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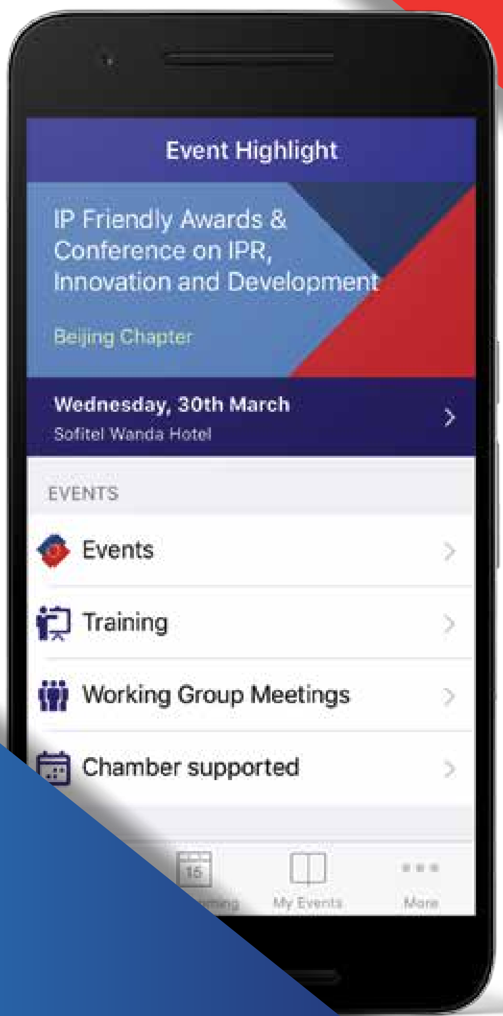

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Chief Editor
Jace Gilmore

Art Director
Zhengnan Cao

For European Chamber Membership:
National Member Relations Manager
Paula Mueller
Tel: +86 (21) 6385 2023
ext 114
pmueller@europeanchamber.com.cn

For advertising in EURObiz:
Advertising and Sponsorship Manager
Queenie Cheng
Tel: +86 (10) 6462 2066 ext 54
qcheng@europeanchamber.com.cn

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

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

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

Shenyang
Room 646, Sofitel Shenyang Lido,
386 Qingnian Street, Heping District,
Shenyang, 110004 P.R. China
沈阳市和平区青年大街386号丽都索菲特酒店 646 室
Tel: +86 (24) 6683 4376
Fax: +86 (24) 6683 4376
shenyang@europeanchamber.com.cn

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

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

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

Southwest – Chongqing
1-1, 23F, B4 Block, Chongqing Foreign Business District, 12 Yun Shan Nan Lu, Yubei District, Chongqing, China
中国重庆市渝北区云杉南路 12 号重庆涉外商务区 B4 栋 23 楼 1-1 室
Tel: +86 (23) 63085669
chongqing@europeanchamber.com.cn

Tianjin
41F, The Executive Center, Tianjin World Financial Center, 2 Dagubei Lu, Heping District, Tianjin 300020, PR China
天津市和平区大沽北路2号天津环球金融中心 41 层德事商务中心
Tel: +86 (22) 5830 7608
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PRESIDENT'S FOREWORD

China Must Stop Protecting its Own Companies, They Can Stand on Their Own Two Feet Now

Mats Harborn

President

European Union Chamber of Commerce in China

Highly innovative Chinese firms are now going toe to toe with their European competition and are reaching parity with, and even surpassing, global leaders in certain fields. In 2018, they passed an important threshold when, for the first time ever, a majority of European businesses said they found their Chinese counterparts to be equally, if not more, innovative than themselves.

International firms that rest on their laurels in China will quickly find themselves swamped by agile and efficient domestic firms, be they one of the 115 Chinese Fortune 500 companies or one of the many disruptive start-ups—including three of the world's five largest unicorns—found across the country.

Many of these firms are no longer content to flex their muscles in the domestic arena and are increasingly going out and entering other markets. Three years ago, Chinese outbound investment outstripped its inbound foreign direct investment (FDI). Since then, Chinese mergers and acquisitions have been grabbing headlines the world over, and some brands that were once known exclusively in China's home market are thriving in many places around the world.

The dynamism of the Chinese economy is undeniable. However, it stands in stark contrast to China's claim that it is a developing country; after all, it certainly no longer behaves like one.

There is a clear contradiction between its self-proclaimed 'developing' status and its dominance in multiple global industries, increasing leadership in cutting-edge fields, prolific outbound investment, and massive, ambitious projects like the Belt and Road Initiative. These demonstrations of economic strength are way beyond the means of most developed nations, let alone developing ones.

Despite the fact that Chinese companies are highly innovative, international enterprises are still being forced to transfer technology, with one in every five European enterprises in China reporting this as a condition for market access.

Domestic companies, and state-owned enterprises in particular, also continue to enjoy protection from international competition in the Chinese market that they no longer need. Unequal treatment has, for many years, forced European players to compete on an uneven playing field. Many Chinese businesses that are entirely independent of the government have proven they can compete both at home and abroad. Not only can they match their international counterparts, they can even teach them a thing or two.

Protection is also afforded to many Chinese enterprises by fencing off many sectors to outside competition. This is another example of a measure that is outdated and unnecessary. That so many Chinese companies have large footprints across global markets is indicative of their ability to compete on equal terms with the very companies that they are protected from domestically. This approach also has a large detrimental effect – by starving domestic companies of international competition, it blunts their capacity to innovate.

The extraordinary progress that China has made in the past two decades owes much to its integration into the multilateral trade and investment system. However, this system demands that participants accept responsibilities to uphold the global economic order.

In its earlier stages of development, any country would make the most of the rights of the system while being absolved of many duties. However, as a country's level of development increases, it can enjoy the same rights but it must also shoulder an equal share of responsibilities.

The convergence of global pressure and China's unfulfilled promises has created an imperative for China to reform and open its market, and to provide national treatment to international companies. This would lead to a surge of high-quality FDI, as there is no shortage of European companies lining up to increase their investments in China. They are just waiting for the right conditions.

This abridged version ran as an op-ed in the *South China Morning Post* on 20th June 2018 under the title, *China must stop protecting its own companies, they can stand on their own two feet now*.

OFFERINGS IN SMART PACKAGING

Exciting opportunities in e-groceries

Online grocery shopping is quickly becoming one of the fastest rising global trends and has created new opportunities for China, along with the rest of the world. Currently in its 11th iteration, the Tetra Pack Index annually provides information on the latest developments in the food and beverage (F&B) industry. In this article, **Tetra Pak** utilises a case study on China's dairy and beverage industry to illustrate the new and innovative changes that are coming with the adoption of smart packaging.

With the quick adoption of online grocery shopping. This year's Tetra Pak Index focuses on how brands can leverage the rise of 'e-groceries' to become more efficient, have stronger consumer relationships and, ultimately, grow their business.

In this new omnichannel world of grocery shopping, packaging will play an important role in response to the growth of online grocery shopping. Smart packaging technologies utilise unique digital codes that will take both online and off-line grocery shopping in exciting new directions over the next few years.

Four trends shaping the growth of e-groceries

The 2018 index highlights the following four key trends helping to shape e-groceries:

• Convenience

The main driver for online consumers using this new technology, is the constant need for products and services that can make a person's life easier and more efficient. This new trend in technology can help to accomplish this goal by providing opportunities for easy product replacement and convenient packaging.

• Sustainability

Putting pressure on the harms that come from using plastics, recognising the benefits that come from widespread recycling and awareness of the circular economy should continue to grow along with the use of online F&B platforms. Consumers want to know whether their favourite brands are 'doing the right thing' in their production and retail processes and by putting their information up online business are becoming much more transparent.

• **Personalisation and uniqueness**

The customisation and personalisation of products will increasingly become important differentiators for consumers going forward. This is accelerating the shift towards direct-to-consumer sales with as much as 80 per cent of companies that produce consumer-packaged goods predicted to migrate to this model by 2025.

• **Technology and performance**

'Super-fast delivery' in as little as 10 minutes is expected to have become widespread by 2025, pushing consumers to alter their behaviour to purchase goods more frequently and in smaller amounts, making the logistics side of a business much more complex. Supply chains will continue to be transformed by a raft of technologies, notably radio-frequency identification (RFID) and robotics, improving both the efficiency and transparency of the entire process.

The role of smart packaging

Smart packaging technologies that use different digital codes allow each and every product to be given a unique identifier. These codes can either be read by using a data scanning device or an ordinary smartphone, thus providing a vast amount of product information and opening up all kinds of possibilities.

E-retailers are calling for unique product identifiers that are compatible with automated technology used in the warehouse and distribution part of their business. Increased amounts of data and full traceability can help companies simplify business logistics and improve distribution efficiency to ensure real-time order fulfilment.

Case study: Adopt A Cow

"The rise of on-line grocery is a great opportunity for food and beverage brands, and packaging plays a key role in supporting their success. In particular, smart packaging helps drive greater transparency and efficiency in the supply chain, up and down stream, while also enabling a direct, interactive relationship with the consumer."

— Alexandre Carvalho
Director of global marketing services, Tetra Pak

Premium ambient white milk and yoghurt are growing areas for dairy in China, a market where concerns about food safety mean consumers particularly appreciate products that are fully traceable. As its name suggests, Adopt A Cow's innovative approach is to allow consumers to 'adopt' a cow for a year, so they know exactly where their milk is coming from. In return, they receive 60 cartons of ambient white milk per year. Adopters can scan a unique QR code to view 'their' cow via webcam, 24-hours a day, and even stay at the farm their cow is at for two nights a year. Seasonal and monthly plans are also available.

The company was financed via Kickstarter and all subscriptions and purchases were originally exclusively managed online, but now, distribution has been extended to offline stores. This product's price point is lower than premium ambient white milk, since the company claims its marketing approach saves on advertising costs, allowing them to provide both value for money and a high-quality product.

Conclusion

This type of technology creates an interactive experience with the consumer, which allows companies to have direct conversations with their customers to provide details on the product's source materials and nutritional facts. In addition, this new online platform can be used by companies to provide games, promotional material and environmental information as well. At the same time, with the use of digital codes providing valuable insights businesses can continuously improve the shopping experience and make it more personalised for the consumer. Eb

***Tetra Pak** is the world's leading food processing and packaging solutions company. Working closely with customers and suppliers, they provide safe, innovative and environmentally sound products that each day meet the needs of hundreds of millions of people in more than 160 countries. With more than 24,000 employees around the world, they believe in responsible industry leadership and a sustainable approach to business. Their motto, "PROTECTS WHAT'S GOOD™", reflects the company's vision to make food safe and available, everywhere. The Tetra Pak Index 2018 is based on consumer research conducted in the United States (US), United Kingdom, China, Saudi Arabia and Korea, a global market segmentation study, as well as interviews with e-retailers in the US, Europe and China.*

WHERE IS THIS FROM AGAIN?

by Andrew Zhang and Mireia Paulo

Using GI to protect European cheese and wine producers in China

A product's geographic indication (GI) indicates if it has the characteristics of the environmental or cultural conditions found in a specific area, region or territory. Even though there are methods to track where a product has originated from, some producers have misled consumers on where their goods were created, causing a brand's reputation to be called into question. In this article, **Andrew Zhang**, partner, and **Mireia Paulo**, director of the European-American Market, from **A&Z Law Firm**, provide the solution to this problem and advise on how to best protect the interests of European companies working with cheese and wine products in mainland China.

What is a GI?

There is no uniform definition for GIs or appellations of origin; however, according to the World Intellectual Property Organization, a GI is defined as the following:

"...a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin."

According to Article 16 of the 2014 China Trademark Law, a GI signifies the goods' place of origin for which the specific quality, reputation and other features are determined by the natural or cultural factors of the region.

China's GI protection system

GIs are protected in China and the 28 European Union (EU) Member States to avoid misleading consumers and to prevent unfair competition.

China created its GI system in the 1990s, with the former State Administration of Quality and Technical Supervision publishing its first regulation governing GIs, titled the *Protection of Designated Origin Products*. Recently, the Chinese Government promulgated a new set of regulations, some of which included the following:

- the *Provisions on the Protection of Geographical Indication Products*,
- the *Detailed Rules for the Implementation of the Provisions on the Protection of Products with Geographical Indications (For Interim Implementation)*, and
- the *Notice of the General Administration of Quality Supervision, Inspection and Quarantine on Issuing the Measures for the Protection of Foreign Geographical Indication Products*.

According to these regulations, an applicant needs to apply with the former General Administration of Quality Supervision, Inspection and Quarantine to protect their foreign GI products, however, that duty now lies with the State Administration for Market Regulation (SAMR). It is recommended that the relevant authority in the country or region of origin also support or refer the applicant. The business should bear in mind that not all countries or regions are recognised, only those that have been accepted by the Chinese Government can apply for GI product protection.

European cheese and wine product coverage under China's GI protection system

Fortunately for European companies, China and the EU have already established formal means of cooperating on the protection of GIs. Currently, there are 21 types of European products under the EU's system of protecting GIs (including four types of British products) that are also protected in China.

A further 79 applications have been accepted by the Chinese Government, covering 79 types of European products produced in 21 EU Member States, many of which include wine and cheese products.[1] We foresee most of these applications being approved by the Chinese Government in the near future.

If the European products exported to China are listed in the Chinese list of protected GIs, producers, industry associations and other communities from the place of origin can apply for the SAMR to use 'special signs' signifying a product's GI once it makes its way into China. After the applications are approved, the applicant (i.e. the obligee) can then take advantage of this system to safeguard their legal interests and promote their business in China.

Current European products with accepted GIs in China

FRANCE	• Cognac • Eau-de-vie de Cognac • Eau-de-vie des Charentes	**Wine**
	• Comté • Roquefort	**Cheese**
	• Pruneau d'Agen • Pruneau d'Agen mi-cuits	**Dried Fruit**
	• Champagne • Bordeaux • Graves • Margaux • Medoc • Pauillac • Pessac-Leognan • Pomerol • Saint-Emilion	**Wine**
SPAIN	• Sierra Magina • Priego de Cordoba	**Olive Oil**
ITALY	• Prosciutto di Parma	**Meat**
	• Grana Padano	**Cheese**
UK	• Scotch Whisky	**Wine**
	• West Country farmhouse cheddar • White Stilton cheese • Blue Stilton cheese	**Cheese**
	• Scottish Farmed Salmon	**Fish**

Sources: *A&Z Law Firm, 27th June 2018.*

Use of the special sign

The obligee can place their special signs

1. See the details of products in the link: http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjgg/2017/201706/P020170616334132075956.pdf

on the product, label, packaging or in its promotion, to show the difference between the products sold by them and similar products without the same indications. By differentiating one's products, sales may increase due to the customer's preference for the special qualities found in the obligee's product.

and management specifications; and

3. any use of misleading names or signs that are similar to special signs, words or patterns that are likely to mislead consumers, or behaviour that makes consumers mistake such products for the protected products

Senise Pepper, locally known as pepperoni, is an Italian fruit and vegetable product with a protected GI from Basilicata, Italy.
Photo: *Stefano Tammaro*

Infringements in the market

If the obligee finds that any of the listed activities below have taken place, they could report the infringement to the SAMR, along with the Administration for Market Regulation and customs authorities at the provincial level, prompting the government to investigate and punish any illegal action. Furthermore, the obligee could also file a lawsuit against the infringer directly in order to protect its interests.

Illegal activities that could be reported to the SAMR are as follows:

1. the unauthorised use or counterfeiting of GI names and special signs;

2. the use of a GI product's name that is inconsistent with the GI's standards

of a particular GI.

The protection of foreign GI may be cancelled by the Chinese authorities in the following circumstances:

(1) the protection has been cancelled by the country or region of origin,

(2) the protection has been cancelled by any Chinese judiciary authorities, or

(3) the product has seriously violated the relevant laws and regulations of the People's Republic of China.

The obligee must maintain the particular level of quality found in their GI products and use special signs in compliance with the relevant Chinese laws to avoid their protection being cancelled.

What should come first: trademark or GI registration?

If the GI application for the wine or cheese products has not yet been accepted or approved by the appropriate Chinese authorities, it is advisable to first apply for the trademark to avoid potential impediments. According to the Trademark Law, in the event that a trademark has been registered in 'goodwill', even if it contains a GI that misleads the public, such registration shall continue to be valid.

In conclusion, European companies that wish to export wine and cheese products—that come from a specific geographical region, to China—should register their GI, as it will help to prove the product's origin. The number of Chinese middle-class consumers is growing fast, and they are increasingly becoming concerned with food safety and quality, including where certain ingredients originated from. Chinese consumers are increasingly willing to pay a higher price for a better quality of product in order to improve their quality of life, and GIs increase consumer trust and help to identify these products. The protection system for GIs in China will bring added value to European products in the Chinese market by making them more competitive and simultaneously protecting the company's legal interests. Eb

__A&Z__ is a leading Chinese law firm, which employs over 55 experts consisting of attorneys, legal practitioners and business analysts across 11 jurisdictions. The Shanghai, Beijing, Dalian, Wuhan and Tokyo offices provide a full range of services covering foreign investment, overseas investment, competition and antitrust, intellectual property, mergers and acquisitions, and corporate restructuring, labour and social security, dispute resolution, compliance and corporate social responsibility, finance and capital markets, customs logistics and maritime commerce, and environment, health and safety.

DIGITAL GROCERY LESSONS FROM AMAZON

by Rob Wilson, Manny Picciola, Maria Steingoltz and Cherry Li

An examination of e-commerce disruption

It is known as the 'Amazon effect' or 'Ali effect' – the disruption that happens when e-commerce behemoths enter a new corner of the retail market. This new commercial marketspace is an internet-based model with online services integrated into offline experiences and logistics by utilising new technologies, such as big data and artificial intelligence. In this article, **Rob Wilson**, **Manny Picciola** and **Maria Steingoltz**, managing directors in **L.E.K. Consulting**'s Food and Beverage practice, along with **Cherry Li** from L.E.K. Consulting (Shanghai), outline these new e-commerce trends in the grocery landscape and what the implications may be for both the United States (US) and China.

On 16th June 2017, Amazon announced its United States dollar (USD) 13.7 billion acquisition of Whole Foods Market, a grocer with more than 460 brick-and-mortar stores in the US. In November 2017, a similar situation arose in China, with Alibaba's (Ali) USD 2.9 billion investment in Gaoxin hypermarket. Both deals sent shock waves through traditional retail sectors that were already struggling with razor-thin margins and cutthroat competition.

In both the US and China, e-commerce penetration of the food and beverage sector has been small in comparison with other sectors, such as electronics and clothing. As of 2017, the food and beverage retail sector only claimed approximately two per cent of online sales in the US, while in China it reached three per cent in 2016.[1] Internet sales will increase

1. https://www.kantarworldpanel.com/cn

globally, with China developing quickly due to its advanced mobile technologies, rising social media influence and changing consumer habits. Even with China's rapid pace of development, the experience of Amazon, a long-standing e-commerce company, is still worth noting for its impact on the grocery landscape and for its promotion of online-offline synergy.

The online land grab

Traditional grocery stores

Competition among grocery retailers had been escalating well before Whole Foods joined the Amazon portfolio. For decades, a typical store's net profit had hovered in the low single digits. Now, traditional grocery stores are feeling the pressure of 'food being everywhere' as other retailers (e.g. discounters and convenience stores) also turn to fresh and processed foods as a way to drive traffic in their stores.

Against this backdrop, grocery investors did not take kindly to the news of Amazon's acquisition of Whole Foods. While Amazon's own stock price stayed about the same, the stock prices of five other US retailers—Walmart, Costco, Sprouts, SuperValu and Kroger—fell an average of 15 per cent over the next two days.

With Whole Foods, Amazon gained hundreds of potential distribution hubs, as almost all US households, 33 million, are within five miles (mi) (approximately eight kilometres [km]) of a store. Among households with income over USD 100,000 per year, 33 per cent are within 3 mi (approximately 5 km) of a Whole Foods. Interestingly enough, food traffic at Whole Foods increased 33 per cent in the week after the acquisition.[2]

Online-offline integration

Amazon's next move was to integrate Whole Foods with its 'Prime' subscription service. Taking advantage of a strong overlap between the two sets of customers (see Figure 1), the company began offering to Prime members the ability to order pantry items online from the Whole Foods 365 house brand. Later, Amazon announced the rollout of 'Prime Now one- and two-hour grocery order delivery', plus an extension of its five per cent cash-back deal for Amazon Prime cardholders that make purchases at Whole Foods. As it increased the visibility of Whole Foods online, Amazon likewise raised its own profile at Whole Foods nationwide.

This is not uncommon in China. In 2017, Alibaba bought an 18 per cent stake in Lianhua Supermarket, a chain under the Bailian Group, which has 4,800 stores. In the following years, Ali plans to connect their online and offline platforms by aligning product prices, promotional activities and their supply chains to create one unified product. In addition, consumers may also have additional discounts if they pay with Alipay at a Lianhua Supermarket – similar to what Amazon is doing in the US.

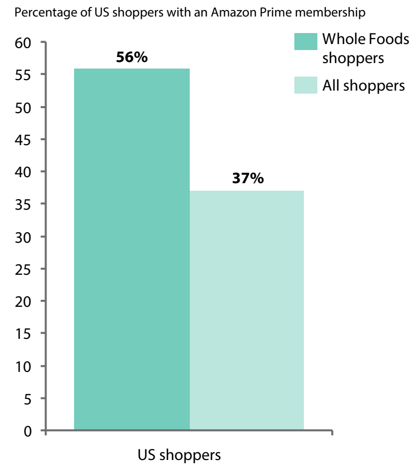
Up-and-coming business models

The integration of Whole Foods with Amazon Prime raised speculation that newer, more efficient grocery players would start emulating Amazon's model.

This has escalated an already-pitched battle for control over the 'last mile' of grocery distribution. Brick-and-mortar grocers, for example, are experimenting with store pickup of online orders. For

Figure 1

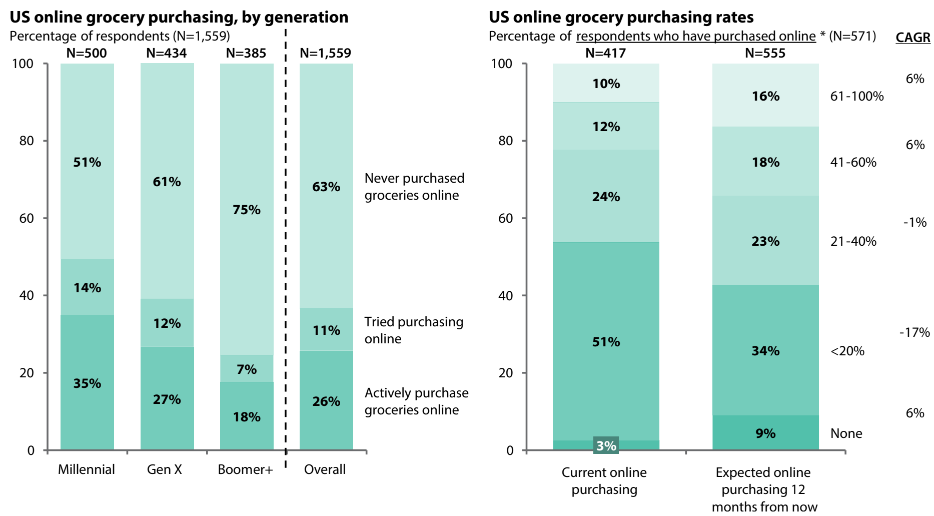
Percentage of Prime members among all US shoppers and Whole Foods shoppers



Source: *Bloomberg, Barclays, Harris Williams, L.E.K. Analysis*

Figure 2

US online grocery purchasing



Source: *L.E.K. consumer survey*

2. Data from research firm, Thasos Group

example, in 2016, Kroger added more than 420 kerbside pickup locations, now totalling 640.

The Chinese brick-and-mortar grocers are also actively trying new approaches. For example, Yonghui Hypermarket launched the Yonghui Life Initiative in 2015, which included the establishment of Yonghui Life convenience stores and the creation of an application (app). As of 2017, there were 172 Yonghui Life convenience stores across the country, each having approximately 800 stock keeping units (SKUs) of fresh food. Consumers can shop in-store or on an app and have their orders delivered to their homes in 30 minutes, within a distance of 3 km from the store.

On the delivery side, grocery stores are pairing with fleet services at a brisk rate, including Kroger and Uber, Walmart and Instacart, and Aldi and Instacart. Grocers are also eyeing meal-kit companies like Plated. In China, their counterparts are also integrating fleet and food services, with Didi incorporating food delivery services into their repertoire and Meituan stepping into ride-hailing.

Evolving shopping behaviour

Penetration of online grocery

That new generation—tech-savvy, experience-oriented and pressed for time—make up the future of digital groceries. By 2025, millennials will comprise 75 per cent of the US workforce, with most being willing to shop for groceries in whatever format best suits their lifestyle.

That could be any combination of online delivery, in-store pickup, automatic subscription or virtual supermarket. Today, roughly 40 per cent of consumers have used online or e-commerce grocery services (see Figure 2).

Personalisation and convenience

As e-commerce retailers continue to ease the path to making purchases and online grocery shopping continues to improve, consumers will gain a personalised, curated shopping experience via loyalty rewards, one-click purchasing capabilities and preset delivery specifications. This approach helps consumers shop more efficiently, leading to less browsing by repeat shoppers.

Crowdsourced dynamic shelf

A key advantage to using digital shelves is that they let consumers provide real-time feedback to retailers and manufacturers by rating and reviewing products, responding to questionnaires, and posting photos. Online reviews deserve their own mention, because shoppers often rely on these to make their purchasing decisions and are more likely to buy something new if the product has already been reviewed.

The imperative to adapt

Amazon's online shopping site, along with its Echo and Alexa products, use proprietary data capturing and analytical tools. These tools track each consumer's online activity, so Amazon can show advertisements, inventory and store layouts that more closely match the consumer's preferences. These tools also optimise distribution logistics for both the supplier and the consumer. Following this trend, Ali and JD.com are installed with similar tools to achieve the same end goal.

This has several implications for grocers. One, is that with the tools Amazon, Ali or JD uses they can create trend-forward, private-labelled products to feature on a digital shelf. Another is that digital grocers can offer wider brand and product assortments than their brick-and-mortar counterparts who are cost-sensitive to the physical spacing issues that come with shelving and inventory.

Meanwhile, fast-moving consumer goods (FMCG) manufacturers can study Amazon's efforts with Whole Foods to see what they can apply to their own digital grocery endeavours. At a minimum, firms will need to do the following:

1. Develop a comprehensive digital strategy – FMCG companies will need to strike a balance between what they require from their own website and what they require from an 'e-tail' partner model.

2. Optimise the digital shelf – Free from the constraints of physical space, firms must develop capabilities for managing their digital assets and showcasing their products for consumers. They also need to manage online reviews and feedback.

3. Rethink price pack architecture – Digital groceries offer the chance to create 'swim lanes' for different product configurations that are attuned to the needs of online shoppers and that mask product price comparisons with traditional channels.

4. Package for at-home delivery – Collaboration with leading suppliers is required to develop distinctive, efficient direct-to-consumer packaging. This includes rethinking external packaging, boxes, pouches and envelopes.

Much has changed since e-commerce companies' initial foray into the grocery market. With these changes in technology and e-commerce companies' willingness to embrace brick-and-mortar retail, the message for food retail becomes clear: in store or online, the world of groceries is going digital, and it is time for brands to get on board. 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. Founded 35 years ago, L.E.K. employs more than 1,200 professionals around the world. L.E.K. entered China in 1998 and has since become a leading commercial adviser.

FOOD SAFETY AND TRACEABILITY IN CHINA

by Shane Farrelly and Veronica Gianola

Modern solutions to modern problems

In recent years, China has aimed to overcome its reputation for being a hub of food safety violations, however, with the emergence of e-commerce, compliance and enforcement will mean it will continue to be an issue. In this article, **Shane Farrelly** and **Veronica Gianola** of **D'Andrea & Partners** outline advances in food traceability, new opportunities for international cooperation and legislative changes that affect food safety in China.

A history of unfortunate incidents

Food safety is an issue that affects the public health of everyone in China. A survey conducted by Edatapower.com, covering 10 provinces and municipalities in China, found that the most concerning issue for the Chinese people was the safety and origin of the food they consume on a daily basis,[1] trumping public security, traffic safety and medical safety.[2] The world has seen a number of food safety scares in recent years, such as the outbreak of *Escherichia coli* in Europe and of *Salmonella* in the United States. However, these incidents pale in comparison to the scandals reported on the Chinese mainland. Egregious examples include the infamous melamine tainted milk scandal of 2008, or the panic that arose when it was found that vinegar in China was contaminated with antifreeze (reportedly claiming the lives of 11 people). The list of scandals is clear for all to see; food safety is a persistent problem in the Middle Kingdom.

The legislative response

As international scrutiny grew, following a slew of food safety scares across China, a growing number of middle-class Chinese citizens became concerned about food safety, leading to poor consumer confidence in domestically made products. The short-term solution was to import foreign-made products, such as baby formula from Australia and beef from Ireland.

However, importing foreign made products was unsustainable, so in order to stimulate the consumption of domestically produced goods, regulatory reform was deemed to be vital. The revised Food Safety Law was passed by the Chinese Executive Committee on 24th April 2015 and came into force on 1st October 2015.

The Food Safety Law introduced more stringent regulatory controls on Chinese food companies and increased oversight over the entire supply chain, effectively improving safety measures for food production and traceability.

A QR code was printed on bottom of the infant formula cans by a Chinese dairy company.
Photo: *Wang Song, Xinhua News Agency*

Many provisions in the Food Safety Law consolidate and expand on pre-existing food safety restrictions, while also containing severer penalties. The newly-revised law also imbued local as well as regional regulatory food safety bodies with more authority to set harsher penalties for food safety violations and provide more guidance in the manufacturing and production process. More attention has been paid to food products that have recently seen scandal (e.g. baby formula ingredients must now be registered with the provincial-level Food Department Authority). The Food Safety Law also takes e-commerce online food distribution into account, making it subject to the same regulations that are tailored to more traditional channels of distribution.

New avenues of traceability

In the past few years, less-traditional means of tackling food safety issues have been used, as a number of companies have turned to blockchain technology to restore consumer faith.

The global tech-giant IBM, in conjunction with Walmart and experts in safety transaction security and authentication technology from Tsinghua University, aim to harness blockchain technology to improve food traceability, authentication and record keeping along a producer's supply chain – providing a permanent record of every transaction.

Blockchain, most commonly associated with the crypto-currency Bitcoin, is used to record every transaction and ensure that consumers are making payments correctly. Once this information is recorded and publicised it cannot be changed, thus ensuring an extra layer of security.

By utilising this technology in food traceability, blockchain will enable the digital tracking of food products from farm-to-table (i.e. from the suppliers to the consumers). It will digitally connect food items to the product's digital information by providing origination details, batch numbers, factory and processing data, expiration dates, storage temperatures,

1. www.china.org.cn/english/Life/137672.htm
2. Haiyan OY (2011), *Five top safety issues of Chinese in 2011*, *Insight China*

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and shipping details, among other types of data. All of this information will be entered into the blockchain at each step of the shipping process. The information on each transaction is agreed upon by all members of the particular business network, and once there is a consensus, the record of each transaction becomes permanent.

China's e-commerce platforms have followed suit, with JD.com, the country's second largest e-commerce platform, and the Inner Mongolian-based beef manufacturer Kerchin utilising blockchain technology to track the production and shipping of frozen beef.

Collaboration efforts in tackling food fraud

Food fraud is estimated to cost euro (EUR) 46 billion globally each year and is expected to rise. In an effort to tackle such issues, a EUR 10 million grant was given by the European Horizon 2020 program and China's Ministry of Science and Technology to establish the EU-China-Safe project, which consisted of 33 members (15 based in the European Union (EU) and 18 in China).

These members, which include many governmental agencies, research and development-based organisations, and major players in the food industry, will be tasked with improving food legislation, inspection, training and transparency, and facilitating trade between the EU and China.

State-of-the-art technologies will be available to improve food detection and safety across the trading regions. Some examples of which include an EU-China Joint Laboratory Network, collaborative surveillance systems, new traceability tools, advanced use of blockchain technology and new efforts in fraud prevention.

Conclusion

In order to address food safety and traceability issues, along with the realities of the global market, China must finally crack down on domestic violators in the food industry and engage in international collaboration to improve best practices and restore the trust of Chinese consumers. With China's rapid adoption of technology, such as blockchain and the Internet of things, it is reasonable to expect that in the future there will be a lower barrier to complying with food safety standards in China, especially as the costs of adopting technology are reduced over time.

However, with the food sector increasingly becoming globalised, risk still exists, and as supply chains lengthen fraudsters and violators may increasingly become more creative. An increased amount of collaboration and transparency is required in the adoption of these new technologies, and partnerships must be formed to yield substantial and long-lasting results.

Finally, it is worth mentioning the State Administration for Market Regulation was formed at this year's National People's Congress and will now be the new super-regulator inside the Chinese Government. They will now be the chief overseer of China's market, with a broad mandate to oversee food, drugs, consumer and industrial products, among other things. The functions of the State Administration for Industry and Commerce, the General Administration of Quality Supervision, Inspection and Quarantine, and the China Food and Drug Administration were incorporated into this new administration. Merging large bureaucratic institutions can be challenging, so those interested in food safety developments should pay close attention to further announcements as the government restructuring continues.

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NEW OPENINGS IN AGRI-FOOD

by Even Pay

A Trump card for EU food and agribusiness

The United States (US)-China trade war is putting pressure on China's commitment to further open its agri-food market. Rather than falling back on rhetoric that invokes 'self-sufficiency', there has been an unprecedented outpouring of support for agricultural trade liberalisation among domestic policymakers and expert advisors in recent months. In this article, **Even Pay** from **China Policy** outlines how European food producers are likely to benefit from this ratcheting up of trade tensions and what can be done to address market access issues and improve trade in food.

A historic shift

Achieving self-sufficiency in food production was a mantra for top leaders since the founding of the People's Republic of China. Supplying enough calories for about 20 per cent of the world's population, with less than seven per cent of its arable land, pushed natural systems to the brink. China's accession to the World Trade Organization (WTO) brought new challenges, as the State bought vast volumes of unwanted grain to keep farmers in business despite cheap, plentiful imports. China's economy has now grown to account for approximately 20 per cent of global gross domestic product, and incomes have risen with it, allowing consumers to seek out a diverse diet including ample meat, dairy and counter-seasonal fruits.

Policy rhetoric has steadily shifted to support rising imports in recent years and self-sufficiency goals have quietly slipped from the government's top agricultural policy document in 2016. Still, powerful interests in the rural sectors of China must be reckoned with each time trade in agricultural products is liberalised – two examples include the sugarcane industry and the domestic dairy sector.

Harvest of sugar beets in a field in the Netherlands.
Photo: *Ruud Morijn*

As trade tensions with the US rose, in early 2018, and products like soybeans and pork became bargaining chips, people feared that the conflict would lend credence to the arguments put forward by domestic trade protectionists and that the risks associated with trading agricultural products might be seen to outweigh the benefits.

Advancing trade in food

In response to the US-China Trade war, Han Changfu, minister of Agriculture and Rural Affairs, convened an inter-ministerial meeting on international cooperation over agriculture, in May 2018, and called for "a new pattern of broad agricultural opening-up at all levels". By early June 2018, dozens of officials and expert advisors went on the record supporting more agri-food imports.

Li Yong, vice director of the China International Trade Council's expert committee, stated that expanding imports, such as high-gluten wheat, helps to ensure food security and meet increasingly diverse domestic demand, allowing the domestic bakery industry to flourish. A long-time critic of depending on international markets for food, Li Guoxiang, researcher at the China Academy of Social Sciences' (CASS') Rural Development Research Institute, argued that rising imports would allow domestic agriculture to be more sustainable and competitive. Han Yijun, director of the China Agriculture University Ag Market Research Centre, explained how imports help to improve food security in the face of insufficient land and water resources. Mr Han speculated that more

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trade liberalisation in the agricultural sector was on its way.

Advantaging Europe's food and agribusiness

It appears that the Trump administration may serve as the perfect scapegoat for leaders that wish to open agri-food markets and shift the blame beyond China's borders. Leading policy advisors have pushed to open markets and diversify agricultural trading partners, cautioning that depending on one or two countries for a particular food product is risky. Already, it appears the country's sights are set on Europe. At a 7th July 2018 meeting of China and Central and Eastern European Countries (often referred to as the 16+1), officials unveiled a China-Bulgaria agricultural cooperation demonstration zone that is expected to act as an e-commerce logistics hub for agricultural trade between China and Europe.

In an editorial, Zhong Feiteng, a scholar at CASS, argued that the European Union (EU) might ally with China, due to strongly shared incentives in defending the multilateral trade system, and discussed China as an alternative market for European products.

Expanding market access

For governments, industry associations and businesses eager to gain or expand market access for food products, a window of opportunity is now open. Recent, swift progress on restoring beef market access to France and the United Kingdom, suspended for 17 and 22 years respectively, shows how products that were previously stuck in limbo may suddenly move forward. France will be the fourth country in the EU to regain beef market access, following Ireland, the Netherlands and Denmark.

Of course, food products will still need to comply with stringent safety and phytosanitary requirements to gain market access, and the required diplomatic negotiations for this process takes time. Chinese counterparts will likely prioritise larger volume trade partners and key products like beef, dairy, aquatic products and a few staple crops. Still, even if US-China trade tensions are resolved, 2018 will be a good time for expanding market access as policymakers hope to avoid over-reliance on any one trade partner for food.

Speeding up trade

In the short term, for governments, industry associations and businesses who have secured market access for their products, there are still dividends to reap. Already, Chinese buyers are looking to Europe for even more agricultural products – particularly in categories like processed meats, wine and dairy, where domestic demand is growing rapidly for high-quality goods. This is due to high tariffs on many US products and to uncertainty surrounding the increased-level of scrutiny at Chinese customs, a particular problem for spoilable products.

In the medium term, China's growing efforts to invest in trade infrastructure, actively engage with multilateral trade fora and participate in setting trade rules and standards that are linked with a growing reliance on agri-food trade and a need to diversify trade partners. This was on display as leaders committed to deepening trade relations at the EU-China Summit in July 2018. A late-June white paper from the State Council and the WTO describes China as a champion of "an open, transparent and inclusive" multilateral trading system in the face of US unilateralism and trade protectionism. Trade partners may disagree with that assessment, but the intent to become more open, transparent and inclusive in trade is there.

In a more practical sense, this will translate into investing in ports, roads and rail links along China's Belt and Road, along with clarifying the rules governing the expansion of cross-border e-commerce and other digital trade channels and simplifying certification and accreditation processes around food quality and safety. New Zealand was the first to sign an agreement on the mutual recognition of organic food certification standards in 2016, and in May 2017, a memorandum of understanding was made between China's Certification and Accreditation Administration of China and the Danish Safety Technology Authority to move towards mutually recognising one another's organic food certification systems. Eb

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A NEW OPPORTUNITY

by Daniel Pedraza

Why the US-China trade war could benefit European food industries

The United States (US) has engaged in a worrying trend that includes the pulling out or renegotiation of major international agreements alongside aggressive actions on trade. Recently, China has been in the current US administration's crosshairs and this has affected the importing and exporting of different goods across the board. While this recent change in trade relations is unfortunate, it does provide a new opportunity for European countries to engage China. In this article, **Daniel Pedraza** from **Eibens**, outlines how Europe can best fill the gap created by the US on trade.

Since the beginning of the US' presidential campaign in 2016, President Trump has repeated multiple times how important it was for him to reduce the trade deficit. He intends to do so by either renegotiating or pulling out of multilateral agreements, such as the North American Free Trade Agreement or the now extinct Trans-pacific Partnership, and applying import tariffs to a number of products coming from countries that have a large trade surplus with the US.

The US trade deficit with China hit a record high in 2017, standing at United States dollar (USD) 375 billion.[1] This prompted the Trump administration to present a list of demands to the Chinese Government that included reducing the trade deficit by at least USD 200 billion by 2020.[2]

On 22nd March,[3] President Trump announced the measures his administration was planning on taking in response to China's 'unfair trade practices'. These actions included raising tariffs to USD 50 billion worth of Chinese imports. A couple of weeks later, the US released a list of 1,333 products from China that would be hit with an additional 25 per cent tariff, targeting information communications technology, robotics, machinery and aerospace industries.

China responded by announcing one day later[4] that retaliatory measures would be applied to 106 American products—worth an equal amount of imports—if the US would follow through on their trade actions. China proposed retaliatory measures that target agricultural products, automobiles, chemicals and airplanes.

In mid-May it looked like the trade dispute would be put on hold, however, after a disappointing joint statement[5] by both countries, which failed to provide any concrete changes to their trade policy, a trade war seemed unavoidable.

After reviewing the proposed tariffs, the US altered the list of products that would be affected and sorted them into two categories: the first contained 818 products worth USD 34 billion and the second contained 284 products worth USD 16 billion. The former came into force on 6th July, while the latter still has no proposed date for its implementation.

China's response did not take long.[6] Just one day after the US measures were implemented, it also published two lists of products that targeted imports for a similar amount. The first list included 545 products,[7] which consisted almost exclusively of animal feed and food and beverages. Since 6th July, China applied an additional 25 per cent tariff on US imports, including meat products (beef, pork, poultry and offal), fish, dairy, vegetables, fruits, grains, fodder, whiskies, tobacco, cotton and cars.[8] The second list includes 112 harmonised system (HS) codes[9] worth USD 16 billion and will come into force if the US implements its new batch of products that are currently under review.

It is not only about tariffs

Raising tariffs on commodities and 'commodity-like' products such as meat, dairy or fish has an enormous impact, not only in China and the US, but worldwide. However, China cannot continue to raise tariffs, since it only imports approximately USD 130 billion worth of goods from the US, a modest amount in comparison with the USD 505 billion in goods that are exported to the same country. Regarding the trade dispute, China has more tools in their arsenal besides raising tariffs.

1. Non-tariff measures – It has been reported[10] that Chinese authorities are slowing down customs clearance for US products. For some products, such as fruits, this presents two main issues: it shortens the shelf life of products after clearing customs and increases storage (refrigerated) costs for the importer.

2. The possibility of boycotting American products is very real – It would not be the first time that a dispute with another country ends up in an unofficial boycott.[11,12,13&14] It happened in 2017 with South Korea after the US installed the Terminal High Altitude Area Defence anti-missile system on Korean soil. Automakers reported a 64 per cent year-on-year slump in sales, the number of Chinese tourists was slashed in half[15] and the distribution giant Lotte was forced to close down 87 of their 99 malls[16] due to several alleged "fire hazard and safety inspections." The Philippines,[17] Japan and Norway[18] also suffered a Chinese boycott in recent years with varying degrees of intensity.

3. Favouring other countries over the US – As a result of increased tariffs and the above-mentioned measures, Chinese imports of US products will certainly decline. However, China still needs these products, so it needs to find other countries to fill the gap in imported goods. In response, China will sign export protocols that

1. https://www.census.gov/foreign-trade/balance/c5700.html
2. https://www.washingtonpost.com/news/wonk/wp/2018/05/04/trump-is-asking-china-to-redo-just-about-everything-with-its-economy/?noredirect=on&utm_term=.1334b8f4a998
3. https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/march/president-trump-announces-strong
4. http://english.mofcom.gov.cn/article/newsrelease/significantnews/201804/20180402731963.shtml
5. https://www.whitehouse.gov/briefings-statements/joint-statement-united-states-china-regarding-trade-consultations/
6. http://english.mofcom.gov.cn/article/newsrelease/significantnews/201806/20180602757681.shtml
7. http://images.mofcom.gov.cn/www/201806/20180616015345014.pdf
8. Full list (545 HS codes): http://images.mofcom.gov.cn/www/201806/20180616015345014.pdf
9.Full list (112 HS codes): http://images.mofcom.gov.cn/www/201806/20180616015405568.pdf
10. https://www.scmp.com/news/china/diplomacy-defence/article/2154123/china-us-trade-dispute-turned-sour-cherry-traders-weeks
11. https://www.ft.com/content/18ced918-89c7-11e8-bf9e-8771d5404543
12. https://www.cnbc.com/2018/06/20/chinas-boycott-of-us-goods-remains-a-real-threat.html
13. https://www.politico.com/story/2018/06/20/china-trade-tariff-trump-635413
14. https://www.straitstimes.com/asia/east-asia/chinese-urged-to-boycott-us-firms-amid-trade-tensions
15. https://money.cnn.com/2017/08/30/news/economy/china-hyundai-south-korea-thaad/index.html
16. https://www.ft.com/content/647f8c04-ee3f-393b-9bb0-4beff1e259fb
17. https://www.bbc.com/news/world-asia-china-36780967
18. https://www.ft.com/content/c7a2f668-2f4b-11e7-9555-23ef563ecf9a

grant quicker market access to new countries, will lower tariffs on select products for others,[19] or will actively encourage and promote the use of other countries' products in Chinese companies.

In summary, Chinese importers pay a lot more, wait longer for products to clear customs and face a potential boycott of US products. They are clearly motivated to change suppliers, and for many of them European producers will be the best alternative.

How could European companies benefit?

Taking swine meat as an example—the European Union's (EU's) largest export to China that will be affected by the new US tariffs—this can be viewed as an economic opportunity for European food manufacturers. In 2017, China reported pork meat imports from the US totalled USD 286 million and pork offal totalled USD 874 million. If we exclude the US, 80 per cent of China's pork products come from EU Member States. Since US swine will no longer be competitive, European pork manufacturers have a USD 1 billion gap to fill.

80%

of China's pork products come from EU Member States.

However, that might not be the greatest opportunity for EU meat producers. China is the largest pork producer in the world by far (about 48 million tonnes in 2016), importing less than five per cent of the total amount it consumes. Since the price for animal feed in China is rising due to increased tariffs on soybean, sorghum and alfalfa feed, the cost of domestically produced pork may increase as well.

19. https://www.reuters.com/article/us-usa-trade-china-soybeans/china-drops-tariffs-on-animal-feed-from-asian-countries-as-u-s-dispute-escalates-idUSKBN1JM0NA

When this happens, China will import at a higher price and the volume of imports will grow significantly.

Is the trade dispute already affecting imports?

Since March 2018, China does not publish trade data, making it difficult to check the impact current trade tensions are having. Instead those following the trade dispute are having to rely on data being reported by the exporting country and do a comparison. This results in a lack of consistency in the trade data and the reporting methods not being as accurate as they need to be.

As of late July 2018, both the US and the EU have published provisional trade data through May 2018. This is before the new tariffs on US products came into force, but after the retaliatory measures were announced (at the end of March). Continuing with the swine meat example, pork meat exports, (HS code 0203) for the first five months of 2018, were analysed from both the US and the EU to China.

During the first quarter, US exports grew by 24.6 per cent in value and 13.1 per cent in weight, while EU exports shrank by 13.3 per cent and 13.2 per cent respectively. In the following two months, US exports decreased 21.1 per cent in value and 23.3 per cent in weight, while EU exports expanded by 0.5 per cent and 11.3 per cent respectively. This signalled a clear turning point in China's imports, even before the new tariffs kick in. One can only expect this trend to intensify throughout 2018.

Where are the opportunities for European exporters?

There are opportunities across the board, since the US is a major food supplier. As already explained, meat producers will benefit the most because of the compound effect of removing a major supplier from the market and the increased cost of China's domestic production.

Fruit is another category where EU exporters can benefit. The US is practically the only alternative to European growers, since seasonality reduces the number of competitors. On the other hand, to be able to export, each exporting country must have in place an export protocol with China for each fruit, which reduces the potential impact the dispute may have. Currently, the US is a leading exporter of apples, oranges and plums, fruits that one or more EU Member States are allowed to export. The US also exports cherries in great quantities, indicating that new export protocols may be signed since many countries in the EU can produce it in large quantities.

Each year, the US supplies more than USD 1 billion worth of aquatic products. While European countries lag behind in this category, opportunities will arise. Cheese is another export for which both regions compete. In 2017, China imported USD 60 million from the US and USD 87 million from the EU. Processed cheese will offer the most opportunities.

Conclusion

European food industries now have a unique opportunity to gain market share quickly and inexpensively. It is uncertain how long the trade dispute will last, but if markets are reshaped, it will be a long time, if ever, before US exporters re-gain their equivalent market position. Eb

Daniel Pedraza *is the China director of* ***Eibens****, a Beijing-based consulting firm specialising in China's agriculture and food and beverages sectors. They provide trade compliance, business intelligence, marketing and business development services to European trade promotion organisations, industry associations and private companies.*

EXPORTING FOOD TO CHINA

by David Ettinger and Dai Yin

The Challenges Continue

Greater attention has been put on China's trade relationship due to the country's recent disputes with the United States (US); however, a pressing issue that is not gaining enough attention has been with China's import/export policy. Having a practical policy for checking foreign countries' food products for safety-related issues is extremely important. In this article, **Keller and Heckman LLP** Shanghai Office's Chief Representative **David Ettinger** and Associate **Dai Yin**, address why companies should be mindful of non-tariff requirements in China.

Amid the heated trade tensions between China and the US, it is a good time to remind ourselves that, while the Chinese Government is raising tariffs on various foods, such as wine, nuts, soybeans, meat, and tobacco, one also should be mindful of China's non-tariff regulatory requirements. The economic impact from higher tariffs often can be outweighed by the inability to get products past the port of entry, if the products are deemed to be non-compliant under China's food laws and regulations. The impact can go beyond the existing shipment, resulting in delays and additional requirements, even on subsequent shipments. In fact, depending on the violation, the authority may add companies to import databases that will put them under stricter regulatory scrutiny.

Inspectors from China's Inspection and Quarantine Bureau are examining imported salmons at the Beijing airport.
Photo: *Zhang Chenlin, Xinhua News Agency*

For example, last month, the General Administration of Customs (GAC) released the latest *Notification of Safety Risk Warning for Imported Food*, the so-called 'blacklist' of overseas food manufacturers,[1] exporters[2] and local food importers.[3] This risk warning notification was issued following the former General Administration of Quality Supervision, Inspection and Quarantine's (AQSIQ's) *Detailed Implementing Rules for the Administration of Bad Record of Imported Foods (Decree No. 43/2014)*.[4]

Under the former AQSIQ's *Decree No. 43/2014*, if a food producer or operator is blacklisted due to importing non-compliant food products, China's GAC can implement, for a certain period of time (typically 6 or 12 months), additional safety control measures – such as requiring importers to submit additional documents to the authority.

In the latest GAC notification, 58 food producers from Europe were included on the blacklist and are subject to various control measures when exporting to China, such as having to submit additional testing data, forcing their local importer to meet with the responsible Chinese customs authorities, and requiring letters of guarantee on their packaging or labelling. Such control measures typically are applied to each batch of the specified food products sold in China.

Assuming no new safety or quality concerns are reported upon expiration of the additional control measures, the blacklisted producer/exporter can apply to the responsible agency at its home country or region for the removal of those measures. Upon verifying the producer's/exporter's application, the foreign agency may request that the GAC lift the restrictive measures. Afterwards, the GAC will issue its decision based on whether a food safety risk persists.

In addition to measures like the blacklist, China has been considering a longer-term plan that focuses on having batch-by-batch certification by the competent authorities in the exporting country/region to ensure that food exported to China is safe and of suitable quality. The intent is to establish a linkage between the competent authorities of the exporting country/region and China. For instance, last summer, China notified the World Trade Organization (WTO)[5] of its draft *Measures for the Administration of Certificates Attached to Foods Exported to China* (*Measures*)[6] and proposed to enforce the *Measures* starting 1st October 2017. However, on 25th September 2017, China filed an addendum to the WTO in which it proposed a transition period of two years for implementing the certification requirement, extending the deadline to enforce certificates to 30th September 2019.

Pursuant to the draft *Measures*, the food importer shall attach a certificate, issued by the competent authority of the exporting country/region, to every batch of food in order to show that each batch is being overseen by the competent authorities

1. Warning Notice on safety Risk of Imported food and cosmetics (Overseas Producer Companies), http://www.customs.gov.cn/customs/jyjy/jckspaq/fxyj/1893389/index.html
2. Warning Notice on safety Risk of Imported food and cosmetics (Overseas Exporter Companies), http://www.customs.gov.cn/customs/jyjy/jckspaq/fxyj/1893395/index.html
3. Warning Notice on safety Risk of Imported food and cosmetics (Importers), http://www.customs.gov.cn/customs/jyjy/jckspaq/fxyj/1893375/index.html
4. AQSIQ's Announcement on the Publication of Detailed Rules for the Administration of Bad Records of Imported Foods, http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/zjgg/2014/201404/t20140414_409200.html
5. See Notification G/TBT/N/CHN/1209, https://docs.wto.org/dol2fe/pages/FE_Search/FE_S_S009-DPaspx?language=E&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True&CatalogueIdList=236989&CurrentCatalogueIdIndex=0&FullTextHash=371857150
6. Measures for the Administration of Certificates Attached to Foods Exported to China (draft), http://jckspaqj.aqsiq.gov.cn/gksqjdf/201706/P020170608531687216476.pdf

One cannot ignore the possibility that, by failing to comply with the certification program, a company could soon find its way onto the blacklist. Thus, while the focus over the past few months has been on tariffs, companies should remain mindful of non-tariff requirements that often have a greater impact on a company's brand and future exports to China.

of the exporting country/region and is eligible for human consumption. Failure to submit such a certificate may result in the rejection of the imported food at the port of entry.

Food safety risk has been one of the key factors China considers when it develops its food management system and designs food-related policies. For example, certain food categories with comparatively high safety risk, such as meat and dairy products, are already subjected to certification requirements if they are exported to China. Unlike these already adopted food safety control measures, which classify foods based on their assessed safety risk, the proposed certification program applies to every food product that is imported in China without distinction.[7] This proposed mechanism has been criticised as lacking scientific justification and may unnecessarily burden the industry. Furthermore, in practice, it is uncommon for a national or local agency to vouch for the safety of specific batches of food. The impracticality of this has led several national governments to urge China to reconsider this program and exclude some low-risk products (such as spirits, biscuits and confections) from having to be certified under the *Measures*.

Although due to the ongoing government restructuring, the enforcement of this certification program might be further delayed,[8] as the 2019 deadline is fast approaching, some countries are negotiating with China to identify an acceptable certificate template in order to export to their country. In fact, templates have already been adopted in the certification of high-risk food products based on agreements between the exporting country and China and may be referenced in the future when developing a general food certificate. For example, dairy products that are exported to China from France must be accompanied with a sanitary certificate issued by the French Ministry for Agriculture and Food (MAF). The content and format of this certificate has been reviewed and approved by the MAF and the former AQSIQ.

Given the above, it is important for individual food producers, trade associations, etc., to keep working with their national or local governments to understand, monitor and prepare for the 30th September 2019 implementation date. Perhaps future negotiations will result in a more practical application of the certification programme, so China can continue to ensure the safety of imported foods, while putting in place requirements that are more feasible for the food industry to meet.

Depending on how this new certification program is finally implemented, in practice, it will likely create new challenges for the food industry and foreign governments. One cannot ignore the possibility that, by failing to comply with the certification program, a company could find its way onto the blacklist. Thus, while the focus in the media over the past few months has been on tariffs, companies should remain mindful of non-tariff requirements that often have a greater impact on a company's brand and ability to efficiently export products to China. Eb

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 chief representative at the firm's Shanghai office, is listed in The Best Lawyers in America 2016, 2017, 2018 and 2019 (FDA Law).*

7. Under Article 12 of the draft Measures, food imported as samples, gifts, food for display, food in small amount related to trade with Taiwan or border trade, food for foreign consulates use or duty-free operation are exempted and subject to special rules.

8. For more information about the Chinese Government's restructuring plan, please visit: https://www.khlaw.com/Chinas-National-Peoples-Congress-Passes-Reshuffle-Plan--to-Establish-New-Food-and--Food-Related-Agencies.

EUROPEAN CHAMBER ADVOCACY HIGHLIGHTS

16 JULY

BEIJING

European Chamber Takes Key Role in EU-China Business Roundtable to Raise Concerns with Political Leadership

President Mats Harborn speaks at the EU-China Business Roundtable.

On 16th July, European Chamber President Mats Harborn led a delegation of European business leaders to participate in the European Union (EU)-China Business Roundtable, part of the larger EU-China Summit, and addressed a variety of concerns with Chinese Premier Li Keqiang and EU President Jean-Claude Juncker. The European leadership spoke on the importance of maintaining and improving the global economic system and took note of both the progress and shortcomings of China's reform agenda. Commissioner Malmström directly referenced the recently released *18 Months Since Davos How China's Vision Became a Reform Imperative* as well as the *European Business in China Business Confidence Survey 2018* (*Business Confidence Survey 2018*) in her statements, calling for greater reciprocity and a level playing field for European firms operating in China.

Rather than delivering a speech, Premier Li asked European business leaders to outline some specific examples of the challenges they face. One member expressed concerns over the often lengthy and burdensome administrative processes that complicate business in China. Another member expressed concerns about access to cutting-edge technology, like intelligent connected vehicles, and frustrations over lead times. Premier Li responded that these issues will be followed-up on, which would be in line with his consistent efforts to try and optimise the local business environments.

In his speech, President Harborn noted several areas where meaningful progress has been made, before expressing concern that many shortcomings in the reform agenda still remain. President Harborn argued that, rather than relying on the 'old policy toolbox', China should modernise the regulatory environment and legally enforce the equal treatment of international firms, especially in areas that fall under the China Manufacturing 2025 initiative. He went on to state his belief that there are sincere efforts being made in the upper levels of government to further reform and open up China, but these efforts rarely trickle down to be implemented locally. Finally, President Harborn indicated his hope that the reform agenda would be invigorated and expressed his desire for improved communication with the Chinese leadership on these issues.

As part of the broader negotiations that took place at the EU-China summit, several key announcements were made. First, market access offers were exchanged for the Comprehensive Agreement on Investment, which needs to be assessed in greater detail by both sides. Second, negotiators reached a basic agreement on geographical indications, an important issue for European producers, particularly those in the agriculture, food and beverage sectors. Third, a joint EU-China working group to address potential reforms to the World Trade Organization will be established.

The European Chamber delegation welcomed these announcements and expressed hope that should these reforms be realised, meaningful opportunities would arise for European companies operating in China. Eb

22 JUNE

HEBEI

Chamber Discusses EU-China Cooperation at Xiongan New Area Visit

European Chamber President Mats Harborn speaks with Hebei Deputy Governor Chen Gong.

On 22nd June, Mats Harborn, president of the European Chamber, led a delegation to visit the Xiongan New Area and met with Chen Gang, deputy governor of the Hebei Provincial Government and head of the Xiongan New Area Administrative Committee, along with other officials from the Hebei Provincial Government and the Xiongan New Area Administrative Committee.

Deputy Governor Chen complimented the Chamber on its significant role in promoting EU-China cooperation and encouraged the Chamber to get more involved in the planning, construction and development of the Xiongan New Area. The Chamber agreed with pre-existing plans for turning Xiongan into a green city and a hub for innovation. President Harborn added that opportunities in Xiongan should go beyond just surface-level cooperation and more direct activities, such as public procurement and construction, should be open to international firms as well. Eb

25 JUNE

BEIJING

Chamber Briefed on 7th EU-China HED by Commission Vice President Katainen

Representatives from the European Chamber Advisory Council meet with high-level European Commission delegation led by Vice President Katainen.

On 25th June, a small delegation led by Mats Harborn president of the European Chamber, met with European Commission Vice President Jyrki Katainen. Vice President Katainen was in Beijing to meet with Premier Li Keqiang and Vice Premier Liu He as part of the 7th High-level Economic and Trade Dialogue (HED) between the European Union (EU) and China.

The Vice President briefed the delegation on some of the key points made during the dialogue, such as news that the EU and China will exchange market access offers at the EU-China Business Summit as part of their ongoing negotiations towards a Comprehensive Agreement on Investment. Vice President Katainen also informed Chamber representatives that the EU and China would be ready to sign a Memorandum of Understanding on the circular economy at the summit.

Vice President Katainen asked industry representatives about the 'on-the-ground reality' and how the European Commission could continue supporting European businesses operating in China. The Chamber delegation shared their concerns and insights on behalf of the banking, chemical, energy, auto, information communication technology, aviation and construction industries. The meeting concluded with an open discussion on the topics of China's cybersecurity environment and global trade tensions. Eb

25 JUNE

BEIJING

Chamber Discusses Circular Economy with NDRC

National Vice Chair of the Environment Working Group, Dr Christoph Schrempp, leads a meeting with the NDRC.

On 25th June, Dr Christoph Schrempp, national vice chair of the European Chamber's Environment Working Group, met with Lu Dongsen, director of the Division of the Circular Economy of the Department of Resource Conservation and Environmental Protection at the National Development and Reform Commission (NDRC), to discuss the circular economy and ways European businesses can sustainably operate in China.

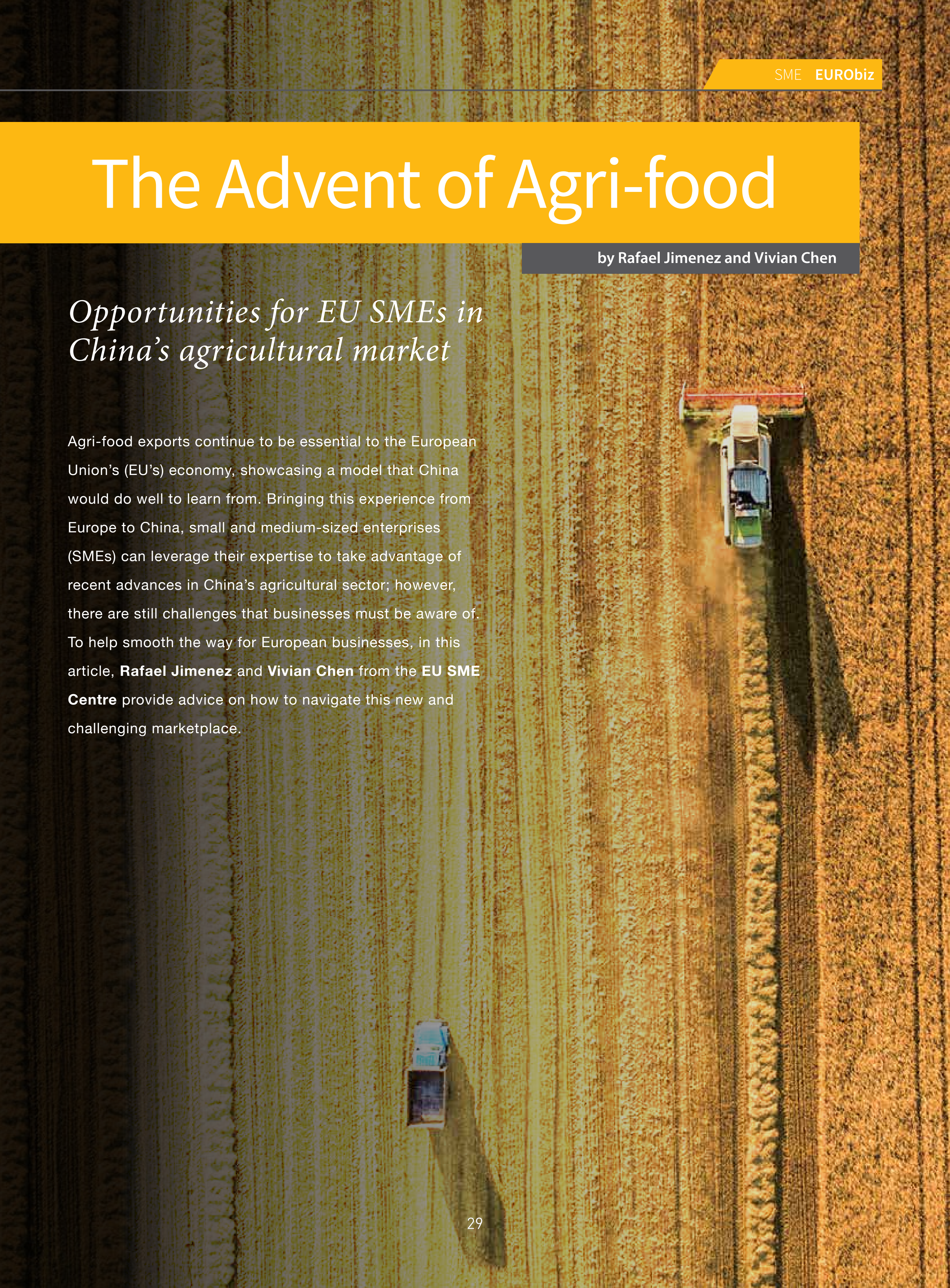
To better understand the role of European businesses in developing China's circular economy, two members, Jet Chang, vice president of TOMRA China, and Zhang Xiaobo, manager for Strategy and Corporate Affairs at Veolia China, shared their successful experiences with working in the circular economy. A question and answer session was subsequently held and the meeting concluded with Dr Schrempp, presenting the *European Business in China Position Paper 2017/2018* and the *Business Confidence Survey 2018* to Director Lu. Eb

The Advent of Agri-food

by Rafael Jimenez and Vivian Chen

Opportunities for EU SMEs in China's agricultural market

Agri-food exports continue to be essential to the European Union's (EU's) economy, showcasing a model that China would do well to learn from. Bringing this experience from Europe to China, small and medium-sized enterprises (SMEs) can leverage their expertise to take advantage of recent advances in China's agricultural sector; however, there are still challenges that businesses must be aware of. To help smooth the way for European businesses, in this article, **Rafael Jimenez** and **Vivian Chen** from the **EU SME Centre** provide advice on how to navigate this new and challenging marketplace.



Agri-food is one of the dominant areas the EU maintains a trade surplus with China in, highlighting the fact that the quality of EU agri-food products is well recognised in China and that demand continues to grow.

In 2017, the EU's agri-food exports to China reached euro (EUR) 11.978 billion with a trade surplus of EUR 6.57 billion, making China the second largest destination of EU agri-food exports. Last year's top-10 EU agri-food exports to China, by value, included the following:

- infant food and other cereals, flour, starch or milk preparations
- pork meat that is fresh, chilled and frozen
- wine, vermouth, cider and vinegar
- offal, animal fats and other meats that are fresh, chilled and frozen
- raw hides, skins and fur skins
- milk powders and whey
- spirits and liqueurs
- beer
- fresh milk, cream, buttermilk and yoghurt
- cotton, flax, hemp, and other plaiting materials

The importance of China for EU agri-food business is obvious, with the EU investing a considerable amount of resources to ensure its businesses stay competitive in the Chinese market and that the trade environment is conducive to European business operations. In May 2018, Phil Hogan, commissioner of the Directorate-general for Agriculture and Rural Development of the European Commission, led a delegation of European companies to SIAL China 2018 in Shanghai, Asia's largest food innovation exhibition, to connect with those operating in the Chinese market.

Challenges

Achieving success in a market as large as China is never easy, especially for small businesses. Market access barriers remain as one of the largest challenges for European SMEs. They find it time-consuming

Chinese customers are purchasing French wines from an international shopping village in Jiaxing, Zhejiang Province.
Photo: *Xu Yu, Xinhua News Agency*

to complete administrative processes in China in order to sell their products. The recent reshuffling of administrative bodies in the Chinese Government further increases businesses' concerns of delay. However, the EU and the Chinese Government have been carrying out negotiations to put in place protocols for certain categories of agri-food to facilitate trade between the two powers.

The Chinese authorities' regulations on food and beverage products in the domestic market have recently been strengthened, with its new Food Safety Law that was enacted in 2015. The law aims to clean up China's entire food supply chain – from banning toxic pesticides, regulating labelling, distribution, and most importantly, increasing punishments for those who violate existing laws. It is important for every company in this business to understand what the specific requirements are and how to be compliant.

Another common challenge for exporters is finding the right business partner in China to help build effective distribution channels. In particular, reaching out to markets outside of first-tier cities demands a deeper level of knowledge and experience. Consumers in China's regional cities might have different shopping preferences, which would require brands to craft a customised strategy.

Opportunities and Trends

For European agri-food exporters looking to sell internationally, the Chinese market cannot be ignored.

In addition to the product types already high on the exporting list, the EU SME Centre foresees food technology and chemical compounds for the domestic food industry (such as flavours and compounds to reduce cholesterol) to be on the rise.

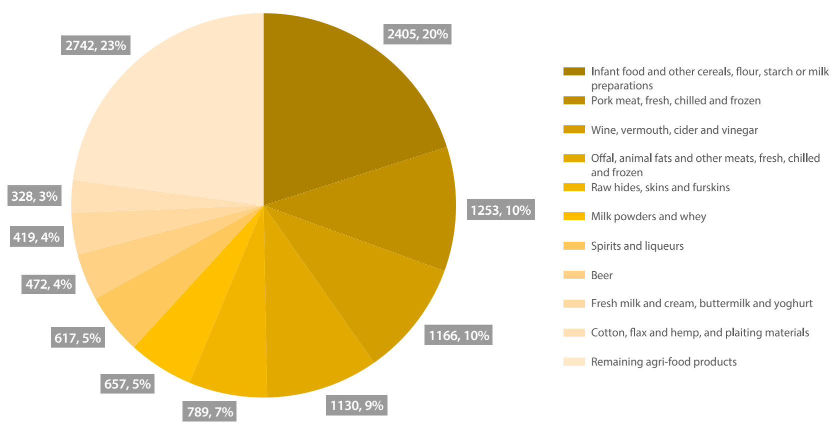
We would encourage Chinese businesses to take a deeper look at what the EU has to offer in food-related technologies. Though the technological side of food and beverages is often neglected, the EU has much to offer. For example, traceability is a critical issue and the cornerstone of the EU's Food Law. To address this issue, the EU utilises the Internet of things to trace food and beverages along with ensuring water and soil quality.

Structure of EU Agri-food trade with China, 2007-2017

Source: *Agri-food Trade Satistical Factsheet EU-China, by the European Commission*

Top 10 EU Agri-food Exports to China in 2017

(in million EUR)



Source: *Agri-food Trade Satistical Factsheet EU-China, by the European Commission*

This is an area where China can learn a lot from the EU's experiences.

Opportunities also lie with the auxiliary industries related to the food and beverage sector. This can include anything from bottling, packaging and sanitising food procedures to research services. For example, China remains in the early stages of processing seafood products, and the EU has more advanced know-how in terms of safely prepared, pre-cooked, and ready-to-eat food.

Additionally, cross-border e-commerce is seen as a growing trade model that European SMEs should familiarise themselves with. In the long term, the EU SME Centre would like this new model to enter the mainstream and become used nationwide, rather than in select pilot zones.

Conclusions

Opportunities in the agri-food sector are abundant in China and a preliminary analysis of 2017 trade data suggests this trend remains strong. China's climate, geography, water scarcity and arable land issues, along with an increasing number of discerning consumers, point to an expansion of the agri-food sector. Though cautious, the EU SME Centre remain positive regarding the agri-food sector, and it encourages SMEs to keep their knowledge of the Chinese market up-to-date. Eb

About the EU SME Centre

*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 EU 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

Seeing Mixed Results

The European Business in China Business Confidence Survey 2018

The purpose of the European Chamber's *European Business in China Business Confidence Survey* is to take an annual snapshot of European companies' successes and challenges in China. Launched on 20th June 2018, this year's survey reports that doing business became more challenging over the past year due to longstanding regulatory barriers, market access restrictions and unequal treatment. European companies must now compete with Chinese firms that are more innovative than ever before. Yet they have remained resilient, delivering strong financial results for the second year running.

Executive Summary

After years of decline, 2016 was the year in which European companies' optimism about growth in China rebounded. Sustained by China's increasingly sophisticated market, this optimism endured in 2017. However, as its economy matures, the longstanding inefficiencies in China's business environment are rendered all the more glaring. According to the *Business Confidence Survey 2018*, half of European Chamber members believe the regulatory environment will worsen over the next five years, making the need to address this issue more pressing than ever before.

Domestic enterprises are evolving to meet greater consumer demand, particularly that of the rising middle class for high- quality goods and services, and European companies see them as increasingly challenging competitors.[1] This year's survey saw for the first time a majority of respondents (61%) report that they perceive Chinese companies to be equally or more innovative than European firms, an increase of 14 percentage points year-on-year (y-o-y). Most notable is the pronounced increase in domestic firms' capability for product/service innovation, which is catching up with their capacity for go-to-market and business model innovation.

Despite fiercer competition and other challenges such as rising labour and living costs, European businesses delivered strong financial results in 2017, with y-o-y revenues improving for 66% of respondents. Among them, the medical devices, pharmaceuticals and automotive sectors reported particularly robust sales. However, for some sectors regulatory issues hit them in the pocket. For example, the proportion of companies in the information technology (IT) and telecoms sector reporting an increase in revenue of 5% or more, decreased by 25% y-o-y. Some of the reasons for this decline can be found in certain parts of the Cybersecurity Law, such as unclear requirements for "secure and trustworthy" technology, the Cybersecurity Multi-level Protection Scheme and the Critical Information Infrastructure

1. *The China Effect on Global Innovation*, McKinsey Global Institute, October 2015, p. 54, viewed 9th May 2016, <https://www.mckinsey.com/~/media/McKinsey/Global%20Themes/Innovation/Gauging%20the%20strength%20of%20Chinese%20innovation/MGI%20China%20Effect_Full%20report_October_2015.ashx>

Protection Scheme.[2]

This year marked the highest percentage of companies reporting positive earnings before interest and tax (EBIT) since 2005. Industries such as automotive, transportation, logistics and distribution, and chemicals and petroleum did particularly well. Some factors that have contributed to these results are members' ongoing prudence and general efficiency. These practices are set to continue, with 46% of respondents saying they plan to cut costs in China in 2018.

Continued cost cutting is driven in part by a more subdued outlook on future profitability, which is a result of the increasingly difficult business environment and growing competition from domestic firms. Emerging markets in Southeast Asia are increasingly catching investors' attention, where overheads such as labour costs are now much lower than in China. As China turns its focus towards advanced manufacturing, countries like Malaysia, India, Thailand, Indonesia and Vietnam are becoming more attractive destinations for low-cost operations.[3] However, in general, European businesses remain committed to China, which remains a top-three destination for present and future investment for 59% of member companies.

China has made some visible progress in key areas of concern for European firms such as intellectual property rights (IPR) protection, equal enforcement of environmental laws and support for innovation. Perceptions about the implementation of IPR regulations have steadily improved, with more than double the share of respondents reporting enforcement as adequate or excellent compared with 2013. This can be understood in the context of IPR protection now moving to the top of the Chinese authorities' agenda, as more domestic enterprises rely on technology innovation to fuel their growth and profitability.

As the domestic environment becomes more innovation driven, overall provisions for research and development (R&D) have also improved. Compared to 2016, European companies are now twice as likely to see China's R&D environment as more favourable than the worldwide average.

There is an increase in the number of companies that believe environmental regulations are being imposed more stringently – 45% of members now report that environmental protection measures are strong, up 23 percentage points from 2017. Moreover, there has been a gradual evening out of how environmental laws are perceived to be applied to European and Chinese entities, which seems to be part of a general trend towards stricter law enforcement for all. While overall discrimination against foreign-invested enterprises (FIEs) has by no means been resolved, the share of respondents who believe they are treated equally with local firms has increased 11 percentage points since 2016.

However, while European enterprises welcome these positive developments, for people running daily operations on the ground persistent regulatory barriers carry a heavy burden. Half of respondents say that doing business in China has become more difficult over the past year, with challenges particularly pronounced in Beijing, Tianjin and Shanghai. Ambiguous rules and regulations are perceived to be the second greatest challenge in conducting future business in China, ranking as the number one regulatory obstacle (according to 48% of respondents). Other major regulatory hurdles include:

- administrative issues (35%);
- discretionary enforcement of rules and regulations (30%);
- market access barriers and investment restrictions (27%); and
- licensing requirements/registration processes for products (25%).

These barriers come at a real cost, with 46% of respondents saying that they missed out on business opportunities as a result of regulatory barriers and limited market access. The industries most affected were pharmaceuticals, legal services and financial services (including insurance). Again, members located in Beijing, Tianjin and Shanghai were most likely to miss out on opportunities.

China's restrictive regulatory environment in some ways damages its ambitions to become a global leader in knowledge and innovation. Internet restrictions are a case in point, with a majority of respondents stating they have had a negative impact on their business. For instance, 23% of respondents are unable to properly search for information and engage in research. The Cybersecurity Law has also raised significant doubts among members and may become a barrier to future investment for fear of non-compliance.[4]

Even the popular cause of environmental protection has been accompanied by some negative consequences. For example, as part of the campaign against pollution there were instances where regulations were interpreted and applied with a heavy hand, resulting in forced relocations, disruption and increased costs for perfectly compliant companies. Some businesses that were affected are now exploring the possibility of relocating parts of their supply chains to other countries to meet demand.[5]

Small and medium-sized enterprises

2. Cybersecurity Law, National People's Congress, 7th November 2016, viewed 29th May 2018, <http://www.npc.gov.cn/npc/xinwen/2016-11/07/content_2001605.htm>
3. Lomas, Matthias, *Which Asian Country Will Replace China as the 'World's Factory'?*, *The Diplomat*, 18th February 2017, viewed 15th May 2018, <https://thediplomat.com/2017/02/which-asian-country-will-replace-china-as-the-worlds-factory/>

4. *Cybersecurity Law, Related Regulations: Unpacking the Second Draft for Public Comment of the Assessment Guidelines for Cross-Border Data Transfers*, *Zhonglun*, 22nd September 2017, viewed 16th May 2018, <http://www.zhonglun.com/Content/2017/09-22/1521375229.html>
5. *China's Pollution Curbs May Start Slowing Growth Within Months*, *Bloomberg*, 2nd October 2017, viewed 21st May 2018, <https://www.bloomberg.com/news/articles/2017-10-02/china-s-pollution-curbs-to-slow-growth-lift-prices-socgen-says>

(SMEs) are most heavily impacted by inefficiencies in the business environment as they do not have the resources to help them deal with ambiguous regulations and cumbersome administrative processes. Although the government has recognised SMEs' need for additional support in recent policies, such as the SME Promotion Law, many are either applicable only to domestic firms or are difficult for FIEs to benefit from.[6] These restrictions are preventing many European SMEs from scaling up and fulfilling their potential for contributing more to innovation, tax revenue and employment.

Any progress that has been made in regulatory enforcement does not mask the fact that 51% of respondents still believe FIEs are treated unfavourably, although this perception varies depending on both the industry and location of the company. In 8 out of 14 industries, more than 50% of respondents perceive they are treated unfairly, citing administrative issues and market access as areas where they are most likely to face discrimination. Additionally, despite improvements to China's R&D environment, FIEs are not always able to access funds for innovation that are available to Chinese enterprises. Furthermore, due to persistent issues, such as unfair technology transfers, the number of members opening R&D centres has stalled since 2017.

It may seem somewhat anomalous that these kind of issues persist while China's overall IPR environment appears to be strengthening. However, once it is understood that many of the improvements are a result of China's need to protect the development of its domestic core technologies and expansion overseas, it makes more sense.[7] China's intentions in this respect were further underlined in early 2018 with the release of the *External Transfer of Intellectual Property Rights Measures (For Trial Implementation)*, which placed increased scrutiny on exports of Chinese IPR.[8]

Significant concerns that industrial policies like China Manufacturing 2025 (CM2025) are tilting the playing field in favour of Chinese players remain, with 43% of respondents stating that they have seen increased discrimination under the plan. That being said, some European Chamber members have seen opportunities in CM2025, particularly in sectors where European firms hold a comparative advantage, such as automobiles and machinery. The onus is now on China to further expand CM2025 opportunities for FIEs to clearly demonstrate that it is not just aimed at achieving domestic dominance in the 10 key industries identified by the plan.

The European Chamber urges China to follow through on its promises of reform and opening up that have been repeatedly stated since President Xi Jinping's speech to the World Economic Forum in January 2017.[9] While some of these pledges have been written into legislation, European companies have yet to see much real concrete implementation. To illustrate this point, only 6% of respondents reported significant results in market opening y-o-y.

The Chinese Government underwent a recent, large-scale restructuring in March 2018, with the aim of streamlining administrative functions by removing overlapping responsibilities between different ministries.[10] This presents a real opportunity for China to address many of the regulatory problems that continue to plague its business environment. However, this can only be done effectively through deep, structural reform.

Lack of reciprocity in investment relations between the European Union (EU) and China remains a major concern for European businesses. This year's survey shows 62% of respondents feel that Chinese firms enjoy better market access in Europe than European enterprises do in China. Indeed, China is found to be one of the most restrictive economies in the world, far below that of developed nations and even most emerging markets.[11]

Although the EU is China's largest trading partner, and China is the EU's second largest, the lack of investment reciprocity is leading to noticeable imbalances in EU-China foreign direct investment (FDI) flows. Annual Chinese FDI in Europe was euro (EUR) 30 billion in 2017, the second highest year on record, while FDI from the EU to China stagnated at around EUR 10 billion between 2010 and 2015, and further declined in 2016 and 2017 to EUR 8 billion.[12] This contrasts with Europe investing approximately EUR 149 billion in the United States in 2017.[13&14]

Broader and more tangible market opening would go a long way to unleashing the investment potential of European businesses, with 57% of respondents likely to increase investment in China if greater market access were to be granted. A successfully negotiated EU-China Comprehensive Agreement on Investment would directly address a number of market access issues and other key concerns, while also helping to diffuse rising political tensions. Both the EU and China should therefore now take the opportunity to move forward with meaningful dialogue to reach a deeper, more mutually beneficial understanding. Eb

6. *Law of the People's Republic of China on the Promotion of Small and Medium-sized Enterprises*, National People's Congress, 2017, viewed on 18th April 2018 <http://www.npc.gov.cn/npc/xinwen/2017-09/01/content_2027929.htm>
7. Carson, John and Schwaab, Andrew, *China applying for more patents than ever before as companies push to innovate, protect brands*, *South China Morning Post*, 16th June 2017, viewed 21st May 2018, <http://www.scmp.com/business/companies/article/2098724/china-applying-more-patents-ever-companies-push-innovate-protect>
8. *China issues new rules tightening up on overseas transfers of intellectual property rights*, Hogan Lovells, April 2018, viewed 22nd May 2018, <https://www.limegreenipnews.com/files/2018/04/CN-overseas-IPR-transfers.pdf>
9. *President Xi's speech to Davos in full*, World Economic Forum, 17th January 2017, viewed 14th April 2017, <https://www.weforum.org/agenda/2017/01/full-text-of-xi-jinping-keynoteat-the-world-economic-forum>
10. *State Council Institutional Reform Plan*, State Council, 17th March 2018, viewed 16th May 2018, <http://www.gov.cn/guowuyuan/2018-03/17/content_5275116.htm>
11. *FDI Regulatory Restrictiveness Index*, OECD, 2016, viewed 20th April 2018, <http://www.oecd.org/investment/fdiindex.htm>
12. Hanemann, Thilo and Huotari, Mikko, *EU-China FDI: Working towards reciprocity in investment relations*, Rhodium Group (RHG) and the Mercator Institute for China Studies (MERICS), 17th April 2018, viewed 22nd May 2018, <https://www.merics.org/en/papers-on-china/reciprocity>
13. Hamilton, David and Quinlan, Joseph, *The Transatlantic Economy 2018: Annual Survey of Jobs, Trade and Investment Between the United States and Europe*, Center for Transatlantic Relations at Johns Hopkins University and the American Chamber of Commerce to the European Union, 2017, viewed 22nd May 2018, p. viii, <https://transatlanticrelations.org/wp-content/uploads/2018/03/TA2018_FullStudy.pdf>
14. The average exchange rate of USD 1.1293 per EUR was used based on: *Average Foreign Exchange Rates*, Credit Suisse, December 2017, viewed 22nd May 2018, <https://www.credit-suisse.com/media/assets/private-banking/docs/ch/unternehmen/kmugrossunternehmen/devisendurchschnittskurse-2017.pdf>

18 Months Since Davos

How China's Vision Became a Reform Imperative

On 10th July, the European Union Chamber of Commerce in China (European Chamber) launched its third annual thematic report, titled *18 Months Since Davos How China's Vision Became a Reform Imperative*. In a morning launch with media and members of the diplomatic community, Mats Harborn, president of the European Chamber, presented on the report's key findings before engaging in a question and answer session. Later that afternoon, a members-only launch was held followed by a roundtable driven by questions from the audience.

The report begins with an examination into the commitments made by President Xi Jinping in his landmark speech at Davos in January 2017. In his address to the World Economic Forum, President Xi spoke highly of economic globalisation and the multilateral trading system. At the same time, a bold reform plan was announced to open up China's market and take a leadership role in the global economic system.

Having heard promises in the past that failed to lead to tangible results, the business community would normally have been less than optimistic. However, the simultaneous promulgation of the *Notice of the State Council on Several Measures on Promoting Further Openness and Active Utilisation of Foreign Investment* (State Council Document, Guofa [2017] No. 5) raised hopes that this time would be different.

State Council Document No. 5 represented a major shift towards the market conditions long sought by European Companies. The contents of the document, which included unambiguous clauses about expanding market access through a unified negative list on foreign investment and providing national treatment for international businesses registered in China, was reminiscent of the sort of grandiose opening that was the norm in the 1990's.

Seven months later, a second document was released. Reiterating the main points of the previous document, the *Notice of the State Council on Several Measures for Promoting Foreign Investment* (State Council Document, Guofa [2017] No. 39) provided further details, including calls for timetables and roadmaps for market opening.

As the report notes, discussion of these documents led to a different set of expectations for both Chinese officials and European business leaders. Meetings with high-ranking officials indicated that, from a policy perspective, the reform agenda had been reinvigorated. European businesses, however, were left uncertain with limited results on the ground.

European Chamber President Mats Harborn delivers a speech for the thematic report.
Photo: *Zhengnan Cao*

The European Chamber performed an 'audit' of the reform agenda. By examining the tangible results experienced by members, in a variety of industries, the successes and shortcomings of the reform agenda became clear. In short, the optimists that proclaim a new era of opening is well underway and the pessimists that are already declaring this round of reforms to be dead on arrival are both wrong; the reality is less black and white. The pace of reform has been quicker in the last 18 months than any time since China's World Trade Organization (WTO) accession in 2001, but that does not mean the pace meets the international community's needs.

The report found notable changes in the following areas:

- **Environmental protection enforcement**

  Having risen as a priority for the Chinese Government, environmental protection policies have been substantially bolstered. Officials have been empowered to enforce them and mete out real consequences for non-compliance, and domestic Chinese firms are increasingly being held to stricter standards.

- **Local business environments**

  After an early 2018 call from the State Council to foster more efficient and responsive business environments, many local governments have begun to enact reforms and communicate these changes. A number of administrative procedures have been streamlined and processing times reduced.

- **Consumer goods**

  Standards setting, approval processes and consumer safety have seen steady progress, and Chinese regulations are beginning to align more with international norms. In addition, tariffs on a wide selection of consumer goods saw substantial decreases, with many rates being cut in half.

- **Research and development (R&D) environment**

  Incentives for R&D at both the national and local level are increasingly valuable, and more and more are becoming equally available to international companies.

While indicative of progress, a series of announcements that China would raise equity caps on foreign investment was found to have fallen short. Raising equity caps in the financial sector and in the automotive, ship-building, and aerospace

industries was welcomed by the report, but members in those sectors noted that raising equity caps alone would do little to change their investment decisions. The message was clear: many European players will remain in joint ventures (JVs) due to the shortcomings found in China's business environment.

Those shortcomings were found to overshadow much of the progress that took place, particularly in the following areas:

- **State-owned enterprises (SOEs)**

Central SOEs have been strengthened to the point where their size and influence prevents private competitors from entering the market. Furthermore, any attempt to steer SOEs into becoming more market orientated has been hamstrung by deeper integration with the Party and a heavier reliance on SOEs to address political and social issues.

- **Intellectual property (IP)**

Despite the relative success, and imminent expansion, of China's specialist intellectual property rights courts and the introduction of higher fines for infringement, very serious concerns remain. China's continued practice of using unfair technology transfers is particularly concerning, the effects of which are becoming increasingly visible. IP concerns related to cybersecurity, the tightening of internet censorship and the control of virtual private networks are additional factors that are seriously damaging China's reputation as an investment destination and are contributing to increased global tensions.

- **Regulation**

China's regulatory and administrative environment is struggling to keep pace with its increasingly sophisticated market. Lengthy approval periods, complicated administrative procedures and overbearing regulations, like the Cybersecurity Law, are major burdens to both Chinese and international firms.

- **Unequal treatment**

International businesses are forced to compete on an uneven playing field. Some of the main issues include unequal access to licences, financing, subsidies and legal recourse, discretionary administrative treatment, customs issues and greater scrutiny from authorities.

- **Unpredictable and ad hoc policies**

Frequent and unforeseeable shifts in policy make doing business in China difficult, particularly for those in industries that have to develop long-term strategic plans. This has increased policy risk across the board from the automotive industry to the financial sector.

The findings of the report further stress that the pressure on China to realise its reform vision is rapidly rising. In relative terms, reform is happening more quickly than in recent memory, but in absolute terms progress has been slow.

Domestically, China faces a maturing but slowing economy. The practice of protecting young industries that could not viably compete with global giants may have helped them grow, but now, they are in dire need of competition in order to become more efficient. Beyond that, Chinese businesses increasingly demand a fair and well-regulated market where they are not forced to compete against firms that are favoured by the government.

Internationally, patience is wearing thin. The most blatant expression of frustration at the slow pace of reform is the United States, with the Trump Administration unilaterally escalating tariffs as part of a drive to address the shortcomings of China's opening up. While less prone to acute moves, the EU and a variety of other economies share the US' concerns.

The report concludes that the reform agenda must accelerate intended reforms and undertake the following changes to indicate its seriousness to market opening:

- Release unambiguous timelines and roadmaps for *State Council Document No. 5* and the *Notice of the State Council on Several Measures for Promoting Foreign Investment* (State Council Document, Guofa [2017] No. 39), and report on their progress in a timely manner.

- Create more favourable operating conditions, with a focus on strengthening institutions and implementing rule of law, in order to create a transparent and predictable legislative environment and to improve regulatory enforcement for businesses and reformed SOEs.

- Work with the European Union (EU), and within the framework of the WTO when necessary, to positively address IP concerns.

- Engage with the EU to successfully complete, in a timely manner, a meaningful Comprehensive Agreement on Investment.

A New Step in Innovation

by Kaspar Wu

Filling the gaps in an ever-changing labour market

China has been ambitious in upgrading and automating its manufacturing, with the country now in need of highly-skilled technicians that will be able to use these new, innovative technologies, such as robots, in factories. However, most workers currently do not have the expertise to use and manage these high-end machines. This lack of know-how has become acute in Foshan's South China manufacturing base, despite it becoming increasingly known for accelerating industrial modernisation. In this article, **Kaspar Wu**, senior project manager of the **Foshan Hi-tech Industry Development Zone**, will discuss the current talent shortage and will provide suggestion on how companies can alleviate this problem.

Factories demand high-tech talent

As a major manufacturing city in the Pearl River Delta, Foshan has striven to build itself as a National Manufacturing Innovation Centre and, at the same time, vigorously promote the use of industrial robots in manufacturing, with an aim to gradually transform traditionally labour-intensive industries to make them more efficient. According to the *Implementation Scheme for Supporting Factories to Replace Labour with Industrial Robots*, issued by the Foshan Government, about 3,000 enterprises in Foshan have completed industrial robot upgrades in 2017, which means more than 50 per cent of the large factories in the area have undergone automotive renovations.[1]

In addition, Foshan is facing a talent gap that is quite large. According to a survey conducted by the Foshan Human Resources and Social Security Bureau, the total number of positions that are open due to Foshan's recent labour shortage is approximately 63,000 in 2018, with those possessing the appropriate skills in robotics and similar technologies in urgent demand.[2] Yuan Zhigang, director of the Research Centre of Employment and Social Security at Fudan University, indicated that at the current stage, although robots replace labour in the workshop, it is still

1. http://finance.sina.com.cn/roll/2016-11-12/doc-ifxxsmic6078114.shtml

2. http://www.21jingji.com/2018/3-22/3NMDEzNzlfMTQyNjg3NQ.html

necessary to have technicians to operate and manage them. Wang Chenyong, head of the Robotics Training Institute in South China, said in an interview, "In the mere fields of robot operation and testing, at least 5,000 technicians are needed in Foshan."[3]

Statistics from the Human Resources and Social Security Department of Guangdong Province shows that, the demand for skilled workers accounted for 18.2 per cent of the total labour demand at the end of 2016, increasing 2.7 per cent year-on-year. Additionally, according to statistics from the Foshan Shunde Employment Service Centre, the high-tech sector accounts for 40 per cent of the total labour shortage, increasing six per cent year-on-year. This labour shortage has spread from traditional manufacturing-based industries, such as home appliances and low-grade machinery, to robotics and other advanced industries. The *21st Century Business Herald Reporter* found that it is extremely difficult for many manufacturing enterprises to recruit the most qualified people for these new positions.[4]

Skilled labour shortages

There are several reasons for factories facing labour shortages. First, higher education does not always correlate directly with market demand. A possible cause of China's current unemployment problems is that despite the recent expansion of university enrolment in the early 21st century, the course design and university admissions system have not kept pace. Technology is changing faster than ever before, with on-the-job vocational training becoming more important by the day.

Second, education in China tends to neglect the use of internships and other forms of practical-based experience. In the survey *Social Needs and Schooling Quality*, 44 per cent of engineering undergraduates think schools provide them an insufficient amount of internship opportunities and practical experience. Among them, 87 per cent think that professional internships are not enough, 21 per cent consider current curriculum to not be practical, and 16 per cent think a graduation project is not scientific or rigorous enough.[5]

Third, technical vocational training is not emphasised. Educational funding for vocational training is only one-third that of undergraduate colleges and major universities, with the income of many graduates from vocational education schools not being very high.

Support from the Foshan Government

In order to keep pace with the country's industrial upgrading strategy, the Foshan Government has been taking active measures to solve the shortage of skilled labour.

The government has brought in talent from nearby tier-one cities, such as Guangzhou. Foshan is not only looking to accelerate the construction of the Guangzhou Higher Education Mega Centre but is also hoping to encourage engineers from Guangzhou to migrate to Foshan and work at the local factories on the weekends – becoming known as 'Saturday technicians'. This model was first used in the 1970s and the city is thinking of resuming this policy.

At the same time, the Foshan Municipal Committee and the Foshan Municipal People's Government issued a *Decision on Strengthening the Set-up of Talent Pool and Promoting the Optimisation and Upgrading of the Economic Structure*. Some of the things it has introduced to try and address the skilled labour problem include the following: improve the existing income allocation system and talent recruitment methods to attract high-skilled workers, create a 'green channel' for high-end talent, establish a hi-tech incubator to bring in skilled workers, use the 'talent special employment' system, arrange for public servants and senior managers to be properly trained, and promote the incorporation of new technologies in the industrialisation process based on a market-oriented approach to innovation.[6] Through these efforts, the Foshan Government believes they will help alleviate the high-skilled worker shortage and upgrade its industry. Eb

A cargo robot carrying 200kg load in a manufacturing facility of Midea Group in Foshan
Photo: *Liu Dawei, Xinhua News Agency*

Foshan Hi-tech Industrial Development Zone *is a national-level high-tech industrial development zone, that was approved by the State Council in December 1992. It plays an integral role in the Pearl River Delta National Indigenous Innovation Pilot Zone and has attracted 61 global Fortune 500 enterprises, 44 listed companies and 380 enterprises with an output value of more than Chinese yuan (CNY) 100 million.*

3. http://finance.sina.com.cn/roll/2016-11-12/doc-ifxxsmic6078114.shtml
4. https://www.touzi.com/news/422448.html
5. http://finance.sina.com.cn/roll/2016-11-12/doc-ifxxsmic6078114.shtml
6. http://www.fshrss.gov.cn/zwgk/jcxxgk/zcfg/rcfw/201709/t20170911_6295260.html

EUROPEAN CHAMBER EVENTS GALLERY

BEIJING CHAPTER

2018 EUCCC Cup

On 9th June, at the Harrow International School, the Chamber held its second annual EUCCC football tournament.

Business Confidence Survey Launch 2018 in Beijing

On 20th June, the Chamber held its launch of the *European Business in China Business Confidence Survey 2018* (*Business Confidence Survey 2018*) in Beijing. This year's survey highlighted an emerging contradiction in the Chinese business environment: the country's increasingly sophisticated economy in contrast to its highly burdensome regulatory environment.

Seminar with Yukon Huang: China's Innovation Ambitions and Trade Tensions with the West

On 22nd June, the Chamber hosted a seminar with Dr Yukon Huang, senior fellow at the Carnegie Endowment for International Peace and former director for China at the World Bank, to discuss increasing trade tensions between China and the West.

EU-China Business Roundtable

On 16th July, Mats Harborn, president of the European Chamber, led a small delegation to the EU-China Business Roundtable (part of the larger EU-China Summit) with Chinese Premier Li Keqiang and European Commission President Jean-Claude Juncker.

SHANGHAI CHAPTER

Shanghai Chapter Football Tournament

On 26th May, the Chamber's Shanghai Chapter hosted the first Shanghai Chapter Football Tournament.

Factory Visit to the Inclusion Factory: Creating an Inclusive Workplace

On 1st June, the Shanghai Chapter members visited the Inclusion Factory, in Taicang, Jiangsu Province, and learned how companies can better integrate people with disabilities into their business activities.

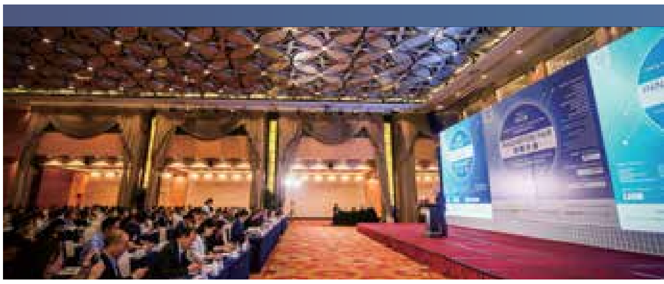
8th M&A Conference: Opportunities Amidst Disruption

On 12th June, the Shanghai Chapter organised its 8th Annual M&A Conference. At this event, speakers discussed the motivations behind Chinese and foreign companies engaging in mergers and acquisitions (M&A).

7th CEO Talk: Corporate Social Profitability with Mary Kay

On 22nd June, Coco Zhang, vice president of Mary Kay, shared with Shanghai Chapter members the company's sustainable practices in China.

NANJING CHAPTER



Nanjing's 1st Innovation Fair

On 23rd May, the Nanjing Chapter jointly held its 1st Innovation Fair with the Nanjing Stuttgart Joint Exhibition Company to provide public awareness on the development of regional innovation ecosystems.

Human Resources Mid-year Review

On 15th June, more than 30 human resources managers from Nanjing Chapter member companies attended the Chamber's Human Resources Mid-year Review. Officials from the Jiangsu Provincial Department of Human Resources and Social Security provided advice on how to avoid legal risk while operating in China.

SOUTHWEST CHINA CHAPTER

Business Confidence Survey 2018 Launch in Chengdu

On 5th July, the Chamber's Southwest China Chapter launched the *Business Confidence Survey 2018* at the Crowne Plaza hotel in Chengdu. The event attracted more than 150 guests from local governments, consulates and member companies.

TIANJIN CHAPTER

Business Confidence Survey 2018 Launch in Tianjin

On 25th June, the Chamber's Tianjin Chapter held its launch of the *Business Confidence Survey 2018* in Tianjin. Over 50 members and guests, including government officials and media, attended the event.

EUROPEAN CHAMBER IN THE MEDIA

European Chamber Launches European Business in China Business Confidence Survey 2018

Bloomberg | AFP


European firms say China's business 'more difficult' despite Beijing's claims of openness

European companies complain they still face a difficult business climate in China despite Beijing's pledges of openness, with about half saying it has become tougher in the past year, according to a survey released Wednesday.

The study comes as President Xi Jinping looks to portray the world's number two as being at the forefront of the globalisation while trade tensions with the United States rise.

On 20th June, the European Chamber launched this year's *European Business in China Business Confidence Survey 2018* in Beijing, with a launch taking place the same day in Shanghai. These were followed by launches at the Tianjin and South China chapters. For the Beijing launch, 43 journalists were in attendance and the event included five television interviews. The media released a variety of different articles that focused on the overall results of the survey, existing regulatory obstacles, challenges from forced technology transfers and the effect the China Manufacturing 2025 initiative is having on European businesses, to name a few. Domestic media urged China to keep their promises of increased market-opening and highlighted the importance of successfully negotiating a Comprehensive Agreement on Investment between the European Union (EU) and China.

Secretary General Adam Dunnett Discusses Forced Technology Transfers

VOA


China Pivots to Europe for Technology Transfers

Adam Dunnett, secretary-general of the European Union Chamber of Commerce in China, believed the sharp ratio has more to do with a decrease in capital flows to the U.S. than an increase into the EU.

On 23rd July, Adam Dunnett, secretary general of the European Chamber, received an interview request from the *VOA*. Mr Dunnett commented on the EU-China trade relationship and pointed out that China should ensure its investment decisions are transparent and driven by market forces. He went on to say that European businesses share their United States (US) counterparts' concerns about technology transfers and intellectual property infringements.

European Chamber Releases Official Statement on New Negative List

Associated Press

On 28th June, the National Development and Reform Commission (NDRC) and the Ministry of Commerce jointly released the 2018 version of the negative list for foreign investment, with the number of items on the list being reduced from 63 to 48. The new list introduces further opening up measures in fields including financing, transportation, professional services, infrastructure, energy, resources, agriculture and shipping. The European Chamber published its official stance online and was quoted by the media.


China eases investment curbs as clash with US looms

JOE McDONALD The Associated Press Jun 30, 2018 0

The latest list "continues to discriminate against non-Chinese companies" by maintaining different rules for them and for local enterprises, the European Union Chamber of Commerce in China said in a statement.

Some companies believe the change is significant but "it is too early to tell what impact it will have," the European chamber's president, Mats Harborn, said in the statement.

Shanghai General Manager Ioana Kraft Discusses China's Role in the WTO on CGTN

CGTN

Dr Ioana Kraft, general manager of the European Chamber's Shanghai Chapter, was interviewed by *CGTN* on the benefits that have been gained from China entering the World Trade Organization (WTO). She also mentioned that the European Chamber is glad to see that China is committed to multilateralism and is engaging in a more bilateral manner with the EU.

European Chamber Launches 18 Month Since Davos How China's Vision Became a Reform Imperative

CNBC **ARD**

On 10th July, the European Chamber released its annual thematic report titled *18 Months Since Davos How China's Vision Became a Reform Imperative* in Beijing and Shanghai. For the press conference in Beijing, there were 52 journalists in attendance. Mats Harborn, president of the European Chamber, was interviewed by *CNBC* and *ARD* on the key messages found in the report.

In a television interview, President Harborn discussed how the reform and opening process has been of limited value to international businesses operating in China. For some, it is simply too little, too late. Speaking on the on-going trade war between the US and China, President Harborn stated that "the most important thing is we get away from using tariffs as a tool. That is very dangerous for the world economy, dangerous for our operations."

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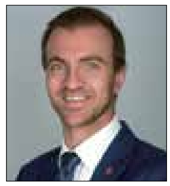

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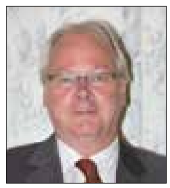

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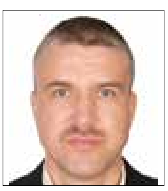

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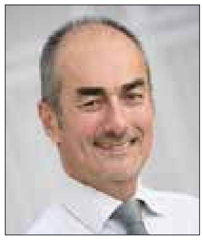

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