Our position

EU-China trade and investment relationship: An opportunity for transatlantic cooperation

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American Chamber of Commerce to the European Union
Speaking for American business in Europe

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Executive summary

This paper sets out the American Chamber of Commerce to the EU (AmCham EU)'s recommendations on the future economic relationship between the EU and China. AmCham EU speaks for US companies committed to and invested in Europe.

The EU is China's most important trading partner at present, while China is the EU's second most important trading partner[1]. Total bilateral trade flows in goods grew to more than €600 billion in 2018, while total trade in services amounted to almost €80 billion in 2017[2].

US companies are heavily integrated in the EU economy and are an essential part of the European business ecosystem. Over the last few decades, they have benefitted from the free flow of goods, services, people and capital throughout the region to serve their customers. They have also built complex and integrated supply chains running across EU Member States and with third countries, such as China. The growing Chinese domestic market represents significant business opportunities for US companies invested in Europe, but it is still considerably less open than the EU's market.

- AmCham EU encourages reform in China that ensures continued, open and free trade globally and creates a facilitated trade and investment environment for foreign-owned businesses in China.

China's growth, geopolitical ambition and its distinct state-led economic model is generating a debate in the EU on how to best balance challenges and opportunities that China presents. Attitudes in the EU are changing with respect to specific Chinese market behaviours, perceived as distortive of global competition, and is urging the introduction of measures to boost a global level playing-field.

- AmCham EU welcomes the decision by the European Commission to engage with China in a reciprocal and conditional manner, based on the respect of fundamental principles, such as a commitment to free trade, fair competition and the rule-of-law.

The EU should engage with China at different levels. First at bilateral level, by continuing to build a stronger and fairer economic relationship in order to resolve trade and investment barriers through bilateral agreements. Second at tri- and multilateral levels, by working with like-minded partners to strengthen multilateral governance. Through collaboration, the EU can address the implications of a state-led economy and create a transparent environment for businesses to operate, granting equal market access and introducing jointly-agreed international standards.

Alongside its efforts to engage China, the EU must at the same time equip itself with the necessary regulatory means to adequately address distortion in its own internal market. Such measures are essential for fair competition in the EU. What is more, they also stand to increase incentives for third countries to engage with the EU at the bi- pluri- and multilateral level.

- AmCham EU calls on the EU to use any bilateral or coordinated tri-, pluri- or multilateral engagement, including within the World Trade Organization (WTO), to encourage Chinese domestic reforms to grant equal market access between domestic and foreign businesses in China. This is without prejudice to any domestic reforms the EU may itself need to undertake to put companies on an equal footing in its internal market.

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[1] European Parliament Research Service, EU-China trade and investment relations in challenging times, May 2020.

[2] Business Europe, The EU and China – Addressing the systemic challenge, January 2020.

Introduction

In March 2019, the European Commission released a joint communication describing its partnership with China as such: 'China is, simultaneously and in different policy areas, a cooperation partner with whom the EU has closely aligned objectives, a negotiating partner with whom the EU needs to find a balance of interests, an economic competitor in the pursuit of technological leadership, and a systemic rival promoting alternative models of governance.'

AmCham EU welcomes that the von der Leyen Commission is following the line defined in the joint communication. For US businesses invested in the EU, it is essential that the EU continues to advocate for a stronger and reciprocal economic relationship with China and addresses China's distortive market behaviours.

This paper outlines the opportunities and challenges of EU-China relationship and provides recommendations on how to address government induced market distortions and rebalance the level playing field.

EU-China engagement

The EU and the business community in the EU have in the past encouraged China's market-based reforms and supported China's integration in the global economy.

When China accessed to the World Trade Organization (WTO) in 2001, many were hopeful that this would lead to a systemic transformation of China's economy from state-led to market-led. China's transformation into a market economy could have reduced systemic market distortions and resulted into a greater level playing-field. However, China's consolidation of its state-led economy might instead worsen systemic problems and their impact on both European and American businesses in the EU. That is why AmCham EU would like to encourage the EU to keep engaging with China using all available channels.

Bilateral talks

At bilateral level, the EU and China should continue to focus on removing trade and investment barriers through bilateral agreements in consultation with the business community. AmCham EU stands by the European Commission and its commitment to complete negotiations for an EU-China Comprehensive Agreement on Investment by end of 2020. This agreement can serve to rebalance the relationship.

US businesses in the EU, as part of the enlarged European business community, should be involved in such consultation process. As US businesses, we draw great benefit from the stable and predictable legal framework of the EU Single Market, which allows for continued operation and fair competition. Chinese companies in the EU also enjoy such treatment. We therefore consider essential to grant equal market access for both EU and US businesses operating with China. Bilateral negotiations are an essential cornerstone in building a stronger and fairer economic relation between the EU and China.

- AmCham EU welcomes continued EU-China dialogue. We support the formalised commitments from China that the swift conclusion of the trade and investment agreement would entail.

Multilateral coordination

The EU should keep working to reform the WTO as it would help address unfair trade practices. AmCham EU strongly encourages the EU to cooperate with like-minded partners to reinforce multilateral economic governance. AmCham EU welcomes any plurilateral initiative in this direction, such as the on-going cooperation with US and Japan to advance proposals for strengthening the WTO disciplines on industrial subsidies. These trilateral talks are an example of how joint effort can be effective in producing tangible outcomes.

The EU and the US have a responsibility to jointly lead discussions at international level. They should promote their fundamental economic values, such as an unwavering commitment to free trade, fair competition and the rule-of-law. The EU and the US should encourage China to engage in a reciprocal and conditional manner with its economic partners. We believe that unilateral action by the EU, the US or others against China should be avoided at all costs as it could lead to countermeasures which may hinder international trade.

- AmCham EU strongly calls for the EU to demonstrate international leadership, and to constructively engage China in multilateral discussions.

- AmCham EU also welcomes the creation of a new US-EU dialogue on China.

Level playing-field in the EU

In parallel to working on developing new international dialogues, it may also be appropriate for the EU to update its own rulebook and give itself new tools to level the playing-field within the EU. The EU has always been and should continue to be an open economy. This openness can and should be preserved for those companies that operate and compete on market-economy terms and between countries that share not only the same economic model but also commitment to fundamental rights and democratic values. Creating new instruments to safeguard the equal footing in the EU Single Market would thus benefit such companies equally while addressing the impact of distortive trade practices.

Challenges and opportunities

The EU-China economic relationship offers great opportunities to American businesses committed to and invested in the EU. Bilateral trade and investment flows between the EU and China have almost doubled in the last ten years, making the relationship highly significant for both parties. However, many of these opportunities are obstructed by challenges that create an asymmetric business relationship.

Economic asymmetries prevent operators within the EU from competing with China on an equal footing. This means that American businesses in the EU are at risk of missing out on opportunities in both EU and Chinese markets as well as in third countries.

The presence of market access barriers, especially in the areas of trade and investment, procurement, IPRs and e-commerce makes China a highly trade-restrictive partner. Moreover, China's state-led system includes direct government control over major parts of its economy including key industries, financial institutions and state-owned enterprises.

This state-led system produces discriminatory outcomes and market distortions, including a disparity in market access between Chinese and foreign firms, financing advantages for Chinese firms in strategic sectors and preferential support for selected Chinese industries. Such government-induced market distortions are affecting American businesses in the EU. The EU must implement measures to mitigate such distortions.

- AmCham EU urges the EU to tackle the potentially distortive presence of state-owned enterprises in its internal market and address the issues of industrial subsidies, competition policy and state aid.[3]

[3] For more on AmCham EU's position regarding the EU's foreign subsidies policy, read our response to the consultation on the white paper on foreign subsidies.

Discussions to level the playing field between China and the EU should take place in a multilateral setting at the WTO. This would create new enforceable international trading rules that would address unfair trading practices more effectively. Such measures could include negotiating coherent and comprehensive rules on industrial subsidies and the role of State-owned Enterprises. However, given the recent difficulties in achieving WTO reforms, other measures could be needed to encourage China to progressively open its markets. Trade defence instruments, such as anti-dumping and anti-subsidy measures, could be used more effectively to ensure a reciprocal approach to China's market-distorting behaviours in the EU Single Market.

Market access barriers and restrictions

The next paragraphs provide concrete examples of market access barriers and restrictions that AmCham EU members face when dealing with China and that can prevent or undermine their businesses.

Trade in goods

Market access barriers to the Chinese market have been among main concerns for both American and European business community in recent years. China is currently the EU's most trade-restrictive partner and European and US businesses alike report the presence of specific operating difficulties in exporting to and investing in China from Europe.

An example of an explicit barrier concerns licensing restrictions that foreign companies face as they seek to build market share in China. Major progress on licensing and certification is a priority for both American and European businesses as many still face restrictions on their ability to operate in China. Therefore, AmCham EU calls for wider sectoral access to licensing and certification, and for streamlined processes to secure them.

In addition, AmCham EU would like to encourage both the EU and China to engage in a regular bilateral dialogue to address mutual concerns about illicit trade resulting from non-compliant practices related to intellectual property rights (IPR), counterfeits and VAT and import duty evasion. These practices harm fair competition and the interests of legitimate traders and manufacturers as well as consumers in both markets. The counterfeit and piracy watch lists prepared by DG TRADE would be a good starting point for increased dialogue and cooperation in this area.

As for every other market that seeks to sell products to the EU Single Market, goods arriving from China should meet EU standards: product safety, IP protection, health, environment. This is not only a principle, but it is a reality which must be enforced at European borders.

A number of recent EU trade defence cases have shown that current EU processes can be too slow to be effective. Antidumping cases tend to be launched only once the damage is already done and cannot be reversed. The burden of proof on illegal subsidy cases is too high to be effective.

China defines the environment in which today's EU industrial policies must be conducted. Diversification, flexibility, rapid access to capital, faster administrative procedures are necessary for Europe's industrial competitiveness today and tomorrow.

Trade in services

Despite some progress in terms of opening up domestic services markets, the services sector in China still remains largely closed to foreign companies. Loosening market restrictions in services would be important to allow foreign businesses to operate in China.

China is introducing data localisation requirements that are becoming more and more incompatible with the modern digital economy, where data need to flow across the borders, while respecting personal data protection. Depriving investors of the control of their digital strategy and of their data is a major impediment to foreign companies. Localisation restrictions can negatively affect growth, preventing investors from optimising their digital strategy. AmCham EU calls for the EU to work with China to remove data localisation requirements.

E-commerce

AmCham EU encourages European Commission DG TRADE and DG TAXUD to explore avenues with Chinese authorities to enforce VAT and customs compliance related to e-commerce flows that originate from e-commerce traders, web shops and related platforms and marketplaces. Particularly in light of the regulatory changes – namely the elimination of the VAT de minimis and introduction of ICS2 planned for 2021 – as well as other practices already identified by the European Court of Auditors, it would be important to open dialogues with Chinese authorities. In this sense, the introduction of a repository of potentially fraudulent e-commerce traders could be a good basis for bilateral enforcement in this area.

In addition, China's current import clearance regime complicates trade and restricts low-value shipments, including shipments from small e-commerce businesses, from benefitting from expedited shipments treatment, as envisioned in the WTO Trade Facilitation Agreement. Procedures are burdensome and supported by highly complex import duty and tax structures. Due to these demanding requirements, market access remains limited mainly to e-Commerce platforms.

Intellectual property rights

IPR are the cornerstone of innovation, science and research across a wide range of industry sectors and stimulate international trade. Where markets are open and intellectual property rights are effectively protected and enforced, innovators can rely on the predictability and certainty they need to collaborate with partners, compete successfully and accelerate innovation. A strong and predictable IP framework is key to the attractiveness of Europe as an investment location, and is essential for industries relying on IPR to continue contributing to Europe's technological autonomy, competitiveness and growth. The reciprocity principle should be applied and China should be encouraged to pursue similar levels of IP protection and enforcement in order to secure outside investments and encourage fairer competition at international level.

IP violations manifest themselves in multiple ways, horizontally affecting a large number of sectors that rely on trademarks, copyright and patents and the negative impact affects entire ecosystems ranging from national economies, individual companies and health and safety considerations for consumers.

AmCham EU welcomes continuous efforts to advance strong intellectual property rights globally. In the context of the ongoing discussions on the EU-China Comprehensive Agreement on Investment (CAI), we would like to recall that one of the operational objectives identified by the European Commission in its Impact Assessment is to 'ensure that investment protection standards include strong protection of intellectual property rights'[4].

[4] https://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2013/swd_2013_0185_en.pdf

More recently, the Council of the European Union acknowledged in its Conclusions on the Data Strategy that EU's digital transformation is contingent on 'international co-operation, improved market access and trade facilitating rules on a large array of issues, including (…) intellectual property laws'[5].

Procurement

While Chinese companies are allowed to bid on public procurement tenders in the EU, foreign businesses are often prohibited to bid on procurement opportunities in China. At multilateral level, the EU has consistently promoted the establishment of the plurilateral Agreement on Government Procurement (GPA) through the WTO. It should be therefore a priority for the EU that China joins the GPA as soon as possible.

In addition, several barriers to foreign bidders on the Chinese market continue to restrict procurement opportunities for European businesses. Among these barriers are the non-transparent procurement system and the unpredictable enforcement of regulation, where selection and award criteria are often unclear.

We therefore welcome the guidance[6] that the European Commission already published last year to contracting authorities to clarify that they have the right and obligation to identify, investigate, and reject abnormally low tenders, including the competence to assess if the tender is abnormally low due to illegal foreign subsidies or otherwise unfair advantages. Importantly, the guidelines also clarify that contracting authorities should not just rely on 'solemn self-declarations' and that they do not have to prove that the tender is abnormally low (ie, that it is this low because the bidder has received foreign subsidies etc) as long as there is reasonable doubt.

AmCham EU also welcomes that the Commission is examining other and further potential avenues to ensure the level playing-field in public procurement markets, such as through the International Procurement Instrument and the White Paper on Foreign Subsidies.

[5] Paragraph 64 – International dimension : https://www.consilium.europa.eu/media/44389/st08711-en20.pdf

[6] https://ec.europa.eu/docsroom/documents/36601