

Legal Character of Tied Aid

A Tale of the Cunning Fox

(and not of the Wise Dragon)

Charlotte Sieber-Gasser
World Trade Institute, Bern

prepared for the African IEL Regional Conference,
University Witwatersrand, Johannesburg, May 5-6 2011

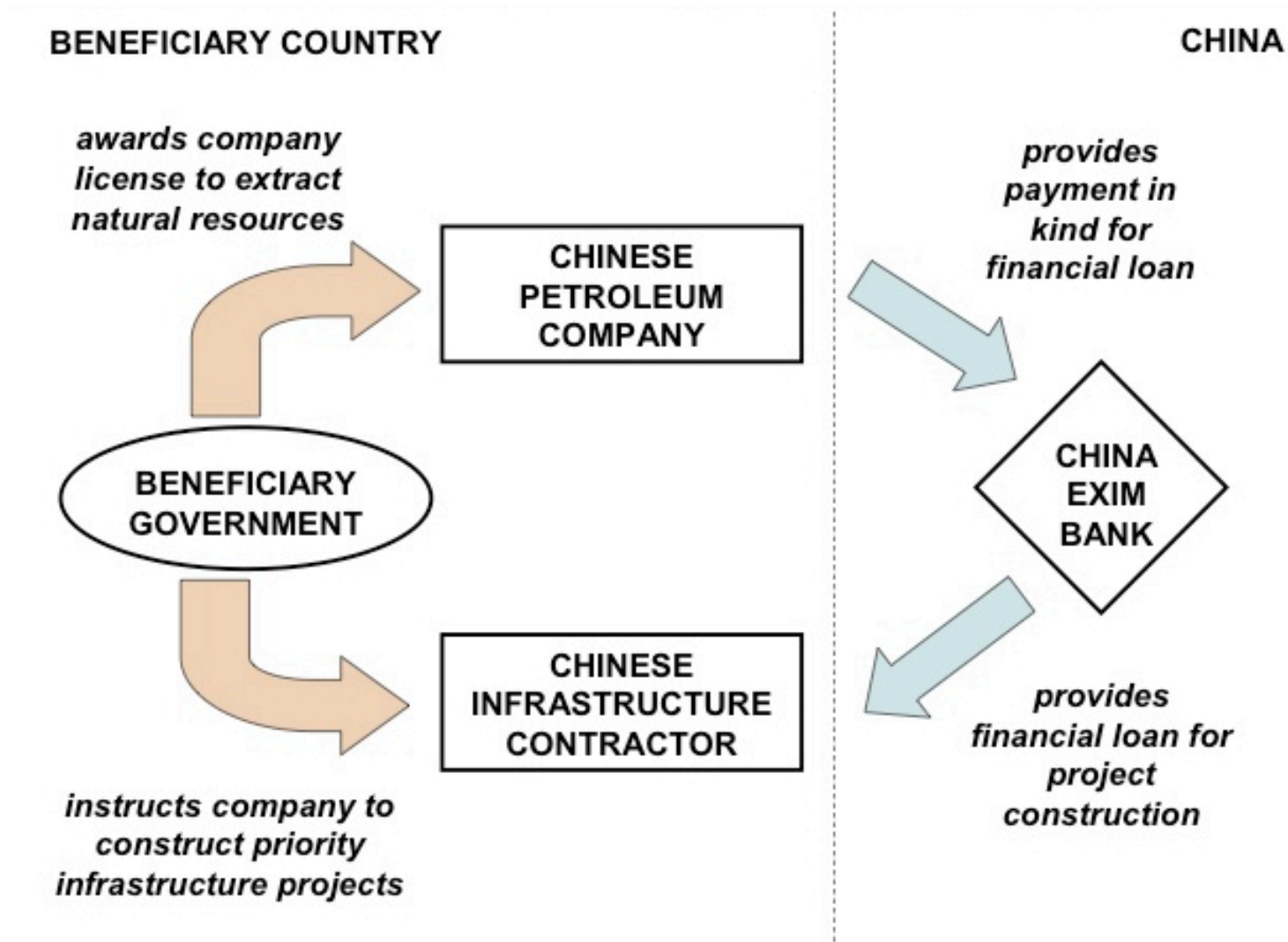
Sino-African Tied Aid

- Two-way trade between China and Africa has seen a **fifty-fold** increase in the years 1999-2008
- yet, there is not a single Sino-African PTA
- Correlation of trade volume with Sino-African tied aid-arrangements in resource-rich countries

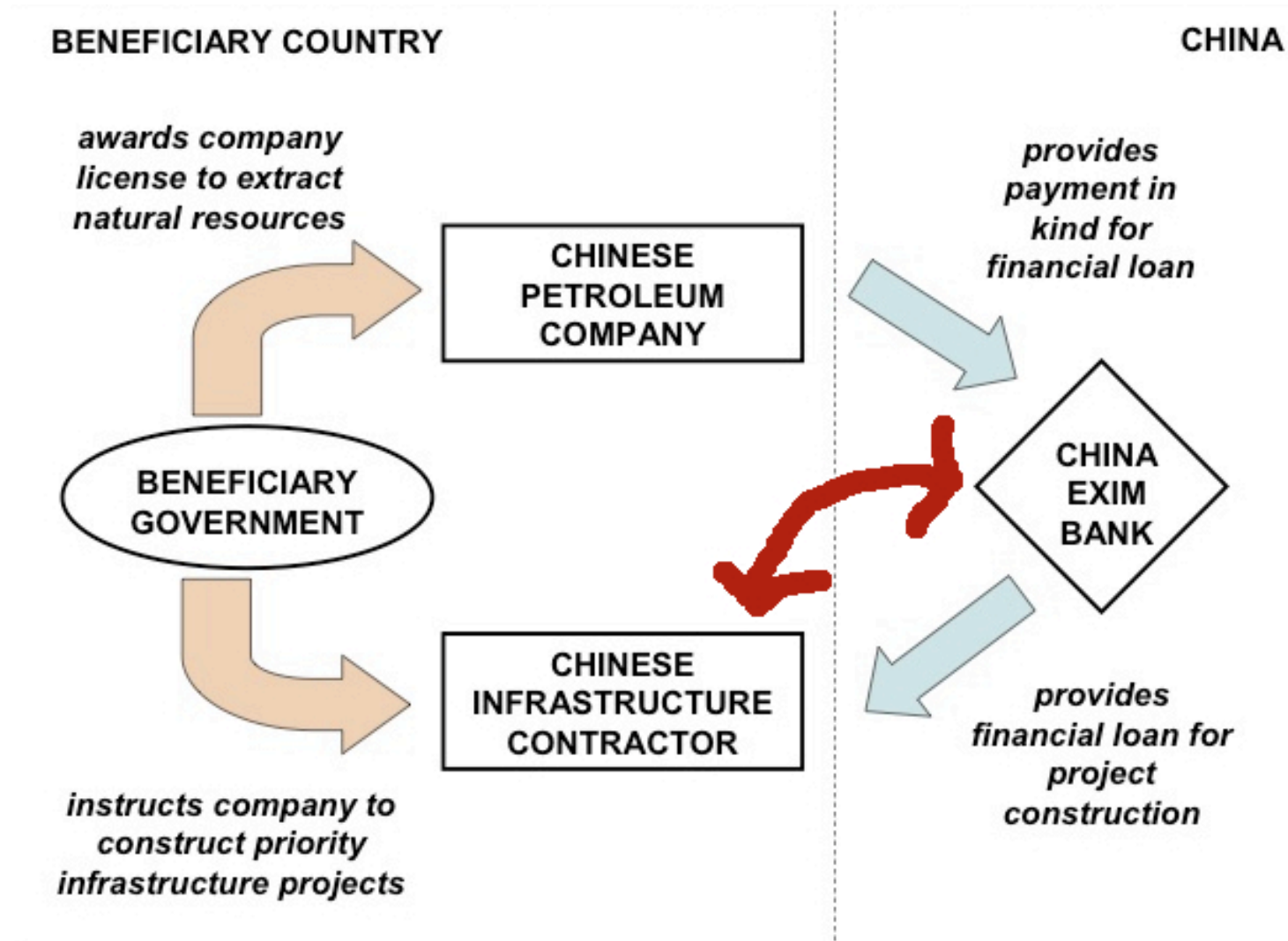
Why care?

- Know more for a better output of Sino-African trade/tied aid negotiations
- Know more for a better understanding of the development impact
- ... Because we care about the coherence of International Economic Law

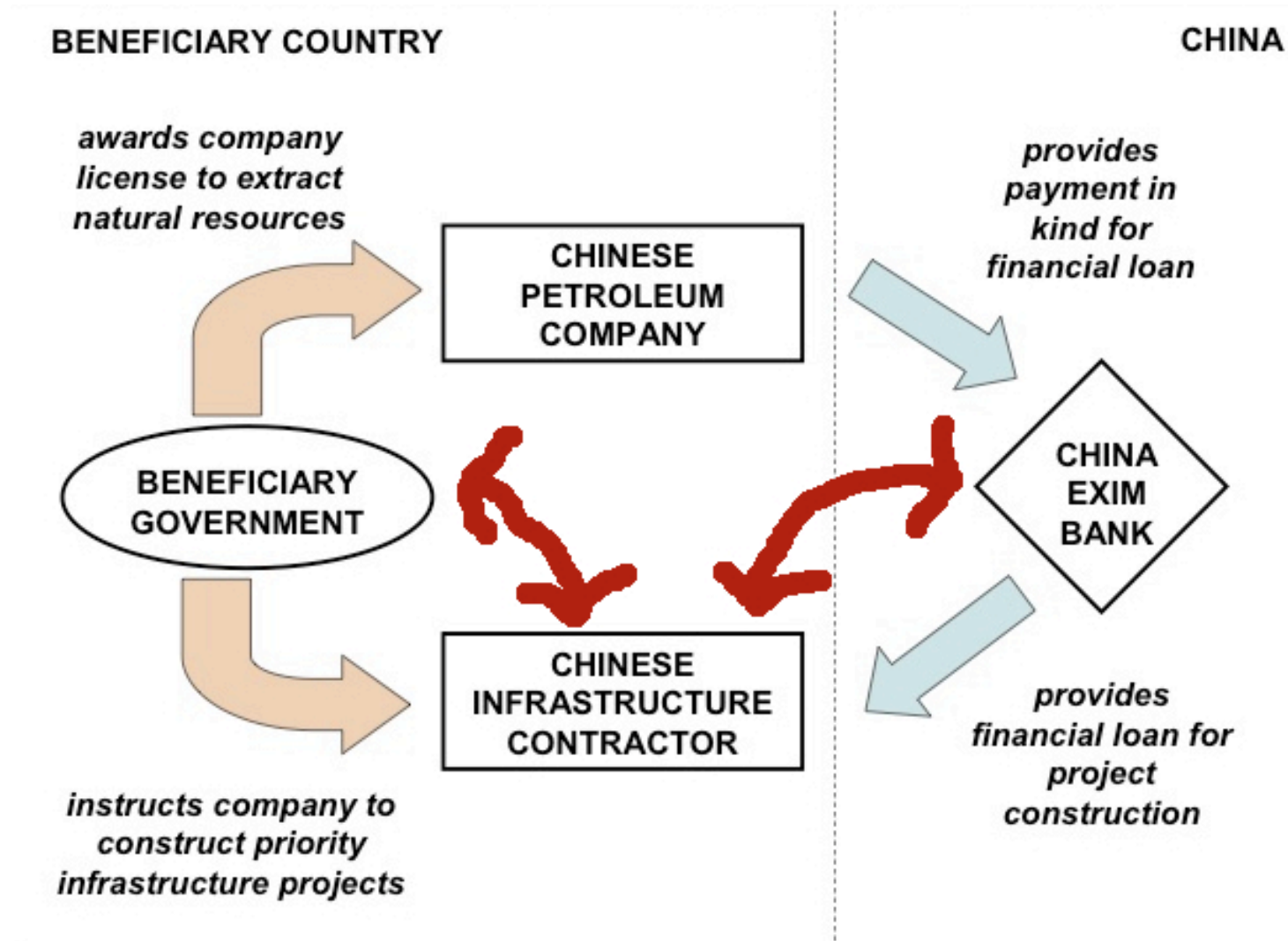
The Angola-Model



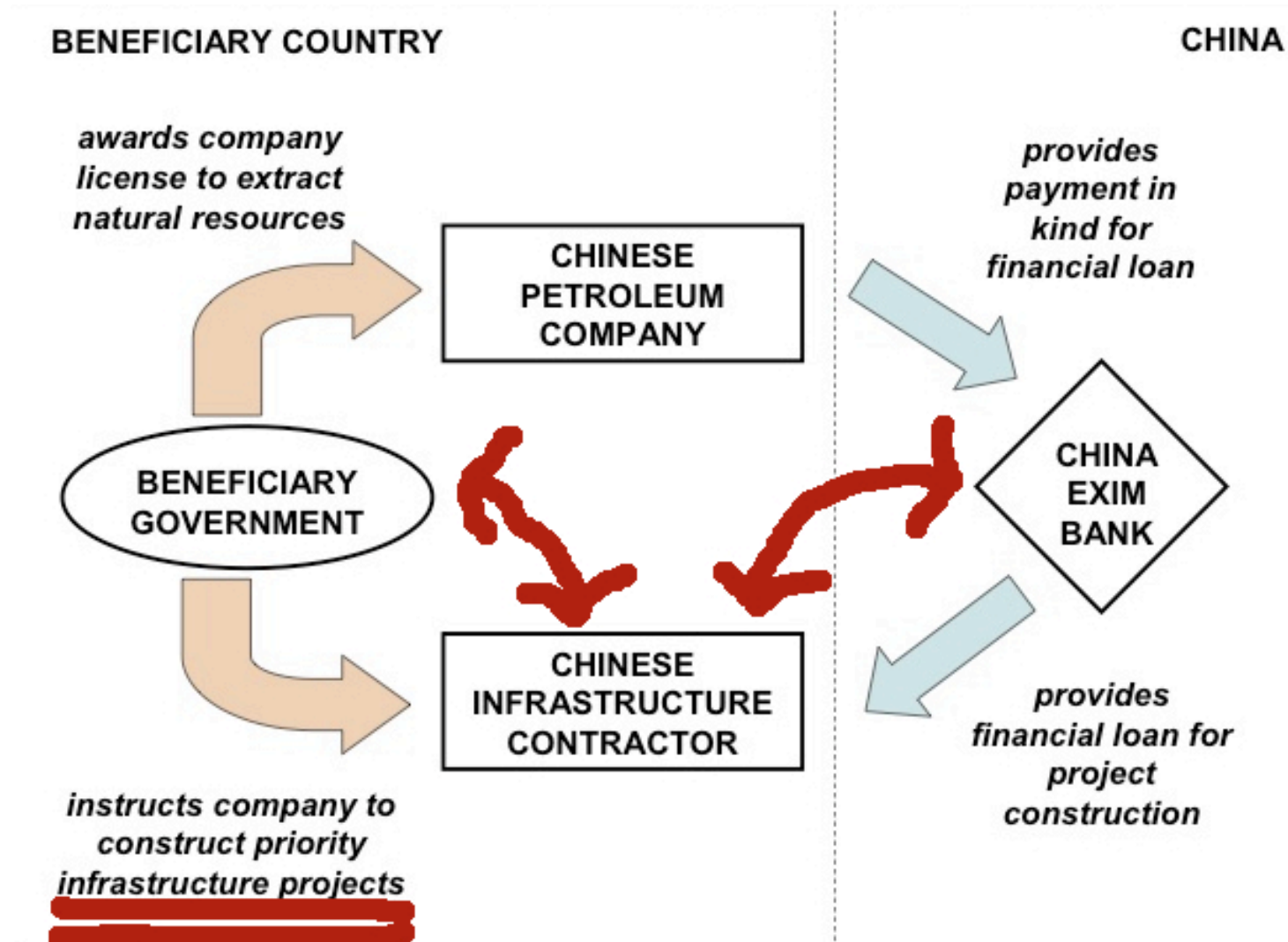
Challenges for IEL



Challenges for IEL



Challenges for IEL



Public vs Private

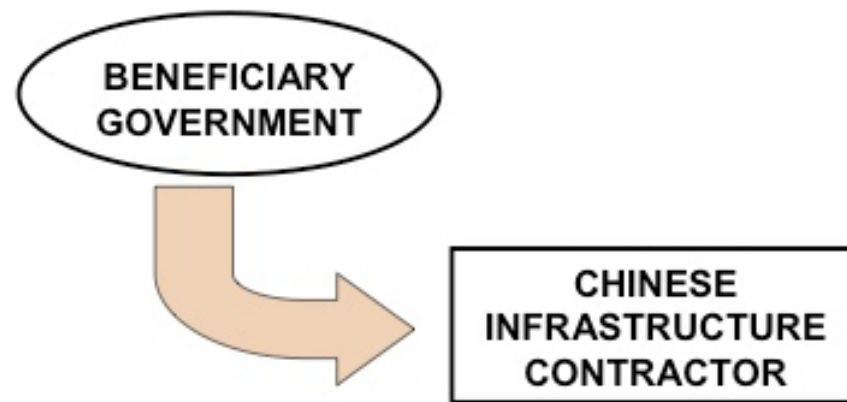
- Different commitments and regulations under private and public law respectively
- Unclear to what sphere the contracts of Chinese corporations belong

➔ Coherence of IEL



Competition Distortions

- Lack of procurement procedures, bundling together of various projects with oil- and other concessions, and the requirement to ‚buy Chinese’: competition distortions
- ➔ Questionable development impact



Preferential Market Access

- Increase in Sino-African trade and presence of Chinese companies in particular sectors point towards *de facto* preferential market access covered by Angola-Model type of tied aid
- ➔ Disadvantage for competing economies



Way Forward

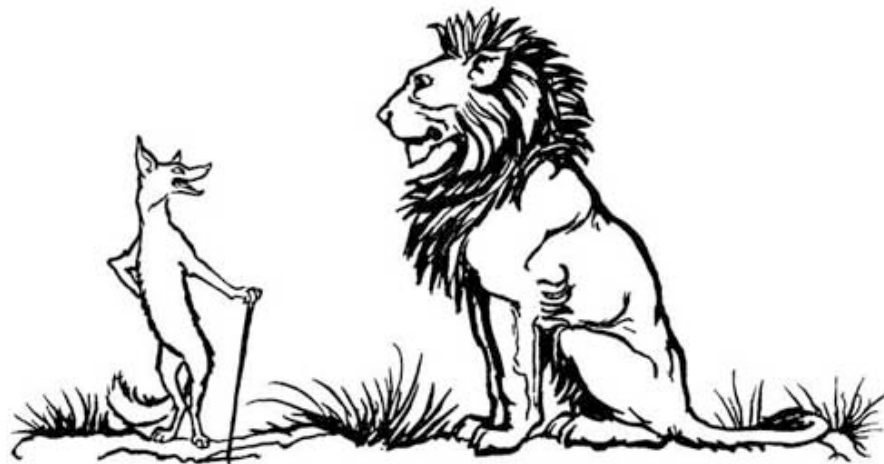
- More transparency: access to the agreements in the interest of the African people and coherence in IEL
- Regulation of *de facto* preferential trade
- Provisions for MNCs acting on behalf of a state
- Regulation of competition distortions based on tied aid arrangements

The Tale of the Cunning Fox



Once upon a time...

The land of the fox needed energy supply, while the land of the lion was built on resources. The fox went kindly asking the lion to give away some of his resources. But the lion requested an offer.



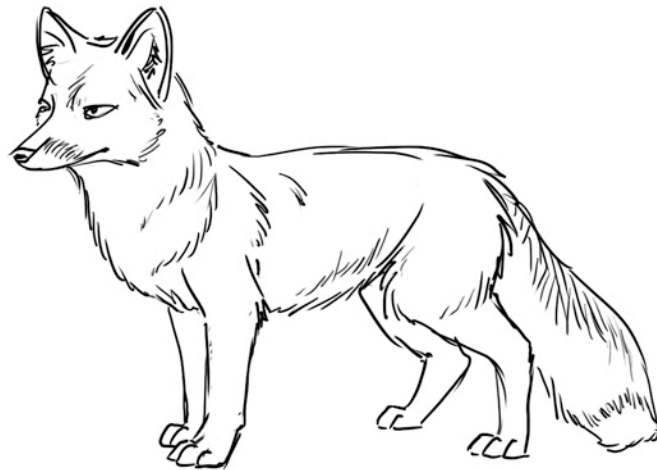
A good offer

The fox analysed what the lion desires and made a good offer: he offered to help the lion to get back on his feet. But the fox only got into business with the lion that had no other business-partners.



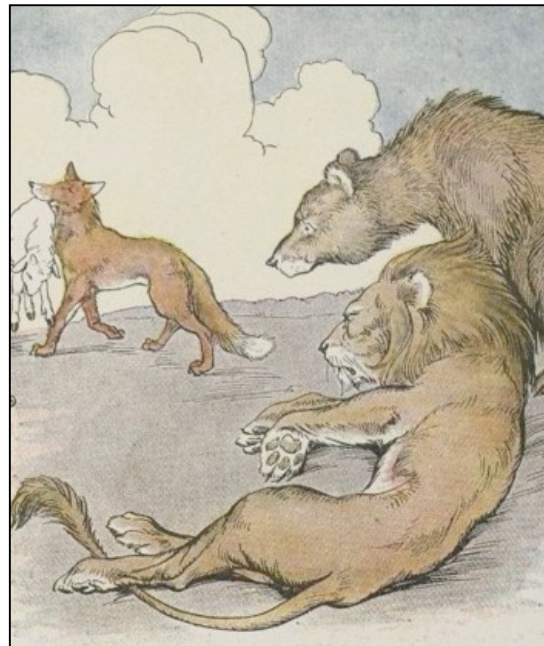
Smart, but wise?

The lion had no better offer and agreed to the fox's offer: The fox, cunning as ever, offered substantial contributions to the land of the lion by his own people, in exchange for resources.



And who gets the pray?

He sent his people to the land of the lion where they started to work. And they worked happily ever after.



The Big Picture

- Sustainable development on the African Continent is in the interest of us all
- Using the broad scope of interpretation in the regulations of tied aid in favour of sustainable development is desirable
- China does not always use this scope primarily in favour of African economies
- Adjusting the scope of interpretation?

Thank you!

For comments and information:

charlotte.sieber@wti.org

www.nccr-trade.org

World Trade Institute, Bern, Switzerland

www.wti.org