

Journal of the European Union Chamber of Commerce in China

EURObiz

www.european-chamber.com.cn

May/June 2016



CONSUMING CHINA

PROTECTING THE PEOPLE

China's Consumer Protection Law

REGULATING THE FLOW OF GOODS

China's cross-border e-commerce industry enters a new spring

THIRST OF THE DRAGON

The growth of popularity and counterfeiting of wine in the Middle Kingdom

CHINA'S NEW FOOD SAFETY LAW

Benefits for Chinese consumers, challenges for European SME food exporters?

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BRIDGING THE DIGITAL DIVIDE

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TABLE OF CONTENTS

SPECIAL REPORT

06 BRIDGING THE DIGITAL DIVIDE

EU Commissioner Věra Jourová on the EU-China Legal Affairs Dialogue.

COVER STORY

08 PROTECTING THE PEOPLE

China's Consumer Protection Law.

11 BREAKING DOWN BORDERS

What you should know about cross-border e-commerce in China.

14 CHINA'S NEW FOOD SAFETY LAW

Benefits for Chinese consumers, challenges for European SME food exporters?

18 REGULATING THE FLOW OF GOODS

China's cross-border e-commerce industry enters a new spring

22 THE SWITCH TO VAT

Ensuring compliance for new VAT payers.

24 THIRST OF THE DRAGON

The growth of popularity and counterfeiting of wine in the Middle Kingdom.

FEATURES

28 BLOWING THE WHISTLE ON 'PROFESSIONAL CONSUMERS'

Chamber lobby success paves the way for new industry desk.

30 WORKING GROUP FOCUS

The Law Master: Michael Tan, Vice Chair of the Legal and Competition Working Group 2015/2016.

32 TRIALS AND TRIBULATIONS

China's trial negative list for (domestic and foreign) market access.

36 STILL KEEPING THE FAITH

The *European Business in China Business Confidence Survey 2016*.

42 INCREASING EFFICIENCY

Chamber Vice Chairman Bertrand de la Noue on the reorganisation of the Chamber's working groups.

44 WHO'S IN CHARGE?

Results of the European Chamber's board elections 2016.

50 THE EXECUTIVE INTERVIEW

Clas Neumann, Senior Vice President, Head of Global SAP Labs Network, Head of Fast Growth Market Strategy Group.

REGULARS

05 PRESIDENT'S FOREWORD

26 LOBBY REPORT

48 EVENTS GALLERY

46 CHAMBER BOARD

11



18



28



32



36





European Chamber Chapters:

Chief Editor
Carl Hayward

Art Director
Wenwen Gu

For European Chamber Membership:

National Member Relations Manager

Paula Mueller
Tel: +86 (21) 6385 2023
ext 114
pmueller@eurochamber.com.cn

For advertising in EURObiz:

Advertising and Sponsorship Manager
Queenie Cheng

Tel: +86 (10) 6462 2066 ext 54
qcheng@eurochamber.com.cn

EURObiz is published bimonthly by the European Union Chamber of Commerce in China, and is distributed free to all Chamber members.

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Beijing

Beijing Lufthansa Center,
Office C412
50 Liangmaqiao Road
Beijing, 100125, PR China
北京市朝阳区亮马桥路五十号
燕莎中心写字楼C-412室
Tel: +86 (10) 6462 2066
Fax: +86 (10) 6462 2067
euccc@eurochamber.com.cn

Nanjing

806, No.99 Zhongshan
Road, Xuanwu District,
Nanjing
南京市玄武区中山路99号
806室
Tel: +86 (25) 8362 7330 /
8362 7331
Fax: +86 (25) 8362 7332
nanjing@eurochamber.com.cn

Shanghai

Unit 2204, Shui On Plaza
333 Huai Hai Zhong Road
Shanghai, 200021
PR China
上海市淮海中路333号
瑞安广场2204室
Tel: +86 (21) 6385 2023
Fax: +86 (21) 6385 2381
shanghai@eurochamber.com.cn

Shenyang

2A-1, No. 7 Road,
Shenyang Economic and
Technology Development
Zone, Shenyang
沈阳经济技术开发区七号路2
甲1号
Tel: +86 (24) 6683 4376
Fax: +86 (24) 6683 4376
shenyang@eurochamber.com.cn

South China - Guangzhou

Unit 2817, 28/F, Tower A,
China Shine Plaza
9 Linhe Xi Road
Tianhe District
Guangzhou, 510613 PR
China
广州市天河区林和西路9号
耀中广场A座2817室
Tel: +86 (20) 3801 0269
Fax: +86 (20) 3801 0275
prd@eurochamber.com.cn

South China - Shenzhen

Rm 308, 3/F Chinese
Overseas Scholars
Venture Bld
South District, Shenzhen
Hi-tech Industry Park
Shenzhen, 518057
PR China
深圳高新区南区
留学生创业大厦3楼308室
Tel: +86 (755) 8632 9042
Fax: +86 (755) 8632 9785
prd@eurochamber.com.cn

Southwest - Chengdu

04-A, F16, Tower 1 Central
Plaza
8 Shuncheng Avenue
Jinjiang District, Chengdu
成都市锦江区顺城大街8号中
环广场1座16楼04-A
Tel: +86 (28) 8527 6517
Fax: +86 (28) 8529 3447
chengdu@eurochamber.com.cn

Southwest - Chongqing

Lobby Gallery, 1F, Hilton
Chongqing, 139 Zhongshan
San Lu, Yuzhong District,
400015 Chongqing
重庆市渝中区中山三路139号
重庆希尔顿酒店1楼大堂精品
廊
Tel: +86 (23) 8832 9803
chongqing@eurochamber.com.cn

Tianjin

41F, The Executive Center,
Tianjin World Financial
Center, 2 Dagubei Lu,
Heping District, Tianjin
300020, PR China
天津市和平区大沽北路2号天
津环球金融中心41层德事商
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tianjin@eurochamber.com.cn



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MORE CONSUMERS, MORE CHOICES AND MORE OPPORTUNITIES



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

A handwritten signature in blue ink, appearing to read 'J. Wuttke', with a stylized flourish at the end.

The European Chamber has followed with great interest two recent legal developments that can positively impact consumer rights in China: the Consumer Safety Law and the new Food Safety Law. Updated in 2013, the former includes stronger rights for consumers to return faulty products and places a heavier burden on businesses to prove, when challenged, that durable goods they have sold are not defective. The latter, passed in late 2015, includes beefed up standards for monitoring and inspection of food products, with detailed requirements that apply specifically to imported food.

As positive as these laws can be, the manner in which they are implemented is key. The Chamber wants to ensure that they are not used as tools to deny European companies market access, or even to damage their brands and market position. In fact, on the issue of 'professional shoppers'—those who deliberately buy products whose ingredients, components or labelling do not fully comply with domestic Chinese standards in order to pursue large sums in compensation—we have already enjoyed a lobbying success. Specifically, we engaged in a dialogue with the Beijing Administration of Industry and Commerce and successfully advocated for more appropriate treatment of cases where no safety risk has been posed and producers have not deliberately contravened Chinese standards. As a result, European producers of luxury and many other classes of goods now stand to save enormous amounts in unjustified fines.

It is therefore critical that Chinese laws are both strong and balanced, to ensure that China's economic and social development is sustainable. In light of the abundance of high-quality, trustworthy European brands, many of which already enjoy an impeccable reputation in China, this approach plays to the strengths European business. China's growing and evermore sophisticated middle class consumers are increasingly willing to pay for premium products: they want more high-quality choices, which, when given market access, European companies can provide. The fact that so many Chinese consumers currently make everyday purchases abroad for items like packaged food, baby products and even rice cookers highlights the costs to China's economy of denying European companies market entry.

European companies, both big and small, therefore need to continually refine their understanding of consumer behaviour and regulatory requirements in China. Fortunately, as EU Commissioner Vera Jourová outlines on page six this issue, this process is aided by such mechanisms as the new EU-China Legal Affairs Dialogue. With the first of these dialogues focussing on e-commerce this should lead to a simplification of the existing legal framework and, ultimately, an increase of online cross-border trade.

I am pleased to report that the Chamber's local board elections that were recently held across all chapters and our Annual General Meeting (AGM) on 28th April, were huge successes. It was an honour to have European Commission Vice President Jyrki Katainen share his insights on both the direction of EU-China relations and European football at the AGM, especially as he did so before meeting with his Chinese counterparts. It was also great that everyone had the chance to thank outgoing Chamber Vice President Mats Harborn for his outstanding contributions over the last three years and to welcome incoming Vice President Patrick Horgan, who has very big shoes to fill.

Needless to say, it is a great honour to serve as your president for this third and final year of my current tenure. I have already started to redouble the Chamber's efforts on your behalf across all chapters, especially in the areas of outreach to government officials and media, as well as the development of a risk management tool that will help us to prepare for all possible contingencies. Furthermore, following the recent publication of local position papers for Tianjin and Southwest China—and the highly positive responses they received from both local Chinese officials and media—Nanjing is next!

Proposed amendments to our Articles of Association were also approved at the AGM. The Chamber has continued to grow and evolve since they were last updated in 2008, something that the new articles reflect. They contribute to our ability to continue to drive positive outcomes for our members. I am proud to report that the new articles also make us an even more inclusive organisation in which all member companies and individuals who want to make a difference can do so. Since value and effectiveness of the Chamber is determined by the degree to which our members contribute and remain engaged, we certainly hope that you will take full advantage. As ongoing changes in both regulatory and consumer landscapes highlight, there is still so much that needs to be done.



BRIDGING THE DIGITAL DIVIDE

The EU-China Legal Affairs Dialogue

Věra Jourová, European Union (EU) Commissioner for Justice, Consumers and Equality, will launch the EU-China Legal Affairs Dialogue on 20th June. In the article below she explains how its establishment will engender a deeper understanding of each side's respective legal systems, which in turn will reinforce exchanges between the EU and China at all levels. The first subject that this dialogue will tackle is e-commerce, with a view to simplifying the existing legal framework, bolstering consumer trust and, ultimately, increasing online cross-border trade.

The EU is a unique organisation in that it brings together the people of 28 different Member States in an ever-closer union based on law. From its beginnings in the 1950's, the EU's actions have been based on legally enforceable treaties. The treaties allow EU legislation that now covers areas ranging from trade and competition policy to product standards and consumer protection. To ensure that the system works, an independent court of justice in Luxembourg adjudicates over any disagreements. In the event of any disputes, EU legislation takes priority over

national law.

This legal glue makes the EU stronger on the international stage. Instead of 28 countries, each with their own borders and regulations, the EU has a single market where goods, services, capital and workers can move freely. The EU represents all of its Member States at the World Trade Organisation.

By constructing a shared legal framework Europeans have built the most important market in the world. Europeans

are responsible for more consumer spending than either the US or the emerging economies of the Brazil, Russia, India and China combined.

EU-China trade has increased dramatically in recent years. China and Europe now trade well over EUR 1 billion a day. China is now the EU's second largest trading partner behind the United States and the EU is China's biggest. But the relationship between the EU and China goes far beyond trade. Over more than 40 years of bilateral relations, close cooperation has been developed across three pillars—political dialogue, economic and sectoral dialogue and people-to-people dialogue—and virtually all EU policies.

Our ongoing cooperation led to the realisation from both sides that we have a common interest in better understanding our respective legal systems. The ways in which our laws work lays the foundations for all other exchanges in sectors such as trade and investment, technology, agriculture, health and social issues, urbanisation and environmental protection.

It was for this reason that, at the 2015 EU-China Summit, Premier Li Keqiang and presidents Tusk and Juncker agreed “that it is necessary to deepen understanding of each other's legal systems, and establish an EU-China Legal Affairs Dialogue for policy exchanges, mutual learning and cooperation in legal affairs.” It is therefore a great honour that, as the EU Commissioner responsible for justice and consumer policies, I will have the privilege of launching this dialogue with Minister Song Dahan in Beijing on 20th June.

It is not always easy to do business in China. I have listened to EU companies and have read the European Chamber's most recent position paper. I could not agree more with the conclusion that a better implementation of the rule of law is not only a top priority for European businesses but will also be “the top driver for China's economic development in the coming years”.

The concerns of European companies are not new, but what is new is that they are now being increasingly shared by the Chinese leadership. In October 2014, the Fourth Plenum set the objectives of ‘judicial fairness’, ‘governing the country according to the law’, ‘equality under the law’ and ‘fair and civilised law enforcement’. China has recognised that a predictable and fair legal framework is necessary to support the long-term and sustainable economic growth that we look to become China's ‘new normal’. The Chinese Government is looking to streamline government structures and improve the quality of legislative decision making – which means that the launch of the Legal Affairs Dialogue could not come at a better time.

The EU-China Legal Affairs Dialogue is intended to be a high level dialogue, held every year alternately in Brussels and in Beijing, between the relevant EU services on one side and the Chinese State Council Legislative Affairs Office on the other. It will be complemented by expert workshops bringing together Chinese and European law practitioners, law-makers, legal academics and other stakeholders to discuss selected themes.

The starting point will be an exchange of information on draft legislation, existing laws and their implementation in China and in the EU, to help identify areas of common interest and open the door to concrete cooperation.


The subject for the first dialogue will be e-commerce. Ensuring that digitalisation benefits European citizens and that the Digital Single Market delivers for European consumers and businesses is a key political priority of the European Commission. The EU's recent Digital Single Market Strategy tackles all major obstacles to the development of cross-border e-commerce in the EU. Removing these obstacles could contribute EUR 415 billion per year to Europe's economy, create jobs and transform our public services.

To underpin this initiative the European Commission adopted two important legislative proposals in December last year: one on the contract rules for the supply of digital content (e.g. streaming music); and one for the online sale of goods (e.g. clothes). These proposals will simplify the existing legal framework and help increase online cross-border trade by building consumers' trust.

China also realises that a large part of its future economy will be online, and to that end the Ministry of Commerce has worked together with other stakeholders in order to prepare a draft law on e-commerce.

This legislation—Chinese and European—will shape a large part of the global economy of the future. I am therefore very encouraged that the Legal Affairs Dialogue will help both sides discuss, compare notes and take inspiration from each other's approach. It should also help facilitate digital trade between China and the EU.

Discussing substantial legal proposals at an early stage is an encouraging demonstration of a more transparent public consultation process. It will also lead to better quality legislation that is easier to implement.

This demonstration of openness is something that we will build upon and I hope it will become the ‘new normal’ when it comes to legislative cooperation. If we better understand our legal systems then we can improve the way we work together and create benefits for both the EU and China. 



PROTECTING THE PEOPLE

China's Consumer Law

China's consumer protection regime has come on leaps and bounds in recent years, and has evolved in tandem with its economic development. The days of double-digit growth in China has given way to more moderate advances—the so-called 'new normal'—which reflects structural adjustments that the country is currently undergoing. The two major pillars of investment and exports that once fuelled China's breakneck growth are no longer tenable and consumer spending is now contributing a significantly larger share of GDP, a model that is both healthier and more sustainable. **Michael Tan** and **Yang Cui** of **Taylor Wessing**, explain how Chinese legislators have been formulating laws and regulations to help foster this new development pattern, which has naturally resulted in increased protection for consumers.

The framework

China's consumer protection regime comprises many laws and regulations. Besides the Consumer's Rights and Interests Protection Law (Consumer Law), the Product Quality Law and the Food Safety Law also regulate areas related to consumer protection. As the general watchdog taking care of consumer protection, the State Administration for Industry and Commerce (SAIC) has also formulated many special rules and notices that focus on increasing protection of consumer interests. In addition, Chinese media—including CCTV's annual *3.15 Gala*—has continued to play an important role in bringing consumer protection cases to the fore, as a means of encouraging law enforcement in this area.

The Consumer Law is the cornerstone of the whole regime, though. Since it was first enacted in 1993, many new consumer issues and problems emerged, yet the law itself did not evolve to deal with them. To some extent this is indicative of the country's focus on an investment- and export-led growth model during this period. Consumer protection remained a hot topic, but didn't yet qualify for action.

A major leap forward took place two decades later, on 25th October, 2013, when the Consumer Law was finally revised. The amendment substantially updated China's consumer protection regime, strengthening existing areas and adding new ones, as well as aligning with recent developments in other laws, such as the Food Safety Law. The amendment also paved the way for further legislative developments in response to the increasingly challenging task of consumer protection in a modern era, which is heavily influenced by the .com economy.

Highlights

The Consumer Law has a broad coverage and regulates all business operators including manufacturers, retailers and service providers. For the first time, financial products and services provided to consumers are also covered by this law. It prohibits business operators from imposing unfair and unreasonable trading terms, including coercive sales. Businesses are also obliged to take care of consumer safety, with the law now addressing restaurants, banks and ports in addition to hotels, shopping malls, airports, public transportation stations and cinemas. With regard to defective products or services, the new law outlines specific measures which business operators must take including halting sales, publishing alerts, recalling goods, innocuous treatment,¹ destroying goods and suspending production or services. Another noteworthy change is that if a consumer makes a complaint about the quality of a product or service within six months of the purchase, business operators now have to assume the burden of proving that there is no deficiency. This obligation applies to sales involving durable goods—like vehicles, computers, household electrical appliances—or refurbishment services.

Besides a strengthened stance in conventional consumer protection areas, another highlight of the new Consumer Law is its focus on emerging consumption trends, in particular online shopping and purchases made via telephone and TV. Consumers have been granted a right to return their purchase within seven days, without needing to state a reason, provided the goods are kept in good order. Exceptions are customised products, live or perishable products, digital soundtracks/videos that have been downloaded or unsealed, delivered periodicals or other goods that have been explicitly exempted from such a return policy beforehand.

Personal data security and privacy protection is another important feature of the new law. This topic really gathered weight in recent years and has attracted constant attention. It started when the National People's Congress issued a decision outlining some major data protection principles, including legitimacy, transparency, consent and proportionality. The new Consumer Law further expands this in the context of consumer protection. Irrespective of whether it is online or not, personal information and privacy shall generally be protected by following the below guidelines:

- The collection and use of consumers' personal information shall be "legitimate, proper and necessary" and shall not violate laws and regulations or agreements between the parties.
- The purpose, method, scope and related rules of information collection and use shall be disclosed and consented to by the data subject prior to data collection.
- A business and its staff shall keep the personal information collected strictly confidential and secure and shall take immediate remedial measures in case of data breach.
- Businesses shall not spam consumers with electronic information of a commercial nature without consumers' request or consent, or if expressly requested not to do so.

A striking development under the new Consumer Law is its additional weaponry to curb consumer data breaches. In addition to normal civil remedies such as compensation or damages, administrative sanctions were introduced for the first time in China. These include being ordered to rectify the breach, issuing warnings, confiscation of illegal gains, a fine of up to ten times any illegal gain (or up to CNY 500,000 if none) and, in extreme cases, shutting down and de-registering the business.

Challenges

There is no doubt that increased consumer protection brought about by the new Consumer Law has its positive side. However, it also raises some controversial issues that create a very challenging business environment for B2C players. One such challenge comes in the form of so-

¹ Ensuring that they cause no harm, including pollution.



called ‘professional consumers’ – individuals that knowingly buy fake or deficient products and then resort to claiming for punitive compensation through the courts. Article 55 of the new Consumer Law stipulates that punitive compensation of up to three times the cost of the goods may be due, with a minimum of CNY 500 applying to fraudulent sales. As far as food products are concerned, this fine could go up to 10 times the cost of the goods. Many ‘professional consumers’ therefore actively seek cases involving false or watered-down sales descriptions in order to make a profit, in particular since the Supreme People’s Court (SPC) endorsed such practices by issuing on a judicial interpretation regarding food and drug cases on 23rd December, 2013. Although the SPC has not yet officially extended this endorsement to all consumer-related cases, results of most trials by local courts indicate cases will not be jeopardised if they are launched by a career ‘fake-buster’.

Another challenge B2C players might face is potential class action in China. Article 47 of the new Consumer Law empowers the China Consumers’ Association (CCA) to launch litigation against a case which harms the legitimate interests of many consumers. A recent amendment to the Civil Procedural Law in 2012, further paved the way for this kind of litigation. Although this is not yet

a full equivalent of a class action lawsuit in a Western jurisdiction, and the exact practice is yet to be built up, the growing importance of the CCA under the new law, as well as the technicality offered by such new laws, will expose B2C operations to increasing pressure in the foreseeable future.

China’s new consumer protection regime, as substantiated by new rules, reflects the country’s determination to gradually transform its development model into a more sustainable one by boosting and relying more on domestic consumption. This goes hand in hand with the so-called ‘supply-side reform’ that is taking place in order to earn and reshape consumers’ trust in China’s domestic market. It appears challenging for all business operators including European players, but also demonstrates the great potential that China’s consumer goods market holds, particularly when considering the advantage that many European brands hold in terms of reputation and quality. **Eb**

Taylor Wessing is a full service law firm with over 1,200 lawyers in 28 offices in Europe, the Middle East and Asia, including two representative offices (Shanghai and Beijing) in China. For more information please visit www.taylorwessing.com.



BREAKING DOWN BORDERS

What you should know about cross-border e-commerce in China

In contrast to many definitions, **Cyril Drouin** and **Christine Wang** of **Saatchi & Saatchi** say the term cross-border e-commerce (CBEC) applies to any brand selling in China with its origins in another country. It is important to understand that cross-border isn't just about bringing products in through bonded warehouses or Hong Kong, they say, it's about translating your brand to fit the Chinese market.

Defining cross-border e-commerce

A brand can operate on Tmall, JD, YHD, or any other platform, have their Chinese business licence, and still be cross-border due to the amount of cross-border brand management that has to be dealt with. From product mix to spokespeople and the tactics you employ, if you're adapting to the Chinese digital sphere, you're doing CBEC – even if you don't have an official marketplace presence. But, if that is the case, you are probably losing out on sales already.

Why do companies choose to be cross-border?

On a product level, particularly when it comes to food, the ability to sell without having to go through China Inspection and Quarantine (CIQ) is incentive enough for most companies to jump on the cross-border train. It enables companies to get to market almost instantly, avoiding the regulatory and financial hassles of traditional importation. Speed to market can have a large impact, if only in terms of avoiding the costs associated with Tmall's requirement for establishing and operating an office for two full years.

However, taxation rates for common cross-border products were greatly modified in April, 2016. Up until that point taxation of such goods had been lenient – a CCTV report claimed that—through the use of personal parcels—the Chinese Government had been paid taxes of less than CNY 1 billion on sales that actually amounted to trillions of RMB.

Under new laws, certain consumer goods and luxury goods will be subject to higher taxes, and the 'personal parcel' and other loopholes have since been closed. There is now also a spending limit in place of CNY 2,000 per single purchase and up to CNY 20,000 annually.

Taking milk powder as an example, for purchases of CNY 500 or less, tax is now 11.9 per cent, up from zero per cent; the tax rate for purchases over CNY 500 has increased from 10 per cent to 11.9 per cent, which should eliminate the previous consumer preference for buying in quantities that total less than CNY 500 in order to avoid tax. Instead, it is expected that average order quantities will increase now that the tax rate is level across purchase points. It can also be anticipated that in order to combat the CNY 20,000 limit, greater numbers of 'consumers' will emerge – a sharp rise in the number of dummy accounts could be witnessed, causing a pretty serious headache for customer relationship management.

Despite these changes in taxation policy, though, the cost of cross-border e-commerce is still not on a par with traditional imports. Importing a product, say milk, priced

at CNY 100 via traditional channels results in CNY 32 in taxes – 15 per cent import tariff and 17 per cent VAT. Under the e-commerce model, the same product is liable to just CNY 11.9 tax – 70 per cent of the 17 per cent VAT and zero per cent import tariff.

In short, taxes are higher but there are greater incentives for consumers to make larger cross-border purchases until they reach the limit. This is essential to remember, particularly for businesses planning their 11.11 or 12.12 campaigns.

So, that's it. You're ready, right?

Well, yes and no...

There are still barriers in China, regardless of how a brand chooses to enter the market. Those related to CBEC are present at every step of the consumer journey.

Awareness

Although Tmall Global results will be prioritised in Taobao searches and will also show up on Tmall searches, when it comes down to it, the numbers don't lie: only 36 per cent of consumers in 2015 purchased goods from cross-border websites; only four per cent purchased cross-border exclusively (China Internet Watch). Consumers don't just need to be aware of your brand's availability in e-commerce marketplaces, they also need to be aware of why buying it there is their best choice. The following should be considered:

- How can you generate and maintain awareness effectively, efficiently and for the right price?
- Purely online brands will need to take marketplace advertising spending into account and completely overhaul how they approach social media to suit WeChat, while brands with an offline presence can see cross-border as a chance to vary their product mix, offer exclusives and test new products in the market.

Daigou

The numbers don't lie, but they also don't show the whole picture. They fail to take into account the sellers who purchase products overseas, import them and then sell them on via grey market channels. This system is known as '*daigou*' in Chinese, meaning 'to buy on behalf of'. *Daigou* purchases are often luxury goods as consumers can avoid the large import tariffs that China places on such products, but they pose a challenge to non-luxury brands too. For example, a lot of demand for *daigou* services have been generated by consumers who are scared of buying unsafe domestic products, particularly



food products.

Daigou sellers can often afford to undercut market prices. Official brand outlets can get away with charging slightly more by contesting the authenticity and quality of products sold on the grey market, but they then run the risk of pricing themselves out of the market altogether.

Daigou sellers need not be the enemy, though. They can become *taobaoke* instead – official resellers who earn a commission from the brand. The higher the commission, the higher the incentive for them to market your brand above the others they sell. This system allows you to filter and choose the sellers you want and to set their commission directly.

Logistics

There are two options available to get your international products to Chinese consumers:

- *Direct Shipping from overseas or Hong Kong*

This is by far the easiest option for brands, but it also has the biggest downside – longer delivery times. In a country where next-day shipping is the norm, this just won't fly. If time hurdles can be overcome, though, with the new tax rates there is a chance that direct shipping could be less expensive for certain purchases, giving this option some advantages over bonded warehousing.

- *Bonded warehousing*

Bonded warehouses are the hot new way of conducting logistics. Once you apply and are

accepted, the customs clearance process and the fulfilment are carried out by one team at the same time. It gets international goods to consumers at a lightning-fast pace. However, as of the 8th April tax code updates, total order prices may increase, which may prompt consumers to consider direct shipping as a more viable alternative, despite increased waiting times.

Cross-border e-commerce is growing and not expected to slow, but that doesn't make it a shortcut to millions in China sales. The market has become more sophisticated in a short space of time and the government has caught up to shipping methods, closing the old loopholes once used by many to increase their margins. Consumers, constantly inundated with messages of foreign quality, history and craftsmanship, are becoming more selective about the brands they use and loyalty is rare in an era of growing market saturation. A unique value proposition adapted to the e-commerce channel in China is the only thing that will give you a real competitive advantage in the market. The best way to do cross-border e-commerce is straightforward: don't cut corners. **Eb**

*One of the first 4A agencies to enter greater China (HK in 1989, the mainland in 1992), **Saatchi & Saatchi** Greater China has offices in Beijing, Shanghai, Guangzhou, Hangzhou, Hong Kong and Macau. These offices serve over 50 domestic and international brands. In the past three years alone, Saatchi & Saatchi has pocketed seven Creative Agency of the Year awards in the Greater China region. Our digital teams pull ideas and practices from this long history of success to create ideas that transform businesses, brands and reputations. They exist to develop strategically sound and creative ideas that directly inspire a purchase.*



CHINA'S NEW FOOD SAFETY LAW

Benefits for Chinese consumers, challenges for European SME food exporters?

As China's F&B market continues to grow, concerns remain over food safety issues. In order to strengthen and enforce consumers' rights, the Chinese Government has over the past two years been restructuring its mechanisms to supervise food production and distribution. On 1st October, 2015, the new Food Safety Law (NFLS) entered into force and is considered to be the most stringent ever passed in China. **Dr Martina Gerst**, Standards and Conformity Assessment Advisor at the **EU SME Centre**, looks at the new law and its potential implications for EU SMEs.

The NFSL is meant to clean up China's entire food supply chain – from banning toxic pesticides, regulating labelling and distribution, and, importantly, increasing punishments for those who violate existing laws. There is a new burden of responsibility placed on everyone along the entire food chain, including European SMEs exporting their foodstuffs to China.

Chinese consumers' appetite for foreign foodstuffs is undiminished – in 2014, imports were valued at EUR 42 billion with 35 million tonnes of imported food being inspected and quarantined in China. Food and beverage (F&B) imports from the EU alone were worth EUR 8.2 billion, with market growth of more than 20 per cent expected for organic food over the next few years.

A look at the law

Although the NFSL is expected to undergo further changes until it comes finally into force, it is worth taking a look at some of the important articles, as well as at some of the measures specifically concerning EU SMEs.

The NFSL now contains ten chapters including 154 articles, compared to the previous 104. It provides the regulatory framework that will shape the operations of traditional and online F&B operators in China, and all other players involved in import/export activities. There are several other related rules and administrative measures that have already come into force or are still at the drafting stage, which expand some of the articles of the Food Safety Law.

Particular attention should be paid by EU SMEs to chapter six of the NFSL, *Food Import and Export*. Some of the key points are listed below:

- The Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) regulates the safety of food imports and exports. In practice, the China Entry-Exit Inspection and Quarantine (CIQ) interprets and implements the regulations (Article 91).
- Imported foods, food additives and food-related products shall comply with China's national food safety standards. Imported foods and food additives shall pass inspection by the CIQ. Foods and food additives shall be accompanied by inspection certificates, as required by the AQSIQ (Article 92).
- In the event of importation of food without a national food safety standard, the overseas exporter/producer, or its entrusted importers, shall submit relevant national (regional) standards or international standards of the exporting country (region) to the National Health and Family Planning Commission (NHFPC). The importation of food with new food raw materials shall be in accordance with the law (Article 93).

- Importers shall examine exporters' and producers' products, and, if food is found to be non-compliant, they must cease importing and recall these products (Article 94).
- The CFDA supervises imported food, food additives and food-related products sold in the domestic market. If serious issues are found, the CFDA will communicate with the AQSIQ so they can take action (Article 95).

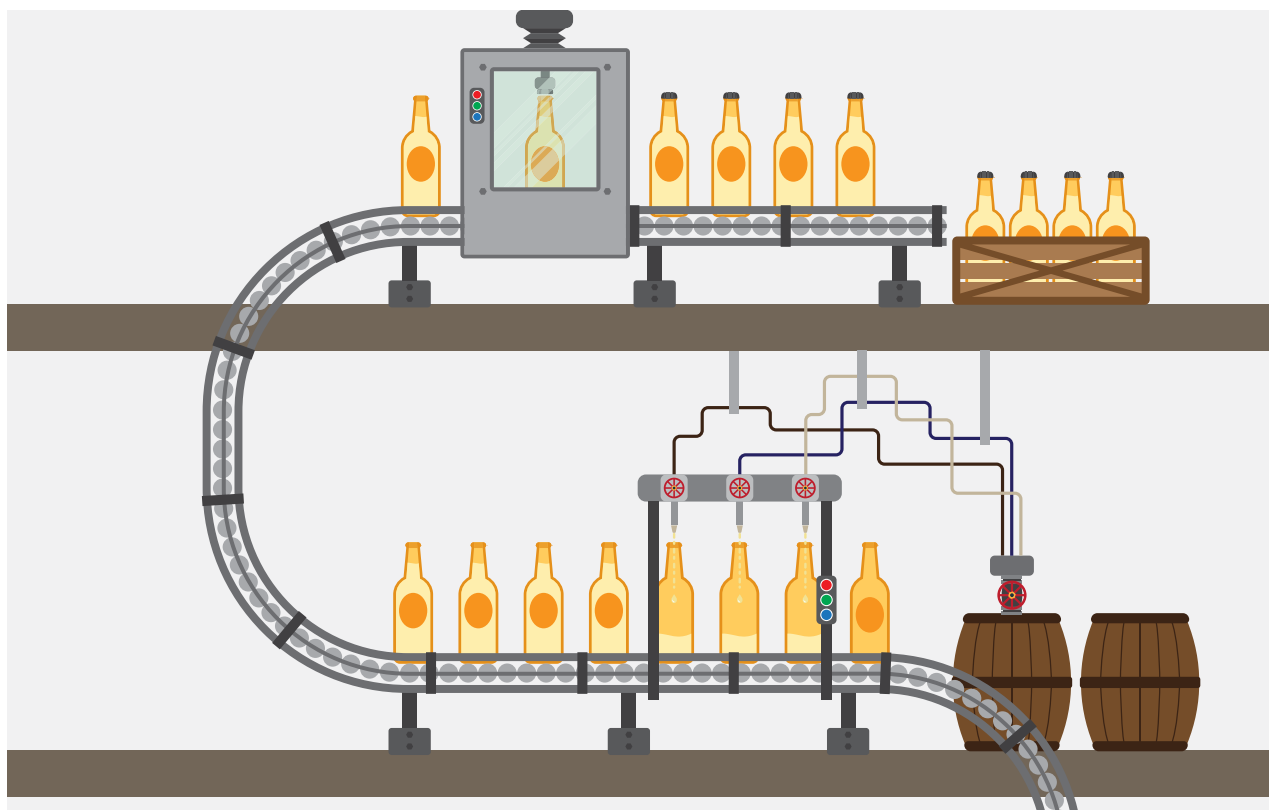
The NFSL imposes new requirements on importers to audit their foreign suppliers, both exporters and producers. If the imported food products fall in to one of the seven categories below that must have on-site inspection, the importers are themselves required to conduct it. If review/inspection records are not kept properly, importers will be punished. The *Catalogue of Products that Must Have On-site Inspection (Catalogue)* includes:

- Infant formula products
- Food for special medical purpose (FSMP)
- Health food
- Meat
- Fresh and frozen seafood for direct consumption
- Rice
- Bulk vegetable oil

Infant formula

There is high demand for European infant formula products in China. According to the *Catalogue*, the law specifically requires infant formula importers to carry out on-site inspections either by themselves or by an authorised third party once every three years. Article 81 of the NFSL specifically deals with infant formula. Of note:

- Formula requires a CFDA registration certificate. The CFDA will publish a list of approved testing organisations to carry out the registration.
- Infant formula producers need to meet relevant standards and file all materials, food additives, product formula and labels before selling their products in China.
- Infant formula producers must display both Chinese and foreign labelling on their products.
- Infant formula producers can only register 9 formulas out of 3 series and all of them must be different from the others already registered.
- Infant formula producers can only use milk or milk products from cows or goats.
- Infant formula producers cannot limit their sales ge-



ographically to any specific region in China or tailor their products for a specific trader.

- Food traders of infant formula must verify the registration certificates and the consistency of the product label. In theory, since traditional and online traders shall follow the same rules, this puts to an end cross-border sales of unregistered infant formula.

In this context it should also be mentioned that the CFDA has published the *Administrative Measures for Registration of Infant Formula Formulations* (draft), which only affects domestic producers. However, in the future it could be extended to foreign producers.

New rules for online food retailers

The increasing popularity of online shopping for food has necessitated some of the changes that appear in the NFSL. New provisions include obligations for online retailers to:

- register genuine contact information such as name and ID; and
- carry out due diligence on their vendors and food distributors and ensure that they have obtained all relevant licences.

Online food retailers will be held liable if they cannot provide this type of information. In addition they must report to the CFDA any illegal activities sellers commit on the platform and act accordingly.

To support the NFSL, the *Administrative Measures for Supervision on Operation of Foods Sold Online* (draft) was published in 2015. It follows the articles laid out in the NFSL with regard to online food traders and platforms. It stresses the importance of the implementation of a traceability and supervision system, and holds traders accountable if there's any discrepancy between the information shown on the website and the actual products:

- Third-party e-commerce platforms and traders of food must ensure that product information is true and consistent.
- They are required to check that their suppliers and retailers comply with the regulations.
- Traders of food must obtain a certificate from the CFDA and display it on their websites.
- Traders of food are responsible for an adequate delivery of the products by using logistics companies that ensure the appropriate transportation conditions.

Related to the online selling of food, cross-border e-commerce (CBEC) via free-trade zones (FTZs) has become very popular. In October 2015, the AQSIQ published the *Rules of Supervision and Administration on the Safety of the Foods Imported via Cross-Border E-commerce Under the Bonded Internet Shopping Model*.

Once these measures come into force, the online platform or trader will need to declare to the local CIQ the following documents (Article 14):

1. The list of the product names and the corresponding Harmonised System (HS) codes, models and specifications.
2. The official quarantine (health) certificate to be submitted from the exporting country as required by the laws and regulations, bilateral agreement, protocol and other regulations.
3. Self-certification information, which must be issued by a qualified laboratory.
4. The filing number of the operating enterprise.
5. The qualifications of registration, filing and safety assessment that shall be obtained for the product.

Online platforms and traders are also required to keep a sales record of and implement a traceability system for the food products sold. Additionally, platforms will also be responsible for daily inspection, recall of uncompliant products and civil compensation for any damages to consumers' legitimate interests.

It is important to highlight that the products delivered directly to the Chinese consumer by international courier are not included in the scope of application of these measures.

Top tips for EU SMEs


The NSFL is clearly a move in the right direction to strengthen food safety for consumers in China. While they are unfolding over time, our recommendations and key takeaways are as follows:

- **Compliance is essential.** You must immediately face all legal aspects required in China, not grope in the dark with the hope that everything will be alright.
- To ensure compliance you may want to **establish a special China food safety team**, ideally consisting of members from the legal, food technology, product management and quality assurance departments before exporting.
- **Establishing a specific internal Chinese food safety working procedure** as a reference for employees involved in various stages of handling a food safety issue is also useful.
- **Keep organised written records for all activities.** Investigation dossiers should include written records such as correspondence, meeting minutes, testing reports, findings of investigations, conclusions reached by the investigation team and corrective measures, if any, that have been taken.
- **Pay close attention to legal updates.** Different CIQ offices, or even officers, often have different interpretations of the regulations. Being accurately

informed of legal and regulatory updates in China is crucial for your business success here.

- **Monitor different enforcement levels and local regulations across the country.** While the central government has published, or is drafting, regulations to enforce the NFSL, local governments also are actively developing new implementing rules. You can expect tighter control and inspection in some cities (e.g. Beijing) while others could still delay the application of the new rules or enforce them in a more lenient way.

Consumers in China will definitely benefit from the NFSL when implemented and enforced, as it provides stricter rules for domestically manufactured foods. European SMEs should brace themselves to face more complex pre-market approvals for general and special foodstuffs.

To learn more details of the NFSL and how you could better adapt to the changes, contact the Centre's experts at www.eusmecentre.org.cn/expert. 

The EU SME Centre in Beijing provides a comprehensive range of hands-on support services to European small and medium-sized enterprises (SMEs), getting them ready to do business in China.

The Centre is funded by the European Union and implemented by a consortium of six partners – the China-Britain Business Council, the Benelux Chamber of Commerce, the China-Italy Chamber of Commerce, the French Chamber of Commerce in China, the EURO-CHAMBRES, and the European Union Chamber of Commerce in China.

To learn more about the Centre, visit website www.eusmecentre.org.cn

CORRECTION: The March/April issue of *EURObiz*, contained the article *Made in China 2025: what does it mean for EU SMEs?*, which was published along with the incorrect logo. We would like to issue a correction: the article was written by Dr Martina Gerst of the **EU SME Centre**, not the China IPR SME Helpdesk.





REGULATING THE FLOW OF GOODS

China's cross-border e-commerce industry enters a new spring

China has recently been rolling out a series of new policies to reform its management of cross-border e-commerce (CBEC). While reforms have mainly been focused on adjustments to tax policies, this April saw the **List of Products Eligible for CBEC (Positive List)** published in two batches.¹ The list clarifies which products can and cannot be imported via CBEC. **David Ettinger of Keller and Heckman LLP** says that the new rules have completely changed the regulatory landscape for CBEC in China, and will have a significant impact on the industry.

¹ <http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201604/P020160407628544745898.pdf> [first batch]; <http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201604/P020160415822493955077.pdf> [second batch]² Woetzel, Jonathan et al, *China's digital transformation*, McKinsey, July 2014, <<http://www.mckinsey.com/industries/high-tech/our-insights/chinas-digital-transformation>>

Checks and balances to booming CBEC

In 2014 and 2015, China issued a series of legal guidance at the central level to boost the development of CBEC; with the industry booming, the government is now looking to add some checks and balances. Notably, the Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) released the *Regulations for the Safety Supervision and Administration of Cross-Border E-commerce of Imported Food via Bonded Warehouse Model* (draft) in October last year, which raised the regulatory bar for those distributing food via CBEC. Further, the draft amendment to the *Implementing Regulations of the Food Safety Law*, released in December 2015, explicitly stated that CBEC-imported food products shall comply with the Food Safety Law and all relevant regulations. Although this amendment is not yet finalised, it continues a trend in recent regulatory developments, with authorities narrowing the gap between regulations governing specially regulated products in CBEC and traditional import, while leaving some regulatory flexibility to the management of conventional products.

From negative to positive

In the past, commodities traded via CBEC were monitored via a risk management system, with safety risk analysis being performed and items being scrutinised in terms of safety and hygiene requirements. Under the bonded warehouse model² inspection procedures varied depending on the risk level of the product. Given that no standard risk analysis guidelines were established at the national level, local CIQs developed and implemented varying product classifications and clearance requirements on a discretionary basis. Per internal instructions from the General Administration of Customs (GAC),³ as long as a product was not included in the *List of the People's Republic of China of Articles Prohibited/Restricted from Import and Export*, was in a 'normal' amount and deemed to be for personal use, it would not normally be prohibited from entering China via CBEC.

This practice changed upon the establishment of the *Positive List*. The *Positive List*—jointly released by the Ministry of Finance (MOF) and ten other ministries and government bodies—includes tariff codes and product names of almost 1,300 permitted CBEC categories of commodities, along with various notes that provide additional regulatory requirements where necessary. The *Positive List* is apparently going to be a dynamic system and will be updated from time to time.⁴

While many approved products are listed without additional notes, a number of product categories do contain exclusions and additional guidelines. Specifically, government clearance requirements for special foods, cosmetics and medical devices were highlighted. On 15th May, the AQSIQ issued a notice⁵ to clarify that products imported via CBEC are considered commercial goods and those imported via the bonded warehouse model must obtain a customs clearance certificate if they are listed in the *Catalogue of Commodities Subject to Entry and Exit Inspection and Quarantine (Catalogue)*.⁶ This further confirms the 'commercial' element of CBEC and the regulatory trend of CBEC products moving in the direction of being governed in the same way as products imported via traditional methods.

Potential impact on individual sectors

China's Food Safety Law, promulgated in 2015, sets forth strict supervision standards for special food products, namely infant and young children formula milk powder (infant formula), health food and formulae for special medical purposes (FSMP). Unsurprisingly, if these products have not obtained pre-market clearance from the government they are excluded from the *Positive List* and cannot be sold on CBEC platforms under the reformed system. However, there is slight variation in their respective management.

Infant formula

Starting from 1st January, 2018, all infant formula imported via CBEC must obtain a formula registration certificate from the China Food and Drug Administration (CFDA), following the *Administrative Measures for the Registration of Baby Formula Milk Powder Products Formula (Registration Measures)*, which should be finalised soon. This suggests infant formula developed per foreign standards will not be available via CBEC platforms, unless its formula is also approved in China. Once the *Registration Measures* are published, the industry should gain more clarity as to whether special rules have been tailored to meet the needs of purchasers of infant formula via CBEC.

In traditional modes of import, before any infant formula can be shipped to China, not only must the formula be registered, but its overseas producers must also undergo Certification and Accredita-

² In bonded warehouse model CBEC, goods arrive in bulk and are stored in a special supervision area in bonded zones before any online purchase order is placed. CBEC operators deliver goods to domestic consumers as individual packages once orders are generated.

³ General Customs Notice [2014] No. 59

⁴ http://gss.mof.gov.cn/zhengwuxinxi/zhengcejiedu/201604/t20160406_1939013.html

⁵ In the old CBEC system where parcel tax applied, CBEC products were treated more as an article for personal use.

⁶ The *Catalogue* is issued and maintained by AQSIQ. It determines whether a product is subject to import inspection and/or quarantine. It is more for the purpose of disease control and product safety assurance. If a product is on the *Positive List* but not in the *Catalogue* when it is imported via CBEC, it is cleared by customs without going through inspection or quarantine procedures; if a product is in the *Catalogue* but not on the *Positive List*, it can be imported through traditional trade, but not via CBEC.

⁷ Currently, CNCA registration of overseas producers of meat, aquatic products, other dairy products and bird's nest is also mandatory.



tion Administration of China (CNCA) registration (known as ‘producer registration’, this is separate from formula registration) and their overseas production site must undergo a full audit.⁷ The *Positive List* remains silent in this regard; however, further clarification is expected as to whether all infant formula via CBEC must be sourced from CNCA-registered foreign producers.

Health food

In line with the requirements for traditional modes of import, health foods, other than vitamins and minerals imported for the first time, now need to be *registered* with the CFDA; vitamins and mineral supplements must complete CFDA *notification*. The new requirement will take effect on 1st July, 2016, when the *Administrative Measures for Health Food Registration and Filing* enter into force.

However, not all vitamin products are carved out from the *Positive List*. Specifically, the pre-clearance requirement for several unblended vitamins and their respective derivatives in the 1st batch list has been now removed. Further interpretations are expected, particularly at the local level, to provide more guidance to the industry regarding the export of these listed products. For example, issues surrounding special dosage forms (e.g. tablets, capsules and sprays), and health function claims that are permitted for the listed CBEC-imported vitamins need to be further clarified.

Other Specially Regulated Products

FSMP

Similarly, FSMP imported via CBEC will be required to obtain formula registration with the CFDA before being marketed. While the *Management Measures for the Registration of FSMP* will take effect on 1st July, 2016, it is not until 1st January, 2018, when a formula registration certificate will become a prerequisite for FSMP imported via CBEC.

Cosmetics

All CBEC cosmetics products must have already been registered or notified with the CFDA, in line with requirements for regular imports. In other words, both cosmetics imported through traditional trade channels and via CBEC will be subject to CFDA clearance. A list of products that have already obtained permission is available on the CFDA’s website.

Medical devices

Medical devices and related products are also now required to be registered or notified according to existing regulations before import via CBEC, which again puts the regularity requirements on par with the requirements that already exist for traditional modes of import. A list of medical devices that have already been registered (or notified) is available on the CFDA’s website.




The following table summarises government clearance requirements for categories outlined above. Currently, there is leeway for infant formula, health food and FSMP imported via CBEC due to later enforcement dates:

Product	Requirement	Enforcement (traditional modes of import)	Enforcement (CBEC)
Infant formula	Formula registration	To be determined	1 st January, 2018
	Overseas producer registration	Already in place	To be clarified
Health food	Registration/notification	1 st July, 2016	1 st July, 2016
FSMP	Formula registration	1 st July, 2016	1 st January, 2018
Cosmetics	Registration of cosmetics for special purposes; notification of cosmetics for non-special purposes	Already in place	Publication date of the Positive List
Medical devices	Registration/notification	Already in place	Publication date of the Positive List

Moving Forward

Because the *Positive List* was announced within a very short period of time, there are still a number of issues that require further government clarification. In fact, after soliciting opinions from major industry representatives on the effects of the new policy, several ministries, including the Ministry of Commerce, the GAC and the MOF, are considering a one-year postponement of the new policy, while emphasising that the overall trend is to regulate CBEC products based upon the requirements of traditional modes of import. While the *Implementing Measures of the Food Safety Law* are expected to be promulgated later this year, more guidance will be provided to industry once the infant formula *Registration Measures* and the AQSIQ's regulations for

managing food that has been imported via CBEC and stored in bonded warehouses become publically available.

At the local level, several pilot cities are drafting their own rules for the inspection and quarantine of products on the *Positive List*. For instance, Ningbo is considering following the same import inspection requirements for products imported via traditional modes of import and bonded warehouse model CBEC; and the Hangzhou CBEC Pilot Zone is at the final stage of developing related registration guidelines for bonded warehouse model CBEC. Developments in these pilot areas should be closely monitored, as they tend to reflect central government's intended direction for managing CBEC. Thus, any policies developed in these areas may well be rolled-out in others not long afterwards. 

Keller and Heckman LLP is a global law firm founded in 1962. The Shanghai office opened in 2004, focusing on serving its global clients in the Asia Pacific Region regarding compliance matters from food and drugs, food packaging, cosmetics, consumer products, chemicals to medical devices. Keller and Heckman has an in-house scientific staff of chemists and toxicologists that works closely with the firm's attorneys on matters of technical complexity. For more information, please contact David Ettinger at ettinger@khlaw.com, Jenny Li at li@khlaw.com or Yin Dai at dai@khlaw.com.

TAX REFORM

THE SWITCH TO VAT

Ensuring compliance for new VAT payers

China's value-added tax (VAT) pilot reform was implemented nationwide on 1st May, 2016. With the expanded scope now covering four new sectors—construction, real estate, finance and life-style services—business tax has now become history in the story of China's tax system. **Stephane Rinkin**, VAT Partner, and **Daphne Cheok**, VAT Manager, **Ernst & Young (China) Advisory Limited** (EY China), look at the compliance challenges for new VAT payers.

The China VAT scope is now much broader than previously with many varying rates of VAT, depending on the industry. The finance industry and life-style services industry have been added to the 'supply of services' category with a VAT rate of six per cent, while for the construction and real estate industries a VAT rate of eleven per cent applies. It is worth noting that special VAT rates of three per cent for the construction industry and five per cent for the real estate industry will also apply for transitional contracts and/or transitional projects, i.e. agreements signed on/before 30th April, 2016, and which will continue after 1st May, 2016.

Circular 36, *Implementing Measures for Pilot Collection of Value Added Tax in Lieu of Business Tax*, jointly released by the Ministry of Finance (MOF) and the State Administration of Taxation (SAT), lays down

relatively specific rules for the four industries, each of which has unique features in terms of business models, income and cost structures. This will likely bring new challenges for new VAT payers when implementing the new rules.

China's tax authorities have been playing an important role in ensuring a smooth transition from business tax to VAT (B2V) and implementing rules for new VAT payers. So far the public has been appreciative of their efforts to provide further clarity on the VAT issue, by continuously releasing documents and announcements.

Preparing for VAT compliance

Despite the best efforts of the Chinese tax authorities, though, the complexity of the new VAT rules means

that further clarification is still required. The B2V reforms demand that entities not only adjust their business operations to comply with the new VAT rules, but that they also focus on preparation and submission of more complex VAT returns. In addition to newly added VAT forms, Chinese tax authorities have also announced revisions to existing VAT returns and appendices forms, which could present additional challenges.

Developing an innovative VAT compliance methodology

Entities need to concentrate on developing a comprehensive workflow in order to turn data into VAT reports. This in itself is by no means a simple exercise, let alone the subsequent consolidation process, which involves collating a large volume of the transactions/source data if the 'get start'¹ method has not been implemented properly. This typically includes integrating data flowing and data mapping with the Golden Tax System,² the company's enterprise system and enterprise resource planning (ERP) system.

The question then is whether the company has already begun establishing a comprehensive workflow from the capturing of source data to processing the information in the system and generating reports. Of the four industries, the finance industry has the most complicated process. For instance, a bank's operational model relies on different systems communicating financial information through multiple sources and database interchange processes.

Preparing a tax reporting team for VAT compliance

There are two key steps that entities must follow in order to prepare for their VAT reporting and ensure timely submission. The first step is to train the relevant personnel (e.g. tax and accounting staff members) on the new VAT compliance and reporting processes. The second step is to establish robust procedures to monitor the submission status of VAT returns, especially for entities with multiple branches. It would appear that not all entities know how to complete these steps internally, and, moreover, there are not many tax compliance professionals available to handle the new and revised VAT compliance requirements that will take effect from June 2016.

Finding an efficient way for VAT compliance and reporting


Entities employ many solutions for their VAT compliance and reporting. One approach is to outsource the VAT compliance and reporting to a third-party service provider. Outsourcing may help

the entity manage its VAT reporting obligations and guarantee accuracy and proper reporting from the beginning. However, if there are multiple service providers across different jurisdictions (local tax agents), the standards of the VAT reporting may vary significantly in each location.

The alternative approach is using in-house resources. Of course, this would require the entity to invest a lot of effort and resources immediately to assess, design and implement a centralised system to complete the VAT returns in multiple jurisdictions, some of which may have different reporting requirements. However, in the long term this approach may allow a better integration of the enterprise's finance and operation functions.

Getting it right for the first taxable period

Getting it right from day one is important from a VAT compliance perspective. The affected entities should consider a solution which offers more than the preparation of VAT returns. It should also provide the ability to trace the data, together with the capacity for a comprehensive analytical review. For example, the ability to perform the transactional analytical test by identifying anomalies, errors and exceptions on a transactional line basis.

In conclusion, entities need to establish an effective VAT compliance methodology for both VAT returns preparation and analytical processes. China tax authorities would expect all entities to have quality VAT compliance and reporting procedures. In order to achieve this, entities must have more clarity and visibility on their VAT position, tracking of source data and providing the broad range of management analysis that is required. It is recommended that you employ the best and most appropriate resources to evaluate the VAT implications and set up action plans. 

The views reflected in this article are the views of the author and do not necessarily reflect the views of the global EY organisation or its member firms.

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¹ Company's standard operating procedures.

² China's national tax system.



THIRST OF THE DRAGON

An introduction to the growth of popularity and counterfeiting of wine in the Middle Kingdom

The appetite that China's middle class consumers have for western foodstuffs is continuing to grow and this includes wine, particularly from Europe. Foreign wine producers traditionally struggled in the Chinese market due to higher prices as a result of shipping costs and import taxes; the China **IPR SME Helpdesk** says that now that there is more parity with prices for Chinese wine the biggest challenge they face is with counterfeiters.

Wine. The Greeks designated this sacred beverage its own deity and the Catholic faith honours it as part of the sacred rite of Eucharist. Today, the history and quality of less ancient vintages has created a thriving trade around the world.

Making up the majority of what the wine industry now calls the 'Old World', Europe combines a rich history of viticulture and winemaking with modern technological innovation. Europe's love of wine has proved especially infectious to developing palettes in East Asia, and over the last few years China's consumption has surged, overtaking France as the largest consumer of red wine worldwide. That being said, potential for growth remains in China as it currently lags behind other nations in terms of individual

consumption: in 2013, France's 51.9 litre per capita consumption dwarfed China's mere 1.5 litres.

Europe's old guard wineries seem to be well-poised to capitalise on this growth: they have spent hundreds of years perfecting their craft, and European 'old world' wines are highly sought after around the world. This reputation precedes them, and, as a result, Chinese consumers primarily turn to Europe to slake their thirst for foreign wines – the Middle Kingdom relies on European imports for 65 per cent of its foreign wine trade. French reds are a particular favourite, with 48 per cent of China's imported wines starting life on French vines, although wines produced in Germany, Spain and Italy also enjoy considerable popularity among Chinese consumers.

However, despite the strong image that European wines enjoy in China, Chinese consumers still display a preference for domestically produced wines – more than 80 per cent of the wine consumed within China is produced by China. According to independent critic and wine expert Jancis Robinson, it is certainly not quality that accounts for this disparity. Robinson, who has routinely visited China over the last decade to sample the country's developing vintages, says that though Chinese winemaking has improved greatly in recent years, most producers still lag behind the established vines and vintners of Europe in terms of quality.

There is of course something to be said for the effect of price on consumption. However, while historically European wines have been more expensive than their Chinese competitors due to import taxes and shipping costs, prices are now falling in line with many Chinese brands. With this barrier lowered, the simple truth is that European wine brands are suffering irreparable reputational damage among Chinese consumers due to rampant acts of counterfeiting.

In vino veritas?

Almost undetected, the Chinese wine market has become awash with fakes over the last few decades. Counterfeit investigations specialist and attorney Nick Bartman has over 25 years' experience in investigating counterfeiting and shutting down infringers, and has spent the last six years tracking down wine counterfeiting in China. His investigations have turned up an astonishing volume of counterfeit wines ranging from cheap knockoffs sporting absurd claims—such as a French Bordeaux purportedly produced by a chateau in Luxembourg—to far more sophisticated fakery which even the actual producers have trouble detecting.¹

Bartman and other experts in the field estimate that as many as one in three bottles of purportedly 'foreign' wine in China is fake.² Inevitably, even the best fakes fall below the standards of quality that would be expected of European wines, which severely damages the reputation of European producers among Chinese consumers.


Due to a lack of understanding of the Chinese IPR environment, and a resultant failure to act early to counter this tsunami of illicit labelling, the European wine industry now faces the daunting task of tackling an established and sophisticated web of infringers, or risk losing valuable ground in a rapidly developing market.

A framework for action

Despite the seemingly grim state of counterfeiting in the Chinese wine market, European producers are not without recourse. Chinese legislators have been steadily building a comprehensive legal framework for IPR protection and enforcement over the past few years: despite a prevailing negative opinion in the West of IP protection in China, the mechanisms for registration, protection and enforcement are actually more accessible to European wine makers than many believe.

Furthermore, Chinese authorities themselves are especially keen to crack down on counterfeiting of wine, motivated by legal as well as health concerns. Much of the liquid found within counterfeit bottles is of substandard quality or has been found to be ' Frankenwine' – wine that has been produced entirely by chemical and laboratory methods, never seeing a grape, let alone a European vineyard.³

Despite having ready allies in the Chinese Government and among many Chinese wineries,⁴ the European winemaking industry must band together and act promptly on this issue. Our sources in the European wine trade have all reported a reluctant acceptance of Chinese wine piracy. With Chinese counterfeit wines now leaking to the West, however, it is crucial that producers act to stem the flow. European producers must take the fight to the infringers and work with the local authorities to assert their rights on Chinese soil.

For advice on how to put together your IPR protection strategy in China. Get in touch with our Helpdesk experts for free, tailored advice for your business. 

*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, including Hong Kong, Taiwan and Macao, 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. The China IPR SME Helpdesk is jointly implemented by DEVELOPMENT Solutions, the European Union Chamber of Commerce in China and European Business Network (EBN).*



¹ As wine counterfeiting gets more sophisticated, the industry fights back, *Daily News*, 9th December, 2013, viewed 11th May, 2016, <<http://www.nydailynews.com/life-style/eats/wine-counterfeiting-sophisticated-industry-fights-back-article-1.1542562>>

² Bartman, Nick, *Fighting fakes in China – part 2*, 5th November, 2013, viewed 11th May, 2016, <<http://www.jancisrobinson.com/articles/fighting-fakes-in-china-part-2>>

³ Ibid.

⁴ Massive Chinese Counterfeit Wine Ring Busted with 7,000 fake cases, *The Wine Cellar Insider*, viewed 11th May, 2015, <<http://www.thewinecellarinsider.com/2013/08/massive-chinese-wine-counterfeiting-ring-busted-7000-fake-cases/>>

EUROPEAN CHAMBER LOBBYING HIGHLIGHTS



MOFCOM Assistant Minister listens to Chamber's concerns

Assistant Minister Liu Haiquan of the Ministry of Commerce (MOFCOM) welcomed a delegation from the European Chamber on 19th April, and expressed his interest in hearing the views of European business. Chamber President Jörg Wuttke briefed Mr Liu on the Chamber's latest developments and presented him with copies of the *Position Paper* and the recent report on overcapacity. After giving an update on the latest bilateral investment data, he also expressed the Chamber's interest in securing expanded market access for European businesses and a strong desire to see a Comprehensive Agreement on Investment between the EU and China successfully negotiated.

Members of the Chamber's Advisory Council, as well as working group chairs and vice chairs, were then given an opportunity to voice their concerns and recommendations. In response, Mr Liu stated that the MOFCOM would review their feedback, work directly on issues that fall under its mandate and cooperate with their counterparts on issues that require cross-departmental coordination.

Chamber discusses data protection with the CAC

On 20th April, European Chamber representatives met with Mr Hu Xiao, Deputy Director-General of the Cyberspace Administration of China's (CAC's) Cybersecurity Coordination Bureau. Maggie Xie, General Manager of the Beijing Office and Head of Government Affairs, provided an overview of the Chamber and the work of its Information and Communication Technology, Information Security, and Cybersecurity working groups. The two sides



then discussed recent developments of relevance to cryptography and data protection. Deputy Director-General Hu acknowledged that the EU and China share many common concerns and objectives, and should continue to develop closer relations.



Czech Republic Senate Delegation on Foreign Food Trading in China

On 14th April, the European Chamber's Beijing Chapter had the pleasure of welcoming the Czech Republic's Deputy Chairman of the Senate and Chairman of the Committee on National Economy, Agriculture and Transport, Mr Zdeněk Škromach, as well as the Czech Republic's Ambassador to China, Mr Bedřich Kopecký. Following a presentation on the Chamber's recent advocacy efforts and achievements, given by

the Beijing Chapter's General Manager, Maggie Xie, the Czech delegates joined a meeting held by the Chamber's Agriculture, Food and Beverage Working Group. They engaged in a lively discussion on a full range of issues related to foreign food trading in China, including market access barriers, the growing demand for dairy and meat products, as well as the wine market.

Working to Understand Shanghai's 13th Five Year Plan (FYP)

European Chamber representatives met with Mr Zhang Zhongwei, Director of the Division of Development Planning at Shanghai's Municipal Development and Reform Commission, on 12th April. Dialogue focused on Shanghai's 13th Five Year Plan (FYP) and the participation of Mr Zhang in a seminar on Shanghai's 13th FYP that the Chamber is preparing to hold for members. Mr Zhang outlined the special focus on the

Four Centres and Innovation Centre initiatives that the plan includes. He also provided new details on the coordination process that the Commission and other departments follow for drafting the city's economic master plan. Chamber representatives outlined the views of European business on the plan and their desire to make expanded contributions to both Shanghai's economy and its capacity for innovation.

Dialogue with Hengqin New Area Authorities Focuses on Understanding New Opportunities

Led by South China Chapter General Manager Francine Hadjisotiriou, the European Chamber held an exclusive dialogue with the Administrative Committee of Hengqin New Area in Zhuhai, Guangdong Province, on 29th March. Also in attendance were several related Chinese government agencies and four European Consulate Generals from Guangzhou. The Deputy Director of the Administrative Committee of Hengqin

New Area, Mr Yan Wu, welcomed European business to play a role in the area, and provided presentations on Hengqin's business environment and preferential policies. The European attendees raised questions and suggestions regarding the area's latest policies and how foreign enterprises can benefit from them. After the meeting, the attendees were given a full tour of Hengqin Innovation Valley facilities.

Tianjin Position Paper Outlined for EU Ambassador to China

Dr Christoph Schrempp, Chairman of the European Chamber's Tianjin Chapter, presented the *Tianjin Position Paper* to the EU Ambassador to China, HE Hans-Dietmar Schweisgut, on 22nd March, 2016. The ambassador was given a brief introduction to the six key recommendations and an outline of the launch

event for the paper that was held on 3rd March, 2016. This was followed by a discussion on the integration of Beijing, Tianjin and Hebei, the opportunities and challenges that the recent development of Tianjin has produced for European business and plans for expanded cooperation.

BLOWING TIME ON 'PROFESSIONAL CONSUMERS'

Chamber lobby success paves the way for new industry desk

The European Chamber is planning to create a new industry desk focussed on advocating for the fashion and leather industry. Recent advocacy efforts taken on behalf of member companies in this sector have been a great success, and the Chamber is looking to build on this momentum, further improve operating conditions and level the playing field that little bit more.

A number of Chamber members in the fashion and leather industry have for some time been facing problems with professional whistle-blowers – consumers that knowingly purchase products that are non-compliant in order to exploit the Consumer Protection Law (CPL) to claim punitive compensation. Article 55 of the CPL stipulates that compensation in these cases can be up to three times the cost of the goods. Enforced at the district level by the local Administration of Industry and Commerce (AIC), this legal technicality has been costing European companies millions of RMB in fines.

It would be one thing if the products being exploited in such a way were damaged and/or potentially harmful to consumers, but unscrupulous whistle-blowers have been cashing in on the CPL by looking for products whose ingredients/components or labelling do not fully comply with domestic Chinese standards. Although the authorities are aware of the situation with professional whistle-blowers, local AICs are impelled to make administrative decisions that are based on the letter of the law. With Chinese courts then making rulings without distinguishing between genuine consumers and professional whistle-blowers—and seemingly not taking companies' interests into consideration—this is a situation that has the potential to continue to severely damage European companies' interests in China.


The luxury goods sector is particularly hard hit, with their high-value products being targeted in particular, and frequent discrepancies between the standards in the country of origin and those in China.

In an attempt to resolve this problem, the Chamber met with the Beijing AIC on 8th April, 2016. Outlining the issue from their perspective, AIC officials explained that dealing with whistle-blower complaints had placed an immense administrative burden on them, particularly in recent years as their numbers increased. As a body that exists to protect both consumers and industry, the

AIC stated that they are duty-bound to remain impartial when receiving complaints, regardless of whether the complainant is legitimate or otherwise: the only action they can take is to follow the CPL.

Although recognising that the Beijing AIC is primarily an administrative body that implements policies, the Chamber suggested setting an appropriate scale for dealing with different types of complaints, particularly when dealing with complaints against products that pose no safety risk and where it is clear that producers have not deliberately contravened Chinese standards. With respect to their concern for industry, AIC officials said that they would look into the possibility of investigating cases to ascertain whether companies had actually fulfilled consumer protection duties, before meting out appropriate resolution measures.

Sometime later, a Chamber member company was following up with a local AIC on a whistle-blower issue, as they were facing fines due to a discrepancy with the product's labelling. Later on, the local AIC discussed the case with an official who had been present in the 8th April meeting between the Chamber and the Beijing AIC. The official confirmed that they had met the company in question during the meeting, and suggested there should be alternative solutions to deal with such non-serious cases. As a result, the local AIC resolved the issue by agreeing to rescind the fine, and provided some administrative instruction to the company instead. In addition, they assisted the company and the whistle-blower to resolve the case together.

The Chamber appreciates the efforts taken by the Beijing AIC, and looks forward to continuing to cooperate with them in the future. 

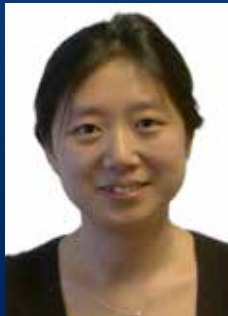
*If you are interested in becoming a member of the Europeans Chamber's **Fashion and Leather Industry Desk**, please contact Cocoa Liu at cliu@european-chamber.com or on (010) 6462 2066 ext. 86.*

PEER RECOGNITION AWARDS

The European Chamber Peer Recognition Awards are given to colleagues who have been nominated by their peers and chosen by the Chamber's Management Committee in recognition of their outstanding work.

Carol He – Beijing Chapter

Awarded for her valuable contribution to the IP Friendly Awards and Conference, taking on responsibilities above and beyond her normal tasks, which brought recognition, visibility and revenue to the Chamber.



Graeme Wallace – Beijing Chapter

Awarded for his cross-departmental, cross-chapter support. Graeme has recently taken on the management of events and sponsorship, in addition to continuing to manage membership. He took over the organisation of the IP Friendly Awards and Conference late in the day, and delivered a very successful event.



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THE LAW MASTER

Michael Tan has worked in the legal industry for more than 16 years, following his graduation from the University of International Business and Economics in Beijing. He has been an extremely active and supportive member of the European Chamber since it was first established in 2000, when he began to get involved in activities organised by the Chamber's Intellectual Property Rights Working Group. He has also been a regular contributor of articles to *EURObiz*.

Michael served as Vice Chair of the Legal and Competition Working Group in 2015/2016, and made great contributions to the group in terms of his commitment and the quality content that he brought. He is currently a partner at **Taylor Wessing** in Shanghai, specialising in corporate M&A, technology, media and telecoms (TMT), data protection, aerospace and aviation.

What made you decide to step up your involvement and run for the position of vice chair?

It was down to my willingness to contribute personal efforts and time, in particular my connections with the local Chinese circle (e.g. institutions and agencies). It was also driven by my desire to be more involved in Chamber activities.

Did you find the role fulfilling?

I found it quite meaningful as it gave me the

chance to better understand the concerns of both the members and the Chamber, and to contribute our efforts and resources. On the other hand, it was also quite challenging to manage my own capacity so that I was able to actually make worthwhile contributions to the Chamber's initiatives, as opposed to just holding the title.

What are the main market access issues that foreign law firms face in China? Have you noticed any developments over the years in this respect?

There are still regulatory restrictions in place as regards what foreign law firms can do in this market, which puts them in a disadvantageous position compared with their Chinese peers. These restrictions include a prohibition on practising PRC law through the employment of qualified and licensed Chinese lawyers, and on representing clients before Chinese courts and government authorities. We have observed that these restrictions have remained there for a very long time. Recent trends, such as the latest revision of the *Foreign Investment Industrial Guidance Catalogue* in 2015, show a tendency towards even tighter controls in this respect nationwide, although certain liberalisation has also been witnessed in some pilot areas like the free trade zones in Shanghai and Guangdong.

According to the Chamber's *Business Confidence Survey 2015*, 90 per cent of legal firms in China would be more likely to increase investment if the market opens further. Do you think it's still the case right now with the slowdown that China's economy is undergoing?

I think it is still the case. The slowing down of the economy may well negatively impact new-entry business, but it could also bring new business for foreign law firms, for example, in the area of business restructuring, as we have seen in the past.

Did the China (Shanghai) Pilot Free Trade Zone open up the legal industry to foreign law firms in any concrete way?

Yes and no. New policies rolled out in the pilot zone have brought some liberalisation—for example joint venture operation is now permissible there—but the extent of liberalisation and business access is still quite limited. The fact that most foreign law firms are still in 'wait and see' mode to some extent reflects this.

Rule of law was the central theme of the Fourth Plenum: has rule of law in China improved since then?

In general yes. This can be seen from many

aspects, including the crackdown on corruption and bureaucracy, reform of the judicial system, a streamlining of administrative procedures and the establishment of a credit-based system associated with law enforcement.


What would you consider to be the major lobbying successes of the working group?

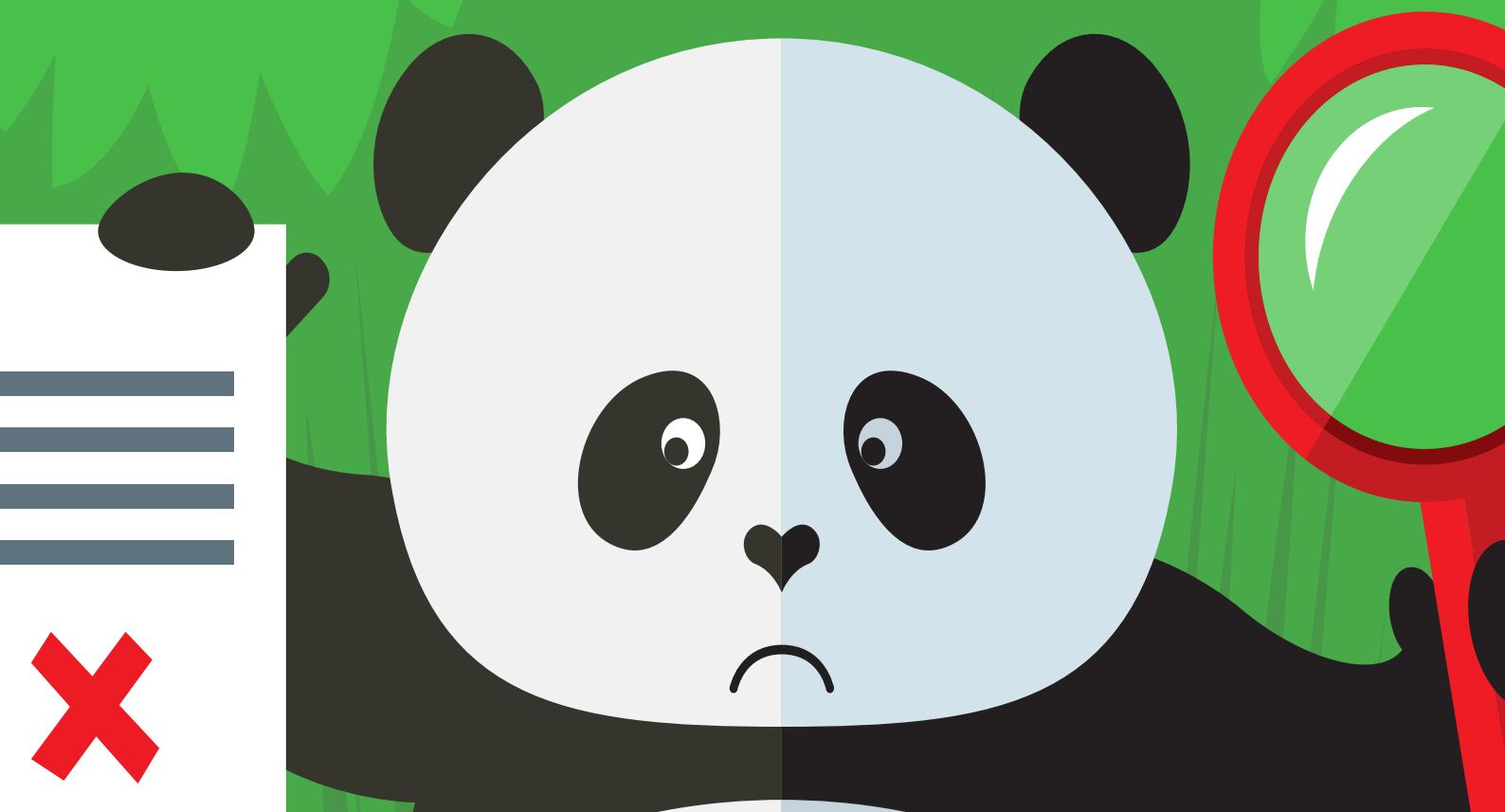
I think the working group has been constantly stressing the general topic of transparency and we have seen gradual improvements in this area, though of course this is not necessarily driven by the working group's efforts alone. Specifically talking about the legal service sector, I see very little improvement has been made, which is likely due to the special nature of the legal service sector; this has been reflected by the fact that many key recommendations under the respective European Chamber position paper have remained the same for many years. In my personal view, this is a highly sensitive sector and any real breakthrough will very much depend on bilateral negotiations between the EU and China on a reciprocal basis.

What do you feel are the main differences in China's legal industry now, compared to when you first started practicing law in China?

Chinese firms are growing quickly, to some extent benefiting from the regulatory restrictions against foreign law firms. The market is becoming more and more competitive, but also the client base is growing with more and more Chinese clients conducting China outbound business.

Do you have any suggestions for topics/issues you would like the Legal and Competition Working Group to cover this year?

I personally would like to see more working-level exchanges between the foreign law firm circle and the Chinese law firm circle, on a basis that is genuinely mutually beneficial, not just symbolic. Also I would expect the Legal and Competition Working Group to relay member concerns back to the European Delegation—as is being done—so as to add more weight to the topic of market access during bilateral negotiations. 



TRIALS AND TRIBULATIONS

China's Trial Negative List for (domestic and foreign) market access

In recent years, the business community in China has been abuzz with talk of various market access 'negative lists' – lists of exceptions to what would otherwise be open market access. China has now introduced a new market access negative list for all forms of investment in the country, both domestic and foreign. **Ashwin Kaja, Timothy P. Stratford** and **Yan Luo** of **Covington and Burling LLP** cast an eye over the existing and proposed negative lists that have drawn such widespread attention over the past couple of years, and then detail the implications of the new trial list issued in March of this year.

US-China BIT Negative List (under negotiation)

There has been extensive discussion of the negative list for the US-China Bilateral Investment Treaty (BIT) currently under negotiation. Foreign investment activities included on the US-China BIT's Negative List would not be eligible for many of the market access benefits and protections of the BIT — particularly, national treatment (that is, equal treatment with domestic investors), a core principle of standard US bilateral investment treaties with other countries.

The US Model BIT,¹ most recently revised in 2012, is a relatively technical 42-page document that sets forth the obligations each party has towards investors and covered investments of the other party. 'Investment' is defined very broadly to include every asset that has the "characteristics of an investment", including such characteristics as a commitment of capital or other resources, the expectation of profit or gain and the assumption of risk. Examples include equity interests; construction, management, production and similar contracts; licences and permits; and intellectual property rights.

The national treatment article provides that parties must accord to investors and covered investments of the other party "treatment no less favourable than it accords, in like circumstances, to its own investors [and investments]" across a broad range of circumstances, including "the establishment, acquisition, expansion, management, conduct, operation, and other sale or disposition of investments in its territory." Of particular note is the inclusion of "establishment" in this list, which means that the benefit of national treatment applies not only to investments after they are established but also to potential investors during the "pre-establishment" phase. In other words, foreign investors should be able to invest in any industry in China on the same terms and conditions as domestic investors. Any exceptions to a party's national treatment obligation must be specifically listed in the US-China BIT Negative List, which will be included as an annex to the treaty.

Nationwide Foreign Investment Negative List (announced)

Among other reforms proposed in the draft Foreign Investment Law that was released in early 2015, Chinese authorities plan to issue a nationwide negative list for foreign investment market access. As with the US-China BIT, unlisted items would be given national treatment, with some procedural differences between the treatment

of investments by foreign and domestic investors.

Pilot Free Trade Zone (FTZ) Foreign Investment Negative List (issued)

Following the issuance of a negative list for foreign investment activities in the China (Shanghai) Pilot Free Trade Zone, Chinese authorities have now adopted one unified negative list that governs all pilot FTZs established to date in Shanghai, Fujian Province, Guangdong Province and Tianjin.

Implications of the New Trial Negative List

In December 2015, the State Council announced its decision to introduce a market access negative list that applies to all investment activities in China, for both domestic and foreign investors. Swiftly acting on the State Council's decision, the National Development and Reform Commission and the Ministry of Commerce issued a trial version of the list (Trial Negative List) in March, which is to be piloted throughout the entirety of the four provinces and municipalities that currently host pilot FTZs, not just in the zones themselves. The respective governments for these four regions must now propose their own methods for implementing the Trial Negative List and obtain the approval of the State Council. Central government authorities are seeking feedback on the implementation of the Trial Negative List to facilitate the roll-out of a nationwide market access negative list in 2018.

The Trial Negative List includes 96 prohibited items in 17 sectors and 232 restricted items in 22 sectors. These items have been compiled from several sources, and include:

- Investment projects requiring administrative approvals** as set out in the *Consolidated List of Administrative Approval Items by Departments Under the State Council* (included in the list as restricted items);
- Project categories designated for elimination or closed for new investment** under the *Catalogue for Guiding Industry Restructuring (2011 version)*, which make up 46 of the 96 prohibited items;
- Projects requiring approvals from the relevant development and reform departments** under the *Catalogue of Investment Projects Subject to Government Verification and Approval (2014 version)* (included in the list as restricted items); and
- Projects restricted or prohibited under other national laws, administrative regulations, and State Council decisions.** Twelve of the 328 total items are (or include sub-items that are) entirely

¹ 2012 US Model *Bilateral Investment Treaty*, the Government of the United States of America, viewed 3rd May, 2016, <<http://www.ustr.gov/sites/default/files/BIT%20text%20for%20ACIEP%20Meeting.pdf>>



new and were not restricted or prohibited under previous laws and regulations. These new items include an approval requirement for collaborations between domestic media and foreign news agencies and censorship requirements for gaming and entertainment equipment.

Foreign investors, including those without interests in the four pilot regions, should pay close attention to these developments. Those investing in the four regions where the Trial Negative List is being piloted should note that they are to be subject to both the Trial Negative List *and* any other restrictions on foreign investment that may concurrently exist, whether written restrictions or *de facto* ones. For instance, if no procedural pathway for approval of a particular type of investment in a regulated industry is provided under existing laws and regulations. Consequently, in the four pilot FTZs, foreign investors will need to heed both the restrictions and prohibitions contained in the Trial Negative List as well as those on the foreign investment negative list for the pilot FTZs.

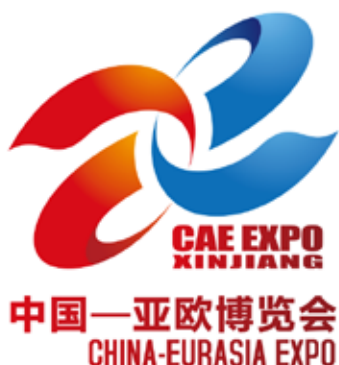
In short, the Trial Negative List does not, itself, offer any improvements in market access for foreign investors in China. Rather, it represents an effort on the part of the

Chinese Government to consolidate in one place a list of all restrictions applicable to both domestic and foreign investors. The goal, hopefully, is to lay the groundwork for procedural reforms, as well as for revisions to the list in the future that would provide improved market access. [Eb](#)

Shirleen Hong and Nick Francescon of Covington & Burling LLP assisted with the research and preparation of this article.

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THE 5TH CHINA-EURASIA 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 the 5th China-Eurasia Expo 2016.

The 5th China-Eurasia Expo 2016, to be held from September 20-25, 2016 in Urumqi Xinjiang China, is proposed to be themed "Discussion, Building and Sharing, the Silk Road: Opportunities and the Future". The exposition will involve different specialized exhibitions: textile and garment exhibition, agricultural product and food exhibition, jewelry and jade craft exhibition, and automobile decoration 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.

THE SECRETARIAT OF CHINA-EURASIA EXPO

Contact person: Huang Jing

Tel :+86-991-5190442

Fax:+86-991-5190446

Website: www.caeexpo.org

Email: caeexpo@vip.163.com

Address: North Building of Kunlun Hotel,

No.146 North Youhao Road,

Urumqi, Xinjiang, China





STILL KEEPING THE FAITH

European Business in China Business Confidence Survey 2016

The purpose of the European Chamber's European Business in China Business Confidence Survey is to take an annual snapshot of European companies' successes and challenges in China. Published since 2004, the survey has enabled the European Chamber to build a rich data set to serve as a broad indicator for how European companies judge the business environment in China, both now and in the future.

Launched on 7th June, 2016, this year's survey reports that while Chamber member companies are increasingly pessimistic and perceive China's reform progress to have stalled, a clear majority would likely increase their investment if they were granted expanded market access.

Executive Summary

China's economic slowdown continues to pose a significant challenge to both Chinese and European companies.¹ However, a business environment that is increasingly hostile and a playing field that is perpetually tilted in favour of domestic enterprises means the effects of the slowdown are intensified for European business. Beijing's failure to deliver on promises that foreign-invested enterprises (FIEs) will enjoy a more open, competitive market has triggered a fresh wave of pessimism, with 41% of European companies now re-evaluating their China operations and planning to cut costs, including through headcount reduction.

More than half of the respondents in the *Business Confidence Survey 2016* report that doing business in China is becoming more difficult year-on-year. Entrenched anti-competitive policies and a failure to enact tangible reforms in crucial areas such as rule of law, eliminating local protectionism, removing market access barriers, reigning in overcapacity and tackling high levels of domestic debt are just some of the key reasons. To date, the symbolism of the Third Plenum's *Decision*² has trumped substance.

Pessimism about the business outlook for China operations of European companies has reached an all-time high, with 31% of respondents bearish about their profitability – an eight-point increase over 2015 figures. Another 15% of respondents report concern about company growth, which is seven percentage points higher than last year. Anxiety over the increasing difficulties of conducting business in China is particularly pronounced in the information technology and telecommunications, machinery and chemicals sectors. Additional market access barriers account for the first two sectors, whereas as a continued worsening of overcapacity accounts for the latter.

After 35 years of dynamic economic development it is natural that the pace of growth should ease off in China, a process that is already well underway. Despite this, China remains a significant investment destination for European companies with 47% reporting that they plan to expand their operations. However, it is noteworthy that this represents a nine-point decrease from 2015. Furthermore, only three years ago a staggering 86% of European companies were intending to expand operations, which provides an even more sobering perspective.

In fact, European investment in China is down about 9% overall from 2014, to EUR 9.3 billion in 2015, suggesting that China is losing its privileged position in the investment portfolios of many European companies. This contrasts starkly with the staggering EUR 20 billion that China invested in Europe in 2015, a 44% leap from 2014.³

However, while the slowdown in economic growth is the primary reason that respondents are scaling back their investment plans, concerns over the nation's growing debt, slowing exports and dwindling returns on investment—particularly in sectors burdened by overcapacity⁴—make it clear that this is by no means the only reason.

As China looks to ease the transition of its economic model towards one based on qualitative growth, the government has repeatedly promised to enact reforms aimed at shifting the market to the heart of the nation's economy. But here too European firms have been disappointed with the resolve that has been demonstrated. In fact, it often seems that Beijing is moving in the opposite direction, promulgating vaguely-worded, security-related laws⁵ and strangling Internet access to the point of harming domestic as well as international businesses.

Yet in the face of these considerable challenges European companies have continued to post reasonable business performance overall, with more than half of the respondents reporting increased revenues for 2015. This is indicative of the tenacity of European companies and their experience in successfully navigating choppy economic waters. Most European firms also remain committed to China with only 11% of respondents saying they have made plans to shift investment to other markets, although 41% anticipate having to cut costs in response to the current business climate. As previously alluded to, headcount reduction is one of the primary methods that will be used to decrease overheads.

Although pronouncements made in the *Decision* committing to a market economy, and gradualist reform efforts such as the once-hailed pilot free trade zones initially piqued great interest among European companies, the absence of concrete developments has deepened their disillusionment in China's reform agenda, the extent of which can be seen from the following figures:

- 56% of respondents are of the view that doing business in China has become more difficult, a five-point increase from 2015.
- 57% report that foreign companies tend to receive unfavourable treatment compared to domestic Chinese companies.
- 57% of respondents believe that environmental regulations are strongly enforced against foreign companies, while only 14% think that they are strongly

³ *A New Record Year for Chinese Outbound Investment in Europe*, Rhodium Group, February, 2016, viewed 19th April, 2016, <http://rhg.com/wp-content/uploads/2016/02/A_New_Record_Year_for_Chinese_Outbound_Investment_in_Europe.pdf>

⁴ A highly significant 92% of respondents believe that a commitment to utilising market forces is necessary if overcapacity issues in China are to be successfully resolved.

⁵ Over the past year China has issued a slate of national-security-related legislation, such as the National Security Law, the Counter-terrorism Law, the Cyber Security Law and the *Trial Measures for the National Security Review of Foreign Investments in China's Pilot Free Trade Zones*. Common to these laws and regulations is vague wording and a broad scope, which combine to create a great deal of uncertainty for business. In a press release dated 3rd June, 2015, the European Chamber said that in sum these laws amount to a "massive national security overreach".

¹ It is important to note that this slower growth is in part due to a higher economic base after three decades of breakneck development.

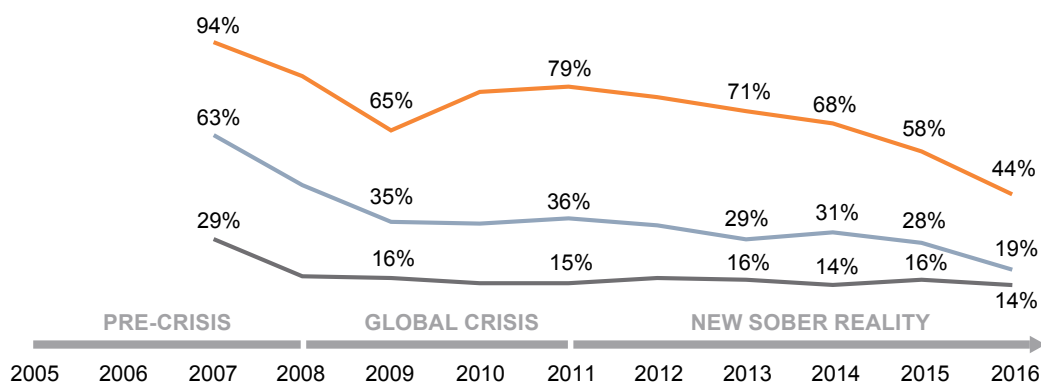
² *Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform*, (*Decision*), China.org.cn, 16th January, 2014, viewed 25th April, 2015, <http://www.china.org.cn/china/third_plenary_session/2014-01/16/content_31212602.htm>

OPTIMISM

Optimistic
about growth

Optimistic
about profitability

Optimistic
about competitive
pressure



Although EU companies are poised to increase their investments if afforded greater market access, optimism continues to slide.
Source: BCS 2016

enforced against Chinese state-owned enterprises and only 12% think that this is the case with privately-owned Chinese companies.

- 58% of respondents state that the recent tightening of Internet controls and access restrictions has a negative impact on their business, a 17-point jump from 2015.
- 40% of respondents feel that foreign companies are being discriminated against through recently promulgated national-security-related legislation.
- 70% of respondents feel less welcome in China than they did 10 years ago.

These issues undermine China's efforts to foster the innovation it needs in order to develop more globally competitive companies and new strategic industries. A major area of concern for China is that European companies' investment in research and development (R&D) remains low: only 28% of respondents have a R&D centre in Mainland China, which is indicative of European distrust of China's vague and arbitrary legal system – effective enforcement of intellectual property rights throughout China's provinces is highly inconsistent. Nearly half of respondents report that China's R&D environment is less favourable than the worldwide average, which is reflected in a sharp drop in European companies willing to invest in R&D, from 85% in 2015 to 72% in 2016.

Looking ahead, European business hopes the *13th Five-Year Plan* (FYP) will be used to guide and support the development of a fairer and more open Chinese marketplace, to the benefit of all. The European Chamber believes that only by creating such conditions will China successfully steer a course through these more economically challenging times. European business also still feels strongly about the Third Plenum's reform promises, though this survey clearly reflects that respondents hold doubts over whether these long-vowed and necessary re-

forms will ever take place.

European companies are also now counting on a successful conclusion to the EU-China Comprehensive Agreement on Investment negotiations, to improve the business environment and reduce market access barriers. Firms hope to be provided with a clear schedule outlining when they will be able to take greater control of their China-based operations, making it easier to undertake strategic acquisitions as well as allowing them to enter new business areas or product segments.

There is an important precedent for this. In 2001, China's accession to the World Trade Organisation (WTO) provided a roadmap and the legal framework that gave more European companies the assurances they needed to either enter the Chinese market or expand their existing operations, leading to a decade of unparalleled growth. We now need to see a new landmark development that will imbue European business with the confidence it needs to recommit to China's future development.

It is telling that the Organisation for Economic Cooperation and Development (OECD) ranked China last among the 58 countries it includes in its Foreign Direct Investment Regulatory Restrictiveness Index. This is not a mere stigma that China needs to shed, it is a very real problem that must be addressed in order to establish and maintain higher quality growth and boost innovation. The Chinese economy is facing increasingly stronger headwinds and needs to attract more high value-add investment from European companies. Substantial market reforms are therefore no longer an option, they are a necessity. **Eb**

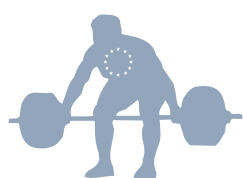
To download a copy of the *European Business in China Business Confidence Survey 2016* please go to www.europeanchamber.com.cn/en/publications-business-confidence-survey-2016.

THE ADVISORY COUNCIL OF THE EUROPEAN CHAMBER

The 29 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.



EUROPEAN BUSINESS IS AFFECTED BY DETERIORATING FUNDAMENTALS



56%

of respondents report that business in China has become more difficult



50%

of companies reported revenue growth in FY 2015, down 10 pts. vs. 2014

OPTIMISM IS WANING...



15%

of respondents are pessimistic about growth (+ 7pts vs. 2015)



31%

of respondents are pessimistic about profitability (+ 8pts vs. 2015)



55%

of respondents believe that the 'golden age' in China is over for multinational corporations

EUROPEAN BUSINESS CONTINUES TO RECEIVE UNEQUAL TREATMENT...



Foreign

Domestic

57%

think that foreign companies tend to receive unfavourable treatment compared to domestic Chinese companies



57%

believe that environmental regulations are strongly enforced against foreign companies (vs. 14% for Chinese SOEs, and 12% for Chinese POEs)

58%

state that the recent tightening of internet control and access restrictions has a negative impact on their business (41% in 2014)



40%

feel that foreign companies are being discriminated against through recently promulgated national-security-related pieces of legislation



**... AND AS A RESULT,
EUROPEAN COMPANIES
FEEL LESS WELCOME IN CHINA**



70%

of companies feel less welcome in China than 10 years ago

THIRD PLENUM REFORM AGENDA REMAINS STALLED: STILL NO LEVEL PLAYING FIELD

Top 3 challenges remain the same as in 2015...



51%

Discretionary
law enforcement

57%

Administrative
issues

59%

Unpredictable legis-
lative environment



...and only

22%



-10 pts
vs. 2015

of respondents are convinced by
the government's commitment
to the reform drive

EUROPEAN COMPANIES ARE SCALING DOWN THEIR CHINA PLANS

11%



of respondents have made plans to
shift current or planned investments
in China to other markets, and...

41%



are planning to engage in cost-
cutting programmes, a sharp
17-point increase vs. 2014



2013

47%



2016



down
from 86%
in 2013

of European companies are
planning to expand their opera-
tions in China

CHINA'S R&D ENVIRONMENT NEEDS TO IMPROVE



28%

of companies have a R&D centre
in Mainland China



43%

of these companies use their R&D centre
mainly for product localisation



45%

of respondents describe the Chinese
R&D environment as less favourable
than the worldwide average



2015



2016

72%

are willing to invest in R&D
(85% in 2015)

EUROPEAN COMPANIES ARE NOW LOOKING TO THE 13TH FIVE-YEAR PLAN TO REIGNITE CHINA'S REFORM IMPETUS

76%

of companies view the 13th Five-Year Plan as
important or somewhat important to their company



THE EU-CHINA COMPREHENSIVE AGREEMENT ON INVESTMENT (CAI) CAN BE A WTO 2.0



39%

of respondents list a
reduction of market access
barriers as a major priority
for the CAI



55%

of companies state that they would
be more likely to increase investment
in China if greater market access
were to be granted



INCREASING EFFICIENCY

Reorganisation of the European Chamber's working groups

European Chamber Vice President **Bertrand de la Noue** explains why the Executive Committee took the important decision to reorganise the Chamber's working groups and how this will improve member interaction with Chinese authorities while ensuring that our messaging is more consistent.

When was the idea of working group reorganisation first mooted, and what led to this discussion taking place?

Working group activities are the backbone of the European Chamber. It is where members can meet and exchange ideas with their peers,

develop their advocacy arguments, begin the process of drafting their position paper and have opportunities to engage with Chinese government authorities, as well as Chinese professionals.

Historically, in order to encourage members' involvement, the European Chamber has basically

given members carte blanche to create as many working groups as they wished, in every part of the country. While this has achieved the aim of increasing member engagement, working groups were sometimes formed without too much control, and this consequently led to some overlaps between different groups. Such was the enthusiasm of our members that we ended up with 52 working groups by the end of 2014. Imagine, we had seven working groups dealing just with energy matters!

The down side was this began to exert a lot more pressure on the Chamber's business managers, and often our messages lacked consistency. Because of this the Executive Committee took the decision last year to begin the process of restructuring working groups.

By having fewer working groups, does the Chamber run the risk of being less representative of the broad range of EU businesses that it represents?

No, on the contrary, having fewer working groups should improve the interaction between members. It will also result in higher quality work, with contributions coming from different angles and regions. This in turn will greatly improve their outreach and advocacy power.

What will happen to the members of the working groups that cease to function, or those that are going to be absorbed by other working groups?

This regrouping process took almost one year complete, and we moved from 52 working groups at the end of 2014, to 25 working groups now. During this process, we ensured that no issue or theme handled by a working group would be orphaned, so that every member of a former working group would find a place to discuss and advocate the issues of interest to their business. It also needs to be kept in mind that the majority of the restructuring consisted of geographical regrouping, merging two or three working groups previously based in different cities that handled the same topic.

Did you encounter any resistance to this process from any of the working groups?

I wouldn't call it resistance, but of course there was some natural concern, and this is fully understandable. So, we didn't rush into this process, and we took our time to explain, to meet the working group representatives, to receive their input, to modify our plans several times accordingly. Each revision was thoroughly reviewed by the Executive Committee before the new organisation was finalised.

In what ways are the roles of working group chairs and vice chairs going change?

This is a key element of this reorganisation. Our objective is to give a more pre-eminent role to the chairs and vice chairs. We want them to be more vocal, more visible at a national level and to really carry the voice of their working group. We also want them to work more closely with the Executive Committee – honestly, this was just not possible with 52 chairs. They will also have an important role in ensuring that their working group comes with a strong and unified message. This cannot and should not be done by the Executive Committee, but we fully understand this will not always be easy.


What are the main results the Chamber is looking to achieve through this reorganisation process?

Stronger working groups with committed leadership carrying their message at a regional and national level, and more efficient support to the working group from the Chamber. This last point is also important: with less working groups, we will have more dedicated business managers, focusing more on content rather than logistics for meetings and pure administration.

Will this process affect the way that the Chamber's Executive Committee functions?

Yes, the Executive Committee will have improved interaction with the working group chairs. Chairs should take a more active role in lobbying activities and will be invited on a regular basis to attend Executive Committee meetings to address working group issues.

What will happen if the need to add further working groups emerges in the future?

Of course, we don't have a rigid policy and a working group number that is cast in stone...but at the same time the door is not fully open either. We will have to carefully review the need on a case-by-case basis, to see if subjects are already covered by an existing group, as well as gauging the number of members interested in joining any proposed new working group. If it is good for our members, and not only for one or two, we will add one. It also needs to be understood that if a working group is not working, it will cease to be a working group. This is a truism, or what we call in French a *lapalissade*! 



WHO'S IN CHARGE?

Chamber election results 2016

Executive Committee

The European Union Chamber of Commerce in China is pleased to announce that member company representatives confirmed Jörg Wuttke as president, during the European Chamber's Annual General Meeting (AGM) on 27th April. Three incumbents—vice presidents Bertrand de la Noue and Sara Marchetta and treasurer Lars Eckerlein—were also confirmed, along with a new vice president, Patrick Horgan, to sit on the Chamber's Executive Committee.

In the days leading up to the AGM, local board elections were held in the European Chamber's other chapters across China. On 24th March, members of the Shanghai Chapter voted Mick Adams as the new chairman, who will also sit on the Executive Committee, along with Alberto Vettoretti, who was elected Chairman of the South China Chapter on 12th April.

We would like to thank our AGM sponsors **Finnair** for their generous support.

The complete line up for the European Chamber's Executive Committee 2016/2017 is:

President

Jörg Wuttke, BASF

Vice Presidents

Mick Adams, Somerley

Bertrand de la Noue, Total

Patrick Horgan, Rolls-Royce

Sara Marchetta, Chiomenti

Alberto Vettoretti, Dezan Shira & Associates

Treasurer

Lars Eckerlein, ABB

On 13th May, the 28 EU National Representatives on the Supervisory Board also confirmed the following three Member State representatives to serve on the European

Chamber's Executive Committee.

States' Representatives

Massimo Bagnasco, Progetto CMR

Frederik Cornu, Bureau Veritas

Mats Harborn, Scania

Nanjing

The local board elections for the Chamber's Nanjing Chapter were held on 14th April with the following results:

Chairman

Bernhard Weber, BSH Home Appliances Holding (China) Co Ltd

Board members

Petra Grandinson, Atlas Copco

Markus Hermann, BASF-YPC

Andreas Risch, Fette (Nanjing) Compacting Machinery Co Ltd

Shanghai

The European Chamber Shanghai Chapter completed its elections on 24th April, with the following results:

Chairman

Mick Adams, Somerley

Vice Chairmen

Carlo D'Andrea, D'Andrea and Partners

Marcus Wassmuth, Landesbank Baden-Württemberg

Board members

Serafino Bartolozzi, MAHLE Technologies



Eduardo Morcillo, InterChina Consulting

Andreas Odrian, Deutsche Bank

Clarissa Shen Yanrong, Sanofi China

Shenyang

Taking place on the 26th April, the elections for the Chamber's Shenyang Chapter returned the following results:

Chairman

Harald Kumpfert, SmartHeat

Board Members

Stephane Gonnetand, ODC Marine

Maximilian Hauk, BMW

Sarah Miller, Michelin

Guido Milner, Sofitel Shenyang Lido

South China

Held on 12th April, the South China Chapter elections returned the following results:

Chairman

Alberto Vettoretti, Dezan Shira & Associates

Vice Chairman

George Lau, TÜV Rheinland

Board Members

Scott D'Alterio QSI International School

Vivian Desmonts, DS Avocats Law Firm

Danny Hong, BASF Polyurethanes (China) Co Ltd

Ivan Shang, Siemens Ltd, China

Klaus Zenkel, Imedco Technology Shenzhen

Southwest

The local board elections for the Chamber's Southwest Chapter took place on 13th April, returning the following results:

Chairman

Robin Niethammer, Bayer Healthcare

Vice Chairman

Paul Sives, Proton Products

Board Members

Shirley Ling, Deloitte Advisory Chengdu

Kevin M. Marin, Oakland Capital GmbH (Chongqing Representative)

Iker Vergel, ADIsports

Aimee Zhang, UniGroup Relocation, Chengdu

Tianjin

The local board elections for Tianjin were held on 20th April, returning the following results:

Chairman

Christoph Schrempp, Airbus

Board Members

Willem Barendswaard, SGS-CSTC

Gabriele Castaldi, Flexbo

Kelvin Lee, PwC Consultants (Shenzhen) Ltd, Tianjin Branch

Michael Stengele, Siemens

EXECUTIVE COMMITTEE OF THE EUROPEAN CHAMBER



President
Jörg Wuttke
BASF



Vice President
Bertrand de la Noue
Total



Vice President
Patrick Horgan



Vice President
Sara Marchetta
Chiomenti



Vice President
Mick Adams
Somerley



Chairman
Alberto Vettoretti
Dezan Shira &
Associates



Treasurer
Lars Eckerlein
ABB



States'
Representative
Massimo
Bagnasco
Progetto CMR



States'
Representative
Frederik Cornu
Bureau Veritas



States'
Representative
Mats Harborn,
Scania



Secretary
General
Adam Dunnett

NANJING BOARD



Chairman
Bernhard Weber
BSH Home
Appliances
Holding (China)
Co Ltd



Petra Grandinson
Atlas Copco



Markus Hermann
BASF-YPC



Andreas Risch
Fette (Nanjing)
Compacting
Machinery Co Ltd

SHANGHAI BOARD



Chairman
Mick Adams
Somerley



Vice Chairman
Carlo D'Andrea
& Partners



Vice Chairman
Marcus Wassmuth
Landesbank Baden-
Württemberg



Serafino
Bartolozzi
MAHLE
Technologies



States'
Representative
Eduardo Morcillo
InterChina



Andreas Odrian
Deutsche Bank



Clarissa Shen
Sanofi China

SHENYANG BOARD



Chairman
Harald Kumpfert
Smartheat



Stephane
Gonnertand
ODC Marine



Maximilian Hauk
BMW



Sarah Miller
Michelin



Guido Milner
Sofitel Shenyang
Lido

SOUTH CHINA BOARD



Chairman
Alberto Vettoretti
Dezan Shira &
Associates



Vice Chairman
George Lau
TÜV Rheinland



Scott D'Alterio
QSI International
School



Vivian Desmonts
DS Avocats Law
Firm (Guangzhou)



Danny Hong
BASF
Polyurethanes
(China) Co Ltd



Ivan Shang
Siemens Ltd,
China



Klaus Zenkel
Imedco
Technology
Shenzhen

SOUTHWEST BOARD



Chairman
Robin
Niethammer
Bayer Healthcare



Vice Chairman
Paul Sives
Proton
Products



Shirley Ling
Deloitte Advisory
Chengdu



Kevin M. Marin
Oakland Capital
GmbH (Chongqing
Representative)



Iker Vergel
ADIsports



Aimee Zhang
UniGroup
Relocation,
Chengdu

TIANJIN BOARD



Chairman
Christoph
Schrempp
Airbus



Willem
Barendswaard
SGS-CSTC



Gabriele Castaldi
Flexbo



Kelvin Lee
PwC Consultants
(Shenzhen) Ltd,
Tianjin Branch

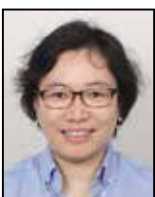


Michael Stengele
Siemens

EUROPEAN CHAMBER OFFICE TEAM



Beijing Office
General Manager
Maggie Xie



Nanjing Office
General Manager
Mei Zhang



Shanghai Office
General Manager
Ioana Kraft



Shenyang Office
Assistant Office
Manager
Marine Chen



South China Office
General Manager
Francine
Hadjisotiriou



Southwest China
Office
General Manager
Sally Huang



Tianjin Office
General Manager
Kitty Wang



Secretary
General
Adam Dunnett

EUROPEAN CHAMBER EVENTS GALLERY

BEIJING CHAPTER



1

China's Expansion of VAT Reform (1)

On 17th March, the Chamber hosted a seminar on VAT reform in China, sharing the latest developments with members.



3

PSB Update on Visa Regulations (3)

On 13th April, the Chamber hosted a seminar on new regulations that will allow a simpler application process for visas, and immigration and permanent residence for high-level foreign talent in Beijing.



2

IP Friendly Awards & Conference on IPR, Innovation and Development (2)

On 30th March, the Chamber hosted the inaugural IP Awards Ceremony and Conference on IPR, Innovation and Development, to mark the 10th anniversary of the EU-China IP Dialogue Mechanism. We would like to thank our sponsor SAP.



4

Annual General Meeting 2016 (4)

The Chamber's AGM took place on 27th April where the European Chamber's Executive Committee was confirmed. We thank our sponsor FINNAIR.

NANJING CHAPTER



1



2

Europe Day Celebration (1&2)

The Nanjing Chapter celebrated Europe Day on 8th May by hosting a dialogue on environmental issues between Chamber member companies and Chinese students.

SOUTH CHINA CHAPTER



1

What Does Hengqin Free Trade Zone Offer European Companies? (1)

On 29th March, the South China Chapter held an exclusive dialogue with the Hengqin New Area authorities to provide guidance for foreign investors on Hengqin's business environment and its preferential policies.



3

2016 South China Board Election (3)

The South China Chapter annual board members election was held on 12th April.



2

2016 EUROpean Chamber Cup Football Tournament (2)

The 5th EUROpean Chamber Cup football tournament took place at SoccerWorld in Shekou, Shenzhen on 23rd April. The tournament attracted over 400 participants including company representatives, media and the public. Dezan Shira and Associates won the championship by defeating Valeo Interior Controls at the final, while Media claimed third place.



4

Smart Factory: Lean Meets Industry 4.0 (5)

On 21st and 22nd April, the European Chamber organised the training session, *Smart Factory: Lean Meets Industry 4.0*.

SOUTHWEST CHINA CHAPTER



1

Exclusive Training on Industry 4.0 and China Manufacturing 2025 (1)

On 14th March, Mr Chen Fu, Vice Director of Chengdu Investment Promotion Commission, along with industry experts, presented 2016 manufacturing investment policies and shared insights on China's manufacturing industry.



2

Southwest China Position Paper 2015/2016 Launched in Chengdu (2)

The Southwest China *Position Paper 2015/2016* was launched in Chengdu on 13th April. More than 50 members and friends including 21 media, diplomatic representatives of European Consulate Generals in Chengdu and Chinese government officials attended.



3

New Southwest China Board Members (3)

The Southwest Chapter held its AGM and board elections on 13th April. The new board will serve a one-year term from April 2016 to March 2017.



4

Chongqing Xiyong Industrial Park Visit (4)

The Southwest Chapter visited Chongqing Xiyong Micro-Electronics Industrial Park with more than 30 company representatives on 22nd March, 2016.



5

Southwest China Position Paper Launch (5)

The Southwest China *Position Paper 2015/2016* was launched in Chongqing on 15th April.

TIANJIN CHAPTER



4

Tianjin Position Paper presented to EU Ambassador (1)

Dr Christoph Schrempp, chairman of the Tianjin Chapter, presented the Tianjin Position Paper to the EU Ambassador, HE Hans-Dietmar Schweisgut, on 22nd March, 2016.



5

New Tianjin Chapter Board Members (2)

The Tianjin Chapter held its annual board election on 20th April, 2016. The new board will serve a one-year term from April 2016 to March 2017.

THE EXECUTIVE INTERVIEW: CLAS NEUMANN

SENIOR VICE PRESIDENT, HEAD OF GLOBAL SAP
LABS NETWORK, HEAD OF FAST GROWTH MARKET
STRATEGY GROUP



Clas Neumann has been involved in **SAP's** China business since 1995, when SAP created their first subsidiary in Beijing, a 100 per cent owned branch of SAP AG in Germany located within Tsinghua University's campus. Back then he was responsible for creating SAP's first China-specific version of their software. Neumann moved to China in 2012, settling with his family in Shanghai. It was then, he says, that China became the centre of their investments into emerging markets.

What are the major changes you have witnessed since SAP established its first entity in China?

There have been so many changes, it is really difficult to know where to start. Besides the obvious changes like the super-fast development of the economy, tech infrastructure and also the political weight of China in international bodies, we have also seen very specific changes in our business.

Initially, the concept of software and paying a licence fee for the use of software was not widely known. Many customers found it counterintuitive to pay for intellectual property when the physical value of the CD was only a few yuan. This has changed dramatically, thanks to the rising Chinese software industry and the government's strong modernisation efforts.

In addition, the knowledge base of our customers has changed significantly. Our first 10 customers, after we entered China in 1995, were from a group of large joint ventures between foreign multinationals and Chinese conglomerates. Today, 90 per cent of our customers are Chinese companies from the private sector and state-owned companies.

Finally, IT-related research at universities, and higher education in general, has improved a lot. Initially, it was challenging to find capable software developers

or IT specialists in China. Today there is a large supply. Nevertheless, the talent situation in Beijing or Shanghai is still difficult, whereas in Xi'an or Chengdu it is a bit easier for an IT company to find highly skilled engineers.

When did SAP decide to invest in R&D in China?

We started our SAP Labs China in 2003, after performing localisation engineering for our products for a few years. Based on the excellent experience we had, we also decided to pursue global R&D work in China. As success breeds success, more business units from SAP were convinced that China is a great place to develop software. Today, China is our third largest R&D hub in the world.

Has SAP's R&D team developed products that are primarily for China?

For many years, the Chinese market was too small to justify such a large R&D set-up. Therefore most of the products were exported and successfully implemented by global SAP clients. Today, the situation has changed a bit. We feel that in many areas, China is either the biggest market (e-commerce, robotics, machine learning) or is also a technology and adoption leader (e-payment systems). So naturally, we have put more research and product development in these areas in China and are slowly transforming our SAP Labs

China in that direction. As the SME market in China is also a strong growth engine, we have developed our latest cloud-based product 'SAP Anywhere' here in Shanghai and had our global product launch in Beijing last year.

How much of a challenge does China's slow and restricted internet access present to SAP's R&D operations?

We believe it is important for researchers across the globe to access and exchange research-based information without restrictions. While we acknowledge the valid concerns of the Chinese Government about cyber security and criminal activities in the internet, we also believe that one has to strike a good balance between these concerns – the unwanted result of restricting access is that you reach a point where obtaining certain information or conducting research in specific areas becomes impossible for many. Nevertheless, we are joining the dialogue between governments and business enterprises and also give feedback on areas of concern.

With China's well documented air pollution deterring some people from locating here, and administrative issues often making it challenging to secure required visas and work permits, what measures has SAP taken to ensure that it is able to attract and retain the talent it requires for its R&D operations?

Indeed it isn't easy to attract foreign talent to large cities in China due to the fact that the living conditions are seen as very difficult. What we do is that we offer more flexible models, where the family can also stay outside of China, or we offer shorter assignments than before. We do not have visa or work permit issues as we usually only bring highly qualified engineers with many years of successful track record to China.

Overall the situation of bringing foreign experts to China is still satisfactory, and we try of course to participate in a small way to make the overall situation better through technology solutions.

What are some of the other key challenges SAP faces in terms of China's regulatory environment?

In many areas in IT, there are regulations that demand a joint venture, such as in providing cloud services to businesses in China. This brings no additional value-add for our customers – in fact sometimes such regulations slow down the process of being able to offer these kind of services in the first place. We have joined the efforts of the European Chamber with regard to asking for a level playing field and for a reduction of bureaucracy.


What is the significance of the Made in China 2025 initiative, and how big an impact do you envisage it having on SAP's future business here?

The Made in China 2025 initiative is a very significant step in the digitalisation of China's industries. It represents the first time a 10-year industrial modernisation plan has been released (even arriving shortly before the release of the latest five-year plan). It also addresses the most important areas in transforming the Chinese economy from an investment-driven model to an innovation- and consumption-driven growth model. The success of the initiative will define how successful the overall transformation turns out to be.

Would you agree that before manufacturers in China start to make costly investments in IT, robotics and other forms of automation typically associated with Industry 4.0, they need to go back to basics and upgrade their management practices?

I don't think that one necessarily has anything to do with the other. Also, I am not a specialist on Chinese management practices, as I have never worked in a Chinese company. I believe the number of robots in comparison to people employed in a typical plant in China is still only a fraction of what it is in South Korea, Japan or Germany. So, there is really a lot of growth opportunity here. Also, if you scrutinise the highly-automated countries I mentioned above, their management practices are also vastly different, yet this has not impacted their ability to successfully automate their respective industries. Actually, the opposite is the case – robots don't care who their manager is and what the management practices are, they do as they are told. Very soon they will also predict, learn and improve.

How does China compare to other fast-growth markets such as India or Russia?

One cannot compare those markets at all, as they are driven by completely different factors. I was never a big fan of the BRIC or BRICS concept. I have been visiting all of these markets every year for a long time and there is really not much that China has in common with Brazil or Russia – with the exception of the landmass. The people are different, the culture and history is different, the economy is driven by completely different factors, the politics work differently....and so on. That being said, these markets are of course highly interconnected in terms of global trade and the interdependencies of their economic development cannot be neglected. 





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CHINA

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50 Liangmaqiao Road, Chaoyang District, Beijing 100125
北京市朝阳区亮马桥路50号 100125
T: +86 10 6465 3388 F: +86 10 6410 4080
www.kempinski.com/beijing

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