

Journal of the European Union Chamber of Commerce in China

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May/June 2014

## TRADE AND INVESTMENT

### **A NEW DAWN**

Developments in EU-China trade relations

### **TALKING IT OVER**

Solving trade disputes through dialogue

### **THE BIGGER PICTURE**

EU-China Bilateral Investment Agreement negotiations

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European Union Trade Commissioner Karel De Gucht attending a meeting in Beijing on the eve of the 16<sup>th</sup> EU-China Summit on 20<sup>th</sup> November, 2013. © European Union, 2014







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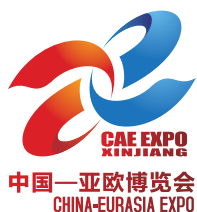


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Over 2,000 years ago, camel bells rang incessantly along the ancient Silk Road. As times have changed, the new Silk Road Economic Belt has again turned into an important passageway linking China and Eurasia, becoming the world's longest economic corridor with the greatest potential. Walking along this new dream road, the China-Eurasia Expo radiates confidence and youthful vitality.

The China-Eurasia Expo has been held three times consecutively since 2011. More and more heads of state and government, politicians as well as officials from international organizations meet in Xinjiang to discuss friendship and cooperation. More and more global 500 companies come here to seek business opportunities. Eurasian countries engage in talks, sign agreements and forge cooperative relations. High-profile forums on politics, economy, humanism, science, transportation, agriculture and finance are held to collect thoughts and plans for the future. Various colorful cultural activities open another platform for cooperation in different areas between China and Eurasian countries. The 5-day exhibitions display high-end technologies, products and investment projects from China and Eurasian countries, covering construction machinery, building materials, furniture, hardware tools, agricultural products, food, textiles and other areas. Over the three years, the China-Eurasia

Expo has attracted over 70,000 domestic and 15,000 overseas merchants. 513 projects were signed by Chinese merchants while foreign trade volumes totaled 17.347 billion U.S. dollars. The number of visitors totaled 920,808.

In September 2014, the 4th China-Eurasia Expo will again be held. It will open a new page for exchange and cooperation between China and countries in Central, West and South Asia as well as Europe. The new Silk Road Economic Belt calls for friendship, cooperation, opening up, mutual trust and win-win development. A beautiful Xinjiang is ready to welcome visitors and hopes to give the world a new opportunity to observe Xinjiang closely and better understand the region. It hopes to work together with the Eurasian continent to create fresh prosperity. The China-Eurasia Expo sincerely welcomes friends and visitors from around the world!



## September 2014, Urumqi of Xinjiang, China welcomes you!

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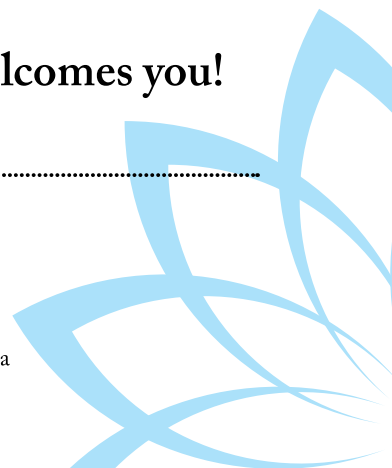
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# EU-CHINA TRADE AND INVESTMENT



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

A handwritten signature in blue ink, appearing to read 'J. Wuttke'.

Europe is China's largest trading partner, and China is now the EU's second largest; trade between the two regions has doubled over the last decade to more than EUR 1 billion a day.

President Xi Jinping's recent visit to Brussels was a game-changing event. It marked the first time an incumbent Chinese leader has visited the EU institutions since ties were established in 1975. The visit underlined the importance of the Bilateral Investment Agreement, currently being negotiated. A lot depends on this agreement—it can reshape bilateral relations like no other tool.

An ambitious agreement would tackle the problems of market access for our investors, level the playing field and curb discrimination against our companies, as well as provide effective dispute settlement provisions to protect our legitimate interests. The agreement would fill many of the gaps left by Chinese WTO commitments, as most of our Chamber's working groups would testify.

This would reinvigorate EU activity in China, providing the sort of investments that China sorely needs to redefine its growth model and ensure stability. The same ambitious market access and investor protection rules would be fundamental to helping Chinese companies go global by investing in the market that offers them most promise: the EU.

An ambitious agreement would also show that China is able engage with the EU in the sort of deep and comprehensive free trade agreement (FTA) that the EU could envisage in the longer term.

Although liberalising reforms have certainly benefitted from a stronger tailwind since the Third Plenum, we must not kid ourselves that further liberalisation in China is no longer politically difficult. Given this reality, it is now time to strengthen our institutional bilateral trade cooperation.

EU-China relations thankfully do not suffer from the shrill, China-bashing, protectionist rhetoric found in the USA. To contain protectionism and incrementally open markets on both sides we must make full use of the institutional framework for bilateral cooperation. The wealth of bilateral dialogues (from research to environment, from transport to agriculture, from consumer welfare to finance, from information technology to competition, from urbanisation to innovation, from trade to investment), with the EU-China Summit at the apex, have worked with a clear goal in mind: genuine opportunities for our companies based on concrete market access, a level playing field and non-discrimination. We must harvest the fruits of this intense activity, which recognises that 'trade' and 'investment' are no longer isolated topics in our ever more complex China relations—but issues with myriad ramifications requiring a 360 degree contribution from many policy areas if success is to be ensured.

Institutional tools bring results when coupled with a political approach that is as savvy as it is solid. The unity and coordination amongst Member States and EU institutions in the run-up to President Xi's visit (which also covered Belgium, France, Germany and The Netherlands) were key to the visit's success—a showcase of the synergy between country-to-country relationships with China and collective EU-China trade relations. After all, trade policy is the quintessential area of EU external policy that is highly centralised, and headline trade-policy issues concerning China can only be dealt with at the EU level.

China's rise, its growing integration with the global economy and its sheer unpredictability are all set to have a steadily growing impact on Europe, to which the EU must find effective responses. If Europe wants Beijing to take it seriously, it needs to start getting serious about China.

As you read this, the people of the European Union will have already elected a new Parliament who will set the tone for a new engagement cycle with China when they convene after the summer. Our established senior friends in Brussels, who are currently preoccupied by geopolitical developments nearer home, will also hand over to a new Commission in November. In this context, the Chamber's *Position Paper*—to be released in September—may be more important than ever before. At that time, approximately one year after the Third Plenum and possibly in the midst of a slowing Chinese economy, questions will be asked about real changes on the ground in Beijing.

Europe will continue to need a clear and consistent diplomatic strategy that transcends the narrow interests of individual members and commands their united support. This will require consistent leadership by Europe's political masters—in Brussels, Strasbourg and in all 28 capitals.

For our part, the European Chamber will increase activity to provide content and information for Chinese and European leaders. We will provide practical recommendations that help strengthen this bilateral relationship and curb protectionist tendencies and which encourage the Beijing leadership to press ahead with WTO-plus reforms that would open up the Chinese economy and strengthen China's standing as a responsible stakeholder in the multilateral system.





# A NEW DAWN

## DEVELOPMENTS IN EU-CHINA TRADE RELATIONS

Photo © European Union, 2014

President José Manuel Barroso shakes hands with President Xi Jinping during his visit to Brussels on 31st March, 2014

Relations between the European Union and China have made significant advances in recent months. The negotiated settlement of trade disputes, the progress of the EU-China Bilateral Investment Agreement and President Xi Jinping's visit to Europe all point towards a relationship that is steadily maturing as it continues to move forward. In this article **Christophe Besse** and **Michal Makocki** of the Trade Section, **Delegation of the European Union to China**, discuss these noteworthy developments.



## Xi comes to Europe

Chinese President Xi Jinping's visit to European institutions in Brussels on 31<sup>st</sup> March, 2014, was the first ever by a Chinese Head of State. It serves as clear recognition of the importance attached to EU-China relations. President Xi had the opportunity to meet with the Presidents of all three European Institutions, namely the Council, the Commission and the European Parliament. His visit to these institutions was part of a broader 10-day tour in Europe from 22<sup>nd</sup> March to 1<sup>st</sup> April, 2014, with stops in the Netherlands, Germany, Belgium and France, where he visited the UNESCO headquarters.

The visit had a large trade content with the aim of developing closer cooperation bilaterally and multilaterally, and this underlines, yet again, China's intention to use relations with the EU as an important lever in a multipolar world.

The EU is China's largest trading partner and China is the EU's second largest. Our relationship is characterised by interdependence, maturity—and great potential. We are two deeply interdependent partners who are conscious of the great mutual benefit that interdependence has brought. China would not have achieved its impressive level of development without an open EU market, and the EU has also benefited from China's growth, and we know that the future holds even more promise. By deepening our trade in services and our investment relations, we can both profit tremendously. In particular, EU technology, know-how, services and investment can decisively help China to achieve a more balanced, sustainable and socially inclusive model of growth—and to become a successful, high-income economy.

The visit also allowed for progress on the urbanisation agenda, a priority area for the Chinese Government, and a field of enormous European expertise. China and the EU anticipate that this will be translated into concrete projects on the ground. Urbanisation is set to be one of the core engines of growth allowing China to redefine its economic model. The EU is committed to delivering effective projects and programmes that help to show ways ahead to Chinese decision-makers in all fields: from mobility to management of water resources, from environmentally friendly solutions to energy-saving buildings, from smart infrastructure to social services. We look forward to China providing the necessary access to the EU's investment, goods, services, technology and ideas to bring these plans to fruition.

The key to turning all this potential into reality is a positive agenda of reciprocal openness and collaboration in the international arena. All these aspects were underlined in the *EU-China Joint Statement* issued during President Xi's visit.

## Resolving disputes through dialogue

Resolving trade disputes adequately is an important part

of a positive agenda. In the run-up to the visit, an amicable solution was found to the Chinese antidumping and anti-subsidy investigation concerning EU polysilicon, as well as the Chinese anti-dumping and anti-subsidy investigation concerning EU wine.

Back in July 2013, at the time when the solar panels case was settled through a price agreement, China had committed to provide all the space necessary for an amicable solution in the polysilicon and wine cases.

On polysilicon, intense discussions towards a price agreement have been going on between Chinese authorities and the EU exporter since February 2014. The European Commission has been closely associated with these discussions. On 18<sup>th</sup> March, 2014, the EU exporter and the Chinese authorities officially announced that an agreement had been found to settle the proceedings through a price undertaking, consisting of a specific minimum import price. As a consequence, China will not impose anti-dumping and anti-subsidy duties on polysilicon exports to China. This price agreement took effect on 1<sup>st</sup> May, 2014, and lasts until the end of April 2016. The European exporter of polysilicon and the Chinese authorities have decided not to disclose the content and details of the agreement.

Concerning the wine case, an ongoing business-to-business dialogue has been taking place between the European Wine Federation and the Chinese Wine Federation since November 2013, with the active support of the European Commission. In February 2014, the second meeting of this dialogue demonstrated that the two sides had a clear willingness to solve the dispute via discussion and cooperation. In February and March 2014, further intense discussions took place between the two federations to agree terms for a Memorandum of Understanding (MoU) aimed at sealing an amicable solution between the two parties through technical cooperation. Eventually, on 24<sup>th</sup> March, 2014, the two parties signed the MoU, the Chinese Wine Federation withdrew its anti-dumping and anti-subsidy complaint, and the Chinese Ministry of Commerce terminated the proceedings.

Finally, as a third pillar of this de-escalation process, both sides agreed to deepen their exchanges to solve the telecom equipment case, which was initiated by the EU (but not activated) in May 2013.

This new approach opens the door to a potential solution in the coming months. This is a testament to a shared commitment to find negotiated solutions to our trade disputes.

## EU-China negotiations

The EU and China welcomed the progress made in the first two rounds of negotiations on an EU-China Investment Agreement covering investment protection and market access. The second round of the investment agreement negotiations, held from 24<sup>th</sup> to 25<sup>th</sup> March in Brussels, completed the conceptual exchanges on the main elements of a



possible agreement. During the third round, that will take place in China, possibly in June, we envisage the initiation of text-based discussions.

Negotiating and concluding such a comprehensive EU-China Investment Agreement, covering investment protection and market access, will convey both sides' joint commitment towards stronger cooperation as well as their willingness to envisage broader ambitions including, once the conditions are right, steps towards a deep and comprehensive Free Trade Agreement (FTA), as a longer-term perspective.

The EU strongly supports China's swift participation in the WTO Trade in Services Agreement (TiSA) negotiation. Both the EU and China will step up their efforts to work towards the conclusion of the negotiations on the review of the WTO Information Technology Agreement (ITA). Both developments pave the way for more economic liberalisation in China.

## Opening up is on the agenda

It may be worth mentioning at this point that trade and investment aspects took on unprecedented importance in this year's sessions of the National People's Congress (NPC) and the Chinese People's Political Consultative Conference (CPPCC), both as a central instrument to achieve reform and as a pillar of foreign policy. Indeed in last year's government work report, 'opening up' is listed as the govern-

ment's second overall priority for 2014, after reform. It is considered a fundamental, reinforcing complement to reform itself, and a crucial tool to enhance the competitiveness of the Chinese economy. Officially and explicitly mentioned at the top of China's trade agenda are the investment negotiations with the EU and the US and FTA negotiations with Korea and Australia. Such strong political signals did not go unnoticed in Brussels.

In view of the great potential to improve their transport relations, both sides have decided to develop synergies between EU policies and China's Silk Road Economic Belt initiative and to jointly explore common goals along these lines. European Union economic and transport corridors and the Silk Road Economic Belt have to be closely coordinated in order to make the flow of goods as efficient and mutually advantageous as possible. Economic collaboration can extend to infrastructure, trains, services and customs facilitation. The possibilities are deep and wide, and could help our partners in the region ensure geopolitical stability.

The European Commission acknowledges the invaluable input and support provided by the European Union Chamber of Commerce in China—truly the 'business arm' of the EU in China—in strengthening our political and economic relationship with China. The EU will continue to work hand in hand with the Chamber to further advance the ambitious trade and investment agenda with China, which just received a fresh presidential impetus. **Eb**



# THE BIGGER PICTURE: EU-CHINA INVESTMENT NEGOTIATIONS

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In the following article **Axel Berger** of the **German Development Institute** takes a broad view of the current EU-China Investment Agreement negotiations with respect to other international processes. By placing the negotiations in the context of an EU-China-US power triangle, he explains that the eventual outcome should be embedded in a global dialogue on investment policies.

Walk and talk: President Xi Jinping with President José Manuel Barroso during his visit to Brussels on 31st March, 2014





From L-R: President Herman Van Rompuy, Premier Li Keqiang and President José Manuel Barroso at the EU-China Summit, Beijing, following the announcement to commence negotiations for the EU-China Bilateral Investment Agreement on 21st November, 2013

Since January 2014 the European Union (EU) and China have been negotiating an international investment agreement (IIA). This treaty should replace the current legal patchwork consisting of 26 different bilateral investment treaties that individual EU Member States have negotiated with China during the past three decades.

China and the EU are aiming at further boosting foreign direct investment (FDI) between both regions. During the last decade investment flows have increased not only from the EU to China but also in the other direction. Yet compared to the intense bilateral trade relationship bilateral investment flows remain rather small.

Beyond the immediate goal of increasing FDI the negotiations are of significance because they are a test case for both partners' new approaches towards negotiating IIAs and are acknowledged as a stepping stone towards a much bigger project—an EU-China free trade agreement. At the same time, a future European-Chinese investment treaty will form part of a power triangle between the EU, China and the US, in which the rules of global investment are in the process of being redefined calling for an accompanying global dialogue on investment rule-making.

### Existing Chinese-European investment treaties

Investment treaties traditionally adhered to a simple logic: their intended aim was to provide a legal framework for developed countries' investments in developing countries, potentially leading to increased investments. These treaties typically contain clauses against discriminatory and unfair treatment of foreign investors, guarantee the free transfer of capital and regulate direct and indirect expropriations. In addition, foreign investors gain the opportunity to bring breaches of treaty provisions before international arbitration tribunals.

With the exception of Ireland, all EU member states have concluded bilateral investment treaties with China following this traditional model. Under closer scrutiny, however, these treaties vary considerably in terms of the level of protection granted to foreign investors.

The first Chinese investment agreement was signed in 1982 with Sweden.<sup>1</sup> In the following years, China negotiated a number of additional agreements with European countries sending out a signal that foreign investments are welcome as part of the Chinese 'reform and open-up' policy. However, this first generation of Chinese investment agreements, negotiated throughout the 80s and 90s, included various safeguards, most importantly regarding the possibility of foreign investors initiating international arbitration. Some European countries' agreements with China are still based on this restrictive model.

In the late 1990s China introduced a new model for its investment agreements that included, *inter alia*, comprehensive investor-state dispute settlement and less restrictive national treatment clauses. A number of European countries updated their old treaties with China to this new level of investment protection during the 2000s. One aim of an EU-wide IIA with China is to replace these different bilateral treaties and create a coherent legal framework for mutual investment flows.

### Entering uncharted waters

Both China and the EU are entering uncharted waters with this new treaty. From a European perspective, the IIA negotiations with China are one of the first pieces of an emerging web of investment rules being negotiated with large economies—often in the context of trade agreements. The inclusion of market access provisions—in the form of pre-entry national treatment that ensures that foreign investors have the same market access as do-

mestic investors—is the decisive element in the package being negotiated with China. If successfully concluded, the investment agreement will constitute a stepping stone towards a comprehensive free trade agreement between China and the EU.

For China, the IIA negotiations with the EU—and in parallel with the US for that matter—come at a crucial phase of economic development. The new Chinese leadership, under President Xi Jinping and Premier Li Keqiang, has embarked upon an ambitious programme of reform that should result in the extensive dismantling of barriers to foreign investments in China. A tangible example of this is the recently launched China (Shanghai) Pilot Free Trade Zone in which investors are granted enhanced market access on the basis of a negative list approach for exceptions. An EU-China investment agreement would place further pressure on China to actually bring these reforms to fruition.

In addition to the challenge of negotiating enhanced market access for foreign investors, China and the EU will also have to take into account the recent calls seeking for a better balance between the rights granted to foreign investors and the ability of host states to regulate FDI in the public interest. On the one hand, this recent turn of international investment rule making is a result of the fact that foreign investors have been initiating numerous claims against host states.<sup>2</sup> The recent discussion in Europe on the benefits and drawbacks of investor-state dispute settlement in the context of the Transatlantic Trade and Investment Partnership (TTIP) are the most recent example in this respect.<sup>3</sup>

On the other hand, it is not only the increasing number of international arbitration cases that define the background against which China and the EU are negotiating a new set of investment rules. A second driver that calls for a re-balancing is the fundamental shift in global FDI flows as companies from emerging countries—especially China—are increasingly investing in developed countries, too. Notably, in 2011 outflows from China to the EU have overtaken those from the EU to the Middle Kingdom.<sup>4</sup> In other words, both China and the EU have to balance their interests as source and receiving economies of foreign investments. China, in its most recent IIAs and trade agreements negotiated with countries from the Americas and Asia, has already made a step in this direction<sup>5</sup> and so will the EU in the context of its trade agreement to be finalised with Canada.

### **The global significance of an EU-China investment treaty**

The investment negotiations are surely of great significance to EU-China economic relations. However, the significance of the negotiations between the EU and China extends beyond the bilateral relationship itself. For some years now China has also been negotiating with the US on an investment treaty that is to take a similar form to the European-Chinese agreement. In addition, the TTIP

between the US and Europe will most likely comprise a comprehensive investment chapter. In all three treaties provisions are being negotiated that should lead to the further liberalisation of investment flows. Rules regarding market access, the prohibition of performance requirements and transparency rules for state-run companies will consequently be elevated to a *de facto* global standard.

It should be in the interests of companies and decision makers of the three economic powers to place these negotiations on a broad footing and take account of the interests of those countries that are not sitting at the negotiating table. Today, transnational companies operate within the scope of global value chains that extend far beyond the triangle described here. Current developments in emerging countries, such as South Africa and India, show a stance of increased hostility against IIAs. The investment negotiations between the EU, the US and China should therefore be accompanied by a global investment dialogue process,<sup>6</sup> which will in turn contribute to achieving a global consensus regarding investment policy. **Eb**

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<sup>1</sup> On China's BIT policy see e.g. Axel Berger (2011): *The Politics of China's Investment Treaty-Making Programme*, in: Tomer Broude / Amelia Porges / Marc Busch (eds.): *The Politics of International Economic Law*, Cambridge, M.A.: Cambridge University Press, pp. 162-185.

<sup>2</sup> The United Nations Conference for Trade and Development counts 568 known investor-state dispute settlement cases at the end of 2013. See UNCTAD (2014): *Recent Developments in Investor-State Dispute Settlement (ISDS)*, IIA Issues Note No. 1, April 2014, online: [http://unctad.org/en/PublicationsLibrary/webdiaepcb2014d3\\_en.pdf](http://unctad.org/en/PublicationsLibrary/webdiaepcb2014d3_en.pdf) (accessed: 22.4.2014).

<sup>3</sup> See Axel Berger (2014): *The transatlantic free trade agreement – the dispute over dispute settlement*, German Development Institute, The Current Column of 4th March 2014, online: <http://www.die-gdi.de/en/the-current-column/article/the-transatlantic-free-trade-agreement-the-dispute-over-dispute-settlement/> (accessed: 22.4.2014).

<sup>4</sup> See online: <http://unctad.org/en/Pages/DIAE/FDI%20Statistics/FDI-Statistics-Bilateral.aspx> (accessed: 22.4.2014).

<sup>5</sup> See Axel Berger (2013): *Investment rules in Chinese preferential trade and investment agreements: is China following the global trend towards comprehensive agreements?* German Development Institute, Discussion Paper 7/2013, online: [http://www.die-gdi.de/uploads/media/DP\\_7.2013.pdf](http://www.die-gdi.de/uploads/media/DP_7.2013.pdf) (accessed: 22.4.2014).

<sup>6</sup> Karl Sauvant and Federico Ortina (2013): *The need for an international investment consensus-building process*, Columbia FDI Perspectives No. 101, August 12, 2013, online: <http://www.vcc.columbia.edu/content/need-international-investment-consensus-building-process> (accessed: 22.4.2014).



# CHAMPING AT THE BIT

How European  
companies can benefit  
from a US-China Bilateral  
Investment Treaty

By Timothy P. Stratford, Covington and Burling LLP



**T**he announcement last summer by Chinese officials that China will negotiate a bilateral investment treaty (BIT) with the United States based on core elements of the US Model BIT is good news—not only for American companies but for European companies as well. Though such a treaty would most directly benefit US investors (including US subsidiaries of European companies), Chinese officials have acknowledged that a US-China BIT will require “fundamental reform of China’s foreign investment regime”, suggesting that systemic changes mandated by the treaty will benefit all foreign investors in China. Moreover, given parallel efforts underway to conclude an EU-China BIT, we can expect that many of the benefits and safeguards included in the US-China BIT will also be reflected in the EU treaty. These developments presage the largest potential new opening of the China market for foreign investors since China entered the WTO in 2001.

However, to take full advantage of this opportunity foreign investors should assess the current operating environment in China and provide a list of key negotiation priorities to US and EU trade officials, who indeed would welcome such input. To help facilitate participation of EU Chamber members in this process, we provide below a brief description of the types of issues addressed in the US Model BIT and the current status of US-China negotiations, and then suggest ways that companies can push for reforms of particular relevance to their specific circumstances and industries.

## **The US Model BIT<sup>1</sup>**

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

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

a schedule of non-conforming measures—the so-called *Negative List*—to be included as an annex to the treaty.

Other Model BIT articles mandate additional protections and safeguards, including, for example, that the parties must permit “all transfers related to a covered investment to be made freely and without delay into and out of its territory”, and that parties cannot impose or enforce performance requirements related to export volumes, domestic content, technology transfers or use of domestic technology. In addition, the Model BIT imposes specific transparency requirements on the parties, and permits “investor-state dispute settlement”, which means that an aggrieved foreign investor may initiate international arbitration proceedings directly against the host country.

## **The July 2013 Breakthrough**

The US and China launched BIT negotiations in 2008 and completed several rounds of constructive technical discussions over the next five years, but little progress was made in resolving major differences regarding certain core elements—including, most notably, the US insistence on “pre-establishment” coverage and adopting the ‘negative list approach’. Many observers were therefore caught off guard when China agreed, during the July 2013 US-China Strategic and Economic Dialogue, to accept these two elements as a basis for continued BIT negotiations with the US.

Since July, US-China BIT negotiations have proceeded apace, including two rounds completed thus far during 2014. Bilateral discussions are currently focused on the text of the treaty, while the Chinese side continues the internal process of developing a draft *Negative List*, which they will probably present to the US by late 2014 or early 2015.

As the negotiations continue, we will likely see a number of measures implemented nationwide—or at least locally on a trial basis—in support of commitments destined for inclusion in the US-China BIT. Already, the establishment of the China (Shanghai) Pilot Free Trade Zone (CSPFTZ or Zone) has permitted foreign investors to invest under a ‘negative list approvals scheme’, and the Zone has featured several sectoral openings likely to be included in the US-China BIT. However, the US side has made clear that it expects an “extremely different” level of ambition to be reflected in a much shorter *Negative List* for the BIT than the one issued for the CSPFTZ.

## **How companies can contribute to and benefit from successful BIT negotiations**

As American and European trade negotiators prepare for meetings with their Chinese counterparts, they seek and appreciate input from businesses and industry groups regarding issues that should be priorities during the BIT negotiations. To assist with this effort, companies should consider and provide input on the following questions:



### **What are the priority concerns of my company?**

Companies should identify and rank in order of importance the current laws, regulations and regulatory practices that restrict or otherwise hamper their operations in China, including not only specific legal provisions but also unofficial (or unwritten) administrative practices or oral instructions. For instance, although many industry sectors are open to wholly foreign-owned enterprises, Chinese administrative officials sometimes condition issuance of required operating licenses or other approvals on the establishment of a joint venture with a domestic company, or use other means to favour domestic investors over foreign investors.

### **Are my company's concerns included within the intended coverage of the US Model BIT, and should they be covered by the EU-China BIT?**

Companies should review the US Model BIT to determine if the priority concerns, identified in the question above, fall under the intended coverage of the treaty. If such concerns are not currently addressed in the US Model BIT, and arguably should be, then discussions with US and European negotiators should be initiated, directly or via industry groups, to assess the importance and viability of addressing them.

### **Are relevant US Model BIT provisions, as currently drafted, workable and effective within the Chinese context?**

China's economic, political, legal and regulatory systems include a number of unique features that often are not adequately captured by traditional treaty language—as demonstrated by the fact that Chinese WTO commit-

ments have not always been interpreted and implemented in accordance with international expectations. For example, China's commitment to make judicial review of administrative decisions available to foreign investors has not been helpful in practice, because companies have often lacked confidence in the independence of the judiciary and have feared retaliation by administrators if their decisions were challenged. Taking these sorts of considerations into account, should any modifications be made to Model Treaty language to help ensure that the promised benefits of treaty protections will actually be realised by foreign investors?

Opportunities to help drive fundamental economic reform in China are rare. Companies should position themselves now to capitalise on this opportunity and benefit directly in a new era of Chinese reform and opening. **Eb**

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<sup>1</sup> Available at: <http://www.ustr.gov/sites/default/files/BIT%20text%20for%20ACIEP%20Meeting.pdf>



# TALKING IT OVER

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After the recent period of EU-China trade friction, trade relations between the two regions are now on a more even keel. **Eric Emerson** and **Henry Cao** of **Steptoe and Johnson LLP** look back over a turbulent couple of years and explain how these disputes arose, and how they were eventually resolved through dialogue.

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**T**he last two years were some of the most contentious in recent memory in EU-China trade relations and were marked by a series of high-profile, interwoven disputes over a range of sensitive items. The volume of potentially-affected trade was enormous, and at several points it appeared that EU-China trade relations could be seriously derailed. However, like the sea after a storm, EU-China trade relations are now remarkably calm—in stark contrast to US-China trade relations, which remain choppy. Now that this storm has passed, we can look back more closely at how the EU successfully managed to resolve its most recent series of trade disputes.

### The dispute begins (on US soil)

The start of the recent spate of EU-China disputes dates back October 2011 in the United States (US), with the filing of antidumping (AD) and countervailing duty (CVD) petitions by the US subsidiary of SolarWorld AG against imports of crystalline silicon photovoltaic (PV) cells and modules—solar cells and panels—from China. This was one of the largest trade cases filed against China in recent years, covering nearly USD 2 billion in imports annually.

Shortly after the US issued its provisional AD/CVD duties in March and May 2012, an *ad hoc* group of EU solar panel producers responded by filing its own AD/CVD petition in July 2012. This type of follow-on trade proceeding is common, as producers often become concerned that exports subject to a trade dispute in a third country will be diverted to their own. But the potential impact of this case was much larger as annual exports of Chinese solar products to Europe topped EUR 20 billion. In response to the industry's petition, the European Commission initiated its investigation in September 2012.

### China's Response

China responded to these solar petitions by initiating AD/CVD investigations against the principal input into the production of solar panels—polysilicon. In July 2012, two months after the US issued its preliminary AD margin in its solar panels case, China retaliated by initiating an AD/CVD investigation against imports of polysilicon from the US, accompanied by an AD-only investigation of polysilicon from Korea. Then, in November 2012—two months after the EU's initiation of the case against China's PV imports—the Ministry of Commerce (MOFCOM) added the EU to the polysilicon investigation. While the volume of trade covered by these polysilicon petitions was not nearly as large as the solar trade actions, China made clear that it intended to fight back.

### The EU ups the ante

Separate from the solar panel dispute, in May 2013, the EU announced that it would take the unusual step of self-initiating AD/CVD investigations of telecoms equipment imported from China—that is to say, it initiated the investigation without receiving a formal petition from the industry. Because the investigation was self-initiated, and because the targets of this case were two of the most prominent Chinese producers, Huawei and ZTE, China viewed this investigation as a particularly antagonistic move.

### Another counterpunch from China

In the wake of the telecoms case, and in further response to the PV dispute, China responded by initiating yet another AD/CVD proceeding, this time against exports of wine from the EU. The wine case, rumoured for several months, was launched on 1<sup>st</sup> July, 2013, and covered approximately EUR 1 billion of exports to China.

While the amount of trade covered by this case was

substantially lower than the amount of PV products exported to Europe, the Chinese press hinted that an even larger case was being contemplated: exports of saloon cars from the EU, with an annual import value in excess of EUR 21 billion—almost exactly the value of Chinese PV exports to Europe. While the idea of such a large case against automobiles might seem like a stretch, recall that in 2009, China initiated an AD/CVD investigation of saloon cars from the US in response to President Obama's decision to impose tariffs on Chinese tyre imports. That investigation against US automobiles resulted in the imposition of an AD/CVD duty as high as 34.4 per cent on US automobiles imported into China. In other words, this was no idle threat.

## EU-China resolution

At this point, the EU and China began a period of intense negotiations to resolve the solar dispute and the related polysilicon investigation. In parallel with the final determination in its AD investigation, issued in August 2013, the EU confirmed a price undertaking with Chinese solar panel exporters, which was later extended to cover the CVD case as well. Chinese solar producers/exporters who agree to this undertaking will be exempted from paying any AD or CVD duties, as long as certain minimum price and maximum quota terms are met. Chinese companies representing roughly 80 per cent of Chinese exports to the EU have signed up to this agreement.

For its part, China eased off in the polysilicon case against the EU. China signalled in its January 2014 preliminary AD/CVD determinations some intention to compromise, in that it elected not to collect provisional duties in spite of its affirmative findings of dumping and subsidisation. A final decision terminating this investigation came into effect on 1<sup>st</sup> May, 2014.

The second part of this settlement process was to resolve the telecoms and wine disputes. On 27<sup>th</sup> March, 2014, the EU announced its decision to drop the AD case on telecoms equipment, an announcement made three days after China announced its decision to terminate the wine case. The European Trade Commissioner, Karel De Gucht, announced that the EU would still continue to examine the issue of illegal subsidies in the telecoms sector, although it would not formally launch a CVD investigation while talks with Beijing continued.

## But US disputes continue...and grow

By contrast, the US disputes have continued and, in some respects, grown. The US imposed final AD/CVD orders on PV products in November 2012, with combined AD/CVD margins for most exporters of 41.2 per cent. Almost immediately enforcement problems began, as the US AD/CVD orders only covered PV cells produced in China and PV panels—that is, the larger arrays into which individual cells are put—made with Chinese origin cells. Panels made with cells from other countries were not covered by these duties, which meant that with the imposition

of the orders, PV cell production shifted from China to countries throughout Southeast Asia.

Concerned about foreign producers' ability to undercut the effectiveness of the orders, the US solar industry filed a follow-on petition in December 2013 to try to close this apparent loophole. This second petition targets China and Taiwan, and seeks to include all PV panels produced in China and Taiwan regardless of the location of cell production. This case is now underway.

## Lessons Learned

The EU's recent trade disputes demonstrate that China is still willing to retaliate, often forcefully, to large-scale trade disputes affecting its key exports. Antidumping/countervailing duty measures are one of the few WTO-permissible tools parties have to increase duty rates, and China's tit-for-tat initiation of the polysilicon and wine cases—ostensibly in response to industry petitions—demonstrates a willingness to take strong action when its export interests are threatened by foreign AD/CVD proceedings.

These recent disputes also suggest that the EU is somewhat better equipped to achieve a negotiated solution than the US. In some respects this comparison may be unfair, as the volume of bilateral trade threatened in the EU-China context was so large that it demanded top-level attention from both governments. But not only does the EU legal regime provide greater flexibility than the US system to resolve disputes through negotiation, recent history suggests that the European leadership is also more willing to engage in this type of bilateral discussion. In the US context, while the leading US solar trade association has been advocating a commercial settlement of this dispute, the US Government does not appear to be as engaged in negotiations—perhaps because these trade disputes, while large, are less pressing than many of the other issues crowding the recent US-China bilateral agenda, such as cyber security. Whatever the reason, the EU has proven itself to be more able to resolve its disputes with China through negotiation than the US.

For now, the sky is clear, but clouds can form at a moment's notice. If another storm does arise, European exporters must hope that the EU can again successfully negotiate its way to a satisfactory outcome. **Eb**

*Attorneys in **Steptoe and Johnson's** China practice help clients invest and conduct business in China. We help clients structure commercial agreements, overcome regulatory barriers to market entry, and comply with relevant Chinese regulations. Steptoe has a particular expertise in the area of international trade, and we are consistently ranked by independent evaluators as having one of the leading international trade practices among law firms operating in China.*

\*Please note: the views expressed in this article are not necessarily those of the European Union Chamber of Commerce in China.

## 中国-欧盟农产品质量安全风险评估研讨会 EU-China Seminar on Risk Assessment for Agro-products



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质量安全监管局  
Ministry of Agriculture, P.R. China  
Center of Quality and Safety  
for Agro-products,  
Ministry of Agriculture, P.R. China

2013年6月6-7日, 北京  
6-7 June 2013, Beijing

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# TRADING PLACES

Launched in 2004, the EU-China Trade Project (EUCTP), is the largest trade and investment-related cooperation project with China. Now in its second iteration—the EUCTP II—the project will have delivered more than 400 activities when it concludes in 2015. **Carl Hayward** met with Project Team Leader **Philip Bartley** to find out about the progress it has made and discuss some of its major achievements.



The EUCTP is a trade technical assistance project funded by the European Union to assist the Chinese Government with capacity building and institutional strengthening, and to help establish trade and economic policy, legislative and regulatory frameworks in line with international standards. This supports China's obligations to comply with international agreements, chiefly as a member of the World Trade Organisation (WTO).

EUCTP has evolved considerably since its original design to support everything under China's WTO accession mandate. Now, the project breaks down into five linked components: Services, including banking, legal, securities, insurance, telecommunications, creative and tourism; Quality Infrastructure, including standardisation, technical regulations, conformity assessment and testing, and market surveillance; Agriculture and Food Safety; Customs; and a Cross-Cutting Component, including competition policy, public procurement, sustainable trade and low carbon economy, WTO issues, investment rules, corporate social responsibility and market access.

Bartley says that the benefit of the project for China is the opportunity to learn from the experiences of the EU, which already has a relatively mature policy, legal and regulatory framework in all aspects of trade and investment. China has identified that the continuation of its economic development relies on harmonisation with international standards and agreements that govern most trade and investment areas, and as the EU has been a pioneering contributor to many of these international standards it provides a valuable reference point for China as it puts in place its own legal and regulatory framework.

The benefit for the EU, Bartley says, is that China can become part of the international trading environment where the same rules apply. "This is part of Europe's external trade policy, to harmonise rules and create a level playing field for all players. Projects like this assist China in reaching these common objectives."

The two phases of the project are a reflection of China's progress in this area, and its changing relationship with the EU. The EUCTP I was more focussed on helping China to implement its regulatory framework following its WTO accession, whereas the EUCTP II has shifted its focus much more to EU-China bilateral trade issues. The relationship has deepened between the two regions, and they are now involved less with points of academic discussion and more on the practical challenges of fine tuning China's longer-term, sustainable trade and investment policies. There are now around 20 EU-China dialogues covering trade and related issues, and Bartley holds this as clear example of the importance of the relationship which the project reflects.

"If you want to look at how intense Europe's relationship is with a certain country, in terms of trade, you have to look at the strength of the political and official dialogues

and working groups," says Bartley. "With China it's extremely strong, whereas some smaller countries may have just one dialogue covering a whole range of issues. With China there's a lot of real stuff getting done, because China is such a huge and growing trade partner for Europe."

Bartley also measures the importance and success of the project by the level of detail that both sides are going into, as well as the political level of people that they are dealing with on the Chinese side. Around 15 per cent of EUCTP's activities deal directly with the State Council's legislative drafting office which, Bartley says, is the highest level of impact you can have on any technical assistance project. "If you look at our financial services activities for example, we are dealing with issues of China's *renminbi* convertibility and China's monetary policy. These are not training or academic debates, they are part of the ongoing reform agenda," he says.

He believes that China's perception of the EUCTP has been positive since its inception and that key ministries now view the project as contributing to its overall framework for supporting its reform. Some EU-China dialogues at the official, political level are very well advanced and there exists a real synergy and understanding between what a particular directorate-general and a ministry wants to achieve together. The outputs of work under such dialogues can therefore set new benchmarks for what is possible and inspire other EU-China dialogue partners to resolve differences and be more ambitious.

Where frictions can exist in the EU-China dialogues the flexible project scope allows both sides to address the problems and identify areas of mutual interest, such as how to achieve a low carbon economy or sustainable urbanisation. The project scope provides opportunities for joint innovation and exploring new approaches to resolving frictions, such as in intellectual property protection. Achieving progress within individual dialogues, Bartley acknowledges, requires the best efforts of both sides.

Now in its penultimate year, the EUCTP should be considered a success due to the support it provides to the EU-China trade dialogues, the level of discussion and the backing that it has received from the Chinese Government and European Commission at all levels. Chinese interlocutors in the dialogues have included ministries, the State Council, the National People's Congress and the Communist Party, who have all put their weight behind the decisions that have been taken on the Chinese side. This is something that Bartley says is unique for a technical assistance project, as the vast majority of trade or other types of projects are not so deeply connected to the political hierarchy, and for this reason do not receive the amount of attention they perhaps deserve.

Another indicator of the success of the project is the number of laws that it has been directly involved in supporting in terms of legislative drafting, laws that can take a considerable amount of time to be promulgated. Most



notably, they have worked on the Anti-Monopoly Law, Insurance Law (revision), the Patent Law (revision), the Trademark Law (revision), the Telecommunication Law, the Environmental Protection Law (revision), the Securities Investment Funds Law (revision), Mutual Assistance on Criminal Matters, Administrative Enforcement, the Copyrights Law (revision), the Tourism Law, the Asset Evaluation Law, and the Credit Reporting Regulation and Energy Law. For some of these laws the EUCTP was involved from the very beginning. At the first stage they were involved with a ministry, with the law then being passed to the State Council before receiving final approval from the National People's Congress, a process that could take four or five years.

In the area of competition policy, in addition to supporting the Anti-monopoly Law, DG Competition is now working with the Chinese anti-monopoly enforcement bodies to share administrative practices and gather information on cross-border cases.

Low carbon is another area, particularly in the last three years, where China is putting together a lot of policy, regulations and new standards to increase renewable energy and improve energy efficiency of buildings. This is another area where the EUCTP has done a great deal of work.

Bartley also points towards the work that they have carried out in the financial services sector, having carried out more than 100 activities with the People's Bank of China, the Banking Regulatory Commission and the Se-

curities Regulatory Commission over the last eight years. "This is a huge body of work," says Bartley, "and directly inputting to China's reform agenda." Currently the trade and investment landscape is becoming an increasing priority for the project as DG Trade and the Ministry of Commerce (MOFCOM) prepare for deeper ties.

It is known that China no longer qualifies for assistance as a developing country now that it is considered to be an industrialised country, so in future the instruments that fund technical assistance will no longer be available to them. However, given the importance of the EU-China relationship, there is ongoing exploration into fresh instruments, new budgets and different ways of cooperating which are perhaps more geared towards mutual interest with matched funding. Each side would invest in future cooperation and then work together on similar kinds of mechanisms, but within a different framework. However, with the project set to conclude in 2015 any future plans lie with the European Commission and the Chinese Government.

After nearly 10 years, Bartley says that China's dynamic development and the ever-changing EU-China relationship have kept the project feeling fresh. "It's almost as if we have reinvented ourselves every year," he says. "This year is the Free Trade Zone and launch of EU-China Investment Agreement negotiations, while last year we saw the early reforms of the new government, so we've constantly had to realign ourselves with these new political instruments and the development challenges that China has identified. There's never a dull day." **Eb**



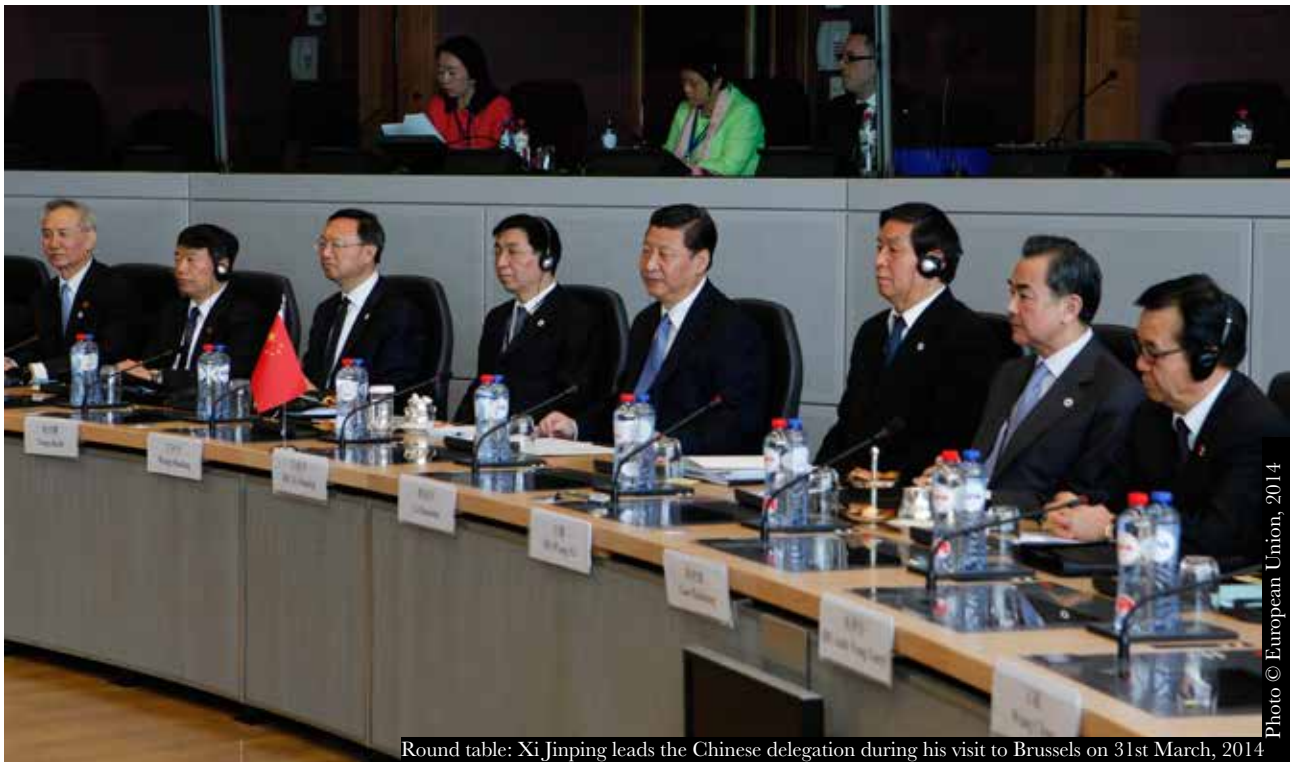
# A CHINESE VIEW: EU-CHINA TRADE AND INVESTMENT

The 16th EU-China Summit at the Great Hall of the People in Beijing on 21st November, 2013

Photo © European Union, 2014

From an EU perspective there are a number of reasons to feel positive about current EU-China trade and investment relations, whether it is the commencement of negotiations for the Bilateral Investment Agreement or the settling of recent trade disputes through dialogue. EURObiz's **Carl Hayward** spoke to **Xing Houyuan**, Vice President of the **Chinese Academy of International Trade and Economic Cooperation, Ministry of Commerce**, to garner a Chinese perspective.





Round table: Xi Jinping leads the Chinese delegation during his visit to Brussels on 31st March, 2014

Photo © European Union, 2014

### **What do you consider to be the most significant development in EU-China trade and investment in the past 12 months?**

China is the EU's largest trade partner, while the EU is China's second largest, and I believe that this status is very significant. In 2013 the bilateral trade between the two sides has been increasing. Imports from the EU into China has been growing at around 3.7 per cent, which is higher than exports from China to the EU, demonstrating that China's policy of seeking a balanced trade relationship with the EU has taken effect, especially in the area of industry and equipment upgrades, an area which the EU has made significant contributions in both technology and investment.

China is in a period of economic transformation, where it needs more demand and consumption to boost its economy. We can see that Chinese tariffs are being lowered, particularly tariffs on luxury goods from the EU, so I hope that more consumer goods can enter the Chinese market and we can find more high-quality products from the EU here. As a consumer, as well as an academic, I will be very happy to see this.

But there were some issues too. Last year we witnessed the trade dispute over solar cells, and although we avoided a trade war and resolved the situation it was not the result that the industry was looking for. There was also a trade dispute in the footwear industry, which caused some dissatisfaction on both sides. So I hope that China and the EU can continue to cooperate at all levels and keep each other's bilateral interests at heart, while resolving disputes and reducing trade frictions.

### **What significant changes to the EU-China investment climate do you anticipate in the near future?**

We anticipate big changes following the EU-China Bilateral Investment Agreement negotiations, and are hoping for a positive outcome. However, since the negotiations have just started it is too early to say what specific changes we would expect to see.

The investment agreement is very important, but is not the only significant change we anticipate. We have observed that interest in investing in Europe has increased amongst Chinese companies, particularly towards the end of last year following the recovery of the economy in Europe, along with certain countries becoming more open to Chinese investment, including investment from Chinese state-owned enterprises.

Similarly we see that EU investment into China is also growing as well, so in general this makes me very hopeful.

### **How do you think the laws for foreign-invested enterprises are likely to change?**

There will certainly be changes to the *Foreign Investment Catalogue*. I believe that it will eventually be transformed into a *Negative List*, like the one being used in the China (Shanghai) Pilot Free Trade Zone (CSPFTZ), probably after 2015. The reason I say after 2015 is because when the National Congress laid out the framework for the CSPFTZ, it was stated that the model could be replicated in other places by this time.

Certain areas that were previously forbidden or restricted will be opened up in this year's *Foreign Investment Catalogue*, such as healthcare, education and nursing homes for elderly people. In addition to opening up certain areas, I believe it will also make provisions for treating foreign-invested companies and domestic companies equally, and this is extremely important.

### **What do you see as the major challenges for Chinese companies looking to invest in Europe?**

I studied this problem quite seriously. Chinese investors are very confused about the legal requirements for investment. If they are going to invest in Europe, are they going to pay more attention to EU trade and investment laws, or those of a specific country? There is not much transparency in this regard.

At the end of 2012, after the 18<sup>th</sup> National Congress, I accompanied a friendship delegation to the EU, and I asked this question of many of the EU officials, and I didn't receive a clear answer.

Another issue relates to work permits and visas. Some countries have stringent visa policies which are not open to adjustment. If a Chinese company wants to invest in Europe, they will need to bring in management teams, and if certain countries are making it difficult to acquire visas this presents a hurdle to investment that needs to be overcome. Chinese entrepreneurs hope that the EU can be more open in this respect to facilitate them moving their management teams overseas.

### **What are the most recent figures on FDI from Europe into China and vice-versa, and your expectations for future trends?**

During 2013, Chinese investment to the EU amounted to around EUR 3.62 billion, and EU investment to China was EUR 6.52 billion. There are some discrepancies among other sources though. Some media report bilateral trade as being quite balanced.

China is still an attractive investment destination for EU companies for three reasons. First, China is the EU's largest importer, and the market remains very lucrative. Second, the 28 countries in the EU are facing a major industry upgrade and China is a good place for them to move their industries, particular in the service sector. Third, China's investment environment is much improved.

I agree that China's investment climate is too restrictive to foreign companies in certain areas; some areas are not even open to investment from domestic companies. We should follow the path laid down following the Third Plenum which allows for a more open, market-based environment and open up more to foreign investment. Right now, the major investments from the EU—around 90 per cent—are in the form of greenfield investments. What we hope to see more of is cross-border mergers instead.

### **What do you think the Chamber could do to improve the investment climate/to improve EU-China Business relations?**

We notice there has been a surge in Chinese investment in Britain and Germany, but investment has been pretty unbalanced across other European countries. We would like to see more information provided on projects, industries and policies across all European countries in order for Chinese companies to get a clear and complete picture of the EU's investment environment, so they can clearly understand all opportunities that are available.

In terms of the EU investing in China it should be the same. China should welcome EU investment to help industry transformation, particularly in the areas such as low-carbon technologies, manufacturing and high tech goods. These are all areas where the EU has an advantage, so we hope that China could be depicted as a positive destination for investment.


### **Is the China (Shanghai) Pilot Free Trade Zone progressing the way you would expect?**

I think so yes. It is actually progressing a lot better than we had anticipated, and when I visited Shanghai six times last year I noticed positive changes. I would like to see the expansion of the free trade zone to encompass the whole of Shanghai municipality. I believe it could be the launch pad for the next round of opening up and reform, just as has happened in Shenzhen and Xiamen.

### **Where would you expect the next pilot scheme to be launched?**

Tianjin and Guangdong: right now these places could help engineer China's next round of opening up, growth and development.

### **When is it anticipated that the Negative List will be reduced in the China (Shanghai) Pilot Free Trade Zone?**

It will definitely be reduced, but I can't really say when or by how much. It would be in the region of a 30 per cent reduction, as the list currently incorporates investment conditions in areas such as mining, agriculture and large-scale manufacturing, none of which take place in the Zone. This reduction will be coupled with the opening of some service areas. 

*The **Chinese Academy of International Trade and Economic Cooperation (CAITEC)** is an institution of applied economic and trade policy research and consultancy directly under the **Ministry of Commerce (MOFCOM)** of the People's Republic of China. Its undertakings cover research, information gathering and analysis, consulting services, publishing services and property management.*



# THE LAST RESORT

According to a recent survey of the world's largest corporations by law firm Hogan Lovells, China is now the fourth most common location for cross-border commercial disputes worldwide. Whereas large companies can afford whole teams of seasoned lawyers to prepare their legal strategy for China, small and medium-sized enterprises (SMEs) tend to lack these resources and are therefore keen to prevent any conflict with their business partners. A guideline on dispute settlement with Chinese companies, published by the **EU SME Centre**, aims to disperse anxieties by providing a clear overview of the options available when legal action can no longer be avoided. **Jonas Rasch** provides a summary of the guideline, which is available for free download on the Centre's website.

## The perks (and drawbacks) of being a 'foreign element'

When it comes to dispute settlement in China, the first question to be answered is whether the accused party has assets that can be used for compensation. Only if this is the case is it worthwhile to think about taking action. The second question revolves around whether or not one of the parties involved is considered a 'foreign element', since Chinese Contract Law and Civil Procedure Law offer special regulations for legal disputes involving 'foreign-related contracts'. Only companies registered abroad fall into

this category. Any foreign-invested enterprise registered in China (e.g. wholly foreign-owned enterprises or joint ventures) is regarded as Chinese and Chinese law applies as a consequence. Chinese law also applies exclusively to disputes among joint venture partners, even if the foreign party is not registered in China, as well as any business concerning real estate or the extraction of natural resources in the country.

If a foreign company is involved, the parties are free to choose the applicable law, the jurisdiction and (if applicable) the domestic or foreign arbitration commission. It is



important to note, however, that enforcement of decisions made by foreign courts or arbitration institutions can become an issue in China. Only if a treaty on judicial assistance or a reciprocity agreement is in place will a Chinese court recognise foreign awards. Several European countries have signed such treaties on commercial law with China—among them France, Spain and Hungary. Many others have not, including the UK and Germany, and decisions made in these jurisdictions will therefore be of no consequence in China.

Which law and jurisdiction applies to any individual ‘foreign-related contract’ will have to be decided between the parties involved, most likely during contract negotiations. For obvious reasons, Chinese companies are reluctant to accept anything other than Chinese law, Chinese courts and Chinese arbitration commissions. Whereas this might have represented a deal breaker in the past, this should no longer be the case as the Chinese legal environment has come a long way since.

## Hope for the best, prepare for the worst

Regardless of whether a dispute involves foreign elements or not, the parties are free to choose between litigation and arbitration to resolve the issue. Both result in legally binding rulings that can, in most cases (see above), be enforced in China. However, only if the contract between the two parties includes a well-drafted arbitration clause can arbitration become a mandatory stage of dispute settlement. Whether litigation or arbitration is preferable depends very much on the details of each case and is a matter of discussion even among experienced lawyers; some of the factors include the most likely type of dispute, the desired remedies, the location of the assets, or the amount of money involved. In general, the advantages of arbitration include:


- its flexibility regarding the servicing of the necessary documents;
- the right to choose an arbitrator from a pre-selected list;
- the right to pick the preferred arbitration institution (within China in case of domestic disputes, globally in international cases);
- the fact that foreign attorneys are allowed to represent foreign clients (however, they are not allowed to make statements and interpret the law if the governing law is Chinese); and
- the fact that the language does not necessarily have to be Chinese.

## Chinese courts: reputation and reality

According to Hogan Lovells’ survey, the Chinese legal environment is currently regarded as the second most challenging by international businessmen and business lawyers of multinational corporations—only the United States’ is considered more difficult. Common preconceptions suggest that local courts might favour local compa-

nies, that cases in China take too long, that corruption is widespread or that the actual enforcement leaves much to be desired. However, much has been done in recent years to remedy the situation. After all, China has a strong interest in keeping and attracting further foreign investment in the country. That these efforts are bearing fruit becomes evident in a recent comparison of the ease of enforcing contracts in 189 economies worldwide, published by the World Bank. Outperforming the UK, Denmark or Italy, China ranks nineteenth when taking a look at the time, cost and procedures involved in resolving a standardised commercial lawsuit between two domestic businesses. However, things might become more difficult when foreign parties are involved, and even more so if the Chinese party happens to be a state-owned enterprise or the dispute revolves around technologies or information deemed politically sensitive. Tellingly, China ranks ninety-eighth on the World Bank’s list concerning the protection of foreign investors.

Besides the lack of a clear-cut division between politics, vested economic interests and the law, the unpredictability of Chinese courts worries many foreign entrepreneurs and managers. The Chinese legal system is not based on case law, thus previous rulings are not regarded as examples for the future and similar cases can have completely different outcomes. In addition, some Chinese regulations are vague and imprecise, providing judges with a wide range of latitude. Another major concern for foreign parties is the fact that Chinese courts base their rulings almost exclusively on documentary evidence and the burden of providing such evidence lies solely with the complainant. Strict rules apply to these documents as well as the timing of their provision, which can become especially difficult if evidence from abroad is involved.

Even though the Chinese court system might be very different from what foreign companies and lawyers are used to, it is easier to navigate than some might assume. Foreign companies can, and do, win cases in Chinese courts on a regular basis. 

*This article is based on a guideline entitled Dispute Settlement with Chinese Companies, which provides much more detailed information on the topic and is freely available after registration on the website of the **EU SME Centre** at [www.eusmecentre.org.cn](http://www.eusmecentre.org.cn). Related resources include guidelines on sales contracts when exporting to China, due diligence for joint ventures, mergers and acquisitions and negotiating with Chinese business partners as well as recordings of webinars on managing contract terms to reduce risk and finding the right Chinese partners and protecting your company’s assets. Should you have any questions concerning the legal framework for doing business in China, please contact our in-house expert team.*



**CHINA IPR**  
**SME HELPDESK**

# EUROPEAN CHAMBER LOBBYING HIGHLIGHTS

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## Position Paper Presentation to CCPIT

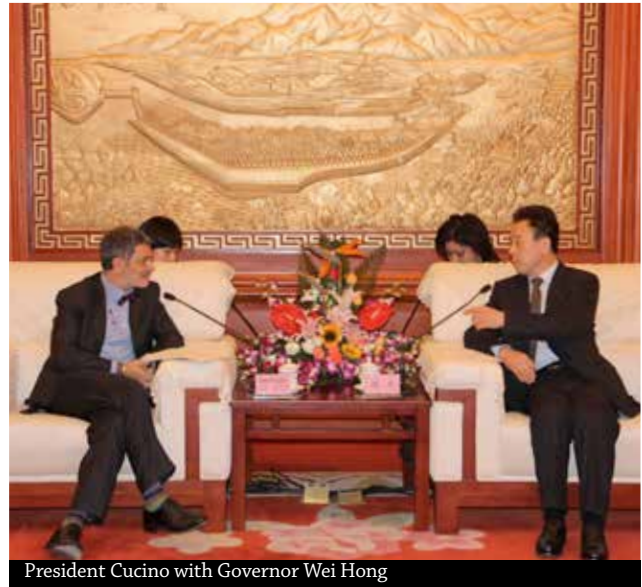


President Wuttke with Jiang Zengwei

On 9<sup>th</sup> May, 2014, the European Chamber's newly-elected president Joerg Wuttke paid a courtesy visit to Mr Jiang Zengwei, recently appointed president of the China Council for the Promotion of International Trade (CCPIT) and presented the *Position Paper 2013/2014*. Both parties complimented the long-term partnership between the Chamber and the CCPIT, particularly the co-organisation of the EU-China Summits.

Both sides have great expectations for the further strengthening of this relationship. President Wuttke went on to emphasise the importance of the forthcoming launch of the Chamber's *Business Confidence Survey 2014*. President Jiang expressed an interest in collaborating with the Chamber to set up a dialogue mechanism for Chinese and European firms, so the latter can share management expertise and provide technical guidance.

## Provincial Quest to Chengdu and Chongqing



President Cucino with Governor Wei Hong

On 26<sup>th</sup> March, a Chamber delegation, led by former Chamber president Davide Cucino, met with the governor of Sichuan Province, Wei Hong, and Vice Governor Gan Lin as part of the second iteration of the Chamber's 'Provincial Quest Programme', following a successful trip to Heilongjiang last July. The trip was in response to our members' growing interest in expanding investments in China's Southwest region, as indicated in the *Business Confidence Survey 2013*. President Cucino engaged Governor Wei and the delegation members in a lively and causal discussion on specific industries in Sichuan after the meeting, and also presented the *Position Paper 2013/2014*.

## Position Paper Presentation to the Vice Mayors of Chongqing and Chengdu



President Cucino with Chengdu's Vice Mayor, Fu Yonglin



President Cucino with Executive Vice Mayor of Chongqing, Weng Jieming

On 25<sup>th</sup> March, a Chamber delegation met with Executive Vice Mayor of Chongqing, Weng Jieming, and discussed the future development of Chongqing and the business prospects of European companies based there. President Cucino presented the *Position Paper 2013/2014* to Vice Mayor Weng and also, a day later in Chengdu, to Vice Mayor Fu Yonglin, who introduced the city's latest developments.

## Position Paper Presentation to Nanjing Vice Mayor



President Cucino with Nanjing Vice Mayor Hua Jing

On 27<sup>th</sup> March, a Chamber delegation, led by former Chamber president Davide Cucino, met with Nanjing Vice Mayor Ms Hua Jing and other senior officials from the Nanjing City Government to discuss how to increase cooperation with European businesses. The Vice Mayor spoke fondly of European businesses and cooperation with the European Chamber's Nanjing Chapter. During the meeting, President Cucino presented the Vice Mayor with the *Position Paper 2013/2014*. Vice Mayor Hua welcomed suggestions from European businesses and stated that the Nanjing Municipal Government will work to improve operating conditions for European businesses in China.

### Other Lobby Activities:

#### LOI signed with CCUD

On the 19<sup>th</sup> April, the Chamber signed a Letter of Intent (LOI) with the China Centre for Urban Development (CCUD) in order to enhance mutual cooperation in urbanisation-related fields. The LOI was signed by **President Cucino** and China Centre for Urban Development **Director General Li Tie**, in the presence of **Mr Xu Shaoshi, Chairman of the National Development and Reform Commission**. The agreement further intends to facilitate in-depth discussions on major trends of urbanisation, and seek solutions in addressing urbanisation challenges. The

topic of urbanisation has been a lobbying priority of the European Chamber for the past few years, especially since the signing of the *EU-China Sustainable Urbanisation Partnership* in May 2012.

Working together with Chinese authorities on China's continued urbanisation drive is one of our lobbying priorities in 2014 and the Chamber plans to launch an Urbanisation Task Force this year in order to address the opportunities and challenges that the European Chamber's members face during this process.





# A DECADE OF DATA

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The purpose of the European Union Chamber of Commerce in China's **European Business In China Business Confidence Survey (BCS)** is to take an annual snapshot of European companies' successes and challenges in China. Now in its tenth year, the survey has enabled the European Chamber to build a rich data set to serve as a broad indicator of how European companies judge the business environment in China, both now and in the future.

The European Chamber invited its members to take part in the BCS 2014 over a three-week period during February 2014. Published on 28<sup>th</sup> May, 2014, the survey was conducted in cooperation with Roland Berger Strategy Consultants. Below are the conclusions drawn from this year's BCS.

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China's strategic importance has climbed year on year in the ten-year history of this *Business Confidence Survey*. This trend is due to the massive opportunities that China's breakneck growth has brought for European companies during this decade. It is bolstered by the fact that China has been the buttress of global growth since the onset of the global economic crisis. Expansion of top-line growth has tended to be relatively simple and, at times, this has meant that China has been perceived by many to be the saviour. As such, European companies have invested heavily in China and have to date largely focused on driving expansion, mirroring China's seemingly 'growth at all costs' stratagem.

Growth brings rewards, but also pressures. The fruits of China's expansion have rightfully started to be better distributed into the hands of the workforce, but years of rising costs must be offset by years of proportional productivity growth.

European companies now perceive rising labour costs to be the most significant factor influencing net profit margins, though the cumulative effect of years of fiercely intensifying competition from state-owned and, in particular, privately-owned Chinese companies, while undoubtedly good for China's economy, is also presenting a challenge to business. However, when looking forward, companies are most concerned about an economic slowdown in China.

After thirty years of almost unbroken rapid growth, the Chinese slowdown, caused primarily by rising labour costs and structural economic problems owing to a near decade-long stagnation of reforms—and further exacerbated by the massive stimulus package of 2009 that in effect turned the clock backward on reform—is already contributing to the steadily declining performance of European companies, both in terms of bottom-line and top-line growth. Revenue and EBIT growth have both dropped progressively since 2010 and most companies are struggling to grow their margins.

Less than two thirds of European companies in China are now profitable and these pressures do not appear to be easing. Optimism for growth is at its lowest levels since the peak of the economic crisis as downward pressures on growth are becoming entrenched. Business is already tough, and it is getting tougher. This is leading many to the conclusion that the good times are over.

Most businesses in China have known nothing other than growth and expansion. A Chinese economic slowdown is a game changer that would fundamentally and necessarily alter the corporate strategies of businesses in China. European firms are already reacting to this new reality. They will continue to regard the Chinese marketplace as strategically important because the sheer size of the marketplace means that they will continue to generate a high proportion of their global revenues in China.


However, it is clear that they are starting to reappraise China's role. More modest expectations are being set and investment plans are being revised downwards. Fewer European firms are considering China a top priority for

investment, fewer are considering expanding current China operations, including through M&A, and fewer are looking to expand to other Chinese provinces as they come to terms with this new, more sober reality.

The European Chamber also estimates that our member companies missed out on EUR 21.3 billion in potential revenues due to market access and regulatory barriers in 2013. This continues to manifest itself in a sense of inequity, as most European companies feel that domestic Chinese companies continue to receive comparably favourable treatment. On the regulatory front, the most significant challenges are the unpredictable legislative environment and the discretionary enforcement of regulations. As a result, the reforms that European companies most want to see are administrative in nature and related to fostering increased rule of law. The reforms laid out in the Central Committee's *Third Plenum Decision* are viewed positively; however, after years of unrealised promises, European companies remain sceptical and have yet to be convinced that meaningful reforms will be implemented.

These regulatory and market access issues heap further pressure on European companies in China at a time when the business environment is becoming increasingly testing and when most companies are worried about a sustained slowdown in economic growth in China. It is not surprising that European companies are adapting their China strategies and being cautious not to put all their eggs in one basket. European companies are 'looking over the fence' to see what opportunities exist in China's neighbours, with half the European companies in China routinely reviewing investment opportunities in other Asian countries.

There is an opportunity to reverse this trend. China's leaders have correctly identified the need for sweeping reforms. Recent actions and reforms, including the promulgation of the *Third Plenum Decision*, the opening of the China (Shanghai) Pilot Free Trade Zone, VAT reforms, the launch of negotiations for an EU-China Investment Agreement and reforms to the administrative approval process, are generally viewed positively by European companies. However, while the *Third Plenum Decision* is immensely important and welcomed by European industry, the reforms it lays out will only reap dividends in the medium term and are not short-term palliative remedies.

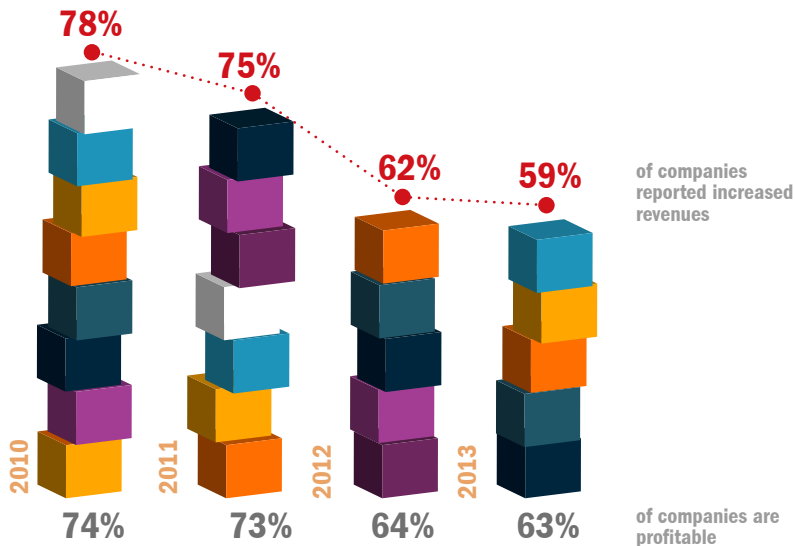
On the contrary, the crucial reforms will inevitably be growth-diminishing in the short term, which likely explains why only approximately one quarter of European companies are more likely to increase their investment plans in China as a result of the release of the *Third Plenum Decision*. Instead, it is market-opening reforms that present an immediate opportunity. A lifting of market access constraints would spur over a half of European companies to re-intensify their China investment plans. 

To download a full copy of the BCS 2014, please go to [www.europeanchamber.com.cn/en/publications-business-confidence-survey](http://www.europeanchamber.com.cn/en/publications-business-confidence-survey).

# Business Confidence

## COMPANIES IN CHINA ARE FACING A NEW SOBER REALITY... FINANCIAL PERFORMANCE CONTINUES TO STEADILY DECLINE...

### > REVENUE & PROFITABILITY:

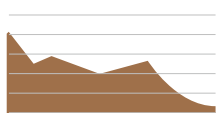


### > EBIT MARGINS:



## ...AND PERSISTENT MARKET CHALLENGES ARE NOT ABATING

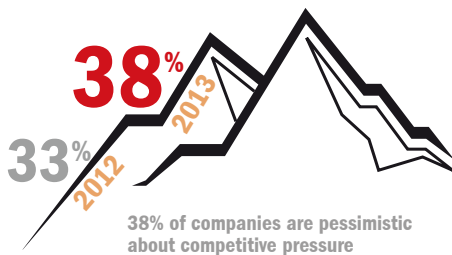
### > TOP BUSINESS CHALLENGES:



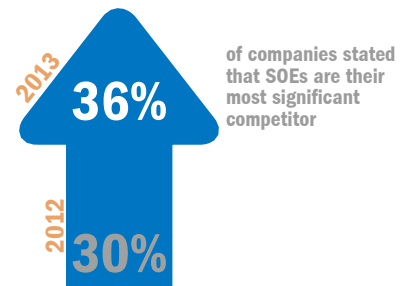
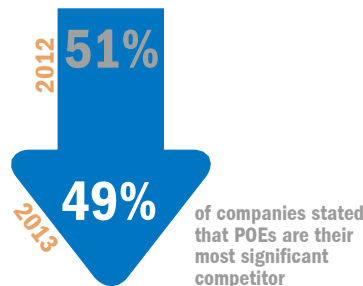
### > EASE OF BUSINESS:



### > OUTLOOK ON COMPETITION:

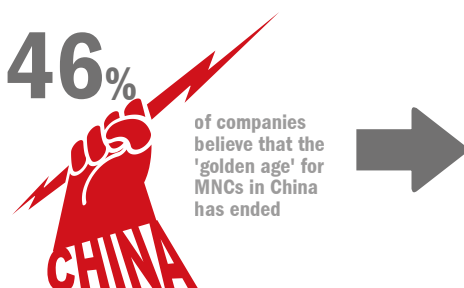


### > MAJOR COMPETITORS:

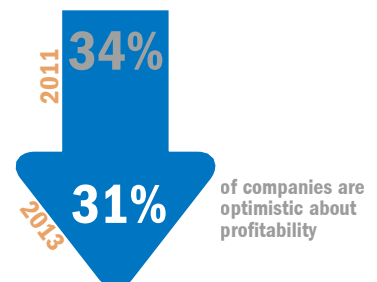
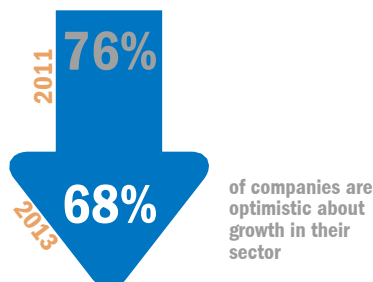


## ...AND THIS IS GIVING THEM PAUSE OPTIMISM IS WANING....

### > POTENTIAL OF CHINA:



### > SHORT-TERM BUSINESS OUTLOOK:

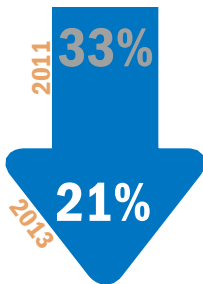




# Survey 2014 Findings

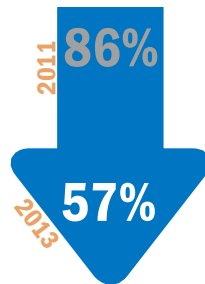
## ...AND COMPANIES HAVE REVISED DOWN THEIR EXPECTATIONS AND INVESTMENT PLANS

### > TOP INVESTMENT DESTINATION:



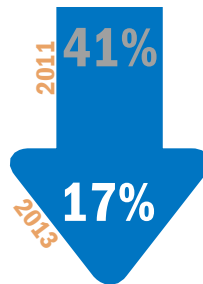
of companies ranked China their top destination for new investment

### > EXPANSION OF OPERATIONS:



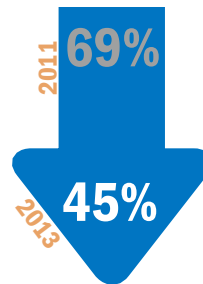
of companies plan to expand their current China operations

### > M&A:



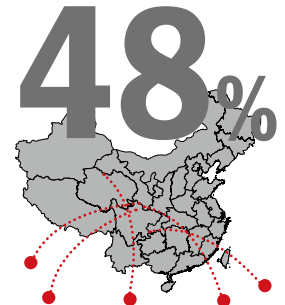
of companies are considering M&A

### > EXPANSION TO OTHER PROVINCES:



of companies are considering expanding operations to other provinces

### > INVESTMENT OPPORTUNITIES OUTSIDE CHINA:



of companies are regularly reviewing investment opportunities outside of China but within Asia

## REGULATORY AND MARKET ACCESS ISSUES EXACERBATE CHALLENGES

### > TREATMENT OF COMPANIES:



### > REGULATORY OBSTACLES:



### > LOST REVENUE:



## READY WHEN YOU ARE REFORMS PRESENT AN OPPORTUNITY

### > INCREASED RULE OF LAW:

**71%**

of companies ranked 'rule of law & transparent policy-making' the #1 driver for future economic performance

### > IMPLEMENTATION OF REFORMS:

**47%**

of companies are unsure or not confident that China's leaders will start meaningful implementation of the 3rd Plenum reforms in the next one or two years, though 45% believe implementation would be good for them

### > GREATER MARKET ACCESS:

**55%**

of companies would be more likely to increase investment were more market access afforded to foreign companies

# HAS SPRING ARRIVED? REGULATORY DEVELOPMENTS IN CHINA'S FINANCE LEASE INDUSTRY

There have been a number of recent regulatory developments concerning finance lease companies in China. **Dr Joachim Glatter** and **Sophie Yun Wei** of **Taylor Wessing** provide details on what they are, and say that although there is still some fine tuning to be done the finance lease industry in China is changing for the better.

China's finance lease industry contains two major groups of finance lease companies<sup>1</sup>: foreign-owned finance lease companies (FFLCs), supervised by the Ministry of Commerce (MOFCOM); and finance lease companies (CBRC-FLCs) supervised by the China Banking Regulatory Commission (CBRC). Subject to the approval of the CBRC, the business scope of CBRC-FLCs may be broader than that of FFLCs and may include, for example, interbank borrowing, therefore the threshold for setting up a CBRC-FLC is higher than that for establishing a FFLC.<sup>2</sup> As a general phenomenon, foreign investors have mostly entered into China's finance lease market by setting up FFLCs. Both groups have achieved rapid growth in recent years.<sup>3</sup>

Along with its significant development, the Chinese Government seems to have realised that the industry as a whole could be an important complement to bank credit and securities financing to businesses. From 2013-2014, China's finance lease regulatory environment changed remarkably in a number of aspects.

## Regulatory developments

### Tax rules

In 2012, China launched a tax reform under which value-added tax (VAT) took the place of business tax. As a result, all finance lease companies in China were subject to VAT since August 2013. They soon discovered that their tax burdens were likely to increase under the reform, especially with regard to their sale-and-lease-back deals (which previously enjoyed tax exemption regarding the sale of the respective asset by the lessee to the lessor). In view of this, on 12<sup>th</sup> December, 2013, the State Administration of Taxation (SAT) and the Ministry of Finance (MOF) jointly issued *Circular Caishui [2013] No. 106* to clarify that such tax exemption would still be available to sale-and-lease-backs, effectively removing tax concerns for sale-and-lease-back deals.

Furthermore, on 3<sup>rd</sup> March, 2014, the SAT and the MOF jointly issued *Circular Caishui [2014] No. 18* to exempt stamp duties on aircraft purchase contracts signed by finance lease companies for the purpose of leasing aircraft.

### Foreign exchange rules

On 10<sup>th</sup> January, 2014, the State Administration of Foreign Exchange (SAFE) issued *Circular Huifa [2014] No. 2*. This simplifies foreign exchange registration requirements for cross-border leases: a finance lease company is no longer required to obtain an approval from SAFE for a cross-border lease. Instead it only needs to register with SAFE within 15 working days of obtaining its creditor's rights (against overseas parties). Outbound credit amounts under cross-border leases are no longer subject to quotas.

### Interpretation of the Supreme People's Court

On 24<sup>th</sup> February, 2014, the Supreme People's Court of China promulgated the *Interpretation on Application of*

*Laws in the Trial of Disputes over Finance Lease Contracts (SPC Interpretation)*. The *SPC Interpretation*, long awaited by the public since its first version was drafted in 2010, clarifies a number of legal issues critical for finance lease contracts and related disputes. For example, the question of whether a contract constitutes a finance lease contract or another type of contract (e.g. a loan contract) shall now be comprehensively analysed by courts based on relevant legal provisions, the nature and value of the leased property, the structure of rental payments and the contractual rights and obligations of the parties.

Furthermore, the *SPC Interpretation* lists a number of circumstances in which a third party cannot claim to have purchased a leased property from a lessee on a bona fide basis. These circumstances include cases in which: (i) the lessor has placed a mark at a prominent position on the leased property so that the third party, when dealing with the lessee, knows, or ought to know, that such property is a leased property; and (ii) the third party, when dealing with the lessee, has failed to conduct a search for finance lease transactions with the corresponding organisations according to law, administrative regulations or the requirements of industry regulators or regional authorities.

### New CBRC Rules

The CBRC released its newly amended *Administrative Rules for Finance Lease Companies*<sup>4</sup> (*New CBRC Rules*) on 13<sup>th</sup> March, 2014. The *New CBRC Rules*, like their previous versions, only govern CBRC-FLCs, not FFLCs. Compared to previous versions, the *New CBRC Rules* lower the entry barriers for setting up a CBRC-FLC and further extend their business scope. For example, previously a CBRC-FLC was only allowed to borrow overseas loans in foreign currency. Now these loans can be denominated in *renminbi* (from abroad). Furthermore, if the CBRC-FLC is well operated and satisfies conditions set by the CBRC, it may conduct additional businesses, including issuing bonds, establishing project companies in domestic bonded zones for finance lease business, assets securitisation and providing security for the subsidiaries and project companies it controls.

### China (Shanghai) Pilot Free Trade Zone Policies

The finance lease industry is specifically supported by quite a few local governments (e.g. Tianjin and Shanghai) and free trade zones. On 18<sup>th</sup> September, 2013, a set of preferential policies for finance lease businesses in the China (Shanghai) Pilot Free Trade Zone (CSPFTZ or Zone) was published under *Circular Guofa [2013] No. 358*. One of these policies allows finance lease companies registered in the CSPFTZ to engage in commercial factoring business. Export tax refunds would be available for cross-border leases conducted by finance lease companies or subsidiaries of CBRC-FLCs registered in the Zone.

## Our observations: has spring arrived?

The regulatory environment for the finance lease industry





in China is changing for the better. A combination of tax, finance and judicial policies to support finance lease companies has emerged. However, some obstacles still remain that need to be removed. For instance, Chinese law does not contain a general regulation on registration of moveable properties, which means that the abovementioned *SPC Interpretation* still might not be sufficient to protect lessors from claims by bona fide acquirers of leased properties. In general, finance lease companies still lack sufficient legal means to re-possess leased properties. A patchwork of rules or regulations issued by local governments or different State Council departments might not be the best way to solve these problems. Rather, it appears advisable to pass a Finance Lease Law comprehensively regulating all major aspects of finance lease transactions. <sup>1</sup>

**Taylor Wessing** is a full service law firm with approximately 900 lawyers in Europe, the Middle East and Asia, with offices in Shanghai and Beijing. For more information please visit [www.taylorwessing.com](http://www.taylorwessing.com). **Dr Joachim Glatter** is a partner of Taylor Wessing based in Shanghai advising international enterprises on the legal aspects of their business transactions in China, in particular on the formation of companies, corporate restructuring and commercial contracts as well as arbitration proceedings. **Sophie Yun Wei** is a counsel in Shanghai particularly knowledgeable in China's commercial law, income tax, indirect tax, free trade zones and international tax treaties.

<sup>1</sup>In addition to FFLCs and CBRC-FLCs, there are also a few domestically-invested lease companies selected and approved by MOFCOM to conduct finance lease business. They are also called "Finance Lease Pilot Enterprises (融资租赁试点企业)". Unless otherwise indicated, "finance lease companies" referred to under this article include FFLCs, CBRC-FLCs and Finance Lease Pilot Enterprises.

<sup>2</sup>For example, a FFLC shall have a registered capital of no less than USD 10 million (RMB 63 million); while a CBRC-FLC's registered capital must be no less than RMB 100 million which must be paid-up in cash in a lump sum. Further, investors to CBRC-FLCs must fulfill higher qualification requirements than investors intending to establish a FFLC.

<sup>3</sup>As of the end of 2012, the number of FFLCs was 509, increasing by 264 compared with 2011; the growth rate was more than 108% and total assets of such 509 FFLCs amounted to over RMB 353 billion. The number of CBRC-FLCs increased by 3 to 20 in 2012. As of the end of 2012, these CBRC-FLCs' total assets value reached RMB 800 billion, approximately, with a yearly growth rate of 52%. ([http://www.clba.org.cn/\\_d270193987.htm](http://www.clba.org.cn/_d270193987.htm))

<sup>4</sup>Order of China Banking Regulatory Commission [2014] No. 3



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# CHINA'S TALENT CRISIS: THE 'MISSING' INTERNATIONAL EXECUTIVE

The complex, dynamic and global nature of business has fundamentally redefined the role of executives. It is no longer sufficient to simply possess regional expertise and experience; today's executives must also manage across borders, while building strong organisations that not only create value, but also have purpose.

Yet, across the globe, leaders who have the perfect mix of regional and global expertise and business acumen are rare.

"While the shortage of international executives is high across the globe," says Dr Zhang Zhixue, a renowned expert in organisational management at Peking University, Guanghua School of Management, "in China, this phenomenon has created a talent crisis that threatens to hinder China's economic maturity, as it positions itself to become an innovation hub with strong global brands."

In the 2013 ManpowerGroup Talent Shortage Survey, China is listed among the top countries that have an increasing talent shortage (up 12 per cent from 2012), fuelled by a demand that far outpaces supply.

The problem is two-fold: (1) Chinese companies looking to establish their global presence lack senior executives that understand international markets and possess international business savvy; and (2) multinational companies (MNCs) seeking to establish their China presence struggle to find executives that have both regional expertise and the ability to work in a multicultural business environment.

"We find that many of our top managers, whether it be in our China operations or abroad, are either ill-equipped to lead our company at the global level or simply don't have a deep understanding of the Chinese business environment," said an anonymous recruiter from an MNC with branches in China.

## How can China hope to address its talent crisis?

Joint degree programmes between prestigious domestic and foreign business schools, like the Guanghua-Kellogg Executive MBA, equip executives with the global and regional expertise needed to thrive in both China and abroad, thus addressing this critical talent shortage.

"Even Guanghua, which is one of the oldest business schools in China, is only thirty years old," says Dr Zhang, "What that means is most senior-level executives in China have not received systematic business education, let alone one that equips them to lead in the global business environment. Thus, companies must invest in their most promising leaders...that is the only way to fill the talent gap."

While there is no shortage of executive MBA programmes in China, reputable programmes that have the perfect mix of 'China focus' and international business exposure are few and far between. Thus, the Guanghua-Kellogg Executive MBA programme provides essential training for executives in China who want to succeed in this challenging global market.

"We're thrilled to partner with the Guanghua School of Management to provide executive-level management education in China," says Dean Blount. "Through our unique global EMBA network, which will now include Guanghua, we offer students a distinctive learning experience, preparing them to lead in the complex global economy."

*The **Guanghua-Kellogg Executive MBA** is a prestigious, joint degree from Peking University, Guanghua School of Management and Northwestern University, Kellogg School of Management. To learn more about the programme, please visit: <http://guanghua.kellogg.northwestern.edu> or email at [gkemba@gsm.pku.edu.cn](mailto:gkemba@gsm.pku.edu.cn).*





# DALIAN: CHINA'S GARDEN CITY

The biggest free trade port in Northern China, Dalian is a modernised international shipping metropolis serving as a gateway to Beijing and Tianjin. In this article, **Rainy Yao** from **Dezan Shira & Associates** takes a look at this 'National Garden City' with abundant commercial opportunities.

## Economic Overview

As the principle city in Liaoning's coastal economic belt, Dalian has made full use of its geographical advantages and leads the region's economic development.

In 2013, Dalian's GDP exceeded RMB 765.08 billion and grew at an annual rate of nine per cent. The city's primary industry contributed RMB 47.76 billion (4.8 per cent growth) and its secondary industry RMB 389.2 billion (9.4 per cent growth). The remaining RMB 328.12 billion came from the service sector, which grew 9.1 per cent annually. The financial industry made a large contribution to the service sector, by the end of 2013, 639 finance institutions had been set up in the city.<sup>1</sup>

The industrial sector plays a vital role in the city's rapid economic growth; the city's gross industrial output reached RMB 343.86 billion (10 per cent growth) in 2013. As an industrial base, Dalian is a major player in almost all categories of industries including:

- shipbuilding;
- machinery manufacturing;
- petroleum refining;

- biological engineering; and
- digital technology.

Known as the 'National Garden City', Dalian is also one of the most popular tourist destinations in China. Tourism brought in close to RMB 90.08 billion in 2013 with over 53.3 million domestic and foreign visitors.

## Development Zones

Dalian's main development zones include:

### Dalian Economic and Technological Development Area

Dalian Development Area (DDA), located in Jinzhou District, is a state-level economic and technological development area that was approved by the government in 1984. With a solid industrial foundation and a comprehensive supply chain, it has attracted more than 2,300 foreign-invested enterprises (FIEs) to date. Major industries include petrochemical, automobile & components, equipment manufacturing and light industry.<sup>2</sup>

### Dalian High-tech Zone (DHTZ)



Approved in 1991, the DHTZ is the first national, innovation-oriented, high-tech zone. It covers an area of 153 square kilometres with more than 4,700 registered enterprises; 90 per cent of all the high-tech enterprises in Dalian are established here. The leading industry clusters in the DHTZ are software and service outsourcing.<sup>3</sup>

### The Dalian Free Trade Zone (DFTZ)

The largest free trade zone in China, the DFTZ, with an area of 251 square kilometres, was established in 1992. It is located alongside the Yellow Sea Coast and consists of the Dayao Bay Bonded Port Area, the Bonded Zone, the Dalian Export Processing Zone A, Shipping Centre, and Dalian Automotive Logistics Park.<sup>4</sup> Major industrial clusters include processing, trade, related logistics and warehousing.<sup>5</sup>

### Dalian Export Processing Zone (DEPZ)

The DEPZ, covering 2.95 square kilometres, was approved in 2000. Major industries include home appliances, light industry and machinery.<sup>6</sup> It is divided into two areas, the Export Processing Zones A and B, one of which is located in the DFTZ.

### Dayao Bay Bonded Port Area

Approved by the government in 2006, the Dayao Bay Bonded Port covers an area of 6.88 square kilometres. It is expected to be a world-class, bonded cold-chain logistics base by 2015.<sup>7</sup>

### Dalian Changxing Island Port Industrial Zone

Approved as a state-level development zone in 2010, this is the second cooperative project between China and Singapore after the Suzhou Industrial Park.<sup>8</sup> The Island Zone covers an area of 349.5 square kilometres, featuring industrial clusters in port logistics, shipbuilding and new high technology.<sup>9</sup>

## Investment opportunities

Dalian's government has rolled out various policies to support foreign investment, particularly for enterprises who set up in the special economic zones. According to the *Catalogue of Encouraged Foreign Investment Industries for Dalian*,<sup>10</sup> the following sectors are encouraged for foreign investment in China:

- service outsourcing
- modern services
- municipal infrastructure
- manufacturing


Specifically, since the 1990s, Dalian has been working to build itself into a leader in IT and software development, with staunch support from Beijing. Known as a national

software export base, Dalian encourages foreign investment in the IT industry.<sup>11</sup>

## Preferential tax policies

According to the preferential tax policies<sup>12</sup> released by the DFTZ, eligible goods, such as raw materials, spare parts and other materials for processing export products, will be bonded within its confines. Furthermore, transit goods and goods stored in the Zone will be treated as bonded goods.

Goods imported into the DFTZ are exempt from import tariffs and import linkage tax if they meet the following conditions:

- Machinery, equipment and other construction materials used in productive infrastructure construction projects.
- Production and management equipment for DFTZ enterprises.
- A reasonable quantity of office supplies and maintenance parts used by the DFTZ enterprises. 

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

For further details or to contact the firm, please email [china@dezshira.com](mailto:china@dezshira.com) or visit [www.dezshira.com](http://www.dezshira.com).

<sup>1</sup> <http://www.dl.gov.cn/gov/detail/detail.vm?diid=1001010001403031647140326478&go=stat>

<sup>2</sup> <http://english.dda.gov.cn/2009/10/30/2157.shtml>

<sup>3</sup> [http://www.ddport.com/investment\\_yqjs.html](http://www.ddport.com/investment_yqjs.html)

<sup>4</sup> [http://www.dlftz.gov.cn/zsw/news/view\\_202493.html](http://www.dlftz.gov.cn/zsw/news/view_202493.html)

<sup>5</sup> <http://english.dlftz.gov.cn/content/Natural.aspx>

<sup>6</sup> <http://rightsite.asia/en/industrial-zone/dalian-export-processing-zone>

<sup>7</sup> <http://baike.baidu.com/view/2230346.htm>

<sup>8</sup> <http://www.ccxi.gov.cn/info/news/english/econtent/2722.htm>

<sup>9</sup> <http://baike.baidu.com/view/3784600.htm>

<sup>10</sup> [http://my.dl.gov.cn/rss\\_info.jsp?diid=100D05000081209460608120356](http://my.dl.gov.cn/rss_info.jsp?diid=100D05000081209460608120356)

<sup>11</sup> <http://www.china-briefing.com/news/2009/07/17/dalian-emerging-as-out-sourcing-hub.html>

<sup>12</sup> [http://www.dlftz.gov.cn/zsw/news/view\\_202494.html](http://www.dlftz.gov.cn/zsw/news/view_202494.html)

# COMPANY CULTURE MATTERS

In order to become innovative, businesses need strong leaders who are capable of developing a continuously evolving company culture. **Laurie O'Donnell**, Managing Director of **Cornerstone International Group**, says that this process begins with the ability to create a positive work environment and lots of courage.

China: never before in human history has there been such a significant overall advance by a country with 1.3 billion people in just a few decades. The depth of China's continued ambition to develop and change is illustrated by their 2020 goals:

- Double China's 2010 GDP, to become the largest economy in the world.
- Double China's per capita income for both urban and rural residents, increasing the average income of urban citizens to USD 7,000, and the middle-income population to over 600 million.

Policy-makers and various government initiatives are driving the country to achieve these nationwide objectives, hoping to maintain the momentum required to ensure positive change beyond 2020. With nationwide goals of sustained growth, organisations are operating in a constantly changing business landscape. Employees as well as organisations are obliged to adapt to dynamic changes and develop the abilities required to achieve the targeted results.

A company culture plays a significant role in determining whether an organisation is prepared for sustained growth and the required adaptability. It should reflect the values and behaviour of everyone in the workforce, and should have a significant impact on the overall success of a business. The desire to create an innovative environment,

better suited to producing solutions, can therefore require some fundamental changes to company culture. Creating a fresh vision for the future is an opportunity for leaders to develop their businesses into innovative, forward thinking and more relevant organisations.

These are some of the values found in world-class organisations:

- Innovative
- Engaged Workforce
- High level of integrity
- Trust relationships
- Effective leadership
- Effective systems and processes
- Performance-based compensation and reward programmes
- Customer-focused
- Effective 360-degree communications
- Commitment to learning and skill development







Joining hands across the Southwest, from L-R: Min Colinot (Southwest General Manager), Steven Fan, Frank Stefan Gottwald, Paul Sives, Ulrich O. Birch (Chairman), Shirley Ling, Torbjorn Sternsjo and Adam Dunnett (Secretary General)

The European Chamber held elections for our Executive Committee and local chapter boards from 17<sup>th</sup> April to 6<sup>th</sup> May, 2014.

## Beijing

The elections for the Chamber's president, three vice presidents and treasurer took place during the Annual General Meeting (AGM) at the Westin Hotel on 24<sup>th</sup> April. The event was extremely well attended with nearly 200 people turning out to have their say in the Chamber's leadership.

We are pleased to announce that member company representatives elected Jörg Wuttke as the new president. As president, Jörg will chair the Executive Committee, which is responsible for providing strategic direction for the Chamber and representing our 1,800 member companies. Jörg is a German national and has been Vice President and Chief Representative of BASF China since 1997. This will be his second stint as president of the European Chamber,

after having previously served for three years between 2007 and 2010. He replaces the outgoing president, Davide Cucino, in the role.

The three elected vice presidents—Bertrand de La Noue, Mats Harborn and Sara Marchetta—and a Treasurer, Francois Bernard, will also be part of the Chamber's Executive Committee. In the days leading up to the AGM held in Beijing, local board elections were also held in the European Chamber's six other chapters across China (see below). In his capacity as elected chairman of the Shanghai Chapter, Stefan Sack has also been appointed as vice president of the Executive Committee.

The States Representatives were selected by the Supervisory Board on 6<sup>th</sup> May, after presentations were given by six potential candidates. The three

representatives for 2014 are Massimo Bagnasco (Italy), who was newly elected, Maija Kurte (Latvia), who was re-elected and Eduardo Morcillo (Spain) who served as vice president of the Chamber from 2013-2014.

### President

Jörg Wuttke, BASF

### Vice Presidents

Bertrand de la Noue, Total

Mats Harborn, Scania

Sara Marchetta, Chiomenti

Stefan Sack, Comau

### Treasurer

Francois Bernard, FJA & Partners



President Jörg Wuttke

### States Representatives

Massimo Bagnasco, Progetto CMR

Maija Kurte, Linearis Translations

Eduardo Morcillo, InterChina

### Nanjing

The local board elections for the Chamber's Nanjing Chapter were held on 21<sup>st</sup> April, 2014, with the following results:

#### Chairman

Helmut Güsten, emz Hanauer Nanjing

#### Board Members

Michele Corso, Marposs Nanjing Automation

Wilhelm Hummerjohann, BASF-YPC

Udo Looser, Willi Elbe Steering Systems Nanjing

Bernhard Weber, BSH Home Appliances Holding China

### PRD

Held on 17<sup>th</sup> April, 2014, the PRD local chapter elections returned the fol-

lowing results:

#### Chairman

Alberto Vettoretti, Dezan Shira & Associates

#### Board Members

Vivian Desmonts, D.S. Avocats Law Firm

Elena Kirillova, Globe Express Services

Dominique Pedreau, Chang'an PSA Automobiles

Donato Vairo, Meta System Electronics

Saul Vazquez, Gold Millennium Group

Yushun Wong, TÜV Rheinland

### Shanghai

The European Chamber Shanghai Chapter completed its elections on 23<sup>rd</sup> of April, held at Marriot City Centre, with the following results:

#### Chairman

Stefan Sack, Comau

#### Board members

Mick Adams, Somerley

Frederik Cornu, Bureau Veritas

Martin Kraemer, Evonik

Carlo Leopaldi, Link Shanghai

Julia Wu, HSBC

Dan Zhu, Shanghai Rainbow Consulting

### Shenyang

Taking place on the 22<sup>nd</sup> April, the elections for the Chamber's Shenyang Chapter returned the following results:

#### Chairman

Florian Schmied, EuroSino Invest

#### Board Members

Guido Faust, Michelin

Stephen Magor, Individual Member

Martin Winter, BMW Brilliance

Kemel Yener, Star Mall Real Estate Development

### Southwest

The local board elections for the Chamber's Southwest Chapter took place on 22<sup>nd</sup> April, returning the following results:

#### Chairman

Ulrich O. Birch, Consenec (ABB Group)

#### Board Members

Steven Fan, Willis Insurance Brokers

Frank Stefan Gottwald, Siemens Electrical Apparatus

Shirley Ling, KPMG Huazhen

Paul Sives, Proton Products

Torbjorn Sternsjo, Sapa Chalco Aluminium Products

### Tianjin

The local board elections for Tianjin were held on 21<sup>st</sup> April, 2014, returning the following results:

#### Chairman

Christoph Schrempp, Airbus

#### Board members

Pascal Blazer, Wallenius Water

Gabriele Castaldi, Globetech

Marcel Gaborel, Veolia

Frank Redecker, Asia Power Systems



# EUROPEAN CHAMBER EVENTS GALLERY

## BEIJING CHAPTER



### Exclusive Seminar with Yukon Huang (1)

Dr Yukon Huang (right), Senior Associate in the Carnegie Asia Programme, speaking at the exclusive Chamber event *China's Third Plenum and its Growth and Debt Prospects*, on 2<sup>nd</sup> April. Vice President Mats Harborn (left) moderated.



### European Chamber's Annual General Meeting (2)

The European Chamber's Annual General Meeting was held in Beijing on 24<sup>th</sup> April. Please see page 44 for a full list of election results.

## NANJING CHAPTER



1



2

### Meeting with Nanjing City Government (1)

On 27<sup>th</sup> March, seven senior officials from the Nanjing City Government met with Chamber President Davide Cucino and the Nanjing Chapter Board, to discuss how to increase cooperation with European businesses.

### Nanjing Chapter's 10th Year Anniversary Celebration (2&3)

The Nanjing Chapter celebrated its 10<sup>th</sup> Year Anniversary on March 27<sup>th</sup> at the Intercontinental Hotel, with over 60 members attending.



3



4

### Meeting with Jiangsu DRC (4)

On 22<sup>nd</sup> April, 11 representatives from the European Chamber Nanjing and the Foreign Representative Offices in Jiangsu visited the Jiangsu Development and Reform Commission (JDRC) to learn the future strategy of Jiangsu Province for the next five years.

## PRD CHAPTER



1



2

### SME Seminar (1)

The SME Seminar *Practical Solutions to Help You Think Big* on 16<sup>th</sup> April, saw a heated discussion among member companies based in the PRD region.

### Board Elections (2)

New board members celebrated with Chamber staff after the 2014 elections on 17<sup>th</sup> April. For a full list of results please see page 44.

## SHANGHAI CHAPTER



1



2

### Free Trade Zone Seminar with Shanghai Customs and Bank of China (1)

This exclusive seminar on the China (Shanghai) Pilot Free Trade Zone (CSPTZ) took place on 21<sup>st</sup> March, with nearly 20 Consul Generals and more than 100 participants attending.

### Compliance in your supply chain operations conference (2)

This half-day conference, sponsored by Hill & Associates, brought together experts from different industries on 26<sup>th</sup> March.

## SHENYANG CHAPTER



1



2

### Easter brunch (1&2)

About 500 Chinese and international guests attended the Easter Brunch in Hunnan District on 20<sup>th</sup> April. A total of RMB 15,615 was raised and donated to the Shenyang Children's Welfare Institute.

## SOUTHWEST CHAPTER



1



2



3

### Visit to ABB Transformer Co Ltd (1)

The European Chamber Southwest Chapter organised a tour visit to the ABB Chongqing Transformers Co Ltd on 19<sup>th</sup> March.

### SME Seminar (3)

On 10<sup>th</sup> April, the European Chamber co-organised the seminar *Diversifying your SME Business Online in China* with the EU SME Centre, Beijing at the Ascott Raffles City Chengdu.

efforts made by the Chongqing Customs to invigorate foreign investment and international trade in the city.

### Southwest AGM (5)

On 22<sup>nd</sup> April, Southwest Chapter Annual General Meeting 2014 was held at the Shangri-La Hotel Chengdu. See page 44 for the full list of results.

### 2014 Spring Spree Inter-Chambers Mixer (2)

The European Chamber and the American Chamber held the Intercham Spring Spree Mixer at the Himalaya Club on 21<sup>st</sup> March. Over 120 guests attended.

### 2014 Customs Lobby Meeting (4)

On 15<sup>th</sup> of April, the Chamber held the 2014 Chongqing Customs Lobby Meeting. Mr Yan Nan, Director General of the Chongqing Customs highlighted the latest regulations and



4



5

## TIANJIN CHAPTER



1



2



3

### PwC Tax Seminar: 2013 Annual Corporate Income Tax Filing Key Points Update (1)

In cooperation with German Chamber of Commerce, the Chamber's Tianjin Chapter organised this informative and practical breakfast briefing on 27<sup>th</sup> March at Hotel Indigo Tianjin Haihe.

### Microsoft Office training (2)

This full-day course, held on 28<sup>th</sup> March, helped attendees to understand the full potential of Microsoft's Office Suite.

### InterChamber Breakfast Briefing: Risk Management and Business Insurance (3)

In cooperation with German Chamber of Commerce the Chamber's Tianjin Chapter organised this breakfast briefing on 11<sup>th</sup> April, 2014 at the Ritz-Carlton Tianjin.



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**Shenyang Office**  
Office Manager  
Oliver Schlaebitz



**Tianjin Office**  
General Manager  
Kitty Wang



Secretary  
General  
Adam Dunnett  
European  
Chamber

# PROTECTING YOUR INTELLECTUAL PROPERTY IN CHINA THROUGH CONTRACTS: PART 2



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Structuring your contracts with third parties and employees in a careful manner should be an important component of your intellectual property (IP) and wider business strategy in China. Often, important information which helps maintain your business's competitive edge is divulged (whether intentionally or not) to third parties by your employees past or present. Similarly, confidential information is sometimes surrendered during negotiations with potential business partners in China. Ensuring awareness of confidentiality obligations through contracts can help avoid both these situations. In last month's EURObiz Part 1 of this article, written by the **China IPR SME Helpdesk**, described the important contractual provisions to include and avoid when conducting business in China. Part 2 outlines the benefits of Non-disclosure Agreements for your business and highlights idiosyncrasies in Chinese law which affect ownership of IP created by your employees.

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## Non-disclosure agreements (NDAs)

It is advisable that you sign a NDA with any third party to whom you plan to reveal confidential information, such as sensitive product information, designs and sketches, business strategy, or client information before doing so. Non-disclosure agreements are quick and inexpensive, and a basic template will require little modification for use with different products and clients. They are also widely used in China and well-accepted by Chinese courts, so a Chinese third party that is unwilling to sign a NDA is not likely to be a trustworthy potential business partner and should be treated with caution.

Sometimes a NDA on its own is insufficient to protect your intellectual property rights (IPR), particularly for companies in the manufacturing industry or those sourcing their products from China. This is because not every single product will be covered by patents or other forms of registered IPR. Under these circumstances, a non-disclosure/non-use/non-circumvention (NNN) agreement may be used:

- The non-disclosure provisions will cover the unauthorised disclosure of confidential information.
- The non-use provisions will state that the Chinese manufacturer cannot produce your product or any similar products for anyone other than you. These provisions will prevent the Chinese manufacturer from making or selling similar 'copycat' products without your authorisation.
- The non-circumvention provisions will prevent the Chinese manufacturer from by-passing the protection or circumvention means or technologies that you put into your product, for example, anti-counterfeit micro-chips.

## Confidentiality, remuneration and other IP provisions in contracts

Companies should think carefully about protection against IP risks when hiring employees in China. It is good practice to include express provisions in employment contracts regarding confidentiality, IPR ownership, non-compete and non-solicitation in order to avoid future disputes and material damages to your business's operations.

### Confidentiality information/trade secrets

The best way to keep trade secrets and confidential information from being divulged by employees is to impose confidentiality obligations in employment contracts. For example, employers may require employees to keep confidential information and trade secrets confidential (unless the employer has given prior written consent) and limit employees' use of confidential information and trade secrets to work-related purposes. Such confidentiality obligations should continue to bind employees even after the termination or expiry of their employment contracts.

Conversely, to avoid infringing others' IPR, you should make clear to your employees orally, and in writing, that they should not disclose or apply confidential information and/or trade secrets obtained from previous employers during their employment terms with your company.

### Patents/copyrights

Under China's Patent Law, any rights to patents arising from creations or improvements made by an employee in the course of his or her employment, or by primarily using the resources of an employer (known as 'employee creation'), automatically belong to the employer unless otherwise stated in the contract.

The employment contract should also limit the use of employer's patents to the sole benefit of the employer and require employees to disclose all inventions they have created. The employer should enter into agreements with its employees explicitly stating the employer's ownership of patents and patent improvements, in order to avoid any misunderstanding or dispute. In addition, the employer should be made the applicant of any patents arising from employee creation, as patent rights are granted only to patent applicants.

Meanwhile, under China's Copyright Law, the copyright of a work created by an employee when fulfilling an assignment from an employer (known as 'service work') only belongs to the employer if it is created primarily with the materials and technical resources of the employer and the employer is responsible for the work. Nevertheless, the employee is still required to be named as the author of such service work.

Since ownership of copyright does not automatically belong to the employer, it is extremely important for the employer to enter into agreements with its employees stating that all service work for which the employer is responsible, or that is created using the employer's resources, belong to the employer.

### Creator-employee remuneration

Under China's Patent Law, when an employee has created something that subsequently results in the granting of a patent to his or her employer (known as 'creator-employees'), the employer is required to award remuneration to the creator-employee for the patented creation. Unless otherwise stated in the contract, the remuneration to be awarded to the creator-employee must be in accordance with the minimum requirements provided in the *Implementing Regulations of China's Patent Law*. For this reason, employers should insert in employment contracts a provision that quantifies the amount of remuneration to be awarded to creator-employees for their patented creation. Such remuneration must be "reasonable" and, in the absence of such an agreement, default rules stipulate that the 'creator-employee' may claim for two per cent of the business profits annually derived from the invention or utility model patents he or she invented.



### Non-compete/non-solicitation


More often than not, employers incorporate non-compete and non-solicitation provisions in the employment contract to prevent leaving employees from stealing, or using without authorisation, the employer's customers, employees and suppliers, and competing with their businesses.

According to China's Labour Law, non-compete obligations must not exceed two years and must apply only to senior management personnel, senior technical personnel and others with non-disclosure obligations. Moreover, employers are required to pay compensation to former employees fulfilling their non-compete obligations. In general, the compensation can be anywhere from 20 to 60 per cent of the employee's annual salary over the last 12 months, as provided in the meeting minutes of the Supreme People's Court and Labour Dispute Arbitration Committee of Beijing Regarding Labour Disputes.

### Top Tips

- Use a China IP specialist to help draft your contracts to ensure the protection of your business's IPR.
- Have your contracts translated into Chinese by a trusted source to avoid any misinterpretations due to poor translation, or have the official versions of your contracts drafted in Chinese and English with both languages having equal effects (meaning both languages are official and shall be respected when interpreting the contract terms).
- You may choose foreign or Chinese law as the law governing the disputes of the performance of the contract, but Chinese IPR under the contract will always be governed and protected in accordance with Chinese IPR laws.

### Take-Away Messages

- Sign a NDA or ensure that there is adequate protection in your contract addressing confidentiality issues.
- For manufacturing or sourcing in China, consider signing a NNN agreement to prevent your Chinese business partner from disclosing your confidential information or competing with you later.
- Ensure that employment contracts include provisions relating to ownership rights, remuneration, non-compete, non-solicitation, and confidentiality if no separate NDA is in place.
- Include confidentiality provisions in all employee contracts. Even if that employee is currently unlikely to have access to confidential information, he or she may do so in future roles within the company. 

The **China IPR SME Helpdesk** is a European Commission funded project that provides free, practical, business advice relating to China IPR to European SMEs. To learn about any aspect of IPR in China, visit our online portal at [www.china-iprhelpdesk.eu](http://www.china-iprhelpdesk.eu). For free expert advice on China IPR for your business, e-mail your questions to: [question@china-iprhelpdesk.eu](mailto:question@china-iprhelpdesk.eu). You will receive a reply from one of the Helpdesk experts within seven working days. The China IPR SME Helpdesk is jointly implemented by DEVELOPMENT Solutions and the European Union Chamber of Commerce in China.



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## BRIEF INTRODUCTION OF SINO-GERMAN METAL ECO-CITY

Sino-German Metal Eco-City is located in Yujiao Town, Jiedong District of Jieyang City, with a planned total area of 25 km<sup>2</sup> and a planned total investment of over RMB 150 billion, focusing on building six transformation and upgrading platforms, such as "Trading Platform", "Innovation Platform", "Manufacturing Platform", "Recycling Platform", "Human Resources Platform" and "Financial Platform". Sino-German Metal Eco-City adopts a development model 'guided by municipal government, dominated by the Metal Enterprises Union of Jieyang, operated by the market', planned to be completed in 2020 and expected to achieve annual industrial output value of RMB 100 billion.

Constructing Sino-German Metal Eco-City is an active exploration in China for the innovation of management system of industrial park construction, the innovation of ways of international cooperation, and the innovation of transformation and upgrading pattern of traditional

advantaged industry. Sino-German Metal Eco-City will be constructed and developed into an important platform of China-Germany cooperation and a demonstration zone for the agglomeration and intensive development of traditional advantaged industry and the promotion of cleaner production and circular economy in Guangdong.

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# SERVING THE COMMUNITY

Community service could be said to have something of an image problem these days; in many parts of the world it is often associated with repaying some kind of civil debt acquired through petty crime. Young people may therefore dismiss the idea of serving the community without properly thinking about the potential benefits. This is perhaps more true in the privileged world of international schools, where students and teachers alike may come to feel like they are living in a protective bubble. Harrow International School Beijing say that popping this bubble and getting involved in community projects can have a transformative effect on the way young people think about, and engage with, the world around them. It can help them to understand that their actions have the power to make a real impact on those around them.

At Harrow International School Beijing, contributing positively to the community is one of the six central strands at the heart of its leadership curriculum. It begins with the central idea of recognition, explains Alasdair MacRae, Head of Upper School, something that is reflected by much of the learning that goes on in the classroom: “In order to properly engage with any kind of service, the first thing you need is a sense of perspective, and an understanding of the world as bigger than yourself—something you need to fit into and have the capacity to help to shape.

In that sense, a lot of the learning about the world that goes on in school should ultimately be moving children into a position where they can give something back to their communities.”

Outside the classroom, there is a huge feel good factor to be experienced. Young people often gain a lot of confidence and satisfaction by getting involved with community service. They will also meet new people from a wealth of different backgrounds, which helps to develop their sense of perspective. It is worthwhile

encouraging them past any initial reluctance, and trying to set up a culture where they feel confident to initiate and take part in activities which provide a service to others.

“We are now at a stage where our students can initiate and develop their own community projects by looking around them and identifying what they think needs to be done,” says teacher Ben Davies, who has been spearheading a new initiative to encourage students to form self-governing committees to improve life at school. “When they can do





this independently, that's the most satisfying thing to see as a teacher, I think."

Below, students and teachers from Harrow International School Beijing speak about some of the community projects that they are engaged with.

## Support Our Students

*Student leader: Mariya Yanishevskaya, Y13*

"Support Our Students (SOS) is a student support team whose main objective is to obtain listening and communication skills in order to be able to provide student counselling sessions and settle new students who arrive at Harrow throughout the year.

"Every Thursday activity time we learn about and practice listening skills with Mr Heywood (the school counsellor). Each week, our members also go to the lower school playground

to engage in therapeutic games with the children.

"As well as positively contributing to the community, I've learnt a lot of cool things about human behaviour and how to effectively listen and talk to people, which are useful skills for life!"

*Staff support: Mike Heywood, School Counsellor*

"I am leading a Leadership in Action programme, teaching students how to listen to people effectively. This has evolved into a student-led support group which offers peer counselling to students as well as play therapy to pre-prep children. We call the group SOS (Support our Students).

"It benefits me as I feel connected to the students personally, through a playful approach to the teaching of the project matter.

"The benefit to students I have seen is that there is a genuine enthusiasm for what we're doing—a real desire to be of use and to learn. An active deepening.

"In terms of the community, there is a wider benefit of the care we show rippling out into school beyond our practice."

## House Charities

*Student leader: Nina Yang, Curie Charity rep, Y11*

"From my point of view, House Charity consists of two main factors: 1) fundraising—people have to come up with plans and ideas about how to sell as much product as possible; and 2) being aware of the real world around us—we go and visit our House Charity regularly during the year.

"I practice my teamwork and leadership skills, get to know what people would like to do and have a better idea of how to communicate with younger people."

## Independent student charity work

*Sherry Wang, Y13 student*

"I have been supporting the Fengtai Charity since year 11 with five of my other friends. This is a charity that some of the school teachers have been supporting and this is how we got to know them.

"After we gave our money for the first time to the charity, they sent back an email with a photo of the baby whose surgery we had partially helped to fund, and we felt like we were actually making a difference.

"Working on a community project benefits me a lot—to get to know more people, to learn new skills, to make a difference, or just to gain personal satisfaction. It feels really good when you know what you are doing is helping, and all the hard work will be worth it."

## Future Forest Project

*Helen Huang, Y13 student*

"Six year 13 students established a Harrow Future Forest set-up team in an effort to organise upper school students to visit the Future Forest's afforestation site in the Kubuqi Desert, Inner Mongolia, to plant trees. On 17<sup>th</sup> of April, the Harrow Future Forest spring planting trip began with the arrival of the first of two groups of students at Kubuqi Desert, a trip, that hopefully will be the first of many more to come.

"We were proud to have planted 240 trees that afternoon. We know that issues of climate change, resource depletion and environmental damage are not easily resolved. It is only by channelling our increasing individual awareness into collective participation that results can occur. I am confident what we have done will bring increasing environmental consciousness and action to the Harrow community.

"Personally, I find this experience extremely valuable because I have grown into a more confident, organised and skillful leader. I look forward to seeing this project continue to succeed in future."



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