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The European Union's Intellectual Property Protection towards China

What is the course of the EU and what are its motives?

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Abstract

The growing economic giant China is becoming increasingly powerful as a geopolitical player. For this reason, the European Union (EU) is currently in an ongoing discourse on how to deal with this new, powerful China. While the two global players have an interconnected trade relationship, many issues such as Intellectual Property (IP) theft remain. Therefore, this paper asks the following question: The European Union's intellectual property protection towards China – What is the course of the EU and what are its motives. To answer this question, three hypotheses were developed, based on three theories of international relations: constructivism, realism, and liberalism. For the analysis, official documents by the European Parliament and the European Commission were used. The results show that the EU's trade and IP policy with China is characterized by free trade and that the policy development is a navigation between its economic interests and its identity as a protector of democratic values. More precisely, it was evident that the Commission is focused on economic interests, while the European Parliament prioritizes the democratic values of the EU.

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Abbreviations

BRI	Belt and Road Initiative
CAI	Comprehensive Agreement on Investment
EP	European Parliament
EU	European Union
FDI	Foreign Direct Investment
FTA	Free-Trade Agreement
GI	Geographical Indication
H	Hypothesis
IP	Intellectual Property
IPR	Intellectual Property Rights
NGO	Non-Governmental Organization
SOE	State-Owned Enterprise
TDI	Trade Defense Instrument
U.S.	United States
WTO	World Trade Organization

1 Introduction

In March 2023 the European Union's (EU) commission president Ursula von der Leyen gave a speech about the EU's relation with China. She criticized China's domestic policy and called it repressive. Furthermore, von der Leyen mentioned that the state has a growing assertiveness, both economically and militarily in the international context (Camut, 2023). On top of that, the Commission's president called for a realignment of the EU in that context. This distinct public criticism of China by the European Union is a recent development and was not seen in the past few years. It portrays how the European Union is currently in a discourse of how to continue the bilateral cooperation with China in terms of trade and investment. A central component of the trade relation between the two players is its interdependence with intellectual property protection. Historically, the European Union takes measures to protect its intellectual property, since innovation is essential for the EU's economy and its member states (Geiger, 2006). This is especially the case in its relationship with China. European businesses often complain about an insufficient protection of trade secrets and intellectual property in China (Zubascu, 2020). Due to pressure by the Chinese side, European companies must transfer technology (knowledge) to gain access to the Chinese market (Zubascu, 2020). To create a more equal playing field the EU and China signed the Comprehensive Agreement on Investment (CAI) in the end of 2020. The agreement is supposed to liberalize the EU's market access in China characterized by investment cooperation and equal trade (Amal, 2021). However, the agreement is a controversial topic due to several reasons. Firstly, it cuts right into the question whether the European Union should increase the trade relations with China with regard to its moral values and its understanding of human rights. Secondly, the timing of the announcement was highly problematic for the EU challenging its relationship with the United States. During this period, the U.S. was experiencing a transition period after the controversial presidential campaign. Shortly before, Joe Biden called for a joint strategy on China by the West, only to receive the news on the recently signed CAI. It is argued by experts, that China was partly aiming to divide the EU and the U.S. with the new agreement (Godement, 2021). Furthermore, it is also not guaranteed that the agreement will be effective. Both China and the EU haven't formally implemented the deal (Hamilton, 2021). Additionally, the European Parliament's ratification, which is still yet to happen, was put on hold. Consequently, there are doubts that the agreement will ever be put into practice (Hamilton, 2021).

These circumstances raise questions about the motives of the European Union. Not just regarding CAI, but also about the question of intellectual property protection and the possible decoupling from China. This paper's goal is to determine the factors within the EU which defined its current position of trade and IP policy towards China. Furthermore, it will examine how the EU's IP policy affect its trade relationship with China. Moreover, it will search for indications defining future trade relations between the two global players. Therefore, the research question is:

The European Union's Intellectual Property Policy towards China – what is the course of the EU and what are its motives?

The research question can be defined as descriptive, regarding the course of the EU, but also interpretative, regarding the motives of the EU.

The topic of this thesis has significant relevance to the current discourse on trade relations in the geopolitical landscape, which has gone through major developments in the last five years. The increased tension between the U.S. and China has substantial impact on the world economic order. Third parties, especially the EU and its member states must adapt and find its place in it. This led to an academic debate about the European Union's trade policy in the context of the new politicization of trade (Meunier & Nicolaidis 2019). The economic position of the EU between the two superpowers China and the U.S. will determine its geopolitical future. Especially, how it will deal with China and its increasing power will be important to examine. A substantial part of the EU's trade-policy is its course of intellectual property protection towards China. The definition and interpretation of the EU's intellectual property protection can function as an ideal indicator on significant parts of its trade policy towards China. While there is already a body of scholars that investigate the trade dynamics between the EU, China, and the U.S. (Meunier & Nicolaidis 2019), the analysis of the EU's IP protection policy should provide additional insights to the broader topic.

2 Literature Review

The purpose of the following literature review is to provide an academic foundation for this thesis. Therefore, it will firstly define Intellectual Property Rights (IPRs), followed by a brief historical outline of the trade relations between the EU and China. Lastly, the issues surrounding China's IPR will be described.

2.1 Intellectual Property Rights

This section defines Intellectual Property Rights focusing on Intellectual Property protection measures and policies.

The World Trade Organization defines Intellectual Property rights (IPR) as “the rights given to persons over the creations of their minds” (WTO, 2023). Usually, IPR grant the creator exclusive authority over the utilization of their creation (WTO, 2023). There is a variety of forms of IPR, such as “patents, trademarks, copyright and neighboring rights, geographical indications (GIs)” etc. (European Commission, 2023a). The protection of IPR became increasingly important in the last decades regarding the economy. Industrial processes and products are dependent on the protection of intangible assets by IPR. Intangible assets are for instance brands, know-how, inventions, and data. (European Commission, 2023a).

Especially, since the mid-1990s IPR became increasingly important due to the fast evolution of communication and information exchange in the information age. Companies began to recognize that their businesses are possibly threatened by the Internet and its corresponding effects (Halbert, 2016).

A strong management and protection of IPR in each country also marks an important incentive for firms to invest, or move their business into that country (Maskus, 2000). If a country does not have a strong regulatory framework regarding the protection of Intellectual Property, it usually results in weak foreign direct investment (FDI) (Maskus, 2000).

The European Commission also states that a sufficient protection of IPR and its enforcement is essential for economic growth (European Commission, 2023a).

Essentially, it can be said that the protection of IPR is a central mechanism for the development of economies.

2.2 EU-China trade relation background

To understand the current status quo of the trade relation between the EU and China, with an emphasis on IP-policy relations, this section will provide a brief overview of the recent trade developments between these parties. This background section will reach back to 2018, marking the beginning of the U.S.-China trade conflict, which had an impact on the entire EU-China trade relationship.

Firstly, the last few years marked a deterioration in the relationship between the two superpowers. However, there were also signs and initiatives of economic rapprochement (van Wieringen, 2022).

The trade-conflict between the two economic superpowers US and China posed a threat to the stability of the entire world economy. A possible weakening of the Yuan could slow down the

Asian economies, which could consequently impact the global economy (Goulard, 2020). Naturally, a slowdown of the global economy is not desirable for any global stakeholder. This also applies to the EU and its member states. The EU is known for an advocacy of free trade, which is why most leaders of the continent openly called for negotiations between the US and China in the context of the trade war (Goulard, 2020). However, the EU as a systemic partner of the US share concerns with the superpower regarding China. An important aspect connecting the interests of the EU and US, is their shared substantial trade deficit with China. Furthermore, there are common concerns addresses regarding state-owned companies of China, as well as breaches of IP rights by Chinese companies (Goulard, 2020). However, it is important to mention that the EU has inner conflicts due to its structure as a Union of states. This is particularly visible when it comes to China's Belt and Road Initiative (BRI). Some of the member states are leaning in favor of BRI while others don't (Goulard, 2020).

Despite the critical atmosphere because of the US-China trade-war, the EU-China summit in April 2019 was characterized by the emphasis on committing to cooperation for WTO reforms (Goulard, 2020). Additionally, the EU and China continued the long negotiations on the Comprehensive Agreement on Investment (CAI). In December 2020, the two economic superpowers reached an agreement in principle. This trade agreement contains several aspects that would further liberalize the bilateral trade framework. It states that European investors and companies would gain more access in the Chinese market and would receive a fair treatment to ensure a level-playing field (European Commission, 2020). This also includes the Chinese commitment ensuring no forced technology transfer for European companies in exchange for access to the Chinese market, which falls under the category of IPR protection. However, the CAI was not ratified by the EP until today. Chinese human rights violations, as well as forced labor issues and an exchange of sanction between Chinese officials and members of the EP in March 2021 have led to the CAI was paused (van Wieringen, 2022).

2.3 China's Intellectual Property Rights Issues

The necessity for the EU to have an IP-policy towards China is due to long-standing IPR violation issues. The common process of IP infringement in China entails instances wherein domestic firms engage in unauthorized exploitation of IPR belonging to foreign counterparts. Additionally, the Chinese state, which is supposed to enforce laws that prevent and punish these actions, fails to do so (Li & Alon, 2019). It is important to distinguish between the private action by domestic firms and the public action by the Chinese state when it comes to IPR violations. However, since the Chinese party-state acts both as a referee and player, making it is difficult

to distinguish private and public action (Li & Alon, 2019). The Chinese party-state should be considered as a player in that matter due to several reasons. The state conducts a global acquisition of IP in a systematic manner, where it not only sponsors forced technology transfer and IP theft, but also conducts it itself (Li & Alon, 2019).

Furthermore, in the case of the EU, many stakeholders report several IPR issues in China. One major issue is the absence or insufficiency of legal certainty and the corresponding enforcement of the Chinese authorities (European Commission, 2023a). Additionally, there are cases in which the Chinese government influences the outcome in disputes between foreign and domestic firms regarding IPR. One case involved the American-based firm DuPont, which reported possible IPR violations of Chinese partners. Instead of protecting the IPR of DuPont, the Chinese authorities raided DuPont's office, which involved the seizing of documents and computer as well as the intimidation of its employees (Li & Alon, 2019). The Chinese state also acquainted a newly developed satellite technology by Boeing for the purpose of its space program, behind the pretense of improving "web access in Africa" (Li & Alon, 2019). This discrimination of foreign companies is a significant concern for EU stakeholders already occurring during simple patent issues (European Commission, 2023a).

On top of that, the Chinese IPR system focuses on certain sectors designated as strategically important, in which multinational companies are obligated to establish joint ventures with domestic firms to engage in production and distribution activities, thereby facilitating the exchange of technology and know-how. It is not allowed for foreign companies to have full ownership in these industry sectors (Li & Alon, 2019).

The reasons for the IPR issues in China are based on the political economy system of China. The party-state needs to maintain economic growth to ensure its legitimacy. A crucial factor is the acquisition of new technologies. The party-state also relies on the fact that there is no judiciary independence. This restricts the representation of interest groups potentially advocating for enhanced IPR protection (Li & Alon, 2019).

3 Theoretical framework

The following section will present approaches based on theories of international relations: Constructivism, Realism and Liberalism. The corresponding reasons for the choice of theory will be explained, followed up by hypotheses deriving from the different theories.

3.1 Constructivism

A suited theoretical approach to answer the research question is the constructivist approach. Its main essence is its focus on social processes and norms. This approach provides a contrast to the other mainstream theories of international relations, predominantly realism and liberalism (Hopf, 1998). Constructivists assume that aspects and behaviors in international relations are socially constructed. Therefore, social aspects such as norms, rules, identities, and ideas are seen as relevant. These aspects were not regarded as decisive factors by the theories that existed before constructivism emerged in the 1980's/90' (Hoffmann, 2010). The constructivist perspective does not support the claim that the manner in which international relations evolve is given. It is merely a socially constructed outcome. Constructivism's theoretical groundwork was laid by Alexander Wendt's publication "Anarchy is what states make of it" (Wendt, 1992). Wendt (1992) portrays how behavior of states, are influenced by the intersubjective aspect of structures, rather than the material aspect.

Another key element of constructivism is the way in which the study of international relations is conducted. Due to its foundation on a broad and profound ontology, the perspective provides a framework for comprehending social ontologies, such as collective intentionality and identities (Pollack, 2001). Furthermore, it looks at how the changes in international politics occur unlike the other theories which are merely substantive. Constructivists approach these questions by looking at aspects like identities. Often, they use ontologies like identity as the center for their analysis (Pollack, 2001). Identities have the function of defining a state's preferences and choices of actions. This is also applicable to actors within a state, who are also a unit of analysis for constructivists. It is important to emphasize that identities are not fixed and eternal. Identities can develop and change depending on political, historical, cultural, and historical contexts (Hopf, 1998). The consequence is there is a large possibility of different choices of action of a state. Moreover, constructivists view changes in international relations through social norms and frames. They assume that frames and ideas of actors are constructed and redefined, which happens through permanent interaction (Saurugger, 2013). Their interests depend on the political, economic, or social contexts. Naturally, these contexts differ for each actor. Furthermore, the behavior is based on the idea of "collective understandings of facts" (Saurugger, 2013). This is intertwined with cognitive frames of actors, which are an important determinant for their policymaking. If the rationality behind the cognitive frames of actors is not understood and considered, it is not possible to make sense of an actor's behavior (Saurugger, 2013).

The described elements of constructivism show how well the theory is suitable to answer the research question. The constructivist approach offers the possibility of a deeper understanding

behind certain actions and behavior in the context of international relations. The aim besides the assessment of the European Union's IP Policy is to understand the motives behind it. The identity of the EU and the corresponding values are vital for assessing the EU's motives.

3.2 Realism

Another approach to analyze the EU's approach on IP is the theory of Realism. It is one of the prominent theories of international relations. It is a broad approach to explain the dynamics and relationships of states in the international system. The theory has developed since the 20th century into a variety of sub-categories that offers several explanations to international developments. A central divide between realists is the question whether egoistic behavior of states is caused by the pursuit of security or the maximization of power (Rathbun, 2019). Common ground between realists is their distinction from other theories of international relations by seeing the world as it is and not suggesting how it should be. It is often perceived as a pessimistic approach that sees the international system as an anarchic setting in which states are the main actors fighting for their survival and struggling for power. More precise, they try to assure their security through pursuing power and making use of it (Stein, 2015). Realists explain the anarchy of the international system with the nature of individuals based on Thomas Hobbes's theories which was further developed into the Realism theory by Hans Morgenthau in 1948. Realists also argue that international law and international institutions are not relevant in the international system, especially when it comes to military action and high politics. The only possible category in which they could play a role are low politics (e.g. cultural or social affairs). Hence, the main essence of the realist approach is that states are the important units, which try to ensure their security in an anarchic system through power (Stein, 2015). Material power for the purpose of resilience is central in the realist approach (Pollack, 2001).

Therefore, Realism offers an important perspective on power relations between the EU and China, in which trade and investment policy is increasingly important as a power instrument. This growing importance is a global trend in geopolitics. Meunier and Nicolaidis (2019) describe this trend as the geopoliticization of trade. This development makes the theory of realism a suitable perspective for the topic of this thesis.

3.3 Liberalism

The third theoretical approach of this the thesis will consider is the international relations theory of liberalism. This approach offers a more optimistic alternative to realism. Liberalism includes a wide range of factors in its analysis besides states, such as international organizations and citizens. The primary concern of liberalism is the individual liberty and ensuring the examination of political power. Therefore, the main task of governments is to provide its citizens with the individual's right to life, liberty, property, and well-being (Duguri et al., 2021). Looking at international actions of states, the emphasis of liberalists lies on limiting military power through civilian control. Mechanism like free and fair elections are monitoring a government's behavior. Evidently, the prevention of imperialism, or imperialist action in the international system is a key issue in liberalism (Duguri et al., 2021).

An often-mentioned characteristic of classical liberalism is free trade. However, in some cases, state-intervention is still regarded as a necessary tool among liberalists. For instance, to protect and improve the conditions for members of society that require help (Phelan & Dawes, 2018). Liberalists support an open economic system because of different, significant benefits. On the one hand it should lead to prosperity and increased wealth. Ideally, this has a positive impact for individuals. On the other hand, increased interconnected trade between states reduces the probability for conflict and war, since this would harm the benefits of trade (Duguri et al., 2021). Finally it has to be mentioned that the market-based perspective of liberalists is often criticized as a narrow version of freedom that prevents various forms of state intervention (Phelan & Dawes, 2018). Nevertheless, this approach offers an insightful perspective on the current situation between the European Union, China, and the United States.

4 Hypotheses

This section will present this thesis' three hypotheses. Furthermore, it will be explained how each hypothesis is connected to the corresponding theory.

4.1 Hypothesis 1 – Constructivism

The European Union's intellectual property protection policy towards China is influenced by normative factors, including the EU's self-identification as a protector of democratic values and its perception of China's political system, which may lead to a more stringent intellectual property protection course against China.

The constructivist perspective explains international politics and the behavior of units in IR through norms, ideas, and identities. Therefore, the hypothesis implies that the EU's IP protection policy is influenced by its identity as a protector of democratic values. Relevant in this context is not just the EU's identity, but also how it perceives China's actions regarding democratic values.

4.2 Hypothesis 2 – Realism

Strengthening intellectual property protection in the European Union towards China is likely to benefit the EU more than China in relative terms.

Realism focuses on security and power maximization through relative material gains in an anarchic global setting. Therefore, the second hypothesis will determine if the EU's IP policy towards China will lead to relative gains for the EU. This refers to possible economic gains that would shift power towards the EU.

4.3 Hypothesis 3 – Liberalism

Even if the Comprehensive Agreement on Investment (CAI) between the European Union and China will not be implemented, their trade relation will continue to be liberal.

The liberalist perspective emphasizes individual liberty and market freedom. Focusing on the latter, the third hypothesis will determine if this free trade approach continues between the EU and China. While the non-ratification of the CAI marks a setback in the trade relation, it will be interesting to see how severe that setback is.

5 Research Design

To answer the research question and test the hypotheses, this thesis will conduct a foreign policy analysis, focusing on the European Union. The goal is to determine the motives and influences of the EU's decision-making processes during certain situations in the context of the research question. The analysis will employ three international relations theories – constructivism, realism, and liberalism, linking one hypothesis to each theory. By testing these hypotheses, this thesis seeks to provide a comprehensive understanding of the EU's motives. The time frame will start in 2018 and end in the present. The reason for choosing 2018 as the beginning of the case study is the year marking an important moment in the triangular relationship between the

U.S., China, and the European Union. After the elected U.S.-President, Donald Trump implemented trade defense measures against China, provoking a trade conflict between the two superpowers for the following two years. This had global effects with a corresponding trend of escalating tariffs (Fajgelbaum et al., 2021). Thereby, the European Union had to assess its position between the two sides. This explains the analysis' starting point in 2018 making it possible to assess the EU's concrete policies' development. To answer the research question and test the hypotheses, this paper will conduct a qualitative content analysis, which is "a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns" (Hsieh & Shannon, 2005, p.1278).

The methodological approach to the data collection and analysis will be described in the following paragraph.

5.1 Method of data collection

To provide this case study with adequate and enough data, this thesis will use triangulation. This will enhance the validity of the findings through inclusion of different perspectives in the context of the research question. Naturally, this ensures the use of different sources to provide the data for the analysis. The sources that will be used are official document of the relevant states of the analysis. That includes policy papers such as briefings, speeches reports, staff working document joint communications, official press releases or official studies by the EU. Most of the documents on the EU's IP and trade policy that are available to the public are either published by the European Commission or the EP. Therefore, during the data collection process, a distinction between EP and Commission documents is essential. The subsequent differences will be part of the analysis to see if there are any substantial position differences between the two institutions.

This method of triangulation is essential to include all perspectives from the context of the research question. It furthermore provides the possibility to analyze the topic through the different theoretical approaches. Primarily, the constructivist approach necessitates this method of data collection since deeper understandings of frames and identities can be well determined with this method.

The documents that will be analyzed are relevant for each of the three hypotheses. However, for each hypothesis, different codes will be used to gather information. A precise overview of the coding scheme will be explained in the next chapter.

5.2 Method of data analysis

As mentioned above, this section presents under which framework the data will be collected and analyzed. To ensure a structured process of data collection, this paper will present a self-developed and -employed coding scheme based on the theories.

As stated earlier, each hypothesis is derived of one of the theories. Therefore, the coding scheme consists of three categories that are derived from the corresponding theory. Subsequently, each category contains two sub-categories. From each sub-category, two codes are derived. The documents will be scanned through the framing of the codes. Therefore, the content of a document that fits a certain code will be assigned to this respective code.

The first category “values & norms” is derived of the constructivist theory and is therefore relevant for H1. The two corresponding sub-categories are “*democratic values*” and “*China’s political actions*”. These sub-categories were chosen because indications for an EU identity that upholds democratic values, and indications of how China’s politics are perceived within the EU have to be determined. Therefore, the codes for “*democratic values*” are “advocacy for democratic values” and “advocacy for human rights”. The codes for “*China’s political actions*” are “authoritarian practices” and “violation of human rights”. It must be mentioned that similarities between the codes for this hypothesis exist. However, there is an important and relevant distinction between the EU’s advocacy for human rights and its acknowledgment of human rights violations in China. While the former is regarding the EU’s identity in general, the latter focuses on its acknowledgment of specific Chinese human rights violations.

H1 will be confirmed, if the above-mentioned codes provide substantial evidence that indicate that the EU in fact identifies itself as a protector of democratic values, especially regarding EU’s IP policy towards China.

The second category “relative benefits” is based on the realist perspective and has the two sub-categories “*EU IP measures*” and “*economic competition*”. Both aspects need to be examined to test the hypothesis. The codes for “*EU IP measures*” are “enhancing EU bargaining power” and “mitigating economic dependency”. To clarify, the latter focuses on indications that the EU strives to mitigate their economic dependency on China. The sub-category “*economic competition*” contains the code “improved Chinese IP regulations” to assess if the EU measures have led to improvements in that regard. The other code will seek for “economic advantages for the EU”, which refers to indications about economic advantages after more stringent Chinese IP regulations.

H2 will be confirmed, if there is substantial evidence supporting the code “economic advantages for the EU”, after the other three codes give a comprehensive overview of the EU-China trade relation, and the EU’s IP measures.

The third category “free trade” is based on the liberalist perspective. The two sub-categories are “*desire for economic prosperity*” and “*cooperation*”. Both sub-categories have a similar nature but are nevertheless important to distinguish. The former is about indications on the desire for economic prosperity by the two superpowers. Therefore, the codes are “promotion of free trade” and “EU-China trade dialogue”. The latter is searching for facts that indicate a continuation of liberal trade relations. Thus, the codes are “market access” and “joint ventures & FDI”.

H3 can be confirmed, if the above-mentioned codes provide a substantial amount of evidence showing that the EU-China trade relations will continue to be characterized by a liberal nature, despite the frozen implementation of the CAI.

The analysis of each hypothesis will be conducted separately. After the hypotheses are tested, it will be possible to provide an answer to the research question in the conclusion chapter.

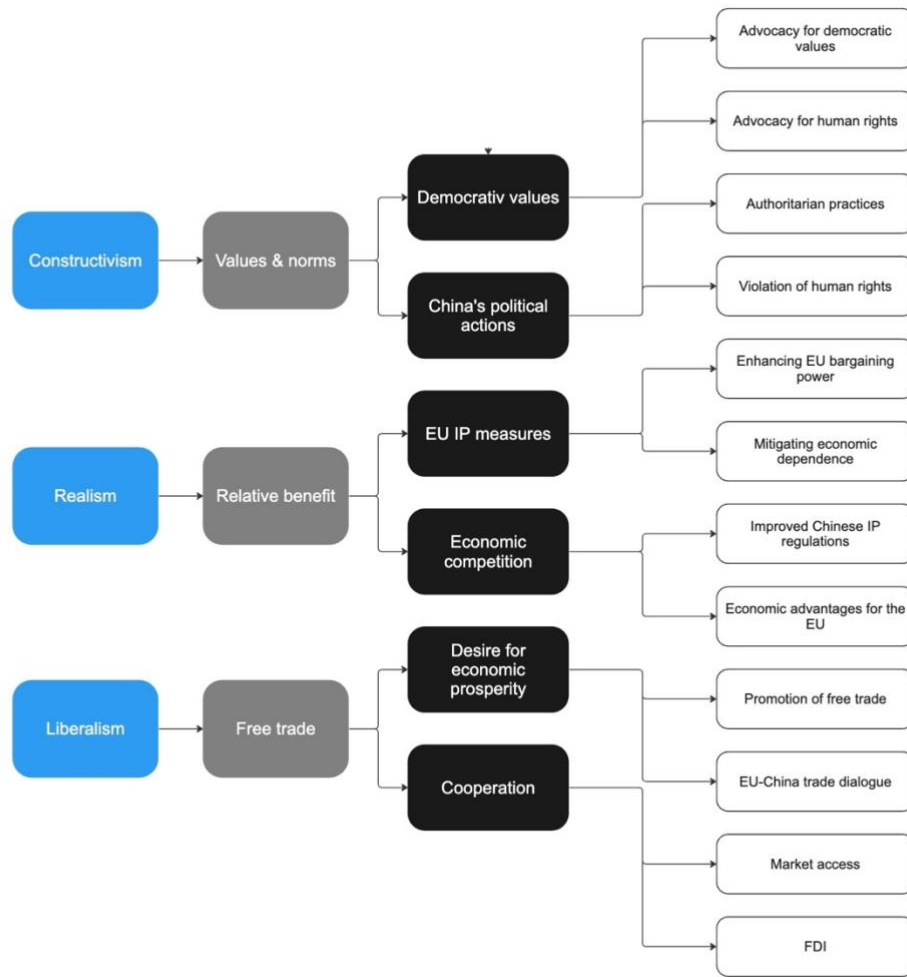


Figure 1. Illustration of the Coding Scheme

6 Analysis

In the following chapter the collected data from the documents will be analyzed. The documents are predominantly published by the EU since it is center of this analysis.

The wide array of the chosen documents, which was described in the methods section, should provide enough data to test the three hypotheses. Most of the documents are not solely regarding IP matters between the EU and China but describing a broader matter such as general trade relations between the EU and China.

The goal of this chapter is to either confirm or reject the three hypotheses through analyzing the findings. Therefore, the chapter will be split up into three subsections. One for each hypothesis. In each subsection, the findings will be presented, followed by an interpretation of those in the context of the hypothesis.

6.1 Hypothesis 1 – Constructivism

Most of the documents by the European Commission and the EP contain indications about the EU's values and the role they play in their trade policies.

Main findings

Several documents by the EP and the European Commission provided clear evidence about the democratic values of the EU the role they play regarding EU trade policies. However, it must be noted that the content of these documents is mostly related to the relations with China, putting the findings in that context. That means that some findings can fit multiple codes simultaneously. For instance, some findings are assigned both to the code “advocacy for democratic values” and “authoritarian practices”.

Democratic values

This section presents the findings that were discovered under the sub-category “democratic values” of the coding-scheme.

In the Commission's joint communication regarding the EU and China, it is explicitly mentioned that “the EU is committed to engaging with China to uphold the rules-based international order” (European Commission, 2019, p.2). It is further described, that while China stated its commitment to this model of rule-based multilateralism, it occurs that the government has different understandings and interpretations of it, compared to the EU. Moreover, the Commission criticized China's occasional unwillingness to accept newly implemented rules, which leads to the weakening of the rules-based order (European Commission, 2019). It is further advocated that China needs to respect “Human Rights, Peace and Security, and Development” which are the three pillars of the UN (European Commission, 2019, p.2). The speech by the Commission's president Ursula von der Leyen also contained implications about the importance of democratic values for the EU. The speech addressed the future relationship with China and repeatedly contained advocations for democratic values and human rights. The president for instance urged her fellow members of the EU to acknowledge and address the human rights violations of the Uyghurs in Xinjiang (European Commission, 2023b). The importance of human rights is not just exclusively stressed by the European Commission, but also by the EP. The majority of documents associated with the EP contain mention the importance of human rights. The EP Research Service mentions human rights multiple times. It criticized, that the CAI does not sufficiently address human rights issues such as forced labor in China (van Wieringen, 2022). Consequently, it can be already said that both the European

Commission and the EP regard the EU's democratic values as relevant, since they are mentioned in such a frequent matter in different documents that regard trade- or IP policy.

China's political actions

In this section the findings of the sub-category "China's political actions" will be presented. Thus, this sub-category needs evidence showing the EU's acknowledgement of authoritarian practices in China. Like the findings regarding "democratic values" it was possible to discover substantial evidence that support the acknowledgement of China's political state in the EU in the context of their trade and IP policy. A reoccurring topic that was discovered is the absence of fundamental liberties of the Chinese people. One briefing of the EPRS pointed out that the EP denounces the freedoms of expression, the press etc. (Jochheim, 2021). In a study about the trade and investment relations between the EU and China that was requested by the INTA committee, concerns about Chinese societal and economic control were expressed. The concern extended to the Chinese exporting their surveillance technologies into other Asian countries (Policy Department for External Relations, 2020). Another matter that concerns the EU is the Chinese government plan to implement the Social Credit System. This system is intended to oversee and regulate the conduct of all economic actors participating in the Chinese market and its different economic areas, which includes IPR (Policy Department for External Relations, 2020). In this context apprehensions have been raised about the potential for Chinese authorities to prioritize their political objectives, which could lead to problems for the Chinese population, but also for foreign firms (Policy Department for External Relations, 2020). The criticism regarding the Social Credit System further extends to acknowledging the Chinese government's public categorization of firms and individuals as "trustworthy" or "distrusted" to pressure them to align with the stipulated requirements of the authorities (Policy Department for External Relations, 2020, p.62).

Regarding the explicit acknowledgment of Chinese human rights violations, there was more evidence collected in EP-documents than in documents published by the European Commission. However, this is mitigated by the fact that there is more access to EP-documents. It also needs to be noted that the codes "advocacy for human rights" and "violation of human rights" often overlap.

The EPRS study emphasizes the fact that "certain Chinese ethnic minorities and civil rights activists have been increasingly targeted by state repression" (van Wieringen, 2022, p.15). In that context responses from 171 experts from EU institutions and think tanks were taken in about how the EU should deal with these increased human rights violations of the Chinese state.

Most respondents were either in favor of a public denouncing of these repressions or even implement EU measures that could deter the Chinese repression (van Wieringen, 2022). This is a clear indication that there is a strong force within the EU that regards its identity as a protector of human rights as a fundamental part of the EU. However, even though the violation of human rights is mentioned frequently in the analyzed documents, there are also indications that show how the advocacy for EU democratic values and human rights are not always the main priority concerning trade policies with China. This was evident through assessing the content of the CAI between the EU and China. Besides its various trade clauses and the inclusion of sustainability, there is no clause that addresses human rights. This was also criticized by a coalition of NGOs through a joint appeal towards the EU in which they advocated for a human rights clause in the CAI. The non-inclusion of this clause in the CAI would lead to the impression that the EU wants “closer cooperation regardless of the scale and severity of human rights abuses carried out by the Chinese Communist Party” (Grieger, 2021, p.10). Therefore, it is evident that the human rights violations by the Chinese government are acknowledged and criticized by the EU, but they do not embody a dealbreaker in trade relations for the EU, as seen with the CAI trade agreement.

Discussion

This section will either confirm or reject Hypothesis 1 based on the generated findings from the previous section. The hypothesis, as well corresponding codes are based on the theory of constructivism.

Naturally, due to the organizational nature of the EU, with its different institutions and member states, it is difficult to generalize the findings into one common EU position. However, it is possible to detect common trends among the documents that implicate forces within the EU with certain positions. A differentiation between the EU and its member states exceeds the scope of this thesis, therefore the focus was limited to the Commission and EP.

A clear discovery of the main findings is that democratic values, as well as the advocacy for human rights is a relevant part of the identity of the EU. Across both the EP and the Commission, the advocacy for those values were addressed on a regular basis. Furthermore, there are clear indications that the EU’s perceives China’s political actions as authoritative and often not in line with human rights. The fact that the European Commission categorizes human rights as an “important measure of the quality of the bilateral relationship” (European Commission, 2019, p.2) in its strategic outlook regarding EU-China relations exhibits the importance of the EU’s self-identification as a protector of this matter. Additionally, the EP

repeatedly pleaded for stronger actions that would enforce a Chinese “binding commitment to international labor and environmental standards” (Jochheim, 2021, p.7).

But in contrast to that, the CAI did not include such enforcements. This would suggest that the EU’s self-identification does not influence their trade policy and therefore their IP-policy towards China. This assumption can be made since the CAI is such a comprehensive and paramount trade deal between the two parties. Nevertheless, the CAI was not ratified by the EP. The reasons for that are the authoritarian practices and human rights violations by the Chinese government (Godement, 2021). This indicates that there is a discrepancy on how important democratic values are regarded between the EP on the one side and the Commission on the other side. The findings in context with the CAI show that there is a much stronger force protecting EU values in the EP than in the Commission.

To conclude, H1 can be partially confirmed. It can be said that the EU’s self-identification as a protector of democratic values has influence on the trade and IP-policy, since the CAI is not ratified. However, there were no findings discovered that implicate that the identity as a protector of democratic values leads to a more stringent IP-policy towards China.

6.2 Hypothesis 2 – Realism

The second hypothesis is based on the theory of realism and resolves around possible relative benefits for the EU when implementing a more stringent IP-protection policy towards China.

Main findings

The analyzed documents provided information the majority of codes that were derived from the theory of realism for the purpose of evaluating Hypothesis 2.

EU IP measures

To answer the hypothesis, it needs to be determined how the measures and tools of the EU, leading to a more stringent IP regulation framework in the Chinese market look like. Given the nature of the matter, it is difficult for the EU to have influence on the IP regulations of the Chinese market, because it is the Chinese government implementing domestic laws. Consequently, the EU is constraint to engage with their Chinese counterparts and exert pressure upon them to enhance their IP regulation, which would mitigate any possible disparities faced by European companies relative to their domestic counterparts. Following the logic of realist theory, acquiring sufficient bargaining power is a necessity for the EU in this negotiating process. One major bargaining tool for the EU is anti-dumping. Data from the WTO indicate

that this trade defense instrument (TDI) was increasingly in force against China over the last 20 years. In 2019, over half of the anti-dumping measures of the EU were directed against China (Policy Department for External Relations, 2020). It is important to mention that even though there are statistics about these anti-dumping measures, there were no clear implications found that indicate how these weigh up against Chinese IPR regulations. Moreover, the documents predominantly provided information about the TDIs that are at the EU's disposal such as antisubsidy-, safeguard-, and anti-dumping measures, but specific indications on how they were used for pressuring their Chinese counterparts for more stringent IP protection regulations. A document by the Commission provided evidence concerning improvements in IP regulation on the Chinese side that lead to better conditions for European companies (European Commission, 2023a). This was indicated in a report on the preservation and implementation of IPR in thirds countries, in which China is the top priority in the analysis. It states that "China has continued to strengthen its IPR protection through different measures, following the institutional and judicial reforms carried out in the preceding years" (European Commission, 2023a, p.16). A prominent example could be the implementation of tribunals and courts that are specialized for IP matters. Furthermore, the report stated that there were continuous reviews and reforms conducted to improve the quality of IPR protection, such as "(...) copyright law, patent law, trademark law, unfair competition law and e-commerce law (...)" (European Commission, 2023a, p. 17). In addition to that, positive reports have been made by rightsholders that the Chinese enforcement authorities "(...) have become more sophisticated and knowledgeable on IP-related cases (...)" (European Commission, 2023a, p.18). This indicates that besides improvements regarding the regulatory framework, there has been progress made when it comes to enforcing the regulations. However, additionally to Chinese IP improvements stated in the Commission report, a chapter followed on the concerns and areas for improvements. Numerous concerns by stakeholders are still being raised, according to the report (European Commission, 2023a). One hotspot of IPR issues is the inconsistency and missing transparency that European stakeholders are met by the Chinese court decisions. Another sensitive matter that is relevant to the EU is the remaining problems of forced technology transfer in China. These technology transfers are enforced by either private actors influenced by the government or by the government itself (European Commission, 2023a). While there have been improvements, severe IPR issues with China still exist and need to be tackled by the EU in the future.

Furthermore, the fact there were no additional findings on improvements of IP in the other sources indicate that Chinese IP regulation is not sufficient enough, forcing the EU to take action.

Economic competition

To understand why the strengthening of IP protection in China could be beneficial for the EU, the nature of the economic competition between the two parties must be characterized. A good indicator is the speech by Commission President von der Leyen in front of the EP. She addressed the economic dependency on China and expressed the importance of developing the EU's economy towards increased resilience to China (European Commission, 2023b). In that context she pledged for a strategy of de-risking instead of economic decoupling. These words indicate that the Commission still plans to cooperate with China economically, but with the simultaneous strategy of mitigating the dependency. The main issues for the EU in its trade relations with China that were repeatedly addressed in the analyzed documents resolve around reciprocity.

Knowing that there have been made improvements in strengthening the Chinese IPR regulations, the documents were searched for any substantial implications that indicate if it leads to economic advantages for the EU. However, only few reliable findings on economic advantages for the EU were found. There were merely indications about how the implementation of a level-playing field in the Chinese economy would enable European companies to compete with Chinese state-owned enterprises (SOEs) (Policy Department for External Relations, 2020). However, this does not directly indicate how strengthened IP regulation would benefit European Companies. Still, a level-playing field implies an equal treatment for foreign and domestic firms by the Chinese authorities, which should extend to IPR matters.

Nevertheless, no further explicit implications were discovered about how stronger IP regulations lead to economic advantages.

Discussion

In this section main findings will be discussed, followed by a determination whether the findings implicate a confirmation or rejection of Hypothesis 2. It is crucial for the context of this Hypothesis that economic power is becoming increasingly essential in the geopolitical landscape. Trade has become a factor that can influence the global system of power (Meunier & Nicolaidis, 2019). Therefore, economic gains must simultaneously also be considered as increased power in the geopolitical context looking at the realist approach. The thought process

for this hypothesis is that strengthened IP regulations in China possibly lead to economic gains for the EU, meaning increased power for the EU. Naturally, this would be beneficial for the EU. The main findings illustrate that the EU has certain power tools at its disposal. Mainly, these are TDIs such as anti-dumping measures. However, as stated in the previous section, there were no clear evidence discovered that portray what value the TDIs have in negotiations with China about IP regulations. Nevertheless, sources showed that Chinese IPR regulations and norms were further developed in the last couple of years. Besides information on the implementation of new legislation and IP courts, there have been implication in the Commission's report on IP, that stakeholders reported positive developments, especially regarding copyrights issues (European Commission, 2023a). This demonstrates that genuine progress has been made, not just regarding the implementation of new legislation, but also concerning the enforcement of this legislation. These findings don't cover the entire issue. While Hypothesis 2 is merely about the strengthening of IP protection in China and the possible positive effects on the EU's economy, it is still important to mention that even though progress has been made, the IPR issues with China remain prevalent.

As stated in the method section, Hypothesis 2 can only be confirmed if substantial evidence on the EU gaining economic advantages of the strengthened IP protection in China is discovered. Considering the meager findings using the code "economic advantages for the EU", which summarizes possible advantages the EU would gain from the strengthened IP regulations, the hypothesis cannot be confirmed.

It must be noted that there is limitation in the research design regarding this hypothesis. A comprehensive analysis of this hypothesis should be complemented by a quantitative analysis, that specifically determines the effects of stronger IP regulations in China on the economic power of the EU. It would be required to look at the EU's development of specific trade indicators before and after chosen changes of IPR regulations in China. Possible figures could be the commonly used *trade dependence index* which measures the international trade ratio to the GDP. It would be necessary to look at the *import penetration index* and the *export propensity index*, which assess the vulnerability of an economy. Lastly, the indicator *marginal propensity to import* shows how an economy reacts to certain external policy shocks (Mikic & Gilbert, 2009). Conducting a study with the above-described framework could provide a more substantial, empirical and definite confirmation or rejection of this hypothesis. Ultimately, the hypothesis can neither be confirmed or rejected.

6.3 Hypothesis 3 (Liberalism)

The third hypothesis is based on the theory of liberalism. It is implemented to determine if the EU-China trade-relation will continue to be liberal, even if the CAI will not be implemented.

Main findings

The analyzed documents provided comprehensive findings about indicators regarding the continuation of a liberal trade relationship between the EU and China.

Desire for economic prosperity

While analyzing the sources, indications were searched that imply the continuation of a general open trade relationship between the two economic parties. The first indicator is the promotion of free trade by the Commission and the EP. The Commission declared their ambitions to have increased trade with China in its strategic outlook which was published in 2019. This outlook was conducted before the CAI; therefore, the content must be carefully considered because the hypothesis comprises the trade relationship without the implementation of the CAI. However, there can be conclusions drawn from the document about the Commission's general position on trade with China. Sources show that the EU seeks synergies on trade-related areas with Asian countries, including China. This is formalized through the "EU's Strategy on Connecting Europe and Asia" (European Commission, 2019, p.5). This strategy clearly implicates the EU's desire to continue a course of interconnected trade relations between Europe and China. While it emphasizes strengthened cooperation, it is also repeatedly indicated that the economic relation must be based on reciprocity. Moreover, the increased implementation of sustainable measures from both sides is also a central concern that is expressed recurrently (European Commission, 2019). Additionally, the Commission's President also emphasized the importance of China as a trading partner for the EU with no desire to break off the economic relations (European Commission, 2023b). This was articulated during her speech in front the EP in April 2023. Thus, free trade with China remains a priority for the Commission. Further implications about the promotion of free trade with China were also discovered in documents of the EP. The INTA study stated that there is no alternative to a "(...) fruitful and balanced co-existence (...)" regarding the economic relation between the two superpowers (Policy Department for External Relations, 2020, p.11). It is further mentioned that a bilateral agreement on investment is essential for ensuring a solid and fair relationship (Policy Department for External Relations, 2020). The growing nature of China's economy and its population size has led European companies to move production into the country, according to the INTA study (Policy

Department for External Relations, 2020). This portrays how the two economies are becoming increasingly intertwined, which suggests that an abatement of the trade relations is unlikely. Another noteworthy circumstance that provides support for the continuation of liberal trade relations is the Belt and Road Initiative (BRI). The initiative is adopted by the Chinese government. One of its goals is to increase trade with participating countries and open new markets (Hillger, n.d.). That includes the EU's markets, which leads to a probable increase of EU-China trade (Department for External Relations, 2020). Moreover, the BRI is a long-term project with trade being one of the central components. Thus, China aspires to conclude free-trade-agreements (FTAs) with countries that participate in the BRI (Department for External Relations, 2020). While the probability for the CAI being implemented remains low, it could be assumed that there will be new attempts from the Chinese side proposing another FTA, because of the BRI (Hamilton, 2021). Furthermore, it is mentioned that there is also a growing interest of EU member states in the BRI, due to their awareness of the importance of the infrastructure the BRI provides (Department for External Relations, 2020). Another indication is the INTA study's predictions on the impact the BRI has on EU trade. It states that the reduction of transportation costs leads to severe profits for the EU and Asia compared to the rest of the world (Department for External Relations, 2020). Both the EU and China are aware of the possible advantages the BRI could provide, which indicates a continuation of a liberal trade relation.

Looking at the code "EU-China trade dialogue", it can be said that different streams of dialogues regarding trade and international commitments beside the CAI are existent.

The Commission acknowledged that China makes steps towards the EU on IPR through joining the The Hague agreement in 2022. (European Commission, 2023a). This was after the CAI, which indicates the further economic rapprochement between the EU and China, despite the non-ratification of the CAI. There is also the ongoing "EU-China Dialogue" that regards IP matters at a "(...) strategic level and more specific and technical discussions through the regular EU-China IP Working Group meetings (...)" (European Commission, 2023a, p.24). Another central dialogue stream is the IP Key China program, which as the name suggests, is also regarding cooperation on IPR matters (European Commission, 2023a). While these lines of dialogue are rather technical, they still illustrate how the two superpowers continue to cooperate on trade issues without the CAI. The EP acknowledges the importance of China and the Asian hemisphere as well. A resolution was adopted regarding connectivity and the EU-Asia relation

on 21 January 2021 encouraging a cooperation with Asian countries under the consideration of EU principles (Jochheim, 2021).

Cooperation

This subcategory assesses the state of market access for EU-companies in China, as well as European FDI in China.

Establishing reciprocity is one of the main objectives the EU follows with China regarding trade. A crucial part of establishing reciprocity is access to the Chinese market for European companies. While analyzing the documents, the only time improving market access for European companies were implicated, was in the context of the CAI. This suggests negotiations about market access was barely happening outside the CAI. But it is important to mention that the findings revealed how essential Chinese market access is to the EU. EU respondents of the EPRS's expert survey categorized market access as a top priority in the EU-China trade relations (van Wieringen, 2022). This lack of market access is a problem in the trade relations between the EU and China because it could be a decreasing factor regarding the continuation of free trade.

Regarding European FDIs, the INTA study states that there are increasing European investments in the Chinese market due to its size and potential. The investments increasingly expand across sectors and companies, which is a new development. Preceding investments have been mostly concentrating on the manufacturing sector due to the cheap labourforce (Department for External Relations, 2020). But the ever-improving infrastructure in China led to European companies being attracted to additional sectors. Moreover, EU's FDI contribution over the last decade into China has been consistent which indicates that there is a persistent interest in the market (Department for External Relations, 2020). The documents demonstrate how the European industry is increasingly invested in the Chinese market and vice versa.

Discussion

The analysis of the documents provides a comprehensive overview for the hypothesis. Noteworthy was the Commission's desire for a continuation of free trade with China. This is mainly due to the awareness of the status that China has in the global economy. Not just China, but the Asian market in general provide growth possibilities for the EU's economy. Furthermore, the "EU's Strategy on Connecting Europe and Asia" shows that the EU is planning to cooperate with Asia and specifically China in the long term (European Commission, 2019).

Due to the power-filled function of the office, the content of the Commission's President speech must be considered as highly relevant. Therefore, the indication that there won't be a distinct cut-off with China on trade matters, should be taken seriously. According to her, decoupling from China is not an option. Instead, "de-risking" in sensitive areas is the targeted strategy (European Commission, 2023b). The fact that von der Leyen, despite economic dependencies in sensitive areas such as energy or health, still emphasizes the necessity of cooperation with China indicates that the EU does not plan to take a protectionist course towards China. Furthermore, the BRI also represents huge possible economic upsides for the EU. Considering the corresponding improvements of infrastructure and therefore less transportation costs, yield benefits for the participating countries. The independent development of the BRI alongside the CAI further supports the continued support of a liberal trade relationship.

Moreover, the European industry is increasingly embedded and active in the Chinese market. European FDIs are diversifying across different sectors and are not just concentrating on the manufacturing sector anymore. The considerable size and sustained growth of the Chinese economy makes it very unlikely that the EU will not engage in this market. The main findings also revealed the existence of numerous trade-dialogue-channels between the EU and China, that are independent of the CAI. Consequently, it can be assumed that the non-ratification of the CAI was a setback, but not a breakdown in the trade relations. However, a remaining problem is the access to the Chinese market for European companies and investors. This issue was tackled during the CAI negotiations, with China committing to make substantial improvements in that regard (Grieger, 2021). Thus, market access remains an obstacle in the trade relationship.

Looking at the main findings, despite the CAI not being ratified, and therefore the non-implication of the agreement, trade relations between the EU and China will continue to be liberal. The overall evidence indicates that there is a strong force in favor of an increasingly free trade relationship with China within the EU. Therefore, the third hypothesis can be confirmed.

However, the partly confirmed Hypothesis 1 looking at the influence of democratic values on its trade policy leads to a mitigation of the confirmation of Hypothesis 3. If China's authoritarian actions become more severe, or if its geopolitical aggressiveness increases (looking at Taiwan for instance) the EU could at some point not account for a liberal trade relationship while upholding its values.

7 Conclusion

This thesis was set out to answer the research question *the European Union's Intellectual Property Policy towards China – what is the course of the EU and what are its motives?* Three hypotheses were developed to provide a foundation for the general research question. To analyze the topic from different perspectives, the three hypotheses were based on three different theories of International Relations: Constructivism, Realism, and Liberalism. The corresponding findings and discussions shed light on the role of the EU's values, economic benefits, and the continuation of liberal trade practices.

The first hypothesis was based on the constructivist framework, and explored the extent of the influence the EU's identity has on its trade and IP policy towards China. The findings revealed that the EU's commitment to its values and human rights is a fundamental part of its identity. However, it was also revealed by examining the CAI, that the EP's commitment to EU values is stronger than the Commission's. The Commission's agreement on the CAI without including a human rights clause was altered by the non-ratification of the EP. This illustrates the complexity and divergent forces within the EU, and the reason for the difficulty of attributing one single motive to the EU.

The second hypothesis was based on realism and examined the possible gains for the EU from a stronger IP protection policy in China. The analysis revealed that even though the EU is using various tools to enforce stronger IPR regulations in China, there were no substantial evidence that suggest resulting economic benefits for the EU. It is still noteworthy that improvements in Chinese IP regulation have been made. But, due to the lack of evidence the hypothesis remains inconclusive. To get a definite answer to the hypothesis, a quantitative study would be necessary. That way the precise economic effects of a more stringent IP regulation in China could be explored. As Meunier & Nicolaidis (2019) point out, EU foreign trade has become an increased politicized matter. Looking through the lens of realism, possible economic gains would also be significant in the geopolitical power relation between the two parties.

Hypothesis 3 was based on the liberalist framework and implicated the continuity of a liberal trade relationship between the EU and China even in the absence of the implementation of the CAI. The findings provided compelling evidence that the EU desires to maintain a trade relationship with China that is characterized by interconnectedness and free trade. Also, its

industry is deeply invested in China's economy, which makes a protectionist course by the EU even more unlikely. Moreover, the BRI is a significant project that facilitates economic ties between the EU and China even further, with both parties showing interest in maintaining cooperation. Only issues such as market access still pose a problem for the EU, which could compromise the trade relationship with China and thus pose a barrier the two parties must overcome.

The findings illustrate the complexity of the matter, especially regarding the research question. The motives of the EU's trade and IP policy with China are characterized by two main influences: practical economic interests and its identity as a protector of democratic values. These two factors determine the corresponding course the EU takes. Currently, the economic interests of the EU are still the driving force in its trade and IP policy with China. However, the increasing awareness of human rights violations of the Chinese authorities and the corresponding measures, such as the non-implication of the CAI show the fragility of the EU-China relationship. On top of that, the success of the EU institutions' policy implementation can be constrained by the diversity of different political opinions of its multiple member states. To conclude, the EU's IP policy towards China reflects a pragmatic approach that navigates between its economic interests and its identity as a protector of democratic values.

The findings of this thesis offer valuable insights on the current IP discourse around China. While the focus has been mostly on US-China IP issues, this thesis tried to shed light on the specifics of the IP issues between the EU and China, insightful findings about the composition of the EU's identity and how it affects EU trade policy. The confirmation of both Hypothesis 1 and Hypothesis 3 further underlines the complexity of this thesis' matter making it impossible to provide an answer based on just one International Relations theory.

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Data appendix

Statement of Authorship

I hereby declare that I am the sole author of this bachelor thesis and that I have not used any sources other than those listed in the bibliography and identified as references. I further declare that I have not submitted this thesis at any other institution in order to obtain a degree.



Münster, 19.08.2023

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