



The CAI as seen from Spain: a positive agreement with uncertain implementation

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Abstract

Spanish elite's perceptions of the European Union-China Comprehensive Agreement on Investment (CAI) are positive given its economic and normative prospects and its compatibility with Spain's policy objectives. Spanish Ministry officials and business representatives welcome the potential progress on market access, level-playing field, and sustainable development, as it would offer economic opportunities in the Chinese market and bilateral investment, without precluding increased monitoring of Chinese economic activities. The agreement is in line with their willingness to increase bilateral ties under a normative framework that defends Spanish interests and values. Spanish elites consider that it is compliant with Spain's and the European Union's strategies and characterization of China as a partner, competitor, rival, which acknowledges that China is a key economic and multilateral partner, but also promotes a unified European China strategy, European strategic autonomy, and initiatives that tackle China's challenges related with human rights, or investments in strategic sectors. Hence, Spanish political parties supported the resolution of the European Parliament freezing an eventual ratification of the CAI whilst Chinese sanctions against European stakeholders are in place. Spanish elites also value that the agreement does not prevent greater cooperation with the United States, a key ally and more significant partner than China. Some political and private groups have expressed their opposition to the agreement, but their impact is likely to be limited. Finally, the practical implications—and reception—of the agreement will depend of its implementation.

This text analyses the reactions generated by the signing of the EU-China Comprehensive Agreement on Investment (CAI) of both public officials and Spanish

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businesses from a political, economic and geostrategic perspective. Before the freezing by the European Parliament of an eventual ratification of the CAI on 20 May 2021, there was a strong consensus among the main Spanish stakeholders in favour of its ratification. As the subject has not entered the public agenda, there will be no analysis here of the position of the general population on the topic.

In addition to news reports, the opinions of the main Spanish actors concerned with the CAI were gathered through semi-structured interviews with business representatives and civil servants from the Ministries of Foreign Affairs and Economics and Digital Transformation based in Spain and in China.

In examining the economic implications of the CAI, the first thing that caught the attention of Spanish actors was that, despite its name, they had not reached an agreement on investment protection. This was one factor which explained the Spanish government's reticence in supporting the agreement under the conditions which it was signed. In any case, both public officials and business leaders felt that the advances made on market access, the level-playing field, and sustainable development outweighed their concerns about insufficiencies in other areas, such as investment protection, and the eventual implementation of the agreement.

Regarding access to the Chinese market, Spanish firms welcomed that the CAI consolidates through an international agreement the level of openness granted by Chinese authorities to foreign companies after two decades of membership in the WTO. This puts the EU firms in the same position than their American counterparts after phase I of the US-China trade agreement. Moreover, the CAI will theoretically open up sectors of the Chinese economy that are of particular interest to Spanish businesses, such as insurance, health, electric vehicles and services for the air travel industry, environment, and business.

Spanish stakeholders also have a positive outlook on the CAI from a defensive point of view, as the agreement does not undermine the current instruments for limiting undesirable investments that could flow to Spain from China. Chinese is still seen as an opportunity capital in the Spanish market, as long as it does not put Chinese investors in a dominant position in a given sector or compromise national security, health, or public order. Generally speaking, Spanish firms hold a high level of financial leverage, and hence there are many opportunities for foreign investors, including from China, to enter into businesses that do not have much exposure to the American market.

On the level playing field, there is clear indication that the gap here is bigger than on market access between Spain had hoped to see and what the CAI is offering. There have still been important steps taken on improving forced technology transfers, obligations for better transparency around the process for licensing and on subsidies for services, as well as the establishment of an institutional mechanism at the vice-premier level to facilitate the implementation of these agreements. This new mechanism of political supervision over the treatment of investments comes from a higher level than the current China-Spain bilateral investment treaty from 2008 and hopes to ease some of the difficulties that Spanish businesses have due to the lack of a fair, impartial, and independent judiciary system in China.

While Spanish stakeholders are not expecting a dramatic and immediate change, the pillar of sustainability is also seen to strongly benefit Spanish firms for two

reasons. On one side, because foreign businesses must comply with much higher labor and environmental standards than Chinese businesses, as the application of Chinese legislation regarding these standards is more relaxed for local foreign firms than for foreign investors. On the other hand, Spanish firms could offer their expertise in environmental services to the Chinese market to help ensure that their firms are able to meet the higher sustainability standards. Apart from the potential economic advantages, this pillar has a normative dimension praised by Spanish officials in that it could promote Chinese ratification of the Convention of the International Labour Organization concerning the Abolition of Forced Labour.

While the CAI is a predominantly economic agreement, it also has evident political and strategic implications. This is where much of the agreement's criticism coming from other member states and the US has focused on. It could be argued that Spanish officials and business representatives tend to question those severe complains as exaggerations and even point to several advantages to be taken from this angle. Nevertheless, there are two critiques frequently repeated among Spanish stakeholders. The first deals with the manner in which various European players worked together during the final phase of negotiations. It would have been preferable, without any hard deadline and after more than seven years and 35 rounds of negotiations, that the Commission would have given member states more than 48 h to scrutinise the agreement. Germany played a central role in this due to its interest in closing the deal before the end of [its presidency of the European Council \(Pirozzi et al. 2020\)](#). German diplomats also facilitated the presence of French President Macron at the meeting prior to the signing of the CAI, a move seen as an affront to the diplomats of Spain and other member states that should not be repeated. The second criticism is the political use that Chinese authorities have made of the agreement to, among other things, minimize international condemnation for human rights violations in the country. Criticism has been especially harsh regarding the 6 January crackdown on the democratic opposition in Hong Kong when 53 activists were detained, some of the most prominent figures of the pro-democracy movement among them. In any case, any reservations about these occurrences did not lead Spain's main public officials and business leaders to question the agreement. Moreover, there is an explicit rejection to the idea that the CAI is a strategic error made by a myopic EU, hijacked, above all, by German, but also French, economic interests, which will make greater transatlantic cooperation impossible, and internationally whitewash a regime that commits massive human rights violations.

Spanish diplomacy considers the CAI to be a reflection of both Spain's and the EU's strategy towards China, as both identify Beijing as a partner, [a competitor, and a rival](#), but not as an enemy (Elcano Royal Institute [n.d.](#)). As detailed in the draft of the [Strategy of External Action \(2021–2024\)](#) issued by the Spanish Ministry of Foreign Affairs and by [President Sánchez](#), Spain, like many other EU member states, is fundamentally attracted by the size and dynamism of China's economy and by its key role in several major global issues such as the fight against pandemics, climate change and the protection of biodiversity (Ministry of Foreign Affairs, European Union and Cooperation of Spain [2021](#); Presidency of the Government of Spain [2021](#)). Spanish authorities are therefore willing to further increase bilateral ties as far as this is done under a normative framework that safeguards the values and

interests of Spain. They consider the CAI to fit with this position as it is not a half-way compromise under which the EU and China will commit to almost equivalent regulatory adjustments, but an agreement under which China has promised to make a large majority of the changes. There is no indication that with this agreement the EU renounces any initiatives supported by Spain such as those aimed at improving the human rights situation in China or to apply defensive measures against China's economic practices that it considers abusive. On the contrary, initiatives have been taken in recent months that point towards a tougher and more strategic position on China, such as the adoption of a global human rights sanctions regime with the ability to punish those responsible for human rights violations worldwide, the entry into operation of the EU [framework for screening of foreign direct investments](#) that may affect European security and public order, the publication of guidelines to guarantee [the security of 5G networks](#), and the preparation of a white paper on foreign subsidies (Arteaga 2020; Esteban and Otero Iglesias 2019). Hence, Spanish political parties supported the resolution of the European Parliament freezing an eventual ratification of the CAI whilst Chinese sanctions against European stakeholders are in place. Additionally, the CAI is seen as an initiative that reflects and promotes Spain's political objectives within the EU, such as the formation of a more cohesive EU foreign policy and the ambition for [European strategic autonomy](#) (Borrell 2020). In that regard, a joint European agreement with China is better than 27 bilateral investment deals to avoid any Chinese efforts to 'divide and conquer' member states, and the EU has decided not to wait for a new US administration to sign it.

At the same time, Spanish authorities do not see the CAI as an obstacle to greater transatlantic cooperation. This is highly relevant because the Spanish government is very eager to cooperate with the Biden administration as the USA is not only a key ally for the defence of Spain but also a more significant economic partner than China. President Sánchez expressed this sentiment in a recent plenary session with Spanish ambassadors where he classified the USA as a "[friend](#)" and "[principle and strategic ally](#)," while stating that China is a country with "a distinct political model," "limitations to the expression of human rights," and which "represents a challenge that does not allow for simplistic responses." (Presidency of the Government of Spain 2021). From this perspective, Spanish diplomacy finds it beneficial that the CAI does not include elements that are harmful to US national interests or that could prevent transatlantic cooperation on a multitude of issues of common interest.

Despite a general level of support in Spain, there are still some that oppose the CAI. This opposition is comprised of a diverse group of voices, each with different motives. Opposition to the CAI has been expressed by the far-right party Vox,¹ pro-human rights associations, and other parties that support the independence of some regions of Spain. Vox is critical of any agreement that may increase relations with a "communist" regime; NGOs would not back the signing of an agreement without obtaining significant improvements to the human rights situation in China; and the independence parties would not offer their support without seeing a reversal of the repressive dynamics prevailing in Hong Kong and Xinjiang. At the moment, the

¹ Vox is a far right-wing populist party with connection to the American "alt-right" and holds the third largest share of seats in the Spanish parliament.

Spanish public has very little knowledge or interest in the CAI as the media has dedicated scarce attention to the topic. It remains to be seen whether this will change with the ratification of the agreement or if the voices in opposition are able to mobilize public opinion against it. That seems fairly unlikely as protests in Spain against Chinese authorities or against the government policies of Spain and the EU towards China have had minimal impact historically.

In conclusion, there is still widespread uncertainty among Spanish stakeholders about the actual practical implications of the CAI, aggravated after the European Parliament froze an eventual ratification of the agreement. Even if the agreement is ratified, Spanish elites believe that there is reason to be cautious as China has previously disappointed when it comes to implementing its international commitments. Nevertheless, Spanish business circles and the main political parties assess the CAI as a positive step in the right direction which offers a normative framework that better defends the interests and values of Spain and the EU in its relations with China without demanding geostrategic or normative concessions.

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