Journal of the European Union Chamber of Commerce in China

EURObiz

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CYBER SECURITY

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VPN disruption in China

STEMMING THE FLOW
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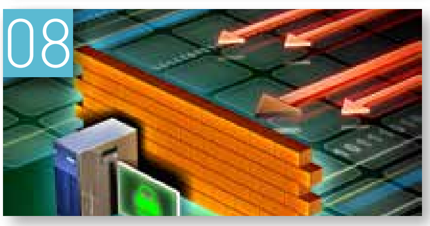

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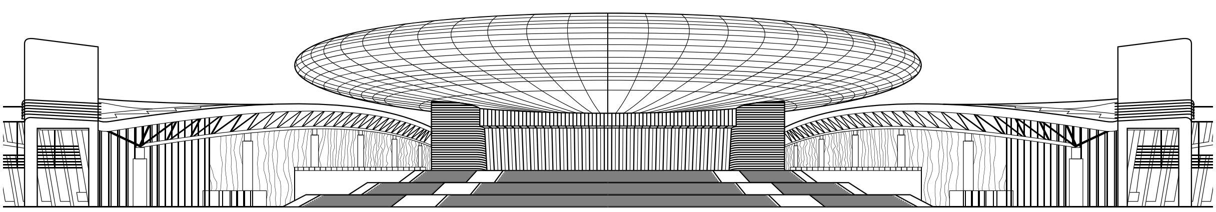
EURASIA COMMODITY AND TRADE EXPO 2015

EACT EXPO
亚欧商品贸易博览会
EURASIA COMMODITY
AND TRADE EXPO

China-Eurasia Expo has been hosted successfully for four sessions and achieved substantial results as a platform for China's summit diplomacy and economic and trade exchanges with its neighboring countries. Chinese state leaders including Li Keqiang, Wen Jiabao, Li Yuanchao and Wang Yang, 21 leaders and former dignitaries of Eurasian countries, as well as over 800 Chinese and foreign minister-level guests attended the exposition. During the previous four editions of exposition, the sponsors and organizers (27 Chinese state ministries and commissions and Xinjiang's over 60 competent governmental departments) organized diverse and inclusive special forums and economic and trade promotion activities which covered a wide range of fields such as agriculture, finance, food security, news, technology and communications. Relevant international organizations and overseas trade and industry departments held over 100 activities such as investment trade fair, tourism promotion and national pavilion day. With the constant improvement of its brand influence and internationalization level, the China-Eurasia Expo is becoming a major platform under the strategy of the "Silk Road Economic Belt".

In light of the actualities of participation by domestic and overseas enterprises and institutions in recent years, the Secretariat of China-Eurasia Expo has planned to host Eurasia Commodity and Trade Expo 2015 .

The Eurasia Commodity and Trade Expo 2015, to be held from Aug. 5-9, 2015 in Urumqi Xinjiang China, is proposed to be themed "Building Silk Road Business Platform to Advance Mutually-beneficial Cooperation between Asian and European Industries". The exposition will involve three specialized exhibitions: textile and garment exhibition, agricultural product and food exhibition, jewelry and jade craft exhibition. To fully display Eurasian countries' superior industries and characteristic products, the Secretariat will invite trade and investment promotion agencies from key countries and regions to present relevant fine items, and will invite other overseas exhibitors to participate in the specialized industrial exhibitions above by category.



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THE WAY AHEAD

Jörg Wuttke
President of The European Union Chamber of Commerce in China

The European Chamber was established in 2000, with the vision to be the unified, independent and influential voice of European business in China. Now, as much as then, lobbying is our raison d'etre and the core service we provide to our members. To continue to do so effectively requires direct access to the Chinese and European authorities, and it is the weight our 1,800 member companies that gives us the requisite clout to make this possible.

The European Chamber's *2014–2017 Strategy Review* (*Strategy Review*) is intended to expand our reach even further. It will also increase our value proposition to our members, adhering to our three pillars – advocacy, business intelligence and community. We will do this by increasing our coverage of Chinese provinces; developing even closer relations with the European Commission; placing even greater emphasis on what we call 'content-based advocacy'; and by ensuring that our stances continue to lead the discourse in opinion-forming, international news outlets. You can read about our *Strategy Review* in more detail on page 24.

Before we release a stance on any given issue we take our time to make sure that it has been given due consideration, so that when we finally speak out our messages are clear and carry a certain weight. This ensures that our words are taken seriously—by both the Chinese Government and the European Commission—and frequently result in us being offered a seat at the table to enter into more detailed dialogue.

In the case of China's non-transparent Anti-Monopoly Law enforcement last year, the Chamber's stance was positively responded to by the National Development and Reform Commission, who invited us for consultation on the matter. Similarly, when the Chamber spoke out on China's recent measures to further restrict domestic Internet access on 12th February this year, we led the discourse in the international media prompting an official response from China's Ministry of Foreign Affairs.

Cybersecurity—the theme of this issue of *EURObiz*—is another topic that could develop along similar lines in 2015, and the Chamber will be observing the situation closely. We expand on this on page six, and follow with related articles on the recent disruptions to foreign VPN services in China; data privacy risks; protection against industrial cyber attacks; how censorship can hamper innovation; and improving cyber security for SMEs.

Reacting to policy developments through statements and press releases is just one way for the Chamber to deliver a better outcome for our members, though. A large part of our advocacy efforts are in fact proactive, through our initiation of public debates on important issues.

This effort has been, and continues to be, driven primarily through our annual publications the *European Business in China Position Paper* and the *Business Confidence Survey*.

In 2015 we will add to these a set of local position papers. The *Shanghai Position Paper 2014/2015* kick-started the series in late January and was extremely well received; other chapters are set to follow suit throughout the year.

We will also re-start the publication of stand-alone papers on current topics informed by the expertise of the Chamber's member companies. These will be similar to previous Chamber publications such as our studies on overcapacity, public procurement and innovation.

To ensure the Chamber's voice is representative of all European business invested in China we are exploring the possibility of opening additional offices over the next few years in areas that are not yet covered. While advocacy efforts will be driven out of Beijing, we recognise the need to increase our focus on individual locales in this continent-sized country.

We have already expanded our reach in Europe by opening an office in Brussels, and it gives me great pleasure to announce that former Chamber President Serge Janssens will be our permanent liaison there. This presence in Europe gives the Chamber a further edge in ensuring that our messages are disseminated swiftly and effectively to the European Commission, the European Parliament and Brussels-based think tanks.

By taking these additional steps we hope to bring further benefits to our membership and increase our relevance to both Chinese and European authorities. As a member, you can be assured that we will continue to strive to provide you with the highest quality services in advocacy, business intelligence and community – the Chamber's 'ABC'.

CYBER SECURE?

ARE CHINA'S POLICIES MAKING THE NATION SAFER, OR ISOLATING IT FROM THE REST OF THE WORLD?

Cyber security, the theme of this edition of *EURObiz*, is a topic that has been making waves in international media over the past year. The issue has drawn increasing attention since the beginning of 2015, with much of the focus on recent policy developments that have been coming out of China.

The current trend in China has been the closing off of certain sectors of the domestic economy to foreign suppliers of information technology (IT) products in response to cyber security concerns. This is a worrisome development for every business—both foreign and domestic—but perhaps the biggest concern is for the Chinese economy overall.

Restricting foreign IT products

The belief that 'shielding' certain, purely commercial sectors of the economy from foreign products will somehow increase national security is a mistaken one. Such policies breed insularity and impair legitimate commercial activities by curtailing the ability of companies to procure the best IT solutions in the global marketplace. If implemented, such restrictions could in fact—contrary to intentions—*weaken* China's cyber security and thus be detrimental to China's economic development going forward.

These policies also greatly increase costs for all companies, particularly those with global operations and IT systems as it will be difficult—or in some areas virtually impossible—to integrate Chinese systems with those in the rest of the world.

"This will set China's tech sector back and makes it non-competitive, as competition drives innovation. Meanwhile EU companies will continue to compete globally and innovate as the competition between them is so fierce," commented Jörg Wuttke, President of the European Chamber, adding, "At the same time, the whole tech system in China will be less secure as Chinese products will likely be more easily compromised. This is a global problem – governments should quit requiring 'back doors' and companies globally need to push for tech integrity and tech system safety."

Furthermore, such policies might run counter to China's World Trade Organisation (WTO) commitments. Although the WTO sees scope for the curtailing of certain sectors of a country's government procurement due to national security concerns, as per the Agreement on Government Procurement (GPA) (to which China has not yet acceded), it is fundamentally opposed to across-the-board cordoning off of sectors.

International trade statistics conclusively show the extent to which China's IT sector has benefited from increased integration into the global IT infrastructure since the country's accession to the WTO.[1] The fact that China's global share of IT exports increased from only about two per cent in 1996, to 30 per cent in 2012, pays testament to that.

This current drive is reminiscent of the so-called 'indigenous innovation' of previous decades, and for the IT sector's 'old China hands' alarm bells are ringing.

Internet restrictions

Similarly gloomy sentiment holds for China's Internet restrictions, too. Limiting which websites or servers can be accessed has a deeply negative effect on the normal day-to-day operations of businesses. It hampers their ability to undertake research and conduct e-commerce transactions, and naturally this has an adverse effect on their productivity.

In having these Internet restrictions in place—and now even *increasing* them—China is doing its economic development in the 21st Century a great disservice. Economic growth in China will no longer be the 'bricks and mortar' growth of the previous decades, but will increasingly be driven by innovative, digital businesses, as is the case in advanced market economies such as the European Union and the United States.

In sum, these trends are also highly detrimental to China's stated intention of attracting and retaining research and development (R&D) investment – research talent is deterred from locating to China because these restrictions prevent them from effectively carrying out their work.

The European Chamber polled its member companies in June 2014 (100 respondents), and again in February 2015 (106 respondents), on the issues of cyber security and Internet restrictions. The findings showed that foreign business in China is concerned about IT and cyber security. Below are some of the key findings from the 2014 survey; key findings from the 2015 survey can be seen on page nine. Both surveys can be downloaded in full from the European Chamber's website:

June 2014 survey:

- 80% of respondents are concerned about the security of their company's IT systems in China.
- 53% of respondents are more concerned about their IT systems in China than in other parts of the world.
- 71% of respondents said the inability to access certain web pages in China negatively affects their business.
- 87% of respondents said the Internet speeds in China negatively affects their business.

Whenever the topic of cyber security comes to the fore, concerns are raised and tensions are ratcheted up a notch. This time around, it is likely that the matter will remain in the public's focus for a while. The European Chamber is closely monitoring developments and gathering as much information as possible in order to make an informed judgement, and we will seek to address these issues on behalf of our members whenever the right opportunity presents itself.

1 *Global imports of information technology goods approach $2 trillion, UNCTAD figures show*, United Nations Conference on Trade and Development (UNCTAD), 12th February, 2014, viewed 12th March, 2015 http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=692.

TRAPPED BEHIND THE FIREWALL

DISRUPTED FOREIGN VPN SERVICES IN CHINA: A CHANGE IN LAW OR A CHANGE IN ENFORCEMENT?

In January 2015, a number of virtual private network (VPN) companies located outside of the People's Republic of China (PRC or China) that serve customers within China reported major disruptions of service. These disruptions, reportedly the result of an upgrade to China's censorship system stemming from safety concerns, have affected many companies and individuals in China who use VPNs to visit websites outside the country—including websites that are important for their businesses and investments in China—which are censored by the Great Chinese Firewall. **Sherry Gong** and **Nolan Shaw** of law firm **Hogan Lovells** explain how this troubling situation has arisen and caution that it could have implications on China's future development.

Following the recent tightening of Internet control measures, a Ministry of Industry and Information Technology (MIIT) official explained in a public statement that only companies acting in accordance with Chinese law are protected under Chinese law, implying that the delivery of services by companies acting outside of the parameters of Chinese law, as many if not all foreign VPNs apparently do, remain vulnerable to disruption and interference.

China regulates the Internet, including commercial VPN services, through a telecoms licensing system which for the most part is closed to foreign investors, despite heavy interest and demand for foreign technology and services. This telecoms licensing system is set forth in the 2000 *PRC Telecommunications Regulations* and the 2003 *Circular of the Ministry of Information Industry on Readjustment of the 'Classified Catalogue of Telecommunications Services'*. Under this system, commercial VPN services are classified as a value-added telecoms (VATS) service, requiring a VATS licence.

According to the 2002 *Provisions on the Administration of Foreign-Invested Telecom Enterprises* (Amended), in theory foreign investors can obtain a VATS licence to provide commercial VPN services in China through the establishment of a Sino-foreign joint venture (JV) enterprise, with a maximum foreign equity ratio of 50 per cent. In practice, however, this licence is generally not open to foreign investors at all.[1]

This licensing regime is generally limited to engagement in telecom activities or telecom-related activities within the PRC. While a number of factors can be at play in deciding whether a VATS service is occurring within the PRC, a good rule of thumb seems to be the location of the servers involved. Generally speaking, servers located in China are within the MIIT's regulatory reach, and those located outside of China are not.

So the physical location of the server is important from a jurisdictional perspective but, as we know, the World Wide Web is known for crossing geographical borders and it is on this cross-border basis that foreign companies have offered VPN services to customers within China. Yes, there are some practical difficulties to the cross-border model—for example, payments for services must usually be paid in foreign (i.e. non-Chinese) currency, which is inconvenient for some consumers within China—but over the past few years this model has generally worked.

That does not mean that the MIIT does not regulate cross-border Internet activity. In fact it does, or at least tries to, by regulating the international Internet infrastructure gateways that link the Chinese Internet with the rest of the world. Under the 2002 Measures for the Administration of International Communications Gateway Exchanges, international gateways in and out of China are heavily regulated and only state-approved, state-invested actors may operate the switches, which they must do in conformity with the MIIT's laws and policies. Setup of virtual networks for the purpose of operating telecoms services via the international Internet gateways (this would include foreign VPN service providers operating on a cross-border basis) must be reported to the MIIT for approval. And, on a related note, setup of VPNs for internal use via the international Internet gateways must be record-filed with the MIIT, although it is not clear whether the recording requirement for internal use of VPNs has been strictly enforced in practice.

Thus commercial VPN service providers are subject to MIIT licensing/approval whether they operate on a domestic basis or a cross-border basis and those that do not secure such licensing/approvals run a constant risk that the Chinese authorities will use their self-asserted rights of 'cyber-security sovereignty' to shut down their services. Recent shutdowns, therefore, are not due to a change in the law but rather result from a change in the level of enforcement, perhaps due to advances in the government's technological capabilities in identifying and blocking VPN traffic.

There has been legislative activity in other aspects of cyber-security, however, including the publication of draft cyber-security review rules, which require foreign companies selling phones and tablets to build 'back doors' into their products and to provide source code to the government. Additionally there is the publication of a draft anti-terrorism law, which calls on companies to store all data related to Chinese users on servers in China.

From a security perspective these laws may be viewed by the government as being a benefit, or even necessary to some degree. But they may also have a further detrimental effect on the business environment and foreign investment in China, which has already been adversely impacted by existing Internet restrictions. Many businesses and individuals traditionally used VPNs as a work around but following the government clamp down at the beginning of 2015, the foreign-invested business community has reported increased difficulty in doing business. A recent European Chamber member survey[2] revealed that:

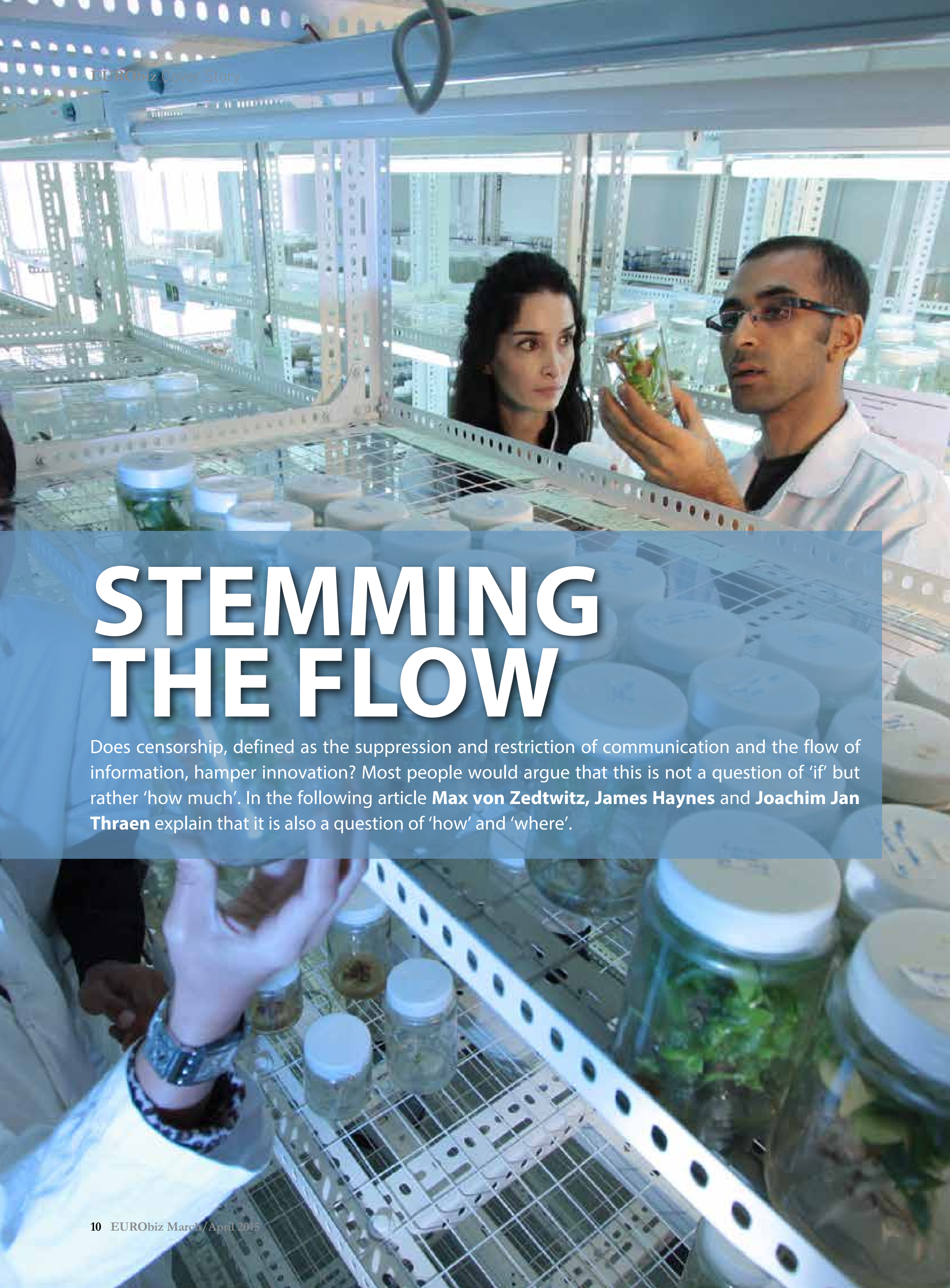
- 86% of respondents reported a negative effect on their business as a result of certain websites and online tools being blocked, a 15% increase compared to June 2014;
- 80% of respondents have recorded a worsening business impact as a result of the recent further tightening of Internet controls beginning in early 2015; and
- 13% of respondents have recently deferred R&D investment or have become unwilling to set up R&D operations in China since Internet restrictions were tightened in early 2015.

Given China's interest in sustaining economic growth and its recent indications elsewhere that it intends to improve its business environment for foreign investment, it will be interesting to observe how the PRC Government will balance its concerns for cyber-security against its continued economic development. Eb

Hogan Lovells *is a global legal practice with over 2,800 lawyers in more than 40 offices including three offices in Greater China, five offices in the rest of Asia, and 17 offices in Europe. The Beijing, Shanghai and Hong Kong offices provide a full range of services covering antitrust/competition law, banking and finance, corporate and contracts, dispute resolution, government and regulatory, intellectual property, media and technology, projects, engineering and construction, real estate, and restructuring and insolvency.*

1 An exception to this may be for Sino-foreign JVs established in the China (Shanghai) Pilot Free Trade Zone. The new policies there may make foreign participation in providing IP-VPN services in China a reality.

2 *Internet Restrictions Increasingly Harmful to Business, Say European Companies in China*, European Union Chamber of Commerce in China, 12th February, 2015, http://www.europeanchamber.com.cn/en/press-releases/2235/internet_restrictions_increasingly_harmful_to_business_says_european_companies_in_china.



STEMMING THE FLOW

Does censorship, defined as the suppression and restriction of communication and the flow of information, hamper innovation? Most people would argue that this is not a question of 'if' but rather 'how much'. In the following article **Max von Zedtwitz, James Haynes** and **Joachim Jan Thraen** explain that it is also a question of 'how' and 'where'.

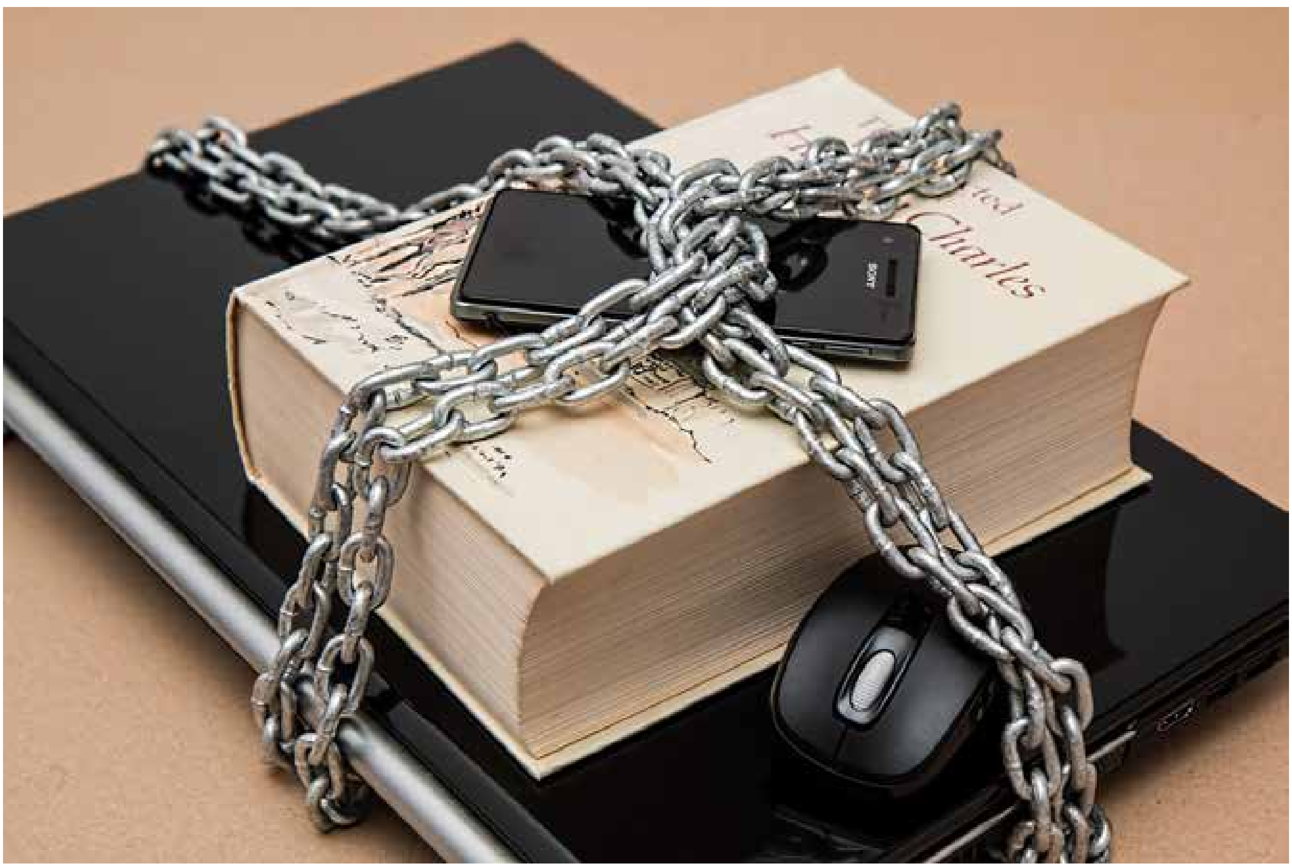
Innovation is the creation, introduction and adoption of something new. We often associate it with new products and new technologies, but innovation can also come in the form of new ways of doing things, new forms of organisation, new standards or new value systems. In many ways, China has been an extremely innovative society over the past few decades. Although not all of these innovations emerged in China, many contributed to change in the country and helped make it what it is today. Innovative companies such as Alibaba, Beijing Genomics Institute and Xiaomi are just a few examples.

All of this happened despite censorship, so censorship does not necessarily preclude all innovation and progress. China does restrict people's access to information but this is not a unique situation: parents censor and control their children's access to certain TV programmes and many Western governments restrict the propagation of subversive material relating to, for example, fascism, child pornography or terrorism. Generally, though, China *does* impose greater censorship on its citizens than most other countries, but one must consider censorship in a multi-dimensional spectrum rather than an absolute, 'either-or' regime.

For instance, when it comes to technological information China does not seem to restrict access or communication very much at all. If anything the relatively lax implementation and enforcement of intellectual property rights (IPR) is the opposite of censorship. China encourages the propagation of technology, so censorship in these areas is negligible. Censorship becomes more publicly noticeable when it relates to politics and current events. Whether in the form of directives handed down from controlling ministries or through self-regulation of journalists and news editors, there are certain standards as to what is acceptable for public consumption and what is not. This also is not a phenomenon unique to China: Western Internet search engines prioritise which information to present to their customers based on certain rules that are only partially controlled by the public – information can be eliminated entirely or favoured prominently depending on companies promoting services or products, for instance.

The real question thus becomes, does censorship aimed at restricting non-technical and political information affect innovation negatively in China? We tend to think it does. The key problem is that while censorship may not be directed at restricting access to technological information, as input to innovation, it stifles people's ability and interest to gather information about problems and solutions in general, including innovation-relevant insights. It also curbs individuals' incentives and willingness to publish and generate information for others.

The Great Firewall of China



The Great Firewall of China (GFC), a system that prevents access to websites deemed undesirable by the Chinese Government, is one of the primary tools of censorship in China. Chinese citizens cannot access Facebook, Twitter, and other Western social media sites, as well as many Western news sites, government sites and most foreign videos. The result is that Chinese citizens are not able to freely access foreign ideas and information.

Innovation is the solving of problems by means of new ideas. Problem sharing and problem reporting are a significant portion of social media and news reports and discussions. If Chinese citizens are not receiving and participating in these subjects they are cut off from finding out about these problems. We see this hampering innovation in four ways.

First, if Chinese citizens are prevented from learning what the rest of the world's problems are they are unable to innovate and help to solve these problems. Therefore, the GFC is inhibiting China from receiving foreign funds for innovation. That is, the Chinese Government is attempting to restrict their problem set to only 'Chinese problems', thereby limiting the scope of what innovation China could achieve. This can be observed by an absence of Chinese solutions to foreign problems in Europe or the United States, for example.

Second, since foreigners can all access Chinese information they can participate in solving Chinese problems. This is also easily observed – many solutions to Chinese problems are provided in China by foreign companies operating in such areas as software, pharmaceuticals and automobiles. Therefore the GCF places China at a disadvantage in that foreign companies can innovate in China but Chinese companies cannot reciprocate.

Third, the GCF makes it more difficult for China to see how problems were solved in foreign countries, and this restricted access impedes China's ability to solve their own challenges. There has been a tremendous import of technology and ideas to China over the years but much of this has been what foreign companies have been willing to concede rather than what China has actually needed. To fully understand a technology the adopter must have the freedom to become fully immersed in the technology and its socio-cultural context. Limiting this access restricts China's creative spirit.

Finally, the GCF slows domestic access to information and ideas. Internet access, download speeds and efficiency of communication are significantly slower than in other countries. This puts Chinese entrepreneurs at a distinct disadvantage in terms of time and money spent on developing their innovations. Also, foreign companies are increasingly hesitant to move time-critical (and IP sensitive) activities to China, so it would come as no surprise to see Chinese companies relocating time-critical activities outside of China and bringing back completed solutions that no longer rely on communication efficiency.

Free flow of information as the backbone of innovation

"The first condition of progress is the removal of censorship." – George Bernhard Shaw

In the early stages of innovation, ideas and new concepts are fragile and vulnerable. Unless given the opportunity to blossom and develop they can be quickly exterminated by the ruthlessness of reality. It is therefore essential that ideas and knowledge be transferred effectively to allow them to be absorbed in the knowledge context of others so they can quickly put down roots and grow in different ways. Companies that feed their product development teams filtered and 'pre-chewed' data cripple their innovative ability. Although the 'truth' about some new innovations may be inconvenient and unsettling it allows companies to react in time, change strategies, redesign products and reinvest capital more efficiently.

In general, most analysts agree that censorship leads to isolation and this can only be bad for creativity and innovation. Some believe that China is big enough to be an independent market of creativity and innovation but this argument is weakened by the ongoing practice of internal censorship and the relative lack of domestic creative diversity.

Censorship may be helpful in nurturing fledging industries and does not automatically lead to the creation of domestic monopolies, as illustrated by the fierce competition among Chinese domestic companies in many industries. However, competition does not necessarily nurture innovation; rather, innovation leads to competition. China's market is still enormous and perhaps large enough to allow every innovation at the global level but censorship of foreign companies in this market comes at a cost. Also, it doesn't protect Chinese entrepreneurs from the large Chinese powerhouses that swallow up underfunded startups. Many startups that do not have the political clout to protect themselves and rely on the ability to demonstrate the superiority of their product are strongly affected by the absence of unrestricted access to new ideas and concepts. Greater transparency would likely provide Chinese entrepreneurs with more options to develop their innovations faster, for example with the support of foreign capital, access to foreign markets and foreign expertise. Ultimately this would benefit Chinese innovation in the long run.

Can censorship help innovation?

It could be argued that the absence of 'unencumbered creativity' can lead to unique solutions completely different from those that currently exist, having been created free from the influence of pre-existing solutions or technology. This clean-slate approach has led to many breakthrough innovations, which are often far superior in efficiency and effectiveness without the constraints of having to be compatible with legacy systems. Such innovations can benefit more mature foreign markets but there is a substantial risk that many of these are 'hacks' around existing constraints and based on existing technology. Many of these indigenous innovation projects in China have not been very successful. A pure clean slate is virtually impossible anywhere – a testimony to the ineffectiveness of total censorship.

Having said this, these kind of attempts at indigenous, self-reliant innovation will strengthen China's ability to master all stages of technology and product development. It will also build a 'can-do' spirit – an understanding that, if needed, China would be able to go it alone. In this sense censorship has had a certain educational effect on Chinese innovators.

Outlook

Overall, the impact that censorship has on innovation is clearly more detrimental than advantageous. Foreign companies based in China, in particular those trying to leverage the innovative potential of their local employees, bear these costs. Global research and development (R&D) and innovation programmes are often curtailed in China due to local regulations and insufficient capability, both related to the negative effects of censorship, IP policy and information access limitation. While foreign companies always have the option to relocate R&D work elsewhere Chinese employees don't have the flexibility to follow. In the long run their professional advancement is slowed down even though this is less obvious if their comparison benchmark is solely in China. Therefore, foreign companies conducting innovation in China may help to serve as guiding examples, leading the way in China's development towards an open, innovative business environment. Eb

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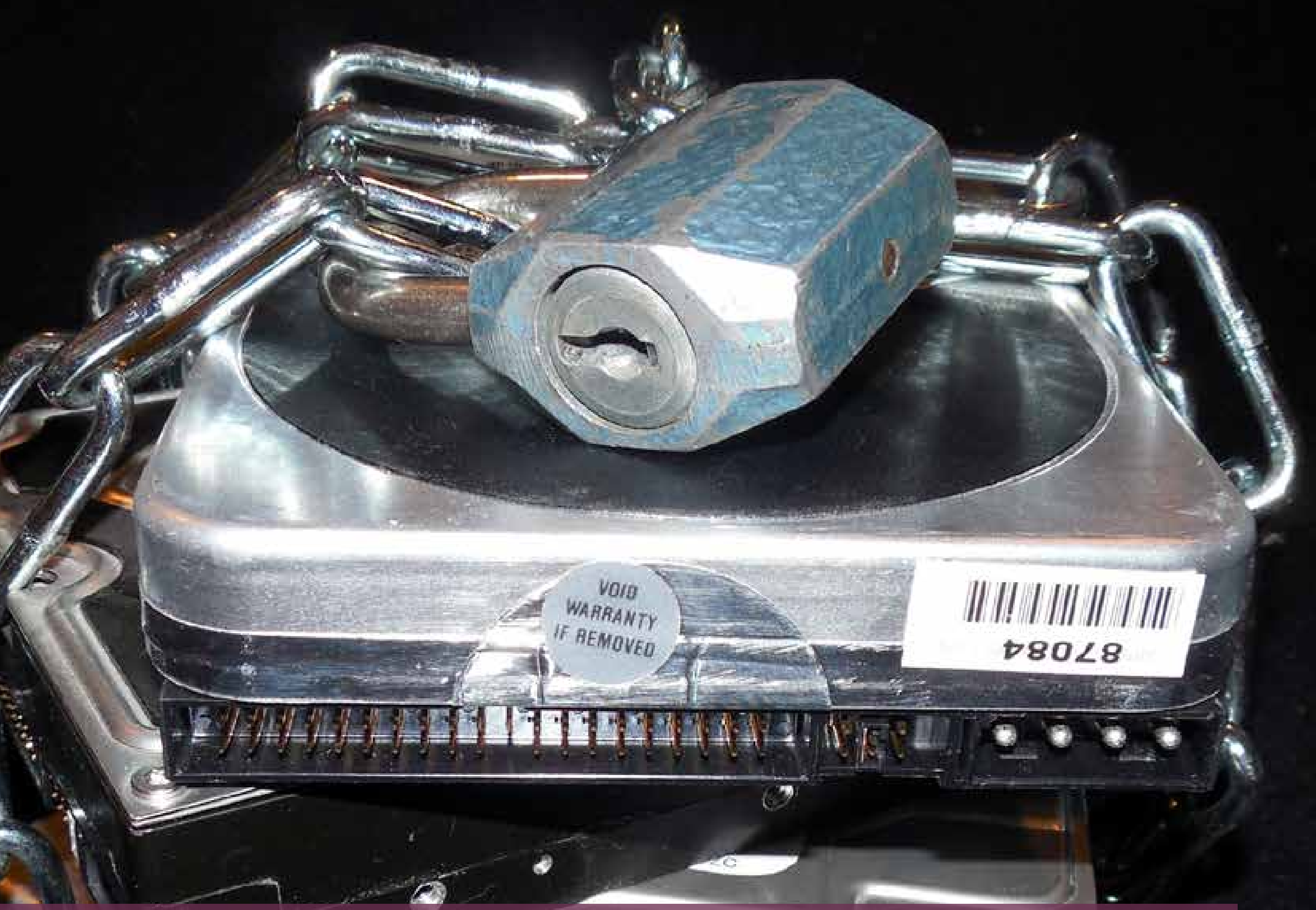

MIND YOUR BUSINESS

MANAGING DATA PRIVACY RISKS IN THE BIG DATA ERA

Access to personal information can present enormous business opportunities in the big data era. This has led to increasing concern for data privacy and data protection among businesses and individuals. In turn these concerns have resulted in aggressive legislation being passed by authorities in Europe, the United States and China. In the following article, **Barbara Li**, lawyer and partner with **Norton Rose Fulbright**, explains what the associated risks are and what companies involved in gathering and transferring personal data should do to ensure compliance with Chinese law.

Unlike the European Union (EU), which has issued a Data Protection Directive requiring EU member states to adopt a local law, China does not have a comprehensive national law that specifically addresses data privacy. Instead, data protection and privacy requirements can be found scattered among various regulations, rules, policies and industry standards such as the *Decision on Strengthening the Network Information Protection* issued by the Standing Committee of the National People's Congress; the *Regulation on Protection of Telecom and Internet Users' Personal Data* issued by the Ministry of Industry and Information Technology (MIIT); and the *Guidelines on Information Security and Personal Data Protection of Public and Commercial Information System*, also issued by the MIIT. It is important to note, though, that the Chinese authorities have enhanced the enforcement of data privacy rules. The most high profile case in this regard relates to a large international company's compliance investigation case in which two senior executives of a foreign-invested consulting company were indicted for criminal liability on the grounds of illegally collecting and trafficking personal data in breach of Chinese data rules.

Under Chinese law personal data refers to computer data which, used solely or in combination with other information, can identify a certain individual. A company must take care in collecting, processing and transmitting personal data, which is classified as being either 'sensitive' or 'non-sensitive'. Express consent from the individual from whom the data is collected is required both at the point of collection and while handling such information as their personal identification, mobile number, ethnic origin, religious beliefs, genetic information and fingerprints.

A company must provide proper notification to data subjects in relation to the collection and use of their personal data. This notification should be provided in a clear, easy-to-understand and appropriate manner and set out the purpose of the data collection. In cases where a third-party service provider is engaged to process the data the notice must disclose the identity of the third-party service provider.

Transfer of personal data across borders is subject to special requirements. Prior consent from the relevant individuals must be obtained before a company can transfer the personal data it has collected to another country. Careful review of data to be transferred abroad is also highly recommended to ensure that it doesn't inadvertently spill over into the category of state secrets, which are prohibited from being transferred abroad.

All industries are affected by privacy and data protection requirements but certain sectors such as healthcare, banking and insurance industries are subject to stricter data protection rules due to the relatively higher level of data sensitivity involved. For example, according to relevant Chinese regulations banks can only store, analyse and process personal banking data in China and cannot send personal banking data abroad, unless specifically permitted under relevant regulations.

Breach of data protection and privacy rules will give rise to serious legal consequences. Chinese authorities have the power and authority to impose administrative sanctions on individuals and companies which fail to follow the legal requirements, and criminal liability may be triggered for severe breaches. Companies in breach are also likely to suffer serious damage to their reputation for violating data privacy rules.

With respect to global data flow, European companies conducting business in China must follow both European and Chinese data privacy regulations. Given the risks and the related requirements, ensuring full compliance of data privacy rules should be a top-of-mind issue for management teams of multinational corporations. Some companies have already adopted and implemented data privacy and data protection programmes but many of these fall short for a variety of reasons, including a lack of understanding of the regulatory and legal landscape in China. Companies seeking to build and maintain an effective and compliant data privacy programme may consider the following best practices:

- Review data privacy programmes to ensure compliance with Chinese data privacy requirements.
- Draft/review data transfer agreements to address data risks from a contractual perspective.
- Monitor third-party service providers and address data privacy risks when outsourcing projects.
- Provide data privacy training to internal teams and key stakeholders to improve data awareness.
- Formulate procedures for handling possible data breaches.

In response to public concerns about personal data, China is stepping up its efforts to upgrade its legal framework to reflect the rapid developments in data privacy. A proposed comprehensive data privacy law is expected to bring China closer in line with global standards on personal data protection. In light of the developments in big data and cloud computing, European companies are increasingly engaged in the collection and use of personal data as part of their business in China. They need to keep a close eye on Chinese regulatory developments in data privacy and take steps for data compliance and risk mitigation whenever necessary. Eb

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Norton Rose Fulbright *is a global legal practice, providing the world's largest corporations and financial institutions with a full business law service. Norton Rose Fulbright has more than 3,800 lawyers based in over 50 cities across Europe, the United States, Canada, Latin America, Asia, Australia, Africa, the Middle East and Central Asia.*

BATTENING DOWN THE HATCHES

PROTECTING INDUSTRIAL CONTROL SYSTEMS AND COMMUNICATION NETWORKS

Since the discovery of Stuxnet[1] in 2010, cyber security has been high on the agenda of operators of industrial facilities around the world. In the following article, **Beat Kreuter** of **DEKRA** explains some of the risks associated with cyber-attacks as well as the recent development of standards aimed at protecting against them.

1 A computer worm designed to attack industrial programmable logic controllers (PLCs).

For years, industrial controls were not designed with security in mind since industrial communication networks where largely closed systems. Increasingly though, industrial networks are connected to networks with Internet access to facilitate remote controlling and real-time monitoring (e.g. smart grid). This trend is only set to increase with the emergence of the Internet of Things and Cyber Physical Systems in process and factory automation (smart factories). The SHINE project,[2] which ran from April 2012 until January 2014, found over two million industrial control system (ICS) devices accessible via the Internet. Sixty-three per cent of these were found in the top industrial nations – the United States (US), Germany, China, Korea and the United Kingdom.

Cyber security and protection against cyber-attacks is not a new topic. Securing confidential and sensitive information is common for many Internet-based services such as banking, online shopping, the general office environment and personal computing. The priorities for these systems are based on keeping information confidential, maintaining the integrity of information and systems and ensuring availability of resources. Computers and servers can and are regularly updated with antivirus software and operating software security to keep systems up-to-date with newly discovered vulnerabilities.

2 SHINE (SHodan INtelligence Extraction) by Bob Radvanovsky and Jake Brodsky.

Industrial control systems cannot be updated as easily as regular information technology (IT) systems due to the high availability requirements and the fact that the operating software or firmware is embedded. In addition, the life cycles of ICSs span 20 years or more. The availability of such systems is their highest priority – a targeted denial-of-service (DoS) attack, for example, should not cause an ICS to crash because of overloaded resources and the inability to respond to process events. The potential consequences of such an event include damage to systems, financial losses and could even endanger lives. These kind of cyber-attacks occur typically via the Ethernet port (TCP/IP), wireless ports, USB ports and other accessible external ports.

Cyber security regulations

Governments around the world are aware of the increasing need to protect critical infrastructures, such as supply chains for food, energy and the health sector—all controlled by ICSs—against cyber threats.

In the US, Presidential Executive Order 1336 from February 2013, called for the development of a risk-based set of industry standards and best practices to help organisations manage cybersecurity risks. The European Union (EU) is in the process of publishing a Network and Information Security (NIS) Directive requiring market operators to detect and manage the risk to the security of networks and information systems essential for the continuity of their core services. Various countries in the Middle East have already published their national ICS cyber security standards to protect their national critical infrastructure.

International standards for cyber security

As early as 2002, the International Society of Automation (ISA) started to work on security standards for industrial automation and control systems. Part of the work of the Industrial Automation and Control System Security Committee (ISA99) of the Instrumentation, Systems and Automation Society has been transferred to, and respectively aligned with, the International Electrotechnical Commission's (IEC's) 62443 series of standards. This series of standards is to date the most comprehensive set of security standards for the manufacturing, process and automation industry. They cover general policy and procedures, system engineering and component/devices requirements for asset owners/operators, integrators and manufacturers of industrial control devices and systems to minimise exposure to cyber risks. The IEC 62443 series of standards builds on proven and available general purpose IT security standards, such as the ISO/IEC 27000 series, while identifying and addressing differences present in ICSs.

Foundational security requirements

The standards set requirements depending on the target security level for seven foundational security requirements: 1) identification, authentication and access control; 2) use control; 3) system integrity; 4) data confidentiality; 5) data flow; 6) timely response to events; and 7) resource availability. Target security levels are numbered from zero to four, with four being the highest security level providing protection against attackers using sophisticated means and extended available resources (e.g. state sponsored attacks). Target security level zero would indicate that no specifically-defined requirements for protection are required. Industrial control devices with a capability security level of four have sophisticated means employed to prevent intrusions and are capable of withstanding sophisticated DoS attacks.

Testing and certification for cyber security

The IEC Conformity Assessment Board (IEC CAB) Working Group 17 on cyber security was formed in August 2014, to evaluate the need for a global conformity assessment programme set against IEC 62443 standards. As a result the IEC System of Conformity Assessment Schemes for Electrotechnical Equipment and Components (IECEE)—commonly referred as the Certification Body (CB)—certification scheme is developing a globally-accepted testing and certification scheme for cyber security of industrial control systems and devices based on IEC 62443 standards. At present 60 countries are participating in the IECEE assessment scheme covering over 16 product categories, including industrial automation and control systems. The global assessment scheme is expected to be operational by the end of 2015. The assessment scheme will cover devices such as programmable logic controllers (PLCs), human machine interfaces (HMI), network routers, firewalls and other devices connected to industrial networks.

In addition it will be possible to assess and certify entire industrial control systems against IEC 62443. In this way asset owners can prove to regulators compliance with, for example, the upcoming EU NIS directive or the US Presidential Order 1336.

Insurers may accept an IECEE certificate as proof that operators have taken precautions against cyber risks based on IEC 62443. The IECEE scheme will also allow certification of systems integrators against IEC 62443, confirming that they possess the capabilities to engineer industrial control systems with appropriate levels of protection against identified cyber threats. Eb

***DEKRA** is one of the world's leading expert organisations and currently runs activities in more than 50 countries on all five continents. About 35,000 employees are committed to ensuring long-term safety, quality and environmental protection. The DEKRA Business Units Automotive, Industrial and Personnel provide professional and innovative services in the fields of vehicle inspection, expertise, claims services, system certification, product testing and certification, industrial and construction inspection, consulting, qualification and temporary work.*

NO SMALL MATTER

CYBER SECURITY IN CHINA: WHAT SMEs NEED TO KNOW

Smaller companies can be particularly susceptible to cybercrime as they often lack the resources to fully protect themselves against such attacks. Writing for the **EU SME Centre**, **Karsten Luc** provides some advice on how SMEs in China can defend themselves against cybercrime.

China has the largest online population with around 642 million users. More remarkable though is the fact that there is another half a billion people in China that are still yet to join this community of netizens.

Through the rise of low-cost smartphones and the expansion of Internet connectivity in particular, more and more Chinese are expected to come online.

It is estimated that 60 per cent of Chinese netizens already browse the web with their smartphones, using the online world for activities such as shopping (e-commerce), communicating (social media) and entertainment (online gaming). As a result, tech companies are benefiting greatly from this trend, such as the smartphone producer Xiaomi, one of the world's most valuable start-ups.

Yet the stakes are high.

In 2013, cybercrime caused damage worth USD 37 billion in China. As more Chinese netizens use mobile payment systems, cyber criminals will seek opportunities to hack into these financial systems and their devices.

The risk is all the more real to organisations lacking profound IT knowledge.

What does this mean for SMEs? Two questions are especially important to understand.

How can SMEs in China defend themselves against cybercrime?

Though media coverage on cyber incidents such as hacking, IP theft and espionage is mushrooming, and despite the fact that governments are increasing their focus on 'cyber' issues, SMEs are still not investing enough in cybersecurity.

A study by the Ponemon Institute in 2013, has found that only 58 per cent of respondents consider cybersecurity relevant to their businesses and that 42 per cent do not invest enough in their IT security.

A reason might be that in cyberspace it is much easier to attack than to defend and not everyone is tech-savvy enough to understand the complex technical processes. For SMEs with limited resources here are five tips that can help to prevent major cyber incidents from occuring:

1. **Train your staff in cyber security:** Most cyber intrusions can be prevented if your staff is well trained and aware of the various cyber risks. This is especially important to SMEs that tolerate BYOD (bring your own device) practices.
2. **Beware of pirated software in China:** If you buy a PC in China, ask yourself if the pre-installed software is pirated and can be updated.
3. **Update your software regularly:** Taking Microsoft Internet Explorer as an example, a lot of Chinese employees are accustomed to using outdated versions. Very few use open-source web browsers such as Firefox which are updated on a regular basis.
4. **Get ready with a diversified strategy for your digital needs:** Label all your digital matters according to their security level. What can be made public and what needs to be protected? For instance, there is nothing wrong with hosting your site in China if it only contains public information. Sensitive data should be handled by your trusted systems from abroad, though.
5. **Insist on rigorous passwords:** Ninety-four per cent of attacks could have been prevented with basic 'cyber-hygiene'. The best example is that the most popular password in use today is '12345', and the second most popular is 'password'.

What efforts are currently undertaken by the Chinese Government?

The Chinese Government wants a healthy development of its Internet and for its cyberspace to be clean of 'spiritual pollution' (online rumours or pornography). As a result, strong Internet regulation policies are being enforced in order to gain sovereignty over cyberspace. To the detriment of foreign SMEs in China, access to foreign websites and their digital services, including vital research tools, are often blocked or restricted.

The result of this is that local firms will shape the digital landscape in China. Most of them offer similar services that mainly target the Chinese audience, but they will become increasingly innovative. Overall, the Chinese Government believes that advanced digital technologies will lead to more innovations that aid economic growth.

Top 8 Reasons That Make SMEs Attractive Targets for Cyber Criminals

1. Not enough resources spent on cybersecurity (time, money, expertise).
2. No IT specialist in the team.
3. No risk awareness.
4. Lack of employee training.
5. No regular security updates.
6. Outsourcing to the wrong contractors (you get what you pay for).
7. No endpoint security (BYOD – Bring Your Own Device).
8. Bad news: SMEs (with annual revenues of less than USD 100 million) cut security spending by 20% in 2014.

Small and medium-sized enterprises in China should strengthen their efforts to understand the Chinese digital market better with its booming service providers but should also be aware of the inherent risks.

With more development in local IT services, SMEs can benefit from a growing number of business opportunities; however IT newcomers still need to prove that they can offer quality services, great customer support and security. The risks are that the chosen company might become a failed investment and might even negatively disrupt business operations.

To get further advice on improving cyber security for your business in China, watch the webinar recording on this topic available on the EU SME Centre's website.

For an overview of the ICT market in China, please download the Centre's sector report. An updated version will be available in May 2015.

The EU SME Centre helps EU SMEs prepare to do business in China by providing them with a range of information, advice, training and support services. Established in October 2010, and funded by the European Union, the Centre has entered its second phase which will run until July 2018.

All services are available on the Centre's website after registration, please visit: www.eusmecentre.org.cn.

EUROPEAN CHAMBER LOBBYING HIGHLIGHTS

European Tour to Brussels

From L-R: Vice President Mats Harborn, President Jörg Wuttke, President of the European Parliament Martin Schulz, Vice President Stefan Sack and Secretary General Adam Dunnett.

From 26th – 30th January, 2015, European Chamber President Jörg Wuttke led a large Chamber delegation, including vice presidents Bertrand de la Noue, Mats Harborn and Stefan Sack, as well as chairs and vice chairs of the Chamber's working groups, to visit the new European Commission in Brussels to present the *Position Paper 2014/2015*. Altogether, more than 70 high- and working-levels meetings were held during the week.

President speaks before European Parliament hearing

On 22nd January, 2015, European Chamber President Jörg Wuttke had the honour of speaking before the European Parliament at a public hearing of its Committee on International Trade (INTA) – a first for a president of the European Chamber. For a full 40 minutes, President Wuttke provided the European Parliament with the Chamber's assessment of China. President Wuttke spoke about European business sentiment in China, the market access barriers that European companies face and the expectations of European industry for a comprehensive EU-China Bilateral Investment Agreement (BIA).

The European Parliament's INTA holds responsibility for the European Union's common commercial policy and all of the EU's external economic relations including its relations with the World Trade Organisation. As per the Treaty of Lisbon, the European Parliament is a co-legislator for the EU's common commercial policy and ratifies all of the EU's trade agreements – it would thus also ratify any potential EU-China BIA.

Commissioner Cecilia Malmström, DG Trade

On 27th January, President Wuttke led a Chamber delegation to meet with Trade Commissioner Cecilia Malmström. President Wuttke and Commissioner Malmström talked at length about the current negotiations of the EU-China Bilateral Investment Agreement, as well as China's WTO Market Economy Status.

Commissioner Margrethe Vestager, DG Competition

Commissioner Margrethe Vestager with President Wuttke.

On 26th January, President Wuttke led a high-level Chamber delegation to meet Commissioner Margrethe Vestager. During the meeting President Wuttke briefed Commissioner Vestager on China's enforcement of its Anti-Monopoly Law (AML) and the subsequent engagement that the European Chamber had with the National Development and Reform Commission (NDRC) on this subject.

Commissioner Jonathan Hill, DG for Financial Stability, Financial Services and Capital Markets Union


President Wuttke with Commissioner Jonathan Hill

On 29th January, a Chamber delegation met with Commissioner Jonathan Hill. Commissioner Hill was briefed on the general business environment in China, including developments in the China (Shanghai) Pilot Free Trade Zone. Fredrik Ektander, Chair of the Banking and Securities Working Group, presented the challenges faced by banks in China as well as policies related to financial services.

Commissioner Vytenis Andriukaitis, DG for Health and Food Safety


Commissioner Andriukaitis and President Wuttke peruse the SME issue of *EURObiz*.

On 29th January, a Chamber delegation met with Commissioner Vytenis Andriukaitis. President Wuttke introduced the work of the Chamber's working groups and focused specifically on the concerns of the Chamber's Agricultural, Food and Beverage Working Group.

Commissioner Phil Hogan, DG for Agriculture and Rural Development


Shake on it: Commissioner Hogan and President Wuttke

On 28th January, President Wuttke led a Chamber delegation to meet with Commissioner Phil Hogan. The delegation briefed Commissioner Hogan extensively on the concerns of the European dairy producers regarding the exportation of cheese to China.

Director-General Alexander Italianer, DG Competition


From L-R: Carlo D'Andrea, Bruce Fu, President Wuttke, DG Italianer, Davide Cucino, Zhou Liqun and Zhu Mingyue.

On 26th January, a delegation led by President Wuttke and including former Chamber president Davide Cucino met with Director-General Alexander Italianer. The delegation discussed the Chamber's engagement with the NDRC on the issue of the non-transparent enforcement of China's AML.

Director Rupert Schlegelmilch, DG Trade


Director Schlegemilch and President Wuttke point to the spot.

On 27th January, President Wuttke met with Director Rupert Schlegelmilch. As Director Schlegelmilch is the European Union Chief Negotiator for the EU-China Bilateral Investment Agreement (BIA), there was an extensive discussion on this issue. President Wuttke relayed to him the expectations European business in China holds for the BIA.

Deputy Head of Cabinet of Commissioner Pierre Moscovici, DG for Economic and Financial Affairs, Taxation and Customs


Reinhard Felke and President Wuttke discuss the *Position Paper 2014/2015*.

On 28th January, President Wuttke met with Reinhard Felke, Deputy Head of Cabinet of Commissioner Pierre Moscovici. Also in attendance were Fredrik Ektander and Tony Chen, Vice Chair of the Aviation Working Group, who provided updates on the banking sector and logistics sector respectively.

Director-General João Aguiar Machado, DG Move

Vice President Mats Harborn doubles up on the position papers with DG João Aguiar Machado.

On 27th January, vice presidents Mats Harborn and Stefan Sack met with Director General João Aguiar Machado, DG Move. There ensued a detailed discussion on transportation including topics on aviation, auto-components, logistics, the automotive industry and public procurement in the rail industry.

Deputy Director-General Zoran Stancic, DG Connect

On 28th January, Vice President Stefan Sack and representatives of the Chamber's ICT and Information Security working groups met with Deputy Director-General Zoran Stancic to discuss the recent Internet restrictions in China.

Director-General Dominique Ristori, Directorate-General for Energy

On 26th January, European Chamber Vice President Bertrand de la Noue met with Director-General Dominique Ristori to discuss the general energy environment in China. The discussion touched on issues related to shale gas, energy prices and composition in China, energy efficiency and smart buildings.

Director-General Walter Deffaa, DG for Regional Policy

On 26th January, vice presidents Mats Harborn and Bertrand de la Noue met with Director-General Walter Deffaa to exchange ideas on business opportunities related to China's continuing urbanisation process. There was also a discussion on innovation and IPR in China. This meeting was extremely timely, coming as it did the day before DG Deffaa's visit to China.

Commissioner Karmenu Vella, DG for Environment, Maritime Affairs and Fisheries

On 27th January, President Wuttke led a large Chamber delegation to meet with Commissioner Karmenu Vella. In addition to a general discussion on the business climate in China, there was also discussion about environmental protection and enforcement of environmental laws, China's involvement in environmental protection at the multi-lateral level and how to engage China in the fight against illegal fishing.

Kostas Glinos, Head of Unit for Strategy on International Cooperation, DG for Research and Innovation

On 27th January, a delegation led by Vice President Harborn met with Kostas Glinos, Head of Unit for Strategy on International Cooperation, to discuss how to increase cooperation between the EU and China in the area of innovation, specifically the concept of creating an EU-China innovation platform and how this might take shape.

Director-General Daniel Calleja, DG for Growth

On 28th January, a European Chamber delegation led by Vice President Harborn met with Director-General Daniel Calleja to present the *Position Paper 2014/2015* and to discuss the general business environment in China.

Director Tung-Laï Margue, Service for Foreign Policy Instrument

Vice President Mats Harborn presents Director Tung-Laï Margue with *EURObiz.*

On 28th January, a delegation led by Vice President Harborn met with Director Tung-Laï Margue to discuss several business topics of interest, notably civil aviation.

Other Lobby Activities:

Meetings on Foreign Investment Law Draft

On 28th January, Senior Government Affairs Manager Helei Fu and Legal and Competition Working Group members Michael Tan and Lynn Zhao, attended a call-for-comments event on the Foreign Investment Law (FIL) Draft organised by the Shanghai Commission of Commerce (SCOFCOM). The SCOFOM's Deputy Director General Gu Jun hosted the meeting.

On 29th January, Vivian Desmonts, Vice Chairman of the European Chamber's South China Chapter, led a delegation to meet with the Department of Commerce of Guangdong Province (DOFCOM). Officials from DOFCOM gave comprehensive answers to a number of questions about the FIL posed by European Chamber member companies.

THE ADVISORY COUNCIL OF THE EUROPEAN CHAMBER

The 31 members of the European Chamber's Advisory Council are particularly active in representing and advising the Chamber, and make an enhanced contribution to the Chamber's funding.

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ONWARDS AND UPWARDS

The European Chamber has developed its *2014–2017 Strategy Review*, which promises improvements to our member services in a number of areas. As the first year of his second term comes to a close, **President Jörg Wuttke** met with *EURObiz* editor **Carl Hayward** to cast an eye over 2014 and outline what these improvements will be.

Having successfully steered the ship from 2007–2010, you'd be forgiven for thinking that Wuttke's second Chamber presidency would be a breeze. Overall, he says, things have gone well but it hasn't all been plain sailing. The Chamber is now a larger and more complex organisation and he compares the information overload he experienced upon returning to "drinking water from a hose." It's inevitable, then, that some things would go better than others.

So what worked, and what didn't?

Despite a palpable increase in column inches in top-tier media in 2014, Wuttke feels media engagement is an area that can be improved on, which seems overly critical until he elaborates the point. Media communication from the top of the organisation has been successful but he'd hoped for more engagement from the local chapters and working groups. He attributes the reluctance to engage to a natural fear of media exposure among some member companies, which he understands.

"This is perhaps something I didn't explain properly," he concedes, "These [media] sessions I proposed would be off the record." The idea being to impart an understanding of the issues the Chamber wants to discuss and gauge the appetite of journalists to pursue these stories. If there was an indication of media interest the Chamber could then launch a topic to try and influence public opinion. This level of media engagement is important, he says, because the Chamber needs to utilise all available channels in order to communicate important issues in a smarter way. "We can't afford advertising to get our points across so we have to find other ways to talk to stakeholders," he explains.

Among the successes of 2014—although published at the beginning of 2015—was the *Shanghai Position Paper*, which Wuttke describes as a "great leap forward". He is also proud of the tenacity the Chamber displayed in government engagement. In particular he highlights the Chamber's stance on the Anti-Monopoly Law (AML), which, although it generated some pushback, eventually resulted in a positive meeting with the National Development and Reform Commission (NDRC) in December and a follow-up workshop, for which Wuttke is extremely appreciative.

"There is a latent fear of taking on government agencies in public but I think if you're fact-based you have all reason to speak up, particularly as the interests of the Chamber also cover the well-being of China's economic structure. If you think there is something to be improved then you should speak out," he says.

A further highlight of 2014 was the development of the Chamber's *2014–2017 Strategy Review* (*Strategy Review*), and it is this that takes up the remainder of our discussion. "It's very important to set out our thoughts on what we want to achieve – and perhaps even more important, what we don't want to do. We must sharpen our focus," says Wuttke.

Content, content, content

A key part of the *Strategy Review* is the plan to produce increased and improved content. Since the Chamber's formation the *Position Paper* has been the standard bearer for Chamber content and is the reason the Chamber is recognised as the leading, independent voice for European business in China. The local chapter papers have historically been consigned to the back of the *Position Paper*, with just a few hundred words dedicated to them. It was increasingly apparent though that for a country the size of China this approach wasn't effective. Wuttke draws parallels between China and the European Union (EU), as both being "continents with member states",

Vice President Stefan Sack addresses the media following the launch of the *Shanghai Position Paper 2014/2015*.

and explains how "the member states of South China and Southwest China have issues that are completely irrelevant to those of Shenyang and Tianjin." This realisation led to the birth of the standalone local chapter position papers.

These local papers will facilitate greater engagement with local government and media, and it is through these channels that the Chamber can advocate members' issues more effectively. "If you're in Chongqing or Chengdu, it's more likely to be local issues that concern you as a member," explains Wuttke. "If we as a Chamber are not speaking to the local government about these issues through the media or giving them regular annual feedback why should they reach out to us or change things?"

Increased media coverage

When he ran for president in 2014, one of Wuttke's nine election points was the intention to reach out to the 'big five'—*Reuters*, *Bloomberg*, *Financial Times*, *The Economist* and the *New York Times*, as well as the *Wall Street Journal* and the *Washington Post*—and gain more media coverage. Although they're mostly US-based papers these are the ones that get translated into Chinese and read at the highest level and they shape public opinion. So far Wuttke feels this media strategy has worked well, with the Chamber hitting the right points, selecting the right topics and remaining relevant without descending into China-bashing. "There's a kind of perception that the media is very negative towards China, so if we don't speak up and add our voice to the chorus, how can we change this perception?" he asks. "We need to acknowledge that China is actually struggling with certain problems, but at the same time we need to speak up and give our recommendations, too."

There is at the same time, Wuttke says, a prevailing opinion among a large section of the European business community that we should be 'nice' to the Chinese Government. This approach would be as much a mistake as China-bashing. The focus should be on being relevant and honest instead Of course there has to be an acknowledgement of the system we are operating in, and there is no sense in making rousing points for the sake of garnering reaction, or shouting into a vacuum and getting no response at all. There needs to be a focus on the matters that mean the most to members, whether it's the AML, taxation or the Environmental Protection Law.

Speaking out in the media is only around five per cent of the engagement the Chamber has with stakeholders – 95 per cent is behind closed doors with the specialists, discussing the content papers with Chinese and European authorities. But it is a crucial part of stakeholder engagement, explains Wuttke. "We're in a different league now, but there is still a lot to be done. Priority number one is for the local chapters and chairs to start servicing the media in all of the regions where we have a presence."

Expanding our reach

For many years the Chamber has been lobbying State Council ministries, but much of the power traditionally held by them has now shifted elsewhere. China's political landscape has become more complex and the *Strategic Direction* takes this into account. Lobbying the 'normal' State Council ministries—the Ministry of Industry of Information and Technology, the Ministry of Commerce, the NDRC and others—will remain the Chamber's bread and butter, but there will be an increased focus on think tanks over the coming years. Think tanks are incubators of new ideas and are often catalysts for possible policy changes – these are the places where you find people whose job it is to test new ideas and, as Wuttke points out, "what else does the Chamber do but make recommendations and bring new ideas to the Chinese leadership?"

These days, advocacy efforts need to be increasingly sophisticated and multi-layered. It is not possible to approach a silo, a single ministry, and advocate your case anymore. "These silos are not isolated, unrelated to other entities, they are part of bigger system and the party, and they're part of the legislative process with the National People's Congress,"

Engaging with Europe can be fun: President of the European Parliament Martin Schulz (2nd from left), shares a joke with Secretary General Adam Dunnett, Vice President Mats Harborn, President Jörg Wuttke and Vice President Stefan Sack, during the European Tour 2015.

says Wuttke, "So it is important to reach out to the party, parliament, ministries and think tanks, as well as local governments."

Better engagement with Europe

This same multi-layered advocacy approach will be adopted in Europe, too. While the commissioners and the commission itself remain important, there is also the parliament to consider. It became something of a powerhouse after the elections last May – they weren't previously in charge of making decisions on the market economy status or stages of trade agreements, for example. At the same time, member states' governments also have a tremendous influence on how China is dealt with so the Chamber needs to maintain channels of communication there as well.

"The big challenge is knowing who the new political masters are, and what their level of awareness about China is, and then judging how we rank among the whole cacophony of matters that they are currently confronted by," says Wuttke. He points to the current volatile situation in Europe—the civil war in Ukraine, emotional discussions on the Transatlantic Trade and Investment Partnership (TTIP), Muslim extremism in some European cities—and expresses some surprise that China still matters a great deal. "Given these challenges, it speaks volumes that the president of the EU parliament received us on our recent tour of Europe," he says.

The Chamber has already established a man on the ground in Brussels—Serge Janssens—who will help to connect the Chamber more effectively with Europe. As a former president of the Chamber Janssens is dedicated to the cause and will help to facilitate a better flow of information.

Increasing our footprint

Another important aspect of the *Strategic Direction* is for the Chamber to expand its capability to speak for China as a whole region. This could entail opening new chapters but Wuttke says that this would have to be done in a structured way if it is to be at all meaningful. It could not be realised in a city that doesn't have a strong network of 50 or more European companies, for example. There are possibilities in cities such as Xiamen, Qingdao and Dalian but Wuttke exercises caution here. "We have made it clear we are sympathetic towards this but we're not going to do it for the sake of putting ourselves on the map – we're already on the map." He continues, "What we need to do is secure solid content from our existing local chapters and get them to speak up. Once we have achieved this other non-Chamber areas will understand what would be expected of them if they were to come on board. We aren't just a networking club."

Stepping up to the plate

It is the list of "unfinished business" that has galvanised Wuttke's decision to run for president again in April 2015. He has a strong desire to see how the local chapter's position papers take root and flourish and to see how they work once data from the Chamber's *Business Confidence Survey* has been woven into them. By rising to the challenge and producing high-quality papers the local chapters will really add to the Chamber's credibility and help to realise the goal of speaking authoritatively for China as a whole, not just the capital. This fits with Wuttke's overall vision for the Chamber to continue to improve all of its service offerings to its members:

"The danger I see, and this is maybe partly why I decided to run again in 2014, is that the Chamber should not become complacent. Once members' engagement levels start to drop all of a sudden there is a new dynamic and to turn that around is very, very difficult. So I felt strongly that the Chamber has more potential when I took this on again last year and I still feel that I definitely want to have one more term to see a couple of developments through." Eb

LIGHT AT THE END OF THE TUNNEL?

THE DRAFT FOREIGN INVESTMENT LAW

The various laws and regulations pertaining to the incorporation of foreign-invested enterprises (FIEs) are soon to be consolidated. Theoretically this should ease the burden on FIEs, but is the light at the end of the tunnel actually a train coming the other way? **Dr Michael Tan, Yang Cui** and **Lynn Zhao** of **Taylor Wessing** dissect the draft Foreign Investment Law below and tell FIEs what they need to be aware of .

Despite China becoming the world's top destination for capital inflow over the past 30 years its legal system is quite 'messy', particularly in the area of foreign direct investment (FDI). The simple establishment of a limited liability company may involve different FDI laws and regulations depending on its business scope and share structure. Most significantly, almost all investment requires governmental approval, which can sometimes develop into a time consuming, bureaucratic journey.

There appears to be a glimpse of light at the end of the tunnel, though. On 19th January, 2015, the Ministry of Commerce (MOFCOM) released the PRC Foreign Investment Law (Draft) to solicit public opinion. On the face of it this draft law seems quite refreshing as it introduces several new mechanisms which appear to overhaul the existing regime with respect to how the Chinese Government regulates FDI. However, despite a general trend of streamlining and increased transparency there are also signs of tightening of control, which foreign investors—both existing and potential—need to be aware of.

Laws to be consolidated

There are currently several laws and regulations pertaining to the incorporation of FIEs. The implementing rules of the most well-known—the PRC Sino-foreign Equity Joint Venture (EJV) Law, the PRC Sino-foreign Contractual Joint Venture (CJV) Law and the PRC Wholly Foreign-Owned Enterprise (WFOE) Law—were enacted way back in the 1980s. In addition to these are additional, special regulations applicable to the various different types of FIEs, such as holding companies or trading companies. They not only regulate investment access and incorporation procedures, but also cover many post-incorporation aspects such as corporate governance, contractual arrangements and operational issues. This situation is a result of Chinese regulators learning as they went along and from a purely legal perspective it is unsystematic and 'messy' – many laws and regulations conflict and discretionary interpretation by officials gives rise to bureaucracy and corruption.

The Draft now explicitly abolishes the EJV/CJV/WFOE laws by focusing on foreign investment access control. Corporate governance, contractual arrangements and operational issues, among others, aren't covered by the Draft, and will be subject to other general laws (e.g. the PRC Company Law) instead. This should result in a transition to a more streamlined and structured regime but some legacy issues could be triggered. For example, the unanimous consent mechanism applicable to a signed equity joint venture (JV) deal might need to be re-opened for negotiation since the Draft will make such issues subject to the general Company Law, which only requires two-thirds majority vote by shareholders. Foreign shareholders of existing JVs will need to be prepared for another fight in this regard.

Broader coverage and control

Any of the activities listed below carried out by foreign investors in China—either directly or indirectly—will be subject to the Draft:

1. Establishing an enterprise.
2. Acquiring shares, equity, property shares, voting rights or other similar rights and interests of a domestic enterprise.
3. Providing financing for one year or longer to a domestic enterprise in which it holds any of the above said rights or interests.
4. Obtaining concession rights for natural resources or infrastructure.
5. Acquiring real properties.
6. Controlling a domestic enterprise or holding rights and interests in such an enterprise by means of contracts or trust.
7. Changing of control in a domestic enterprise due to an off-shore transaction.

Compared with existing laws the reach of the Draft is quite extensive, covering almost all types of economic 'foreign influence' aside from pure investment activities. This is particularly apparent in its broad and flexible definition of the term 'control'. The Draft appears to go beyond the topic of FDI to also cover indirect foreign investments (e.g. investments via capital markets) and some routine business activities (e.g. property acquisition and financing). Considering the various administrative mechanisms applicable to foreign investment activities, such as national security review and reporting obligations, it is hard to see how the Draft could be implemented in practice since it could potentially result in a substantial burden for foreign investors.

Streamlined market access

A significant breakthrough is that the approval requirement—presently a general requirement for all foreign investment projects—will be mostly abolished, although it will still apply in exceptional cases. Also notable is the introduction of the *Catalogue of Special Administrative Measures*—the so-called *Negative List*—which will be published and updated by the State Council. Provided the target business is not mentioned in the *Negative List* and no special industrial licence is required, the foreign investor will be free to invest and can simply file a new incorporation, or change of incorporation, with the company registration authorities.

Foreign investors will not be permitted to invest in areas that the *Negative List* classifies as 'prohibited', and for those that are 'restricted' they will require a prior-access permit (approval) granted by the MOFCOM. This requirement will also apply to investment projects that exceed the size threshold defined by the State Council. The Draft provides a flexible approach to the access permit – besides a simple 'yes' or 'no', there may also be approvals that come with preconditions such as an assets or business divestiture, limitation of the foreign stake and project term, geographical restrictions and local-hire requirements. It should also be noted that the Draft provides the MOFCOM the power to escalate the complexity of its approval process, for example by triggering a national security review and public

hearing, which would potentially prolong the procedure.

Reporting, a new burden

The Draft stipulates that all foreign investors and FIEs will be subject to various reporting obligations. These include an entry report at the start of the investment and updated reports on any subsequent changes to the investment, both of which must be submitted within 30 days. The information required in these reports is substantial and includes certain things that are even not required under existing approval practices, such as the ultimate controller and the source of the investment. There is also a requirement for an annual—or in some cases quarterly—report. Heavy penalties will be imposed if these obligations are neglected – fines up to CNY 500,000 or five per cent of the investment and even a possibility of criminal liabilities in serious cases.

Taking into consideration the recent amendment to the Company Law, which requires all companies in China to submit an annual report to the company registration authorities, these additional requirements seem unnecessary and appear to discriminate against foreign companies. The requirement for detailed disclosure raises a further concern over potential loss of trade secrets, too.

A general overview

In many respects the Draft appears to make some effort to streamline existing FDI administration. It should not come as too much of a surprise to European investors that many of the new mechanisms to be introduced are closer to the business-friendly approach that they are accustomed to in Europe. Although the apparent tightening of controls has drawn criticism European companies shouldn't be overly concerned – from a political perspective European investments will face less scrutiny than those from the US or Japan. Regarding the extremely controversial issue of the variable interest entity (VIE) structure, which has been widely adopted by Chinese technology companies to circumvent foreign investment restrictions in sensitive sectors, Europe appears to have less at stake – most foreign investment in these companies come from the US capital market.

Since the Draft was included in the five-year legislation plan of the present congress it is expected that it will be officially rolled out in the coming years, although there are still many legislative steps pending. European companies should prepare themselves for the foreseeable changes to come. Eb

Taylor Wessing *is a full service law firm with approximately 900 lawyers in Europe, the Middle East and Asia, with offices in Shanghai and Beijing. For more information please visit www.taylorwessing.com .*

CEASE AND DESIST

HOW TO SPOT AND REMOVE COUNTERFEIT GOODS FROM E-COMMERCE SITES IN CHINA

China's booming online retail market has attracted many European companies to sell their products through popular Internet selling platforms (ISPs). Unfortunately these ISPs are also used by unscrupulous businesses selling counterfeit goods that infringe intellectual property rights (IPR).

The **China IPR SME Helpdesk** recommends that manufacturers of intermediate or consumer goods for the Chinese market safeguard their businesses by adopting a three-step strategy: 1) by registering rights; 2) by monitoring e-commerce sites; and, if necessary, 3) requesting take-downs of counterfeit or infringing goods. In the following article they describe best practices for monitoring and take-down for China's two most popular ISPs – Alibaba and Taobao.

How to spot infringing content

In order to stop infringement as early as possible it is recommended that you proactively monitor the Internet for counterfeits. The most common infringements encountered on e-commerce sites include trademark violation, sale of counterfeit products and copyright infringement (advertisements and other images used to promote counterfeit products).

Tips on how to find infringing products

- Search for names which are identical or similar to your brand or product name.
- Search for your brand or product name in Chinese. Chinese consumers like to translate brand names into Chinese, either as a phonetic translation or by translating the meaning. Where possible ask a Chinese colleague or use a translation tool.
- You may find more results by conducting your search through a Chinese search engine.
- Search for items in the same category as your product.
- Use you product name plus your home country as key search terms.

How to spot a suspicious sale

The following can often be indicators of a counterfeit product or unlicensed sale:

- The listing was made by an individual or company who is not involved in your official distribution channel in China.
- There are a large number of listings from one vendor.
- The vendor is offering the product lower than the market price.
- The product is listed several times with a wide variation between prices for each listing.
- The vendor has a large number of units available for sale. Please note that if a vendor offers only one or few a units of a product, it may not constitute an infringement as it is legal to sell 'second hand' products or to re-sell original new products.

Tools for requesting takedowns

Both Alibaba and Taobao offer tools for removing infringing products from sale. It is wise for a business to familiarise itself with these, particularly as they differ to Western ISP equivalents, such as eBay's VeRO.

Alibaba

Alibaba's IPR protection policy expressly prohibits "listings of counterfeits, replicas, or other unauthorised items." Furthermore, it stipulates that the "listings of offers to sell or purchase counterfeits, replicas or other unauthorised items shall be subject to removal by Alibaba.com." In case of infringement Alibaba may:

- Remove the listing upon receipt of a take-down notice from the IPR holder;
- Notify members responsible for listings, subject to an IP infringement claim; and
- Suspend or terminate the membership of a user who has received multiple IP infringement claims.

AliProtect®: File claims and request take-downs

AliProtect® provides an efficient and transparent channel for IPR holders to file claims and request take-down of allegedly infringing listings, which is available in English. In order to proceed you need to complete a free registration and accept the terms and conditions. In addition, you need to accept a disclaimer which states the right holder will, "hold Alibaba.com harmless from all claims, causes of action, damages and judgements arising out of any removal of product listings pursuant to intellectual property (IP) infringement claims."

Necessary documents

Three sets of documents must be submitted to AliProtect® for IP infringement claims:

1. **Proof of identity:** For companies this includes a business incorporation certificate or certificate of incorporation. For individuals, identification documents such as a passport or national identification card are required.
2. **Proof of IPR ownership:** Including patent registration certificate, trademark registration certificate or copyright registration certificate (please note an application receipt is insufficient).
3. **Identification of the alleged infringer and details of the listing which you wish to have removed:** It is best to include clickable hyperlinks.

Timeline and counter-notification system

Alibaba evaluates IP infringement claims filed via AliProtect® promptly and deletes listings on a weekly basis. Often, there will be more than one infringing listing and Alibaba admits a maximum of 200 listings per infringement complaint against a single vendor. Before the listing can be removed the vendor will be notified of the complaint through the online system and will have the opportunity to respond to the claim. The vendor will also receive the IPR holder's contact information to facilitate direct conflict resolution. There is no charge for registration and submission of IPR infringement claims.

After receiving a complaint the alleged infringer must (assuming no objection):

- Delete the link and clear up other product information involving IPR on the relevant webpage; and
- Submit a counter notification in the system (note: if no counter-notification is received within three days after receipt of notice, the system will automatically delete the listing under complaint).

The complainant must take the following steps after receiving any counter-notification:

- If the complainant accepts the counter-notification, they must confirm so in the system.
- If the complainant does not accept the counter-notification, they must submit a dispute handling request in the system.
- If the complainant does not respond, the listing under complaint will be reinstated until the complainant responds.

Taobao

Taobao is the original business-to-consumer arm of the Alibaba group, aimed at domestic users. It operates exclusively in Chinese and only accepts IPR registered in China for take-down notices. It has a sophisticated complaint system which led to 87 million listings being removed and 1 million users being punished in 2012.

Although Taobao's online complaint system is available only in Chinese it does provide the option of filing an IPR infringement complaint in English via a template email together with the required proof of identify and IPR ownership. Additionally, Taobao provides an English step-by-step guide to using the online system. There is no charge for registration and submission of IPR infringement claims.

Necessary documents

Identification:

- Individuals should provide a copy of valid identification (e.g. passport).
- Enterprises should provide a copy of a valid business licence or incorporation certificate.
- Agents should provide an additional authorisation letter.

Supporting documents:

- Proof of copyright (worldwide) or Chinese registered trademark or patent (invention patent, utility model, design patent).
- All documents must be in electronic format and must be submitted online.

Timeline and counter notification system

Before submitting any take-down notices, you must register as a user on the website (Taobao provides a step-by-step English guide to registering). Once an initial complaint is made, Taobao may take up to seven working days to process and remove the disputed listing from the website. However, this time may be reduced to three to five working days once a track record of submitting accurate take-down notices has been established.

Counter-notification must be submitted by the vendor within three days of the listing being taken down. The IPR holder has three days to respond or the listing will be reinstated. If the complainant does not accept the counter-notification a dispute handling request can be submitted via the online system.

The importance of frequent monitoring

Although issuing a take-down notice is a relatively quick process it is one which may need to be completed frequently depending on the number of counterfeits on the market. As well as searching the sites mentioned above you might also want to look at other popular e-commerce sites in case your IP is being infringed elsewhere. In the case of widespread counterfeiting it may be possible to take further legal action against the infringer, so it is a good idea to save evidence of listings in the form of product pages.

The strategy of monitoring and taking appropriate action on ecommerce sites should be a crucial part of any long-term business strategy for companies offering products with international appeal. Therefore, it is important to schedule the responsibility of search and monitoring tasks as a regular work duty – a simple task that carries great benefits in the long run.

*The **China IPR SME Helpdesk** is a European Union co-funded project that provides free, practical, business advice relating to China IPR to European SMEs. To learn about any aspect of intellectual property rights in China, visit our online portal at www.china-iprhelpdesk.eu. For free expert advice on China IPR for your business, e-mail your questions to: question@china-iprhelpdesk.eu. You will receive a reply from one of the Helpdesk experts within three working days.*

DOFFING THE CAP

FOREIGN INVESTMENT IN E-COMMERCE IN THE CHINA (SHANGHAI) PILOT FREE TRADE ZONE

Since its launch in 2013, the China (Shanghai) Pilot Free Trade Zone (CSPFTZ or Zone) has been attracting increasing amounts of foreign investment in many sectors. The recent memorandum of understanding between American giant Amazon and the CSPFTZ, under which Amazon launched its new cross-border e-commerce platform inside the Zone, has generated particular excitement. This new development, combined with interest from other major players, has led to further loosening of restrictions in the online data processing and transaction processing business (e-commerce) sector. **Carlo D'Andrea** of **D'Andrea and Partners** and Chair of the Legal and Competition Working Group in Shanghai divulges details below, including how a foreign-invested enterprise (FIE) can be registered in the Zone.

Registered capital share: from 55 to 100

On 13th January, 2015, the Ministry of Industry and Information Technology's (MIIT's) *Notice on the Lifting of the Cap on Foreign Investment in Online Data Processing and Transaction Processing Business (e-commerce) in the China (Shanghai) Pilot Free Trade Zone* (Notice) was issued, detailing a further loosening of restrictions on the ratio of foreign shareholding in e-commerce within the CSPFTZ.

Previously, foreign investment in this sector was capped at 55 per cent inside the Zone,[1] and businesses could

1 *Opinions of Ministry of Industry and Information Technology and Shanghai Municipal People's Government on Further Opening Value-added Telecommunications Services to*

only be operated by Sino-foreign joint ventures (JVs) or Chinese domestic enterprises. Now, the cap for foreign investment in e-commerce has been raised to 100 per cent, or in other words the cap has been removed altogether. Therefore, wholly foreign-owned enterprises (WFOEs) are now allowed to establish e-commerce operations in the CSPFTZ.

The *Notice* represents a huge step forward in the e-commerce industry. Up until now e-commerce in China has been mainly monopolised by Chinese companies such as Alibaba, JD.com and Suning, with foreign competitors prevented from fully entering the market by themselves due to the aforementioned restrictions. With the release of the Notice, foreign players in this industry can not only set up their own company as a WFOE in the CSPFTZ, they can now also start to gradually implement their strategic plans for the Chinese e-commerce market.

Establishing a FIE in the CSPFTZ

The establishment of FIEs is much faster within the Zone compared to other areas in China. Approval procedures have been abolished in favour of registration unless otherwise stated, based on the State Council's *Special Administrative Measures of China (Shanghai) Pilot Free Trade Zone for Admittance of Foreign Investments* (*Negative List*). Pre-approval from the Ministry of Commerce (MOFCOM) is no longer necessary before registering an FIE with the Administration of Industry and Commerce (AIC).

Potential investors should first search for their target industry for investment in the *Negative List*: if is not contained within they can simply complete the Backup Record Registration Form with the relevant information regarding their investment and submit this form to the CSPFTZ administration authority. After that the investors can then move forward with administrative procedures with the AIC, tax registration and the other standard procedures.

To further simplify matters the new 'one-stop application processing platform' in the CSPFTZ means that investors are able to deal with all authorities under one roof. This means they are spared the inconvenience of spending several days travelling between different offices, as is frequently the case for FIEs setting up investments outside the Zone.

E-commerce outside the Zone

In addition to the heavy commercial competition provided by Chinese e-commerce companies, FIEs in the e-commerce sector that are based outside the CSPFTZ still face a number of limitations. According to the *Provisions on the Administration of Foreign-funded Telecommunications Enterprises* (2008 Revision) the ratio of foreign investment in telecom value-added services shall not exceed 50 per cent. This means that outside of the CSPFTZ foreign capital is only permitted in the form of an Equity JV in the e-commerce industry. This provides a huge incentive for foreign investors to establish their e-commerce operations inside the Zone.

Expectations for future development

With the rapid development of the Internet, e-commerce is likely to become one of the mainstays of China's economic development. Last year, the vice minister of the MIIT revealed at China's first Internet Conference that the e-commerce industry is set to be fully opened up to foreign investment, with related policies being drafted. However, as yet no schedule for this development has been forthcoming.

From the release of the *Opinions* in January 2014, to the *Notice*, issued in January 2015, the ratio of foreign investment in value-added telecommunications services in CSPFTZ has been lifted from 55 per cent to 100 per cent in just one year. So it is natural to anticipate that the rules for foreign investments in e-commerce will become increasingly flexible, creating an even more favourable environment for foreign investors in this field. In addition, since the CSPFTZ is the designated area piloting new policies that will eventually be implemented nationwide we could reasonably expect that WFOEs might be permitted to participate in e-commerce nationwide in the not-too-distant future.

Although recent developments are extremely encouraging it needs to be kept in perspective – e-commerce businesses rely on fast and reliable Internet access. As indicated in the recent survey conducted by the European Chamber: 86 per cent of businesses reported a negative effect on their business as a result of certain websites and online tools being blocked; 80 per cent of respondents recorded a worsening business impact as a result of the recent further tightening of Internet controls since the beginning of 2015. So it will be interesting to observe which exerts the greater force in this industry – the lure of a more open market or the deterrent of a restricted operating environment. Eb

With offices in China in Shanghai, Nanjing and Zhuhai and a network of professionals around the world, ***D'Andrea & Partners*** *assists with legal services European companies in China as well as Chinese companies wishing to enter the global market through the establishment of foreign-invested enterprises and/or by mergers and acquisitions. The team is composed of both Chinese and European professionals, many of whom have experience of legal practice outside their home country.*

HARBIN: GATEWAY TO RUSSIA AND TRANSPORT HUB FOR NORTHEAST CHINA

As the capital of China's Heilongjiang province, Harbin is a key political, economic and cultural centre in Northeast China. Due to its close proximity to Russia the city serves as the country's gateway to trade with Russia and hosts the annual China-Russia Expo. Many Russian immigrants made Harbin their home in the early 20th century.

Since the 1950s it has become a hub for mining and steel production. In this article, **Rainy Yao** from **Dezan Shira & Associates** explains how this 'ice city' is turning out to be one of the fastest growing regions in the country with a unique geographical location and sound transport network.

Economic overview

In 2013, Harbin's GDP reached CNY 501.08 billion, up 8.9 per cent from 2012. The city's primary industry contributed CNY 59.26 billion of its total GDP, and its secondary industry CNY 174.39 billion. With CNY 267.43 billion, the service sector accounted for more than 52 per cent of the economy. The statistics for 2014 have not yet been released but during a meeting in January 2015, the Harbin Government was able to say that the city's GDP has been growing at a stable rate.

Harbin is home to some major manufacturing industries and is a key industrial base in China. However, it is arguably more important as a shopping and tourism centre. The city is well known for the annual Ice Festival. Tourism brought in CNY 66.85 billion (20.6 per cent growth) in 2013, with close to 55.5 million foreign and Chinese tourists visiting the city.

Agriculture plays a small but an important role in Harbin's economy. The soil around the city is rich in nutrients and mainly used to grow rice.

Transportation network

Harbin's strong infrastructure and transportation networks see it serve as the transportation hub of Heilongjiang Province, which borders Russia to the north.

- *Rail:* Harbin is one of the largest railway hubs in Northeast China, second only to Shenyang, Liaoning. Currently, 138 trains terminate in or pass through Harbin daily, with trains available to major cities such as Beijing, Shanghai and Guangzhou.
- *Air:* The Harbin Taiping International Airport offers international flights to Hong Kong, the United States, Canada, Russia, South Korea, Japan, Singapore and Malaysia, as well as domestic flights throughout China.
- *Port:* Along the Songhua River, Harbin Harbour is one of the eight inland ports in China and the largest of its type in Northeast China. Harbin port is the only inland open port in China equipped to handle import and export procedures. The harbour has established maritime trade relationships with over 300 ports in more than 160 countries and regions, including direct access to major Russian cities such as Khabarovsk, Chita and Blagoveshchensk.

Development zones

Harbin's main development zones include:

Harbin High and New Technology Industrial Development Zone

Established in 1988, the Harbin High and New Technology Industrial Development Zone was approved as national-level development zone in 1991. Enterprises from over 40 countries and regions including Hong Kong, South Korea, Japan and America have invested in the zone. Major industries include electronics, machinery, light industry, medicine and textiles.

Harbin Songbei Economic Development Zone

The Songbei Economic Development Zone was established in 1998, featuring industrial clusters such as electronics assembly and manufacturing, food and beverage processing and modern logistics.

Harbin Limin Development Zone

The Limin Development Zone was created in 1991, covering an area of 24.39 square kilometres. There are seven major industries in the zone: green food, modern medicine, machinery manufacturing, timber processing, education, software and logistics. To date, 335 enterprises have been established in the zone.

China-Russia Expo

The China-Russia Expo was approved and co-organised by the governments of China and Russia, upgraded from the China Harbin International Economic and Trade Fair which has been held for 24 consecutive years. The Expo has seven professional exhibition areas including ones for foreign countries, China-Russia cooperation projects, construction materials, agriculture and organic food, machinery and electric products, the culture industry and furniture. The exhibition provides services such as consultation, matchmaking and advertising. Enterprises looking to participate in the exhibition can register online through the official website, http://www.china-russiaexpo.org/.

Investment Opportunities

The Harbin Government released the *Circular on Further Supporting the Development of Small and Medium-sized Enterprises* in 2014. The circular allows multiple entities to list the same registered address on their respective business licences, which is prohibited in most parts of China. Enterprises establishing a laboratory or research centre for research and development (R&D) purposes may be granted a subsidy of up to CNY 300,000. If an enterprise whose trademark is recognised by the Chinese Government as a 'well-known trademark' it may be awarded CNY 500,000 by the city government. Meanwhile, enterprises who register a foreign trademark may receive a subsidy of no more than CNY 50,000.

Enterprises are encouraged to use e-commerce to expand their business. For enterprises that use an e-commerce platform for selling online for the first time, the government may subsidise the e-commerce platform fees. Eb

__Dezan Shira & Associates__ is a specialist foreign direct investment practice, providing corporate establishment, business advisory, tax advisory and compliance, accounting, payroll, due diligence and financial review services to multinationals investing in emerging Asia. Since its establishment in 1992, the firm has grown into one of Asia's most versatile full-service consultancies with operational offices across China, Hong Kong, India, Singapore and Vietnam as well as liaison offices in Italy and the United States.

For further details or to contact the firm, please email china@dezshira.com or visit www.dezshira.com.

EUROPEAN CHAMBER EVENTS GALLERY

BEIJING CHAPTER


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3

Exclusive Dialogue with the NDRC: Training on Anti-Monopoly Law Enforcement (1)

On 22nd January the Chamber organised training on the Anti-Monopoly Law, provided by Deputy Director General Li Qing from the NDRC's Price Supervision and Anti-Monopoly Bureau and Mr Wan Jiang from the Bureau's Legal Affairs Division.

Exclusive Seminar with Yukon Huang: Why do views about China's economy differ so much? (2)

The Chamber held an Exclusive Dialogue with Dr Yukon Huang who presented his perceptions on the current status of China's economy on 23rd January.

Overview and update on visa procedures for foreigners in China (3)

On 10th February, the Chamber hosted a seminar providing the latest information on new options for short-term work assignments for foreigners in China.

SHANGHAI CHAPTER


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Shanghai Position Paper Launch (1 & 2)

On 21st January the Shanghai Chapter launched the first *Shanghai Position Paper* as a standalone publication in front of more than 100 attendees. Vice President and Chairman of the European Chamber Shanghai, Stefan Sack, presented the key findings,together vice chairmen of the board, Mick Adams and Carlo Leopaldi.

Shanghai 2020 Dinner (3&4)

The European Chamber Shanghai held its Shanghai 2020 - European Chamber Dinner on 22nd January. HE Hans-Dietmar Schweisgut, Ambassador-Head of Delegation of the European Union to the People's Republic of China and Mongolia, and Gu Jun, Deputy Director General of Shanghai Municipal Commission of Commerce were special guests. We thank our sponsors—Bayer, D'Andrea & Partners, Dachser, Fuchs, Rabobank and Suez Environment China—for making this event possible.

Position Paper Presentations to Chambers of Commerce (5)

On 9th February, Mats Harborn, Vice President of the European Chamber, summarised key points from the *Position Paper 2014/2015* to members of the Swedish Chamber, the Danish Chamber and the Finnish Business Council Shanghai. Mick Adams, Vice Chairman of the Board, Shanghai, then presented the *Shanghai Position Paper*.

Shanghai Position Paper Presentation to German Chamber (6)

Vice President and Chairman of the Board, Stefan Sack, and Iris Duchetsmann, Member of the Board, met members of the German Chamber of Commerce on 11th February to present both the *Shanghai Position Paper 2014/2015* and the *Position Paper 2014/2015*.

SOUTH CHINA CHAPTER

Cocktail reception
On 5th February, the South China Chapter hosted a reception in honour of the 13 European Consuls General based in Guangzhou.

SOUTHWEST CHAPTER


1


2


3

Meet and greet the new Hungarian Consul General, Chongqing (1,2&3)
On 4th February, more than 120 guests from consulate generals, government organisations and business attended a cocktail party in honour of the new Hungarian Consul General in Chongqing.

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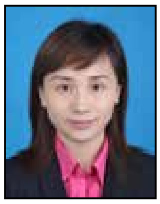
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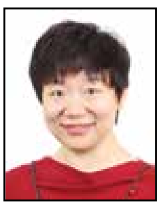
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A NEW PLAYGROUND

RE-EVALUATING THE RISKS OF DOING BUSINESS IN BEIJING

Signs that China's general investment environment is worsening poses even greater challenges for small and medium-sized enterprises (SMEs) in Beijing. **Mina Lim**, General Manager of **Vantone Commercial Center,** analyses the current situation and offers a way to turn adversity into advantage.

Economic impact on real estate

Rising demand and limited supply of office real estate in Beijing has doubled office rents in the Chinese capital since 2008, making its Financial Street the world's third-most expensive area behind Hong Kong's Central and London's West End, according to real estate broker CBRE Group Inc in April last year. The cost of office rental in

Beijing is set to rise further as only half the average annual supply of the past decade is projected to be added over the next three years.

Beijing has repeatedly stated its intention to shift the economic mix of the country away from the investment-heavy, export-oriented manufacturing formula that has driven massive growth for the past 30 years, towards domestic consumption and services. Although the old model lifted hundreds of millions of people out of poverty it also inflated a dangerous real estate bubble, on top of other issues.

For months now various agencies, including the provincial governments themselves, have announced trimmer gross domestic product (GDP) growth rates for 2015. Research group The Conference Board have predicted that China's GDP growth may fall to as low as 3.9 per cent over the period 2020–2025. China's (GDP) slowdown in the short term has been due to declining real estate prices but the ageing population and increasing wealth of its people are factors that will slow growth in the medium term.

With investment growth in China declining in the third quarter of last year and leading indicators pointing to a further slowdown the macroeconomic risks are potentially coming from real estate, according to some fund advisers.

Real estate in Beijing contrasts with the rest of China—and perhaps even the whole Asia region where new office space grew—as the supply in its prime areas has been restricted. This has ensured that demand for offices in Beijing has remained resilient, despite soaring rents and the city's much publicised air quality problems.

A deteriorating investment environment?

Despite some gradual improvements to China's regulatory landscape and the opening up of certain sectors of its economy, with the promise of further positive developments, there remain significant challenges to conducting business here. This has been brought into sharp focus by a number of recently-published reports.

A "healthier environment" was the number one reason for talent residing in Beijing to relocate—surpassing job promotion—according to a January 2015 survey of 5,000 professionals in Greater China and Singapore conducted by recruitment firm MRIC Group. This is compounded by the fact that much-needed foreign talent is being discouraged from relocating to Beijing for the same reason.

A poll conducted by management consulting firm Bain, in partnership with the American Chamber of Commerce in China, found that 15 per cent of the 477 respondents have moved or plan to move operations and investments outside Mainland China due to rising labour costs – this is up from 14 per cent in 2014 and 11 per cent in 2013. A further report by Bain indicated that more than 30 per cent of polled companies have no investment expansion planned in 2015, the highest rate since the global financial crisis in 2009. In a nutshell, China's investment environment is deteriorating according to 29 per cent of respondents, up from 18 per cent in 2014, while 32 per cent said there was an improvement, down from 34 per cent in 2014.

The European Chamber's recent member survey noted that 13 per cent of respondents have recently deferred their R&D investment or have become unwilling to set up R&D operations in China following the further tightening of Internet restrictions at the beginning of this year.

A sliver of opportunity?

Pollution, rising HR costs and Internet restrictions aside, how can SMEs take advantage of the current situation? One thing is quite certain, the probability of a significant drop in rents is slim.

Rentals will remain flat and soft, and this presents an opportunity to SMEs to upgrade to better premises without the extras. Taking up a space that offers higher lease flexibility decreases risks and allows SMEs to be more reactive to the business climate. Non-traditional-lease workspaces operated by professional business centres usually have very flexible terms that can accommodate expansion, as well as streamlined operations in view of the outlook for an economic slowdown in Beijing.

Financial statements can be turned around by converting fixed expenses into variable costs in addition to giving management a shorter decision-making and implementations time. Businesses can enjoy minimal capital long-term asset investments, not to mention clearer EBITDA (earnings before interest, tax, depreciation and amortisation) margins.

In Beijing a mid to premium serviced office operator can tailor leases to suit SMEs of 5-20 persons in the range of CNY 4,000–8,000 (EUR 550–1,130) per person per month; communal workstations can be as low as CNY 2,000 per person per month. Some professional business centres offer more sophisticated support and services such as facilitated networking opportunities and training seminars on best practices or industry updates, which can help SMEs to gain a firmer grip on the ground.

It may be surprising that what appears to be high rental on first glance can in fact lead to a more effective and healthier financial statement. With China local developers already embarking on this new leasing model, this could be an opportune time to reconsider your workspace and change your game plan.

Vantone Commercial Center *is an experienced professional serviced office operator offering fully verified work and office space to meet all the needs of SMEs in CBD and Financial Street locations; and is a wholly owned subsidiary of Vantone Holdings.*

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