmans, Hu et al (2018, ch. 9), the Chinese technical standardisation system initially suffered from path dependency going back to the days of mandatory planning in a closed economy. This was increasingly at odds with the requirements of a modern and far more open market economy, both for imports and exports of goods (and, at first, especially for intermediates). Also the swiftly rising level of technology in China and the exports of medium- and hi-tech goods created a strong demand for conformity assessment based on world standards, or at least on technical standards from the US bodies and of the EU system based on the New Approach and on harmonisation. One form of path dependency consisted in a myriad of ministries and agencies which had a partial say on some forms of standardisation, whilst, at the same time, companies formally had no right to standardize. Indeed, conventional market-driven (private) standardisation bodies as referred to in the Annex of the WTO TBT Agreement do not exist in China. In 2015 China finally embarked on a thorough reform of the standardisation system, overhauling the incredible complexity and cutting overlaps, whilst allowing some freedom for enterprises. In 2017 a new standardisation law was adopted. The EU has worked with China via a dialogue and local representation of CEN/CENELEC/ETSI (also funded by the Commission) in Beijing since 2014. China

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<sup>55</sup> See Accession of the People's Republic of China, WTO, WT/L/432, 23 November 2001, at p.4.

<sup>56</sup> See Annex 5, Accession of the People's Republic of China, WTO, WT/L/432, 23 November 2001.

<sup>57</sup> Though based on the latest communication from the Chairperson of the Panel dated 3 March 2020, due to US' two consecutive requests for suspending the proceeding of the Panel in light of its ongoing consultations with China, the proceeding will further be suspended till 1 May 2020.

<sup>58</sup> China — Certain Measures on the Transfer of Technology, DS 549.

has gradually become more open to consultation with foreign business in case of numerous standardisation plans ; it has also announced to become more active in ISO/IEC, helping to write world standards, again strongly advocated by the EU. However, it has not stimulated the establishment of ‘private standard setting bodies’ as defined in the TBT Annex. In other words, standards are still very much state affairs, be it in a more open and rational framework.

One of the most successful dialogues with China for decades consists of the one on IPRs (Pelkmans, Hu et al, 2018, ch. 13 and Hu(2018)). After an initial focus on IPR laws and implementation, including geographical indications, the emphasis recently has been on enforcement via special IPR courts (now functioning in several important cities in China) and technical support on the fight against counterfeiting. That fight is a huge problem still today, with the EU (and its business) suffering major damage every year simply because Europe is the commercial leader in most of the (luxury) product sectors typically suffering from counterfeiting. Less known is that also inside China counterfeiting is a huge issue and a lot of litigation takes place. For the EU, of all counterfeiting discovered at EU borders no less than 56 % originates directly from China and several indirect routes add probably another 10-plus percent. It is estimated that 12.5 % of all goods trade from China consists of counterfeited goods!<sup>59</sup> Therefore, despite the active and systematic approach and support via the IPR dialogue, successful in helping China’s lawmaking and enforcement strategies, one can nevertheless argue that the results of the IPR dialogue are mixed. This is because of the continued failure to come to grips with the massive violation of IPRs in goods trade and inside China (also a major problem for EU companies selling there). But on the other hand, for instance, China adopted the EU’s *sui generis* geographical indications (GI) protection scheme. The conclusion of the bilateral GI protection and cooperation agreement at the end of 2019 will further boost EU’s agri-food exports to China, which is already now the EU’s second largest agriculture export market, after the US, and the export volume is continuously growing. And China is the EU’s 5th source of imports of agriculture and fisheries (Hu 2018). Indeed, one hardly hears European farmers complain about China.

Altogether, there is no doubt that reforms in China have, in and by itself, helped to improve effective market access for EU exporters and investors, but the overall picture is mixed with good and bad experiences. Dialogues clearly play a role in this.

#### 4.2.4. Dialogues for improving effective market access

In a fragmented way, there are documented indications of the role of trade-related EU/China Dialogues for the improvement of market access. We use quotations from two EU trade barriers reports to substantiate the point. In the 2013 report <sup>60</sup> on p. 6 the Commission writes that these ‘market access issues have been elevated to key priorities in the EU ’s bilateral trade relations’ and ‘... has systematically raised them in all bilateral meetings, often up to the highest bilateral political level (e.g. summits)’. In the same report, there is a revealing section (pp. 16/7) on the value of diplomatic (e.g. non-legalistic) trade discussions, not unlike the typical Chinese appreciation of ‘relational’ approaches, in order to solve frictions or overcome market access barriers. ‘Trade diplomacy is part of the EU’s coherent approach on external action. Trade diplomacy is usually the fastest way to tackle trade barriers as it does not require a specific context, as in the case of FTA negotiations or a long and complex litigation strategy as in the case of trade disputes. [...] [S]uch a way to address trade barriers is indeed a diplomatic tool as its objective is precisely to solve issues, suggesting that no party has to lose while the other wins. This avoids the risk of escalation in the disputes and retaliatory measures, legal or not. [...] [T]he EU’s capacity to provide convincing alternative solutions, concrete proposals, ideally based

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<sup>59</sup> Report on the EU customs enforcement of intellectual property rights: Results at the EU border, 2018, EC Taxation and Customs Union.

<sup>60</sup> Trade and Investment Barriers report 2013, COM(2013)103 of 28 February 2013, see [http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc\\_150742.pdf](http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150742.pdf)

on its own experience and the wealth of experience in its Member States and lessons-learnt. Regulatory cooperation or dialogues are a very useful tool to do so.’

In the 2018 barriers report <sup>61</sup> (p. 15), there is a specific list of Dialogues having been instrumental for addressing market access questions with China. “While the EU has used all avenues to address the challenges it faces with China, including bilateral dialogues (Economic and Trade Working Group, ICT Dialogue, Cyber task Force, Trade and Investment Dialogue, High Level Economic Dialogue, Summit) and multilateral fora (various WTO committees), the recent developments require additional, well-coordinated efforts to better address market access issues vis-a-vis China”. It is also interesting to observe (on p. 29) that bilateral dialogues <sup>62</sup> sometimes do lead to issues being resolved, as for instance with SPS standards for cheese in China.

#### **4.3 Can the dialogues stimulate ‘sustainable development’?**

The short answer is that they do, ever since 1994 for energy and shortly thereafter for environment, and subsequently labour and climate. This confirmation is crucial for the central question of the RESPECT project : as ‘sustainable development’ is a very important and comprehensive NTPO, EU trade policy in a wider sense exerts a positive influence on NTPOs in China.

The overriding rationale for this ‘effectiveness’ is found in the gradual process of convergence of China’s and EU’s strategic objectives in this enormous domain. There are essentially four areas that, together, make up ‘sustainable development’. China has been interested, and even keen in some cases, to converge with EU objectives and approaches in all four. China has improved its occupational health and safety laws (there is an EU/China Dialogue on this topic). In terms of labour rights (sometimes referred to as international labour standards <sup>63</sup>) China today adheres to 6 out of 8 core ILO Conventions [ not those on freedom of association and on collective bargaining]. It has also improved and tightened over time its environmental laws and enforcement, for instance on chemical pollution as well as other air quality issues, landfill issues and e.g. plastics. Also on climate issues China has been involved for decades and ratified the Kyoto Protocol (but assumed modest obligations at first as a – then – developing country). The 2015 Paris agreement was of course a truly global effort, China and the EU have been working closely together to achieve this significant result.

The authors are in the process of finalizing two RESPECT papers on Dialogues between the EU and China on ‘sustainable development’: one on labour and related social questions ( Hu & Pelkmans, 2020), and one on environment and climate policies (Pelkmans, 2020). The former would include an analysis of the convergence of occupational health & safety over time via dialogues and related programmes, as well as China’s adherence of ILO core conventions and the policy ideas behind it, including the ILO Decent Work Agenda. In addition, there will be a lengthy analysis of social protection in China in the period around 1995 until 2020. The latter paper surveys the process of convergence in the fields of environment and climate, with detailed attention for the starting position of China in the mid-1990s when its growth was pursued ‘at all costs’, followed by a careful inspection of policy developments and indicators with respect to environment and climate mitigation until 2020.

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<sup>61</sup> Report .. on Trade and Investment Barriers 2018, June 2019, European Commission, see [www.trade.ec.europa.eu/doclib/docs/2019/june/tradoc\\_157929.pdf](http://www.trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157929.pdf)

<sup>62</sup> The text says “After the issue has been raised by the EU in different bilateral meetings..”, and these are most likely to be one or more Dialogues. Unfortunately, in the 2019 report, no efforts traceable to Dialogues can be found, although China is prominent in the report. Cf. [www.trade.ec.europa.eu/doclib/docs/2020/june/tradoc\\_158789.pdf](http://www.trade.ec.europa.eu/doclib/docs/2020/june/tradoc_158789.pdf)

<sup>63</sup> Although these are regulations once incorporated in national law rather than standards, which are by definition voluntary.

For present purposes we limit ourselves to illustrations of the recent dialogue process and substance. Current dialogue work is based on the China/EU roadmap on energy cooperation 2016-2020<sup>64</sup>. This roadmap goes surprisingly far, even including harmonization. On energy supply, it seeks to reduce costs by 'improving competition' via trade and investment, a formulation directly relevant for the objective of the RESPECT project. This intriguing policy intention between the EU and China ought to be investigated further in later work<sup>65</sup>. On energy demand and efficiency, the roadmap is ambitious. It suggests mutual recognition of existing and future schemes, harmonizing energy labels and going for market-oriented energy-performance contracting. Again, this asks for further research and clarification. On cross-cutting issues, three aspects seem equally ambitious. First, the roadmap speaks of harmonizing regulatory 'grid' policies, which seems very ambitious indeed. Second, the partners advocate the promotion of markets for 'green goods'. Here, China as a member of APEC has supported a 'green goods' plurilateral agreement in the WTO (a follow-up of APEC's green goods arrangement) and so has the EU but these negotiations are currently stuck<sup>66</sup>. Promoting domestic green goods markets might be a reason for emulation between the two partners but this would need to be analysed further. Third, and somewhat surprising, the roadmap seeks cooperation within the framework of the Energy Charter, so far a legal framework with EU-like rules for a much wider European area. The (economic and trade) meaning of this intention and the possible link with the BRI will have to be addressed in further work. One possible suggested reason behind this close cooperation is the long-run strategy of the large electricity companies in China (the largest in the world and all SOEs) vis a vis Europe, envisaging take-overs and tighter connectivity between both electricity systems.

In 2018 the joint EU/China political leaders' declaration in Beijing<sup>67</sup> suggests further deepening in climate change and clean energy. Confirming an earlier point, the partners step up their bilateral cooperation for implementing the Paris Agreement, including the international cooperation to this effect. It also enhances technical, economic and scientific cooperation while explicitly involving the EIB. Leaders confirm once again their strong commitment to the \$ 100 bn climate fund for developing countries and new funding after 2025. They express support of the Kigali amendment (of the Montreal treaty on HFCs) and pledge to jointly phase out harmful heating, fridges and air conditioning liquids. Finally, China has now unambiguously committed to lowering emission in air and maritime transport, long a controversial issue.

This short description of EU/China dialogues and programmes on sustainable development makes it very clear that (i) the gradual convergence is real and goes quite far; (ii) has led to concrete and significant policy implications for both economies as well as for international cooperation. Since sustainable development has become a major trade and investment issue, these policy commitments support the premise – central to RESPECT – that NTPOs can be and are supported by EU's trade and investment policy, and, in this area, in amazing degrees. However, one has to assess this conclusion properly, because it hinges on two critical aspects : the gradual convergence over time of the objectives of the two partners, and a rather long time period (here, some 25 years) in order to avoid studying merely a few 'trees' of the forest and risking, as well, to miss out on China's long run approaches.

It is at least doubtful whether the long-run rapprochement in climate and environmental policies, and to a considerable degree also in social protection and most of the labour standards, would have gone so far, had the overall long-run objectives been the central subject of Dialogues, time and again, rather than a commonly agreed ambition . It can therefore be maintained that the relative effectiveness of these specific Dialogues over decades is a function of the more fundamental process of convergence in these

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<sup>64</sup> EU-China Roadmap on energy cooperation (2016-2020), see [https://ec.europa.eu/energy/sites/ener/files/documents/FINAL\\_EU\\_CHINA\\_ENERGY\\_ROADMAP\\_EN.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/FINAL_EU_CHINA_ENERGY_ROADMAP_EN.pdf)

<sup>65</sup> Note that the roadmap also includes a range of highly specific items on supply.

<sup>66</sup> See de Melo & Solleder (2019) for a detailed analysis of the complications of the green goods plurilateral.

<sup>67</sup> EU-China leaders' statement on climate change and clean energy, Beijing 16 July 2018, see [https://ec.europa.eu/clima/files/news/20180713\\_statement\\_en.pdf](https://ec.europa.eu/clima/files/news/20180713_statement_en.pdf)

two pillars of sustainable development. Farnell & Crookes (2016) are more sceptical for the majority of Dialogues, without specifying them in this quote : “Whilst the broad scope of discussion may be defined, there is often no specific goal, except to contribute to mutual understanding.... In most cases, there is no oversight of the discussions at the political level, no timetable for results and no sense of urgency to make progress”. This sweeping statement is surely too general as we show for environment & climate as well as for the (generally more sensitive) social pillar of sustainable development. Although Farnell & Crookes, op. cit, acknowledge ‘practical objectives’ in some policy areas and provide precise examples <sup>68</sup> as well as a short overview of considerable funding for articulated programmes, their view is that these are the exceptions. Following a few case studies on energy, environment, climate and urbanisation (often linked to those), their conclusions are sombre. Not that not much seems to happen and extensive networking occurs, but cooperation is rarely ‘deep’ and mutual. “In general, .. the exchanges are limited to government officials.... But only rarely business, and when it does the result has been judged insufficient by the European side”(p. 187). “.. Influence on policy,, is one-way, from the EU to China... The benefits of EU-China cooperation for the real economy.... appear to be very limited” (p. 188). It is good to be warned by Farnell & Crookes not to read too much in frantic Dialogue activities and networking. But there is substantial evidence that more than 2 decades have not been without explicit and tangible rapprochement in e.g. climate mitigation and environment. However, in China there is often a long period from public announcements to concrete policy implementation and that is certainly the case in sustainable development. Moreover, Farnell & Crookes, op. cit., had finished their book just before the Paris treaty on climate mitigation and before the enactment of the three paramount environmental laws on air, soil and water in China. Also in the social field it can be shown that China looked for the EU for inspiration and experience, with the EU eager to witness social progress in China. There are also signs that the time horizon of Farnell & Crookes might be a little too short, something that we have attempted to avoid as much as feasible.

#### **4.4 Can dialogues address ‘systemic’ differences’?**

China boosts its ‘socialist market economy with Chinese characteristics’. When the EU and China look back on some 25 years of bilateral dialogues on market orientation, market opening for trade and investment, various forms of close cooperation and many aspects of reforms in China, the inevitable query comes up whether the focus on numerous ‘trees’ (i.e. the many dialogues) need not be preceded by a well-founded view on the ‘forest’ (what about the Chinese system of a ‘socialist market economy’, underlying many bilateral policy issues and, indeed, many problems in the WTO)? A significant and complicating factor is that neither China nor any other country with a ‘socialist’ ideology <sup>69</sup> is a democracy with a recognized and legally protected freedom of speech and information – that is, open and unrestricted debate - as well as social and political rights of ‘association’. This mere fact renders it a priori most unlikely that fundamental ‘systemic’ differences can be fruitfully discussed in earnest, even when diplomatic accommodation in informal and closed settings might take place.

From the literature it is clear that, several decades ago, many countries or leading politicians in several parts of the world might have entertained expectations of a gradual change of China’s socialist market economy in which case the EU (as well as the US, separately) had also a cooperation programme on governance for village suffrage, for example, with some of them believing in an eventual shift to a multi-party system with greater social and political freedoms. By now, these expectations and erstwhile beliefs have been eroded if not eliminated. If this is correct, the query becomes whether informal but frank and fact-based discussions in bilateral dialogues can address ‘systemic differences’ of socio-political tenets underlying the ‘socialist market economy’. The short answer is : no. Such initiatives would be regarded, inevitably, as attempts of ‘regime change’ and hence be taboo. Diplomatic parlance would have it that this would be an unacceptable interference in domestic affairs. It would also

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<sup>68</sup> Such as on standards for electric vehicles and specific issues in customs procedures

<sup>69</sup> Take Vietnam, Cuba and North Korea, for example

undermine the spirit of the ‘strategic partnership’ currently upheld firmly by China and the EU, in wherewithal of occasional frictions. Some in China even suggest informally that the EU would resist, equally categorically, any attempts by China to discuss a reversal of democracy and of a relatively non-interventionist economy, even though China’s doctrine has it that democracies exhibit fundamental weaknesses and markets require far more steering by direct government instruments, including a major role of SOEs.

In this respect, it is interesting to quote the work of Max Roger Taylor (2019), another rare book<sup>70</sup> where numerous interviews with officials involved in EU /China cooperation lay at the basis of his conclusions. For present purposes, addressing systemic trade issues derived from the ‘socialist market economy with Chinese characteristics’, his three negative<sup>71</sup> hypotheses about promoting EU values with China should be considered:

- a. ‘Raising the most EU controversial values with China is expected to trigger an obstructive response by the Chinese side which will critically undermine dialogues’
- b. ‘Value mainstreaming is pointless as well as risky, as Chinese interlocutors are perceived likely to be unable to meaningfully impact Chinese policy connected to EU controversial values’
- c. ‘A perception amongst EU officials that China is not listening to EU and it should’.

All three hypotheses are frequently heard in conversations. They might as well apply to the discourse about the systemic trade issues of the socialist market economy with Chinese characteristics.

The fundamental query is therefore a derived one : can ‘systemic differences’ be addressed in the framework of bilateral and multilateral trade and investment rules and accepted world practices? The economic case for such actions must rest on the extent and gravity of distortions and the potential or actual negative spill-overs engendered. What renders it so problematic is that ‘extent and gravity’ as well as negative cross-border spill-overs are far from easy to establish firmly. Many other countries intervene in multiple ways in their markets which implies that it is a tall order to distinguish ‘systemic’ from other interventions. For the WTO it is known that, to some extent and for some forms of interventionism and controls, specific distortions can be addressed, whereas for other ‘distortions’ this is either doubtful, given the gaps and omissions in the rules and rulings of the Appellate Body, or as yet impossible. So far, filing WTO cases by both China and the EU (also outside the trade defence area) has not undermined the spirit of the strategic partnership.

19 years after WTO accession, it is a fair judgment that China is (roughly ) WTO compliant where legal texts in the WTO are clear and straightforward [see e.g. Grieger (2016) and the literature quoted]. There are surely some outstanding compliance issues, one particularly serious example is industrial subsidies.<sup>72</sup> It would seem to be a different matter altogether where the implicit assumption - of original GATT members and of today’s WTO - that trading partners are market economies is less than properly incorporated in the written rules, or not at all, or where actual implementation or enforcement of accepted WTO disciplines is weak or literally failing. Even a relatively simple discipline such as careful and timely notification of e.g. subsidies in various forms has been followed up in lax ways or not at all in forms useful for trade policy. Not only by China<sup>73</sup> but in particular by China because there are powerful indications that distortions occur, and are aggravated because of its sheer size in the world economy. Recently, there has been much more explicit attention for such omissions and for the de facto

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<sup>70</sup> A Ph. D. dissertation at the University of Bath

<sup>71</sup> He also puts forward two positive hypotheses. See Taylor (2019, p. 280, table 10.1).

<sup>72</sup> See Hu, 2019, Industrial Subsidies, Policy Brief, Institute for International Trade, the University of Adelaide. Also see WTO Trade Policy Review, China, Report by the Secretariat, WT/TPR/S/375, 6 June 2018, at p.17.

<sup>73</sup> However, just to select one prominent example, India has carefully complied with the obligations to report on subsidies in the WTO.

circumvention of what market economies typically regard as routine market disciplines. Moreover, there are non-trivial signals that under president Xi, the systemic differences have widened.

It is not publicly known how the EU/China dialogues at top level have dealt with the ‘forest’ of ‘systemic differences’ relevant for trade and investment. What is known is that the EU has insisted that China should pursue a broad economic reform route for markets to work better, and that it supported the rich November 2013 CCP reform plans as a manifestation of this approach. However, when it became clear that these reform plans turned out to be a paper tiger, the concerns of China’s trading partners including the EU increased exponentially, not least because China had meanwhile initiated radical and interventionist plans for many business sectors, with apparently massive funding in ingenious ways. The present paper is not suitable to set out these concerns in analytical detail <sup>74</sup> but the upshot has been a new China strategy for the EU in March 2019 <sup>75</sup>. Dubbing it a ‘new’ strategy is not correct as the main elements have been adopted from the 2016 strategy, but there is no doubt that the wording and style are far more assertive than hitherto. This newly formulated strategy and several important WTO cases touching on some of the suspected distortions at stake, not to speak of the U-turn of the US administration led by president Trump, have made China realize that it has to respond to these pressures by further opening up, be it selectively once again, accelerate the CAI talks by setting an end date and work together with the EU in a bilateral dialogue on WTO reform <sup>76</sup>. The EU has also responded with the introduction of an EU framework of (Member States) investment screening as a basis for possible restrictions for reasons of national security and public order (but a somewhat wider concept of security). This screening is more a ‘sign on the wall’ than a very restrictive tool but it is a credible signal that the EU has become vigilant about incoming FDI. The same approach applies to some EU member states, such as Germany. Also the Commission’s 2020 White paper on foreign subsidies affecting economic activity in the EU single market <sup>77</sup>.

For the EU the ‘socialist market economy with Chinese characteristics’ has certain tenets affecting negatively trade and investment in bilateral and multilateral ways. These tenets concern

(a) the many methods (often hidden or non-transparent) and sheer quantities of subsidies, including many hundreds of heavily-state-influenced investment funds;

(b) the steering and direct influence of the state on SOEs, and these SOEs are often giant firms, in sectoral markets dominated by them, and/or they largely control leading R & D subsidies and programmes in what are called industries of the future; unlike e.g. in the EU, SOEs are not embedded in an overall pro-market regime, with strict transparency rules about the financial relations between the state and the companies and prohibitions or conditioning of state aids

(c) the ever increasing direct role of the Party (CCP) in firms, and not only SOEs but in more than 200 000 *private* companies too; usually, the CCP representative sits in the board; this phenomenon is unknown in any other WTO partner (as far as the authors know); there is nothing ‘Chinese’ of this characteristic – it is party control for other motives than market-led

(d) condoning or forcing technology transfer when a foreign company wants to invest in China; given the enormous market size of China, also rapidly growing, this ‘soft’ instrument can be quite effective, because the only alternative for firms is to quit China, which is often even less attractive.

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<sup>74</sup> See Pelkmans, 2018 for an elaboration; see also EPSC (2019), Heilmann (2018) and Zenglein & Holzmann (2019) . <https://www.merics.org/en/papers-on-china/evolving-made-in-china-2025>

<sup>75</sup> EU-China – a strategic Outlook, Brussels, 12 March 2019, see [www.ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf](http://www.ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf)

<sup>76</sup> Of course, concluding the Phase 1 Economic and Trade Agreement with the US (January 2020) is another step taken by China to open up.

<sup>77</sup> See footnote 18.



(e) widespread restrictions on incoming FDI and often highly discretionary treatment (under licensing regimes) rather than mere general rules; China also steers or even controls *outward* FDI, which – for a country with huge foreign exchange reserves – cannot be explained by balance of payment considerations; managing outward FDI is alien to a market economy

(f) China also maintains a number of dubious or unusual interventions in goods trade, including VAT exemptions and a battery of export restrictions

Having said the above, “socialist market economy with Chinese characteristics” *per se* is not a problem for market access. A “marriage of convenience” no doubt, China innovatively coined the term to accommodate two opposing ideologies, i.e. the legitimacy of one-party Communism in the country and a market-driven model of development with private property rights, in order to qualify for membership at the WTO which is in effect only for market economies. The principal issue with the “socialist market economy with Chinese characteristics” is the Chinese government’s continued roles influencing the markets, which is also incompatible with its WTO commitments<sup>78</sup>. Practically all these issues can be addressed in EU/China dialogues but there seems to be little public information whether this is so and whether it leads to fewer interventions. One difference recently is that systemic differences are widely debated in many capitals in the world and not least in Geneva and Brussels. Unfortunately, the bilateral WTO Reform working group has not published its deliberations.

## 5. Conclusions

EU/China dialogues fulfil many useful functions and a large majority of some 50 or so of these dialogues is directly or indirectly relevant for trade and investment. Today’s architecture of the EU/China Dialogues can be traced back to (i) early development needs and requests for policy learning which China (and international organisations) expressed decades ago, (ii) some first Dialogues linked to the 1985 EU/China non-preferential trade agreement, (iii) the preparation of China’s accession to the WTO – when the EU offered capacity building and support programmes, with in-depth exchanges in the many areas of the WTO – and (iv) the persistent urge on both sides for China to reform deeply and structurally as China migrated out of the top-down and rigidly planned economy (without much private economic initiative allowed) towards a market economy. Today, the underlying rationale for having so many trade-relevant dialogues is that modern trade and investment policy covers a very broad spectrum of policy areas. Moreover, there are permanent and emerging issues to address jointly in the world economy and at the same time new opportunities to enhance job growth via increased trade and direct investment. This wide range is also reflected in the proliferation of WTO agreements and new<sup>79</sup> areas of attention.

Inside the EU, the recent assignment of a wide range of areas to EU trade policy, instead of the Member States being competent, has certainly caused a further widening of the scope of EU/China Dialogues. This widening of the scope of EU-level trade policy began with the 1991 opinion of the CJEU, followed recently by the 2017 CJEU opinion on the legality of several aspects of the EU /Singapore FTA<sup>80</sup>. A comparable widening of scope has been found in FTAs concluded<sup>81</sup> by the EU and by several other OECD countries with both developed and developing countries. An important underlying reason for such broadening are ‘trading costs’, the effective cost differential between

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<sup>78</sup> See Hu, 2019, Industrial Subsidies, Policy Brief, Institute for International Trade, the University of Adelaide. Also, Hu, 2019, China as a WTO Developing Member, Is It a Problem? CEPS.

<sup>79</sup> Although some are not so much new, rather they have become better accepted in the global trade community (cf. the four so-called Singapore issues going back to EU proposals in 1996).

<sup>80</sup> Opinion 2/15 declares that the EU’s exclusive competence in trade does not cover only two aspects, namely the field of non-direct foreign investment (‘portfolio’ investments made without any intention to influence the management and control of an undertaking) and the regime governing dispute settlement between investors and States.

<sup>81</sup> In the case of Mexico, the FTA concluded in the late 1990s even had to be upgraded recently so as to accommodate the policy demand for widening of scope and deepening of commitments.

bringing goods to the domestic and to a foreign market (apart from transport and insurance which are inevitable). In the case of China, as mentioned above, the proliferation of dialogues has several explanations. In short, the demand for wide-ranging consultation and mutual policy learning given the lack of a FTA for such an important trade & investment relationship, (initially) the developmental and support needs of China in a series of technical fields and, most prominently, the powerful quest for reforms expected to have a positive impact on market access as well as on the better functioning of the Chinese market (including a level-playing field for foreign enterprises). Much attention has been paid for two decades on the ‘green’ and social pillars of sustainable development, a major NTPO.

The following conclusions on the role and functions of Dialogues in the EU/China in the CSP are based on a data search (Hu, 2020) which is unfortunately incomplete as the reporting on EU/China dialogues from both sides is neither centralised nor systematic, but scattered and very incomplete. Nevertheless, the authors believe the survey of the data is the best available so far.

We asked four specific questions, after first mapping the EU/China Dialogues.

*i. Do Dialogues help for market access ?*

Dialogues would seem to have facilitated market access in a variety of ways: helping Chinese laws to align with WTO laws, supporting the delivery of specific WTO commitments, help strengthen enforcement by China, including technical controls, stimulate opening up in specific fields (like air transport and maritime) and assisting China to level the playing field inside China which is also helpful for EU companies in China. However, when it comes to classic tariff setting, China is unilateral (under bound tariffs). In trade defence there have been two Dialogues (one on TDI ‘best practices’ and one on the ‘market status’) but the EU has only further increased its restrictions vis a vis China – these two Dialogues might have accomplished little more than letting off steam by complaining. The EU has also consistently insisted on reforms in China with a view to lessen restrictions which hinder effective market access. In some aspects this seems to have worked but not in the big issue of SOEs and their privileges. We show that SOEs under Xi have rapidly gained prominence and support, even at the expense of private firms. Moreover, the factual application of the AML (competition law, inspired by EU law) to SOEs, and in particular for mergers between large SOEs, is plainly anti-competitive. Market access and post-establishment liberalisation for EU FDI under ‘national treatment’ is a key subject of the CAI and is of course a negotiation for a treaty, not a Dialogue matter. On forced technology transfer Dialogues failed to work and the EU eventually settled for filing a WTO case, similar to the US and Japan. In IPRs, however, Dialogues and follow-up programmes have been quite successful – the remaining (serious) problem is enforcement. In GIs a 7-years negotiation resulted in an EU/China treaty in 2019, with 100 GIs on both sides to begin with. In technical standardisation the partners still have a TBT Dialogue but meanwhile also quasi-permanent cooperation in Beijing. Finally, since the reporting on these Dialogues is always couched in diplomatic language, the authors have attempted to find traces in EU reports confirming this use of Dialogues. This led to a few revealing quotes showing what Dialogues matter in this respect and an admission why Dialogues might often be more practical and less controversial than a legalistic approach in the framework of a FTA.

*ii. Can the web of Dialogues be seen as an ‘unbundled’ FTA ?*

The answer is : not really. The FTA is no longer a short-run objective for both partners and the EU’s two prerequisites for starting FTA talks are not fulfilled : concluding the CAI and deep reforms in China (bound to include a different approach to SOEs). Building up an ‘unbundled’ FTA via numerous Dialogues on areas nowadays often included in deep and comprehensive FTAs requires refined coordination on both sides and this is absent. A lot of Dialogues are bottom-up, fairly loose and non-committal and basically not coordinated horizontally. Their links with the annual Summit are usually ‘vertical’ by pleading importance of the initiative or the field, not so much by overall longer-term frameworks. The trade dialogues do not seem to substitute, even imperfectly, for a FTA, though the dialogue subjects coincide with a number of typical FTA chapters. Indeed, an eventual future FTA may be conveniently drafted based on only some of the dialogues.

*iii. Can the Dialogues stimulate 'sustainable development'?*

In sustainable development (including adherence to 6 of the 8 ILO core Conventions though the last two are the most crucial), a considerable degree of recent convergence of objectives has been extremely helpful for effective bilateral cooperation both for the social pillar (labour standards and social protection) and the environment & climate pillar. The EU and China have worked together for two or more decades on a myriad of projects, programmes, Dialogues, Declarations (also by the Summit) and via special funding. Thus, in recent energy cooperation the bilateral collaboration goes remarkably far, including even harmonizing in selected areas. In climate strategies the EU and China have recently come to work closely together. But also in environment, after a history of dreadful neglect and indifference, with adverse public health consequences as well, the partners have cooperated in a number of different ways resulting in e.g. better (f.i. risk-based) regulation and more effective enforcement. The NPTOs under 'sustainable development' have been supported actively by the EU, with continued interest from China, and occasionally with cooperation 'on the ground in China' (e.g. with the cap-and-trade system).

*iv. Can Dialogues bridge or at least mellow 'systemic differences'?*

In the case of 'systemic differences' Dialogues have not proven to be very useful in terms of results, if indeed this can be expected at all from Dialogues. The accomplishment is to keep open channels of debate and exchange. From the EU end, dealing with 'systemic differences' effectively when the partner country takes pride in enjoying a 'socialist market economy with Chinese characteristics' is intrinsically impossible. This question is so fundamental, if not existential given the overwhelming and highly intrusive role of the CCP, that one can only hope to work on the incompatibilities with the WTO and the experienced negative spill-overs from the massive interventionism in China. Dialogues here have been concrete on some issues (e.g. steel and the Global Steel Forum; on innovation in the light of the China manufacturing 2025 programme) and increasingly firmly linked with WTO reform (indeed, a bilateral dialogue on this theme is ongoing), whilst at the same time WTO cases have been filed or joined by the EU. These features are reflected in the newly reformulated China strategy of the EU of March 2019 in which China is regarded as a partner as well as a rival.

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**Author contacts:**

**Weinian Hu**

Research Fellow, CEPS

Email: [weinian.hu@ceps.eu](mailto:weinian.hu@ceps.eu)

**Jacques Pelkmans**

Associate Senior Fellow CEPS & College of Europe

Email : [jacques.pelkmans@ceps.eu](mailto:jacques.pelkmans@ceps.eu)



With the support of the  
Erasmus+ Programme  
of the European Union

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