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**BELT AND ROAD IN EUROPE:
IMPACT AND OUTCOME**

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SOMETHING NEW HAS LANDED



The “Belt and Road” Initiative (“BRI”)

- “The largest physical infrastructure build out in modern history” [Pippa Malmgren, economic analyst and forecaster]
- “Involves 65 countries, among which trade is expected to surge to 2.5 trillion US\$ within a decade” [HSBC estimate 2017]
- Or, according to CNN “more than 68 country and encompassing 4.4 billion people and up to 40% of the global GDP”
- Or even better, “more than 4 billion people who produce 55 per cent of the world’s national product” [European Bank for Reconstruction and Development]
- “Currently comprises around 900 infrastructure projects, from highways in Central Asia to ports in Africa, totalling US 890 billion in investment [Lowy Institute, Australia’s leading independent think tank]

So what is it exactly ?

Making the world more “global”

- “Revive and extend the historic trading routes that once linked Europe, Asia and Africa by enhancing infrastructure and addressing policy bottlenecks to promote the smooth flow of goods and services throughout all three regions”
- “By better connecting some of the world’s fastest-expanding economies, the project is to provide a significant boost to global growth”

[HSBC: The New Trade Routes Reshaping the Global Economic Landscape]



...and in practical terms

The project aims to connect Asia, Europe and Africa:

- by land (mostly railways): the Silk Road Economic Belt
- by sea: the 21st-Century Maritime Silk Road

In total five routes (or six according to the various sources...), but all ending in continental Europe



The European view (business)

- 1) Undoubtedly China at present has the best and more forward looking vision of the global economy and they have a clear strategy on how to fully exploit the situation to their advantage.
- 2) Their vision is clever because they sell win-win solutions with great appeal especially for developing economies or governments in desperate need for cash to finance highly visible and politically relevant domestic project.
- 3) SEA countries are in the position to take advantage of the investment that China is putting into BRI infrastructure but they need to be mindful that “there is no such a thing as a free meal”. In other words, it is going to be important for those countries who benefit from BRI infrastructure to balance their relationship with China with relationship with EU, US, Japan and India. Overreliance on China can be a risky game!
- 4) Competing projects may well create overcapacity and duplication of infrastructure, however, not introducing in the global scene competing projects that would allow a better balanced share of power would be in my view a far worse scenario.
- 5) As far as the EU goes, as long as “All roads lead to Rome” we should be happy and take full advantage of the situation.”

[Roberto Benetello, CEO European Chamber of Commerce in Malaysia]

The European view (bureaucracy/ politics)

DG Trade of the European Commission
High ranking officer in charge of relations with China

From private conversation:

- the first presentation of the BRI in Brussels in late 2013 was “empty” in content
- a “community platform” has been set up following the first high level meeting summit in June 2015, commitments were agreed regarding market access, procurement but no progress towards implementation
- over 90% of the funding is reserved for PRC companies
- EU expects more governance: environmental rules, compliance with international trade principles
- EU expects also that low income countries are not lured into ending up overly in debt
- EU concerned about European companies’ access to China funded facilities eg ports
- EU vigilant about the jurisdiction of China’s so-called specialised courts



Many open questions: smart technology part of the road? Or disrespect for the environment ?

- smart buildings
- energy efficiency
- energy storage
- renewable energy generation
- smart (electrical) grid
- smart mobility



Largest world market is Asia (Source: The Global Cleantech Report 2012)



Will there be smart cities ?

- China seems to suggest it is part of the plan
- More than 300 smart city pilot schemes in PR China with a three key objective: provide energy, move people and things around, keep people safe
- China aims to turn itself into a green economy: will the same standards apply or will the “funded territories” be treated as dumping places ?

Which brings us to legal questions



- Will the funding coming as “loans” (as it seems) be guaranteed by collaterals ?
- Who will hold title and of what?
- Will the contracts provide for free access to the facilities or just to countries of the lender i.e. China?
- Will the contracts impose the jurisdiction of Chinese courts?
- Will the contracts be properly balanced between the parties’ interests?

...many disputes to be anticipated

- where there is building there is a huge potential for disputes about delivery time, quality, respect of tender terms...
- labour disputes
- intellectual property disputes
- consortium/JV disputes
- licences and ownership of land/built up
- ...etc
- but what jurisdiction?





Specialised courts on the Singapore (and Dubai) model

- China announced in January 2018 the creation of three courts dedicated to the BRI, in Beijing (headquarters), Xian (commercial disputes) and Shenzhen (sea routes)
- How those courts may have jurisdiction is unclear: compulsory clause in China funded contracts? long-arm jurisdiction such as US Courts?
- Nothing to be compared with the known skills, experience and independence of CIETAC et other Chinese arbitral institutions
- Possible conflict of jurisdiction with similar courts such as in Paris



Conclusion: a very strong case in favour of arbitration

- Neutrality more of the essence than ever in the context of BRI
- Enforceability of awards also - doubts are not out of the question for adverse court decisions from PRC courts against Chinese entities after so much money has been spent by China - possibility to enforce against PRC assets abroad along the BR line
- Be prepared for the challenge: specialised panel, working group to identify potential legal issues specific to the BRI, dedicated management unit for BRI cases... etc. AIAC as a regional leader?

Thank you



谢谢