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Abstract

EU trade policymakers are confronted with two major challenges. Internally, established day-to-day policymaking procedures are challenged by changing competencies through the Treaty of Lisbon, as well as informal processes between institutions and policymakers. Externally, global power shifts – with the (re-)emergence of China at the forefront – demand increasing attention. This working paper analyzes the negotiations over a Bilateral Investment Agreement (BIA) with China as a case study of how the EU responds to these challenges in its trade and investment policy. Instead of focusing on official interests or effectiveness, policymaking practices will be addressed. By applying an interpretive approach, it is shown that the practice of presenting trade and investment as technical emphasizes the role of the Commission vis-à-vis the other institutions, in particular the European Parliament. At the same time, it will be shown how this approach is articulated in the EU's China policy – thus contributing to the shift from political issues to presumably technical issues in EU-China relations.

Keywords: China; EU; interpretive policy analysis; policymaking; trade

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1 Introduction

Policymakers in the European Union (EU) institutions are confronted with internal and external challenges in their trade policymaking. This paper addresses how these challenges are addressed within policymaking practices in the context of the negotiation of a bilateral investment agreement with China.

Externally, global power shifts, most notably the (re-)emergence of China are constitutive for the global order in the 21st Century. Trade and investment flows among the EU and its trading partners have rapidly increased, with China accounting for the largest share over the past decade (European Commission, 2014a). At the same time, according to the European Commission, China poses a challenge to the EU's trade and investment policy (European Commission, 2009). The European Union as the "world's largest unified market and trading bloc" (Smith, 2014, p. 21) is thus said to be in need to develop policy responses to these challenges. The EU-China literature in particular argues that the EU shifted its approach from human rights and democracy promotion to pragmatic topics such as economic and trade issues (Cottey and Gottwald, 2008; Crookes, 2013; Mattlin, 2009; Mergenthaler, 2015). However, most perspectives which focus on the EU's policy solely as a response to external factors (Breslin, 2013; Men, 2012; Smith, 2013) do not seem able to provide satisfactory explanations for this seemingly profound and sudden shift over the last decade.

Internally, the negotiation and management of trade flows is a Community competence under the Common Commercial Policy (CCP). Trade policy is a core competency of the EU and, due to its market size and the volume of trade it generates, foreign trade negotiations are often considered the most important and consequential manifestation of the EU as a global actor (De Ville and Orbie, 2014; Dür and Zimmermann, 2007; Orbie, 2008). The policymaking competence of the EU institutions via the member states has been continuously deepened since the establishment of the European Communities by the

Treaty of Rome in 1957. The latest changes were implemented with the Treaty of Lisbon (ToL), which came into effect in 2009.

The three most salient changes in trade policy for the EU institutions include, (i) the integration of trade as part of EU foreign policy, (ii) the inclusion of investment as a Community competence, and, (iii) the increase of competence of the European Parliament (EP) through the Ordinary Legislative Procedure (OLP). However, EU policy outcomes are rather shaped by the existence of established decision-making procedures and shared expectations of key decision-makers, i.e. policymaking practices, than solely based on formal competence (Woolcock, 2010).

Thus, the policymaking practices among the institutions, which are evolving due to the changes in the formal provisions of the Treaty of Lisbon, are the focus of this paper. I argue that these practices have possible effects on both the internal dimension of policymaking between the EU institutions as well as on the external dimension, the EU's policy and approach towards China. Taking these practices into account deepens our understanding of EU trade policymaking towards China and adds to the explanation for the shift from human rights and democracy promotion to economic and trade issues in EU-China relations.

Despite the key function of the CCP for the EU and the evolving competence of the EU institutions in this field, the literature on European trade policy and in particular trade negotiations remains fragmented. Formal changes introduced by the Treaties have received abundant attention. But although the institutions produce large numbers of policy papers, these often contain little that could illuminate internal decision-making processes (Dür and Zimmermann, 2007). Thus, actual policymaking practices within the institutions have not received sufficient attention. Research that takes both the internal dimension of policymaking and the external dimension, the EU's policy approach, into account remains even scarcer.

The aim of this paper is to show how these practices function both internally in the policymaking process and externally in the EU's trade policy towards China. It argues that the described internal and external dimensions of policymaking are co-constitutive for the EU's policy approach. Thus, in order to understand the shift in the EU's China policy, we need to take both dimensions into account.

The current negotiation process over a Bilateral Investment Agreement (BIA) between the EU and China exemplifies the policymaking practices in the EU institutions. While the EU market is regarded as an open environment for foreign investments, European companies complain about substantial barriers in the Chinese market. According to the EU Chamber of Commerce in China, there are many areas "where European business is prohibited, or at best restricted, from making similar investments in China" (The European Union Chamber of Commerce in China, 2016, p. 5). With the BIA the EU aims to achieve substantive improvements to market access for its companies.

The BIA is the first stand-alone investment agreement negotiated by the EU institutions since the ToL came into effect, thus demonstrating how policymaking practices are evolving. While the Treaty of Lisbon has formally strengthened the role of the 'political' body, the European Parliament, the analysis will show how presenting trade and investment as technical issues emphasizes the role of the Commission vis-à-vis the other institutions, in particular the European Parliament. With regard to the external dimension, it will be shown that this approach is articulated through a seemingly neutral language, for instance by proposing "natural" solutions for identified problems in the Chinese market. The working paper thus contributes to the literature arguing that there is a visible shift towards trade and investment issues in the EU's China policy.

The remainder of this paper will proceed as follows: The next section will take a closer look at the literature describing the shift in EU-China relations and respective internal and external explanations. In particular, there is a lack of studies incorporating both internal and external factors to EU policymaking as well as studies on EU trade policymaking from

an interpretive approach. I will then outline the methodology and conceptual framework. The fourth section will analyze the internal and external dimension of policymaking towards China within the context of the negotiation process of the BIA based on primary data gathered through fieldwork in Brussels. Finally, the conclusion aims to summarize the findings and points to further areas of research.

2 Literature Review

This section outlines the literature in the field, highlighting three issues: a) there is a visible shift from issues of human rights and democracy promotion to issues of trade and investment in the EU's rhetoric towards China, b) the literature is mainly divided between the analysis of internal and external explanations, and c) interpretive approaches are rarely adopted in research on EU-China trade and investment policy.

2.1 The Shift in EU-China Relations

The literature describes how the EU shifted its approach towards China from internal and supposedly political issues, to technical and supposedly more neutral issues such as trade and investment. Following this argument, China has, in line with its economic growth, increased its interactions in terms of trade and in international fora, as well as reformed domestically. This process is also discussed as "Reform and Opening Up" and often referred to as China's rise or (re-)emergence. In this context, it is said that policymakers in the European institutions and elsewhere expected China's economic growth and integration into the capitalist liberal order to lead to democratization and economic liberalization. EU policy papers, such as the Commission's Asia Strategy "Towards a New Asia" (1995), the China policy papers "A Long-Term Policy for EU-China Relations" (1995), and "EU-China Relations: A Maturing Partnership" (2003), explicitly stated these expectations and focused on supporting China's domestic reforms of society and politics (Callahan, 2009).

It is further argued that policymakers believed that this process could be influenced and supported by the EU due to its own experiences, simultaneously enhancing the EU's international role and influence. For instance, in 2000, Romano Prodi, then President of the European Commission, is cited, stating that Europe needed to project its model of society into the wider world (Prodi, 2000), reflecting the idea of the EU as a normative, civilian and soft power (Men and Balducci, 2010).

The argument that China would develop according to EU expectations is also mentioned in the context of the Strategic Partnership Agreement¹, which was signed in 2003. The Strategic Partnership is considered a major milestone and the following years are often labeled “honeymoon-period” in EU-China relations. In addition to the EU's support for China's entry into the WTO, strategic dialogues furthermore aimed at promoting standards and institutions, “the nuts and bolts of economic reform that promise[d] to spur the anticipated spillover into capitalist democracy” (Callahan, 2009, p. 142). At the same time, the EU became China's largest trading partner following the EU's Eastern enlargement in 2004.

The shift in the general narrative of the literature arrives around 2006 onwards, as increasingly disagreements are recognized in the overall relationship between the EU and China as well as in particular in the field of trade and investment. The comments now spoke of “sudden shifts” and challenges in the EU-China relationship that culminated in the failure of the negotiations over a Partnership and Cooperation Agreement (PCA).

Around this time, Chinese and European policymakers expressed different understandings of concepts such as sovereignty, human rights, multilateralism and global governance, and disagreement was growing on how to practically implement the Strategic Partnership on the basis of common objectives (Z. Pan, 2012). Particular incidents that are cited as

¹ The EU and China have initiated their Strategic Partnership in 2003. It includes foreign affairs, security matters and international challenges such climate change and global economic governance. However, the Strategic Partnership is often described as a misnomer, as it is not a clearly defined or coherent concept. See Cîrlig (2012), Smith (2016), and Smith and Xie (2010).

straining the (high-level) relationship were meetings of European leaders with the Dalai Lama and the increasing European criticism over China's human rights conduct, in particular within the context of the 2008 Summer Olympics in Beijing. Perhaps less visible, but also mentioned, are disagreements about China's market economy, the EU's growing trade deficit, intellectual property rights, market access and dumping and subsidies, although these issues became more salient over time. The impact of the 2008 financial crisis in Europe and the EU's growing trade deficit with China are mentioned by the Commission (European Commission, 2014a) and China is more frequently described as a competitor to the EU (Bersick, 2010; Brown, 2014).

In 2007, the EU and China launched negotiations over a Partnership and Cooperation Agreement, which is described as the next big step after the Strategic Partnership. The PCA would have presented a substantial trade agreement, updating economic relations which until today are still based on the EC Trade and Economic Cooperation Agreement of 1985 (Fritsche, 2016; Thelle, Sunesen, and Francois, 2012, p. 11). The PCA negotiations included a wide range of issues, not only of economic nature but also clauses regarding human rights, sustainability and the environment. However, "the negotiations have been stalled in 2011 due to divergences between the mandates and expectations of the parties" (European Commission, 2016a).

Within this context, it is argued that the Commission's rhetorical approach towards China gradually changed, already visible in the 2006 policy paper, which considerably de-emphasized human rights in comparison to earlier policy papers (Mattlin, 2009). Instead, the 2006 policy paper mentioned "growing responsibilities" of, and competition from, China (European Commission, 2006). Furthermore, in 2008, former EU trade Commissioner Mandelson stated that the EU "will not be able to dictate the solutions to China's problems" (Mandelson, 2008). Similarly, in 2010, former High Representative for Foreign Affairs and Security Policy Catherine Ashton concluded that the EU could do little to change the Chinese society (Rettman, 2010). The emphasis thus presumably shifted from

China's internal reforms to China's external conduct. Indeed, EU's rhetorical focus seems to have shifted from political and contentious issues of China's internal policies towards supposedly pragmatic and less political issues in EU-China relations, namely trade.

After the PCA negotiations stalled, negotiations over a Bilateral Investment Agreement were launched. Presumably, there is sufficient interest in concluding the BIA by both sides: for the EU in order to obtain market access, for China to have a common framework for investments in all EU countries and secure safe environments for its increasing outbound investments, as well as to eventually negotiate a free trade agreement with the EU. The BIA is mentioned as an example of the supposedly pragmatic approach of the Commission, as the BIA is much more narrow in scope than the proposed PCA. It focuses exclusively on investment issues and does not have the aim of updating the broader EU-China relationship.

2.2 Internal and External Explanations

There are several different explanatory approaches to this shift. Most literature focuses on the external dimension, which sees the shift as a reaction to external developments. Realist explanations range from China's increased negotiating power owing to its growing economic weight (Breslin, 2013; Smith, 2013) to explanations assuming a larger agenda, i.e., China's strive for hegemony in the international order (Mearsheimer, 2006; Scobell and Harold, 2013).

This literature paints a liberal account of China's rise, in which it is the EU's task to integrate China into existing rules and institutions (Hutton, 2008; Kagan, 2003). While China is depicted as rising, its counterpart, the EU (or more often the US), is described as declining. In particular realists contend that China poses a threat to European interests and therefore should be contained (Breslin, 2013; Smith, 2013). For Jing Men (2012), frictions in EU-China trade and economic relations persist because of the growing trade imbalance,

China's growing assertiveness, and differing interests between the EU and China. In order to maintain cooperation with China, the EU thus supposedly shifted in its approach. These approaches focus on the external dimension of policymaking, i.e. the EU institutions as reactive to external developments.

However, authors such as Smith (2014), Bickerton (2011), and Conceição-Heldt (2014) argue that the internal dimension of policymaking between the EU institutions deserves attention as well. Internal struggles over competency are considered more powerful in EU policy than in national policymaking, because there is no central mechanism on the EU-level for integrating different interests and subordinating them to the final word of an executive (Bickerton, 2011, p. 7). Bickerton and Conceição-Heldt however locate their arguments within the debate on the EU's effectiveness in trade governance, thus relating policymaking processes to specific (desirable) policy outcomes. As the following section will show, the aim of this paper is rather to ask which possible effects policymakers' statements and practices might have.

Another approach, which highlights the internal dimension, focuses on the EU's identity as constitutive for its policies. Accordingly, it is argued that as a normative power it was the EU's aim to support China's domestic transformation, i.e. developing the rule of law, safeguarding human rights, a pluralistic society and more recently promoting a sustainable environment and market economy – overall supporting “meaningful change” in different policy areas (Cottey and Gottwald, 2008). According to Bengtsson and Elgström (2011), this approach stems from the EU's self-conception, which, in their specific example, is implemented through economic and technical assistance to third countries and the discursive framing of concepts such as development and security. However, these approaches do not provide insights into the policymaking processes between the EU institutions.

In short, the literature remains largely separated between those studying EU policymaking in its internal dimension and those focusing on the policy outcomes, i.e. the outward-

oriented (external) dimension. One exception is Orbie (2008), who indeed considers both dimensions. His account of EU trade policymaking discusses conflicts between the Commission and the Council internally, as well as the EU in multilateral negotiations or in comparison with other global trade powers such as the US, externally. Siles-Brügge (2014), in another notable example, focuses on strategic discourses based on the ideas and beliefs of EU policymakers. His approach distinguishes between private 'coordinative' discourses and public 'communicative' declarations in the field of EU trade policy. My research contributes to the above literature as it emphasizes the importance of studying the internal and external dimensions in conjunction. It departs from the literature in a) its specific focus on EU trade policy towards China, b) by taking into account the changes in internal policymaking through the Treaty of Lisbon, in particular regarding the European Parliament, and c) its inquiry into policymaking practices in the EU institutions.

In the following, I will proceed from the assumption that policy outcomes cannot always be directly and causally linked to the policymaking processes and structures. Nevertheless, formal and informal processes do play an important role and both need to be taken into account, because, as the analysis will show, one and the same policy approach may contribute to both internal as well as external effects.

Furthermore, the above-cited realist scholarship often portrays particular economic actions, policies, or rules as the product of fairly obvious rational responses to clear environments. Similarly, the bulk of the (mainly positivist) literature on China and EU-China relations treat China as an entity defined by observable facts and therefore assume an ultimately knowable Chinese reality. By contrast, policymakers define their counterparts by attaching meaning to them and the respective contexts. Only a few studies take the social construction of policy and policy environments into account and for instance demonstrate how certain representations of China (e.g., China as a threat or its

assertiveness) have been (deliberately) framed as such and thereby created particular realities.²

However, research on discursive practices has been largely neglected in the realm of EU trade policy³. Only recently, a few authors have adopted discursive approaches (De Ville and Orbie, 2014; Mathieu and Weinblum, 2013; Siles-Brügge, 2011, 2013, 2014). In a similar way, I will argue that trade and investment policies are not simply technical matters, but are negotiated and implemented through political practices (Smith, 2016, p. 11). The methodology and conceptual framework for the study of these practices are described in the following.

3 Policymaking Practices

The following analysis is approached through interpretive policy analysis. In applying this methodology, the researcher takes the activities, ways of reacting, and daily discourse of the social actors into account. In particular, the representations, common understandings, and concepts used by the social actors are central to the analysis. Instead of explaining human actions with instrumental rationality, the analytical focus lies on what statements and actions mean and on their “performativity”, that is their world-making power. By focusing on specific situations and practices, the importance of individual contexts is emphasized over deducing general laws. Interpretive policy analysis asks not what a policy means but how a policy comes to mean what it does, and by which processes these meanings are communicated. It thereby demonstrates the possible multiple definitions of a problem that result from the different experiences and concepts put into practice by different social actors. Thus, the social construction of meaning is analyzed in reference to, or directly taken from key concepts or buzzwords used by the actors (Münch, 2016, p. 20).

² See for instance Gompert *et al* (2014), C. Pan (2012), Turner (2013) and Jerdén (2014).

³ As a notable exception see for instance the special section „Evolving European Discourse of Economic Crisis“ in the British Journal of Politics and International Relations, Volume 16, Issue 1 (2014).

When analyzing the data, one main question is what the actors represent and accept as a relevant 'fact' and which is often part of the contestation (Rhodes, 2015; Yanow, 2000). By focusing on the production of meaning and its possible effects, the research moves beyond mere description.

In this research, policymaking processes are conceptualized as grounded in discourse and practices. In the literature, there is no consensus on the concept of practices, questions of theorization, or proper methods to study practices (Adler and Pouliot, 2011; Bueger and Gadinger, 2015; Frost and Lechner, 2016a, 2016b; Neumann, 2002; Schatzki, 2006; Yanow, 2015). Adler and Pouliot (2011, p. 7) provide general criteria for practices, including that they are a) performed, i.e. are a process of doing something, b) patterned, i.e. are repeated and reproduce similar behaviors with regular meanings within a socially organized context, c) socially recognizable by an audience, and d) embody, enact and reify background knowledge. However, practices should not be considered as unreflective habits, but rather as actions that lead to (possibly unintended) effects.

Practices have for instance been studied in the context of diplomacy (Neumann, 2002, 2012, 2013; Pouliot, 2010; Pouliot and Cornut, 2015), social order (Bueger and Gadinger, 2015), identity (Hopf, 2010), and international organizations and institutions (Kuus, 2015; Lequesne, 2015; Sending and Neumann, 2011). What these approaches have in common is the aim to analytically grasp actions of practitioners. Yet, in particular the relationship between discourse and practices remains contested. According to Neumann (2002), practices are necessarily discursive, because they cannot be thought outside of discourse. However, the analysis must go beyond textual analysis. Thus, in analyzing practices, the aim is to understand what agents do or have done in the past (Frost and Lechner, 2016a, p. 300), which is framed by discourse.

Specifically, practices embed the experiential, hands-on knowledge of policymakers. Such practices are dynamic, pluralistic and contextual. They refer to the relationship between the actors and the environment, which is driven by particular representations and how

these actors negotiate their environment (Wagenaar, 2011, p. 308). The focus lies on the construction of meaning, linking both what policymakers say and what is done by them, thereby illuminating the meaning of rhetoric in the context of actions. For instance, I analyze what is said by policymakers and in policy documents, and also consider the implications of policy actions. Statements in this sense often serve as a political tool, which may have practical implications on policy. The aim is not to ascribe certain motives to the actors, but to show which effects these statements and practices might have. This research thus examines the statements and policy actions of policymakers in the EU Institutions within the context of the negotiation process of the BIA.

This research is mainly based on empirical data gathered through formal and conversational interviews with policymakers in the EU institutions (European Parliament, Commission, EEAS, and to a lesser extent the Council), participation at events and meetings on the topic of EU-China trade and investment relations in Brussels, as well as policy documents published by the EU institutions. The analysis combines the close reading of the material and inductive coding using ATLAS.ti. In analyzing practices, the data is approached by asking what policymakers of different institutions do in the policymaking process, what implications their (discursive) practices might have. The analysis of the empirical data is presented in the following section.

4 Policymaking Towards China and the BIA Negotiations

As a new approach after the failed PCA negotiations, the EU and China launched negotiations over a Bilateral Investment Agreement in 2012. When concluded, it will be the first stand-alone investment agreement after the Lisbon Treaty came into force, hence the first such agreement negotiated as a Community agreement by the European Union. At the same time, the EU-China BIA is one of the priorities of the EU's 2015 trade and investment strategy "Trade for All" (European Commission, 2015). While the economic relationship between the EU and China historically focused on trade in goods, investments remain

comparably low. The agreement aims at the progressive liberalization of investment and the elimination of restrictions for investors to each other's markets, as well as to provide transparency, legal certainty and market access (European Commission, 2014b, 2014c; Godement and Stanzel, 2015). The BIA is also described as an opportunity to revive the stagnated relationship between the EU and China on a substantial level. The BIA would, when concluded, be the first agreement between the EU and China since the Strategic Partnership was concluded in 2003.

This section discusses the negotiation process of the Bilateral Investment Agreement, which is mentioned as an important milestone in the policy literature. It will on the one hand analyses the informal policymaking processes within the EU institutions, outlining common and evolving practices in EU trade policymaking towards China, in particular between the Commission, the EEAS, and the European Parliament. On the other hand, it will discuss the EU's approach in its trade and investment policy towards China in this context. It exemplifies the shift in the EU's approach towards China and demonstrates the linkage between the internal and external dimensions. It in particular shows how the use of technical terms as a practice affects the policymaking process internally and is at the same time employed externally.

4.1 Internal and External Dimensions of the BIA Negotiations

“And to use a technical analogy [you could see the policymaking process as] a pipeline or sewer and the process that gets water through the system. It has to do with dynamics, with movements in the pipeline. There are hoops and junk and rubbish in it that will make it clog, is it actually moving in some ways we didn't see [...] The EU-China BIA is a good case study in how this flow of liquid has changed based on the Treaties, based on politicians, based on power politics, based on the structure of EU-China relations” (Official, 2016b).

The following part of the analysis looks at existing and evolving policymaking practices in the European institutions. These are based on the strengthened Community competence regarding trade and investment through the Treaty of Lisbon. As the EU-China BIA is the first such treaty negotiated by the EU Institutions since the ToL has come into effect, it can be regarded as a test case in which policymakers are still developing their practices. As this section will show, practices affect the internal policymaking between the EU institutions as well as the EU's approach towards China.

The most frequently mentioned and highly valued by my interview partners⁴ are practices evolving through the increased role of the European Parliament. The EP has now the right to be informed over the progress of trade and investment negotiations and must consent to any negotiated agreement before it can fully come into effect. It therefore has become an essential part of trade policymaking – at least in the final voting stage. While the Treaty of Lisbon and the Inter-institutional Agreement formally outline these competencies of the institutions, these documents are not all encompassing. Therefore, a constant power-struggle is visible in the policymaking processes between the institutions.

My interview partners almost in every case referred to the formal competencies of the institutions during our conversations, highlighting how the issue is brought up in discussions between different institutions and its influences on day-to-day work practice. This supports Bickerton's (2011, p. 119) argument that EU policy needs to be understood through its internal dimension, which expresses itself implicitly in the struggle over legal competence and the distribution of responsibilities and portfolios across the different institutions. The actions of the different institutions, the Commission, the EEAS, the EP, and the Council, must thus be understood against this backdrop.

⁴ My interview partners from within the EU institutions include senior advisors, head of units, desk and policy officers, MEPs, and assistants. All interviewees spoke off the record. Anonymity is therefore preserved in the presentation of the material. Quotes are usually paraphrased and only in few instances used directly to illustrate specific issues.

In the context of the BIA negotiations, the Commission formally takes the lead. The Commission has received the formal negotiating directives adopted by the Council and is now responsible for carrying out the negotiations with its Chinese counterpart. Within the Commission, DG Trade is in charge of this process. Apart from the negotiation events itself, meetings are organized before each round to inform and consult with all relevant services, Directorate Generals and the European External Action Service (EEAS)⁵. In contrast, the EEAS “follows” the file. The EEAS’s “role is to understand the messaging and how to weave this messaging into the normal political process [...], which for instance happens in the strategic dialogues” (Official, 2015a). According to its staff, the EEAS coordinates activities and “makes them compatible” (Official, 2015b) and is consulted by DG Trade. This consultation usually takes place through informal contact between the staff of the institutions. The EEAS does not have a formal role in the policymaking process, and in contrast to the Council and the Parliament, no veto power. While the EEAS is supposed to coordinate foreign policy, the design of the Service itself embodies turf-wars between the institutions post-Lisbon: The EP asserting its power through the request of EEAS budget oversight and regulating the number of staff recruited from national ministries, in comparison to staff reassigned from the Commission, and the Commission defending its authority over development and foreign trade policy (Bickerton, 2011, p. 24).

Similar to the EEAS, the EP follows the process, but has no formal way of directly influencing the negotiations. According to the ToL, the Parliament has the right to be informed at all stages of the negotiations and under the Ordinary Legislative Procedure needs to consent to the final agreement. However, the EP is demanding more access and closer involvement. An often-cited view is that the EP has become a much more credible veto power since rejecting the Anti-Counterfeiting Trade Agreement (ACTA) in 2012 and therefore is taken more seriously by the Commission. By contrast, the assumption that the

⁵ The European External Actions Service (EEAS) is the EU’s diplomatic service. It was created by the ToL and brings together expertise from EU and national diplomatic services. It is responsible for running the EU Delegations and Offices and representing the EU and its citizens globally. The EEAS carries out the foreign policy that is determined by the Council. It does not have a formal role in the policymaking process.

EP as a nuisance to practical policymaking because of its political nature also circulates among Commission officials (Official, 2015c). Thus, the integration of the EP as a fully-fledged and important Institution in the policymaking process is contested.

The internal struggles over competence are enacted through information flows. While the Parliament has the right to be informed at all stages of the negotiation process of the BIA by the Commission, in practice, this could be confirmed for only a very limited group of people. The ToL does mention the right to be informed of the EP, it does not, however, specify how this will or should be implemented in practice. According to Trade Commissioner Malmström,

“At the end of each negotiating round, the Commission shares a report with both the Council and the European Parliament. It also attends the INTA Monitoring Group on China, where it informs on the state of play of the negotiations” (Malmström, 2016a).

However, in the case of restricted documents – as on ongoing trade negotiations – information may be dispersed only to a selected group, such as INTA’s Chairman, the Deputy Chairs and the Coordinators (Official, 2016a). Other members of the Parliament thus state a lack of transparency and insufficient flow of information towards the Parliament (Official, 2015d, 2015e). The negotiations are progressing, but to date very little discussion on the topic of the BIA has actually taken place in the Parliament. Despite Parliament vote on the final agreement, it seems to be common that the EP is not involved in the negotiation but only at the end of the process (Official, 2015d). Hence, this example demonstrates how continuing practices may have the effect of excluding the EP.

The Council, through a special committee, is also informed by the Commission on the progress of the negotiations. However, the role of the Council has not changed through the Treaty of Lisbon, it has always been a substantial part of the decision-making process. The Council furthermore has, aside from the high-level meetings of heads of state, little visibility on the working level (Official, 2015f).

By contrast, the EP is increasing its external visibility and strengthening its public voice. Commission officials retain a narrative of caution towards information sharing with the EP. One cited example is the negotiation of the Transatlantic Trade and Investment Treaty (TTIP) between the EU and the USA, in which negotiation texts have been leaked to the public. A public discussion has evolved around the transparency in the EU's trade and investment negotiations beyond this example⁶. The public discussion has framed these trade negotiations as political arenas. This discussion however does not (yet) include the case of the EU-China BIA.

The Commission discourse draws a distinction between political issues and technical issues, between politicians and the bureaucracy. As Members of the European Parliament (MEPs) "have the luxury of taking [...] the more extreme positions that the Commission and Member States cannot" (Official, 2016b), Commission officials may even approach Parliament staff with suggestions (Official, 2015g). Thus, while the discourse on the one hand may have the effect of alienating the EP from the policymaking process by restricting its access to information, on the other hand, the discourse of trade and of investment as technical and apolitical may also have the effect of inhibiting Commission officials to voice certain views in public.

Alternatively, Orbie (2008, p. 41) suggests that the Commission may be able to use the assumption of diverging interests between the EU institutions to its advantage in trade negotiations. For instance, it is difficult for the counterpart to verify to what extent the Commission's actions are actually bound by either the interests of the Council or the EP, even though it may claim that its hands are tied during negotiations.

Issues of transparency, information sharing, and coordination are not only visible between, but also within the institutions, as the following example of the EP shows. For instance,

⁶ Further negotiation processes that are being criticized for their lack of transparency are in particular the negotiations over the TTIP between the EU and the US, but also the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, as well as the Trade in Services Agreement (TISA) negotiated between 23 Members of the WTO.

within the EP, in December 2015 the Committee on Foreign Affairs (AFET) prepared a report on EU-China relations, which referenced trade relations with China and in particular the BIA. However, issues concerning trade and investment with China conceptually fall under the remit of the Committee on International Trade (INTA). Even though one could accept this as a minor breach and as bystanders it may even seem logical to reference an agreement in negotiation such as the BIA in a policy paper on the EU's foreign policy towards China, the implications may go beyond mere "office politics" (Official, 2016a). Foreign policy is intergovernmental – ultimately decided by the member states – whereas trade policy is a Community competence.

Thus, it is stated that this practice could have larger effects on the division of power between the EU institutions and the member states. At the same time this example demonstrates how the structures and formal competencies can on the one hand influence policymaking, while on the other hand may, in practice, be disregarded. As Bickerton (2011) argues, a united EP would likely be more effective in its fight for greater power within the institutional power struggle. By contrast, the EP in reality reflects the diversity of its membership and represented constituents and is therefore more legitimate (Bickerton, 2011, p. 71). Therefore, according to this argument, disunity represents diversity and can possibly be utilized by the actors differently in different contexts.

The foregoing analysis has shown that the Commission's discourse distinguishes between political and non-political, i.e. technical, policy issues. The BIA is discussed as latter. The technical framing reinforces the described shift in EU-China relations from human rights and democracy promotion to pragmatic topics focusing on presumably technical economic and trade issues and the discourse emphasizes the role of the Commission vis-à-vis the other institutions. At the same time it has implications for how the EU responds to China and for the EU's China policies, i.e. the outward-oriented or external dimension. The following will show which possible effect the same approach can have externally in the

EU's policy towards China. For instance, it focuses the discussion on economic issues in contrast to political issues, in particular with regard to China.

In their elaborations, my interview partners were particularly careful to avoid political language and markedly resorted to very narrow definitions of investment and the framework of the BIA. However, the economic goals of the BIA can only be reached if problems (in China) are addressed:

“If we have already, which is the case, identified, that investors for example have difficulties operating an investment in China because the rules are not transparent enough, because there are many complicated procedures, there is not enough legal certainty, obligations are not enforced, then the investment agreement can address these problems” (Official, 2015h).

The stated problems in this case, however, mainly pose problems for European businesses in China, and not necessarily a problem for the Chinese government. The Commission's 2016 Joint Communication to the European Parliament and the Council “Elements of a new EU Strategy on China” presents the problem in the context of China's industrial system and indicates how this problem can be addressed:

“The EU is seriously concerned about industrial overcapacity in a number of industrial sectors in China, notably steel production. If the problem is not properly remedied, trade defence measures may proliferate, spreading beyond steel to other sectors such as aluminium, ceramics and wood-based products. Although this problem is being given increasing political attention in China, the scale of the challenge remains considerable [...] In the medium term, China needs to reform its state-led economy and let market forces naturally address the problem” (European Commission, 2016b, p. 7).

The Commission thus identifies industrial overcapacity, in particular in the steel sector, as a problem in China. This problem, as mentioned in the document, is also receiving attention from the Chinese government. According to the Commission this is not yet sufficient. As a response, the Commission implements trade defense measures in those areas in which state intervention is present in the market. However, these may be extended to other sectors such as aluminum, ceramics and wood-based products, if these stated distortions are not corrected, ideally through the deployment of market forces.

The discourse of the Commission points to two issues. First, the statement, “trade defence measures may proliferate” can be read as a request, if not even as a threat: the EU (Commission) is ready to implement further trade defense measures, if market distortions persist in the steel sector as well as in other sectors. In order to do so successfully, “further strengthening the effectiveness of the EU's Trade Defence Instruments notably through the swift adoption of the Commission's Trade Defence Instruments modernisation proposal of April 2013 is key” (European Commission, 2016b, p. 7). By contrast, in the context of human rights, the policy paper states that “the EU will hold China to account for its human rights record” (European Commission, 2016b, p. 5), but does not indicate how this might be done. In this sense, the policy paper can be interpreted in line with the argument that there has been a shift in the EU's China policy away from human rights issues and towards technical issues of trade and investment. Even though human rights are still mentioned, in contrast to the example of overcapacity, the discourse does not refer to any sanctioning policy element.

Second, the “natural” way to address the stated problem is by reforming China's state-led economy into a market economy. If this were to be implemented, the problems mentioned in the context of the BIA would also be – in part – solved, and subsequently venues for European businesses would be opened. The solution to the problem is presented as one that is not necessarily a political choice, but a “natural” one, thereby excluding other possible options – among these maintaining the status quo – from the outset.

An additional incentive for the BIA lies in its benefits for China: the BIA “can make life simpler for the increasing number of Chinese companies that want to invest in Europe” (Malmström, 2016b), as a single agreement would replace the 26 bilateral investment agreements that are currently in place between EU member states and China, and would furthermore increase legal certainty (Malmström, 2016c). Finally, the EU reminds China that

“A Comprehensive Agreement on Investment is the EU’s immediate priority towards the objective of deepening and rebalancing our relationship with China. The conclusion of such an agreement, as well as progress in China’s reforms towards liberalising its economy and therefore creating a level-playing field for business, would open new market opportunities and allow both sides to envisage broader ambitions such as a Free Trade Agreement” (European Commission, 2016b, p. 6).

The EU thus presents the BIA as a carrot, the successful conclusion of which, together with reform progress in China, may lead to the opening of free trade negotiations in a vague and distant future (European Commission, 2015, p. 31, 2016b, p. 6).

As the main goal of the BIA for the EU is to enhance market access and setting common standards for investments, the negotiations have a geopolitical dimension. The narrative of setting global standards (without China) is common in the American context. In contrast to the European Commission, which refers to trade and investment as technical rather than political issues, US policymakers frequently present trade as a political tool. In particular in the context of the negotiations over the TTIP between the EU and the US, and the TPP, the Transpacific Partnership Agreement, originally negotiated between the US and eleven Pacific Rim countries. Both negotiations excluded China and statements on the negotiations explicitly referred to them as a tool to set global standards before China does. While the TTIP negotiations have been the topic of heated public debate on free trade agreements in

European countries, this is not (yet) the case with the BIA. Thus, the discussion (for the time being) remains within the EU institutions on the issue.

In sum, externally, the discussion around the BIA is framed in technical, presumably neutral terms via China, for instance in articulating market forces as “natural” solution for the identified problems in Chinese industries. At the same time, the implied consequences for China are worded more strongly than in the context of human rights – further contributing to the argument that the EU’s approach has shifted from human rights to trade and investment issues.

5 Conclusion

This paper argued that, in order to better understand EU policymaking towards China, we need to consider internal and external dimensions of policymaking in the EU institutions in conjunction. It therefore employed an interpretive approach to policymaking practices in the context of trade and investment policy. The paper discussed the EU response to the outlined internal and external challenges, common and evolving practices within the institutions, as well as the EU’s response to China in its trade and investment policy. Taking the example of the negotiation process over a Bilateral Investment Agreement, it showed how internal and external dimensions of policymaking in the EU institutions are co-constitutive.

Internally, the evolving policymaking process in the institutions is characterized by the practice of presenting trade and investment as technical issues, thereby emphasizing the role of the Commission vis-à-vis the other institutions, in particular the European Parliament. Thus, the analysis has also demonstrated that the changes introduced by the Treaty of Lisbon, at least for the case examined here, have not yet translated into a substantial shift in the actual policymaking practices, in particular with respect to the EP. This resonates with Woolcock’s (2010) findings, who emphasizes that the ToL does little to

change the fundamentals of EU trade policy decision-making and negotiation. In particular, he argues that “‘political’ intervention from the EP, in the relatively effective technocratic processes that shape EU policy today, will depend on whether the EP can bring about a shift in the de facto balance of influence” (Woolcock, 2010, p. 15). This will be an interesting subject for analysis once the content of the negotiated agreement of the BIA takes on more concrete forms and the EP is able to voice its opinion more strongly and potentially even leverage its veto power in the final voting stage effectively. Nevertheless, the Commission has maintained its central role in EU trade and investment policy, which, according to Woolcock, has even increased since the ToL.

Externally, in the EU’s policy discourse, trade and investment issues are framed as technical, for instance in referring to the market economy as a neutral tool with “natural” solutions to identified problems in the Chinese market. It thereby contributes to the argument that the EU has shifted in its approach from political issues of human rights and democratization to presumably technical issues of trade and investment.

As the global order is in constant flux and the processes in the EU institutions are at the same time further evolving, this paper could only present a spotlight on these issues today. Further research might investigate the response of China towards the EU. Another approach taking this research a step further, might comprise comparative studies, analyzing to what extent this shift in the EU’s approach may or may not be unique to China in comparison to other important trading partners. Such analyses could substantially further our knowledge of the EU-China trade and investment relationship. This paper presents a first attempt to contribute to a deeper understanding of the policymaking processes at play in the EU institutions in the context of trade and investment within the example of the negotiations over a bilateral investment treaty.

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