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Rafael Leal-Arcas, *European Union – China  
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## EUROPEAN UNION – CHINA TRADE RELATIONS

**RAFAEL LEAL-ARCAS\***

*This article analyzes European Union-China trade relations in the context of the current negotiations for a new comprehensive framework agreement between the European Union (EU) and the People's Republic of China. China is a strong economic power with increasingly sophisticated production in its coastal regions and is attempting to establish itself as a gravity center by concluding many bilateral free-trade agreements in the region. Although China has a strong hold in the Far East, there may be specific policy areas in which China's influence ends up being global.*

*The article explains the steps taken for negotiating a new comprehensive framework agreement between China and the European Union, examines trade relations between the entities as well as the bilateral trade relations from a Chinese perspective. It also seeks to analyze the various ways to improve the currently difficult EU-China trade relations. The article concludes that dealing with China was one of the main arguments in favour of ratifying the Treaty of Lisbon because it provides for a permanent president of the European Council and a single foreign affairs post for the entire EU, which facilitates the EU's coherence in its external affairs. Moreover, the article concludes that the European Commission should negotiate the prospective Partnership and Cooperation Agreement between the EU and China more constructively, without patronizing China, and instead accept it as an equal player in the current multipolar framework of global economic governance.*

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## I. INTRODUCTION

The European Union–China relationship is one of the most important and least understood relationships in the world today. The previously existing cooperation between the Chinese and the Europeans has now been replaced by competition with the emergence of new issues such as China's role in Africa. Chinese unconditional aid policy in Africa has infuriated many European Union (EU) countries which consider Chinese intervention counterproductive to Europe's efforts to promote human rights, good governance, and environmental health in Africa.

Mutual understanding is a pre-requisite for mutual trust. Therefore, this paper aims at understanding the potential of a trade partnership between the EU and China. As will be analyzed henceforth, there are many difficulties and differences between the EU and China in the trade field, some of which raise serious concerns for the EU. This article raises various questions in this respect: is the EU an attractive trade partner for China? Does the EU want cooperation with China? What can the EU expect from cooperation with China? What are the EU's priorities in its foreign trade policy? Which instruments can the EU use to engage China?

China is a strong economic power with increasingly sophisticated production in its coastal regions and is attempting to establish itself as a gravity center by concluding many bilateral free-trade agreements (FTAs) in the region.<sup>1</sup> Although China has a strong hold in the Far East, there may be specific policy areas in which China's influence ends up being global.

The article is divided into six parts. After the introduction, Part II explains the steps taken for negotiating a new comprehensive framework agreement between

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<sup>1</sup> For a list of China's notified RTAs in force, *see* <http://rtais.wto.org/UI/PublicSearchByMemberResult.aspx?enc=bUbyxPA3Wob5pG8+pdmN/5hheUKek7uIQN+ZcNKlh38=> (last visited Oct. 5, 2010).

China and the European Union. Part III is devoted to EU-China trade relations, and Part IV to the bilateral trade relations from a Chinese perspective. Part V examines the various ways to improve the currently difficult EU-China trade relation, followed by the conclusions in Part VI.

## II. A NEW BILATERAL AGREEMENT IN THE MAKING

The EU has been China's largest trading partner since 2004.<sup>2</sup> In terms of volume of trade, the EU-China trade relationship is the second largest bilateral trade relationship in the world, only after the EU-U.S. trade relationship. Diplomatic relations were established in May 1975, between the European Economic Community (EEC) and China,<sup>3</sup> and a trade agreement was concluded between the EEC and China, as early as 1978.<sup>4</sup> This agreement was replaced by a Trade and Economic Cooperation Agreement between China and the EEC in 1985.<sup>5</sup> Till date, the EU continues to work towards improving bilateral trade relationships. On November 4, 2005, Commissioners Peter Mandelson and Benita Ferrero-Waldner met with Chinese trade Minister Bo Xilai to discuss the Doha Round<sup>6</sup> as well as a wide range of issues including the environment, energy, and intellectual property.<sup>7</sup>

However, the EU-China relations have not always been smooth. For example, in November 2008, the Chinese government informed the French EU Presidency that Chinese Prime Minister Wen Jiabao would not be travelling to

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<sup>2</sup> Alfredo Pastor & David Gosset, *The EU-China Relationship: A Key to the 21<sup>st</sup> Century Order*, available at: <http://www.ceibs.edu/ase/Documents/eu-china.relationship.en.htm> (last visited Oct. 5, 2010).

<sup>3</sup> See Annexure, available at: [http://ec.europa.eu/external\\_relations/china/docs/chronology\\_2009\\_en.pdf](http://ec.europa.eu/external_relations/china/docs/chronology_2009_en.pdf) (last visited Oct. 5, 2010).

<sup>4</sup> O.J. (L 123), May 11, 1978, at 2.

<sup>5</sup> Council Regulation 2616/85, 1985 O.J. (L 250/1) (Sept. 19, 1985).

<sup>6</sup> Before the creation of Doha Round in 2001, developing and least-developed countries had been marginalized in the world trading system, which brought with it serious economic implications. In 2001 in Doha (Qatar), developing countries were promised inclusion in the world trading system in order to achieve a higher level of justice and equity in the world. That is why the Doha Round is called the development agenda. The Doha Round was the result of widespread agreement among delegates at the 4th WTO Ministerial Conference in Doha that it was time to address the imbalances of previous rounds and to offer developing countries the prospect of trade talks which they could see were to their benefit. For further details, see RAFAEL LEAL-ARCAS, *THEORY AND PRACTICE OF EC EXTERNAL TRADE LAW AND POLICY* 486-500 (2008).

<sup>7</sup> See the 20<sup>th</sup> meeting of China-EU Mixed Committee on Trade and Economic Cooperation, available at: <http://www.chinamission.be/eng/sbqx/sbjw/t220311.htm> (last visited Oct. 5, 2010).

Lyon for the EU-China summit. The summit was expected to focus on disputes over China's high trade surplus with the EU as well as coordinating a global response to the financial crisis, which has expedited China's rise to a position of greater responsibility in maintaining international order in global economic governance.<sup>8</sup> The Chinese government based its decision on the fact that the Dalai Lama was going to visit several EU Member States at the same time as the EU-China summit had been scheduled, and that he would be meeting with heads of state and government as well as presidents of European institutions. One could infer from this Chinese retaliation that Chinese leaders consider the isolation of Tibet and the Dalai Lama a bigger priority than the enhancement of the Sino-European strategic partnership.<sup>9</sup> This retaliation raises some interesting questions: what does it mean from a Chinese perspective that EU countries have meetings with the Dalai Lama at the same time as the Chinese Prime Minister is supposed to have meetings in those countries? Why are EU countries not interfering more in the China-Tibet situation?

The first EU-China Strategic Dialogue at Deputy Foreign Minister level was held in London in December 2005, where the two sides exchanged views on each other's role in the current international system, China's peaceful development, the EU's integration process, and other issues of common concern.<sup>10</sup> At the 9th EU-China Summit in September 2006 in Helsinki, the EU and China agreed on opening negotiations for a new comprehensive framework agreement covering topics such as energy, sustainable development, cooperation in Africa, and the protection of intellectual property rights.<sup>11</sup> This was largely due to the mutual consensus between both parties that the 1985 Agreement no longer reflected the scope, depth, or overall nature of their current relationship.

#### So negotiations for a more comprehensive Partnership and Cooperation

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<sup>8</sup> For an official recount of China's ten responsibilities in the world, see Wen Jiabao, Premier, People's Republic of China, Speech delivered at the Welcoming Banquet hosted by the Australian Prime Minister: China – On the Path of Peaceful Development for World Peace and Prosperity, (Apr. 3, 2006), available at <http://in.china-embassy.org/eng/zyjh/t244011.htm> (last visited Oct. 5, 2010).

<sup>9</sup> See EurActiv, *Brussels stunned as Beijing cancels EU-China summit*, Nov. 27, 2008, available at <http://www.euractiv.com/en/foreign-affairs/brussels-stunned-beijing-cancels-eu-china-summit/article-177550> (last visited Oct. 5, 2010).

<sup>10</sup> See Chinese Government's Official Web Portal, *China, EU hold strategic dialogue in London*, Dec. 23, 2005, available at [http://www.gov.cn/misc/2005-12/23/content\\_134701.htm](http://www.gov.cn/misc/2005-12/23/content_134701.htm) (last visited Oct. 6, 2010).

<sup>11</sup> Press Release, Europa Press releases RAPID, EU and China to agree on opening negotiations for a new Comprehensive Framework Agreement (Sept. 8, 2006), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/1161&format=HTML&aged=0&language=en&guiLanguage=en%22> (last visited Oct. 5, 2010).

Agreement (PCA) started in January 2007. The PCA is expected to cover all components of the EU-China relationship and provide a comprehensive management framework. The prospective PCA is expected to lay the foundation for enhanced cooperation, including the enforcement and, where possible, the upgrading of environmental, social, labour and safety standards. It will also hold comprehensive discussions in over 20 ongoing sectoral dialogues, with a view to promote cooperation in all sectors, including on economic and financial matters, in both bilateral and multilateral *forums*. With regard to these existing sectoral agreements, the PCA will complement rather than replace these agreements.<sup>12</sup>

By re-negotiating the 1985 Trade and Economic Cooperation Agreement, the EU and China will be facing several difficulties as both parties expect more from each other. The new agreement is expected to boost the dialogues between the EU and China.<sup>13</sup> However, despite the ever intensifying commercial links between the two sides, discussions over the scramble for energy supplies,<sup>14</sup> human rights, and other issues have hampered a renewed convergence of interests.<sup>15</sup> Furthermore, the 2008 global financial crisis had a considerable effect and is expected to have a profound impact on Sino-EU relations in political and economic spheres.

In general, the PCA will be negotiated on the basis of a commitment to the principles of good governance, rule of law,<sup>16</sup> effective multilateralism, the fight against corruption, and improved transparency. As such, the PCA will contain a standard clause on human rights—an issue where China continues to have a poor record domestically.<sup>17</sup> This is despite the fact that Article 33 of the Chinese

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<sup>12</sup> Emerging Markets Group & Development Solutions, *Trade Sustainability Impact Assessment of the Negotiations of a Partnership and Cooperation Agreement between the EU and China – Draft Global Analysis Report*, August 2007, at 8.

<sup>13</sup> For EU-China Political, Trade, and Economic Dialogue Meetings, *see* [http://ec.europa.eu/delegations/china/eu\\_china/political\\_relations/pol\\_dialogue/index\\_en.htm](http://ec.europa.eu/delegations/china/eu_china/political_relations/pol_dialogue/index_en.htm) (last visited Oct. 5, 2010). For an Overview of the EU-China Sectoral Dialogues, *see* [http://eeas.europa.eu/china/docs/sectoraldialogues\\_en.pdf](http://eeas.europa.eu/china/docs/sectoraldialogues_en.pdf) (last visited Oct. 5, 2010).

<sup>14</sup> On Energy Governance, *see* GLOBAL ENERGY GOVERNANCE: THE NEW RULES OF THE GAME (Andreas Goldthau & Jan Martin Witte eds., 2010).

<sup>15</sup> UACES – Exchanging Ideas on Europe, *China and the EU: Concord or Conflict?*, available at: <http://www.uaces.org/events/calendar/event.php?recordID=142> (last visited Oct. 5, 2010).

<sup>16</sup> For an analogous experiment on how WTO law affects the rule of law in domestic legal orders, *see* Martin Hu, *WTO's Impact on the Rule of Law in China*, in THE RULE OF LAW: PERSPECTIVES FROM THE PACIFIC RIM 101-106 (The Maureen and Mike Mansfield Foundation, October 2000) (hereinafter Hu).

<sup>17</sup> For concrete examples of China's apathy toward human rights, *see* Human Rights Watch, *Devastating Blows: Religious Repression of Uighurs in Xinjiang* Vol. 17, No. 2 (Apr. 11, 2005).

Constitution affirms that the State shall respect and guarantee human rights.<sup>18</sup> In the past, China has also provided aid to foreign countries without paying attention to the importance of human rights. For example, China's unconditional aid policy in Africa has infuriated many EU countries which consider Chinese intervention counterproductive to Europe's efforts to promote human rights, good governance, and environmental health in Africa.<sup>19</sup> This is going to be one of the major hurdles in the negotiation of this new agreement.

The EU, on the other hand, uses the Generalized System of Preferences (GSP), as a vital tool of its pro-development trade policy,<sup>20</sup> developed at the instigation of the United Nations Conference on Trade and Development.<sup>21</sup> The GSP is an autonomous measure of the EU which, from the outset, has been authorized under GATT/WTO law, and where the BRIC countries (Brazil, Russia, India, and China) are beneficiaries. The purpose of such an autonomous measure is, *inter alia*, to improve human rights protection in developing countries and to raise their export revenue.

In addition to the GSP, the EU also offers a special incentive arrangement to foster sustainable development and good governance, called the GSP Plus incentive system.<sup>22</sup> To benefit from the GSP Plus scheme, countries need to demonstrate that their economies are poorly diversified, and therefore dependent and vulnerable. They also need to have ratified and effectively implemented 27 key international conventions: the 16 core conventions on human and labor rights and seven (out of 11) of the conventions related to good governance and the protection of the environment.<sup>23</sup> At the same time, beneficiary countries must

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<sup>18</sup> Constitution of the People's Republic of China art. 33 (*adopted* Dec. 4, 1982).

<sup>19</sup> Even countries such as Germany and France, whose former leaders once were China's best friends, have now become more skeptical of China.

<sup>20</sup> On the legal basis for adoption of a GSP, *see* Case 45/86, *Comm'n v. Council*, 1987 E.C.R. 1493, where the European Court of Justice confirmed the former article 113 of the Treaty Establishing the European Community (hereinafter EC Treaty) (current art. 133 EC Treaty) as the appropriate legal basis.

<sup>21</sup> The idea of granting developing countries preferential tariff rates in the markets of industrialized countries was originally presented by Raul Prebisch, the first Secretary-General of the United Nations Conference on Trade and Development (UNCTAD), at the first UNCTAD conference in 1964. The Generalized System of Preferences was adopted at UNCTAD II in New Delhi in 1968. Under the standard GSP, preferential access to the EU market is provided to 176 developing countries and territories in the form of reduced tariffs on around 6,400 goods when entering the EU market, with no expectation of reciprocal treatment.

<sup>22</sup> *See* Council Regulation (EC) 732/2008, O.J. (L 211/1) (July 22, 2008), applying a scheme of generalized tariff preferences for the period from Jan. 1, 2009 to Dec. 31, 2011.

<sup>23</sup> For the list of conventions to qualify for the GSP Plus scheme, *see*

commit to ratifying and effectively implementing the international conventions which they have not yet ratified. In any case, the 27 conventions had to be ratified by the beneficiary countries by 31 December 2008. In December 2008, the EU granted preferential tariff rates for the period from 2009 to 2011 to 16 developing countries that met its criteria for sustainable development and good governance.<sup>24</sup> None of the BRIC countries wants to be part of the GSP Plus incentive arrangement, presumably because they do not like conditionality, and because they do not see themselves as fitting the basic criteria. The PCA between China and the EU is expected to foster cooperation between the two in finding international solutions to global issues such as climate change, including specifically energy cooperation by stimulating energy efficiency and the promotion of renewable energy. Increased cooperation will also be sought in education, culture, and science. It is envisaged that there will be increased peer-to-peer exchanges of unions, students, academics, business associations, non-governmental organizations, and other areas of cooperation at the grass-roots level.<sup>25</sup>

A free-trade agreement (FTA) between the EU and China is not on the horizon since it would alienate other EU trading partners. Moreover, an FTA would create much resistance from within the EU and from third countries, even though cooperation dialogues between the EU and China already exist on many levels. Furthermore, China is, as it is, very competitive without an FTA with the EU.

### III. CURRENT DIFFICULTIES IN EU-CHINA TRADE RELATIONS

Trade can be used as a “carrot” or as a “stick.” It is used as a “carrot” when preferences for certain countries create competitive advantages over third parties. Trade can also be used as a “stick” or punishment such as: (1) to deny preferences to a certain country when granting them to others, thereby creating discrimination and trade diversion; (2) through “trade defense instruments”<sup>26</sup> such as anti-

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[http://ec.europa.eu/trade/issues/global/gsp/memo230605\\_en.htm](http://ec.europa.eu/trade/issues/global/gsp/memo230605_en.htm) (last visited Oct. 5, 2010).

<sup>24</sup> For a list of the 16 beneficiary countries, *see* Commission Decision, O.J. (L 334/90), 2008/938/EC (Dec. 9, 2008). These tariff preferences are in addition to the standard GSP. *See* Bridges Weekly News Digest, *EU: 16 Developing Countries to Receive GSP+ Market Access Benefits* Vol. 12, No. 42, Dec. 10, 2008, available at: <http://ictsd.net/i/news/bridgesweekly/35942/> (last visited Oct. 5, 2010).

<sup>25</sup> Hu, *supra* note 16.

<sup>26</sup> Trade defense instruments are protective mechanisms that are legal under the WTO Agreements. They may be triggered to counter the effects of dumping, subsidies and unexpected import surges causing injury to domestic industry. Such mechanisms include anti-dumping measures, countervailing duties and safeguards. *See* DICTIONARY OF TRADE POLICY TERMS 101 (5th ed. 2007).

dumping and safeguard measures;<sup>27</sup> and (3) by legally punishing the wrongdoer to compensate the victim through the World Trade Organization (WTO) dispute settlement system.<sup>28</sup> Knowing that trade with the West is vital, Chinese leaders railed against the dangers of protectionism during the 2008 economic recession and opposed very much the new trend of protectionism in the world trading system.<sup>29</sup>

Where there used to be cooperation between the Chinese and the Europeans, competition and tension has now replaced it, as a result of defensiveness on both sides. There are several differences and difficulties between the EU and China in the trade field, some of which are of serious concern to the EU: the protection of intellectual property rights,<sup>30</sup> counterfeiting and product piracy,<sup>31</sup> product safety concerns,<sup>32</sup> a ballooning bilateral trade deficit,<sup>33</sup> China's undervalued currency,<sup>34</sup>

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<sup>27</sup> On anti-dumping and safeguard measures in the case of China, *see* Patrick Messerlin, *China in the WTO: Antidumping and Safeguards* 18(1) WORLD BANK ECON. REV. 105 (2004).

<sup>28</sup> *See* Understanding on Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, Legal Instruments – Results of the Uruguay Round, 33 I.L.M. 1125 (1994) at art. 22.1 (hereinafter DSU). According to Rachel Brewster, the WTO's Dispute Settlement Understanding subordinates unilateral enforcement of international trade law to a rule-based system of multilateral enforcement. It also immunizes violations of WTO law from retaliatory sanctioning so long as the offending measures are withdrawn at the end of the litigation process, which is often several years later. *See* Rachel Brewster, *Shadow Unilateralism: Enforcing International Trade Law at the WTO*, 30 U. PA. J. INT'L ECON. L. 1133 (2009).

<sup>29</sup> Min Zeng, *China President Warns Against Protectionism*, WALL ST. J., Nov. 15, 2008, available at: <http://blogs.wsj.com/economics/2008/11/15/china-president-warns-against-protectionism/> (last visited Oct. 6, 2010).

<sup>30</sup> *See generally*, European Commission, *Intellectual Property Rights in China*, available at [http://ec.europa.eu/trade/issues/sectoral/intell\\_property/ipr\\_china\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/intell_property/ipr_china_en.htm) (last visited Oct. 5, 2010). *See also* Panel Report, *China—Measures Affecting the Protection and Enforcement of Intellectual Property Rights*, WT/DS362/R (Jan. 26, 2009), where the EC acted as a third party in a case brought by the U.S. against China.

<sup>31</sup> A few years ago, Nobel Prize winner in Economics and Columbia University Professor Joseph Stiglitz was approached by a Chinese publisher who wanted him to write a foreword to a pirated edition of one of his books. *See* Joseph Stiglitz, Lecture delivered at the Edinburgh International Book Festival (Aug. 27, 2006) at 6, available at <http://www.scribd.com/doc/1037295/RSA-talk-Joseph-Stiglitz> (last visited Oct. 5, 2010).

<sup>32</sup> *See* Joint Statement of the Ninth EU-China Summit (Sept. 9, 2006).

<sup>33</sup> Since the 2008 global macroeconomic crisis started, the bilateral trade deficit has been reduced because there is less trade.

<sup>34</sup> On monetary affairs, it is interesting to note the proposal by Zhou Xiaochuan, governor of China's central bank, who has suggested creating a "super-sovereign reserve currency" to replace the dollar over the long run. For an analysis on the matter, *see* Fred

China's delay in complying with and enforcing WTO rules,<sup>35</sup> China's competitive advantage from its poor social and environmental standards, and unfair subsidies to favored national industries, (which is a manifest violation of one of the fundamental principles of WTO law—that of no unfair trade)<sup>36</sup> to name but a few.<sup>37</sup> Examples of unfair trade practices are Chinese export restrictions on a number of key raw materials. The EU has unsuccessfully raised the issue with China on several occasions, including through formal WTO consultations. As a result, the Europeans have decided to use the WTO's dispute settlement system, hoping that China will comply with its international obligations.<sup>38</sup> The lack of transparency in some of China's policies is an issue of great concern to the EU.<sup>39</sup> More recently, in May/June 2010 the EU used the WTO's most recent Trade Policy Review of China<sup>40</sup> to encourage China to continue adopting its promises for an open economy and more transparency in policy-making. Intellectual property rights theft remains a serious problem for European businesses in China. Almost 60% of all counterfeit goods seized at European borders in 2007 came from China. Seven out of ten European businesses operating in China say that they have been the victim of intellectual property rights violations.<sup>41</sup> The EU, therefore, pushes

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Bergsten, *We Should Listen to Beijing's Currency Idea*, FINANCIAL TIMES, Op-ed, Apr. 8, 2009. For an analysis of China's undervalued currency, see Bryan Mercurio & Celine Sze Ning Leung, *Is China a 'Currency Manipulator'?: The Legitimacy of China's Exchange Regime Under the Current International Legal Framework*, 43(3) INT'L LAW. 1257 (Fall 2009).

<sup>35</sup> On China's compliance with its WTO obligations, see Kent Hughes, Gang Lin & Jennifer L. Turner, *China and the WTO: Domestic Challenges and International Pressures* Woodrow Wilson Center Special Report, 2002. See also Gerald Chan, *China and the WTO: The Theory and Practice of Compliance*, (Royal Institute of International Affairs, Asia Programme Working Paper No. 5, June 2003); Donald C. Clarke, *China's Legal System and the WTO: Prospects for Compliance*, 2 WASH. U. GLOBAL STUD. L. REV. 97 (Winter 2003).

<sup>36</sup> See generally, European Commission, *Respecting the Rules*, available at [http://ec.europa.eu/trade/issues/respectrules/index\\_en.htm](http://ec.europa.eu/trade/issues/respectrules/index_en.htm) (last visited Oct. 5, 2010).

<sup>37</sup> See European Commission, *EU uses WTO China Trade Policy Review (TPR) to raise questions of Fair Treatment, Intellectual Property Protection*, May 23, 2008, available at [http://ec.europa.eu/trade/issues/bilateral/countries/china/pr230508\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/china/pr230508_en.htm) (last visited Oct. 5, 2010) (hereinafter EC- *WTO China TPR*).

<sup>38</sup> See Press Release, European Commission, EU requests WTO panel on Chinese export restrictions on raw materials, (Nov. 4, 2009) available at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=481> (last visited Oct. 5, 2010).

<sup>39</sup> See Opening Statement by the EU Head of Delegation in Geneva on the Trade Policy Review of China, May 31, 2010, available at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=579> (last visited Oct. 5, 2010).

<sup>40</sup> World Trade Organization, Trade Policy Review of China, WT/TPR/S/230 (April 26, 2010).

<sup>41</sup> European Commission, *EU-China trade in facts and figures*, available at [http://ec.europa.eu/trade/issues/bilateral/countries/china/memo300109\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/china/memo300109_en.htm) (last visited Oct. 5, 2010) (hereinafter EU-China facts & figures).

China hard to trade fairly, respect intellectual property rights, and meet its WTO obligations. However, in Chinese culture, focus is more on the system than on the individual and traditionally it is an honour for the inventor if his/her ideas are copied by others. One wonders whether this has an impact on the Chinese application of intellectual property rights.<sup>42</sup> In a nutshell, there are causes of frustration on both sides: the EU's frustration stems from the perception that it is losing ground in China amidst a soaring bilateral trade deficit, whereas China feels that the EU is not appropriately appreciating a mutually beneficial relationship and is frustrated over the recurring calls for protective measures. This treatment continues even though China has recently set up special courts dealing solely with intellectual property rights issues.<sup>43</sup>

Based on the above, the question is whether the EU is using the Chinese violations of intellectual property rights politically. The EU has stated that it will continue to give China the non-market economy treatment<sup>44</sup> in anti-dumping cases until China improves its practices in various areas, including intellectual property rights.<sup>45</sup> The question arises whether the EU is really interested in granting China a market-economy status in the anti-dumping field. The fact that the EU does not grant China a market-economy status is certainly a concern for China, which in turn pushes EU Member States to grant China a market-economy status even when EU Member States have little role in trade matters. It is important to note that anti-dumping is one of the very few tools to legally make a trade obstacle towards the import of Chinese products.<sup>46</sup>

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<sup>42</sup> The ethics of intellectual property rights is widely discussed in the literature. See for instance Kit-Chun Joanna Lam, *Confucian Business Ethics and the Economy*, 43(1/2) J. BUS. ETHICS 153 (2003); John D. Mittelstaedt & Robert A. Mittelstaedt, *The Protection of Intellectual Property: Issues of Origination and Ownership*, 16(1) J. PUB. POL'Y & MARKETING 14 (1997); William Alford, *Whose Property? Whose Rights?*, CIO Vol. 19, No. 23, at 50-52 (2006); Wei Shi, *Cultural Perplexity in Intellectual Property: Is Stealing a Book an Elegant Offense?*, 32(1) N.C. J. INT'L L. & COM. REG. 1 (2006); Tobias Bender, *How to Cope with China's (Alleged) Failure to Implement the TRIPS Obligations on Enforcement*, 9(2) J. WORLD INTELL. PROP. 230 (2006).

<sup>43</sup> See, for example, Derek Bosworth & Deli Yang, *Intellectual Property Law, Technology Flow and Licensing Opportunities in the People's Republic of China*, 9(4) INT'L BUS. REV. 453 (2000).

<sup>44</sup> The issue of non-market economy was most recently raised at the 12<sup>th</sup> EU-China Summit in Nanjing, China, on Nov. 30, 2009. See Joint Statement, at 6, ¶ 21, available at [http://www.se2009.eu/polopoly\\_fs/1.25563!menu/standard/file/statement091130.pdf](http://www.se2009.eu/polopoly_fs/1.25563!menu/standard/file/statement091130.pdf) (last visited Oct. 5, 2010).

<sup>45</sup> See *China – Market economy status in trade defence investigations*, Brussels (June 28, 2004), available at: [http://trade.ec.europa.eu/doclib/docs/2004/june/tradoc\\_117795.pdf](http://trade.ec.europa.eu/doclib/docs/2004/june/tradoc_117795.pdf) (last visited Oct. 5, 2010).

<sup>46</sup> See Anti-Dumping Agreement (Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994). See also Chad P. Brown, *The Global Resort to*

Under WTO law, there is no definition of market economy.<sup>47</sup> One valid definition, however, is “an economy in which the price mechanism determines what is produced and traded, though too often price signals are distorted by subsidies, industry policy and other types of government intervention”.<sup>48</sup> Some countries have granted China market-economy status in the anti-dumping field. It follows from Article 15 of the WTO Accession Agreement of China that it is left entirely to the other WTO Members on a bilateral basis to give China a market-economy status in anti-dumping cases.<sup>49</sup> For example, countries such as Australia, Argentina, Brazil, and several Asian countries treat China as a market economy in anti-dumping cases, whereas the EU and the U.S. treat China as a non-market economy.<sup>50</sup>

China’s economy since the late 1970s has changed from a centrally planned system which was largely closed to international trade, to a more market-oriented economy that has a rapidly growing private sector and is a major player in the global economy.<sup>51</sup> Reforms started in the late 1970s with the phasing out of collectivized agriculture and expanded to include the gradual liberalization of prices, fiscal decentralization, increased autonomy for state enterprises, the foundation of a diversified banking system, the development of stock markets, the rapid growth of the non-state sector, and the opening to foreign trade and investment.<sup>52</sup> China has generally implemented reforms in a gradualist or piecemeal fashion. In recent years, China has re-invigorated its support for leading state-owned enterprises in sectors it considers important to economic security, explicitly

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*Antidumping Safeguards, and other Trade Remedies amidst the Economic Crisis* (World Bank, Policy Research Working Paper 5051, September 2009).

<sup>47</sup> For example, GATT 1947 does not make any reference to the concept of market economy.

<sup>48</sup> See WALTER GOODE, *DICTIONARY OF TRADE POLICY TERMS* 274 (5th ed. 2007). For an analysis of what features of a legal structure suited to a market economy are missing in the case of China, see Donald C. Clarke, *China: Creating a Legal System for a Market Economy* 1-24 (George Washington University Law School Public Law and Legal Theory Working Paper No. 396, 2007).

<sup>49</sup> Protocol on the Accession of the People’s Republic of China to the WTO, Nov. 10, 2001, *available at*: <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN002123.pdf> (last visited Oct. 5, 2010).

<sup>50</sup> For an overview of anti-dumping and the non-market economy treatment of China by the EU and the U.S., see Francis Snyder, *The Origins of the Nonmarket Economy: Ideas Pluralism and Power in EC Anti-Dumping Law about China*, 7(4) EUR. L.J. 369 (2001).

<sup>51</sup> See CENTRAL INTELLIGENCE AGENCY, *THE WORLD FACTBOOK: CHINA*, *available at*: <https://www.cia.gov/library/publications/the-world-factbook/geos/ch.html> (last visited Oct. 5, 2010).

<sup>52</sup> *Id.*

looking to foster globally competitive national champions.<sup>53</sup>

According to the European Commission, ‘China is the single most important challenge for EU trade policy’.<sup>54</sup> As argued by former trade commissioner Mandelson, ‘doing business in China remains attractive. However, it is equally clear that much work needs to be done to create a level playing field for European companies, concerning market access, transparency and protection of intellectual property’.<sup>55</sup> In this sense, according to the European Commission, European services companies find it very difficult to break into the Chinese market and are often discriminated against. Although China has signed agreements to open its market, since 2001 it has granted 22,000 telecoms licenses in China and only 14 had gone to foreign companies as of July 2010.<sup>56</sup> Moreover, although imports from China have surged, thanks to the EU’s open market, Asia’s share of total EU imports has increased only very moderately by 10% since the beginning of the 2000s.<sup>57</sup> The bilateral trade deficit reflects the considerable problems EU businesses still have accessing the Chinese market.<sup>58</sup> Based on the above, it is also in question whether the GATS rules about services in general, and its special rules about telecommunication services in particular, are good enough to ensure EU service providers access to the Chinese market.<sup>59</sup>

According to the European Commission, for the bilateral relationship to be politically and economically sustainable in the long term, the EU “should continue to offer open and fair access to China’s exports and to adjust to the competitive challenge. The EU needs to develop and consolidate areas of comparative advantage in high-value and high-tech design and production, and to help workers

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<sup>53</sup> *Id.*

<sup>54</sup> European Commission, *Accompanying COM (2006) 631 final: Closer Partners, Growing Responsibilities. A policy paper on EU-China trade and investment: Competition and Partnership*, at 3 (European Commission Working Document, COM (2006) 632 final) (Oct. 24, 2006) (hereinafter EC-Working Document).

<sup>55</sup> European Commission, *Mandelson discusses opportunities, barriers in China with EU Business*, Sept. 17, 2008, available at: [http://ec.europa.eu/trade/issues/bilateral/countries/china/pr170908\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/china/pr170908_en.htm) (last visited Oct. 5, 2010) (hereinafter EC-*Mandelson*).

<sup>56</sup> See Press Release, Europa, EU-China trade in facts and figures, MEMO/10/352 (July 20, 2010) available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/352&type=HTML> (last visited Oct. 5, 2010).

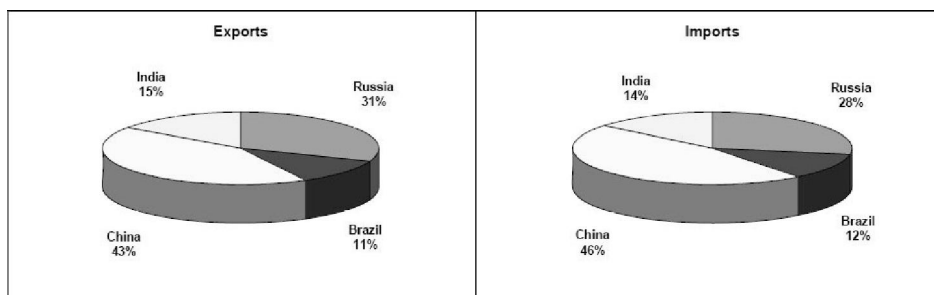
<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> See the complicated rules in the GATS Annex on Telecommunications as well as the various commitments and exemptions by the parties to the agreement. For comments about the complicated rules in the GATS and the banking sector, see Daniel C. Crosby, *Banking on China's WTO Commitments: 'Same Bed, Different Dreams' in China's Financial Services Sector*, 11(1) J. INT'L ECON. L. 75 (2008).

retrain. China for its part should reciprocate by strengthening its commitment to open markets and fair competition”.<sup>60</sup>

China maintains investment and ownership caps in many sectors such as banking, construction and telecommunications. Moreover, as regards the legal sector, foreign law firms in China are not allowed to employ Chinese lawyers and are not permitted to participate in bar exams to gain Chinese qualifications.<sup>61</sup> Furthermore, even if China is the EU’s fastest growing export market,<sup>62</sup> the Chinese market is still relatively closed to the goods Europe seeks to export.<sup>63</sup> China may have lowered its tariffs substantially since 2001, but barriers ‘behind the border’ in the Chinese market are costing European businesses more than €20 billion every year in lost exports.<sup>64</sup> Nevertheless, as can be seen in the chart, when comparing with the rest of the BRIC countries (Brazil, Russia, India, and China), China is the main partner for both EU imports<sup>65</sup> and exports:<sup>66</sup>



Source: Eurostat

*Fig 1: Share of EU trade with individual BRIC countries*

<sup>60</sup> European Commission, *EU – China: Closer partners, growing responsibilities*, “Communication from the Commission to the Council and the European Parliament”, (European Commission Working Paper, COM(2006) 631 final) (Oct. 24, 2006).

<sup>61</sup> EU-China facts & figures, *supra* note 41.

<sup>62</sup> The EU exported around € 78.4 billion worth of goods to China in 2008 and this figure increased by 9% in 2008 compared to 2007. Exports from the EU to China grew by approximately 65% between 2004 and 2008. Nevertheless, the EU still exports more to Switzerland (a market of 7.5 million people) than to China (a market of 1.3 billion people). *See* EU-China facts & figures, *id*.

<sup>63</sup> EC-Mandelson, *supra* note 55.

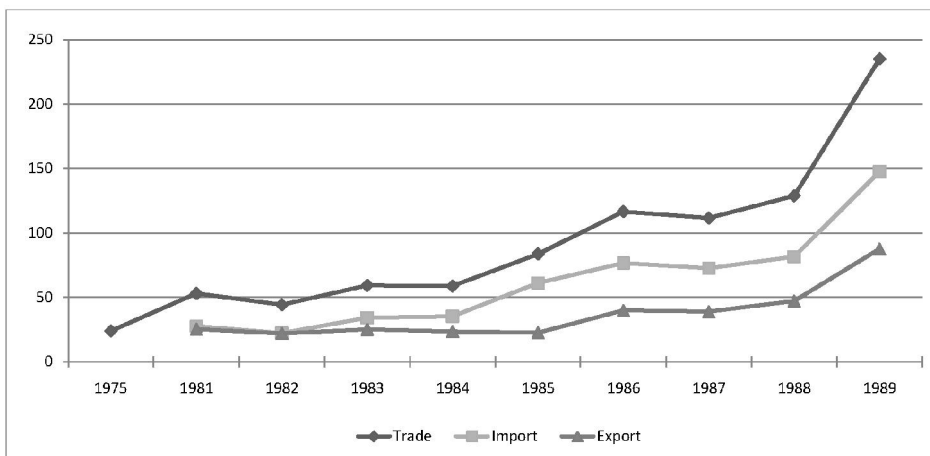
<sup>64</sup> *Id*.

<sup>65</sup> EU imports from China have grown by around 18% per year for the last five years. China is the EU’s biggest source of manufactured imports. Two decades ago, China and the EU traded almost nothing. *See* EU-China facts & figures, *supra* note 41.

<sup>66</sup> According to the European Commission, the EU “treats China as a normal and important trading partner”. *See* EC- WTO China TPR, *supra* note 37.

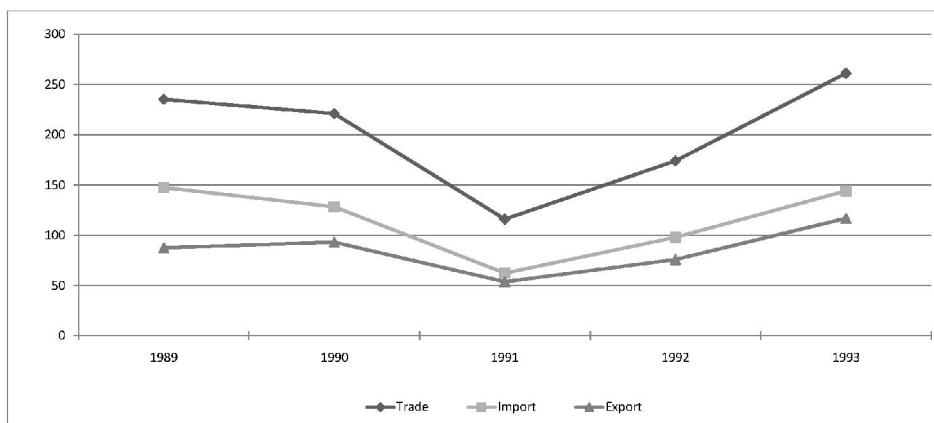
IV. A CHINESE PERSPECTIVE OF THE EU-CHINA TRADE RELATIONS

EU-China commercial ties have grown increasingly stronger to the extent that the EU-China economic and trade relationship is today one of the largest, most exciting, and challenging bilateral trade relationships in the world. The following four graphs show the progression of China’s trade relationships with the EU from 1975 to 2008:



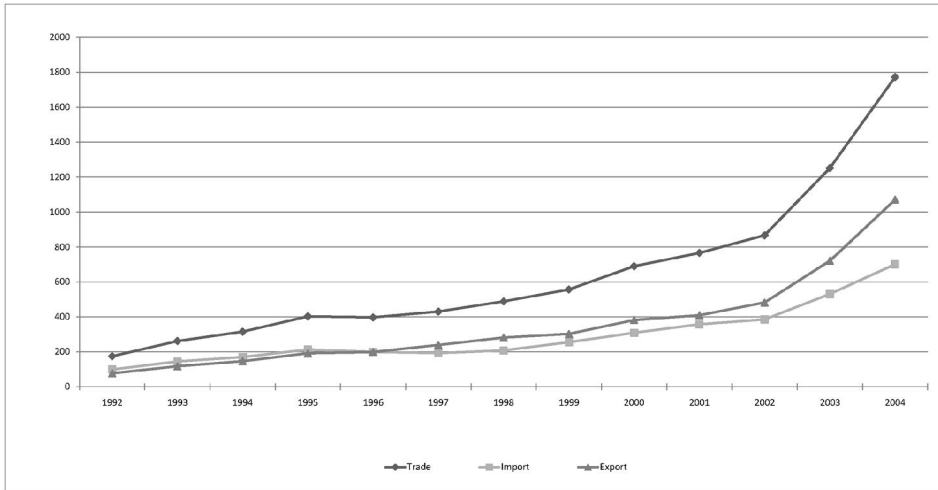
Unit: hundred million (US\$)  
Source: Chinese Customs Yearbook

Graph 1: China's Trade with the EC (1975-1989)



Unit: hundred million (US\$)  
Source: Chinese Customs Yearbook

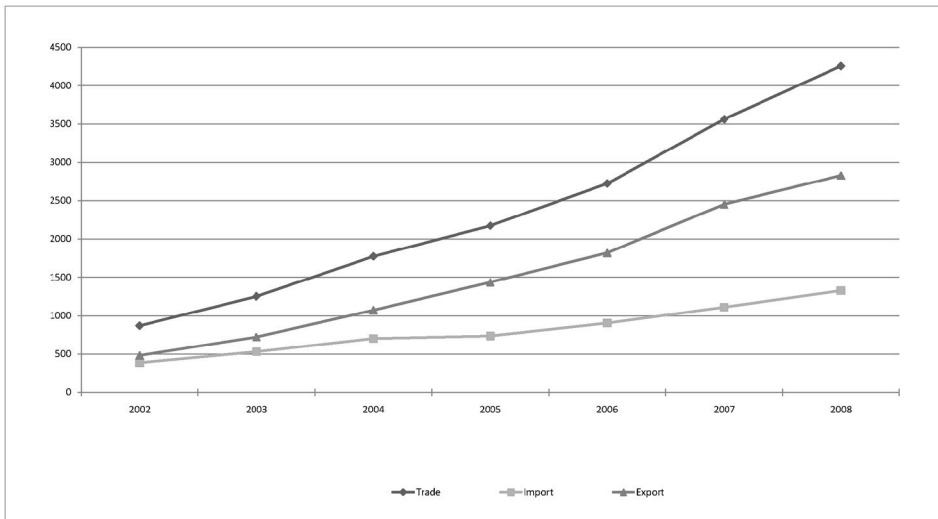
Graph 2: China's Trade with the EU (1989-1993)



Unit: hundred million (US\$)

Source: Chinese Customs Yearbook and the Ministry of Commerce, People's Republic of China

*Graph 3: China's Trade with the EU (1992-2004)*



Unit: hundred million (US\$)

Source: Ministry of Commerce, People's Republic of China

*Graph 4: China's Trade with the EU (2002-2008)<sup>67</sup>*

<sup>67</sup> Graphs on file with author.

The traumatic political breakdown as a result of the 1989 Tiananmen Square incident delivered a serious blow to the European Community-China trade relationship.<sup>68</sup> Trade volume dropped in 1990-1991. In 1992, the trade value started to recover and, since then, it has been growing considerably. This can be partly attributed to the complementary nature of the Chinese and European economies and partly to the full normalization of bilateral relations in 1994-1995, which ultimately was to develop into a comprehensive strategic partnership in 2003-2004.

Europe was one of the earliest interlocutors that China approached in its campaign to resume membership of the General Agreement on Tariffs and Trade (GATT).<sup>69</sup> China's former Vice Premier and Minister for Trade, Li Lanqing, recently disclosed in his book how the Chinese trade negotiator viewed the European Community (EC) when, in 1987, China started to pursue negotiations for the resumption of its GATT membership with the EC:

The European Communities are a powerful trading group, holding a very important position in the GATT second only to the United States. China has an excellent relationship with the European Communities. Politically, the EC welcomes and supports China's request for resuming its GATT membership, but when negotiating the terms of China's resumption of GATT membership, the EC took an uncompromising approach and seized on every economic interest. Therefore, as we see the EC as one of our major negotiating interlocutors, we need to lobby hard and enhance mutual understanding. On the one hand, we should elaborate upon our position and views on resumption of GATT membership, state China's policies of opening-up and economic reform, and show our sincerity and determination to participate in the multilateral trading system. On the other, we should listen to the EC's feedback on China's request and have a good understanding of the specific requests from the European Communities.<sup>70</sup>

In the EU-China WTO accession talks,<sup>71</sup> former EU trade commissioner Pascal Lamy played tough, pressing for further market access concessions, after the

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<sup>68</sup> See European Council Declaration on China, June 26-27 1989, available at [http://ue.eu.int/uedocs/cmsUpload/FACTSHEET\\_ON\\_THE\\_EU\\_AND\\_CHINA.pdf](http://ue.eu.int/uedocs/cmsUpload/FACTSHEET_ON_THE_EU_AND_CHINA.pdf) at Annex I (last visited Oct. 5, 2010).

<sup>69</sup> For an analysis of the relations between China and the EU with regard to China's membership of the WTO, see THE EUROPEAN UNION AND CHINA, 1949-2008: BASIC DOCUMENTS AND COMMENTARY Ch. 9 (Francis Snyder ed., 2009).

<sup>70</sup> LI LANQING, BREAKING THROUGH: THE BIRTH OF CHINA'S OPENING-UP POLICY (2010).

<sup>71</sup> See, for instance, China's accession to the WTO: First and Second stages of Integration under the Agreement on Textiles and Clothing, O.J. (C 356) (Dec. 14, 2001) at 0004.

U.S. and China had already signed a market access deal in November 1999.<sup>72</sup> Lamy managed to conclude the talks in May 2000. He was demanding, but at the same time, well-aware that allowing China to join the WTO was not only a necessity for the EU's commercial interests, but also an inevitable historical trend, as China was re-emerging onto the world stage and committed to becoming part of the existing multilateral trading system.<sup>73</sup>

The first time that the EU witnessed China's genuine commercial power and massive build-up of its exporting capabilities was in the textile sector, where the EU directly experienced the tensions among European consumers, producers, importers, retailers, EU Member States representing their interests, and China as well. There were three main points on the minds of the Chinese decision-makers: (1) ensuring the stable growth of China's textile exports to the EU market, (2) maintaining positive EU-China relations, and (3) avoiding harming the interests of other developing countries.<sup>74</sup>

After the conclusion of the China-EU Textile Memorandum of Understanding in 2005 in Shanghai, Chinese Minister of Commerce Bo Xilai emphasized upon China's strategic thinking regarding Sino-EU relations by stating that consideration must be given to the overall situation of China's diplomacy. Furthermore, he stated that China's relationship with the EU is much broader than the textile case alone and therefore one cannot allow the textile issue to affect the China-EU comprehensive strategic partnership.<sup>75</sup> Chinese Premier Wen Jiabao acknowledged the importance of considering the commercial interests of other developing countries when he met with the Prime Minister of Mauritius on 6 November 2006. At that meeting, Premier Wen stated that the agreements that China signed with the EC and the U.S., had, to a large extent, taken into consideration the interests that African countries have in the EU and American markets.<sup>76</sup>

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<sup>72</sup> WTO news, *Director-General Moore welcomes US-China deal, but cautions more work remains on China's entry*, Press/148, Nov. 15, 1999, available at: [http://www.wto.org/english/news\\_e/pres99\\_e/pr148\\_e.htm](http://www.wto.org/english/news_e/pres99_e/pr148_e.htm) (last visited Oct. 6, 2010).

<sup>73</sup> On China, regional trade agreements, and the WTO, see FRANCIS SNYDER, *THE EU, THE WTO AND CHINA: LEGAL PLURALISM AND INTERNATIONAL TRADE REGULATION* Ch. 9 (2010).

<sup>74</sup> *Id.*

<sup>75</sup> For a Chinese official view of the China-EU Textile Memorandum of Understanding, see Ministry of Commerce of the People's Republic of China, *China and EU Signed Memorandum on Textile Trade*, available at: <http://boxilai2.mofcom.gov.cn/aarticle/activity/200506/20050600117183.html> (last visited Oct. 5, 2010).

<sup>76</sup> Chinese Government's Official Web Portal, *Premier Wen meets four African leaders*, available at: [http://english.gov.cn/2006-11/06/content\\_433774.htm](http://english.gov.cn/2006-11/06/content_433774.htm) (last visited Oct. 5, 2010).

The result was the final development of a “win-win-win”<sup>77</sup> agreement, as Commissioner Mandelson said to the press, in the sense that “(the) agreement will be fair on both sides. It provides clarity, certainty and predictability and will also provide relief for developing country textile exports to Europe. It is an agreement that helps everyone’s interest”.<sup>78</sup>

While the buzzword of the EU-China trade relationship in 2005 was “textiles”, in 2006-2007 it became “trade deficit”. History repeats itself. When negotiating the 1978 EEC-China Trade Agreement, China was suffering from a serious trade deficit *vis-à-vis* the EEC, and therefore tried to obtain a trade balance clause (Article 3) which would “foster the harmonious expansion of their reciprocal trade” and help to attain “a balance in such trade”.<sup>79</sup>

The strong urge to tackle the 2008 financial crisis prompted the Chinese side to hold two summits with the EU in 2009 and send 10 missions to the EU. Premier Wen Jiabao spent his 2009 Spring Festival in the EU,<sup>80</sup> sharing with EU policy-makers confidence, courage and hope in difficult times. Although in 2009 total EU-China trade dropped by 14.5%, the EU remained China’s largest trading partner, with nearly 19.7% of China’s total exports ending in Europe and 12.7% of China’s total imports coming from Europe.<sup>81</sup>

In a nutshell, the important elements for the stability and development of the EU-China trade relations are the strategic nature of the relationship, the unswerving support and personal involvement of leaders from both sides, regular and timely updates of bilateral institutional frameworks, a good use of dialogues, mutual trust, and confidence, especially in difficult times.

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<sup>77</sup> Press Release, European Commission, Details of EU-China Textile Agreement, Press Release No. 62/05 (June 13, 2005) *available at*: <http://www.eurunion.org/news/press/2005/2005062.htm> (last visited Oct. 5, 2010).

<sup>78</sup> *Id.*

<sup>79</sup> *See* Council Regulation (EEC) 946/78, O.J. (L 123/1) (May 2, 1978) at 2, concerning the conclusion of the trade agreement between the European Economic Community and the People’s Republic of China.

<sup>80</sup> Wen Jiabao, Premier, People’s Republic of China, Remarks at Joint Press Conference with EU Leaders (May 21, 2009) (transcript available at Chinese Ministry of Foreign Affairs website *at*: <http://www.fmprc.gov.cn/eng/wjdt/zyjh/t564469.htm> (last visited Oct. 6, 2010).

<sup>81</sup> For an overview of EU-China trade statistics, *see* European Commission Directorate General for Trade, *available at*: [http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_113366.pdf](http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113366.pdf) (last visited Oct. 5, 2010).

## V. POSSIBLE WAYS TO IMPROVE EU-CHINA TRADE RELATIONS

The question arises as to what the EU can do in the trade field to improve its relations with China. Can trade policy be used to improve bilateral relations with China and induce China to be more responsible and multilateral? China is the EU's second largest trading partner, behind the United States. Cooperation is a priority despite the fact that the European Commission has, in the past, mentioned the use of tougher measures if China does not rectify some of its actions. Perhaps an extension of a high-level strategic dialogue<sup>82</sup> similar to the U.S.-China Strategic Economic Dialogue would make sense.<sup>83</sup> In fact, there are bilateral dialogues on virtually every topic to reduce differences.

In this sense, Commission President Barroso and Chinese Prime Minister Wen launched a new EU-China High Level Economic and Trade Dialogue (HED) Mechanism in Beijing on 25 April 2008 as an effort to maintain cooperation between the two players.<sup>84</sup> The HED is a Chinese initiative and was established in order to address the imbalance in trade flows between the EU and China, thereby hoping to give strategic direction to the bilateral trade relationship and trying to resolve specific concerns on both sides. The HED is a continuous process to drive the bilateral economic relationship forward and it provides a forum for resolving bilateral frictions. The broad remit of the HED is to examine the global trading system, strategic bilateral trade-related issues, investment, innovation, technology and intellectual property rights, as well as EU-China economic cooperation.<sup>85</sup> The HED mechanism is to function as a complement and reinforcement to already established EU-China dialogues.

Proposed by the Chinese authorities and approved at the EU-China Beijing summit in November 2007, this mechanism will strengthen the dialogue between

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<sup>82</sup> *See* in this sense the favorable views of former Commissioner Mandelson toward dialogue, rejecting thereby trade boycotts against China, as such moves only damage the interests of ordinary Europeans and Chinese. European Commission, *Mandelson says new high level economic group can help EU and China weather political storms*, Apr. 15, 2008, available at: [http://ec.europa.eu/trade/issues/bilateral/countries/china/pr150408\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/china/pr150408_en.htm) (last visited Oct. 5, 2010).

<sup>83</sup> Given the growing importance of China in world affairs, it is interesting to note the potential shift in the U.S. from a past trans-Atlantic focus to a future and inevitable trans-Pacific focus. *See* Henry A. Kissinger, *The Three Revolutions* WASH. POST, Apr. 7, 2008.

<sup>84</sup> European Commission, *EU and China start high-level economic and trade talks*, available at: [http://ec.europa.eu/trade/issues/bilateral/countries/china/pr250408\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/china/pr250408_en.htm) (last visited Oct. 5, 2010).

<sup>85</sup> 2<sup>nd</sup> EU-China High-Level Economic and Trade Dialogue (HED), May 6, 2009, at 2, available at: [http://trade.ec.europa.eu/doclib/docs/2009/may/tradoc\\_143096.pdf](http://trade.ec.europa.eu/doclib/docs/2009/may/tradoc_143096.pdf) (last visited Oct. 6, 2010).

both sides, and will provide a new tool for dealing with the problems confronting European companies trying to establish themselves in China, especially in the fields of investment, market access, and protection of intellectual property rights.<sup>86</sup> The main goals of the HED are to examine: (1) the multilateral trading system, specifically the role of the EU-China trade relations in the wider WTO framework; (2) strategic bilateral trade issues such as market-access and technical barriers to trade; (3) investment issues in order to enable greater bilateral investment flows; (4) innovation, including intellectual property rights and technology given that an effective protection of intellectual property rights is key for both parties; and (5) the EU-China economic cooperation, which includes close coordination on energy, sustainable development, transportation, and better regulation.<sup>87</sup>

Regarding the protection of intellectual property rights, in March 2009, high-level officials from China and the EU met the European industry representatives in Brussels to present progress on the protection and enforcement of intellectual property rights.<sup>88</sup> This progress was made under the bilateral cooperation program on the protection of intellectual property rights, i.e., the EU-China project on the protection of intellectual property rights (IPR2 project).<sup>89</sup>

A second meeting of the EU-China High Level Economic and Trade Dialogue took place in May 2009 to discuss ways to improve business opportunities between the two sides. On trade and investment, it was agreed at the second meeting to focus on creating a more balanced trade relationship, including fair competition, by strengthening the EU's and China's customs and regulatory cooperation to create a harmonious trading environment. It was also agreed that the EU would open a European small and medium enterprise center in Beijing by the end of 2009. However, in November 2009, the European Commission decided to cancel the project.<sup>90</sup> On investment, the EU and China agreed to step up their bilateral

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<sup>86</sup> EC-*Mandelson*, *supra* note 55.

<sup>87</sup> Factsheet, European Commission, *Second meeting of the EU-China High Level Economic and Trade Dialogue: 7 and 8 May 2009 in Brussels* (May 8, 2009) (hereinafter EC-*2<sup>nd</sup> HED Meeting*).

<sup>88</sup> EU-China Project on the Protection of Intellectual Property Rights (IPR2), *EU-China high-level forum on co-operation for strengthening IPR protection and enforcement: results presented to European industry*, available at: [http://www.ipr2.org/index.php?option=com\\_content&view=article&id=809:eu-china-high-level-forum-on-co-operation-for-strengthening-ipr-protection-and-enforcement-results-presented-to-european-industry&catid=105:access-to-information&Itemid=83](http://www.ipr2.org/index.php?option=com_content&view=article&id=809:eu-china-high-level-forum-on-co-operation-for-strengthening-ipr-protection-and-enforcement-results-presented-to-european-industry&catid=105:access-to-information&Itemid=83) (last visited Oct. 6, 2010).

<sup>89</sup> For more information on the EU-China project on the protection of intellectual property rights (IPR2), *see* [http://www.ipr2.org/index.php?option=com\\_content&view=section&layout=blog&id=12&Itemid=89](http://www.ipr2.org/index.php?option=com_content&view=section&layout=blog&id=12&Itemid=89) (last visited Oct. 6, 2010).

<sup>90</sup> EurActiv, *EU in sudden U-turn on China SME Centre* Nov. 4, 2009, available at: <http://www.euractiv.com/en/enterprise-jobs/eu-sudden-turn-china-sme-centre/article->

investment relationship with a view to ensure an open, stable, and predictable transparent environment for two-way investment.<sup>91</sup>

Furthermore, at the second meeting of the EU-China High Level Economic and Trade Dialogue, it was also agreed that the EU and China should step up their cooperation in improving product safety. Because sanitary and phytosanitary rules are harmonized across the EU, this would simplify market-access processes.

There are a few motivating factors for an EU-China High Level Economic and Trade Dialogue Mechanism. First, there is a need to avoid EU-China policy sliding into a 'tit-for-tat' form of protectionism. Increasingly hostile rhetoric on both sides (especially in the EU) prevents further market-access liberalization. There are considerable benefits to be gained from a deepened commercial integration on both sides, although currently there is no adequate framework for moving bilateral relations further. Guided by such concerns and gradually becoming more worried about protectionism, China is keen in promoting multipolarity.<sup>92</sup> Second, there is a potential market access from reciprocal bargains and from actions by China to open its markets further and to make more efforts to enforce its WTO obligations.<sup>93</sup> Third, the EU-China trade negotiations within the PCA to update the 1985 Trade and Economic Cooperation Agreement between the EEC and China should not be put together with other issues of the negotiations for a PCA, given some highly contentious issues on the PCA such as human rights and climate change. If trade issues are negotiated in the same context as the PCA, there is a risk that negotiations on most topics will end up at a halt. Therefore, the HED can oil out the trade negotiations between the EU and China by giving them a medium-to-long-term context and concrete, small-scale, low-key achievements. And the fourth motivation for an EU-China HED is bilateral trade dispute consultations. If the HED develops in a friendly manner to inspire effective, business-like problem-solving attitudes, many of the EU's concerns will be solved without a long, uncertain WTO legal dispute.<sup>94</sup>

Other constructive approaches to improving EU-China trade relations could include addressing the non-market economy treatment of Chinese companies in anti-dumping matters, the launch of a cooperation program with China on

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187032 (last visited Oct. 6, 2010).

<sup>91</sup> EC-2<sup>nd</sup> HED Meeting *supra* note 87.

<sup>92</sup> On multipolarity in the world trading system, *see* LEADERSHIP AND CHANGE IN THE MULTILATERAL TRADING SYSTEM (Amrita Narlikar & Brendan Wickers eds., 2009).

<sup>93</sup> Iana Dreyer & Fredrik Erixon, *An EU-China trade dialogue: A new policy framework to contain deteriorating trade relations* (European Centre for International Political Economy Policy Briefs, No. 03/2008) at 9.

<sup>94</sup> *Id.* at 7-10.

intellectual property protection, closer cooperation between the EU and the U.S. on intellectual property rights with a joint action in key markets such as China, or the creation of an intellectual property rights helpdesk for EU businesses in China. However, a confident China knows now that EU businesses too depend heavily on access to the Chinese market.<sup>95</sup>

## VI. CONCLUSIONS

The EU is undoubtedly an attractive trade partner for China as it provides much in its trade relations. It is, in fact, China's largest trading partner and, in turn, China is the second largest trading partner of EU. Dealing with China was one of the main arguments in favour of ratifying the Lisbon Treaty because it provides for a permanent president of the European Council and a single foreign affairs post for the entire EU, which facilitates the EU's coherence in its external affairs.

China is, in some areas, much more assertive than other emerging economies such as Brazil and India. So an EU partnership with China is more difficult than with Brazil or India. The EU is not in a stronger position *vis-à-vis* China due to the large Chinese market and China's growing economic and political power. However, the best results with China—whether it is on climate change, fighting the macroeconomic recession, or fighting terrorism—can only be achieved through partnership with the EU. It seems, therefore, that China has overestimated the EU and the EU has underestimated China.

Regarding the PCA, ambitious yet at the same time realistic goals should be a priority. The PCA negotiations provide a mechanism to move EU-China objectives forward. Although negotiations for a PCA have already started, the process will not be easy due to the broad scope, complex nature, and importance of EU-China relations and the intra-EU structure of governance. Dealing with micro-issues first (such as unfair subsidies or market access) might be a better way forward to minimize bilateral tensions than tackling macro-issues (such as the undervalued Chinese currency or the bilateral trade deficit). On the EU side, negotiations will need to balance the interests of the various stakeholders on relevant issues, ensure policy coordination at all levels, and find a common position with a single voice on key issues toward China.

Although the EU does want cooperation with China—whether it is via the

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<sup>95</sup> For more details on the High Level Economic and Trade Dialogue, see the Media Briefing note *EU-China High Level Dialogue—Can it End Souring Trade Relations and Increased Protectionism?* European Centre for International Economy, May 2009, available at: <http://www.ecipe.org/files/Media%20Brief.%20EU%20China%20High%20Level%20Dialogue.%20A%20Second%20Chance.pdf> (last visited Oct. 5, 2010).

PCA or the EU-China High Level Economic and Trade Dialogue—in this author’s opinion, using trade policy as a “carrot” in a policy-centered approach does not have much scope beyond current existing efforts. The European Commission’s Directorate-General for external trade is already very active. So, few new initiatives seem possible. Therefore, the EU must adopt a new and better approach with China. Let us hope that the PCA, currently being negotiated, will bring this new approach, where mutual respect should be the basis of the bilateral relations.

Furthermore, given the high volume of commercial transactions as well as the widening and deepening economic cooperation between the EU and China, it is necessary to have a comprehensive treaty law basis, which presumably the PCA will offer. However, an FTA with the EU does not seem to be a suitable trade instrument at the moment. Nevertheless, the EU can expect a mutual benefit as well as greater economic and political ties with China.

In the opinion of the author, it is not about what one negotiates, but how one negotiates the issues. The European Commission should negotiate the prospective PCA more constructively, without patronizing, and instead accept China as an equal player in the current multipolar framework of global economic governance.

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#### ANNEX: A CHRONOLOGY OF EU-CHINA RELATIONS<sup>96</sup>

1975	May	<i>Diplomatic relations established. Christopher Soames first European Commissioner to visit China.</i>
1978	May 2	Trade agreement EEC-China signed. Inter alia establishes Joint Committee.
1979	February	Roy Jenkins visits China. First visit of a Commission President. Meets Deng Xiaoping.
	July	First Meeting of the Joint Committee in Beijing.
	July 18	(First) agreement on textile trade.
1980	June 16-19	First inter-parliamentary meeting between delegations of the EP and of the National People’s Congress, Strasbourg.
1983		Launch of first science and technology cooperation program.
1984		First political consultations at ministerial level, in the

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<sup>96</sup> *Available at:* [http://ec.europa.eu/external\\_relations/china/docs/chronology\\_2009\\_en.pdf](http://ec.europa.eu/external_relations/china/docs/chronology_2009_en.pdf) (last visited Oct. 5, 2010)

		context of European Political Cooperation. Launch of first cooperation projects in China (Management training and rural development).
1985	May 21-23	<i>Agreement on trade and economic cooperation signed.</i>
1988	Oct. 4	<i>Opening of the Delegation of the European Commission in Beijing</i>
1989	June	<i>As a reaction to Tiananmen incidents of June 4, EC freezes relations with China and imposes a number of sanctions, including an arms embargo.</i>
1990	October	Council and EP decide to re-establish bilateral relations step by step.
1992		EC-China relations largely back to normal; arms embargo remains in place.
	June	Launch of environmental dialogue
	June	<i>Establishment of a new bilateral political dialogue</i>
1993	October	Opening of a Commission office in Hong Kong
1995	July 15	<i>European Commission publishes first Communication “A long-term policy for China-Europe relations”.</i> <i>Launch of a specific dialogue on human rights issues</i>
1996	March 1-2	First Asia-Europe Meeting (ASEM); China and EU are active participants.
1998	March 25	European Commission publishes Communication “Building a Comprehensive Partnership with China”.
	April 2	<i>1<sup>st</sup> EU-China Summit, London.</i>
	Dec. 22	Agreement on scientific and technological cooperation signed.
1999	Dec. 21	<i>2<sup>nd</sup> EU-China Summit, Beijing</i>
2000	May 19	Bilateral agreement on China’s WTO accession signed in Beijing
	July 11	Visit of Prime Minister Zhu Rongji in Brussels (first visit of a Chinese Premier to the Commission).
	Oct. 24	<i>3<sup>rd</sup> EU-China Summit, Beijing</i>
2001	May 15	European Commission publishes Communication “EU Strategy towards China: Implementation of the 1998 Communication and Future Steps for a more Effective EU Policy”.
	Sept. 5	<i>4<sup>th</sup> EU-China Summit, Brussels</i>
	Sept. 17	New Information Society Working Group launched.
	Oct. 25-26	Human Rights Dialogue, Beijing.
	Nov. 13	Ministerial Troika, New York (in the margin of UN General Assembly).
	Nov. 30	Political Directors Troika, Beijing.
	Dec. 8	Human Rights Seminar, Brussels.
	Dec. 11	<i>China becomes the 143<sup>rd</sup> Member of the World Trade Organisation.</i>

2002	Jan. 30-31	EC-China Joint Committee, Brussels.
	March 1	Release of China country Strategy Paper 2002-2006.
	March 5-6	Human Rights Dialogue, Madrid.
	Mar.28-	Visit of Commissioner Patten to China.
	Apr.4	
	May 16	Launch of negotiations on Chinese participation in GALILEO.
	June	Exchange of letters strengthening the EU-China political dialogue.
	Sept. 24	<i>5<sup>th</sup> EU-China Summit, Copenhagen</i>
	Nov. 13-15	Human Rights Dialogue, Beijing.
	Dec. 6	EU-China maritime transport agreement signed
2003	Feb. 14	EU-China Ministerial Troika held in Beijing
	March 5-6	Human Rights Dialogue, Athens
	March 10	<i>EC opens European Economic and Trade Office in Taiwan.</i>
	June 3	China formally requests market economy status under EU's anti-dumping instrument.
	June 30	Ministerial Troika, Athens
	Sept. 10	European Commission adopts policy paper "A maturing partnership: shared interests and challenges in EU-China relations".
	Oct. 13	EU Council of Ministers endorses Commission policy paper "A maturing partnership".
	Oct. 13	<i>China releases first ever policy paper on EU.</i>
	Oct. 30	<i>6<sup>th</sup> EU-China Summit, Beijing</i> Agreements signed on § Cooperation in the Galileo satellite navigation program. § Industrial Policy Dialogue. § EU-China Dialogue on Intellectual Property.
	Nov. 26-27	Human Rights Dialogue, Beijing.
2004	Feb. 10-11	EU-China Seminar on the two Policy Papers issued in October held in Beijing, leading to "Guidelines for Common Action".
	Feb. 12	Signing of MoU on Approved Destination Status (the "Tourism Agreement").
	Feb. 26-27	Human Rights Dialogue, Dublin.
	Feb. 26	Political Directors Troika, Beijing
	April 16	<i>Commission President Romano Prodi visits China.</i>
	May 6	<i>Chinese PM Wen Jiabao visits Commission Headquarters</i> , new dialogue initiatives signed; customs cooperation agreement initiated; political leaders recommend that the "Guidelines for Common Action" are implemented.
	May 26	5 <sup>th</sup> High Level Consultations on Illegal Migration and trafficking of human beings, Brussels.

	Sept. 24	Human Rights dialogue, Beijing.
	Oct. 8	Ministerial Troika, Hanoi.
	Nov. 12	Geographical Directors' Troika, Beijing.
	Dec. 8	7 <sup>th</sup> EU-China Summit, <i>The Hague</i> the EU and China signed § Joint declaration on Non-proliferations and Arms Control. § EU-China Customs Cooperation Agreement. § Agreement on R&D cooperation on the peaceful use of nuclear energy.
2005	Feb. 24-25	Human Rights Dialogue, Luxembourg.
	May 11	Ministerial Troika, Beijing.
	June 30 - July 1	EU-China Civil Aviation Summit, Beijing.
	July 7	First ADS Committee ("Tourism Agreement") Meeting, Beijing.
	July 14-18	<i>Commission President José Manuel Barroso visits China.</i>
	Sept. 5	8 <sup>th</sup> EU-China Summit, <i>Beijing</i> , the EU and China signed: § MoU on labour, employment and social affairs. § Joint Statement on cooperation in space exploitation, science & technology development. § Joint declaration on climate change.
	Oct. 25-27	Human Rights Dialogue, Beijing.
	Nov. 4	EC-China Joint Committee, Brussels.
	Nov. 20	<u>1<sup>st</sup> EU-China Strategic Dialogue, London.</u>
	Dec. 20	EU-China Strategic Dialogue at Vice Foreign Minister Level, London.
2006	January	EU-China MoU on food safety is signed in Beijing.
	Feb. 3	Ministerial Troika, Vienna.
	Feb. 20	Commission and Chinese Government sign a MoU on cooperation on near-zero emissions power generation technology.
	March 27	Political Directors Troika, Beijing.
	March 30	The first EU-China bilateral consultations under the Climate Change Partnership are held, Vienna.
	April 6	Geographical Directors Troika, Brussels.
	May 15	EU-China Dialogue on Regional Cooperation initiated.
	May 25-26	Human Rights Dialogue, Vienna.
	June 6	2 <sup>nd</sup> EU-China Strategic Dialogue.
	Sept. 9	9 <sup>th</sup> EU-China Summit, <i>Helsinki</i> the EU and China agree on opening negotiations for a new comprehensive framework agreement.
	Oct. 11	Official launch of China-EU Science and Technology Year.
	Oct. 19	Human Rights Dialogue, Beijing.

- Oct. 24 Commission adopts Communication “EU-China: Closer Partners, growing responsibilities” and a policy paper on trade and investment.
- Nov. 7 EC-China Joint Committee, Beijing.
- Dec. 7 The first Macroeconomic Dialogue is held.
- Dec. 11 The Council endorses the Commission Communication and adopts related Council Conclusions.
- 2007 Jan. 16-18 Commissioner for External Relations Ferrero-Waldner visits Beijing: launch of negotiations on a Partnership and Cooperation Agreement.
- March 5 Geographical Directors Troika, Beijing.
- May 3 Commission and ECB discuss economic policy issues with Chinese counterparts, Beijing.
- May 8 Political Directors Troika, Brussels.
- May 15-16 Human Rights Dialogue, Berlin.
- June 11-12 EC-China Joint Committee, Brussels.
- June 22 1<sup>st</sup> Meeting of the EU-China Civil Society Round Table, Beijing.
- Oct. 17-18 Human Rights Dialogue, Beijing.
- Oct. 25 *3<sup>rd</sup> EU-China Strategic Dialogue, Lisbon*
- Nov. 14 *2<sup>nd</sup> Meeting of the EU-China Civil Society Round Table, Brussels*
- Nov. 28 *10<sup>th</sup> EU-China Summit, Beijing* the EU and China  
§ Establish High Level Economic and Trade Dialogue.  
§ Agree to enhance cooperation on climate change.
- 2008 March 11 Geographical Directors’ Troika, Brussels.
- April 24-25 President José Manuel Barroso and nine Commissioners meet with their counterparts in Beijing.
- April 25 EU-China High Level Economic and Trade Dialogue Mechanism, Beijing.
- May 15 Political Directors’ Troika, Beijing.
- May 15 Human Rights Dialogue, Brdo, Slovenia.
- June 9 EU-China Ministerial Troika, Ljubljana.
- June 11 Chinese Foreign Minister Yang Jiechi visits Brussels.
- June 23-26 3<sup>rd</sup> Meeting of the EU-China Civil Society Roundtable, Beijing.
- Sept. 24-25 EC-China Joint Committee, Beijing.
- Nov. 28 Human Rights Dialogue, Beijing.
- 2009 Jan. 19 *4<sup>th</sup> EU-China Joint Strategic Dialogue, Beijing*
- March 29-30 Commissioner B. Ferrero-Waldner’s visit to China.
- May 14 Human Rights Dialogue, Prague, Czech Republic.
- May 20 *11<sup>th</sup> EU-China Summit, Prague, Czech Republic.*
- May 27 EU-China Ministerial Troika, Phnom Penh, Cambodia.

- Nov. 18 Political Directors troika with China, Stockholm.
- Nov. 20 28<sup>th</sup> round of the EU-China dialogue on Human rights/Legal seminar, Beijing.
- Nov. 29 Foreign Ministerial Troika, Nanjing.
- Nov. 29 Euro-zone troika and Chinese counterparts, Nanjing.
- Nov. 30 *12<sup>th</sup> EU-China Summit, Nanjing, China.*
- Dec. 1 President Barroso/ Prime Minister Reinfeldt and President Hu, Beijing.

*(Last updated: Dec. 7, 2009)*