

The EU-China Partnership and Cooperation Agreement Negotiation Deadlock

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Why has the EU-China Partnership and Cooperation Agreement Negotiation Deadlocked?

Explanation from the Two-Level Games Perspective

The Partnership and Cooperation Agreement (PCA) has been an important legal framework for the EU to strengthen and deepen relations with third countries, in particular countries in Central and Eastern Europe and Asia. It usually covers a broad range of issues on economic cooperation and political dialogue, with the aim to “provide a basis for cooperation in the legislative, economic, social, financial, scientific, civil, technological and cultural fields.”[1]

Following the 9th summit in Helsinki in 2006, the EU and China decided in 2007 to launch the negotiation of a PCA, which is aimed to “reflect the full breadth and depth of today’s comprehensive strategic partnership between the EU and China...encompass the full scope of their bilateral relationship, including enhanced cooperation in political matter.”[2] With the establishment of a “Strategic Partnership” and the growing scope of EU-China cooperation, it is desirable for both sides to base their relationship on a more comprehensive legal framework. And therefore both sides were optimistic about reaching positive outcomes in the negotiation[3]. Yet despite the momentum in the beginning, and much of the talk being completed in 2009, the negotiation turns out to be less than straightforward and has been deadlocked for years.

This paper seeks to answer the question of why the EU-China PCA negotiation has deadlocked over the years. For that purpose, I will turn to the analytical framework of two-level games developed by Robert Putnam, according to whom the concept of “win-set”— “the set of all possible Level I agreements that would win”[4]—is key to understand the two-level games of international negotiations. I argue that the stalemate of EU-China PCA negotiation could be explained by the small size of overlapping win-sets of the two sides.

The following sections of the paper will analyze the contours of win-sets on both the part of the EU and China. It investigates respectively the factors that restrain the win-sets of the two parties, in line with (where appropriate) Putnam’s observation on the determinants of win-sets, namely Level II preferences and coalitions, Level II institutions and Level I negotiators’ strategies.[5] Finally, the paper concludes with a summary of the findings and some reflections on the application of the two-level games approach.

The Limitations of the EU’s Win-sets

On the side of the EU, there are several hard obstacles that are conditioning the size of its win-set. According to Putnam, “the size of win-set depends on the Level II political institutions.”[6] This is especially true in the case of EU-China PCA negotiation. In terms of the nature and content, PCA belongs to the category of “mixed agreements” in which the Union and Member States (MSs) have “shared competence”. [7] Thus the PCA will have to be negotiated and ratified with the involvement of both EU institutions and Member States, which gives each member states a veto power. According to Young and Peterson, “the more actors there are that can block policy—the more the ‘veto players’—the harder it is to change policy.”[8] Moreover, the decision threshold of such agreement are both very high

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in the EU and MSs. On the Union level, the PCA is negotiated by the Commission on behalf of the EU, but subject to approval by unanimity in the Council and absolute majority in the European Parliament (EP), whose veto power in international agreements has significantly increased after the Lisbon Treaty in 2009. On MSs' level, the ratification of the PCA is also subject to different degrees of decision thresholds. As Young and Peterson again put it, "the higher the threshold for ratification, the smaller the win-set... and thus the more likely that a given agreement might be rejected." [9] Therefore, the EU's win-set in PCA negotiation is largely constrained by its decision rules, in particular by the large number of veto players and the high threshold of ratification within the players, which increase the risk of "involuntary defection" [10].

A further constraint on the win-set of the EU comes from its divergent preferences with China. Following the existing PCAs, the EU apparently favors for a single comprehensive agreement that will upgrade the 1985 Trade and Economic Cooperation Agreement (TECA) and encompass "both the commercial and political dimensions of the relations." [11] And on both dimensions, the EU has very divergent priorities with China. Regarding trade and commerce, the major interest of the EU is to press China to fulfill the WTO obligations, and protect its trade and investment in China. Therefore, the priorities as identified by the EU in the negotiation includes trade deficit, exchange rates, export restrictions on raw materials, market access, Intellectual Property Rights, service, investment, subsidies, government procurement, norms and standards. [12] None of these priorities are easy to be met by the Chinese side, thus reducing the EU's win-set. On the political dimension, there are also considerable difficulties to overcome on the most sensitive issues regarding "democracy, human rights, the rule of law, Taiwan, the arms embargo, non-proliferation, disarmament, and the International Criminal Court." [13] The EU seeks to link the trade agreement with political matters of human rights and democracy on which China great reservations and different emphasis. According to Putnam, "politicization often activates groups who are less worried about the costs of no-agreement, thus reducing the effective win-set." [14] The European Parliament's insistence on inserting human rights clauses into the PCA thus risks reducing the EU's win-set.

Constraints on China's Win-sets

While China's ratification rules on international agreements are much simpler than the EU, its win-sets in the PCA negotiation are majorly constrained by some other factors. Firstly, China is not as highly motivated as the EU to negotiate the PCA and the cost of no-agreement for China is low. China is not experienced in negotiating such agreement as PCA and as pointed out, "the practice of Chinese foreign policy show that China does not prefer to conclude comprehensive, legally-binding bilateral agreements." [15] China's incentive in the negotiation is also reduced by the low cost of no-agreement. Over the past decades, the EU-China relationship has achieved "a high degree of institutionalization." [16] Currently, the institutional framework of EU-China relations has expanded and enhanced to include various bilateral agreement, multi-level dialogues and policy documents. With the existence of already extensive institution-building, the no-agreement scenario in the PCA negotiation is not that costly to China. According to Putnam, "the lower the cost of no-agreement to constituents, the smaller the win-set." [17] China's win-set is thus constrained by the low cost of no-agreement.

Secondly, China has divergent preferences with the EU. China's approach to the PCA negotiation is mainly focused on trade matters and China seeks to separate trade and economic issues from the political agreement. China's approach thus implies the conclusion of two agreements, the PCA and an updated TECA, with the substance of TECA being incorporated into the chapters of PCA. [18] But this will meet with opposition from the EU, even if China manage to persuade the EU to negotiate separate agreements on trade and political matter, there are huge obstacles on both area. On trade and economic matter, China is mainly concerned with "EU's anti-dumping measures, anti-subsidy, safeguards, TBT (Technical Barrier to Trade) and other restrictions." [19] China in particular wants the EU to recognize its Market Economy Status (MES) and lift the arms embargo, both of which China thinks unfair but will be resisted by the EU. The EU refuses to grant the MES to China due to political considerations and the large trade deficit with China. The lift of arms embargo has also been met with strong opposition from the EU (in particular the EP) on the ground of human rights concerns. On the political area, China is very concerned with the "sovereignty issue" regarding Taiwan, Tibet and Xijiang, taking them as China's internal affairs and tries to avoid providing the EU with a basis to interfere on these issues. Therefore, China demands the integration of "One China" principle and "the Five Principles of Peaceful Co-existence" in to the agreement. However, the EU will emphasize the principle of

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democracy, human rights and rule of law as the fundamental principle of its bilateral relationship with China.

Concluding Remarks

By a two-level games approach to the analysis of EU-China PCA negotiation, the win-sets in the negotiation are firstly constrained by the political institutions on the EU's side and the low cost of no-agreement on the Chinese side. This is further complicated by the comprehensive nature of the agreement which involves multiple actors and a broad range of mixed issues, thus opening room for disagreement. The EU and China have divergent preferences and priorities on the form and content of the agreement, each seeking to "create linkages between different areas [so that] they will get the other side to make concessions on the issue they care most about." [20] But the principled position of the EP on human rights clause and China's insistence on the principle of "non-interference" means that there are little room for compromise, thus constraining the size of overlapping win-sets.

It is also noted in the case of EU-China PCA negotiation that the win-sets are conditioned by the evolution of bilateral and international dynamics, which has not been fully considered in Putnam's model. In his analysis of the determinants of the win-sets, he narrows his focus on Level II itself while analyzing the win-sets, and he seems to take a static view of the determinants of the win-sets. Yet, as demonstrated by the EU-China PCA negotiation, the win-sets have also been conditioned by the external developments over the year of prolonged negotiation: the Tibet disturbance in the spring of 2008, Europe's call of boycott of the 2008 Olympic Games in Beijing and President Sarkozy's meeting with Dalai Lama in 2008. [21] It is therefore necessary to take into consideration the evolving bilateral and international dynamics during the negotiation process while applying Putnam's two-level games model.

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Footnotes

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[5] *Ibid*, p.442.

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