



Yale Law School

Paul Tsai China Center

耶鲁大学法学院蔡中曾中国中心

A Roadmap for U.S.-Europe Cooperation on China

Paul Gewirtz, Ryan Hass, Susan Thornton, Robert Williams, Craig Allen, David Dollar

February 2021



A Roadmap for U.S.-Europe Cooperation on China

OVERVIEW

Over the past year, we have worked together with a diverse group of U.S. experts on China to explore how the United States and Europe can most effectively combine efforts to meet the many challenges posed by China's rise. Working with allies and partners in Europe to increase our collective leverage with China has been one of President Biden's major themes. This paper provides concrete and practical recommendations for achieving this crucial goal.

Developing effective trans-Atlantic collaboration on China requires a realistic understanding of how European leaders think about and approach China. Toward that end, a primary focus of our work has been intensive interactions with a broad cross-section of current European officials and experts who work on China policy. European officials are generally enthusiastic about Joe Biden's election and the prospect of the U.S. again working in concert with allies and partners on common challenges and opportunities. They share President Biden's view that leverage with China will be much enhanced if like-minded countries work collaboratively. Nonetheless, they have also been very candid in expressing their views about likely convergences and divergences between the U.S. and Europe concerning policies toward China. The recommendations in this paper take account of these important realities.

Two preliminary matters should be highlighted. (Our more specific recommendations follow.) First, as European attitudes toward China have clearly been significantly toughening, the EU and European governments have repeatedly articulated a three-part approach to China that does not exactly match the approach the U.S. currently articulates. Europe's three-part approach was stated once again in the [recent EU paper titled "A new EU-U.S. agenda for global change,"](#) issued on December 2 after Biden was elected:

"For the EU, China is a *negotiating partner for cooperation*, an *economic competitor*, and a *systemic rival* [emphasis added]. The approach set out in the EU-China Strategic Outlook provides a solid roadmap to defend our common interests and values. As open democratic societies and market economies, the EU and the U.S. agree on the strategic challenge presented by China's growing international assertiveness, even if we do not always agree on the best way to address this. The new EU-U.S. Dialogue on China will provide a key mechanism for advancing our interests and managing our differences."

A [recent *Washington Post* op-ed](#) written jointly by the German Foreign Minister and French Foreign Minister also emphasized this. [France's President Emmanuel Macron](#) repeated this exact language at a press conference as recently as February 5, 2021.

It is clear to us that U.S. diplomacy with Europe on trans-Atlantic cooperation on China must [take account of](#) this basic European approach, which reflects European leaders' considered assessment of their countries' own interests and requires, in the explicit words of

the December 2 EU paper, “managing our differences” with the United States on China. The Trump years have also left a significant residue of distrust and uncertainty about the United States in Europe. Developing strong trans-Atlantic collaboration on China must be part of a broader and skillful diplomatic effort to build back more trusting relationships with European partners, which will take time.

A second preliminary matter is a very recent development: At the end of December, the EU and China announced [a deal on a long-negotiated EU-China investment agreement \(CAI\)](#). This development has dominated public discussions about trans-Atlantic cooperation on China since late December. The incoming Biden Administration [signaled its preference](#) that the EU delay finalizing the deal so that the new Administration and the EU could consult on common concerns about China’s economic practices. But the EU went ahead with the deal. This produced some early strains between Europe’s leaders and the incoming Biden Administration, exacerbated by the fact that Biden’s transition team was barred from direct contacts with foreign governments, so no quiet diplomacy was possible – and the deal has also stirred up controversy in Europe itself, with some pointing to U.S. objections, and the EU Parliament’s ratification process is still ahead. At a recent private meeting, a senior EU official firmly rebutted criticism from some in the U.S. He stated that:

- the EU had been working toward this deal for seven years and with 35 rounds of negotiations;
- the deadline of reaching a deal by the end of 2020 was long-established, and this deadline had produced substantial Chinese concessions that would significantly benefit Europe at a time of economic distress;
- the commitments in the agreement on subsidies, which is a priority area for both the EU and U.S., and on market access are “most favored nation” (MFN) commitments, so U.S. companies will also benefit from these commitments;
- the U.S. had unilaterally negotiated a Phase One trade deal with China, U.S. allies in Asia had all joined the Regional Comprehensive Economic Partnership (RCEP) free trade agreement and made other deals with China, and the U.S. should not expect Europe to lose ground with economic competitors without similarly advancing its economic interests with a China deal on the table;
- the EU hadn’t given up economic leverage instruments such as investment screening and human rights sanctions, and this is the first deal of its kind to open up new Chinese labor commitments;
- the EU would continue strongly criticizing China’s human rights abuses, but should not turn down an economic agreement that addresses various Chinese economic abuses and brings important benefits to Europeans.

At the same time, this senior EU official emphasized that there are ripe areas for trans-Atlantic cooperation on China and many other matters, and it was important to show some quick wins with the new Biden Administration.

This recent development highlights some of the EU-U.S. divergences and likely complexities in developing collaboration on China. It also suggests that in their initial conversations with European leaders, President Biden and our top officials should avoid making the EU-China deal an obstacle to the enormous possibilities for the U.S.-Europe collaboration on China that we both seek. Even in the economic arena, the EU-China deal (mostly about European companies’ market access for investing in China) leaves

wide open U.S.-European cooperation on a long list of shared economic concerns about China. Furthermore, the EU-China deal does not address any of the other extremely promising areas for U.S.-Europe cooperation to increase leverage on China, including technology, human rights, climate, pandemic plans, and reform of international institutions. Yes, the EU-China investment deal produced strains during the U.S. presidential transition period, but there is so much promise in improved trans-Atlantic relations that the priority with the Europeans now that Biden has taken office should be these broad new possibilities for trans-Atlantic collaboration. Early discussion with Europe's leaders should seek to establish a spirit of mutual respect and optimism, and launch a productive process for follow-on successes.

What follows is a prioritized list of specific issues where we believe the U.S. and Europe should focus their efforts in the first months of the new administration because our discussions with European officials indicated these are specific areas where agreement on a shared approach seems most promising. The framework set by trans-Atlantic leaders in the post-Trump era should be that we are long-standing partners who sit on the same side of the table with shared values and see opportunities for mutually beneficial new leverage with China. But durable new habits of trans-Atlantic coordination on China should proceed with modest public expectations and quiet diplomacy on specific issues likely to produce concrete agreement. Conversely, such efforts could be undermined if framed as creating a bloc or coalition in opposition to China, since such framing has [almost zero purchase among European leaders](#).

The list below is, therefore, purposely not exhaustive, but reflects those areas of urgent priority that have the most U.S.-Europe common ground and where joint approaches or actions would increase prospects of eliciting improved Chinese behavior or deterring bad behavior. We conclude with some recommendations about the diplomatic approach and mechanisms that might best deliver results.

PRIORITY ISSUES AND SPECIFIC GOALS

1. Trade and Investment

- a. *Subsidies*: China's excessive and often secret subsidies, like its continued dumping practices, hurt workers around the world, not only companies. The U.S., Europe, and Japan signed [an agreement](#) on the need to address subsidy issues in international trade and should now codify and develop mechanisms for jointly enforcing these principles with respect to China. Europe made gains with China in CAI negotiations on subsidy transparency requirements for services. The U.S. and Europe, together with Japan and other countries, should push for further progress – and should jointly monitor and enforce commitments, in particular by establishing and supporting a common dispute settlement mechanism.
- b. *Intellectual Property*: Pursue joint monitoring and enforceability of recent Chinese commitments in international trade and investment agreements related to intellectual property protection (i.e., the [Phase One Trade Agreement](#) and [CAI provisions](#) related to intellectual property protection and forced technology transfer).
- c. *Inbound Investment*: Establish an investment screening coordination mechanism between the Committee on Foreign Investment in the United States (CFIUS) and European member states' investment screening bodies that includes intelligence sharing; this could be via a monthly secure video conference.

- d. *Market Access*: Set up a trans-Atlantic business monitoring group to spotlight and nimbly respond to emerging trade and investment barriers and for testing of China’s “market opening” promises. This could include UK businesses.
- e. *Regulatory Collaboration*: Develop a joint regulatory framework for e-commerce and government procurement that does not disadvantage U.S. and European companies vis-à-vis China.
- f. *Countering Economic Coercion*: Develop joint standards to respond to non-market economic coercion or retaliation by China for perceived political transgressions. Explore “political retaliation” risk insurance against “China ire.” This might help to marketize the increased risk of doing business with China and drive needed diversification through market forces. U.S. and EU businesses could be encouraged by governments to hold such insurance.

2. Technology Standards and Regulation

- a. Jointly launch a new [Trans-Atlantic Technology Council \(TTC\)](#) with the goals of ensuring critical supply chain security, devising human-centered standards for emerging technologies, harmonizing regulatory approaches, promoting fair competition, and producing digital public goods to compete with China’s initiatives and influence in the developing world. In doing so, however, the U.S. should remain sensitive to potential interagency conflicts and bureaucratic competencies on all sides, aiming to streamline discussions wherever feasible and maintaining realistic expectations.
- b. Adopt joint policies to implement 5G and 6G network and supply chain security principles such as the [EU 5G Security Toolbox](#), including agreement on technical solutions for secure interoperability such as network segmentation, encryption, and software-based threat detection systems.
- c. Spur a multi-stakeholder initiative aimed at ensuring the transparency and independence of [international standard-setting bodies](#) for various technologies, monitoring and publicizing efforts by governments and their proxies to manipulate technical standard-setting processes for ends that unfairly advantage “national champion” firms or contravene international human rights norms. At the same time, recognize the value of harmonized global standards in retaining leverage with China.
- d. Enforce norms against state-sponsored, cyber-enabled theft of commercial secrets through intelligence sharing (e.g., cyber forensic analysis), joint attribution, and, where appropriate, targeted multilateral sanctions against entities that engage in and benefit from campaigns of cybertheft.
- e. Coordinate [export controls](#) for strategic technologies such as advanced semiconductors and cyber-surveillance tools, ensuring that controls are narrowly targeted, clearly and objectively delineated, multilaterally enforced, and crafted to avoid counterproductively incentivizing Chinese indigenous substitutes or undercutting the trans-Atlantic innovation base. These interactions should be flexible and dynamic, including the most relevant national governments for specific technologies, instead of a heavily bureaucratized process.
- f. Reconstitute the [EU-U.S. Privacy Shield](#), in consultation with the UK, to enable commercially beneficial trans-Atlantic data flows while protecting data security and eventually laying the foundation for a broader, privacy-protective digital trade arrangement.

3. **Human Rights** U.S.-Europe collaboration can leverage shared values of human rights and rule of law to increase pressure on Beijing for concrete progress on issues of significantly increased concern in both Europe and the U.S., especially regarding Xinjiang and Hong Kong.
 - a. Impose increased reputational costs by coordinating naming-and-shaming criticisms both country-by-country and in international fora.
 - b. Impose coordinated sanctions, supply chain restrictions, and/or export controls on relevant officials and businesses (facilitated by the EU's new "Magnitsky law") with coordinated criteria, targets, and announcements.
 - c. Xinjiang: Prioritize pressuring Beijing to close Xinjiang camps and end forced labor policies and other major human rights abuses in Xinjiang.
 - d. Hong Kong: Coordinate support for Hong Kong citizens with multiple exit options for Hong Kong residents wishing to relocate.

The effectiveness of these options in actually changing China's behavior is uncertain, but a U.S.-Europe united front will increase the leverage vis-à-vis China and will also reinforce all countries' national values and a shared trans-Atlantic identity as liberal democracies.

4. **Climate Change** The EU is a leader on these issues and the UK will host COP 26 in November 2021 following the U.S. climate summit in April 2021. The EU and U.S. agree that China will be key to progress.
 - a. We should agree on targets to try to get China to announce as interim benchmarks at COP 26 and bring joint pressure. Some of these could be: earlier "peak emissions" targets; coal power plant shutdowns/upgrades; limiting coal-based energy use as part of the Belt and Road Initiative (BRI); and determining how emissions-intensive infrastructure "exports" should be counted toward Paris Agreement commitments.
 - b. Work together on a "green technology alliance" that could serve to advantage U.S. and European companies in the competition with China on "green technology." Given the private sector lead in our economies, we could explore pooling government-funded basic research in certain areas or how to effectively and legally deploy subsidies and export credits to incentivize priority innovation and diffusion to the developing world.
 - c. Looking toward the emphasis in the U.S., Europe, and China on "green technology," devise trans-Atlantic principles for treatment of green technology products from China, in light of subsidies, technology licensing, positive externalities, and disparate levels of regulation (e.g., carbon border adjustment tax).
 - d. Work together to elevate the "green financing" agenda of international financial institutions and other lenders. Jointly leverage funding for the Green Climate Fund.
5. **COVID-19 Pandemic and Global Health** This will be the most urgent priority for Europe and the United States in the coming six months; a collaborative approach regarding China is important.
 - a. Reach agreement on a plan for major powers, including China, to distribute vaccines, possibly through the COVAX facility.
 - b. Set common goals for reform of the World Health Organization (WHO) and jointly press for their implementation.

- c. Set goals for diversification and resiliency of medical supply chains for infectious diseases and other global medical emergencies.
 - d. Rebuild the international disease surveillance architecture to include China.
6. **International System** With President Biden’s election there is now trans-Atlantic agreement that international and multilateral institutions need to be reformed, updated, and strengthened to better protect and advanced common interests. Biden is already returning the United States to international institutions, enabling the U.S. and its partners to more powerfully shape their direction, rather than allowing China an outsized role. As priorities we recommend:
- a. The U.S. and Europe should work to develop and push common reform proposals for various international institutions such as the World Trade Organization (WTO) and the WHO, recognizing the particular difficulties of WTO reform.
 - b. Convene a Summit on Democracy (note: European Commission President Ursula von der Leyen recently suggested a [very broad approach](#) to attendance). European interlocutors have indicated that anti-corruption/anti-kleptocracy would be a particularly attractive and productive agenda item.
 - c. Iran: Get back to joint negotiations with Iran on a nuclear agreement and work with earlier partners to keep China in and to join a common approach. Appreciate that European participants in the P5+1 process blame both the U.S. and Iran for Iran’s violations of the Joint Comprehensive Plan of Action (JCPOA) after the U.S.’s total withdrawal.
 - d. Indo-Pacific security: Encourage European allies to step up their collaborative involvement in Indo-Pacific security issues, such as freedom-of-navigation operations (also in the Arctic), and provide maritime assistance and training to Asian countries to help build capacity to deter Chinese military aggression and coercion.
 - e. Development: Jointly increase pressure on China to become a member of the [Paris Club](#), and collaborate on pushing for BRI transparency and providing advice to recipient countries on how they can better protect their interests.

PROCESS STEPS FOR ACHIEVING RESULTS

Our exchanges with European officials and experts have led us to conclude that post-Trump trans-Atlantic diplomatic outreach on China holds the greatest potential to advance concrete objectives if it is guided by a few principles: (1) acknowledgement of the damage wrought by the Trump Administration’s efforts to pressure Europe on China; (2) desire to look forward, not back; (3) recognition that it will take time and some American humility to rebuild European trust and capacity for coordination on China; and (4) awareness that American leadership will be derived from its unique ability to convene, listen, and mobilize efforts around common problems.

The Biden Administration’s diplomacy with Europe on China cooperation will of course proceed both with individual European countries and with the EU. European officials will be looking for early signals from the Biden Administration on its preferred diplomatic architecture for trans-Atlantic coordination on China. A “U.S.-EU Dialogue on China” was negotiated and put in place by the Trump Administration and the EU in 2020. A top priority of the Biden Administration should be to review this existing “Dialogue” with the EU and quickly decide whether changes to the structure may be appropriate to reflect the new and more positive approach to trans-Atlantic relations with the Biden Administration in place, as well as the goal of achieving concrete results from U.S.-EU

engagement. This should happen quickly so that the necessary substantive work can be started promptly and effectively, ideally producing some quick early results.

It will be important to augment the existing U.S.-EU Dialogue on China with a supporting structure of channels above and below it. The U.S.-EU Dialogue on China is planned to meet twice annually at the Deputy Secretary of State level, but should report to—and be directed by—top leaders on both sides. There should be an expectation that the chairs of the U.S.-EU Dialogue on China will report out their progress to their respective leaders in advance of leader-level engagements and will receive guidance from leaders on priorities to pursue based on leader-level exchanges on such topics. President Biden should use early meetings with his EU counterparts, either standalone or on the margins of planned multilateral gatherings (e.g., Summit on Democracy, Climate Summit) to set priorities and ambition levels for the U.S.-EU Dialogue on China.

To make the U.S.-EU Dialogue on China productive, there will need to be technical working groups among experts that meet throughout the year to tee up goals and outcomes for the Dialogue. Such issue-based working groups will need to receive guidance from senior officials managing relations with China in order to identify shared U.S.-EU objectives and specific coordinated steps that could be taken to advance such objectives.

This task will be made more complex by the devolution of responsibilities between the EU and its member states on specific issues. For example, U.S.-EU working groups could launch monthly coordination meetings on trade issues, regulatory issues, and climate change policies related to China, but discussions on investment screening, export controls, security, and other issues would need to involve EU member state capitals, where authority in such matters is largely retained.

It will be important to consider what steps could be taken to quickly win back trust and signal that the U.S. sees Europe as a partner. In this respect, almost all European interlocutors have mentioned the Trump Administration's Section 232 tariffs on steel as particularly problematic. The Biden Administration should immediately work with Europeans on our own economic differences and seek to end President Trump's multilateral trade wars. Another issue European counterparts have raised is the importance of settling the Boeing/Airbus dispute now that the WTO has ruled against both.

Lastly, Washington should retain existing Assistant Secretary (A/S) level diplomatic channels for bilateral policy coordination on China with major European capitals as a supplement to U.S.-EU Dialogue work streams. The traditional "Quint" U.S.-Europe consultations on East Asia (U.S., European External Action Service, France, UK, Germany, Italy) might be broadened, especially if there is a prospect of secure video-conferencing, to include a rotating seat for another EU member state, to bring in additional perspectives. These consultations can inform the working groups' efforts to set objectives and prepare the higher-level Dialogue outcomes.

AUTHORS

Paul Gewirtz

Potter Stewart Professor of Constitutional Law
and Director, Paul Tsai China Center
Yale Law School
paul.gewirtz@yale.edu

Susan Thornton

Senior Fellow, Paul Tsai China Center
and Visiting Lecturer in Law
Yale Law School
susan.thornton@yale.edu

Craig Allen

President
U.S.-China Business Council
callen@uschina.org

Ryan Hass

Michael H. Armacost Chair and Senior Fellow,
John L. Thornton China Center
Brookings Institution
rhass@brookings.edu

Robert Williams

Executive Director, Paul Tsai China Center and
Senior Research Scholar and Lecturer in Law
Yale Law School
robert.d.williams@yale.edu

David Dollar

Senior Fellow, John L. Thornton China Center
Brookings Institution
ddollar@brookings.edu



Yale Law School

Paul Tsai China Center

耶鲁大学法学院蔡中曾中国中心