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FOOD AND DRUG SAFETY

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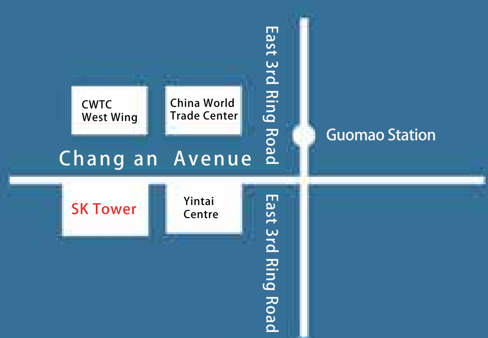

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THE EUROPEAN CHAMBER ON CHINA MANUFACTURING 2025

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

Xi Jinping promised the World Economic Forum in January that China would resist the global trend toward protectionism and champion economic globalisation. While the Chinese president's message was welcome, the reality is that Beijing has doubled down on industrial policy that might damage its own economy. On 7th March, the European Chamber of Commerce in China released a study on China Manufacturing 2025 (CM2025), a government initiative launched two years ago that increased support for domestic companies and tilted the playing field against foreign competitors.

Under the CM2025 initiative, state planners set out to develop 10 industries by making decisions that should be left to private businesses. This includes setting aggressive market-share targets for the Chinese and international markets and 'self-reliance' for key components.

Beijing's policy tools run contrary to the principles of free trade. They include hundreds of billions of dollars in subsidies and investment funds, support for inefficient state-owned enterprises (SOEs), state-backed acquisitions of companies in the European Union and elsewhere, as well as market-access restrictions and forced technology transfers for foreign businesses.

While this poses challenges for European businesses in the market, the primary victim is ultimately China's own economy. In the field of industrial robotics, for example, government subsidies are contributing to serious overcapacity in the low and middle tiers of China's market.

Government support for SOEs makes it difficult for innovative Chinese enterprises to access capital and grow. Pressuring Chinese companies to give domestic component suppliers preference regardless of whether they offer the best combination of quality and price makes it harder for their own products to succeed in international markets.

China's turn toward protectionism and industrial policy is particularly evident in the lack of reciprocity in investment relations. In 2016 European investment in China saw a major year-on-year decline of 23 per cent, to EUR 8 billion. Meanwhile, funds flowing from China into the EU grew by a stunning 77 per cent, to EUR 35 billion.

Because much of this Chinese inflow was in sectors targeted by the CM2025 initiative, EU Member States now face the question of how to handle investments directed by Beijing's industrial policy. The fact that China's state planners see these acquisitions as being in their national interest does not mean that they align with the host countries' interests.

Free and open markets are part of the DNA of EU Member States: they welcome investment by privately owned Chinese enterprises for the employment and prosperity that it contributes. However, this does not mean that they are naive, as investments influenced by industrial policy may lead to the acquisitions' technology being diffused to third parties. Other European companies that are not acquired may lose access to the Chinese market.

In 2013, the Chinese Communist Party's Third Plenum stated that the market would play the "decisive role" in the economy. But Beijing has so far failed to implement the decision and the role of the market has weakened.

Until China lives up to the Third Plenum and President Xi's public commitments, EU Member States may need to screen China's state-directed foreign investment. But the review process must be transparent so that it does not inadvertently dissuade Chinese and other foreign firms from going ahead with legitimate, market-driven bids. Such reviews should only go forward with key terms such as 'public security', 'national interest' and 'key technologies' clearly and narrowly defined.

While reviews may conclude that proposed investments are in European interests, it is first necessary to understand how they relate to priorities laid out under foreign industrial policy. This is especially true in areas where European businesses are barred from making similar investments in China.

China would be wise to learn from past mistakes that some European Member States made with misguided industrial policy. The fact that it is a much larger country does not mean the results will be more favorable. Rather, the costs are likely to be higher. For China's own sake, it needs to allow market forces and fair competition to replace industrial policy.

The Wall Street Journal published this Op-Ed by President Wuttke under the title *Vetting China's State-Directed Investments* on 7th March, 2017 in conjunction with the release of a major new European Chamber report titled *China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces*. To date, the report has already received 100 mentions in the international and Chinese press, including *Associated Press, Agence France Presse, Bloomberg, Financial Times, Reuters, The New York Times, Caijing, China Daily, South China Morning Post* and *Xinhua*. The Minister of Industry and Information Technology, Miao Wei, also publicly responded to the findings of the report during a press conference held on 11th March during China's annual National People's Congress.

STABILITY FIRST

Beijing's Top Priority at the 2017 'Two Sessions'

Despite being widely anticipated to be uneventful, ahead of President Xi Jinping's personnel shuffle later this year, the 2017 'Two Sessions' (*lianghui*) were full of signposts. **Peter Folland, Nicholas Consonery, Mark Rushton** and **Kevin Ma** of **FTI Consulting** distil six key points from the lianghui that indicate the direction that China will take over the coming year.

This year's *lianghui*, the annual meetings of the China People's Political Consultative Conference (CPPCC) and the National People's Congress (NPC), provided plenty of opportunities to feel the pulse of Chinese politics amid a slew of press conferences and public briefings. Call it a high season for Chinese politics. The meetings took on a special significance this year given that they were the last major political gatherings before the upcoming leadership transition at the 19th Chinese Communist Party (CCP) Congress in the autumn.

Above all, the underlying theme for this year was the politically-driven desire to maintain stability and avoid any disruption to the upcoming transition (we've called this China's 'Stability First' policy – in contrast to the 'America First' mantra of new US President Donald Trump). The government's annual target for economic growth for the year was only very slightly reduced from last year, and in his kick-off speech to the Congress Premier Li Keqiang said explicitly that "stability is of overriding importance." In fact, Li's report mentioned 'stability' fifteen times – up from just four times in 2016.

For foreign investors and multinational companies (MNCs), the NPC did still reveal some interesting details on the reform and policy outlook in 2017, though the overarching focus on stability suggests that Beijing won't have much appetite for reforms considered too risky. But it is also important to note that in some areas, like environmental degradation, Beijing believes that *not reforming* may actually be the bigger risk to stability. Those are the kinds of issues where we should expect some progress this year.

The range of issues openly discussed at the NPC was enormous. A short list would include: financial regulatory reform, environmental protection, state-owned enterprise reform, the One Belt One Road initiative, food safety, poverty alleviation, tax reform, trademark protection, foreign investment policies, promoting innovation in new and high-tech sectors, healthcare reform, anti-corruption work, legal and judicial reform, education reform and foreign relations, to name a few. The government also issued three important policy reports during the NPC including a work report from Premier Li Keqiang, which set out high-level policy goals for the year, and work reports from both the National Development and Reform Commission (NDRC) and the Ministry of Finance (MoF), which provide details on issues ranging from deficit targets to infrastructure spending.

Amid all the policy discussions, it can be tough for investors to discern the signal through the noise. Here is our list of what we think matters most from this year's NPC:

Growth is good, more growth is better

In only slightly reducing the annual growth target ("around 6.5 per cent or higher if possible," down from "between 6.5 to seven per cent" last year), the government confirmed that its focus for 2017 is on keeping the economy stable and managing risks, rather than unleashing radical reforms in areas like reducing industrial overcapacity and bad debt, which would threaten sharp increases in joblessness and potentially even slower growth. The message is that Beijing is willing to tolerate only incremental progress on tackling those structural issues in exchange for solid growth this year. Many media sources are saying that the target is simply "around 6.5 per cent," but we think the actual text is more in line with last year's target.

Eye catching infrastructure spending and support for social welfare

There was some optimism that Beijing might announce a wider fiscal deficit to support the economy this year. Instead, the deficit target was set at three per cent of GDP, the same as last year. Still, Beijing's infrastructure aspirations are, as ever, impressive: some of the goals for this year are to complete railway infrastructure investment of CNY 800 billion (USD 115 billion) and CNY 1.8 trillion (USD 260 billion) in highways and waterways. The government also announced a 9.5 per cent increase in central government transfer payments to local governments with a specific aim of increasing local-level funding for social welfare. These resources are badly needed given that most provincial governments are over-burdened with social welfare obligations. For foreign firms, the government also views investments in entrepreneurship as having an important role to play in meeting its social welfare goals, through the creation of jobs and generation of upward social mobility through start-ups and innovation.

Serious language on pollution

In his opening comments to the Congress, Premier Li said that Chinese people are "desperately hoping" for cleaner air, and made strong commitments to reducing air pollution by cutting the use of coal and stepping up monitoring of manufacturing sectors. The government's work report specifically targeted a reduction of at least 3.4 per cent in energy consumption per unit of GDP (in-line with last year's targets), along with a promised net reduction in steel production capacity and the aforementioned target to shutter 150 million tonnes of coal production – a target not mentioned in the 2016 work report. It also promised to suspend, postpone construction on, or eliminate no less than 50 million kilowatts of coal-fired power generation capacity. The report committed to making China's energy supply

'greener' through privatisations, innovation and better integration of renewables. This big push for green development means huge spending on environmental technology, which may result in increased opportunities for foreign firms. However, the government will also continue to increase investment and prioritise the development of domestic industry in these areas.

Big shift in tone on foreign investment

One major bright spot for the NPC in 2017 was a big switch in tone on foreign investment. In 2016 the government promised "innovative ways to promote foreign trade". This year, the commitment is to "big moves to improve the environment for foreign investors", which is significant both in emphasising the need for fundamental reform and also in specifically recognising the need to be responsive to concerns of foreign companies. This follows on from a recent 20-point State Council directive on promoting foreign investment. Still, we're only looking for gradual steps this year in light of the focus on stability and the likely institutional pushback to greater openings. In the work report Li said explicitly that Beijing would use revisions to its foreign investment catalogue and new free trade zones to promote inbound investment, specifically identifying services, manufacturing and mining as targeted sectors.

A desire for smooth US-China relations

One major issue that was not on the official agenda but was at the forefront of the minds of all officials and NPC observers was real concern about the trajectory of the US-China relationship. Senior officials were unambiguous on their desire to keep the relationship stable: in his press conference new Commerce Minister Zhong Shan said that a US-China trade war would not be in either country's interests; and Chinese Foreign Minister Wang Yi outlined the possibility of expanding areas of cooperation with the US stating, "As long as we.....follow the principles of no conflicts, confrontation and mutual respect....there is no reason why China and the United States cannot become excellent partners." It was also announced towards the end of the *lianghui* that Presidents Xi and Trump will meet in April in Florida. Regional stability, particularly concerning North and South Korea, is likely to feature high on the agenda.

A politicised environment in a political year

In short, this year's *lianghui* were decisively influenced by the upcoming 19^{th} Party Congress. As President Xi looks to solidify his team for his upcoming second term, he has little incentive to risk policy changes that would generate slower growth or instability in foreign relations. For MNCs, the underlying message is to expect a more highly politicised environment in China this year as the government is distracted by managing the transition. Internal jockeying will intensify, and local officials will become even more avoidant of risk taking. This will mean greater wariness about engaging with MNCs, and a harder time getting needed issues on the agenda of China's officialdom. For 2017, MNCs will need to be patient, carefully monitor the policy winds and lay the groundwork for making traction with up-and-coming officials who will be empowered during Xi's second term.

Beyond the transition, Beijing's recent promises to further open to foreign investors and pursue other meaningful reforms could start to bear more fruit. That, however, will likely have to be a question for 2018.

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HANDLING PROFESSIONAL CONSUMERS

A New Challenge to Doing Business in China

What is a professional consumer? What do they do and why should enterprises be aware of them? **David Ettinger** of **Keller and Heckman LLP** explains how the rise of this 'profession' is causing problems for food manufacturers, and provides tips on how to respond.

The term 'professional consumer' is not legally defined in any existing laws or regulations. This phenomenon has in fact arisen from Chinese legislation that is actually intended to protect consumers. The legislative intent, which is reflected in legal provisions that grant punitive damages, has been interpreted by certain individuals and groups as an opportunity to make a profit. These individuals, referred to as 'professional consumers', focus their attention on identifying products that, based on their limited understanding of the law, may or may not comply with applicable laws and regulations. The professional consumer will then purchase items that they believe will entitle them to compensation worth several times more than the commodity's purchase price. Many professional consumers base their claims on facts that often do not relate to food safety or product quality, but their complaint must still be dealt with, which often results in a waste of administrative and judicial resources, not to mention costs for food manufacturers and operators to defend such claims. Sadly, the outcome typically does not have any effect on improving food safety in China.

This article reviews China's legislative trend in dealing with professional consumers with a focus on reports and complaints in the food area, and offers possible strategies to effectively respond to situations when the professional consumer knocks on the door.

Regulatory background

In 2009, China promulgated the Food Safety Law (FSL) (replacing the 1995 Food Hygiene Law), which not only started a new era of food safety management in China, but also introduced the 'professional consumer' to the food industry. The 2009 FSL established grounds for compensating consumers up to 10 times the cost of a product for noncompliance of a food safety standard. Professional consumers saw an opportunity to profit from this 10-time compensation provision and went after food companies by claiming their products do not comply with food safety standards (e.g., the General Standard for the Labelling of Pre-packaged Foods (GB7718)). As noted above, the professional consumer will purchase food products in an amount beyond reasonable daily consumption and file complaints or reports with relevant government agencies or go to court to seek damages per their understanding of non-compliance. The total complaints/reports filed by professional consumers has dramatically increased since the adoption of the 2009 FSL. For instance, the Market Supervision Bureau in Hangzhou reported that, in 2016, more than half of their food-related complaints and reports were filed by professional consumers.

The *Supreme Court Notice* (*Notice*) regarding reviewing food cases and consumer requests in 2014 marked another milestone for consumers as well as the professional consumer. The *Notice* explicitly supports claims by consumers who purchase foods with the knowledge that they are problematic. In other words, it protects professional consumers' right to compensation even if they are aware of the potential non-compliance of a food, regardless of their intent. This has resulted in professional consumers becoming more motivated to take their cases to administrative agencies and assert their claims before the courts.

Some common complaints filed include: 1) use of novel food ingredients or non-cleared food additives; 2) false labelling; and 3) misleading product names or exaggerated function claims. While some cases like these may help improve food safety, these cases are typically in the minority. A majority of the cases we have seen are filed based on problems such as printing errors and small font sizes used on food labelling, which, by nature, are not food safety concerns and unlikely to mislead consumers. However, food manufacturers and distributors have suffered greatly from these frivolous claims, enduring significant economic losses, government sanctions, bad press and brand dilution.

Legislators finally realised that the time had come to revise the law, to balance the need to protect consumers, while maintaining normal function of the legal system to regulate the food industry. Specifically, in 2015, the amended FSL explicitly excludes food labelling defects and non-safety threatening or misleading cases from the scope of causes for punitive damages. In 2016, the *Draft Implementing Regulations of the Consumer Protection Law (Draft Implementing Regulations*) amends the definition of 'consumers' to exclude professional consumers who buy products not for the purpose of daily consumption. Similar actions also have been taken at the local level. For example, the *Draft Implementing Regulations in Zhejiang* (2016) clarify that "consumers are limited to persons who buy products for daily consumption." The *Draft Food Safety Rules* (2016) in Shenzhen went further by imposing a restriction on claiming damages, stating that when "the complainant's purchasing behaviour is beyond a reasonable scale, or the complainant's main income relies on seeking damages and rewards," his/her claim for damages will not be supported.

As a result, enforcement agencies and courts apply more deliberate consideration when they review food cases filed by professional consumers. As it now stands, it is not unusual for local courts to dismiss a claim for compensation of 10 times the purchase price due to: 1) the amount purchased is beyond the scope of daily consumption; or 2) the purpose of the purchase disqualifies the plaintiff from the CPL's protection. Legislation and administrative practice pertaining to professional consumers is still evolving and should be monitored closely. In the meantime, we recommend that food companies adjust their strategies to handle professional consumer claims as discussed below.

Tips for responding to professional consumer complaints

Despite an overall improvement in the climate for food producers and distributors to respond to professional consumers' complaints, the threshold for determining whether a complaint falls under the scope of 'food safety' issues is still not standardised among the different administrative agencies and courts. It is therefore difficult to predict the outcome of a case involving a professional consumer complaint. Given this situation, we provide below some tips to better prepare food producers or operators when facing a professional consumer.

- *Continuous internal checks on compliance status*

  Every stage of food production and distribution is worth attention and thorough recordkeeping. Do not let any flaws or defects slip under the radar. It cannot be stressed enough that continued monitoring of legal developments in China is critical to dealing with such complaints, both at the central and local levels. Ingredient use, food labelling and advertisements must be reviewed against applicable national and local regulations and standards before any distribution plan is settled.

- *Turn to professionals for an effective coping strategy*

  It takes experience and patience to deal with professional consumers who are specialised in spotting issues, filing complaints and pressing for favourable rulings. It is never too early to have your company's in-house team and external legal consultants step into the process and commence dialogue with the professional consumer. Meanwhile, in-time consultation and cooperation with the local administrative agency commonly moves the case forward efficiently and effectively.

- *Close the case in court*

  Law suits are typically considered to be the last resort and usually resolve the case when settlement or release of liability agreements cannot be reached. When entering the court phase, it will be important to have accurate records and sound evidence to help secure a positive outcome. Always remember to seek professional legal advice along the way, both in negotiations and formal legal proceedings.

The above suggestions are intended to guard the legitimate rights and interests of food producers and operators. They should not be understood as methods to avoid fulfilling one's primary responsibility of ensuring food safety and quality. As the Chinese Government's management of consumer reports and complaints becomes more sophisticated, we continue to expect to see ordinary consumers being distinguished from those making purchases for profits that disrupt the orderly functioning of the market.

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, medical devices to E-cigarettes and tobacco related products.*

The firm's global food and drug practice has gained recognition by Chambers and Partners Asia-Pacific Guide in the category of Life Sciences (International Firms) – China. David Ettinger, the Shanghai office's chief representative, has attained noted practitioner status in the same category and guide.

For more information about the firm and the article, please contact David Ettinger at ettinger@khlaw.com, Jenny Xin Li at li@khlaw.com or Yin Dai at dai@khlaw.com.

DRUG SAFETY

Putting patients first

Patient safety is a serious global public health topic that sits atop the World Health Organization's (WHO's) agenda. **You Lv**, Scientific Communication Manager, **Bayer China Communication**, and **Hellen Zhang**, Pharmacovigilance China Country Head, **Bayer Pharmaceuticals**, explain how pharmaceutical companies have an obligation to positively add to this agenda by ensuring that all of their products have been carefully tested and evaluated for risks before being released on the market.

Following the WHO's first Global Patient Safety Action Summit in London in March 2016, a second Global Ministerial Summit on Patient Safety will be held at the end of March in Bonn, Germany. The summit's goal is to galvanise international policy-makers and governmental authorities to prioritise patient safety at all levels. Furthermore, as one of the key initiatives going forward, the WHO will launch its Global Patient Safety Challenge on medication safety in the first half of 2017, which aims to propose solutions to address many of the obstacles to ensuring patient safety.

Along with the WHO's call for a global movement, awareness of patient safety is rising steadily in general, with many countries increasingly recognising the importance of improving patient safety over recent years. An international consensus has formed among governmental agencies, healthcare professionals (HCPs), medical institutions and health insurance funds, as well as patient groups and industry, that patient safety is a fundamental principle of healthcare. In China, too, the central government regards patient safety as an integral part of the Healthy China 2030 blueprint in support of achieving its overall goals in public health.

Benefit-risk evaluation for ensuring patient safety

Patient safety is the essence of the pharmaceutical industry and it is more than just an obligation. 'Safety' is a relative concept and decisions about a particular drug's use must be evaluated as a balance between the benefits and risks of a given medication for an individual patient – and this can't be done in a vacuum. It needs to be assessed against the benefits and risks of other therapy choices.

The benefit-risk profile of a certain drug is carefully evaluated, beginning at the early stages of research and development. The efficacy and safety of pharmaceuticals are investigated in preclinical and clinical studies. The documentation submitted to the regulatory authorities contains the results of these studies and a comprehensive benefit-risk assessment. Only when the experts at the regulatory authorities have carefully reviewed all the information and approved the drug, will it be made available for patients. Marketing authorisation is only granted for a product if it satisfies the safety requirements of the health and regulatory authorities. Following registration, pharmaceutical companies continue to evaluate benefit-risk profiles. They update product labels and communicate with authorities and HCPs, as well as patients, about any benefit-risk profile updates.

Pharmacovigilance: safety monitoring during the whole drug life-cycle

Millions of people have to trust in the efficacy of medicinal products. And equally, they trust that their benefits outweigh the risks of side effects. For the pharmaceutical industry it is therefore crucial that someone always keeps an eye on the risks, which means pharmacovigilance.

The WHO defines pharmacovigilance (PV) as the science of, and activities relating to, the detection, assessment, understanding, and prevention of adverse effects or any other drug-related problem. The aims of pharmacovigilance are to enhance patient care and patient safety in relation to the use of medicines; to provide assessments and communicate the risks and benefits of drugs on the market; and to provide education and information for patients.

For pharmaceutical companies, our ability to meet expectations relies to a great extent on how well we optimise the safe and appropriate use of our medicines. This goal should be accomplished through a comprehensive pharmacovigilance system and processes operated by dedicated professionals. These professionals need to be alert during the whole life cycle of a medicinal product, and must react to every risk that becomes evident, while constantly monitoring any other risks and safety concerns of the product.

Any safety reports for medicinal products should be properly processed and then analysed by safety scientists and physicians to confirm the safety of a given product, and to look for any new emerging safety signals which, together with any new information on product benefits, should be updated in a risk assessment on a regular basis. It is a highly complex and highly regulated business.

When risks are identified, pharmaceutical companies should immediately undertake measures to minimise or prevent risks and safeguard the health of patients in coordination with the authorities. These measures range from routine risk minimisation measures, such as updating product information for patients, consumers and HCPs, to additional risk minimisation measures such as direct communication with HCPs, or providing educational materials targeting patients or HCPs. In certain cases it may be judged that risk minimisation cannot control the risks to the extent possible to ensure a positive benefit-risk balance and that the medicinal product needs to be either withdrawn from the market or restricted to those patients in whom the benefits outweigh the risks.

Quality assures drug safety

Even with a proven benefit-risk profile of a specific product, drug safety also relies on the quality of drugs.

A *quality* management system must be the basis for the highest possible safety standards in the manufacturing of pharmaceuticals and medical devices, which are subject to strict quality requirements compliant with internationally recognised standards, like Good Manufacturing Practices (GMP).

Engaging all stakeholders in patient safety

Ensuring comprehensive patient safety requires joint efforts from all relevant stakeholders, including regulatory authorities, research institutes, HCPs, pharmaceuticals companies and patients. This can be accomplished by conducting different activities on patient safety, such as panel discussions and seminars, to engage a wide range of stakeholders and discuss the relevant solutions for improving patient safety.

Recent studies show that patients are being encouraged to take an active role during their treatments for improving patient safety as well. Patient engagement and patient-centered strategies are widely recommended by the WHO and a number of research institutes to ensure better medication safety. Patients should also be empowered to make informed decision together with their HCPs.

***Bayer** is a global enterprise with core competencies in the life science fields of healthcare and agriculture. Its products and services are designed to benefit people and improve their quality of life. Bayer is committed to the principles of sustainable development and to its social and ethical responsibilities as a corporate citizen. At pharmaceuticals, we focus on researching, developing and marketing specialty-focused innovative medicines that provide significant clinical benefits and value. In this way, we are addressing the growing requirements of patients, physicians, healthcare payers and regulatory agencies.*

A CHALLENGE TO FOOD SAFETY

China's new consumption trends

Dr Li Kai, Project Manager of Agriculture and Food, **SGS China**, looks at how changing trends in food consumption in China are increasing challenges to ensuring food safety.

The romantic King of Bavaria, Ludwig II, would be proud of his beloved Neuschwanstein Castle. Nowadays, his architectural work of art is flocked by thousands of Chinese pilgrims every year. What he would never have expected, though, is that when most of them return to China they carry with them cases of milk powder. At the Munich central railway station, the Mueller shop now declares a long-term limitation on the purchasing of infant milk powder.

Since 2008's Melamine scandal, Chinese consumers have turned to overseas milk powder as an alternative to domestic supply. The damage that this event wreaked on consumer trust severely impaired the Chinese milk industry, while contributing towards the formation of today's food consumption habits in China.

The rapid growth of the economy in the past decade has nourished the world's largest emerging urban middle-class – children of the 1980s to 1990s, who are mostly single-children due to the country's 'one-child' policy, which kicked-off around 35 years ago. Compared to the previous generation, they are better-educated and no longer short of materials, including an abundant food supply. Yet while they require more assurances regarding public food safety, the supply profile of today, in general, hardly meets such demand.

According to Ipsos' 2015 survey, Chinese consumers are now taking unprecedented care over food safety and health. Meanwhile, traditional concerns, such as flavour and price, have faded. An overwhelming 85 per cent of respondents reported that food safety is consumers' primary consideration when buying food or dining outside, with food health ranking second (78 per cent). The survey further indicates consumers with higher household income prefer food products with a high brand recognition. Significantly, families with a monthly income in excess of CNY 7,000 believe that higher brand recognition can deliver higher food safety assurance.

Green or organic food consumption has gradually become an urban trend, and city residents would rather pay a higher price tag for a basket of health and safety assurance. Seventy-nine per cent of the respondents reported that they would accept a price increase of 10 per cent for this assurance; 52 per cent agreed on a 11 to 30 per cent increase; while 21 per cent said they would accept an increase of 31 to 50 per cent. This reflects a stratification of food consumption similar to the early market of 'Bio'-labelled products in Germany, despite the community still not being fully aware of green or organic concepts.

In addition to green or organic food consumption, the survey also unveils a growing tendency for foreign food purchases in the past five years. Half of the respondents regard most imported foodstuffs to be more trustworthy than domestically manufactured products.

The upgrading of China's food consumption towards safer and healthier foods seems quicker than expected. Many native agri-food initiatives have accelerated investments in brand and safety enhancement. The WH Group's recent acquisition of Smithfield Foods—the largest pork producer in the US—is highly symbolic in this sense: with China's pork supply-demand ratio approaching 1.0, the company has introduced this well-known household name to China, which is targeting middle-class consumers here.

Nowadays, Chinese consumers often go shopping without carrying a physical wallet, relying instead on their Smartphones. Alipay, Wechat pay and Apple pay have all transformed payments into non-cash transactions, which can take place all the way from the luxury café to the wet market. The boom of e-commence and the logistics industry has also profoundly changed food shopping habits. One in five young people under the age of 30 in Shanghai buy food online at least once a week. For the top three e-commence platforms—Taobao, Tmall and JD—on average over 50 per cent of their annual revenue is contributed by food shopping. It indicates that food raw materials and products are now circulating faster than ever before, and that supply channels have become ever more complicated. Adding to this complication is increasing consumer awareness – consumers are now complaining that meal ordering platforms are short of transparency for raw material preparation and kitchen processing. And around 84 per cent of Chinese consumers are also reportedly opposed to genetically-modified food.

The Chinese Government launched its Made in China 2025 plan in 2015, partly aimed at upgrading and modernising supply chains, and during 2017's Two Sessions, Chinese Premier Li Keqiang re-stressed the importance of food safety for the whole nation's sustainable development. To feed 1.35 billion with healthier and safer food is undoubtedly one of the government's top tasks. The National Food Safety Law, revised in October 2016, is deemed to be historically the most stringent. Chinese leaders have vowed to tackle food counterfeiting and pollution. According to the top leaders, China will strategically undertake supply-side reform in the agriculture and food manufacturing sectors. President Xi Jinping himself stressed the importance of supply-side reform and food security, saying, "Ensuring food security has always been the top priority concerning the national economy and people's livelihoods, and we urge the further perfecting of policies and boosting crop production capacity."

Theoretically, the modern food supply chain goes from field to shop or table, so hazards at each step may aggregate and migrate into end products, and eventually the hands of consumers. It is imperative for food quality and safety assurance to guarantee step-wise monitoring of the whole supply chain. This form of monitoring has proven to be one of the most effective methods in several European economies, with the kernel of such a mechanism lying in traceability systems and the level of transparency. Chinese law makers must introduce this concept into the latest legislation, additionally emphasising public trust-building and third-party supervision integration.

German society benefits from the third-party supervision in relation to food safety. Providing independent monitoring services, a professional certification body can help food enterprises standardise manufacturing processes, and benchmark against European food safety principles. Furthermore, by holding a third-party certificate, enterprises will win consumers' trust and thus reap market rewards.

In general, China has successfully tackled the issue of food shortage over the past three decades and is resolute in meeting people's growing demand for healthier and safer food. The latest legislation on food safety provides the chance to embed supply chain monitoring from the field to shop or table. All stakeholders, including investors, governmental agencies and third-party bodies should cooperate to prevent any loopholes in monitoring, so that food safety for Chinese people can be effectively guaranteed. Eb

***SGS** is the world's leading inspection, verification, testing and certification company. SGS is recognized as the global benchmark for quality and integrity. Its agriculture and food industry expertise and global experience delivers efficient services to help safeguard quality and safety throughout the whole food supply chain from farm to folk in all principal food segments. SGS deliver comprehensive and cost-effective control solutions including testing, auditing, inspection, certification, technical solutions, training, etc. The integrated package of measures to assist in continuously improving the culture of food safety quality and sustainable development.*

HEALTHY, HAPPY PEOPLE

How China's New Food Safety Law (NFSL) impacts exporters of 'health food' and special food

Chinese people are increasingly curious about trying foreign food products, and with the advent of cross-border e-commerce (CBEC) many of the products they seek are now just a mouse-click away. China's new Food Safety Law (NFSL), is ensuring that foreign exporters of foodstuffs remain compliant and ensure consumer safety. **Dr Martina Gerst**, Standards and Conformity Assessment Advisor at the **EU SME Centre**, looks at how the law relates particularly to SME producers of 'health' or 'special' foods.

Online sales of food and beverages, especially packaged food, have grown steadily in recent years. In a poll taken in 2015, McKinsey discovered that online purchases of packaged food and fresh food were more frequent than those of apparel (34 and 24 times a year, compared to 22 times a year), even though the latter still remains the most purchased item online.

China is already the world's largest consumer market for food and beverages and projections are for it to continue growing in the years to come on account of rising incomes, improving living conditions and increasing demand for higher nutritional value and better food quality from local consumers. This is already reflected in a steadily growing domestic market for organic food. The same trend is expected for 'health food' over the next few years.

This is, in part, due to consumers becoming more health-conscious and focussed on taking care of their bodies as a result of national fitness programmes and a younger generation that is increasingly interested in being healthy and staying in good shape. These trends, combined with a burgeoning CBEC market, is causing more European companies to consider exporting their 'health food' products to China, including dietary supplements, functional food and drinks, and sports nutrition.

With the NFSL that entered into force on 1st October, 2015, the Chinese Government has restructured its mechanisms to supervise food production and distribution, not only to ensure the safety of food in general, but also to strengthen 'health' or 'special' foods in particular.

What does the NFSL mean for EU SME producers of 'health food'?

There are a variety of products classified as 'health food', claiming to improve people's health – and they are classified under a variety of labels. Checking the shelves of supermarkets or pharmacies, you can find:

- Dietary or food supplements, e.g. products containing minerals and/or vitamins in similar pharmaceutical forms;
- Dietary foodstuffs, e.g. infant formula, sports nutrition or food to reduce weight;
- Functional food, e.g. products with additional special ingredients that purport to enhance bodily functions, such as probiotic yoghurt; and
- Food for Special Medical Purposes (FSMP), for individuals suffering from certain disorders or medical conditions, e.g. high-calorie foodstuff.

For those EU SMEs planning to export these types of food to China, we would highly recommend that particular attention be paid to to Section 4 of the NFSL, where the regulatory requirements for 'special foodstuffs' are defined.

For example, Articles 74 to 79 refer to regulatory administration of 'health food' in great detail:

- Article 74 "defines" the respective "special foodstuffs" where the State shall implement stringent supervision and administration: 'health food', special formula foodstuffs for special medical purposes and infant formula.
- Article 75 "requires" that health functions asserted by a certain type of 'health food' should be backed by scientific proof, and of course should not harm human health.

In practice, this means that the relevant government authorities involved, such as the China Food and Drug Administration (CFDA), jointly with the State Administration of Traditional Chinese Medicine, will issue and constantly revise a list of 'health food' ingredients and permitted health function assertions made by 'health food'.

Furthermore, this list of 'health food' ingredients should include a description and dosage of ingredients and the corresponding efficacy. The ingredients included in the list of 'health food' ingredients are only be permitted for use in the manufacturing of 'health food', and must not be used for manufacturing of other foodstuffs. Subsequent articles are aimed at registration, filing and requirements related to the country of origin.

- Article 76 further defines that 'health food' using ingredients other than those included in the list of 'health food' ingredients and first-time imported 'health food' should be registered with the CFDA.

However, where a first-time imported 'health food' is defined as vitamins, minerals and other nutrients, a record should be filed as well.

Other 'health food' must be filed with the CFDA of the People's Governments of provinces, autonomous regions and centrally administered municipalities.

- Article 77 follows up on the registration requirements, and lists examples of the kinds of documents that are expected, including, but not limited to, the research and development report, product formula, manufacturing process documentation, the health and safety function assessment, labelling and instructions.

In December 2016, the CFDA released the *Health Food Registration Application Service Guideline* (2016), which helps to facilitate 'health food' registration. In a technical review, the CFDA may grant registration for applications which satisfy the requirements of safety and function assertion. For 'health foods' that are required to be filed pursuant to the law, the product formula, manufacturing process documentation, labelling, instructions and materials stating the product's safety and health function must be submitted at the time of filing. In addition, imported 'health food' should also be permitted to be sold by the authorities of the exporting country.

Other important sections of the law related to labelling and marketing of products include:

- Article 78: specifies that the label and instructions of 'health food' should not claim a disease prevention or treatment function. Contents should be true and consistent with the filing's contents, the specific suitable and unsuitable group(s), and that the effective ingredients or symbolic ingredients and their contents should be stated. Furthermore, the statement "this product does not serve as a substitute for medicine" must be included.

- Article 79: states that 'health food' advertisements should also include the statement that "this product does not serve as a substitute for medicine". The respective advertisement content of a product will be examined by the CFDA, before 'health food' advertisements are approved and added to a list.

Regarding the safety of food imported via CBEC, a series of new rules were issued aimed at further regulating online shopping for health foods. 'Operating companies' should ensure that their imported food for online shopping conforms to the following requirements:

- It is listed through approved online platforms connected with PRC Customs.
- Health products, genetically modified food, food with no national safety standards yet, new food ingredients, and food containing new material food ingredients should obtain registration filing and a safety assessment from relevant departments and authorities.

However, the implementation of these rules has been postponed until May 2017.

Sports Nutrition Food

One good example of 'health food' is sports nutrition food, such as energy drinks. Sports nutrition as a market segment has a very promising future in China – in 2015, the market size was estimated at USD 74 million.

In this context, an important aspect for EU SMEs to keep in mind is that according to Article 92 of the NFSL, imported food, food additives and food-related products have to comply with Chinese national food safety standards. In the past, market access for sports nutrition products grew slowly due to the unclear regulatory environment and consumers' lack of product knowledge. Also, sports nutrition food was guided by recommended standards only.

According to experts, new opportunities in nutrition may arise through the release of two new mandatory standards in 2015, by the National Health and Family Planning Commission:

- The Nutritional Supplement Food for Pregnant Woman, GB 31601-2015; and
- The General Standard for Sports Nutrition Food, GB24154-2015.

The General Standard for Sports Nutrition Food was scheduled to come into force in November 2016. For EU SMEs exporting sports nutrition food, all imported products in that area should conform to this new mandatory standard.

Advice for SMEs

Overall, 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 – both via traditional channels and via CBEC. The market for 'health foods' seems attractive to European SMEs since the EU SME Centre regularly gets enquiries in that area. However, companies find it challenging to navigate the constantly changing regulatory environment, which is intended by the government to direct companies to ensure consumer health and well-being. Eb

*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.*

Our team of experts provides advice and support in four areas – business development, law, standards and conformity and human resources. Collaborating with external experts worldwide, the Centre converts valuable knowledge and experience into practical business tools and services easily accessible online. From first-line advice to in-depth technical solutions, we offer services through Knowledge Centre, Advice Centre, Training Centre, SME Advocacy Platform and Hot-Desks.

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 EUROCHAMBRES, and the European Union Chamber of Commerce in China.

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

EUSME Centre

DRUG INNOVATION THROUGH BETTER ENFORCEMENT

IP Protection in the Pharmaceutical Industry

China is one of the largest pharmaceutical markets in the world. Its development is high on the government's reform agenda, as they seek to provide stimulus and intensify research and development (R&D) activities. This, coupled with enhanced health awareness among a rapidly growing patient pool, makes the country an increasingly attractive market for foreign business. The **China IPR SME Helpdesk** describes the current intellectual property regime in China, and says that better enforcement will create a more secure environment that can attract more R&D and stimulate higher levels of innovation in China's pharmaceutical industry.

The level of intellectual property (IP) enforcement in China has constrained pharmaceutical companies' efforts in carrying out R&D activities in the country. However, China's Patent Law is soon due to be revised and is expected to foster greater innovation and slow the proliferation of counterfeit drugs. A growing number of companies have become increasingly attracted to having an R&D centre in China, as a local presence provides a generally lower cost base and favourable tax rates.

Patents

China's Patent Law protects technological innovations for active pharmaceutical ingredients, drug combinations, pharmaceutical formulations, preparation processes of pharmaceutical products, new medical indications of a known drug and medical devices, among others. Most pharmaceutical innovations are protected by invention patents which provide 20 years' protection.

A pharmaceutical company must continuously monitor the patent status of the related subjects of its own products and design a R&D strategy predicated on filing a series of patent applications around its own innovations. It seems that the antibody drug Genetech could be a good example of an effective monitoring strategy, with over 60 Chinese patents/applications protecting its preparation processes, and its combination with other drugs, among other innovations.

Research and development for new drugs is risk-intensive and costly. Before carrying out R&D in China, companies should conduct 'freedom to operate' (FTO) patent research to ensure that there is no risk of infringing another party's patent rights or ongoing patent application.

To assess novelty and inventiveness, companies must perform a patent search before filing the application through a local patent agency. A patent search should be exhaustive, covering all scientific and chemical aspects and possible variants. This typically includes a drug's Chinese general name and trade name, the structure of the compound, possible variants in structure, the corresponding general formula, medical use, combination use and preparatory method.

Patentable subject matter includes the general formula of a compound, its composition with a combination of two agents, its release control formulation, sequences of amino acids and sequences of DNA/RNA, preparation processes. However, treatment/diagnostic methods of diseases and first medical use are un-patentable in China.

A substance found in nature and existing in its natural state is also not patentable. However, if a substance can be isolated or extracted from nature for the first time, where the physical or chemical parameters are unknown in the prior art and can be precisely characterised, and it has industrial value, both the substance and the process for obtaining it will be patentable. For example, obtaining a plant extract and the process of extraction is patentable in China.

Concerning infringement cases, the plaintiff carries the burden of proof unless the patent concerned is a method patent, in which case the burden is transferred to the defendant. According to China's Patent Law, where a dispute arises from an alleged infringement of the patent right, the patentee or any interested party may institute legal proceedings in the people's court, or request the local Patent Administration Department (PAD) to handle the matter. If the PAD decides that there has been an infringement, it may order the infringer to stop the infringing act immediately.

Trademarks

A pharmaceutical trademark is a mark registered with the Chinese Trademark Office and can be a newly created mark or a Chinese transliteration of a trademark. The drug name of pharmaceuticals includes the common name and trade name. The common name refers to the drug's legal name approved by the Pharmacopoeia Commission of the Ministry of Health. The Trademark Law prevents common names from being registered. For instance, Paracetamol is a common name of a pharmaceutical for curing fever and therefore cannot be registered. In fact, different manufacturers often use the same common name on pharmaceuticals with the same prescription or the same variety of drugs.

The trade name of pharmaceuticals is decided by the manufacturers of the drugs themselves, and can be applied for as a trademark. Under a same common name, the drugs could have different trade names. Trade names distinguish different providers of the same pharmaceuticals. For instance, Motrin and Tylenol are both trade names of pharmaceuticals for curing fever. They share the same common name, but by bearing different trade names, consumers can distinguish between the two.

It is important to avoid making a trade name a common name. A classic example is the case of Aspirin, where consumers became accustomed to ascribing Aspirin, a trade name at the time, to all pharmaceuticals treating arthritis, rendering it a common name in practice. As a result, the rights owner, Bayer, lost its trademark in many countries due to its failure to clarify Aspirin's status as a trade name. The following actions should thus be considered to avoid generalisation of the trade name of pharmaceutical products:

- A trade name should be as distinctive as possible. It is important to avoid using a name related to the features or functions of the pharmaceutical. For instance, Motrin is translated as MEI LIN in China without literal meaning. It does not include any descriptive nature of the drug. Thus, it is not easy for Motrin to be mistaken for a common name.

- The owner of a pharmaceutical in China should not claim the trade name if a trade name is listed in pharmaceutical nomenclature. The mark will likely be regarded as a common name and can consequently be used by any party.
- If any competitor uses a trade name as a common name, timely action should be taken, such as sending a cease and desist letter to the infringer and publicising the infringement in newspapers and magazines, among other actions.

Trade Secrets

The complexity of R&D processes concerning new drugs makes protection of trade secrets critical to pharmaceutical companies. High employee turnover in the industry makes it very important to sign a confidentiality agreement before employee participation in a R&D project. Furthermore, companies should set up relevant internal rules and physical technological and contractual measures to prevent unauthorised use and disclosure of trade secrets.

Inspection of computer hard drives and monitoring emails of employees with access to technical secrets and know-how is also critical. A robust monitoring system of disclosure in the public domain can disincentivise unlawful actions on the part of current and former employees. Once an ex-employee has shared a secret with the third party or has filed a patent application, in practice, it is advised to first attempt a settlement through negotiation with the infringer before pursuing a long and costly lawsuit.

Most disputes between business partners often relate to misuse of the involved technology secrets by the patent licensee. Once there is a dispute, be sure to collect evidence to demonstrate unauthorised access to the involved technical secrets and similarity of the alleged know-how and the involved technical secrets before commencing litigation. Be sure to protect the technology secret during litigation by asking for a closed hearing. Collecting evidence on trade secret theft is difficult and borne by the plaintiff. It is therefore advisable to seek the court's assistance in issuing an investigation order or evidence preservation during litigation by submitting a reasonable requirement.

The pharmaceutical sector is rapidly developing under the current reform agenda, with impending changes to the Patent Law expected to safeguard R&D activities. This will hopefully result in better protection and stronger enforcement mechanisms for technological innovations and a more stable operating environment for European businesses.

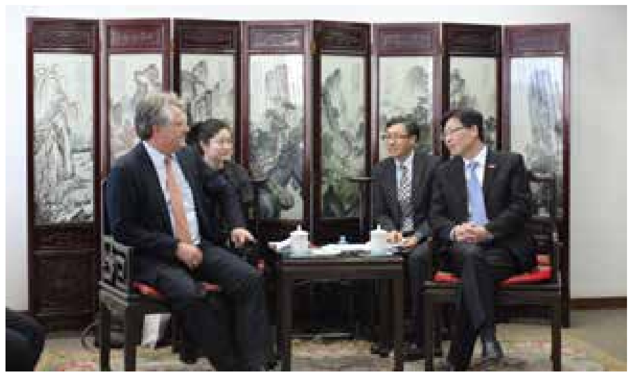
*The **China IPR SME Helpdesk** supports small and medium sized enterprises (SMEs) from European Union (EU) member states to protect and enforce their Intellectual Property Rights (IPR) in or relating to China, Hong Kong, Macao and Taiwan, through the provision of free information and services. The Helpdesk provides jargon-free, first-line, confidential advice on intellectual property and related issues, along with training events, materials and online resources. Individual SMEs and SME intermediaries can submit their IPR queries via email (question@china-iprhelpdesk.eu) and gain access to a panel of experts, in order to receive free and confidential first-line advice within 3 working days. The China IPR SME Helpdesk is co-funded by the European Union.*

To learn more about the China IPR SME Helpdesk and any aspect of intellectual property rights in China, please visit our online portal at http://www.ipr-hub.eu/.

CHINA IPR
SME HELPDESK

EUROPEAN CHAMBER LOBBYING HIGHLIGHTS

Discussing the Future of Aviation in China with the CAAC



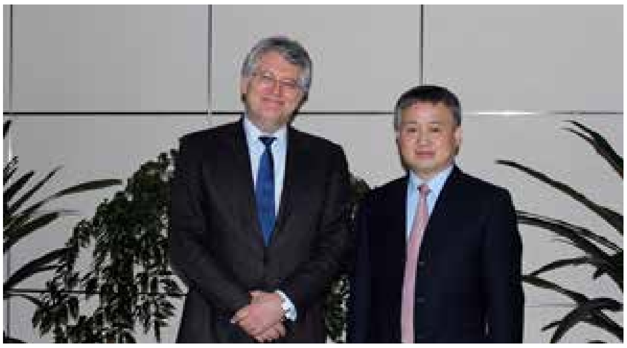
On 24th February, Chamber President Jörg Wuttke led a delegation to meet Vice Administrator Wang Zhiqing of the Civil Aviation Administration of China (CAAC). President Wuttke discussed the rapid development of China's civil aviation industry and presented the Chamber's *Position Paper 2016/2017* to Vice Administrator Wang. Senior representatives from the Chamber's Aviation and Aerospace Working Group put forward their key recommendations for the Chinese industry and expressed their concerns regarding market access. Also in attendance was the China-EU Aviation Partnership Project's expert on air traffic management, Eike Kuehl, who introduced the project to Mr Wang and asked for his support on upcoming activities related to both take-off and landing operation time allocation for European airlines at major airports in China, as well as flexible use of airspace. Mr Wang responded to all of the recommendations provided and stated that the CAAC attaches great importance to the Chamber's input.

Meeting with Italian President SE Sergio Mattarella

Carlo D'Andrea, Vice Chair of the Shanghai chapter, met Italian President SE Sergio Mattarella on 24th February during his visit to Shanghai, and took the opportunity to introduce the Chamber's work on behalf of European business in China. In the subsequent speech delivered by the President at Shanghai Fudan University, he remarked upon the importance of seizing opportunities to improve and consolidate commercial cooperation between China and the EU, which was one of the key messages delivered by the Chamber during its EU Tour earlier that month.

Working to Address Foreign Exchange-related Challenges

Chamber President Jörg Wuttke met with Pan Gongsheng, Deputy Governor of the People's Bank of China and Administrator of the State Administration for Foreign Exchange (SAFE), on 23rd January. The purpose of the meeting was to follow up on lobby letters sent to the SAFE regarding the recent 'window guidance' instructions it released, which has created problems for European businesses' daily operations for issues such as the remittance of dividend payments. Mr Pan suggested a communication channel be established between the SAFE and the Chamber through which specific cases where members have faced challenges can be submitted, and gave his personal commitment to further look into the issue. President Wuttke also presented the Chamber's *Position Paper 2016/2017*. The two sides finished with an exchange of views on the state of EU-China bilateral trade and investment, China's foreign exchange market and foreign exchange reserves, monetary policies, and capital inflows and outflows.



Presenting China Manufacturing 2025 Report to the EU Trade Commissioner

During the Chamber's annual European Tour, on 10th February we had an opportunity to present key points from the Chamber's then still-unreleased report on the China Manufacturing 2025 (CM2025) industrial policy initiative to European Union Commissioner for Trade Cecilia Malmström. President Wuttke, along with vice presidents Sara Marchetta and Patrick Horgan, outlined the concerns that CM2025 poses for European business in areas like market access barriers and pressure to transfer technology. The potential importance of a new announcement from the Chinese State Council in January on improving the business and investment environment for foreign business was also discussed, with both sides committing to continued coordination following evolving conditions in China.

Opportunities for European SMEs in China

On 13th January, European Chamber Secretary General Adam Dunnett met with Ma Xianghui, Director General of the Ministry of Industry and Information Technology's SME Bureau. They engaged in a discussion on the ongoing revisions to the *SME Promotion Act*, as well as its guiding role for future legislation and policymaking concerning SMEs by relevant ministries and government bodies. The meeting also touched upon opportunities to improve access to China's SME Development Fund for European companies present in the Chinese market. The two sides agreed to maintain open communication as further developments concerning the *SME Promotion Act* emerge.

Presenting the Nanjing Chapter's Position to the City's Vice Mayor

A delegation led by the Chair of the Chamber's Nanjing Chapter, Bernhard Weber, met with Vice Mayor Huang Lan of the Nanjing Municipal Government to present the *European Business – Nanjing Position Paper 2016/2017*. The two parties discussed the paper's key recommendations which relate to industrial transformation and upgrading of the region, policy enforcement and the broader business environment. Both sides also exchanged ideas regarding Nanjing's ongoing development. Vice Mayor Huang stated his expectation that through the combined efforts of European business present in Nanjing the city's long-term competitiveness will be improved

REFINING THE ENVIRONMENT THROUGH TAX

The PRC Law on Environmental Protection Tax and the Interim Provisions on the Administration of Pollutant Discharge Permits

It is now commonplace in China that every winter consecutive smoggy days thrust the issue of environmental protection into the spotlight. Last year was no exception. As if on cue, in December 2016, two important legislative documents in the field of environmental protection were promulgated. **Li Huini**, of **ADAMAS**, says that they are a manifestation of the Chinese Government's willingness to further refine its environmental protection legal framework through new mechanisms. Below she outlines key points of this new legislation.

The PRC Law on Environmental Protection Tax

On 25th December, 2016, the Standing Committee of the National People's Congress passed the PRC Law on Environmental Protection Tax (EP Tax Law), which will come into force as of 1st January, 2018. This 28-article law represents China's 19th tax category and will serve as the foundation for this tax regime, which will be completed by the release of further implementation rules over the coming years.

Regardless of its nature as a new tax category, the introduction of the EP Tax does not automatically mean that business entities in China, especially manufacturing enterprises, will have to bear an additional financial burden. According to Article 27 of the EP Tax Law, upon the law coming into effect, the existing pollutant discharge fees will be abolished and replaced by the EP Tax. Of course, this new legal instrument is a more sophisticated mechanism given that it will be integrated into China's overall taxation system.

Tax payers and taxable pollutants

Those that will be subject to the EP Tax are the enterprises and entities (dischargers) that directly discharge taxable pollutants into the environment within PRC territory, or the sea area that falls under the jurisdiction of the PRC. Taxable pollutants under the EP Tax Law include atmospheric pollutants, water pollutants, solid waste and noise.

Dischargers who are not obliged to pay the EP Tax include those that discharge pollutants to facilities for centralised treatment of wastewater or household waste and those who store or dispose of solid waste at facilities and locations that meet the national and local standards for environmental protection.

Taxation basis and payables

The taxation basis for each kind of pollutant is as follows:

- **Atmospheric**: the pollution equivalent calculated according to the discharge volume.
- **Water**: the pollution equivalent calculated according to the discharge volume.
- **Solid**: the discharge volume.
- **Noise**: any decibel level that exceeds the national standard.

The pollution equivalents for atmospheric and water pollutants are to be calculated according to the equivalent index listed in the appendix of the EP Tax Law.

It should be noted that not all pollutants that fall under the aforementioned four categories will be taxed. Instead, for the atmospheric pollutants from one discharge outlet, only the pollutants with the top three pollution equivalent are taxable; while for water pollutants, the top five in the first category of water pollutants and the top three in other categories of water pollutants are taxable.

Tax payable will be calculated by multiplying the abovementioned taxation basis by the fixed, per-unit tax amount, which can vary quite a lot (for instance, from CNY 1.2 to CNY 12 for atmospheric pollutants), with each needing to be fixed at the provincial level.

Tax concessions and collection

The EP Tax Law specifies several circumstances under which the EP Tax may be exempted. These include: agricultural production (excluding large-scale breeding); movable pollution discharge, such as vehicles; and discharging wastewater or household waste by centralised treatment facilities in line with national and local standards. To be noted here is that centralised treatment facilities for industrial wastewater or solid waste are not included in the tax exemption.

With the integration of the pollutant discharge fee into the taxation system, the EP Tax Law assigns the work of tax collection to the tax authorities. In the meantime, coordination is to be set up between tax authorities and environmental protection authorities in order to guarantee efficient and precise tax collection. Tax authorities should inform environmental protection authorities about the tax payment status of tax payers, while the latter should provide the former with information on the pollution discharge status of the tax payers.

Interim Provisions on the Administration of Pollutant Discharge Permits (PDPs)

While the EP Tax indicates that an individual discharger must pay tax for its discharge, the PDP mechanism goes a step further, stipulating that for certain types of discharge, a permit is a prerequisite before discharge can take place.

The PDP mechanism has been implemented on a trial basis since 1987, in many cities across China. It applies mainly to wastewater discharge (according to the PRC Law on the Prevention and Control of Water Pollution) and atmospheric pollutant discharge (according to the PRC Law on the Prevention and Control of Atmospheric Pollution). The 'constitution' of PRC environmental laws and regulations, i.e. the Environmental Protection Law, for the first time adopted this mechanism in its latest revision in 2014. On 23rd December, 2016, the Ministry of Environmental Protection (MEP) promulgated the *Interim Provisions on Administration of Pollutant Discharge Permits (Interim Provisions)*, effective as of their promulgation.

Dischargers subject to PDPs

Dischargers subject to PDPs are those included in the *Pollutant Discharge Classified Management List*, in particular: entities that discharge industrial waste gas or poisonous or harmful atmospheric pollutants; operators of centralised, coal-fired heating facilities; entities that discharge industrial wastewater or medical wastewater to waterbodies, either directly or indirectly; operators of urban and industrial wastewater treatment facilities; as well as other entities prescribed by law.

In January 2017, the MEP published the *Trial Category on Classified Management of Pollutant Discharge Permit for Solid Pollutant Sources (Trial Category)* for solicitation of public opinions. According to the output and discharge quantity and the harmful effect of diverse industries, the *Trial Category* lists the industries that are subject to PDP administration. For each industry, the dischargers are subject to either normal PDP administration, simplified PDP administration or temporary exemption from PDP administration. The *Trial Category* helps dischargers to understand whether or not their industries are subject to PDP administration, which type of administration is applicable and the deadline for application of such administration.

Applying for and obtaining PDPs

Dischargers should apply for PDPs in accordance with the technical requirements published by the MEP. Relevant information will be made public for at least five days prior to the application. The application should be submitted online through the information platform managed by the MEP, and on paper to the competent environmental protection bureau, normally at the municipal level.

When reviewing the application documentation submitted by the discharger, the authority may conduct an onsite inspection or organise a public hearing, expert assessment or similar. If not, the PDP will be issued to qualified applicants within 20 days of all the documentation being accepted.

The first PDP issued according the *Interim Provisions* is valid for three years with the possibility of extending it for five years.

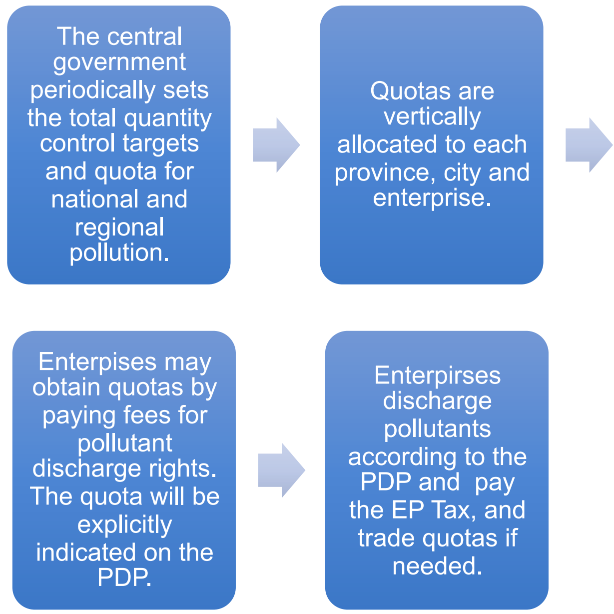
PDP administration

Discharge of various water and/or atmospheric pollutants by the same entity should be authorised through one comprehensive PDP. The national PDP administration information platform is to be set up and managed by the MEP. Application, issuance, modification, extension, revocation of PDPs, as well as information publication required by law, should be carried out through this platform.

On the PDP, information including the location and number of outlets, the method of discharge, the discharge direction, the types of pollutants involved and the density and quantity of pollutants are to be explicitly indicated. Before verifying the pollutant discharge detail, the Environmental Protection Bureau refers to the pollutant discharge standards, the local total discharge limit and the environmental impact assessment approval, among others.

Outlook

The PDP is the core implementation tool for total quantity control of pollution and the practice of trading on pollutant discharge rights. The overall administration mechanism for pollution control can be depicted as follows:



With the effectiveness of the PDP mechanism nationwide, trading on pollutant discharge rights and other detailed regulations and practices are expected to be further refined in 2017. While this may lead to an increase in environmental protection-related costs for enterprises, it will make such costs more transparent and predictable. Eb

Founded in 1969, ***ADAMAS*** *advises major European companies, institutions, public entities and governmental authorities on business and public law matters and assists them in litigation. In Mainland China, ADAMAS is the oldest existing foreign law firm licensed by the PRC Ministry of Justice to practice in the field of law. ADAMAS now has representative offices in Beijing and Shanghai, and partner offices in Chengdu, Guangzhou and Wuhan.*

IT'S A GAS

Investment opportunities in China's industrial gas market

Due to their wide-ranging downstream applications and impact on the overall market, industrial gases have been dubbed the 'blood' of industry. They are widely used in areas such as metallurgy, petroleum, petrochemicals, chemicals, electronics and aerospace. However, the current economic downturn in China has made it more challenging for companies and investors to determine where new opportunities are and growth prospects lie in China's industrial gas market. **Yong Teng**, **Yiru Lou** and **Webster Guo** of **L.E.K. Consulting** shed some light on where they may be found.

The market: maintaining rapid growth

Industrial gases consist of three major types: air separation gases (i.e. nitrogen, oxygen, argon), synthetic gases (i.e. hydrogen, carbon dioxide, acetylene) and speciality gases (i.e. ultra-high purity gases, electronic gases), with 50 per cent, 35 per cent and eight to 10 per cent market share respectively.

The global industrial gas industry (outsourced only) grew steadily, at 7.6 per cent per year in the last two years, and was valued at USD 98 billion in 2015. As the industrial gas market typically grows at twice the rate of GDP growth, we forecast that the market will continue to grow at 7.3 per cent from 2015 to 2018—which would put its 2018 value at USD 122 billion—due to rapid industrialisation of developing countries.

China's industrial gas market (outsourced only) has grown at an even faster rate of more than 10 per cent per year, from CNY 82 billion in 2013, to CNY 100 billion in 2015. And with China's per capita consumption of industrial gases still low compared to developed countries there is still considerable growth potential. We would expect China's industrial gas industry to maintain double-digit growth over the next two to three years, to reach CNY 135 billion in 2018.

Additionally, Chinese customers are increasingly outsourcing their gas supply (currently 55 per cent of gas is outsourced, significantly lower than the 80 per cent seen in developed countries), a trend that will create additional opportunities for gas suppliers in China.

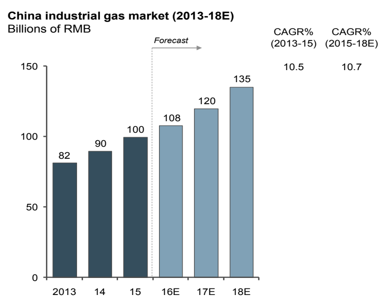


Figure 1: China's Industrial Gas Market

Competition: MNCs still hold the advantage, but locals are catching up

Four types of players exist within the industrial gas market:

- 'Big 4' multinational companies (MNCs) (Linde, Air Liquide, Air Products, Praxair): make up nearly half of the outsourcing gas market, each with revenues of over CNY 6 billion and over 50 factories in China.
- Tier-2 players, 5-7 large domestic (Yingde and Hangyang) and MNC (Taiyo Nippon Sanso, Messer) gas producers: own around 30% of the market with revenues of CNY 2-6 billion and 30-50 factories each.
- Tier-3, mid-sized companies, 20-30 domestic gas producers including Jinhong Gas, Shanghai Pujiang, Nantong Tianyuan, and Kaifeng Air Separation: own 10–15% market share with about 10 factories each in China.
- Lastly, there are over 1,000 smaller manufacturers making up the rest

Local players are still unable to compete with major MNCs in terms of both scale and technology. For example, Hangyang is the first domestic company that is able to offer medium-to-large-scale air separation units. However, Hangyang requires roughly 50 operators for its 80km^3/h (cubic kilometres per hour) unit, while Air Products only needs 16.

Some local companies are investing heavily in R&D and M&A to catch up. For example, Jinhong Gas developed the capability of mass production of 99.9999% purity ammonia in 2012, and quickly captured over 50 per cent market share in the electronics industry.

Downstream applications: attractive opportunities in the electronics industry

Among the major downstream application industries, we believe electronics is more attractive because of: 1) rapid growth in demand; 2) heavy reliance on specialty gas and advanced technologies; and 3) relatively limited competition.

Rapid growth in demand

Industrial gases are indispensable raw materials used in electronics manufacturing, from semi-conductors, flat panel displays, solar cells, to LED lighting. With increasing demand for data processing, automotive electronics and internet-related services, the semiconductor industry is expected to grow at 5.1 per cent per year in the next five years globally, of which China makes up roughly 30 per cent of the market and is the largest growth driver.

We therefore expect the speciality gas industry for the electronics market to grow up to 15 per cent per year in the next five years, to a value of CNY 13 billion.

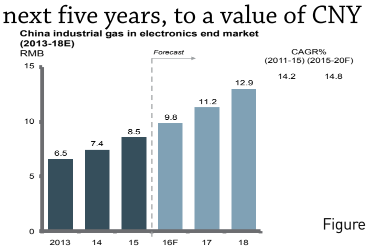


Figure 2: China's Electronics Industry

Heavy reliance on speciality gas and technology advancement

The electronics end-market relies heavily on the use of speciality gases in various processes including etching, film forming, doping and ion injection, and crystalline production.

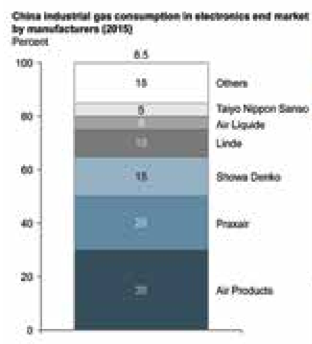
Unlike the metallurgy and chemical industries, the electronics industry holds industrial gas suppliers to higher standards:

- *Medium-to-large-scale air separation unit expertise*: deep know-how in site and pipeline design, strict safety compliance and strong operational support.
- *Adequate portfolio in specialty gases:* certain VLSI (very large scale integration systems) require over 50 kinds of specialty gases in 400+ manufacturing processes.
- *High purity level:* key processes require 6N purity (99.9999%), or even higher.

Relatively Limited Competition

Because electronic speciality gas has such high technical requirements, the market is mostly dominated by leading MNCs. Air Products, Praxair, Showa Denko, Linde and six other foreign manufacturers account for 85 per cent of the market share in China.

Local players are able to produce and supply high purity silane, ammonia, nitrous oxide and neon gas, and are expected to be able to provide chlorine (CL2) and arsenic in near future. Local speciality gas has a 30 per cent share in 8+ inch semiconductors. However, the majority of local gas suppliers only have small-scale operations and can't provide customers with a full range of services.



Electronics specialty gas portfolio

Manufacturers		Electronic gas: Hydride gas	Electronic gas: Fluoride gas	Electronic gas: Fluorocarbon gas	Standard gas: Single component	Standard gas: Multi-component	Ultra high purity gas
MNC	Linde	✓	✓	✓	✓	✓	✓
	Air Liquide	✓	✓	✓	✓	✓	✓
	Air Products	✓	✓	✓	✓	✓	✓
	Praxair	✓	✓	✓	✓	✓	✓
	Taiyo Nippon Sanso	✓	✓	✓	✓	✓	✓
Local	Yingde						✓
	Hangyang				✓	✓	✓
	Jinhong	✓	✓	✓			✓

Figure 3: Market dynamics of China's industrial gas market for the electronics industry

Growth options of local players

In a market where MNCs enjoy dominant positions, local gas companies may start looking into the following options:

- *Identifying the right segment:* local gas companies can enter the electronics gas market through segments which require lower technical capabilities and purity requirements (e.g., Jinhong gas now makes up 50% of the high purity ammonia market).
- *Cooperating with research institutes:* collaboration with institutes with deep expertise in specialty gases, such as Guangming Chemical Research and Design Institute (China's only specialty gas research institute) and the Liming Research Institute of Chemical Industry (Chinese leading fluoride research institute).
- *Look into M&A:* major MNC and local gas suppliers have continually strengthened their business through M&As. Local companies may begin to look to overseas targets with advanced know-how in specialty gases.

Investment considerations

There are still attractive opportunities for PE investment, especially in speciality gases. However, it is worth considering what the underlying market drivers are. What will be the future trends? What are customers' purchasing requirements and specifications? How competitive is the target's offering compared to market competitors? What investments are required to fulfil capability/resource gaps? Investors should scrutinise potential risks in order to develop mitigation plans accordingly. Eb

L.E.K. Consulting *is a global management consulting firm that uses deep industry expertise and rigorous analysis to help business leaders achieve practical results with real impact. We have a wealth of experience and insight in China's industrials sector and help business leaders make informed decisions and achieve tangible results through our professional expertise and rigorous analysis. Founded more than 30 years ago, L.E.K. employs more than 1,200 professionals across the Americas, Asia-Pacific and Europe. For more information, go to www.lek.com. The authors of Investment Opportunities in China's Industrial Gas Market, Yong Teng, Yiru Lou and Webster Guo, are all from L.E.K. Consulting's Shanghai Office.*

ARE WE PART OF THE PLAN?

China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces

On 7th March, the European Chamber released our first major publication of the year, *China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces*. In it, the Chamber analyses the potential impact of the China Manufacturing 2025 (CM2025) initiative on both European business and China's economy. This is accomplished through a review of the initiative's goals, which include achieving domestic and international market-share targets in ten industries, attaining self-reliance for key components and turning the concept of 'indigenous innovation' into reality. It also focuses on five of the ten industries covered by CM2025, including new energy vehicles, industrial robotics and semiconductors, and outlines the consequences of government intervention in these sectors.

The Chamber's study, *China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces*, had a significant impact upon its release, becoming a talking point among both policy-makers and political commentators.

At the time of writing it had received 100 original reports in domestic and international media, including *Wall Street Journal, New York Times, Financial Times, Reuters, Bloomberg, China Daily, South China Morning Post, Xinhua* and *Global Times*. Several media carried multiple mentions over separate articles, and *Wall Street Journal* published an op-ed piece written by President Wuttke (see President's Foreword on p. 5).

The report was also referenced by Minister Miao Wei of the Ministry of Industry and Information Technology during an 11th March press conference in which he said that after fully evaluating the report, he found some of the suggestions provided by the European Chamber to be helpful. He went on to say that the market is the driving force behind the CM2025 initiative and that China is not forcing companies to transfer technology in exchange for market access. He also highlighted that both domestic and foreign companies should be treated equally under the CM2025 initiative.

Below is the Executive Summary from the report.

Executive Summary

In May 2015, Chinese state planners launched another initiative to promote and support the development of advanced industries and technologies. It is clear that this latest attempt is not to be achieved through measures that will establish a market economy. Instead, government officials have tasked themselves with steering development and have handpicked the industries that they believe will drive China's economy in the future.

Titled China Manufacturing 2025, the plan sets ambitious goals for developing ten industries. The numbers attached to this initiative are staggering. In total, the Chinese central and local governments have announced hundreds of billions of euros of funding in the form of subsidies, funds and other channels of support.

There is no doubt that China's continuous, growing investments in research and development (R&D), and attempts to encourage its domestic industry to strive for quality and efficiency have a great deal of merit. However, the broad set of policy tools that are being employed to facilitate CM2025's development are highly problematic. This has already created problems for both China's economy and European business. Under recently passed legislation in the new energy vehicle (NEV) industry, for example, European business is facing intense pressure to turn over advanced technology in exchange for near-term market access; in the field of industrial robotics, government subsidies are contributing to overcapacity in the low- and mid-tiers of China's market; and in the information technology industry European business is seeing market access constrict further.

Despite the rhetoric of the Third Plenum's *Decision* of 2013—which strongly advocates market forces—it seems that the Chinese Government is determined to maintain a prominent role in guiding the economy. This is highlighted by the large number of domestic and international market share targets that have been set, along with references to 'indigenous innovation' included in the multiple planning documents related to CM2025. The appearance of 'indigenous innovation'—along with mentions of the need to realise 'self-sufficiency'—is particularly concerning – it suggests that Chinese policies will further skew the competitive landscape in favour of domestic companies. The European Chamber believes that all companies should receive equal treatment under Chinese law, regardless of their nationality.

It is plausible that the amount of state support that has been offered by the central and local governments for CM2025 will act as an early warning system to China's international trade partners as to where additional industrial overcapacity is likely to emerge up to 2025 and beyond. As with industries like steel and solar panels in the past, such overcapacity would run the risk of creating new, and exacerbating existing, tensions with China's international trade partners. This would be even more undesirable at a time when support for economic globalisation and free trade is facing growing opposition in some quarters. Furthermore, the government-driven approach to pursuing international acquisitions that align with industrial policy priorities may jeopardise Chinese companies' efforts to complete regular, market-based outbound investments.

In the short and medium term, CM2025 does present attractive opportunities for some European businesses to play an important role, though. Numerous European companies have already established partnerships with Chinese companies in this respect, to provide critical components, technology and management skills for areas covered by CM2025. However, in the long term CM2025 amounts, in large part, to an import substitution plan. Market access for European business can therefore be expected to shrink, especially in areas where Chinese companies are able to close the technology gap. The world would benefit from additional innovative Chinese products and services, but not at the expense of

inhibiting market forces through state-driven schemes.

The commitments made by President Xi Jinping during his speech at the World Economic Forum in Davos along with those made by the State Council in January 2017, to encourage investment in advanced manufacturing by foreign-invested enterprises (FIEs) and to ensure that these companies receive equal treatment under strategic policies and measures related to CM2025, were extremely positive. In the interests of mutual benefit, and to ensure that China reaches its full technological potential, the European Chamber hopes that China follows through on these commitments and that European business is indeed permitted to participate in this process and compete as a full and equal partner in an open ecosystem for innovation.

However, it is important to understand that even if CM2025 is opened to a wider range of participants, it will not guarantee that China is able to avoid the middle income trap. Of the 101 countries that had achieved middle-income status in 1960, only 13 ultimately reached high-income status. It was a failure on the part of the other 88 countries to undertake the necessary institutional reforms that led to their growth slowly stabilising, before eventually becoming stagnant. This would be a highly undesirable outcome for both China and the world economy, and one that is explicitly cautioned against in the 13th Five-year Plan, as well as in the interview with the 'authoritative person', published in *People's Daily* on 9th May, 2016.

Fortunately, China already has a blueprint that will allow it to carry out the restructuring necessary to avoid this outcome and to lay a strong foundation for its manufacturing industry – the Third Plenum's reform agenda, as committed to in the 2013 Decision. It would therefore be advisable for the Chinese authorities to now develop a roadmap that thoughtfully prioritises these reforms and to focus on the key competencies of government: facilitating innovation through support for basic research, building necessary infrastructure and establishing a fair and transparent regulatory environment for private business.

Ultimately, perfecting the market would do far more to ensure that China reaches its full potential for economic development and innovation than more old-school, expensive industrial planning ever could. In this ongoing struggle between 'masters and markets', European business is poised to contribute its expertise and invest in China's future. Eb

To download a copy of the report please go to: http://www.europeanchamber.com.cn/en/publications-archive/473/China_Manufacturing_2025_Putting_Industrial_Policy_Ahead_of_Market_Force

ON THE ROAD

The Chamber's European Tour 2016/2017

In February 2017, the European Chamber took to the road to present the Position Paper 2016/2017, together with a preview of our forthcoming study on *China Manufacturing 2025*—which was subsequently released on 7th March—to the European Union (EU) institutions in Brussels and cities of other Member States.

A European Chamber delegation of 26 people, led by Chamber President Jörg Wuttke, visited Brussels from 6th to 10th February. The delegation included vice presidents Bertrand de la Noue, Patrick Horgan and Sara Marchetta; States' representatives to the Executive Committee Massimo Bagnasco and Mats Harborn; President Emeritus Davide Cucino; Secretary General Adam Dunnett; and General Manager of the Shanghai Chapter Ioana Kraft.

The main purpose of this visit was to emphasise the ongoing importance of China, to elaborate on China's economic situation and outlook and to stress the need for continued high-level EU-China engagement.

Key messages

In addition to presenting the key messages from the Chamber's *Position Paper 2016/2017* and the China Manufacturing 2025 report, the European Chamber also communicated how the economic downturn and the slower-than-expected reform and opening up process are having a clear impact on EU business interests, and how there now exists a fear of increased protectionism. The Chamber emphasised the need for Europe to engage with China at the highest level in order to ensure that it delivers on its reform and opening up promises.

The uncertain political and economic situation following the recent US elections was also discussed, as it presents a potential opportunity to start a uniform action vis-à-vis China at the European level. While the US remains the EU's primary trading partner, the recent geopolitical changes, culminating in the cessation of TTIP negotiations, are shifting the focus to China and its potential for opening up its market.

It was also emphasised that Europe needs to focus more on economic diplomacy. This should not be a mere add-on. Instead, every Commissioner should have a fundamental business component at the top of their agenda. In addition there should be high-level events that allow for meaningful exchanges between top EU and Chinese CEOs.

In terms of the EU-China Comprehensive Agreement on Investment (CAI), the Chamber stressed that Chinese investment in the EU is more than double that of EU investment in China. This situation could lead to a deterioration of relations due to asymmetric market access conditions. Although the EU should keep a positive agenda with China, it now needs to be firm and apply further pressure.

Key outcomes

- Confirmation that China is a top priority.
- Extensive dialogue between Vice President Katainen and relevant Commissioners on the necessity of creating a more open business environment for foreign investors in China.
- Expected high-level visits to China: Commissioner Cañete (DG CLIMA & DG ENER), probably in March; Vice President for the Energy Union Šefčovič in July, and Director-General Demarty (DG TRADE).
- EU-China Summit to take place in Brussels around in June 2017.
- Invitation for the Chamber to participate in EU-China SME Policy Dialogue in Beijing.
- The European Commission asked Chamber member companies to continue to provide specific input that will be used to feed into the EU-China CAI.

Highlights

The delegation took part in approximately 70 high- and working-level meetings and two events. High-level meetings included visits to three vice presidents, seven commissioners, eight director-general level, two ambassadors and five members of the European Parliament. Working-level meetings included visits to officials from different EU institutions, think tanks and industry associations.

President Wuttke was invited once again to speak at a public hearing of the European Parliament's Committee on International Trade (INTA) and Delegation to China, which took place on 9th February. The primary focus of the INTA meeting was to discuss China's outlook in terms of welcoming foreign investments. President Wuttke gave an overview of the overall economic and business climate as well as developments over the last year. One message that resonated was the potential need to screen Chinese investments in strategic sectors when they are government-backed. Special interest was also paid to the recent capital outflow restrictions imposed by the Chinese Government.

The European Chamber met the following high-level officials, advisors and committees:

- Vice President Jyrki Katainen (Jobs, Growth, Investment & Competitiveness)
- Vice President Andrus Ansip (Digital Single Market)
- Vice President Maros Sefkovic (Energy Union)
- Commissioner Phil Hogan (DG Agriculture)
- Commissioner Gunther Oettinger (DG BUDGET&HR)
- Commissioner Karmenu Vella (DG ENV)
- Commissioner Pierre Moscovici (DG ECFIN & DG TAXUD)
- Commissioner Vera Jourova (DG JUST)
- Commissioner Vytenis Andriukaitis (DG SANTE)
- Commissioner Cecilia Malmström (DG TRADE)
- Cristina Lobillo Borrero, Head of Cabinet of Commissioner Canete (DG ENER&CLIMA)

From L-R: Secretary General Adam Dunnett, Chair of the Auto Components Working Group Serafino Bartolozzi, States' Representative Massimo Bagnasco, Vice President Bertrand de la Noue, President Jörg Wuttke, European Commission Vice President Jyrki Katainen, Vice President Patrick Horgan, President Emeritus Davide Cucino and Chair of the ICT Working Group Michael Chang

- Matej Zakonjsek, Head of Cabinet of Commissioner Bulc (DG MOVE)
- Edward Bannerman, member of the Cabinet of Vice President Katainen (Jobs, Growth, Investment & Competitiveness
- Denis Cajo, member of the Cabinet of Commissioner Mimica (DG DEVCO&ECHO)
- Advisor Joao Nogueira Martins, Cabinet of European Council President Tusk
- Secretary General Alexander Italianer (SG)
- Director General Jerzy Bogdan Plewa (DG AGRI)
- Director General Olivier Guersent (DG FISMA)
- Director General Lowri Evans (DG GROW)
- Director General Luc Lemaitre (DG REGIO)
- Director General Henrik Hololei (DG MOVE)
- Director General Xavier Prats Monné (DG SANTE)
- Director Anne Mettler (EPSC)
- Deputy Director General Marjeta Jager (DG DEVCO)
- Deputy Director General Mauro Petriccione (DG Trade)
- Committee on International Trade and Delegation to China, European Parliamant
- Irish Ambassador Declan Kelleher
- MEP Jo Leinen (Chair China Delegation, EP)
- MEP Cristian Preda Committee on Foreign Affairs, EP MEP Daniel Caspary (INTA Committee, EP)
- MEP Iuliu Winkler (INTA Committee, EP)
- MEP Frank Engel (Delegation to China, EP)
- HE Ambassador Yang Yanyi (Permanent Mission of PR China to the EU)

The European Chamber, together with BUSINESSEUROPE and the EU-China Business Association (EUCBA), also organised a large-scale event targeting the business community in Brussels. The speakers were President Wuttke, Commissioner Malmström and the Secretary General of Business Europe, Philippe de Buck.

This year's tour also marked a meeting in Brussels for the Inter-Chamber SME Working Group of the EU SME Centre. Representatives from European SMEs elaborated on the challenges and opportunities they encounter in China. The Bank of China also participated and focused its presentation on cross-border matchmaking for EU and China SMEs.

Capitals/cities

Delegates of the European Chamber presented the *Position Paper 2016/2017* to Member State authorities, PRC embassies in Member States, industry associations, think tanks and local business communities in Germany, France, Italy and Spain.

ADVOCACY IN THE SOUTHERN CAPITAL

The Nanjing Position Paper 2016/2017

Since 2015, the European Chamber has gradually been shifting the policy spotlight onto local issues, with the release of a series of local position papers. While continuing to advocate on behalf of European business at the central level remains vitally important, the sheer size of China and its vastly differing regions demands that more attention is paid to advocacy at the provincial and municipal levels. This latest local position paper, focussing on Nanjing and Jiangsu Province, includes recommendations on economic transformation and growth, policy reforms and fair enforcement, and the business environment.

Executive Summary

While the Thirteenth Five-Year Economic and Social Development Plan of Jiangsu (FYP) attempts to further much of the success that Jiangsu has experienced in recent years, it includes several components that concern European business. These concerns fall into one of two general categories: content and implementation.

The Nanjing Chapter holds serious concerns about how the FYP will be transformed from words into actions, having grown accustomed to hearing promises and grand plans in the past, but seeing limited action actually taken. The FYP therefore provides an opportunity for the government to demonstrate their resolve to further open up to the world, allow market forces to act freely and provide fair and equal enforcement of the law.

Economic Transformation and Growth

Jiangsu Province's China Manufacturing 2025 Action Plan remains unclear and seems to simply parrot national strategy rather than developing a clear and locally-relevant set of policies. Adapting the strategy to fit with local conditions, while aligning with international standards, would greatly improve the future prospects of the region's smart manufacturing industry.

Its smart manufacturing potential is further diminished by a lack of skilled labour that is equipped with the knowledge and experience necessary for high-end production. Very few vocational schools have partnerships with factories, and they struggle to transform theory into practice. A commitment to improving the quality of vocational education and establishing more quality apprenticeship programmes can go a long way towards addressing this problem.

Small and medium-sized enterprises (SMEs)—key drivers of economic growth and innovation—often struggle under the burden of unnecessary regulatory barriers, limited access to financing, unfair competition from SOEs and poor protection and enforcement of intellectual property rights (IPR). The potential for SMEs to make greater contributions to the local economy cannot be fully realised until these issues are all positively addressed.

Nanjing and the wider region benefit tremendously from a strong chemicals industry, which feeds into, and is essential to, so many other industries. However, there is still a lot of scope for improvement here too, such as aligning general and environmental protection standards with international ones and establishing solid communication platforms between the industry and regulators.

Policy Reforms and Fair Enforcement

Creating clear and consistent policies, following through on announced reforms, advancing the rule of law and communicating changes in policies and regulations with the private sector—all areas that European business has reported as currently lacking—will create a more predictable and open business environment and inspire greater levels of investor confidence.

The Nanjing Chapter applauds the recently announced reforms to the customs system. However, an unfortunate lack of follow-through on recent promises has left many cynical that such change will actually take place. By fully pursuing this new plan to its completion the local government would signal a greater willingness to earnestly implement reforms.

Current visa and *hukou* policies are limiting the ability of businesses to attract the talent they need. As provincial-level governments have a certain degree of control over visa requirements and *hukou* policy, Jiangsu should push through reforms that will help to attract a smarter, better-equipped workforce.

European companies—struggling against unequal treatment, a preference in the local economy for SOEs and a lack of market access—are finding it increasingly difficult to compete. Opening public procurement to the free market and working to level the playing field between SOEs and privately-owned enterprises (POEs) would go some way towards addressing this imbalance.

Business Environment

Air pollution remains a major concern for locals and foreigners alike, and it is extremely concerning that limited action has been taken to resolve the problem. Continuing progress in making pollution standards for coal power plants more stringent, fully enforcing all environmental standards and encouraging public transit should all be pursued.

Low quality and restricted Internet is another major source of frustration for both local and foreign companies. It limits proper research and certain communication with offices abroad and prevents connection to many essential websites. Improving Internet speeds through the creation of better infrastructure and by working closely with the central government to bring about change to national-level policies that regulate information would improve the operating conditions in Jiangsu a great deal.

Finally, all government departments throughout Jiangsu should look to improve their bilingual services. Currently, government websites—which are a first port of call for many potential investors seeking information about the region—are rarely updated and information is often inaccurately translated, which creates unnecessary problems. Addressing these issues will create a more welcoming and certain environment for both existing and potential investors. Eb

To download the Nanjing Position Paper, please go to http://www.europeanchamber.com.cn/en/publications-archive/472/Nanjing_Position_Paper_2016_2017.

EUROPEAN CHAMBER IN THE MEDIA

Chamber's CM2025 Report Dominates the News

The European Chamber held a press conference to release the report *China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces* at 10:30am on Tuesday, 7th March, 2017.

All of the major international media outlets, including *Financial Times*, *The Wall Street Journal*, *Bloomberg*, *The New York Times*, and *Reuters*, published articles on the report, with at least two mentions each. The China Manufacturing 2025 (CM2025) report also received coverage in domestic Chinese media outlets, such as *Xinhua*, *SCMP*, *Global Times*, *Yicai* and *Caijing*. As of 30th March, the Chamber had received 100 news reports related to this publication.

Articles from *Reuters* and The *Wall Street Journal* both highlighted that CM2025 aims to nationalise key industries instead of allowing market forces to operate, which can be expected to diminish competition, curtail market access for foreign companies and harm bilateral investment relations. European Chamber President Jörg Wuttke was also quoted on this topic in *The New York Times*, German media *Deutsche Welle* and Japanese media *Nikkei*.

'"The Chinese make it clear that they want to be the global champion" and are trying to carve out market share now, said Joerg Wuttke, the president of the European Union Chamber of Commerce in China, which wrote the report.' (The New York Times)

'"In the field of industrial robotics, government subsidies are contributing to overcapacity in the low- and mid-tiers of China's market; and in the information technology industry European business is seeing market access constrict further,"' it [the report] said. (Reuters)

'The EU chamber report, however, said the "Made in China 2025" policy threatens to undermine fair competition and hurt the Chinese economy by fuelling overcapacity, bad debt and inefficient and misdirected investment.' (The Wall Street Journal)

MIIT Minister Evaluates the CM2025 Report During the Two Sessions

On 11th March, Minister Miao Wei provided his evaluation of the report and responded to questions from *China Daily* about it at a press conference during the Two Sessions. While he stated that he found some of the suggestions provided in the report to be helpful, he also argued that the Chamber had misunderstood some aspects of the initiative. Specifically, he claimed that the market is the driving force in CM2025 and that China is not forcing companies to transfer technology in exchange for market access. Echoing the MIIT's public response, many Chinese media published articles detailing Minister Miao's comments.

'"The strategy and its related policies are applicable to all businesses in China, be them [sic] domestic or foreign," Miao Wei, minister of industry and information technology, said at a press conference on the sidelines of the annual parliamentary session. The remarks came after a lengthy report from the European Union (EU) Chamber of Commerce claimed that China's support for high-tech manufacturing would lead to worsening treatment for foreign companies, while allowing government-subsidized homegrown players to compete unfairly.' (*Xinhua*)

'The initiative, which was designed to promote high-end manufacturing in China, adheres to government-led, market-oriented principles, said Miao Wei, minister of Industry and Information Technology. "Foreign and Chinese enterprises will continue to be treated equally. We have never forced foreign companies to transfer technology," Miao said at a news conference on the sidelines of the annual plenary session of the National People's Congress. The remarks followed a report by the EU business group saying the push to upgrade industry will give Chinese companies an unfair advantage.' (*China Daily*)

Chamber Vice President Mick Adams Speaks on Brexit Bill

On 13th March, the UK Parliament put a Brexit bill to the vote, coinciding with the 45th anniversary of the establishment of diplomatic relations between Britain and China. On the same day, European Chamber Vice President and the Chair of the Shanghai Chapter Mick Adams appeared on *CGTN's World Insight* programme to discuss what Brexit will mean for China, the UK and the EU. Vice President Adams said that China could be drawn to the UK as it offers world-class services and openness to investment. He also mentioned that Brexit negotiations between the UK and the EU will be complicated but that hopefully the UK can maintain strong ties with China.

Chamber Secretary General Adam Dunnett discusses Two Sessions

On 5th March, during the opening session of the National People's Congress (NPC) in Beijing, Chamber Secretary General Adam Dunnett attended a live discussion on CGTN's Two Sessions Special. The discussion focussed on Premier Li Keqiang's government work report, in particular the topics of China's new economic growth target, structural reforms and overcapacity.

Secretary General Dunnett stated that China's 6.5 per-cent growth target is still ambitious and that it needs to implement supply-side structural reforms to ensure quality growth. He also welcomed President Xi Jinping's speech about opening up at the World Economic Forum in Davos, but called for more openness to foreign investment. "There are still large areas of the economy that the private sector in China can't get into," and in sectors like banking or insurance, foreign investors can only gain access through joint ventures, said Secretary General Dunnett.

EUROPEAN CHAMBER EVENTS GALLERY

BEIJING CHAPTER


1


2


3

Exclusive Dialogue with SAT (1)
On 15th February, Mr Lian Qifeng, Deputy Director General, Property and Behaviour Tax Department, State Administration of Taxation, provided the Chamber with an exclusive update on the newly adopted Environmental Protection Tax Law.

Book Launch: China's Offensive in Europe(2)
On 1st March, the Chamber hosted a launch event for *China's Offensive in Europe*, which studies the trends, sectors and target countries of Chinese investments in Europe.

China Manufacturing 2025: Trying to Plan What the Market Should Decide (3)
On 7th March, the European Chamber released its first major study of 2017 on the China Manufacturing 2025 initiative.

NANJING CHAPTER

1


2

Nanjing Position Paper Launch and Government Dialogue (1&2)
On 21st January, the Chamber released the *European Business in China – Nanjing Position Paper 2016/2017*. The launch was purposely coincided with the annual Jiangsu Government Dialogue.

SHANGHAI CHAPTER

1


2

China Outlook 2017: a change in tone for 2017? (1)
The China Outlook 2017 Conference took place on 14th February. Speakers and participants exchanged views on China's Economic Slowdown and the importance of reciprocity.

Crisis Communications in China: Learning from brands in the line of fire (2)
On 15th February, the Chamber hosted a seminar on crisis communications. Based on real cases, the speakers took participants through the development of one well-known crisis that played out in the media and online in


3


4

4th CSR CEO Talk: CSR vs Profitability VIP Talk with Continental (3)
On 24th February, 2017, the Shanghai Chapter hosted the 4th CSR CEO Talk where the discussion focused on best social practices and the impact on sustainable business operations.

China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces (4)
On 8th March, the Shanghai Chapter hosted a launch of our study on the China Manufacturing 2025 industrial policy initiative. Over 100 attendees and guests from member companies and consulates attended.Chamber, focusing on the top CSR trends for 2017.

TIANJIN CHAPTER


1


2

Factory Visit Series and Tour of Wuqing (1&2)
On 16th March, the Tianjin Chapter visited Atlas Copco's factory and then conducted a tour of the Sino-Europe Industry Park located in the Wuqing Development Area.

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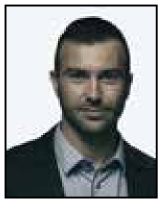
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