

Eu-China Bit and FTA Enhance Labor Cooperation and Protection

RONALD C. BROWN †

TABLE OF CONTENTS: 1. Introduction; 2. Pathways to EU-China FTA, BIT, Labor Cooperation, and Increased Labor Protections; 2.1. Trade and FDI; 2.2. Pathways to EU-China BIT and FTA.; 3. EU and China Labor Protections in BITs and FTAs; 3.1. BITs; 3.2. FTAs; 4. Labor Cooperation; 5. Conclusion.

CONFERENCE & MEETING PROCEEDING: Presentation at the 17th International Conference in Commemoration of Professor Marco Biagi, “The Collective Dimensions of Employment Relations: Organisational and Regulatory Challenges in a World of Work in Transformation”, March 18th-19th, 2019, Marco Biagi Foundation - University of Modena and Reggio Emilia (Modena, Italy).

KEYWORDS: *China; EU-China Free Trade Agreement; International Labor Cooperation EU and China*

UNIVERSITY OF BOLOGNA LAW REVIEW

ISSN 2531-6133

[VOL.4:2 2019]

1. INTRODUCTION

An EU-China Free Trade Agreement (hereinafter FTA) and Bilateral Investment Treaty (hereinafter BIT) can stimulate new labor protections and collective labor union cooperation in Chinese and European Union (hereinafter EU) workplaces, benefitting individual workers. Not only will it bring possible substantive improvements provided by the sustainability provisions calling for compliance with I.L.O. labor standards, but most importantly, the interface of EU trade unions with Chinese workers, employers, and the local All-China Federation of Trade Unions (hereinafter A.C.F.T.U.), brought about by its accompanying labor cooperation provisions and activities, will enhance workers' rights.¹ It will also provide a measure of certainty with rules to guide the evolving Belt and Road Initiative (hereinafter B.R.I.) across the New Silk Road.

For example, the 2013 Switzerland-China FTA has minimal protection of labour standards, but it includes a Memorandum of Understanding on Labor (hereinafter M.O.U.) that commits to I.L.O. core labor obligations and also states cooperative activities may, inter alia, take place through dialogue, joint studies, and capacity building.² Swiss trade unions initially resisted the FTA but came to support it when it determined the official linkages under the agreement to facilitate cooperation between unions in Switzerland and China. It also have the opportunity to educate the companies and workers regarding labor

[†] Professor of Law, University of Hawaii Law School, Honolulu, Hawaii (US), ronaldc@hawaii.edu.

¹ See Ronald C. Brown, *Asian and US Perspectives on Labor Rights Under International Trade Agreements Compared*, in *GLOBAL GOVERNANCE OF LABOR RIGHTS: ASSESSING THE EFFECTIVENESS OF TRANSNATIONAL PUBLIC AND PRIVATE POLICY INITIATIVES* 83, 96-112 (Axel Marx et al. eds., 2015).

² MEMORANDUM OF UNDERSTANDING ON LABOR AND SOCIAL SECURITY COOPERATION, AND THE ENVIRONMENTAL COOPERATION AGREEMENT BETWEEN THE PARTIES. FTA, China-Chile, art. 108, Nov. 18, 2005.

standards.³ Likewise, EU FTAs incorporate not only state commitments to I.L.O. labor standards, but also to modes of labor cooperation.

Labor cooperation and involvement arises from trade-related activities and from Foreign Direct Investment (hereinafter FDI) in China or in the EU. A current example of German trade union involvement is with the Midea Group, a Chinese electrical appliance manufacturer, that purchased Kuka, a German manufacturer of industrial robots and solutions for factory automation.⁴ Within this arrangement, the IG Metall Trade Union through its Works Council,⁵ in tandem with other stakeholders in China, promote worker benefits and protections for the Chinese workers. It is reported that this engagement and labor cooperation of IG Metall Trade Union with China and the A.C.F.T.U. has been going on for some years.⁶ This is a cutting edge need in China's manufacturing industry (and other targeted industries) as China promotes its Made in China 2025 Initiative, noted as "robot replaces man". This initiative has resulted large numbers of *displaced* workers and the need for appropriate consideration of those workers, as well as the *retained, retrained, and the newly-hired workers*.⁷ In this case, the experience and the expertise of the German trade union and its

³ See Vasco Pedrina and Zoltan Doka, *Switzerland-China Free Trade Agreement and Labour Rights*, GLOBAL LABOUR COLUMN (Oct., 2014), <http://column.global-labour-university.org/2014/10/switzerland-china-free-trade-agreement.html>.

⁴ See Jens Kastner, *Layoffs cloud outlook for Chinese takeovers in Germany*, NIKKEI ASIAN REVIEW (Jan. 30, 2018), <https://asia.nikkei.com/Asia300/Layoffs-cloud-outlook-for-Chinese-takeovers-in-Germany> ("Kuka was acquired by Chinese appliance-maker Midea Group, the world's largest maker of home appliances, for approximately 4.6 billion euros in December 2016. In 2016, those acquisitions totaled nearly 13 billion euros, or 5% of all industrial investment in Germany"). Kuka has also set up operations in China and there is concern by the IG Metal Workers Union that many of the German jobs will be moved to China. The Union protested recent layoffs at Kuka and Ledvance plants.

⁵ L. Fulton, *Worker representation in Europe*. Labor Research Department, WORKER-PARTICIPATION.EU (2015) <https://www.worker-participation.eu/National-Industrial-Relations/Countries/Germany/Workplace-Representation> ("Works councils provide representation for employees at the workplace and they have substantial powers – extending to an effective right of veto on some issues. Although not formally union bodies, union members normally play a key role within them").

⁶ See Anne Sander, *German Trade Unions and China: From Non-Interference to Cooperation?*, EU-CHINA CIVIL SOCIETY FORUM (July 20, 2009) https://www.eu-china.net/uploads/tx_news/28_German_Trade_Unions_and_China_01.pdf.

⁷ See Ronald C. Brown, *Made in China 2025: Implications of Robotization and Digitalization on MNC Labor Supply Chains and Workers' Labor Rights in China*, 9 TSINGHUA CHINA L. REV. 186 (2017).

cooperation with the other stakeholders directly provides individual workers' benefits and protections that would not have otherwise been achieved.

Another legal approach to bring labor cooperation is through bilateral investment treaties (BITs) which are often absorbed into the FTAs. While typically they do not themselves contain labor provisions, the proposed EU-China BIT is reported to contain labor provisions.⁸

In 2014, Chinese President Xi Jinping called for the EU and China to “actively explore” a bilateral FTA.⁹ The EU-China connection is one of the key corridors of China's B.R.I.¹⁰ There are many reasons and opportunities why China and the EU should contemplate a EU-China FTA.¹¹ Current trade is \$1.5 billion per day, and against a background in which the United States is increasingly drawing into question its commitment to free trade and the global commons. Furthermore, with the uncertainty resulting from Brexit, there clearly exists a need for China and the EU not only to increase the breadth and depth of their

⁸ See generally *EU and China Agree on Scope of the Future Investment Deal*, EUROPEAN COMMISSION, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1435> (last updated Jan. 15, 2016). (In 2016, the EU and China negotiators reached clear conclusions on an ambitious and comprehensive scope of the upcoming EU-China investment agreement and moved into a phase of specific text-based negotiations. The EU and China agreed in particular that the future deal should improve market access opportunities for their investors by establishing a genuine right to invest and by guaranteeing that they will not discriminate against their respective companies. The EU and China are also determined to address key challenges of the regulatory environment, including those related to transparency, licensing and authorization procedures, and to provide for a high and balanced level of protection for investors and their investments. The agreement will also include rules on environmental and labor-related dimensions of foreign investment).

⁹ *China, EU Pledge to Consider Bilateral Trade Pact*, INTERNATIONAL CENTRE FOR TRADE AND SUSTAINABLE DEVELOPMENT (Apr. 3, 2014), <https://www.ictsd.org/bridges-news/bridges/news/china-eu-pledge-to-consider-bilateral-trade-pact>. (“The EU and China agreed on Monday to consider the possibility of a bilateral trade pact, should their current negotiations for an investment deal prove fruitful. The announcement came as part of Chinese President Xi Jinping's high-profile visit to Brussels, which also saw the EU publicly support Beijing's bid for joining talks on a plurilateral deal in services trade”).

¹⁰ See THE STATE COUNCIL, *Full text: Action plan on the Belt and road Initiative*, ENGLISH.GOV.CN, http://english.gov.cn/archive/publications/2015/03/30/content_281475080249035.htm (last updated Mar. 30, 2015), (China's State Council labels its “Silk Road Economic Belt and the 21st Century Maritime Silk Road Initiatives” as B.R.I.).

¹¹ See Alicia García-Herrero et al., *EU-China Economic Relations to 2025 Building a Common Future*, BRUEGEL.ORG (Sept. 13, 2017), http://bruegel.org/wpcontent/uploads/2017/09/CHHJ5627_China_EU_Report_170913_WEB.pdf.

cooperation, but also to act more strategically in the way they relate to each other.¹² Likewise, there is expanding FDI flowing both ways between EU and China,¹³ with the promise of the new BIT increasing that flow.

Perhaps it is time for the EU and Chinese leaders to build on the existing EU–China 2020 Strategic Agenda for Cooperation, to quickly conclude on-going negotiations on their EU–China BIT, and to embrace substantive negotiations on an EU–China FTA? China is now the EU’s second-biggest trading partner behind the United States and the EU is China’s biggest trading partner. The resulting BIT and FTA could enhance trade and investment opportunities, as well as contribute to employment opportunities and rising labor standards, bringing with it increased labor cooperation and worker protections. There are recent precedents, discussed herein, indicating China is open to more substantive and cooperative labor provisions in their FTAs and BITs.

This paper focuses on enhanced labor protections and collective labor cooperation under China and EU Members’ existing and proposed FTAs and BITs. Following the Introduction, Part II discusses the economic connections of trade and Foreign Direct Investment (hereinafter FDI) between EU and China and the pathways to further the relationship. Part III provides a legal comparison of their different approaches on labor protections, dispute resolution, and labor cooperation in FTAs and BITs. Part IV provides an analysis on the current and varying approaches of enhanced labor cooperation. Part V states the conclusion and suggests that the EU–China corridor of the new Silk Road could and should be paved with labor protections consistent with international labor standards and emanating from a EU–China FTA, with its accompanying labor cooperation activities that exist within and behind the legal terms.

¹² See Study on a New Era in EU–China Relations: More Wide Ranging Strategic Cooperation?, EUR. PARL. DOC. (PE 570.493) 12 (2018). See also Ronald C. Brown, *A New Leader in Asian Free Trade Agreements? Chinese Style Global Trade: New Rules, No Labor Protections*, 35 UCLA PAC. BASIN L. J. 1 (2017).

¹³ García-Herrero et al., *supra* note 11. (“In 2015, the stock of EU FDI in mainland China (not including Hong Kong) amounted to €168 billion, and investment stock from mainland China in the EU was only €35 billion (€115 billion including Hong Kong), even though Chinese investment flows into the EU have grown substantially in recent years”).

2. PATHWAYS TO EU-CHINA FTA, BIT, LABOR COOPERATION, AND INCREASED LABOR PROTECTIONS

2.1. TRADE AND FDI

China is striving to become a leader in globalism¹⁴ and is investing heavily in making it happen. One of the world's largest projects, the B.R.I.¹⁵ is a primary driver of China's development strategy. A key aim of the B.R.I. is to promote economic connectivity among countries in Eurasia by recreating the historic Silk Road by a land and a sea route along several corridors. A growing number of FTAs, such as Comprehensive and Progressive Agreement for Trans-Pacific Partnership and Comprehensive Economic and Trade Agreement, are already establishing new trading areas and, the fact EU and China each have FTAs with some of the same countries – e.g., South Korea; suggests that China should act promptly to set their rules of trade.¹⁶ Further pressures may come from the soon-to-be-completed US-Mexico-Canada FTA.¹⁷ China is now the EU's

¹⁴ See Brown, *supra* note 12.

¹⁵ See THE STATE COUNCIL, *supra* note 10. (China's State Council labels its "Silk Road Economic Belt and the 21st Century Maritime Silk Road Initiatives" as B.R.I., which is explained as follows:

The Belt and Road run through the continents of Asia, Europe and Africa, connecting the vibrant East Asia economic circle at one end and developed European economic circle at the other, and encompassing countries with huge potential for economic development. The Silk Road Economic Belt focuses on bringing together China, Central Asia, Russia and Europe (the Baltic); linking China with the Persian Gulf and the Mediterranean Sea through Central Asia and West Asia; and connecting China with Southeast Asia, South Asia and the Indian Ocean. The 21st-Century Maritime Silk Road is designed to go from China's coast to Europe through the South China Sea and the Indian Ocean in one route, and from China's coast through the South China Sea to the South Pacific in the other.

See also H.E. Xi Jinping, *Work Together to Build the Silk Road Economic Belt and the 21st Century Maritime Silk Road: Speech by H.E. Xi Jinping, President of the People's Republic of China, At the Opening Ceremony of the Belt and Road Forum for International Cooperation*, XINHUANET (May 14, 2017), http://www.xinhuanet.com/english/2017-05/14/c_136282982.htm.

¹⁶ See, *supra* note 12.

¹⁷ Agreement between the United States of America, the United Mexican States, and Canada, Nov. 30, 2018. The three partners hope to sign and ratify it in 2019. The agreement also requires the three nations to give three-months' notice if they start trade negotiations with a non-market economy (Art. 32.10), an indirect reference to China. The US can terminate its pact with Mexico or Canada if either of them strikes a deal with a non-market economy. See also Geoffrey Gertz, *5 things to know about*

second-biggest trading partner behind the United States and the EU is China's biggest trading partner. The resulting BIT and FTA could enhance trade and FDI opportunities and contribute to China's employment opportunities and rising labor standards.

Trade

In 2017, the EU continues to be China's largest trading partner and China is the EU's second biggest trading partner in trade in goods, after the US. China and Europe trade goods worth well over EUR 1.5 billion a day. Trade with China is worth a total of EUR 375 billion in terms of EU goods imports and EUR 198 billion in terms of EU goods exports. The EU continues to record a significant trade deficit with China, amounting to EUR 176 billion in 2017.¹⁸

Even with the growing economic integration of EU and China, with China being EU's biggest source of imports and its second-biggest export market, there is still much room for growth, especially in the areas of FDI and services.¹⁹

The European Union (EU) and China have much in common. Their GDPs (€14.72 trillion and €9.75 trillion, respectively, in 2015) rank number two and number three in the world, behind the United States (€16.64 trillion). They are two of the most externally-integrated economies in the world, with annual international trade in goods and services of €15 trillion (€5 trillion if only trade external to the EU is considered) and €4.75 trillion, respectively, in 2015. Their annual bilateral trade in

U.S.M.C.A., the new NAFTA, BROOKINGS (Oct. 2, 2018) <https://www.brookings.edu/blog/up-front/2018/10/02/5-things-to-know-about-usmca-the-new-nafta/>. See also, *Trump has cleared deck for China trade war by striking new Nafta deal, says analyst*, THE STRAITS TIMES (Oct. 2, 2018), <https://www.straitstimes.com/world/united-states/trump-has-cleared-deck-for-china-trade-war-by-striking-new-nafta-deal-say>.

¹⁸ EUR. PARL. DOC. (PE 570.493) 12 (2018), *supra* note 12.

¹⁹ See *China*, EUROPEAN COMMISSION, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/china/> (last updated May 7, 2019).

goods and services stood at €580 billion in 2015, with each being the other's largest source of imports and second-largest export destination. . . . [M]any areas of economic interaction remain under-developed, including trade in services, levels of foreign investment, cooperation on industrial and technological innovation, and financial market integration.²⁰

An example of how EU-China trade often blends with FDI is illustrated below.

Chinese firm CATL will build a battery factory in central Germany to supply the country's key auto industry in its transformation toward electric cars, an investment hailed Monday by Chancellor Angela Merkel as a "new step" in Sino-European cooperation. . . . Industrial workers' union IG Metall also hailed the deal, which it said could create around 1,000 new jobs in the high-tech sector. Earlier Monday, luxury carmaker BMW had already announced that it had struck a 4.0 billion-euro (\$4.7 billion) deal to buy batteries from the Chinese giant, with 1.5 billion euros worth of sales in Germany and 2.5 billion in China. BMW said the Chinese battery manufacturer would supply the cells for the electric Mini and for BMW's upcoming "iNext" electric limousine, slated for production from 2021.²¹

²⁰ García-Herrero et al., *supra* note 11, at vi. ("Chinese imports of services grew at an average annual rate of more than 25 per cent between 2010 and 2015, and the EU's trade surplus in services with China has been growing at an average annual rate of 37 per cent since 2010, reaching €11 billion in 2015. . . . Growing Chinese consumption, especially of services, has the potential to create new markets for European businesses, while rising Chinese investment in the EU, in addition to increasing EU GDP and employment, also provides Chinese companies with a platform to improve their global competitiveness").

²¹ *China's CATL to build first EU electric car battery plant in Germany*, PHYS.ORG (Jul. 9, 2018), <https://phys.org/news/2018-07-china-catl-electric-car-battery.html>.

FDI²²

Government information on EU-China FDI shows:

Foreign direct investment (FDI) in Europe from China hit a record 65 billion euros (USD 79 billion) in 2017, thanks largely to ChemChina's takeover of agribusiness company Syngenta for USD 43 billion in Switzerland in May 2017. Without that deal, Chinese FDI into Europe would have fallen by 22 %, to around USD 38 billion, according to Chinese authorities.²³

Chinese outbound FDI has dramatically swung toward Europe in the first half of 2018; in the first six months of the year, newly-announced Chinese mergers and acquisitions (hereinafter M&A) into Europe were \$20 billion, with completed investments at \$12 billion.²⁴

Sweden was the top European destination for Chinese investment in the first half of 2018 with \$3.6 billion, followed by the U.K. at \$1.6 billion, Germany at \$1.5 billion and France at \$1.4 billion. Automotive, health and biotech, and consumer

²² See THE LEVIN INSTITUTE - THE STATE UNIVERSITY OF NEW YORK, *What Are the Different Kinds of Foreign Investment?*, GLOBALIZATION 101 (2017), <http://www.globalization101.org/what-are-the-different-kinds-of-foreign-investment/>. (“Foreign direct investment (FDI) pertains to international investment in which the investor obtains a lasting interest in an enterprise in another country. Most concretely, it may take the form of buying or constructing a factory in a foreign country or adding improvements to such a facility, in the form of property, plants, or equipment. FDI is calculated to include all kinds of capital contributions, such as the purchases of stocks, as well as the reinvestment of earnings by a wholly owned company incorporated abroad (subsidiary), and the lending of funds to a foreign subsidiary or branch. The reinvestment of earnings and transfer of assets between a parent company and its subsidiary often constitutes a significant part of FDI calculations”).

²³ EUR. PARL. DOC. (PE 570.493) 12 (2018), *supra* note 12, at 14 (“Annual Chinese outbound foreign direct investment (FDI) in the 28 EU economies has grown from EUR 700 million in 2008 to EUR 35 billion in 2017; whereas, EU investment in China is about EUR 10 billion annually”). See also Thilo Hanemann and Mikko Huotari, *EU-China FDI: Working towards reciprocity in investment relations*, MERICS PAPERS ON CHINA (May, 2018), <https://www.merics.org/sites/default/files/2018-08/180723.pdf> (“According to Chinese authorities, in 2017 the main destinations for China’s merchandise exports remained the United States 19%; the EU 16%”). See also UNCTAD, *World Investment Report 2018*, <https://unctad.org/en/PublicationsLibrary/.pdf>. See also EUROPEAN THINK-TANK NETWORK ON CHINA, *Chinese Investment in Europe: A Country-level Approach*, MERCATOR INSTITUTE FOR CHINA STUDIES (Dec., 2017), <https://www.merics.org/en/about-us/programs/ecpu/etnc/chinese-investment-in-europe> (“Chinese global FDI in 2016 was at the top at \$893 billion versus the U.S. in third place at \$595 billion”).

²⁴ See Natasha Turak, *China is investing 9 times more into Europe than into North America*, CNBC (July 17, 2018).

products and services have become the top recipients for Chinese FDI in both the U.S. and Europe.²⁵

Because of a gap in investment openness between EU and China, concerns have been raised about detrimental economic impacts such as unfair competition and resulting market distortions and a sense among EU citizens and businesses that the playing field between Europe and China is not level.²⁶ This strengthens protectionist sentiment and fuels political backlash against economic engagement with China. Thus, the resolution of reciprocity concerns is critical for future EU-China economic relations and is, of course part of the discussion in the EU-China BIT negotiations.²⁷

FDI brings about increased employment and thus possible labor impacts. In 2018 BMW in Germany reported that Chinese firm CATL will build a battery factory in Germany to supply it's auto industry's transformation to electric cars. German "industrial workers' union IG Metall" also hailed the deal, which it said could create around 1,000 new jobs in the high-tech sector.²⁸ Additionally, it is reported that "global

²⁵ *Id.*

²⁶ See Till Hoppe and Stephan Scheuer, *Stopping the Chinese*, HANDELSBLATT TODAY (June 19, 2017) <https://global.handelsblatt.com/companies/stopping-the-chinese-783166> ("The European Union is drawing up proposals [draft EU law] that will allow it to monitor and possibly block the takeover of European companies by state-owned Chinese businesses, but German car makers fear the law could hit their Chinese markets"). See also Norbert Häring et al., *Warnings Over State Intervention in Kuka Deal*, HANDELSBLATT TODAY (June 3, 2016), <https://www.handelsblatt.com/today/companies/chinese-investment-warnings-over-state-intervention-in-kuka-deal/23538330.html>.

²⁷ HANEMANN & HUOTARI, *supra* note 23, at 3-8. ("Chinese investments in Europe, especially in Germany, reveal a strong move toward market and asset-seeking investments. German companies acquired by Chinese investors, especially in the machinery industry, are often not only leaders in their fields, but also strongly focused on RD. This Investment Motive seems to be the predominant MA strategy of Chinese companies in Germany"). See also Dr. Margot Schüller, *Globalisation of Chinese Companies*, GIGA (2013), <https://www.giga-hamburg.de/de/projekt/globalization-of-chinese-companies>. See also FRANKFURT BUREAU, *Factbox: Chinese investments in German companies*, REUTERS (Feb. 26, 2018), <https://www.reuters.com/article/us-daimler-geely-factbox/factbox-chinese-investments-in-german-companies-idUSKCN1GA1RO> (for a partial list of Chinese companies FDI in Germany). See also Miriam Widman, *Chinese Takeovers of German Firms on the Rise*, HANDELSBLATT TODAY (Sept. 3, 2014), <https://global.handelsblatt.com/companies/chinese-takeovers-of-german-firms-on-the-rise-12623>. See also *New Chinese battery factory electrifies German e-car revolution*, THE LOCAL GERMANY (July 9, 2018), <https://www.thelocal.de/20180709/chinas-catl-to-build-electric-car-battery-plant-in-germany>.

²⁸ *Id.*

automakers are planning a \$300 billion surge in spending on electric vehicle technology over the next five to ten years, with nearly half of the money targeted at China, accelerating the industry's transition from fossil fuels and shifting power to Asian battery and electric vehicle technology suppliers."²⁹

FDI and BITs

"While the early literature was skeptical on the effectiveness of BITs, more recent empirical studies generally find that BITs do actually stimulate the inflow of FDI."³⁰

We find strong evidence that liberal admission rules promote bilateral FDI. We focus on two investment provisions which constitute important legal innovations relating to the liberalization and protection of FDI: (i) guarantees of market access for foreign investors by means of NT and MFN treatment in the pre-establishment phase; and (ii) credible commitments against discriminatory and discretionary treatment by means of ISDS mechanisms in the post-establishment phase.³¹

With increasing FDI, more foreign companies will be establishing business in the foreign location which will employ workers who may be represented by labor unions, thus raising the question of the role of labor union cooperation with the foreign employer.³² Unions in Switzerland are

²⁹ This is an unprecedented level of spending – fueled by Germany's Volkswagen AG. It is reported, "the future of Volkswagen will be decided in the Chinese market," said Herbert Diess, chief executive of VW. Paul Lienert et al., *Exclusive: VW, China spearhead \$300 billion global drive to electrify cars*, REUTERS (Jan. 10, 2019), https://www.reuters.com/article/us-autoshow-detroit-electric-exclusive/exclusive-vw-china-spearhead-300-billion-global-drive-to-electrify-cars-idUSKCN1P40G6?utm_source=applenews.

³⁰ Liesbeth Colen and Andrea Guariso, *What Type of FDI Is Attracted by Bilateral Investment Treaties?*, LICOS CENTRE FOR INSTITUTIONS AND ECONOMIC PERFORMANCE (June 12, 2012), <https://www.etsg.org/ETSG2012/Programme/Papers/197.pdf>.

³¹ Axel Berger, Matthias Busse, Peter Nunnenkamp and Martin Roy, *Do Trade and Investment Agreements Lead to More FDI? Accounting for Key Provisions Inside the Black Box*, KIEL WORKING PAPERS IFW (2010), <https://ideas.repec.org/p/zbw/wtowps/ersd201013.html>.

³² See Tian Ameng, *FTA a win-win for China and Switzerland*, CHINADAILY (Jan. 19, 2017), http://www.chinadaily.com.cn/business/2017wef/2017-01/19/content_27996541.htm. In 2017, China and Switzerland upgraded their 2013 FTA and data showed that: "in 2015, Sino-Swiss bilateral trade reached \$44.27 billion, of which China's imports from Switzerland amounted to \$4.1 billion. There are currently around 100 Chinese companies

reported to have agreed in 2013 to the Switzerland–China FTA (which incorporated BIT provisions),³³ notwithstanding concerns over protection of labor rights based on their conviction that: “first, a policy of economic opening towards China is better than one of isolating that country, . . . secondly, the durability provisions that were negotiated . . . provide better means of pressing both countries to combat human and labor rights breaches than would have been the case without such an FTA”.³⁴

2.2. PATHWAYS TO EU-CHINA BIT AND FTA

The pathway to an eventual successful bilateral FTA would be to build on the existing EU–China 2020 Strategic Agenda for Cooperation that places an EU–China BIT³⁵ as central to the EU’s long-term bilateral relations

in Switzerland. There’s also a growing interest from Chinese investor for Swiss brands in terms of M&A, targeting commodities but also sports, media and technologies, such as the deals between ChemChina and Syngenta, between Dalian Wanda and Infront Sports & Media”.

³³ See FTA, Switz.-China, Chapter 8, July 5, 2013 (includes all aspects of a BIT for investment).

³⁴ PEDRINA & DOKA, *supra* note 3. Switzerland–China FTA, Art. 3: 1. The Parties reaffirm the importance of cooperation to further improve their respective labour standards and practices in line with their national labour policy objectives and according to the obligations set out in applicable I.L.O. Conventions. 2. In pursuit of this objective, the Parties agree that cooperation relating to labour and employment, including administrative and technical cooperation as well as capacity building, shall be conducted under the bilateral M.O.U..

³⁵ See Axel Berger, *Investment Treaties and the Search for Market Access in China*, INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT (June 26, 2013), <https://www.iisd.org/itn/2013/06/26/investment-treaties-and-the-search-for-market-access-in-china/> (EU–China BIT has also been referred to as the Comprehensive Agreement on Investment (CAI) and the terms appear to have flexibility as the latter may omit some terms present in a BIT). See also Iuliu Winkler, *EU–China Investment Agreement – Legislative Train Schedule*, EUROPEAN PARLIAMENT (May 20, 2019), <http://www.europarl.europa.eu/legislative-train/theme-a-balanced-and-progressive-trade-policy-to-harness-globalisation/file-eu-china-investment-agreement>. For example, China also negotiates Preferential Trade Investment Agreements (hereinafter P.T.I.A.) of which four include comprehensive rules on investment:

These treaties were negotiated with Pakistan (2006), New Zealand (2008), Peru (2009) and ASEAN (2009). The P.T.I.A. with Singapore just incorporates the China–ASEAN investment agreement and the P.T.I.A. with Costa Rica from 2010 just reaffirms the China–Costa Rica BIT signed in 2007. The P.T.I.A. recently signed with Iceland follows this approach and “recognizes the importance” (Art. 92) of the China–Iceland BIT from 1994.

with China.³⁶ The BIT would accelerate the process toward an FTA and create a more open and transparent environment for increased flows of investment. It would also improve investment for European and Chinese investors by creating investment rights and guaranteeing non-discrimination, improving transparency, and providing investment rules on environmental and labor-related aspects of foreign investment, as all are potential obstacles for agreement on an FTA.³⁷

In 2014, China, supported by the EU, joined the US-led and on-going negotiations under the WTO towards a global Trade in Services Agreement that also seeks to open markets and improve rules.³⁸

Furthermore, there is a Working Group from high levels of EU and Chinese governments, underscoring the seriousness of the work; the EU-China Trade Project II (hereinafter E.U.C.T.P.), works on the many substantive issues underlying an EU-China FTA and suggests appropriate positions and accommodations to support China's continued integration into the global trading system.³⁹

³⁶ See EU EXTERNAL ACTION, EU-CHINA 2020 STRATEGIC AGENDA FOR COOPERATION http://eeas.europa.eu/archives/docs/china/docs/eu-china_2020_strategic_agenda_en.pdf.

³⁷ *Id.*

³⁸ See *Trade in Services Agreement*, EUROPEAN COMMISSION, <http://ec.europa.eu/trade/policy/in-focus/tisa/> (last updated July 14, 2017). See also Shawn Donnan and Andrew Byrne, *China Courts EU on Bilateral Trade Agreement*, FINANCIAL TIMES <https://www.ft.com/content/77dc2efc-b9b4-11e3-a3ef-00144feabdco>.

³⁹ See *Project Background*, E.U.C.T.P., <http://www.euctp.org/index.php/en/project-background.html>. ("The E.U.C.T.P. works with Chinese and European ministries, directorates general and other organizations to develop and deliver results, as well as other international and donor organizations working in the field of trade and sustainable development in China. China partners include: Ministry of Commerce, National Development and Reform Commission, State Administration of Industry and Commerce, Ministry of Justice, Ministry of Housing and Urban-rural Development, Ministry of Agriculture, General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), Legislative Affairs Office of the State Council, The People's Bank of China, China Banking Regulatory Commission, China Securities Regulatory Commission, China Insurance Regulatory Commission, State Administration of Foreign Exchange, Certification and Accreditation Administration of the People's Republic of China, Beijing Municipal Commission of Commerce, Beijing WTO Affairs Center, China Science and Technology Exchange Center EU Partners: Directorate Generals for Trade, Directorate General for Health and Consumers, Directorate General for the Internal Market, Directorate General for Agriculture, Directorate General for Taxation and Customs Union, Directorate General for Information Society and Media, Directorate General for Mobility and Transport, Directorate General for Economic and Financial Affairs, Directorate General for Climate Action, Directorate General for Energy, Directorate General for Enterprise and Industry, Directorate General for Competition, and, EU

Further opportunities to move discussions on the EU-China BIT toward completion will arise in the second half of 2020 when the EU and China appear to be having a summit meeting.⁴⁰

3. EU AND CHINA LABOR PROTECTIONS IN BITS AND FTAS

3.1. BITS

The EU Members have a number of BITs,⁴¹ most of which do not include labor provisions. However, three Member States have entered into four BITs that include labor provisions, including Belgium-Luxembourg⁴² and Austria,⁴³ that entered three separate BITs and commit to the I.L.O. core labor standards. Currently, though there are China BITs with EU

Delegation to China and Mongolia, EU China Project on the Protection of Intellectual Property Rights (IPR2), European Union Chamber of Commerce in China (EUCCC))

⁴⁰ See Andreas Rinke, *Merkel planning EU-China summit for Germany's 2020 presidency*, REUTERS (Jan. 14, 2019), <https://uk.reuters.com/article/uk-eu-china-germany/merkel-planning-eu-china-summit-for-germanys-2020-presidency-sources-idUKKCN1P81FC>. (“Chancellor Angela Merkel has proposed a China-European Union summit during Germany’s 2020 EU presidency that would include national leaders of EU countries as well as officials from Brussels and Beijing, EU diplomats said. The summit, which is likely to coincide with China’s displacement of the United States as the EU’s largest trade partner, would aim to counter what Berlin sees as Beijing’s divide-and-rule approach to dealing with the bloc. Projects like the Belt-and-Road debt-for-development initiative has made China an influential player in poorer eastern EU members like Hungary and Greece”).

⁴¹ See *How to Understand the China-EU Bilateral Investment Treaty Negotiation*, INSTITUTE OF EUROPEAN STUDIES OF CHINESE ACADEMY OF SOCIAL SCIENCES, (May 13, 2019), http://ies.cass.cn/english/chinare/cer/201309/t20130903_2464193.shtml. It has been noted that the BITs of EU members “are still incomplete as there is a lack of completeness and coordination from the overall perspective of the EU. Moreover, the BITs concluded by China with different EU Member States, although quite similar, may result in large differences in specific content such as standards of treatment, currency exchange and different provisions with regard to dispute settlement.” See also Jie Hao and Dawe Li, *Progress, Difficulties and Promotion Strategies of the EU-China BIT Negotiation*, <http://english.cciee.org.cn/archiver/ccieeen/UpFile/Files/Default/2017121.pdf>. See also *International Investment Agreements Navigator*, UN INVESTMENT POLICY HUB, <http://investmentpolicyhub.unctad.org/IIA/mappedContent>. (“International investment agreements (IIAs) are divided into two types: (1) bilateral investment treaties and (2) treaties with investment provisions”).

⁴² See Agreement for Reciprocal Promotion and Protection of Investment, BLEU - Montenegro, art. 1(6), Apr. 22, 2016.

⁴³ See Agreement for the Promotion and Protection of Investment, Austria - Taj., art. 5, Dec. 15, 2010.

members, none include labor provisions. As EU and China trade continues to grow, it is also expected that FDI will increase in both countries. This will result in more interaction with workers and foreign labor unions and increases the need for attention to labor issues and labor union cooperation.⁴⁴ Meanwhile, the negotiations for an EU-China BIT continue.⁴⁵ “It will replace the 26 existing Bilateral Investment Treaties between 27 individual EU Member States and China by one single comprehensive investment Agreement.”⁴⁶

The EU Government stated: “The EU’s top priorities remain the conclusion of the Comprehensive EU-China Agreement on Investment [BIT].”⁴⁷ Further, German Chancellor Merkel said she “wanted quick progress on an EU-China investment deal and that this would be a precondition to any free trade talks, a move Premier Li said would be timely.”⁴⁸

⁴⁴ See John Seaman, Mikko Huotari, Miguel Otero-Iglesias, (eds.), *Chinese Investment in Europe: A Country-Level Approach*, EUROPEAN THINK-TANK NETWORK ON CHINA, p. 154-155 (Dec. 2017), https://www.merics.org/sites/default/files/2018-01/171216_ETNC%20Report%202017_0.pdf.

⁴⁵ See *Overview of FTA and Other Trade Negotiations*, EUROPEAN COMMISSION http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf (The 18th round of negotiations took place in Brussels from 12 to 13 July 2018). For a more comprehensive analysis, see Ronald C. Brown, *China-EU BIT and FTA: Building a Bridge on the Silk Road Not Detoured by Labor Standard Provisions*, UNIV. WASH. INT’L L. J. (forthcoming 2019-20).

⁴⁶ *Id.* (“In 2016 the EU and China negotiators reached clear conclusions on an ambitious and comprehensive scope for the EU-China investment agreement and established a joint negotiating text”).

⁴⁷ EUR. PARL. DOC. (PE 570.493) 12 (2018), *supra* note 12, at 6.

Negotiations, launched in 2013, on the EU’s first bilateral Comprehensive Agreement on Investment are the EU’s immediate top priority with a view to deepening and rebalancing relations with China. The aim is to reach the same level of openness in China’s market that is already available in the EU’s market. The objective is to facilitate market access by addressing both discriminatory and quantitative restrictions. Both investment and investor protection and reciprocal market access are important aspects for the EU. The EU Member States’ Bilateral Investment Treaties (BITs) with China do not provide for investment market access. So far, 17 rounds of negotiations have taken place, the most recent one from 22 to 24 May 2018.

⁴⁸ *Germany and China Vow to Expand Partnership Amid Concerns About Trump’s Policies*, BLACK CHRISTIAN NEWS NETWORK ONE, <https://bcnn1wp.wordpress.com/2017/06/01/germany-and-china-vow-to-expand-partnership-amid-concerns-about-trumps-policies/> (Jun. 1, 2017).

It is perhaps noteworthy that the EU-China 2020 Strategic Agenda for Cooperation placed as a goal in its EU-China BIT negotiations – to negotiate “rules on environmental and *labor-related aspects* of foreign investment” (emphasis added).⁴⁹

Although current China BITs, included those concluded with EU Member States do not contain labor protections or references to I.L.O. standards,⁵⁰ it is not uncommon for a BIT to precede an FTA and is often incorporated into the FTA. It was recently⁵¹ noted that as “a precursor to their free trade agreement (FTA) negotiations, which launched in March 2013, China, Japan, and Korea (CJK) signed a trilateral investment agreement in May 2012.”⁵² And, as noted above, it is reported to be included in the currently negotiated EU-China BIT.

3.2. FTAS

EU FTAs all contain labor protection provisions committing to I.L.O. core labor standards and have a dispute resolution system with a tripartite format, though without penalties for violations (e.g., Japan, Canada, S. Korea). First, there are substantive standards committing to I.L.O. core

⁴⁹ *Trade*, EUROPEAN COMMISSION <http://ec.europa.eu/trade/policy/countries-and-regions/countries/china/> (last updated May 7, 2019). See also FRANK BICKENBACH ET AL., KIEL INSTITUTE FOR THE WORLD ECONOMY, *THE EU-CHINA BILATERAL INVESTMENT AGREEMENT IN NEGOTIATION: MOTIVATION, CONFLICTS AND PERSPECTIVE* 95 (2015).

⁵⁰ See EUROPEAN COMMISSION, *supra* note 45. There are 26 existing Bilateral Investment Treaties between 27 individual EU Member States and China. See also Investment Policy Hub, <http://investmentpolicyhub.unctad.org/IIA>.

⁵¹ See Jeffrey J. Schott and Cathleen Cimino, *The China-Japan-Korea Trilateral Investment Agreement: Implications for US Policy and the US-China Bilateral Investment Treaty*, PIIIE BRIEFING (Feb., 2015), <https://www.goldmansachs.com/our-thinking/pages/us-china-bilateral-investment-dialogue/multimedia/papers/toward-a-us-china-investment-treaty.pdf>.

⁵² Agreement among the Government of Japan, the Government of the Republic of Korea, and the Government of the People's Republic of China for the Promotion, Facilitation and Protection of Investment, May 13, 2012. For discussion of difficulties of negotiating a trilateral FTA, see Jonathan D. Greenberg, *The Elusive China-Japan-South Korea Free Trade Agreement* (Sept., 2015) (thesis, NPS Monterey, California), <http://www.dtic.mil/dtic/tr/fulltext/u2/1008948.pdf> (the author suggests there are “four potential explanations for the trilateral FTA’s current lack of progress: perceptions of the deal not being an economic priority, the power of influential domestic business interests negatively affected by the FTA, regional competition over China’s growing domestic market, and regional political-historical animosities”).

labor standards and the Decent Work Agenda; second, there are obligations and procedural commitments relating to implementation; third, there are institutional mechanisms to resolve disputes.⁵³

Of China's thirteen FTAs, five include labor protection standards (Chile, Iceland, New Zealand, Peru, and Switzerland). Of the five FTAs that have references to labor issues, substantive provisions are not in the texts of FTAs but are in M.O.U.s. There is diversity ranging from the China-Iceland FTA⁵⁴ where the parties agree to enhanced labor communication and cooperation, to other agreements, such as with New Zealand and Switzerland⁵⁵ where, as in EU FTAs, the parties reaffirm their obligations under the I.L.O. and recognize that it is inappropriate to encourage trade or investment by weakening or failing to enforce labor laws, and that it is inappropriate to set or use labor laws, regulations, policies and practices for trade protectionist purposes, but there is no enforcement mechanism.⁵⁶

The text of the 2013 Switzerland-China FTA itself has very minimal language regarding labor standards. Chapter 13.5, Economic and Technical Cooperation, refers to the 2011 and the 2013 China-Swiss M.O.U..⁵⁷ This M.O.U. has language that largely parallels the language of the EU's FTA labor provisions. Likewise, China's FTAs with non-EU

⁵³ See James Harrison et al., *Governing Labor Standards through Free Trade Agreements: Limits of the European Union's Trade and Sustainable Development*, 57 J. COMMON MKT. STUD. 260 (2018).

⁵⁴ See FTA, China-Iceland, art. 96, Apr. 15, 2013.

⁵⁵ See, e.g., FTA, Switz.-China, July, 2013.

⁵⁶ See FTA, N.Z.-China, Apr. 7, 2008.

⁵⁷ See Agreement on Labor and Employment Cooperation, Switz.-China, 2013. See also the 2013 M.O.U. also referenced an earlier more generally-worded 2011 Memo of Understanding.

Considering the objectives and principles of the International Labor Organization (hereinafter I.L.O.) of which Switzerland and the People's Republic of China are members; including their commitment under the 1998 Declaration on Fundamental Principles and Rights at Work and its follow-up, as well as the 2008 I.L.O. Declaration on Social Justice for a Fair Globalization, Determined to improve working conditions and living standards in their respective countries and protect, enhance and enforce basic workers' rights as embodied in the core labor standards, have reached the following understanding.

See also Agreement on Labor and Employment Cooperation, Switz.-China, 2011.

members, Chile and New Zealand have similar language in their labor provisions committing to I.L.O. core labor standards.⁵⁸

In sum, comparing past BITs of China and the EU, respectively, neither includes labor provisions. However, three EU Members – Austria and Belgium-Luxembourg (in tandem) have concluded BITs containing labor provisions that are quite like those in the recent EU's FTAs. China's FTA-related M.O.U.s regarding labor standards and dispute resolution are like those of the EU.

4. LABOR COOPERATION

Labor cooperation, with or without an FTA, occurs in different forms, formal and informal, with the former sometimes hosted by the governments and include conducting training and workshops, frequently in cooperation with other organizations, such as the I.L.O., O.E.C.D., International Trade Union Confederation (hereinafter I.T.U.C.). Informal education of labor rights and issues is often undertaken by labor unions themselves.

For example, in Switzerland, that has an FTA with China, the unions are working to create labor education and cooperation between Swiss and Chinese labor unions and workers.⁵⁹ Although it remains to be seen whether this FTA can really become a lever in the struggle for human and labor rights in China, their strategic plan is described below.

The Swiss multisectoral trade union, Unia, together with the development organization, Solidar Suisse, has chosen an interesting approach, with the dual aim of both contributing to the application of labor rights in China and promoting the notion of solidarity among their own members and the general public. The main element is the provision of support to

⁵⁸ See FTA, China-Chile, Nov. 18, 2005. See also FTA, N.Z.-China, Apr. 7, 2008.

⁵⁹ See, e.g., PEDRINA & DOKA, *supra* note 3.

rank-and-file groups in China that have set out to assist workers in their struggle to get their rights applied. Chinese labor law does provide scope for this, but the big problem is implementation. As part of this program, support is given to grassroots organizations which advise and mentor workers regarding problems with overtime, social insurance and occupational health.

A second objective, in both countries, is to establish a link between employee representatives within Swiss firms active in China (whether subsidiaries or joint ventures). The aim here is to get labor rights respected by promoting collective agreements. In China, the conditions for this have been slightly improved recently by the creation of a new legal basis for collective bargaining policy. In several provinces, it is now quite possible to conclude collective agreements. This raises the question of the form to be given to relations with the official trade unions affiliated to the A.C.F.T.U. federation. These are the only organizations with a recognized entitlement to represent employees.⁶⁰

German labor cooperation provides another illustration. Inside the workplace itself, the goals of labor education, reform, and cooperation may be taking place, where as a result of FDI, foreign employers must deal with the local laws and labor unions in working out understandings and accommodations. For example, the Chinese company Midea, that recently purchased German robotic company Kuka in Germany, continues to have the IG Metall Worker's Union influencing employer labor decisions. In November 2017, the employer announced that 250 of the unit's 5000 employees would be cut, and immediately, the union head of the

⁶⁰ *Id.* ("The third element is awareness-raising in Switzerland. "My colleague Li" is the slogan that Unia and Solidar Suisse have chosen for regional events, a film, workplace leafleting etc. The aim is to inform union members about the realities of labor struggles in China today and our solidarity action, thus encouraging them to play an active part. By denouncing abuses, the intention is also to put pressure on the Swiss authorities and on China to start changing things. The durability provisions in the new FTA are to be used as a lever for this").

Augsburg branch of IG Metall, Germany's largest labor union said, "talks with management are underway to 'get to the bottom of it'".⁶¹ The engagement of labor unions and employers in collective bargaining is an attribute of labor cooperation and is at the core of labor cooperation to benefit the workers.

The strategies of German unions towards China began with research, training, and visits along with some grassroots assistance; and, they also participate in joint programs with I.T.U.C. and other sector international unions.⁶² As early as 2009 there was cooperation between China's A.C.F.T.U. and Germany's IG Metall Trade Union and it has proven to be by far the most active foreign union in China with the longest experience in cooperation.

German unions have adopted a variety of strategies for dealing and cooperating with the ACFTU and on a much smaller scale also with Chinese workers. This however can be explained quite easily, given that roughly 75% of German enterprises investing in China fall within the scope of the IG Metall.⁶³

The IG Metall Trade Union determined that coping with the ongoing globalization, had to be by transnational trade union cooperation and strived for adjustment of labor standards worldwide as an instrument to both preserve German jobs and fight for social justice in developing economies.⁶⁴ For specific strategies, it targeted companies, not workers,

⁶¹ Daniel Ron, *German robot maker Kuka eyes €1b sales in China by tapping parent's Midea Group's network*, SOUTH CHINA MORNING POST (Mar. 7, 2018), <https://www.scmp.com/business/companies/article/2136197/german-robot-maker-kuka-eyes-eu1b-sales-china-tapping-parents>. See also, Barbara Woolsey, *Robot maker Kuka feels the squeeze*, HANDELSBLATT TODAY (Dec. 17, 2017), <https://global.handelsblatt.com/companies/robot-maker-kuka-feels-the-squeeze-861702> (Under the investor agreement spanning to 2023, Midea said it would not interfere in management or close any plants and would support Kuka's growth strategies. The agreement also said it would not delist Kuka from the German stock exchange or access Kuka's intellectual property and client data). See also KASTNER, *supra* note 4. See also, Kuka Sustainability Report 2017, <https://www.kuka.com/-/media/kuka-corporate/documents/ir/reports-and-presentations/sustainability-reports/kuka-sustainability-report-2017.pdf>.

⁶² See SANDER, *supra* note 6.

⁶³ *Id.*

⁶⁴ See *Id.* ("One of the earliest attempts of enterprise-level international engagement and cooperation was made by parts of the IG Metall in the auto industry. As a forum for union

codes of conduct, and international framework agreements⁶⁵ and established “trade union cooperation in MNCs and Joint Ventures through their international partners (notably the IMF).”⁶⁶

[T]he most active and successful engagement has not been targeted at those Chinese workers most affected by appalling working conditions (e.g. unskilled migrant laborers working in the informal sector or the Export processing enterprises of most notably the textile and toy industry) but rather at big companies (Bayer, Siemens, VW or Daimler Chrysler to name only a few) employing skilled Chinese labor. This is however not surprising, as the main focus of national unions in the international arena has always been on labor issues in subsidiary companies of these big companies’ German unions.⁶⁷

At the same time, the goals of labor education, reform, and cooperation are taking place at the workplace level, where as a result of FDI, foreign employers must deal with the local laws and labor unions in working out understandings and accommodations.

Sweden, an EU Member without a bilateral FTA with China, has ongoing labor workshops with China dealing with labor themes and Corporate Social Responsibility, including for example, training on “social responsibility and international trade, labor contract, working

workplace representatives and shop stewards they sought to establish communication and exchange of information between workforces of plants worldwide. Solidarity action is organized if necessary, as well as qualification and training of unionists for international trade union work”).

⁶⁵ See *Id.* (“Daimler Chrysler has established a Code of Conduct in their Chinese production plants, Faber Castell has implemented a Social Charta which is monitored by IG Metall and IMF. IG Metall’s especially tried to establish trade union structures particularly in German-Chinese Joint Ventures. Additionally, strived to implement social minimum standards through Codes of Conduct – as for instance for Daimler Chrysler. International Framework Agreements have so far been the most effective means of engagement in China”).

⁶⁶ *Id.*

⁶⁷ *Id.* (“An early IMF and Asia Monitor Resource Centre report in China-based plants of German MNCs found that workers were largely unaware of such agreements and that there were not shown to be effective. The same report also revealed that the impact of trade unions is bigger in joint ventures where some board members are German and thus closer consultation with German unions takes place (e.g. Beijing Daimler Chrysler)”).

hour, wage and benefit, harmonious working relationship, international standard of working hour and wage, factory inspection as well as requirements and management for young workers.”⁶⁸ Swedish labor union cooperation with the Chinese labor union is also ongoing.

“The Swedish model is unique because it is an agreement between trade unions, the employers’ organizations and the government,” said Mr. Anders Ferbe, Chairman of the Swedish trade union IF Metall at a seminar about democratic management in business in Beijing [in 2015]. The event offered a unique and first-time opportunity for Swedish companies to meet representatives from the ACTFUs.⁶⁹

Likewise, China participates in ongoing labor workshops; for example, a recent seminar co-hosted by the A.C.F.T.U. and Trade Union Advisory Committee to the O.E.C.D. (hereinafter O.E.C.D.-T.U.A.C.) has dealt specifically with the sustainable development of multinational corporations and the role of trade union. The seminar dealt with “China’s initiatives to build a Silk Road Economic Belt and 21st Century Maritime Silk Road, [and how] to regulate the behavior of multinational corporations, safeguard workers’ rights and promote sustainable growth”.⁷⁰

There is also an international organization, the Trade Union Development Cooperation Network (hereinafter T.U.D.C.N.) whose

⁶⁸ *Joint Activities*, SINO-SWEDISH CORPORATE SOCIAL RESPONSIBILITY WEBSITE, <http://csr2.mofcom.gov.cn/article/wangzhanjianjie/about2.shtml#jinzhan28>. (A list of the many joint activities is provided).

⁶⁹ *See The Swedish model: a win-win-win solution to industrial relations*, SINO-SWEDISH CORPORATE SOCIAL RESPONSIBILITY WEBSITE (Apr. 22, 2015), <http://csr2.mofcom.gov.cn/article/csrnews/news2015/201505/20150500959653.shtml>.

For example, Swedish fashion brand H&M is helping its suppliers in China to build a good industrial relation in the factories with the support of IF Metall. We are working from different angles, including internal communication, cooperation with other brands, engagement of local governments and capacity building for the suppliers. . . . Mr. Zhang Zhijun, Director of Supervision Division of Legal Department of A.C.F.T.U. suggested, “It is very important for companies to build up an internal communication mechanism between the workers and management”.

⁷⁰ *A.C.F.T.U./O.E.C.D.-T.U.A.C. Seminar*, ALL-CHINA FEDERATION OF TRADE UNIONS (May 28, 2015), <http://en.acftu.org/28612/201505/28/150528142253162.shtml>.

objective is to bring the trade union perspective to the international development policy debates and improve the coordination and effectiveness of trade union development cooperation activities. T.U.D.C.N. is an initiative of the I.T.U.C. bringing together affiliated trade union organizations, solidarity support organizations, regional ITUC organizations, the Global Union Federations (GUFs), the European Trade Union Confederation (ETUC) and the O.E.C.D.-T.U.A.C..⁷¹

5. CONCLUSION

An EU-China BIT and FTA with stabilizing “rules of the road” provisions and labor provisions will increase FDI and provide more inter-union and union-foreign employer interaction and cooperation and impetus for increased worker protection. The EU-China corridor of the new Silk Road could and should be paved with standards consistent with international labor standards and emanating from an EU-China BIT and FTA and with its accompanying labor cooperation that exists within and behind the legal terms. This provides an additional approach to enforcement and improvement of workers’ conditions whether it occurs accompanying the formal levels of treaties, by the I.L.O., or by the informal changes “on the ground”, coming from the diverse avenues of labor cooperation.

⁷¹ See generally *Trade unions as actors of development education and awareness raising for global solidarity*, TRADE UNION DEVELOPMENT COOPERATION NETWORK (2016), https://www.ituc-csi.org/IMG/pdf/tudcn_brochure_dear_2016_en.pdf.