



Bipartisan Spoilers Targeting E.U. Investment Policy: Continuity from Trump to Biden

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Investment policy is one of the many areas in which the Trump administration disrupted transatlantic efforts rooted in multilateralism and legalization.¹ In its first year, the Trump administration ceased Transatlantic Trade and Investment Partnership (TTIP) negotiations; in 2019, the European Council declared their original negotiating directives “obsolete and no longer relevant.”² Other disruptions include the United States effectively ignoring E.U. efforts to replace current ad hoc arbitration of investor-state disputes with a standing court; stymying progress at the World Trade Organization (WTO) on trade-related investment issues, among other things; and rejecting E.U. member states’ efforts to negotiate over international tax coordination, euphemistically requesting a “pause” in negotiations of the OECD Inclusive Framework on Base Erosion and Profit Shifting (BEPS).³ There is little-to-no evidence that these disruptions originated with the E.U. For example, the E.U. approved the Comprehensive Economic Trade Agreement (CETA) with Canada in 2017, which speaks to these investment issues and more via a multilateral, legalized approach.⁴

Consistent with its preference for multilateralism, the E.U. raised the prospect of renewed coordination with the incoming Biden administration, including in meeting the “strategic challenge” of China.⁵ Then, weeks before Biden took office, the E.U. and China concluded negotiations on a years-in-the-making Comprehensive Agreement on Investment

(CAI). As articulated by the E.U.’s trade commissioner, the CAI “represented a ‘levelling up’ with the U.S.,” intending to secure for E.U. actors the kind of access American actors got as a result of the Trump administration’s unilateral Phase 1 deal.⁶ To be clear, the text of the CAI does not contain the sweeping, fundamental changes to the E.U.-China status quo that some of its biggest European supporters claim.⁷ Additionally, much substantive criticism of the CAI focuses on its obviation of China’s troubling human rights record (a record that, to be sure, it already had at the time of the Trump Phase 1 deal).⁸ Nonetheless, neither the CAI’s provisions nor human rights issues dominated the headlines of U.S. news media in the wake of its announcement.

Instead, the go-to U.S. media framing was exemplified by an article in the *New York Times* Europe news section, titled, “Will the Sudden E.U.-China Deal Damage Relations with Biden?” Published shortly after the CAI announcement, and before the CAI text was made public, the article introduces the CAI as a possible “diplomatic and political error,” which pursues an E.U. policy of “strategic autonomy...that annoys many American policymakers,” and “looks like it was done on the sly, in an underhand manner.” The article concludes that, “for trans-Atlantic relations, this will stay as a bitter taste for Biden.”⁹

Supporters of the CAI in the E.U. were surely be vexed by this kind of U.S. news reporting. In answering the headline question in the affirmative, the article accused the E.U. of doing something

untoward. The logic implied is perplexing: the E.U. should have set its economic goals aside (despite both acute and secular economic turmoil); paused final negotiations on its long-pursued economic agreement (despite the U.S. having already concluded its own agreement, without E.U. involvement); and waited for the approval of the Biden administration (despite Biden not yet being in office). Moreover, the narrative expecting E.U. deference implies that the E.U. would be more successful in achieving its goals under the leadership of the Biden administration, already a herculean expectation given Trump-era damage to the effectiveness of U.S. leadership on the world stage. It bodes poorly if the expectation of E.U. deference is so ingrained in the U.S. psyche that it has bled over from op-ed to news reporting.¹⁰

Most importantly, the assumption is incorrect that the E.U. and the United States have the same investment policy goals. To repeat, the E.U. has been committed to multilateralism and legalization in investment policy, with which the CAI as announced in January 2021 is consistent. The CAI is a legalized solution, and it has the added benefit of being in the service of multilateralism – as an E.U. diplomat put it, “[The CAI] will put the E.U. and U.S. at the same level to then discuss jointly how to handle China.”¹¹

In stark contrast, the United States has accrued years of evidence of deep, bipartisan rejection of multilateralism and legalization when it comes to trans-Atlantic investment policy – as made clear by the relentless U.S. opposition to Nord Stream 2, the \$11 billion pipeline project initiated in 2015 to expand gas delivery from Russia to Germany, for onward delivery to

European markets. Gazprom owns the pipeline, and half of its cost is being financed by European firms.¹²

Clearly, oil and gas pipelines linking Russia, Germany, and the E.U. more broadly have geostrategic implications for the United States. The U.S. has been emphatic in its opposition to the pipeline since the project’s inception. Nevertheless, when asked to comment on long-standing U.S. opposition in March 2019, German Ambassador to the United States Emily Haber emphasized a pivotal E.U. gas directive widening the applicability of E.U. law to Russian-owned assets, for which “the U.S. had long pushed.” In the Ambassador’s estimation, this legal measure had successfully reconciled the United States with the project, in addition to addressing her own qualms: “as a former critic of Nord Stream 2, I can tell you now that those key areas of concern have been addressed.”¹³

But addressing Nord Stream 2 via multilateralism and legalization had never matched U.S. policy “to oppose the Nord Stream 2 pipeline.”¹⁴ Opposing Nord Stream 2 is deeply bipartisan – quite a feat in contemporary polarized U.S. politics. In 2017, 2018, 2019, and 2020, bipartisan legislation imposed increasingly deep and wide, unilateral sanctions, aiming to wield U.S. market power to make the project commercially unviable.¹⁵ One Democratic co-sponsor of sanctions legislation neatly summarizes the agreed-upon underlying narrative: “[Nord Stream 2] is another tool used by Putin to attempt Russian domination of a free and prosperous Europe.”¹⁶

To be sure, it is an understatement to describe the Nord Stream 2 venture as

having roiled internal E.U. politics. That said, the E.U. and its member states have used their legitimate governing authority to intervene in and regulate the project. Consistent with principles of legalization, multiple E.U. officials have gone on to repudiate U.S. sanctions “as a matter of principle,” rejecting “the imposition of sanctions against E.U. companies conducting legitimate business in line with European law.”¹⁷ In the words of a German diplomat: “Threatening a close friend and ally with sanctions...will not work...European energy policy will be decided in Brussels, and not in Washington, DC.”¹⁸

Still, the Biden administration vowed in January 2021 to “use every persuasive tool that we have to convince our friends and partners, including Germany, not to move forward with it.”¹⁹ The proffered rationale was that using sanctions to stop construction would give the United States “the opportunity to confidentially and calmly speak” with European governments.²⁰ The approach changed in May 2021, when the Biden administration announced that it would waive sanctions - although the announcement lacked clarity on the status of the suite of preexisting sanctions and threats, and it could be rescinded at any point.²¹ But while the tactic changed, the goal remained the same: lifting rather than imposing sanctions as a tool in pursuit of providing “space for diplomatic engagement with Germany to address the risks that a completed pipeline would pose to Ukraine and European Energy security.”²² There remains scant evidence that any such U.S. diplomacy would aim at anything other than E.U. deference.

In summary, there is little reason to expect

the Biden administration to ease conflicts in trans-Atlantic investment policy through a commitment to shared principles of engagement built on multilateralism and legalization. Neither U.S. media reporting around the CAI, nor well-established bipartisan positions on Nord Stream 2, are bellwethers of change. Why is it a matter of debate: private U.S. interests? Links to other foreign policy goals with regard to China and Russia? An accepted narrative of a return to U.S. dominance in international relations as the cure for Trump-era disruptions? Whatever the reason, without the credible expectation that the United States will – at minimum – defer to the E.U.’s principles of engagement, there is little reason to expect the E.U. to defer to U.S. interests regarding European investment policy choices.

Endnotes

1 Johns, Leslie, Krzysztof J. Pelc, and Rachel L. Wellhausen. “How a Retreat from Global Economic Governance May Empower Business Interests.” *Journal of Politics* 81(2): 731-738. 2019.

2 Council of the European Union decision 6052/19. Brussels, 9 April 2019. (<https://www.consilium.europa.eu/media/39180/st06052-en19.pdf>)

3 Erb, Kelly Phillips. “U.S. Pauses OECD Talks After Expressing Concern over Digital Tax.” *Forbes*. 18 June 2020.

4 The regional parliament of Wallonia, which nearly derailed CETA, agreed to support it contingent on the European Court of Justice ruling on the legality of its investor-state dispute settlement provisions, itself a multilateral and legalized solution. Although, as CETA remains in force only provisionally (at the time of writing), it is an example of the intra-E.U. hold-up problems generated by underlying legal requirements for member state unanimity.

5 Fleming, Sam, Jim Brunnsden, and Michael Peel. “E.U. proposes fresh alliance with U.S. in face of China challenge.” *Financial Times*. 29 November 2020.

6 Quoted in: Brunnsden, Jim, et al. “E.U. and China agree new investment treaty.” *Financial Times*. 30 December 2020.

7 For evidence, see Lauge Poulsen, [The E.U.-China Investment Deal and Transatlantic Investment Cooperation](#), Perry World House. See also: Axel Berger and Manjiao Chi, “The E.U.-China Comprehensive Agreement on Investment: Stuck half-way?” *Columbia FDI Perspectives* No. 299. 8 March 2021.

8 The U.S. signed the Phase 1 deal while also emphasizing that existing U.S. law prevents the import of products made by forced labor; it went on to implemented a number of targeted bans. Unquestionably, the E.U.’s legal position on the forced labor issue is weaker, as the E.U. itself does not have equivalent law. The CAI asks China to make “continued and sustained efforts” to ratify conventions on labor rights, without clear enforcement measures. See: “Cynicism explains a flawed new E.U.-China commercial pact.” *The Economist*. 9 January 2021.

9 Erlanger, Steven. “Will the Sudden E.U.-China Deal Damage Relations with Biden?” *New York Times*. 6 January 2021.

10 With only this U.S. media narrative in hand, one cannot parse the logic offered by the Chair of the European Parliament’s delegation for relations with China: “The whole idea that [the] E.U. must hurry to strike a China deal to impress the U.S. is misguided...It helps E.U. sovereignty more if we demonstrate that we know when to stand tall to China. And align with partners.” Quoted in: Sevastopulo, Demetri, et al. “Biden team voices concern over E.U.-China investment deal.” *Financial Times*. 22 December 2020.

11 Quoted in: Sevastopulo, Demetri, et al. “Biden team voices concern over E.U.-

China investment deal.” *Financial Times*. 22 December 2020.

12 “Russia’s Nord Stream 2 Pipeline: Running in Place.” Congressional Research Service. Updated 28 September 2020. Gazprom has a 51% stake in Nord Stream 1, and European firms own the remainder (Ibid).

13 The Ambassador’s first reaction to the question asking her to reflect on U.S. opposition was to laugh and say, “I could do that sleeping...I’ve been asked that so often.” Remarks by Ambassador Emily Haber at the University of Texas at Austin, in response to the author. 30 March 2019.

14 “Russia’s Nord Stream 2 Pipeline: Running in Place.” Congressional Research Service. Updated 28 September 2020.

15 By September 2020, international associations of shipping insurers confirmed that they would not take on Nord Stream 2 clients because of threats of U.S. sanctions. See: Gardner, Timothy. “Russia to Germany gas pipeline targeted in U.S. defense bill.” *Reuters*. 4 December 2020.

16 Congressman Denny Heck (D-WA), quoted in: Gillespie, Maura. “Bipartisan bill expands sanctions on Nord Stream 2 pipeline.” Press release from the office of Congressman Adam Kinzinger (R-IL). 25 June 2020.

17 “Russia’s Nord Stream 2 Pipeline: Continued Uncertainty.” Congressional Research Service. Updated 8 February 2021. In May 2021, Ambassador Haber (previously confident that all U.S. concerns had been resolved) questioned why E.U. imports of Russian gas were out of the question, while U.S. imports of Russian oil are uncontroversial: “Why treat two hydrocarbons differently?” Virtual Speaker Event, Penn German Society. 14 May 2021.

18 Quoted in: Payne, Adam. “Germany is furious...” *Business Insider*. 11 August 2020. This particular statement was provoked by the inflammatory letter three Republican senators took it upon themselves to send to the operator in the terminal German port town, threatening “crushing” sanctions against not just executives and shareholders but also entry-level employees.

19 “Nomination of Hon. Anthony J. Blinken to be U.S. Secretary of State – Part I,” Senate Hearing 117-4. 19 January 2021.

20 Quoted in: Payne, Adam. “Germany is furious...” *Business Insider*. 11 August 2020.

21 For the best record of the saga to date, see: Rene Höltschi, Gerald Hosp, and Christian Steiner. “Die Neuesten Entwicklungen: Pipeline-Projekt Nord Stream 2.” *Neue Zürcher Zeitung*. Last accessed 4 June 2021.

22 Shalal, Andrea, Timothy Gardner, and Steve Holland. “U.S. waives sanctions on Nord Stream 2 as Biden seeks to mend Europe ties.” *Reuters*. 19 May 2021.