Twitter Thread by Nick Marro

Nick Marro
@nickm4rro

1/ Lots of good analysis out there on why the EU-China CAI is a bad decision in the context of Xinjiang, transatlantic partnerships, etc. But I also think that even the trade/econ benefits of the CAI look quite limited. Thread:

2/ It highlights, as a win, that China's preservation of existing liberalizations. That's positive, but not really a big problem; the bigger issue is stagnation, where reform pledges have failed to materialize after years/decades of promises. Great example is in the FDI openings,



3/ which are highlighted to include cloud, auto, fin services etc—all areas of EU/MNC interest. Thing is, these openings aren't new. China has begun opening auto/finance since 2018/19, while the 50% cap on cloud services has remained unchanged since 2015 (or before if we consider

- **Automotive sector:** China has agreed to remove and phase out joint venture requirements. China will commit market access for new energy vehicles.

- **Financial services**: China had already started the process of gradually liberalising the financial services sector and will grant and commit to keep that opening to EU investors. Joint venture requirements and foreign equity caps have been removed for banking, trading in securities and insurance (including reinsurance), as well as asset management.

4/ WTO ascension commitments vs the 2015 Telecom Catalogue, but that's for another day). So these are existing openings that are repackaged as "wins." More critical issue beyond FDI caps is around licensing issuance, which still big problem. Arguably some more significance in

5/ R&D and health? Not an expert, but the FDI conditions (eg hospitals only in certain cities) are limiting, while R&D could be complicated by data/info controls. It's also unclear how existing tech transfer prohibitions exceed existing protections in the foreign investment law,

- **Forced technology transfers** – The CAI lays very clear **rules against the forced transfer of technology**. The provisions consist of the prohibition of several types of investment requirements that compel transfer of technology, such as requirements to transfer technology to a joint venture partner, as well as prohibitions to interfere in contractual freedom in technology licencing. These rules would also include disciplines on the protection of confidential business information collected by administrative bodies (for instance in the process of certification of a good or a service) from unauthorised disclosure. The agreed rules significantly enhance the disciplines in WTO.

- **Standard setting, authorisations, transparency** – This agreement covers other long-standing EU industry requests. China will provide **equal access to standard setting bodies** for our companies. China will also **enhance transparency, predictability and fairness in authorisations**. The CAI will include transparency rules for regulatory and administrative measures to enhance legal certainty and predictability, as well as for procedural fairness and the right to judicial review, including in competition cases.

6/ nor how China will provide equal access to standards setting; that this keeps coming up in intl discussions/domestic policy pledges means it’s a longstanding issue, and it’s unclear how the CAI addresses structural issues underpinning that (eg forced IP localization). The lang

- **Forced technology transfers** – The CAI lays very clear **rules against the forced transfer of technology**. The provisions consist of the prohibition of several types of investment requirements that compel transfer of technology, such as requirements to transfer technology to a joint venture partner, as well as prohibitions to interfere in contractual freedom in technology licencing. These rules would also include disciplines on the protection of confidential business information collected by administrative bodies (for instance in the process of certification of a good or a service) from unauthorised disclosure. The agreed rules significantly enhance the disciplines in WTO.

- **Standard setting, authorisations, transparency** – This agreement covers other long-standing EU industry requests. China will provide **equal access to standard setting bodies** for our companies. China will also **enhance transparency, predictability and fairness in authorisations**. The CAI will include transparency rules for regulatory and administrative measures to enhance legal certainty and predictability, as well as for procedural fairness and the right to judicial review, including in competition cases.

7/ around SOEs/subsidy disclosure is disappointing, considering how important an ask this was for the EU. W/o more detail on dispute resolution, unclear how SOEs can be forced to change here, especially bc things like procurement are conducted via back channels that disadvantage

Improving level playing field – making investment fairer

- **State owned enterprises (SOEs) -** Chinese SOEs contribute to around 30 percent of the country's GDP. **CAI seeks to discipline the behaviour of SOEs** by requiring them to act in accordance with commercial considerations and not to discriminate in their purchases and sales of goods or services. Importantly, China also undertakes the obligation to provide, upon request, specific information to allow for the assessment of whether the behaviour of a specific enterprise complies with the agreed the CAI obligations. If the problem goes unresolved, we can resort to dispute resolution under the CAI.

- **Transparency in subsidies –** The CAI fills one important gap in the WTO rulebook by imposing **transparency obligations on subsidies in the services sectors**. Also, the CAI obliges China to engage in consultations in order to provide additional information on subsidies that could have a negative effect on the investment interests of the EU. China is also obliged to engage in consultations with a view to seek to address such negative effects.

8/ MNCs, or in the case of ICT, are swayed by domestic policy pledges (eg ■■■■) that come from political/diplomatic problems, not commercial issue. Tied to this, the fact that subsidy disclosure doesn't *touch* the industrial sector avoids a huge problem area that now

Improving level playing field – making investment fairer

- **State owned enterprises (SOEs) -** Chinese SOEs contribute to around 30 percent of the country's GDP. **CAI seeks to discipline the behaviour of SOEs** by requiring them to act in accordance with commercial considerations and not to discriminate in their purchases and sales of goods or services. Importantly, China also undertakes the obligation to provide, upon request, specific information to allow for the assessment of whether the behaviour of a specific enterprise complies with the agreed the CAI obligations. If the problem goes unresolved, we can resort to dispute resolution under the CAI.

- **Transparency in subsidies –** The CAI fills one important gap in the WTO rulebook by imposing **transparency obligations on subsidies in the services sectors**. Also, the CAI obliges China to engage in consultations in order to provide additional information on subsidies that could have a negative effect on the investment interests of the EU. China is also obliged to engage in consultations with a view to seek to address such negative effects.

9/ underpins a lot of retaliatory trade policy/pushback against globalization. Finally, if we look at the commitments on labour and environ, benchmark is again not backsliding—but what about *existing* issues around forced labour/XJ? Pledging to not allow labour standards

- China commits, in the areas of **labour and environment,** not to lower the standards of protection in order to attract investment, not to use labour and environment standards for protectionist purposes, as well as to respect its international obligations in the relevant treaties. China will support the uptake of **corporate social responsibility** by its companies.

- Importantly, the CAI also includes commitments on environment and climate, including to **effectively implement the Paris Agreement on climate**.

- China also commits to working towards the ratification of the outstanding **ILO (International Labour Organisation) fundamental** Conventions and takes specific commitments in relation to the two ILO fundamental Conventions on forced labour that it has not ratified yet.

10/ to deteriorate further is from a very low base. Commitment towards working to ratify ILO conventions is also very different from being forced to do so. Finally, on enforcement and dispute resolution—the most key parts of any deal!!—the commitments seem similarly disappointing



11/ but we still need details on how this will work. Precedent w/ the US shows that China sees any framework for regular monitoring (and, potentially, punitive action) as a violation of sovereignty. Suggesting that enforcement might lack teeth. Overall, CAI looks like it slightly

12/ moves the needle on some issues, while leaving many others untouched. We still need to wait for final text to be released in order to do deeper analysis, but this suggests CAI will have a hard time going through European Parliament for ratification. (end)