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European Business in China

POSITION PAPER 2023/2024

European Union Chamber of Commerce in China

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The *European Business in China Position Paper 2023/2024* represents the views of the European Union Chamber of Commerce in China. Our working groups, fora and more than 1,700 member companies have together compiled the latest assessments, concerns and recommendations of European businesses operating in China.

We hope that this position paper will promote constructive dialogue between Europe and China, at both the political and business levels. We look forward to continued improvement in business cooperation, to the benefit of both Europe and China.

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represents the number of years the working group has been making this recommendation.

This icon

indicates that the Key Recommendation is related to achieving carbon neutrality.

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Message from the President

After the programme of reform and opening up of the late 1970s set China's economy on a spectacular growth trajectory, European companies quickly recognised the country's enormous market potential. With Chinese state planners seeking to ensure growth and stability, pragmatic principles guided the country's economy, and reforms facilitated huge inflows of foreign direct investment (FDI).[1] For decades, European companies thrived in China, benefitting from a stable and efficient business environment.

However, after the turbulent past three years, many have re-evaluated their basic assumptions about the Chinese market. The business community feels that predictability and reliability—core characteristics of China's attractiveness as an investment destination—have been eroded as a result of erratic policy shifts, such as the unexpected disruptions to power supplies that took place in 2021 and 2022, and the sudden mass lockdowns that were imposed in an attempt to contain COVID.[2] Overall confidence in China's growth prospects has deteriorated,[3] and companies are revising down their forecasts. Sentiment is spreading that, with China's economic growth slowing and its focus on 'self-reliance' solidifying, only foreign companies in industries that are directly supportive of China's policy goals—or those that are temporarily needed due to a lack of local suppliers—will be able to prosper the way they did when China's growth was pushing double digits.[4]

The disruptions that took place over the past couple of years were an eye-opener, as they laid bare the fragility of modern supply chains. As a result, many companies are now focussed on making their supply chains more durable and have become increasingly risk averse. Several European companies are either considering shifting or have already shifted investments out of China to increase supply chain resilience, or have onshored supply chains into China, detaching them from global value chains.[5] Geopolitical issues are also pushing companies towards increased caution,[6] with Russia's war on Ukraine amplifying sensitivities in particular.[7]

Mixed messaging from the Chinese Government only adds to the growing sense of uncertainty, further eroding confidence in this important market. The annual work report delivered by China's outgoing premier Li Keqiang at the 14th National People's Congress, held in March 2023, highlighted the government's aim to encourage more foreign investment.[8] However, while businesses are waiting for this pledge to be followed by action, China's push

1 "FDI inflows to China have surged from almost nil at the start of reform in the late 1970s to between $40 billion and $45 billion a year (nearly 5 percent of GDP) in the second half of the 1990s[…]By the 1990s China had become the second-largest FDI recipient in the world, after the United States, and by far the largest recipient among developing countries, accounting for about 25-30 percent of FDI flows to all developing countries." Tseng, Wanda S., *Foreign Direct Investment in China: Some Lessons for Other Countries*, International Monetary Fund (IMF), 24th February 2003, viewed 10th August 2023, <https://www.elibrary.imf.org/display/book/9781589061781/ch005.xml>

2 *European Business in China Position Paper 2022/2023*, European Union Chamber of Commerce in China, p. 12, 21st September 2022, viewed 10th August 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1068/European_Business_in_China_Position_Paper_2022_2023>

3 Confidence in China's growth prospects over the coming two years deteriorated among respondents to the *European Business in China Business Confidence Survey 2023* (BCS 2023), with fewer (-6 percentage points (pp)) reporting optimism than in 2022, despite the fact that companies were surveyed after China's 're-opening'. *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, p. 8., 21st June 2023, viewed 10th August 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

4 This includes industries that can provide the technology and expertise China needs to upgrade its value chains, such as chemicals, machinery and semiconductors.

5 Making their supply chains more resilient was selected by 31 per cent of those respondents who are either considering shifting or have already shifted investments out of China in the BCS 2023. *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, pp. 10–11, 21st June 2023, viewed 10th August 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

6 According to a recent IMF report, "FDI flows are increasingly concentrated among geopolitically aligned countries, particularly in strategic sectors". *World Economic Outlook: A Rocky Recovery*, IMF, April 2023, viewed 10th August 2023, <https://www.imf.org/en/Publications/WEO/Issues/2023/04/11/world-economic-outlook-april-2023?cid=bl-com-spring2023flagships-WEOEA2023001>

7 Russia's invasion of Ukraine, which saw over 1,000 companies publicly announce that they would be voluntarily curtailing their Russia operations, has acted as a further wake-up call for businesses, and pushed them to evaluate how susceptible their China operations would be to a similar disruption. In a flash survey conducted by the European Chamber in April 2022, a third of respondents reported that the war in Ukraine made China a less attractive investment destination. This indicates that, regardless of whether there is actually a serious dispute between Mainland China and Taiwan, just the threat of wars or blockades is enough to increase the sense of unpredictability. *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, p. 21, 21st June 2023, viewed 10th August 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>; *Flash Survey: COVID-19 and the War in Ukraine: The Impact on European Business in China*, European Union Chamber of Commerce in China, 5th May 2022, viewed 10th August 2023, <https://www.europeanchamber.com.cn/en/publications-archive/973/Flash_Survey_COVID_19_and_the_War_in_Ukraine_The_Impact_on_European_Business_ in_China>

8 *Full text: Report on the Work of the Government, Xinhua*, 15th March 2023, viewed 28th June 2023, <http://www.china.org.cn/china/2023-03/15/content_85169057.htm>

for technological self-reliance continues to restrict foreign enterprises' market access.[9] In July 2023, Xi Jinping called for a higher level of opening up and efforts to boost foreign cooperation in investment and trade, among others.[10] At the same time, recent legislation, including the amended Anti-espionage Law and the new Foreign Relations Law,[11&12] indicates an increasing focus on national security across a widening scope of areas, which is prompting businesses to exercise even more caution.

At the top of a growing list of questions about the Chinese market is, *what kind of relationship does China want to have with foreign enterprises?* A decisive answer would be for policymakers to begin tackling the fundamental, structural issues hindering China's economic rebound,[13] while taking concrete action to address the challenges faced by private companies, both Chinese and foreign. This would do much to rejuvenate business confidence and restore the appetite of foreign companies to continue engaging with China, and even increase their investments.

Although European firms' perceptions about the Chinese business environment might be changing, they have a shared interest in China's continued success. To this end, the European Chamber stands ready to increase its engagement with Chinese stakeholders and provide constructive recommendations that can boost China's recovery and help to realise its vast potential.

Jens Eskelund
President
European Union Chamber of Commerce in China

9 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, p. 25, 21st June 2023, viewed 10th August 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

10 Yu, Evelyn & Tam, Felix, *Xi Calls for More Economic Opening, Trade as Recovery Falters, Bloomberg,* 11th July 2023, viewed 10th August 2023, <https://www.bloomberg.com/news/articles/2023-07-11/china-s-xi-calls-for-greater-economic-opening-in-charm-offensive#xj4y7vzkg>

11 *A battle against spies in China is spooking locals and foreigners, The Economist*, 4th May 2023, viewed 2nd July 2023, <https://www.economist.com/china/2023/05/04/a-battle-against-spies-in-china-is-spooking-locals-and-foreigners?gclid=EAIaIQobChMIg9LTqMTv_wIV9MZMAh30ewJbEAMYASAAEgLQBfD_BwE&gclsrc=aw.ds>

12 The Law on Foreign Relations of the People's Republic of China, *Xinhua*, 28th June 2023, viewed 2nd July 2023, <https://english.news.cn/20230628/28c7aedd386440ba9c370eb22476d430/c.html>

13 There are many structural issues—both long-standing and recently emerged—that need to be addressed for China to regain momentum for its economic recovery. According to the Rhodium Group's assessment of the second quarter of 2023, key systemic issues that require the attention of Chinese policymakers include "crushing local government debt, an ongoing property sector crisis, continued addiction to investment projects for GDP growth, and falling confidence among both domestic consumers and businesses and foreign investors." Rosen, Daniel H., Salidjanova, Nargiza & Lietzow, Rachel, *China Pathfinder: Will Sluggish Growth Trigger Green Shoots of Reform? Q2 2023 Update*, Rhodium Group, 7th August 2023, viewed 10th August 2023, <https://rhg.com/research/china-pathfinder-will-sluggish-growth-trigger-green-shoots-of-reform-q2-2023-update/>

ABOUT THE EUROPEAN UNION CHAMBER OF COMMERCE IN CHINA

FOUNDED IN
2000
BY 51 MEMBER COMPANIES

35
WORKING GROUPS AND FORA

MORE THAN
1,700
MEMBER COMPANIES

OPERATING IN
9
CITIES

The European Union Chamber of Commerce in China (European Chamber) was founded in 2000 by 51 member companies that shared a goal of establishing a common voice for the various business sectors of the EU and European businesses operating in China. It is a member-driven, non-profit, fee-based organisation with a core structure of 26 working groups, 13 sub-working groups/desks and nine fora representing European business in China.

The European Chamber has more than 1,700 member companies in seven chapters operating in nine cities: Beijing, Nanjing, Shanghai, Shenyang, South China (Guangzhou and Shenzhen), Southwest China (Chengdu and Chongqing) and Tianjin. Each chapter is managed at the local level by local boards reporting directly to the Executive Committee.

The European Chamber is recognised by the European Commission and the Chinese authorities as the official voice of European business in China. It is also recognised as a foreign chamber of commerce by the Ministry of Civil Affairs. The European Chamber is part of the growing network of European Business Organisations (EBOs), which connects European business associations and chambers of commerce from 45 non-EU countries and regions around the world.

Mission Statement

As a member-based organisation, the European Chamber seeks to:

1. Ensure greater market access and a level playing field for European companies operating in China;
2. Improve market conditions for all businesses in China;
3. Facilitate networking and communication among members and stakeholders;
4. Provide specific, relevant information to its members on how to do business in China; and
5. Update its members on economic trends and legislation in China.

Principles

1. We are an independent, non-profit organisation governed by our members.
2. We work for the benefit of European business as a whole.
3. We operate as a single, networked organisation across Mainland China.
4. We maintain close, constructive relations with the Chinese and European authorities, while retaining our independence.
5. We seek the broadest possible representation of European business in China within our membership: small, medium and large enterprises from all business sectors and European Member States, which operate throughout China.
6. We operate in accordance with Chinese laws and regulations.
7. We treat all of our members, business partners and employees with fairness and integrity.

Executive Summary

Regaining Momentum

How to Restore Business Confidence

After abruptly abandoning its 'zero-COVID' approach in late 2022,[1] China reopened its borders on 8th January 2023. This decision was a welcome surprise, as pandemic control measures were one of the main reasons European companies had had an extraordinarily difficult year in 2022,[2] and the removal of the restrictions gave rise to a belief that a swift economic rebound would follow. International banks revised up their growth forecasts for China, and businesses were expecting a surge in new orders resulting from pent-up Chinese demand.[3]

The political will in China also seemed to finally match businesses' expectations for increased opening of the economy. At the 14th National People's Congress, held in March 2023, China's outgoing premier Li Keqiang delivered the government's annual work report, reviewing the progress made on development plans from 2022, and setting out the key priorities for the coming year. The gross domestic product (GDP) target for 2023 was set at around five per cent, and Li's presentation emphasised economic recovery and stability. The work report also outlined aims to encourage more foreign investment. The business community saw these as positive messages, as they suggested the Chinese Government would shift focus from ideological considerations—and an emphasis on self-reliance and national security concerns—to prioritising the economy and re-engagement with the world.[4&5]

While economic indicators at the beginning of 2023 showed momentum was gathering, as the year progressed, China's recovery began to wane, with many areas of the economy not performing as expected. A key factor in this was that the much-anticipated release of pent-up demand simply did not take place, resulting in an extended contraction of manufacturing activity, producer prices and industrial profits.[6] While services fared somewhat better than manufacturing, growth in this sector showed signs of slowing after an initial strong rebound.[7] On top of this, a host of serious challenges that China's economy had already been facing—including mounting government debt and the unravelling of the real estate

1 China's successful management of the COVID-19 pandemic in the two years following the initial outbreak led to a swift economic recovery relative to the rest of the world, while protecting the health of its population. However, waves of more transmissible variants of the virus throughout 2022 began to exert immense pressure, first on supply chains and then on China's economy overall.

2 A record-high 64 per cent of respondents to the European Chamber's *European Business in China Business Confidence Survey 2023* (BCS 2023) reported that doing business in China become more difficult in 2022. Revenue and profitability took a turn for the worse, as stringent COVID-19 containment measures disrupted operations and slowed China's economic growth, and the contribution of China operations to companies' global revenues decreased for a second year running. *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, p. 1, 21st June 2023, viewed 5th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

3 Wang, Huiyao, *5 reasons China's reopening is good news for the global economy, SCMP,* 10th January 2023, viewed 28th June 2023 <https://www.scmp.com/comment/opinion/article/3206057/5-reasons-chinas-reopening-good-news-global-economy>

4 *Full text: Report on the Work of the Government, Xinhua,* 15th March 2023, viewed 28th June 2023, <http://www.china.org.cn/china/2023-03/15/content_85169057.htm>

5 *European Business in China Position Paper 2022/2023*, European Union Chamber of Commerce in China, pp. 4–8, 21st September 2022, viewed 5th July 2023, <https://www.europeanchaamber.com.cn/en/publications-archive/1068/European_Business_in_China_Position_Paper_2022_2023>

6 Huang, Eustance, *Weak consumption is a 'major problem' for China's recovery, says analytics firm, CNBC,* 10th June 2023, viewed 29th June 2023, <https://www.cnbc.com/2021/06/10/weak-consumption-is-problem-for-china-recovery-says-analytics-firm.html>

7 *China's services activity softens as recovery falters, Reuters*, 5th July 2023, viewed 7th July 2023, <https://www.reuters.com/markets/asia/chinas-services-activity-softens-recovery-falters-caixin-pmi-2023-07-05/>

sector—are yet to be resolved.[8,9,10&11]

China's demographic dividend is also fading,[12] and urban youth unemployment broke historic records for several months in a row in 2023,[13] adding more pressure to the country's recovery. Official statistics, published until July 2023,[14] suggested that one in five people between the ages of 16 and 24 were out of a job in China's big cities. This data also highlighted the need for targeted policies in order for domestic consumption to live up to its potential as a key driver for the Chinese economy.[15] Rebuilding consumer confidence will also require measures that can improve the outlook for the real estate sector, in which over 70 per cent of Chinese household wealth is tied up.[16]

Some momentum for China's economic recovery could be regained by providing policy support for the demand rather than the supply side. This is particularly important given that supply-side policies have been a contributor to the significant trade imbalances China has accumulated with both the European Union (EU) and the United States (US).[17&18] There is a danger that, if not addressed, this may lead to reactions by overseas governments – the growing trade imbalance and the lack of reciprocal market access are often cited by European politicians as key grievances and reasons for dissatisfaction with the relationship with China.[19]

8 Government debt increased significantly during the COVID-19 pandemic as lending accelerated to help businesses recover, local governments poured money into pandemic control measures—including the building of new hospitals and quarantine centres, and mandating regular testing for the population—and the real estate sector crashed. He, Laura, *Chinese cities are struggling to pay their bills as 'hidden debts' soar, CNN*, 1st February 2023, viewed 2nd August 2023, <https://edition.cnn.com/2023/01/31/economy/china-local-governments-basic-services-debt-crisis-intl-hnk/index.html>; Lee, Amanda, *How China's hidden debt risk 'comes from its system', and why local governments are beholden to Beijing, SCMP*, 30th July 2023, viewed 2nd August 2023, <https://www.scmp.com/economy/china-economy/article/3229284/how-chinas-hidden-debt-risk-comes-its-system-and-why-local-governments-are-beholden-beijing>

9 Cheng, Evelyn, *China's property sales are set to plunge 30% - worse than in 2008, S&P says, CNBC*, 27th July 2022, viewed 2nd August 2022, <https://www.cnbc.com/2022/07/27/chinas-property-sales-set-for-a-worse-plunge-than-in-2008-sp-says.html>

10 Lee, Yen Nee, *These charts show the dramatic increase in China's debt, CNBC*, 13th July 2021, viewed 2nd August 2022, <https://www.cnbc.com/2021/06/29/china-economy-charts-show-how-much-debt-has-grown.html>

11 Ma, Josephine, *How zero-Covid was a costly lesson for China's local governments, SCMP,* 14th February 2023, viewed 1st August 2023, <https://www.scmp.com/news/china/science/article/3210188/how-zero-covid-was-costly-lesson-chinas-local-governments>

12 The 'demographic dividend' refers to economic development that is driven by a high proportion of working-age population. This is being lost in China due to its unprecedented low number of newborns and its rapidly ageing population. Woo, Ryan & Yao, Kevin, *China demographic crisis looms as population growth slips to slowest ever, Reuters*, 11th May 2021, viewed 9th August 2022, <https://www.reuters.com/world/china/china-2020-census-shows-slowest-population-growth-since-1-child-policy-2021-05-11/>

13 "China's youth unemployment rate hit a record in June—marking a third consecutive month above 20%—and the government warned the situation may get even worse as new graduates start looking for work." Disis, Jill Elaine & Siu, Chi Yui, *China Warns Youth Unemployment to Worsen After Hitting Record, Bloomberg*, 17th July 2023, viewed 28th July 2023, <https://www.bloomberg.com/news/articles/2023-07-17/china-warns-youth-unemployment-to-worsen-after-hitting-record?srnd=economics-jobs#xj4y7vzkg>

14 The National Bureau of Statistics suspended the publication of the urban unemployment data broken down into age groups in August 2023. Figures in this series only included young people who were actively looking for work. However, according to an estimate by a professor at Peking University, who has since been censored, the figure may be as high as 46.5 per cent, if those 'lying flat' or relying on their parents were also included. Woo, Ryan & Zhang, Ellen, *Chinese professor says youth jobless rate might have hit 46.5%, Reuters*, 20th July 2023, viewed 2nd August 2023, <https://www.reuters.com/article/china-economy-youth-unemployment-idUSKBN2Z00HN>

15 Youth consumption is important for China's economy, especially in areas such as culture and education, rent, transportation and communication, in which they generally spend heavily. *Why has youth unemployment risen so much in China?*, Goldman Sachs, 31st May 2023, viewed 29th June 2023, <https://www.goldmansachs.com/intelligence/pages/why-has-youth-unemployment-risen-so-much-in-china.html>

16 *China's $16 Trillion Cash Hoard Shows Deepening Household Gloom, Bloomberg,* 23rd May 2022, viewed 7th July, <https://www.bloomberg.com/news/articles/2022-05-23/china-s-16-3-trillion-cash-hoard-shows-deepening-household-gloom>

17 In 2022, the EU's trade deficit with China surged to euro (EUR) 395.7 billion from EUR 250.3 billion in 2021. Huld, Arendse, *EU-China Relations – Trade, Investment, and Recent Developments*, China Briefing, 4th April 2023, viewed 7th July 2023, <https://www.china-briefing.com/news/eu-china-relations-trade-investment-and-recent-developments/>

18 In 2022, the US' trade deficit with China reached US dollar (USD) 382.9 billion, the second highest level on record. Palmer, Doug, *What cold war? U.S. trade with China hits new high, Politico*, 7th February 2023, viewed 7th July 2023, <https://www.politico.com/news/2023/02/07/trade-china-relations-economies-00081301>

19 For example, the Italian Government highlighted its growing trade imbalance with China as a reason behind its intention to leave the Belt and Road Initiative, which Italy joined as the only Group of 7 (G7) country in 2019. Folkman, Varg, *Italy intends to leave China's Belt and Road Initiative, defense minister says, Politico*, 30th July 2023, viewed 2nd August 2023, <https://www.politico.eu/article/italy-leave-belt-and-road-initiative-china-minister-guido-crosetto/>

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The role of European business in China's economic development

Shaken by the supply chain vulnerabilities that became evident during the COVID-19 pandemic, concerned about the economic outlook in China and globally, and with geopolitical tensions raising new challenges, European companies' perception of the Chinese market as predictable, reliable and efficient has been steadily eroded.[20] However, while they have come under increasing pressure to mitigate risks stemming from their presence in China, they remain committed to this important market.[21]

Although Beijing is taking steps to increase its technological self-reliance, European businesses historically played an important role in the upgrading of China's domestic industry through both collaboration and competition with Chinese companies.[22] And there is still enormous potential for them to continue making valuable contributions to China's development, particularly if self-reliance efforts are focussed on narrow and precisely-defined national security concerns. If provided with greater market access, 63 per cent of respondents to the BCS 2023 said they would consider expanding their footprint in China. Nearly half of those would likely increase investments by between five to 10 per cent of their annual revenue; 12 per cent would likely increase investments by 11 to 20 per cent of their annual revenue; and one in 10 by more than 20 per cent.[23] European and other foreign companies have also created many new jobs through greenfield investments in China. However, with the value of greenfield foreign direct investment (FDI) having decreased sharply in 2022, even compared to the first two years of the COVID-19 pandemic,[24] China is at risk of losing out on the positive effect that FDI can have on employment.

Implementing policies that can help companies attract and retain foreign talent to work in China is another area that needs to be addressed if China wants foreign companies to optimise the contributions they can make to the country's development. This challenge was exacerbated by the pandemic, during which many companies experienced an outflow of foreign workers.[25]

According to official figures in 2021, the number of foreign nationals in China was already very low. Of the 1.4 billion total population in Mainland China recorded in the 2021 census, only 845,697 were foreign nationals, which represented approximately 0.06 per cent of the total.[26] Furthermore, the number of foreign workers from developed economies that work in international companies was shown to be falling in some key cities. This trend is not beneficial to China's economy, as high-level foreign talent tend to make significant contributions to innovation, efficiency and productivity in areas that are important to the country's high-quality development.

While the 2021 census indicates a total foreign population of 845,697 in Mainland China (or 1,430,695

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20 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, 21st June 2023, viewed 5th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

21 Ibid.

22 Zenglein, Max J. & Holzmann, Anna, *Evolving Made in China 2025: China's industrial policy in the quest for global tech leadership*, Mercator Institute for China Studies (MERICS), July 2019, viewed 30th June 2023, <https://merics.org/sites/default/files/2020-04/MPOC%20Made%20%20in%20China%202025.pdf>

23 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, p. 32, 21st June 2023, viewed 5th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

24 "Inbound FDI for China declined further in 2022, with decreases in the number of announced FDI projects numbers (24%), capital expenditure (44%) and job creation (59%). Compared to 2019, the number of projects into China last year [2022] was down 60% and capital investment was down 68%." *The fDi Report 2023: Global greenfield investment trends*, fDi Intelligence, p. 10, 16th May 2023, viewed 30th June 2023, <https://www.fdiinsights.com/fdi/report2023>

25 Wang, Huiyao, *China's zero-Covid policy has had a severe impact on its stock of global talent, Financial Times*, 18th July 2022, viewed 3rd August 2023, <https://www.ft.com/content/fef5a71d-8a19-4f65-804e-42bfb02af083>

26 By contrast, foreign residents in Japan in 2021 made up about 2.2 per cent of the total population: *Number of registered foreign residents living in Japan from 2012 to 2021*, Statista, 4th January 2023, viewed 7th August 2023, <https://www.statista.com/statistics/687809/japan-foreign-residents-total-number/>; and as of March 2021, foreign residents in South Korea made up around 3.8 per cent of the total population: Yonhap, *Foreign population in S. Korea falls below 2m for 1st time in over 5 years, The Korea Herald*, 27th April 2021, viewed 3rd August 2023, <www.koreaherald.com/view.php?ud=20210427000344>

including residents from Hong Kong, Macau and Taiwan), an increase of 251,865 over the 593,832 recorded in 2010, it is important to put these numbers—and in particular the geographical distribution of international talent—into context. For example, the foreign populations of Beijing and Shanghai—locations that have historically had a higher density of foreign nationals from developed economies relative to the rest of China—dropped from 107,445 (about 0.5 per cent of the total) to 62,812 (about 0.3 per cent of the total) and from 208,602 (about 1.0 per cent of the total) to 163,954 (about 0.6 per cent of the total) respectively from 2010 to 2021.[27] Given China's increased focus on innovation under the 14th Five-year Plan (14FYP), the significance of a decreasingly diverse working population—particularly in cities that are expected to be important drivers of future growth—cannot be overstated.

The outflow of foreign nationals has resulted in reduced transfer of know-how and best practices, as well as increased communication difficulties between headquarters (HQs) and China operations. In some cases, this has led to investment plans being deferred or even companies closing their China operations down.[28] The announcement of the four-year extension of non-taxable allowances for foreign national employees in August 2023 was therefore welcomed by European businesses,[29] as the measure will help them to continue providing more competitive employment opportunities for much-needed foreign talent. Nevertheless, while extending these benefits until 31st December 2027 is seen by the Chamber as a demonstration of China's commitment to both foreign companies and the foreign nationals that are already working in the country, it is likely that more policies that can attract new talent will still be needed.[30]

Would you like to know more?

To learn more about how tax-related issues impact European businesses' operations in China, read the *Finance and Taxation Working Group Position Paper 2023/2024* on page 49.

One key challenge that undermines China's attractiveness to international talent is the erosion of the soft infrastructure that is vital for maintaining a vibrant foreign community in China. For example, with international schools and medical clinics finding themselves short of both staff and customers, their service offerings have reduced overall, which makes relocation to China a less attractive proposition, especially for senior-level talent, who are more likely to bring their families.

Once attracting foreign investment became a clear policy priority at the beginning of 2023,[31&32] Chinese interlocutors at all levels of government ramped up engagement with foreign business representatives in a bid to introduce their respective regions as viable investment destinations. There was also a significant

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27 Calculations on the proportion of foreign nationals compared to total metropolitan populations of Beijing and Shanghai conducted by the European Chamber. The foreign populations provided for Shanghai and Beijing include residents of Hong Kong, Macau and Taiwan. *How many Foreigners live in China – the seventh national census in 2021*, Registration China, 15th May 2021, viewed 7th August 2023, <https://www.registrationchina.com/articles/how-many-foreigners-live-in-china/>; *Beijing, China Metro Area Population 1950-2023*, macrotrends, viewed 8th August 2023, <https://www.macrotrends.net/cities/20464/beijing/population>; *Shanghai, China Metro Area Population 1950-2023*, macrotrends, viewed 8th August 2023, <https://www.macrotrends.net/cities/20656/shanghai/population>

28 "One in six respondents (16%, +5pp y-o-y) say they do not currently employ any foreign nationals, while foreign nationals make up 10% or less of overall staff for 78% of respondent companies." *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, p. 16, 21st June 2023, viewed 2nd July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

29 *Announcement on the Continuation of the Implementation of Non-taxable Allowances of Individual Income Tax Policies for Foreign National individuals*, Ministry of Finance (MOF) & State Taxation Administration, 29th August 2023, viewed 1st September 2023, <http://szs.mof.gov.cn/zhengcefabu/202308/t20230828_3904329.htm>

30 Some recent measures were aimed at streamlining visa application procedures; however, while welcome, these steps have little impact on companies' ability to attract foreign talent. *The Ministry of Public Security issued 26 measures to ensure high-quality development of services, People's Daily Online*, 3rd August 2023, viewed 3rd August 2023, <http://society.people.com.cn/n1/2023/0803/c1008-40049749.html>; *The State Council's notice on the publication of measures on adopting international standards at conditional pilot free trade zones and free trade ports and promoting structural opening up*, State Council, 29th June 2023, viewed 3rd August 2023, <https://www.gov.cn/zhengce/content/202306/content_6889026.htm>

31 Wang, Orange, *Chinese Foreign Minister Qin Gang assures US business leaders of Beijing's support, SCMP*, 26th March 2023, viewed 2nd July 2023, <https://www.scmp.com/news/china/diplomacy/article/3214870/chinese-foreign-minister-qin-gang-assures-us-business-leaders-beijings-support?module=inline&pgtype=article&module=inline&pgtype=article>

32 He, Laura, *China's new premier rolls out the welcome wagon for foreign companies, CNN*, 28th March 2023, viewed 30th June 2023 <https://edition.cnn.com/2023/03/28/economy/china-development-forum-foreign-companies-welcome-intl-hnk/index.html>

uptick in the number of in-person meetings at the political level.[33,34&35] European Chamber members reported a surge in the number of investment promotion meetings, both in China and at their HQs in Europe. The European Chamber also received many regional investment promotion bureaus since the beginning of 2023, seeking foreign investment.[36] Restarting face-to-face meetings after a three-year gap has been an important step towards rebuilding bridges, as China's isolation from the rest of the world resulted in less understanding of the country and diminished business confidence. This renewed engagement was welcomed by the European business community in China, and it raised expectations that foreign companies would rush back to the table after the country re-opened its doors with a bang. However, despite the warm reception and the apparent attentiveness towards the challenges of businesses, the appetite for investment was not there once business leaders realised they were being served the same old menu.

In segments of China's economy that have continued to open and become better regulated, European companies have increased their investments. This goes to show that when Chinese policymakers follow up on pledges to improve conditions for foreign businesses, it gives a visible boost to investor confidence. At the same time, it is important to institute meaningful government-industry communication before new policies are introduced to ensure they are practical and effective, as inconsistencies and ambiguity over certain requirements can pose barriers.

For example, in the automotive industry, the lifting of ownership restrictions resulted in one large European automotive manufacturer increasing its stake in its joint venture (JV) partner in the first half of 2022, an investment that accounted for over half of the total EU FDI into China during that period.[37] However, despite the removal of equity caps, many foreign-invested carmakers still face regulatory hurdles when trying to optimise their investments in China. These barriers largely stem from approval requirements and processes that are not clearly specified, which does not provide international automotive manufacturers the certainty they need to plan their investments in China.

Would you like to know more?

To learn more about the automotive sector in China, and the concerns and recommendations of the European Chamber's relevant members, read the *Automotive Working Group Position Paper 2023/2024* on page 170.

The aviation sector provides another example of an opening promise that has not yet materialised due to prevalent invisible market access barriers. Although China included among its commitments to the World Trade Organization (WTO) in 2001 the liberalisation of its computer reservations system (CRS) market, foreign CRS providers still do not have access in practice. In 2012, China released measures that would allow licensed foreign companies to offer global distribution system (GDS) services in China

33 European Commission chief Ursula von der Leyen accompanied French President Emmanuel Macron to Beijing in April. *Macron and von der Leyen in China: A difficult but useful dialogue, Le Monde*, 8th April 2023, viewed 29th June 2023, <https://www.lemonde.fr/en/opinion/article/2023/04/08/macron-and-von-der-leyen-in-china-a-difficult-but-useful-dialogue_6022150_23.html>

34 Tesla CEO Elon Musk and Microsoft co-founder Bill Gates headed to the Chinese capital in May and June respectively. Chiang, Sheila, *China's Xi tells Bill Gates he's the 'first American friend' he met in Beijing this year, CNBC*, 16th June 2023, viewed 29th June 2023, <https://www.cnbc.com/2023/06/16/bill-gates-visits-china-hot-on-the-heels-of-elon-musk-with-xi-meeting-confirmed.html>

35 Similarly, Chinese stakeholders also resumed their overseas trips, with Wang Yi in his role of foreign minister in February and then Li Qiang, stepping into the role of China's premier, paying visits to several European countries.

36 Some examples of such meetings include: *Meeting with Chairman of China Council for the Promotion of International Trade (CCPIT) Changsha Branch*, European Union Chamber of Commerce in China, 12th July, 2023, viewed 7th August 2023, <https://www.europeanchamber.com.cn/en/lobby-actions/6497/Meeting_with_Chairman_of_China_Council_for_the_Promotion_of_International_Trade_CCPIT_Changsha_Branch>, *Meeting with Vice-Chairman of China Council for the Promotion of International Trade (CCPIT) Tianjin Sub-Council*, European Union Chamber of Commerce in China, 11th July 2023, viewed 7th August 2023, <https://www.europeanchamber.com.cn/en/lobby-actions/6496/Meeting_with_Vice_Chairman_of_China_Council_for_the_Promotion_of_International_Trade_CCPIT_Tianjin_Sub_Council>, *Meeting with China Council for the Promotion of International Trade (CCPIT) Wuhu Delegation*, European Union Chamber of Commerce in China, 9th June 2023, viewed 7th August 2023, <https://www.europeanchamber.com.cn/en/lobby-actions/6400/Meeting_with_China_Council_for_the_Promotion_of_International_Trade_CCPIT_Wuhu_Delegation>

37 Kratz, Agatha, Barkin, Noah & Dudley, Lauren, *The Chosen Few: A Fresh Look at European FDI in China*, Rhodium Group, 14th September 2022, viewed 5th July 2023, <https://rhg.com/research/the-chosen-few/>

to certain sales agencies. However, when agencies choose a foreign-owned service provider, they have to go through a licence verification process that exceeds 50 days, illustrating how the playing field is tilted in favour of domestic competitors. This problem is further exacerbated by the lack of clarity on how certain required authorisation processes apply to foreign GDS providers.

Would you like to know more?

For more information on the aviation sector in China, and the concerns and recommendations of the European Chamber's members in relevant industries, read the *Aviation and Aerospace Working Group Position Paper 2023/2024* on page 296.

Some market access challenges in certain sectors are due to 'one-size-fits-all' regulations, and can act as a deterrent to foreign investment across multiple industries. For example, foreign banks in China already have smaller balance sheets compared to their Chinese peers and, on top of that, often face stricter compliance requirements, making it difficult for them to compete on bond-trading turnover and inventory size. However, foreign banks usually have larger overseas client bases that are eager to trade with them via China's investment channel Bond Connect, and to get market updates and recommendations to access the onshore Chinese Interbank Bond Market. Therefore, difficulties in qualifying to become Bond Connect market makers limit foreign banks' ability both to develop business and bring investment into China.

Would you like to know more?

To learn more about the challenges that European banks face in China and their recommendations for improving the business environment, read the *Banking and Securities Working Group Position Paper 2023/2024* on page 367.

Research and development (R&D) is one area in which the Chinese Government has clearly signalled its intention to expand the role of foreign investment. Recent measures have been rolled out to create a better environment for foreign-funded R&D activities, facilitate the mobility of overseas talent and strengthen intellectual property (IP) protection, among others.[38&39] It is seen as a positive sign by European businesses that some of their key concerns have been reflected in these documents, but it remains to be seen how effectively these measures will be implemented.

Would you like to know more?

For more information on developments in China's innovation field, read the *Research and Development Working Group Position Paper 2023/2024* on page 110.

38 *Several Measures on Further Encouraging Foreign Investment to Establish R&D Centres*, Ministry of Commerce (MOFCOM) & Ministry of Science and Technology (MOST), 11th January 2023, viewed 10th July 2023, <https://www.most.gov.cn/xxgk/xinxifenlei/fdzdgknr/fgzc/zcjd/202301/t20230119_184334.html>

39 *Action Plan for Improving Enterprise Technology Innovation Capabilities (2022–2023),* MOST & MOF, 5th August 2022, viewed 10th July 2023, <https://www.most.gov.cn/xxgk/xinxifenlei/fdzdgknr/qtwj/qtwj2022/202208/t20220815_181875.html>

European Chamber
中国欧盟商会

1 Section One

Executive Position Paper

Executive Position Paper

Time to change the menu

Even though many challenges remain, and economic recovery has shown signs of faltering, China is still widely expected to meet its growth targets in 2023.[1] However, in the coming years, economic growth is projected to decelerate.[2] This is in line with trends seen in most economies as they mature, albeit with some obvious and significant differences,[3] which provides a compelling argument for shifting from growth-at-all-costs to a more sustainable model. European companies have a key role to play in this alignment, as they can bring much needed competition and technology if provided with an open market and a level playing field.

An important part of the shift towards sustainable economic growth is finding ways to increase productivity. This could be difficult for China given its emphasis on increasing self-reliance, and in some cases developing self-sufficiency.[4] China is pursuing this partly as a result of being denied access—for various reasons—to certain types of foreign technology, particularly that which has dual use applications. It is also driven by a desire to achieve self-sufficiency in strategic technologies, an idea that can actually be traced back nearly two decades, and to create dependencies on its own market.[5] Messaging from the Communist Party's 20th Party Congress, held in October 2022, suggests that in the face of growing external risks, the country will further increase its focus on national security.[6]

Three trends stemming from the same root: China's self-reliance campaign, the European Union's (EU's) 'de-risking' strategy, and the United States' (US') own version of 'de-risking'

The Trump administration's trade and technology war with China led the Chinese leadership to view

1 In April, the International Monetary Fund (IMF) set its gross domestic product (GDP) growth forecast for China at 5.2 per cent; and in June, the World Bank projected that China's GDP will grow 5.6 per cent in 2023. *World Economic Outlook: A Rocky Recovery,* IMF, 11th April 2023, viewed 6th July 2023, <https://www.imf.org/en/Publications/WEO/Issues/2023/04/11/world-economic-outlook-april-2023>; *China Economic Update – June 2023*, World Bank, 14th June 2023, viewed 6th July 2023, <https://www.worldbank.org/en/news/press-release/2023/06/14/priority-reforms-key-for-sustaining-growth-and-achieving-china-s-long-term-goals-world-bank-report>

2 The IMF expects China's GDP growth to slow to 4.5 per cent in 2024; the World Bank forecasts a deceleration to 4.6 per cent in 2024, and then to 4.4 per cent in 2025. Ibid.

3 One obvious difference is that in comparison to other fast-developing economies—particularly the 'Asian Tigers', Hong Kong, Singapore, South Korea and Taiwan—that have seen rapid transitions to higher income levels, China's growth rate is slowing at a time when its relative GDP per capita is much lower. Dieppe, Alistair, Gilhooly, Robert, Han, Jenny, Korhonen, Iikka & David Lodge, (eds), *The transition of China to sustainable growth – implications for the global economy and the euro area*, European Central Bank, p. 10, January 2018, viewed 2nd August 2023, <https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op206.en.pdf>

4 It is important to make the distinction between 'self-reliance'—and its relation to 'de-risking' from an European Union (EU) perspective—and 'self-sufficiency,' and how this is more related to the idea of 'de-coupling'. Increasing self-reliance is a strategy that many economies are now pursuing—including those of the EU and the United States (US)—in order to reduce dependency on any one source or country for crucial goods, such as medical devices, pharmaceutical inputs or rare earths. For the EU, this involves taking a carefully considered, analytical approach to identifying which goods can be truly defined as 'critical', and then taking precise, country-agnostic actions that can ensure its continued access to those goods, even in the event of global shocks. This narrow, surgical approach to 'self-reliance' is what the EU terms 'de-risking', in order to differentiate it from a broader self-reliance drive. The aim of becoming 'self-sufficient' is to ensure that you can source and produce everything that you need within your own country, which involves 'decoupling' – in other words, 'self-sufficiency' entails countries developing entire supply chains that are completely insulated from the rest of the world.

5 Although China's drive to achieve self-sufficiency in strategic technologies has recently accelerated due to additional export controls that have been imposed, the origins of this idea predate it by nearly two decades. It can be traced to 2006, with the launch of the National Medium- and Long-term Programme for Science and Technology Development (2006-2020) (MLP), which saw China adopt the concept of "indigenous innovation" as a policy priority. The MLP was introduced to address the fact that most key innovation was taking place outside of China, and was intended to "reduce [China's] dependence on foreign technology by at least 30%". The 2010 Strategic Emerging Industries (SEI) initiative, reiterated the guiding principles of the MLP and was aimed at supporting hand-picked national champions to become leaders in strategic industries. The "comprehensive national security" concept was then formally adopted in 2014, which saw increasing national security explicitly stated as a policy objective. Made in China 2025 (MiC2025), aka China Manufacturing 2025 (CM2025), was published in 2015, and is largely acknowledged as a re-packaging of the SEI. It focusses on China achieving "technological self-assurance". MiC2025 assigns global "market share targets" for 10 key industries and outlines the need to reduce dependence on foreign core technologies.

6 Lin, Bonny, Hart, Brian, Funaiole, Matthew P. & Lu, Samantha, *China's 20th Party Congress Report: Doubling Down in the Face of External Threats*, Center for Strategic and International Studies, 19th October 2022, viewed 7th July 2023, <https://www.csis.org/analysis/chinas-20th-party-congress-report-doubling-down-face-external-threats>

their earlier self-reliance efforts as retrospectively vindicated. However, the combination of China's own industrial policies and market access barriers aimed at ringfencing strategic areas of its economy largely contributed to the escalation of tensions between the world's two largest economies. It has also had profound consequences for European businesses.[7]

China's self-reliance campaign has a common with the EU's 'de-risking' strategy and the US' own version of 'de-risking', since all these approaches stem from the realisation that overexposure to any one source can lead to major challenges if that source suddenly becomes unavailable.[8&9] However, one key element that differentiates these approaches is the extent to which they are offensive and aimed at restricting a rival economy's development, or defensive and aimed at ensuring economic and social stability in a player's home market.

The US' version of 'de-risking' from China primarily manifests itself in a series of measures to stop or limit the sale of 'emerging' and 'foundational' technologies to China. While China has also taken some targeted retaliatory measures specifically against the US, it has introduced a broader framework of export and import controls, and formalised its own version of an entity list as well.[10] These tools allow China to introduce blanket export controls and increase the reliance of third countries on its market in certain areas.[11]

One area in which China is increasingly exerting its dominance is in solar panel production. After proposing an export restriction on technologies used in the production of key components of photovoltaic (PV) cells,[12] China's Ministry of Commerce (MOFCOM) imposed export controls on gallium and germanium, two metals used in semiconductors and solar panels.[13] Such moves are in line with China's 'dual circulation' policy, which outlines its plan of tapping into the unexploited potential of its huge domestic market to become a leader in key technologies that will be the drivers of the future global economy. This approach, however, is pushing other players to find ways of diversifying away from the country to reduce their dependencies sooner rather than later.

For its part, the EU has also been working on strategies aimed at reducing critical dependencies and vulnerabilities in its economy. While the fragility of global supply chains was exposed by the COVID-19 pandemic, Russia's war on Ukraine was the event that pushed the issue to the top of the agenda in Brussels. Only two weeks after the invasion of Ukraine, the European Council adopted the Versailles Declaration, setting out the targets for reducing the EU's energy dependency on Russia. Meanwhile, recognising the need to enhance the economic resilience of the Single Market, EU leaders began

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7 Much of China's opening has taken place in non-critical areas, or has been conditional, for example through JV requirements that have kept foreign players as minority stakeholders or by requiring technology transfers that have empowered Chinese companies. Meanwhile, industrial policies, such as the CM2025, set out to advance "indigenous innovation" and "self-reliance" in strategic areas. *Decoupling: Severed Ties and Patchwork Globalisation*, European Chamber of Commerce in China, pp. 10–11, 14th January 2021, viewed 7th July 2023, <https://www.europeanchamber.com.cn/en/publications-decoupling>

8 Ibid, p. 10.

9 The fragility of global supply chains has been exposed and risk management has become a priority due to a host of factors, including COVID-19, Russia's invasion of Ukraine, inadequate logistics infrastructure, and a lack of truck drivers in many markets, as well as freak occurrences such as the container ship that ran aground and blocked the Suez Canal. *European Business in China Position Paper 2022/2023*, European Union Chamber of Commerce in China, p. 21, 21st September 2022, viewed 6th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1068/European_Business_in_China_Position_Paper_2022_2023>

10 The entity list is a tool used to deter parties from conducting trade or investment activities with certain foreign entities. China's *Unreliable Entity List* came into effect when the MOFCOM issued its relevant provisions in September 2020. *MOFCOM Order No. 4 of 2020 on Provisions on the Unreliable Entity List*, MOFCOM, 19th September 2020, viewed 31st July 2023, <http://english.mofcom.gov.cn/article/policyrelease/questions/202009/20200903002580.shtml>

11 Ouyang, Shijia, *List of technologies banned from export released, China Daily*, 29th August 2020, viewed 7th July 2023, <https://www.chinadaily.com.cn/a/202008/29/WS5f495f8aa310675eafc56330.html>

12 Yeh, Nadya, *China drafts new export controls to shore up solar dominance*, The China Project, 1st February 2023, viewed 7th July 2023, <https://thechinaproject.com/2023/02/01/china-drafts-new-export-controls-to-shore-up-solar-dominance/>

13 Domonoske, Camila, *China imposes export controls on 2 metals used in semiconductors and solar panels, NPR*, 4th July 2023, viewed 7th July 2023, <https://www.npr.org/2023/07/04/1185940293/china-imposes-export-controls-on-two-metals-used-in-semiconductors-and-solar-pan>

outlining the areas where strategic dependencies need to be addressed.[14]

Discussions about the EU's potential overexposure to China were already ongoing at the time, as part of its re-evaluation of its relations with the world's second largest economy. However, as the EU's critical dependency on Chinese goods is being characterised as limited,[15&16] the bloc's approach to eliminating risks is expected to be narrow and precise, especially since the EU's de-risking strategy—unlike China's push for self-reliance—is not aimed at onshoring production, but rather ensuring that any one supplier does not dominate EU supply chains for a specific product.

The EU's 'de-risking' approach, first put forward by European Commission President Von der Leyen in March 2023,[17] and reaffirmed by the European Council three months later,[18] acknowledges both the need to maintain engagements to resolve key issues and the potential for strengthening cooperation, trade and investment partnerships. The EU's leadership made it clear that its strategy towards China is different from that of the US, primarily in that it "does not intend to decouple or to turn inwards".[19] Current discussions in the EU also indicate that there is an expectation that the depth and breadth of corporate de-risking activities will be significantly more modest in scope and much less restrictive compared to self-reliance initiatives in China, as they are driven by the need to build resilient supply chains rather than achieve self-sufficiency.

Risks and opportunities

To fend off potential risks to operational continuity, an increasing number of firms are creating two separate systems, with one for China and one for the rest of the world – including for supply chains, data and information technology (IT) systems, and staffing. Some are bringing as much of their own production into China as they can, and/or enticing existing suppliers to enter the China market. Others are looking to replace their overseas suppliers with local ones that are more likely to be in line with relevant Chinese regulations and guidelines.[20]

It should be noted, though, that this approach still carries risks. Some European companies already report receiving conflicting requests from Chinese and Western customers to produce goods containing either no China- or no US-made components or software.[21] Should current geopolitical tensions take a turn for the worse, Chinese buyers may well feel pressure to cease using European suppliers altogether.

For certain companies, however, siloing their China operations is simply not an option, either because

14 Critical raw materials, semiconductors, healthcare products, digital technologies and key agricultural products were listed as the most sensitive areas of strategic dependence. *Versailles Declaration*, European Council, 11th March 2022, viewed 7th July 2023, <https://www.consilium.europa.eu/media/54773/20220311-versailles-declaration-en.pdf>

15 MERICS identified 103 such product categories in electronics, chemicals, minerals/metals and pharmaceutical/medical products. Zenglein, Max J., *Mapping and Recalibrating Europe's Economic Interdependence with China*, MERICS, p. 7, 18th November 2020, viewed 7th July 2023, <https://merics.org/en/report/mapping-and-recalibrating-europes-economic-interdependence-china>

16 In May 2021, the European Commission proposed a strategy for reducing dependency on 137 imported products in the areas of raw materials, batteries, active pharmaceutical ingredients, hydrogen, semiconductors, and cloud and edge technologies, which in total account for about six per cent of the total value of goods that the EU imports. While China was identified as accounting for 52 per cent of the imported goods the EU was highly dependent on, its critical dependence on China was for only three per cent of the total value of EU imported goods. *EU unveils strategy to reduce dependency on China*, Economist Intelligence, 18th May 2021, viewed 6th July 2023, <https://www.eiu.com/n/eu-unveils-strategy-to-reduce-dependency-on-china/>

17 *Speech by President von der Leyen on EU-China relations to the Mercator Institute for China Studies and the European Policy Centre*, European Commission, 30th March 2023, viewed 7th July 2023, <https://ec.europa.eu/commission/presscorner/detail/en/speech_23_2063>

18 *European Council conclusions on China,* European Council, 30th June 2023, viewed 7th July 2023, <https://www.consilium.europa.eu/en/press/press-releases/2023/06/30/european-council-conclusions-on-china-30-june-2023/>

19 Ibid.

20 Overall, 79 per cent of respondents to the *Business Confidence Survey 2023* (BCS 2023) reported they had at least partially localised their China supply chains over the past five years—with 67 per cent reporting having done so "significantly" or "moderately"—while 24 per cent reported plans to further onshore their supply chains into China. *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, pp. 15–17, 21st June 2023, viewed 7th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

21 Ibid, p. 39.

they import components to China that they cannot easily source from elsewhere or, as is often the case for smaller companies, because they either lack the necessary resources to create separate systems for China and the rest of the world or doing so would make their business unviable.[22]

Companies are also facing the risk of being caught between conflicting legal regimes, as recently adopted and forthcoming legislation in the EU and China pose compliance challenges. The EU has recently rolled out laws to ensure that companies operating outside of its legal jurisdiction keep in line with its human rights and environmental standards.[23&24] The US already has legislation in place that requires importers to provide sufficient evidence that goods entering the country have not been produced using forced labour.[25]

It is not clear how companies will be able to comply with such requirements, as independent, third-party audits that could certify them as not using forced labour anywhere along their supply chains are difficult, and in some cases impossible, under current conditions in China.[26] This situation was brought into sharp focus following raids on some American firms that conduct background checks and due diligence as part of their business. According to reports, at least one of these companies was investigated due to its work on "Xinjiang supply chain audits".[27] As the date for reporting obligations under the new EU legislation draws closer, affected companies may come under increasing pressure to move operations out of sensitive regions in China, on top of the pressure they are already facing from many Western customers to do the same.[28]

As previously noted, China's current policy agenda and the EU's targeted approach to mitigating risk still leaves plenty of opportunities for strengthening the EU-China relationship. WTO reform, international standardisation and tackling climate change are all areas where bilateral cooperation can and should deepen. The focus on both sides should be to rebuild the right bridges so that these ties can continue to flourish in the long-term.

China has repeatedly stated its commitment to open its doors wider to foreign investment and foster a world-class business environment. However, meaningful change comes through implementation, not pledges. For example, while the proposed establishment of a 'unified national market' was touted as a move towards the creation of efficient, standardised and competitive market,[29] it merely brings together

22 Only a quarter of respondents do not import components or equipment into China that cannot be easily replaced in the event of a supply disruption; and a third of manufacturers (32 per cent) import critical components for which they cannot source alternatives at all. Over a quarter (27 per cent) of respondents are able to source alternatives for equipment/components they currently import into China, but report that the substitutes are of lower quality; another 14 per cent report that they can source replacements but will have compatibility issues; and 11 per cent say the alternative products available come at a higher cost. Ibid, p. 19.

23 The Corporate Sustainability Reporting Directive (CSRD) entered into force on 5th January 2023. It obliges all large and all listed companies operating in the EU to "disclose information on what they see as the risks and opportunities arising from social and environmental issues, and on the impact of their activities on people and the environment." From 2024, such companies will need to prepare sustainability reports—including information on their sustainability policies, environmental protection policies and actions, social responsibility and treatment of employees, and respect for human rights—for submission in 2025. *Corporate sustainability reporting*, European Commission, viewed 10th July 2023, <https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en>

24 The Corporate Sustainability Due Diligence Directive (CSDDD) was approved by the European Parliament on 1st June 2023. It will require EU-based companies to establish due diligence processes to ensure their entire operations—including subsidiaries, and up- and downstream suppliers—are in line with EU human rights and environmental standards. *MEPs push companies to mitigate their negative social and environmental impact*, European Parliament, 1st June 2023, viewed 10th July 2023, <https://www.europarl.europa.eu/news/en/press-room/20230524IPR91907/meps-push-companies-to-mitigate-their-negative-social-and-environmental-impact>

25 The US Uyghur Forced Labor Prevention Act came into effect on 21st June 2022. *Implementation of the Uyghur Forced Labor Prevention Act*, US Department of State, 21st June 2022, viewed 10th July 2023, <https://www.state.gov/implementation-of-the-uyghur-forced-labor-prevention-act/>

26 In the BCS 2023, 16 per cent of respondents reported the lack of third-party audits as a concern. While this issue is not a concern for 45 per cent of respondents, it should be noted that 38 per cent said they "don't know", meaning that there could be many more impacted. *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, p. 46, 21st June 2023, viewed 10th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

27 *China's 'men in black' step up scrutiny of foreign corporate sleuths, Financial Times*, 2nd May 2023, viewed 10th July 2023, <https://www.ft.com/content/8c21b86d-66de-4c69-8c8d-a0ef270ae3e3>

28 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, p. 39, 21st June 2023, viewed 10th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

29 *China's State Council discusses work plan on unified domestic market, Xinhua,* 20th May 2023, viewed 7th July 2023, <https://english.www.gov.cn/news/202305/20/content_WS64680365c6d03ffcca6ed336.html>

under one umbrella many items that have been on China's to-do list for quite some time, which remain unfulfilled.[30] Renaming a list of old dishes will not satisfy the appetite of foreign investors. Instead, China needs to listen to long-standing concerns and take tangible steps to address them. The Chamber's 1,058 recommendations contained in this position paper provide a blueprint for how this can be achieved, with the aim of improving market conditions for all companies operating in China. By following them, China can build on its reopening momentum and give investors the menu they have been craving.

30 "The primary task of last year's guidelines are to encourage competition, lower institutional costs, boost efficiency and productivity, elevate tech innovation and promote international cooperation.[…]Specifically, the government campaign includes plans to implement unified market access standards, fair competition, a social credit system, intellectual property rights protection and the free flow of labour and data." Nulimaimaiti, Mia, *Will a unified domestic market be a trump card to tackle China's economic growth problems and US threats?, SCMP*, 5th June 2023, viewed 7th August 2023, <https://www.scmp.com/economy/china-economy/article/3223011/will-unified-domestic-market-be-trump-card-tackle-chinas-economic-growth-problems-and-us-threats>

European Chamber
中国欧盟商会

Executive Position Paper

Key Recommendations

There is a host of structural issues that need to be addressed to boost economic recovery and satisfy the appetite of foreign investors, especially now that China's economic slowdown is reported as the top challenge faced by European businesses.[31] Below are five broad key recommendations that can improve China's economic outlook and boost business confidence if addressed. Some can be tackled comparatively easily through targeted policies, while others will require a systemic approach.

1. Increase Productivity by Giving Greater Play to Market Forces

Concern

The prioritisation of the public sector is hindering competition and undermining productivity in China.

Assessment

The International Monetary Fund's (IMF's) 2023 report on China identified the advancement of the public sector as a key factor weakening China's productivity growth.[32] The IMF's report also highlights that, as state-owned enterprises (SOEs) tend to be less productive than their privately-owned counterparts, their continued prioritisation might further increase the productivity gap between China and advanced economies.[33]

The need to rebalance the state-owned and private sectors has been acknowledged by Chinese financial experts, including two former People's Bank of China (PBOC) governors, Zhou Xiaochuan and Yi Gang.[34&35] Yi Gang asserted that China should consider applying the principle of 'competitive neutrality' to SOEs as part of a solution to "solve the structural problems in the Chinese economy".[36] At the moment, certain industries are only fully open to SOEs, which hold the advantage in many areas of doing business—including access to financing, licences and public procurement, and the ability to influence policy—and are largely protected from competition. This is to the detriment of the private sector,[37] and small and medium-sized enterprises (SMEs) in particular. Although, as pointed out by former Vice Premier Liu He, "SMEs are the mainstay of the market and the main source of jobs",[38] they still do not receive adequate support in China for financing or basic administrative issues.

SOEs are being pushed to take the lead in sectors deemed strategically important to China's ongoing technological self-reliance drive. To channel financing into strategic sectors, the China Securities

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31 Over a third of respondents to the BCS 2023 ranked China's economic slowdown as a top-three challenge that will have the greatest impact on their future business in China. *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, p. 9., 21st June 2023, viewed 28th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

32 *People's Republic of China: 2022 Article IV Consultation – Press Release; Staff Report; and Statement by the Executive Director for the People's Republic of China, IMF*, p. 5, 3rd February 2023, viewed 30th June 2023, <https://www.imf.org/en/Publications/CR/Issues/2023/02/02/Peoples-Republic-of-China-2022-Article-IV-Consultation-Press-Release-Staff-Report-and-529067>

33 According to the IMF's recommendation, "productivity growth can be bolstered by ensuring a level playing field for all enterprises and rolling back support to SOEs, including by removing implicit guarantees, increasing banks' risk weights on corporate loans to firms with stretched debt-to-earnings ratios, adjusting cost advantages provided to SOEs, strengthening financial reporting, and fostering the orderly exit of unprofitable SOEs". Ibid, p. 23.

34 Miles, Tom, *Ex-PBOC Chief says China Must Address "Loopholes" as Part of WTO Reform, Reuters*, 19th September 2018, viewed 30th June 2023, <https://www.reuters.com/article/us-china-economy-zhou-idUSKCN1LZ0XU>

35 Antonini, Renato, *Comment: Expect More on 'Competitive Neutrality' in WTO Reform Talks*, Borderlex, 12th December 2018, viewed 30th June 2023, <https://borderlex.net/2018/12/12/comment-expect-more-on-competitive-neutrality-in-wto-reform-talks/>

36 Ibid.

37 For example, some formal restrictions have been removed in the financial sector, but only after it had become saturated by dominant domestic players. This left foreign banks to compete in only a few remaining niches, such as cross-border services. In addition, even after formal market access has been granted, many companies struggle due to indirect barriers, such as difficulties obtaining operating licences or certification: *European Business in China Executive Position Paper 2020/2021*, European Union Chamber of Commerce in China, September 2020, viewed 24th July 2022, <https://www.europeanchamber.com.cn/en/publications-archive/865/Executive_Position_Paper_2020_2021>

38 Ma, Jess, *China's SMEs: how important are small firms to the economy, and what challenges are they facing?, SCMP*, 14th November 2021, viewed 2nd August 2023, <https://www.scmp.com/economy/china-economy/article/3155660/chinas-smes-how-important-are-small-firms-economy-and-what>

Regulatory Commission (CSRC) created a 'traffic light system', giving a 'red light' to companies in non-strategic sectors, effectively barring them from listing on domestic stock exchanges.[39&40] This increasing reliance on policy-related rather than market-related factors to attract and allocate funding diverges from the spirit of market reforms. In fact, a May 2023 report, jointly published by two prominent think tanks, found that in terms of competition, China has moved further from market economy norms in the first quarter of 2023, just as it was in the process of 'reopening' to the world.[41]

Over the course of the 2023 summer period, Chinese policymakers gave several signals that they would take steps to advance the development of private businesses and promote Over the course of the 2023 summer period. In July 2023, the Central Committee of the Communist Party of China and the State Council jointly released a document containing 31 points that are to be used as key principles in the formulation of new regulations, as well as in the implementation of existing ones, in an attempt to boost the private sector.[42] Some of the requirements include the removal of market access barriers for private enterprises, and consulting with businesses in the policymaking process. In August 2023, China's State Council also released the *Opinions of the State Council on Further Optimising the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment (Opinions)*.[43] The 24 points listed in the *Opinions* resonate with the foreign business community, as, if implemented in a timely, coordinated and consistent manner, they would go a long way to improving business confidence. Many of them reflect ongoing issues for which the European Chamber has advocated solutions through its *Position Paper* and other targeted actions. Chinese policymakers took swift action with the announcement of the four-year extension of non-taxable allowances for foreign national employees, something the State Council *Opinions* implied would be forthcoming.[44] Businesses are now waiting to see if action will be taken to resolve the other points listed in this important document.

Another key part of boosting confidence in the private sector, especially among foreign-invested enterprises, will be navigating a path that allows for the development of common-sense policies aimed at proportionately increasing self-reliance in areas that are truly related to national security, while avoiding a blanket approach aimed at achieving self-sufficiency. Some European companies have reported having already been pushed to increasingly localise their China operations, separating them from the rest of the world. However, it is an expensive and highly inefficient solution that still carries risk,[45] and will hinder China's economic development.

Recommendations

- Refocus on reform and opening, to address market access and regulatory issues and rebuild confidence in the private sector.
- Continue with reforms that bring SOEs more in line with market forces through the adoption of modern

39 Salidjanova, Nargiza, Lietzow, Rachel & Rosen, Daniel H. *China Pathfinder: Q1 2023 Update*, Rhodium Group, 4th May 2023, viewed 1st July 2023, <https://rhg.com/research/china-pathfinder-q1-2023-update/>

40 Sun, Yu & Cheng, Leng, *Beijing blocks listings of 'red light' companies to steer funding to strategic sectors, Financial Times*, 9th January 2023, viewed 1st July 2023, <https://www.ft.com/content/1fdb223f-49aa-4ccf-9b82-5573554515d9>

41 Salidjanova, Nargiza, Lietzow, Rachel & Rosen, Daniel H. *China Pathfinder: Q1 2023 Update*, Rhodium Group, 4th May 2023, viewed 1st July 2023 <https://rhg.com/research/china-pathfinder-q1-2023-update/>

42 *Opinions of the Central Committee of the Communist Party of China and the State Council on Promoting the Development and Growth of the Private Economy, Xinhua,* 19th July 2023, viewed 28th July 2023, <https://www.gov.cn/zhengce/202307/content_6893056.htm>

43 *Opinions of the State Council on Further Optimising the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment,* State Council, 13th August 2023, viewed 4th September 2023, <https://www.gov.cn/zhengce/content/202308/content_6898048.htm>

44 *Announcement on the Continuation of the Implementation of Non-taxable Allowances of Individual Income Tax Policies for Foreign National individuals*, Ministry of Finance (MOF) & State Taxation Administration, 29th August 2023, viewed 1st September 2023, <http://szs.mof.gov.cn/zhengcefabu/202308/t20230828_3904329.htm>

45 This includes companies' staff, supply chains, IT systems and data storage infrastructure. For more information see: *European Business in China Business Confidence Survey 2022*, European Union Chamber of Commerce in China, 20th June 2022, viewed 24th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>; Some companies are also separating their R&D operations, with core R&D being carried out in EU Member States or other countries, and China R&D functions focussing more on localisation. For more information see: *China's Innovation Ecosystem: Right for many, but not for all*, European Union Chamber of Commerce in China & MERICS, 8th June 2022, viewed 28th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1019/China_s_Innovation_Ecosystem_Right_for_Many_But_Not_for_All>

governance structures to make them more efficient, and eventually implement 'competitive neutrality'.

- Establish regulations that can provide a truly level playing field between foreign and Chinese enterprises.
- Address barriers that prevent businesses from attracting and retaining foreign talent.
- Provide SMEs with support for administrative issues and access to financing.
- Increase China's integration with the global economy and steer away from excessive self-reliance and self-sufficiency.
- Develop nuanced strategies for strengthening supply chains that do not err towards trade protectionism.
- Remain committed to globalisation and contribute to the strengthening of multilateral institutions.

2. Reduce Corporate Risk by De-politicising the Business Environment and Removing Ambiguity from Legislation

Concern

The politicisation of business, and ambiguous laws and regulations, make it increasingly difficult to carry out due diligence and meet compliance requirements, which increases risk for companies operating in China.

Assessment

Geopolitical developments have prompted China to expand its toolkit aimed at protecting its national security and development interests, which has resulted in a more politicised business environment.[46] This is being exacerbated by the prevalence of ambiguity in new or updated laws and regulations, with European companies struggling to understand their compliance obligations, a factor that significantly decreases business confidence.[47]

The most recent examples of such ambiguity can be found in China's recently amended Anti-espionage Law and the new Foreign Relations Law.[48&49] While both laws contain references to the broader concept of 'national security', neither provide guidelines on what constitutes a national secret, raising the likelihood of both inconsistent implementation and compliance issues for businesses.

While the purpose of any law is to specify what is allowed and what is not, businesses tend to err on the side of caution in the absence of clear language and well-defined boundaries. This can deter new investments, the planning of which requires a thorough assessment of the destination business environment—including related risks—by carrying out rigorous due diligence. With no clear understanding of what kind of information can and cannot be obtained, what is required to fulfil compliance requirements and what could constitute an act that is "detrimental to China's national interests", conducting business intelligence operations becomes a high-risk activity. This enhances the attractiveness of other markets that can provide more legal certainty.

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46 In the BCS 2023, 59 per cent of respondents reported that China's business environment became more politicised in 2022, a nine per cent increase year-on-year. The Chinese Government is perceived as the main source of increased political pressure. A large percentage of respondents foresee the situation getting worse before it gets better. *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, pp. 37–38, 21st June 2023, viewed 2nd July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

47 According to the BCS 2023, ambiguous rules and regulations ranked as the top regulatory obstacle members face for the seventh year running. Ibid, pp. 27–28.

48 The amended version of the Anti-espionage Law was approved by China's legislature on 26th April 2023 and came into effect on 1st July 2023, expanding the scope of activities that could be categorised as espionage. While the old version of the law, first adopted in 2014, specifically applied to obtaining or sharing state secrets or intelligence, the new version also adds to this list "other documents, data, materials or items related to national security or interests". *A battle against spies in China is spooking locals and foreigners, The Economist*, 4th May 2023, viewed 2nd July 2023, <https://www.economist.com/china/2023/05/04/a-battle-against-spies-in-china-is-spooking-locals-and-foreigners?gclid=EAIaIQobChMIg9LTqMTv_wIV9MZMAh30ewJbEAMYASAAEgLQBfD_BwE&gclsrc=aw.ds>

49 The Foreign Relations Law, adopted by the Standing Committee of the 14th National People's Congress on 28th June 2023, puts an obligation on enterprises and citizens, among others, "to safeguard China's sovereignty, national security, dignity, honor and interests in the course of international exchanges and cooperation". Article 8 of the law also stipulates that "any organization or individual who commits acts that are detrimental to China's national interests in violation of this Law and other applicable laws in the course of engaging in international exchanges shall be held accountable by law". *The Law on Foreign Relations of the People's Republic of China, Xinhua*, 28th June 2023, viewed 2nd July 2023, <https://english.news.cn/20230628/28c7aedd386440ba9c370eb22476d430/c.html>

It was on these grounds that reports in the first half of 2023 about raids by the Chinese authorities on several US-invested consultancies raised concerns among businesses operating in China. The details of these high-profile crackdowns have not been made public, but as the allegations against the companies in question alluded to the obtaining of 'sensitive information', without providing a clear definition of the term, companies were left wondering if they may face a similar outcome if they conduct due diligence.[50]

With the EU's Corporate Sustainability Reporting Directive (CSRD) having entered into force on 5th January 2023, European companies operating in China—particularly those in 'sensitive' regions—will increasingly find themselves torn between two legal regimes. The CSRD obliges all large and all listed companies operating in the EU to "disclose information on what they see as the risks and opportunities arising from social and environmental issues, and on the impact of their activities on people and the environment." From 2024, such companies will need to prepare sustainability reports—including information on their sustainability policies, environmental protection policies and actions, social responsibility and treatment of employees, and respect for human rights—for submission in 2025.[51] The Corporate Sustainability Due Diligence Directive (CSDDD) was approved by the European Parliament on 1st June 2023. It will require EU-based companies to establish due diligence processes to ensure their entire operations—including subsidiaries, and up- and downstream suppliers—are in line with EU human rights and environmental standards.[52] As the date for reporting obligations under the new EU legislation draws closer, affected companies may be increasingly compelled to move out of 'sensitive' regions in China, while being pulled in the opposite direction by Chinese customers applying pressure for them to maintain these operations.[53]

As both the Foreign Relations Law and the revisions to the Anti-espionage Law are relatively new, the ambiguity of some of their contents could be explained by the limited time available for their interpretation. However, these two laws seem to follow a longer trend of designing legislation that is broad and vague to allow room for more flexible implementation. For example, over the past six years, China's regulatory authorities and standard-setting bodies have issued a series of laws, measures, standards and guidelines on the protection of personal information and "important data" that also contain certain terms that are not clearly defined. Despite key regulations—including the Cybersecurity Law (CSL), the Data Security Law (DSL) and the Personal Information Protection Law (PIPL)—having been in force for years, there is still no definition of "important data", and the catalogue of what constitutes important data, which is provided for in the DSL, has not been made public. This makes it impossible for data handlers to comply with China's general requirements.[54]

In the summer of 2023, the European Chamber and its members, along with other industry associations, were invited to government meetings for briefings on some of the key policies that impact them.[55] However, although attendees sought clarity on these topics, to date officials are yet to share any information that has not been already publicly available.

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50 *China's raids on foreign firms hurt its own interests, Financial Times,* 10th May 2023, viewed 3rd July 2023, <https://www.ft.com/content/f956ab7c-7980-44e4-b2b4-5f101398e2b3>

51 *Corporate sustainability reporting,* European Commission, viewed 10th July 2023, <https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en>

52 *MEPs push companies to mitigate their negative social and environmental impact,* European Parliament, 1st June 2023, viewed 10th July 2023, <https://www.europarl.europa.eu/news/en/press-room/20230524IPR91907/meps-push-companies-to-mitigate-their-negative-social-and-environmental-impact>

53 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, p. 39, 21st June 2023, viewed 10th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

54 The CSL came into effect on 1st June 2017, the DSL became effective on 1st September 2021 and the PIPL on 1st November 2021. The DSL prescribed the formulation of a catalogue of 'important data'; however, at the time of writing, no such catalogue has been released by the relevant authorities. *Understanding China's Data Regulatory Regime: What Are Important Data? And Can They Be Transferred Outside Of China?*, Sidley, 11th April 2022, viewed 3rd July 2023, <https://datamatters.sidley.com/2022/04/11/understanding-chinas-data-regulatory-regime-what-are-important-data-and-can-they-be-transferred-outside-of-china/>

55 For example, on 21st July 2023, China's MOFCOM held a briefing session for the foreign business community on recent laws and policies that have raised concerns among foreign-invested enterprises, including cross-border data transfer, the Anti-espionage Law and export controls. *The Ministry of Commerce holds roundtable meeting on policy interpretation and communication for foreign investment associations*, MOFCOM, 21st July 2023, viewed 2nd August 2023, <http://www.mofcom.gov.cn/article/xwfb/xwbldhd/202307/20230703423168.shtml>

Unclear compliance requirements leave a high chance of inconsistent implementation of laws and regulations in general, but this is especially so at the local level, where degrees of industry knowledge and competence can vary significantly across different levels of government. European Chamber members in the petrochemical, chemical and refining (PCR) industries, for example, reported that they were ordered by local authorities to shut down plants within unreasonably short timeframes once the Yangtze River Protection Law entered into force in March 2021. In addition, many companies received conflicting information from different government departments and encountered difficulties establishing direct negotiation channels with the relevant authorities.[56&57]

Would you like to know more?

To learn more about the PCR industries, and the concerns and recommendations of the respective members of the European Chamber, read the *Petrochemicals, Chemicals and Refining Working Group Position Paper 2023/2024* on page 256.

When a law appears to be enforced arbitrarily, even if it is due to competence issues, it will result in compliance concerns and increased operating costs. Some members of the European Chamber's Nanjing Chapter, for instance, reported that when undergoing environmental, health and safety (EHS) inspections, different inspectors held conflicting views on how to improve safety. For example, in one case, one expert required installation of a flammable gas warning system only for another expert to subsequently require it be taken down shortly after.[58]

It is worth noting that local governments can also suffer from the lack of clarity in legislation, as their inability to accurately interpret and enforce it can impact their ability to attract foreign investment.

Recommendations

- Engage in dialogue with other governments and key stakeholders to depoliticise the business environment.
- Refrain from punishing companies for the actions of their home governments.
- Improve the predictability and reliability of China's regulatory environment by ensuring laws and regulations are specific and clearly defined.
- Provide the conditions that allow companies to undergo independent, third-party audits of their entire operations, so they can be certified as being fully compliant with global legislation.
- Ensure administrative processes are transparent, consistent and predictable.
- Provide local authorities with proper guidance and training on how to consistently implement laws.

3. Optimise Policymaking by Allowing Space for Discussion and Constructive Feedback

Concern

Narrowing space for discussion on economic trends and policies prevents relevant experts and industry players from providing input that can improve China's business environment.

Assessment

For China to implement necessary structural reforms through policies that are practical and implementable, it will be important for policymakers to be given space to 'make mistakes', openly discuss ideas and ultimately change course, something that was previously a characteristic of policymaking in the country. However, with China's red lines becoming more blurred, and the scope of issues deemed as

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56 The law prohibits constructing or expanding chemical parks and projects within one kilometre of the river, with no recognition for projects intended to upgrade plants' safety and ecological protection. *Petrochemicals, Chemicals and Refining Working Group Position Paper 2023/2024*, p. 256.

57 *European Business in China Nanjing Position Paper 2023/2024*, European Union Chamber of Commerce in China, p. 18, 27th April 2023, viewed 3rd July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1079>

58 Ibid, p. 17.

'sensitive' constantly expanding, people's willingness to speak out is bound to diminish.

In late June 2023, China's popular microblogging platform, Sina Weibo, announced that it had blocked the account of a prominent economic commentator, Wu Xiaobo, alongside two unnamed users, for "disseminating negative and harmful information" about China's economy. While the content that the accounts were blocked for was not disclosed, and recent posts by Wu were deleted from his account, in its statement, Sina Weibo accused the three writers of "hyping up the unemployment rate", "smearing the development of the security market", and "attacking and undermining" the country's economic policies.[59&60]

The European Chamber itself has had content removed, with no clarity provided on which red lines were allegedly crossed with regard to China's regulation of online content. Over a one-year period, from May 2022 to May 2023, a total of 10 posts were deleted from the Chamber's official WeChat account.[61] The explanations given by the platform's provider for deleting posts were that the contents violated either relevant official regulations,[62] or WeChat's internal regulations on the operation of public accounts, without further details.

In August 2021, the Cyberspace Administration of China (CAC) launched a two-month-long rectification campaign to remove from the internet information provided by individuals that "misinterpret[s] economic policies and forecast doom and gloom in financial markets".[63] This was at least partly intended to tackle widely acknowledged problems with the Chinese internet, such as curbing the dissemination of fraudulent information used to mislead investors or blackmail stakeholders. However, the campaign also gave rise to fears that an over-reach in its implementation could prevent investors from accessing valuable sources of legitimate information.[64]

Access to important information related to the economy and regulations has already been significantly curtailed for foreign entities. For example, in late 2022, Shanghai-based Wind Information—China's largest financial data provider—restricted offshore users' access to some business and economic data, citing new CAC regulations as the reason.[65] Similarly, researchers outside of China were cut off from the country's largest academic database in April, and some corporate databases have become increasingly difficult to access from overseas.[66&67] In March 2022, the National Bureau of Statistics discontinued the public release of its consumer confidence data, a series which it issued every month for over three decades.[68] In August 2023, it also suspended the publication of the urban unemployment data broken

59 Ji, Siqi, *China censors economic, financial writer Wu Xiaobo for 'hyping up unemployment rate' amid economic slowdown, SCMP*, 27th June 2023, viewed 4th July 2023, <https://www.scmp.com/economy/china-economy/article/3225598/china-censors-economic-financial-writer-wu-xiaobo-hyping-unemployment-rate-amid-economic-slowdown>

60 White, Edward & Lockett, Hudson, *China censors financial blogger as economic recovery falters, Financial Times,* 27th June 2023, viewed 4th July 2023, <https://www.ft.com/content/c3e64c12-cccb-4559-b046-1ea81fbf709a>

61 These included announcements of the launch of some of the Chamber's key publications—such as the *Business Confidence Survey 2022*, and the *Position Paper 2022/2023*—and even a post about the Chamber's president attending an event organised by the China Council for the Promotion of International Trade.

62 互联网用户公众账号信息服务管理规定 *(Provisions on the Administration of Information Services of Internet Users' Public Accounts)*, The State Council Information Office of the People's Republic of China, 22nd January 2021, viewed 4th July 2023, <http://www.scio.gov.cn/32344/32345/44688/46640/xgzc46646/Document/1711132/1711132.htm>

63 Zhang, Jane, *China targets fake news and citizen journalists with new campaign from internet watchdog, SCMP,* 28th August 2021, viewed 4th July 2023, <https://www.scmp.com/tech/policy/article/3146734/china-targets-fake-news-and-citizen-journalists-new-campaign-internet>

64 *Financial blogger crackdown leaves China investors scrabbling for data, Financial Times*, 16th September 2021, viewed 4th July 2023, <https://www.ft.com/content/d5725cb3-169c-442f-953e-077bb926f4c0>

65 *New rules compel leading China financial data provider to limit offshore access, sources tell Reuters, CNBC*, 5th May 2023, viewed 13th July 2023, <https://www.cnbc.com/2023/05/05/new-rules-compel-offshore-china-financial-data-access-limits-reuters.html>

66 Pak, Yiu, *China to slash foreign researchers' access to academic database, Financial Times*, 28th March 2023, viewed 13th July 2023, <https://www.ft.com/content/93051bff-5af8-4841-8e1f-8c9ab0cbd3fe>

67 Wei, Lingling, Kubota, Yoko & Strumpf, Dan, *China Locks Information on the Country Inside a Black Box, The Wall Street Journal*, 30th April 2023, viewed 13th July 2023, <https://www.wsj.com/articles/china-locks-information-on-the-country-inside-a-black-box-9c039928>

68 Bradsher, Keith, *China Is Trying to Make Its Gloomy Consumers Spend More, The New York Times*, 31st July 2023, viewed 7th August 2023, <https://www.nytimes.com/2023/07/31/business/china-economy-consumer-stimulus.html>

down into age groups.[69] Without access to such data and business intelligence, companies will be unable to make well-informed investment decisions and will look to other jurisdictions that offer more transparency.

China has historically had a strong track record of trialling schemes before rolling them out, with the understanding that constructive criticism is an important correction mechanism to ensure that the resulting policies can best serve the country's interests. A narrowing space for discourse and critical voices, from industry and other stakeholders, will lead to Chinese authorities missing out on feedback that can help to shape policies capable of sustaining China through the next stage of its economic development.

Recommendations

- Accept feedback from key government, think tanks and industry stakeholders so that new policies can be developed, and existing ones adapted, to tackle emerging challenges in a way that does not sacrifice other key priorities, such as sustainable economic growth.
- Refrain from erratic policy shifts and allow reasonable transition times before implementing new, or amending existing, policies or regulations.
- Permit access to legitimate sources of data and business intelligence that companies need to make well-informed investment decisions.

4. Address Socio-economic Challenges to Boost Consumption

Concern

Although domestic consumption can play a significant role in China's economic recovery, current socio-economic challenges are undermining consumer confidence.

Assessment

The anticipation that there would be a release of pent-up demand after China's reopening partly stemmed from the fact that household savings in China grew by a record amount in 2022.[70] However, rather than a sign of supressed consumption, a significant proportion of the excess savings were due to a heightened sense among the public that precaution was necessary in the face of uncertainty.[71]

Chinese policymakers have—to some extent—acknowledged the problem of weaker-than-expected consumption recovery, and new measures were rolled out to encourage more spending. However, these measures predominantly target the supply side, and fail to address the issues on the demand side that are inducing Chinese consumers to keep their wallets closed.[72]

While a large proportion of household savings in China is most often primarily tied up in real estate, with the property sector still struggling to bounce back and expectations for a strong recovery waning,[73] Chinese households are increasingly turning to bank deposits. According to the findings of a quarterly survey conducted by the PBOC, Chinese consumers' willingness to spend increased only mildly in the first

69 Chen, Laurie & Zhang, Albee, *China suspends youth jobless data after record high readings*, *Reuters*, 15th August 2023, viewed 15th August 2023, <https://www.reuters.com/world/china/china-stop-releasing-youth-jobless-rate-data-aug-says-stats-bureau-2023-08-15/>

70 "China's household savings surged by RMB 17.8 trillion (USD 2.5 trillion) in 2022, causing many economists to believe that these "excess savings" represent pent-up demand and could lead to a wave of "revenge spending" in 2023." Mei, Qin, *Why China's Long-Awaited "Revenge Spending" Boom Has Not Arrived*, Center for Strategic and International Studies, 1st June 2023, 4th July 2023, <https://www.csis.org/blogs/trustee-china-hand/why-chinas-long-awaited-revenge-spending-boom-has-not-arrived>

71 Zhang, Jun, *China's savings conundrum, China Daily*, 5th March 2023, viewed 4th July 2023, <http://www.chinadaily.com.cn/a/202303/05/WS64040246a31057c47ebb241c.html>

72 Li Chunlin, vice chair of the NDRC, admitted that some Chinese consumers "lack confidence and have many concerns". The NDRC rolled out 20 measures in July 2023 to encourage spending in certain areas, including in new energy vehicles and housing upgrades. Some of the listed measures were reiterating already existing policy initiatives, for example, that older apartment building should install elevators, which is a programme that was set in motion in 2020. Others were vague on specifics, especially about how the cost of these support measures will be covered. Bradsher, Keith, *China Is Trying to Make Its Gloomy Consumers Spend More, The New York Times,* 31st July 2023, viewed 2nd August 2023, <https://www.nytimes.com/2023/07/31/business/china-economy-consumer-stimulus.html>

73 Cheng, Evelyn, *New warning signs emerge for China's property market, CNBC*, 30th May 2023, viewed 4th July 2023, <https://www.cnbc.com/2023/05/31/new-warning-signs-emerge-for-chinas-property-market.html>

quarter of 2023, with over half of surveyed urban depositors reporting they preferred to further increase their savings.[74]

In addition to a more cautious approach, another factor pushing Chinese consumers towards more carefully considered spending is that the cost of living—especially in China's most developed, eastern regions—has been increasing. While consumer price inflation has overall been modest in recent years, the costs of housing, child- and elderly-care have been putting significant pressure on households. With China's demographic dividend fading, this pressure is set to increase, setting in motion a vicious cycle where the willingness to have children decreases because of the potential cost of raising them.[75]

China has already achieved significant progress in building a social safety net, and providing pension insurance and basic medical insurance for the vast majority of its large population.[76] However, in order to tap into the positive impact that consumption can bring to its economic recovery and future growth, more support is needed for its households in the near- to medium-term; for example, through the provision of more affordable housing and welfare programmes that provide financial support for low- and middle-income families.[77]

Recommendation

- Develop and implement demand-side policies that can boost domestic consumption.
- Provide a more predictable policy landscape in order to reassure consumers that they do not need to accumulate large amounts of savings in anticipation of sudden policy shifts.

5. Maintain a Balance Between Economic Recovery and the Low Carbon Transition

Concern

As policy focus shifts towards reviving the economy while ensuring energy security, China's low carbon transition is at risk of decelerating.

Assessment

Since the country's reopening, Chinese policymakers' focus has shifted from carbon reduction goals towards the double challenge of reviving the economy and ensuring energy security.[78&79] With consumption recovery sluggish, more energy-intensive exports and investments present an obvious way to reignite economic growth. Meanwhile, with extreme weather events—such as heatwaves and droughts—putting China's energy supply under increasing pressure in recent years, and although global energy prices have risen, coal was again given a prominent role in guaranteeing energy security.[80]

74 Zhou, Lanxu, *Income, willingness to spend rallying: PBOC, China Daily*, 3rd April 2023, viewed 4th July 2023 <https://www.chinadaily.com.cn/a/202304/03/WS642ad140a31057c47ebb8235.html>

75 "According to the Seventh National Chinese Population Census, the age dependency ratio in China increased to 46.3 per cent in 2021. It means that for every 100 people of working age, more than 46 elderly people and children had to be supported." Yan, Jing Tian, *For family and country: why China needs more babies, SCMP,* 22nd June 2023, viewed 5th July 2023, <https://multimedia.scmp.com/infographics/news/china/article/3224346/china-population/index.html>

76 *World Social Protection Report 2017/19*, International Labour Organization, 29th November 2017, viewed 4th July 2023 <https://www.ilo.org/beijing/information-resources/public-information/press-releases/WCMS_606868/lang--en/index.htm>

77 Zhang, Jun, *China's savings conundrum, China Daily*, 5th March 2023, viewed 4th July 2023, <http://www.chinadaily.com.cn/a/202303/05/WS64040246a31057c47ebb241c.html>

78 The government work report presented each year at the Two Sessions routinely includes details on the progress of China's green development. However, in 2023, the summary of the progress made in the previous year was shorter than in the 2022 report, and the language about carbon reduction efforts was softened. Song, Ziying, *China's two sessions of 2023: trend for green development, green finance, and Belt and Road Initiative (BRI)*, Green Finance and Development Center, 15th March 2023, viewed 5th July 2023, <https://greenfdc.org/chinas-two-sessions-of-2023-trend-for-green-development-green-finance-and-belt-and-road-initiative-bri/>

79 References to energy intensity reduction targets were dropped altogether from the 2022 and 2023 government work reports. Lu, Sophie & Zou, Chris, *China 30/60: Tracking the Financing of China's Green Transition*, Rhodium Group, 13th March 2023, viewed 2nd August 2023, <https://rhg.com/research/china-30-60-tracking-the-financing-of-chinas-green-transition/>

80 *People's Republic of China: 2022 Article IV Consultation – Press Release; Staff Report; and Statement by the Executive Director for the People's Republic of China*, IMF, p. 8, 3rd February 2023, viewed 5th July 2023, <https://www.imf.org/en/Publications/CR/Issues/2023/02/02/Peoples-Republic-of-China-2022-Article-IV-Consultation-Press-Release-Staff-Report-and-529067>

China has already made significant achievements in its green transition: non-fossil fuel energy sources, such as wind, solar and hydro power, already account for 50.9 per cent of the country's total installed capacity of electricity generation.[81] However, China still primarily relies on fossil fuels for power generation, with coal accounting for more than 56 per cent of total consumption in 2022.[82] According to Greenpeace, in the first quarter of 2023, Chinese provincial governments had already approved more new investments into coal-fuelled power generation than in the whole of 2021.[83] Meanwhile, the country has been falling behind on making progress on its energy intensity targets since 2020.[84]

To ensure it reaches its targets of peaking carbon dioxide emissions before 2030 and achieving carbon neutrality by 2060 (30/60 Goals),[85] China needs to address the challenges companies face in transitioning to green energy. Many European companies have made globally binding pledges to achieve decarbonisation well ahead of China's timeline for its national targets; however, they face barriers that could prevent them from both meeting their corporate pledges and contributing fully to the 30/60 Goals. Key challenges include limited access to renewable energy, a lack of clear policy guidance, a scarcity of necessary technology and issues related to China's emissions trading system (ETS).[86]

As the World Bank has highlighted, China's carbon neutrality challenge is a challenge to the whole world because, "[w]ithout China successfully transitioning to a low-carbon economy, achieving global climate goals will be impossible".[87] The fight against climate change therefore calls not only for a redoubling of global efforts, but also is an area that demands greater EU-China cooperation.

Recommendations

- Deepen EU-China collaboration in the fight against climate change and sustainable development.
- Increase EU-China cooperation in environmental policymaking to facilitate the sharing of best practices.
- Address challenges related to companies' green energy transition:
  - Increase companies' access to reliable sources of renewable energy.
  - Provide clear policy guidance at the local and sectoral level on China's decarbonisation roadmap.
  - Create a fully functioning national electricity market, including developing an ancillary market and mechanisms for renewable energy to be sold nationwide.
  - Communicate clearly to businesses how China's national ETS and associated mechanisms will work in practice during each phase.
- Ensure European companies can fully contribute their expertise and technology to help China achieve its 30/60 Goals:
  - Remove market access and regulatory barriers that prevent foreign companies from investing in renewable energy.
  - Remove market access barriers that prevent green technologies from entering the Chinese market.

81 *China's installed non-fossil fuel electricity capacity exceeds 50% of total, Reuters*, 12th June 2023, viewed 5th July 2023, <https://www.reuters.com/business/energy/chinas-installed-non-fossil-fuel-electricity-capacity-exceeds-50-total-2023-06-12/>

82 The consumption of coal increased by 4.3 per cent year-on-year in 2022, with coal accounting for 0.3 per cent more of the total energy consumption than in 2021. *Statistical Communiqué of the People's Republic of China on the 2022 National Economic and Social Development*, National Bureau of Statistics of China, 28th February 2023, viewed 5th July 2023, <http://www.stats.gov.cn/english/PressRelease/202302/t20230227_1918979.html>

83 *China has already approved more new coal in 2023 than it did in all of 2021 — Greenpeace*, Greenpeace East Asia, 24th April 2023, viewed 5th July 2023, <https://www.greenpeace.org/eastasia/press/7939/china-has-already-approved-more-new-coal-in-2023-than-it-did-in-all-of-2021-greenpeace/>

84 Lu, Sophie & Zou, Chris, *China 30/60: Tracking the Financing of China's Green Transition*, Rhodium Group, 13th March 2023, viewed 2nd August 2023, <https://rhg.com/research/china-30-60-tracking-the-financing-of-chinas-green-transition/>

85 Farand, Chloé & Darby, Megan, *Xi Jinping: China will aim for carbon neutrality by 2060, Climate Home News*, 22nd September 2020, viewed 5th July 2023, <https://www.climatechangenews.com/2020/09/22/xi-jinping-china-will-achieve-carbon-neutrality-2060/>

86 *Carbon Neutrality: The Role of European Business in China's Race to 2060*, European Union Chamber of Commerce in China, 25th March 2023, viewed 5th July 2023, <https://www.europeanchamber.com.cn/en/publications-carbon-neutrality-report>

87 *China's Transition to a Low-Carbon Economy and Climate Resilience Needs Shifts in Resources and Technologies,* World Bank, 12th October 2022, viewed 5th July 2023, <https://www.worldbank.org/en/news/press-release/2022/10/12/china-s-transition-to-a-low-carbon-economy-and-climate-resilience-needs-shifts-in-resources-and-technologies>

Recommendations

Recommendations for the European Union

- Continue to proactively engage with China, and reject calls for disengagement.
- Enhance the overall coordination between member states and EU institutional stakeholders in order to foster a united European approach towards China.
- Avoid provoking China unnecessarily, while defending European core interests.
- Ensure that responses are measured and proportionate when EU-China disagreements arise.
- Deepen EU-China cooperation in areas where interests overlap, such as in relation to combating climate change, international standard-setting, sustainable development and WTO reform.
- Ensure that the EU's China strategy reflects both existing and emerging priorities and challenges, and strikes the right balance between collaboration and competition.
- Continue to work towards reciprocity with third countries, including in relation to public procurement.
- Continue to engage with chambers of commerce, China-focussed think tanks, industry organisations and standard-setting bodies when formulating China policy, to ensure that it reflects on-the-ground realities.
- Strengthen the competitive capabilities of European players by developing bottom-up industrial policy that promotes market competition and innovation in strategic industries, without prescribing technological pathways.

Recommendations for European Companies

- Maintain strong communication between company HQs and China operations, to ensure that HQs receive accurate, on-the-ground information in order to make informed investment and operational decisions.
- Continue to integrate foreign staff into China operations—as well as Chinese staff into global operations—to maintain diverse teams and avoid talent silos.
- Establish 'decoupling teams' to evaluate the costs associated with both localisation in China and disconnection from certain global systems.
- Continue to monitor areas of potential political risk or public backlash, or sudden changes in market conditions, and develop proportionate mitigation strategies.
- Prepare for emerging global regulations on supply chains by establishing transparency up and downstream to the greatest extent possible, and determine levels of exposure to current and potential sanctions.
- Invest and participate more in government advocacy efforts through chambers of commerce, industry associations and standard-setting bodies.

European Chamber
中国欧盟商会

2 Section Two

Horizontal Issues

Horizontal Issues

The position papers in this section address the main horizontal issues that affect European businesses in China, covered by the following 10 working groups and one sub-working group:

- Compliance and Business Ethics
- Environment
- Finance and Taxation
- Human Resources
- Intellectual Property Rights
- Inter-chamber Small and Medium-sized Enterprise
- Investment
- Legal and Competition
- Research and Development
- Standards and Conformity Assessment
  - Quality and Safety Services

Businesses operating in China faced a more challenging environment in 2022, with 'zero-COVID' policies and related travel restrictions negatively impacting both communications with headquarters, and human resources (HR) attraction and retention. When China reopened its borders on 8th January 2023, growth forecasts were revised up in line with expectations of a strong rebound. However, while there was an initial spike early in the year, data from the first half of 2023 indicated that the recovery was slowing down overall at the time of writing.[1&2]

The resumption of in-person meetings at all levels of politics and business that followed China's re-opening was an essential step in rebuilding both relationships and an understanding of China.[3,4&5] However, it remains a significant concern that the number of foreign nationals in China that come from developed countries—who serve as valuable 'ambassadors' for China—has declined in recent years. The European Chamber's *Business Confidence Survey 2023* (BCS 2023) revealed that the exodus of foreign nationals continued in 2022.[6] In order to try and stem the outflow of foreign nationals, the *Human Resources Working Group Position Paper* and the *Finance and Taxation Working Group Position Paper* both recommend that the individual income tax exemption for specific non-cash benefits provided to foreign employees in China be maintained.[7] The announcement of

1 Wang, Huiyao, *5 reasons China's reopening is good news for the global economy,* SCMP, 10th January 2023, viewed 12th June 2023, <https://www.scmp.com/comment/opinion/article/3206057/5-reasons-chinas-reopening-good-news-global-economy>

2 Zhang, E. & Cash, J., *China's April data show economic recovery losing steam, testing policymakers, Reuters*, 16th May 2023, viewed 12th July 2023, <https://www.reuters.com/world/china/chinas-factory-output-consumption-highlight-slack-post-covid-economic-momentum-2023-05-16/>

3 European Commission chief Ursula von der Leyen accompanied French President Emmanuel Macron to Beijing in April. *Macron and von der Leyen in China: A difficult but useful dialogue, Le Monde*, 8th April 2023, viewed 29th June 2023, <https://www.lemonde.fr/en/opinion/article/2023/04/08/macron-and-von-der-leyen-in-china-a-difficult-but-useful-dialogue_6022150_23.html>

4 Tesla chief executive Elon Musk and Microsoft co-founder Bill Gates headed to the Chinese capital in May and June respectively. Chiang, Sheila, *China's Xi tells Bill Gates he's the 'first American friend' he met in Beijing this year, CNBC*, 16th June 2023, viewed 29th June 2023, <https://www.cnbc.com/2023/06/16/bill-gates-visits-china-hot-on-the-heels-of-elon-musk-with-xi-meeting-confirmed.html>

5 Similarly, Chinese stakeholders also resumed their overseas trips, with Wang Yi in his role of foreign minister in February, and then Li Qiang stepping into the role of China's premier paying visits to several European countries.

6 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, p. 16, 21st June 2023, viewed 10th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

7 See: *Human Resources Working Group Position Paper 2023/2024*, p. 59.

Section Two: Horizontal Issues

the four-year extension of non-taxable allowances for foreign national employees in August 2023 was therefore welcomed by European businesses,[8] as the measure will help them to continue providing more competitive employment opportunities for much-needed foreign talent. Nevertheless, while extending these benefits until 31st December 2027 is seen by the Chamber as a demonstration of China's commitment to both foreign companies and the foreign nationals that are already working in the country, it is likely that more policies that can attract new talent will still be needed.

According to the BCS 2023, a record number of European companies (62 per cent) reported missing business opportunities because of market access and regulatory barriers. The top three regulatory challenges faced by European companies in China in 2022 were ambiguous rules and regulations, the unpredictable legislative environment, and market access barriers and investment restrictions.[9] The *Legal and Competition Working Group Position Paper* addresses these issues, advocating for the establishment of rule of law in China, and the creation of a fair and unified market, in line with China's *Opinions on Accelerating the Establishment of a Unified Domestic Market (Opinions)*.[10&11]

The Anti-monopoly Law amendments, which took effect on 1st August 2022, were aimed at making legal enforcement more consistent, and establishing a more open and competitive market system. Fully implementing both the *Opinions* and the Anti-monopoly Law would be a positive step towards creating a unified, non-discriminatory and fair market for foreign companies. In addition, the Legal and Competition Working Group is advocating for consistent implementation of the Foreign Investment Law (FIL),[12] as more than three years after its promulgation there is still a distinction made between foreign and domestic investment, meaning the playing field remains uneven.

Intellectual property rights (IPR) protection is another significant concern for European companies. One in five BCS 2023 respondents reported that China's written IPR laws and regulations are inadequate, while 45 per cent of respondents report the same for enforcement of IPR laws and regulations.[13] On a related note, there was also an increase in the number of respondents reporting being compelled to transfer technology and or trade secrets in exchange for market access, an additional indication that the FIL is still not being comprehensively enforced.[14&15]

The Environment Working Group continues to raise concerns around the green transition and decarbonisation, and is advocating for more engagement between China and Europe in these fields.[16] This is well within China's interests, as European companies can leverage their advanced technologies and management systems to provide green solutions that will help China achieve its 2030 and 2060 decarbonisation goals.

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8 *Announcement on the Continuation of the Implementation of Non-taxable Allowances of Individual Income Tax Policies for Foreign National individuals*, Ministry of Finance & State Tax Administration, 29th August 2023, viewed 1st September 2023, <http://szs.mof.gov.cn/zhengcefabu/202308/t20230828_3904329.htm>

9 *European Business in China Business Confidence Survey 2023,* European Union Chamber of Commerce in China, p. 27, 21st June 2023, viewed 10th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

10 *Opinion on Accelerating the Establishment of a Unified Domestic Market,* State Council, 21st April 2022, viewed 11th July 2023, <https://www.gov.cn/xinwen/2022-04/10/content_5684388.htm>

11 See: *Legal and Competition Working Group Position Paper 2023/2024*, p. 99.

12 Foreign Investment Law of the People's Republic of China, National People's Congress, 15th March 2019, viewed 12th July 2023, <http://www.npc.gov.cn/englishnpc/c23934/202012/5b80fe5055504efa93b6744f9272b3c2.shtml>

13 *European Business in China Business Confidence Survey 2023,* European Union Chamber of Commerce in China, p. 36, 21st June 2023, viewed 10th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

14 The FIL prohibits the transfer of technology by 'administrative means'.

15 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, p. 35, 21st June 2023, viewed 10th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

16 See: *Environment Working Group Position Paper 2023/2024*, p. 37.

Compliance and Business Ethics Working Group

Key Recommendations

1. **Duly Consider the Robustness of a Company's Compliance Programme during Enforcement** 3
   - Modify related legislations and implementation guidelines to allow recognition of the implementation of a robust compliance system as a valid defence in bribery cases.
   - Continue to refine guidance on the key elements of an adequate and effective compliance programme.
   - Enhance experience exchanges among the government and business community on best practices in combatting corruption and bribery.

2. **Encourage Systematic Compliance Talent Cultivation and Establish a Holistic Compliance Professional Qualification and Management System to Ensure State-of-the-art Compliance Capabilities** 3
   - Cultivate compliance professionals by creating a standardised curriculum for universities and training programmes in law firms.
   - Establish a professional compliance qualification certification at various levels and incentivise companies to build internal compliance management systems.
   - Establish continuous education programmes at the local and national level that will allow compliance professionals to update and broaden their expertise and techniques as well as deepen their specific expertise in special fields of compliance.
   - Establish knowledge and best practice exchange among governmental authorities, universities and business entities.

3. **Incentivise Business Entities to Allocate Sufficient Resources for Developing Compliance Expertise** 3
   - Draft and issue guidelines, local standards or industry standards to educate business entities and society on compliance matters, as well as the necessity for sufficient resouce allocation.
   - Evaluate the feasibility of incentivising relevant business entities to allocate sufficient resources for compliance through lenient treatment during enforcement.
   - Learn best practices from other jurisdictions, such as the United States or the European Union, on government-enterprise cooperation on compliance topics to develop China's relevant compliance practices.
   - Leverage the experiences of multinationals to further enhance and improve state-owned and private companies' compliance practices through *jour fixe* meetings.

4. **Create an Expertise-sharing and Communication Platform among Business Entities, Policymakers and Law Enforcement Authorities** 2
   - Create transparent platforms enabling business entities, policymakers and law enforcement authorities to share expertise, and discuss and align best compliance practices.

- Initiate and implement dynamic collaboration systems among stakeholders with well-defined deliverables.
- Create a compliance education system that is continually updated to train compliance professionals and achieve mutually beneficial outcomes for all stakeholders.

Introduction to the Working Group

Created in 2015, the Compliance and Business Ethics Working Group aims to create a trusted environment for European Chamber members to discuss their compliance and business ethics experiences. The purpose is to foster learning and development in this area, thereby enhancing compliance quality among European Chamber member companies. The Compliance and Business Ethics Working Group also advocates to the Chinese Government on a range of compliance-related issues that regularly affect European Chamber members. This working group is only open to in-house counsels, compliance officers and internal auditors from industry players.

Recent Developments

China is carrying out legal reforms and broadening compliance in many areas. Global legal challenges have also arisen against the backdrop of de-globalisation and geopolitical tensions.[1] As a result, upgrading corporate governance and developing compliance capabilities has now become a pertinent task for multinational companies operating in China.

On 15th January 2022, the State-owned Assets Supervision and Administration Commission (SASAC) launched the "Year of Strengthening Compliance Management" for state-owned central enterprises. This was followed by a meeting on 28th February 2022 aimed at strengthening compliance management among central enterprises,[2] reflecting the great importance that the SASAC attaches to this task.

On 27th October 2022, the Central Commission for Discipline Inspection released the *Work Report of the 19th Central Commission for Discipline Inspection to the 20th National Congress of the Communist Party of China (Report)*.[3] The *Report* also emphasised the need for strengthening corporate compliance and stationed supervision.[4]

Several events with key implications for China's compliance governance also occurred in 2022:

On 9th March 2022, the China National Knowledge Infrastructure (CNKI) Database, the most influential web-based database for academic resources in China, was fined Chinese yuan (CNY) 97.6 million by the State Administration for Market Regulation (SAMR) for abusing its dominant market position.

In May 2022, China's first domestic case of corporate data compliance with a non-prosecution decision took place. Shanghai Putuo District People's Procuratorate conducted a virtual public hearing on its decision to not prosecute Z Network Technology Co Ltd and others that illegally obtained confidential business data.[5] Officials, investigators, corporate compliance third-party inspectors and victims were invited. This is the first case

1 These challenges include: navigating the United States' (US's) Uyghur Forced Labor Prevention Act that was signed into law in December 2021, the European Union's (EU's) Corporate Sustainability Reporting Directive that came into force in January 2023, Germany's Supply Chain Due Diligence Act that came into force in January 2023, and China's new Counter-espionage Law that came into effect in July 2023.

2 *Weng Jieming Attends Special Promotion Meeting for Central Enterprises to strengthen Compliance Management,* SASAC, 2nd March 2022, viewed 3rd May 2023, <http://www.sasac.gov.cn/n2588020/n2588072/n2590860/n2590862/c23467737/content.html>

3 *Work Report of the 19th Central Commission for Discipline Inspection to the 20th National Congress of the Communist Party of China*, State Council, 27th October 2022, viewed 3rd May 2023, <http://www.gov.cn/xinwen/2022-10/27/content_5722233.htm>

4 Stationed supervision means supervision and inspection bodies or personnel stationed in other institutions by disciplinary bodies.

5 *China's First Compliance Without Prosecution Case on Data and Cybersecurity*, Lexology, 23rd June 2022, viewed 3rd May 2023, <https://www.lexology.com/library/detail.aspx?g=008112a6-0ef5-4c2a-a2f4-8ebfd38699af>

of its kind that resulted without prosecution and lenient treatment for companies that had taken adequate compliance measures and follow-up measures.

On 21st July 2022, the Cyberspace Administration of China (CAC) fined Didi Global Co CNY 8 billion and its chief executive and president CNY 1 million each following a network security review,[6] in accordance with the Network Security Law, the Data Security Law, the Personal Information Protection Law, the Administrative Punishment Law and other relevant laws and regulations.

Throughout the above examples, the regulators have been focussing not only on punishment but also education and recidivism prevention, thereby providing a strong boost to corporate compliance.

China has been actively implementing compliance-related legislation developments to promote effective compliance practices, data security, and anti-monopoly and unfair competition laws. The following are highlights in 2022:

i) Corporate Compliance Regulations

On 23rd May 2022, the China Association of Small and Medium-sized Enterprises approved and released the *Group Standard on Evaluation of the Effectiveness of Compliance Management System of Small and Medium-sized Enterprises (SMEs).*[7] This is the first group standard on the evaluation of the effectiveness of the compliance management system of SMEs in China, and provides a comprehensive and detailed standard for the evaluation method, process and index.

On 12th October 2022, the *Compliance Management System Requirements and Guidelines for Use (Guidelines)*,[8] a national standard for enterprises to apply for compliance management system certification, were officially released, replacing the *Compliance Management System Guidelines* of 2017.

ii) Data Security Compliance Regulations

On 4th January 2022, a new version of the *Network Security Review Measures (Measures)* was jointly issued by 13 departments,[9] focussing on national data security risks for data processing activities.

On 1st September 2022, the *Data Exit Security Assessment Measures* were released.[10] The measures put forward specific requirements of China's data exit 'security check', which marks the formal implementation of the data exit security assessment system established by the Network Security Law.

On 29th July 2022, the Ministry of Industry and Information Technology released the *White Paper on Data Transmission Security*,[11] focussing on typical application scenarios of data transmission security, and the main risks and solutions.

iii) Anti-monopoly Law

On 1st August 2022, 14 years after its implementation in 2008, the first amendment to the Anti-monopoly Law came into force.[12] The amendment to the law increased the penalties for liabilities, including assisting acts and liabilities for corporate executives.

iv) Anti-unfair Competition Law

On 20th March 2022, the Supreme People's Court (SPC) issued the *Interpretation on Several Issues Concerning the Application of the Anti-unfair Competition Law*.[13] The focus of the Interpretation is on the refinement of Article 2, namely, counterfeiting and confusion, false propaganda, and unfair competition on the Internet. On 27th November 2022, the SAMR called for public consultation on revisions to the Anti-unfair Competition Law.[14]

6 *CAC's Decision on the Administrative Penalties Related to Cybersecurity Review of Didi Global Co, Ltd,* CAC, 21st July 2022, viewed 3rd May 2023, <http://www.cac.gov.cn/2022-07/21/c_1660021534306352.htm>

7 *The Group Standard on Evaluation of the Effectiveness of Compliance Management System of Small and Medium-sized Enterprises Released, People's Daily,* 23rd July 2022, viewed 3rd May 2023, <http://society.people.com.cn/n1/2022/0725/c1008-32485175.html>

8 *Compliance Management System Requirements and Guidelines for Use,* National Public Service Platform for Standards Information, 12th October 2022, viewed 3rd May 2023, https://std.samr.gov.cn/gb/search/gbDetailed?id=EB58F4DA9034B2A2E05397BE0A0A7D33

9 *Network Security Review Measures*, CAC, 4th January 2022, viewed 3rd May 2023, <http://www.cac.gov.cn/2022-01/04/c_1642894602182845.htm>

10 *Data Exit Security Assessment Measures*, CAC, 7th July 2022, viewed 3rd May 2023, <http://www.cac.gov.cn/2022-07/07/c_1658811536594644.htm>

11 *White Paper on Data Transmission Security Launched at World Internet Conference, Guangming Net*, 4th August 2022, viewed 3rd May 2023, https://wlaq.gmw.cn/2022-08/04/content_35933371.htm

12 *Revision of the Anti-unfair Competition Law,* SAMR, 24th June 2022, viewed 3rd May 2023, <https://gkml.samr.gov.cn/nsjg/fldj/202206/t20220624_348111.html>

13 *Interpretation on Several Issues Concerning the Application of the Anti-unfair Competition Law,* SPC, 17th March 2022, viewed 3rd May 2023, <https://www.court.gov.cn/zixun-xiangqing-351291.html>

14 *SAMR's Public Consultation on the Anti-unfair Competition Law of the People's Republic of China,* SAMR, 22nd November 2022, viewed 4th May 2023, <https://www.gov.cn/hudong/2022-11/27/content_5729081.htm>

Key Recommendations

1. Duly Consider the Robustness of a Company's Compliance Programme during Enforcement 3

Concern

The adequacy and effectiveness of a company's compliance system are not always considered when deciding on the liabilities and related penalties of companies and their management.

Assessment

When assessing penalties for bribery or corruption, it is common in many countries to consider being lenient if companies are able to demonstrate they have already in principle established a robust compliance system. In China, however, there are no implementation measures to guide courts on how such leniency can be provided.[15]

There have been several positive developments in this regard, but only with respect to liability under criminal law. On 3rd June 2021, the Supreme People's Procuratorate (SPP) issued the *Guidance on the Establishment of a Third-party Supervision and Evaluation Mechanism for the Compliance of Enterprises Involved in the Case (Trial Implementation)*.[16] In September 2021, the SPP, the China Federation of Industry and Commerce, and nine other departments jointly established the management committee of the third-party supervision and evaluation mechanism. In November 2021, the nine departments jointly issued two supporting provisions: the *Administrative Measures for the Selection and Appointment of Professionals of the Compliance Third-party Supervision and Evaluation Mechanism of Enterprises Involved in the Case (Trial Implementation)*; and the *Implementation Rules of the Guiding Opinions on the Establishment of the Compliance Third-party Supervision and Evaluation Mechanism of Enterprises Involved in the Case (Trial Implementation).*

However, even though the authorities have implemented two rounds of pilot programmes,[17] the standards for compliance inspection and evaluation need to be further refined. This is especially true regarding the application of standards outside the realm of criminal law, such as liability under the Anti-unfair Competition Law. As of July 2023, the time of writing, no official interpretation has been provided on how a company with a robust compliance system may use its good compliance policy or history of good compliance, for example, as a point of a plea for lenient treatment.

In other countries, such as Germany and Spain, adequate compliance measures and policies adopted by the prosecuted company are recognised as valid defence. For example, on 9th May 2017, the German Federal Court of Justice ruled that a compliance management system can lead to a reduction of a fine against a company.[18] According to the ruling, two issues were to be taken into consideration during the determination of fines: first, whether an effective and risk-adequate compliance management system was in place before the misconduct took place; and second—and most importantly—whether the management reacted promptly, identified the gaps in the system and bridged those gaps to prevent similar misconduct in the future.

This means that if companies can show they took meaningful actions to prevent bribery by employees, they may be 'rewarded' with a partial or full defence. Other factors are also taken into account, such as willingness to cooperate with the authorities. Whether the defence of adequate procedures is applicable depends on the circumstances of the offence, including the scale and complexity of the organisation, and any risks the potential act of bribery exposed the company to. Anti-bribery procedures are expected to be proportionate to the risk.

15 Although the Anti-unfair Competition Law was amended in 2017 to distinguish bribery behaviour committed by a single employee and that committed by the business operator, there are no official interpretations of the types of evidence companies can use to support such determination. Article 7 states that: "Bribery committed by a staff member of a business operator shall be deemed as bribery committed by the business operator, except where the business operator has evidence to prove that the conduct of the said staff member has nothing to do with seeking transaction opportunities or competitive advantage for the business operator." Anti-unfair Competition Law of the People's Republic of China, National People's Committee Standing Committee, 4th November 2017, viewed 6th May 2023, <http://www.gov.cn/xinwen/2017-11/05/content_5237325.htm>

16 *Guidance on the Establishment of a Third-party Supervision and Evaluation Mechanism for the Compliance of Enterprises Involved in the Case (Trial Implementation)*, SPP, 3rd June 2021, viewed 4th May 2023, <https://www.spp.gov.cn/spp/xwfbh/wsfbh/202106/t20210603_520224.shtml>

17 A total of 10 provinces have participated in the two rounds of corporate compliance trial programmes; procuratorates of the trial provinces handled 766 corporate compliance cases, including 503 cases applicable to third-party supervision and evaluation mechanism. *Comprehensively Accelerating Corporate Compliance Reform Trials! What are the Important Signals From This Meeting?*, SPP, 2nd April 2022, viewed 2nd May 2023, <https://www.spp.gov.cn/zdgz/202204/t20220402_553256.shtml>

18 *Judgment of the 1st Criminal Senate of 9th May 2017*, Bundesgerichtshof Im Namen des Volkes, 9th May 2019, viewed 6th May 2023, <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=78723&pos=0&anz=1>

Prerequisites for using a compliance system as a defence include the following principles:

- Proportionate processes that are clear, practical, accessible, effectively implemented and enforced to maintain an anti-bribery stance and create a corporate culture that supports it.
- A strong tone from the top of the organisation to foster a culture of integrity, with management involved in key decisions regarding, as well as in the communication of, anti-bribery policies to ensure meaningful impact.
- External communication to reassure third parties of the company's principles.
- Comprehensive training, well-rounded risk assessment, effective due diligence and monitoring of the effectiveness of their anti-bribery policies and procedures.

Fully implementing a similar compliance system defence in all areas of Chinese law will promote even greater transparency and compliance, as companies will be encouraged to improve their internal compliance systems. Furthermore, this statutory defence may also allow other companies to assess what constitutes best practices and implement strong compliance systems. In turn, this can lead to continuous improvement by authorities, companies, their shareholders and society, reducing bribery risks.

Recommendations

- Modify related legislations and implementation guidelines to allow recognition of the implementation of a robust compliance system as a valid defence in bribery cases.
- Continue to refine guidance on the key elements of an adequate and effective compliance programme.
- Enhance experience exchanges among the government and business community on best practices in combatting corruption and bribery.

2. Encourage Systematic Compliance Talent Cultivation and Establish a Holistic Compliance Professional Qualification and Management System to Ensure State-of-the-art Compliance Capabilities 3

Concern

China lacks the necessary development system for cultivating outstanding compliance professionals.

Assessment

In recent years, several central government departments, including the SAMR, the Ministry of Commerce and the SASAC, have issued regulations and guidelines on compliance management. As a result, Chinese enterprises and institutions are focussing more on this topic. It is very positive that, in March 2021, the Ministry of Human Resources and Social Security (MOHRSS) added 'corporate compliance officer' to the list of official professions, with the key responsibilities of setting up a company's compliance management strategy, identifying and assessing relevant risks, implementing compliance management systems and conducting compliance training and investigations.[19] Furthermore, in August 2022, the SASAC promulgated *Measures for the Compliance Management of Central Enterprises*, focussing on state-owned central enterprises' compliance management and practice, in addition to the policies and meetings mentioned in the Recent Developments section.

Although compliance pressure by both domestic and overseas regulatory bodies (such as the United States' (US') Department of Justice (DOJ)) and internal development needs continue to grow, the corresponding increase in demand for qualified compliance professionals in China is not being met. In addition, China currently has few systematic university-level curricula for compliance; most compliance professionals come from legal, risk management or finance backgrounds. This means that many government agencies and large state-owned or private enterprises lack compliance professionals with sufficient training. These issues have become more challenging against the backdrop of rocketing interest among stakeholders in compliance topics and the corresponding need for deeper knowledge and expertise.

These factors, in addition to the recent official recognition of corporate compliance officer as a profession, mean there is a real need for China to step up its efforts to develop a compliance talent system. This can be done by improving compliance curricula in universities and occupational schools and establishing compliance programmes that lead to professional qualifications. Guidelines or policies should also be developed at

19 *The Ministry of Human Resources and Social Security, the State Administration for Market Supervision and Administration, and the National Bureau of Statistics jointly released 18 new occupations including integrated circuit engineering and technical personnel,* MOHRSS, 18th March 2021, viewed 6th May 2023, <http://www.mohrss.gov.cn/xxgk2020/fdzdgknr/zcjd/zcjdwz/202103/t20210318_411356.html>

both national or local government levels that promote a culture of compliance and encourage the establishment of both compliance organisations and dedicated corporate compliance teams and management systems. Furthermore, it is crucial to cultivate specialised compliance professionals capable of managing specific compliance challenges such as data and privacy, sanctions and export control.

Finally, of additional importance is the establishment of knowledge and best practice exchange and transfer among government authorities, universities and business entities. These measures would promote the development of compliance talent pools and creation of a robust and sustainable compliance culture in China.

Recommendations

- Cultivate compliance professionals by creating a standardised curriculum for universities and training programmes in law firms.
- Establish a professional compliance qualification certification at various levels and incentivise companies to build internal compliance management systems.
- Establish continuous education programmes at the local and national level that will allow compliance professionals to update and broaden their expertise and techniques as well as deepen their specific expertise in special fields of compliance.
- Establish knowledge and best-practice exchange among governmental authorities, universities and business entities.

3. Incentivise Business Entities to Allocate Sufficient Resources for Developing Compliance Expertise 3

Concern

There is a lack of sufficient resources allocated to business entities for developing compliance expertise.

Assessment

Due to growing geopolitical tensions and uneven rates of recovery from the COVID-19 pandemic, countries are increasingly ring-fencing their regulatory frameworks to protect their national security interests and critical assets. As a result, legal professionals not only need to manage traditional compliance challenges, such as bribery and corruption, but also must tackle newly emerging challenges. These include new requirements relating to sanctions and export control, personal data protection, cybersecurity, environment, health and safety (EHS), customs and tax compliance. Some of these newly emerging topics—for example, personal data protection or EHS—need special expertise, which necessitates adequate investment in training. However, neither businesses nor the government are paying sufficient attention to such challenges and have been unwilling to allocate adequate resources to developing compliance professionals. This is leading to high levels of burnout and overstretching among compliance professionals.

Compliance should not be left to businesses alone to manage and invest in; it also requires input from other stakeholders, including government, industry associations and corporate citizens. Only when all stakeholders allocate sufficient resources to proactively promote a strong compliance culture, sharpening professional expertise and advocating compliance best practice, can a robust compliance scheme gain a solid foothold. This can then provide a foundation for the development of an open and diverse bedrock compliance ecosystem.

An option to engage all stakeholders is to create a communication platform on which multinationals can have open exchanges with their peers at state-owned and private enterprises, for example, via *jour fixe* meetings.[20]

One way to mitigate burnout among compliance officers is to learn best practices from other jurisdictions. For example, the US DOJ and Securities and Exchange Commission (SEC) have jointly issued a 100-page guide to the US Foreign Corrupt Practices Act (FCPA).[21] The guide provides companies, practitioners and the public with detailed information about the statutory requirements of the FCPA while also providing insight into DOJ and SEC enforcement practices through examples, summaries of applicable case law and DOJ opinion releases. It also summarises applicable new

20 *Jour fixe* meeting refers to regular structured meetings between a group of people to maintain and develop the standard process. From a business and/or political perspective, *jour fixe* meetings serve as a platform to “ensure the current process and future process changes are understood and agreed by all key stakeholders and coded in the organisation’s formal process documentation”. Kuna, Hans, *The Process Jour Fixe*, 30th August 2020, viewed 3rd May 2023, <https://hanskuna.com/2020/08/30/the-process-jour-fixe/>

21 *A Resource Guide to the US Foreign Corrupt Practices Act,* DOJ, 25th November 2020, viewed 6th May 2022, <https://www.justice.gov/criminal-fraud/fcpa-resource-guide>

policies announced in recent years.

The European Commission implements similar practices with regard to anti-trust compliance. For example, the European Commission and the national competition authorities in all European Union (EU) Member States created the European Competition Network, through which members cooperate and exchange best practices on merger control via an EU Merger Working Group.[22]

As part of continuing efforts to increase transparency, the Chinese Government could adopt, once the necessary changes have been made, best practices from other jurisdictions to help businesses operating in China effectively combat the ever-changing compliance challenges. It is positive that certain Chinese government regulatory authorities have already taken substantial steps in this direction; for example, the SAMR and its provincial counterparts (local AMRs) have promulgated guidelines for anti-trust compliance practices. Such practices should be adopted by other regulatory authorities.

Recommendations

- Draft and issue guidelines, local standards or industry standards to educate business entities and society on compliance matters, as well as the necessity for sufficient resource allocation.
- Evaluate the feasibility of incentivising relevant business entities to allocate sufficient resources for compliance through lenient treatment during enforcement.
- Learn best practices from other jurisdictions, such as the US or the EU, on government-enterprise cooperation on compliance topics to develop China's relevant compliance practices.
- Leverage the experiences of multinationals to further enhance and improve state-owned and private companies' compliance practices through *jour fixe* meetings.

4. Create an Expertise-sharing and Communication Platform among Business Entities, Policymakers and Law Enforcement Authorities 2

Concern

China lacks well-defined and up-to-date compliance databases to address information gaps in compliance enforcement, and enhance consistency and best-practice sharing among stakeholders.

Assessment

Compliance is a specialised field in which professionalism needs to be embedded and advocated throughout all compliance practices, i.e., from identifying compliance risks to legislature and policy formulation, to implementation and through to review and improvement.

Compliance should also be transparent in order to demonstrate its effectiveness and credibility. At present, some of China's industry sectors have yet to introduce detailed compliance incentives and reward policies, and some enterprises have insufficient knowledge and expertise to assess or implement their compliance programmes. Therefore, to create an expertise-sharing and communication platform among business entities, it is of increasing importance for China's policymakers and law enforcement authorities to lay the foundation for the interoperability and transparency of compliance information. Through such joint exercises and efforts, stakeholders will gain insight into each other's perspectives, positions and concerns, which will ultimately provide the entire ecosystem a better basis for well-informed decision-making.

Building a compliance management platform, especially with the support of digital technological means, can allow for the dynamic management of compliance information and experience sharing. Continuously "feeding back" the information shared on the platform to the compliance community can optimise compliance management. Various stakeholders can also use this platform to reach a consistent interpretation of and strategic response to common compliance issues, which can enhance overall compliance awareness and management capabilities, while also increasing efficiency.

Furthermore, continued compliance education via Chinese Government advocacy can help to ensure state-of-the-art expertise within China's compliance ecosystem and community.

Recommendations

- Create transparent platforms enabling business entities, policymakers and law enforcement authorities to share

22 *European Competition Network (ECN), 2021*, European Commission, viewed 6th May 2023, https://ec.europa.eu/competition/ecn/mergers.html

Section Two: Horizontal Issues

expertise, and discuss and align best compliance practices.

- Initiate and implement dynamic collaboration systems among stakeholders with well-defined deliverables.
- Create a compliance education system that is continually updated to train compliance professionals and achieve mutually beneficial outcomes for all stakeholders.

Abbreviations

CAC	Cyberspace Administration of China
CNKI	China National Knowledge Database
CNY	Chinese Yuan
DOJ	Department of Justice
EHS	Environment, Health and Safety
EU	European Union
FCPA	Foreign Corrupt Practices Act
MOHRSS	Ministry of Human Resources and Social Security
SAMR	State Administration of Market Regulation
SASAC	State-owned Assets Supervision and Administration Commission
SEC	Securities and Exchange Commission
SME	Small and Medium-sized Enterprise
SPC	Supreme People's Court
SPP	Supreme People's Procuratorate
US	United States

Environment Working Group

Key Recommendations

1. Increase the Transparency and Predictability of Environmental Protection Enforcement 5

- Enforce the Environmental Protection Law and related regulations in a transparent fashion.
- Install direct communication channels for companies to notify central government authorities of any issues and irregularities related to 'one-size-fits-all' approaches or other unreasonable environmental enforcement.
- Provide transparent, open communication channels at both national and local levels to introduce science-based policies, guidelines and standards that are consistent with industry development and international practices.
- Involve industry players and associations in preliminary research and the public consultation process at an earlier stage when developing new and revised policies and regulations.
- Provide timely feedback from relevant government authorities on reasons behind the adoption or rejection of suggested revisions.
- Allocate sufficient transition time for new environmental regulations before implementation in order to avoid business operation disruptions.
- Accelerate the revision of the Circular Economy Promotion Law with detailed, concrete timelines by involving multinational corporations and industry associations in the process.
- Streamline the approval procedure for circular economy projects, such as onsite waste treatment facilities and shared waste treatment system.

2. Establish a Holistic Resource Management System to Address the Plastic Pollution Crisis with Measures Along the Whole Value Circle 2

- Define an overall strategy for plastic pollution control based on circular economy and holistic resource management concepts, with a mid- and long-term legislation framework, including clear quantitative targets and roadmaps.
- Set up a clear waste management hierarchy with priorities and definitions for terms such as 'circular economy', 'resource utilisation, and 'comprehensive utilisation'.
- Accelerate the packaging and packaging waste policymaking process, using the European Union's Extended Producers' Responsibility mechanism as the foundation.
- Set a clearly defined target and roadmap to consolidate and formalise the long-existing informal scrap collecting and recycling system in order to ensure post-consumption recyclable material can be recycled at the highest possible quality for closed-loop or high-end applications.
- Improve market conditions for recycled materials in China to attract more social investment in upgrading the sector by clarifying policies for recycled plastic for food contact materials and further developing industrial standards for recycled materials and processes.

3. Improve the Regulatory Framework for Ensuring the Development of the Recycling and Reuse Industry Amid China's Dual Control of Energy Consumption Policy

- Strengthen policy research on the recycling and reuse industry to enhance coordination between industrial development and dual control energy consumption policies.
- Clarify high energy consumption project standards, ensuring that energy usage of raw materials, energy efficiency levels and environmental benefits are taken into consideration.
- Implement financial subsidies and tax incentives that encourage the recycling and reuse industry in order to drive circular economy development.
- Outline clear, specific roadmaps and targets for material recycling to encourage manufacturers to use more recycled materials in recycling and reuse policies.
- Build an electric vehicle (EV) battery recycling system with rigid traceability, quality and environment standards.
- Formulate a whitelist of professional recycling enterprises as well as companies dedicated to EV battery breaking and sorting.
- Set mandatory regulations for recycling stations, strengthen the supervision of private workshops and form a production responsibility extension system to standardise battery recycling
- Include industrial players in the planning and construction of a zero-waste city, including alignment on the types of waste that should be prioritised for recycling, and the land or facilities needed.

4. Reinforce the Role Played by Environmental Facilities in China's Industrial Hazard Waste Treatment Industry and the National Emergency Response System 3

- Enhance the construction of environmental facilities to ensure their effectiveness in national emergency responses.
- Recognise the key role played by environmental facilities in ensuring the effectiveness of the Chinese public health emergency response system, and provide support as necessary.
- Clarify the position of cement kiln co-processing in the industrial development plan, emphasising that centralised incineration should be the main approach for industrial hazardous waste treatment with co-processing as a supportive role.
- Strengthen industry research and project layout planning at the local governmental level to ensure that cement kiln co-processing can supplement the centralised incineration treatment of hazardous wastes.
- Deploy only a specified amount of cement kiln co-processing in areas with a severe shortage of hazardous waste disposal capacity while ensuring that the waste supplied is suitable for the cement kiln co-processing technology.
- Strengthen environmental supervision, qualification review and process management of cement kiln co-processing projects to reduce the environmental risk.

5. Contribute to Decarbonisation by Pushing Green, Low Carbon and Circular Economy Development 3

- Prioritise the implementation of a transition strategy to a circular economy with a mid- and long-term legislative framework, as well as pilot projects that include the joint involvement of Chinese and European companies.

- Enhance industrial players' involvement in, and promote frequent and in-depth exchanges and dialogues on, the joint Memorandum of Understanding on Circular Economy Cooperation.
- Encourage technology developments that can facilitate better recycling of not only high-value and easy-to-recycle materials, such as cardboard and polyethylene terephthalate (PET), but also materials such as polypropylene, polyethylene, polystyrene, glass, waste polyester, non-ferrous metals and critical mineral resources.

Introduction to the Working Group

Established in 2006, the Environment Working Group currently comprises over 180 member companies from various industry sectors, such as waste, water, smart grids, chemicals, pharmaceuticals, petroleum, biochemistry and logistics. The working group functions as a channel for government stakeholder engagement, particularly with the National Development and Reform Commission (NDRC), the Ministry of Ecology and Environment (MEE),[1] the Ministry of Water Resources and the Ministry of Natural Resources.[2] Members, which include environmental technology service providers, environmental consultants and lawyers, regularly provide feedback to the Chinese authorities on environmental regulations, standards, and technologies in China.

Recent Developments

Strengthening Green Compliance

In September 2020, China announced its ambitious targets to peak carbon emissions by 2030 and reach carbon neutrality by 2060 (30/60 Goals). This, however, will not be an easy task, and has led to the strengthening of green compliance and environmental regulations along the whole supply chain. This in turn has increased compliance obligations for all stakeholders, including European companies operating in China. Some legislative and regulatory developments of note include the following:

Also in September 2020, the revised Prevention and Control of Environmental Pollution from Solid Waste Law took effect, incorporating industrial solid waste into the sewage permit management system. This marked a significant legislative reform, as it shifted the responsibility for properly treating waste to the original producer.[3]

Tangible steps have been taken to reduce the amount of plastic pollution in recent years, such as Beijing enacting measures to restrict or ban non-degradable plastic packaging from key industries such as catering and food delivery outlets by the end of 2022.[4] China also banned the use of disposal plastic packaging, tableware and straws on domestic flights and at airports with an annual throughput of at least two million passengers in 2022, with the extension applying to all airports and international passenger flights in 2023.[5]

While China currently lacks specific legislation covering environmental, social and governance (ESG) as a holistic concept, the *Measures for the Administration of Legal Disclosure of Enterprise Environmental Information*, released in December 2021, mandate major polluters and companies to submit annual environmental reports, indicating stricter enforcement of environmental regulations in China.[6]

1 Previously known as the Ministry of Environmental Protection. It became the MEE at the end of March 2018 following wider government restructuring.
2 Previously known as the Ministry of Land and Resources. It became the Ministry of Natural Resources at the end of March 2018 following wider government restructuring.

3 *In Green Milestone, China to End Solid Waste Imports*, MEE, 8th December 2020, viewed 24th May 2023, <https://english.mee.gov.cn/News_service/media_news/202012/t20201208_811909.shtml>
4 *Beijing to Ban Non-Degradable Plastic Packaging From Delivery Outlets, Xinhua*, 29th April 2022, viewed 24th May 2023, <https://english.news.cn/20220429/14cd59cc8509409e88b9365b7293285f/c.html>
5 *China to ban disposable non-degradable plastic use on flights, Xinhua*, 26th May 2021, viewed 24th May 2023, <http://www.xinhuanet.com/english/2021-05/26/c_139970492.htm>
6 *Administrative Measures for the Lawful Disclosure of Enterprise Environmental Information*, MEE, 11th December 2021, viewed 26th May 2023, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk02/202112/t20211221_964837.html?mc_cid=45e6a7ad33&mc_eid=627c47469b>

Most recently, in May/June 2023, the Intergovernmental Negotiating Committee for Plastics, a United Nations (UN) committee, met in Paris to resume discussions of the first international, legally binding treaty on global plastic pollution.[7] Given the short timeframe,[8] the negotiations between global mandates and national solutions present a critical period for the development of environmental protection law globally, as well as in China.

Research and Development (R&D) in Going Green

R&D remains central to the Made in China 2025 manufacturing strategy, with a significant push to prioritise green technology for low-carbon development, resource recycling and remanufacturing in recent years.[9] For example, to encourage investment in green technology, the *2022 Catalogue of Encouraged Industries for Foreign Investment* includes recycling equipment and solutions regarding waste plastics, vehicles, fibres, electronics and construction materials.[10] In December 2022, the NDRC and the Ministry of Science and Technology (MOST) jointly issued the *Implementation Plan for Further Improving the Market-orientated Green Technology Innovation System (2023–2025)*, further aiming to encourage foreign investment in high-end equipment manufacturing for green technology.[11]

Reducing Carbon Emissions

The European Union (EU) and China's shared goal of climate change mitigation was demonstrated at the 26th UN Conference of Parties on Climate Change (COP26) in November 2021, during which China "accepted two of the most important points in the Glasgow Climate Pact: a reaffirmation of limiting global warming to 1.5 degrees Celsius and the targeting of fossil fuels".[12] In November 2022, at COP27 held in Egypt, China reiterated its commitment to its 30/60 Goals but emphasised that multilateral cooperation was key to solving this global challenge.[13]

Although the EU and China have adopted different frameworks for achieving carbon neutrality, it is clear that the two sides are aligned on tackling climate change through ambitious policies at home as well as international cooperation. For example, with its targets of cutting greenhouse gas (GHG) emissions by at least 55 per cent by 2030 and becoming the world's first climate-neutral continent by 2050,[14] the EU has gained a wealth of experience and technological know-how in green development that China could benefit from. As outlined in the European Chamber's publication *Carbon Neutrality: The Role of European Companies in China's Race to 2060,* 67 per cent of respondents to a survey conducted in conjunction with the report are already pursuing carbon neutrality, and 40 per cent have established decarbonisation teams in China.[15] While the 30/60 Goals are ambitious, deepening EU-China cooperation will allow China to utilise European technologies proven in their home markets. However, this requires providing further policy guidance at all levels, including fleshing out the '1+N' framework,[16] establishing a more flexible power market and addressing ongoing market access barriers.

At the UN Biodiversity Conference (COP15) Leaders Summit on 12th October 2021, President Xi announced carbon emissions peaking implementation plans,[17&18] while also emphasising the importance of building a

7 *UN Talks on Treaty to End Global Plastic Pollution Open in Paris, Voice of America,* 29th May 2023, viewed 30th May 2023, <https://www.voanews.com/a/un-talks-on-a-treaty-to-end-global-plastic-pollution-open-in-paris/7114292.html>

8 This is the second of five meetings scheduled to take place by 2024 to complete the negotiations.

9 For more information on R&D in China, see *China's Innovation Ecosystem: The Localisation Dilemma,* European Union Chamber of Commerce in China, 8th June 2022, viewed 13th July 2023, <https://www.europeanchamber.com.cn/en/publications-innovation-report>

10 *2022 Catalogue of Encouraged Industries for Foreign Investment,* NDRC & Ministry of Commerce, 26th October 2022, viewed 7th June 2023, <http://wzs.mofcom.gov.cn/article/n/202210/20221003362982.shtml>

11 *Implementation Plan for Further Improving the Market-orientated Green Technology Innovation System (2023–2025)*, NDRC & MOST, 28th December 2022, viewed 7th June 2023, <https://www.ndrc.gov.cn/xxgk/zcfb/tz/202212/t20221228_1344205.html?code=&state=123>

12 Jiang, Yifan, *China at COP26: Coal, 1.5C and short-term actions*, China Dialogue, 16th November 2021, viewed 22nd May 2023, <https://chinadialogue.net/en/climate/coal-1-5c-and-short-term-actions-china-at-cop26/>

13 *COP 27: China climate envoy says Beijing committed to carbon neutrality, Reuters*, 8th November 2022, viewed 25th May 2023, <https://www.reuters.com/markets/carbon/cop-27-china-climate-envoy-says-beijing-committed-carbon-neutrality-2022-11-08/>

14 *European Green Deal,* European Commission, viewed 22nd May 2023, <https://ec.europa.eu/clima/eu-action/european-green-deal_en>

15 *Carbon Neutrality: The Role of European Companies in China's Race to 2060*, European Union Chamber of Commerce in China, 25th May 2022, viewed 24th May 2023, <https://www.europeanchamber.com.cn/en/publications-carbon-neutrality-report?>

16 '1+N' framework, where the '1' refers to the guiding opinions that set out the overarching principles of policies related to carbon peaking and carbon neutrality, while the 'N' refers to specific action plans that will be rolled at the local and industry level.

17 *Working Guidance for Carbon Dioxide Peaking and Carbon Neutrality in Full and Faithful Implementation of the New Development Philosophy,* NDRC, 24th October 2021, viewed 25th May 2023, <https://en.ndrc.gov.cn/policies/202110/t20211024_1300725.html>

18 De Boer, Dimitri, & Fan, Danting, *How is progress in China's 1+N policy framework?*, China Council for International and Cooperation on Environment and Development, 11th March 2022, viewed 25th May 2023, <https://cciced.eco/climate-governance/how-is-progress-in-chinas-1n-policy-framework/>

green, low-carbon and circular economy.[19] As a market-based policy tool for reducing GHG emissions, the carbon market has increasingly become a crucial part of overall emissions reductions for China.[20&21] On 16th July 2021, three years after it was announced, the national Emissions Trading System (ETS) was officially launched, with the objective of increasing control and reducing carbon emissions nationwide.[22] Initially covering the power sector, which accounts for over 40 per cent of the country's carbon emissions, the national ETS also builds on the progress made by pilot carbon markets implemented in eight regions that continue to operate in parallel.[23]

For China to achieve its 30/60 Goals, companies will also need access to sufficient funding to support their green transitions. As part of efforts to mobilise the necessary funds, the People's Bank of China (PBOC) launched a green finance tool on 1st July 2021 to direct capital towards green and sustainable projects by appraising the green performance of investments through quarterly evaluations.[24] It is estimated that China's green investment needs to reach Chinese yuan (CNY) 2.2 trillion (approximately United States dollars (USD) 340 billion) per year in the current decade, increasing to CNY 3.9 trillion from 2031–2060.[25] The EU-China Common Ground Taxonomy (CGT), released by the European Commission and the PBOC, is also paving the way towards offering clearer guidance on green finance. First published in November 2021 and updated in June 2022, the CGT marks a crucial step towards developing international taxonomies, as it aligns the definitions of terms such as such as 'green', 'clean' and 'low-carbon' between the EU's taxonomy for sustainable activities and China's green finance taxonomy.[26] The alignment of the technical criteria will make it easier for Chinese borrowers to access green funding in the international markets.[27]

Key Recommendations

1. Increase the Transparency and Predictability of Environmental Protection Enforcement

5

Concern

The implementation of environmental protection measures by local governments in China often follows an arbitrary 'one-size-fits-all' approach, which can lead to unfairly enforced regulations and compromised environmental protection.

Assessment

In order to meet centrally imposed environmental targets, local government agencies are often encouraged to implement rigorous environmental protection initiatives on top of existing regulations and standards. This has resulted in stricter environmental standards for wastewater discharge and air emissions, among others. In recent years, a 'one-size-fits-all' approach has led to environmental enforcement sometimes unexpectedly impacting companies that already comply with relevant regulations.[28] While some progress has been made in this area, following the April 2021 release of the MEE's *Guiding Opinions on Strengthening the Positive List Management of Ecological Environment Supervision and Law Enforcement*,[29] European businesses operating in China still encounter two major issues associated with the 'one-size-fits-all' approach. First, the local government often suspends approval procedures for investment projects if a new policy or regulation is issued and no implementation rules are available. Second, new environmental regulations and policies are

19 *Full text: Xi Jinping's speech at the COP15 leaders' summit, China Daily*, 12th October 2021, viewed 24th May 2023, <https://www.chinadaily.com.cn/a/202110/12/WS61653286a310cdd39bc6e685.html>

20 For more information and recommendations on the development of China's carbon market and the Emissions Trading System, see the *Carbon Market Sub-working Group Position Paper 2023/2024*.

21 *What are Carbon Markets and Why are They Important?* UN Development Programme,18th May 2022, viewed 12th July 2023, <https://climatepromise.undp.org/news-and-stories/what-are-carbon-markets-and-why-are-they-important>

22 *Trading Begins under China's National ETS*, IISD, 19th July 2021, viewed 23rd May 2023, <https://sdg.iisd.org/news/trading-begins-under-chinas-national-ets/>

23 Tan Luyue, *The First Year of China's National Carbon Market Reviewed*, China Dialogue, 17th February 2022, viewed 25th May 2023, <https://chinadialogue.net/en/climate/the-first-year-of-chinas-national-carbon-market-reviewed/>

24 *PBOC Introduces New Green Finance Evaluation Tool for Country's Lenders*, Climate Cooperation China, 12th June 2021, viewed 23rd May 2023, <https://climatecooperation.cn/climate/pboc-introduces-new-green-finance-evaluation-tool-for-countrys-lenders/>

25 *China Boosts Green Finance in Pursuit of Carbon Neutrality, Xinhua*, 3rd July 2021, viewed 23rd May 2023, <http://www.china.org.cn/business/2021-07/03/content_77603598.htm>

26 Lund Larsen, Matthias, *EU-China Opinion Pool: Rethinking EU-China climate cooperation*, Mercator Institute for China Studies, 18th November 2021, viewed 24th May 2023, <https://merics.org/en/opinion/eu-china-opinion-pool-rethinking-eu-china-climate-cooperation>

27 *Sustainable Transition: Mapping the Common Ground Between China And the EU*, BNP Paribas, 2nd November 2022, viewed 7th June 2023, <https://cib.bnpparibas/sustainable-transition-mapping-the-common-ground-between-china-and-the-eu/>

28 *The Masses Can't Stand It, Cadres Also Complain: Why The "One Size Fits All" Governance Continues Despite Repeated Prohibitions, Xinhuanet*, 31st July 2019, viewed 18th May 2023, <http://www.xinhuanet.com/politics/2019-07/31/c_1124820494.htm>

29 *Guiding Opinions on Strengthening the Positive List Management of Ecological Environment Supervision and Law Enforcement and Promoting Differentiated Law Enforcement and Supervision*, MEE, 7th April 2021, viewed 18th May 2023, <http://www.mee.gov.cn/xxgk2018/xxgk/xxgk05/202104/t20210423_830095.html>

sometimes over-specific and inflexible, which causes significant challenges for certain industries where some of the related requirements are not applicable.[30]

In 2022, China introduced new incentives to reduce pollution and carbon emissions,[31] such as the relaunch of the voluntary Chinese Certified Emission Reduction scheme (CCER) in 2023,[32] which are expected to boost the demand for carbon offsets in a sustainable manner.[33] However, many European companies report that they encounter unexpected requirements to reduce their environmental impact through the procurement of energy from renewable energy (RE) sources, occasionally beyond what is realistic. For companies that are already operating in authorised industrial parks and adhere to the highest standards in order to comply with applicable regulations, such requirements cause uncertainty in investment and manufacturing decision-making. If the same special measures are applied to all companies, regardless of their level of compliance, it can act as a disincentive to proactively reduce emissions. Furthermore, as the *Regulations on Management of Pollutant Discharge Permits* orders manufacturers to closely monitor their own emission levels,[34] the one-size-fits-all approach is unfair to compliant companies. More clarity is needed regarding compliance management to enable companies to become frontrunners in green manufacturing.

For European companies, particularly multinationals operating in China, communication with the local government is relatively accessible. European businesses are also able to participate in the public consultation process for a new national law or regulation through various channels. However, feedback from the authorities on the reasons behind the adoption or rejection of the suggested revisions is limited. Moreover, the period allowed for public consultation period is always very short, with little time left before the official release of a new regulation or policy, which limits industry players' access and the valuable input they can provide, as well as the authorities' ability to adopt suggestions. European businesses have also appealed for the revision of some national laws, regulations and standards that lag behind industry development. A prime example is the Circular Economy Promotion Law (CEPL)—which came into effect in 2009 and is aimed at realising China's transition to a circular economy and improve ecological development—and its related necessary implementation rules. Although the NDRC announced the *14th Five-year Plan for Circular Economy Development* in July 2021,[35] which is focussed on improving the overall resource utilisation capacity and build a resource recycling industrial system, progress in adopting suggestions for changes has been relatively slow.

Recommendations

- Enforce the Environmental Protection Law and related regulations in a transparent fashion.
- Install direct communication channels for companies to notify central government authorities of any issues and irregularities related to 'one-size-fits-all' approaches or other unreasonable environmental enforcement.
- Provide transparent, open communication channels at both national and local levels to introduce science-based policies, guidelines and standards that are consistent with industry development and international practices.
- Involve industry players and associations in preliminary research and the public consultation process at an earlier stage when developing new and revised policies and regulations.
- Provide timely feedback from relevant government authorities on reasons behind the adoption or rejection of suggested revisions.
- Allocate sufficient transition time for new environmental regulations before implementation in order to avoid business operation disruptions.
- Accelerate the revision of the CEPL with detailed, concrete timelines by involving multinational corporations and industry associations in the process.
- Streamline the approval procedure for circular economy projects, such as onsite waste treatment facilities and shared waste treatment system.

30 A key example of inflexible environmental regulations is the prohibition of new chemical and heavy chemical industrial parks within one kilometre of the Yangtze River, see the *Petrochemicals, Chemicals and Refining Working Group Position Paper 2023/2024* for further details.

31 *The Key Points of Ecological and Environmental Protection Will be Defined in an Orderly Manner in 2022, and Green and Low-carbon Development Will Take the Lead, Xinhua*, 10th January 2022, viewed 18th May 2023, <http://www.news.cn/2022-01/10/c_1128247497.htm>

32 CCER refers to emissions reduction activities conducted by companies on a voluntary basis that are certified by the Chinese Government, including renewable power generation and forestry projects.

33 For more information on CCERs, see the *Energy Working Group Position Paper 2023/2024*.

34 *Regulations on the Administration of Discharge Permits*, State Council, 29th January 2021, viewed 19th May 2023, <http://www.gov.cn/zhengce/content/2021-01/29/content_5583525.htm>

35 *Circular Economy Gets 5-year Regulator Boost*, State Council, 8th July 2021, viewed 25th May 2023, <http://english.www.gov.cn/policies/policywatch/202107/08/content_WS60e639b0c6d0df57f98dc92b.html>

- Streamline the approval procedure for circular economy projects such as onsite waste treatment facilities and shared waste treatment system.

2. Establish a Holistic Resource Management System to Address the Plastic Pollution Crisis with Measures Along the Whole Value Circle 2

Concern

China's authorities responsible for plastic waste lack a holistic approach to recycling, hindering the implementation of effective waste classification policies.

Assessment

Due to technological advancements in recent years, the mass production of durable and lightweight plastic for commercial use has become relatively inexpensive, but its usage poses a severe threat to environmental protection and climate change mitigation. As the world's largest producer of plastic,[36] global efforts to combat the plastic pollution crisis require meaningful contribution from China. While China has adopted many policies to promote a circular economy in recent years, institutional arrangements remain weak and lack a holistic approach. The *14th Five-year Plan of Action for Plastic Pollution Control* (Action Plan),[37] outlines measures to cut the production and use of plastics, develop plastic alternatives and substantially reduce the amount of plastic waste in landfills and environmental leakage during the 14th Five-year Plan period (2021–2025). However, while consolidation of plastic recycling capacities is mentioned, the policy does not set quantitative targets for plastic recycling, and incineration is still encouraged over recycling as a means of energy recovery.

Improperly managed plastic waste poses significant environmental risks, including threats to public health and diversity. While these issues are commonly acknowledged, several other aspects are often overlooked. First, plastic production is a high carbon-intensity activity, as most plastics are produced from fossil-fuel resources.[38] As burning or incinerating plastic releases embedded carbon as carbon dioxide (CO_2), which contributes to climate change, China must avoid or tightly control plastic incineration to meet its climate commitments under the Paris Agreement and its 30/60 Goals. Secondly, China's plastic production is heavily dependent on imports, including crude oil for production as well as high-end polymers.[39] While this material can technically be recycled, it is generally incinerated after just one use, resulting in a huge loss of valuable natural resources, missed decarbonisation opportunities and greater exposure to price volatility. It is also worth pointing out that incineration can only recover a certain amount of energy and not the entire material value, meaning that it is excluded from the circular economy.[40]

China has a well-functioning plastic bottle recycling industry, consisting of a long-existing informal scrap collecting and transportation network, and a relatively formalised down-stream processing sector. However, the industry is not well regulated and often leads to secondary pollution and unavoidable down-cycling. Recent government policies have sought to encourage the formalisation of plastic recycling, but gaps remain. For example, high-value and high-quality food-grade plastic beverage bottles get recycled to lower-value short fibres. China still prohibits recycled polyethylene terephthalate (rPET) plastic from being used for food-contact purposes, despite other developed economies having done so for years. This practice has also been adopted by several developing countries in Asia, including Vietnam, Thailand and India.[41] Recycling plastic beverage bottles also significantly decreases their carbon footprint; for example, manufacturing a rPET bottle emits 70 per cent less CO_2 than manufacturing a virgin polyethylene terephthalate (PET) plastic bottle.[42] Therefore, it would be a positive development if China can accelerate its policy research and eventually allow 'closed-loop' recycling for plastic

36 Heng, Cheryl, *China's Plastic Waste Mountain the Biggest in the World: Study, SCMP,* 23rd May 2021, viewed 26th May 2023, <https://www.scmp.com/news/china/science/article/3134480/chinas-plastic-waste-mountain-biggest-world-study>

37 *Notice of the Ministry of Ecology and Environment of the National Development and Reform Commission on Printing and Distributing the "14th Five-year Plan" Plastic Pollution Control Action Plan*, NDRC & MEE, 16th September 2021, viewed 20th July 2023, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk10/202109/t20210916_945621.html>

38 *The Circular Economy – A Powerful Force for Climate Mitigation (Executive Summary)*, Material Economics, viewed 23rd May 2023, <https://materialeconomics.com/publications/the-circular-economy>

39 *China May Spend $100 billion more on crude oil imports in 2022 amid surging global oil prices: experts*, *Global Times*, 13th April 2022, viewed 23rd May 2023, <https://www.globaltimes.cn/page/202204/1259198.shtml>

40 Lovett, Gina, *Why Are We Still Addicted to Burning Waste?, The Guardian,* 3rd August 2015, viewed 8th June 2023, <https://www.theguardian.com/sustainable-business/2015/aug/03/why-are-we-still-addicted-to-burning-waste>

41 *Recycled PET in SE Asian and Indian F&B Packaging*, Rabobank, January 2021, viewed 22nd May 2023, <https://research.rabobank.com/far/en/sectors/fa-supply-chains/recycled-pet-in-se-asian-indian-food-and-beverage-packaging.html>

42 *Bottle to Bottle, From the Source to the End User,* Veolia, 2022, viewed 22nd May 2023, <https://www.veolia.com/en/our-customers/achievements/industries/circular-economy/germany-rostock-0>

bottles, as explicitly mentioned in the Action Plan. Furthermore, outlining clear definitions for terms such as ‘resource utilisation’ and ‘comprehensive utilisation’ would also help standardise the waste management hierarchy.

To achieve a true circular economy for plastic, the collection and sorting of post-consumption plastics are crucial and require formalisation and centralisation. For single-use plastic bottles and metal cans, a deposit and return system (DRS)—especially for beverage containers—is a proven mechanism for delivering the highest possible collection rate and highest quality material recovery. In addition, a DRS provides accurate data on plastic collection and sorting to all stakeholders along the value circle, thereby creating a stable demand-supply relationship as well as increasing transparency for policymakers. Moreover, the DRS mechanism creates new green job opportunities and improves working conditions for unofficial or part-time waste collectors.[43]

Better product design is also key to the concept of ‘reduce, reuse and recycle’. Producers should be required to make products with longer durability and that are easier to repair, reuse or recycle. The EU’s Extended Producer Responsibility policy introduced in 2015,[44] where producers pay financial contributions based on the end-of-life costs of their products, creates economic incentives for designing products that can be more easily recycled or reused. This could provide a model for China. Currently, circular economy models for some ‘high value’ and ‘easy-to-recycle’ materials such as cardboard, metal and PET plastic are better established in China, due to the maturity of the collection and recycling value chain. However, policies should also encourage technological and business model innovation to turn high-volume and high-material-value waste materials such as polyolefins, glass and textiles into valuable resources. While initial targets outlined in the *Implementation Plan of Household Waste Classification System* aimed to increase the recycling rate in 46 municipalities to 35 per cent by 2020,[45&46] China now strives to reuse 60 per cent of urban household waste by 2025. Recycling rates are higher in many EU Member States, such as Germany, where the recycling rate has already reached 68 per cent.[47] This means most European companies will have expertise they can share to support China's waste reduction efforts.

Currently, only 30 per cent of China’s plastic waste is recycled annually, while more than 63 per cent is incinerated or landfilled,[48] resulting in a significant waste of resources. Much of this waste contains valuable materials that could be sorted for recycling rather than energy recovery or disposal. Additionally, plastic waste is increasingly mixed in with residue waste, leading to rising carbon emissions from incineration. Therefore, the working group recommends promoting material recovery from residue waste before incineration or landfill, with economic incentives and legislation to enforce mixed waste sorting.

Recommendations

- Define an overall strategy for plastic pollution control based on circular economy and holistic resource management concepts, with a mid- and long-term legislation framework, including clear quantitative targets and roadmaps.
- Set up a clear waste management hierarchy with priorities and definitions for terms such as ‘circular economy’, ‘resource utilisation, and ‘comprehensive utilisation’.
- Accelerate the packaging and packaging waste policymaking process, using the EU’s Extended Producers’ Responsibility mechanism as a model.
- Set a clearly defined target and roadmap to consolidate and formalise the informal scrap collecting and recycling system, to ensure post-consumption recyclable material can be recycled at the highest possible quality for closed-loop or high-end applications.
- Improve market conditions for recycled materials in

43 *Deposit-Refund System (DRS): Facts and Myths*, Deloitte, April 2019, viewed 24th May 2023, <https://www2.deloitte.com/content/dam/Deloitte/pl/Documents/Brochures/pl_DRS_Brochure_Deloitte.pdf>

44 *Extended Producer Responsibility*, Organisation for Economic Co-operation and Development, n.d., viewed 24th May 2023, <https://www.oecd.org/env/tools-evaluation/extendedproducerresponsibility.htm>

45 *Notice of System Implementation Plan Waste Classification System Implementation Plan*, NDRC & Ministry of Housing and Urban-Rural Development, 18th March 2017, 20th July 2023, <https://www.gov.cn/gongbao/content/2017/content_5186978.htm>

46 *Urban and Rural Municipal Solid Waste in China and the Circular Economy*, World Bank Group, April 2019, p. 18, viewed 24th May 2023, <https://openknowledge.worldbank.org/bitstream/handle/10986/33838/Urban-and-Rural-Municipal-Solid-Waste-in-China-and-the-Circular-Economy-A-Brief-Overview-and-Opportunities-Going-Forward.pdf?sequence=1&isAllowed=y>

47 *Waste Recycling in Europe*, European Environment Agency, 18th November 2021, viewed 19th May 2023, <https://www.eea.europa.eu/ims/waste-recycling-in-europe>

48 Hou, Liqiang, *Program to Beef Up Plastics Recycling*, *China Daily*, 26th December 2022, viewed 22nd May 2023, <https://www.chinadaily.com.cn/a/202212/26/WS63a8f3dfa31057c47eba61a9.html>

China to attract more social investment in upgrading the sector by clarifying policies for recycled plastic for food contact materials and further developing industrial standards on recycled materials and processes.

3. Improve the Regulatory Framework for Ensuring the Development of the Recycling and Reuse Industry Amid China's Dual Control of Energy Consumption Policy

Concern

China's policy on dual control of energy consumption and emissions has restricted the recycling and reuse industry in key areas, hindering regulatory modernisation, advances in industry technology and opportunities for solution providers.

Assessment

The recycling and reuse industry for materials such as metals, plastic, batteries, textiles and automotive components plays an important role in pollution control, carbon emissions reduction and promoting material efficiency. One overlooked but important development in this regard is the *China Waste Textile Suggestion*, published in April 2022,[49] establishing a plan to recycle a quarter of China's textile waste into two million tonnes of new fibres each year by 2025 as part of its 2030 carbon peaking goal.

It is difficult to collect and sort textile waste as it is often mixed with other municipal waste. As a result, sorting centres are required, but plans to construct of such sites must start from the land use planning phase. While it is encouraging to note that 'sorting, recycle and reuse' for waste textiles was adopted in the *Catalogue of Industries Encouraging Foreign Investment (2022 Version)*, released on 26th October 2022,[50] the working group recommends involving textile industry players in the development of zero-waste cities, particularly to align on prioritising waste categories for recycling and the facilities necessary to do so.[51]

A series of policies have been published to push energy conservation and develop a circular economy, while curbing projects with high energy consumption and high emissions – dual controls.[52] However, questionable classification standards for 'resources' and 'waste', ambiguities over legal liability and different policy interpretations continue to hinder the development of the recycling and reuse industry in China.[53] In some cases, local governments support upstream waste collection and processing as a circular economy while criticising downstream recovery and reuse as 'high energy consumption' projects. Due to 'one-size-fits-all' practices, recycling and reuse projects face many difficulties obtaining administrative approvals. For example, if a company uses PET polyester plastic recycled from waste beverage bottles to produce environmentally friendly fibres, the project would boost development of new low-carbon textile materials. However, the 'one-size-fits-all' policy that categorises such projects under the chemical fibre industry means it would be considered as a 'high-energy-consuming' project by the provincial government, and therefore would be suspended.[54]

The safe repurposing of batteries and electronics also form a crucial aspect of developing an established recycling industry in China. Given that a battery's lifecycle is approximately five to eight years, the current growth trajectory of the electric vehicle (EV) industry in China is leading to an emerging market for EV battery recycling, essential for the reuse of rare materials such as lithium, cobalt and nickel.[55] In 2020, China retired over 200,000 tonnes of EV batteries with a market value of CNY 10 billion; the 2025 market is projected to reach over CNY 40 billion.[56] In March 2022, the Ministry of Industry and Information Technology released the *Guiding Opinions on Further Strengthening the*

49 Glover, Simon, *China Announces Textile Recycling Targets*, Ecotextile News, 13th April 2022, viewed 22nd May 2023, <https://www.ecotextile.com/2022041329224/materials-production-news/china-announces-textile-recycling-targets.html>

50 *Catalogue of Industries Encouraging Foreign Investment (2022 Edition),* NDRC, 26th October 2022, viewed 26th May 2023, <https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202210/t20221028_1339662.html?code=&state=123>

51 *The General Office of the National Development and Reform Commission and Others Issued a Notice On the Issuance of a List of Key Cities For the Construction of the Recycling System of Waste Materials,* State Council, 19th July 2022, viewed 8th June 2023, <https://www.gov.cn/zhengce/zhengceku/2022-08/02/content_5703971.htm>

52 Fan, Angela, *Three Reform Strategies Behind Xi's Energy Revolution*, US-China Business Council, viewed 23rd May 2023, <https://www.uschina.org/three-reform-strategies-behind-xi%E2%80%99s-energy-revolution>

53 Li, Jingheng, *Tightening Approval and Seeking Change in the Chemical Industry*, EEO, 12th June 2021, viewed 23rd May 2023, <http://www.eeo.com.cn/2021/0612/491462.shtml>

54 *5 Barriers to Using Recycled Materials to Boost the Circular Economy,* World Economic Forum, 10th December 2021, viewed 13th April 2023, <https://www.weforum.org/agenda/2021/12/5-barriers-to-using-recycled-materials-to-boost-the-circular-economy/>

55 *The "Retirement Tide" of Power Batteries is Coming One After Another, and it is Urgent to Establish a Scientific and Standardised Recycling System*, NDRC, 28th February 2023, viewed 8th June 2023, <https://www.ndrc.gov.cn/wsdwhfz/202302/t20230228_1350052.html>

56 According to data from the China Automotive Technology and Research Centre: Liu Yukun, *EV battery recycling powering up in China, China Daily*, 22nd September 2021, viewed 23rd May 2023, <https://www.chinadaily.com.cn/a/202109/22/WS614a8cada310cdd39bc6aa0d.html>

Construction of Safety Systems for New Energy Vehicle Enterprises, encouraging the industry to adopt more sustainable practices through regulated recycling stations and increasing supervision for private workshops.[57] However, due to the absence of an effective recycling and reuse system, the vast majority of retired EV batteries are acquired on an unregulated basis by private workshops for illegal recycling and resale.

The informal recycling sector can pose serious environmental hazards, by burning materials that release toxic chemicals such as lead and chromium, which can contaminate entire ecosystems near informal recycling site and e-waste landfills. Similarly, electronic waste contains large amounts of resources such as gold, silver and rare metals, but less than 20 per cent is recycled through regulated channels in China.[58] Furthermore, although China promises subsidies for the treatment of waste from electrical and electronic equipment (WEEE), payment delays hinder the sustainable development of the industry. The working group therefore recommends the development of a formal recycling framework, including clearly outlined incentives.

Recommendations

- Strengthen policy research on the recycling and reuse industry to enhance coordination between industrial development and dual control energy consumption policies.
- Clarify high energy consumption project standards, ensuring that energy usage of raw materials, energy efficiency levels and environmental benefits are taken into consideration.
- Implement financial subsidies and tax incentives that encourage the recycling and reuse industry to drive circular economy development.
- Outline clear, specific roadmaps and targets for material recycling to encourage manufacturers to use more recycled materials in recycling and reuse policies.
- Build an EV battery recycling system with rigid traceability, quality and environment standards.
- Formulate a whitelist of professional recycling enterprises as well as companies dedicated to EV battery breaking and sorting.
- Set mandatory regulations for recycling stations, strengthen the supervision of private workshops and form a production responsibility extension system to standardise battery recycling.
- Include industrial players in the planning and construction of a zero-waste city, including alignment on the types of waste that should be prioritised for recycling, and the land or facilities needed.

4. Reinforce the Role Played by Environmental Facilities in China's Industrial Hazard Waste Treatment Industry and the National Emergency Response System 3

Concern

Environmental facilities in China have been largely neglected, which delays the recovery process and poses potential risks to public safety in the event of public emergencies related to hazardous waste.

Assessment

Environmental facilities providing quality services in sanitation, wastewater treatment, municipal waste treatment, and hazardous and medical waste treatment, play a key role in safeguarding environmental standards, as well as handling public emergencies such as oil spills and chemical plant explosions.[59&60] However, their role is usually downplayed in China. According to the Ministry of Emergency Management (MEM), in 2021 alone there were 122 accidents in the chemical industry, causing 150 deaths.[61] Without an efficient emergency response system that incorporates environmental facilities for impact mitigation, such accidents are likely to cause secondary environmental risks that may pose a threat to public health and safety. In many cities, environmental facilities are excluded from emergency response systems for two main reasons: either because the cities in question do not have a sufficient number of environmental facilities, or the role of the facilities has been neglected by local governments. It is, therefore,

57 *Guiding Opinions on Further Strengthening the Construction of Safety Systems for New Energy Vehicle Enterprises*, State Council, 29th March 2022, viewed 8th June 2023, <https://www.gov.cn/zhengce/zhengceku/2022-04/09/content_5684250.htm>

58 *Seven departments issued documents to support the recycling of home appliances and the catalyst for home appliance consumption, China News Network*, 26th May 2020, viewed 23rd May 2023, <http://news.cctv.com/2020/05/26/ARTINItlYi0UVJpqUOBjxJ1W200526.shtml>

59 Take the Yancheng chemical plant explosion in March 2019, with a death toll of 78, as a key example. In April 2019, in the immediate aftermath, Jiangsu Province released the *Jiangsu Province Chemical Industry Safety and Environmental Protection Notice of Remediation and Improvement Plan*, Jiangsu Provincial People's Government, 27th April 2019, viewed 20th July 2023, <http://safety.nanjing.gov.cn/zwfw/shfw/whpgl/201908/P020190823593101291896.pdf>

60 Xu, Yuanchao, *Jiangsu Chemical Park Explosion: Rectify or Shutdown?*, CWR, 18th June 2019, viewed 21st May 2023, <https://www.chinawaterrisk.org/resources/analysis-reviews/jiangsu-chemical-park-explosion-rectify-or-shutdown/>

61 *China's Major Chemical Accidents Fell to Single Digits for the First Time in 2021*, MEM, 18th February 2022, viewed 19th May 2023, <https://www.mem.gov.cn/xw/xwfbh/2022n2y15rxwfbh/mtbd_4262/202202/t20220218_408142.shtml>

paramount to increase awareness of the potential consequences of environmental incidents and the role of environmental facilities through policy reform.[62]

In 2021, the centralised treatment capacity of hazardous waste in China exceeded 160 million tonnes per year, four times higher than that in 2012.[63] As in several other countries worldwide, China has utilised its cement industry for the disposal of solid waste through cement kiln co-processing, with a certain number of companies licensed to process hazardous waste. However, the development of the hazardous waste treatment industry has been hindered by the erratic development of the cement industry. As cement kiln co-processing is only suitable for the disposal and treatment of a fraction of the hazardous waste categories, traditional hazardous waste treatment plants are still necessary.

Furthermore, fluctuations in the development of the cement industry not only impact the quality and standard of hazardous waste disposal, but also increase unfair competition for professional hazardous waste treatment enterprises. Due to the shift to co-processing, many small-scale cement enterprises face fierce competition and encounter challenges in maintaining safe and stable hazardous waste treatment operations due to shortages in capital and technology. As easily processed waste is acquired by cement kilns at low prices, highly corrosive and refractory waste is left to professional hazardous waste disposal plants. This poses an environmental risk, as some hazardous waste treatment companies are forced to accept amounts of corrosive waste far beyond their capacity. In addition, some cement kiln co-processing facilities in China accept hazardous waste containing heavy metals despite lacking the facilities to treat such substances, which increases environmental risks. Meanwhile, a 'price war' has been waged in hazardous waste disposal, which is detrimental to the long-term sustainable development of the professional hazardous waste disposal industry and the stability of public environmental services.

Recommendations

- Enhance the construction of environmental facilities to ensure their effectiveness in national emergency responses.
- Recognise the key role played by environmental facilities in ensuring the effectiveness of the Chinese public health emergency response system, and provide support as necessary.
- Clarify the position of cement kiln co-processing in the industrial development plan, emphasising that centralised incineration should be the main approach for industrial hazardous waste treatment with co-processing as a supportive role.
- Strengthen industry research and project planning at a local governmental level to ensure that cement kiln co-processing can supplement the centralised incineration treatment of hazardous wastes.
- Deploy only a specified amount of cement kiln co-processing in areas with a severe shortage of hazardous waste disposal capacity, while ensuring that the waste supplied is suitable for the cement kiln co-processing technology.
- Strengthen environmental supervision, qualification review and process management of cement kiln co-processing projects to reduce the environmental risk.

5. Contribute to Decarbonisation by Pushing Green, Low Carbon and Circular Economy Development 3

Concern

Current decarbonisation incentives are inadequate to achieve China's 30/60 Goals.

Assessment

RE and energy efficiency development are crucial elements for tackling climate change effectively. Yet, with existing technologies, the transition of the energy system to renewables would only address 55 per cent of GHG emissions, with the remaining 45 per cent derived from industry, agriculture, and land use.[64] In order to transition to a viable circular economy, it must have a holistic design and a concrete action plan covering all stages of the cycle, from design and production to consumption, waste reuse and waste management. As a result, the transition will also foster sustainable economic growth, improve ecological development and generate green jobs.

62 *Suggestions on Improving China's Comprehensive Environmental Emergency Management Capacity,* Guangmingwang, 28th April 2021, viewed 19th May 2023, <https://theory.gmw.cn/2021-04/28/content_34805091.htm>

63 Zheng, Xinyu, *All-China Federation of Industry and Commerce Environmental Chamber of Commerce: Reasonable planning of hazardous waste disposal capacity, People's Daily*, 6th March 2023, viewed 22nd May 2023, <http://paper.people.com.cn/zgcsb/html/2023-03/06/content_25968930.htm>

64 *Fixing the Economy to Fix Climate Change*, Ellen MacArthur Foundation, viewed 22nd May 2023, <https://ellenmacarthurfoundation.org/topics/climate/overview>

The policies implemented by the EU can be taken as an example for China's green transition. The EU rolled out its Circular Economy Action Plan 2.0 in March 2020, as one of the key priorities of its Green Deal. The plan forms a critical part of 'Fit for 55'[65] and the 2050 carbon neutrality goal,[66] under which only sustainable products with a strict eco-design framework and proven circularity in the production process can be sold in the EU market, which will impact Chinese manufacturers and exporters to the EU.

In July 2018, the EU and China signed a Memorandum of Understanding (MOU) on Circular Economy Cooperation, which established a high-level dialogue on the circular economy. This will lay the foundation for more effective EU-China dialogue and cooperation. Further clarification should also be provided to encourage state-owned enterprises to take a more proactive approach to decarbonisation, a process that would benefit from accelerating environmental reform and utilising best practices from industry players that are well advanced with their decarbonisation plans.

Recommendations

- Prioritise the implementation of a transition strategy to a circular economy with a mid- and long-term legislative framework, as well as pilot projects that include the joint involvement of Chinese and European companies.
- Increase industrial players' involvement in, and promote frequent and in-depth exchanges and dialogues on, the joint MOU on Circular Economy Cooperation.
- Encourage technology developments that can facilitate better recycling of not only high-value and easy-to-recycle materials, such as cardboard and PET, but also materials such as polypropylene, polyethylene, polystyrene, glass, waste polyester, non-ferrous metals and critical mineral resources.

65 Refers to the EU's target of reducing net greenhouse gas emissions by at least 55 per cent by 2030.

66 *Changing how we produce and consume: New Circular Economy Action Plan shows the way to a climate-neutral, competitive economy of empowered consumers*, European Commission, 11th March 2020, viewed 25th May 2023, <https://ec.europa.eu/commission/presscorner/detail/en/ip_20_420>

Abbreviations

CCER	China Certified Emission Reduction
CEPL	Circular Economy Promotion Law
CGT	Common Ground Taxonomy
CNY	Chinese Yuan
CO_2	Carbon Dioxide
COP	Conference of the Parties
DRS	Deposit and Return System
ESG	Environmental, Social and Governance
ETS	Emissions Trading System
EU	European Union
EV	Electric Vehicle
GHG	Greenhouse Gas
MEE	Ministry of Ecology and Environment
MEM	Ministry of Emergency Management
MOST	Ministry of Science and Technology
MOU	Memorandum of Understanding
NDRC	National Development and Reform Commission
PBOC	People's Bank of China
PET	Polyethylene Terephthalate
R&D	Research and Development
RE	Renewable Energy
rPET	Recycled Polyethylene Terephthalate
UN	United Nations
USD	United States Dollars
WEEE	Waste from Electrical and Electronic Equipment

Finance and Taxation Working Group

Key Recommendations

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- Retain the existing tax exemption regime for reasonable non-cash benefits for foreign nationals.

2. Optimise the Value-added Tax (VAT) Law (Draft) and Prevailing Regulations 8

- Clarify the Chinese VAT place-of-supply rules in the draft VAT Law.
- Optimise the prevailing export VAT refund system.
- Eliminate input VAT recovery limitation for out-of-scope supplies.
- Expand the scope of zero-rating of exported services.
- Enable non-resident taxpayers to register for VAT in China.
- Allow all taxpayers to claim the input VAT incurred on loan interest.
- Allow negative VAT taxable income of financial products to be carried forward to the next year.

3. Take Prudent Steps in Consumption Tax Reform 10

- Involve experts in discussions on standards and measurements and, where necessary, re-determine the scope of taxation.
- Publish in a timely manner the timetable and implementation rules for the various sectors enlisted in the Consumption Law reform pilot and provide a sufficient transition period.
- Improve the effectiveness of the nationwide tax system and synchronise tax systems at central and local levels.
- Review the applicable tax threshold, tax rates and taxation method to facilitate the macro-development strategies of specific industries in line with China's consumption reality and to better reflect international best practices.
- Accelerate the development of the sales tax regime for the Hainan Free Trade Port (FTP), integrate it with China's existing consumption tax regime, and promote its smooth transition to contribute to the success of the FTP.

4. Ensure Consistent Implementation of Taxation and Customs Policies at the Local Level

Transfer Pricing (TP)

- Strengthen the relationship and collaboration between customs and tax bureaus, especially at the local level, following Shenzhen's best practice.
- Explore cooperation between customs and tax bureaus, such as respecting the results of Bilateral Advance Pricing Arrangements and Advance Pricing Agreements, when customs review the profit level of enterprises.
- Build clear and operable enforcement regulations to avoid differences in implementation by different customs authorities.
- Consider reasonable analysis of related parties' transaction price of import and export goods when customs conduct reviews of TP or review TP documents.

Double Taxation

- Provide further clarification on bilateral agreements to avoid double taxation and clearly define the applicable conditions for non-double taxation.
- Execute the bilateral agreements and refund the duplicated portion of IIT.

5. Enhance Administrative, Fiscal, and Organisational Efficiency for Multinational Companies Investing in China 6

- Allow consolidated corporate income tax filing for Chinese holding companies with their wholly owned subsidiaries in China.
- Strengthen the full adoption of electronic invoices and further enable consolidated handling of VAT invoices for companies within a company group.
- Increase flexibility for intercompany financing within China and across borders.
- Facilitate corporate restructurings and relocations within China by providing further guidance to local authorities on preconditions, procedures and implications.

Introduction to the Working Group

The Finance and Taxation Working Group consists of a range of companies, from multinational corporations (MNCs) to law firms with operations in China. The working group's goal is to engage in an effective dialogue with regulators to develop an integrated set of taxation, finance and accounting rules in line with international best practices and standards. Accordingly, the working group's recommendations are not sector-specific but represent the interests of all European Chamber member companies.

Recent Developments

The working group welcomes the two-year extension of non-taxable allowances for foreign national employees jointly announced by the Ministry of Finance (MOF) and the State Taxation Administration (STA) on 31st December 2021.[1] However, this extension is set to expire on 31st December 2023. Over the past three years, China's COVID-19 control policies severely impacted business confidence and the number of foreign residents leaving the country.[2] Retaining the non-taxable allowances for foreign national employees would demonstrate China's commitment to attracting foreign talent and improving the business environment.

In recent years, the Chinese authorities promulgated new regulations and reinforced the existing tax administration, making it easier to pay taxes by implementing a preferential corporate income tax (CIT) rate for small enterprises, reducing the value-added tax (VAT) rate for specific industries and enhancing the electronic filing and payment system. On 30th December 2022, the National People's Congress (NPC) issued a notice to collect public comments on the VAT Law.[3] The draft release is an important milestone in China's VAT legislation process as it is the first to codify VAT-related rules into law. It aims to maintains a stable tax regulatory and policy framework while lowering the tax burden on businesses. The working group hopes that the final VAT Law will reduce the compliance costs of taxpayers as well as ensure tax certainty. However, introduction of this law alone does not ensure alignment with international standards, and measures to encourage the international competitiveness of businesses operating in Mainland China remain necessary.

1 *Announcement on the Continuation of the Implementation of Non-taxable Allowances of Individual Income Tax Policies for Foreign National Individuals*, MOF & STA, 31st December 2021, viewed 23rd April 2023, <http://szs.mof.gov.cn/zhengcefabu/202112/t20211231_3780374.htm>

2 A flash survey conducted by the European Chamber in April 2022 shows that 27 per cent of companies experienced difficulty in retaining staff as an immediate result of the pandemic control measures. See: *European Chamber Flash Survey on COVID-19 and the War in Ukraine: The Impact on European Business in China*, European Union Chamber of Commerce in China, 5th May 2022, viewed 22nd April 2023, <https://www.europeanchamber.com.cn/en/publications-flash-survey-2022>

3 *13 Draft Laws Called for Public Comments*, NPC, 30th December 2022, viewed 23rd April 2023, <http://www.npc.gov.cn/npc/kgfb/202212/15316721389e4a5483d056c2cc448b90.shtml>

Key Recommendations

1. Retain the Individual Income Tax (IIT) Exemption for Specified Non-cash Benefits for Foreign Employees in China

AUGUST 2023 SOLVED

Concern

Discontinuation of the IIT exemption for specified non-cash benefits, scheduled for 2024, will impose prohibitive additional costs for employers of foreign nationals, which is in contrast to China's strategies of further opening up, attracting foreign talent and boosting foreign investment.

Assessment

As per *Guoshuifa [1997] No. 54*, foreign national employees can enjoy IIT exemptions on non-cash benefits such as relocation costs, home flights, housing rental and children's school tuition, subject to reasonable limitations.[4] In 2018, the Chinese Government released *Caishui [2018] No. 164*, announcing that this exemption scheme was to abolished on 31st December 2021 and the non-cash benefits to become taxable.[5] However, with the *Announcement of the Ministry of Finance and the State Taxation Administration [2021] No. 43*, the abolishment of the IIT exemption scheme was postponed by two years to 31st December 2023.[6]

Terminating the existing regime will bring prohibitive extra costs to European and other foreign employees and enterprises (cost increases up to +81.8 per cent for the employer, see sample calculation). This will not only hamper the attraction and retention of foreign talent, but also negatively impact foreign investment into China.

Most foreign enterprises need high-calibre foreign expatriates to establish and upgrade their operations in China. In over 40 years of reform and opening up in China, foreign nationals have brought operational know-how, provided training, set up research and development centres, facilitated technology transfers, developed regional headquarters, promoted cultural exchanges and helped Chinese companies internationalise. In foreign companies, they are an essential link to overseas headquarters as they can explain the realities of China in an ever more challenging geopolitical environment. They, as well as their children and spouses, are some of China's strongest supporters, serving as goodwill ambassadors to the outside world.

If foreign employers and employees are to bear the costs of the existing non-taxable reimbursements after 2023, many companies will be unable to allocate the resources required to carry their investment plans through. As a consequence, companies might look for alternative investment destinations in neighbouring countries and regions that have more favourable tax treatments, such as Singapore and Hong Kong.

	Exemption treatment until 31st Dec 2023	Taxation treatment starting from 1st Jan 2024 (tax liability borne by employer)
Annual school fee for three children, e.g. CNY 750k per year	CNY 750,000	CNY 750,000
Annual housing rental fee for the family, e.g. CNY 300k per year	CNY 300,000	CNY 300,000
Total non-cash benefits	CNY 1,050,000 +81,8% →	CNY 1,050,000
Additional individual income tax burden	-	CNY 859,091[7] (= taxable benefit CNY 1,909,091 x 45%)
Total taxable benefit (including non-cash benefits and tax)	-	CNY 1,909,091[8] (= gross-up CNY 1,050,000 / [1-45%])
Total cost burden for employer per year[9]	CNY 1,050,000	CNY 1,909,091

Recommendation

- Retain the existing tax exemption regime for reasonable non-cash benefits for foreign nationals.

4 *Notice on the Implementation of Exemption of Relevant Subsidies for Foreign Nationals from Individual Income Tax of the State Taxation Administration*, STA, 9th April 1997, viewed 23rd April 2023, <http://www.chinatax.gov.cn/chinatax/n363/c1219/content.html>

5 *Notice on Questions on Arrangement of Relevant Preferential Policies After the Revision of Individual Income Tax*, STA, 27th December 2018, viewed 17th March 2023, <http://www.chinatax.gov.cn/chinatax/n810219/n810744/n3752930/n3752974/c3979016/content.html>

6 *Notice on Extension of Implementation of Exemption of Non-cash Benefits for Foreign Nationals from Individual Income Tax*, MOF & STA, 31st December 2021, viewed 23rd April 2023, <http://www.gov.cn/zhengce/zhengceku/2021-12/31/content_5665899.htm>

7 Chinese yuan (CNY) 859,091 = 45%* {CNY 1,050,000 / [1-45%]}

8 CNY 1,909,091 = CNY 1,050,000 / [1-45%]

9 1) IIT borne by the employer is a taxable benefit, so will increase the employer's tax burden (so-called "gross-up approach"); 2) Existing deduction schemes in the regular Chinese IIT regime for rental and education fees (so-called "special additional deductions") are far from reflecting actual costs, and hence are not included in the calculations due to their immaterial impact. 3) Such cost increases will hit the foreign community to its core, significantly impair the ability of Chinese employers to hire foreign nationals, and diametrically contradict China's strategy of further opening up, attracting foreign talent and boosting foreign investment.

2. Optimise the VAT Law (Draft) and Prevailing Regulations

Concern

The prevailing VAT policies do not accommodate the current diversity of businesses, causing extra VAT costs for companies.

Assessment

In 2019, the MOF and the STA released the draft VAT Law for public comments. After extensive feedback from various stakeholders, the draft VAT Law was submitted to the Standing Committee of the 13th NPC for first-round review in December 2022.[10] While the draft VAT Law includes some welcome steps forward, the working group would like to recommend the following areas also be considered.

Clarify the Chinese VAT Place-of-Supply Rules in the VAT Law

VAT neutrality in cross-border trade follows the 'destination' principle in Organisation for Economic Co-operation and Development (OECD) *International VAT/Goods and Services Taxes Guidelines*, which states that taxes should be collected in the country where the service is consumed.[11] The working group is reassured to see that the draft law indicates that the MOF and the STA intend to take a significant step in adopting the OECD guidelines into the Chinese VAT system, in particular by taking the place of consumption approach in determining whether a transaction has a place of supply within China, and by allowing refunds of excess input VAT credits.

However, further clarification of the determination of 'consumption' in the draft VAT Law is recommended. For example, the working group suggests that the primary place of supply for standard business-to-business services be defined as the place where the customer is located. In addition, exceptions should be included for services deemed to be consumed in China, such as real estate-related, transportation and entertainment services. This would mean that standard services provided by Chinese suppliers to overseas branches would generally not be subject to Chinese VAT. On business-to-customer services, the working group recommends that the primary place of supply be defined as where the supplier is established. However, exceptions should be included for services deemed to be consumed in the country where the customer is located, such as telecommunication and electronically provided services, transportation and entertainment services.

Optimise the Prevailing Export VAT Refund System

Enterprises' business activities have become increasingly diversified, due to advances in technology and changes in consumer demand. The current export VAT refund policies have yet to adapt to these diversified business models, raising the tax burden on exporting enterprises. Increasing numbers of manufacturing enterprises not only carry out manufacturing activities but also purchase goods from other suppliers for sale to their overseas customers to better accommodate their diversified needs. Under China's prevailing tax regulations, such exporters are only eligible for an "exempt, credit, refund" under certain strict conditions. In many cases, the conditions cannot be satisfied. Therefore, the working group recommends abandoning or relaxing the strict conditions to allow more manufacturing enterprises enjoy export VAT refund treatment on exportation of purchased goods.

Export VAT refund policies differ for manufacturing and trading enterprises. Trading companies are eligible for refunds on input VAT arising from the procurement of exported merchandise. However, they cannot claim other input VAT, such as that on testing equipment, consulting services, rentals and other operating costs. Some working group members report having been required by the Chinese tax authorities to transfer these types of input VAT out as costs. This leads to inequity of the VAT burden between manufacturing and trading enterprises. Therefore, the working group recommends revising the current tax regulations to apply the exemption, credit and refund policy to both manufacturing and trading companies.

Indirect export is a convenient customs measure provided to enterprises that engage in processing trade relief (PTR)[12] activities with the intention of selling the bonded finished goods to other PTR enterprises in China for further processing. From a customs

10 *The draft VAT Law is submitted for the first-round review,* NPC, 28th December 2022, viewed 10th April 2023, <http://www.npc.gov.cn/npc/c30834/202212/6a83a9d038f14388b050650ec8cc57b3.shtml>

11 Accordingly, the draft VAT Law provides that services are subject to VAT in China if either the service provider is in China or the service is consumed in China. This proposition differs from the current rule in which either the service provider or service recipient in China shall be subject to VAT (with an exclusion where the service wholly occurs outside of China).

12 Also known as deep processing transit, or factory transfer.

perspective, indirect export is considered export and import transactions, although the goods are not shipped out of China. However, for VAT purposes, indirect exports are not eligible for export VAT refund treatments. In addition, VAT treatments vary in different locations; for example, indirect exports are VAT exempted in South China, meaning the associated input VAT is not deductible and becomes VAT costs.

Eliminate Input VAT Recovery Limitation for Out-of-Scope Supplies

Input tax is defined in the draft VAT Law as the amount of VAT paid or borne by a taxpayer on a purchase in connection with a taxable transaction. Although the draft stipulates "in connection with a taxable transaction", this may lead to more uncertainty over input VAT recovery related to out-of-scope supplies such as dividend income or deposit interest.[13] Furthermore, based on international VAT standards, out-of-scope supplies should not, in principle, limit input VAT recovery as long as they are closely linked to a taxable activity of the taxpayer. Therefore, the working group suggests removing the phrase "in connection with a taxable transaction" in the input VAT definition to eliminate input VAT recovery limitation for out-of-scope supplies.

Expand the Scope of Zero-rating of Exported Services

As stated earlier, the application of the 'destination' principle in VAT achieves neutrality in international trade. Accordingly, the total tax paid in relation to a supply is determined by the rules applicable in the jurisdiction of its consumption, and all revenue accrues to the jurisdiction where the supply to the final consumer occurs. The draft VAT Law states that onshore VAT taxpayers can apply VAT at a zero rate for exported services within the scope allowed by the State Council. However, the draft does not provide a detailed list of eligible exported services. Currently, the rules for zero-rating services and goods are not applicable to all supplied services and goods. For example, financial services provided overseas are not zero-rated. The working group recommends implementing a zero per cent VAT rate for all services provided overseas, except those consumed inside China.[14]

Enable Non-resident Taxpayers to Register for VAT in China

To align the VAT position of Chinese companies with overseas companies, the working group recommends allowing non-resident taxpayers to register for VAT in China. This would enable overseas entities to claim back Chinese input VAT and fair competition on pricing between Chinese and overseas companies from a VAT perspective. Several other jurisdictions—such as Singapore and Thailand—have started putting in place simplified VAT registration mechanisms designed explicitly for taxing electronically supplied services by overseas entities.[15] The working group therefore recommends exploring the feasibility of implementing a similar mechanism in China.

Allow All Taxpayers to Claim the Input VAT incurred on Loan Interest

The working group notes that in the draft VAT Law released in December 2022, the disallowance of claiming input VAT credits on loan interest included in earlier drafts has been removed, which has been a welcome development. However, many businesses consider that uncertainty remains on this matter, as claiming input VAT credits on loan interest may still be disallowed by way of subsequent tax circulars, even if the VAT Law is finalised in its current form. An early clarification in this regard would help relieve businesses' concerns in this regard.

Allow Negative VAT Taxable Income of Financial Products to be Carried Forward to the Next Year

According to the current regulation, the difference between financial products' buying and selling prices is subject to VAT. A negative amount can be carried forward to the next quarter but not to the following year, which means that if such negative amounts are incurred in the last quarter of the year, they will be forfeited, even if VAT has been paid for a positive amount in the previous quarters of the same year. This has a detrimental impact on businesses, as it generates uncertainty and unfairness. It is less beneficial than the situation before the VAT reform when taxpayers could apply for business tax refunds under the same scenario.

13 Out-of-scope supplies refers to supplies that fall outside the scope of goods and services tax legislations, like sales in third countries or free trade zones, and private transactions.

14 See the first section for more details on place-of-supply rules.

15 *Thailand's application of VAT on digital services (e-services) provided by foreign operators will apply as of 1 September 2021*, EY Global, 6th August 2021, viewed 20th June 2023, <https://www.ey.com/en_gl/tax-alerts/thailand-s-application-of-vat-on-digital-services-e-services-provided-by-foreign-operators-will-apply-as-of-1-september-2021>

Recommendations

- Clarify the Chinese VAT place-of-supply rules in the draft VAT Law.
- Optimise the prevailing export VAT refund system.
- Eliminate input VAT recovery limitation for out-of-scope supplies.
- Expand the scope of zero-rating of exported services.
- Enable non-resident taxpayers to register for VAT in China.
- Allow all taxpayers to claim the input VAT incurred on loan interest.
- Allow negative VAT taxable income of financial products to be carried forward to the next year.

3. Take Prudent Steps in Consumption Tax Reform

Concern

Consumption tax regulations fail to adequately reflect China's current economic development and consumer habits, as evidenced by the scope, tax base and tax collection channels lagging behind the real economy, which results in an uncertain transition.

Assessment

China first imposed a consumption tax in 1994 on a selection of products, many of which were aligned with how excise duty was imposed in other countries.[16] Over the last three decades, the consumption tax has been reformed several times to reflect China's economic development and to guide consumer behaviour. For example, in December 2019, the draft Consumption Tax Law was released for public consultation.[17] In March 2021, the 14th Five-year Plan proposed to "adjust and optimise the scope and tax rate of consumption tax, move the taxation point to a later phase and gradually transfer to local authorities".[18] In November 2022, China introduced a consumption tax on e-cigarettes to curb their use, as these products may affect the health of teenagers.[19] While the working group welcomes these developments, further reforms should be implemented to reflect China's economic development adequately. Such reforms should prioritise increasing efficiency and equality, in particular in support of China's goal of common prosperity.

One significant update is the indication from the State Council that a pilot reform for consumption tax is to be implemented. The pilot reform programme is introduced in detail in the document *Guo Fa [2019] No. 21*,[20] which stipulates that it is to be applied to selected sectors to adjust the tax scope, rates and taxation points. The main purpose is for the consumption taxation point for some items, currently implemented at the production (import) stage, to be gradually moved down to the wholesale or retail stages, on the premise of controllable collection and management. The aim is to elevate local revenue sources and improve local consumption. However, to date, no clear timetable for this pilot programme has been issued, nor a list of items that will be included, although high-end watches and jewellery are mentioned as examples in *Guo Fa [2019] No. 21*.[21]

Previous rounds of the consumption tax reform were accompanied by little to no transition period from the old to the new policy. This causes companies a great deal of uncertainty, as they do not know if or when their products will be impacted, making it difficult for them to perform accurate stock management and planning. For example, for high-end consumer goods with a longer sales cycle, it may take years between a batch being imported and the same batch being sold. If a batch of such goods is imported before the consumption tax pilot reform takes effect, consumption tax will be paid when it is processed by customs (this portion of the tax revenue goes directly to the national treasury), and if the reform or pilot reform launches before the entire batch is 'consumed' at retail points, the remaining

16 *The Interim Regulations on Consumption Tax of the People's Republic of China (PRC) (Revised)*, State Council, 10th November 2008, viewed 23rd April 2023, <http://www.gov.cn/zwgk/2008-11/14/content_1149528.htm>

17 *Call for Comments on the Consumption Tax Law of the PRC (Draft for Comments)*, MOF, 3rd December 2019, viewed 23rd April 2023, <http://www.chinatax.gov.cn/chinatax/n810356/n810961/c5140457/content.html>

18 *Outline of the 14th Five-year Plan for National Economic and Social Development of the PRC and Long-Range Goals for 2035*, State Council, 13th March 2021, viewed 23rd March 2023, <http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm>

19 *Announcement of the State Administration of Taxation on Matters Related to the Collection and Administration of E-Cigarette Consumption Tax*, STA, 25th October 2022, viewed 23rd April 2023, <http://www.chinatax.gov.cn/chinatax/n360/c5182408/content.html>

20 *State Council Notice on the Issuance of Adjustment of Revenue Division Reform between the Central and Local Governments after the Implementation of Larger Tax Cuts and Fee Reductions*, State Council, 26th September 2019, viewed 23rd April 2023, <http://www.gov.cn/zhengce/content/2019-10/09/content_5437544.htm>

21 *State Council Notice on Implementation Action Plans on Reform of Revenue Adjustment between Central and Local Government After Large Scale Tax and Fee Cuts*, State Council, 26th September 2019, viewed 23rd April 2023, <http://www.gov.cn/zhengce/zhengceku/2019-10/09/content_5437544.htm>

goods will have to be taxed again individually (this part of the tax revenue goes to the local tax office). In other words, the same batch of goods would be subject to double consumption taxation. Moreover, the additional consumption tax would need to be adjusted into the retail price, thereby transferring the additional cost to consumers, damaging sales revenues and ultimately making the Chinese market less competitive and attractive for foreign investment.

Therefore, the working group recommends issuing a clear timetable and a reasonable transition period for the pilot programme as soon as possible to allow companies to adjust accordingly. Furthermore, in amending the draft Consumption Law, underlying problems in the national and local tax systems should be addressed to introduce a new set of clear and effective measures and systems for consumption tax collection.

The working group also recommends that the tax threshold on certain goods be re-assessed and re-adjusted to ensure it is in line with the country's economic development. In addition, the design Hainan Free Trade Port (FTP) sales tax regime is still under development, and the tax regime transition with the mainland consumption tax regime, the tax regime for new business types, preferential policies, and the scope of taxpayers remain unclear. Therefore, finalising the relevant policies as soon as possible is recommended.

Finally, regarding low-carbon and circular economy policies, the working group urges efforts to speed up the implementation of green transformation principles (for example, the reuse of plastic waste as a raw material) through tax incentives.[22] This could include consumption tax exemption on refined oil products (ROPs) made from recycled waste plastic, and 100 per cent VAT refunds on ROPs or chemical products made from waste plastics.

Recommendations

- Involve experts in discussions on standards and measurements and, where necessary, re-determine the scope of taxation.
- Publish in a timely manner the timetable and implementation rules for the various sectors enlisted in the Consumption Law reform pilot and provide a sufficient transition period.
- Improve the effectiveness of the nationwide tax system and synchronise tax systems at central and local levels.
- Review the applicable tax threshold, tax rates and taxation method to facilitate the macro-development strategies of specific industries in line with China's consumption reality and to better reflect international best practices.
- Accelerate the development of the sales tax regime for the Hainan FTP, integrate it with China's existing consumption tax regime, and promote its smooth transition to contribute to the success of the FTP.

22 In the European Chamber's *Carbon Neutrality* report, 22 per cent of European companies hoped to receive tax incentives for decarbonisation initiatives: *Carbon Neutrality: The Role of European Business in China's Race to 2060*, European Union Chamber of Commerce in China, p. 8, 25th May 2022, viewed 28th April 2023, <https://www.europeanchamber.com.cn/en/publications-archive/974/Carbon_Neutrality_The_Role_of_European_Business_in_China's_Race_to_2060>

4. Ensure Consistent Implementation of Taxation and Customs Policies at the Local Level

Concern

Inconsistent implementation of taxation and customs policies, such as on transfer pricing and double taxation, at the local level creates uncertainty and increases the costs for foreign companies in their daily operations.

Assessment

Transfer Pricing (TP)

Related parties' transactions and TP issues are areas of concern for tax bureaus and customs worldwide. China's customs have been conducting in-depth research on many hot topics in the field of valuation, such as 'imported goods royalties' and 'TP policies of MNCs'. The General Administration of Customs China (GACC) has constantly pushed the frontier of valuation theory research and improved the technical level of valuation theory. However, implementation of customs valuation and tax TP remains inconsistent, which increases costs for foreign enterprises in their daily operations.

Differences between TP and customs valuation in practice

For related parties' transactions involving imported goods, the customs and tax bureau will review whether the transaction price complies with the principle of independent third-party transactions. However, the concerns of the two authorities are not aligned. The transaction value of imported goods is the primary basis for customs to levy import taxes. The GACC is mainly concerned about the possibility of Chinese enterprises importing goods at prices below market value, which may result in a loss of import tax revenue. The GACC therefore pays more attention to the gross profit margin of related party transactions for specific goods. However, the profit of an importer, which is calculated after deducting the cost of purchase and expenses from the revenue, is often the basis for taxation by the STA. Therefore, the STA focusses on whether the import prices (purchase costs) are too high, which would result in a lower overall net profit for enterprises during a certain period and consequently lead to losses in CIT and other tax revenues. In addition, the lack of unified enforcement regulation has led to regional differences in practice. Not only does China's customs currently lack unified and practical regulations, implementation by customs in different regions also varies.[23]

According to the World Trade Organization's *Valuation Agreement*, enterprises are responsible for providing evidence during investigations of customs valuation-related cases.[24] However, enterprises may face difficulties in providing sufficient evidence. For example, annual TP comparable analyses are usually only conducted for the net profit margin, as is required by the STA. However, if customs authorities request details on the gross profit margin of specific goods, it may be difficult for enterprises to obtain valid comparable information as supportive evidence.[25]

Transfer pricing adjustments (TPA) that can be implemented from a taxation perspective may be difficult to execute effectively from a customs perspective. From a taxation perspective, TPA as either upward or downward can be effectively executed in principle. However, customs may not permit an enterprise to decrease the historical import price of goods for annual TPA. Conversely, customs generally accept increases in historical import prices of goods. In addition, following TPAs and corresponding tax payments for historical import prices of goods, the process of foreign exchange payment also poses significant challenges. The working group recommends exploring cooperation between customs and tax bureaus, such as customs respecting the results of any Bilateral Advance Pricing Arrangements (BAPAs) and Advance Pricing Agreements (APAs) when reviewing the profit level of enterprises.

There are further challenges in innovating and promoting collaborative management systems. On 18th May 2022, the Shenzhen Taxation Bureau and Shenzhen Customs issued *the Shen Guan Shui Notice [2022] No. 62*,[26] marking the introduction of a pilot mechanism to address the persistent problem of dual pricing recognition and repetitive taxation by customs and taxation authorities for related import transactions. However, acceptance of these measures is currently limited due to factors such as the diversity of enterprise business arrangements and varying levels of willingness among different local customs and tax authorities to collaborate.

Double Taxation

Double taxation occurs when assignees, who are considered as tax treaty residents of their home country according to Article 4 of the OECD double tax treaty model agreement,[27] work outside of their country of assignment.[28] According to the double tax treaties concluded between China and and several EU Member States, in such cases, the home country has the right to tax the employment income related to such working days exercised outside of the country of assignment.[29] When assignees of European companies meet the tax residency requirements of the relevant European countries, they are subject to personal income tax in Europe. At the same time, according to China's IIT Law, the employees are also liable for assuming IIT in China. Generally, the Chinese tax authorities will tax all "China-

23 For example, each local customs have its own standards when determining whether the TP of an enterprise is reasonable. This can lead to different evaluation results and adjustment scopes for the same TP arrangement in different local customs. Additionally, due to the lack of practical guidance documents from customs, enterprises may find themselves in a situation where they want to comply with regulations but are unsure how to do so. It is challenging for enterprises to provide sufficient evidence by themselves during the investigation and response process.

24 *Customs Valuation*, World Trade Organization, viewed 23rd April 2023, <https://www.wto.org/english/tratop_e/cusval_e/cusval_e.htm>

25 Although, in particular, some enterprises undertake specific risks and functions in their industry, customs may require them to provide information about other enterprises in the same industry that undertake similar risks and functions.

26 *Notice on Implementing Collaborative Management of Transfer Pricing for Related Import Goods by Shenzhen Customs, State Taxation Administration, and Shenzhen Taxation Bureau,* Shenzhen Customs & Shenzhen Taxation Bureau, 18th May 2022, viewed 13th June 2023, <http://urumqi.customs.gov.cn/shenzhen_customs/zfxxgk15/2966748/tzgg23/tztg79/4350171/index.html>

27 *Model Tax Convention on Income and on Capital*, OECD, 21st November 2017, <https://www.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-full-version_9a5b369e-en>

28 For instance, outside of Mainland China by undertaking business trips to their home country or third countries.

29 As indicated by Article 15 of the double tax treaty model agreement.

sourced income" during the assignment period.[30] Since assignees typically have one contract or position within the host entity in China only rather than having duties and responsibilities with the home entity, the Chinese tax authority will consider the entire employment income during their assignment as "China-sourced income" and treat it as fully taxable in China.

The working group understands that China has already reached bilateral agreements with several countries on avoiding double taxation.[31&32] According to OECD commentary of the double tax treaty model agreement concerning the taxation of employment income, "employment is exercised in the place where the employee is physically present when performing the activities for which the employment income is paid".[33] Such interpretation of double tax treaties provides the basis of IIT collection in most home countries (including several EU Member States) and results in taxation of workdays the assignees physically spend outside of Mainland China. However, as China is not an OECD member, the Chinese tax authorities may only consider Chinese tax laws and regulations in practice, which means the "China-sourced income" regarded by Chinese tax authorities during a foreign national employee's physical presence outside of Mainland China would be taxed in both China and the home country.

Recommendations

Transfer Pricing

- Strengthen the relationship and collaboration between customs and tax bureaus, especially at the local level following Shenzhen's best practice.
- Explore cooperation between customs and tax bureaus, such as respecting the results of BAPAs and APAs, when customs review the profit level of enterprises.
- Build clear and operable enforcement regulations to avoid differences in implementation by different customs authorities.
- Consider reasonable analysis of related parties' transaction price of import and export goods when customs conduct reviews of TP or review TP documents.

Double Taxation

- Provide further clarification on bilateral agreements to avoid double taxation and clearly define the applicable conditions for non-double taxation.
- Execute the bilateral agreements and refund the duplicated portion of IIT.

5. Enhance Administrative, Fiscal and Organisational Efficiency for MNCs Investing in China

Concern

MNCs still face inefficiencies in tax matters from administrative, fiscal and organisational perspectives, which adds to their labour and costs.

Assessment

Multinational investors in China commonly maintain multiple legal entities spread over different domestic locations to serve the market while carefully evaluating the administrative and actual costs of doing so. Per current CIT regulations in China, each legal entity must file its own annual CIT return, with CIT being separately assessed and levied regardless of all legal entities belonging to the same group of companies. However, many other jurisdictions offer consolidated CIT regimes that allow companies within the same group to file a consolidated annual return and pay CIT on that basis. This helps reduce administrative efforts and eliminates complexities around transfer pricing within the company group. Moreover, such a concept may fit into the Chinese holding company (CHC) regime. Therefore, the working group recommends allowing consolidated CIT filing for CHCs with their wholly owned subsidiaries in China.

While China is a world leader in standardised VAT invoicing systems, official VAT invoices (*fapiaos*) can only be issued within the jurisdiction of the tax authority in charge. For groups of companies in China, this

30 "China-sourced income" is calculated by the number of days a foreign employee physically performs working and non-working activities inside and outside of mainland China during the assignment period.

31 *Agreement Between the People's Republic of China and the Federal Republic Of Germany for the Avoidance of Double Taxation With Respect To Taxes On Income And Capital*, STA, 28th March 2014, viewed 23rd April 2023, <http://www.chinatax.gov.cn/n810341/n810770/c1153094/5026999/files/b8727fafc4cc431fb9d1ae2a4ec4a61c.pdf>

32 For instance, according to Article 15(1) of the *Agreement Between the People's Republic Of China and the Federal Republic Of Germany for the Avoidance Of Double Taxation With Respect to Taxes on Income and Capital*, "salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State." Namely, salaries, wages and other similar remuneration derived by the employee as a tax resident of Germany shall be taxed in Germany only unless the employment is exercised in China.

33 OECD (2017), "Commentary on Article 15", in *Model Tax Convention on Income and on Capital: Condensed Version 2017*, OECD Publishing, Paris, viewed 23rd April 2023, <https://doi.org/10.1787/mtc_cond-2017-18-en>

implies that each legal entity must maintain separate invoicing capability, which is inefficient and contradicts the government's aim of centralising administrative services. Considering the national character of VAT and the trend towards electronic invoicing—which emerged in China in 2015—strengthening the full adoption of electronic invoicing and allowing consolidated handling of VAT invoices nationwide is recommended.

Given the importance of cashflow in business, multinational investors need the flexibility to move cash according to business needs among their legal entities both within China and across borders. In China, two aspects restrict cashflow within company groups: the application of VAT on interest charges (without the availability of input credit); and the tightly restricted framework of intercompany loans and cash pools, both within China and across borders. The working group recommends increasing the flexibility for intercompany financing, both within China and across borders.

Where investors maintain multiple legal entities, changes in the business environment may need to be reflected in the legal entity structure within the company group; for example, through mergers, splits, share transfers or similar activities, but also concerning relocation within China. Relocations of legal entities within China typically fall between the competence of the authorities of the old and new locations. Therefore, promulgating further guidance for local authorities on handling such cases is recommended. Furthermore, in cases of legal entity restructurings, even when assets remain within the group of companies, tax implications can be severe and prohibitive, while preconditions for tax-deferred treatment are demanding and ambiguous. Publishing further guidance on unclear preconditions and opening additional restructuring scenarios under tax-deferral treatment—such as upstream and side-stream transfers of shares within the group, both domestic and cross-border—would help to clarify matters.

Recommendations

- Allow consolidated CIT filing for CHCs with their wholly owned subsidiaries in China.
- Strengthen the full adoption of electronic invoices and further enable consolidated handling of VAT invoices for companies within a company group.
- Increase flexibility for intercompany financing within China and across borders.
- Facilitate corporate restructurings and relocations within China by providing further guidance to local authorities on preconditions, procedures and implications.

Abbreviations

APA	Advance Pricing Agreement
BAPA	Bilateral Advance Pricing Arrangement
CHC	Chinese Holding Company
CIT	Corporate Income Tax
CNY	Chinese Yuan
FTP	Free Trade Port
GACC	General Administration of Customs China
IIT	Individual Income Tax
MNC	Multinational Corporation
MOF	Ministry of Finance
NPC	National People's Congress
OECD	Organisation for Economic Co-operation and Development
PRC	People's Republic of China
ROP	Refined Oil Product
STA	State Taxation Administration
TP	Transfer Pricing
TPA	Transfer Pricing Adjustment
VAT	Value-added Tax

Human Resources Working Group

Key Recommendations

1. Retain the Individual Income Tax (IIT) Exemption for Specific Non-cash Benefits Provided to Foreign Employees in China

- Retain the IIT exemption for specific non-cash benefits provided to foreign national employees in China.

2. Enhance Workforce Flexibility and Modernise Chinese Labour Laws

- Update the current Labour Law and related regulations in order to provide clear guidelines on the obligations and responsibilities of flexible work modes.
- Find practical solutions for employers to provide social insurance for employees hired in different locations where the company is registered or doing remote work.
- Apply the same statutory standards to all employees and ensure a uniform interpretation of the law is implemented at different locations.

3. Facilitate the Mobilisation of International Talent Between China and the European Union (EU)

- Waive the antigen rapid test requirement from the pre-departure process.
- Lift the requirement of declaring a negative test result to China Customs.
- Discontinue post-arrival random sampling inspections.

4. Improve Employee Data Protection Regulations

- Comply with the statutory law on collecting personal information of individuals.
- Perform notification obligations to the individuals involved according to statutory law in order to fulfil legal obligations and duties.
- Review the types of personal information collected in daily work to ensure that it is limited to the minimum scope necessary for achieving government work purpose to avoid excessive collection.
- Find alternatives for real-name authentication to identification card numbers where possible

5. Enhance the Development of Practical Knowledge, Soft Skills, and Access to Vocational Training Institutions

- Review and update the most popular courses and training provided through technical schools, colleges and universities on digitalisation, intelligent manufacturing and advanced operations.

6. Expand Incentives in Order to Encourage More Young Talent to Remain and Reside in Tier-one Cities

- Enhance subsidies to science, technology, engineering and mathematics (STEM) students in tier-one cities during their three-year university programme, allowing talent with qualifications

below doctorate degrees to remain in the cities post-graduation.
- Guide young STEM engineers towards a quick, safe and affordable move to tier-one cities and facilitate their integration and that of their families into the local society.

Introduction to the Working Group

Through nurturing people and effectively managing labour relations, human resources (HR) departments play a critical role in engaging the workforce to increase business capacity, particularly amid major disruptions. HR departments have also come to play an increasingly important role in such areas as corporate social responsibility, sustainability and workplace ethics. At the same time, today's rapid technological innovation and socio-economic changes require greater adaptability from employees for companies to get ahead in an ever more dynamic work environment.

The Human Resources Working Group represents European companies employing hundreds of thousands of people who contribute to tax and social security funds in China. The working group aims to provide a platform for exchanging information, experiences and best practices among member companies, as well as to promote awareness of HR issues by facilitating an open dialogue with enterprises and relevant Chinese authorities. The working group tracks labour-related policies and advocates for initiatives that advance organisational development, improve the health and well-being of staff, and strengthen stakeholder collaboration, in an effort to contribute to China's development goal of creating more employment opportunities in a stronger national economy.

Recent Developments

Protection of Rights and Interests of Women in the Workplace

The Law of the People's Republic of China (PRC) on the Protection of Rights and Interests of Women was amended and became effective on 1st January 2023.[1] It included some new statutory requirements for employers in relation to the protection of the rights and interests of women in the workplace.

For example, to help prevent sexual harassment against women in the workplace, employers must:
- establish relevant rules and regulations;
- appoint an internal body or person responsible for implementing the preventative measures;
- carry out relevant training, and take the necessary measures to safeguard female employees' rights;
- establish investigation procedures to handle disputes in a timely manner and protect personal privacy; and
- support and assist female victims in safeguarding their rights, and provide psychological counselling to female victims where necessary.

If an employer fails to take necessary measures in preventing sexual harassment, resulting in the infringement of women's rights or negative impacts on society, the employer may be ordered by the competent authority to make rectifications. If the employer refuses to rectify the situation or if it is a serious violation of the law, the person directly responsible and other persons directly responsible within the company may be sanctioned in accordance with the law.

As part of the recruitment process, employers are explicitly prohibited from doing any of the following:
- Hiring only men or specifying that men are preferred
- Inquiring or investigating into the marital status and birth of a child of a job applicant
- Requiring a pregnancy test
- imposing restrictions on marriage or childbirth as a condition of recruitment
- Other acts consisting of refusing to recruit women because of their gender or raising recruitment standards for women in any way.

During employment, employers shall adhere to the principle of equality between male and female employees in terms of salary and benefit treatment or when deciding

1 The PRC Law on Protection of Rights and Interests of Women, National People's Congress (NPC), 30th October 2022, viewed 25th May 2023, <http://www.npc.gov.cn/npc/c30834/202210/d80092ae46b24946b30b3a880c2f2be5.shtml>

on promotions, evaluating and recognising professional titles, or providing training opportunities. In particular, the marriage status of female employees, or the fact that they are pregnant, on maternity leave or nursing a baby, should not affect their consideration for promotion or training opportunities, or the evaluation and recognition of their professional titles. In addition to not reducing female employees' salaries during the pregnancy, maternity or nursing periods, employers shall not reduce female employees' welfare benefits during these periods.

Employers must organise regular health checks for their female employees, including gynaecological and breast checks, as well as other examinations specifically required for women.

Employers shall include special protection clauses for female employees in their employment contracts, and shall not impose restrictions on their marriage and childbirth. The collective contracts concluded by and between the employer and the employees shall contain provisions regarding gender equality and the protection of female employees' rights and interests.

Article 49 of the law stipulates that gender equality in the workplace shall be included in the scope of labour protection supervision conducted by the labour administrative department. Due to this change, rather than having to go to labour arbitration as was previously the case, female employees can now make complaints directly to the competent labour administrative authority. If the complaint is verified, the authority is entitled to ask the employer to make rectifications. If the employer refuses to do so, or the circumstances of the case are of a serious nature, the authority can impose a penalty of Chinese yuan (CNY) 10,000 to CNY 50,000.

Change of Social Insurance Policies

The *PRC Social Insurance Fund Administrative Supervision Measures*,[2] which became effective on 18th March 2022, specify the situations in which a company or an individual will be deemed as obtaining social insurance benefits by cheating, such as participating in a social insurance scheme using fake personal information or based on a fake labour relationship, applying for pension benefits with fake personal files, or applying for work-related injury benefits with false work-related injury accident or fake supporting documents. In such cases, according to the PRC Social Insurance Law, the individual can be required to return the social insurance benefits and the company can be subject to a penalty amounting to two to five times the social insurance benefits.[3]

Prior to the release of these measures, many HR agencies would provide social insurance services for employees who worked remotely or in locations other than the registered location of their company's business units. Following the release of the measures, HR agencies have stopped providing such services, which may be construed as fake labour relationships. As companies are only legally entitled to provide social insurance for employees located in their business units, they no longer have any options for providing employees that work remotely or in other locations, which is of great inconvenience for both these employees and their companies.

Preferential Policies on Unemployment and Work-related Injury Insurances Extended Until the End of 2024

In 2016, the Chinese Government temporarily reduced the contribution rates of unemployment insurance and work-related injury insurance to reduce costs on enterprises.[4] According to the policy, the total contribution rates of unemployment insurance for both the employer and employee should be one per cent and the rate applicable to the employee should not be higher than that applicable to the employer. As for the contribution rate of the work-related injury insurance, it was reduced by 20 per cent to 50 per cent, subject to the financial status of the local work-related injury insurance fund. This policy has a limited period of validity, and its extension is dependent on the government's decision.

On 29th March 2023, the Ministry of Human Resources and Social Security (MOHRSS), the Ministry of Finance (MOF) and the State Taxation Administration (STA) jointly issued the *Notice Regarding Issues in Relation*

2 *The PRC Social Insurance Fund Administrative Supervision Measures,* Ministry of Human Resources and Social Security (MOHRSS), 9th February 2022, viewed 25th May 2023, <http://www.mohrss.gov.cn/xxgk2020/gzk/gz/202202/t20220221_436454.html>

3 PRC Social Insurance Law, NPC, 7th January 2023, viewed 25th May 2023, <http://www.npc.gov.cn/npc/c30834/201901/4a6c13e9f73541ffb2c1b5ee615174f5.shtml>

4 *Notice on Periodic Reduction of Social Insurance Premiums*, MOHRSS, 20th April 2016, viewed 12th July 2023, <https://www.gov.cn/xinwen/2016-04/20/content_5066089.htm>

to Temporary Reduction of Contribution Rates of Unemployment and Work-related Injury Insurance.[5] According to this notice, China will maintain the reduced contribution rates of unemployment and work-related injury insurance until the end of 2024.

Personal Pension

According to the *Opinions on Promoting the Development of Personal Pension*,[6] released on 8th April 2022, as well as *the Measures on Implementation of Personal Pension*,[7] released jointly on 4th November 2022 by the MOHRSS and five other authorities, labourers who participate in the basic pension insurance for urban employees or basic pension insurance for urban residents can participate in the PRC personal pension scheme and choose from a variety of financial products. Such financial products—such as bank financial products, savings deposits, commercial pension insurance, public funds, among others—should be safe, mature and stable with standardised targets, focussing on long-term value preservation and meeting the preferences of different investors. The capital and interests accrued from the financial products can be withdrawn as personal pensions after retirement.

Currently, an individual may contribute to a personal pension up to a total amount of CNY 12,000 each year while also enjoying deferral individual income tax (IIT) treatment. This threshold may be adjusted from time to time by the MOHRSS and the MOF in accordance with the level of economic and social development as well as the overall maturation of the Chinese pension system.

Key Recommendations

1. Retain the IIT Exemption for Specific Non-cash Benefits Provided to Foreign Employees in China

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Concern

The cancellation of the current IIT exemption for specified non-cash benefits would impose discouraging additional costs on all European companies operating in China and their employees, while also impeding the mobility of foreign talent.

Assessment

In 1997, the STA issued the *Guofashi [1997] No. 54 Notice on the Implementation of Exemption of Relevant Subsidies for Foreign Nationals from Individual Income Tax*, announcing the non-cash benefits for foreign nationals that were exempted from IIT.[8] These include costs for home flights, housing rental and children's school tuition, subject to reasonable limitations. Given the higher cost of living and education for foreign employees' families in China, the tax exemption policy plays a crucial role in attracting skilled foreign nationals to live and work in the country. In 2018, the Chinese Government announced with *Caishui [2018] No. 164* that this exemption scheme was to abolished on 31st December 2021, and the non-cash benefits to become taxable.[9] However, on 31st December 2021, with the joint MOF and STA *Announcement [2021] No. 43,* the scheme was extended to 31st December 2023. The Human Resources Working Group welcomed and supported this decision, which demonstrated China's commitment to attracting and retaining foreign investment and talent. Nonetheless, the extension of the IIT exemption scheme is due to expire at the end of 2023, which is a cause for great concern among employers of foreign nationals, as the above-mentioned allowances will soon be subject to personal income tax. Terminating the existing system would impose discouraging additional costs on European and other foreign national employees and companies.[10] This not only hinders the attraction and retention of foreign talent but also has a negative impact on foreign investment in China.

In recent years, the global flow of foreign direct investment has been significantly affected by the COVID-19 pandemic and escalating geopolitical tensions. This has presented unprecedented challenges for China in attracting foreign investment. If China

5 *Notice Regarding Issues in Relation to Temporary Reduction of Contribution Rates of Unemployment and Work-related Injury Insurance,* MOHRSS, 29th March 2023, viewed 25th May 2023, <http://www.mohrss.gov.cn/SYrlzyhshbzb/shehuibaozhang/zcwj/202303/t20230330_497764.html>

6 *Opinions on Promoting the Development of Personal Pension*, State Council, 8th April 2022, viewed 12th July 2023, <https://www.gov.cn/zhengce/content/2022-04/21/content_5686402.htm>

7 *Measures on Implementation of Personal Pension,* MOHRSS, 4th November 2022, viewed 25th May 2023, <http://www.mohrss.gov.cn/xxgk2020/fdzdgknr/shbx_4216/ylbx/202211/t20221104_489352.html>

8 *Notice on the Implementation of Exemption of Relevant Subsidies for Foreign Nationals from Individual Income Tax of the State Tax Administration*, STA, 9th April 1997, viewed 5th July 2023, <http://www.chinatax.gov.cn/chinatax/n363/c1219/content.html>

9 *Notice on Questions on Arrangement of Relevant Preferential Policies After the Revision of Individual Income Tax,* STA, 27th December 2018, viewed 17th March 2023, <http://www.chinatax.gov.cn/chinatax/n810219/n810744/n3752930/n3752974/c3979016/content.html>

10 Employer costs will increase up to +81.8 per cent. For more information on the figures, please refer to the *Financial and Taxation Working Group Position Paper 2023/2024* on page 49.

aims to successfully attract high-level overseas talent and enhance its innovation capabilities, it is crucial to establish and maintain a vibrant and diverse foreign community with experienced international professionals.

Most foreign enterprises need high-calibre foreign expatriates to establish and upgrade their operations in China. In over 40 years of reform and opening up in China, foreign nationals have brought operational know-how, provided training, set up research and development centres, facilitated technology transfers, developed regional headquarters, promoted cultural exchanges and helped Chinese companies internationalise. In foreign companies, they are an essential link to overseas headquarters as they can explain the realities of China in an ever more challenging geopolitical environment. They, as well as their children and spouses, are some of China's strongest supporters, serving as goodwill ambassadors to the outside world.

The cancellation of the current tax exemption policy will significantly increase the HR costs for businesses and have a negative impact on the employment of foreign experts and talent in China. The country will lose its attractiveness for international talent seeking employment, making it more challenging to attract foreign national professionals such as engineers and technicians. If the tax incentives for foreign employees are revoked, the resulting rise in labour costs and the HR shortages will make it more difficult to hire foreign experts and undertake investment projects in China, and have adverse effects on investment decisions.

Recommendation

- Retain the IIT exemption for specific non-cash benefits provided to foreign national employees in China.

2. Enhance Workforce Flexibility and Modernise Chinese Labour Laws 9

Concern

The current Labour Law, Labour Contract Law,[11] and related social security policies need updating in order to provide clear guidelines and fair regulations on hiring employees in flexible, part-time ways.

11 Labour Contract Law, MOHRSS, 28th December 2012, 25th May 2023, <http://www.mohrss.gov.cn/xxgk2020/fdzdgknr/zcfg/fl/202011/t20201102_394622.html>

Assessment

Home office and hybrid working modes have become increasingly popular in recent years. However, as such working modes are not yet addressed in China's current labour laws and regulations, there is no clear legal basis that can be followed by employers that need or want to arrange for employees to work in a flexible way. The rights and obligations of both employers and employees under such flexible work modes are not indicated clearly in any regulation. This is of particular concern for employees on a comprehensively calculated or flexible working time system, as their time of rest cannot be guaranteed.

Furthermore, the current Social Insurance Law only allows employers to provide social insurance for employees at the locations where the enterprise's business units are established.[12] Based on the newly issued *PRC Social Insurance Fund Administrative Supervision Measures* (see the Recent Developments section), employers are not able to provide social insurance for the employees located in other places. This make expanding business to other locations or adopting remote work in China difficult, because if one or two employees are in a particular location, to provide social insurance for them there, an employer has to set up a business unit in that location, which will be very costly.

In addition, current regulations do not adequately reflect recent legislative developments. For example, the Labour Law (revised 2018)[13] still refers to a 44-hour week despite 40 hours now being the standard. The Labour Law also stipulates a 60-day deadline for filing a labour dispute, although the Labour-dispute Mediation and Arbitration Law (2008)[14] provides for a one-year deadline. Interpretation of the Labour Law also differs across cities in China; for example, the Shanghai Higher People's Court allows an employer to terminate employment without specifying a reason after the expiry of the second fixed-term contract, whereas the Beijing Higher People's Court expressly denies the employer this very right.

12 Social Insurance Law, MOHRSS, 29th December 2018, viewed 25th May 2023, <http://www.mohrss.gov.cn/xxgk2020/fdzdgknr/zcfg/fl/202011/t20201102_394629.html>

13 Labour Law, MOHRSS, 29th December 2018, viewed 25th May 2023, <http://www.mohrss.gov.cn/xxgk2020/fdzdgknr/zcfg/fl/202011/t20201102_394625.html>

14 Labour Dispute Mediation and Arbitration Law of the PRC, State Council, 29th December 2007, viewed 26th May 2023, <https://www.gov.cn/flfg/2007-12/29/content_847310.htm>

Recommendations

- Update the current Labour Law and related regulations in order to provide clear guidelines on the obligations and responsibilities of flexible work modes.
- Find practical solutions for employers to provide social insurance for employees hired in different locations to where the company is registered, or doing remote work.
- Apply the same statutory standards to all employees and ensure a uniform interpretation of the law is implemented at different locations.

3. Facilitate the Mobilisation of International Talent Between China and the European Union (EU)

Concern

The requirement of pre-boarding antigen tests for all China-bound passengers increases unnecessary costs and time for companies and individuals when planning travel between China and the EU, which discourages talent mobilisation, especially for exiting and entering mainland China.

Assessment

On 5th May 2023, the World Health Organization (WHO) stated that COVID-19 is now an established and ongoing health issue which no longer constitutes a public health emergency of international concern.[15] On 25th April 2023, the authorities in Mainland China had announced that the requirement for all in-bound passengers to present a negative COVID-19 polymerase chain reaction (PCR) test before boarding would be rescinded, and replaced with a requirement to take an antigen rapid test (ART) 48 hours before boarding their flight.[16] If travellers receive a positive test result, they should only travel to China when they once again test negative for COVID-19. While airlines are no longer obliged to check the COVID-19 test results of passengers, all inbound passengers are required to declare their negative test result to China Customs by filling out a Health Declaration Form on the customs WeChat mini-programme or website.

The waiver of the COVID-19 PCR test requirement is welcomed, as it simplifies the process for the entry of overseas talent to China. Prior to this facilitation, the PCR test requirement has been a major concern for overseas talent to travel to China, as the uncertainty and inconvenience made it difficult to manage business trips between member companies' European headquarters and their China subsidiaries.

The working group is pleased to see such positive steps being taken to reduce international travel restrictions, after having continuously advocated for this at both central and local government levels since the Omicron variant of COVID was proven by the WHO to be much less virulent than the Delta variant. However, at the time of writing, the Chinese Government has yet to remove the pre-departure ART requirement and post-arrival random sampling inspections.

Recommendations

- Waive the ART requirement from the pre-departure process.
- Lift the requirement of declaring a negative test result to China Customs.
- Discontinue post-arrival random sampling inspections.

4. Improve Employee Data Protection Regulations

Concern

Repeatedly collecting personal information beyond the scope of the law can easily lead to personal information leaks.

Assessment

Although government organisations or public institutes are allowed to process the personal information of individuals without their consent for statutory duties and obligation purposes, the PRC Personal Information Protection Law still requires that they comply with the rules of lawfulness, legitimacy, necessity and good faith.[17] For example, the personal information collected should be limited to the minimum scope necessary for achieving the purpose of processing. Even if an individual's consent is not required, government organisations and public institutes should still expressly and clearly notify the individual about the types of

15 *WHO chief declares end to COVID-19 as a global health emergency,* United Nations, 5th May 2023, viewed 26th May 2023, <https://news.un.org/en/story/2023/05/1136367>

16 *Ministry of Foreign Affairs spokesperson: From 29th April, airlines will no longer check China-bound passengers' pre-board COVID-19 test results*, State Council, 25th April 2023, viewed 12th July, <https://www.gov.cn/lianbo/2023-04/25/content_5753142.htm>

17 Personal Information Protection Law of the PRC, NPC, 20th August 2021, viewed 26th May 2023, <http://www.npc.gov.cn/npc/c30834/202108/a8c4e3672c74491a80b53a172bb753fe.shtml>

personal information involved, the processing purpose and method, retention period, employee's legal rights, the contact person, and so on, except in cases where the processing is confidential according to law or in cases of emergency.

However, in practice, when government organisations and public institutes collect an individual's personal information, they do not fulfil their notification obligation, or they ask for additional personal information unnecessary for their processing purposes. For example, in many places, the identification (ID) card numbers of individuals are widely collected when they need to enter into certain areas, though providing ID card number is not the only method for real-name authentication. Since ID card numbers contain different kinds of personal information, widely collecting ID card numbers of individuals can easily cause the person's information to be leaked. In some places—for example, Shenzhen—when foreign national employees apply for a work permit or a residence permit, they are required to provide sensitive personal information—such as religion, fingerprints, among others—which are unnecessary for the issuance of work and residence permits. Further, when government organisations collect the personal information of foreign employees for issuing work and residence permits, they do not notify the employees about the purpose of collecting such information, how they will process it, how long they will keep the data, and so on.

Recommendations

- Comply with the statutory law on collecting the personal information of individuals.
- Perform notification obligations to the individuals involved according to statutory law to fulfil legal obligations and duties.
- Review the types of personal information collected in daily work to ensure that it is limited to the minimum scope necessary for achieving government work purpose to avoid excessive collection.
- Find alternatives for real-name authentication to ID card numbers where possible.

5. Enhance the Development of Practical Knowledge, Soft Skills and Access to Vocational Training Institutions 5

Concern

The labour market is currently unable to meet the growing need for highly skilled workers as a result of the rapid rate of modernisation in the manufacturing industry.

Assessment

Vocational schools in China offer courses covering supply chain management, lean manufacturing, cost basics, total productive maintenance, production material control, purchasing management, information technology application in manufacturing and leadership, among others. The main focus is on theoretical general training. As the needs of vocational education students have changed very fast over the past decade, the Human Resources Working Group recommends that the standards of vocational education and teaching, and guidance on the design of updated teaching materials for vocational schools be updated, in accordance with the updated Vocational Education Law.[18] The most popular vocational training courses currently available need further synchronisation with industrial development and technical trends.

In addition to the need for updating and adjusting the curriculum of vocational schools, more practical training for vocational education students is required. Recent graduates in China who wish to pursue a career in technical fields generally start from entry-level positions as basic operators. Though graduates may be unwilling to start their career as an operator, working group members report that this is necessary because, upon graduation, technicians are often ill-equipped to carry out their first job with efficiency and quality. Companies generally need to provide graduates with a minimum of one year of additional training, focussing on areas such as machinery, electronics, automation, and environment, health and safety (EHS), in order for them to meet the demands of their technical roles.

Article 5 of the Made in China 2025 initiative, released on 8th May 2015, highlights the need to establish a

18 Law of the PRC on Vocational Education, NPC, 20th April 2022, viewed 25th May 2023, <http://www.npc.gov.cn/npc/c30834/202204/04266548708f44afb467500e809aa9cf.shtml>

comprehensive multi-level talent development system.[19] It emphasises the strengthening of vocational education and skills training, and encourages the exploration of establishing international training bases. As illustrated above, there is currently a gap between the abilities of students trained in China's vocational colleges and the actual needs of enterprises, which indicates that policies are not being implemented effectively.

In contrast, European companies have demonstrated good practices and mechanisms in this regard, gained from experiences in European countries, which recognise that exchanges on and promotion of vocation education are vital to achieving long-term development goals. Improving collaboration and communication in vocational technical sectors, along with experience-sharing seminars, will bring benefits to both enterprises and the whole industry. Vocational courses can provide training in vital skills such as electrical engineering, machining and assembly, Industry 4.0, technology upgrading and manufacturing standards. Employees that receive vocational education are more likely to become skilled technical specialists and go on to find work in various technical sectors.

Recommendation

- Review and update the most popular courses and training provided through technical schools, colleges and universities on digitalisation, intelligent manufacturing and advanced operations.

6. Expand Incentives in Order to Encourage More Young Talent to Remain and Reside in Tier-one Cities

Concern

Young science, technology, engineering and mathematics (STEM) talent with qualifications below doctorates lack the financial means to live in tier-one cities, where their expertise is most needed.

Assessment

The *Attractiveness Report of Tier One Cities 2022* report,[20] published by the leading Chinese high-end recruitment platform Liepin, shows that young talent tend to choose employment opportunities in the 'new tier-one cities'—cities that are increasingly attracting commercial and investment interest, such as Hangzhou, Chengdu and Suzhou—rather than the original tier-one cities of Beijing, Shanghai, Guangzhou and Shenzhen. According to Liepin's analysis, job applications in the new tier-one cities grew from 31.52 per cent in 2017 to 35.03 per cent in 2021, while the rate in tier-one cities fell during the same period. The report also highlights the growing importance of retention in the tier-one cities, particularly in 2022, when zero-COVID measures led to a halt in the inflows of talent for the first time. While some consider this temporary and due to the impact of the pandemic, it is clear that young people are now more prepared to return to their home town or city, or to the cities where they received their most recent education, in order to achieve a better standard of living, as the huge cost of living in the tier-one cities is not offset by higher incomes. As a result, competition to attract young talent is fierce among cities in China. For example, the *Hangzhou City Report* [21] outlines that city's efforts to attract talent through policies providing benefits for young people with a college education.

The ageing of Chinese society is also a common concern nowadays. At the end of 2022, China's population was recorded at 1.4 billion, down 850,000 year-on-year.[22] That was the first drop in population growth since 1961. Such demographic changes will make it even more important to attract young talent through incentives such as employment, lodging, affordable accomodation and resident permits. A city with sustainable growth should be able to offer young people stable career opportunities, good levels of disposable income and social insurance, and reputable and competent employers in STEM sectors such as the Internet of Things, new materials, green energy and digitalisation.

Housing fees and commuting costs are high in tier-one cities, meaning that young STEM graduates with qualifications below doctorates cannot settle down in these locations without additional financial support from their families. For those that graduate from universities in tier-one cities, the cost of living during university years affects their subsequent ability to finance setting

19 *Circular of the State Council on Printing and Distributing Made in China 2025*, State Council, 19th May 2015, viewed 4th July 2023, <http://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm>

20 *Attractiveness Report of Tier 1 Cities 2022*, Liepin, 22nd February 2022, viewed 25th May 2023, <http://www.techweb.com.cn/it/2022-02-22/2879689.shtml>

21 *Hangzhou city report*, Hangzhou Investment Promotion Bureau, 19th May 2023, 25th May 2023, <http://tzcj.hangzhou.gov.cn/art/2023/5/19/art_1621408_58892543.html>

22 *Wang Pingping: The Total Population Has Slightly Decreased, And the Level of Urbanization Continues to Increase*, National Bureau of Statistic, 18th January 2023, viewed 13th July 2023, <http://www.stats.gov.cn/xxgk/jd/sjjd2020/202301/t20230118_1892285.html>

up a new family. Therefore, a trend is emerging: young STEM talent that have been living in tier-one cities for one to three years for university are returning to their home town post-graduation to find better living conditions.

Some cities have already recognised the problem and are adopted regulations to address it. For example, Shenzhen has established *Regulations on Talent Work in Shenzhen Special Economic Zone*.[23] Clause 57 of this regulation requires relevant departments of the city and district to, in accordance with their respective responsibilities, provide convenient services for talent attraction, children's education, spouse employment, medical care, as well as visas and residency for foreigners coming to China, and to implement relevant benefits.

However, the cost of living in Shenzhen remains unaffordable for most STEM graduates. Establishing policies will not be enough if they are not accompanied by sufficient concrete measures to enable young STEM talent to work and live in tier-one cities.

Recommendations

- Enhance subsidies to STEM students in tier-one cities during their three-year university programme, allowing talent with qualifications below doctorate degrees to remain in the cities post-graduation.
- Guide young STEM engineers towards a quick, safe and affordable move to tier-one cities and facilitate their integration and that of their families into the local society.

Abbreviations

ART	Antigen Rapid Test
CNY	Chinese Yuan
EU	European Union
HR	Human Resources
ID	Identification
IIT	Individual Income Tax
MOF	Ministry of Finance
MOHRSS	Ministry of Human Resources and Social Security
NPC	National People's Congress
PCR	Polymerase Chain Reaction
PRC	People's Republic of China
STA	State Taxation Administration
STEM	Science, Technology, Engineering and Mathematics
WHO	World Health Organization

23 *Regulations on Talent Work in Shenzhen Special Economic Zone*, State-owned Assets Supervision and Administration Commission of Shenzhen Municipal People's Government, 20th June 2022, viewed 25th May 2023, <http://gzw.sz.gov.cn/gzrc/rczc/content/post_9896762.html>

European Chamber
中国欧盟商会

Intellectual Property Rights Working Group

Key Recommendations

1. Patents

1.1 Ensure Equal Treatment for Foreign Companies During the Patent Application Process

- Review the patent application process for foreign applicants to ensure average pendency and the number of office actions for such applicants is comparable to that of Chinese applicants.

1.2 Apply a More Proportionate Standard for 'Obviousness' in Patent Examination and Invalidation Proceedings

- Apply a more proportionate standard of 'obviousness' in patent examination and invalidation proceedings to ensure consistency between foreign and Chinese patent applications.

1.3 Issue the Implementation Rules of the Patent Law and the Patent Examination Guidelines as Soon as Possible

- Release implementation rules of the Patent Law and the Patent Examination Guidelines, along with transitional measures, as soon as possible.

2. Trademarks

2.1 Replace the Periodic Verification of Trademark Use Proposed in the Draft Revision of the Trademark Law with Provisions That Subject the Protection of Trademarks to Their Use

- Enact a provision within the Trademark Law stipulating that when a trademark has been registered for over three years, its owner can be asked by a defendant in an opposition, invalidation, or civil litigation case to substantiate the use of the trademark.

2.2 Avoid Citing Article 10.1.7 of the Trademark Law as an Alternative to Article 11 When Refusing the Registration of a Trademark

- Cite Article 11 as the basis for registration refusals in cases where the main reason is based on descriptiveness or a lack of distinctiveness, instead of citing Article 10.1.7.

2.3 Facilitate the Registration of New Trademarks Refused on Relative Grounds by Allowing a Joint Adjudication of All Conflicts Between the Applied and Cited Trademarks, or Accepting Coexistence Agreements

- Provide, in a revision of the Trademark Law, that when a trademark application is refused due to the existence of prior trademarks registered for more than three years, the trademark applicant who files a review against such refusal may request the owners of the cited trademarks to submit evidence of use.
- Provide, in a revision of the Trademark Law, that when a trademark application is refused due to the existence of prior trademarks, all conflicts raised by the applicant of the new trademark against the owners of the prior trademarks shall be adjudicated jointly with the review of the trademark application refusal.
- Provide that where a trademark is invalidated on the grounds of bad faith, the court shall have the power to order the owner of the invalidated trademark to pay the legal costs incurred by the applicant of the invalidation.
- Accept letters of consent.

3. Access to Law

3.1 Implement an Official System of Appeal or Review of Unfavourable Patent Evaluation Reports for Utility Model Patents or Design Patents

- Adopt a review or appeal system for patentees to be able to contest initial unfavourable patent evaluation reports issued by the China National Intellectual Property Administration (CNIPA) for utility model patents or design patents.

3.2 Specify That When the Circumstances for Punitive Damages in Litigation are Met, the Amount Shall be Decided by the Court Alone

- Allow courts full discretion to award punitive damages based on the circumstances of the case and within the limits prescribed by the law, without regard for the amount of damages claimed by the plaintiff.

3.3 Make All Court Decisions on Patent-related Cases Publicly Available

- Improve the openness and transparency of the Chinese patent system by making all court decisions in patent cases publicly available.

3.4 Allow People's Courts to Accept Claims Filed Against a Registered Trademark and Suspend the Case Until the Trademark at Issue is Invalidated

- Allow the People's Courts to accept a claim filed against a registered trademark and to suspend the case until the trademark at issue is invalidated.

4. Online Intellectual Property (IP) Protection

4.1 Enhance Regulation of Internet Platform Enterprises to Address IP Infringement Concerns and Strengthen Supervision of Internet Counterfeit Advertising and Emerging Forms of Counterfeit Sales

- Create a dedicated regulatory body or task force, under the supervision of the Cyberspace Administration of China (CAC) and the CNIPA, to oversee and safeguard online IP protection.
- Release reports regularly to disclose the anti-counterfeit initiatives undertaken by online sales platforms, as well as to elucidate the punitive measures implemented by the CAC or the CNIPA.
- Implement a monitoring mechanism initiated by the CAC that guarantees the effective identification and prompt removal of counterfeit products.
- Assist online platforms in developing standardised protocols for managing infringement complaints through guidance provided by the State Administration for Market Regulation (SAMR), ensuring consistency and fairness in the process.
- Enhance penalties for online platform operators that fail to effectively manage IP infringement by implementing stricter measures enforced by the SAMR.
- Raise public awareness about the substantial risks linked to counterfeit products by launching extensive campaigns spearheaded by the SAMR.

5. Trade Secrets

5.1 Level the Playing Field for Foreign Companies that Rely on Administrative or Criminal Enforcement of Trade Secrets

- Provide guidance clarifying the detailed standard for requirements of administrative and criminal cases related to enforcement of trade secrets.
- Accept administrative and criminal cases regardless of the nationality of a trade secret owner.

5.2 Adjust Both the Formality Requirements and the 'Prima Facie Evidence' Standard for Proving Trade Secret Infringements

- Provide guidance for formality requirements for evidence based on best practice and after considering input from foreign companies.
- Clarify the criteria for '*prima facie* evidence'.

5.3 Develop Criteria to Determine if a Technical Feature Is the Owner's Trade Secret or Public Information

- Provide guidance or interpretations to clarify that the bar in considering whether a claimed defendant's information infringes a plaintiff's trade secret should be the same as that in considering whether a plaintiff's trade secret is publicly known over public information.

Introduction to the Working Group

Intellectual property (IP) laws protect human intellectual achievements by granting rights holders the exclusive privilege to control and benefit from their creation. Effective intellectual property rights (IPR) enforcement is crucial for encouraging innovation and competition in any market, and for facilitating transnational partnership agreements. If there is a lack of trust in IPR protection, companies and individuals will be reluctant to introduce their most valuable IP to a country and will not be willing to develop cutting-edge IP creations.

The Intellectual Property Rights Working Group represents a wide range of European interests in China's IP regulatory framework and its enforcement of IPR. With a presence in Beijing, Shanghai and South China, the working group serves as a platform for companies to increase awareness of the need to protect IP, to inform business how to solve IP problems, and to share best practices on IP matters. It is a bridge between China's IP authorities and European business and offers support primarily through recommendations aimed at improving the efficiency and effectiveness of China's IPR protection system.

Recent Developments

After President Xi Jinping stressed the importance of strengthening IPR protection during a speech to the Political Bureau of the Party Central Committee on 30th November 2020,[1] China introduced a series of related laws and regulations, including the following:

- On 12th April 2022, the China National Intellectual Property Administration (CNIPA) issued the *Notice on Continuing to Crack Down on Malicious Trademark Registration*.[2]
- On 8th July 2022, the CNIPA issued the *Notice on Cracking Down on the Act of Forging Application Materials for Geographical Indications by Agents*.[3]
- On 31st October 2022, the CNIPA published the revised draft of the *Patent Examination Guidelines* for public consultation.[4]
- On 27th November 2022, the State Administration for Market Regulation (SAMR) published the revised draft of the Anti-unfair Competition Law for public consultation.[5]
- On 13th January 2023, the CNIPA called for comments on the revised draft of the Trademark Law.[6]
- On 7th March 2023, the CNIPA published the

1 *Xi Jinping presided over the 25th collective study and speech of the Political Bureau of the Central Committee*, State Council, 1st December 2020, viewed 29th May 2023, <https://www.gov.cn/xinwen/2020-12/01/content_5566183.htm>

2 *Notice on Continuing to Crack Down on Malicious Trademark Registration*, CNIPA, 12th April 2022, viewed 17th May 2023, <https://www.cnipa.gov.cn/art/2022/4/12/art_75_174557.html>

3 *Notice on Cracking Down on the Act of Forging Application Materials for Geographical Indications by Agents*, CNIPA, 8th July 2022, viewed 2nd June, <https://www.cnipa.gov.cn/art/2022/7/8/art_75_176438.html>

4 *CNIPA called for comments on the revised draft of Patent Examination Guidelines,* CNIPA, 31st October 2022, viewed 17th May 2023, <https://www.cnipa.gov.cn/art/2022/10/31/art_75_180016.html>

5 *SAMR called for comments on the revised draft of the Anti-unfair Competition Law,* SAMR,27th November 2022, viewed 20th June 2023, <https://www.gov.cn/hudong/2022-11/27/content_5729081.htm>

6 *CNIPA called for comments on the revised draft of the Trademark Law,* CNIPA, 13th January 2023, viewed 12th July 2023, <https://www.cnipa.gov.cn/art/2023/1/13/art_75_181410.html>

Issuance of the National Intellectual Property Administrative Protection Work Plan for 2023.[7]

Furthermore, on 5th February 2022, China acceded to the Hague Apostille Convention,[8] aiming to abolishing the requirement of legalisation for foreign public documents. Members of the Intellectual Property Rights Working Group expect that China will introduce measures that can ensure the practical implementation of terms under this convention.

Key Recommendations

1. Patents

1.1 Ensure Equal Treatment for Foreign Companies During the Patent Application Process

Concern

Foreign companies are subject to additional requirements during patent applications, which delays the process unnecessarily and reduces the effective enforceable term of their patents.

Assessment

Foreign companies have consistently reported average pendency rates for invention patent applications with the CNIPA of between 36 to 42 months. They also often report that they are subject to additional administrative requirements, meaning their invention patents can sometimes take six to 12 months longer than Chinese applicants to be granted. This results in the effective enforceable term of foreign applicants' patents being reduced on average by six to 12 months. The necessity for some additional administrative requirements may be due to either: 1) the difference in drafting/claims requirements that exist between different patent offices (as is the case, for example, when preparing claims for a United States (US) filing versus a European Patent Office filing; and/or 2) the CNIPA requiring clarification and amendments due to translation issues. However, the consistency of such additional office actions being required for filings by foreign applicants warrants consideration and addressing by the CNIPA.

Recommendation

- Review the patent application process for foreign applicants to ensure average pendency and the number of office actions for such applicants is comparable to that of Chinese applicants.

1.2 Apply a More Proportionate Standard for 'Obviousness' in Patent Examination and Invalidation Proceedings

Concern

The basis for determining 'obviousness' in patent applications goes beyond what could be considered reasonable.

Assessment

Foreign patent applicants and registrants report that there has been a noticeable increase in the number of both patent application rejections and the invalidation of granted patents by the CNIPA and the Patent Re-examination Board, on the basis of 'obviousness'.[9] Furthermore, the 'skills' and knowledge of the 'expert in the relevant field' appear to be set so high, and may involve such a large number of prior art sources, that the standard for inventiveness appears to be more burdensome for foreign patent applicants (both in relation to invention patents and utility model patents). As a result, foreign applicants find it increasingly difficult to secure and/or maintain patent rights in China.

Recommendation

- Apply a more proportionate standard of 'obviousness' in patent examination and invalidation proceedings to ensure consistency between foreign and Chinese patent applications.

1.3 Issue the Implementation Rules of the Patent Law and the Patent Examination Guidelines as Soon as Possible

Concern

Although the amended Patent Law came into effect

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7 *CNIPA published the Issuance of the National Intellectual Property Administrative Protection Work Plan for 2023,* CNIPA, 7th March 2023, viewed 17th May 2023, <https://www.cnipa.gov.cn/art/2023/3/7/art_75_182580.html>

8 *Hague Apostille Convention*, Hague Conference on Private International Law, 5th October 1961, viewed 18th May 2023, <https://www.hcch.net/en/instruments/conventions/full-text/?czid=41>

9 "Patent obviousness is the idea that if an invention is obvious to either experts or the general public, it cannot be patented. Obviousness is one of the defining factors on how to patent an idea and whether or not an idea or invention is patentable. It is one of the hardest concepts to understand since it is often subjective and even arbitrary." *Patent Obviousness: Everything You Need To Know,* Upcounsel, viewed 13th June 2023, <https://www.upcounsel.com/patent-obviousness>

in 2021,[10] its implementation rules and the *Patent Examination Guidelines* are still pending.

Assessment

On 1st June 2021, the fourth amendment to the Chinese Patent Law came into effect. The amended law includes the following significant changes:

- Partial design is included in the scope of patentable items.
- A design patent can claim both foreign and domestic priority of earlier patent filings.
- A patent applicant can request for a six-month grace period of novelty, when his inventions are disclosed under a national state of emergency or extraordinary circumstances and disclosed for the first time and for the sake of public interest.
- The patent term compensation mechanisms are included for invention patents and pharmaceutical patents, which is equivalent to the patent term adjustment (PTA) and patent term extension (PTE) in the US.
- A patentee can release an open licence to any entity or individual to exploit his patent by making a statement at the CNIPA.
- Infringers have the right to request a patent evaluation report in the course of resolving utility model or design patent cases.

Until the Patent Law's implementation rules and the *Patent Examination Guidelines* are issued, along with transitional measures, the rights and interests of patent applicants or patentees may be negatively impacted, and they may struggle to make informed business decisions.

Recommendation

- Release implementation rules of the Patent Law and the *Patent Examination Guidelines,* along with transitional measures, as soon as possible.

10 China Patent Law, National People's Congress, 19th November 2020, viewed 1st June 2023, <http://www.npc.gov.cn/npc/c30834/202011/82354d98e70947c09dbc5e4eeb78bdf3.shtml>

2. Trademarks

2.1 Replace the Periodic Verification of Trademark Use Proposed in the Draft Revision of the Trademark Law with Provisions That Subject the Protection of Trademarks to Their Use

Concern

The proposed strategy for dealing with large numbers of unused trademarks creates the obligation to provide evidence of the use of all trademarks every five years, which places an unjustified, time-consuming and costly burden on all trademark owners.

Assessment

The draft revision of the Trademark Law that imposes obligations on all trademark owners misses the point, which is to discourage trademark hoarding by depriving unused trademarks of any right. Trademark hoarders file trademarks with the aim of making a profit.[11] If registered trademarks are only protected insofar as they are used (with the exception of the first three years), unused trademarks will lose any right to block, oppose or invalidate a third party, and hence will lose value. Trademark hoarding will not be a profitable business anymore and might progressively disappear.

Recommendation

- Enact a provision within the Trademark Law stipulating that when a trademark has been registered for over three years, its owner can be asked by a defendant in an opposition, invalidation, or civil litigation case to substantiate the use of the trademark.

2.2 Avoid Citing Article 10.1.7 of the Trademark Law as an Alternative to Article 11 When Refusing the Registration of a Trademark

Concern

The CNIPA's increasing trend of refusing trademark applications based on absolute grounds, resulting in absolute prohibition and potential sanctions, is causing significant issues for legitimate trademark applicants.

11 "Trademark hoarding (sometimes called trademark squatting) is when a person or entity files a large number of trademark registrations to prevent other businesses from being able to use those marks. Trademark hoarding is a bad-faith practice when the business or individual has no intention of using the registered trademark in the future." *Trademark Hoarding: What Is It and How To Challenge It,* Rocket Lawyer, 18th January 2023, viewed 13th June 2023, <https://www.rocketlawyer.com/business-and-contracts/intellectual-property/trademarks/legal-guide/trademark-hoarding-what-is-it-and-how-to-challenge-it>

Assessment

Article 10.1.7 of the Trademark Law prohibits the use of trademarks that are deceptive and likely to mislead the public in terms of the quality, place of origin or other characteristics of goods. The *Guidelines for Trademark Examination and Trial*, issued by the CNIPA in 2021,[12] elaborated on the circumstances in which a trademark would be refused registration on such absolute grounds, and made it clear that the characteristics of the goods that would be assessed in this regard include raw materials, function and use. These same characteristics of goods are also subject to assessment under Article 11 of the Trademark Law, which requires trademarks to be of sufficient distinctiveness to be registrable. In cases where the trademark includes words that could be perceived as having a certain connection with possible ingredients, function or use of the designated goods, the trademark application could be refused by the CNIPA based on either Article 10.1.7 or Article 11 of the Trademark Law, or both.

The demarcation between these two grounds for refusal is not clear in practice, and the CNIPA appears to have been issuing an increasing number of refusals based on absolute grounds, when the main reason for the refusal is that the trademark is descriptive, an issue that could otherwise be overcome by the trademark applicant demonstrating inherent or acquired distinctiveness. This is inconsistent with the prior examination standards, and causes problems for trademark owners seeking to register trademarks that may be perceived as descriptive or suggestive of the possible ingredients, function or use of the designated goods, but which are unlikely to deceive or mislead consumers exercising common sense in their purchasing decisions in practice.

Recommendation

- Cite Article 11 as the basis for registration refusals in cases where the main reason is based on descriptiveness or a lack of distinctiveness, instead of citing Article 10.1.7.

12 *Guideline for Trademark Examination and Trial*, CNIPA, 16th November 2021, viewed 30th May 2023, <https://www.cnipa.gov.cn/attach/0/123456011.pdf>

2.3 Facilitate the Registration of New Trademarks Refused on Relative Grounds by Allowing a Joint Adjudication of All Conflicts Between the Applied and Cited Trademarks, or Accepting Coexistence Agreements

Concern

Procedures resulting from trademark refusals based on relative grounds are time-consuming and costly for the trademark applicant, while carrying neither risk nor cost for bad faith trademark registrants.

Assessment

When a trademark application is refused by the examiner on account of one (or more) prior ‘cited’ trademark(s), the applicant is often obliged to file a request for review while challenging the validity of the cited trademark(s). Suspension of the review process while the procedure or procedures against the cited trademark(s) is often refused, which forces the applicant to continue with registration before the courts to keep the application ‘alive’. In the meantime, the trademark applicant must challenge the prior trademarks by initiating separate procedures (oppositions or invalidation). It is only after these procedures have been completed and the prior ‘obstacle’ trademarks eliminated that the new trademark application can proceed to registration.

These procedures are conducted in accordance with the Administrative Procedure Law, which does not provide for the possibility to claim compensation for costs against the losing party. In certain cases, these procedures could be avoided altogether by friendly negotiation leading to a coexistence agreement, but such agreements are currently not accepted in China.

If a trademark owner agrees that its trademark can coexist with another trademark without risk of confusion, it obviously means that neither the owner's interests nor the interests of the public are threatened by such coexistence. There is no reason, therefore, to refuse the registration of a trademark that is accepted, in a 'letter of consent', by a prior trademark owner.

Recommendations

- Provide, in a revision of the Trademark Law, that when a trademark application is refused due to the existence of prior trademarks registered for more than three years, the trademark applicant who files a review against such refusal may request the owners of the cited trademarks to submit evidence of use.

- Provide, in a revision of the Trademark Law, that when a trademark application is refused due to the existence of prior trademarks, all conflicts raised by the applicant of the new trademark against the owners of the prior trademarks shall be adjudicated jointly with the review of the trademark application refusal.
- Provide that where a trademark is invalidated on the grounds of bad faith, the court shall have the power to order the owner of the invalidated trademark to pay the legal costs incurred by the applicant of the invalidation.
- Accept letters of consent.

3. Access to Law

3.1 Implement an Official System of Appeal or Review of Unfavourable Patent Evaluation Reports for Utility Model Patents or Design Patents

Concern

While patent evaluation reports issued by the CNIPA are generally required for enforcement of utility model patent or design patent rights, in the event of an unfavourable report, there is no recourse of appeal beyond the CNIPA, which renders the rights potentially unenforceable.

Assessment

Article 66 of the Patent Law provides that either courts or administrative enforcement authorities may ask the patentee to provide a utility model patent evaluation report or design patent evaluation report issued by the CNIPA as evidence for examining patent infringement. This is required because such patents do not undergo substantive examination before being granted.

In practice, not only are such evaluation reports invariably required for enforcement of utility model patents and design patents, but also the content of such reports can directly impact the views of the courts or the administrative enforcement authorities on the enforceability and strength of the patentee's claims.

During the process for examining applications for invention patent, unfavourable decisions made by the CNIPA as to the validity of the patent can be appealed against by the applicant. However, there is no recourse for the patentee of a utility model patent or design patent to appeal against unfavourable findings of the CNIPA on the validity of the patent as set out in the patent evaluation reports. The lack of such an official appeal or review system could substantially undermine the patentee's ability to enforce the patent.

Recommendation

- Adopt a review or appeal system for patentees to be able to contest initial unfavourable patent evaluation reports issued by the CNIPA for utility model patents or design patents.

3.2 Specify That When the Circumstances for Punitive Damages in Litigation are Met, the Amount Shall be Decided by the Court Alone

Concern

The essence of punitive damages, which is the equivalent of a penalty, is often misconstrued as being part of the claim for compensation, which sometimes deprives the court of the power to order the full extent of the penalty.

Assessment

Punitive damages are a common law concept, whereby the court, or a jury, may award damages for an amount in excess of the actual prejudice justified and claimed by the plaintiff. Even though they are paid to the plaintiff, the punitive damages are a penalty sanctioning bad behaviour, not the compensation of a prejudice. The problem is that in a 'civil law' country like China, the judge may not award damages higher than the plaintiff's claim. Therefore the courts believe that punitive damages are additional damages and that they should therefore be capped at the claim amount. The result is that, in many cases, courts are unable to apply the full penalty that they are willing to impose because they are limited by the amount of the claim.

Recommendation

- Allow courts full discretion to award punitive damages based on the circumstances of the case and within the limits prescribed by the law, without regard for the amount of damages claimed by the plaintiff.

3.3 Make All Court Decisions on Patent-related Cases Publicly Available

Concern

Currently, many court decisions lack transparency, with an increasing number of decisions on patent-related cases not being published by the courts.

Assessment

The number of published court decisions on IP-related cases are on a decline over the past few years, particularly for patent-related cases. According to the annual white paper *Intellectual Property Protection by Chinese Courts*, published by the Supreme People's Court (SPC), the number of patent-related cases accepted by the courts at all levels below the SPC steadily increased from 23,235 cases in 2018 to 40,846 cases in 2022, an increase of approximately 75 per cent. The number of all IP-related cases decided by the courts also increased at a similar pace, by around 70 per cent, from 319,651 cases in 2018 to 543,379 cases in 2022.[13&14] However, the number of published court decisions for patent-related cases available on official or commercial databases seem to have declined significantly. The number of such court decisions available on China Judgements Online, a website of the SPC, went from 20,672 cases in 2017 to 11,098 cases in 2022;[15] and the number of such court decisions available on PKULAW.COM, a major commercial database, went from 20,181 cases in 2018 to 12,428 cases in 2022.[16]

Recommendation

- Improve the openness and transparency of the Chinese patent system by making all court decisions in patent cases publicly available.

13 *Intellectual Property Protection by Chinese Courts in 2018,* The People's Court Press, 1st April 2019, viewed 2nd June 2023, <https://www.court.gov.cn/style/system/files/zscqsfbh201811.pdf>

14 *Intellectual Property Protection by Chinese Courts in 2022,* SPC, 20th April 2023, viewed 2nd June 2023, <https://www.court.gov.cn/zixun-xiangqing-397082.html>

15 China Judgement Online, 2000, SPC, viewed 11th May 2023, <https://wenshu.court.gov.cn>.

16 PKULAW.COM, Beijing Peking University Yinghua Technology Co Ltd, viewed 11th May 2023, for court decisions organised under the patent category, annual updating

3.4 Allow People's Courts to Accept Claims Filed Against a Registered Trademark and Suspend the Case Until the Trademark at Issue is Invalidated

Concern

The prohibition to sue the owner of a registered trademark, imposed by the SPC in 2008, has no justification and constitutes an obstacle to the fight against bad faith trademark applications.[17]

Assessment

Because of this prohibition, the plaintiff must first request invalidation of the litigious trademark, while the registrant of the said trademark is still allowed to claim that it has the 'right to use' for the duration of the invalidation procedure. Trademark registration does not confer a 'right to use' the trademark, but only the right to prevent others from using it. The draft revision of the law even specifies that the acts of infringement committed before the invalidation shall only be taken into consideration when calculating damages if bad faith is proved. Therefore, the result of the prohibition to sue a registered trademark for infringement is that registration is equivalent to an authorisation to infringe.

The plaintiff should be allowed to act without waiting for the invalidation, and the court should be allowed to accept the case and suspend the procedure until the invalidation has been completed.

Recommendation

- Allow the People's Courts to accept a claim filed against a registered trademark and to suspend the case until the trademark at issue is invalidated.

4. Online IP Protection

4.1 Enhance Regulation of Internet Platform Enterprises to Address IP Infringement Concerns and Strengthen Supervision of Internet Counterfeit Advertising and Emerging Forms of Counterfeit Sales

Concern

Insufficiently transparent and lenient punitive actions regarding the prevention and control of IP infringement

17 *Provisions on the Trial of Cases Civil Disputes over Trademark Conflicts with Prior Rights*, The People's Court Press, 18th February 2008, viewed 25th July, <http://gongbao.court.gov.cn/Details/5394144fe9f15cc7b5f6e50b3d6317.html?sw=>

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on online sales platforms, along with non-standardised and unclear procedures for addressing infringement complaints, contribute to the rise in online IP infringements.

Assessment

There are no adequate regulations or standards for online platforms to set up effective IP infringement prevention and control measures, or on handling complaints from right holders.

Some of the challenges that right holders face when raising IP infringement complaints include high complaint thresholds and inadequate penalties that do not act as an effective deterrent. There is a need to optimise complaint systems to improve efficiency, as the current lack of uniform processing standards can result in inconsistent handling of complaints. Additionally, the boundaries of platform autonomy are unclear, especially when administrative and judicial decisions are pending or when determining patent infringements.

Under the existing regulations, the online platforms lack motivation to collaborate proactively with rights holders. For instance, rights holders often find that many of their sugggestions for IP-infringing products removals are disregarded, or only the infringing images are removed instead of deleting the entire link. The standard of proof of counterclaims for counterfeit complaints may also be too lenient. Disclosure and transparency in offline investigations also need to be improved.

Furthermore, some platforms lack proper management of usernames, as well as the advertising of counterfeit goods as well as sales through live streams, short videos or other private domain traffic. There is lack of standards for right holders to follow in regard to solid evidence collection.

Recommendations

- Create a dedicated regulatory body or task force, under the joint supervision of the Cyberspace Administration of China (CAC) and the CNIPA, to oversee and safeguard online intellectual property protection.
- Release reports regularly to disclose the anti-counterfeit initiatives undertaken by online sales platforms, as well as to elucidate the punitive measures implemented by the CAC or the CNIPA.
- Implement a monitoring mechanism initiated by CAC that guarantees the effective identification and prompt removal of counterfeit products.
- Assist online platforms in developing standardised protocols for managing infringement complaints through guidance provided by the SAMR, ensuring consistency and fairness in the process.
- Enhance penalties for online platform operators who fail to effectively manage IP infringement by implementing stricter measures enforced by the SAMR.
- Raise public awareness about the substantial risks nked to counterfeit products by launching extensive campaigns spearheaded by the SAMR.

5. Trade Secrets

5.1 Level the Playing Field for Foreign Companies that Rely on Administrative or Criminal Enforcement of Trade Secrets

Concern

The required standard for proving a protectable trade secret in both administrative and criminal enforcement makes it onerous for foreign companies to prove a trade secret infringement case.

Assessment

China's legal system provides administrative and criminal enforcement besides civil litigation. In practice, when a trade secret owner, in particular a foreign company, raises an administrative case or criminal case with authorities such as the Administration for Market Regulation or the Public Security Bureau, it usually faces high requirements for proving the trade secret is not known to the public.

On 27th November 2022, the SAMR published a call for comments on the draft revision of the Anti-unfair Competition Law.[18] The revision of Article 10 noted, "The State promotes the establishment and improvement of a trade secret protection system that integrates self-protection, administrative protection and judicial protection of trade secrets." On 18th January 2023, the SPC and the Supreme Procuratorate published a call for comments on the *'Interpretation of Several Issues Concerning the Application of Law in Handling Criminal*

18 *Call for Comments for the New Revision of the Anti-unfair Competition Law*, State Council, 27th November 2022, viewed 2nd June, <https://www.gov.cn/hudong/2022-11/27/content_5729081.htm>

Cases of Intellectual Property Infringement.[19] However, neither of these documents provide detailed regulations related to the enforcement of trade secrets.

Recommendations

- Provide guidance clarifying the detailed standard for requirements of administrative and criminal cases related to enforcement of trade secrets.
- Accept administrative and criminal cases regardless of the nationality of a trade secret owner.

5.2 Adjust Both the Formality Requirements and the 'Prima Facie Evidence' Standard for Proving Trade Secret Infringements

Concern

Current formality requirements and the vagueness of '*prima facie* evidence' increases the burden on trade secret owners to prove infringements.

Assessment

When member companies raise trade secret cases before courts, they face challenges regarding formality requirements and often fail to get cases accepted by the courts on the first try. While Article 32 of the Anti-unfair Competition Law provides for the transfer of the burden of proof, through which, as long as a right holder provides '*prima facie* evidence', the burden can be shifted to the defendant. However, the definition of what constitutes '*prima facie* evidence' is yet to be clarified and is currently subject to different interpretations among different courts and judges.

Recommendations

- Provide guidance for formality requirements for evidence based on best practice and after considering input from foreign companies.
- Clarify the criteria for '*prima facie* evidence'.

5.3 Develop Criteria to Determine if a Technical Feature Is the Owner's Trade Secret or Public Information

Concern

The inappropriate standard of comparison between the trade secrets' technical feature with the public information by the judicial appraisal entities weakens the protection of trade secrets.

Assessment

In Article 13 of the *Regulations of the Supreme People's Court on Certain Issues Concerning the Application of Law in the Trial of Civil Cases Involving Infringement of Trade Secrets*,[20] the SPC clarifies the standard of 'substantial difference' when considering if information provided in an infringement claim is substantially the same as a trade secret, and lists several factors to be taken into consideration.

In trade secret civil litigation cases, whether claimed proprietary information is publicly known, and hence does not constitute a trade secret, is usually disputed between the parties. Often, a judicial appraisal entity will be engaged to deliver an opinion from a technological perspective on which many local courts heavily rely. It is not clear in the *Regulations* how much difference there should be between proprietary information and public information, and sometimes the appraisal entity raises the bar to or even beyond the standard of inventiveness in the Patent Law, which results in inadequate trade secret protection.

Recommendation

- Provide guidance or interpretations to clarify that the bar in considering whether a claimed defendant's information infringes a plaintiff's trade secret should be the same as that in considering Whether a plaintiff's trade secret is publicly known over public information.

Abbreviations

CAC	Cyberspace Administration of China
CNIPA	China National Intellectual Property Administration
IP	Intellectual Property
IPR	Intellectual Property Rights
PTA	Patent Term Adjustment
PTE	Patent Term Extension
SAMR	State Administration for Market Regulation
SPC	Supreme People's Court
US	United States

19 *Call for Comments for the 'Interpretation of several issues concerning the application of law in handling criminal cases of intellectual property infringement'*, SPC, 18th January 2023, viewed 2nd June 2023, <https://www.court.gov.cn/zixun-xiangqing-386871.html>

20 *Regulations of the Supreme People's Court on Certain Issues Concerning the Application of Law in the Trial of Civil Cases Involving Infringement of Trade Secrets*, SPC, 11th September 2020, viewed 30th May 2023, <https://www.court.gov.cn/zixun-xiangqing-254751.html>

Inter-chamber Small and Medium-sized Enterprise Working Group

Key Recommendations

1. Provide European Small and Medium-sized Enterprises (SMEs) in China with Better Access to Financing 9

- Enhance the implementation of lending strategies to assist all SMEs—both European and Chinese—operating in China.
- Increase incentives that encourage commercial banks to grant short-term overdrafts to SMEs facing temporary cash shortages.
- Publish specialised credit risk assessment procedures or systems for providing both local and international SMEs with loans.
- Develop a regulatory framework that encourages innovative financing support for SMEs, while limiting potential financial risks.
- Relax foreign exchange debt quota requirements to remove regulatory obstacles that limit SMEs', especially foreign-invested enterprises' (FIEs'), access to credit financing.
- Expand green finance tools (such as green bonds) for foreign companies, especially SMEs.
- Organise information-sharing seminars with local banks and financing intermediaries, and include financing options in a handbook on regulatory issues.
- Increase foreign SMEs' awareness of and accessibility to government incentives and funding instruments from local administrations.
- Enhance transparency and availability of information on standards and criteria to obtain loans from domestic banks.
- Publish English-language versions of notices on the availability of local research and development funds and grants, and communicate them in a timely manner.

2. Promote Coordination Between Different Administrative Departments and Improve the Transparency, Clarity and Integrity of All Relevant Regulations for SMEs 9

- Implement 'one-stop' service desks in provincial/regional administrative departments to support all SMEs, both foreign and Chinese, in fulfilling their multiple registration and regulatory obligations, as well as matters related to their daily operations.
- Improve data sharing and general administrative coordination among both different local districts and different government departments.
- Continue efforts to alleviate administrative burdens for SMEs by reducing the number of government approvals required and simplifying the remaining approval and filing procedures.
- Develop mechanisms to allow FIEs in general, and SMEs in particular, to raise their issues and concerns to the relevant local government authorities.
- Enhance communication channels and formats between local governments and industry associations where SMEs are represented.

3. Reduce the Financial Burden of SMEs to the Greatest Extent Possible, Including Through Measures Like Ensuring Reasonable Payment Terms and Enforcing Timely Payments 9

- Issue guidelines and implement effective industry supervision measures to ensure that state-owned enterprises (SOEs) and private sector players respect contractual payment terms when dealing with SMEs.
- Set a maximum payment term that is lawfully allowed to be included in contracts.
- Ensure that SOEs sign contracts with SMEs that have reasonable payment terms.
- Improve legal debt collection procedures.
- Develop and implement further measures to encourage banks to provide financing solutions to SMEs based on accounts receivable.
- Provide debt collection support or funds for SMEs to collect their debts through legal action.
- Continue to develop targeted measures that reduce the financial burden of SMEs, such as extending the exemption period for value-added tax and corporate income tax.

4. Promote the Value of Intellectual Property Rights (IPR) Protection and Enforcement Mechanisms at the Consumer, Business and Local Government Levels 8

- Strengthen enforcement and consistency with regard to notice-and-take-down procedures on e-commerce platforms.
- Engage local enforcement agencies, customs authorities and courts to take effective action against counterfeiting.
- Treat documentation required for IP enforcement, such as power of attorney and company incorporation certificates, as public documents falling under the Hague Convention on Abolishing the Requirement of legalisation for Foreign Public Documents.
- Increase the State Administration for Market Regulation's power to enforce the European Union-China Geographical Indications Agreement.

Introduction to the Working Group

The Inter-Chamber Small and Medium-sized Enterprise (SME) Working Group was established in 2014 as a new advocacy element of the European Union (EU) SME Centre (Phase Two),[1] with the objective of strengthening advocacy for European SMEs in China.[2] The working group is based on the European Chamber's Small and Medium-sized Enterprise Forum. It acts as a platform for advocating on behalf of SMEs operating in China, who are key contributors to overall economic development and social welfare.[3] The working group regularly organises meetings that provide practical solutions and policy advice to European SMEs and their stakeholders.[4]

EU SME Projects in China Implemented by the European Chamber

The EU SME Centre (Phase Four) started in July 2022 and will run until 2025. Its main objectives are: assisting European SMEs to establish and develop a commercial presence in the Chinese market by providing EU added-

1 *About EU SME Centre*, EU SME Centre, viewed 27th April 2023, <http://www.eusmecentre.org.cn/about-centre>

2 According to the European Commission's 2020 revised user guide regarding the definition of SMEs, an SME is an enterprise that employs less than 250 people and has an annual turnover not exceeding euro (EUR) 50 million, and/or total assets no greater than EUR 43 million. *SME Definition – User guide 2020*, European Commission, 8th September 2020, viewed 27th April 2023, <https://ec.europa.eu/docsroom/documents/42921>

3 The *Inter-Chamber SME Working Group Position Paper* presents the recommendations of SMEs from all EU Member States, regardless of their membership status with the European Chamber.

4 Stakeholders include EU SME Centre implementation partners and EU Member State embassies, *About Us*, EU SME Centre, viewed 27th April 2023, <http://www.eusmecentre.org.cn/about-centre>

value support services; improving corporate synergies and increasing best practice-sharing at the national and regional EU business association levels; and strengthening advocacy efforts on behalf of the European business community to help create a better business environment in China.[5] Another notable EU SME project in China is the China IP SME Helpdesk, which supports European SMEs in both protecting and enforcing their intellectual property rights (IPR) in or relating to Mainland China, Hong Kong, Macao and Taiwan, through the provision of free information and services.[6]

Recent Developments

The abandonment of China's 'zero-COVID' policy in late November 2022 was a key turning point for the whole country, including foreign SMEs. The travel restrictions that had been imposed as pandemic controls had a negative impact on company operations, as well as the ability to attract and retain foreign talent. The strict lockdowns that took place in 2022, as well as the then abrupt relaxation of 'zero-COVID' measures, also resulted in significant disruptions that disproportionately affected smaller companies.[7]

Since the abandonment of zero-COVID policies, foreign business confidence remains relatively subdued. Data from the *European Business in China Business Confidence Survey 2023* (BCS 2023) shows that the lowest percentage of respondents on record (55 per cent) view China as a top three destination for future investments, that 53 per cent have no plans to expand their China operations in 2023, and that 14 per cent are considering shifting future investments previously planned for China to other markets (with a further eight per cent having already done so).[8]

The State Council Notice on Supporting SMEs and the 2023 Government Work Report

On 11th January 2023, the State Council published the *Notice on Printing and Distributing Several Measures to Assist Micro, Small and Medium-sized Enterprises in Stable Growth, Structural Adjustment and Strong Capacity*.[9] The notice is divided in two main sections:

1) Promoting stable growth, which includes measures aimed at reducing the financial burden on SMEs; increasing financing support for small businesses; expanding market demand by supporting the technological development of SMEs and reserving up to 40 per cent of procurement projects for small players; guaranteeing a stable supply of raw materials; strengthening the services system for SMEs; and boosting the protection of SME rights in areas such as late payments.
2) Fostering the restructuring and strengthening of SMEs through measures such as promoting the cultivation of innovative SMEs; promoting the integration of big and small companies; supporting the digital transition of small businesses; enhancing IPR protection; increasing direct financing for SMEs through channels like the Beijing Stock Exchange; fostering talent development within small companies; improving quality standards for SMEs; and developing industrial clusters of small businesses.

Meanwhile, the *2023 Government Work Report* also mentioned speeding up the digital transition for SMEs and generally supporting micro, small and medium-sized enterprises in their business development.[10]

Key Recommendations

1. Provide European SMEs in China with Better Access to Financing 9

Concern

European SMEs operating in China still struggle to access financing, an obstacle that prevents them from reaching their full potential and limits their ability to further contribute to China's economy.

Assessment

Although sufficient access to financing is crucial for enterprises' development, SMEs in China—especially

5 Ibid.

6 *About Us*, China IP SME Helpdesk, viewed 27th April 2023, <https://intellectual-property-helpdesk.ec.europa.eu/regional-helpdesks/china-ip-sme-helpdesk_en>

7 According to a quarterly survey of SMEs conducted by Peking University in December 2022—a period covering both stringent lockdowns and the spread of COVID-19 throughout the country—respondents reported an average contraction of 17.5 per cent of their turnover compared to the previous quarter, as well as being able to maintain their cashflow for an average of 2.4 months only: *Online Survey of Micro-and-small Enterprises (OSOME): Quarterly Report (2022Q4) and Confidence Index (2023Q1)*, Peking University Enterprise Big Data Research Centre, 23rd February 2023, viewed 27th April 2023, <https://www.gsm.pku.edu.cn/2022.pdf>

8 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, 21st June 2023, viewed 22nd June 2023, <https://www.europeanchamber.com.cn/en/publications-business-confidence-survey>

9 *Notice on Printing and Distributing Several Measures to Assist Micro, Small and Medium-sized Enterprises in Stable Growth, Structural Adjustment, and Strong Capacity,* State Council, 11th January 2023, viewed 27th April 2023 <http://www.gov.cn/zhengce/zhengceku/2023-01/15/content_5737024.htm>

10 *2023 Government Work Report,* State Council, 5th March 2023, viewed 27th April 2023, <http://www.gov.cn/zhuanti/2023lhzfgzbg/index.htm>

foreign ones—face more challenges in this regard compared to larger companies, despite the Chinese Government's attempts to create more favourable conditions. The main reasons for this are that SMEs are generally considered high-risk/low-return clients, and because domestic companies tend to be preferred due to their closer relationships with local banks. This approach may have negative repercussions in the long run as SMEs and start-ups are generally at the forefront of innovation.

The situation varies geographically. For example, in the European Chamber Southwest China Chapter, members report that obtaining financing from domestic Chinese banks remains difficult in practice, with many benefits applying mostly to mid-sized enterprises.[11] Meanwhile, SMEs based in South China and Shanghai report that movable assets cannot not be mortgaged for a bank loan and that their Chinese SME counterparts experience less difficulties when applying for loans.[12] SMEs in South China also report a lack of transparency regarding requirements, standards and criteria for getting bank loans.

Opaque information is an issue that has both been echoed at the local level and flagged at the national level by an EU SME Centre report, which finds that training sessions and workshops on research and development (R&D) incentive schemes and innovation funding programmes are often organised—though sometimes not heavily publicised—by local administrations across China.[13] Although dominated by domestic actors, such incentives and funding instruments in China are also open to qualifying foreign-invested enterprises (FIEs). Awareness of these opportunities, however, remains overall low among European SMEs.

In China, available financing options are simply more limited compared to those in Europe. This is reflected in studies like the European Central Bank's *Survey on the Access to Finance of Enterprises in the Euro Area*.[14] For foreign SMEs, options are considerably fewer despite the theoretical availability of funds back in their home countries. For example, bank loans for FIEs are generally obtained against guarantees from banks outside of China, which typically require further risk assessment by European headquarters. In addition, foreign exchange loans, which should be easier for FIEs to access, are limited by the so-called 'borrowing gap' – the difference between the total amount invested and the minimum amount of required capital that corresponds to the investment. Borrowing from domestic Chinese banks, though possible in theory, is extremely difficult for FIEs.[15]

The Chinese authorities have recently taken steps to increase SMEs' access to financing. Measures in 2022 included fostering direct financing through the new Beijing Stock Exchange for innovation-orientated SMEs,[16] and increasing the number of inclusive loans to SMEs by 24 per cent year-on-year, among others.[17] However, the participation of foreign investors in the Beijing Stock Exchange is still relatively restricted; only qualified foreign institutional investors are eligible to trade stocks listed on the bourse.[18]

One area where China excels globally, and which could potentially ease the financing difficulties of SMEs operating in the country, is alternative online financing. An International Monetary Fund study on fintech credit risk assessments shows that not only are potential loan defaults from small companies predicted with higher accuracy with fintech—which goes some way towards addressing Chinese banks' concerns that loans to SMEs are inherently riskier—but also that the approach benefits smaller SMEs in third- and fourth-tier cities, as

11 *Southwest China Position Paper 2021/2022*, European Union Chamber of Commerce in China, 20th April 2022, viewed 27th April 2023, <https://www.europeanchamber.com.cn/en/press-releases/3428>

12 *Shanghai Position Paper 2023/2024*, European Union Chamber of Commerce in China, 14th February 2023, viewed 27th April 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1073/Shanghai_Position_Paper_2023_2024>

13 *Incentives, Subsidies and Funding for Tech SMEs in China*, EU SME Centre, 27th October 2021, viewed 27th April 2023, <https://www.eusmecentre.org.cn/report/incentives-subsidies-and-funding-tech-smes-china>

14 *Survey on the Access to Finance of Enterprises: tighter financing conditions and an expected deterioration in the economic environment,* European Central Bank, 6th December 2022, viewed 27th April 2023, <https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr221206~ea55ea7ad9.en.html>

15 For more information on funding limitations for foreign banks, please refer to the *Banking and Securities Working Group Position Paper 2023/2024.*

16 *"Reducing costs and gathering resources for full service" Beijing Equity Exchange Centre's "Notice on Printing and Distributing Eight Measures to Help Enterprises Rescue" takes multiple measures to help small, medium and micro enterprises resume work and production*, China Securities Regulatory Commission, 30th June 2022, viewed 27th April 2023, <http://www.csrc.gov.cn/beijing/c105538/c4042857/content.shtml>

17 *2023 Government Work Report,* State Council, 5th March 2023, viewed 27th April 2023, <http://www.gov.cn/zhuanti/2023lhzfgzbg/index.htm>

18 These are programmes that allow foreign investment institutes that meet certain criteria to invest in A-shares (*renminbi* (RMB) shares listed on Mainland China stock exchanges that are only available to foreign investors through certain channels).

it fosters more inclusive financing.[19] Another move that could greatly ease foreign SMEs' financing issues would be improving the operating conditions for non-banking financial institutions (NBFIs), as they are important financing channels for small businesses.[20]

In recent years, China has rapidly developed its green financing system and is now one of the world's largest issuers of green bonds. The latest version of the People's Bank of China's *Green Bond Endorsed Projects Catalogue*, published in April 2021, defines criteria and taxonomy of green bond projects in China in six sectors: energy-saving, clean production, clean energy, ecology and environment, green upgrading of basic infrastructure and green services.[21] This version is more aligned with the EU's taxonomy compared to previous releases.

Although it has become easier for foreign companies in China to issue *renminbi* (RMB)-denominated bonds, the number actively doing so (especially issuing green bonds) is very limited, and it is still very difficult for issuers to transfer proceeds freely, including overseas.

There is a need to increase SMEs' access to financing to help realise China's mid- and long-term goals of increasing its middle-income population, boosting innovation and achieving its ambitious carbon neutrality goal.

Recommendations

- Enhance the implementation of lending strategies to assist all SMEs—both European and Chinese—operating in China.
- Increase incentives that encourage commercial banks to grant short-term overdrafts to SMEs facing temporary cash shortages.
- Publish specialised credit risk assessment procedures or systems for providing both local and international SMEs with loans.
- Develop a regulatory framework that encourages innovative financing support for SMEs, while limiting potential financial risks.
- Relax foreign exchange debt quota requirements to remove regulatory obstacles that limit SMEs', especially FIEs', access to credit financing.
- Expand green finance tools (such as green bonds) for foreign companies, especially SMEs.
- Organise information-sharing seminars with local banks and financing intermediaries, and include financing options in a handbook on regulatory issues.
- Increase foreign SMEs' awareness of and accessibility to government incentives and funding instruments from local administrations.
- Enhance transparency and availability of information on standards and criteria to obtain loans from domestic banks.
- Publish English-language versions of notices on the availability of local R&D funds and grants, and communicate them in a timely manner.

2. Promote Coordination Between Different Administrative Departments and Improve the Transparency, Clarity and Integrity of All Relevant Regulations for SMEs 9

Concern

Despite recent policy developments, China's regulatory and licence approval system—particularly at the implementation level—is still extremely burdensome for international SMEs in China, which limits their development.

Assessment

Thanks to a number of measures aimed at improving the business environment rolled out over the past few years, foreign SMEs have reported advances in areas such as a reduction in the time required for registering or closing down operations. On 17th April 2023, the National Development and Reform Commission (NDRC) announced plans to shorten the *Special Administrative Measures on Foreign Investment Access (Negative List) (2023 edition)* in order to channel more foreign investment to advanced manufacturing, high-end technologies and modern services.[22] In response to this and other national policies aimed at improving the business environment, various local government bodies, including the Municipal Commission of Commerce in Tianjin and the Shanghai Municipal People's Government, have held policy training sessions

19 Huang, Yiping; Zhang, Longmei; Li, Zhenhua; Qiu, Han; Sun, Tao; and Wang, Xue, *Working Paper: Fintech Credit Risk Assessment for SMEs: Evidence from China*, International Monetary Fund, 25th September 2020, viewed 26th April 2023, <https://www.imf.org/en/Publications/WP/Issues/2020/09/25/Fintech-Credit-Risk-Assessment-for-SMEs-Evidence-from-China-49742>

20 For more information on steps the Chinese Government could take to support NBFIs, please refer to the *Non-banking Financial Institutions Working Group Position Paper 2023/2024*.

21 *Green Bond Endorsed Projects Catalogue (2021 Edition)*, People's Bank of China, 21st April 2021, viewed 27th April 2023, <http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/4342400/2021091617180089879.pdf>

22 *All-out effort to make a new breakthrough in building a new development pattern*, NDRC, 17th April 2023, viewed 16th May 2023, <https://www.ndrc.gov.cn/fzggw/wld/cl/lddt/202304/t20230417_1353658.html>

promoting services such as a 'one-stop' administration system, and released notices listing various support schemes.[23&24]

At the same time, there is still room for improvement in a variety of areas, in particular the transparency, predictability and streamlining of administrative procedures both at the national and local levels. Although business registration processes established at the national level have generally improved, the time required to set up a business is still relatively long. The approval of the business scope of FIEs is subject to extensive scrutiny from the State Administration for Market Regulation (SAMR) and the Ministry of Commerce, as well as additional specific departments if special licensing is required. This process is especially difficult for smaller enterprises to navigate and can create additional costs, such as having to pay for office rental while licence applications are still pending.

At the local level, SMEs in regions such as South China and Tianjin report that overlapping regulations and a lack of interdepartmental coordination results in administrative processes that are so arduous they negatively impact their daily operations. Implementation of 'one-stop' service desks—such as those set up by the Chengdu Municipal Government and promoted by the Tianjin Municipal Government—could help in this regard.[25]

Recommendations

- Implement 'one-stop' service desks in provincial/regional administrative departments to support all SMEs, both foreign and Chinese, in fulfilling their multiple registration and regulatory obligations, as well as matters related to their daily operations.
- Improve data sharing and general administrative coordination among both different local districts and different government departments.
- Continue efforts to alleviate administrative burdens for SMEs by reducing the number of government approvals required and simplifying the remaining approval and filing procedures.
- Develop mechanisms that allow FIEs in general, and SMEs in particular, to raise their issues and concerns to the relevant local government authorities.
- Enhance communication channels and formats between local governments and industry associations where SMEs are represented.

3. Reduce the Financial Burden of SMEs to the Greatest Extent Possible, Including Through Measures Like Ensuring Reasonable Payment Terms and Enforcing Timely Payments 9

Concern

It is increasingly challenging for European SMEs to shoulder the financial burdens associated with doing business in China, with difficulties exacerbated by liquidity problems arising from an absence of maximum contractual payment terms, non-negotiable payment terms with state-owned enterprises (SOEs) or private sector players, and late/non-payments from clients.

Assessment

Late Payments

Since access to financing is limited for SMEs in general in China, and international SMEs in particular, substantial reserve assets are a prerequisite for their business operations in the country. Usually, SMEs have limited bargaining power during negotiations with clients for payments, often resulting in customers imposing onerous contractual payment terms. In addition, many customers simply do not comply with these terms and pay late.

In China, most industries lack guidelines to ensure that market players respect contractual payment terms, and so enterprises set a maximum payment term to be included in contracts. Unlike in the EU, Chinese law in the past had limited provisions on late payments (existing ones are mostly referred to the Supreme Court's *Interpretation on the Adjudication of Contract Disputes*,[26] and the Civil Procedure Law[27]). Debt collection services are available, but are often not practical given the time and, most importantly, high costs involved. In 2022,

23 *Shanghai Municipal People's Government published the Notice on Issuing the Measures of Shanghai Municipal on Increasing the Attraction and Utilisation of Foreign Investment*, Shanghai Municipal Government, 3rd April 2023, viewed 16th May 2023, <https://www.shanghai.gov.cn/nw12344/20230404/6ebb74adcc9241ef87e3fe8eaff578aa.html>

24 Tianjin International Trade Single Window, Tianjin Municipal Government, viewed 17th May, <https://www.singlewindow.tj.cn/>

25 *Southwest China Position Paper 2021/2022*, European Union Chamber of Commerce in China, pp. 11–12, 20th April 2022, viewed 27th April 2023, <https://www.europeanchamber.com.cn/en/press-releases/3428>

26 *Supreme Court's Interpretation on the Adjudication of Contract Disputes*, Hualv.com, 10th January 2019, viewed 27th April 2023, <https://www.66law.cn/laws/131741.aspx>

27 The major flaw is that while the debtor may not dispute the debt, they may refuse to pay and then bring a claim that does not have to be substantiated in order for the court to dismiss the case, which leaves the creditor to pursue their claim through regular court proceedings. Civil Procedure Law of the People's Republic of China (2021 amendment), Peking University, 24th December 2021, viewed, 27th April 2023, <http://en.pkulaw.cn/display.aspx?cgid=3ce82cb92ee006b6bdfb&lib=law>

Section Two: Horizontal Issues

there was an increase of the average collection period of accounts receivable to 52.8 days, 3.5 more than 2021.[28]

This issue has a negative impact for foreign SMEs across industries and regions. Members of the Inter-Chamber SME Working Group report experiencing significant challenges with cash flow as a result of late payments from clients. In the case of manufacturing SMEs, unreasonable payment terms from their suppliers make it difficult for them to buy materials upfront for the following few months.

On 1st July 2020, the State Council issued the *Regulation on Ensuring Payments to Small and Medium-sized Enterprises (Payment Regulations)*.[29] This a positive development in terms of developing a regulatory framework to address late payments, but effective implementation, and clear and well-developed regulations, will be key to its success. The Ministry of Industry and Information Technology's (MIIT's) December 2021 issuance of the *Interim Measures for Handling Complaints on Safeguarding Payments to SMEs (Interim Measures)*, to facilitate the implementation of the *Payment Regulations*,[30] is also positive. The working group welcomes the fact that that some provinces and cities have issued additional documentation supporting the implementation of the *Payment Regulations* and *Interim Measures*.

Reduction of Financial Burden

European SMEs report that actions taken by the Chinese Government to reduce the financial burden on small businesses have generally yielded positive results. For instance, the working group welcomes the extension of preferential value-added tax (VAT) policies for small tax-payers in 2023, including maintaining the VAT rate for small-scale taxpayers at one per cent.[31] The working group also welcomes the announcements by the Ministry of Finance and the State Taxation Administration (STA) regarding the extension of preferential policies for small taxpayers with an annual taxable income not exceeding Chinese yuan (CNY) 1 million on corporate income tax (CIT) and personal income tax.[32] While these measures can contribute to a business rebound, such recoveries tend to occur at a slower pace for SMEs, so it is recommended that the policies be maintained for a longer period of time for smaller companies.

Recommendations

- Issue guidelines and implement effective industry supervision measures to ensure that SOEs and private sector players respect contractual payment terms when dealing with SMEs.
- Set a maximum payment term that is lawfully allowed to be included in contracts.
- Ensure that SOEs sign contracts with SMEs that have reasonable payment terms.
- Improve legal debt collection procedures.
- Develop and implement further measures that encourage banks to provide financing solutions to SMEs based on accounts receivable.
- Provide debt collection support or funds for SMEs to collect their debts through legal action.
- Continue to develop targeted measures that reduce the financial burden of SMEs, such as extending the exemption periods for VAT and CIT.

4. Promote the Value of IPR Protection and Enforcement Mechanisms at the Consumer, Business and Local Government Levels

8

Concern

Ineffective IPR enforcement at the local level continues to limit the impact of recent positive changes to China's IPR legislative environment.[33]

Assessment

Despite improvements in legislation and enforcement, difficulties related to navigating the Chinese intellectual property (IP) protection system still pose a challenge for European companies.

China's IP landscape has significantly improved over the past five years as the country reviewed and updated

28 *The Profit of Industrial Enterprises above Designated Size in 2022*, National Bureau of Statistics, 1st February 2023, viewed 27th April 2023, <http://www.stats.gov.cn/english/PressRelease/202302/t20230201_1892630.html>

29 *Regulations on Protecting Payments to Small and Medium-sized Enterprises*, State Council, 3rd July 2020, viewed 27th April 2023, <http://www.gov.cn/zhengce/content/2020-07/14/content_5526768.htm>

30 *Interim Measures for Handling Complaints on Safeguarding Payments to SMEs*, MIIT, 30th December 2021, viewed 29th April 2022, <http://www.gov.cn/zhengce/zhengceku/2021-12/30/content_5665561.htm>

31 *Announcement of the State Taxation Administration on matters related to the collection and administration of policies such as reduction and exemption of value-added tax for small-scale taxpayers of value-added tax*, STA, 9th January 2023, viewed 27th April 2023, <http://www.chinatax.gov.cn/chinatax/n359/c5183540/content.html>

32 *Announcement of the Ministry of Finance and the State Taxation Administration on Issues Concerning the Implementation of Income Tax Preferential Policies for Small Low-Profit Enterprises,* STA, 27th March 2023, viewed 27th April 2023 <http://www.chinatax.gov.cn/chinatax/n362/c5185878/content.html>

33 For more information on IP issues affecting European businesses, please refer to the *Intellectual Property Rights Working Group Position Paper 2023/2024*.

its major IP laws. Trademark protection has been strengthened by the Trademark Law, which came into force on 1st November 2019.[34] Since its application, the China National Intellectual Property Administration (CNIPA) has shown determination in tackling bad-faith applications and trademark squatting.[35] However, as legislation evolves, infringers have become more sophisticated, highlighting the need for more effective enforcement at state and local government levels. To this end, the Chinese authorities have decided to further revise the Trademark Law. The proposed draft amendments to the law (January 2023) would further strengthen the law on bad-faith trademark applications by broadening the definition of malicious trademark applications, thus providing rights owners with additional means to challenge bad-faith trademark applications.[36] In addition, the rules on forbidding trademark agencies from engaging in trademark squatting would be further strengthened. Proper implementation of the law will be key to ensuring the additional amendments are successful at tackling bad-faith trademark applications.

Copyright and patent protection are also strengthened by amendments to the Copyright Law and Patent Law,[37&38] both of which became effective in June 2021. These amendments significantly adjust the amount of damages infringers must pay, modifications similar to those implemented in the Trademark Law and the Civil Code. Regardless, there is still room for improvement, as in large-scale infringements the damages granted by the courts generally do not cover the actual losses suffered by enterprises. The calculation of statutory damages often seems arbitrary to many European companies, which they report makes it difficult for them to accurately carry out risk assessment and management.[39]

In 2022, China joined the *Hague Agreement Concerning the International Registration of Industrial Designs*, which facilitates the protection of industrial designs (design patents) in multiple countries or regions with minimal formalities, a step long-awaited by rights holders.[40] This has the potential to reduce EU SMEs' costs related to design protection.

China's E-commerce Law, which came into effect on 1st January 2019, strengthens IPR enforcement on e-commerce platforms.[41] However, the role of voluntary copyright registration certificates in the notice-and-take-down procedures remains inconsistent, as some e-commerce platforms do not consider the certificate a basis to commence procedures, while in some cases bad faith copyright registration certificates actually facilitate trademark infringements. Furthermore, the notice-and-take-down procedures allow bad faith online sellers to provide a statement of not having committed an offence. While not negative *per se*, such statements mandate the platforms to end the measures taken against the seller unless the claimant starts administrative or legal actions within 15 days—extended to 20 under the latest draft amendments to the E-commerce Law—which imposes significant costs on rights holders. This is further exacerbated by the increase in online infringements. Moreover, the draft amendments include a provision allowing sellers to provide a guarantee to the platforms for the amount of the estimated sales, to temporarily avoid restrictions imposed by the platforms while the notice-and-take-down procedure is pending.[42] In practice, this significantly reduces the efficiency of the procedure during special sale promotions, when sales numbers are impossible to estimate, but are likely to be extraordinarily high.

34 Trademark Law, National People's Congress (NPC), 7th May 2019, viewed 27th April 2023, <http://www.npc.gov.cn/npc/c30834/201905/dacf65eec798444e821a1e06a347f3ee.shtml>

35 *Report on the Implementation of China's Amended Trademark Law*, International Trade Mark Association, November 2021, viewed 27th April 2023, <https://www.inta.org/wp-content/uploads/public-files/advocacy/committee-reports/CHINA-TRADEMARK-LAW-REPORT_120121.pdf>

36 *Draft Amendments to the Trademark Law*, CNIPA, 13th January 2023, viewed 26th April 2023 <https://www.cnipa.gov.cn/art/2023/1/13/art_75_181410.html>

37 *Decision of the Standing Committee of the National People's Congress on Amending the Copyright Law of the People's Republic of China,* NPC, 11th November 2020, viewed 27th April 2023, <http://www.npc.gov.cn/npc/c30834/202011/272b72cdb759458d94c9b875350b1ab5.shtml>

38 *Decision of the Standing Committee of the National People's Congress on Amending the Patent Law of the People's Republic of China*, NPC, 18th October 2020, viewed 27th April 2023, <http://www.gov.cn/xinwen/2020-10/18/content_5552102.htm>

39 "It is difficult for the right holder to prove his rights by means of litigation, which leads to the absolute dominant position in the application of statutory compensation rules. However, the scope of the amount of compensation awarded in the statutory compensation rules is determined by judicial discretion, which is uncertain for the protection of the rights and interests of the right holder. Although the loss rules and the benefits rules are feasible in theory, few cases apply to them because the right holder cannot obtain the relevant evidence. The loss rules, which requires the right holder to collect evidence, is a high cost for the small and medium enterprises.": Zhang, Jingchen, *China's Patent Law has Changed: How to understand and apply infringement damages under the new rules, Swiss Chinese Law Review Journal*, 19th April 2021, viewed 27th April 2023, <https://www.sclalawreview.org/understanding-and-applying-the-infringement-damages-article-of-chinas-2020-patent-law/>

40 *China joins the Hague System*, CNIPA, 17th February 2022, viewed 26th April 2023 <http://english.cnipa.gov.cn/art/2022/2/17/art_1340_173309.html>

41 E-commerce Law, NPC, 31st August 2018, viewed 27th April 2023, <http://www.npc.gov.cn/zgrdw/npc/lfzt/rlyw/2018-08/31/content_2060827.htm>

42 *Public Consultation on the Decision on Amending the E-commerce Law of the People's Republic of China (Draft)*, SAMR, 31st August 2021, viewed 27th April 2023, <https://www.samr.gov.cn/hd/zjdc/202108/t20210831_334252.html>

Despite improvements to China's IP system, counterfeiting remains a major issue in China. According to the EU Agency for Law Enforcement Cooperation (EUROPOL) the EU Intellectual Property Office (EUIPO), China is still the origin of around 76 per cent of all counterfeited products detained at the bloc's borders.[43]

On the enforcement side, China's IP Court system has progressed in recent years with the establishment and subsequent expansion of specialised IP Courts and tribunals across China. The internet courts in Hangzhou, Beijing and Guangzhou have facilitated some IP-related dispute processes, and blockchain-based evidence is increasingly being accepted in the People's Courts across China. These developments are especially significant for SMEs, as they have the potential to considerably reduce the costs associated with IP dispute processes.

While China's COVID-19 containment measures complicated the registration and enforcement of IPR, especially those of foreign companies throughout 2020 to the end of 2022, the abandonment of 'zero-COVID' policies has had some positive impact on IP management. Furthermore, China's joining of the *Hague Convention on Abolishing the Requirement of Legalisation for Foreign Public Documents* will potentially make the costly and time-consuming process of document legalisation easier and cheaper. Whether this will reduce IP-enforcement costs for EU SMEs depends on whether China considers enforcement-related documents—such as the power of attorney (PoA) and company incorporation certificates—as public documents covered by clauses of the convention.[44]

On the political front, there have been several high-level statements regarding the protection of IP in China,[45] and, more concretely, the condemnation of unfair technology transfers. Yet, in practice, policy guidance at the municipal or provincial level, as well as legal instruments such as joint venture (JV) requirements, continue to compel technology transfers. For example, guided by China Manufacturing 2025, local public tenders often include a 'made in China' requirement, pushing foreign companies into JVs in exchange for market access.[46] In the European Chamber's *Business Confidence Survey 2023*, 17 per cent of respondents (a three-point increase compared to 2022) reported they were still compelled to transfer technology, more than two years after the implementation of the Foreign Investment Law, which should prohibit this practice.[47]

The EU-China Agreement on Geographical Indications (GIs), which came to force in March 2021, was an important step for the protection of GIs within the China market. However, some EU GIs may be excluded from acquiring protection because of their generic names (for example, claims outside of the EU that 'feta' has become the generic name for a white cheese aged in brine) or prior trademarks.[48] These two exceptions can potentially endanger the success of future EU GI registrations. Furthermore, the proposed amendments to the Trademark Law allowing exceptions against claims of trademark infringement based on the use of names of geographical locations and generic names further exacerbate the fears of EU rights holders. Therefore, strengthening the SAMR's powers to enforce the EU-China GI Agreement will be crucial to the success of the initiative.

Recommendations

- Strengthen enforcement and consistency with regard to notice-and-take-down procedures on e-commerce platforms.
- Engage local enforcement agencies, customs authorities and courts to take effective action against counterfeiting.
- Treat documentation required for IP enforcement, such as the PoA and company incorporation certificates, as public documents falling under the Hague Convention on Abolishing the Requirement of Legalisation for Foreign Public Documents.

43 *Intellectual Property Crime Threat Assessment 2022*, EUIPO & EUROPOL, updated 16th March 2022, viewed 27th April 2023, <https://www.europol.europa.eu/publications-events/publications/intellectual-property-crime-threat-assessment-2022>

44 Van Malenstain, Reiunout, *China joins Apostille Convention – no legalization for public documents*, HFG Law & Intellectual Property, 14th March 2023, viewed 27th April 2023 <https://www.hfgip.com/news/china-joins-apostille-convention-no-legalization-public-documents>

45 *14th Five-year Plan for the National Economic and Social Development and the Long-range Objectives Through the Year 2035*, NDRC, 23rd March 2021, viewed 27th April 2023, <https://www.ndrc.gov.cn/xxgk/zcfb/ghwb/202103/P020210313315693279320.pdf>

46 *"Report on the protection and enforcement of intellectual property rights in third countries" Commission Staff Working Document,* European Commission, April 2021, viewed 27th April 2023, <https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc_159553.pdf>

47 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, 21st June 2023, viewed 21st June 2023, <https://www.europeanchamber.com.cn/en/publications-business-confidence-survey>

48 GIs identified as potentially problematic include: Perigord, Szegedi teliszalami/Szegedi szalami, Prosciutto Toscano, Fontina, Munster, Nurnberger Bratwurste, Jambon de Bayonne and Beaufort: Hu, Weinian, *Dinner for three: EU, China and the US: Around the geographical indications table,* Centre for European Policy Research, April 2020, viewed 27th April 2023, <https://www.ceps.eu/wp-content/uploads/2020/04/PI2020-07_EU-China-and-the-US-around-the-geographical-indications-table.pdf>

- Increase the the SAMR's power to enforce the EU-China GI Agreement.

Abbreviations

CIT	Corporate Income Tax
CNY	Chinese Yuan
EU	European Union
EUIPO	European Union Intellectual Property Office
EUR	Euro (currency)
EUROPOL	European Union Agency for Law Enforcement Cooperation
FIE	Foreign-invested Enterprise
GI	Geographical Indication
IP	Intellectual Property
IPR	Intellectual Property Rights
JV	Joint Venture
MIIT	Ministry of Industry and Information Technology
NBFI	Non-banking Financial Institution
NDRC	National Development and Reform Commission
NPC	National People's Congress
PoA	Power of Attorney
R&D	Research and Development
RMB	*Renminbi*
SAMR	State Administration for Market Regulation
SME	Small and Medium-sized Enterprise
SOE	State-owned Enterprise
STA	State Taxation Administration
VAT	Value-added Tax

Investment Working Group

Key Recommendations

1. Ensure Consistent Implementation of the Foreign Investment Regime and Adhere to the Principle of National Treatment 4

- Continue to reduce the number of industry sectors on the negative lists in which foreign investment is either restricted or prohibited.
- Introduce reporting, mediation and dispute resolution mechanisms and avenues of recourse for foreign companies compelled to transfer technology.
- Implement and adhere to the principle of national treatment across government levels and nationwide (in particular in the area of government procurement).
- Abolish specific laws and regulations imposing investment restrictions only on foreign investors, including onshoring requirements and discriminatory requirements on licensing.
- Introduce legislation that allows for a national unified market aligned with international rules and best practices, and the unification of standards and policies in different regions and industries.

2. Enhance Market Competitiveness and Create a Level Playing Field with State-owned Enterprises (SOEs) 7

- Afford national treatment to all enterprises established in China, regardless of ownership and company type.
- Reduce complexities around business licences and permits, and improve transparency in the application of risk and return guidelines for SOE financing.

3. Streamline the Cross-border Mergers and Acquisitions Process 4

- Formulate national-level guidance aimed at providing automatic, fast-track licensing for asset deals that adequately reflect business transfers.
- Allow foreign-invested enterprises (FIEs) access to China's capital market on an equal basis with local players.
- Adhere to a strict application of bankruptcy laws and eliminate arbitrary considerations in decisions involving informal reorganisation arrangements.
- Continue to harmonise the treatment of FIEs and domestic companies as per the Foreign Investment Law (FIL) and eliminate remaining barriers to foreign investment by creating a level playing field.

4. Further Open Up China's Capital Market to FIEs 10

- Expand FIEs access to China's capital market.
- Improve market regulation by the China Securities Regulatory Commission and its sister financial regulators.
- Create a fair and level playing field for FIEs seeking to issue debt securities, including bonds and asset-backed securities.
- Grant FIEs national treatment and allow them to list their shares on a Chinese stock exchange.
- Establish an 'international board' on the Shanghai Stock Exchange to allow international

enterprises to achieve a secondary listing of their equity securities in China's A-share market.

- Simplify the rules for foreign investors selling shares of listed joint ventures as per the principle of national treatment highlighted by the FIL.
- Remove the additional disclosure requirements on investments by foreign investors in listed companies so as to correspond to the principle of national treatment.

Introduction to the Working Group

The Investment Working Group advocates for improvements in China's investment environment in terms of market access and regulatory environment. The working group's membership is comprised of service providers, including investment consultants, law firms, private equity and venture capital firms, and banks, as well as a range of large European manufacturers. The working group seeks to achieve a level playing field for foreign investors based on reciprocity. It further provides a platform for knowledge exchange and expertise sharing among professional investment advisors in China.

Recent Developments

In 2022, foreign direct investment (FDI) into China grew by eight per cent, reaching a record high of United States dollars (USD) 189 billion.[1]

European Union (EU) investment into China almost doubled in 2022, growing 92.2 per cent year-on-year, a reversal from the 10.4 per cent year-on-year decrease seen in 2021.[2] The cumulative value of EU FDI in China stood at approximately USD 176 billion in 2021. The annual average flow of EU FDI into China from 2000–2020 was USD 8.3 billion per year. In the opposite direction, the cumulative value of Chinese FDI in the EU

Figure 1: Growth in China's FDI Slows After 2021 Surge

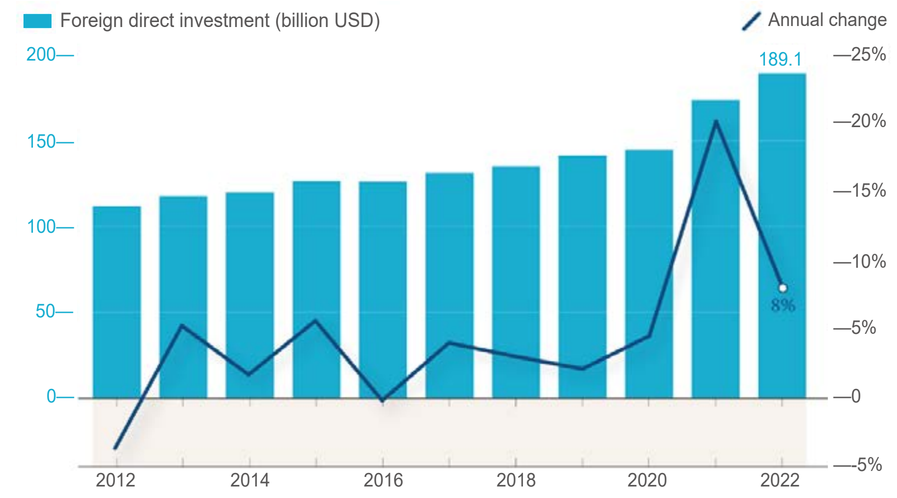


Figure 1 Source: Caixin Global

1 *Zhang Yukun, Charts of the Day: China's FDI Growth Slowed but 'Steady' in 2022, Caixin Global,* 18th January 2023, viewed 18th April 2023. <https://www.caixinglobal.com/2023-01-18/charts-of-the-day-chinas-fdi-growth-slowed-but-steady-in-2022-101990636.html>

2 Arendse Huld, *China Records Steady FDI Growth in 2022*, China Briefing, 20th January 2023, viewed 18th April 2023, <https://www.china-briefing.com/news/china-records-steady-fdi-growth-in-2022/>

Figure 2: China M&A Breakdown

Source: S&P Global Market Intelligence as of 31 December 2021.

was roughly USD 155 billion in 2021, with an average annual flow of USD 7.3 billion from 2000–2020.[3]

In 2022, the number of domestic and inbound mergers and acquisitions (M&A) in China reached 2,046 deals, while that of outbound M&A deals from Greater China was 238 in total. Total domestic and inbound M&A value was USD 188.7 billion, while the total outbound M&A value was USD 19.5 billion. The decline in 2022 M&A activity compared to previous years was driven in large part by slower global economic growth and highly restrictive COVID-19 measures, particularly within China.[4]

EU Investment Toolbox

On 20th June 2023, the European Commission and the High Representative published a joint communication on a European Economic Security Strategy.[5] The communication lays out a plan of action, including reviewing the *FDI Screening Regulation* and examining, together with Member States, the types of security risks that can result from outbound investments. These assessments will form the basis for a proposal on an initiative to enhance economic security to be delivered by the end of 2023.

On 6th June 2023, the European Parliament and the European Council reached a final political agreement on the Anti-coercion Instrument (ACI).[6] The ACI will enable the EU to respond to economic coercion, through a wide range of possible countermeasures against a coercing country, including the imposition of tariffs, restrictions on trade in services, and restrictions on access to FDI or public procurement.

According to a speech by European Commission President Ursula von der Leyen on EU-China relations in March 2023, there are gaps in the EU's toolbox "which allow the leakage of emerging and sensitive technologies through investments in other countries".[7] President von der Leyen said that the EU is reflecting on whether Europe should develop a targeted instrument on outbound investment, aimed at a small number of sensitive technologies where investment can lead to the development of military capabilities that pose risks to national security.

On 28th November 2022, the European Council approved the *Regulation on Foreign Subsidies Distorting the*

3 *Report on foreign direct investment flows between the EU and China (Q2 2021)*, European Commission, 21st July 2021, viewed 12th June 2023, <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/4931018c-33b2-489d-905e-9596be86f22b/details>

4 *Greater China Q4 2022 Capital Markets Update*, S&P Global, viewed 12th June 2023,<https://pages.marketintelligence.spglobal.com/rs/565-BDO-100/images/china-manda-by-the-numbers-q4-2022.pdf>

5 *An EU approach to enhance economic security*, European Commission, 20th June 2023,viewed 28th June 2023, <https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3358>

6 *Political agreement on new Anti-Coercion Instrument to better defend EU interests on global stage*, European Commission, 6th June 2023, viewed 14th June 2023, <https://ec.europa.eu/commission/presscorner/detail/en/IP_23_3046>

7 *Speech by President von der Leyen on EU-China relations to the Mercator Institute for China Studies and the European Policy Centre*, European Commission, 30th March 2023, viewed 12th June 2023,<https://ec.europa.eu/commission/presscorner/detail/en/speech_23_2063>

Internal Market,[8] thereby filling a regulatory gap and creating a new instrument to prevent foreign subsidies from distorting the EU internal market.

On 23rd February 2022, the European Commission adopted a proposal for a Directive on Corporate Sustainability Due Diligence.[9] The aim of this directive is to foster sustainable and responsible corporate behaviour and to anchor human rights and environmental considerations in companies' operations and corporate governance.

China's Negative Lists

On 27th December 2021, the National Development and Reform Commission issued the *Negative List for Foreign Investment (2021 version)*,[10] and the Ministry of Commerce (MOFCOM) issued the *Negative List for Foreign Investment for Pilot Free Trade Zones (2021 version)*.[11]

In the 2021 versions, the negative lists for foreign investment in China and pilot free trade zones are further reduced by two items to 31 and three items to 27 items respectively. In the automobile manufacturing sector, restrictions on foreign ownership in passenger car manufacturing and restrictions on the establishment of joint ventures in China for production of the same vehicle products are abolished. The European Chamber welcomed the updates contained in the two negative lists, which came into effect on 1st January 2022.[12] Regarding market access in the pilot free trade zones, in the radio and television equipment manufacturing sector, restrictions on the production of ground receiving facilities and key components for satellite television and radio broadcasting were abolished. The working group views the updated *Negative List for Foreign Investment* as another small step forward in China's reform and opening up agenda.

China's Reopening

China's zero-COVID policy, with strict social distancing, mass testing, lockdowns and largely closed borders, shut the country off from the outside world. International travel restrictions under the policy made cross-border business trips between headquarters in Europe and China almost impossible, which has been detrimental to timely communication. However, the restrictions were lifted in late December 2022 and borders fully reopened in early 2023. China no longer requires quarantine for arrivals, which had been a major deterrent for business trips. Since the start of 2023, a flurry of top executives have visited China for the first time since the start of the COVID-19 pandemic, re-launching face-to-face meetings with Chinese officials and regulators.

Two Sessions

The Two Sessions (the annual plenary sessions of National People's Congress and the Chinese Political Consultative Conference) are where the Chinese Government sets out its key economic targets and policy directives for the upcoming year. With a new premier and economic ministerial team appointed at the Two Sessions in 2023, the priority policy areas were highlighted, with a focus on reflating the economy and reigniting private investment. During the Two Sessions, the *2023 Government Work Report* was submitted to the national legislature for deliberation, which highlighted China's intention to intensify efforts to attract foreign investment. According to the report, "China will expand market access, continue to open up the modern services sector, ensure national treatment for foreign-funded companies, improve services for foreign-funded companies and facilitate the launch of landmark foreign-funded projects".[13] Meanwhile, the new administration outlined the state policy priority of reform and opening-up, and in a manner in alignment with high standard international trade rules.[14]

8 *Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market*, EUR-Lex, 23rd December 2022, viewed 14th June 2023, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2022.330.01.0001.01.ENG&toc=OJ%3AL%3A2022%3A330%3ATOC>

9 *Corporate sustainability due diligence*, European Commission, 23rd February 2022, viewed 15th June 2023, <https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en>

10 *Special Administrative Measures on Foreign Investment Access (Negative List) (2021 version),* State Council, 27th December 2021, viewed 18th April 2023, <http://www.gov.cn/zhengce/zhengceku/2021-12/28/content_5664886.htm>

11 *Special Administrative Measures on Foreign Investment Access (Negative List) (2021 version) for Pilot Free Trade Zones*, State Council, 27th December 2021, viewed 18th April 2023, <http://www.gov.cn/zhengce/zhengceku/2021-12/28/content_5664887.htm>

12 *European Chamber Stance on the Liberalisation of Ownership Restrictions in the Automotive Sector,* European Union Chamber of Commerce in China, 11th January 2022, viewed 18th April 2023,<https://www.europeanchamber.com.cn/en/press-releases/3414>

13 *China to intensify efforts to attract, utilize foreign investment, Xinhua*, 5th March 2023, viewed 18th April 2023, <https://english.www.gov.cn/premier/news/202303/05/content_WS6403f2bbc6d0a757729e7a6f.html>

14 *Premier Li Qiang Meets the Press: Full Transcript of Questions and Answers*, Ministry of Foreign Affairs of the People's Republic of China (PRC), 13th March 2023, viewed 18th April 2023, <https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/202303/t20230314_11040394.html>

Key Recommendations

1. Ensure Consistent Implementation of the Foreign Investment Regime and Adhere to the Principle of National Treatment 4

Concern

The inconsistent enforcement of the Foreign Investment Law (FIL) and restrictions imposed on foreign-invested enterprises (FIEs) continue to result in unequal treatment toward foreign companies.

Assessment

Despite the promulgation of the FIL over three years ago, China continues to differentiate between foreign and Chinese companies in the field of investment. The FIL does not fundamentally abolish the distinction between foreign and domestic investment.

The Investment Working Group maintains that no compelling reasons exist to regulate companies differently based on ownership structure or investor nationality. However, China's negative list system continues to either prohibit or restrict foreign investment in certain sectors. That being said, certain aspects of China's market access have improved marginally, including the lifting of ownership restrictions for manufacturers of passenger vehicles.[15]

However, despite the aforementioned easing of market access in China, foreign investors have lingering concerns, with 62 per cent of respondents to the European Chamber's *Business Confidence Report* (BCS) *2023* reporting having lost business opportunities due to market access barriers – the highest on record. One in seven respondents face direct market barriers, such as China's negative lists, while indirect barriers—which include complex and time-consuming administrative approval requirements and *de facto* obstacles to obtaining operating licences—are encountered by 21 per cent.[16]

FIL and Technology Transfer

Despite China releasing the *Guidelines for Building a Powerful Intellectual Property Nation (2021–2035)* in September 2021,[17] intellectual property (IP) protection remains a significant concern for European companies as many are still being compelled to transfer technology to maintain market access.

Article 22 of the FIL states that "No administrative department or its staff member shall force any transfer of technology by administrative means."[18] In addition to which, under the *Implementation Regulations of the Foreign Investment Law of the People's Republic of China (PRC)*, Article 24 states that "No administrative authority (including organisations with the function of managing public affairs as authorised by laws and regulations) or their working personnel may force directly or in a disguised way any focreign investor or foreign-invested enterprise to transfer its technology by virtue of implementing administrative licensing, administrative inspection, administrative punishment, administrative enforcement or other administrative means."[19]

However, this does not address the core problem. According to the BCS 2023, 17 per cent of respondents were compelled to transfer technology and/or trade secrets in exchange for market access. It is concerning that 53 per cent of those report that the compelled technology transfer either happened within the previous year or was still taking place at the time of the survey. This means that the majority of compelled technology transfers occurred after the FIL—which should prohibit this practice—went into effect on 1st January 2020. Most respondents report that the technology they were compelled to transfer was part of a commercial agreement or joint venture requirements, but 23 per cent report that it happened due to written policy requirements or verbal pressure from government officials.[20] This suggests that the FIL has not been implemented to the letter of the law.

15 For more information, please refer to the Recent Developments section of this position paper.

16 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, 21st June 2023, viewed 28th June 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

17 *Guidelines for Building a Powerful Intellectual Property Nation (2021–2035),* State Council, 22nd September 2022, viewed 18th April 2023, <http://www.gov.cn/zhengce/2021-09/22/content_5638714.htm>

18 Foreign Investment Law of the PRC, National Development and Reform Commission, 15th March 2019, viewed 18th April 2023, <https://en.ndrc.gov.cn/policies/202105/t20210527_1281403.html>

19 *Implementation Regulations of the Foreign Investment Law,* State Council, 26th December 2019, viewed 18th April 2023, <http://www.gov.cn/zhengce/content/2019-12/31/content_5465449.htm>

20 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, 21st June 2023, viewed 28th June 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

If foreign companies are subjected to unfair technology transfers, an increased level of clarity on the avenues of recourse is required as, in practice, FIEs still encounter unequal treatment compared to their domestic competitors. This leaves the FIL provisions somewhat dulled and ineffectual considering general business practices.

Public Procurement

Article 16 of the FIL states that, "The State shall guarantee that foreign-funded enterprises can participate in government procurement activities through fair competition. Products produced and services provided by foreign-funded enterprises within the territory of China shall be treated equally in a government procurement." However, the BCS 2023 findings indicate that discrimination against FIEs in public procurement is a key challenge for members operating in the medical devices, civil engineering, and IT and telecommunications sectors.

National Unified Market

On 10th April 2022, the Central Committee of the Communist Party of China and the State Council jointly released the *Opinions on Accelerating the Construction of the National Unified Market*.[21] This document outlines plans to create a “national unified market” to improve standardisation and consistency in the implementation of regulations across a wide range of industries in China.

The construction of a national unified market was first proposed in early 2021 in the 14th Five-year Plan (14FYP), which sets out the goal of “optimising the market environment by benchmarking against advanced international rules and best practices, promoting the coordination and unification of standards, rules, and policies in different regions and industries, and effectively eliminating local protectionism, industry monopoly, and market segmentation.”[22] The national unified market will target a range of industries through a variety of regulations, such as intellectual property rights (IPR) protection, market access and anti-monopoly regulations, as well as via various industry-specific standards.

21 *Opinions on Accelerating the Construction of the National Unified Market*, State Council, 10th April 2022,viewed 18th April 2023, <http://www.gov.cn/zhengce/2022-04/10/content_5684385.htm>

22 *Outline of the 14th Five-Year Plan for National Economic and Social Development of the People's Republic of China and the Long-term Goals for 2035*, State Council, 13rd March 2021, viewed 18th April 2023, <http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm>

While the *Opinions* are a welcome development, their desired effect of consistency for all enterprises is somewhat muted, as the *Opinions* do not constitute legislation, merely the means to spur further regulation and guidelines. In addition, the *Opinions* envision amending segmented inefficiencies across different local governments as opposed to more broad national-based issues concerning providing a level playing field to foreign investors.

Recommendations

- Continue to reduce the number of industry sectors on the negative lists in which foreign investment is either restricted or prohibited.
- Introduce reporting, mediation and dispute resolution mechanisms and avenues of recourse for foreign companies compelled to transfer technologies.
- Implement and adhere to the principle of national treatment across government levels and nationwide (in particular in the area of government procurement).
- Abolish specific laws and regulations imposing investment restrictions only on foreign investors, including onshoring requirements and discriminatory requirements on licensing.
- Introduce legislation that allows for a national unified market aligned with international rules and best practices, and the unification of standards and policies in different regions and industries.

2. Enhance Market Competitiveness and Create a Level Playing Field with State-owned Enterprises (SOEs) 7

Concern

China’s SOEs continue to enjoy preferential treatment, to the detriment of privately-owned competitors and Chinese consumers.

Assessment

Although SOEs constitute one strategic pillar of the Chinese economy, achieving long-term, sustainable development entails the creation of an efficient domestic market in which participation by all players is enabled and fair competition for the benefit of consumers is ensured.

SOE Reform

On 31st December 2020, the State-owned Assets Supervision and Administration Commission and the Ministry of Finance (MOF) jointly issued the

Management Measures for the Formulation of Articles of Association of State-owned Enterprises,[23] which still play a key role in the reform and development of China's SOEs. Central SOEs are heavyweights in strategic industries, making government-led attempts to reform their structure especially challenging. Over the past few decades, most reform efforts have been directed toward these SOEs. As a result, explicit and implicit barriers to competition remain pervasive at the local level, where SOEs are less spread out geographically than their central counterparts.

In addition, working group members have noted that large domestic SOEs have been pressuring external suppliers to adopt their internal standards in recent years. Due to the lack of involvement of stakeholders along the industry chain in the formulation of these internal standards, they often lack sophistication and have low applicability and universality. This has affected the application of advanced technologies in China to an extent that it has become a significant hidden barrier to FIEs trying to enter the Chinese market. The working group expects more focus on continuing SOE reform in a deeper, systematic fashion that could lead to tangible improvements in the local business environment.

New Industries

The 14FYP set environmental protection and technological advancement as top national priorities for the period 2021–2025. European companies are eager to support China in this pursuit, yet face barriers that risk impairing their ability to contribute to the investment goals in new industries. In the absence of fair competition, access to markets like green energy generation is limited for foreign companies, if not outright restricted in areas such as carbon capture and storage, and power generation and distribution.[24]

This situation is worsened by restrictive regulations that widen the gap between FIEs and local players. For example, data localisation requirements, although applicable to both local and foreign companies alike, affect foreign players the most and result in a duplication of data storage and management assets and processes.

A similar situation affects data-driven technology industries, including cloud computing and information and communications technology.[25] Here, the impact of regulatory-induced market segmentation for foreign players is even more concerning, given that project success is closely tied to the ability to offer service bundling and data monetisation across service lines. Current limitations in digital industries not only add complexity to any M&A investment but also prevent FIEs from deploying synergetic strategies that generate wealth and growth for domestic subsidiaries.

Recommendations

- Afford national treatment to all enterprises established in China, regardless of ownership and company type.
- Reduce complexities around business licences and permits, and improve transparency in the application of risk/return guidelines for SOE financing.

3. Streamline the Cross-border M&A Process

4

Concern

M&A activity continues to be hindered by regulatory and bureaucratic requirements that make investment into China comparatively more expensive than in competing regions.

Assessment

Regulatory Burdens Affecting Inbound Investment

The legal regime governing acquisitions in China remains complicated and restrictive, and its application mostly unpredictable. Foreign investors have to overcome a number of restrictions under the *Provisions on Merger and Acquisition of Domestic Enterprises by Foreign Investors (M&A Rules)*[26] along with additional challenges, such as merger control filing and national security review. A typical inbound M&A investment, for example, can take anything between 10 weeks, in the absence of special approvals, and several years for transactions that require reapplication for certain permits. Moreover, foreign M&As are also regulated by additional rules issued by the MOFCOM as well as regulations applicable to general FDI in China, such as the negative lists and the FIL.

23 *Management Measures for the Formulation of Articles of Association of State-owned Enterprises*, State Council, 31st December 2020, viewed 29th June 2023, <https://www.gov.cn/zhengce/zhengceku/2021-02/28/content_5589299.htm>

24 See the *Environment Working Group Position Paper 2023/2024* for more information.

25 See the *Information and Communication Technology Working Group Position Paper 2023/2024* for more information.

26 *Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors (M&A Rules)*, MOFCOM, 24th July 2009, viewed 18th April 2023, <http://www.gov.cn/flfg/2009-07/24/content_1373405.htm>

With regard to the regulatory burden for foreign investment into China, structural elements exist that make inbound M&As more resource-intensive and uncertain than in other legal systems. Among the problematic structural elements most cited by European investors are unclear guidelines and uncertainty surrounding the implementation of regulations on bankruptcy, court disputes, and permit granting and renewal, which often vary from region to region and city to city. In consequence, many European companies estimate a higher risk premium for investments into China.

European investors also worry that this comparative disadvantage will intensify in the near future, especially in light of the growing geopolitical tensions, as investment progressively shifts towards a greater focus on technology-intensive assets, in particular those related to decarbonisation and overall environmental sustainability. In the green economy, an area where European companies have much to offer to China, complexities in the context of permit granting, coupled with uncertainties surrounding standard setting, remain significant and risk hampering inbound investment – vehicle battery manufacturing is one compelling example of how standards keep changing almost on an annual basis, adding layers of difficulty for foreign investors.

Access to Capital Markets and Financing

Foreign entities in China often complain of a less-than-level playing field when it comes to access to capital markets and financing of M&A transactions. For example, current China Securities Regulatory Commission (CSRC) rules prevent the controlling shareholder of a publicly listed company from owning 'competing' business outside of China, effectively requiring that entire global operations be listed in the country, not just the Chinese subsidiaries.[27] The unclear legal status of board members and top management in listed companies is also a concern for multinational corporations (MNCs) that would otherwise list domestic operations in Chinese stock markets. Furthermore, capital endowment requirements and exchange controls limit the ability of European companies investing into China to fund operations and capital investments through debt.

27 *Measures for the Administration of Acquisition of Listed Companies*, CSRC, 31st July 2006, viewed 18th April 2023,<http://www.csrc.gov.cn/csrc/c101864/c1024664/content.shtml>

Foreign inbound M&A are also still unlikely to obtain funding domestically in China. Most MNCs use offshore funds in their acquisitions; risk management by domestic Chinese banks generally hinges on the value of hard assets on the balance sheet, such as land and machinery. In fact, M&A funding by Chinese financial institutions is subject to hard assets pledges. This practice inevitably penalises MNCs that are looking to enter China, as they have less tangible assets onshore than their domestic counterparts. In the rare instances where leveraged buy-out funding is provided in China, it is extended on the basis of parent companies' guarantees. This constraint has become ever more critical with the emergence of new drivers of growth and further rebalancing of the Chinese economy: contrary to a decade ago, inbound European investment is now mostly aimed at China's value chains. New investment opportunities are also opening up in capital intensive growth areas, such as decarbonisation and the green economy. Investors that intend to focus on these new areas can expect, to a large extent, to compete with SOEs, which already have advantages in the capital allocation of domestic funds. *Vis-à-vis* these developments, the working group urges regulators to expand foreign investors' access to financing on market-consistent terms.

Recommendations

- Formulate national-level guidance aimed at providing automatic, fast-track licensing for asset deals that adequately reflect business transfers.
- Allow FIEs access to China's capital market on an equal basis with local players.
- Adhere to a strict application of bankruptcy laws and eliminate arbitrary considerations in decisions involving informal reorganisation arrangements.
- Continue to harmonise the treatment of FIEs and domestic companies as per the FIL and eliminate remaining barriers to foreign investment by creating a level playing field.

4. Further Open Up China's Capital Market to FIEs 10

Concern

Restrictions are hampering FIEs' access to China's capital markets in their entirety, including equity, debt and structured products, which is detrimental to the Chinese economy.

Assessment

FIEs still face many access restrictions to China's capital markets – a situation that is detrimental to both them and the Chinese economy, as it contributes to the continued underdevelopment of the domestic capital market. This lack of access prevents many FIEs from further embedding themselves into the Chinese economy and society.

A-share Markets

It is possible for an FIE to be listed on China's established stock markets by incorporating itself as, or converting itself into, a foreign-invested company limited by shares (FICLS), and then applying for a listing on the exchange of its choice in accordance with the relevant regulations. However, the requirements that FICLS and their investors must satisfy are more stringent than those that apply to domestic companies. Some examples, according to China's Company Law, include requiring at least half of the shareholders to be domiciled in China and maintaining a foreign shareholding of at least 10 per cent post-listing. Therefore, it is not possible to list a wholly foreign-owned enterprise (WFOE) on the A-share market.[28]

Even if it were possible to list WFOEs, CSRC regulations would require the listed entity to own its own IP and be free to compete on a global basis. This essentially precludes an international company from listing a local subsidiary, which differs from common practices in other financial markets, where a foreign investor can raise capital as well as control and operate a locally-listed company without its global business being required to become a domestic public entity. In the reform of China's capital markets, the working group recommends that access be made available to all economic actors, including foreign investors operating successful local subsidiaries in Mainland China.

Additional requirements applying to FICLS and their investors should also be removed, and international businesses should be free to list on the A-share market in the same way as domestic companies. This would reflect the nationwide trend of harmonising regulatory requirements that are applicable to both domestic and international entities, and the removal of many filing requirements in the field of FDI. It would also encourage foreign private equity investment in domestic companies, by facilitating foreign investors' ability to subsequently exit their investments through a Chinese initial public offering.

To this end, domestic stock exchange listing rules should be amended to make it easier for foreign companies to list on Chinese stock exchanges, thereby increasing the attractiveness of China's capital markets while leading to greater diversification from new, high-quality issuers. This would also be conducive to establishing the much-anticipated international board on the Shanghai Stock Exchange (SSE), which would enable international enterprises to achieve a secondary listing of their equity securities in China's A-share market. Removing specific listing requirements in China, limited to companies that already have listed in their home markets, could be a practical solution to overcome technicalities such as horizontal competition,[29] trademark or brand ownership, and 'arm's length' trade and services[30] arrangements.

On 25th March 2022, the CSRC approved the *Interim Measures for the Listing and Trading of Depository Receipts under the Stock Connect Scheme between Shanghai Stock Exchange and Overseas Stock Exchanges*,[31] thereby expanding the link between the stock exchanges of Shanghai and London to include bourses in Germany, Switzerland and Shenzhen. The regulator also enabled European companies to sell new shares and raise funds from investors in Mainland China, and simplified their financial-reporting and disclosure requirements.

On 3rd March 2023, the SSE released the *Implementation Measures of the Shanghai Stock Exchange for Shanghai-Hong Kong Stock Connect Business (2023 Revision)*.[32] This marks the first time for stocks of foreign companies primarily listed on the Hong Kong Exchange to also be listed on the Shanghai-Hong

28 Shi, Emilia, *Establishing a Business in China: Overview*, Thomson Reuters, 1st July 2019, viewed 18th April 2023, <https://uk.practicallaw.thomsonreuters.com/1-623-4945?transitionType=Default&contextData=(sc.Default)>

29 Horizontal competition refers to the rivalry to gain customer preference among entities at the same level, such as competition among competing wholesalers or competing retailers.

30 'Arm's length' trade and services refers to a business deal in which buyers and sellers act independently without one party influencing the other.

31 *Shanghai Stock Exchange Issues the Interim Measures for the Listing and Trading of Depository Receipts under the Stock Connect Scheme between Shanghai Stock Exchange and Overseas Stock Exchanges and Relevant Guidelines*, SSE, 25th March 2022, viewed 18th April 2023, <http://english.sse.com.cn/news/newsrelease/c/5700281.shtml>

32 *SSE Meets the Press on Revision of Implementation Measures of the Shanghai Stock Exchange for Shanghai-Hong Kong Stock Connect Business*, SSE, 3rd March 2023, viewed 18th April 2023, <http://english.sse.com.cn/news/newsrelease/c/5717637.shtml>

Kong Stock Connect, thereby making them available to Mainland Chinese investors. Foreign companies listed in Hong Kong can now take advantage of the abundant liquidity in the Mainland market, while also increasing their Mainland investor base as well as their popularity and valuation in the Chinese market. For foreign stocks to be eligible for inclusion on the Shanghai-Hong Kong Stock Connect, they must not have any special taxation or corporate arrangements, such as being required to pay financial transaction taxes to a foreign government or to pay dividends with different tax rates to different investors. As of June 2023, such special arrangements cannot be supported by the Shanghai-Hong Kong Stock Connect technical systems.[33]

Debt Market

Since 2018, it has become easier for FIEs to routinely issue *renminbi* (RMB)-denominated debt securities, so-called 'panda bonds'. The People's Bank of China (PBOC) and the MOF jointly published interim administrative rules for bond issuance by foreign entities,[34] which, as well as clarifying and simplifying a number of issues, delegated registration of non-financial enterprises to the National Association of Financial Markets Institutional Investors. The rules also formally introduced the concept of 'equivalent accounting standards',[35] allowing enterprises reporting under non-Chinese accounting standards—such as the International Financial Reporting Standards—to access the panda bond market without converting their financial statements to Chinese Generally Accepted Accounting Principles.

In 2019, the PBOC took additional steps to open China's financial sector and improve the rating quality of the bond industry by allowing foreign rating companies to conduct bond rating in the interbank bond market.[36] In December 2021, the PBOC and the State Administration of Foreign Exchange (SAFE) solicited public opinions on the *Provisions on the Administration of Funds for Domestic Issuance of Bonds by Overseas Institutions (Draft for Comments)*.[37] The draft proposes that "funds raised by domestic bonds issued by overseas institutions can be remitted abroad or retained for domestic use. Those retained for domestic use shall comply with provisions on the administration of direct investment, foreign debt, etc. Overseas institutions are encouraged to collect, pay and use funds raised by domestic bond issuance in the form of RMB."[38]

Recommendations

- Expand FIEs access to China's capital market.
- Improve market regulation by the CSRC and its sister financial regulators.
- Create a fair and level playing field for FIEs seeking to issue debt securities, including bonds and asset backed securities.
- Grant FIEs national treatment and allow them to list their shares on a Chinese stock exchange.
- Establish an 'international board' on the SSE to allow international enterprises to achieve a secondary listing of their equity securities in China's A-share market.
- Simplify the rules for foreign investors selling shares of listed joint ventures as per the principle of national treatment highlighted by the FIL.
- Remove the additional disclosure requirements on investments by foreign investors in listed companies so as to correspond to the principle of national treatment.

33 Ibid.

34 *Announcement [2018] No.16 of the PBOC and the MOF on Interim Administrative Measures for Bond Issuance by Overseas Institutions in the China Interbank Bond Market*, PBOC, 8th September 2018, viewed 18th April 2023, <http://www.gov.cn/gongbao/content/2019/content_5362059.htm>

35 Ibid.

36 Anstey, Chris, & Tu, Lianting, *China Opens to Foreign Credit Raters to Boost Bond Credibility, Bloomberg*, 27th February 2019, viewed 18th April 2023, <https://www.bloomberg.com/news/articles/2019-02-27/china-opens-to-foreign-credit-raters-to-boost-bond-credibility>

37 *Notice on Soliciting Public Comments on the Provisions on the Administration of Funds Issued by Overseas Institutions in China (Draft)*, PBOC and SAFE, 2nd December 2021, viewed 18th April 2023, <http://www.pbc.gov.cn/tiaofasi/144941/144979/3941920/4405194/index.html>

38 *Two departments: encourage overseas institutions to issue bonds and raise funds in China to receive, pay and use cross-border in the form of RMB*, EqualOcean, 2nd December 2021, viewed 18th April 2023, <https://www.equalocean.com/briefing/20211202230099707>

European Chamber
中国欧盟商会

Abbreviations

14FYP	14th Five-Year Plan
ACI	Anti-coercion Instrument
BCS	Business Confidence Survey
CSRC	China Securities Regulatory Commission
EU	European Union
FDI	Foreign Direct Investment
FICLS	Foreign-invested Company Limited by Shares
FIE	Foreign-invested Enterprise
FIL	Foreign Investment Law
IP	Intellectual Property
IPR	Intellectual Property Rights
M&A	Mergers and Acquisitions
MNC	Multinational Corporation
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
PBOC	People's Bank of China
PRC	People's Republic of China
RMB	*Renminbi*
SAFE	State Administration of Foreign Exchange
SOE	State-owned Enterprise
SSE	Shanghai Stock Exchange
USD	United States Dollar
WFOE	Wholly Foreign-owned Enterprise

Legal and Competition Working Group

Key Recommendations

1. Continue to Strengthen the Rule of Law to Sustain Fair Competition in the Domestic Market and Contribute to Global Economic Recovery 3

- Continue to focus on advancing the rule of law and implementing a fair competition review system to create and maintain a market-orientated business environment.
- Continue to standardise the judicial decision-making process to eradicate the application of discretion and ensure equitable, transparent, predictable and impartial implementation and enforcement of laws and regulations nationwide.
- Enhance the legislative quality and remove inconsistencies within laws and regulations to provide a stable and predictable legal environment for businesses.
- Enhance the protection of trade secrets and continue lowering the prerequisite with regard to loss estimation when initiating legal proceedings for infringements.
- Ensure prompt, comprehensive and correct enforcement of judicial decisions and arbitral awards by disclosing the trial process, judgment documents and enforcement proceedings, as well as setting up effective communication channels among the interested parties.
- Enhance compliance with terms and deadlines in court and administrative procedures.
- Standardise the public consultation process.
- Permit foreign nationals to attend civil and commercial hearings at the People's Courts without prior registration.
- Enhance personnel mobility and exchange by facilitating visa issuance to qualified foreign lawyers.

2. Reform the Foreign Investment Legislative and Administrative Regime to Ensure a Level Playing Field for All Companies

- Consider fundamentally changing the existing foreign investment management regime to eliminate differentiation between Chinese and foreign investment, and ensure a level playing field and non-discriminatory market access regime.
- Formulate In a timely manner the necessary implementation rules to clarify the uncertainties and ambiguities caused by the launch of the Foreign Investment Law, particularly the gaps created by abolishing old laws.
- Adjust and consolidate all other pertinent laws and regulations to maintain alignment of the whole legal framework in the field of foreign investment, including greenfield investment and mergers and acquisition activities.
- Ensure transparency in the rule-making process by publishing a clear enactment and public consultation timeframe, including information on the respective stakeholders in charge of rulemaking, and allow sufficient time throughout the process for public comments to reflect business concerns.

3. Develop an Export Control Regulatory Framework that is Clear, Proportionate and Aligned with Global Practices 3

- Clarify the supervision and enforcement of governmental organs, and the rights and powers thereof, to facilitate direct dialogue and discussion between export control authorities and industry.
- Exempt commercial mass market products from export restrictions, focussing the export control system instead on items that directly and strategically affect China's national security.
- Ensure a practical and user-friendly licensing system featuring bulk and general licensing and licensing exceptions for intra-company transfers.
- Consider updating the current dual-use items list with designations based on the nature of goods control.
- Narrowly define the scope of 'deemed exports' subject to licensing, and introduce reasonable export thresholds and exemption arrangements.
- Clarify the definition and management mechanism of 're-export'.
- Establish regulations to control 'end-use' and reduce risks arising from indirect sales.

4. Eliminate Restrictions on the Legal Services that Foreign Law Firms Can Provide 12

- Allow foreign law firms to fully practice People's Republic of China (PRC) law in non-contentious areas through the employment of individuals who are qualified and licensed to practice PRC law.
- Allow lawyers in foreign law firms to fully represent their clients before Chinese government authorities as long as they have the proper powers of attorney.
- Relax the requirement for foreign law firms in joint operations to establish a representative office in China for at least three years, and allow qualified foreign lawyers to become partners in Chinese law firms at the local level, such as in Shanghai, Hainan and other pilot locations.
- Ensure consistent and transparent implementation and enforcement of laws and regulations concerning foreign investments.
- Streamline the registration procedures, timing and requirements for foreign lawyers.

5. Develop an Advanced Regulatory Framework that Enables All Aspects of Sustainability to Permeate Chinese Corporate Governance and Supply Chains for Stronger Cooperation with the European Union (EU) Towards a Green Transition 2

- Plan and develop an advanced regulatory framework which enables all aspects of sustainability, including environmental and social and governance (ESG) aspects, to permeate corporate governance and supply chains in China.
- Review and reinforce China's signature and ratification of existing international treaties relevant to sustainability and ESG matters.
- Support awareness and enhance the training of key players in different industrial sectors, including state-owned enterprises and private companies, for a deeper understanding of ESG matters and in preparation for new sustainability challenges in global supply chains.
- Strengthen cooperation with the EU and EU Member States to create a sophisticated set of shared rules and standards that could act as a global benchmark.

Introduction to the Working Group

Created in 2000, the Legal and Competition Working Group fosters greater legal transparency and awareness of legal developments that affect foreign trade and investment in China. It also advocates for strengthening the rule of law in China and improving foreign businesses' access to the Chinese market, including the legal services market. It is now comprised of approximately 480 individuals that represent over 270 member companies.

Recent Developments

Since the 18th National Congress of the Communist Party of China, the Chinese Government has taken a series of major decisions and measures to upgrade the legal framework, advancing the continuous improvement of the level of administration in accordance with the law. As part of its 14th Five-year Plan (2021–2025), China is looking to significantly improve legal awareness among the public, as well as to build a more integrated system of law education during this period. In 2022 and early 2023, several welcome developments were carried out by the legislative, regulatory and judicial bodies, including amendments to the Anti-monopoly Law (AML) and some legislative proposals at the Two Sessions..

Anti-monopoly Law (AML)

On 24th June 2022, the 13th National People's Congress (NPC) Standing Committee adopted the first amendments to the AML.[1] The amendments took effect on 1st August 2022, aiming to unify legal enforcement and to establish an open, competitive and orderly market system. The amended AML brings about important changes that cover key aspects of companies' business operations. It also includes content on vertical agreements, internet platforms, and increased fines and liability for violations.

Two Sessions Legislative Proposal Updates

The 'Two Sessions', China's most significant annual political event, refers to the annual sessions of the NPC, the nation's top legislature, and the National Committee of the Chinese People's Political Consultative Conference, China's leading political advisory body. The most noteworthy legislative proposals for businesses from the Two Sessions in 2023 are the special legislation on trade secrets and on renewable energy.[2&3]

Key Recommendations

1. Continue to Strengthen the Rule of Law to Sustain Fair Competition in the Domestic Market and Contribute to Global Economic Recovery 3

Concern

European companies face challenges when operating in China, including ambiguous legal requirements, inadequate legal and policy implementation, and a lack of guidance on business conflicts.

Assessment

China has made significant progress in improving its legal system since joining the World Trade Organization in December 2001. Efforts have been made to converge with international standards and create a legal framework that promotes a market environment. However, there are still challenges in relation to transparency and impartiality in law enforcement in certain areas of trade and investment. Further improvements are needed in the areas below to ensure a level playing field and non-discriminatory market access for foreign-invested enterprises (FIEs).

1) Advance the rule of law and enforce a unified national market that is non-discriminatory and fair for FIEs

China's ambition to create a fair and united market was outlined in the *Opinion on Accelerating the Establishment of a Unified Domestic Market (Opinion),* issued jointly by the Central Committee of the Communist Party of China (CPCCC) and the State Council on 10th April 2022.[4] The *Opinion* explicitly calls for the eradication of all policies that compromise fair competition between companies. In addition, under the amended AML, the fair competition review system was officially included for the first time in law to protect fair competition in the market and encourage innovation. The working group therefore calls for an immediate and

1 Anti-monopoly Law, NPC, 24th June 2022, viewed 4th May 2023, <http://wjw.wenzhou.gov.cn/art/2022/11/14/art_1209943_58913660.html>

2 *Proposal regarding the legislation of trade secrets,* NPC, 14th February 2023, viewed 4th May 2023, <http://www.npc.gov.cn/npc/c30834/202302/7537cd58cbd54054a3c5242ca97e0e80.shtml>

3 *Proposal regarding the legislation of renewable energy,* NPC, 1st March 2022, viewed 4th May 2023, <http://www.npc.gov.cn/npc/c30834/202301/017aa78f4f344f6782d1dcc66ed54a35.shtml>

4 *Opinion on Accelerating the Establishment of a Unified Domestic Market*, CPCCC & State Council, 10th April 2022, viewed 16th April 2023, <http://www.gov.cn/xinwen/2022-04/10/content_5684388.htm>

robust implementation of the *Opinion* and the AML at all levels, through, for example, transforming requirements into legal and regulatory systems, enhancing the fair competition review, reducing the *Negative List for Foreign Investment* and ensuring non-discriminatory enforcement of the AML.[5]

2) Standardise the enforcement of laws and regulations

Despite the significant improvements, European companies still encounter inconsistencies in the application and enforcement of laws and regulations. This is often due to discretionary implementation, which can vary depending on the parties involved, the location or the sector. The working group expects the government to continue standardising all judicial and administrative proceedings to create a more predictable, transparent and impartial legal system. To achieve this, the authorities should reduce the adoption and application of open clauses in legislation, publish details on enforcement and related decision-making processes, and enhance and expand existing law enforcement monitoring and reporting systems.[6&7]

3) Enhance legislative quality and remove inconsistencies within laws and regulations to provide a stable and predictable legal environment for businesses

Consistency within the legal framework is fundamental for business planning operations and exercising their legal rights. However, several stipulations in Chinese legislations are inconsistent with or even contradictory to their upper-level laws or regulations. For instance, the stipulation of the *Regulation on the Administration of Human Genetic Resources*[8] that patent rights will be shared is in discord with the Civil Code and Patent Law, which allow contractual terms to define intellectual property (IP) allocation.[9] Stricter enforcement of the Legislation Law and the associated legislative review to amend or repeal contradictions and inconsistencies within legal and regulatory systems could provide and sustain a stable and coherent legal environment for companies.[10]

4) Enforcement of judgments and awards

Problems related to the enforcement of judgments and arbitral awards in China are still quite common, as the People's Courts and the winning parties in proceedings are too often not provided with adequate means to follow up on enforcement proceedings. Disclosing the trial process, judgment documents and enforcement proceedings, as well as setting up effective communication channels among the interested parties, would help to further enhance the depth and level of judicial openness.

5) Compliance with terms and deadlines in court and administrative procedures

Stipulated terms and deadlines in court and administrative procedures are crucial for companies to know when they can seek legal recourse and damages during complex disputes. The current uncertainty of judicial and administrative proceedings may cause companies to doubt their ability to obtain procedural justice, while seeing their related costs increase. Thus, the working group hopes that measures will be taken by the relevant authorities to strengthen adherence to terms and deadlines, and make available recourse or appeals mechanisms to resolve non-compliance issues.

5 *Negative list for Foreign Investment,* Ministry of Commerce (MOFCOM), 28th Dec 2021, viewed 29th June 2023, <http://er.mofcom.gov.cn/article/jmxw/202112/20211203232425.shtml >

6 Since the beginning of 2021, regulatory documents and drafts aimed at improving the law enforcement quality and limiting discretional judgments in some areas have been subsequently released, such as *Guidance for Improvement of Law Enforcement Effectiveness in Ecosystem and Environment Protection*, Ministry of Ecology and Environment (MEE), 6th January 2021, viewed 16th April 2023, <http://www.mee.gov.cn/xxgk2018/xxgk/xxgk03/202101/t20210114_817353.html>; *Guidance for Differentiated Law Enforcement based on Affirmative List in Ecosystem and Environment Protection*, MEE, April 6th 2021, viewed 16th April 2023, <http://www.tjhx.gov.cn/zwgk/zfxxgk/zfgbm/qsthjj/fdzdgknr/zdmsxx/hjbh/202110/P020211029478194648929.pdf>; *Trial Standard for Discretional Administrative Penalty on Fishing in Oceans*, Ministry of Agriculture and Rural Affairs & China Coast Guard, 26th November 2021, viewed 16th April 2023, <http://www.gov.cn/zhengce/zhengceku/2021-12/23/content_5664119.htm>

7 One example of good practice is a compliance system set up online by the Ministry of Justice (MOJ) for the public to report law enforcement issues, viewed 16th April 2023, <http://www.12348.gov.cn/sfbxzzf/#/suggestion/suggestion>

8 Article (Art.) 24 requires that patents developed in international research using Chinese human genetics shall be co-owned by the Chinese organisation and the foreign counterparty: *Regulation of the People's Republic of China on the Administration of Human Genetic Resources,* State Council, 1st July 2019, viewed 22nd June 2023, <http://www.gov.cn/zhengce/2020-12/27/content_5574163.htm>

9 The *Civil Code* (Art. 859–860) and the Patent Law (Art. 8) both allow contracts as the base for IP allocation between counterparties. *Civil Code*, 28th May 2020, viewed 16th April 2023, <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE3MjlkMWVmZTAxNzI5ZDUwYjVjNTAwYmY%3D>; Patent Law, 1st June 2021, viewed 16th April 2023, <https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE3NTJiN2Q0MzAxNzVlNDY1MWNiZDE1NDc%3D>.

10 The Legislation Law (amended in March 2015) requires amendment or repeal of lower-level laws/regulations that contradict with upper-level ones (Art. 96) and provides legislative review process for consistency check (articles 68, 72 and Chapter 5), Legislation Law, 15th March 2015, viewed 16th April 2023, <http://www.npc.gov.cn/zgrdw/npc/dbdhhy/12_3/2015-03/18/content_1930713.htm>

6) Improve the public consultation process

Public consultation is a crucial element in the law-making process, as it facilitates resolving potential problems in the practical implementation of laws before their official promulgation, and therefore ensures better legislation. Despite efforts to improve transparency, and the Ministry of Justice's (MOJ's) and many other ministries' and commissions' work to maintain their public consultation website, there are still many occasions—especially at the city level and below—in which a period of at least 30 days for public consultation on draft regulations was not strictly implemented as according to the Legislation Law. Failure to do so is also contrary to commitments made in the *Interim Regulation on Major Administrative Decision-making Procedures*.[11] Furthermore, the public consultation process should be made more transparent by sharing a working plan with enough lead time and providing alerts of forthcoming public consultations. Legislators should also publish major contributions received from stakeholders, together with feedback from regulators on the stakeholders' comments, in a manner similar to that on the European Commission website.[12]

7) Access to judicial judgments and participation in court hearings

European businesses welcome the increase in transparency and publicity of court judgments, as well as improvements to the websites of the Supreme People's Court (SPC) and local courts,[13&14] through which numerous court judgments are now available, pursuant to Article 156 of the Civil Procedure Law. The publication of guiding cases by the SPC was also a welcome step towards developing a comprehensive approach to jurisprudence, and should contribute to more consistent interpretation and implementation of laws and regulations throughout the country's courts.[15] The working group encourages the courts to continuously consolidate and disclose cases and judgments from all levels and expects that—as is common practice in European jurisdictions—foreign nationals could have full public access to commercial and civil hearings in the People's Courts without the need to pre-register or receive special authorisation.

8) Promote the role of domestic and foreign lawyers, and enhance personnel mobility and exchange

Legal professionals—including private practice lawyers and in-house counsels, domestic and foreign lawyers—play a pivotal role in enhancing and strengthening the rule of law, both domestically and internationally. Therefore, the working group expects recognition and support for all legal professionals, in view of their importance to business. As facilitating personnel mobility is crucial for the opening-up of China's legal service industry, providing convenient visas to qualified foreign lawyers would be conducive to communication and exchange.

Recommendations

- Continue to focus on advancing the rule of law and implement a fair competition review system to create and maintain a market-orientated business environment.
- Continue to standardise the judicial decision-making process to eradicate the application of discretion and ensure equitable, transparent, predictable and impartial implementation and enforcement of laws and regulations nationwide.
- Enhance the legislative quality and remove inconsistencies within laws and regulations to provide a stable and predictable legal environment for businesses.
- Enhance the protection of trade secrets and continue lowering the prerequisite with regard to loss estimation when initiating legal proceedings for infringements.
- Ensure prompt, comprehensive and correct enforcement of judicial decisions and arbitral awards by disclosing the trial process, judgment documents and enforcement proceedings, as well as setting up effective communication channels among interested parties.
- Enhance compliance with terms and deadlines in court and administrative procedures.
- Standardise the public consultation process.
- Permit foreign nationals to attend civil and commercial hearings in the People's Courts without prior registration.

11 *Interim Regulation on Major Administrative Decision-making Procedures*, State Council, 8th May 2019, viewed 16th April 2023, <http://www.gov.cn/zhengce/content/2019-05/08/content_5389670.htm>

12 For example, the Public Consultation Section of the European Commission website, viewed 25th July 2023, <https://ec.europa.eu/info/law/better-regulation/have-your-say_en>

13 For example, the website of the SPC has special sections for publishing court decisions and judicial enforcement, viewed 16th April 2023, <https://www.court.gov.cn/fabu-gengduo-15.html>

14 For example, Beijing local court's website, viewed 16th April 2023, <https://bjgy.chinacourt.gov.cn/paper.shtml>

15 Please see the 'Guiding Cases' section on the China Courts' website, viewed 16th April 2023, <https://www.chinacourt.org/article/index/id/MzAwNDAwMjAwMSACAAA.shtml>

- Enhance personnel mobility and exchange by facilitating visa issuance to qualified foreign lawyers.

2. Reform the Foreign Investment Legislative and Administrative Regime to Ensure a Level Playing Field for All Companies

Concern

Although the Foreign Investment Law (FIL) reiterates the concept of national treatment for foreign companies, the lack of fundamental abolishment of the distinction between foreign and domestic investment across the investment legislative and administrative regimes creates challenges in achieving a level playing field in practice.

Assessment

The FIL addresses many key concerns of foreign investors, such as IP protection, equal support policies, participation in government procurement, pre-establishment national treatment, and negative-list management. Although the FIL reiterates the concept of national treatment for foreign companies, it still does not fundamentally abolish the distinction between foreign and domestic investment, which means that a level playing field cannot be achieved in practice. There are no compelling reasons to regulate companies differently due to their ownership structure or by the nationality of their investors. To do so creates unnecessary complexities in practice, as there are always cases where differentiating foreign investment from domestic investment is very difficult (such as 'variable interest entity structure' cases). For comparison, the EU and EU Member States market economies do not have special laws specifically treating foreign capital differently.

Considering that China is the world's second-largest economy and is increasingly sharing responsibilities and leading internationally, real consideration should be given to fundamentally changing the existing foreign investment management regime in favour of a fairer, more reliable and more open business environment. In particular, this should entail ceasing to differentiate between Chinese and foreign investment.

The announcement by the Ministry of Finance (MOF) on 20th October 2021, regarding the *Notice on Implementing the Policies on Equal Treatment of Domestic and Foreign-invested Companies in Government Procurement Activities*,[16] states that "government procurement shall give equal treatment to products domestically produced in China (including the services provided) by local and foreign enterprises". This regulation marks the first call in writing for equal treatment of domestic and foreign companies' products in government procurement. In addition, the *Regulations on Optimising the Business Environment* explicitly oblige governmental agencies at all levels to treat all market entities in a non-discriminatory way, regardless of whether they are domestic or foreign.[17] The working group expects further similar efforts from relevant stakeholders to this effect.

However, restrictions in other foreign investment regulations, rules and policies remain, impeding market access and creating direct and indirect barriers for foreign investors. According to the European Chamber *Business Confidence Survey 2023* (BCS), a record-high 62 per cent of respondents reported having missed out on business opportunities due to market access restrictions.[18] Regulations imposing these direct and indirect barriers focus on areas such as re-investment of FIEs based in China; foreign-invested holding and investment companies; the administration of total investment; registered capital and foreign debts of FIEs; and mergers and acquisitions (M&A) by foreign investors of domestic enterprises. The aim should be to abolish such restrictions and create a level playing field for all market participants. Maintaining transparency in future legislation impacting business is also necessary by publishing clear enactment timeframes and allowing sufficient time for public comments to reflect business concerns.

Regarding implementation of the FIL, clearer rules and further guidance are needed to facilitate the phasing out of joint venture (JV) companies incorporated under the old laws. Since many of these old JVs resulted from complex negotiations, statutory deadlines to restructure their corporate governance according to the FIL create

16 *Notice on Equal Treatment of Domestic and Foreign-invested Companies in Government Procurement Activities*, MOF, 13th Oct 2021, viewed May 18th 2023, <http://www.gov.cn/zhengce/zhengceku/2021-10/26/content_5644953.htm>

17 *Regulations on Optimising the Business Environment,* State Council, 1st October 2020, viewed May 18th 2023, <http://www.gov.cn/zhengce/content/2019-10/23/content_5443963.htm>

18 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, 20th June 2023, viewed 20th June 2023, <https://www.europeanchamber.com.cn/en/publications-business-confidence-survey>

unnecessary pressures for the parties to re-open a concluded deal for negotiation. The provision of judicial interpretation or similar guidelines could help to better direct the parties through the process and minimise impact on business operations of these JVs.

The national security review (NSR) mechanism within the FIL framework is also a concern, as it could be influenced by global political tensions. On 20th December 2020, the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) jointly issued the *Foreign Investment Security Review Measures* (*Review Measures*).[19] Although the *Review Measures* provide more detail on the NSR mechanism, the list of sensitive areas that could potentially trigger an NSR remains quite vague and general. While the NDRC has made efforts to assist businesses—for example, in April 2019, it published details on a contact point for NSR-related consultancy—it is necessary for additional relevant stakeholders to provide more clarity on this topic. Ambiguity in rules and regulations has been cited by European Chamber member companies for seven consecutive years as the most significant regulatory obstacle to doing business in China, according to the BCS 2023, highlighting the need for regulatory reform and improved communication between government and industry.[20]

Recommendations

- Consider fundamentally changing the existing foreign investment management regime to eliminate differentiation between Chinese and foreign investment, and ensure a level playing field and non-discriminatory market access regime.
- Formulate in a timely manner the necessary implementation rules to clarify the uncertainties and ambiguities of the FIL, particularly the gaps created by abolishing old laws.
- Adjust and consolidate all pertinent laws and regulations to maintain alignment of the whole legal framework on the field of foreign investment, including greenfield investment and M&A activities.
- Ensure transparency in the rule-making process by publishing a clear enactment and public consultation timeframe, including information on the respective stakeholders in charge of rule-making, and allow sufficient time throughout the process for public comments to reflect business concerns.

3. Develop an Export Control Regulatory Framework that is Clear, Proportionate and Aligned with Global Practices 3

Concern

Ambiguity in the regulatory frameworks for export control and lack of alignment with global practices leads to compliance risks and potential disruptions in business operations.

Assessment

With the enactment of the Export Control Law on 1st December 2020,[21] China's export control legal system came into global focus due to increasingly complex political and economic frictions domestically and abroad, and reconstruction of the global industrial chain following the trade tariffs imposed between the United States and China. However, detailed judicial implementation rules and localisations of the export control-related laws and regulations, including corresponding supplemental guidance rules, remain unclear. The Legal and Compliance Working group expects the following improvements:

1) Supervision structure and mechanism

According to the Export Control Law, China intends to adopt a unified export control system, which will be subject to administration through multiple control lists and export and import licensing. However, the mere promulgation of the Export Control Law is far from sufficient for the contemplated unification. Previously, the Foreign Trade Law and relevant regulations and rules from various governmental authorities formulated export limitations. Therefore, China's current export control management is co-regulated among multiple enforcement organs with different management structures. For example, controlled export goods, technologies and dual-use items are managed by the Department of Foreign Trade, the Department of Trade in Services and Commercial Services, and the Bureau of Industry, Security, Import and Export Control under the MOFCOM respectively, each of which has a separate regulatory system.

19 *Foreign Investment Security Review Measures*, MOFCOM & NDRC, 20th December 2020, viewed 6th April 2023, <http://www.mofcom.gov.cn/article/i/jyjl/j/202012/20201203024706.shtml>

20 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, 20th June 2023, viewed 20th June 2023, <https://www.europeanchamber.com.cn/en/publications-business-confidence-survey>

21 Export Control Law, NPC, 17th October 2020, viewed 20th July 2023, <https://www.66laws.com/fagui/3905.html>

2) Scope of controlled items

The applicable scope of the Export Control Law is set out in Article 2, which covers relevant goods, technologies and services, as well as technical information related to controlled items. Although the Export Control Law lists the controlled items, it does not provide further clarity on sources, content and exceptions that may apply and other specific applications. Moreover, given the diversity of current international trade supply chains and cross-border research and development (R&D) activities, these definitions may not meet the requirements for identification of controlled items in the daily operations of enterprises.

The working group is concerned about industrial policy elements being incorporated into a national security-orientated Export Control Law, and recommends that the proposed export control system focus only on items that have direct and strategic significance to national security. Globally, a small fraction of goods and technology are subject to export controls. Therefore, the proposed Chinese system should not attempt to restrict commercial mass market items that, by volume or distribution, are not susceptible to control, and instead provide for licensing exceptions, including intra-company transfers.

3) Controlled activities

The Export Control Law explicitly includes 'deemed export' and 're-export' as controlled activities for the first time, greatly expanding the scope of controlled activities. However, uncertainty remains over how to interpret these new concepts.

According to Article 2 of the Export Control Law, 'deemed export' refers to the provision of controlled items by citizens, legal persons and other non-incorporated organisations of China to foreign organisations and individuals. Such control measures may trigger concerns for multinational companies (MNCs) that conduct R&D activities in China, as an export is 'deemed' to be taking place when data is released to a foreign national, despite their physical presence in China. Therefore, the working group recommends narrowly defining the export licences' application scope with reasonable Chinese export thresholds, and establishing certain exemption arrangements to allow MNCs to apply for an automatic general licence or facilitative licence.

While Article 45 of the Export Control Law contains a provision on 're-export', it is widely acknowledged that one simple provision is far from adequate for such a complex activity. Detailed and delicate regulation arrangements are needed to guide companies on how to comply with this export control.

4) Export licence mechanism

Though a licensing system for the export of controlled items is confirmed in the Export Control Law, the detailed rules need further refinement and clarity. The authorities should implement a practical and user-friendly licensing system, including leveraging procedures (such as special bulk and general licensing mechanisms with multi-year expirations), licence exceptions (such as intra-company licence exceptions), and other implementation and management methods. A flexible licensing system could minimise uncertainty over control status, thereby reducing unnecessary regulatory burdens for both exporters and the Chinese authorities. For example, general licences or licence exceptions could authorise exporters to export dual-use items and technology to a specific destination based on clearly defined parameters. Licence requirements should also be based on classification rather than product aspect, given the export volume and scale of many companies.

Recommendations

- Clarify the supervision and enforcement of governmental organs, and the rights and powers thereof, to facilitate direct dialogue and discussion between export control authorities and industry.
- Exempt commercial mass market products from export control restrictions, focussing the export control system instead on items that directly and strategically affect China's national security.
- Ensure a practical and user-friendly licensing system featuring bulk and general licensing and licensing exceptions for intra-company transfers.
- Consider updating the current dual-use items list with designations based on the nature of goods control.
- Narrowly define the scope of 'deemed exports' subject to licensing, and introduce reasonable export thresholds and exemption arrangements.
- Clarify the definition and management mechanism of 're-export'.
- Establish regulations to control 'end-use' and reduce risks arising from indirect sales.

4. Eliminate Restrictions on the Legal Services that Foreign Law Firms Can Provide 12

Concern

Restrictions placed on foreign lawyers and foreign law firms operating in China significantly limit access for both Chinese and foreign companies to high-level legal advice needed in complex cross-border investments.

Assessment

While the registration and management of foreign law firms and lawyers by the MOJ is a step in the right direction, concerns remain about the failure to eliminate restrictions on the provision of legal services in certain areas. For example, restrictions remain in the areas of foreign investment, contractual and commercial matters, employment matters, M&A, competition law, banking and finance law, and capital markets law (i.e., non-contentious areas). The failure to eliminate these restrictions is becoming a significant issue in fostering economic progress and working relationships between the EU, its Member States and China. Further opening up the legal services sector, particularly in non-contentious areas, will help to promote cooperation between foreign and Chinese law firms. This expansion would provide Chinese clients and companies with better access to international laws and practices while also supporting global clients in their investments in China by providing integrated Chinese and international legal advice.

1) Employment of Chinese-licensed lawyers by European law firms and foreign partners of Chinese firms

When European law firms in Mainland China hire licensed People's Republic of China (PRC) lawyers, those individuals' qualifications and licences to practice PRC law in non-contentious areas are suspended. At the same time, foreign lawyers are not allowed to become partners of Chinese law firms. Removing these restrictions would provide faster, more cost-effective and more efficient access to legal advice for both Chinese and foreign clients, both locally and internationally. It would also broaden the career prospects of both PRC and EU lawyers, allowing them to grow and gain expertise in local and international environments, which will benefit cross-border investors from both China and the EU.

2) Participation of lawyers from foreign law firms in Chinese Government meetings

Lawyers from foreign law firms, including PRC-licensed lawyers, have occasionally been permitted to appear, participate, and represent their clients before Chinese government authorities and other public, non-judicial authorities on a case-by-case basis. However, the lack of transparent and consistently enforced access and representation rights for lawyers working in foreign law firms reduces the quality of information exchanged with Chinese authorities and limits the sharing of experience by foreign law firms with European investors. These circumstances do not facilitate the trust of foreign investors towards Chinese authorities and can result in misunderstandings that lead to European investors postponement of and difficulties in finalising business decisions for the Chinese market.

3) Developing relationships and dialogues with supervising authorities

In almost all jurisdictions, lawyers and firms are registered as 'special professionals', with stricter codes of conduct and special requirements for practice. For registered lawyers and representatives of firms registered in the EU, it is essential to have guidance from and dialogue with EU supervisory authorities at the central level. In similar spirit, registered lawyers and representatives of EU firms operating in China would like to have exchanges with the MOJ and other competent departments at the central level in China, and to create open channels that enable valuable exchanges among professionals that are practicing law in different areas, including private practitioners, in-house counsels, public administration and legislative bodies, either foreign or Chinese.

4) Access to JV firms

China's accession to the World Trade Organization has further opened up its legal services industry, including lifting restrictions on the number of foreign law firms that can be established in China, removing the restrictions on the geographical location of foreign law firms, and lifting the restrictions that a foreign law firm can only establish one office in China. However, foreign law firms still face many obstacles in their operation in China. While a few pilot joint operations have been established since 2015, existing rules have not yet been deployed nationally. Furthermore, the pilot regulations only allow for a 'one office, two teams' model, and not a 'fully integrated JV model' that would combine the strengths of the Chinese and foreign firms' partners. Under Shanghai's implementation of the pilot regulations, the thresholds for forming a joint operation are much higher than for domestic law firms, which prevents small and medium-sized China operations of foreign law firms from benefitting from this scheme. Regulations relating to JVs, such as the requirement for foreign law firms to have establish a representative office in China for at least three years before they can be eligible, should be further relaxed. In addition, according to the provisions of the Lawyers' Law, foreign lawyers are still unable to officially register as partners in Chinese law firms. Consideration should be given to allowing qualified foreign lawyers to become partners in Chinese law firms at the local level, such as in Shanghai, Hainan and other pilot locations.

5) Registration procedures and requirements

The registration process for a new foreign lawyer in China can take several months, as it is a two-fold procedure that involves local and central registration. In addition, the requirements for a chief representative to have at least three years of foreign bar registration and six months domicile in the PRC, as well as the requirement of at least two foreign representatives for each foreign-owned law firm, are more stringent than the immigration requirements for foreign representatives working in other sectors. These requirements are also very burdensome and time-consuming compared to international practices.

Recommendations

- Allow foreign law firms to fully practice PRC law in non-contentious areas through the employment of individuals who are qualified and licensed to practice PRC law.
- Allow lawyers in foreign law firms to fully represent their clients before Chinese government authorities as long as they have the proper powers of attorney.
- Relax the requirement for foreign law firms in joint operations to establish a representative office in China for at least three years, and allow qualified foreign lawyers to become partners in Chinese law firms at the local level, such as in Shanghai, Hainan and other pilot locations.
- Ensure consistent and transparent implementation and enforcement of laws and regulations concerning foreign investments.
- Streamline the registration procedures, timing and requirements for foreign lawyers.

5. Develop an Advanced Regulatory Framework that Enables All Aspects of Sustainability to Permeate Chinese Corporate Governance and Supply Chains, for Stronger Cooperation with the EU Towards a Green Transition 2

Concern

Mismatches among rules and regulations between the EU and China will cause further disruption to global supply chains, additional difficulties in cross-border investments, and heavier governance and compliance burdens on cross-border investors.

Assessment

The working group welcomes the developments in new EU legislation on sustainability and in the corporate governance sphere. Such sophisticated regulations, however, also bring complex challenges in terms of due diligence on supply chains and the responsibilities of corporate board members.

Several pieces of legislation have been proposed or adopted by the EU to support its sustainability efforts. However, some of those rules, such as the Directive on sustainable corporate governance and the proposal for regulations on supply chain due diligence,[22] are posing challenges to both European and Chinese companies. The enhanced duties of businesses will cover more than just listed companies, and will likely cascade down the supply chain to Chinese suppliers, as well as Chinese companies operating in the EU with revenues over a certain level. Furthermore, the mismatch between the new EU regime and the Chinese business and legal environment will put both FIEs in China and Chinese suppliers to EU companies in a complex position, both in terms of compliance obligations and with regard to competition.

The aforementioned EU regulation is an integral part of the EU effort for more sustainable and greener business activities. As China shares the objective of a more sustainable and inclusive business environment with the EU, China should prepare a legislative framework that can comply with such corporate sustainability regulations. While current Chinese legislation covers

22 *Just and sustainable economy: Commission lays down rules for companies to respect human rights and environment in global value chains,* European Commission, 23rd February 2022, viewed 24th July 2023, <https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1145>

non-financial reporting by listed companies and disclosure of environmental matters and efforts, China could also benefit from more sophisticated sustainability legislation covering all environmental, social and governance (ESG) matters.[23] This would also assist China in realising its climate goal for peak carbon emissions before 2030 and to reach carbon neutrality before 2060, as well as achieving a level playing field for all business entities, including state-owned enterprises, private companies and foreign companies.

Recommendations

- Plan and develop an advanced regulatory framework which enables all aspects of sustainability, including all ESG aspects, to permeate corporate governance and supply chains in China.
- Review and reinforce China's signature and ratification of existing international treaties relevant to sustainability and ESG matters.
- Support awareness and enhance the training of key players in different industrial sectors, including state-owned enterprises and private companies, for a deeper understanding of ESG matters and in preparation for new sustainability challenges in global supply chains.
- Strengthen cooperation with the EU and EU Member States to create a sophisticated set of shared rules and standards on ESG reporting that could act as a global benchmark.

23 For more details on ESG reporting, please refer to the *Environment Working Group Position Paper 2023/2024* on page 37 and the *Finance and Taxation Working Group Position Paper* on page 49.

Abbreviations

AML	Anti-monopoly Law
Art.	Article
BCS	Business Confidence Survey
CPCCC	Communist Party of China Central Committee
ESG	Environmental, Social and Governance
EU	European Union
FIE	Foreign-invested Enterprise
FIL	Foreign Investment Law
IP	Intellectual Property
JV	Joint Venture
M&A	Mergers and Acquisitions
MEE	Ministry of Ecology and Environment
MNC	Multinational Corporation
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
MOJ	Ministry of Justice
NDRC	National Development and Reform Commission
NPC	National People's Congress
NSR	National Security Review
PRC	People's Republic of China
R&D	Research and Development
SPC	Supreme People's Court

European Chamber
中国欧盟商会

Research and Development Working Group

Key Recommendations

1. **Invest More in Green and Sustainable Technology Research and Development (R&D) to Accelerate Along the Path Towards Carbon Neutrality and Realise China's Overall Environmental Goals** 5
    - Expand the constructive dialogue and strategic partnerships between politics, academia and business, and promote social and technological innovation on low-carbon and circular technologies, especially at universities, in collaboration with industry, start-ups and social and public organisations.
    - Create a supportive regulatory environment for new technologies and overall technology openness.
    - Guarantee freedom of research by facilitating the creation of regulatory sandboxes for pilots in low-carbon, circular and sustainable technologies and their scale-up and commercialisation.
    - Provide an attractive catalogue of measures to support the long-term development of green, low-carbon and circular technologies.
    - Provide more transparency for China's carbon technology roadmap and R&D programme, like the Action Plan for Carbon Dioxide Peaking Before 2030 and the European Union (EU)-China Research and Innovation Co-funding Mechanism.

2. **Encourage Foreign-invested Enterprises (FIEs) to Contribute to R&D in China by Optimising the Financial Incentives Framework and Improve International R&D Cooperation** 5
    - Establish a common, reciprocal, transparent and efficient mechanism to facilitate EU-China R&D cooperation with the participation of European companies based in China.
    - Give fair notice about R&D fund and grant applications, allowing an appropriate response period for all stakeholders.
    - Remove restrictions that hinder FIEs from applying for High and New Technology Enterprise status.
    - Develop comprehensive regulations based on local governments' best practices that encourage the development of foreign-funded R&D centres.
    - Further explore the role of FIEs in maintaining economic stability, and enhancing global competitiveness and low-carbon sustainable development, in China.

3. **Create an Ecosystem that Supports the Mobility of International Talent to and from China** 5
    - Increase foreign enterprises' autonomy in issuing invitations to international talent and establish a preferential visa policy targeting R&D personnel for important projects.
    - Clarify existing policy requirements for recruiting foreign nationals as interns.
    - Encourage special visa facilitation for young researchers in general.

4. **Create an Ecosystem that Supports Multinational Corporations' (MNCs') Digital Innovation in China** 4
    - Simplify the data transferring regulations and increase access to open data resources to foster a

better ecosystem for MNCs' digital innovation in China.
- Publish a list of open databases that foreign enterprises can access, and clarify whether FIEs can establish and manage their own public database independently.

5. Strengthen Protection of R&D—Including Intellectual Property (IP)-related Aspects—to Develop a World-class Innovation Environment 5

- Consult with universities, foreign and national research institutions, and Chinese and international companies' R&D departments when drafting new innovation and intellectual property rights (IPR) protection policies.
- Increase technical expertise and standardise judgments in IPR cases related to innovation and R&D by centralising jurisdiction in top-tier locations with access to highly competent relevant legal and scientific authorities.
- Enhance the enforcement of IPR legislation to avoid compelled technology transfers or technology transfer difficulties.
- Allow the existence of co-ownership of IP between the parent company and local affiliates (or ownership of the parent company) in R&D projects funded by the Chinese Government.

Introduction to the Working Group

The European Chamber's Research and Development (R&D) Working Group provides a platform for exchanging information, experiences and best practices among members. The Research and Development Working Group was created in 2014 to deepen the work of the former Research and Development Forum of the European Chamber. The working group is comprised of professionals directly involved in R&D, with representatives from more than 50 European multinational corporations (MNCs) that have R&D operations in China. Various industries are represented in the working group, including automotive; petrochemicals, chemicals and refining; information and communications technology; aerospace; energy; and pharmaceuticals, among others. The working group aims at providing a single interlocutor to engage the European and Chinese local and central authorities, offering input on topics related to research and innovation.

Recent Developments

The 2022 Global Innovation Index, published by the World Intellectual Property Organization (WIPO), ranks China 11th out of 132 countries, an improvement of one place compared to 2021.[1] In 2022, China's R&D spending grew by 10.8 per cent year-on-year to Chinese yuan (CNY) 3.09 trillion, with R&D intensity[2] hitting 2.55 per cent.[3]

On 24th June 2022, the Ministry of Science and Technology (MOST) and nine other departments issued the Science and Technology (S&T) Support Carbon Peak Carbon Neutrality Implementation Plan (2022–2030).[4] It serves as a guiding document for China to establish a low-carbon R&D environment by 2030. The working group welcomes this plan and looks forward to its further implementation.

On 5th August 2022, the MOST and the Ministry of Finance (MOF) launched the Action Plan for Improving Enterprise Technology Innovation Capabilities (2022–2023).[5] The plan's objective is to create a better environment for foreign-funded R&D activities, further expand the role of foreign-funded R&D centres and promote foreign-funded industrial upgrades.

1 *Global Innovation Index 2022, WIPO*, 2022, viewed 17th April 2023, <https://www.wipo.int/global_innovation_index/en/2022/>

2 R&D intensity is the ratio of R&D investment to the current gross domestic product of a region, or to the revenue of an organisation.

3 *The State Council Information Office held a press conference on "Deeply Implementing the Innovation-Driven Development Strategy and Accelerating the Construction of a Science and Technology Power"*, State Council Information Office, 24th February 2023, viewed 17th April 2023, <http://www.gov.cn/xinwen/2023-02/24/content_5743191.htm>

4 *Science and Technology Support Carbon Peak Carbon Neutrality Implementation Plan (2022-2030)*, MOST, 24th June 2022, viewed 17th April 2023, <https://www.most.gov.cn/xxgk/xinxifenlei/fdzdgknr/qtwj/qtwj2022/202208/t20220817_181986.html>

5 *Action Plan for Improving Enterprise Technology Innovation Capabilities (2022–2030)*, MOST & MOF, 5th August 2022, viewed 17th April 2023, <https://www.most.gov.cn/xxgk/xinxifenlei/fdzdgknr/qtwj/qtwj2022/202208/t20220815_181875.html>

On 11th January 2023, the Ministry of Commerce (MOFCOM) and the MOST released *Several Measures on Further Encouraging Foreign Investment to Establish R&D Centres*.[6] It aims to support the development of S&T innovation, create a better environment for R&D, facilitate the mobility of overseas talent, and strengthen intellectual property (IP) protection. The working group welcomes the announcement of the measures and looks forward to seeing their further implementation at the local level.

On 7th March 2023, the State Council unveiled a plan for reforming the government's institutions, which was approved by the 14th National People's Congress (NPC) during the Two Sessions.[7&8] As a result, the MOST has been streamlined, with many of its industry-related responsibilities reallocated to relevant departments. In addition, a new party institution has been established under the MOST – the Central Science and Technology Commission, which will focus primarily on general R&D issues under the direct supervision of the Central Committee of the Communist Party of China.

In April 2023, the European Chamber released a report titled *China's Innovation Ecosystem: The Localisation Dilemma,* based on member surveys and in-depth interviews. The publication highlights that respondents reported policy-related factors having a negative influence on their R&D strategies, including China's weak intellectual property rights (IPR) protection system (34%); the unlevel playing field for foreign companies (32%); and limited or non-existent government support (24%). However, the report also indicates that among those that could access R&D-related government support, certain policies have had a positive impact. These policies include tax incentives (46%), access to related subsidies (35%), and those related to attainment of high and new technology enterprise (HNTE) status (32%).[9]

6 *Several Measures on Further Encouraging Foreign Investment to Establish R&D Centres*, MOFCOM & MOST, 11th January 2023, viewed 17th April 2023, <https://www.most.gov.cn/xxgk/xinxifenlei/fdzdgknr/fgzc/zcjd/202301/t20230119_184334.html>

7 *State Council Institutional Reform Plan, Xinhua*, 11th March 2023, viewed 17th April 2023, <http://www.news.cn/politics/2023lh/2023-03/11/c_1129425669.htm>

8 *Party and State Institutional Reform Plan*, State Council, 16th March, viewed 17th April 2023, <https://www.gov.cn/gongbao/content/2023/content_5748649.htm>

9 *China's Innovation Ecosystem: The Localisation Dilemma,* European Union Chamber of Commerce in China, 21st April 2023, viewed 21st April 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1077/China_s_Innovation_Ecosystem_the_localisation_dilemma>

Key Recommendations

1. Invest More in Green and Sustainable Technology R&D to Accelerate Along the Path Towards Carbon Neutrality and Realise China's Overall Environmental Goals 5

Concern

The Chinese Government does not provide sufficient support for R&D in green and sustainable technologies and their commercial application, hindering China's overall green development and slowing its progress towards carbon neutrality.

Assessment

Green development is a national strategy of China. On 22nd September 2020, President Xi Jinping stated in his speech at the 75th General Debate of the United Nations General Assembly that China will increase its nationally determined contributions, adopt more targeted policies and measures, and "aim to peak carbon dioxide emissions by 2030, and to achieve carbon neutrality by 2060" (30/60 Goals).[10]

On 26th October 2021, the State Council released the Action Plan for Carbon Dioxide Peaking Before 2030. The plan reiterates the Chinese Government's determination to achieve carbon peaking in 2030. It clearly encourages enterprises to undertake major national low-carbon R&D projects and states the intention of the Chinese Government to open related facilities, data and other resources. The working group looks forward to further implementation of the plan, and hopes to strengthen communication with relevant departments so that foreign-invested enterprises (FIEs) can better help China achieve its 30/60 Goals.

Innovation in low-carbon technology is currently comparable to other high-end R&D activities, in that it generally has a long R&D cycle and requires high levels of investment with a low rate of return. Therefore, incentives and measures to motivate enterprises to invest in low-carbon technologies R&D are crucial. Given that a significant amount of investment is required in these areas, additional tax reduction can encourage companies to engage in R&D activities relating to low-

10 McGrath, Matt, *Climate Change: China aims for 'carbon neutrality by 2060'*, *BBC News*, 22nd September 2020, viewed 26th April 2023, <https://www.bbc.com/news/science-environment-54256826>

carbon, circular and clean technology. At the same time, to facilitate commercialisation of such R&D activities, the mechanism of connecting laboratories to the market needs to be further developed. This could be facilitated by methods such as creating open R&D cooperation platforms and establishing pilot and demonstration areas.

The establishment of a well-developed legal framework for low carbon innovation is also recommended. Given the European Union's (EU's) relatively advanced legal and regulatory framework, its determination to develop green technologies and halve emissions by 2050, and the advanced technology utilised by many European companies, the Chinese Government should enhance its collaboration with EU governments on this aspect.[11] The working group also recommends providing more transparency on China's carbon technology roadmap and R&D programme, such as with the EU-China Research and Innovation Co-funding Mechanism.[12]

Recommendations

- Expand the constructive dialogue and strategic partnerships between politics, academia and business, and promote social and technological innovation on low-carbon and circular technologies, especially at universities, in collaboration with industry, start-ups, and social and public organisations.
- Create a supportive regulatory environment for new technologies and overall technology openness.
- Guarantee freedom of research by facilitating the creation of regulatory sandboxes for pilots in low-carbon, circular and sustainable technologies and their scale-up and commercialisation.
- Provide an attractive catalogue of measures to support the long-term development of green, low-carbon and circular technologies.
- Provide more transparency for China's carbon technology roadmap and R&D programme, such as the Action Plan for Carbon Dioxide Peaking Before 2030 and the EU-China Research and Innovation Co-funding Mechanism.

11 *Carbon Neutrality: The Role of European Companies in China's Race to 2060*, European Union Chamber of Commerce in China, 25th May 2022, viewed 21st April 2023, <https://www.europeanchamber.com.cn/en/publications-carbon-neutrality-report>

12 *Second Call for Proposals published for the EU-China Co-funding Mechanism for Research and Innovation (CFM)*, EU External Action, 20th January 2017, viewed 21st April 2023, <https://www.eeas.europa.eu/node/18964_en>

2. Encourage FIEs to Contribute to R&D in China by Optimising the Financial Incentives Framework and Improving International R&D Cooperation 5

Concern

FIEs face significant challenges in acquiring HNTE status and accessing public funding and grants for R&D.

Assessment

China has well-developed incentives in place to stimulate innovation, including 'strategic support' (long-term structural incentives like HNTE status and a super deduction scheme for reducing costs) and 'tactical support' (focussed grants for projects with a definite scope and target). HNTE status is one of the most important, the criteria for which were revised in 2016 by the MOST, the Ministry of Finance and the State Taxation Administration.[13] Although certain requirements were relaxed, such as the minimum R&D expense ratio and the level of academic qualifications of technical personnel, those relating to IP ownership were tightened, with the applicant needing to own the core IP of their product or service within China. Although FIEs run some of China's largest R&D operations, in many cases, their core technologies were originally developed outside of China; thus they lack IP ownership within China. This situation leads to great difficulties for FIEs in meeting the requirements to acquire and maintain HNTE status. Moreover, even if FIEs are willing to reregister patents in China, patent priority will only be granted if applicants submit the relevant applications within 12 months of the date when the patent was first filed, and only if the country in which it was first filed has an agreement signed or an international treaty with China. Applicants must also submit examination information from the country of origin within a prescribed time limit, or the application will be deemed as having been withdrawn. This not only increases FIEs' operating costs but also raises the risk of infringement. Given these challenges, the working group recommends that the authorities agree to accept globally registered patents as part of the HNTE application process.

Frameworks allowing international R&D cooperation between China and other countries exist in abundance,

13 *Criteria for High and New Technology Enterprises*, MOST, 8th June 2020, viewed 21st April 2023, <https://www.gov.cn/fuwu/2020-06/08/content_5518015.htm>

for example, the EU-China Research and Innovation Co-funding Mechanism,[14] through which academic and industry members from Europe and China have jointly developed innovative technologies of common interest. However, there has been a lack of coordination between the Chinese Government and the EU in terms of funding, project timelines and approval processes. FIEs often face opaque or unclear application information and procedures for relevant programmes, and struggle to access relevant information. R&D cooperation between EU and China has great potential. In the fields of agriculture, food and biotechnology, climate change, circular economy and biodiversity, China and the EU share the same goals. Strengthening bilateral scientific research cooperation would help to integrate existing resources and stimulate researchers on both sides. China and the EU are also important trading partners for each other; therefore, strengthening relevant scientific research cooperation would facilitate quicker commercialisation of research results. To further promote international R&D cooperation, China and the EU should also hold open discussions on establishing a common, reciprocal, transparent and efficient mechanism for R&D cooperation.

The release of *Several Measures on Further Encouraging Foreign Investment to Establish R&D Centres* by the State Council on 11th January 2023 is a positive development for foreign-funded R&D centres in China.[15] The new measures encourage and support these centres to undertake national S&T tasks and participate in major national S&T projects, while also piloting project plans in multiple languages, as well as extending deadlines when appropriate and better facilitating project declarations. As such, these measures directly address concerns the working group has had for many years, and member companies have reported improvements in the ease of applying for related projects since their release. Local R&D support mechanisms have also been greatly simplified, such as the Programme of Collaborative Innovation with Foreign-funded R&D Institutions under the 2023 Shanghai Action Plan for Science, Technology and Innovation.[16] While there is still room for improvement compared to the treatment provided for "domestic champions", it is encouraging to see such support mechanisms for FIEs. The working group hopes to see similar initiatives expanded throughout China in the long-term.

Recommendations

- Establish a common, reciprocal, transparent and efficient mechanism to facilitate EU-China R&D cooperation with the participation of European companies based in China.
- Give fair notice about R&D fund and grant applications, allowing an appropriate response period for all stakeholders.
- Remove restrictions that hinder FIEs from applying for HNTE status.
- Develop comprehensive regulations based on local governments' best practices that encourage the development of foreign-funded R&D centres.
- Further explore the role of FIEs in maintaining economic stability, enhancing global competitiveness and low-carbon sustainable development in China.

3. Create an Ecosystem that Supports the Mobility of International Talent to and from China 5

Concern

International enterprises engaged in R&D are struggling to recruit and retain international talent, especially young researchers.

Assessment

Efforts have been made by the Chinese Government to facilitate the development of R&D through measures related to hiring foreign nationals. However, the complexity of policies that have been released, coupled with the fact that multiple government agencies—including the Human Resources and Social Security Bureau, the local S&T Commission Talent Service Office and the Foreign Expert Office—release information through their own channels, it is challenging for FIEs to follow and clearly understand them.

14 *China and EU Sign New Round of Joint Research Funding Agreement,* MOST, 26th April 2022, viewed 28th April 2023, <http://www.most.gov.cn/kjbgz/202204/t20220426_180342.html>

15 *Several Measures on Further Encouraging Foreign Investment to Establish R&D Centres*, MOFCOM & MOST, 11th January 2023, viewed 17th April 2023, <https://www.most.gov.cn/xxgk/xinxifenlei/fdzdgknr/fgzc/zcjd/202301/t20230119_184334.html>

16 *Programme of Collaborative Innovation with Foreign-funded R&D Institutions under the 2023 Shanghai Action Plan for Science, Technology and Innovation*, S&T Commission of Shanghai Municipality, 21st March 2023, viewed 17th April 2023, <https://www.shanghai.gov.cn/gwk/search/content/20f388085f014ce68365d2115b078920>

Existing policies also need to be clarified. For example, currently, only "well-known domestic enterprises" are allowed to hire foreign interns, but the definition of a "well-known domestic enterprise" is not clear.[17] Furthermore, rules such as "only Fortune 500 companies can hire qualified foreign interns"[18] should be rescinded. All companies should be at liberty to hire whichever interns they identify as potential future talent, to create a more favourable and stimulating R&D and innovation environment in China. Chinese visa policies are currently strongly biased in favour of fresh graduates, interns from top global universities and senior foreign talent who have achieved specific accolades during their careers. However, the number of people that this applies to is limited. A great deal of young talent have adequate education and are capable, qualified and, importantly, willing to come to China to contribute and gain experience. According to a 2019 EURAXESS survey, over 95 per cent of European researchers working in China (some currently in higher positions) moved here early in their career and stayed for approximately seven to 10 years.[19] This suggests early exposure to the Chinese market and innovation ecosystem encourages long-term commitment. Therefore, the working group encourages adopting a more friendly visa policy to welcome all young talent.

Recommendations

- Increase foreign enterprises' autonomy in issuing invitations to international talent and establish a preferential visa policy targeting R&D personnel for important projects.
- Clarify existing policy requirements for recruiting foreign nationals as interns.
- Encourage special visa facilitation for young researchers in general.

4. Create an Ecosystem that Supports MNCs' Digital Innovation in China 4

Concern

The lack of access to open data sources, the requirements for international companies to establish databases in China, and the lack of harmonisation between Chinese and international informaiton technology (IT) standards discourage international companies from both carrying out IT R&D locally and transferring technologies to China.

Assessment

Over the past decade, China has promoted several notable policies, such as Made in China 2025,[20] the Platform for Action to Promote Big Data Development,[21] and the New Generation Artificial Intelligence (AI) Development Plan to promote domestic innovation.[22] While these policies have accelerated the development of AI and big data in China, the participation of foreign companies in these kinds of projects is limited. This is detrimental to the market, as deeper participation by FIEs can increase competition and result in better products and services.

Creating an ecosystem that fosters FIEs' digital innovation in China is essential. Innovation depends on access to open data sources and the freedom to create and manage databases. However, FIEs face many hurdles in accessing such resources in China.

In 2020, the NPC released the *Guidance on the Development of Industrial Big Data (Guidance)*, which included new measures to accelerate data pooling, promote data sharing and deepen data application,[23] as well as recommendations on facilitating international collaboration and boosting deeper exchange on big industry data in policies, technologies, standards, talent and enterprises at a more comprehensive, deeper level. However, no clear guidelines exist on how FIEs can access and use such data resources, and consequently, their access is limited.

Moreover, China's 'autonomous and controllable'[24] guidelines also impact European R&D operations. For

17 *The National Immigration Administration Promotes the Replication of 12 Policies on Immigration and Immigration Facilitation in the FTZs Nationwide*, Ministry of Public Security, 17th July 2019, viewed 23rd April 2023, <https://www.mps.gov.cn/n6557558/c6613913/content.html>

18 Ibid.

19 *Results of a survey on the internationalisation of Chinese universities*, EURAXESS, 16th April 2021, viewed 23rd April 2023, <https://euraxess.ec.europa.eu/worldwide/china/results-survey-internationalisation-chinese-universities>

20 *Notice from the State Council on Made in China 2025*, NPC, 2nd June 2020, viewed 23rd April 2022, <http://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm>

21 *Platform for Action to Promote Big Data Development,* People.cn, 5th September 2015, viewed 23rd April 2022, <http://politics.people.com.cn/n/2015/0905/c1001-27545655.html>

22 *New Generation Artificial Intelligence Development Plan*, NPC, 20th July 2017, viewed 23rd April 2022, <http://www.gov.cn/zhengce/content/2017-07/20/content_5211996.htm>

23 *Guidance on the Development of Industrial Big Data*, NPC, 8th April 2020, viewed 23rd April 2022, <http://www.gov.cn/zhengce/zhengceku/2020-05/15/content_5511867.htm>

24 'Autonomous and controllable' (also referred to as 'secure and controllable') is a concept put forward in several recent Chinese laws and regulations whereby the government has broad discretion on deciding how it protects information networks, devices and data deemed critical to national and economic security. This concept is closely linked to the development and use of Chinese indigenous products and technologies instead of foreign ones.

example, following enactment of the Data Security Law,[25] the Ministry of Industry and Information Technology issued the *Measures for the Administration of Data Security in the Informatisation Field (Trial)* on 8th December 2022.[26] These measures put forward new requirements for cross-border data transfer and oblige enterprises to conduct regular security audits and backups. The Chinese Government's purpose of maintaining national data security is understandable. However, companies still have legitimate concerns that the implementation of these measures will both negatively impact cross-border R&D-related data flows and increase compliance costs.[27]

According to the European Chamber report on R&D, *China's Innovation Ecosystem: The Localisation Dilemma*, China's cyber and data security legislation, its supporting regulations and broader self-reliance trends (for example, the push for autonomous and controllable technology adoption) have created a complex ecosystem that brings varying degrees of pressure on a number of European companies to localise their cyber and data systems, either due to explicit sectoral localisation requirements or due to the increased operational burdens and uncertainties created by existing compliance obligations. The firms that are most affected by these often-overlapping rules have experienced knock-on effects during their R&D operations.[28]

Therefore, the Research and Development Working Group recommends that China publish a list of open databases that foreign enterprises can access, clarify whether FIEs can establish and manage their own public database independently, and simplify cross-border data transfer requirements to facilitate cross-border R&D-related data flows. Simplifying these regulations and increasing access to open data resources can help to foster a better ecosystem for MNCs' digital innovation in China.

25 Data Security Law of the People's Republic of China, State Council, 10th June 2021, viewed 16th April 2022, <http://www.gov.cn/xinwen/2021-06/11/content_5616919.htm>

26 *Measures for the Administration of Data Security in the Informatisation Field (Trial)*, State Council, 8th December 2022, viewed 21st April 2023, <http://www.gov.cn/zhengce/zhengceku/2022-12/14/content_5731918.htm>

27 For more information, please see the *Cybersecurity Sub-working Group Position Paper 2023/2024*.

28 *China's Innovation Ecosystem: The Localisation Dilemma*, European Union Chamber of Commerce in China, 21st April 2023, viewed 21st April 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1077/China_s_Innovation_Ecosystem_the_localisation_dilemma>

Recommendations

- Simplify the data transferring regulations and increase access to open data resources to foster a better ecosystem for MNCs' digital innovation in China.
- Publish a list of open databases that foreign enterprises can access, and clarify whether FIEs can establish and manage their own public database independently.

5. Strengthen the Protection of R&D—Including IP-related Aspects—to Develop a World-class Innovation Environment

5

Concern

European companies are still struggling to protect their IPR related to R&D in China, which discourages them from investing in cutting-edge technological innovation locally.

Assessment

In recent years, continuous improvements have been made to China's overall IP protection system. However, to further encourage European companies to invest in cutting-edge technology in China, it is important to understand the differences between IPR strategies in European countries and China. The core question is how to protect IPR related to R&D while maintaining a positive environment for innovation without overregulation.

To address this issue, China introduced a new Patent Law, which went into force on 1st June 2021,[29] and a revised Science and Technology Progress Law, officially promulgated on 24th December 2021.[30] These laws aim to establish and improve China's IP system at the legal level, boost social awareness of and protect IPR, and encourage independent innovation. Furthermore, with local governments being tasked with optimising their respective business environments, all regions are carrying out actions to strengthen IP enforcement.

To further China's goal of creating a better innovation environment, the function, value and impact of patent system need to be adjusted so that it balances existing

29 Patent Law of the People's Republic of China (2021 Revision), NPC, 19th November 2020, viewed 16th April 2023, <http://www.npc.gov.cn/npc/c30834/202011/82354d98e70947c09dbc5e4eeb78bdf3.shtml>

30 Science and Technology Progress Law of the People's Republic of China, MOST, 24th December 2021, viewed 16th April 2023, <http://www.most.gov.cn/xxgk/xinxifenlei/fdzdgknr/fgzc/flfg/202201/t20220118_179043.html >

IP holders and new market entrants. Fostering R&D in new technologies, such as biotechnology and AI, requires that the related IP legal framework and patent system can swiftly and strategically respond to the challenges that arise. Consulting with experts from the private sector, academic and scientific communities can help realise these changes effectively. For instance, interpretation of the revised Patent Law should be strengthened before being actively communicated to local governments and enforcement authorities, with widely accepted practical case studies and rulings supporting the revisions. This will help ensure the quality of judgments in IPR-related cases across jurisdictions.

More complex cases require a higher level of judicial and scientific-technical competence to provide the best ruling outcome. Although China has established several specialised IP Courts, courts outside Tier 1 cities without this high degree of expertise may require a different approach, like holding court cases or hearings remotely via video link-ups. A more centralised system for adjudication could expand the range of IPR cases that can be heard, alleviate pressure in technically complex cases, and standardise IPR rulings at the national level. In addition, establishing a complete expert hearing system would also improve the court system's ability to hear IP-related cases, while promoting the progress of IP-related cases nationwide.

Technology transfers, both from FIEs to 'indigenous' Chinese companies and vice versa, are challenging. On 2nd March 2019, the State Council repealed three controversial articles within the Technology Import and Export Administrative Regulation,[31] a positive development in controlling compelled technology transfer from a legal perspective. However, repealing these articles does not automatically mean that compelled technology transfers are not still taking place. It remains of significant concern to the working group that European companies are still being compelled to transfer technology to maintain market access – as reported by 17 per cent of respondents to the European Chamber's *Business Confidence Survey 2023*. Over 53 per cent of those report that the compelled technology transfer either happened within the previous year or was still taking place at the time of the survey. Additional measures may be deemed necessary to address the core problem, as modern transfers are compelled by means of market access rather than unnecessary administrative requirements.[32] There is still a clear need for further enhancement of IPR-related legislation. Integrating international companies' feedback can help to improve China's overall IPR protection framework,[33] encourage increased investment in R&D and eventually boosting China's innovation capacity exponentially.

The process for transferring IP from Chinese firms to foreign parties has become progressively tighter, with transfers being strictly reviewed if they affect national security or core technology in strategic fields.[34] New IP produced by projects that receive Chinese state funding requires: 1) approval from the relevant government authorities if IP is to be transferred or exclusively licensed to non-Chinese entities, including international project partners that contribute background IP; and 2) that the first licence of the newly produced IP is in China. A certain degree of relaxation of such restrictions can incentivise FIEs to participate in China's innovation projects, as IP owned by FIEs could prove essential background IP in some projects. For example, without self-owned IP rights, enterprises are not eligible for China's HNTE benefits due to the patent requirement.[35]

Recommendations

- Consult with universities, foreign and national research institutions, and Chinese and international companies' R&D departments, when drafting new innovation and IPR protection policies.
- Increase technical expertise and standardise judgments in IP cases related to innovation and R&D by centralising jurisdiction in top-tier locations with access to highly competent relevant legal and scientific authorities.
- Enhance the enforcement of IPR legislation to avoid compelled technology transfers or technology transfer difficulties.
- Allow the existence of co-ownership of IP between the parent company and local affiliates (or ownership of the parent company) in R&D projects funded by the Chinese Government.

31 *Administrative Decree No. 709,* State Council, 2nd March 2019, viewed 23rd April 2022, <http://www.gov.cn/zhengce/content/2019-03/18/content_5374723.htm>

32 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, 21th June 2023, viewed 21th June 2023, p. 35, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

33 For more information, please see the *Intellectual Property Rights Working Group Paper 2023/2024.*

34 *External Transfer of Intellectual Property Rights Measures (Trial Implementation)*, State Council, 18th March 2018, viewed 23rd April 2022, <https://www.gov.cn/zhengce/content/2018-03/29/content_5278276.htm>

35 *Measures for the Administration of Recognition of High-tech Enterprises*, MOST, 14th April 2008, viewed 6th July 2022, <http://www.most.gov.cn/xxgk/xinxifenlei/fdzdgknr/fgzc/gfxwj/gfxwj2010before/200811/t20081129_65744.html>

European Chamber
中国欧盟商会

Abbreviations

AI	Artificial Intelligence
CNY	Chinese Yuan
EU	European Union
FIE	Foreign-invested Enterprise
HNTE	High and New Technology Enterprise
IP	Intellectual Property
IPR	Intellectual Property Rights
IT	Information Technology
MNC	Multinational Corporation
MOST	Ministry of Science and Technology
NPC	National People's Congress
R&D	Research and Development
S&T	Science and Technology
WIPO	World Intellectual Property Organization

Standards and Conformity Assessment Working Group

Key Recommendations

1. **Implement the Principles of the World Trade Organization Agreement on Technical Barriers to Trade (WTO/TBT) Related to Standards, Technical Regulations and Conformity Assessment Procedures 16**
    - Ensure proper notification of all mandatory standards that may impact market access, and enlarge the scope to cover all mandatory market access requirements.
    - Continue to limit the scope of technical regulations and mandatory standards to issues related to the protection of the environment, health and safety, in accordance with the WTO/TBT Agreement.
    - Rescind mandatory industry standards or convert them to recommended or mandatory national standards as soon as possible.

2. **Review Mandatory Market Access Requirements, Including the Simplification of Testing and Certification Procedures 16**
    - Optimise the synchronisation of mandatory standards, compulsory certification schemes and administrative licensing schemes.
    - Support the recognition of test reports at both the national and international levels.
    - Allow more manufacturers to use their own testing laboratories, provided they meet all necessary accreditation requirements.
    - Ensure all mandatory-type approval schemes for market access are based only on national mandatory standards and supervised by one government authority.

3. **Ensure that all Relevant Stakeholders Enjoy Equal Access and Participation Rights in Standardisation Work 16**
    - Grant fair access to all technical committees (TCs) for interested stakeholders.
    - Grant equal rights to all organisations/companies participating in TCs.
    - Encourage open and extensive industry involvement in all types of standardisation work, including the development of standardisation strategies, leading the drafting of standards projects, and participation in international standardisation activities.
    - Ensure transparency with regards to membership requirements, participation or sponsorship fees, and disclosure of financial information in standardisation projects.
    - Support foreign enterprises applying for local standardisation projects by expanding eligibility requirements for qualified experts.

4. **Continue the Current Reform of the Chinese Standardisation System and Increase Harmonisation Efforts 8**

    Mandatory national standards
    - Introduce reasonable transition periods for mandatory standards in a transparent manner and harmonise the transition periods with the European concept in more industries.

- Avoid referring to recommended standards in mandatory standards.
- Increase the communication with relevant industries when mandatory standards are suggested, in order to understand the challenges and feasibility.
- Indicate the implementation date on the WTO/TBT public notice.

Recommended national standards

- Avoid implementing recommended standards as mandatory standards.
- Avoid referring to recommended standards in law enforcement and market surveillance.
- Follow the same notification procedure of mandatory standards and provide sufficient transition period in cases where recommended standards must be implemented as mandatory.

Social organisation standards/group standards

- Stick to the policy of independent development and free use of social organisation standards and strictly avoid the inclusion of social organisation standards in administrative measures.
- Establish proper procedures to facilitate the transformation of social organisation standards into national and industrial standards.
- Ensure there is transparency in processes related to social organisation standards, and that equal access is granted to all relevant players.
- Develop a pilot evaluation of the development capacity of group standards organisations, and improve the evaluation mechanism of group standards organisations.

International standards

- Continue participating in international standards-setting activities and increase the adoption rate of identical international standards.
- Ensure the compatibility between national standards and international standards, and build a predictable regulatory and investment environment.

5. Ensure Fair and Transparent Market Surveillance 16

- Limit market surveillance to mandatory requirements.
- Increase the number of product categories to be checked in the market, especially for the products not covered by mandatory certification or energy labelling requirements.
- Check if products' claimed compliances are followed, especially voluntary standards.
- Allow commercial organisations that meet accreditation requirements to join market surveillance.
- Provide diverse channels for reporting non-compliance.
- Intensify follow-up market checks, and develop processes and penalties that serve as effective deterrents.

6. Create a Unified Green Development Conformity Assessment Scheme

- Avoid using different standards and methods to calculate carbon footprints.
- Ensure China's unified green development conformity assessment scheme minimises companies' financial risks under the Carbon Border Adjustment Mechanism (CBAM) and other carbon tariff plans.
- Accelerate the development of China's '1+N' policy framework.

Quality and Safety Services Sub-working Group

1. Ensure Equal and Fair Treatment in Government Procurement Activities for Foreign-invested Testing, Inspection and Certification (TIC) Agencies 4

- Regulate government procurement by establishing a fair, transparent, impartial and efficient management system.
- Remove all conditions that are not related to the capabilities necessary to perform a bid, and provide a platform for fair competition among testing and inspection service providers.

2. Accelerate Market-orientated Reforms of Government-affiliated TIC Agencies and Accelerate the Establishment of a Fair, Open TIC Market System 10

- Continue accelerating market-orientated reforms of government-affiliated TIC agencies.
- Reduce excessive and unclear market access barriers and adopt international norms for assessment.
- Provide true national treatment for foreign-invested TIC agencies.

3. Allow Foreign-invested TIC Agencies to Provide Container Inspection Services 4

- Allow foreign-invested TIC agencies to provide container inspection services.

4. Expand the Scope of Commodities for which Customs Accept Inspection Results from Third-party Inspection Agencies

- Expand the scope of commodities for which customs accept inspection results from qualified third-party agencies to cover low-risk, bulk, resource-based commodities as soon as possible.

Introduction to the Working Group

The Standards and Conformity Assessment (SCA) Working Group was founded in 2008. Its members come from various industry sectors including automotive, automotive components, construction, cosmetics, healthcare equipment, electrical equipment, information and communication technology and machinery. It contains the Quality and Safety Services Sub-working Group. The Standards and Conformity Assessment Working Group aims to support the development of China's SCA systems in order to facilitate China's integration into the global economy. As China opens its door wider to the world, SCA will be essential to facilitating cooperation between the European Union (EU) and China in investment, trade, environment, healthcare and production activities.

Recent Developments

On 21st March 2023, the Standardisation Administration of China (SAC) published *China's Standardisation Development Annual Report 2022* as a summary of its work throughout the year.[1] The key achievements include: 95 per cent of Chinese standards for main consumer goods in key sectors are now harmonised with international standards; and the conversion rate of international standards for equipment manufacturing in key sectors has reached 90 per cent. In addition, many new standards in the areas of materials, electric vehicles, high-end equipment manufacturing and smart manufacturing were introduced during the year. The report also outlined the SAC's aim

1 *China's Standardization Development Annual Report 2022*, SAC, 21st April 2023, viewed 26th April 2023, <https://www.sac.gov.cn/sp/art/2023/art_383455d6a7394416af8017c94e5dcfe3.html>

Section Two: Horizontal Issues

of supporting enterprises, social organisations and research institutions' participation in the formulation of international standards in climate change, green finance and the digital sector.

On 1st March 2023, the newly revised *National Standard Management Measures* entered into force.[2] The measures have improved and specified the management rules jointly applicable to mandatory national standards and recommended national standards, while coordinating with the *Management Measures for Mandatory National Standards*.[3] They further refine the scope of national standard development and clarify the requirements for developing such standards.

On 21st March 2023, the SAC published its *Key Points of 2023 National Standardisation Work*, which indicate its intention to strengthen the development of standards in emerging technology, strengthen international cooperation in standardisation, and improve green development standards.[4]

Key Recommendations

1. Implement the Principles of the World Trade Organization Agreement on Technical Barriers to Trade (WTO/TBT) Related to Standards, Technical Regulations and Conformity Assessment Procedures 16

Concern

China's practices do not fully comply with WTO/TBT Agreement principles and create unnecessary obstacles for foreign enterprises trying to access the Chinese market.

Assessment

a) Proper notification of mandatory standards, technical regulations and conformity assessment procedures—including administrative licensing—required for market access

According to the WTO/TBT Agreement, government bodies of signatory countries and regions are obliged to notify other WTO members about proposed technical regulations and conformity assessment procedures at an early stage. The goal is to ensure that these regulations and procedures do not create unnecessary obstacles to trade or foster protectionism. While the working group recognises the positive progress made by China in this regard, there are still many cases where either no notification was given or the information was incomplete.

Currently, many mandatory market access schemes in China have never been notified to the WTO despite affecting market access for the products they cover.

b) Limiting the scope of technical regulations and mandatory standards to issues related to the protection of the environment, health and safety (EHS), according to the WTO/TBT Agreement

The WTO/TBT Agreement allows countries to take necessary measures to fulfil legitimate objectives, such as national security requirements, the prevention of deceptive practices, and the protection of EHS. The working group is pleased to note that China intends to limit the scope of mandatory standards to the above-mentioned objectives and recommends that China continue to fulfil its commitments in this regard, by either rescinding mandatory industry standards, or converting them to either recommended or mandatory national standards,[5] such as with the updates to the *Network Critical Equipment and Security-specific Product Catalogue*.[6]

Recommendations

- Ensure proper notification of all mandatory standards that may impact market access, and enlarge the scope to cover all mandatory market access requirements.
- Continue to limit the scope of technical regulations and mandatory standards in accordance with the WTO/TBT Agreement.
- Rescind mandatory industry standards, or convert them to recommended or mandatory national standards as soon as possible.

2 *National Standard Management Measures,* State Administration for Market Regulation (SAMR), 1st March 2023, viewed 25th April 2023, <https://www.samr.gov.cn/xw/zj/art/2023/art_ff24af5ba9d94f408fd8a30a2ec589b7.html>

3 *Management Measures for Mandatory National Standards*, SAC, 6th January 2020, viewed 7th July 2023, <https://www.gov.cn/zhengce/zhengceku/2020-01/14/content_5468984.htm>

4 *Key Points of 2023 National Standardisation Work*, SAC, 21st March 2023, viewed 25th April 2023, <https://www.sac.gov.cn/xw/tzgg/art/2023/art_80c53d6e4b064ec0b64b3a1e2980fe3e.html>

5 For more sector-specific information linked to WTO/TBT notification and exemptions, please see Key Recommendation (KR) 1 of the *Fashion and Leather Desk Working Group Position Paper 2023/2024*.

6 *Network Critical Equipment and Security-specific Product Catalogue*, Ministry of Industry and Information Technology, 4th July 2023, viewed 7th July 2023, <https://www.sac.gov.cn/sp/art/2023/art_383455d6a7394416af8017c94e5dcfe3.html>

2. Review Mandatory Market Access Requirements, Including the Simplification of Testing and Certification Procedures 16

Concern

Market access barriers are created when certain products have to fulfil multiple and uncoordinated requirements published by different authorities, while certain testing and certification procedures increase manufacturers' costs and hinder the import of technology and services without improving product safety.

Assessment

a) The concurrent existence of mandatory standards, compulsory certification and administrative licensing schemes

According to the Standardisation Law, many products must comply with mandatory standards.[7] In addition, other regulations require certain products to comply with specific mandatory certification schemes and individual administrative licensing schemes. Furthermore, the lack of coordination between these regulations results in overlapping testing requirements, which leads to additional costs for manufacturers and can even delay product launches.

Part of the reason for this lack of cohesion is that these regulations have been formulated by different ministries and government authorities that work independently from one another. Improved coordination among relevant authorities would help to eliminate any overlap or conflict between the various mandatory standards, compulsory certification schemes and administrative licensing systems, and could ensure these schemes are only based on mandatory standards. It would also reduce wait times for companies to access the latest technologies and increase manufacturing efficiency, which in turn would help to revitalise the Chinese economy.

b) Recognition of test reports at both national and international levels, and increasing the efficiency of testing and certification processes

Currently, there are various unified testing and certification schemes for different products in China, such as the China Compulsory Certificate (CCC) and the urban transit equipment certification. In addition, some domestic certification systems adopt the same technical standards as international certification systems, for example, the CCC for explosion-proof products and equipment for potentially explosive atmospheres (ATEX). However, European companies still find that some test reports issued by testing laboratories are not accepted by other testing laboratories for identical tests of the same product. This means manufacturers have to re-test their products, which wastes company resources and ultimately results in delayed product launches, increased costs and reduced efficiency.

Ensuring nationwide recognition of test reports for the same technical qualifications would avoid product test repetition and facilitate business at both national and international levels. This will require certain testing requirements to be clearly defined, to ensure testing equivalence across China. The procedures already established for existing international certification bodies could act as models for China to follow in this regard.

c) Recommended standards used as market access requirements

Recommended standards by definition should remain voluntary. Unfortunately, some have either become *de facto* mandatory after being chosen as the basis for mandatory certification and administrative licensing schemes, or include some mandatory terms. As mentioned in Key Recommendation (KR) 1, the practice of using recommended standards in mandatory certification schemes is still widespread in China. The lack of transparency in these instances causes problems for enterprises that must comply with multiple mandatory market access schemes.

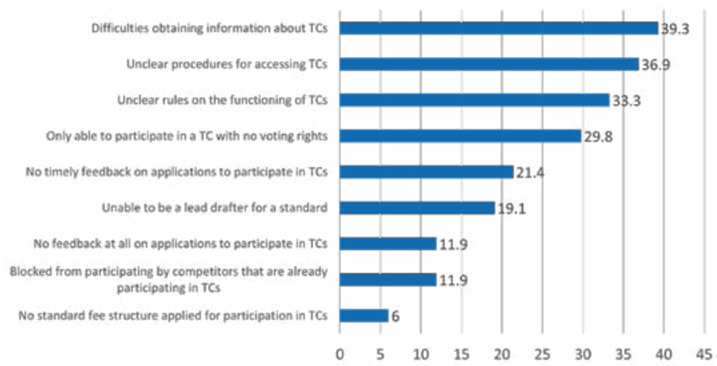
Recommendations

- Optimise the synchronisation of mandatory standards, compulsory certification schemes and administrative licensing schemes.
- Support the recognition of test reports at both national and international levels.
- Allow more manufacturers to use their own testing laboratories, provided they meet all necessary accreditation requirements.
- Ensure all mandatory-type approval schemes for market access are based only on national mandatory standards and supervised by one government authority.

7 Standardisation Law of the People's Republic of China (PRC), National People's Congress, 4th November 2017, viewed 7th July 2023, <http://www.npc.gov.cn/npc/c30834/201711/04d8afd2637d4f68bea84391e46d986f.shtml>

Figure 1: Which of the following obstacles has your company faced when trying to gain access to, or obtain equal treatment within, standardisation activities in China (in %)?

How has your industry's business environment changed over the past year?



Source: European Chamber member survey on standardisation

3. Ensure that all Relevant Stakeholders Enjoy Equal Access and Participation Rights in Standardisation Work 16

Concern

Even though numerous pieces of Chinese legislation stipulate that all relevant stakeholders shall be granted equal access and participation rights in standardisation work, there is still a gap in implementation.

Assessment

Equal participation in standardisation work in China is a long-standing concern for foreign-invested enterprises (FIEs). Access to technical committees (TCs) is one area in which some encouraging progress has been made throughout the past few years. However, the principle of granting equal access to TCs to all stakeholders has not been fully implemented. Both the survey and subsequent interviews conducted for the European Chamber report, *The Shape of Things to Come: The Race to Control Technical Standardisation*, show that while direct barriers—such as instances of companies being expressly denied participation in TCs—seem to have reduced and now only occur in a limited number of sectors (such as cryptography), European Chamber member companies continue to experience a variety of indirect barriers (see Figure 1).[8]

Another issue encountered by members is that the approval of local standard projects must be confirmed with the relevant local standardisation department. However, applications led by FIEs for local standards projects can encounter difficulties, and often result in failure. One of the main reasons is that when government-commissioned research projects purchase services, associated tenders often have rigid requirements for participating institutions to include in their bids personnel with professional titles, including senior professional titles. These stringent requirements can often be difficult for foreign-funded institutions and enterprises to meet because, while in many cases their personnel have the required knowledge and experience, they do not have the equivalent professional titles.

Both the *National Standardisation Deveelopment Outline* and the *14th Five-year Plan (14FYP) for Standardisation* commit to ensuring open,[9] inclusive and transparent standardisation processes for all stakeholders. In this new phase of standardisation reform, the Chinese Government should step up its efforts to encourage FIEs' equal participation in domestic standardisation activities. This includes providing feedback on major standardisation strategies, being able to hold the secretariat of a TC, lead the drafting of Chinese standards, participate in or lead China's international standardisation activities in

8 Rühlig, Tim, *The Shape of Things to Come: The Race to Control Technical Standardisation*, European Union Chamber of Commerce in China & the Swedish Institute of International Affairs, 2nd December 2021, viewed 19th April 2023, <https://www.europeanchamber.com.cn/en/publications-standardisation-report>

9 *National Standardisation Deveelopment Outline,* State Council, 10th Octorber 2021, viewed 7th July 2023, <https://www.gov.cn/zhengce/2021-10/10/content_5641727.htm>

certain technical fields, and access incentive policies from governments at all levels. In addition, the standardisation behaviour of social groups—such as associations, industry alliances and federations—should be supervised to ensure fair and equal access, and participation rights, of all stakeholders.[10]

Recommendations

- Grant fair access to all TCs for interested stakeholders.
- Grant equal rights to all organisations/companies participating in TCs.
- Encourage open and extensive industry involvement in all types of standardisation work, including the development of standardisation strategies, leading the drafting of standards projects, and participation in international standardisation activities.
- Ensure transparency with regards to membership requirements, participation or sponsorship fees, and disclosure of financial information in standardisation projects.
- Support foreign enterprises applying for local standardisation projects by expanding eligibility requirements for qualified experts.

4. Continue Reforming the Chinese Standardisation System and Increase Harmonisation Efforts 8

Concern

Neither the revised Standardisation Law nor other relevant standardisation reforms have been completely implemented in all technical fields, and the transparency and fairness of existing standard-setting procedures still need to be improved.

Assessment

a) Mandatory national standards

The working group has observed progress in China's streamlining and consolidation of mandatory national standards over the past few years, as well as in establishing processes for the management of such standards. As a result, the working group expects the following:

- No conflicting mandatory requirements and standards.
- A reduction of mandatory standards to a minimum.
- Guarantees that, before listing and drafting any mandatory national standard, calls for comments involving key industry stakeholders will be open for two months.
- Basing new standards projects on technological developments and the need to unify technical requirements instead of non-technology-based reasons.
- The establishment of clear work processes, roles and responsibilities for both industry authorities and the SAC in organising the drafting of mandatory national standards.

European best practices can set an example with regard to transition periods, to ensure that products manufactured according to the old standard can continue to be sold in the Chinese market after the implementation date of the new standard. This would involve either taking the implementation date of the new mandatory standard as the time at which production is switched, rather than the time to switch products being sold, or combining the grace period with an additional transition period for sales.

The working group observes that, in China, in some cases the official released standard specifies a shorter transition period than the previous draft, which causes serious problems for foreign companies. For instance, in the case of imports, different transition periods can result in insufficient lead time for companies to be compliant with mandatory requirements and thus delay the import of affected products. To avoid these issues, greater transparency in standard setting is required.

Currently, some mandatory standards have indicated the implementation date on their WTO/TBT public notice while others have not. Indicating the implementation date on all WTO/TBT public notices would enable enterprises to respond on time and carry out the corresponding admission work, and improve the efficiency of cooperation between enterprises and supervisory government departments.

b) Recommended national standards

In the past few years, some recommended standards have been directly adopted as mandatory requirements without relevant stakeholders being clearly notified or given a sufficient transition period. In some cases, these voluntary standards have even been used in market surveillance. The authorities should avoid

10 For more sector-specific information on European business access to and participation in standardisation activities in China, please see KR3 of the *Rail Working Group Position Paper 2023/2024*, and KR5 of the *Automotive Working Group Position Paper 2023/2024*.

implementing recommended standards as market access requirements. If recommended standards are utilised, then sufficient industry research and the same notification procedure of mandatory standards should be carried out before implementation. Furthermore, a reasonable transition period should be provided.

c) Social organisation standards/group standards

When social organisation standards are transformed into national or industry standards, an open and inclusive process in which all stakeholders have equal opportunities to provide feedback should be guaranteed. Similarly, when a social organisation standard is transformed into a mandatory national standard, the relevant standard-setting and WTO/TBT procedures should be followed.[11]

The working group supports the recommendation from the SAC to 'carry out a pilot evaluation of the development capacity of group standards organisations, and improve the evaluation mechanism of group standards organisations',[12] in order to establish a quality evaluation system for group standards and promote their application demonstration and quality; to guide innovative development of relevant industry (such as smart vehicles); and enhance the implementation of standard applications.

d) International standards

Key policy documents like the revised Standardisation Law, the *Outline* and the *14FYP for Standardisation* have consistently pointed towards the Chinese Government's willingness to increase its participation in international standardisation activities and to continue to adopt international standards. The working group recommends that the authorities continue to increase the issuance and the adoption rate of identical international standards. The authorities should also clarify the methodology of the calculations used to establish the adoption rate of international standards in order to enhance transparency and accountability.[13]

The working group has noticed that China has a different perspective from mainstream international standards when formulating standards for new technology, such as automotive semiconductor chips. The authorities should promote an international mutual recognition mechanism for standardisation work, actively adopt correlated international standards, and ensure compatibility between national and international standards. Such actions can help build a predictable regulatory environment that will attract foreign investment to China by reducing entry costs, as well as boosting China's exports.

Recommendations

Mandatory national standards

- Introduce reasonable transition periods for mandatory standards in a transparent manner and harmonise the transition periods with the European concept in more industries.
- Avoid referring to recommended standards in mandatory standards.
- Increase communication with relevant industries when mandatory standards are drafted, in order to understand the challenges and feasibility of implementation.
- Indicate the implementation date on the WTO/TBT public notice.

Recommended national standards

- Avoid implementing recommended standards as mandatory standards.
- Avoid referring to recommended standards in law enforcement and market surveillance.
- Follow the same notification procedure of mandatory standards and provide sufficient transition period in cases where recommended standards must be implemented as mandatory.

Social organisation standards/group standards

- Stick to the policy of independent development and free use of social organisation standards, and strictly avoid the inclusion of such standards in administrative measures.
- Establish proper procedures to facilitate the transformation of social organisation standards into national and industrial standards.
- Ensure there is transparency in processes related to social organisation standards, and that equal access is granted to all relevant players.
- Develop a pilot evaluation of the development capacity of group standards organisations, and

11 For more sector-specific information on the experiences of European businesses with the social organisation standards system, please see KR3 of the *Rail Working Group Position Paper 2023/2024*.

12 *Key Points of 2023 National Standardisation Work*, SAC, 21st March 2023, viewed 25th April 2023, <https://www.sac.gov.cn/xw/tzgg/art/2023/art_80c53d6e4b064ec0b64b3a1e2980fe3e.html>

13 For more sector-specific information on the perspective of European business regarding adoption of and harmonisation with international standards, please see KR3 of the *Rail Working Group Position Paper 2023/2024*, KR1 of the *Construction Working Group Position Paper 2023/2024*, and KRs 2 and 4 of the *Information and Communication Technology Working Group 2023/2024*.

improve the evaluation mechanism of group standards organisations.

International standards

- Continue participating in international standards-setting activities and increase the adoption rate of identical international standards
- Ensure compatibility between national and international standards, and build a predictable regulatory and investment environment.

5. Ensure Fair and Transparent Market Surveillance 16

Concern

The current market surveillance practice has been extended to checking voluntary requirements, while not enough products are being checked for mandatory requirements, especially those not covered by mandatory certification requirements.

Assessment

a) Market surveillance for mandatory requirements versus voluntary requirements

While the working group recognises that product quality surveillance and inspection in China is becoming more standardised and systematic, it would like to highlight that, in practice, market surveillance activities are not strictly following the surveillance principal that only mandatory market access requirements need to be checked. In fact, voluntary requirements defined in various recommended national or industry standards—which are more similar to performance standards—are often checked. This happens more in provincial, city or county level surveillance.

b) Insufficient market surveillance for mandatory requirements not covered by mandatory certification

Mandatory certification or labelling requirements—for example, CCC or energy labels—are well recognised by consumers and used on sales channels such as e-commerce platforms. As a result, most products on the market have met the mandatory requirements covered by these requirements. However, requirements not covered by mandatory certification are often overlooked, and it is difficult to check for non-compliance without professional testing tools. Under such circumstances, government surveillance plays a key role; however, in China, the working group has noticed that such surveillance checks are insufficient. For example, out of more than 50 categories of lighting products, the State Administration for Market Regulation (SAMR) generally only checks three every year. And these three categories are mostly covered by CCC, which means most requirements defined by other mandatory standards are not checked, leading to safety risks for many products.

c) Status of claimed compliances

The Product Quality Law requires all products to claim which standards they are compliant with, whether mandatory, recommended, social or enterprise standards. However, checking that manufacturers are in fact compliant with the standards they claim is often overlooked. The relevant authorities should implement proper checks to ascertain if these claimed standards are really being followed, in particular, when the standards are part of the 'top runner' system.[14]

d) Social resources in compliance check

To ensure a sufficient level of surveillance, more resources are needed to perform compliance checks. In line with international best practices, more commercial organisations—like industry associations and testing laboratories—could be allowed to perform that type of work provided they meet relevant accreditation requirements. Meanwhile, the authorities could also consider developing diverse channels to identify more non-compliant products on the market. One avenue could be to develop a smartphone application, WeChat mini-programme or official website that allows consumers and other relevant stakeholders to report non-compliant products in the market. This practice has provided positive results in international markets like India.

Finally, in order to avoid instances of the performance/safety features of products sold in the market differing from the samples sent for testing, the authorities should intensify their follow-up market checks, and develop processes and penalties that serve as effective deterrents for the sale of non-compliant products.

Recommendations

- Limit market surveillance to mandatory requirements.
- Increase the number of product categories to be checked in the market, especially for products not covered by mandatory certification or energy labelling requirements.

14 *2023 Main Areas of 'Top Runner' Enterprise Standards Implementations*, SAMR, 29th June 2023, viewed 16th July 2023, <https://www.samr.gov.cn/bzcxs/tzgg/art/2023/art_2948497b6ed8477eb53805172d06d44b.html>

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- Check if products' claimed compliances are followed, especially voluntary standards.
- Allow commercial organisations that meet accreditation requirements to join market surveillance.
- Provide diverse channels for reporting non-compliance.
- Intensify follow-up market checks, and develop processes and penalties that serve as effective deterrents for the sale of non-compliant products.

6. Create a Unified Green Development Conformity Assessment Scheme

Concern

There is no unified green development conformity assessment scheme in place to guide companies on meeting China's carbon neutrality goals.

Assessment

On 2nd February 2021, the State Council announced the *Guiding Opinions on Accelerating the Establishment and Improvement of a Green and Low-carbon Circular Economic Development System*, calling for improvement in green standards, accelerating the construction of a green certification system, and strengthen the statistical monitoring system.[15]

Many companies and organisations have also set their own green development goals, hoping to bring additional value and improvement to multiple areas. The European Chamber's report, *Carbon Neutrality: The Role of European Companies in China's Race to 2060*, finds that 67 per cent of European companies operating in China are already pursuing carbon neutrality, and 40 per cent have established China-focussed decarbonisation teams, many of which report directly to the company's board.[16]

Globally, companies are utilising different methods to calculate their carbon footprints. For example, according to International Organization for Standardization (ISO) *14064-1 Specification with guidance at the organisation level for quantification and reporting of greenhouse gas emissions and removals*,[17] an organisation's carbon footprint is measured by its own carbon footprint (scope one and scope two carbon emissions) and its supply chain carbon footprint (scope three emissions). Scope one emissions are the direct emissions caused by activities within the organisation. Scope two are indirect emissions caused by the electricity, heat and steam purchased and used by the organisation. Scope three are all the emissions generated from activities related to the organisation that are not included in scope one and two. While calculating scope one and two is relatively clear, defining scope three is complex and obtaining the relevant data from suppliers can be difficult.

Carbon tariffs is another method used by governments to urge companies to reduce emissions. In April 2023, the European Parliament passed an agreement on a Carbon Border Adjustment Mechanism (CBAM).[18] As a result, from 2026, non-EU companies will be required to pay a carbon tariff for certain emission-intensive products entering the EU to compensate for the difference between their country of origin's carbon price and the EU's emissions trading system's carbon prices. Although the CBAM's impact on China's exports to the EU is currently limited, as the scheme expands in the future, it could become the most important external factor in optimising China's own national carbon calculation and trading system.

Regarding carbon neutrality, the Chinese Government announced the '1+N' policy framework in 2021,[19] with '1' being the long-term guideline for achieving China's carbon neutrality goals, and 'N' being the detailed implementation plans for various industries, as well as plans for technology support, energy security, carbon sequestration capacity, fiscal and financial pricing policies, standard measurement systems, inspection, and assessment. However, this framework still needs to be quickly fleshed out, as 65 per cent of European Chamber members report that a lack of industrial guidance and best practice sharing from the government or non-governmental organisations could

15 *Guiding Opinions on Accelerating the Establishment and Improvement of a Green and Low-carbon Cycle Economic Development System*, State Council, 2nd February 2021, viewed 27th April 2023, <http://www.gov.cn/zhengce/content/2021-02/22/content_5588274.htm>

16 *Carbon Neutrality: The Role of European Companies in China's Race to 2060*, European Union Chamber of Commerce in China, 25th May 2022, viewed 27th April 2023, <https://www.europeanchamber.com.cn/en/publications-carbon-neutrality-report>

17 *Specification with Guidance at the Organization Level for Quantification and Reporting of Greenhouse Gas Emissions and Removals*, ISO, December 2018, viewed on 27th April 2023, <https://www.iso.org/standard/66453.html>

18 *Fit for 55: Parliament Adopts Key Laws to Reach 2030 Climate Target,* European Parliament, 18th April 2023, viewed 12th May 2023, <https://www.europarl.europa.eu/news/en/press-room/20230414IPR80120/fit-for-55-parliament-adopts-key-laws-to-reach-2030-climate-target>

19 *China's "1+N" Policy Framework*, Embassy of the PRC in the United States of America, 17th November 2021, viewed 26th April 2023, <http://us.china-embassy.gov.cn/eng/zt/climatechange/202111/t20211117_10449121.htm>

prevent them from achieving their decarbonisation goals.[20]

Recommendations

- Avoid using different standards and methods to calculate carbon footprints.
- Ensure that China's unified green development conformity assessment scheme minimises companies' financial risks under CBAM and other carbon tariff plans.
- Accelerate the development of China's '1+N' policy framework.

Abbreviations

14FYP	14th Five-year Plan
ATEX	Equipment for Potentially Explosive Atmospheres
CBAM	Carbon Border Adjustment Mechanism
CCC	China Compulsory Certification
EHS	Environment, Health and Safety
EU	European Union
FIE	Foreign-invested Enterprise
ISO	International Organization for Standardization
KR	Key Recommendation
PRC	People's Republic of China
SAC	Standardisation Administration of China
SAMR	State Administration for Market Regulation
SCA	Standards and Conformity Assessment
TC	Technical Committee
WTO/TBT	Technical Barriers to Trade of the World Trade Organisation

20 *Carbon Neutrality: The Role of European Companies in China's Race to 2060*, European Union Chamber of Commerce in China, 25th May 2022, viewed 27th April 2023, <https://www.europeanchamber.com.cn/en/publications-carbon-neutrality-report>

European Chamber
中国欧盟商会

Quality and Safety Services Sub-working Group

Introduction to the Sub-working Group

Established in 2012, the Quality and Safety Services (QSS) Sub-working Group is a sub-working group of the Standards and Conformity Assessment Working Group. The QSS sector is made up of independent third-party agencies that provide manufacturers, trade-related parties and end users with testing, inspection and certification (TIC) services, and other conformity assessment services related to their products and management systems, with the aim of improving the safety and quality of products on the market. The members of the sub-working group are primarily European TIC industry leaders that have operated in China for over two decades, providing professional, reliable and high-quality services for Chinese manufacturers and other sectors.

These member companies have contributed significantly to both China's market-orientated reforms and to development plans like the Belt and Road Initiative by sharing their expertise and advanced management experience with the State Administration for Market Regulation (SAMR) and the Certification and Accreditation Administration of China (CNCA). The sub-working group identifies industry concerns and makes constructive recommendations in order to create a more transparent and better-coordinated QSS system that improves market access for all players. It advocates for China to further open its TIC market and provide opportunities for cooperation between Europe and China in the area of quality and safety management.

Recent Developments

Compared to other major economies, China imposes strict regulations on third-party TIC agencies, which come under the primary purview of the SAMR. China's regulatory agencies exert a tremendous amount of influence on quality and safety systems—as well as the development and enforcement systems for standards—by dictating the development of national quality infrastructure regulations.

State-owned enterprises and government-affiliated organisations have significant market share in China's QSS sector, while foreign-invested TIC agencies account for only a small portion. Despite TIC services being included in the *Catalogue of Encouraged Industries for Foreign Investment*,[1] government-affiliated TIC agencies are still favoured in terms of developing national and industry standards, receiving important science and research projects, and being appointed or recommended as third-party organisations in government procurement. This puts foreign-invested QSS agencies at a competitive disadvantage in areas that are of crucial importance to the Chinese Government.[2]

Market Developments in the TIC Industry

China's TIC industry continued to grow throughout 2022. According to the SAMR, there were 1,128 certification bodies in the country as of the end of 2022, representing 21 per cent year-on-year growth; a total of 3,366,000 verification certificates were issued by TIC agencies to 939,000 companies or organisations, an increase of 11.4 per cent and 8.3 per cent respectively year-on-year; and 54,000 TIC agencies were accredited, representing 8.2 per cent growth year-on-year.[3]

Developments in the Regulatory Environment

On 26th May 2022, the SAMR issued the *Special Conditions for the Accreditation and Market Access of Testing and Inspection Institutions for Imports and Exports*,[4] which governs the market access of TIC agencies for imported and exported commodities after the State Council removed administrative approval requirements in this area.

On 27th March 2023, the SAMR published the *Measures for the Administration of Capability Verification of*

1 *Catalogue of Encouraged Industries for Foreign Investment (2022)*, National Development and Reform Commission (NDRC) & Ministry of Commerce (MOFCOM), 28th October 2022, viewed 19th April 2023, <http://www.mofcom.gov.cn/article/syxwfb/202210/20221003363087.shtml>

2 For more details about difficulties foreign-invested TIC agencies are facing, please refer to Key Recommendation 3 of the *Standards and Conformity Assessment Working Group Position Paper 2023/2024*.

3 *Report on the 2023 National Certification, Accreditation, Testing & Inspection Conference*, CNCA, 21st February 2023, viewed 19th April 2023, <https://www.cnca.gov.cn/zwxx/zcjd/art/2023/art_613283ad2eea4fbd97a1eb2597beeb19.html>

4 *Special Conditions for the Accreditation and Market Access of Testing and Inspection Institutions for Imports and Exports*, SAMR, 26th May 2022, viewed 19th April 2023, <https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/rkjcs/art/2023/art_01c1769afa6346ff8146504715cf71e3.html>

Testing and Inspection Institutions,[5] with the aim of strengthening supervision and management of testing and inspection agencies, both during and after service provision, and enhancing accountability to ensure that their technical capabilities remain qualified. Article 24 specifically encourages testing and inspection agencies to actively participate in capability verification activities organised by domestic and foreign authorities, as well as other capability verification organisations, to continually improve their technical competence. The sub-working group welcomes these reform measures.

On 20th September 2022, the General Administration of Customs (GACC) published the *Measures for the Administration of Accepting Inspection Results for Imports and Exports*,[6] and with the promulgation of Decree No. 120 of 2022 on 1st December, these measures are being applied first to imported garments.[7] The sub-working group welcomes these reform measures and expects an acceleration of the reform process, so that the measures become applicable to more commodities as soon as possible.

Key Recommendations

1. Ensure Equal and Fair Treatment in Government Procurement Activities for Foreign-invested TIC Agencies 4

Concern

Certain unreasonable conditions set in government procurement activities constitute invisible barriers that exclude foreign-invested TIC agencies from obtaining equal and fair treatment during the process.

Assessment

China is committed to and has achieved notable results in establishing a government procurement system that provides equal and fair treatment for domestic enterprises and foreign-invested enterprises (FIEs).[8] The Ministry of Finance (MOF) issued the *Notice on Promoting Fair Competition in Government Procurement and Optimising the Business Environment* in July 2019,[9] requiring all relevant government authorities to eliminate any practices and regulations that hinder fair competition in the field of government procurement. This is in line with both the *Plan for Deepening the Reform of the Government Procurement Mechanism* and the *Notice by the General Office of the State Council on Focussing on Enterprises' Concerns and Further Promoting the Implementation of Policies to Optimise the Business Environment*.[10&11] According to the notice, no measures that exclude or restrict market competition should be introduced, and government procurement tenders that have not undergone a fair competition review process cannot be published at all.

On 26th October 2021, the MOF released the *Notice on the Implementation of Policies Relating to the Equal Treatment of Domestic and Foreign Enterprises in Government Procurement*,[12] requiring authorities to ensure equal access to opportunities and equal treatment of domestic and FIEs in government procurement, including ensuring equal access to bidding information and setting reasonable requirements and evaluation criteria for suppliers. Excluding certain suppliers by imposing any form of unreasonable conditions is not allowed. As a result, more third-party inspection agencies have been able to participate in government quality sampling and inspection activities.

However, in practice, some local governments still adopt terms or conditions that could be considered as excluding or restricting competition in their bidding processes. Public bidding and competitive negotiation are the two statutory methods of government

5 *Measures for the Administration of the Capability Verification of Testing and Inspection Institutions*, SAMR, 27th March 2023, viewed 19th April 2023, <http://www.gov.cn/zhengce/zhengceku/2023-04/09/content_5750559.htm>

6 *Measures for the Administration of Accepting Inspection Results for Imports and Exports, Order [2022] No. 259*, GACC, 20th September 2022, viewed 17th April 2023, <http://www.customs.gov.cn/customs/302249/2480148/4590463/index.html>

7 *Announcement on the Requirements of Accepting Inspection Results for Imported Garments (Decree [2022] No. 120)*, GACC, 1st December 2022, viewed 17th April 2023, <http://www.customs.gov.cn/customs/302249/302266/302267/4717164/index.html>

8 *State Council Policy Briefing on 29th October 2019,* State Council Information Office, 29th October 2019, viewed 10th April 2023, <http://www.gov.cn/xinwen/2019zccfh/69/index.htm>

9 *Notice on Promoting Fair Competition in Government Procurement and Optimising the Business Environment*, MOF, 26th July 2019, viewed 10th May 2023, <http://www.mof.gov.cn/gkml/caizhengwengao/wg201901/wg201908/201912/t20191230_3452065.htm>

10 *Central Committee for Deepening Overall Reform adopted the Plan for Deepening the Reform of the Government Procurement Mechanism,* China Government Procurement Network, 15th November 2018, viewed 29th June 2023, <https://www.ccgp.gov.cn/news/201811/t20181115_11112110.htm>

11 *Notice of the State Council General Office on Focussing on Enterprises' Concerns and Further Promoting the Implementation of Policies to Optimise the Business Environment*, State Council, 8th November 2018, viewed 10th May 2023, <http://www.gov.cn/zhengce/content/2018-11/08/content_5338451.htm>

12 *Notice on Equal Treatment of Domestic and Foreign-invested Companies in Government Procurement Activities,* MOF, 26th October 2021, viewed 10th May 2023, <http://www.gov.cn/zhengce/zhengceku/2021-10/26/content_5644953.htm>

procurement most commonly adopted by the Chinese authorities. Comparatively speaking, the process of competitive negotiation is less contentious, as it relies solely on prices to determine winning bids and the tender price will eventually be publicly announced. However, the public bidding process involves a comprehensive scoring method in which price accounts for only a portion of the score. Other factors, such as product quality, sales and after-sales services, are also taken into consideration, which can leave the system at risk of manipulation. Specifically, bidding requirements could be established to impede foreign-invested bidders that are otherwise qualified but unable to meet unreasonable procurement rules set in the bidding document.

The imposition of unfair and unreasonable bidding requirements that exclude or restrict market competition is another major hurdle encountered by FIEs with regard to government procurement. For instance, factors taken into consideration under the bidding system include: 1) enterprises' experiences in sampling and inspection services carried out by administrations for market regulation at the national and provincial level; 2) experience in developing national or industry standards; 3) recommendations or awards received; and 4) year-end performance reviews. However, government outsourcing of sampling and inspection services was only recently opened nationwide to the private sector, meaning that foreign-invested TIC agencies have not had enough time to accrue relevant sampling and inspection service experience in China.[13] Foreign-invested TIC agencies have also not had enough opportunities to take part in Chinese standardisation technical committees or sub-committees, or to participate in the development of national or industry standards. Moreover, awards, commendations and performance assessments are only available for public agencies and do not directly relate to the capabilities of bid participants.

As a result of these unreasonable invisible barriers, foreign-invested TIC agencies have been put at a competitive disadvantage.

Recommendations

- Regulate government procurement by establishing a fair, transparent, impartial and efficient management system.
- Remove all conditions that are not related to the capabilities necessary to perform a bid, and provide a platform for fair competition among testing and inspection service providers.

2. Accelerate Market-orientated Reforms of Government-affiliated TIC Agencies and Accelerate the Establishment of a Fair, Open TIC Market System 10

Concern

The progress of market-orientated reforms of government-affiliated TIC agencies needs to be accelerated to further remove industry barriers.

Assessment

TIC services play a vital role in promoting the upgrading and sustainable development of entire industries, safeguarding the rights and interests of consumers, and facilitating trade, service market regulation and social governance. Having more world-leading foreign-invested players in the China market is beneficial to end-users and consumers, as the quality, safety and performance metrics of products will be better guaranteed. In addition, a market filled with more competent players helps to accelerate overall industry upgrading and replace low-quality service providers with higher-quality ones, which can provide an assessment basis for government and regulatory officers.

For the TIC industry to further facilitate economic and social progress, a more mature, market-orientated, transparent system needs to be developed, in which fair competition is promoted among all TIC agencies, whether state-owned, Chinese private or foreign-invested.

The *Modernisation of Market Regulation and Administration in the 14th Five-year Plan*, published by the State Council in December 2021, clearly states that market-orientated reforms should be maintained and the reform of TIC agencies actively encouraged, along with the development of third-party testing and

13 Despite several local governments outsourcing third-party inspection services since 2013, it was not until the introduction of the *Administrative Measures on Food Safety Sampling Inspection*, approved by the SAMR during the 2019 11th Bureau Affair Conference on 30th July 2019, which came into effect on 1st October 2019, that sampling and inspection services were officially opened to private inspection agencies. Article 11, Chapter 3 of these measures clearly states that market regulatory and administrative entities may independently perform sample tests or authorise a service provider to do so: *Administrative Measures on Food Safety Sampling Inspection*, SAMR, 1st October 2019, viewed 10th May 2023, <https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/fgs/art/2023/art_e916b7ff0aff4d04ad1bd26674a304a6.html>

inspection service providers.[14] The *Development of Certification, Accreditation, Testing and Inspection in the 14th Five-year Plan*, issued by the SAMR on 29th July 2022,[15] highlights the goal of promoting a market-orientated, international, professional, efficient and standardised TIC industry, and proposes the accelerated development of a system that features consistent management, collaborative implementation, credibility and mutual recognition. These specific market-orientated reform initiatives would foster a fair and open TIC market system, and accelerate growth of the TIC industry overall, which would serve economic and social development to the greatest extent.

Further progress in market-orientated reforms of government-affiliated TIC agencies is needed. However, the latest statistics released by the SAMR for the TIC industry show that, by the end of 2022, government-affiliated TIC agencies still accounted for 19.69% per cent of all 52,769 TIC agencies in the country.[16]

In addition, to foster a fair and open TIC market system, various industry barriers, such as unreasonable and non-transparent market access conditions, should be removed. These barriers are present predominantly in domains related to TIC services of industrial products that require administrative permits, such as special equipment and healthcare equipment. The relevant administrative authorities set high market entry thresholds by requiring TIC agencies to, for example, be staffed with a certain number of employees with relevant professional titles. These requirements can often be difficult for foreign-invested agencies to meet because, while in many cases their personnel have the required knowledge and experience, they do not have the equivalent professional titles. If such barriers are not removed, it will not be possible to establish a fair and open market in which foreign-invested agencies with advanced technologies and experience can achieve their full potential, which will impede overall development of the Chinese TIC industry.

14 *The Modernisation of Market Regulation and Administration in the 14th Five-year Plan*, State Council, 14th December 2021, viewed 10th May 2023, <http://www.gov.cn/zhengce/content/2022-01/27/content_5670717.htm>

15 *Development of Certification, Accreditation, Testing and Inspection in the 14th Five-year Plan,* SAMR, 16th September 2022, viewed 27th June 2023, <https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/rzjgs/art/2023/art_6b55306125704c99b7db2fccd11825e4.html>

16 *Latest Data for Year 2022 on the Development of China's TIC Industry,* SAMR, 14th June 2023, viewed 5th July 2023, <http://qts.cnca.cn/qts/DownloadNoticeFileServlet?fileId=40288277877f1c380188b88e41214ef7>

Recommendations

- Continue accelerating market-orientated reforms of government-affiliated TIC agencies.
- Reduce excessive and unclear market access barriers and adopt international norms for assessment.
- Provide true national treatment for foreign-invested TIC agencies.

3. Allow Foreign-invested TIC Agencies to Provide Container Inspection Services

4

Concern

According to certain government regulations, foreign-invested TIC agencies are restricted from providing container inspection services.

Assessment

In China, containers are currently subject to statutory surveys managed by the Ministry of Transport (MOT) and the China Maritime Safety Administration. The latter delegates the qualification of statutory surveys of containers solely to the China Classification Society (CCS)—a secondary public interest institution—which then subcontracts the work to its subsidiary company, the CCS Certification Company, authorising it to carry out surveys of containers owned by both domestic and foreign enterprises. Pursuant to the *Regulations of the People's Republic of China Governing Inspection of Ships and Offshore Installations* and the *Vessel Inspection Administration Regulations*,[17&18] foreign-invested ship inspection agencies registered in China are only permitted to inspect containers owned by foreign businesses (i.e., foreign export containers). In other words, foreign-invested inspection and testing service providers registered in China are not permitted to conduct legal inspections on containers owned by domestic organisations subject to such requirement.

The sub-working group recommends that China open up the container inspection market to ship inspection agencies from all member states signatory to the International Convention for Safe Containers

17 *Regulations of the People's Republic of China Governing Survey of Ships and Offshore Installations,* State Council, 2nd March 2019, viewed 10th May 2023, <http://www.gov.cn/gongbao/content/2019/content_5468917.htm>

18 *Vessel Inspection Administration Regulations,* MOT, 22nd January 2016, viewed 10th May 2023, <http://www.gov.cn/gongbao/content/2016/content_5070757.htm>

(Convention),[19] and grant foreign-invested TIC agencies authorisation to provide inspection services for containers owned by Chinese businesses, for the following reasons:

1) To meet the principle of reciprocity

The relevant authorities of European Union (EU) Member States neither restrict Chinese inspection agencies or their inspection companies established in EU countries to inspecting containers owned by non-EU governments, nor do they prohibit them from inspecting containers owned by businesses from EU countries. Therefore, it is recommended that the relevant authorities in China follow the principle of reciprocity. The sub-working group also suggests that China no longer restrict the licensed business scope of inspection agencies in China, which are invested in and established by European classification societies, based on the nationality of container owners.

2) To meet the principle of mutual recognition of the Convention

According to the Convention, once an inspection agency obtains the necessary qualification to survey containers from one contracting state, then all contracting states must accept the qualification of the agency in question, as well as the inspection process and results it provides. However, such mutual recognition is not observed in the Chinese market, with European enterprises restricted to inspecting only containers owned by foreign businesses. In so doing, China does not recognise the qualifications granted by the governments of the counterpart contracting states and, as such, violates the principle of mutual recognition under the Convention.

3) To conform to the 'pre-establishment national treatment plus negative list' administrative system

Article 4 of China's Foreign Investment Law stipulates that the 'pre-establishment national treatment plus negative list' administrative system be applied to foreign investments.[20] This means there is an obligation to treat foreign investors in industries not included in the *Negative List for Foreign Investment (Negative List)*,[21] jointly issued by the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM), no less favourably than domestic investors at the initial stage of market access. In addition, Article 6 of the *Regulation on the Implementation of the Foreign Investment* Law stipulates that domestic enterprises and FIEs shall be treated equally by the authorities with respect to government funding arrangements, land supply, tax reductions, certification, standard setting, project applications and human resource policies.[22]

4) To avoid monopolistic behaviour, in line with international practices

The statutory inspection of containers is a charged service provided by third parties. The service fees are adjusted in accordance with market prices, and supply and demand, as international practices dictate. In the majority of jurisdictions worldwide, enterprises are at liberty to choose inspection services from international classification societies that have the qualifications required by the Convention for statutory inspection services. When administrative measures specify only a single organisation can provide such services, a monopoly can easily result, as this results in a lack of competition and a price adjustment mechanism for inspection fees. It not only limits the freedom of choice of Chinese container owners, but also disincentivises the designated inspection agencies from improving either their services or technical capabilities.

5) To promote the development of the industry and alleviate the burden on enterprises

The implementation of the *Vessel Inspection Administration Regulations* has been impeded by China's administrative policy that foreign ship inspection companies cannot carry out surveys of containers owned by Chinese enterprises.[23] For instance, if foreign ship inspection companies wish to conduct inspection services on Chinese tank containers of hazardous cargo for international shipping to Europe, when applying for a testing certificate with the CCS they also need to apply

19 *International Convention for Safe Containers*, International Maritime Organization, 6th September 1977, viewed 10th May 2023, <https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-Safe-Containers-(CSC).aspx>

20 Foreign Investment Law, National People's Congress, 15th March 2019, viewed 27th June 2023, <http://www.npc.gov.cn/npc/c30834/201903/121916e4943f416b8b0ea12e0714d683.shtml>

21 *China's Negative List for Foreign Investment Access (New Edition): English Version Available*, China Briefing, 28th December 2021, viewed 10th May 2023, <https://www.china-briefing.com/news/chinas-foreign-investment-negative-list-2021-edition-english-version/>

22 *Regulation on the Implementation of the Foreign Investment Law*, State Council, 26th December 2019, viewed 10th May 2023, <http://www.gov.cn/zhengce/content/2019-12/31/content_5465449.htm>

23 *Vessel Inspection Administration Regulations*, MOT, 22nd January 2016, viewed 10th May 2023, <http://www.gov.cn/gongbao/content/2016/content_5070757.htm>

separately for an additional certificate issued by a ship inspection company domiciled in an EU Member State and registered in China. This certificate is issued after the same tank containers are tested in accordance with the European Agreement Concerning the International Carriage of Dangerous Goods by Road. This certificate is required because China has yet to become a member of the European Agreement; consequently, without the authorisation of EU countries, the CCS cannot issue a corresponding certificate for these containers. Therefore, the policy prohibiting EU-domiciled ship inspection agencies in China from inspecting Chinese-owned containers prevents Chinese businesses from receiving the desired services. It also adversely affects China's international shipping business and impedes the advancement of the Belt and Road Initiative. Moreover, the cost burden is doubled, as two inspection agencies must carry out a procedure that could otherwise have been completed by one.

Recommendation

- Allow foreign-invested TIC agencies to provide container inspection services.

4. Expand the Scope of Commodities for which Customs Accept Inspection Results from Third-party Inspection Agencies

Concern

Although inspection results from third-party agencies for imports and exports have started to be accepted by Customs, the practice is applicable to a very limited scope of commodities, excluding many low-risk ones.

Assessment

As China continues to develop, ever higher standards of customs supervision and services will be required. While customs services have improved in recent years, customs clearance efficiency is still lacking. Reforms are needed that can optimise clearance management, reduce both clearance costs and the time needed for import and export, and increase supervision efficiency.

China is stepping up reforms to simplify administration and delegate power, combine decentralisation and management, and optimise public services. This has benefitted third-party inspection agencies that play an increasingly important role in the quality and safety supervision of imports and exports. According to the *Opinions of the State Council on Improving the Quality Safety Risk Early Warning and Quick Response Regulation System for Imports and Exports and Effectively Protecting Consumer Rights and Interests*,[24] customs should improve the management system in order to accept inspection results from qualified third-party agencies and thereby encourage their participation in supervision work. The sub-working group believes that third-party inspection results will become the primary means to supervise the quality of imported and exported commodities. This practice will also apply to imported bulk resource-based commodities.

On 20th September 2022, the GACC published the *Measures of the Customs of the People's Republic of China for the Administration of Accepting Inspection Results for Imports and Exports* in Order No. 259,[25] which became effective on 1st December 2022. It allows inspection results from qualified third-party agencies to serve as the basis for conformity assessment in customs inspections of imported and exported commodities. The new policy also indicates that customs will identify and publish the scope of applicable commodities and specific acceptance requirements based on quality and safety risk assessments, which are subject to periodic review and adjustment. As of June 2023, the practice is only applicable to imported garments and imported cement,[26&27] while excluding other low-risk bulk resource-based commodities. Given the diversity and the sheer volume of imported and exported commodities, a backlog may build up if the volume of bulk imports continues to increase. This would result in import and export enterprises having to queue for their inspection results. Expanding the scope of applicable commodities to cover low-risk bulk commodities would provide an effective solution, and further facilitate cross-border trade.

24 *Opinions of the State Council on Improving the Quality Safety Risk Early Warning and Quick Response Regulation System for Imports and Exports and Effectively Protecting Consumer Rights and Interests,* State Council, 14th September 2017, viewed 13th April 2023, <http://www.gov.cn/gongbao/content/2017/content_5232364.htm>

25 *Measures of the Customs of the People's Republic of China for the Administration of Accepting Inspection Results for Imports and Exports, Order [2022] No. 259*, GACC, 20th September 2022, viewed 17th April 2023, <http://www.customs.gov.cn/customs/302249/2480148/4590463/index.html>

26 *Announcement on the Requirements of Accepting Inspection Results for Imported Garments, Decree [2022] No. 120*, GACC, 1st December 2022, viewed 17th April 2023, <http://www.customs.gov.cn/customs/302249/302266/302267/4717164/index.html>

27 *Announcement on the Requirements of Accepting Inspection Results for Imported Cement, Decree [2023] No. 21*, GACC, 10th March 2023, viewed 17th April 2023, <http://www.customs.gov.cn/customs/302249/2480148/4885549/index.html>

Recommendation

- Expand the scope of commodities for which customs accept inspection results from qualified third-party agencies to cover low-risk, bulk, resource-based commodities as soon as possible.

Abbreviations

CCS	China Classification Society
CNCA	Certification and Accreditation Administration of China
EU	European Union
FIE	Foreign-invested Enterprise
GACC	General Administration of Customs China
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
MOT	Ministry of Transport
NDRC	National Development and Reform Commission
QSS	Quality and Safety Services
SAMR	State Administration for Market Regulation
TIC	Testing, Inspection and Certification

Section Three 3

Goods

European Chamber
中国欧盟商会

Goods

The Goods section of the *Position Paper* encompasses 11 European Chamber working groups and four sub-working groups:

- Agriculture, Food and Beverage
  - Dairy Industry
  - Paediatric Nutrition, and Food for Special Medical Purpose (two sub-working groups)
- Automotive
- Automotive Components
- Cosmetics
- Energy
  - Carbon Market
- Fashion and Leather
- Healthcare Equipment
- Maritime Manufacturing and Industrial Services
- Petrochemicals, Chemicals and Refining
- Pharmaceutical
- Rail

In 2022, the European Union (EU) maintained its position as China's largest trade partner, importing euro (EUR) 626 billion worth of goods, a 32 per cent year-on-year (y-o-y) increase; while China was the EU's third largest trade partner, importing just EUR 230.3 billion worth of goods, a mere three per cent y-o-y increase. This marked a 58 per cent y-o-y increase of the EU's trade deficit with China, to EUR 395.7 billion,[1] underscoring China's reliance on the EU market for exports. European Commission President Ursula von der Leyen has stated the EU's intention to "rebalance" the relationship, which will entail minimising exposure to China in key areas, such as medicines, pharmaceutical raw materials and rare earths, as part of its 'de-risking' strategy.[2] At the same time, it is clear there is huge potential for increasing EU exports to China.

For European companies in China, doing business became more difficult in 2022 for 64 per cent of respondents to the European Chamber's *Business Confidence Survey 2023* (BCS 2023)—a four per cent y-o-y increase and the highest on record—and the proportion of companies reporting a decline in revenues increased by 20 percentage points y-o-y.[3] At the sectoral level, the proportion of members that reported a deterioration in the ease of doing business was even higher for many goods manufacturers and importers, including in the medical devices (79 per cent) and automotive (73 per cent) industries.

For the medical devices industry, this was in no small part due to China's staunch protection of its domestic firms. European companies were disadvantaged by opaque approval processes and China's centralised volume-based procurement directive, as well as the government's continued provision of direct financial support, tax benefits, and research and development (R&D) support to

1 *China-EU – international trade in goods statistics*, Eurostat, February 2023, viewed 6th July 2023, <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=China-EU_-_international_trade_in_goods_statistics>

2 O'Carroll, Lisa, *EU softens China strategy by adopting 'de-risking' approach, The Guardian*, 30th June 2023, viewed 6th July 2023, <https://www.theguardian.com/world/2023/jun/30/eu-china-strategy-de-risking-ursula-von-der-leyen-brussels>; Blenkinsop, Philip, *EU agrees to de-risk from China and debates what this means, Reuters,* 30th June 2023, viewed 6th July 2023, <https://www.reuters.com/world/eu-leaders-pledge-de-risk-china-debate-what-this-means-2023-06-30/>

3 *European Business in China Business Confidence Survey 2023,* European Union Chamber of Commerce in China, pp. 3–6, 21st June 2023, viewed 10th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

local firms throughout the COVID-19 pandemic.[4] This not only negatively impacted the 2022 revenues of European firms, but also resulted in some having to make major staff cuts.

European firms operating in the automotive industry were negatively impacted by China's stringent COVID-19 restrictions, which dampened consumer demand and caused supply chain complications.[5] Members of the Automotive and Auto Components working groups also faced regulatory challenges due to restrictions on the collection of data and its cross-border transfer,[6] and some European original equipment manufacturers were denied permission to increase their shares in their joint ventures (JVs), despite ownership restrictions in the sector having been formally removed from 1st January 2022.[7&8]

In August 2022, many goods manufacturers in China began to be impacted by power shortages for the second year running. This was largely a consequence of demand peaking due to the intense summer heat and severe droughts that led to the collapse of hydropower production in Southwest China, which provides 80 per cent of Sichuan's power as well as up to 10 per cent of combined power consumed by Jiangsu, Shanghai and Zhejiang. As in 2021, another factor was poor results regarding China's 'dual control' targets for reducing both energy consumption and energy intensity. With the world facing increasingly extreme weather conditions, this problem is likely to reoccur in the absence of a plan that can maintain a balance between energy security and China's long-term decarbonisation targets. Part of such a plan should be ensuring that European investment and technology have equal access to the renewable energy sector, while accelerating the transition from coal to gas in the energy mix, and developing new, high-quality power infrastructure and a green power market, among others.

New and forthcoming supply chain legislation poses additional challenges for European goods manufacturers in China. The United States (US) Uyghur Forced Labor Prevention Act (UFLPA), which came into effect on 21st June 2022,[9] restricts imports from Xinjiang and establishes a 'rebuttal presumption'. This puts the burden of proof on importers to provide sufficient evidence that goods entering the US have not been produced using forced labour.[10] In addition, on 5th January 2023, the EU's Corporate Sustainability Reporting Directive (CSRD) entered into force. The CSRD obliges all large and all listed companies operating in the EU to "disclose information on what they see as the risks and opportunities arising from social and environmental issues, and on the impact of their activities on people and the environment."[11] From 2024, such companies will need to prepare

4 Erixon, Fredrik, Guildea, Anna, Guinea, Oscar & Lamprecht, Philip, *China's Public Procurement Protectionism and Europe's Response: The Case of Medical Technology*, European Centre for International Political Economy, December 2021, viewed 4th April 2023, <https://ecipe.org/publications/chinas-public-procurement-protectionism/>

5 Wu, Sara & Norihiko, Shirouzu, *China's COVID curbs hit Toyota, Volkswagen and Apple supplier Foxconn, Reuters*, 14th March 2022, viewed 6th July 2023, <https://www.reuters.com/technology/foxconn-suspends-shenzhen-operations-adjusts-production-line-minimise-impact-2022-03-14/>

6 This limits companies' ability to collect and store data for R&D and customer services purposes.

7 *European Chamber Stance on the Liberalisation of Ownership Restrictions in the Automotive Sector*, European Union Chamber of Commerce in China, 1st November 2022, <https://www.europeanchamber.com.cn/en/press-releases/3414/european_chamber_stance_on_the_liberalisation_of_ownership_restrictions_in_the_automotive_sector>

8 Following the lifting of equity caps, some large European automotive multinational companies (MNCs) were permitted to increase their stakes in their JV partners in China, most notably BMW, which in 2022 paid EUR 3.7 billion to increase its stake in JV partner Brilliance from 50 per cent to 75 per cent. Waldersee, Victoria, *BMW pays $4.2 bln to take control of Chinese JV, Reuters,* 11th February 2022, viewed 10th July 2023, <https://www.reuters.com/business/autos-transportation/bmw-receives-license-take-75-stake-china-joint-venture-bmw-brilliance-automotive-2022-02-11/>

9 *Implementation of the Uyghur Forced Labor Prevention Act,* US Department of State, 21st June 2022, viewed 10th July 2023, <https://www.state.gov/implementation-of-the-uyghur-forced-labor-prevention-act/>

10 In the BCS 2023, four per cent of respondents said that they are either already being impacted or that they will be impacted by the UFLPA, and nine per cent said the same of their partners' operations: *European Business in China Business Confidence Survey 2023,* European Union Chamber of Commerce in China, p.21, 21st June 2023, viewed 10th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

11 *Corporate sustainability reporting*, European Commission, viewed 7th July 2023, <https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en>

sustainability reports—including information on their sustainability policies, environmental protection policies and actions, social responsibility and treatment of employees, and respect for human rights—for submission in 2025.[12] On 1st June 2023, the EU approved the Corporate Sustainability Due Diligence Directive (CSDDD),[13] a law that will require companies to establish due diligence processes to ensure their entire operations—including subsidiaries, and up- and downstream suppliers—are in line with EU human rights and environmental standards.[14] However, the independent, third-party audits required as part of CSRD reporting to certify that companies are not using forced labour anywhere along their supply chains are not possible under current conditions in China, which was highlighted as a concern for 16 per cent of respondents to the BCS 2023.[15] This situation was brought into sharp focus following raids on some American firms that conduct due diligence as part of their business, with reports that at least one of these companies was investigated due to its work on “Xinjiang supply chain audits.”[16] As the date for reporting obligations under the new EU legislation draws closer, affected companies may be increasingly compelled to move out of ‘sensitive’ regions in China, while being pulled in the opposite direction by customers applying pressure for them to maintain these operations.[17]

All these challenges, compounded by increasing geopolitical tensions and China’s data management and cybersecurity regime—which is pushing many companies to localise information technology and data storage infrastructure—have put some European companies’ China operations in a precarious position. In response, three out of four respondents to the BCS 2023 report having re-evaluated their supply chains, with a focus on increasing resilience as opposed to increasing efficiency and market share. A sizeable proportion are taking steps to decouple their China supply chains from the rest of world: 12 per cent have already moved parts of them out of China, and nearly a quarter of respondents plan to onshore their supply chains at least partially into the country.[18]

Looking ahead, manufacturers will continue to evaluate which parts of their supply chains they can shift into China to service the domestic market, while diversifying global supply chains for the rest of the world to reduce overreliance on any one country and mitigate non-compliance risks. Companies will also increasingly explore the options of reshoring, nearshoring and friendshoring,[19] particularly to produce critical goods. In short, while recognising the need to maintain a strong presence in this crucial market, European companies will continue to de-risk, which may involve decoupling China and global operations in the areas where it makes most sense.

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12 *The EU CSRD: What your business needs to know about the EU Corporate Sustainability Reporting Directive (CSRD),* brightest, 15th June 2023, viewed 7th July 2023, <https://www.brightest.io/csrd-corporate-sustainability-reporting-directive>

13 Ellena, Silvia, *EU Parliament agrees common position on corporate due diligence law, Euractiv*, 1st June 2023, viewed 10th July 2023, <https://www.euractiv.com/section/economy-jobs/news/eu-parliament-agrees-common-position-on-corporate-due-diligence-law/>

14 *Supply Chain Management: CSDDD and CSRD – What’s the difference?*, SupplyShift, 20th April 2023, viewed 10th July 2023, <https://www.supplyshift.net/blog/csddd-and-csrd-whats-the-difference/>

15 While this issue is not a concern for 45 per cent of BCS 2023 respondents, a concerning 38 per cent said they “don’t know”, meaning that there could be many more impacted. *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, p. 46, 21st June 2023, viewed 10th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

16 *China’s ‘men in black’ step up scrutiny of foreign corporate sleuths, Financial Times*, 2nd May 2023, viewed 10th July 2023, <https://www.ft.com/content/8c21b86d-66de-4c69-8c8d-a0ef270ae3e3>

17 *European Business in China Business Confidence Survey 2023,* European Union Chamber of Commerce in China, p.39, 21st June 2023, viewed 10th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

18 Ibid.

19 These are all terms that are related to the reshaping of supply chains to fix weaknesses and increase economic resilience. Reshoring is the act of bringing manufacturing from a remote location to the company’s home country; nearshoring is the act of bringing manufacturing nearer to the point of use; friendshoring is the act of relocating manufacturing to a country that is considered a trusted partner to the company’s home country.

Agriculture, Food and Beverage Working Group

Key Recommendations

1. Optimise the Implementation of the Registration and Administration of Overseas Producers of Imported Food 2

- Provide foreign authorities and overseas manufacturers with guidance on the China Import Food Enterprise Registration system for registration applications, modifications and extensions.
- Set up an additional communication channel for foreign authorities and overseas manufacturers, and ensure that frequently asked questions are addressed effectively.
- Clarify the criteria and timelines of the review process for registration applications, modifications and extensions, for goods registered by overseas authorities and those registered by overseas manufacturers.
- Conduct regular risk reviews and adjust registration forms accordingly, and publish the updated list of food categories required for registration by foreign authorities.

2. Distribute Responsibilities Proportionately Across the Supply Chain, and Design a Penalty System Accordingly that is Consistent with the 'Due Duties and No Responsibility' Principle 10

2.1 Distinguish and Clarify the Responsibilities of Food Producers and Retailers, and Publish Specific Rules to Apply Penalties According to Food Safety Responsibilities

- Publish specific rules to apply penalties according to food safety responsibilities, and distinguish between the responsibilities of food producers and food retailers when enforcing regulations to comply with the 'Due Duties and No Responsibility' Principle.
- Clarify whether the executives of chain retailers are also liable for penalties in instances where individuals have been identified as responsible for food safety incidents.
- Standardise policies and enforcement criteria, and improve the consistency of enforcement in all regions.

2.2 Establish a Unified National Food Traceability Platform

- Establish a unified national food safety traceability platform that applies consistent regulations and standards, and covers the whole industry chain, from farming and breeding to processing and production, storage, transportation and retail.
- Ensure that tracing entities, products and information are all bound by the same rules, and that technologies used are compatible.

3. Allow Recycled Materials in Food Contact Applications and Establish Approval Processes and Standards as Soon as Possible to Encourage the Recycling of Food-grade Recycled Polyethylene Terephthalate (rPET) Materials 2

- Establish an assessment system and corresponding regulatory standards for rPET materials in food contact materials.

Section Three: Goods

- Encourage the implementation of primary recycling of food-grade rPET bottles to reduce the use of raw plastics.

4. Improve Management of and Consumer Education on Soon-to-expire Food and Reprocessed Raw Materials to Encourage Rational Consumption and Reduce Food Waste 2

- Increase consumer awareness of soon-to-expire food and labels, and motivate them to reasonably purchase soon-to-expire food to reduce food waste.
- Publish regulations that exempt food donors and food recycling organisations from civil liability when making soon-to-expire food donations, except in cases of gross negligence or intentional misconduct.
- Encourage companies to use reprocessed food and raw materials to reduce waste.

5. Remove Restrictions in the Foreign Investment Negative List Relating to the Seed Industry to Level the Playing Field 3

- Remove the restrictions on foreign investment in genetically modified (GM) technology and GM seed (seedling) production.
- Relax restrictions on foreign investment in the selection, breeding and production of new crop varieties of wheat and maize.

6. Guarantee a Transparent, Scientific and Efficient Review and Approval Procedure for Bio-technology Products, and Accelerate the Approval Procedure for Genetically Modified Microorganism (GMM) Food, GMM Feed Additives and GM Agricultural Products 4

6.1 Optimise Bio-safety Evaluation Procedures for GMM Food Additives (including Nutrient Fortifiers), Publish Technical Guidance on Key Information Required in Submissions and Reviews, and Start the Evaluation Procedures for GMM Food Ingredients

- Establish and publish the submission requirements and technical guidelines for reviews of GMM food additives and food ingredients.
- Inform companies of GMM review results and list all issues in one written notice from the National Health Commission to avoid repetitive reviews.

6.2 Accelerate the Approval Procedure for GMM Feed Additives and GM Agricultural Products

- Establish different approval procedures based on the product safety risk level, and facilitate market access for imported GMM agricultural products.
- Adopt the European Union practice of acknowledging third-party test reports or delegating safety assessments to independent culture collection organisations.
- Simplify the approval requirements and accelerate the approval process for GMM feed additives, and accept plasmid or recombinant deoxyribonucleic acid (DNA) samples for safety assessment.

7. Strengthen Communication with the Organisation for Economic Co-operation and Development (OECD) to Support China's Accession to the OECD's Framework Agreement on Pesticides 4

- Strengthen communication with the OECD and its members to support China's accession to the OECD framework agreement on pesticides.

8. Optimise Implementation of the 14th Five-year National Health Plan in Conjunction with the United Nations Sustainable Development Goals to Educate Consumers on Making Healthier Choices 2

8.1 Continue to Encourage the 'Three Reductions and Three Health' Initiative Based on Scientific Assessment

- Conduct comprehensive market and consumer research to establish a front of package (FOP) labelling system that fits Chinese dietary characteristics and nutritional needs, and takes other countries' requirements into consideration.
- Coordinate among different stakeholders to adopt a unified FOP labelling framework.
- Enhance consumer education, improve public awareness of the FOP labelling system, and help consumers make healthy and informed choices.

8.2 Increase Public Awareness of Responsible Drinking, and Encourage Product Innovation that both Discourages Alcohol Abuse and Benefits Consumer Health

- Continue to promote responsible alcohol consumption, the reduction of alcohol abuse, and the healthy and sustainable development of the alcoholic beverage industry by hosting nationwide awareness campaigns.
- Encourage product innovation that mitigates health hazards and expedites industry innovation.

8.3 Optimise the Regulation of Plant-based Foods

- Develop comprehensive food safety standards for plant-based foods, specify the definition of plant-based foods, and encourage industry innovation and technological advancement.
- Establish a regulatory framework for plant-based foods to oversee business activities and protect consumer rights.

Dairy Industry Sub-working Group

1. Improve Dairy-related National Food Safety Standards 3

- Align the development and revision of dairy-related standards more effectively with international standards and practices, as well as the reality of domestic and international dairy markets and supply chains.
- Implement the Dairy Products Quality and Safety Improvement Action Plan by encouraging the introduction of group/industry standards instead of mandatory national standards.
- Optimise the development and revision of national food safety standards to provide a more transparent and open channel to all industry players.

2. Optimise the Regulation of Cultures Applied in Dairy Production 8

- Revise the labelling requirement in the relevant national food safety standard so that only the general name of the 'food culture' needs to be listed on the label instead of all individual cultures.

- Exempt cultures that have a history of safe use in dairy production from the food culture positive list, and classify them as permitted ingredients in dairy production as soon as possible.

Food for Special Medical Purpose Sub-working Group and Paediatric Nutrition Sub-working Group

1. Optimise the Registration System for Special Food 7

1.1 Enhance the Transparency and Consistency of Product Registration and Improve the Efficiency of Review and Approval Processes

- Improve the registration review and approval process, and inform the industry of new requirements in a timely manner.
- Refrain from imposing new requirements for products that have already passed technical review, in line with the 'principle of non-retroactivity'.
- Build trust with enterprises by accepting future guarantee statements on relevant issues.
- Establish early communication channels between the State Administration for Market Regulation (SAMR), the SAMR's Centre for Food Evaluation (CFE) and the industry to understand the trends of, and provide guidance for, research and development (R&D).

1.2 Clarify the Mechanism for Cooperating with Overseas Authorities to Enhance the Efficiency of Overseas Onsite Inspections

- Clarify the criteria for implementing onsite inspections in the Food for Special Medical Purpose (FSMP) *Administrative Measure*, as well as the timeline for overseas onsite inspections.
- Extend the Memorandum of Understandings as a cooperative mechanism underpinning overseas onsite inspections of both infant formula and FSMP production facilities, and apply them to more countries and regions.

1.3 Leverage Local Administrative Resources to the Greatest Extent Possible in Order to Enhance the Efficiency of Onsite Inspections

- Maximise the use of local resources and delegate onsite inspections to local authorities, with the CFE selecting the inspection team leader when necessary, while providing guidance and ensuring transparency.

1.4 Define the Conditions Under Which Companies can be Exempted from Stability Testing

- Exempt companies from stability testing when they submit modification and deregistration information with new applications for similar formulas using identical techniques and packing materials if they have already been approved under new national standards.

1.5 Clarify the Criteria for Differences in FSMP Formulas with Regard to Registration Reviews

- Relax the criteria for differences in FSMP formulas to take diverse product demands of different groups, scenarios and needs into consideration.
- Publish technical guidance with measurable requirements, or establish pre-reviewal mechanism for formula differences, to avoid wasting time and resources if the differences in similar FSMP formulas must be claimed by one company.

1.6 Optimise the Registration and Approval Requirements for FSMP for Rare Diseases

- Revise the *Administrative Measures for the Registration of Food for Special Medical Purpose*, and establish special channels for conducting priority reviews and approvals for FSMP for rare disease.
- Strengthen communication among central and local governments, and the industry.
- Promote the implementation of pilot policies at the local level and allow conditional approvals of overseas FSMP for rare diseases.
- Accelerate the review and approval of FSMP for rare diseases on the basis of ensuring safety, effectiveness and quality control, so that patients can obtain reliable treatment as soon as possible.

2. Continue to Fine-tune National Food Safety Standards and Administrative Measures Related to FSMP and Infant Formula to Ensure the Smooth Transition of Product Registration under New Standards 3

- Expedite the revision of the new national standards for FSMP, promptly specify the implementation date and ensure sufficient transition time for its implementation.
- Advance the revision of the *Administrative Measures for the Registration of FSMP*, thoroughly review the necessity and feasibility of clinical trials for specific diseases, and provide clear guidance on clinical trials.
- Promote the issuance of the secondary documents following the *Administrative Measures for the Registration of Infant and Young Children Milk Powder Formula*, and clarify the rules for formula upgrades and formula differences.
- Allow registration materials submitted within six months (based on the time required for stability testing) prior to the issuance of revised horizontal standards to only comply with the then horizontal standards for infant formula and FSMP under registration.
- Give companies flexibility to conduct modification and file a report to local or national regulatory authorities on their own initiative when new horizontal standards are issued for approved infant formula and FSMP.
- Allow Chinese amino acids manufacturers to apply for production licences for raw materials and food additives (nutrition fortifiers) in compliance with the amino acid type and quality requirements of Appendix B of *GB 10765-2021, GB 10766-2021, GB 25596-2010* and *GB 29922-2013*.
- Accelerate the formulation and revision of national standards or notices on amino acids listed in the appendix to meet the needs of R&D and production.

3. Optimise the Requirements for Clinical Trials of FSMP 4

3.1 Rationalise the Requirements Imposed on Trial Participants

- Allow a smaller sample size for clinical trials, waive clinical trials or conduct post-marketing clinical data collection for food protein intolerance formula for children aged one to 10 years.
- Provide relevant data, waive clinical trials, allow smaller sample sizes for clinical trials or conduct clinical data collection for rare disease formulas or specific nutrient complete formulas for low morbidity disease for children aged one to 10 years.

- Accept the normal diet as a control group, and either the 'before and after' comparison of one patient, or the comparison with normal growth, instead of mandating parallel controlled clinical trials.
- Establish a channel for consultations on clinical trial design prior to registration review, allowing companies to discuss experimental designs with review agencies before conducting clinical trials.

3.2 Adjust Evaluation Indicators in Clinical Trials to Accurately Reflect the Specific Features of FSMP

- Study the effects of renal-specific formulas by using before/after comparisons (i.e., single-arm) or by comparing with renal-specific formulas marketed overseas.
- Consider the fact that FSMPs are only clinical nutritional support products, and design reasonable clinical observation indicators.
- Allow the sharing of clinical trials data on functional equivalent (solid/liquid) formulas.

4. Increase Market Access for, and Improve Public Awareness of, FSMP 4

- Develop further the administrative and regulatory system, and ease market access criteria, for FSMPs.
- Optimise the clinical application procedure for FSMPs in medical institutions, integrate FSMPs into the hospital information system and increase consumer accessibility.
- Improve the development of clinical nutrition departments and clinical nutritionist teams, expand the scope of clinical nutrition screening, diagnosis and treatment, and provide more FSMP seminars to raise public awareness.

5. Establish an Appropriate Regulatory Framework to Supervise the Retail Marketing of 0–12 Months Infant Formula and Provide a Detailed Plan to Encourage Breastfeeding 8

- Revise and issue the *Administrative Measures on the Sales of Breast Milk Substitutes* to regulate the marketing of 0–6 months infant formula on retail channels.
- Confirm the SAMR as the regulatory authority to oversee promotion of 0–6 months infant formula in supermarkets, maternity stores and other retail outlets.
- Develop a regulatory framework for 0–12 months infant formula in retail channels.

Introduction to Working Group

The Agriculture, Food and Beverage (AFB) Working Group has over 180 member companies, including food importers and exporters, manufacturers, distributors, retailers, catering service providers, specialised testing laboratories and consultants. The working group has three sub-working groups: the Dairy Industry Sub-working Group, the Food for Special Medical Purposes Sub-working Group, and the Paediatric Nutrition Sub-working Group. The purpose of these working groups is to build communication channels with government departments, optimise market access for European companies and promote healthy dietary choices.

Recent Developments

The total value of agri-food trade between the European Union (EU) and China in 2022 decreased eight per cent year-on-year to euro (EUR) 15.8 billion,[1] largely

1 *Monitoring EU Agri-food Trade: Developments in 2022*, European Commission Directorate-General for Agriculture and Rural Development, 13th April 2023, viewed 1st June 2023, <https://agriculture.ec.europa.eu/system/files/2023-04/monitoring-agri-food-trade_dec2022_en.pdf>

due to the COVID-19 pandemic. Measures that had been introduced to manage the pandemic resulted in disruptions and delays to the movement of goods, and the overall economic uncertainty they caused resulted in a slump in consumer demand. With China bringing an end to its 'zero-COVID' policy at the end of 2022, the total value of agri-food trade between the EU and China rebounded, with the total value of agricultural products imported from the EU growing more than 20 per cent in the first quarter of 2023.[2]

In September 2022, the State Administration for Market Regulation (SAMR) issued the *Regulations on the Supervision and Management of Enterprises' Implementation of the Main Responsibility for Food Safety (Order No. 60)*, which took effect in November 2022.[3] The regulations require enterprises to clarify the respective responsibilities of the company's legal representative, food safety director and food safety officer. While this is a positive development in terms of improving the overall food safety management system, the regulations could be further optimised if they were tailored to the specific requirements of different businesses, products and risk levels. Businesses also require clearer guidance on how the regulations will be implemented.

On 1st December 2022, the working group sent an advocacy letter to the General Administration of Customs of China (GACC), recommending that the production date of imported food be taken as the implementation date for new standards, in order to mitigate market access barriers. On 30th December 2022, the GACC issued *Notice No. 136*, confirming that infant formula, cheese and processed cheese, and condensed milk products that are in compliance with previous national standards, and which were manufactured or imported prior to the effective date of the new national standards, would be valid for import and sale in China within their shelf life.[4] This was also a positive regulatory development, and the working group looks forward to more imported food categories being included in the future.

The following food-related standards and administrative measures are currently under revision:

- The *National Food Safety Standard General Rules for the Labelling of Pre-packaged Foods (GB 7718)*
- The *National Food Safety Standard General Rules for Nutritional Labelling of Pre-packaged Foods (GB 28050)*
- The *National Food Safety Standard Labelling Standard for Pre-packaged Foods for Special Dietary Uses (GB 13432)*
- The *National Food Safety Standard for the Use of Food Nutrition Fortifier (GB 14880)*
- The *National Food Safety Standard for the Use of Food Additives (GB 2760)*
- The *Administrative Measures on Food Labelling*

They will have a significant impact on the food and beverage industry, so it is essential that their content and issuance, and the transition period, be well coordinated to allow a smooth shift from old to new standards.

Key Recommendations

1. Optimise the Implementation of the Registration and Administration of Overseas Producers of Imported Food

2

Concern

Although the *Registration and Administration of Overseas Producers of Imported Food (Decree 248)* took effect in January 2022, some food manufacturers still encounter difficulties with both online applications and registration modifications and extensions.

Assessment

In November 2021, the GACC issued an interpretation of *Decree 248*, clarifying the rules and requirements for the registration of overseas food producers.[5] Furthermore, a helpdesk was added to the China Import Food Enterprise Registration (CIFER) system to respond to frequently asked questions on application

2 *The State Council Information Office Hosts a Press Conference on Quarter 1 Import and Export Conditions*, State Council, 13th April 2023, viewed 1st June 2023, <http://www.gov.cn/lianbo/2023-04/13/content_5751295.htm>

3 *Regulations on the Supervision and Management of Enterprises' Implementation of the Main Responsibility for Food Safety,* SAMR, 22nd September 2022, viewed 1st June 2023, <http://www.gov.cn/gongbao/content/2022/content_5725279.htm>

4 *Notice No. 136 on Inspection Requirements for the Implementation of National Food Safety Standards for Infant Formula, Processed Cheese and Other Imported Foods,* GACC, 30th December 2022, viewed 1st June 2023, <http://gdfs.customs.gov.cn/customs/302249/302266/302267/4767851/index.html>

5 *Interpretation of Regulations on the Registration and Administration of Overseas Producers of Imported Food (Decree 248),* GACC, 26th November 2021, viewed 1st June 2023, <http://jckspj.customs.gov.cn/spj/zcfg18/bmgz91/3985778/index.html>

procedures and requirements. Despite these welcome developments, foreign authorities and enterprises still encounter a number of difficulties with online applications, as well as registration modifications and extensions.

According to *Decree 248*, there are 18 food categories required to register through foreign authorities, which need to conduct inspections of the manufacturers and provide a recommendation letter and application materials to the GACC on their behalf. To address the administrative burden on foreign authorities, and ensure optimal trade with overseas manufacturers, a fast-track registration process with waivers for certain materials was introduced by the GACC in 2022. The deadline for extending previous registrations for all manufacturers was 30th June 2023. Given it is the first year of completing the full registration and most procedures are not yet clarified, both manufacturers and authorities faced great uncertainty and pressure. Though most companies that fall into the 18 categories submitted registration materials by the deadline, it remains unclear whether or when the registration can be approved. In addition, because *Decree 248* provides limited information on how to modify an existing registration, overseas manufacturers find it hard to prepare the required materials and the necessary application. Overseas manufacturers also encounter difficulties arranging inventory and guaranteeing exports to China due to unclear timelines for the whole registration process. Both foreign authorities and overseas manufacturers therefore need additional communication channels with the GACC, improved operational guidance and clear timelines to optimise the process.

Additionally, Article 6 of the interpretation of *Decree 248* states that the GACC will adjust the current registration forms and requirements based on a risk assessment of raw materials, production techniques, safe-use record and targeted population, among other factors. To increase the efficiency of the overall food safety management system, the GACC should also regularly review the risk levels of the food categories required to register through foreign authorities, and publish an updated list with low-risk categories removed.

Recommendations

- Provide foreign authorities and overseas manufacturers with guidance on the CIFER system for registration applications, modifications and extensions.
- Set up an additional communication channel for foreign authorities and overseas manufacturers, and ensure that frequently asked questions are addressed effectively.
- Clarify the criteria and timelines of the review process for registration applications, modifications and extensions for goods registered by overseas authorities and those registered by overseas manufacturers.
- Conduct regular risk reviews and adjust registration forms accordingly, and publish the updated list of food categories required for registration by foreign authorities.

2. Distribute Responsibilities Proportionately Across the Supply Chain, and Design a Penalty System Accordingly that is Consistent with the 'Due Duties and No Responsibility' Principle 10

2.1 Distinguish and Clarify the Responsibilities of Food Producers and Retailers, and Publish Specific Rules to Apply Penalties According to Food Safety Responsibilities

Concern

Current laws and regulations do not clearly distinguish between the responsibilities of food producers and those of retailers, and the implementation of both policies and penalties is inconsistent across different regions.

Assessment

Food producers (including farming, manufacturing and processing) and food business operators bear different responsibilities in the value chain. However, in many cases, the Food Safety Law and its supporting regulations regulate responsibilities and obligations by combining food producers and retailers, resulting in the latter often incurring penalties that should be borne by the former. This is inconsistent with the 'Due Duties and No Responsibility' Principle stated in the Article 136 of the Food Safety Law.[6]

When penalties are applied, the executives of large chain retailers are often heavily fined, though they do not necessarily bear personal responsibility for food safety incidents since they barely participate in the

6 People's Republic of China Food Safety Law, National People's Congress, 7th January 2019, viewed 1st June 2023, <http://www.npc.gov.cn/npc/c30834/201901/c6d064de8295489288ec1383b33212ee.shtml>

daily management of stores. Improper penalties will increase the compliance, reputation and financial risks of executives of large chain retailers. Furthermore, inconsistent policies and enforcement among regions lead to inconsistent penalties for identical food safety incidents, bringing uncertainties for enterprises.

Recommendations

- Publish specific rules to apply penalties according to food safety responsibilities, and distinguish between the responsibilities of food producers and food retailers when enforcing regulations to comply with the ‘Due Duties and No Responsibility’ Principle.
- Clarify whether the executives of chain retailers are also liable for penalties in instances where individuals have been identified as responsible for food safety incidents.
- Standardise policies and enforcement criteria, and improve the consistency of enforcement in all regions.

2.2 Establish a Unified National Food Traceability Platform

Concern

Inconsistent food traceability platforms among different government agencies at all levels prevent industry chain traceability as whole.

Assessment

Article 42 of the Food Safety Law stipulates that the state will establish a whole-value-chain food safety traceability system, and that food business operators must establish related policies and implementation practices. Yet government departments at all levels in different regions have established their own traceability platforms independently of each other. The tracing categories and technologies used are incompatible, which seriously hinders cross-departmental and cross-regional food safety traceability. To be effective, a unified food safety traceability platform that applies consistent regulations and standards, and integrates all links of the food value chain, must be established.

Recommendations

- Establish a unified national food safety traceability platform that applies consistent regulations and standards, and covers the whole industry chain, from farming and breeding to processing and production, storage, transportation and retail.
- Ensure that tracing entities, products and information are all bound by the same rules, and that technologies used are compatible.

3. Allow Recycled Materials in Food Contact Applications and Establish Approval Processes and Standards as Soon as Possible to Encourage the Recycling of Food-grade Recycled Polyethylene Terephthalate (rPET) Materials 2

Concern

The lack of a properly developed regulatory regime and approval process for the use of recycled food contact materials is resulting in a huge waste of natural resources.

Assessment

The National Development and Reform Commission (NDRC) and the Ministry of Ecology and Environment jointly issued the *14th Five-year Plan Action Plan for Plastic Pollution Control* in 2021, which prioritises increasing the recycling and reuse of plastic waste, improving related standards and encouraging the homogenisation and high value-added utilisation of plastic waste.[7] However, the lack of clear standards is hindering enterprises from taking relevant action, despite the availability of technology for the primary recycling of food-grade rPET bottles.

Although the recycling rate of food-grade polyethylene terephthalate (PET) bottles in China is as high as 94 per cent, most of the material is recycled to clothing for only one time. If they were to be fully recycled as food-grade rPET bottles, it could be recycled seven to eight times, thereby conserving tens of millions of tonnes of raw materials refined from petroleum per year and reducing greenhouse gas emissions by 63 per cent (including more than 50 million tonnes of carbon emissions), cutting energy consumption by 79 per cent.[8]

In Europe, regulatory frameworks and approval

7 *14th Five-year Plan Action Plan for Plastic Pollution Control*, NDRC, 8th September 2021, viewed 1st June 2023, <https://www.ndrc.gov.cn/xxgk/zcfb/tz/202109/t20210915_1296580.html?state=123&code=&state=123>

8 Dong, Ying & Socci, Edward, 2021, *Study of Food-grade Recycled Polyester Bottles for Achieving China's ‘Carbon Neutrality’ Goal, China Packaging*, vol. 7, pp. 31–34, viewed 20th April 2022, China National Knowledge Infrastructure, <https://kns.cnki.net/kcms/detail/detail.aspx?dbcode=CJFD&dbname=CJFDLAST2021&filename=ZBZZ202107007&uniplatform=NZKPT&v=SwXA68vkDzj0YOuaDoPP2Ee2swE6jvQG8FpC51inJrzh7gVGS-FU4tlaJQia41x_>

processes for PET recycling have already been established, and food-grade rPET materials are already widely used. However, China is still in the process of conducting risk assessment of such materials. Issuing relevant policies, regulations and standards as soon as possible to encourage the use of rPET materials would help to establish their use as a significant driver of carbon neutrality in the food and beverage industry, and facilitate sustainable development. This is in line with China's strategic goals to bring about the green transformation of industries, achieve its 30/60 goals,[9] and develop a circular economy.

Recommendations

- Establish an assessment system and corresponding regulatory standards for rPET materials in food contact materials.
- Encourage the implementation of primary recycling of food-grade rPET bottles to reduce the use of raw plastics.

4. Guide and Improve Management of and Consumer Education on Soon-to-expire Food and Reprocessed Raw Materials to Encourage Rational Consumption and Reduce Food Waste 2

Concern

Current regulations and national standards relating to both soon-to-expire food and the reprocessing of food and raw materials are not fully developed, and there is a lack of related public awareness, which leads to unnecessary waste.

Assessment

The 2021 Anti-food Waste Law demonstrates China's commitment to combatting food waste.[10] The NDRC also issued the *Action Plan to Combat Food Waste (Action Plan)* and the *Green Consumption Implementation Plan* to encourage sustainable consumption and prevent food waste.[11] The *Action Plan* is aimed at optimising the sale and labelling of soon-to-expire food, by encouraging food producers to sell soon-to-expire products at discounted prices.

However, retailers and consumers still have concerns about the safety of soon-to-expire food, despite it being safe to consume within its shelf life. Further guidance and enhancing public awareness would help develop better understanding of soon-to-expire food and how it differs from expired food, and encourage consumers to purchase soon-to-expire food, such as for donation purposes. Also, it is necessary to exempt food donors and food recycling organisations from civil liability when making soon-to-expire food donations, except in cases of gross negligence or intentional misconduct

Government agencies should also optimise regulations and national standards for reprocessing food and raw materials, such as the *National Food Safety Standard – General Hygiene Rules for Food Production (GB 14881)*, currently under revision.[12] If food safety is not affected, food and raw materials should be allowed to be reprocessed and reused again (for example, caster sugar is reprocessed to improve its physical properties, including granularity, and such reprocessing under controlled conditions does not affect food safety). This can further reduce food and raw material waste and is also in line with the guidance provided by the Anti-food Waste Law and other supporting policies.

Recommendations

- Increase consumer awareness of soon-to-expire food and labels, and motivate them to reasonably purchase soon-to-expire food to reduce food waste.
- Publish regulations that exempt food donors and food recycling organisations from civil liability when making soon-to-expire food donations, except in cases of gross negligence or intentional misconduct.
- Encourage companies to use reprocessed food and raw materials to reduce waste.

9 China's '30/60 Goals' are to peak carbon emissions before 2030 and achieve carbon neutrality by 2060: *Full text of Xi's statement at the General Debate of the 75th Session of the United Nations General Assembly, Xinhua*, 23rd September 2020, viewed 20th May 2023, <http://www.xinhuanet.com/english/2020-09/23/c_139388686.htm>

10 People's Republic of China Anti-food Waste Law, National People's Congress, 29th April 2021, viewed 1st June 2023, <http://www.npc.gov.cn/npc/c30834/202104/83b2946e514b449ba313eb4f508c6f29.shtml>

11 *Action Plan to Combat Food Waste*, NDRC, 30th November 2021, viewed 1st June 2023, <https://www.ndrc.gov.cn/xwdt/tzgg/202112/t20211217_1308234.html?code=&state=123>; *Green Consumption Implementation Plan*, NDRC, 28th January 2022, viewed 1st June 2023, <https://www.ndrc.gov.cn/fzggw/jgsj/zys/sjdt/202201/t20220128_1313761.html?code=&state=123>

12 *General Hygiene Rules for Food Production,* National Health Commission (NHC), 26th June 2013, viewed 1st June 2023, <http://www.nhc.gov.cn/cms-search/xxgk/getManuscriptXxgk.htm?id=56f30af754ef49448705806d35af06a1>

5. Remove Restrictions in the Foreign Investment Negative List Relating to the Seed Industry to Level the Playing Field 3

Concern

The most recently updated *Special Administrative Measures for Foreign Investment (Negative List 2021)* removed some restrictions in the seed industry, but it still prohibits or restricts foreign investment in seed selection, breeding and production.

Assessment

Although the *2018 Free Trade Zone Special Administrative Measures on Foreign Investment Access (FTZ Negative List 2018)* increased foreign equity caps on wheat and maize breeding and seed production from 49 per cent to 66 per cent, restrictions on crop breeding and seed production are still in place.[13] In addition, the *Negative List 2021* and the *FTZ Negative List 2021* still prohibit foreign investment in breeding of genetically modified (GM) varieties and GM seed (seedling) production.[14]

Since 2021, China has approved multiple safety certificates for GM maize to revitalise the domestic seed industry. In 2022, the Ministry of Agriculture and Rural Affairs (MARA) oversaw the domestic pilot production of almost 20 GM varieties of maize, with their commercialisation expected to begin in 2023.[15] However, foreign investment in seed selection, breeding and production is still prohibited. This not only exacerbates unfair market competition between domestic and foreign-invested businesses in this industry, but also hinders China's goals for innovation in and modernisation of the agricultural sector.

Recommendations

- Remove the restrictions on foreign investment in GM technology and GM seed (seedling) production.
- Relax restrictions on foreign investment in the selection, breeding and production of new crop varieties of wheat and maize.

6. Guarantee a Transparent, Scientific and Efficient Review and Approval Procedure for Bio-technology Products, and Accelerate the Approval Procedure for Genetically Modified Microorganism (GMM) Food, GMM Feed Additives and GM Agricultural Products 4

6.1 Optimise Bio-safety Evaluation Procedures for GMM Food Additives (including Nutrient Fortifiers), Publish Technical Guidance on Key Information Required in Submissions and Reviews, and Start the Evaluation Procedures for GMM Food Ingredients

Concern

The submission requirements and technical guidance for GMM food additives (including nutrient fortifiers) and food ingredients have not been published, and the review procedure is not transparent.

Assessment

According to the Food Safety Law, companies must submit safety assessment materials to the health administration agencies under the State Council to enable them to use new food ingredients to produce food, food additives or other food products.[16] However, the safety assessment is more complex if the production process involves GM technology.

The National Health Commission (NHC) previously only accepted applications for new GMM enzyme preparations, while other new GMM food additives (such as human milk oligosaccharides (HMO)) and new GMM food ingredients could not be registered. In 2021, the NHC established application platforms for GMM food additives other than GMM enzyme preparations. Such applications need to be reviewed and approved by two government departments, with the MARA responsible for bio-safety assessments and the NHC responsible for reviews and approvals. However, the industry still faces several challenges: the ambiguity in review criteria given the absence of published application requirements and technical guidelines for

13 *2018 Free Trade Zone Special Administrative Measures on Foreign Investment Access*, NDRC & Ministry of Commerce (MOFCOM), 28th June 2018, viewed 1st June 2023, <https://www.gov.cn/zhengce/2018-06/30/5302510/files/5616043fde4d432fa8ab542d12db66c4.pdf>

14 *2021 Special Administrative Measures on Foreign Investment Access (Negative List 2021)*, NDRC & MOFCOM, 27th December 2021, viewed 1st June 2023, <http://www.gov.cn/zhengce/zhengceku/2021-12/28/content_5664886.htm>; *2021 Free Trade Zone Special Administrative Measures on Foreign Investment Access (FTZ Negative List 2021)*, NDRC & MOFCOM, 27th December 2021, viewed 1st June 2023, <http://www.gov.cn/zhengce/zhengceku/2021-12/28/content_5664887.htm>

15 *Genetically Modified Maize Can be Expected for Production and Sales in Q1 of 2023*, Agropages, 11th January 2023, viewed 13th July 2023, <https://cn.agropages.com/News/NewsDetail---27487.htm>

16 People's Republic of China Food Safety Law, National People's Congress, 7th January 2019, viewed 1st June 2023, <http://www.npc.gov.cn/npc/c30834/201901/c6d064de8295489288ec1383b33212ee.shtml>

review; a lack of written notice from the NHC regarding the results of the review; and a lack of disclosure of all issues related to review materials at one time. Companies also face uncertainty in review requests for GMM food additives and food ingredients, since the number of review meetings each year are limited to two and the times of review meetings are unpredictable, which affects business plans.

Recommendations

- Establish and publish the submission requirements and technical guidelines for reviews of GMM food additives and food ingredients.
- Inform companies of GMM review results and list all issues in one written notice from the NHC to avoid repetitive reviews.

6.2 Accelerate the Approval Procedure for GMM Feed Additives and GM Agricultural Products

Concern

The approval procedures for GMM feed additives and GM agricultural products are currently inefficient, which acts as a market access barrier and impedes industry development.

Assessment

According to the *Guidance for the Safety Assessment of GMM for Animal Use*, products derived from the gene expression of GMM (such as phytase and antimicrobial peptides) or metabolites, as well as from from inactivated GMM, should pass an intermediate test, environmental release and safety evaluation to obtain safety certificates.[17] However, feed products produced with GMM but without living GMMs and recombinant deoxyribonucleic acid (DNA)—which are excluded from the scope of the GM food and feed regulation in the EU—are still included in this category in China. They thus need to go through the safety evaluation procedure, which is unnecessarily complex and time-consuming. The long approval procedures and resulting uncertainty also slows the development of new GMM feed additives. Requiring the intermediate test for the issuance of safety certificates for only products that contain living GMM would therefore shorten the time from import to market for all types.

Furthermore, to apply for the safety certificate, agricultural GM biological samples and control samples, as well as testing materials and testing methods, must be sent to the MARA for safety assessment, according to *Administrative Measures for Safety Assessment of Agricultural Genetically Modified Organisms*.[18] The MARA then transfers the materials to the designated institution for verification. This may lead to inefficiencies in the evaluation process, which will further slow industrial development and innovation. Adopting the current normal practice in the EU, whereby third-party test reports or evaluation by independent culture collection organisation are acknowledged, instead of depositing the GMM strains for feed enzyme production to the MARA, which then sends them to the institution, would boost efficiency across the entire process. For products that do not contain GMM production strain and recombinant DNA, plasmid or recombinant DNA samples could be submitted instead of a viable strain sample to simplify the safety assessment and regulatory requirement.

Recommendations

- Establish different approval procedures based on the product safety risk level, and facilitate market access for imported GMM agricultural products.
- Adopt the EU practice of acknowledging third-party test reports or delegating safety assessments to independent culture collection organisations.
- Simplify the approval requirements and accelerate the approval process for GMM feed additives, and accept plasmid or recombinant DNA samples for safety assessment.

7. Strengthen Communication with the Organisation for Economic Co-operation and Development (OECD) to Support China's Accession to the OECD's Framework Agreement on Pesticides 4

Concern

Because Article 16 of the MARA's *Administrative Measures for Pesticide Registration* has not been fully implemented, foreign companies applying for pesticide registration must re-conduct all registration tests in China, which increases their costs and impacts their sustainable investment and development pledges.

17 *Guidance for the Safety Assessment of GMM for Animal Use*, MARA, 23rd January 2017, viewed 1st June 2023, <http://law.foodmate.net/show-189904.html>

18 Administrative Measures *for Safety Assessment of Agricultural Genetically Modified Organisms*, MARA, 7th October 2017, viewed 1st June 2023, <http://www.kjs.moa.gov.cn/zcjd/201904/t20190418_6184797.htm>

Assessment

On 1st June 2017, China's newly revised *Pesticide Management Regulations* went into effect, with the *Administrative Measures for Pesticide Registration* released shortly afterwards.[19] However, the provisions relating to the approval of overseas test data in Article 16 of the measures are difficult to implement in practice, resulting in no new compounds having been registered by foreign enterprises in China since the measures took effect.

Since 2003, 24 pesticide laboratories in China have obtained Good Laboratory Practice (GLP) certification from four OECD member countries (Germany, Belgium, The Netherlands and Poland). Registration test reports issued by the 24 Chinese laboratories can not only be recognised by these countries for local registration, but can also be acknowledged by other countries under the OECD mutual acceptance system (including 35 member countries and six non-member countries).[20] However, China has not yet joined the OECD Mutual Acceptance of Data and Agricultural Pesticides Programme, which also prevents the full implementation of Article 16 of the *Administrative Measures for Pesticide Registration*.[21] Multinational enterprises with registration test reports from foreign OECD GLP-certified laboratories have to re-test in Chinese labs, with costs of around Chinese yuan (CNY) 20–30 million for a single product, and an additional registration procedure that can take three to four years. This not only significantly increases costs for businesses but also impacts their investment confidence.

Recommendation

- Strengthen communication with the OECD and its members to support China's accession to the OECD framework agreement on pesticides.

19 *Pesticide Management Regulations,* State Council, 1st April 2017, viewed 1st June 2023, <http://www.gov.cn/zhengce/content/2017-04/01/content_5182681.htm>; *Administrative Measures for Pesticide Registration*, MARA, 7th January 2022, viewed 1st June 2023, <http://www.gov.cn/zhengce/2022-01/07/content_5721293.htm>

20 *Mutual Acceptance of Data (MAD),* OECD, 2019, viewed 1st June 2023, <https://www.oecd.org/env/ehs/mutualacceptanceofdatamad.htm>

21 *Agricultural Pesticides Programme*, OECD, 1992, viewed 1st June 2023, <https://www.oecd.org/env/ehs/pesticides-biocides/agriculturalpesticidesprogramme.htm>

8. Optimise Implementation of the 14th Five-year National Health Plan in Conjunction with the United Nations Sustainable Development Goals to Educate Consumers on Making Healthier Choices

2

8.1 Continue to Encourage the 'Three Reductions and Three Health' Initiative Based on Scientific Assessment

Concern

Current health and wellness policies lack incentives for companies to create healthier products, invest in public education or actively engage in responsible marketing.

Assessment

On 15th July 2019, the NHC issued the *Healthy China Action Plan (2019–2030)*, which recommends expediting the revision of the *General Rules for Nutritional Labelling of Pre-packaged Foods*, and adding mandatory labelling of sugars to encourage consumption of low sugar or sugar-free products. The industry is encouraged to use front-of-package (FOP) labelling to help consumers select healthy food, and improve the supervision and administration of pre-packaged food nutrition labels.[22] In April 2022, the *14th Five-year National Health Plan* proposed the national promotion of a healthy lifestyle through the so-called 'three reductions and three health' initiative (reduction of salt, oil and sugar; oral health, weight health, bone health) and other special actions.[23] The food and beverage industry has been incorporating the health plan into their long-term strategies accordingly.

The working group supports the improvement of food nutrition labelling regulations and the FOP labelling system, while fully considering Chinese dietary patterns, exploring consumer preferences and guiding the revision process scientifically. However, the China National Food Industry Association and the Chinese Nutrition Society each have their own FOP labelling system to indicate certain ingredients and their recommended daily intake to consumers. These overlapping systems could confuse consumers and create difficulties for regulatory authorities. It would therefore make sense to develop a

22 *Healthy China Action Plan (2019–2030)*, NHC, 15th July 2019, viewed 1st June 2023, <http://www.gov.cn/xinwen/2019-07/15/content_5409694.htm>

23 *14th Five-year National Health Plan,* State Council, 20th May 2022, viewed 1st June 2023, <http://www.gov.cn/zhengce/zhengceku/2022-05/20/content_5691424.htm>

national unified FOP labelling system that suits China's national conditions while taking into account other countries' requirements to avoid possible trade barriers. The industry has conducted many useful studies and developed practices in product diversification, as well as in enhancing the nutritional and health benefits of products. It has also contributed to the 'three reductions and three health' initiative through product innovation and diversification in order to raise nutritional and health awareness among consumers and advocate for healthy lifestyles. By providing additional guidance in relation to FOP labelling, the government can provide companies with further motivation to produce healthier food and beverage products.

Recommendations

- Conduct comprehensive market and consumer research to establish a FOP labelling system that fits Chinese dietary characteristics and nutritional needs, and takes other countries' requirements into consideration.
- Coordinate among different stakeholders to adopt a unified FOP labelling framework.
- Enhance consumer education, improve public awareness of the FOP labelling system, and help consumers make healthy and informed choices.

8.2 Increase Public Awareness of Responsible Drinking, and Encourage Product Innovation that both Discourages Alcohol Abuse and Benefits Consumer Health

Concern

While the *14th Five-year National Health Plan* encourages reducing the harmful use of alcohol, its implementation guidelines are not clear.

Assessment

Alcohol abuse is an important public health issue, and the industry has consistently recognised its significant social responsibility to promote responsible drinking and reduce alcohol abuse. Responsible drinking can positively impact society, culture and the economy, and contribute to a balanced lifestyle. With this in mind, the government, industry associations and businesses have worked together to jointly develop the National Responsible Drinking Awareness Week, as well as the publication of the *2022 Green Paper on the Prevention of Underage Alcohol Consumption in China*.[24]

The *14th Five-year National Health Plan* clearly specifies that health education on alcohol control should be strengthened to reduce its overuse. On 8th June 2022, the Ministry of Industry and Information Technology and other four ministries jointly issued the *Guidelines to Promote the High-quality Development of Light Industry*, underlining support for innovation and development in "low-alcohol baijiu, yellow wine and non-alcoholic beer", to provide alternative beverages.[25] The working group looks forward to working with the regulatory authorities, consumers and other stakeholders to explore more ways of promoting responsible alcohol consumption.

Recommendations

- Continue to promote responsible alcohol consumption, the reduction of alcohol abuse, and the healthy and sustainable development of the alcoholic beverage industry by hosting nationwide awareness campaigns.
- Encourage product innovation that mitigates health hazards and expedites industry innovation.

8.3 Optimise the Regulation of Plant-based Foods

Concern

The market for plant-based foods in China is still at an early stage, so there is an urgent need for a well-developed regulatory regime, and product and labelling standards, as well as effective consumer awareness programmes.

Assessment

The 2022 Central Rural Work Conference highlighted the need to "develop a comprehensive food concept, establish a diversified food supply system, and explore multiple food supply sources through various channels".[26] The promotion of plant-based foods is very much in line with this proposition, and would facilitate high-quality development of the food industry.

24 Themes focussed on included 'Drink Responsibly and Say No to Drunk Driving', 'Care for Children', 'No Drinking Before the Legal Age', and 'Moderate Drinking, Joyful Living': *2022 National Responsible Drinking Awareness Week is Launched in Beijing, People's Daily Online*, 27th December 2022, viewed 1st June 2023, <http://finance.people.com.cn/n1/2022/1227/c1004-32594794.html>

25 *Guidelines to Promote the High-quality Development of Light Industry,* State Council, 8th June 2022, viewed 1st June 2023, <http://www.gov.cn/zhengce/zhengceku/2022-06/19/content_5696665.htm>

26 *Xi Attended and Delivered an Important Speech at the Central Rural Work Conference, Xinhua,* 24th December 2022, viewed 1st June 2023, <http://www.gov.cn/xinwen/2022-12/24/content_5733398.htm>

On 24th August 2021, the Chinese Institute of Food Science and Technology (CIFST) issued the *General Guidelines for Plant-based Food Standards (T/CIFST 002-2021)*, which provide classification, basic requirements and labelling requirements for plant-based foods to bridge current gaps in the regulatory system.[27] In November 2022, the CIFST issued the *Scientific Consensus on Plant-based Food (2022)* to further direct plant-based food development and provide insights on industry needs.[28] However, plant-based food in China is still in its early stages and has not yet been categorised in the mandatory national food safety standards system. As a result, there are increasing challenges regarding product categorisation, naming, labelling and the use of new food raw materials.

Recommendations

- Develop comprehensive food safety standards for plant-based foods, specify the definition of plant-based foods, and encourage industry innovation and technological advancement.
- Establish a regulatory framework for plant-based foods to oversee business activities and protect consumer rights.

Abbreviations

AFB	Agriculture, Food and Beverage
CIFER	China Import Food Enterprise Registration
CIFST	Chinese Institute of Food Science and Technology
CNY	Chinese Yuan
DNA	Deoxyribonucleic Acid
EU	European Union
EUR	Euro
FTZ	Free Trade Zone
FOP	Front-of-Package
GACC	General Administration of Customs China
GB	*Guobiao*
GLP	Good Laboratory Practice
GM	Genetically Modified
GMM	Genetically Modified Microorganism
HMO	Human Milk Oligosaccharides
MARA	Ministry of Agriculture and Rural Affairs
MOFCOM	Ministry of Commerce
NHC	National Health Commission
NDRC	National Development and Reform Commission
OECD	Organisation for Economic Co-operation and Development
PET	Polyethylene Terephthalate
rPET	Recycled Polyethylene Terephthalate
SAMR	State Administration for Market Regulation

27 *Notice on the Release of General Guidelines for Plant-based Food Standards and Other Three Group Standards*, CIFST, 24th August 2021, viewed 1st June 2023, <https://www.cifst.org.cn/a/dynamic/tongzhi/20210824/2252.html>

28 *Scientific Consensus on Plant-Based Food (2022), China Food News*, 30th November 2022, viewed 1st June 2023, <http://www.cnfood.cn/article?id=1597775645127053314>

Dairy Industry Sub-working Group

Introduction to the Sub-working Group

The European Chamber's Dairy Industry Sub-working Group, originally the Cheese Industry Desk, was established in 2014, and has 10 prominent European dairy producers and industry associations that are committed to bringing the best dairy products to the Chinese market. The sub-working group represents members' interests and promotes constructive dialogue between relevant stakeholders, including industry associations and regulators, to ensure a level playing field for all market participants. It is a sub-working group of the Agriculture, Food and Beverage Working Group.

Recent Developments

China's dairy market experienced a slowdown in 2022: total dairy output increased by only 2 per cent year-on-year (y-o-y)[1] compared to 9.4 per cent in 2021.[2] At the same time, there was a significant decline in dairy imports, particularly milk powder, cheese, cream, condensed milk and whey powder: the value of total dairy imports dropped 17.1 per cent y-o-y to United States dollars (USD) 13.9 billion. Solid dairy products accounted for more than 69 per cent of imports, representing a y-o-y decline of 14.4 per cent.[3]

Reacting to the overall slump in consumer spending, the Chinese Government outlined a plan to stimulate consumption during the Central Economic Work Conference in December 2022.[4] The sub-working group believes that further development of the dairy industry can help to contribute to this plan by bringing a more diverse range of dairy products to market, while also promoting China's Healthy China 2030 and the National Nutrition Plan 2017–2030.[5&6]

On 16th January 2023, the China National Intellectual Property Administration announced that it had received 175 applications for products from the European Union (EU) to be added to the EU-China Agreement on Geographical Indications,[7] with 19 more cheese products on the list.[8] This is positive news for the European dairy industry, which expects the implementation of the agreement to provide fresh impetus for cooperation with the Chinese dairy industry.

On 28th July 2022, the National Health Commission (NHC) and the State Administration for Market Regulation (SAMR) published the modified *National Food Safety Standard Processed Cheese and Cheese Products (GB 25192-2022)*, and the *National Food Safety Standard Condensed Milk Products (GB 13102-2022)*, both of which came into effect on 30th December 2022.[9] This gave companies only five months to revise their labels accordingly. The grace period was even shorter for overseas companies given the fact that the reference date given for implementation of new food safety standards for imported products was the date of inspection by the General Administration of Customs of China (GACC) rather than the date of production at the factory. Considering the time it takes to transport the goods and clear customs, this meant the grace period for the new standards for imported food would have been shorter than that for food produced in China. To ensure a level playing field, the sub-working group submitted a letter to the GACC advocating for fair treatment of imported and domestic products. As a result, the GACC published *Notice No. 136*, guaranteeing that the implementation date for the new standards for imported foods—such as processed

1 *Industry Has Not Recovered From Low Milk Prices, China Food News*, 11th April 2023, viewed 14th April 2023, <http://www.cnfood.cn/article?id=1645596422630903809>

2 *Dairy Industry Development in 2021 from January to December*, Ministry of Industry and Information Technology, 3rd March 2022, viewed 4th July 2023, <https://wap.miit.gov.cn/gyhxxhb/jgsj/xfpgys/gzdt/art/2022/art_f6de8747ee7649599e12e36571a101ca.html>

3 *China Dairy Trade Monthly Report of January 2023*, National Dairy Industry, Technology and Economy Research Office, 2nd February 2023, viewed 13th April 2023, <https://mp.weixin.qq.com/s/LMwTX7zsyGgevTh3G1CuSQ>

4 *Central Economic Work Conference Is Hosted in Beijing, Xinhua*, 16th December 2022, viewed 20th April 2023, <http://www.gov.cn/xinwen/2022-12/16/content_5732408.htm>

5 *Outline of Healthy China 2030*, State Council, 25th October 2016, viewed 5th May 2023, <http://www.gov.cn/xinwen/2016-10/25/content_5124174.htm>

6 *National Nutrition Plan (2017–2030)*, State Council, 30th June 2017, viewed 5th May 2023, <http://www.gov.cn/zhengce/content/2017-07/13/content_5210134.htm>

7 *EU-China Geographical Indications Agreement at a Glance*, European Parliament, 2020, viewed 9th June 2023, <https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/652045/EPRS_ATA(2020)652045_EN.pdf>

8 *China and Europe Strengthen Cooperation in Geographical Indications, the Two Sides Have Achieved A Total of 244 Products for Mutual Recognition and Mutual Protection, Xinhua,* 16th January 2023, viewed 5th May 2023, <http://www.news.cn/2023-01/16/c_1129290144.htm>

9 *Announcement on the Publication of 36 National Standards for Food Safety and 3 Modification Lists*, NHC, 28th July 2022, viewed 20th April 2023, <http://www.nhc.gov.cn/sps/s7891/202207/d30f4827b27148779c93f3090fc2afc3.shtml>

cheese and cheese products, and condensed milk products—would be the same as for domestic foods.[10]

Several national food safety standards related to dairy products are still under revision at the time of writing. On 17th November 2022, the NHC's China National Centre for Food Safety Risk Assessment (CFSA) organised an online briefing session on national food safety standards and announced the plan for the upcoming revisions of dairy-related standards, including the following:

- *National Food Safety Standard Raw Milk (GB 19301-2010)*[11]
- *National Food Safety Standard Pasteurised Milk (GB 19645-2010)*[12]
- *National Food Safety Standard Sterilised Milk (GB 25190-2010)*[13]
- *National Food Safety Standard Fermented Milk (GB 19302-2010)*[14]
- *National Food Safety Standard Milk Powder (GB 19644-2010)*[15]
- *National Food Safety Standard Cream, Butter and Anhydrous Cream (GB 19646-2010)*[16]
- *National Food Safety Standard Whey Powder and Whey Protein Powder (GB 11674-2010)*[17]
- *National Food Safety Standard Prepared Milk (GB 25191-2010)*[18]
- *National Food Safety Standard Milk Protein*
- *National Food Safety Standard High Temperature Sterilised Milk*

The sub-working group has submitted comments on many of these standards and expects subsequent revisions to be based on existing scientific evidence. At the same time, the sub-working group continues to advocate for the barriers currently hindering the import of certain European dairy products and the development of China's domestic dairy industry to be further removed, which is in line with China's position on promoting trade liberalisation and economic globalisation.

Key Recommendations

1. Improve Dairy-related National Food Safety Standards 3

Concern

Some revisions to China's dairy-related standards do not take into account the level of development of both international and domestic dairy markets.

Assessment

On 20th December 2020, the SAMR announced the Dairy Products Quality and Safety Improvement Action Plan.[19] It prioritised the reinforcement of the regulatory standard system, including both national food safety standards and group/industry standards. However, most of the current national food safety standards related to dairy products were formulated and released in 2010. Over the past 13 years, innovation in technology for dairy production has increased, and product categories have become more varied. Meanwhile, the Chinese dairy market has become more internationalised. This has resulted in discrepancies between current national food safety standards for dairy products and the level of development of both international and domestic dairy markets, a problem that needs to be urgently resolved through the revision of relevant standards.

For example, the definition of 'cream' in the *National Food Safety Standard Cream, Butter and Anhydrous Cream (GB 19646-2010)* is one of the industry's main concerns. The standard lists raw milk as the only raw material, which excludes instances in which some

10 *GACC [2022] Notice No. 136 (Notice on Inspection Requirements for Implementation of National Food Safety Standards for Infant Formula, Processed Cheese and other Imported Foods)*, GACC, 30th December 2022, viewed 5th May 2023, <http://gdfs.customs.gov.cn/customs/302249/302266/302267/4767851/index.html>

11 *National Food Safety Standard Raw Milk (GB 19301-2010)*, former Ministry of Health (MOH), 26th March 2010, viewed 20th April 2023, <https://sppt.cfsa.net.cn:8086/db?type=2&guid=6DEFF20C-AEBD-49D3-8C35-C9B086A0F44B>

12 *National Food Safety Standard Pasteurised Milk (GB 19645-2010)*, former MOH, 26th March 2010, viewed 20th April 2023, <https://sppt.cfsa.net.cn:8086/db?type=2&guid=BB832452-5017-4EA8-AD06-A6F1557A423D>

13 *National Food Safety Standard Sterilised Milk (GB 25190-2010)*, former MOH, 26th March 2010, viewed 20th April 2023, <https://sppt.cfsa.net.cn:8086/db?type=2&guid=69F95D12-21FC-46D0-BA60-0D8802593A1A>

14 *National Food Safety Standard Fermented Milk (GB 19302-2010)*, former MOH, 26th March 2010, viewed 20th April 2023, <https://sppt.cfsa.net.cn:8086/db?type=2&guid=849A1775-3D0A-4674-BCE4-3253BE5531CB>

15 *National Food Safety Standard Milk Powder (GB 19644-2010)*, former MOH, 26th March 2010, viewed 20th April 2023, <https://sppt.cfsa.net.cn:8086/db?type=2&guid=EF931D82-DF12-4CF5-B123-5D1B099D887E>

16 *National Food Safety Standard Cream, Butter and Anhydrous Cream (GB 19646-2010)*, former MOH, 26th March 2010, viewed 20th April 2023, <https://sppt.cfsa.net.cn:8086/db?type=2&guid=6818B3FF-4E2C-400B-AF62-D7BE3CF7FE3A>

17 *National Food Safety Standard Whey Powder and Whey Protein Powder (GB 11674-2010)*, former MOH, 26th March 2010, viewed 20th April 2023, <https://sppt.cfsa.net.cn:8086/db?type=2&guid=806A934C-35AA-44F6-8BE5-110A11B2B4D7>

18 *National Food Safety Standard Prepared Milk (GB 25191-2010)*, former MOH, 26th March 2010, viewed 20th April 2023, <https://sppt.cfsa.net.cn:8086/db?type=2&guid=806A934C-35AA-44F6-8BE5-110A11B2B4D7>

19 *Notice on the Publishment of the Dairy Products Quality and Safety Improvement Action Plan*, SAMR, 30th December 2020, viewed 4th July 2023, <https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/spscs/art/2023/art_ee985cd16eef4f89b53868120f4b40bb.html>

European manufacturers take qualified cream (product A) from a manufacturing plant as a raw material, and transport it to complete final production (product B) in another plant nearby. In this case, the cream itself (product A) is used as the raw material to produce the final product (product B). If such a widely-used technique is not considered when drafting the new standard, many high-quality cream products from Europe would be categorised incorrectly as 'processed cream', leading to related companies suffering substantial losses in the China market.

The draft *National Food Safety Standard Milk Powder and Modified Milk Powder (GB 19644)* presents another example.[20] Its definition of 'modified milk powder' was changed so that the main ingredient should contain no less than 70 per cent dairy solid content and that 'main ingredients' must be limited to processed products produced from raw milk and/or whole milk (or skimmed or partially skimmed) derived from a single variety. This modification aims to improve the overall quality of milk powder products, but, at the same time, it will require large-scale adjustments to existing modified milk powder products on the market, which in turn will result in fluctuations in the raw materials market.

To meet the increasingly diversified demands of domestic consumers and to provide high-quality, reasonably priced products for domestic consumption, recent advances in both the domestic and international dairy industries, as well as the conditions along Chinese and global supply chains, should be fully taken into account when formulating policies and standards.

With regard to policies related to improving the quality of dairy products and encouraging the use of fresh milk to produce dairy products, industrial development could be guided through industry and group standards, rather than mandatory national food safety standards, while taking a holistic approach that takes into account international dairy industry practices and trends.

Recommendations

- Align the development and revision of dairy-related standards more effectively with international standards and practices, as well as the reality of domestic and international dairy markets and supply chains.
- Implement the Dairy Products Quality and Safety Improvement Action Plan by encouraging the introduction of group/industry standards instead of mandatory national standards.
- Optimise the development and revision of national food safety standards to provide a more transparent and open channel to all industry players.

20 *Public Consultation on Five National Food Safety Standards,* NHC, 10th May 2023, viewed 4th July 2023, <http://www.nhc.gov.cn/sps/s7891/202305/d9003cacca18456c8ff034afaca573f5.shtml>

2. Optimise the Regulation of Cultures Applied in Dairy Production 8

Concern

Many cultures traditionally utilised in European dairy production processes are not included in the positive list that China uses to regulate the application of cultures in food production, which prevents many safe products from entering the Chinese market.

Assessment

China's regulation of food cultures allows only a very limited number of microbial cultures to be used. In 2010, the then Ministry of Health (MOH) issued the *List of Cultures Applied in Food (List)*.[21] It included a 'positive list' that recognised only a few microorganism types, mainly used for yoghurt manufacturing, with regulated cultures applied in food for infants and young children featuring in another list. In addition, cultures used for traditional food manufacturing and processing are exempted from this regulation. While those exempted are not specified as those used in traditional Chinese food, the official interpretation and actual implementation in fact apply only to cultures used in traditional Chinese food, including vinegar, soy sauce, Chinese liquor and others. According to the *Revised Questions and Answers on National Food Safety Standard General Principles for the Labelling of Pre-packaged Food (GB 7718-2011)*, published in February 2014, enterprises are required to label the listed cultures.[22] As a result, the compliance risks for enterprises that use unlisted cultures in traditional cheese production are increased.

21 *Notice of Ministry of Health Office on Issuing the List of Cultures Applied in Food,* former MOH, 28th April 2010, viewed 5th May 2023, <http://www.gov.cn/gzdt/2010-04/28/content_1594897.htm>

22 *Revised Questions and Answers on National Food Safety Standard General Principles for the Labelling of Prepackaged Food (GB 7718-2011),* NHC, 26th February 2014, viewed 5th May 2023, <http://www.nhc.gov.cn/sps/s3594/201402/544c0539b95d4d35b99ffbc105579071.shtml>

After seven further updates to the *List* over the past 13 years, a total of 38 cultures now feature, expanded from the original 21.[23] Cultures other than the 38 listed and those used in Chinese traditional foods are not permitted for use in food production unless they are approved in a safety review conducted by the NHC. In October 2021, the CFSA issued a public consultation on a draft of a further revision to the *List*.[24] While the draft includes new varieties of cultures, and categories have been revised to reflect the latest international trends, most cultures that are traditionally used for cheese production are still not included. Furthermore, the review process is almost impossible for culture producers to follow as it requires information that is very difficult to obtain—such as the toxicological assessment of certain cultures, which is very time- and resource-consuming—thereby hindering the development of the Chinese dairy industry, in particular the cheese sector. In addition, the review process itself is labour-intensive, which is an unnecessary cost, as these cultures have a long history of safe usage in a wide variety of European dairy products.

Authoritative lists of microorganisms used by international organisations, or in countries other than China, include cultures that are generally recognised for their history of safe usage. Such lists include those published as a result of a joint project between the International Dairy Federation (IDF) and the European Food and Feed Cultures Association in 2002, and a Danish Veterinary and Food Administration (DVFA) list of notified microbial cultures that are used in food production. After being reviewed and updated in 2012 and 2018, the IDF inventory now lists approximately 300 microbial cultures covering a wide range of food matrices.[25] The Chinese Government and a number of research institutes are cooperating with the IDF to have the cultures used in manufacturing traditional Chinese food included in the inventory.

The DVFA list of notified microbial cultures is a record of all microbial cultures the organisation has been notified of, and can be expanded if culture manufacturers provide more information. Safety documentation is not precluded in the notification process: the DVFA does not approve microbial cultures before they are used, but safe-use history and safety risks are evaluated before a culture is included on the list. In European countries, cultures are considered ingredients and must meet legal safety requirements, with the responsibility for their safety lying with manufacturers. Related regulations state that manufacturers shall only use cultures that have a history of safe use.

The contributions certain microbes have made to cheese have been widely recognised, and pure microbial cultures are commonly used by dairy product manufacturers. In addition to lactic acid bacterial starter cultures, various species of bacteria and fungi are often added to dairy products for specific characteristics. For instance, blue-mould cheeses have always been fermented with *Penicillium roqueforti*; spores of the filamentous fungus *Penicillium camemberti* are inoculated into milk during the production of bloomy, rind cheeses such as Brie and Camembert; and the actinomycete bacterium *Brevibacterium linens (B. linens)* contributes to the reddish-orange colour found in the traditional cheese Epoisses. Dairy product manufacturers have learned over centuries how to consistently cultivate specific microbial colonies by controlling the conditions a dairy product is subjected to during the ageing process. Recognising the historical safe use of cultures applied in cheese will help promote the dairy industry in China, allowing Chinese customers to enjoy a wider variety of dairy products and thereby boosting consumption.

Recommendations

- Revise the labelling requirement in the relevant national food safety standard so that only the general name of the 'food culture' needs to be listed on the label instead of all individual cultures.
- Exempt cultures that have a history of safe use in dairy production from the food culture positive list, and classify them as permitted ingredients in dairy production as soon as possible.

23 *Notice on Updated List of Cultures Applied in Food and the List of Cultures Applied in Infant and Young Children Food,* NHC, 25th August 2022, viewed 5th May 2023, <http://www.nhc.gov.cn/sps/s7892/202208/1d6c229d6f744b35827e98161c146afb.shtml>

24 *CFSA Public Consultation on the List of Cultures Applied in Food and the List of Cultures Applied in Infant and Young Children Food*, Chinese Institute of Food Science and Technology, 28th October 2021, viewed 4th July 2023, <https://www.cifst.org.cn/a/news/fagui/20211028/2288.html>

25 Bourdichon, F., Casaregola, S., Farrokh, C., Frisvad, J.C., Gerds, M.L., Hammes, W.P. & Powell, I.B., *Food fermentations: microorganisms with technological beneficial use*, *International Journal of Food Microbiology,* vol. 154, no. 3, pp. 87–97, 15th March 2012, viewed 20th April 2023, <https://www.sciencedirect.com/science/article/pii/S0168160511007586>

Abbreviations

CFSA	China National Centre for Food Safety Risk Assessment
DVFA	Danish Veterinary and Food Administration
EU	European Union
GACC	General Administration of Customs China
GB	*Guobiao*
IDF	International Dairy Federation
MOH	Ministry of Health
NHC	National Health Commission
SAMR	State Administration for Market Regulation
USD	United States Dollars
y-o-y	Year-on-year

Food for Special Medical Purpose Sub-working Group and Paediatric Nutrition Sub-working Group

Introduction to the Sub-working Groups

This paper is composed of two sub-working groups. The European Chamber's Food for Special Medical Purpose (FSMP) Sub-working Group was established in 2016, and counts as members four leading international manufacturers that specialise in special nutrition. The European Chamber's Paediatric Nutrition Sub-working Group was established in 2009, and currently has nine international companies as members and three domestic manufacturers as local partners. Both are sub-working groups of the European Chamber's Agricultural, Food and Beverage Working Group. The FSMP Sub-working Group and the Paediatric Nutrition Sub-working Group are committed to contributing to accelerating innovative development in the sector.

Recent Developments

In 2022, China's infant formula industry faced registration challenges and pressure to implement new national standards. The infant formula market, as determined by the number of new-borns, fell 10 per cent in 2022 to 9.56 million.[1] However, imports of infant formula increased by 1.5 per cent year-on-year to 265,600 metric tonnes, but were still below the industry's record high of 345,500 metric tonnes in 2019.[2]

China's ageing population, growing awareness of health issues and relevant supporting polices have created significant opportunities for FSMP.[3] In 2022, the national authorities promulgated several FSMP-related policies, including the *Labelling Guidelines for Food for Special Medical Purposes*, aimed at promoting high-quality development of the industry.[4]

Between 2017 and the end of 2022, a total of 92 FSMP products were approved in China.[5] And 1,380 infant formulas (excluding deregistered ones) were approved for recipe registration during the same time period.[6] The registration rate of infant formula has declined since 2018, with a slight rebound in 2022 as new standards came into effect, while the registration rate of FSMP products remains sluggish.

The following recently released regulations and standard revisions have had a significant impact on the infant formula and FSMP industries:

- On 18th November 2022, the State Administration for Market Regulation (SAMR) issued the *Review Rules for Infant Formula Milk Powder Production Licence (2022)*, which came into effect on the issue date.[7]
- On 28th December 2022, the SAMR published the *Labelling Guidelines for Food for Special Medical Purposes*.[8]
- On 30th December 2022, the General Administration of Customs China (GACC) issued the *Notice on Inspection Requirements for Implementation of National Food Safety Standards for Infant Formula, Processed Cheese and other Imported Foods* ([2022] *No. 136*).[9]
- On 22nd February 2023, the *National Food Safety Standard Infant Formula (GB 10765-2021)*, the *National Food Safety Standard Older Infant Formula (GB 10766-2021)*, and the *National Food Safety Standard Young Children Formula (GB 10767-2021)*, issued by the National Health Commission (NHC) and the SAMR, came into effect.[10]

1 Wang, Pingping, *Total Population Declines Slightly, Urbanisation Level Continues to Increase,* National Bureau of Statistics, 18th January 2023, viewed 23rd May 2023, <http://www.stats.gov.cn/xxgk/jd/sjjd2020/202301/t20230118_1892285.html>

2 *China Dairy Trade Monthly January 2023,* National Dairy Industry Technical System Economy Research Office, 2nd February 2023, viewed 23rd May 2023, <https://mp.weixin.qq.com/s/LMwTX7zsyGgevTh3G1CuSQ>

3 Zhu, Meiqiao, *FSMP to Become the Next Blue Ocean Market, China Food*, 3rd August 2022, viewed 23rd May 2023, <http://www.cnfood.cn/article?id=1554382656258670593>

4 *2022 Review of Top 10 News in China's FSMP Industry, Xinhua*, 9th January 2023, viewed 23rd May 2023, <http://www.news.cn/food/20230109/b6222074005c4777a7e15b80463b6b74/c.html>

5 *Summary of FSMP Registrations Approved in 2022, Foodmate*, 17th January 2023, viewed 23rd May 2023, <http://news.foodmate.net/2023/01/651368.html>

6 *Summary of Infant Formula Registrations Approved in 2022, Foodmate,* 26th January 2023, viewed 23rd May 2023, <http://news.foodmate.net/2023/01/651647.html>

7 *Notice of the State Administration for Market Regulation on the Issuance of Review Rules for Infant Formula Milk Powder Production Permit (2022 Edition)*, SAMR, 18th November 2022, viewed 23rd May 2023, <https://www.samr.gov.cn/tssps/zcwj/art/2023/art_ac6bce9ce1c64264a4a52c8026bf50b1.html>

8 *Notice on the Issuance of Labelling Guidelines for Food for Special Medical Purposes,* SAMR, 28th December 2022, viewed 23rd May 2023, <https://www.samr.gov.cn/tssps/zcwj/art/2023/art_9b77d11ac8ec4c60bf2aadc87d909e8e.html>

9 *Notice No. 136 of 2022 on Inspection Requirements for Implementation of National Food Safety Standards for Infant Formula, Processed Cheese and other Imported Foods,* GACC, 30th December 2022, viewed 23rd May 2023, <http://gdfs.customs.gov.cn/customs/302249/302266/302267/4767851/index.html>

10 *Notice on the Release of National Food Safety Standard Cheese (GB 5420-2021) and 50 other National Food Safety Standards and four Revision Orders,* NHC, 18th March 2021, viewed 25th May 2023, <http://www.nhc.gov.cn/cms-search/xxgk/getManuscriptXxgk.htm?id=0bdb6c4318724644b40e3f3f894aa88f>

Section Three: Goods

- On 10th July 2023, the SAMR published the *Administrative Measures for the Registration of Infant and Young Children Milk Powder Formula*. The regulation will come into effect on 1st October 2023.[11]

In the past two years, the sub-working groups have promoted the registration of special food and accelerated the review and approval process effectively by facilitating cooperation on overseas onsite inspection between Chinese and European authorities through the signing of memoranda of understanding (MoUs).[12] The sub-working groups will continue participating in the formulation and revision of regulations and standards for special food with the aim of accelerating the development of the special food industry in China.

Key Recommendations

1. Optimise the Registration System for Special Food 7

1.1 Enhance the Transparency and Consistency of Product Registration and Improve the Efficiency of Review and Approval Processes

Concern

During the registration of infant and young children milk powder formula and FSMP, frequent changes to registration requirements, as well as technical reviews and approval requirements that exceed existing regulations and standards, create considerable compliance challenges.

Assessment

In recent years, the requirements for infant formula and FSMP registration have become increasingly strict and rigorous. And while new requirements have continually been added during the review process, they have not been communicated to the industry in a timely and effective manner. For example, enterprises have been asked to provide equity relationship documents, without prior notice, in order to comply with *Notice No. 43 on the Prohibition of Commission, OEM and Sub-packaging in Production of Infant and Young Children Milk Powder Formula*, issued back in 2013.[13] Since guarantee statements from enterprises are not accepted, they have instead had to spend a significant amount of time preparing additional materials that include confidential information.

The lack of a communication channel with relevant authorities also makes it harder for enterprises to conduct research and development (R&D). Prior to the preparation of product registration applications, enterprises will spend two to five years conducting R&D, production testing and clinical trials, with investments running to tens of millions of Chinese yuan (CNY). Therefore, failure to publish new registration requirements in a timely manner can result in a significant waste of time and resources, and hinder the innovation and stable development.

Recommendations

- Improve the registration review and approval process, and inform industry of new requirements in a timely manner.
- Refrain from imposing new requirements for products that have already passed technical review, following the 'principle of non-retroactivity'.
- Build trust with enterprises by accepting future guarantee statements on relevant issues.
- Establish early communication channels between the SAMR, the SAMR's Centre for Food Evaluation (CFE) and industry to understand the trends of, and provide guidance for, R&D.

1.2 Clarify the Mechanism for Cooperating with Overseas Authorities to Enhance the Efficiency of Overseas Onsite Inspections

Concern

Uncertainty over the process for overseas onsite inspections creates challenges for overseas applicants trying to register both infant and young children milk powder formula and FSMP.

Assessment

The recently published *Administrative Measures for the Registration of Infant and Young Children Milk Powder Formula* states that onsite inspections shall be

11 *Administrative Measures for the Registration of Infant and Young Children Milk Powder Formula*, SAMR, 10th July 2023, viewed 19th July 2023, <https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/fgs/art/2023/art_3a5f8aa921ac4d9e85c2dffe93b05955.html>

12 *Memorandum of Understanding on Onsite Inspection Signed between China and France*, SAMR, 7th April 2023, viewed 4th June 2023, <https://www.samr.gov.cn/tssps/sjdt/gzdt/art/2023/art_12377b5e24c3489794eb416545f4a446.html>

13 *Notice No.43 on the Prohibition of Commission, OEM and Sub-packaging in Production of Infant and Young Children Milk Powder Formula*, former China Food and Drug Administration (CFDA), 3rd December 2013, viewed on 24th May 2023, <http://law.foodmate.net/show-180367.html>

conducted based on "actual needs" and clarifies certain conditions where onsite inspections are needed. The *Administrative Measures for the Registration of Food for Special Medical Purposes* claims that the inspection department shall organise onsite inspections based on "actual needs" without outlining the circumstances for which onsite inspections can or cannot be exempted.[14] Therefore, enterprises are unable to make informed production and operational plans.

To restart overseas onsite inspections for infant formula and FSMP manufacturers during the pandemic, the SAMR took swift action to sign MoUs with a number of countries to authorise foreign authorities to conduct inspections. Now that the World Health Organization declared an end to COVID-19, it remains unclear whether those MoUs will be extended. If they can be extended, and even applied to more countries and regions, this mechanism would greatly enhance the efficiency of overseas onsite inspections and boost business confidence. If the MoUs are not maintained, this would increase the administrative and operational burdens on FSMP companies that have been operating in China for many years.

Recommendations

- Clarify the criteria for implementing onsite inspections in the FSMP *Administrative Measures,* as well as the timeline for overseas onsite inspections.
- Extend the MoUs as a cooperative mechanism underpinning overseas onsite inspections of both infant formula and FSMP production facilities, and apply them to more countries and regions.

1.3 Leverage Local Administrative Resources to the Greatest Extent Possible in Order to Enhance the Efficiency of Onsite Inspections

Concern

The authorities responsible for onsite inspections have limited resources, which results in long waiting times for inspections and uncertainty over the timeline for registration reviews.

Assessment

The registration process for China-based infant formula and FSMP enterprises is hampered by long and unpredictable waiting time for onsite inspections. The main reason is the lack of administrative resources available to the inspection department of the CFE, which is not only responsible for core tasks such as report reviews and issue discussions, but also for overall management and coordination, including designation of experts, scheduling and financial compensation, among others.

Therefore, the CFE should make full use of local administrative resources, distribute the workload and concentrate on core tasks to improve the efficiency of inspections and reduce waiting times. According to the *Administrative Measures for the Registration of Infant and Young Children Milk Powder Formula*, the CFE could either conduct inspections by itself or outsource to local agencies as needed. Local authorities have already gained inspection capacity under the guidance of the CFE over the past years by shadowing the CFE inspection teams. Furthermore, they have access to technical support from agencies and experts that have also been trained for years in conducting onsite inspections efficiently and competently.

Recommendation

- Maximise the use of local resources and delegate onsite inspections to local authorities, with the CFE selecting the inspection team leader when necessary, while providing guidance and ensuring transparency.

1.4 Define the Conditions Under Which Companies can be Exempted from Stability Testing

Concern

The requirement for a stability testing report delays registration and waste resources unnecessarily in circumstances where companies have already registered formulas under the new standards with previous stability testing data.

Assessment

Formulas currently registered under the new standards have already undergone strict stability testing and data analysis. Given that the changing patterns of the nutrients processed with similar techniques are almost the same, requiring each following formula to provide repetitive stability report for registration will cost significant time. It usually takes at least six months or longer, including delivery time, for overseas companies

14 *Administrative Measures for the Registration of Food for Special Medical Purposes*, former CFDA, 7th March 2016, viewed 25th May 2023, <http://www.gov.cn/zhengce/2019-03/29/content_5723755.htm>

to send samples to laboratories in China. Moreover, stability testing takes up considerable amounts of the CFE's inspection department's resources.

Therefore, the necessity for stability testing of new formulas should be revaluated when there are registered formulas that share similar processing techniques, and the conditions under which companies can be exempted should be clearly specified to avoid resource waste and improve approval efficiency. Currently, formulas registered under the new standards have all completed stability testing reports, and many new formula are similar in nutrients, techniques and packaging. By enforcing a rigorous quality management system, the quality and stability of products can be guaranteed without the need for redundant stability testing.

Recommendation

- Exempt companies from stability testing when they submit modification and deregistration information with new applications for similar formulas using identical techniques and packing materials if they have already been approved under new national standards.

1.5 Clarify the Criteria for Differences in FSMP Formulas with Regard to Registration Reviews

Concern

The regulatory authorities have not published clear guidelines regarding the criteria for significant differences in FSMP formulas and requirements for completion of the product registration process, which is creating uncertainty among enterprises.

Assessment

The requirements for "significant differences" and "scientific evidence" in the FSMP *Administrative Measure* lack clear definitions, which makes it challenging for enterprises to prepare materials based on measurable parameters.

In cases in which differences in FSMP formulas are not significant, including the unclear boundary between nutrient-complete formulas and specific-disease formulas, the review department should consider the diverse nutritional needs of the target populations when setting review criteria. For example, there are different formulas developed based on the nutritional needs of different age groups, dietary needs of a certain population, product forms required by various patients, and application scenarios. These formulas have no significant differences but help to serve different populations and purposes. Relaxing restrictions on formula differences would help to diversify market supplies and meet consumer demands, as well as to both motivate R&D in FSMP industry and enhance compliance.

At the same time, the selection of formulas for registration and marketing is a business decision that should be made by enterprises themselves once the safety, nutritional adequacy and clinical effectiveness of a product has been approved by the review department. Additionally, the "proof of production and sales within five years" required for registration extension would effectively screen non-competitive, identical products out of the market.[15]

Recommendations

- Relax the criteria for differences in FSMP formulas to take diverse product demands of different groups, scenarios and needs into consideration.
- Publish technical guidance with measurable requirements, or establish pre-reviewal mechanism for formula differences, to avoid wasting time and resources if the differences in similar FSMP formulas must be claimed by one company.

1.6 Optimise the Registration and Approval Requirements for FSMP for Rare Diseases

Concern

The slow registration approval process for FSMP for rare diseases prevents patients from obtaining the latest products in a timely manner.

Assessment

1) Registration Challenges

The low demand for FSMP for rare diseases and the high cost of registration have resulted in a lack of incentives for enterprises to register related products. Such products are subject to strict restrictions regarding the use of shared production lines during registration.

15 *Application Materials Requirements for Registration of Food for Special Medical Purpose (Pilot 2017)*, SAMR, 13th April 2021, viewed 24th May 2023, <https://www.cfe-samr.org.cn/zyyw/tsyxytpfsp/xzzq_87/202104/t20210413_3108.html>

However, a single round of commercial production can usually meet the needs of several countries due to low demand. It is expensive for companies to provide dedicated production facilities for certain products. It is also not conducive to the commercialisation of products if formulas must be developed according to the regulations of each target country. In addition, Chinese registration regulations require trial production and stability testing of three commercial batches for each formula, the costs of which are high.

Most enterprises are reluctant to register FSMP due to the high costs, and would rather produce and sell the goods as non-FSMP. This means that patients who rely on such products for long-term treatment can only access those that are not strictly regulated. As regulation becomes stricter, many patients will struggle to obtain the products they rely on, which may cause a deterioration of their health.

2) Slow local implementation of pilot policies

Some local governments allow the import of foreign FSMP that are not yet registered in China for urgent use by those with rare diseases. However, the implementation of such policies is slow and lacks transparency. In addition, insufficient communication between central and local governments results in local governments still being constrained by the current administrative measures on FSMP.

Recommendations

- Revise the *Administrative Measures for the Registration of Food for Special Medical Purpose*, and establish special channels for conducting priority reviews and approvals for FSMP for rare disease.
- Strengthen communication among central and local governments, and the industry.
- Promote the implementation of pilot policies at the local level and allow conditional approvals of overseas FSMP for rare diseases.
- Accelerate the review and approval of FSMP for rare diseases on the basis of ensuring safety, effectiveness and quality control, so that patients can obtain reliable treatment as soon as possible.

2. Continue to Fine-tune National Food Safety Standards and Administrative Measures Related to FSMP and Infant Formula to Ensure the Smooth Transition of Product Registration under New Standards 3

Concern

The current timelines for the revision of national food safety standards, administrative measures for registration, and both horizontal and raw material standards related to FSMP and infant formula are unclear, affecting registration renewals and the re-registration of products.

Assessment

1) Revision of standards and administration measures

R&D for FSMP is lengthy, and China's current strict and time-consuming registration procedures prolongs the commercialisation process. Product registration requires companies to provide substantial medical evidence, and in some cases to also devise and execute long-term clinical trials for certain specific diseases. The *National Food Safety Standard General Rules for Infant Formulas for Special Medical Purposes (GB 25596-2010)*, the *National Food Safety Standard General Rules for Food for Special Medical Purposes (GB 29922-2013)*,[16&17] and the *Administrative Measures for the Registration of Food for Special Medical Purpose* are under revision. If the issue dates for the new standards and administrative measure are not specified and the transition periods are too short, companies will have limited time to develop, verify and register new formulas, which may result in supply shortages in the market.

Infant formula R&D is encouraged in the new *Administrative Measures for the Registration of Infant Formula*, but the lack of information on formula upgrades and differences leaves companies unsure of when to initiate modification or re-registration. Publishing the secondary documents on formula upgrades and formula differences would help to spur R&D and maximise innovation potential.

16 *National Food Safety Standard General Rules for Infant Formula for Special Medical Purposes (GB 25596-2010),* former Ministry of Health (MOH), 21st December 2010, viewed 25th May 2023, <https://www.cfe-samr.org.cn/zcfg/tsyxytpfsp_140/flfg_142/202104/P020210413335500450385.pdf>

17 *National Food Safety Standard General Rules for Food for Special Medical Purpose (GB 29922-2013),* former National Health and Birth Planning Commission (NHBPC), 26th December 2013, viewed 25th May 2023, <http://www.nhc.gov.cn/ewebeditor/uploadfile/2015/04/20150414114624848.pdf>

2) The effect of horizontal standards revision on registration

Currently, several horizontal standards are under revision.[18] In accordance with current review requirements for the registration of infant formulas and FSMP, any changes to horizontal standards require products undergoing registration to comply with the requirements of the new standards. However, Article 39 of the SAMR's *Order No. 25* on the *Administrative Measures for Compulsory National Standards* provides that "companies may choose to comply with either the original or the new national standards before the implementation of new compulsory national standards."[19] Thus, mandating companies to follow the standards under revision ahead of their implementation is a contradiction of these measures. It poses a dilemma to companies: registration might not be approved if they do not follow the revised standards in advance; the registration might also be rejected if they follow the revised standards that fail to be issued before the product is registered.

3) The impact of revised raw material standards on registration

The amino acid in breast milk is used to assess the quality and quantity of proteins in breast milk substitutes.[20] According to Appendix B of *GB 10765-2021*, *GB 10766-2021*, *GB 25596-2010* and *GB 29922-2013*, the amino acids listed can be used in infant formula and infant FSMP (iFSMP). However, the lack of appropriate raw materials and food additives (nutrition fortifiers) standards for most amino acids means that Chinese amino acid manufacturers are unable to obtain production licences, which may lead to compliance risks for companies using amino acids both in R&D and production.

Recommendations

- Expedite the revision of the new national standards for FSMP, promptly specify the implementation date and ensure sufficient transition time for its implementation.
- Advance the revision of the *Administrative Measures for the Registration of Food for Special Medical Purpose*, thoroughly review the necessity and feasibility of clinical trials for specific diseases, and provide clear guidance on clinical trials.
- Promote the issuance of the secondary documents following the *Administrative Measures for the Registration of Infant and Young Children Milk Powder Formula*, and clarify the rules for formula upgrades and formula differences.
- Allow registration materials submitted within six months (based on the time required for stability testing) prior to the issuance of revised horizontal standards to only comply with the then horizontal standards for infant formula and FSMP under registration.
- Give companies flexibility to conduct modification and file a report to local or national regulatory authorities on their own initiative when new horizontal standards are issued for approved infant formula and FSMP.
- Allow Chinese amino acids manufacturers to apply for production licences for raw materials and food additives (nutrition fortifiers) in compliance with the amino acid type and quality requirements of Appendix B of *GB 10765-2021, GB 10766-2021, GB 25596-2010* and *GB 29922-2013*.
- Accelerate the formulation and revision of national standards or notices on amino acids listed in the appendix to meet the needs of R&D and production.

3. Optimise the Requirements for Clinical Trials of FSMP 4

3.1 Rationalise the Requirements Imposed on Trial Participants

Concern

One-size-fits-all clinical trial requirements are not suitable for diverse FSMP products.

18 *National Food Safety Standard Labelling Standard for Pre-packaged Food for Special Dietary Uses (GB 13432)*, former NHBPC, 26th December 2013, viewed 14th July 2023, <http://www.nhc.gov.cn/ewebeditor/uploadfile/2014/05/20140505140531583.pdf>; *National Food Safety Standard General Rules for Nutritional Labelling of Pre-packaged Foods (GB 28050)*, former MOH, 12th October 2011, viewed 14th July 2023, <https://www.gov.cn/gzdt/att/att/site1/20120709/001e3741a4741164d66215.pdf>; *National Food Safety Standard General Rules for the Labelling of Pre-packaged Foods (GB 7718)*, former MOH, 20th April 2011, viewed 14th July 2023, <http://www.nhc.gov.cn/wjw/aqbz/201106/53c53d99b71940c7a74830f86b46f8db.shtml>; *National Food Safety Standard Standard for Use of Food Nutrition Fortifier (GB 14880)*, former MOH, 15th March 2023, viewed 14th July 2023, <http://www.nhc.gov.cn/wjw/aqbz/201306/d4548c20ef914c3abef239df9a31d939.shtml>; and *National Food Safety Standard Standard for Use of Food Additives (GB 2760)*, former MOH, 20th April 2011, viewed 14th July 2023, <http://www.nhc.gov.cn/zwgk/cybz/201106/a2cedb1c45894acdba5790ca164883aa/files/b2413b87e525441ebb2882e61137242c.pdf>

19 *Order No. 25 on the Administrative Measures for Compulsory National Standards*, SAMR, 6th January 2020, viewed 25th May 2023, <http://www.gov.cn/gongbao/content/2020/content_5512561.htm>

20 *Protein and Amino Acid Requirements in Human Nutrition*, Joint WHO/FAO/UNU Expert Consultation, 2007, viewed 24th May 2023, <https://apps.who.int/iris/bitstream/handle/10665/43411/WHO_TRS_935_eng.pdf?ua=1>

Assessment

The Announcement on the Technical Guiding Principles for Paediatric Populations in Drug Clinical Trials (2016 No. 48) clearly stipulates that, in designing clinical trials for drugs used in paediatric populations, the principle of "smallest sample size, fewest specimens and least pain" shall be observed, while ensuring all evaluation needs are met.[21] Therefore, application channels should be provided for exemption of clinical trials or reduction of the number of cases required for clinical trials in a paediatric population.

For instance, the specifications for the category 'food protein intolerance' of FSMP in GB 29922-2013 is similar to that of the category 'iFSMP with milk protein allergies' in GB 25596-2010. As clinical studies are not required for the registration of iFSMP, it should also not be required for the registration of hypoallergenic formulas for toddlers over one year old. Moreover, as infants aged 6–12 months and young children over one year old have started having other foods, FSMP clinical studies on this population are increasingly difficult to carry out due to increased diet diversity. To obtain the necessary sample size for rare disease clinical trials, a relatively long clinical trial cycle is needed due to low morbidity, the difficulties for patients to join such trials and the relatively high dropout rate. Furthermore, such disease-specific FSMPs are always in demand by clinical patients and cannot be replaced by normal FSMP.

Recommendations

- Allow a smaller sample size for clinical trials, waive clinical trials or conduct post-marketing clinical data collection for food protein intolerance formula for children aged one to 10 years.
- Provide relevant data, waive clinical trials, allow smaller sample size for clinical trials or conduct clinical data collection for rare disease formulas or specific nutrient complete formulas for low morbidity disease for children aged one to 10 years.
- Accept the normal diet as a control group, and either the 'before and after' comparison of one patient, or the comparison with normal growth, instead of mandating parallel controlled clinical trials.
- Establish a channel for consultations on clinical trial design prior to registration review, allowing companies to discuss experimental designs with review agencies before conducting clinical trials.

3.2 Adjust Evaluation Indicators in Clinical Trials to Accurately Reflect the Specific Features of FSMP

Concern

The required clinical designs and trials of disease-specific FSMPs cannot demonstrate the effectiveness of the products in nutritional therapy for patients scientifically, and hinder the registration of certain products.

Assessment

When establishing clinical regulations, it is important that scientific and clinical research are combined to design a reasonable evaluation plan that conforms to a patient's usage habits, rather than simply adopting the clinical trial method used in medicine and non-inferiority of effectiveness indicators. For example, for renal-specific formulas, ordinary nutrient-complete formula cannot be used as a control group in the clinical study process, as patients with kidney disease are required to avoid or reduce the intake of certain nutrients or ingredients, such as protein, potassium, calcium and phosphorus. Ordinary nutrient-complete formula is therefore not suitable for such patients to use long-term as it increases health risks, especially for outpatients for whom the daily dosage cannot be controlled. Most imported disease-based FSMPs currently on the China market have been sold in many other markets for several years and have been clinically observed during that time. Therefore, recognising foreign clinical trial data for products that meet Chinese national food safety standards without requiring any adjustments would avoid wasting resources by repeating clinical trials in China.

Recommendations

- Study the effects of renal-specific formulas by using before/after comparisons (i.e., single-arm) or by comparing with renal-specific formulas marketed overseas.
- Consider the fact that FSMPs are only clinical nutritional support products, and design reasonable clinical observation indicators.
- Allow the sharing of clinical trials data on functional equivalent (solid/liquid) formulas.

21 *Notice on the Release of Technical Guiding Principles for Paediatric Populations in Drug Clinical Test ([2016] No. 48)*, former CFDA, 1st March 2016, viewed 25th May 2023, <https://www.nmpa.gov.cn/xxgk/ggtg/qtggtg/20160307164401912.html>

Section Three: Goods

4. Increase Market Access for, and Improve Public Awareness of, FSMP 4

Concern

In China, the lack of market access for FSMP has resulted in a limited scope of clinical application of FSMP, as well as low public awareness and consumer access to such products.

Assessment

According to the research conducted by nutritionists in 2012, approximately 65 per cent of inpatients required clinical nutrition support, 70 per cent of whom did not receive effective support.[22] In 2017, the State Council issued the National Nutrition Plan (2017–2030), which provides for "facilitating the standardised utilisation of FSMP and therapeutic diets.[23] These emphasise the urgent need to improve nutritional conditions and lower medical costs. However, as of June 2023, although a total of 125 FSMP products were registered and approved, it is not adequate to satisfy the diverse dietary requirements of different populations.[24] Strict registration requirements and high R&D costs have restricted the number of companies capable of entering the market, resulting in non-standardised clinical applications, low consumer availability and insufficient public awareness.

Furthermore, according to *GB 25596-2010* and *GB 29922-2013*, FSMP should be used under the guidance of a licensed physician or clinical nutritionist, meaning that the primary sales channels should be medical institutions and pharmacies. However, as FSMPs are currently not included in China's unified hospital information system (HIS) with charge codes, physicians or clinical nutritionists cannot prescribe them to patients. Moreover, because the clinical nutrition sector is not well-developed in China, it lacks complete functionality and sufficient staffing, further restricting patient access to FSMPs. According to the survey results based on data collected from 592 medical institutions in 2020, 42.5 per cent of hospitals have only one type of FSMP, and 85.5 per cent of hospitals have less than five types of FSMP.[25] While the National Healthcare Security Administration issued provisional charge codes for selected areas, such as Jiangsu Province, the scope needs to be expanded further.

Recommendations

- Develop further the administrative and regulatory system, and ease market access criteria, for FSMPs.
- Optimise the clinical application procedure for FSMPs in medical institutions, integrate FSMPs into the HIS and increase consumer accessibility.
- Improve the development of clinical nutrition departments and clinical nutritionist teams, expand the scope of clinical nutrition screening, diagnosis and treatment, and provide more FSMP seminars to raise public awareness.

5. Establish an Appropriate Regulatory Framework to Supervise the Retail Marketing of 0-12 Months Infant Formula and Provide a Detailed Plan to Encourage Breastfeeding 8

Concern

The lack of a framework to standardise and regulate the marketing of formulas for infants aged 0–12 months in retail channels may have an adverse influence on the protection and promotion of breastfeeding.

Assessment

On 15th November 2021, the NHC and 15 other agencies issued the Breastfeeding Promotion Action Plan (2021–2025), which aims to achieve a national breastfeeding rate of over 50 per cent for infants aged 0–6 months.[26] However, following the repeal of the *Administrative Measures on the Sale of Breast Milk Substitutes* in 2017, advertising and marketing for infant formula in China has been in a regulatory vacuum. Inappropriate or noncompliant marketing behaviour cannot be eradicated solely by the self-regulation of individual companies.

In March 2020, the SAMR's *Interim Administrative*

22 Wang, Jian, Yi, Long, Shu, Xiaoliang, Mi, Mantian & Cai, Donglian, 2012, *Present Status and Problem of Clinical Nutriology in China, Food and Nutrition in China,* vol. 7-5, viewed on 14th July 2023, paid subscription service.

23 *National Nutrition Plan (2017–2030),* State Council, 13th July 2017, viewed 25th May 2023, <http://www.gov.cn/zhengce/content/2017-07/13/content_5210134.htm>

24 *Rapid Growth of FSMP in First Half of 2023 - Summary of 125 Domestic FSMP Registrations,* CIRS Group, 27th June 2023, viewed 14th July 2023, <https://www.cirs-group.com/cn/food/shou-kuan-te-yi-zhi-fang-zu-jian-huo-pi-guo-nei-83-kuan-te-yi-shi-pin-zhu-ce-xin-xi-hui-zong-fen-xi>

25 Li, Xuemei, Ma, Xianghua, Zhang, Yongsheng, Yao, Ying; Shi, Lei & Hu, Wen, 2022, *Survey on Clinical Supply, Application, and Demand for FSMP in 592 Medical Institutions, Food and Nutrition in China,* vol. 6, viewed 25th May 2023, paid subscription service.

26 *Notice on the Release of the Breastfeeding Promotion Action Plan (2021–2025),* NHC, 15th November 2021, viewed 25th May 2023, <http://www.gov.cn/zhengce/zhengceku/2021-11/24/content_5653169.htm>

Measures for the Advertising Reviews for Drugs, Medical Devices, Health Food and Food for Special Medical Purposes took effect, which explicitly prohibits the advertisement of iFSMP.[27] In April 2021, the SAMR issued the Advertising Law, Article 20 of which expressly stipulates that "advertisements for infant formula, beverages, and other food products that claim to be a total or partial substitute for breast milk in mass media or public places are strictly prohibited."[28] According to the China Advertising Association's 2022 research report *Compliance in Infant Formula Milk Powder Advertising and Promotion*, the overall positive trend in the compliance of infant formula advertising is largely due to the laws and regulations of infant formula advertising.[29] By contrast, the absence of a regulatory framework for the marketing of infant formula products has resulted in inappropriate marketing practices (such as free samples, gifts and discounts) in both online and offline retail channels, which could mislead mothers into prematurely giving up breastfeeding, and have an adverse impact on breastfeeding rates.

Recommendations

- Revise and issue the *Administrative Measures on the Sales of Breast Milk Substitutes* to regulate the marketing of 0–6 months infant formula on retail channels.
- Confirm the SAMR as the regulatory authority to oversee promotion of 0–6 months infant formula in supermarkets, maternity stores and other retail outlets.
- Develop a regulatory framework for 0–12 months infant formula in retail channels.

Abbreviations

CFDA	China Food and Drug Administration
CFE	Centre for Food Evaluation
CNY	Chinese Yuan
FSMP	Food for Special Medical Purpose
GACC	General Administration of Customs China
GB	*Guobiao*
HIS	Hospital Information System
iFSMP	Infant Food for Special Medical Purpose
MOH	Ministry of Health
MOU	Memorandum of Understanding
NHBPC	National Health and Birth Planning Commission
NHC	National Health Commission
R&D	Research and Development
SAMR	State Administration for Market Regulation

27 *Interim Administrative Measures for the Advertising Reviews for Drugs, Medical Devices, Health Food, and Food for Special Medical Purposes*, SAMR, 24th December 2019, viewed 25th May 2023, <https://www.gov.cn/gongbao/content/2020/content_5488918.htm>

28 *Advertising Law of the People's Republic of China*, National People's Congress, 29th April 2021, viewed 25th May 2023, <https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/fgs/art/2023/art_5474cf75173c45d6a0379730fb4e8d97.html>

29 *Compliance Report in Infant Formula Milk Powder Advertising and Promotion,* China Advertising Association, 6th December 2022, viewed 14th July 2023, paid subscription service.

Automotive Working Group

Key Recommendations

1. Deliver on the Commitment to Fully Open Up the Automotive Industry and Create an Open, Transparent, Non-discriminative and Predicable Investment Environment

- Increase the transparency of policies for regulating foreign investment access and administration in the automotive industry and provide an open, transparent and predictable regulatory environment.
- Increase the transparency of the automotive industry overall, setting out clear access requirements and approval processes for foreign investment in vehicle manufacturing, and provide coherent policy interpretation and guidelines to international automotive manufacturers on their prospective investments in China.
- Allow international automotive manufacturers to participate in the drafting and revision process of policies related to foreign investment approvals.

2. Amend Legislation Related to Cross-border Data Transfer and Enable Secure, Adequate and Stable Collection, Utilisation and Transfer of Automotive Data Under the Principle of Ensuring Data Security 2

- Revise the *Several Provisions on the Management of Automobile Data Security (Trial)* to allow automotive companies to appropriately collect and process data inside and outside the cockpit, provided they adhere to the principle of ensuring data security and cybersecurity.
- Develop data classification standards that are coordinated among government agencies to address the diversified nature of data involved in the automotive industry.
- Allow the free flow of vehicle identification number data.
- Consult with foreign automotive companies when developing policies related to automotive data and information security.

3. Create a Predicable, Non-discriminatory and Balanced Legislative Environment that is Conducive to the Sustainable Development of New Energy Vehicles (NEVs) 6

Policy transparency and predictability

- Ensure international automotive manufacturers can participate in the drafting and revision of new policies and regulations.
- Provide lead time of at least four to five years for automotive manufacturers to plan and react to released policies and planning documents.

Decarbonisation

- Provide ample lead time when designing the decarbonisation roadmap for the automotive industry.
- Calculate separately the emissions of upstream and downstream suppliers to provide additional incentives to decarbonise.
- Harmonise battery recycling standards between China and the European Union.

Incentives (national level)

- Maintain the current policy and existing technical requirements for granting purchase tax exemption to mitigate the impact of any changes on the NEV market.

Charging infrastructure

- Harmonise standards with in-use pillars and new generation pillars.
- Harmonise the standards of high-power charging, including fast-charging and super-fast charging.

NEV credits

- Consult with the industry in advance to avoid setting policy goals or management measures related to dual credits beyond 2025 that are too aggressive, and to ensure enterprises have enough lead time to make plans.
- Release the plan for dual credits and carbon emissions as early as possible so that enterprises have enough time to prepare for compliance.

4. Strengthen the Revision and Compilation of Laws and Regulations on Intelligent Connected Vehicles (ICVs) in a way that Supports Innovation and Facilitates Further Development of the Industry 4

- Improve the legislation and standards, and gradually remove institutional obstacles, for the development of ICVs.
- Ensure consistency, non-discrimination and appropriateness of market access laws, regulatory systems and technical requirements related to ICVs.
- Legalise autonomous vehicles in relevant legislation.
- Support the innovation of assisted driving technology of ICVs, encourage the application of new technologies provided safety is ensured and allow 'hands-off' autonomy.
- Introduce standards on maps used for ICVs as soon as possible to support the development of the vehicle-to-everything industry.
- Strengthen coordination of ICV management among government agencies.

5. Commercial Vehicles (CVs)

5.1 Recognise Optimised Vehicle Specifications in the Regulation of CVs 4

- Involve automotive companies early in the process of drafting and updating regulations for CVs.
- Unify market access requirements and implementation procedures, and simplify the registration process for the issuance of transport licences.
- Implement only one integrated national standard covering CVs.
- Publish recommended standards (GB/T) and industry standards under the World Trade Organization publication system for mandatory standards if they are quoted in technical regulations.
- Grant sufficient lead time for manufacturers to adapt to new regulations.

5.2 Allow Longer Vehicle Combinations to Minimise the Carbon Footprint of CVs and Increase Transport Efficiency 4

- Implement proper road classification and allow for different lengths and gross combination weight, depending on road and bridge conditions.
- Amend standard *GB 1589-2016* to allow for more than six axles and long vehicle combinations as soon as possible.
- Calculate the carbon footprint of vehicles as carbon dioxide (CO_2) emissions (energy

consumption) per tonne per kilometre.

- Include in government plans and roadmaps the use of biofuel by CVs to reduce CO_2 emissions.

6. Motorcycles 2

6.1 Rescind the 13-year 'Shelf Life' Limitation for Motorcycles in China

- Rescind the mandatory 13-year 'shelf-life' of motorcycles, and adopt annual inspection of motorcycles that have been used for 13 years, to extend their service life.

6.2 Open to Motorcycles All Roads that Permit Four-wheeled Vehicles, Including Highways

- Refine further the limitations and restriction areas for motorcycles, open highways to motorcycles over 250cc, and effectively enforce national laws regarding roads and highways.
- Perform category-based administration of motorcycle plate number and driver's licence examination according to a motorcycle's displacement range, including electric motorcycles.
- Issue green licence plates and other preferential benefits for electric motorcycles as for NEVs.
- Encourage the development of motor cyclist retraining institutions to educate users on safety and environmental protection after they obtain a driver's licence.

7. Take Measures to Cultivate a Classic Car Culture, and Promulgate Relevant Identification Standards and Management Systems, to Ensure the Industry Realises Its Growth Potential

- Establish a classic car verification administration system.
- Accelerate the formulation and application of national standards for classic cars, and launch pilot programmes in areas that have a relatively more mature automotive industry, such as Jiading District in Shanghai.
- Grant limited road access and temporary licence plates for classic cars for conditional road use.
- Establish customs commodity codes and tariffs for classic cars.

Introduction to the Working Group

The Automotive Working Group is composed of European manufacturers and importers of passenger vehicles, commercial vehicles, special vehicles, motorcycles and automotive components. The working group has more than 100 members and works closely with the Auto Components Working Group. The core members of the Automotive Working Group are also members of automobile associations in the European Union (EU) and individual EU Member States. The working group actively maintains communication with government authorities on topics related to market access, the creation of technical standards, unified regulatory benchmarks, fair competition and ways to improve the overall business environment.

Recent Developments

On 29th June 2023, the Ministry of Industry and Information Technology (MIIT) and other four ministries jointly released the *Decision on Amending the Parallel Management Measures for Corporate Average Fuel Consumption of Passenger Vehicle and New Energy Vehicle (NEV) Credits*, also known as China's dual credits measures.[1] This revision has adjusted the calculation method on NEV credits, set a flexible credit trading mechanism and optimised multiple credits administration regimes.[2]

1 *Decision on Amending the Parallel Management Measures for Corporate Average Fuel Consumption of Passenger Vehicle and NEV Credits*, MIIT, Ministry of Finance (MOF), Ministry of Commerce (MOFCOM), General Administration of Customs of China (GACC) & State Administration for Market Regulation (SAMR), 29th June 2023, viewed 14th July 2023, <https://www.miit.gov.cn/zcfg/jdcjxl/art/2023/art_6facac0a0f534cfbbc65f9cf213ce33c.html>

2 *Interpretation on the Decision on Amending the Parallel Management Measures for Corporate Average Fuel Consumption of Passenger Vehicle and NEV Credits*, MIIT, 6th July 2023, viewed 14th July 2023, <https://ythxxfb.miit.gov.cn/ythzxfwpt/hlwmh/zcwj/xzxk/clsczr/art/2023/art_7d61f8c983dc4f6abd6542d0a5d6d3aa.html>

On 19th June 2023, the Ministry of Finance (MOF), the State Taxation Administration (STA) and the MIIT jointly issued the *Announcement on the Continuation and Optimisation of the Policy of Vehicle Purchase Tax Exemption for New Energy Vehicles*,[3] the fourth extension of the policy since its promulgation in 2014. The vehicle purchase tax exemption (PTE) policy will contintue to apply up to 31st December 2027. The policy has played a key role in boosting the consumption of NEVs, while advancing industrial upgrading and low-carbon development.

On 26th December 2022, the State Administration for Market Regulation (SAMR) issued the *Notice on the Launch of the Automotive Safety Sandbox Regulatory Pilot* and officially began accepting applications from enterprises to participate.[4] The sandbox regulation is an innovation for the post-market stage, allowing car manufacturers to have their new technologies and functions tested and verified on a voluntary basis.

On 14th October 2022, the SAMR released *GB/T 41871-2022 Information Security Technology Automotive Data Processing Security Requirements*,[5] which came into force on 1st May 2023. This important standard regarding data compliance in the automotive field will guide enterprises on integrating data protection in operational processes, including automotive design, production, operation and maintenance.

On 5th July 2022, the Ministry of Commerce (MOFCOM) and 16 other departments jointly issued the *Notice on Several Measures to Invigorate Automobile Circulation and Expand Automobile Consumption* in order to further stimulate the car market.[6] The notice introduced policies to support the purchase and use of NEVs, as well as measures aimed at eliminating policy bottlenecks in the circulation of used cars, such as allowing them to be sold between provinces provided emissions requirements are met, something that was not previously permitted.

Key Recommendations

1. Deliver on the Commitment to Fully Open up the Automotive Industry and Create an Open, Transparent, Non-discriminative and Predicable Investment Environment

Concern

The lack of clear guidance on the application process for vehicle manufacturing projects brings uncertainty to international automobile manufacturers when making investment decisions in China.

Assessment

Pursuant to the *Special Administrative Measures for Foreign Investment Access (Negative List) (2021 Edition)*,[7] and the *Special Administrative Measures for Foreign Investment Access in Pilot Free Trade Zones (FTZ Negative List) (2021 Edition)*,[8] as of 1st January 2022, the restrictions on passenger vehicles for foreign automotive manufacturers, in terms of ownership restrictions and the previous limit on the number of joint ventures (JV) were totally removed, thus making the market fully open. The European Chamber welcomed the move as a boost to business confidence, allowing European manufacturers to make long-term investment decisions more easily and providing the space for them to formulate more flexible and effective strategies for their overall development in China.[9]

However, since the promulgation of both negative lists, international vehicle manufacturers have still faced regulatory hurdles when trying to optimise their investments in China, including the restructuring of existing car manufacturing operations, adjusting the foreign equity ratio of existing JVs, and building new vehicle production companies. Although the authorities officially regulate

3 *Announcement on the Continuation and Optimisation of the Policy of Vehicle Purchase Tax Exemption for New Energy Vehicles*, MOF, STA & MIIT, 19th June 2023, viewed 4th July 2023, <https://www.gov.cn/zhengce/zhengceku/202306/content_6887734.htm>

4 *Notice on the Launch of the Automotive Safety Sandbox Regulatory Pilot*, SAMR, 26th December 2022, viewed 17th April 2023, <https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/zlfzs/art/2023/art_1ee3894063de4dd49c8287f8e89a1cbd.html>

5 *GB/T 41871-2022 Information Security Technology Automotive Data Processing Security Requirements*, SAMR, 14th October 2022, viewed 17th April 2023, <https://openstd.samr.gov.cn/bzgk/gb/newGbInfo?hcno=4D3C5BB193E079AD54294E5845749B8F>

6 *The Notice on Several Measures to Revitalise Auto Circulation and Expand Auto Consumption,* MOFCOM & 16 other ministries, ministries, 5th July 2022, viewed 17th April 2023, <https://www.gov.cn/zhengce/zhengceku/2022-07/07/content_5699701.htm>

7 *Special Administrative Measures for Foreign Investment Access (Negative List) (2021 Edition)*, National Development and Reform Commission (NDRC) & MOFCOM, 27th December 2021, viewed 15th April 2023, <https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202112/t20211227_1310020.html?code=&state=123>

8 *Special Administrative Measures for Foreign Investment Access in Pilot Free Trade Zones (Negative List) (2021 Edition)*, NDRC & MOFCOM, 27th December 2021, viewed 15th April 2023, <https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202112/t20211227_1310019.html?code=&state=123>

9 *European Chamber Stance on the Liberalisation of Ownership Restrictions in the Automotive Sector,* European Union Chamber of Commerce in China, 11th January 2022, viewed 13th April 2023, <https://www.europeanchamber.com.cn/en/press-releases/3414/european_chamber_stance_on_the_liberalisation_of_ownership_restrictions_in_the_automotive_sector>

investments in automotive manufacturing through the *Provisions on the Administration of Investments in the Automotive Industry*,[10] they are also regulated through a host of non-public documents and internal procedures. Many related approval requirements and processes are not clearly specified, meaning that overall policy implementation lacks transparency. This has caused great uncertainty for international automotive manufacturers when planning their investments in China.

Recommendations

- Increase the transparency of policies regulating foreign investment and administration in the automotive industry and provide an open, transparent and predictable regulatory environment.
- Increase the transparency of the automotive industry overall, setting out clear access requirements and approval processes for foreign investment in vehicle manufacturing, and provide coherent policy interpretation and guidelines to international automotive manufacturers on their prospective investments in China.
- Allow international automotive manufacturers to participate in the drafting and revision process of policies related to foreign investment approvals.

2. Amend Legislation Related to Cross-border Data Transfer and Enable Secure, Adequate and Stable Collection, Utilisation and Transfer of Automotive Data Under the Principle of Ensuring Data Security 2

Concern

Current policies related to vehicle data security administration hinder the collection and cross-border transfer of data for both research and customer service purposes.

Assessment

The three highest-level data laws pertaining to data security in China, the Cybersecurity Law, the Data Security Law and the Personal Information Protection Law, have already come into force.[11,12&13] The *Several Provisions on the Management of Automobile Data Security (Trial)* on the management of automotive data security have also been released and implemented. The *Measures of Security Assessment for Cross-border Data Transfer* and the *Measures for the Standard Contract for Cross-border Transfer of Personal Information*,[14&15] which offer more concrete guidance and implementation rules for companies' data compliance, have also been brought into force.

However, companies are struggling to understand exactly how these laws and regulations will be implemented. For example, they are not clear about how they should comply with requirements for the collection and processing of data inside and outside the cockpit, or if they are allowed to export data for different projects in separate batches.[16] There is also a need to further optimise and clarify the requirements for annual data security reports and outbound transfers of data. Furthermore, given the diversified nature of data involved in the automotive industry, defining all people-related data as "personal information" without any distinction, or classifying data irrelevant to national security as "important data" will seriously hinder companies' daily operations.[17]

Because the flow of data is the basis of a data-driven economy, it is essential to establish a practical balance between regulatory needs and innovation when formulating related regulations for the automotive industry. Data needed for automobile research and development (R&D), as well as personal information and vehicle data that does not contain sensitive information, should be allowed to flow freely, provided they do not endanger national security and have been anonymised. Immediate remote assistance from engineers outside the country is often required to analyse and solve

10 *Administrative Provisions on Automotive Industry Investment*, NDRC, 10th December 2018, viewed 17th April 2023, <http://www.gov.cn/gongbao/content/2019/content_5377111.htm>

11 Cybersecurity Law, Standing Committee of the National People's Congress (NPCSC), 7th November 2016, viewed 15th April 2023, <http://www.gov.cn/xinwen/2016-11/07/content_5129723.htm>

12 Data Security Law, NPCSC, 10th June 2021, viewed 15th April 2023, <http://www.gov.cn/xinwen/2021-06/11/content_5616919.htm>

13 Personal Information Protection Law, NPCSC, 20th August 2022, viewed 15th April 2023, <http://www.gov.cn/xinwen/2021-08/20/content_5632486.htm>

14 *Measures of Security Assessment for Cross-border Data Transfer,* Cyberspace Administration of China (CAC), 7th July 2022, viewed 17th April 2023, <http://www.gov.cn/zhengce/zhengceku/2022-07/08/content_5699851.htm>

15 *Measures for the Standard Contract for Cross-border Transfer of Personal Information,* CAC, 22nd February 2022, viewed 17th April 2023, <http://www.legaldaily.com.cn/index/content/2023-02/24/content_8825810.html>

16 See the *Information and Communication Technology Working Group Position Paper 2023/2024* for details on similar issues regarding data definition.

17 More information on cross-border data transfer can be found in the *Cybersecurity Working Group Position Paper 2023/2024.*

problems under emergency circumstances, such as car accidents; therefore a special process should be allowed where data that needs to be sent overseas to ensure vehicle and user safety is exported first and approved later.

In addition, any restrictions on the cross-border flow of vehicle identification number (VIN)[18] data—which is considered key infrastructure of the automotive industry—would limit the ability of both Chinese companies to do business overseas and foreign companies to serve the Chinese market.

The relevant Chinese authorities would therefore be well advised to actively communicate and coordinate with industry players, including international automotive companies, when formulating related policies, to ensure they are complete, scientific and implementable.

Recommendations

- Revise the *Several Provisions on the Management of Automobile Data Security (Trial)* to allow automotive companies to appropriately collect and process data inside and outside the cockpit, provided they adhere to the principle of ensuring data security and cybersecurity.
- Develop data classification standards that are coordinated among government agencies to address the diversified nature of data involved in the automotive industry.
- Allow the free flow of VIN data.
- Consult with foreign automotive companies when developing policies related to automotive data and information security.

3. Create a Predicable, Non-discriminatory and Balanced Legislative Environment that is Conducive to the Sustainable Development of NEVs 6

Concern

The lack of both transparency and equal treatment in policy implementation, combined with stricter requirements on the supply side and a lack of clarity on the demand side, creates uncertainty for NEV developers.

18 VINs are used across the entire life cycle of vehicles, spanning production, sales, after-sales services and end-of-life management.

Assessment

Policy transparency and predictability

As product decisions need to be made several years ahead of the launch of new NEV models, it is important that the government ensures transparency and early industry involvement before introducing new policies. This is required so that original equipment manufacturers (OEMs) can determine whether a NEV product will be able to fulfil new regulatory requirements, to give them the confidence to invest in and develop new models.

Decarbonisation

While China's 14th Five-year Plan provides some general guidance on peaking carbon emissions by 2030,[19] it lacks the level of specificity required by the automobile industry. Similarly, China's '1+N' policy framework for peaking carbon emissions and achieving carbon neutrality,[20&21] has no clear roadmap or concrete solutions for achieving these goals. Developing practical solutions is a challenge because policymakers often have a limited understanding of company operations in specific industries.[22] Achieving carbon neutrality in the automotive industry will therefore require close collaboration between policymakers, and upstream and downstream suppliers, in order to develop practical, implementable policies for zero-emission cars.

The push to decarbonise could be boosted by aligning international standards between China and the EU on battery recycling. At the moment, China focusses on certification methods and circulation rules, whereas the EU places more emphasis on recycling ratios and utilisation rates.

Incentives (national level)

According to the *Announcement on the Continuation*

19 *Outline of the 14th Five-year Plan for National Economic and Social Development of the People's Republic of China and the Long-term Vision for 2035,* State Council, 13th March 2021, viewed 10th April 2023, <http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm>

20 *Opinions of the Central Committee of the Communist Party of China and the State Council on the Complete and Accurate Implementation of the New Development Concept and Good Performance of Carbon Peak and Carbon Neutral Work*, Communist Party of China & State Council, 22nd September 2021, viewed 10th April 2023, <http://www.gov.cn/zhengce/2021-10/24/content_5644613.htm>

21 *The Overall Arrangement of Carbon Dioxide Peaking by 2030, interview with the head of NDRC with respect to Action Plan for Carbon Dioxide Peaking Before 2030, Xinhua*, 27th October 2021, viewed 4th May 2023, <http://www.news.cn/2021-10/26/c_1127998871.htm>

22 For more information, please refer to the report published by the European Chamber: *Carbon Neutrality: The Role of European Business in China's Race to 2060*, European Union Chamber of Commerce in China, 25th May 2022, viewed 10th June 2023, <https://www.europeanchamber.com.cn/en/publications-archive/974>

and Optimisation the Policy of Purchase Tax Exemption for NEVs,[23] PTE incentives have been extended to the end of 2027. However, the MIIT releases the technical requirements for NEVs to be eligible for PTE without prior notice or sufficient lead time. This disrupts manufacturers' production schedules for launching new NEV products, which—due to the time needed to develop them—are decided well in advance.

Charging infrastructure

As the number of NEVs on the road increases, emerging challenges to the development and rolling out of charging infrastructure need to be dealt with. Supporting policies and regulations are needed to optimise the development and promotion of convenient charging services (such as plug and charging), which rely heavily on communication and data exchange platforms between vehicles and charging stations (especially next-generation fast-charging interfaces). Currently, two major fast-charging standards are being developed that represent different technical roadmaps for OEMs. The industry expects an early harmonisation no matter which standard is eventually chosen by government.

NEV credits

Rules for dual credits after 2025 have not yet been released,[24] which may impact sustainable development of the automotive industry, as manufacturers require a stable and predictable regulatory environment to plan production schedules. Before setting rules, full consultation with the industry is necessary to avoid setting either over-aggressive goals or impractical transition periods. While the *NEV Development Plan 2021–2035* outlines a proposal to connect China's dual credits measures with its emissions trading system,[25] details on how they will be integrated are not yet in place. Clarifying the details as early as possible is necessary to give manufacturers the time they need to achieve compliance.

23 *Announcement on the Continuation and Optimisation the Policy of Purchase Tax Exemption for NEVs,* STA, MOF & MIIT, 16th June 2023, viewed 26th June 2023, <https://www.gov.cn/zhengce/zhengceku/202306/content_6887734.htm>

24 *Decision on Amending the Parallel Management Measures for Corporate Average Fuel Consumption of Passenger Vehicle and NEV Credits,* MIIT, MOF, MOFCOM, GACC & SAMR, 29th June 2023, viewed 14th July 2023, <https://www.miit.gov.cn/zcfg/jdcjxl/art/2023/art_6facac0a0f534cfbbc65f9cf213ce33c.html>

25 *NEV Development Plan 2021–2035,* SC, 20th October 2020, viewed 15th June 2023, <https://www.gov.cn/zhengce/content/2020-11/02/content_5556716.htm>

Recommendations

Policy transparency and predictability

- Ensure international automotive manufacturers can participate in the drafting and revision of new policies and regulations.
- Provide lead time of at least four to five years for automotive manufacturers to plan and react to released policies and planning documents.

Decarbonisation

- Provide ample lead time when designing the decarbonisation roadmap for the automotive industry.
- Calculate separately the emissions of upstream and downstream suppliers to provide additional incentives to decarbonise.
- Allow reimbursement or other incentives for proven decarbonisation initiatives.
- Harmonise battery recycling standards between China and the EU.

Incentives (national level)

- Maintain the current policy and existing technical requirements for granting PTE to mitigate the impact of any changes on the NEV market.

Charging infrastructure

- Harmonise standards with in-use pillars and new generation pillars.
- Harmonise the standards of high-power charging, including fast-charging and super-fast charging.

NEV credits

- Consult with the industry in advance to avoid setting policy goals or management measures related to dual credits beyond 2025 that are too aggressive, and to ensure enterprises have enough lead time to make plans.
- Release the plan for dual credits and carbon emissions as early as possible so that enterprises have enough time to prepare for compliance.

4. Strengthen the Revision and Compilation of Laws and Regulations on Intelligent Connected Vehicles (ICVs) in a way that Supports Innovation and Facilitates Further Development of the Industry 4

Concern

Current ICV management policies do not give enough weight to innovation-driven development of the industry, which impacts both OEMs' R&D investment plans and the development and application of technology.

Assessment

China has promising autonomous driving technologies built on years of growth. However, China's Road Traffic Safety Law (2021 Revision)[26] has not yet legalised autonomous driving on public roads, which seriously impacts companies' R&D investment and plans as well as the development and application of ICV technologies.

Although China has introduced a series of policies in this area, such as the *Opinions on Enhancing the Administration for Market Access of ICV Manufacturers and Products*,[27] safety remains the sole priority. While this is extremely important, industry players also require more support from the government in terms of encouraging and promoting the application of advanced driver-assistance systems. For example, while mainstream vehicle manufacturers are exploring the relatively mature Level 2 'hands-off' autonomy, unclear policies limit the technology's promotion and application.

In November 2022, the MIIT and the Ministry of Public Security (MPS) jointly issued the *Notice on the Market Access and Commercial Operation Pilot Programmes of ICVs (Draft for Comments)*,[28] which is expected to pilot ICVs equipped with Level 3 or higher-level autonomy.[29] Such pilot programmes are vital for the development of ICVs and autonomous vehicles. The industry looks forward to their progress and expects clarification around related standards and regulatory requirements as soon as possible. In the meantime, road tests and pilot operations across the country are still necessary for R&D and technology verification, so support from the authorities should still be maintained in this area.

China's industrial policies are encouraging cellular vehicle-to-everything (C-V2X) communication technologies, an area based on precise processing of spatial location information. However, while the existing standard for navigable electronic maps requires the encryption and deflection of spatial location information,[30] it lacks a specific encryption standard or method that blocks the use of high-definition maps in V2X systems, meaning the V2X industry cannot make meaningful progress in this area.

The development of ICVs requires endless innovation involving multiple industries, including automobile production, communication and artificial intelligence, among others. Major challenges in this regard lie in removing administrative obstacles among ministries and harmonising the development of different ICV policies.

Recommendations

- Improve the legislation and standards, and gradually remove institutional obstacles for the development of ICVs.
- Ensure consistency, non-discrimination and appropriateness of market access laws, regulatory systems and technical requirements related to ICVs.
- Legalise autonomous vehicles in relevant legislation.
- Support the innovation of assisted driving technology of ICVs, encourage the application of new technologies provided safety is ensured and allow 'hands-off' autonomy.
- Introduce standards on maps used for ICVs as soon as possible to support the development of the V2X industry.
- Strengthen coordination of ICV management among government agencies.

5. Commercial Vehicles (CVs)

5.1 Recognise Optimised Vehicle Specifications in the Regulation of CVs 4

Concern

Regulators do not recognise the specific nature of CVs, which hampers industry development.

Assessment

CVs are essential for efficient transportation of goods and people, and provide vital services. Although they have wheels and an engine, CVs are not the same as passenger vehicles, and the way they are regulated has more implications for society and the environment.

26 Law of the People's Republic of China on Road Traffic Safety (2021 Revision), NPCSC, 29th April 2021, viewed 17th April 2023, <http://jtgl.beijing.gov.cn/jgj/jgxx/flfg/fl/205308/index.html>

27 *The Opinions on Enhancing the Administration for Market Access of ICV Manufacturers and Products*, MIIT, 30th July 2021, viewed 17th April 2023, <http://www.gov.cn/zhengce/zhengceku/2021-08/12/content_5630912.htm>

28 *The Notice on the Market Access and Commercial Operation Pilot Programmes of ICV (Draft for Comments),* MIIT, 2nd November 2022, viewed 17th April 2023, <https://wap.miit.gov.cn/gzcy/yjzj/art/2022/art_4ae46de7edee4a72adb611b3c67b9d6e.html>

29 *GB/T 40429-2021 Taxonomy of Driving Automation for Vehicles,* SAMR & Standardisation Administration of China (SAC), 20th August 2021, viewed 26th June 2023, <https://openstd.samr.gov.cn/bzgk/gb/newGbInfo?hcno=4754CB1B7AD798F288C52D916BFECA34>

30 *GB 20263-2006 Navigable Electronic Map - Basic Requirements of Security Processing Technology*, SAC, 15th March 2006, viewed 10th April 2023 <http://openstd.samr.gov.cn/bzgk/gb/newGbInfo?hcno=517545EC0EE59615E0CA8D7EA56B153B>

CVs are often specialised, tailor-made vehicles that provide optimal services and maximise revenue, and include refuse collectors, fire engines, tank vehicles and concrete pumps. Although CVs encompass a wider variety of variants per vehicle type than passenger vehicles, China's vehicle homologation and registration system makes no distinction between them. The homologation and certification system is also overly complicated, slow and costly, which limits the possibility of introducing CVs fully optimised to meet customer needs.

In some cases, China's national recommended standards (GB/T) and industrial standards are quoted in homologation or technical regulations of CV where a GB/T in practice plays the role of a national mandatory standard, though it was not reviewed under the World Trade Organization (WTO) process for mandatory standards.

In addition, new standards have been introduced at a rapid pace, disrupting the stock management of CVs. The grace period for implementing new standards—such as China V, China Via and China Vib—was too short, resulting in immense costs and complications for CV manufacturers.[31&32]

Recommendations

- Involve automotive companies early in the process of drafting and updating regulations for CVs.
- Unify market access requirements and implementation procedures, and simplify the registration process for the issuance of transport licences.
- Implement only one integrated national standard covering CVs.
- Publish recommended standards (GB/T) and industry standards under the WTO publication system as mandatory standards if they are quoted in technical regulations.
- Grant sufficient lead time for manufacturers to adapt to new standards.

5.2 Allow Longer Vehicle Combinations to Minimise the Carbon Footprint of CVs and Increase Transport Efficiency 4

Concern

Current standards and regulations limit the types of vehicle and trailer combinations that can be used, which has resulted in overcapacity of inefficient vehicles and suboptimal emissions reduction of CVs.

Assessment

Regulators, OEMs and operators need to work together to reduce the negative environmental impact of transportation.

The lowest-hanging fruit for reducing carbon dioxide (CO_2) emissions per tonne per kilometre would be to use larger transport units, or longer vehicle combinations, which would allow for fewer engines transporting more goods. In some countries, vehicle combinations with up to 12 axles with heavier loads are allowed, which further reduces the CO_2 emissions of transportation. However, the use of long vehicle and trailer combinations is currently limited in China through standards GB 1589-2016 and GB 7258-2017.[33]

To further reduce CO_2 emissions in CVs, the use of biogas and other forms of biofuels from sludge or food waste should be adopted.

Recommendations

- Implement proper road classification and allow for different lengths and gross combination weight, depending on road and bridge conditions.
- Amend standard GB 1589-2016 to allow for more than six axles and long vehicle combinations as soon as possible.
- Calculate the carbon footprint of vehicles as CO_2 emissions (energy consumption) per tonne per kilometre.
- Include in government plans and roadmaps the use of biofuel by CVs to reduce CO_2 emissions.

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31 *China Light Duty Emissions*, TransportPolicy.net, 20th April 2020, viewed 15th April 2023, <https://www.transportpolicy.net/standard/china-light-duty-emissions/>

32 *China V transition period extended, parallel import car price increases*, Sina Automotive, 17th May 2020, viewed 25th June 2023, <https://auto.sina.com.cn/zz/jm/2020-05-17/detail-iircuyvi3510056.shtml>

33 *GB 7258-2017 Technical Specifications for Safety of Power-driven Vehicles Operating on Roads*, SAMR & SAC, 29th September 2017, viewed 10th April 2023, <http://openstd.samr.gov.cn/bzgk/gb/newGbInfo?hcno=06A0C376A0CA7B14E93106194C99730F>

6. Motorcycles 2

6.1 Rescind the 13-year ‘Shelf Life’ Limitation for Motorcycles in China

Concern

The mandatory imposition of a 13-year ‘shelf life’ on motorcycles does not reflect the potential lifetime of vehicles manufactured to a high standard, and hinders foreign companies from further investment.

Assessment

In China, the service life of newly bought motorcycles is limited to 13 years from the day of registration. Both imported and locally produced motorcycles must abide by the regulation without any distinction between engine cylinder categories.

At present, China’s product type certification tests include emissions durability projects that follow the world’s most stringent standards of pollutant control; as well as electronic fuel injection technology and the application of emissions after-treatment equipment in all imported and domestic motorcycles, which is the same as that used in cars. This is a technological leap of several generations compared to when the mandatory 13-year ‘shelf-life’ rule was first established in 2013.[34]

Given that motorcycles have become for many consumers a lifestyle more than a transportation solution, it will benefit both domestic manufacturers and consumers, while boosting consumption, if the 13-year mandatory ‘shelf-life’ limitation is lifted.

Recommendations

- Rescind the mandatory 13-year ‘shelf-life’ of motorcycles, and adopt annual inspection of motorcycles that have been used for 13 years, to extend their service life.

6.2 Open to Motorcycles All Roads that Permit Four-wheeled Vehicles, Including Highways

Concern

Banning motorcycles from highways or other areas designated by local governments hinders both the consumption and mobility of motorcycles.

Assessment

Even though motorcycles are permitted on highways under national law, some provinces have implemented local restrictions due to safety concerns, despite the construction quality and maintenance of both highways and general roads being at a good level. Signage, protection measures, surveillance cameras and rapid police responses are also already in place. Safety, as well as environmental protection, concerns could be further addressed by retraining motorcyclists after they receive their licence.

Now that improved technologies are being applied in motorcycle production—with large-displacement models of 250cc output volume and above that are equipped with antilock braking systems gradually becoming the mainstream—these restrictions are no longer appropriate. Instead, administration requirements should tailored to correspond with different displacement ranges. Another reason to review and abolish restrictions on motorcycle use is the shift in consumption patterns, from commuting to lifestyle purposes, such as sport and travel. Removing restrictions will boost consumption of motorcycles and associated equipment, and help growth in other service industries.

In recent years, the production and sales of electric motorcycles have grown steadily in China.[35] The advantages of electric motorcycles include zero emissions, saving parking space and easing urban congestion. Given that most areas with motorcycle restrictions are in central urban zones, it is recommended that green licence plates for motorcycles be implemented, such as those already adopted for NEVs. This would facilitate both the regulation of motorcycles and the travel of residents.

Recommendations

- Refine further the limitations and restriction areas for motorcycles, open highways to motorcycles over 250cc, and effectively enforce national laws regarding roads and highways.
- Perform category-based administration of motorcycle plate numbers and driver’s licence examinations according to a motorcycle’s displacement range, including electric motorcycles.

34 *Regulations for Motor Vehicle Mandatory Scrapping Standard*, MOFCOM, NDRC, MPS & Ministry of Environmental Protection, 27th December 2012, viewed 26th June 2023, <http://www.mofcom.gov.cn/article/swfg/swfgbh/201303/20130300062947.shtml>

35 *21.42 Million Motorcycle Sold in China in 2022, Sina.com*, 31st January 2023, viewed 17th April 2023, <https://finance.sina.com.cn/wm/2023-01-31/doc-imyeancp0159099.shtml#>

- Issue green licence plates and other preferential benefits for electric motorcycles as for NEVs.
- Encourage the development of motor cyclist retraining institutions to educate users on safety and environmental protection after they obtain a driver's licence.

7. Take Measures to Cultivate a Classic Car Culture and Promulgate Relevant Verification Standards and Administrative Frameworks, to Ensure the Industry Realises Its Growth Potential

Concern

The current lack of verification standards and relevant policies for classic cars is hampering the growth of the industry in China.

Assessment

According to the definition adopted by the classic car industry worldwide, a classic car usually refers to a road vehicle of a certain age that has been preserved in its original historical state, driven by mechanical power, not typically used as a daily mode of transport, and with technical and cultural value.[36] This definition has been accepted and applied by classic car regulatory bodies and enthusiasts in multiple countries and regions.[37&38]

Research reveals that many countries and regions have mature verification and administration systems for classic cars in place, which provide the framework for classic car registration and inspections, and also regulate on-road traffic limits, daily maintenance, trade auctions or exhibitions, and displays, rally competitions and sales of peripheral products.[39] This has given rise to new industries while creating new employment opportunities and sources of taxation, generating massive economic and social value.[40]

36 *Protecting Motoring Heritage*, International Federation of Historic Vehicles (FIVA), viewed 4th May 2023, <https://fiva.org/en/fiva-home/>

37 *FIVA Legislation Survey 2009*, FIVA, 25th April 2009, viewed 4th May 2023, <https://fiva.org/wp-content/uploads/2022/04/FIVA-legislation-survey-2009.pdf>

38 *Article 3 of Directive 2014/45/EU of the European Parliament and of the Council*, European Parliament, 3rd April 2014, viewed 4th May 2023, <https://www.legislation.gov.uk/eudr/2014/45/article/3>

39 *Drafting Instruments of the Specification of Classic Car Evaluation (Draft for comments)*, Standards Drafting Team, 27th January 2022, viewed 4th May 2023, <http://www.ttbz.org.cn/upload/file/20220127/6377887966643469805923450.pdf>

40 Classic car events such as the Mille Miglia 1,000-mile race in Italy, the Goodwood Festival of Speed in the United Kingdom, the Bodensee Classic Rally in Germany and the Pebble Beach Concours d'Elegance in California have attracted enthusiasts from all over the world, generating significant consumption and promoting a range of supporting industries.

It is therefore positive that the *Notice on Several Measures to Invigorate Automobile Circulation and Expand Automobile Consumption*, published in 2022, refers to studying and formulating "verification criteria for traditional classic cars, to promote development of traditional classic car-related industries such as exhibitions, collection, trading, racing, as well as automobile culture".[41] Furthermore, under the proposal of the leading office for the construction of a world-class automotive industry centre in Jiading District in Shanghai, the group standard *T/CAAMTB 79-2022 Evaluation Standards for Classic Cars* was released in August 2022,[42] while higher-level national recommended standards are also being formulated.

As administration of and support for the classic car industry requires the involvement of multiple government departments, a unified set of measures needs to be formulated. Specifically, a verification administration system should be established, in which government administrative bodies take the lead in creating a verification framework for classic cars, and enforcement authorities are responsible for vehicle management, while third-party professional organisations provide professional verifying opinions. According to the condition of vehicles, the main purpose for collecting them, and usage scenarios and frequencies, vehicles can be classified into either 'stationary display' or 'road-worthy'. For 'road-worthy' classic cars, special policies need to be developed that cover safety and emission inspections, and road access, as well as other aspects such as dealing with requests for temporary licence plates. On the basis of optimised verification standards for classic cars, relevant customs commodity codes and tariffs should also be created, to ease the import of foreign classic cars.

Recommendations

- Establish a classic car verification administration system.
- Accelerate the formulation and application of national standards for classic cars, and launch pilot programmes in areas that have a relatively more mature automotive industry, such as Jiading District in Shanghai.

41 *The Notice on Several Measures to Revitalise Auto Circulation and Expand Auto Consumption*, MOFCOM & 16 other ministries, 5th July 2022, viewed 17th April 2023, <http://www.gov.cn/zhengce/zhengceku/2022-07/07/content_5699701.htm>

42 *CAAM Publish Second Batch of Group Standards*, China Association of Automobile Manufacturers (CAAM), 17th August 2022, viewed 17th April 2023, <http://www.ttbz.org.cn/Home/Show/42700>

- Grant limited road access and temporary licence plates for classic cars for conditional road use.
- Establish customs commodity codes and tariffs for classic cars.

Abbreviations

CAC	Cyberspace Administration of China
CAAM	China Association of Automotive Manufacturers
CO_2	Carbon Dioxide
CV	Commercial Vehicle
C-V2X	Cellular Vehicle-to-everything
EU	European Union
FIVA	International Federation of Historic Vehicles
GB	*Guobiao* (China national standard)
ICV	Intelligent and Connected Vehicles
JV	Joint Venture
MIIT	Ministry of Industry and Information Technology
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
MPS	Ministry of Public Security
NDRC	National Development and Reform Commission
NEV	New Energy Vehicle
NPCSC	Standing Committee of the National People's Congress
OEM	Original Equipment Manufacturer
PTE	Purchase Tax Exemption
R&D	Research and Development
SAC	Standardisation Administration of China
SAMR	State Administration for Market Regulation
STA	State Taxation Administration
VIN	Vehicle Identification Number
WTO	World Trade Organization

Auto Components Working Group

Key Recommendations

1. **Mandate Snow Tyre Usage During the Cold Season in Low-Temperature Areas to Improve Road Safety and Reduce the Societal Costs of Accidents** 3
    - Promulgate in a timely manner China's national standards for snow tyres to regulate snow tyre products and their use in the Chinese market.
    - Formulate snow tyre legislation to mandate their usage in China's low-temperature areas to improve road safety and reduce the negative impact on society.

2. **Accelerate the Introduction and Implementation of Relevant Data Standards and Promote Collaborative Data Sharing Across the Industry to Develop the Intelligent Connected Vehicle Industry** 2
    - Standardise and harmonise vehicle data formats nationwide, and coordinate with all industry stakeholders to actively develop and unify vehicle data standards.
    - Give full play to role of the market and conduct pilot projects for data exchange.
    - Establish a sound, independent third-party authorisation mechanism for data service providers.

3. **Adopt a Unified Standard Reference Test Tyre to Maintain Consistency with Global Automobile and Tyre Industry Standards**
    - Accept International Standardisation Organisation testing methods in Chinese tyre testing standards and regulations, while maintaining the use of the American Society for Testing Materials' (ASTM) Standard Reference Test Tyre (SRTT).
    - Align China Metrology Association SRTT with ASTM-SRTT and unify performance standards as much as possible while maintaining stability to reduce the testing burden of tyre manufacturers.

Introduction to the Working Group

The Auto Components Working Group was created in 2000, the year the European Chamber was established. It consists of around 100 international companies involved in manufacturing auto components, machine tools for producing auto components and automotive assembly lines. Members also import and distribute auto components and provide after-sales services in China. This working group has fostered ties with various organisations and governmental bodies in Europe and China.

Recent Developments

Market Developments

In 2022, China's auto vehicle production and sales continued the growth trend of the previous year; over 27 million vehicles—including both passenger and commercial vehicles—were produced, and 26.9 million vehicles were sold, representing year-on-year (y-o-y) increases of 3.4 per cent and 2.1 per cent, respectively. However, in the first quarter of 2023, automobile production and sales saw a y-o-y decrease of 4.3 per cent and 6.7 per cent respectively, reaching 6.2 million units and 6.1 million units respectively.

Time Period	Vehicle Production and y-o-y Growth	Vehicle Sales and y-o-y Growth
2022	27.0 million units, 3.4 per cent	26.9 million units, 2.1 per cent
2023 1st Quarter	6.21 million units, -4.3 per cent	6.07 million units, -6.7 per cent

Passenger vehicle production and sales in 2022 reached 23.8 million units and 23.7 million units, with respective y-o-y increases of 11.2 per cent and 9.5 per cent. However, in the first quarter of 2023, passenger vehicle production fell by 4.3 per cent and sales by 7.3 per cent.

Time Period	Passenger Vehicle Production and y-o-y Growth	Passenger Vehicle Sales and y-o-y Growth
2022	23.8 million units, 11.2 per cent	23.7 million units, 9.5 per cent
2023 1st Quarter	5.26 million units, -4.3 per cent	5.13 million units, -7.3 per cent

Contrary to the overall industry growth trend, commercial vehicle production and sales both decreased in 2022 by 31.9 per cent and 31.2 per cent, respectively, to 3.2 million and 3.3 million. This decline continued in early 2023, though at a slower rate; production was down 3.9 per cent y-o-y, and sales by 2.9 per cent.

Time Period	Commercial Vehicle Production and y-o-y Growth	Commercial Vehicle Sale and y-o-y Growth
2022	3.2 million units, -31.9 per cent	3.3 million units, -31.2 per cent
2023 1st Quarter	0.95 million units, -3.9 per cent	0.94 million units, -2.9 per cent

China's zero-COVID policy deeply impacted the automotive industry and supply chains in 2022. While production and sales of automobiles grew steadily in the first two months of 2022, the lockdowns in Jilin and Shanghai from March to May disrupted the automotive industry supply chain, leading to a sharp decline in both production and sales. From June 2022 onwards, production and sales rapidly recovered with a high y-o-y growth rate due to purchase tax exemptions, manufacturer promotions, and a low baseline for the same period in the previous year caused by semiconductor chip shortages. In the fourth quarter of 2022, the industry was again subject to pandemic-related disruptions, leading to reduced consumer demand and slower growth in production and sales, the effects of which spilled over into the first quarter of 2023.[1&2]

Regarding the auto component sector specifically, the re-emergence of pandemic prevention policies and rising raw material prices were the two factors that had a major negative influence. The resurgence of the pandemic and associated control measures led to a decline in consumer purchases and an overall decrease in vehicle sales, which in turn affected auto component suppliers. The pandemic also caused a sharp increase in labour costs for component suppliers, which significantly impacted overall production costs and profit levels. While raw material supplies stabilised in the first two months of 2022, the sector's recovery was once again hampered by global supply chain interruptions caused by rising fuel prices and the Russian invasion of Ukraine. An increase in raw material prices further raised production costs for auto components manufacturers, and eating into their profit margins. As a result, auto component suppliers encountered significant pressure throughout 2022 and into early 2023.[3]

Policy Development

Encouraging Automobile Purchases

The central government introduced a series of policies aimed at mitigating the impact of the pandemic and accelerating the post-zero-COVID economic recovery, including measures targeting the automobile industry specifically. In May 2022, the State Council issued the *Series of Policies and Measures to Stabilise the Economy*, which included recommendations for local governments to refrain from implementing new restrictions on car purchases, and for areas that had already implemented such restrictions to gradually increase the number of car increment metrics[4] and relax restrictions for car buyers.[5]

1 *2022 Automobile Industry Development Conditions*, National Development and Reform Commission, 12th January 2023, viewed 19th April 2023, <https://www.ndrc.gov.cn/fggz/cyfz/zcyfz/202301/t20230131_1348147_ext.html>
2 *2023 First Quarter Automobile Industry Development Conditions*, China Association of Automobile Manufacturers, 12th April 2023, viewed 19th April 2023, <http://www.caam.org.cn/chn/5/cate_39/con_5235761.html>
3 Mogge, Felix & Daniel, Florian, *Global Automotive Supplier Study 2022*, Roland Berger, 2nd December 2022, viewed 19th April 2023, <https://www.rolandberger.com/zh/Insights/Publications/Global-Automotive-Supplier-Study-2022.html>
4 The annual allowance of licences for new cars in a city in China.
5 *A Series of Policies and Measures to Stabilise the Economy*, State Council, 9th May 2022, viewed 19th April 2023, <http://www.gov.cn/zhengce/content/2022-05/31/content_5693159.htm>

In July 2022, the Ministry of Commerce and 17 other departments issued the *Initiatives to Revitalise Automobile Circulation and Boost Automobile Purchases*. These initiatives present 12 methods to enhance automobile circulation and boost automobile purchases, with the aim of stabilising the economic outlook and improving people's livelihoods in six aspects, including encouraging the purchase and use of new energy vehicles, expediting the development of the used car market, encouraging automobile upgrading, and improving the facilities and infrastructure for automobiles.[6]

The working group believes that these policies are positive developments that will help stimulate the domestic car market, boost the recovery of the industry and ease operational pressure on automotive component suppliers.

Automotive Data

On 14th October 2022, the State Administration for Market Regulation (SAMR) and the National Standardisation Management Committee issued *GB/T 41871-2022 Information Security Technology: Security Requirements for Automotive Data Processing*.[7] This standard requires original equipment manufacturers (OEMs) to exercise complete control over data collection and transmission from all components in the vehicles they produce, and to control and oversee the behaviour of component suppliers processing automobile data. However, as it can be challenging for auto component suppliers to obtain the data needed to efficiently improve their products' performance and services, this standard has increased their compliance burden (see Key Recommendation 2 for more details). The relative departments should take into account the actual circumstances of vehicle manufacturers and automotive components suppliers when implementing the standard to avoid imposing unnecessary compliance burdens.

6 *Initiatives to Revitalize Automobile Circulation and Boost Automobile Purchases*, State Council, 5th July 2022, viewed 19th April 2023, <http://www.gov.cn/zhengce/zhengceku/2022-07/07/content_5699701.htm>

7 *GB/T 41871-2022 Information Security Technology: Security Requirements for Automotive Data Processing*, Standardisation Administration of China, 14th October 2022, viewed 19th April 2023, <https://openstd.samr.gov.cn/bzgk/gb/newGbInfo?hcno=4D3C5BB193E079AD54294E5845749B8F>

Key Recommendations

1. Mandate Snow Tyre Usage During the Cold Season in Low-temperature Areas to Improve Road Safety and Reduce Societal Costs of Accidents 3

Concern

There are no regulations to mandate the usage of winter tyres in complex road conditions of snow and slush in China's low-temperature regions, which significantly increases tyre-related crashes and fatalities.

Assessment

Complex snowy and icy road conditions are common in the low-temperature regions[8] of China. The tread compound[9] of normal tyres tends to stiffen and lose traction and grip in low temperatures, which makes accelerating, cornering and braking less reliable and riskier on snowy and icy roads. Therefore, the promotion of snow tyres and the formulation of legislation and standards to mandate snow tyre usage is essential to ensure driving safety under snowy road conditions.[10]

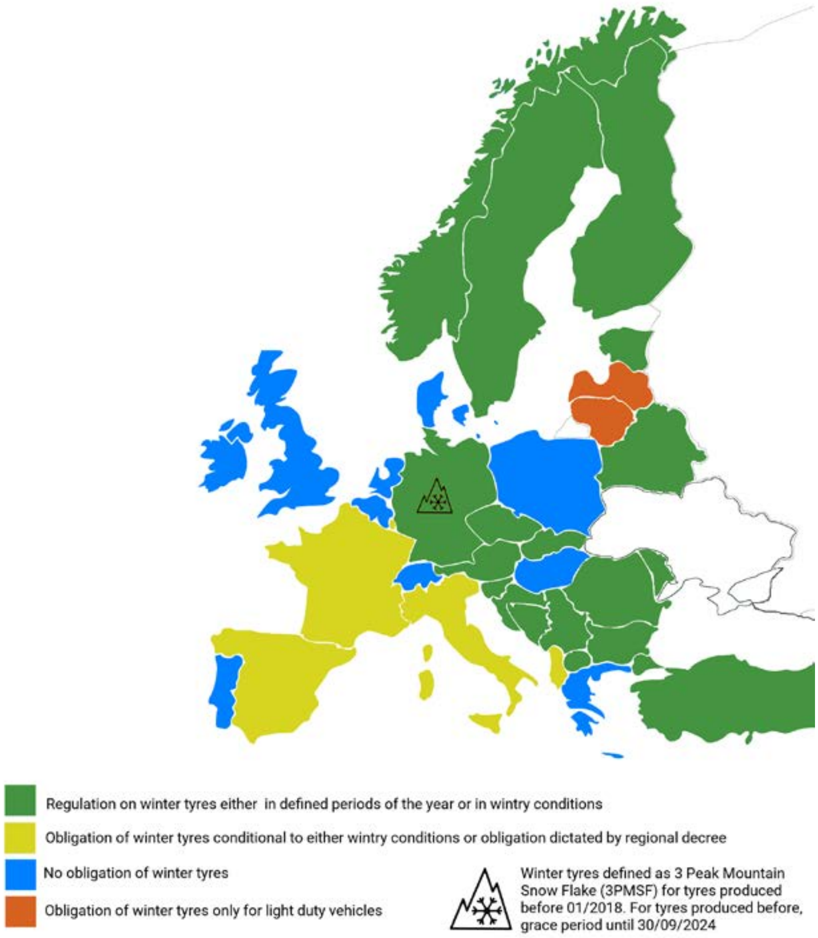
Snow tyres are specially developed for use during winter, with a soft rubber compound and tread pattern designed to deliver excellent grip and driving performances in complex winter road conditions such as snow and ice, with significantly improved braking distance. Their use is crucial to avoid sideslips and ensure driving safety. According to data from the China In-depth Accident Study, conducted by the China Automotive Technology and Research Centre, the use of winter tyres reduced the number of traffic accidents caused by tyres by half and the number of fatal accidents by more than double in the areas surveyed between 2019 and the third quarter of 2022.[11]

8 China's low-temperature areas refer to Heilongjiang, Jilin and Liaoning provinces, the northern part of Xinjiang and Inner Mongolia Autonomous Region, among others.

9 Tread compound is the outermost layer of the tyre is in contact with the road surface and has a pattern printed on the surface.

10 The term "winter tyres" is commonly used in the commercial market, which generally includes three types of tyres with different performances. The following is a general description of the three types, as no regulation currently provides technical definitions: Slush tyres: No additional performance definitions or requirements, only markings such as "M+S, M/S" on the tyre sidewall; Winter tyres: Added performance definitions and requirements. In addition to the "M+S, M/S" markings on the tyre sidewall, they must also be marked with the snowflake symbol ""; Ice tyres: Additional performance definitions and requirements. In addition to the "M+S, M/S" and the snowflake symbol, the tyre sidewall must also be marked with the icy road symbol "".

11 This data from the China In-Depth Accident Study database was supplied by a working group member company.



Winter Tyre Regulations in European Countries[12]

Road Condition	Tyre Category	Number of Accidents	Accident Ratio
Snow/ice	Snow tyre	62	1 (benchmark)
	Normal tyre	85	1.371

Road Condition	Tyre Category	Fatal Accidents	Fatal Ratio
Snow/ice	Snow tyre	11	1 (benchmark)
	Normal tyre	21	1.91

Currently, snow tyres are already mandatory[13] during winter in many European countries (including Austria, Finland, Sweden and Norway) to ensure driving safety. China should introduce a similar policy in its affected low-temperature regions to improve road safety and reduce tyre-related crashes and fatalities.

12 *Tyre Regulations*, European Tyre and Rubber Manufacturers' Association, 2019, viewed 16th April 2023, <https://www.etrma.org/key-topics/tyre-regulations/>

13 The 'mandatory' notice can vary, depending on the country involved, and the map is updated regularly.

Recommendations

- Promulgate in a timely manner China's national standards for snow tyres to regulate snow tyre products and their use in the Chinese market.
- Formulate snow tyre legislation to mandate their usage in China's low-temperature areas to improve road safety and reduce the negative impact on society.

2. Accelerate the Introduction and Implementation of Relevant Data Standards and Promote Collaborative Data Sharing Across the Industry to Develop the Intelligent Connected Vehicle (ICV) Industry

2

Concern

Current data-related policies and standards in China's

ICV[14] industry lack clarity, making it difficult for auto components and after-sales maintenance companies to obtain vehicle operation data effectively.

Assessment

The automotive industry is characterised by a long industrial chain and diverse businesses. It involves a wide range of stakeholders in fields including OEMs, auto components manufacturers, vehicle dealerships, after-sales services and the circulation of used vehicles. Monopolistic agreements and the abuse of market dominance are common issues in the industry, with vertical monopolistic agreements being particularly complex.[15&16]

As increasing numbers of ICV enter the market, approximately 10 terabytes of data per vehicle per day will be generated.[17] Management of this data will have a significant impact on the future development of transportation and the whole industry value chain:

1. Data exchange and collaboration between the intelligent traffic system, road systems and ICVs will improve automated driving capabilities, road access efficiency and passenger safety.
2. Automotive and automotive components manufacturers can analyse data to provide optimised services and better user experiences.
3. Third-party service providers can use the data to provide maintenance services.

However, as vehicle driving data is an important resource for the development of ICVs, and its main collectors and processors are OEMs, its collection is prone to creating barriers to competition and can lead to data monopolies. Without clear regulations, relevant data will only be under the control of OEMs, and auto components manufacturers and after-sales service providers may not be able to obtain the relevant data that will allow them to improve their products and services, thereby affecting the healthy development of the industry and fair competition.

Therefore, it is crucial to ensure the automotive data is standardised and transferable to allow automotive manufacturers, auto component manufacturers and third-party maintenance companies to develop and provide differentiated services. Standardised data will also prevent data barriers and monopolies, improve consumer experiences and protect user rights.

The European Union (EU) is gradually establishing a data regulatory system for the automotive industry, and has enacted the following legislation on data flow and sharing:

EU Data Act

The EU officially passed the Data Act in April 2022,[18] which contains important provisions concerning the right to use and share data, including:

1. Users and third parties have the right to access and utilise data; that is, product (such as automotive) users have the right to access, use or share their product usage data with third parties.
2. Unfair data-sharing contracts are prohibited.

EU Regulation on the Free Flow of Non-personal Data

The EU officially passed the *Regulation on the Free Flow of Non-personal Data* in November 2018,[19] to ensure the liquidity of electronic data, excluding personal data, within the EU. The regulation aims to: (1) increase the cross-border liquidity of non-personal data in the Single Market; (2) ensure that jurisdictional agencies' power to request access to data for regulatory purposes is not compromised; and (3) ensure that professional data storage users or other data processing services can easily change service providers and migrate data without overburdening service providers or distorting the market.

EU Directive on Open Data and the Re-use of Public Sector Information

The EU passed the Directive on Open Data and the Re-use of Public Sector Information in 2019,[20] which aims to remove major barriers to data re-use in the internal market, promote the re-use of public sector data across

14 ICVs refer to a new generation of vehicles that use modern communication and network technologies to enable intelligent exchange and sharing of information between the vehicle and its surrounding environment.

15 *Interpretation of Antitrust Guidelines for the Automobile Industry,* SAMR, 30th October 30, 2020, viewed 24th April, 2023, <https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/fldj/art/2023/art_c349cba8055045c197efcef5d84e8182.html>

16 *Manufacturing Trends: Vertical Integration,* Swiss Re, 2nd March 2023, viewed 14th July 2023, <https://corporatesolutions.swissre.com/insights/knowledge/manufacturing-trends-vertical-integration.html>

17 *Research Report on Intelligent Connected Vehicle Data Security,* CERT, 20th June, 2021, viewed 24th April, 2023, <https://www.sohu.com/a/473091463_118021>

18 *Data Act,* European Commission, 22nd March 2022, viewed 14th April 2023, <https://digital-strategy.ec.europa.eu/en/policies/data-act>

19 *EU Regulations on the Free Flow of Non-personal Data*, EUR-Lex, 14th November 2018, viewed 14th April 2023, <https://eur-lex.europa.eu/eli/reg/2018/1807/oj>

20 *EU Directive on Open Data and the Re-use of Public Sector Information,* EUR-Lex, 20th June 2019, viewed 14th April 2023, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L1024&qid=1649934357210>

the EU, and promote the development of data-intensive technologies.

The Chinese Government should issue similar policies and regulations for the Chinese market to promote collaborative data-sharing across the automotive industry chain. While China has enacted several data protection-related legislation, there is limited progress in data flow, sharing, utilisation and standardisation, especially in the automotive sector. A balance between guaranteeing data security and improving data flow is needed if the industry is to develop.

Therefore, vehicle data formats should be standardised and unified nationwide. This requires coordination with relevant parties such as industrial associations, individual carmakers, auto components manufacturers, and third-party maintenance companies to actively develop standards and harmonise vehicle data standards so that they will be of most relevance to the industry. As inconsistent data formats can lead to inefficient data flows and more data security issues, standardisation is a prerequisite for facilitating data flow between businesses and platforms.

It is important to give full play to role of the market, and to conduct pilot projects on data exchange. Utilising market mechanisms can motivate entities to participate in data exchange and improve data resource allocation efficiency. Pilot projects should be carried out on aspects such as data ownership registration, value assessment, buyer-seller connection and profit allocation in eligible areas. Data exchange institutions can be leveraged to encourage communication and exchanges between data suppliers and requesters, boost market demand and fully explore business scenarios. The authorities should also support businesses in conducting data exchange and compiling typical use scenarios, and create operational guidelines for data exchange and case studies.

Considering the important role of data openness and sharing throughout the automotive industry, China should also establish a sound, independent third-party authorisation mechanism, along with certification requirements and a grading system for data service providers. Relevant principles and frameworks should be established at the national level based on data type shared between different business entities, focussing on elements such as transparency, creating common values, respecting mutual interests of OEMs and auto components suppliers, and fair competition. China should also create a proper legal and regulatory system to guarantee data security and facilitate its circulation. This will help guarantee the future high-quality development of the ICV industry.

Recommendations

- Standardise and harmonise vehicle data formats nationwide, and coordinate with all industry stakeholders to actively develop and unify vehicle data standards.
- Give full play to role of the market and conduct pilot projects for data exchange.
- Establish a sound, independent third-party authorisation mechanism for data service providers.

3. Adopt a Unified Standard Reference Test Tyre that will Maintain Consistency with Global Automobile and Tyre Industry Standards

Concern

China's plan to use an independently produced Standard Reference Test Tyre (SRTT) instead of the existing global standard will lead to market access barriers and unnecessary additional costs for auto component manufacturers.

Assessment

The SRTT was designed in the 1980s by the American Society for Testing and Materials (ASTM) to compare the performance of tyres used in different types of vehicles. The SRTT is now used in various International Standardisation Organisation (ISO) standards and regulatory tests worldwide. China is also developing a SRTT group standard, the China Metrology Association Standard Reference Test Tyre (CMA-SRTT)—which will be used for future tyre regulations in China. Although China has developed its own SRTT, it should ensure consistency with global standards to avoid creating a trade barrier between the Chinese and international markets. The working group appreciates the intention of the relevant agencies to further improve China's standard system. However, considering the actual situation of the industry, two SRTTs with different market performances will increase the compliance burden for businesses and hinder the free flow of trade.

SRTT are specialised test tyres that can be used to evaluate the braking and traction of tyres on wet and icy roads, and grip performance, as well as the roughness and sound absorption coefficient of test sites. Thus, different SRTT will lead to different test results for the same tyre,[21] and make it necessary to conduct the same test twice. As all tyre companies (including Chinese brands sold domestically and exported) face challenges when attempting to expand globally, differing SRTT tests will greatly increase tyre-makers' research and development costs.

Additionally, tyre sidewall markings should reflect SRTT performance indicators, for example, the mountain/snowflake symbol () for winter tyres. While tyres that meet ISO standards for the SRTT test for winter tyres can be labelled with the mountain/snowflake symbol, if the tyres do not meet CMA-SRTT standards for winter tyres, any such markings must be removed for the Chinese market. This may require companies to differentiate their products for the Chinese market, which hinders internationalisation.

Therefore, it is recommended that China adopt ISO testing methods and maintain the use of the ASTM-SRTT in domestic tyre testing standards and regulations to unify performance standards as much as possible while maintaining stability. This will reduce the testing burden on tyre manufacturers, which will in turn optimise the business environment, eliminate trade barriers and ensure consistency with global standards, ultimately benefitting businesses operating in China.

Recommendations

- Adopt ISO testing methods in Chinese tyre testing standards and regulations, and maintain the use of the ASTM-SRTT.
- Align the CMA-SRTT with the ASTM-SRTT and unify performance standards as much as possible while maintaining stability to reduce the testing burden on tyre manufacturers.

Abbreviations

ASTM	American Society for Testing Material
CMA	China Metrology Association
EU	European Union
ICV	Intelligent Connected Vehicle
ISO	International Standardisation Organisation
OEM	Original Equipment Manufacturer
SAMR	State Administration for Market Regulation
SRTT	Standard Reference Testing Tyre
y-o-y	Year-on-year

21 According to member companies' limited experiments, a 7 per cent discrepancy was found in wet traction between ASTM-SRTT and CMA-SRTT tyres for passenger cars at 15°C. This performance difference varies with temperature, ranging from 2 to 12 per cent. The limited available data also shows a difference of between 3 and 15 per cent for SRTT tyres on trucks.

Cosmetics Working Group

Key Recommendations

1. Ensure a Smooth Transition Period with Clear Implementing Guidelines for the Cosmetics Supervision and Administration Regulation Supplementary Legislation 5

- Establish an efficient supervision system based on risk management, with companies bearing the responsibility for product quality and safety.
- Provide sufficient transition periods for changes that will have a significant influence on the industry and prepare flexible policies for grace periods on a case-by-case basis, to ensure a smooth and stable transition.
- Collect issues raised during the implementation of new regulations and launch necessary policy interpretations that are pertinent to the implementation and release of the regulations.

2. Encourage Safety Supervision in a Scientific Way to Boost Innovation in the Cosmetics Industry

2.1 Raw Material Safety Information Submission and Management 2

- Engage cosmetics manufacturers and their raw material suppliers in discussions on technical guidelines drafting with the authorities to ensure a consistent standard is used by the industry.
- Allow registrants and notifiers to keep on file the raw material safety information of cosmetics registered before the release of technical guidelines.
- Optimise the raw material reporting code platform by adding new functions, such as modification, addition and deletion of information.

2.2 Alternatives to Animal Testing 17

- Exempt enterprises from animal testing during registration for products with anti-hair loss, spot removal, whitening and sun protection functions, provided a full safety assessment is conducted.
- Establish a research group on alternatives to animal testing.
- Formulate innovative, non-test assessment methods and detailed implementation guidelines that meet international standards.
- Phase out animal testing in special cases when the requirements for cosmetics registration are met.

2.3 Scientific Tools to Mitigate the Data Gap of Full Safety Evaluations

- Establish a safety assessment expert group comprised of enterprises and experts from the National Institutes for Food and Drug Control.
- Formulate detailed implementation guidelines for innovative, non-test assessment methods such as read-across and quantitative structure-activity relationship (QSAR) models, and resolve the problems encountered by enterprises during the full safety assessment process.
- Establish a new database including modern assessment techniques such as threshold of toxicological concern, read-across and QSAR to tackle the insufficient toxicological data for raw materials or different capacity levels of data application.

2.4 Scientific and Sound Adverse Effects Monitoring Rules 3

- Require the reporting of adverse reactions only when serious and socially significant adverse reactions from the use of products occur.

Section Three: Goods

- Develop and promulgate standards for assessing adverse effects caused by cosmetics, using the EU's *Guidelines for Reporting Serious Adverse Reactions in Cosmetics* as a reference.

2.5 Feasible Regulatory Supervision Model and Pathway for Innovative Cosmetics Products 4

- Use the experiences and outcomes of personalised service pilot projects to develop formal regulations and expand them nationally to benefit a broader audience.
- Provide a clear definition and scope of "cosmetics that must be used in conjunction with devices" and refine the related detailed management requirements.
- Develop administrative standards with reference to different circumstances and risk control points related to product quality and safety.
- Adopt the mechanism employed by other countries and regions of including assessed raw materials in the list of raw materials used.
- Implement a pre-registration consultation system for new raw materials.

3. Ensure the Smooth Implementation of the Provisions on the Management of Cosmetics Registration and Notification Dossiers

3.1 Transparent and Unified Evaluation Standards and Guidelines 3

- Formulate detailed, transparent and consistent criteria, as well as guidelines, for the evaluation of cosmetics, to allow manufacturers to compile registration dossiers.
- Conduct investigations and surveys prior to introducing new or controversial evaluation requirements, and publicly notify companies well in advance of such review requirements being implemented.

3.2 Improving Communication Between Government and Enterprises 3

- Establish an official training and troubleshooting mechanism for periodic registration and notification requirements.
- Establish a face-to-face discussion mechanism with review agencies to provide timely feedback on common issues and provide suggestions to the companies during the registration review process.

4. Improve the Management of Efficacy Claims and Labelling

4.1 Administration of Efficacy Claim Evaluations 3

- Extend the application scope of the guiding principle of equivalent evaluations to all product efficacies, not only multi-colour cosmetics products.
- Accept an applicant's rationale as to why minor differences in formulas do not affect efficacy, and allow for slight adjustments of pigments, essences and antiseptics.

4.2 Administration of Labelling 3

- Issue implementation guidelines for the *Administrative Measures of Cosmetics Labelling* that both meet regulatory requirements and do not adversely impact company operations or lead to wasted resources.
- Issue a series of supporting policies, such as the use of electronic labels, to resolve the difficulties related to labelling small-sized products.
- Allow the Chinese label to reflect selected efficacy claims within the scope of the *Classification Catalogue of Efficacy Claims*.
- Permit any information that is required to be identified by the laws and regulations of the region of origin to be either noted on, or covered by, the Chinese label.
- Allow enterprises to adjust any label content that does not involve product efficacy and safety without requiring the label to be changed.

Introduction to the Working Group

The Cosmetics Working Group consists of more than 70 members, including a large number of internationally well-known cosmetics brands, with a diverse range of business models. Most members are industry leaders and have established research and development (R&D), and production facilities, in China. The cosmetics industry has acted also as a catalyst for other related industries, such as fine chemicals, packaging, logistics and advertising. The purpose of the Cosmetics Working Group is to:

- present the interests of European cosmetics companies and facilitate information exchanges among members, professional associations and regulatory bodies;
- promote the healthy and sustainable development of China's cosmetics industry and contribute to the formation of an efficient, fair and transparent regulatory environment; and
- ensure consumer safety.

European cosmetics companies possess cutting-edge technologies and extensive experience in quality management and safety assessment. A fully open China market, which allows both competition and cooperation between Chinese and European cosmetics companies, will ensure that the domestic market becomes stronger, and provide Chinese consumers access to a variety of new and advanced products.

Recent Developments

According to China's National Bureau of Statistics (NBS), in 2022 the total retail sales of cosmetics in the Chinese market experienced a decrease of 4.5 per cent year-on-year, to Chinese yuan (CNY) 393.6 billion.[1] The main reasons for the decline were China's stringent COVID-19 containment measures and global supply chain disruptions, coupled with the gradual promulgation of additional industry regulations and stricter management. According to the General Administration of Customs (GACC),[2] China's imports of beauty cosmetics and toiletries in the first quarter of 2023 decreased eight per cent year-on-year.

The *Cosmetics Supervision and Administration Regulation* (CSAR) came into effect on 1st January 2021 and was followed by more than 20 supporting documents. In 2022, the National Medical Product Administration (NMPA) published more than 10 supporting regulations and explanations related to the manufacturing and operations of cosmetics, adverse reaction monitoring and online business operations. These regulations are aimed at improving companies' quality management systems, encouraging increased investments in R&D, and enhancing the overall level of quality and safety assurance in China's cosmetics industry.

The Cosmetics Working Group appreciates the inclusive approach of regulatory authorities to the legislative process, whereby the industry is able to offer its opinions. The working group is open to playing a cooperative role in facilitating field visits and research that objectively assess the actual impact of new requirements on R&D, production and operations. In line with the best practices of mature, international markets, the Chinese regulatory authorities should minimise the impact of new regulations on the launch of new products by ensuring a reasonable grace period. This can help to ensure the high-quality development of the cosmetics industry and actively create a good business environment, while promoting smooth implementation of new regulations.

Key Recommendations

1. Ensure a Smooth Transition Period with Clear Implementing Guidelines for the CSAR Supplementary Legislation 5

Concern

The CSAR supplementary regulations contain requirements that have a short lead-time and lack clear guidance as to how they will be enforced.

Assessment

The promulgation of the CSAR marks significant progress in administrative streamlining and decentralisation of authority.[3] It adopts a risk-based classification management system, which is conducive to innovation and upgrading R&D operations. The CSAR also encompasses a registrant and notifier system, aimed at improving the compliance level for the entry threshold

1 *Total Retail Sales of Consumer Goods in December*, NBS, 18th January 2023, viewed 10th June 2023, <http://www.stats.gov.cn/english/PressRelease/202301/t20230118_1892301.html>

2 *China's Total Export and Import Values*, GACC, March 2023, 18th April 2023, viewed 20th April 2023, <http://www.customs.gov.cn/customs/302249/zfxxgk/2799825/302274/302277/302276/4966289/index.html>

3 *CSAR*, State Council, 29th June 2020, viewed 20th April 2023, <http://www.gov.cn/zhengce/content/2020-06/29/content_5522593.htm>

of cosmetics manufacturing and operations as a whole. However, detailed supporting regulations are needed if all these systems are to be effectively implemented.

The CSAR significantly also alters the industry definition of cosmetic and its scope, the oversight and administration of products with special efficacies and ingredients, and labelling requirements. This will result in changes to the supervisory framework, which will have a long-term impact on the industry.

Consideration should therefore be given to the potential effects that these new regulations may have, and the principal differences between the respective laws and regulations in China and Europe. Policies that prevent short-term industry fluctuations are needed so that the regulations be can implemented as intended, to the benefit of companies, consumers and the industry as a whole. Detailed introductions and explanations are essential for the successful implementation of new regulations, to help the industry fully understand how to comply in a consistent way.

Recommendations

- Establish an efficient supervision system based on risk management, with companies bearing the responsibility for product quality and safety.
- Provide sufficient transition periods for changes that will have a significant influence on the industry and prepare flexible policies for grace periods on a case-by-case basis, to ensure a smooth and stable transition.
- Collect issues raised during the implementation of new regulations and launch necessary policy interpretations that are pertinent to the implementation and release of the regulations.

2. Encourage Safety Supervision in a Scientific Way to Boost Innovation in the Cosmetics Industry

2.1 Raw Material Safety Information Submission and Management 2

Concern

Discrepancies between the composition of raw materials and in-market raw material safety information in cosmetic formulae are raising compliance risks.

Assessment

According to the A*nnouncement of the National Medical Product Administration on Further Optimising Measures for the Management of Cosmetic Raw Material Safety Information (Announcement)*,[4] registrants and notifiers should review and evaluate the authenticity and completeness of the reporting code and raw material safety information provided by the raw material supplier. If there are concerns over the authenticity of the information provided by the supplier, the raw material should not be used; if there are issues with the completeness of the information, applicants (i.e., the companies) may collect, complete and submit additional raw material safety information documentation themselves, explaining the issues with the raw material reporting code. The transition periods for the implementation of policies related to the submission of raw material safety information have been extended, which helps alleviate the burden on enterprises and implements reform measures to delegate power, streamline administration and optimise government services.

The results of an internal member survey conducted by the Cosmetics Working Group show that the combined raw material information reported by raw material suppliers is often different from that provided by cosmetics companies during registration. This is due to the lack of official technical guidelines, as well as differing interpretations of raw material compositions and impurities between raw material suppliers and downstream cosmetics companies, among other reasons. These differences pose compliance risks (such as the description of composition percentages) for cosmetics companies and hinders their operations in China. Therefore, it is vital to involve both suppliers and finished product companies when drafting the guidelines for filing information on raw material safety. Likewise, standardised technical guidelines for raw material composition should be developed in collaboration with industry experts, taking into account their relevant technical opinions and suggestions.

In addition, no updates or modifications can be made to the raw material reporting code information once it has been submitted by the raw material supplier. If there

4 *Announcement of the National Medical Product Administration on Further Optimising Measures for the Management of Cosmetic Raw Material Safety Information ([2023] No. 34)*, NMPA, 27th March 2023, viewed 20th April 2023, <https://www.nmpa.gov.cn/directory/web/nmpa/xxgk/ggtg/qtggtg/jmhzhptg/20230327145218196.html>

are changes or updates to the relevant information, it can only be modified by undergoing the registration process again. This can easily cause confusion in the management of reporting codes and exacerbate compliance issues related to the submission of inconsistent information.

Recommendations

- Engage cosmetics manufacturers and their raw material suppliers in discussions on technical guidelines drafting with the authorities to ensure a consistent standard is used by the industry.
- Allow registrants and notifiers to keep on file the raw material safety information of cosmetics registered before the release of technical guidelines.
- Optimise the raw material reporting code platform by adding new functions, such as modification, addition and deletion of information.

2.2 Alternatives to Animal Testing 17

Concern

The mandatory requirement for animal tests for special cosmetics runs counter to global practices and limits the number of imported special cosmetics products that can enter the Chinese market.

Assessment

Most major economies and regions have either prohibited or are in the process of setting up a schedule to ban animal testing for market approval of cosmetics. China is the only country that mandatorily requires animal testing for the registration of certain cosmetics. However, the *Provisions for the Management of Cosmetics Registration and Notification Dossiers*, which came into force on 1st May 2021,[5] exempt companies that produce general cosmetics (including imported general cosmetics) which meet the required conditions from submitting results for toxicological testing on animals. This is another important milestone for China in the gradual process of replacing mandatory animal testing. However, for special cosmetics, cosmetics that use new ingredients within the three-year monitoring period, and cosmetics for use by infants and children, as well as new ingredients in the Chinese market, several compulsory toxicological animal tests are still required for registration.

At present, following the '3R' principle (replace, reduce and refine), advanced alternatives to animal testing—such as in-vitro testing and computer modelling—have been widely adopted across the world. These methods can reduce the requirements for animal testing while ensuring the safety of special cosmetics. This has positive implications both for animal welfare and for controlling the cost of testing for enterprises.

In accordance with Chinese regulations, special anti-hair loss cosmetics have undergone a "human trial safety assessment", and special cosmetics with anti-freckle, whitening and sun protection functions have undergone a "human skin patch test" during the registration process. In addition, under the *Technical Guidelines for Cosmetics Products Safety Assessment (Technical Guidelines)* full safety assessments of cosmetics will be required from 1st May 2024,[6] after which toxicological assessments will be conducted on each ingredient used in the formula, including local and systemic toxicity assessments, further ensuring the safety of the product.

Recommendations

- Exempt enterprises from animal testing during registration for products with anti-hair loss, spot removal, whitening and sun protection functions, provided a full safety assessment is conducted.
- Establish a research group on alternatives to animal testing.
- Formulate innovative, non-test assessment methods and detailed implementation guidelines that meet international standards.
- Phase out animal testing in special cases when the requirements for cosmetics registration are met.

2.3 Scientific Tools to Mitigate the Data Gap of Full Safety Evaluations

Concern

The lack of detailed guidance on carrying out safety assessments on certain ingredients with limited data causes operational challenges for companies.

5 *Announcement of the National Medical Product Administration on the Implementation of the Provisions for the Management of Cosmetics Registration and Notification Dossiers ([2021] No. 35),* NMPA, 5th March 2021, viewed 20th April 2023, <https://www.nmpa.gov.cn/xxgk/ggtg/qtggtg/20210305172050192.html>

6 *Announcement of the National Medical Product Administration on the Technical Guideline on Safety Assessment on Cosmetics ([2021] No. 51),* NMPA, 8th April 2021, viewed 29th June 2023, <https://www.nmpa.gov.cn/xxgk/ggtg/qtggtg/20210409160436155.html>

Assessment

Since 1st January 2022, cosmetics registrants and notifiers have been obliged to conduct cosmetics safety assessments and submit product safety assessment dossiers in accordance with the requirements of the *Technical Guidelines* prior to either registering specific cosmetic products or filing for general cosmetics products.

Some raw materials (such as plant extracts) that lack toxicological data are still required to undergo evaluation, but there is a lack of official guidance on how this can be carried out. The *Technical Guidelines* adopt the widely used weight-of-evidence principle and modern safety assessment methods and tools, including non-test assessment methods such as the threshold of toxicological concern (TTC), read-across chemical grouping and quantitative structure-activity relationship (QSAR). However, the Chinese authorities have not issued detailed rules on the use of read-across,[7] leaving companies at a loss. At the same time, Chinese cosmetics regulatory authorities, technical review experts and many cosmetics enterprises are not yet familiar with these innovative assessment methods, and it is technically beyond the capabilities of most enterprises to conduct their own comprehensive safety assessments. Adding to the complexity of this situation, the regulatory authorities have neither the technology nor experience to effectively review assessment reports submitted by the few enterprises that can conduct these assessments.

Recommendations

- Establish a safety assessment expert group comprised of enterprises and experts from the National Institutes for Food and Drug Control.
- Formulate detailed implementation guidelines for innovative, non-test assessment methods such as read-across and GSAR models, and resolve the problems encountered by enterprises during the full safety assessment process.
- Establish a new database including modern assessment techniques such as TTC, read-across and QSAR to tackle the insufficient toxicological data for raw materials or different capacity levels of data application.

2.4 Scientific and Sound Adverse Effects Monitoring Rules 3

Concern

The requirement for comprehensive reports that contain data on all potential adverse reactions, regardless of the level of risk, could result in low-value data for authorities to assess and waste administrative resources.

Assessment

The causes of skin lesions are complex and diverse, and include environmental factors, individual sensitivity, past medical history, diet, medication and lifestyle habits. Cosmetics are only one of the factors that can cause such adverse reactions. In general, such reactions are spontaneously reported by consumers, with the assessment of the causal relationship between adverse reactions mainly based on a consumer's own description and photographs. This is neither objective nor specific enough a basis for determining the cause. As these types of reports may be numerous, requiring their submission to the authorities will result in a waste of limited administrative resources without any significant benefit to adverse reaction prevention or warnings. As serious adverse reactions related to cosmetics are usually identified by proper medical diagnosis, registrants, notifiers and regulatory authorities should instead focus on reporting, tracing and investigating the possible causes of such adverse reactions and take appropriate risk control measures.

In addition, there is currently no standard for the evaluation of adverse reactions in cosmetics, with medical agencies, enterprises or platforms all employing different approaches, resulting in reports that vary in quality. The *Guidelines for Reporting Serious Adverse Reactions in Cosmetics*, published by the European Union (EU) in July 2013,[8] detail the methods and decision trees for evaluating adverse reactions. They are now widely used in the evaluation of adverse reactions in cosmetics after years of validation, which makes it an important reference document for China to create its own guidelines.

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7 Read-across is when the already available data of a data-rich substance (the source) is used for a data-poor substance (the target) that is considered similar enough to the source substance to use the same data as the basis for a safety assessment. Berggren, Elisabet, *Read-Across with Computational and In vitro Data*, DG Joint Research Centre, European Commission, viewed 11th May 2022, <https://www.toxexpo.com/events/shm/fda/docs/4%20SOT%20FDA%20 Berggren%20Read-Across.pdf>

8 *Guidelines for Reporting Serious Adverse Reactions in Cosmetics*, European Commission, July 2013, viewed 20th April 2023, <https://ec.europa.eu/docsroom/documents/34783>

Recommendations

- Require the reporting of adverse reactions only when serious and socially significant adverse reactions from the use of products occur.
- Develop and promulgate standards for assessing adverse effects caused by cosmetics, using the EU's *Guidelines for Reporting Serious Adverse Reactions in Cosmetics* as a reference.

2.5 Feasible Regulatory Supervision Model and Pathway for Innovative Cosmetics Products

4

Concern

The lack of standards and implementation guidance on innovative products and ingredients runs counter to the CSAR's principle of encouraging innovation and impedes the development of the cosmetics industry.

Assessment

Around the world, many different types of cosmetics used in conjunction with devices are being developed, to improve both the overall experience and the outcome of their use. However, in the *Provisions for the Management of Cosmetics Registration and Notification Dossier*,[9] the definition of this category as "cosmetics that must be used in conjunction with devices" is too vague. In addition, the associated management measures and standards are also not specific enough to guide industry players in implementing requirements in an innovative manner while ensuring compliance.

The *CSAR* specifies that—in addition to special cosmetics that have hair colouring, perm, anti-hair loss, sun protection, anti-freckle and whitening functions—a category for innovative products that have new efficacy has been created.[10] However, to date, there have been no mechanisms or guidelines on how to register such products, which prevents them from entering the market.

As of June 2023, more than midway through the one-year pilot period for personalised cosmetic services,[11] it is still unclear if related regulatory policies will follow the pilot, or whether the outcomes will be transformed into formal regulations and policies to benefit enterprises in more regions.

In terms of innovative raw material, substances that are not listed in the NMPA's *Catalogue of Used Cosmetic Raw Materials (Catalogue)*[12] can only be adopted through new raw material registration, which has significant market entry barriers. Although such substances have been passed by the EU's Scientific Committee on Consumer Safety and widely used in the EU market, which indicates their safety of use, they cannot be included in the Catalogue as the animal testing required by China for new material registration is banned in the EU. The lack of alternatives to animal testing for inclusion in the *Catalogue* therefore limits Chinese consumers' access to innovative EU substances and products. Moreover, the technical details of new raw materials can only be discussed with officials during registration evaluation and post-notification supervision, resulting in low efficiency in the exchange of technical information.

Recommendations

- Use the experiences and outcomes of personalised service pilot projects to develop formal regulations and expand them nationally to benefit a broader audience.
- Provide a clear definition and scope of "cosmetics that must be used in conjunction with devices" and refine the related detailed management requirements.
- Develop administrative standards with reference to different circumstances and risk control points related to product quality and safety.
- Adopt the mechanism employed by other countries and regions of including assessed raw materials in the list of raw materials used.
- Implement a pre-registration consultation system for new raw materials.

9 *Announcement of the National Medical Product Administration on the Issuance of Provisions for the Management of Cosmetics Registration and Notification Dossiers,* State Council, 26th February 2021, viewed 20th April 2023, <http://www.gov.cn/zhengce/zhengceku/2021-03/04/content_5590288.htm>

10 *CSAR*, State Council, 29th June 2020, viewed 20th April 2023, <http://www.gov.cn/zhengce/content/2020-06/29/content_5522593.htm>

11 Beijing, Shanghai, Zhejiang, Shandong and Guangdong have been listed as pilot zones for personalised cosmetic services. *Notice of the Comprehensive Department of the National Medical Product Administration on Pilot Work of Personalised Cosmetic Services*, NMPA, 7th November 2022, viewed on 20th April 2023, <http://www.gov.cn/zhengce/zhengceku/2022-11/11/content_5726121.htm>

12 *Announcement of the National Medical Product Administration on Issuing the Catalogue of Used Raw Materials,* NMPA, 27th April 2021, viewed 29th June 2023, <https://www.nmpa.gov.cn/xxgk/ggtg/qtggtg/20210430162707173.html>

3. Ensure the Smooth Implementation of the Provisions on the Management of Cosmetics Registration and Notification Dossiers

3.1 Transparent and Unified Evaluation Standards and Guidelines 3

Concern

Due to the lack of specific review guidelines, cosmetics companies have received a great deal of unpredictable and inconsistent evaluation feedback during product registration and notification, leading to both delays to marketing plans and operational challenges.

Assessment

The issue of inconsistent evaluation standards among reviewers in different regions has a long history. The latest version of the *Provisions for the Management of Cosmetics Registration and Notification Dossiers* includes many new requirements,[13] including on raw material information reporting, product implementation standards, sample product labels and evidence for the use of raw materials with special functions. It is therefore necessary for the authorities to provide a clear interpretation, with guidelines for various registration documentations, as well as a unified national evaluation standard. The official interpretation of the requirements and the implementation process should be communicated to enterprises in advance of implementation, to enable them to comply efficiently. Such interpretation would also allow local regulators to implement consistent review standards, thereby avoiding the waste of corporate resources.

Recommendations

- Formulate detailed, transparent and consistent criteria, as well as guidelines, for the evaluation of cosmetics, to allow manufacturers to compile registration dossiers.
- Conduct investigations and surveys prior to introducing new or controversial evaluation requirements, and publicly notify companies well in advance of such review requirements being implemented.

13 *Announcement of the National Medical Product Administration on the Issuance of Provisions for the Management of Cosmetics Registration and Notification Dossiers,* State Council, 26th February 2021, viewed 20th April 2023, <http://www.gov.cn/zhengce/zhengceku/2021-03/04/content_5590288.htm>

3.2 Improving Communication Between Government and Enterprises 3

Concern

The current communication channels between regulators and industry regarding implementation of the new requirements under the *Provisions for the Management of Cosmetics Registration and Notification Dossiers* are inadequate.

Assessment

Following recent changes that have been made to laws and regulations regarding the registration and filing of cosmetics products, it is important to maintain consistency in policy interpretation during communication and negotiations between enterprises and the authorities. This is essential to ensure smooth registration and notification of cosmetics under the new requirements and to reduce any negative impact on product launch plans. However, companies have reported a lack of clarity over implementation of the new regulations, and have received numerous evaluation opinions that are unclear, repetitive and/or inconsistent. As the channels of communication between regulators and industry are currently limited, cosmetic enterprises have not been able to solve these issues. Sharing a list of frequently-asked-questions on the NMPA website relating to the registration process would help to provide official interpretation of the regulations and act as guidance for companies.

Recommendations

- Establish an official training and troubleshooting mechanism for periodic registration and notification requirements.
- Establish a face-to-face discussion mechanism with review agencies to provide timely feedback on common issues and provide suggestions to the companies during the registration review process.

4. Improve the Management of Efficacy Claims and Labelling

4.1 Administration of Efficacy Claim Evaluations 3

Concern

Strict limitations on the application of the read-across method for efficacy evaluations of similar products is inconsistent with global norms and results in the need for low-value repetitive tests, which increases companies' innovation costs and puts pressure on their limited testing resources.

Assessment

The read-across evaluation method of similar formulas is an important basic principle and a practical tool in the R&D of cosmetic products. It is widely used within the cosmetics industry internationally in efficacy and safety evaluation. This method can be used for test formulas and marketing formulas at the R&D stage. In order to meet the needs of consumers for varied products, manufacturers often develop multiple flavours or colours of a product based on the same basic formula. In addition, when the EU changes regulations on cosmetics preservatives, manufacturers may also need to slightly adjust the formulas of preservatives accordingly to be compliant. However, it is important to understand that such slight changes in essences, pigments and preservatives will not affect the efficacy of a product. If all products need to be tested for efficacy, as required under the *Guidelines for Cosmetics Efficacy Claim Evaluation*,[14] it will not only be inconsistent with current industry practices, but will also put great pressure on the already limited inspection and testing resources, resulting in an increase of testing costs and delays to product launches. Moreover, unnecessary repeated tests will not bring any additional benefits to consumers. On the contrary, the increase in costs will eventually be passed on to them.

Recommendations

- Extend the application scope of the guiding principle of equivalent evaluations to all product efficacies, not only multi-colour cosmetics products.
- Accept an applicant's rationale as to why minor differences in formulas do not affect efficacy, and allow for slight adjustments of pigments, essences and antiseptics.

4.2 Administration of Labelling

Concern

Inconsistent and unpredictable interpretation of the *Administrative Measures for Cosmetics Labelling* will result in significant operational challenges, especially for manufacturers that import products into China.

Assessment

New requirements have been added to the *Administrative Measures for Cosmetics Labelling*,[15] obliging manufacturers to include additional detail in Chinese on the labelling for products bound for the Chinese market. This includes the full list of ingredients, instructions for use, the shelf-life after opening, and any safety- or efficacy-related words. The *Administrative Measures for Cosmetics Labelling* also require the Chinese name of the product and the date of expiry to be printed on the primary inner packaging. However, there are many minor and practical difficulties that prevent companies from implementing these requirements, including the following:

1. The printing area is limited, not only on small-sized products (<15 grams/15 millilitres), but also on many normal-sized products.
2. The Chinese name of a product, in particular that of special cosmetics, can only be printed after being approved by the NMPA, hence this requirement will prolong the production cycle and delay the time to market.
3. Imported products to be sold in China cannot use uniform packaging designed for the global market, which means cosmetics would need to be relabelled after import, which will increase product quality risks and trade costs.

Although companies could increase their labelling space by expanding the outer box, cosmetics packaging still needs to comply with the mandatory national standard *GB 23350 Restrictions on Excessive Packaging Requirements for Food and Cosmetics*, which places restrictions on the product to packaging size ratio.[16] Therefore, if relying only on traditional forms of labelling, the problem of insufficient labelling space cannot be fully resolved for all products.

It is a global trend that electronic labels have been applied in other industries like pharmaceuticals and medical devices. The prevalence of smart devices and the technological maturity of digital information

14 *Announcement of the National Medical Product Administration on the Implementation of the Guidelines for Cosmetics Efficacy Claim Evaluation ([2021] No. 50)*, NMPA, 9th April 2021, viewed 26th May 2023, <https://www.nmpa.gov.cn/xxgk/ggtg/qtggtg/20210409160321110.html>

15 *Announcement of the National Medical Product Administration on the Issuance and Implementation of the Administrative Measures of Cosmetics Labelling ([2021] No. 77)*, NMPA, 3rd June 2021, viewed 20th April 2023, <https://www.nmpa.gov.cn/xxgk/ggtg/qtggtg/20210603171933181.html >

16 *Restrictions on Excessive Packaging Requirements for Food and Cosmetics*, Ministry of Industry and Information Technology, 5th March 2020, viewed 18th April 2023, <http://www.gdcdc.cn/upfile/2020/03/20200306164707_441.pdf>

systems therefore seems to provide an opportunity to expand the application of digital labelling technology to other consumer goods. Electronic labelling would meet supervisors' information acquisition requirements and allow traceability of consumer use, while also helping with anti-counterfeiting efforts. Furthermore, it would reduce the amount of packaging material waste, benefitting the environment.

In addition, the *Administrative Measures of Cosmetics Labelling* stipulate that the product safety and efficacy claims on the Chinese label of an imported product should correspond to the relevant contents of the original label. It is important to note that other countries and regions have not put forward similar requirements for imported cosmetics precisely because regulations and management of cosmetics vary widely across different jurisdictions. This provision is equivalent to a disguised mandatory requirement for the labels of foreign original packaging of imported cosmetics to meet the requirements of Chinese regulations. If there are discrepancies, manufacturers will have to design labels only for export to China, which will seriously impact their global supply chains and logistics.

Therefore, the interpretation of label management methods will be of great significance for helping the industry understand regulations and unifying the understanding of regulatory authorities at all levels. The Cosmetics Working Group has submitted to the regulatory authorities comments and suggestions related to labelling, and expects a practical interpretation that will avoid enterprises from having to repeatedly modify packaging, thereby wasting resources.

Recommendations

- Issue implementation guidelines for the *Administrative Measures of Cosmetics Labelling* that both meet regulatory requirements and do not adversely impact company operations or lead to wasted resources.
- Issue a series of supporting policies, such as the use of electronic labels, to resolve the difficulties related to labelling small-sized products.
- Allow the Chinese label to reflect selected efficacy claims within the scope of the *Classification Catalogue of Efficacy Claims*.
- Permit any information that is required to be identified by the laws and regulations of the region of origin to be either noted on, or covered by, the Chinese label.
- Allow enterprises to adjust any label content that does not involve product efficacy and safety without requiring the label to be changed.

Abbreviations

CNY	Chinese Yuan
CSAR	Cosmetics Supervision and Administration Regulation
EU	European Union
GACC	General Administration of Customs of China
NBS	National Bureau of Statistics
NMPA	National Medical Product Administration
QSAR	Quantitative Structure-activity Relationship
R&D	Research and Development
TTC	Threshold of Toxicological Concern

Energy Working Group

Key Recommendations

1. Accelerate the Low-carbon Energy Transition with a Balance of Energy Security, Climate Awareness and Economic Efficiency

1.1 Promote Gas Development and Speed Up the Shift From Coal to Gas in China's Energy Mix for Short to Mid-term Energy Security 6

- Emphasise the role of gas in achieving carbon neutrality in China's energy policies.
- Accelerate reform of the gas infrastructure regulatory regime:
  - Open investment to all entities, including private companies and foreign-invested enterprises (FIEs).
  - Ensure open access to all upstream producers and downstream end-users.
  - Clarify the conditions of third-party access for natural gas (NG) infrastructure.
  - Optimise the terms of terminal use agreements (short-, mid- and long-term) in tariffs, conditions of capacity attributions and prioritisation, and penalties.
  - Adopt non-discriminatory rules for the sale of infrastructure capacity.
- Encourage provincial pipeline companies to be open to both PipeChina and FIEs.
- Encourage PipeChina to be open to foreign equity.
- Improve downstream competition by giving smaller companies fair and open access to supply and allowing city gas companies and industrial companies to source directly from gas producers.
- Encourage the building of gas storage systems, particularly underground storage facilities, that are open to all domestic and international investors.
- Develop underground gas storage in a market system with an independent commercial performance index.
- Clarify market regulation to foster FIEs' direct investments in NG infrastructure to improve security of supply and reduce import needs.
- Encourage liquified NG bunkering by setting up national standards in line with international standards.
- Foster market transparency through early establishment of regulations on information-sharing and monitoring mechanisms.
- Switch from gas production based on coal gasification to biomethane and biogas production from biomasses.
- Incentivise the deployment of methane abatement measures and technologies along the gas value chain.

2. Renewable Energy (RE) and Power System

2.1 Ensure European Companies Have Equal Access in the RE Sector and Provide a Minimum Quota per Province 3

- Mandate provincial governments to diversify the ownership of RE projects, by giving five to

Section Three: Goods

10 per cent of project development rights to foreign players or Sino-foreign joint ventures, and clearly define foreign investment as entities that are originally headquartered abroad, rather than foreign subsidiaries of domestic companies.
- Allow more flexibility on the change of shareholding of RE assets before commercial operation date, and refine relevant regulations to differentiate between speculation and legitimate market activities.
- Enhance the transparency of RE asset allocation schemes, and accelerate the integration of RE into the grid.
- Encourage provinces to implement competitive tendering processes that measure developers' global records instead of limiting only to records within China, while also considering improvements to environmental governance.
- Accelerate investment for transportation and development between the new megabases of RE production and industrial consumption bases in the East and South coastal regions.
- Set up clear rules for distributed solar projects to be valorised by certificates.
- Improve synergy among existing policies and mechanisms, such as green electricity certificates, provincial renewables portfolio standards and the carbon market, and provide clear and consistent policy expectations to boost foreign investment confidence.

2.2 Facilitate Corporate Green Energy Procurement by Developing New High-quality Power Infrastructure and Leveraging Smart Digital Solutions 3

- Enact overall planning and enhance coordination among multiple stakeholders along the value chain, to set up a new power infrastructure that can integrate with traditional facilities to make the large-scale utilisation of renewables feasible.
- Accelerate the application of digital technology and smart power installations from both the distribution- and demand-side.
- Provide policy schemes to incentivise a wide deployment of decentralised power generation, and to facilitate microgrid penetration, and the use of energy storage.
- Promote green power grid products such as sulphur hexafluoride-free switchgears.
- Develop smart energy-management platforms and software to stabilise and balance the load, and lower costs and consumption.
- Accelerate the operation of green power markets from pilot runs, expand their coverage, facilitate inter-provincial transactions, and encourage the procurement of long-term power purchase agreements (PPAs).
- Improve synergy among existing policy and market mechanisms such as PPAs, green electricity certificates, provincial renewables portfolio standards and the carbon market.
- Refine transaction rules to increase market accessibility and policy transparency for RE procurement, especially for FIEs.
- Allow proper market price and risk hedging across different stakeholders by establishing various tools such as a long-term electricity market, long-term bilateral PPAs and an electricity futures market.
- Accelerate the ongoing reform of the RE market by encouraging market competition and transparency, as well as increased dialogue with relevant industries to enhance policy effectiveness and predictability.
- Raise international awareness and understanding of China's RE certificates to facilitate global recognition of multinationals' low-carbon supply chain measures.
- Accelerate the development of a national green electricity market with unified trading rules and

a specific timeline.

- Incentivise and reward companies purchasing green electricity by giving them priority in peak season demand and reducing the energy quota needed when consuming RE.

2.3 Enhance the Hydrogen Supply Chain and Use of Low-carbon Hydrogen Solutions 3

- Enhance efforts to invest and develop infrastructures for hydrogen production, transport and distribution.
- Adopt a certification scheme aligned with international standards, such as CertifHy in Europe, to define low carbon and/or renewable hydrogen.
- Reinforce mechanisms to incentivise the large-scale production of low-carbon or renewable-based hydrogen by electrolysis of water using curtailed electricity.
- Define and simplify specific safety regulations to be harmonised at the national level for hydrogen production, distribution, storage (such as liquid hydrogen) and usage (for example, hydrogen refuelling stations), and implement them initially in dedicated parks to minimise potential consequences.
- Promote medium and long-distance hydrogen transportation using different methods, including pipelines, rail and/or shipping.
- Provide tangible updates for on-board liquid storage mechanisms following the regulations to produce and transport hydrogen in a liquid form.
- Promote hydrogen usage for power generation, heating and decarbonising highly polluting industries, including by supporting carbon capture and utilisation projects.

2.4 Set Clear Targets and Policies for the Development of Alternative Fuels 4

- Recognise the role of bioenergy in securing energy supply and achieving decarbonisation targets.
- Define national policies and concrete actions for the development of biofuels and biogas (for electricity production), with binding short- and medium-term targets.
- Identify a portfolio of subsidies that provinces can adopt to foster the development of green methanol, cellulosic bioethanol, biodiesel, biogas and biomethane plants.
- Accelerate government efforts to achieve the E10 petrol policy target nationwide.
- Promote the development of biodiesel by policy mandate, such as the rollout of a nationwide B5 biodiesel policy.
- Accelerate the re-introduction of Chinese Certified Emissions Reduction to ensure compliance with biogas and biofuels.
- Introduce guarantees of origin mechanisms for biogas, while aligning certification between the European Union and China.

3. Energy Efficiency and Digitalisation

3.1 Boost Innovation in Energy-efficiency (EE) Solutions 2

- Leverage digitalisation in the industrial sector to implement data-driven solutions, such as real-time monitoring, predictive maintenance, and advanced process controls.
- Expand the scope of the national real-time energy consumption monitoring platform to include more key energy-intensive enterprises and industries.
- Include the building sector in the Emissions Trading Scheme (ETS) market to improve the

transparency of building energy consumption.
- Promote low-emissions technology replacements to high-emissions thermal power technology and install carbon capture, utilisation and storage facilities.
- Continue to raise minimum energy performance standards to encourage higher energy efficiency and strengthen global collaborations on this front.
- Strengthen green finance support for EE projects to incentivise businesses and individuals to invest in energy-saving technologies and initiatives.
- Promote the development and implementation of district energy systems.
- Treat energy intensity as an equally important indicator of energy consumption as carbon intensity through mechanisms such as carbon markets.

3.2 Take an Integrated Approach Towards Net-zero Cities 3

- Adopt a circular economy approach and apply energy-saving solutions throughout urban infrastructure planning, construction and operations.
- Strengthen collaboration in both public and private areas throughout the city value chain, including policymakers, business, infrastructure and real estate developers, city administrators, civil society and the financial sector.
- Establish a system of common technical standards with which to evaluate and assess environmental sustainability in a consistent and transparent way.
- Initiate and sponsor zero-carbon pilot projects at the local level before gradually scaling up to district and city level.

Carbon Market Sub-working Group

1. Increase the Accuracy and Transparency of Carbon Emissions Monitoring, Reporting and Verification (MRV) in China's National Emissions Trading Scheme

- Issue a specific regulation detailing the exact requirements for the compulsory disclosure of carbon-related data by enterprises, the pace at which disclosure is expected and an overall timeline for the procedure.
- Upgrade the verification management regulations and relevant technical guidelines.
- Build a national-level energy emission factor (EF) database, differentiate between green and grey electricity for grid EF, and issue specific accounting standards for emissions from purchased green electricity.
- Build a national-level product carbon footprint database, starting with upstream chemical products.
- Identify a unified and scientific accounting methodology for product carbon footprints, and integrate it into the international standard system.
- Establish accreditation authorities that have open, detailed and clear rules for organisations applying for accreditation, regularly conduct in-depth audits of these organisations, and disclose a list of qualified verifiers on an annual basis.
- Impose stricter penalties for non-compliance in emissions reporting and failure to submit allowances, and clarify the boundaries of responsibility for data quality among different participants.

2. **Introduce Other Key Emitting Sectors to the National Carbon Market by 2024**
   - Include other key emitting sectors, for example cement and steel, in the national carbon market during the next compliance cycle.
   - Ensure the necessary preparatory work is completed from now until the next compliance cycle by setting relevant benchmarks, publishing allocation mechanisms for other key emitting sectors, and conducting consultations and capacity-building for all covered enterprises.

3. **Facilitate Bilateral Government, Civil Society and Business Exchanges on the Latest Decarbonisation Policies and Actions to Reinforce Cooperation in Line with China's 30/60 Goals and the European Union (EU) Green Deal**
   - Engage with both European and Chinese businesses regarding the latest developments in policymaking and implementation, and as an active part of achieving strategic decarbonisation targets in both the EU and China.
   - Support domestic think tanks and facilitate their exchanges with EU peers on the rules, progress and impact of the EU's Carbon Border Adjustment Mechanism on EU-China trade and investment.
   - Provide technical and coordination support for the harmonisation of MRV standards and requirements between the EU and China.

Introduction to the Working Group

The Energy Working Group comprises over 200 companies across the energy supply chain, including equipment manufacturers, energy production and infrastructure firms, service providers, and consultants. The working group seeks to establish constructive dialogue on energy policies with relevant regulators, provide input on China's energy policy work and share best practices from European energy industries operating in China. The working group collaborates with the European Commission and provides steering to the business component of the European Union (EU)-China Energy Cooperation Platform (ECECP). It also works with the China Electric Power Planning and Engineering Institute under the guidance of China's National Energy Administration (NEA), having jointly built the China-Europe Energy Innovation Cooperation (CEEI) network, which covers 400 major Chinese and European energy companies in four main sectors: smart energy, hydrogen, wind power and energy storage.

Recent Developments

Energy Security

In 2021, China experienced severe power shortages nationwide, prompting the central government to prioritise national energy security through coal production to stabilise economic growth. From October 2021, China implemented a raft of emergency reforms to boost coal production capacity and streamline the coal-electricity pricing mechanism. The *14th Five-year Plan (14FYP) for the Modern Energy System*[1] also highlights the short-term shift to coal production to ensure China's basic energy needs are met, with coal named as "the backstop of supply security" and excluding caps on coal consumption and coal-fired power capacity.[2]

In April 2022, to cushion against soaring global commodity prices, the State Council outlined plans for a unified national energy market,[3] aiming to improve the interconnectivity of energy supply chains while ensuring

1 *China's 14th Five-year Plan for the Modern Energy System,* National Development and Reform Commission (NDRC) & National Energy Administration (NEA), 22nd March 2022, viewed 14th May 2023, <https://www.ndrc.gov.cn/xxgk/zcfb/ghwb/202203/t20220322_1320016.html?code=&state=123>

2 *China's 14th Energy Five-year Plan: Pivoting toward a "modern energy system",* IHS Markit, 13th April 2022, viewed 14th May 2023, <https://www.spglobal.com/commodityinsights/en/ci/research-analysis/chinas-14th-energy-fiveyear-plan-pivoting-toward-a-modern-ener.html>

3 Huld, Arendse, *China's "National Unified Market" – Standardizing the Domestic Market to Spur Internal Circulation,* China Briefing, 14th April 2022, viewed 15th May 2023, <https://www.china-briefing.com/news/chinas-national-unified-market-standardizing-the-domestic-market-to-spur-internal-circulation/>

the standardisation of energy infrastructure and trading markets. In August 2022, China once again experienced an energy crisis, exacerbated by a record-breaking heatwave and drought affecting the manufacturing hub of the Yangtze River Basin.[4] As a result, power restrictions were enforced on both commercial and residential power usage in Sichuan Province, which relies heavily on hydropower. Given the severe impact of the 2022 power cuts on day-to-day operations, many member companies took steps to optimise their energy efficiency ahead of anticipated summer 2023 energy shortages. For example, some installed energy storage solutions at their plants to mitigate disruptions from both potential curbs on energy use and blackouts. Since this issue first emerged in 2021, the European Chamber has been advocating for the prioritisation of sustainable power supply strategies in China and will continue to do so as extreme weather conditions become more frequent.

Due to a sluggish global economy and high energy prices, energy consumption worldwide is projected to grow by just over one per cent in 2023. On 6th January 2023, the National Energy Administration (NEA) released a draft policy, *Blue Book on Developing the Renewable Energy-based Power System*, outlining a 'three-step roadmap' for the development of China's new power system by 2030, 2045 and 2060. It provides for an accelerated transition phase from fossil fuels to renewables, with additional coal power plants for energy security until 2030 when their transition to low-carbon power plants will begin, and finally consolidating renewables into the energy mix.[5]

Decarbonisation in the Energy Sector

China has further emphasised the implementation of green building materials, smart appliances and new energy vehicles (NEVs) in recent years. For example, its world-leading electric vehicle (EV) industry is underpinned by generous subsidies and mandatory production quotas.[6] With access to hydrogen charging stations being prioritised, NEV charging infrastructure facilities nearly doubled in 2022.[7] While China saw a slump in NEV sales at the start of 2023 due to the expiration of generous subsidies, the new Chinese yuan (CNY) 520 billion package of tax breaks unveiled in June 2023 will likely boost auto sales growth over the next four years, despite stricter national emissions standards coming into effect in July 2023.[8&9] New policies are expected for emissions control, including the removal of renewable energy (RE) power from the energy quota, and the relaunch of the Chinese Certified Emissions Reduction (CCER) scheme,[10] which is expected to boost demand for offsets and play a significant role in achieving emissions cost reductions.

While China's goals to peak carbon emissions by 2030 and reach carbon neutrality by 2060 (30/60 Goals) are ambitious, deepening EU-China cooperation on carbon reduction will allow China to utilise proven European technologies used in their home markets. Based on the member survey and interviews conducted with industry players as part of the European Chamber's *Carbon Neutrality* report, European businesses are well-placed to help China accelerate its carbon neutrality drive, given that 67 per cent of European companies operating in China are already pursuing carbon neutrality, while 40 per cent have established China-focussed decarbonisation teams.[11] This progress can largely be attributed to global pledges, stringent EU environmental regulations and consumer demand.

However, three sets of barriers require addressing: providing further policy guidance at the national, local and sectoral levels, including fleshing out the '1+N' policy framework;[12] providing a more transparent and flexible power market to ensure sufficient access to

4 Zhao, Ziwen, *China's power crisis: why is it happening and what does it mean for the economy?*, SCMP, 27th August 2022, viewed 17th May 2023, <https://www.scmp.com/economy/china-economy/article/3190313/chinas-power-crisis-why-it-happening-and-what-does-it-mean>

5 *Blue Book on New Power System Development (Draft for Comments)*, NEA, 6th January 2023, viewed 17th May 2023, <http://www.nea.gov.cn/2023-01/06/c_1310688702.htm>

6 *Measures for the Parallel Management of Average Fuel Consumption and New Energy Vehicle Credits of Passenger Car Enterprises*, State Council, viewed 15th May 2023, <http://www.gov.cn/zhengce/2022-11/27/content_5722693.htm>

7 *China's NEV charging infrastructure facilities nearly double in number in 2022, Xinhua,* 14th February 2023, viewed 15th May 2023, <https://english.www.gov.cn/archive/statistics/202302/14/content_WS63eadb09c6d0a757729e6b8d.html>

8 Li, Qiaoyi & Lee, Liz, *China unveils $72 billion tax break for EVs, other green cars to spur demand*, *Reuters*, 21st June 2023, viewed 19th July 2023, <https://www.reuters.com/business/autos-transportation/china-announces-extension-purchase-tax-break-nevs-until-2027-2023-06-21/>

9 *China to implement stricter vehicle emissions standards from July 1*, *Reuters*, 9th May 2023, viewed 14th May 2023, <https://www.reuters.com/world/china/china-implement-stricter-vehicle-emissions-standards-july-1-2023-05-09/>

10 CCER refers to emissions reduction activities conducted by companies on a voluntary basis that are certified by the Chinese Government, including renewable power generation and forestry projects.

11 *Carbon Neutrality: The Role of European Companies in China's Race to 2060,* European Union Chamber of Commerce in China, 25th May 2022, viewed 10th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/974/Carbon_Neutrality_The_Role_of_European_Business_in_China_s_Race_to_2060>

12 The "1" of the 1+N policy system stands for 2030 carbon dioxide (CO_2) peaking and 2060 carbon neutrality guidance, and the "N" stands for the *Action Plan for Carbon Dioxide Peaking before 2030* and other relevant policies and action plans for key areas and sectors.

renewable energy and a well-established emissions trading system; and ongoing regulatory hurdles, including a lack of common standards, which hinders the development of a low-carbon culture. Addressing these barriers will contribute to achieving China's 30/60 Goals at a sustainable pace, while enabling businesses to make informed investment decisions today with those targets in mind.

Key Recommendations

1. Accelerate the Low-carbon Energy Transition while Balancing Energy Security and Climate Awareness

1.1 Promote Gas Development and Speed Up the Shift From Coal to Gas in China's Energy Mix for Short- to Mid-term Energy Security

Concern

The transitional role of natural gas (NG) is at risk of being compromised by coal.

Assessment

The role of gas

In comparison to coal, NG is a more reliable, cleaner and safer energy source. The National Development and Reform Commission's (NDRC's) *Working Guidance* and *Action Plan*[13] acknowledge gas as a source of clean energy in the decarbonisation of commercial road vehicles and maritime vessels, and as a replacement for coal in heavily polluting sectors. However, the NEA's *Guiding Opinions of Energy Work in 2023* emphasise coal's importance, particularly its combination with RE.[14] Three key goals have been outlined: ensuring energy security, deepening the transformation of the energy structure and improving energy efficiency.

In addition, China's import tariffs for coal were cut to zero from May 2022 to March 2023. While coal may be regarded as the cornerstone for energy security in the short term, unabated coal usage, plus RE, will not be sufficient for China to achieve its 30/60 Goals. Therefore, while NG is required to play a transitional role in China's green transition, many foreign companies still experience difficulties in accessing gas infrastructures.

Non-discriminatory third-party access (TPA) to gas infrastructures

China's current NG transportation, distribution network and storage capacity are unable to satisfy the growing demand for NG under China's 30/60 Goals. The *14FYP for the Modern Energy System* contains goals for 55–60 billion cubic metres (bcm) of gas storage capacity by 2025, the equivalent of around 13 per cent of gas demand, and over 230 bcm in domestic production by 2025.[15] Positive signs for gas market deregulation came with the establishment of the China Oil and Gas Piping Network Corporation (PipeChina) in 2020, which separates transmission and sales businesses, allowing for more market competition for third parties. In 2021, several provinces integrated their gas infrastructures into PipeChina. Under the guidance to accelerate the construction of a unified national market, gas supply chains are expected to be further interconnected, and the infrastructure and trading markets standardised. To increase transparency for foreign-invested enterprises (FIEs) and facilitate their marketing of gas in China, the working group recommends timely updates of regulations regarding monitoring mechanisms, including pipeline and terminal utilisation rates and spare capacity data by location.

If encouraged to play a bigger role, FIEs can introduce best practices to the Chinese NG market. Given that the upstream exploration and wholesale marketing are already open to foreign investors, it is critical to ensure the same applies to all midstream access—the infrastructure—at both the national and provincial level. A lack of access to midstream energy infrastructure upsets the delicate balance between centres of production and consumption, the NG system's ability to deal with seasonal changes and peaks in demand, and the possibility of optimising liquified NG (LNG) import costs during winter peaks. Several government announcements on opening up midstream access have been made,[16] but tangible implementation progress is

13 *Working Guidance for Carbon Dioxide Peaking and Carbon Neutrality in Full and Faithful Implementation of the New Development Philosophy*, NDRC, 24th October 2021, viewed 16th May 2023, <https://en.ndrc.gov.cn/policies/202110/t20211024_1300725.html>; *Action Plan for Carbon Dioxide Peaking Before 2030,* NDRC, 27th October 2021, viewed 16th May 2023, <https://en.ndrc.gov.cn/policies/202110/t20211027_1301020.html>

14 *Guiding Opinions of Energy Work in 2023*, NEA, 6th April 2023, 23rd May 2023, <http://zfxxgk.nea.gov.cn/2023-04/06/c_1310710616.htm>

15 *China's 14th Five-year Plan for the Modern Energy System*, NDRC & NEA, 22nd March 2022, viewed 16th May 2023, <https://www.ndrc.gov.cn/xxgk/zcfb/ghwb/202203/t20220322_1320016.html?code=&state=123>

16 For example, the creation of PipeChina; opening up of LNG terminals for third party access; *Work Plan for the Special Supervision of Fair Opening of NG Pipeline Networks and LNG Terminals*, NEA, 31st May 2021, viewed 16th May 2023, <http://zfxxgk.nea.gov.cn/2021-05/31/c_1310000748.htm>; *Catalogue of Encouraged Industries for Foreign Investment (Edition 2022)(Draft)*, NDRC & MOFCOM, 10th May 2022, viewed 16th May 2023, <https://hd.ndrc.gov.cn/yjzx/yjzx_add.jsp?SiteId=380>

required. The working group also advocates for more progress in PipeChina's opening to foreign equity, and for the development of underground gas storage in a market system with an independent commercial performance index so that it can fully function. Production, importation, transportation, storage, distribution and smart metering along the NG supply chain must be carefully planned and well-coordinated to avoid efficiency bottlenecks, while domestic standards should also be aligned with international ones to promote LNG development.

Decarbonisation across the gas value chain

As the long-term emissions benchmark for gas is net zero, developing decarbonised gases will be critical. This can be achieved by capturing the carbon contained in NG; developing biogas and tackling methane emissions and developing 'blue hydrogen' with the integration of carbon capture, utilisation and storage (CCUS). In addition to NG, utilisation of biogas is technically mature enough for wide commercialisation; yet, a lack of clear incentive policies and stable feedstock supply has led to its development lagging far behind. Tackling methane emissions from gas operations is also one of the best near-term opportunities.[17] Policy tools,[18] with the help of transparent and reliable emissions data, can be implemented to effectively drive down such emissions.

Recommendations

- Emphasise the role of gas in achieving carbon neutrality in China's energy policies.
- Accelerate reform of the gas infrastructure regulatory regime:
  - Open investment to all entities, including private companies and FIEs.
  - Ensure open access to all upstream producers and downstream end-users.
  - Clarify the conditions of TPA for NG infrastructure.
  - Optimise the terms of terminal use agreements (short-, mid- and long-term) in tariffs, conditions of capacity attributions and prioritisation, and penalties.
  - Adopt non-discriminatory rules for the sale of infrastructure capacity.
- Encourage provincial pipeline companies to be open to both PipeChina and FIEs.
- Encourage PipeChina to be open to foreign equity.
- Improve downstream competition by giving smaller companies fair and open access to supply and allowing city gas companies and industrial companies to source directly from gas producers.
- Encourage the building of gas storage systems, particularly underground storage facilities, that are open to all domestic and international investors.
- Develop underground gas storage in a market system with an independent commercial performance index.
- Clarify market regulation to foster FIEs' direct investments in NG infrastructure to improve security of supply and reduce import needs.
- Encourage LNG bunkering by setting up national standards in line with international standards.
- Foster market transparency through early establishment of regulations on information-sharing and monitoring mechanisms.
- Switch from gas production based on coal gasification to biomethane and biogas production from biomasses.
- Incentivise the deployment of methane abatement measures and technologies along the gas value chain.

2. Renewable Energy and Power System

2.1 Ensure European Companies Have Equal Access in the RE Sector and Provide a Minimum Quota per Province 3

Concern

European companies face unequal competition with Chinese companies in the RE sector.

Assessment

China's 30/60 Goals have led power generation companies to more aggressively pursue development rights for RE projects However, most operational RE projects in China are controlled by only a handful of companies, mostly state-owned enterprises (SOEs), leaving foreign enterprises with considerable constraints in developing, owning or operating renewable assets. While the central government must approve provincial planning, provincial governments are responsible for granting RE project development rights.

The EU has accumulated extensive experience in RE technology and operations, particularly in offshore wind power, floating wind power, energy storage and energy-efficient technologies. However, due to preferences for

17 In the oil and gas sector, it is possible to avoid more than 70 per cent of current methane emissions with existing technology, and around 45 per cent could be avoided at no net cost.

18 For example, leak detection and repair requirements, technology standards and bans on non-emergency flaring and venting.

domestic manufacturers, foreign manufacturers in the wind power industry, for example, face a bidding gap of up to 40 per cent.[19] Establishing minimum quotas per province for foreign-invested RE project development under the *Catalogue of Encouraged Industries for Foreign Investment* would facilitate healthy competition, stimulate industry development and technological innovation.[20] Competitive tendering processes that consider improvements to environmental governance in China as well as globally would also encourage foreign investment in domestic RE.

China's current RE policies are generally quite rigid and discourage foreign investors. Promoting more flexible, transparent policies and fully utilising the flexibility of the market can enable further development and allow for foreign investment across the whole life cycle of a RE asset.[21] SOEs that generate RE electricity should be encouraged by the government at all levels to establish supply-and-consumption ties with foreign players through long-term power purchase agreement (PPA) and RE project joint ventures (JVs). This would support the ability of multinational corporations (MNCs) operating in China to meet local demand for RE. Furthermore, improving the synergy among existing policies and mechanisms—such as green electricity certificates (GECs), clearer rules for solar projects to be valorised by certificates, provincial renewables portfolio standards (RPS) and the carbon market—will ensure alignment on policy expectations and boost confidence in foreign investment.

The Chinese Government has pushed for the creation of RE production bases in several key areas, such as Inner Mongolia, demonstrating the great advantages China has for RE electricity production in terms of technology, manufacturing capacities and local set-up. However, despite major investments, transportation and distribution (T&D) lines to convey the RE electricity from these megabases to large consumption areas like the East and South coasts are still congested and limited. Accelerating further T&D investment would help resolve these bottlenecks.

Recommendations

- Mandate provincial governments to diversify the ownership of RE projects, by giving five to 10 per cent of project development rights to foreign players or Sino-foreign JVs, and clearly define foreign investment as entities that are originally headquartered abroad, rather than foreign subsidiaries of domestic companies.
- Allow more flexibility on the change of shareholding of RE assets before commercial operation date, and refine relevant regulations to differentiate between speculation and legitimate market activities.
- Enhance the transparency of RE asset allocation schemes and accelerate the integration of RE into the grid.
- Encourage provinces to implement competitive tendering processes that measure developers' global records instead of limiting only to records within China, while also considering improvements to environmental governance.
- Accelerate investment for T&D between the new megabases of RE production and industrial consumption bases in the East and South coastal regions.
- Set up clear rules for distributed solar projects to be valorised by certificates.
- Improve synergy among existing policies and mechanisms, such as GECs, provincial RPS and the carbon market, and provide clear and consistent policy expectations to boost foreign investment confidence.

2.2 Facilitate Corporate Green Energy Procurement by Developing New High-quality Power Infrastructure and Leveraging Smart Digital Solutions 3

Concern

Market access for green energy is limited in China, and digitalisation in the power sector has occurred without coordination along the supply chain.

Assessment

China's 'new infrastructure' proposal[22] has led to increased digitalisation in the power sector, without

19 Mathis, Will, Beene, Ryan & Saul, Josh, *Wind Power's 'Colossal Market Failure' Threatens Climate Fight, Bloomberg,* 25th April 2022, viewed 19th April 2023, <https://www.bloomberg.com/news/articles/2022-04-25/wind-power-s-colossal-market-failure-threatens-climate-fight>

20 Zhou, Qian, *China Further Expands the Encouraged Catalogue to Boost Foreign Investment,* China Briefing, 1st November 2022, viewed 24th May 2023, <https://www.china-briefing.com/news/china-2022-encouraged-catalogue-updated-implementation-from-january-1-2023/>

21 *European Investment in China: Prospects for 2023*, China Briefing, 25th January 2023, viewed 19th April 2023, <https://www.china-briefing.com/news/european-investment-in-china-prospects-for-2023/>

22 *How Can Foreign Technology Investors Benefit from China's New Infrastructure Plan?* China Briefing, 7th August 2020, viewed 11th May 2023, <https://www.china-briefing.com/news/how-foreign-technology-investors-benefit-from-chinas-new-infrastructure-plan/>

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a clear roadmap or coordination among the various players. Hasty investments will quickly lead to problems such as overcapacity, wasted resources and poor integration with traditional infrastructure.

Alongside the digital upgrading of the main power grid, the digitalisation of power distribution and demand-side response is equally important. A smarter energy-production system that can make large-scale utilisation of RE feasible should be established, and greener power equipment and technologies deployed. For example, 95 per cent of China's power grids use traditional switchgear technology, which contains the world's strongest greenhouse gas (GHG): sulphur hexafluoride (SF6).[23] At the same time, energy efficiency (EE) continues to be overlooked as a key priority in the dialogue around the energy crisis and the green transition. Meanwhile, the traditional power structure has shifted from 'generation-grid-load' to a dynamic interaction of 'generation-grid-load-storage', highlighting the role of energy storage as the fourth critical element.[24] Therefore, it is essential to further develop digital-enabled smart energy management platforms and software that monitor energy consumption data in real time, aiding grid operators in stabilising and balancing the load, and ultimately lowering costs and energy consumption.

Despite the joint 2022 NDRC and NEA guidance calling for the promotion of a unified national power market system,[25] China's power market remains slow to adopt green electricity trading.[26] This is of concern to European companies operating in China as, due to global decarbonisation pledges set by their headquarters, their demand for green energy has become increasingly urgent in recent years. According to the European Chamber's *Carbon Neutrality* report, which included extensive interviews with industry players, European companies' China and global decarbonisation strategies are closely aligned, as both are largely dependent on access to and investment in RE.[27] While some European companies have achieved carbon neutrality already through the procurement of GECs, this is not sufficient for most large manufacturers, which need to purchase green energy directly.[28] It is encouraging that China's green power trade pilot programme—officially launched in September 2021[29]—has accelerated direct green electricity transactions, but transactions need to shift from pilot phase to normal operation as soon as possible to scale up transactions. Finally, raising international awareness and understanding of China's RE certificates will help facilitate global recognition of low-carbon supply chain measures.

On 15th February 2023, the NDRC, Ministry of Finance and the NEA issued the *Notice on Green Electricity Projects Subsidised by the Central Government to Participate in Green Electricity*,[30] enabling subsidised wind and solar energy projects to participate in green electricity trading. While this is a positive development, as it is likely to increase the green electricity supply in the market, the sources of RE involved should be further expanded.

Inter-provincial transactions should also be promoted to address the unequal demand and supply of RE across different regions in China. In addition, long-term (five to 10 years) PPAs should be encouraged to provide guaranteed revenue streams for investors. Linking existing mechanisms—such as direct PPAs, GECs, RPS and the carbon emissions trading market—is urgently required to avoid double counting. Establishing tools such as long-term bilateral PPAs and an electricity futures market will also allow proper market price and risk hedging across different stakeholders.

23 SF6 is an extremely potent and persistent greenhouse gas that is primarily utilised as an electrical insulator and arc suppressant.

24 *Blue Book on New Power System Development (Draft for Comments)*, NEA, 6th January 2023, viewed 17th May 2023, <http://www.nea.gov.cn/2023-01/06/c_1310688702.htm>

25 *Document No. 118*, NDRC & NEA, 18th January 2022, viewed 19th July 2023, <https://www.ndrc.gov.cn/xxgk/zcfb/tz/202201/t20220128_1313653.html?code=&state=123>

26 *Building a Unified National Power System in China: Pathways for Soft Power Markets*, International Energy Agency, April 2023, viewed 13th May 2023, <https://www.iea.org/reports/building-a-unified-national-power-market-system-in-china>

27 *Carbon Neutrality: The Role of European Companies in China's Race to 2060*, European Union Chamber of Commerce in China, 25th May 2022, viewed 11st May 2023 , <https://www.europeanchamber.com.cn/en/publications-archive/974/Carbon_Neutrality_The_Role_of_European_Business_in_China_s_Race_to_2060>

28 For more information on recommendations on local corporate access to green energy, see *the European Chamber's Tianjin Position Paper 2023/2024* (pp. 10–12), 10th March 2023, viewed 25th May 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1074/Tianjin_Position_Paper_2023_2024>; and the *Nanjing Position Paper 2023/2024* on promoting green energy in Jiangsu and developing an efficient environment, health and safety inspection system; *Nanjing Position Paper 2023/2024*, pp. 13–19, 27th April 2023, viewed 25th May 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1079>

29 Hou Liqiang, *Pilot direct trading of green power launched, China Daily*, 8th September 2021, viewed 11th May 2023, <https://www.chinadaily.com.cn/a/202109/08/WS6137f32ba310efa1bd66dfa0.html>

30 *Development and operation mechanism of the green power market in China*, China Energy Transformation Program, 25th April 2023, viewed 24th May 2023, <https://www.cet.energy/2023/04/25/the-development-and-operation-mechanism-of-the-green-power-market-in-china/>

Finally, improving market accessibility and policy transparency would give international companies confidence they can achieve their renewable consumption commitments for their operations in China. To facilitate this, transaction rules should be refined with regular updates, such as minimum trading volumes and eligible industry sectors for bulk trades.

Recommendations

- Enact overall planning and enhance coordination among multiple stakeholders along the value chain, to set up a new power infrastructure that can integrate with traditional facilities to make the large-scale utilisation of renewables feasible.
- Accelerate the application of digital technology and smart power installations from both the distribution- and demand-side.
- Provide policy schemes to incentivise a wide deployment of decentralised power generation, and to facilitate microgrid penetration, and the use of energy storage.
- Promote green power grid products such as SF6-free switchgears.
- Develop smart energy-management platforms and software to stabilise and balance the load, and lower costs and consumption.
- Accelerate the operation of green power markets from pilot runs, expand their coverage, facilitate inter-provincial transactions, and encourage the procurement of long-term PPAs.
- Improve synergy among existing policy and market mechanisms such as PPAs, GECs, provincial RPS and the carbon market.
- Refine transaction rules to increase market accessibility and policy transparency for RE procurement, especially for FIEs.
- Allow proper market price and risk hedging across different stakeholders by establishing various tools such as a long-term electricity market, long-term bilateral PPAs and an electricity futures market.
- Accelerate the ongoing reform of the RE market by encouraging market competition and transparency, as well as increased dialogue with relevant industries to enhance policy effectiveness and predictability.
- Raise international awareness and understanding of China's RE certificates to facilitate global recognition of MNCs' low-carbon supply chain measures.
- Accelerate the development of a national green electricity market with unified trading rules and a specific timeline.
- Incentivise and reward companies purchasing green electricity by giving them priority in peak season demand and reducing the energy quota needed when consuming RE.

2.3 Enhance the Hydrogen Supply Chain and Use of Low-carbon Hydrogen Solutions

3

Concern

While China acknowledges hydrogen's critical role in the decarbonisation process, onerous or missing regulations and inefficient supply chains are hindering the proper scale-up of low-carbon hydrogen solutions.

Assessment

China has expanded its vision of hydrogen's role in the energy system, and implemented the Fuel Cell Electric Vehicles (FCEVs) National Pilot Scheme[31] in 2021 to support FCEVs and associated infrastructure deployment in key cities. Since then, under the 14FYP, the role of hydrogen has expanded in various sectors, including transport, iron and steel, non-ferrous metal, and construction. In January 2023, the NEA's draft *Blue Book on Developing the Renewable Energy-based Power System* highlighted the future role of hydrogen as a main storage system for the nation's power system.[32] Several significant SOE projects, including large power-to-X and hydrometallurgy projects, were announced in 2022, positioning China as a global leader in heavy-duty trucks and hydrogen refuelling station deployment.[33] China also recently launched its first long-distance hydrogen pipeline project in April 2023.[34] However, the efficiency of the hydrogen supply chain—particularly in storage, transportation and dispensing—is still lagging due to the lack of regulations.

Therefore, regulations regarding medium and long-distance hydrogen transportation using liquid hydrogen, rail and/or pipelines must be implemented to foster an efficient and scalable supply chain while decreasing

31 This scheme initially included three city alliances around Beijing, Shanghai and Guangdong, and was later extended to the provinces of Hebei and Henan.

32 *China pushes efforts for new power system, China Daily*, 10th January 2023, viewed 9th May 2023, <http://english.www.gov.cn/news/topnews/202301/10/content_WS63bd0a1ac6d0a757729e54ec.html>

33 These including large power-to-X projects by Sinopec in Xinjiang and Inner Mongolia.

34 *China Energy Policy Newsletter – May 2023*, CET, 12th May 2023, viewed 29th May 2023, <https://www.cet.energy/2023/05/12/china-energy-policy-newsletter-may-2023/>

the total cost of ownership.[35] Second, China needs to enhance the development of infrastructures for hydrogen production, transport and distribution, as well as to increase the hydrogen storage density by upgrading on-board storage to Type IV vessels and hence improving FCEV competitiveness.[36] Finally, China's numerous codes and standards on hydrogen value chains should have a clear structure, harmonised at national level and aligned with those already issued by internationally recognised bodies, such as the International Organization for Standardization (ISO),[37] to create a more sustainable and globally competitive market.[38]

China also needs to decarbonise hydrogen production. Options include promoting schemes such as using RE for water electrolysis, biomethane reforming and capturing existing low-carbon off-gases. This could be enhanced by a certification scheme aligned with international standards—such as CertifHy, the EU's Guarantee of Origin scheme for green and low carbon hydrogen enacted in 2014—to define low-carbon and renewable hydrogen production.

Hydrogen also has great potential to decarbonise heavy-polluting industries. For instance, a hydrogen-based power system can act as a systemic 'buffer' for harmonising continuous production from fossil fuels, nuclear plants and intermittent production from renewables to optimise electricity supply and demand patterns.[39] Therefore, re-electrification from green or low-carbon hydrogen should be promoted, starting with pilot schemes. In addition, hydrogen usage to support the development of carbon capture and utilisation (CCU)-based chemicals could present a tremendous opportunity for China to reduce its emissions while increasing its energy security. Likewise, more support is needed to develop hydrogen as a feedstock for heavily polluting industries such as steel, cement and glass.

35 Total cost of ownership is an estimate of all the direct and indirect costs involved in acquiring and operating a product or system over its lifetime.

36 Onboard hydrogen storage continues to be a key technical barrier for widespread adoption of hydrogen fuel cell vehicles. Type IV vessels are composite tanks made of carbon fibre with a polymer liner (thermoplastic). They are the lightest of the pressure vessels, making them most suitable for vehicle applications.

37 *ISO/TC 197 Hydrogen Technologies*, ISO, n.d., viewed 12th May 2023, <https://www.iso.org/committee/54560.html>

38 For more information on alignment with international standards, please refer to the *Standards and Conformity Assessment Working Group Position Paper 2022/2023*.

39 *Harnessing the Full Power of Renewable Energy with Hydrogen*, European Commission, 29th August 2016, viewed 12th May 2023, <https://ec.europa.eu/programmes/horizon2020/en/news/harnessing-full-power-renewable-energy-hydrogen>

Recommendations

- Enhance efforts to invest and develop infrastructures for hydrogen production, transport and distribution.
- Adopt a certification scheme aligned with international standards, such as CertifHy in Europe, to define low carbon and/or renewable hydrogen.
- Reinforce mechanisms to incentivise the large-scale production of low-carbon or renewable-based hydrogen by electrolysis of water using curtailed electricity.
- Define and simplify specific safety regulations to be harmonised at the national level for hydrogen production, distribution, storage (such as liquid hydrogen) and usage (for example, hydrogen refuelling stations), and implement them initially in dedicated parks to minimise potential consequences.
- Promote medium and long-distance hydrogen transportation using different methods, including pipelines, rail and/or shipping.
- Provide tangible updates for on-board liquid storage mechanisms following the regulations to produce and transport hydrogen in a liquid form.
- Promote hydrogen usage for power generation, heating and decarbonising highly polluting industries, including by supporting CCU projects.

2.4 Set Clear Targets and Policies for the Development of Alternative Fuels 4

Concern

The lack of concrete actions and policy support is hindering the promotion and implementation of alternative green fuels at a regional level.

Assessment

Under the 30/60 Goals, China has prioritised the integration of bioenergy, including biomethanol, bioethanol, biodiesel and biogas into its energy mix. China has a competitive advantage in green fuel production due to its abundant renewable power resources, significant biomass waste resources, an equipment supply chain advantage and strong political willingness.

The global shipping industry, which currently accounts for three per cent of global CO_2 emissions, considers green methanol to be the most scalable decarbonisation fuel solution in the current decade.[40]

40 Methanol is a relatively energy-dense molecule by volume while being easy to store and transport given its liquid form at ambient temperature and pressure.

Green methanol can be produced either through green hydrogen synthesis with CO_2 captured from biogenic sources (e-methanol) or biomass waste gasification (bio-methanol).[41] Bio-methanol projects in China are delivering faster than many other geographies, as its technology and resources available are comparatively mature. However, due to biomass resource constraints, most of the projects are more distributed and of smaller scale than e-methanol projects; therefore e-methanol offers a more scalable solution in China in the medium-term. Foreign investors are welcome to participate in the upcoming green methanol infrastructure/value chain as a strategic partner of SOEs in the greenfield development phase. Interested European investors should start engaging early with the authorities, as the permissions for RE projects process involves governments at all levels – from local to national.

China needs to develop policies to ensure long-term cost visibility and stability of biomass waste feedstock, uniformed standards and incentives for green fuel bunkering in its ports, and transparent lifecycle assessment (LCA) certification data management systems. Furthermore, it is essential to align policies on issues such as the re-introduction of CCER to ensure compliance with biogas and biofuels, and measures such as introducing guarantees of origin for biogas in line with certification from both the EU and China.

Cellulosic ethanol—produced from fibrous lignin contained in straw—is regarded as a good substitute for traditional gasoline in the transportation sector. Promoting cellulosic ethanol will help China reduce its dependence on gasoline while accelerating decarbonisation before total electrification and widespread application of hydrogen energy. If the E10 petrol policy continues to advance in China,[42] and the annual consumption of biofuel ethanol reaches nine million tonnes, crude oil imports can be reduced by around 27 million tonnes, which should in turn cut carbon emissions by 21 million tonnes. However, preliminary research and achieving economies of scale in cellulosic ethanol production will require continuous capital investment. Government support and subsidies are therefore necessary to facilitate large-scale production of cellulosic ethanol, which will foster a mature market for biofuel.

Biodiesel can also provide alternatives to fossil fuels in the heavy transportation sector, and even in aviation and maritime transport. Animal fats, vegetable oils, used cooking oils and high-acidity oils are all good raw materials to produce biodiesel.[43] In terms of application, either pure biodiesel can be used (B100), or it can be blended with petro-diesel. While a B5 mandate is implemented in many European countries,[44] Shanghai has been the only Chinese city to implement it so far. As biodiesel is key to China's green transition in the transportation and agricultural sectors, a nationwide B5 mandate would accelerate this movement.

Recommendations

- Recognise the role of bioenergy in securing energy supply and achieving decarbonisation targets.
- Define national policies and concrete actions for the development of biofuels and biogas (for electricity production), with binding short- and medium-term targets.
- Identify a portfolio of subsidies that provinces can adopt to foster the development of green methanol, cellulosic bioethanol, biodiesel, biogas and biomethane plants.
- Accelerate government efforts to achieve the E10 petrol policy target nationwide.
- Promote the development of biodiesel by policy mandate, such as the rollout of a nationwide B5 biodiesel policy.
- Accelerate the re-introduction of CCER to ensure compliance with biogas and biofuels.
- Introduce guarantees of origin mechanisms for biogas, while aligning certification between the EU and China.

3. Energy Efficiency (EE) and Digitalisation

3.1 Boost Innovation in EE Solutions 2

Concern

As China plans to shift from control of energy intensity to carbon intensity, there is a risk that the importance of EE may be diluted.

41 For more information on green methanol as an alternative fuel solution for the global shipping industry, see the *Maritime Manufacturing and Industrial Services Working Group Position Paper 2023/2024*.

42 E10 petrol contains 10 per cent biofuel ethanol; see *The Plan for Expanding Biofuel Ethanol Production and Promoting Ethanol Usage in Motor Vehicles*, NEA, 13th September 2017, viewed 12th May 2023, <http://www.nea.gov.cn/2017-09/13/c_136606035.htm>

43 An enzymatic process helps convert these tougher oils into biodiesel and improve production rates, while significantly reducing pollution caused by harsh chemicals.

44 B5 is five per cent biodiesel, 95 per cent petroleum diesel.

Assessment

China has set an ambitious target to reduce energy intensity by 13.5 per cent during the 14FYP period, alongside carbon intensity goals, reflecting its commitment to both objectives.[45] While EE has improved, China could further boost innovation in related solutions for the industrial sector. Furthermore, China's shift to carbon intensity control poses the risk that support for EE solutions may be diluted in the transition process. EE, as the 'first fuel', should remain central to China's energy transition roadmap, and the Chinese Government should reiterate its ambitions to strengthen innovative EE solutions and incentivise further related improvements. For instance, leveraging digitalisation can help the energy sector become more efficient by implementing data-driven solutions, such as real-time monitoring, predictive maintenance and advanced process controls.

China needs to take a comprehensive approach that encompasses both policy and technology measures to boost energy efficiency. Policy measures could include raising minimum energy performance standards (MEPS) for appliances and equipment, expanding the EE standards system, and strengthening global collaborations on EE standards and certification schemes.[46] China also needs to collaborate with the EU on mutual recognition of EE standards and certification schemes, thereby reducing costs for importers and exporters. Second, efficiency increases can be attained through retrofitting existing coal-fired power stations with CCUS systems and adjusting MEPS and GHG emissions thresholds for newly approved coal-fired power plants. Enabling existing facilities to implement CCUS could help reduce emissions of thermal power generation, while utilising smart district energy systems can efficiently heat and cool buildings.

The energy consumption of a building's entire life-cycle accounts for 46.5 per cent of China's total energy consumption, a figure which has been significantly reduced over the past decade.[47] However, improving building EE faces two challenges: a significant number of existing buildings need to be retrofitted, requiring substantial investment; and local governments cannot keep providing subsidies for newly constructed passive houses and ultra-low energy consumption buildings. To solve these challenges, the emissions trading scheme (ETS) market offers a valuable model for the building sector to achieve energy consumption digitalisation. In addition to providing extra sources of funding, the ETS also offers solutions for improving the transparency of building energy consumption data – a powerful tool to crack down on energy consumption data fraud. To avoid diluting the importance of energy efficiency, it is crucial to treat energy intensity as an equally important assessment indicator alongside carbon intensity. Therefore, combining energy intensity with carbon intensity through mechanisms such as carbon markets can be an effective approach.

Recommendations

- Leverage digitalisation in the industrial sector to implement data-driven solutions, such as real-time monitoring, predictive maintenance, and advanced process controls.
- Expand the scope of the national real-time energy consumption monitoring platform to include more key energy-intensive enterprises and industries.
- Include the building sector in the ETS market to improve the transparency of building energy consumption.
- Promote low-emissions technology replacements to high-emissions thermal power technology and install CCUS facilities.
- Continue to raise MEPS to encourage higher energy efficiency and strengthen global collaborations on this front.
- Strengthen green finance support for EE projects to incentivise businesses and individuals to invest in energy-saving technologies and initiatives.
- Promote the development and implementation of district energy systems.
- Treat energy intensity as an equally important indicator of energy consumption as carbon intensity through mechanisms such as carbon markets.

45 *Q&A: What does China's 14th 'five year plan' mean for climate change?*, Carbon Brief, 12th March 2021, viewed 5th May 2023, <https://www.carbonbrief.org/qa-what-does-chinas-14th-five-year-plan-mean-for-climate-change/>

46 including but not limited to MEPS for buildings, data centres and consumer network-connected devices.

47 Sun Wanghu, Sun Yuning, Xu Li, Chen Xing & Zai Debin, *Research on Energy Consumption Constitution and Energy Efficiency Strategies of Residential Buildings in China Based on Carbon Neutral Demand, Sustainability*, 2022, vol. 14, no. 5, p. 2741, viewed 8th June 2023, <https://www.mdpi.com/2071-1050/14/5/2741>

3.2 Take an Integrated Approach Towards Net-zero Cities

Concern

The lack of an integrated approach to the planning and operation of the urban ecosystem hinders the deployment of EE measures while contributing to overall emissions and costs.

Assessment

Cities today account for 70 per cent of global emissions and consume 78 per cent of primary energy.[48] Despite increasing focus on maximising EE in power infrastructure, factories, data centres and public transportation, progress has mostly taken place in isolation. However, a circular economy approach to waste, water and materials, also known as systemic efficiency, would be able to boost EE even further.[49] Suzhou Industrial Park is an example of systemic efficiency through the circularity of industrial waste and by-products. The cluster's clean energy consumption represents more than 75 per cent of its energy usage, the largest share among all national development zones in China. Therefore, local governments should initiate and sponsor similar pilot projects, such as net-zero industrial parks, residential compounds and campuses.

The working group recommends the adoption of a holistic, cross-sectoral approach to the planning and operations of the urban ecosystem. To maximise EE, energy-saving solutions should be applied throughout the urban design and building process, and in the renovation of existing buildings; heating, cooling, lighting and other facilities; and equipment in public institutions and transport. For instance, district heating expansion could be coordinated with building renovations.[50]

Recommendations

- Adopt a circular economy approach and apply energy-saving solutions throughout urban infrastructure planning, construction and operations.
- Strengthen collaboration in both public and private areas throughout the city value chain, including policymakers, business, infrastructure and real estate developers, city administrators, civil society and the financial sector.
- Establish a system of common technical standards with which to evaluate and assess environmental sustainability in a consistent and transparent way.
- Initiate and sponsor zero-carbon pilot projects at the local level before gradually scaling up to district and city level.

48 *Net Zero Carbon Cities: An Integrated Approach,* World Economic Forum, 11th January 2021, viewed 11th May 2023, <http://www3.weforum.org/docs/WEF_Net_Zero_Carbon_Cities_An_Integrated_Approach_2021.pdf>

49 Ibid.

50 *District Heating*, IEA, November 2021, viewed 11th May 2023, <https://www.iea.org/reports/district-heating>

Abbreviations

14FYP	14th Five-year Plan
bcm	Billion Cubic Metres
CCU	Carbon Capture and Utilisation
CCUS	Carbon Capture, Utilisation and Storage
CCER	China Certified Emission Reduction
CEEI	China-Europe Energy Innovation Cooperation
CO_2	Carbon Dioxide
ECECP	European Union-China Energy Cooperation Platform
EE	Energy Efficiency
ETS	Emissions Trading Scheme
EU	European Union
EV	Electric Vehicle
FCEV	Fuel Cell Electric Vehicles
FIE	Foreign-invested Enterprise
GEC	Green Electricity Certificate
GHG	Greenhouse Gas
JV	Joint Venture
LNG	Liquefied Natural Gas
MEPS	Minimum Energy Performance Standards
MNC	Multinational Corporation
NDRC	National Development and Reform Commission
NEA	National Energy Administration
NEV	New Energy Vehicle
NG	Natural Gas
PPA	Power Purchase Agreement
RE	Renewable Energy
REC	Renewable Energy Certificate
RPS	Renewables Portfolio Standard
SF6	Sulphur Hexafluoride
SOE	State-owned Enterprise
T&D	Transportation and Development
TPA	Third-party Access

European Chamber
中国欧盟商会

Carbon Market Sub-working Group

Introduction to the Sub-working Group

The Carbon Market Sub-working Group advocates for well-functioning and cost-effective domestic and international frameworks for greenhouse gas (GHG) emissions trading. It is a sub-working group of the European Chamber's Energy Working Group and consists of 80 member companies that represent all aspects of the carbon market sector, including project developers, carbon funds, investors, lawyers, auditors and consultants, as well as financial institutions and companies under compliance obligations. The sub-working group seeks involvement in a carbon market that results in real and verifiable GHG reductions, while balancing economic efficiency with environmental integrity and social equity.

To deliver the Paris Agreement's climate goals,[1] the sub-working group advocates for market-orientated carbon pricing by:

- seeking to strengthen the credibility and functionality of today's carbon markets;
- calling for wider market access to China's carbon markets;
- promoting accelerated growth of high-integrity, voluntary markets with globally harmonised trading rules;
- fostering a framework for common, robust accounting rules to create a new, more ambitious international carbon trading mechanism; and
- building a professional community and networks that can deliver a just transition to net zero in the longer term.

Recent Developments

In China

China's national emissions trading scheme (ETS) became fully operational in 2021. Despite being the world's largest in terms of covered emissions—estimated to cover more than 4 billion tonnes of carbon dioxide (CO_2) and over 40 per cent of the country's carbon emissions[2]—China's national ETS is still in its infancy and faces many problems such as low market participation, a defective pricing mechanism and supervision deficiency.

The development of China's carbon market in 2022 slowed mainly due to the resurgence of the COVID-19 pandemic and the country's stringent control measures. From February to October 2022, the market saw very little action as China's policymakers focussed on the pandemic and other priorities, leaving covered entities in limbo in terms of regulatory decisions (such as the allowance allocations) that would have clarified their compliance needs. Consequently, relatively few permits changed hands: a total of 51 million Chinese Emission Allowances (CEAs) were traded, a 70 per cent decrease compared to 2021. Nevertheless, the weighted average price of a CEA increased to Chinese yuan (CNY) 55.30/tonne (approximately euro (EUR) 8), nearly 30 per cent higher than in 2021.[3]

In March 2022, the Ministry of Ecology and Environment (MEE) published the *Work Plan on the Management of Enterprise Greenhouse Gas Emissions Reporting and Verification in 2022*,[4] where detailed monitoring, reporting and verification (MRV) requirements were introduced to address issues with data fraud discovered in 2021. The MEE also requested that provincial authorities organise key emitters (including seven industries other than the power sector[5]) to submit their GHG emission reports for the year 2021, which would form the basis of data for allowance allocation once these sectors are included in the national ETS. Meanwhile, enterprises from the power sector had to disclose their verified emissions in the first compliance

1 *Adoption of the Paris Agreement*, United Nations Framework Convention on Climate Change, 12th December 2015, viewed 4th June 2023, <https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf>

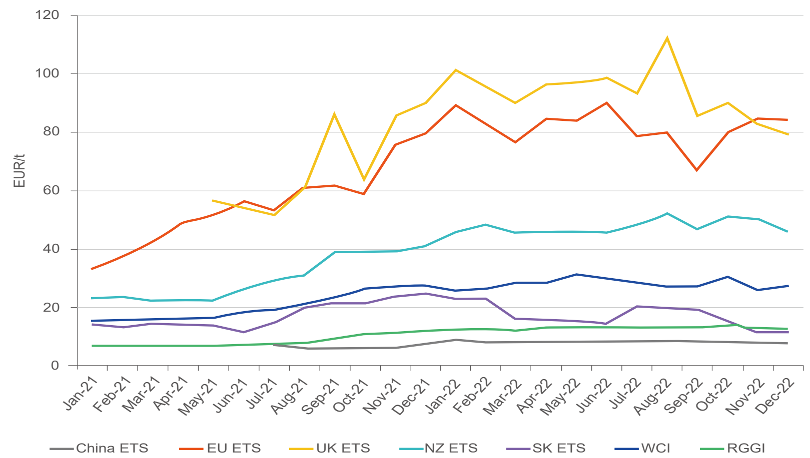
2 *Emissions Trading Worldwide 2023*, International Carbon Action Partnership (ICAP), 22nd March 2023, viewed 10th May 2023, <https://icapcarbonaction.com/en/publications/emissions-trading-worldwide-2023-icap-status-report>

3 *Carbon Market Year in Review 2022*, Refinitiv, 6th February 2023, viewed 10th May 2023, <https://www.refinitiv.com/content/dam/marketing/en_us/documents/gated/reports/carbon-market-year-in-review-2022.pdf>

4 *Work Plan on the Management of Enterprise Greenhouse Gas Emissions Reporting and Verification in 2022*, MEE, 15th March 2022, viewed 16th May 2023, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk06/202203/t20220315_971468.html>

5 Petrochemicals, chemicals, building materials, steel, nonferrous metals, paper and domestic aviation. These seven industries currently do not have compliance obligations in China's national ETS but do have compliance obligations under regional pilots that are running in parallel with the national ETS.

Figure 1: Emission allowance prices in key markets 2022 (by month) (Local prices converted to euros) Refinitiv's *Carbon Market Year in Review 2022*



cycle of the national ETS no later than the end of March 2022, update their emissions data quality management plans and report verified key parameters related to emissions accounting, such as monthly fuel consumption, elemental carbon content and low-level heat content of fuel. But in June 2022, in response to the impact of the COVID-19 pandemic and the global energy crisis, the MEE published the *Adjustment on the Management of Enterprise Greenhouse Gas Emissions Reporting and Verification in 2022*,[6] which extended the deadline for verification to September and simplified emissions measurement procedures.

In November 2022, the MEE released a draft allocation plan for 2021 and 2022 emissions,[7] significantly tightening the benchmark values for coal-fired power plants, with reductions of between 6.5 per cent and 18.8 per cent. The compliance process for the two-year period was set, with a final compliance deadline of December 2023. The draft plan also proposed four separate allocation benchmarks, thereby confirming that the scope of the national ETS will remain limited to the power sector. All four benchmark values have been lowered compared with the first compliance period, to reward generators that use large-capacity, high-efficiency and cogeneration design.[8] After public consultation, the final allocation plan was announced in March 2023.[9] The final plan includes several significant changes compared to the draft, such as setting out a timeline for the second compliance period and introducing flexible rules for compliance.[10] It confirms that ETS participants will still be able to use Chinese Certified Emissions Reductions (CCERs) to meet up to five per cent of their compliance obligations.

The potential rebooting of China's domestic voluntary carbon market, CCERs, will be closely watched in 2023. Demand for CCERs in the national ETS has been very strong, with around 33 million tonnes used in the first compliance period, exceeding the total amount of those used from 2012 to 2017.[11] However, the registration of new projects under the CCER scheme has been suspended since March 2017, and the credits

6 *Adjustment on the Management of Enterprise Greenhouse Gas Emissions Reporting and Verification in 2022*, State Council, 7th June 2022, viewed 16th May 2023, <http://www.gov.cn/zhengce/zhengceku/2022-06/12/content_5695325.htm>

7 *Public Consultation on the Implementation Plan for Setting and Allocating the Total Amount of National Carbon Emission Trading Allowances for 2021 and 2022 (Power Generation Sector) (Draft for Comments)*, MEE, 3rd November 2022, viewed 8th May 2023, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk06/202211/t20221103_999595.html>

8 *China releases draft allocation plan for 2021 and 2022*, ICAP, 2nd December 2022, viewed 16th May 2023, <https://icapcarbonaction.com/en/news/china-releases-draft-allocation-plan-2021-and-2022>

9 *Notice on the Work Related to the Allocation of National Carbon Emission Trading Allowances for 2021 and 2022*, MEE, 15th March 2023, viewed 8th May 2023, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk03/202303/t20230315_1019707.html>

10 *China releases allocation plan and compliance arrangements for 2021 and 2022*, ICAP, 27th March 2023, viewed 16th May 2023, <https://icapcarbonaction.com/en/news/china-releases-allocation-plan-and-compliance-arrangements-2021-and-2022>

11 *Rebooting China's carbon credits: What will 2022 bring?*, China Dialogue, 9th June 2022, viewed 20th May 2023, <https://chinadialogue.net/en/climate/rebooting-chinas-carbon-credits-what-will-2022-bring/>

circulating today are from projects registered before that point. Regulators had indicated that the national CCER registry and other associated market infrastructure would relaunch in 2022, but this did not happen, leaving inadequate supply and thus a low traded volume in the market.[12] The sub-working group is glad to see that in February 2023, the China Beijing Green Exchange announced its registration and trading systems for CCER were ready for inspection before operations resume;[13] one month later, the MEE launched a public consultation seeking revisions on existing methodologies and the introduction of new ones to generate voluntary carbon credits under the CCER scheme;[14] and in July, the MEE called for comments on the *Administrative Measures for Voluntary Emission Reduction Trading of Greenhouse Gases (Trial Implementation)*.[15] These moves signal the scheme will be relaunched in the foreseeable future, which will ease the supply shortage and high prices.

In 2022, all regional ETS pilots continued trading and compliance activities, with large emitters in various sectors other than power generation still being regulated by the respective regional markets. In addition to these regular activities, Beijing, Chongqing, Guangdong, Shanghai, Shenzhen and Tianjin released or updated their *Tan Pu Hui*—a carbon offsetting mechanism—as an incentive for individual or small-scale GHG reduction projects. Credits generated from these projects will be used for compliance purposes.[16] Though the pilot ETSs continue to operate, there was a significant drop in volumes as increasing numbers of power sector emitters transitioned to the national ETS. Just over 25 million tonnes were traded in all the pilots combined in 2022, continuing the downward trend from 2021, despite the emergence of more types of offsets.

12 *Carbon Market Year in Review 2022*, Refinitiv, 6th February 2023, viewed 10th May 2023, <https://www.refinitiv.com/content/dam/marketing/en_us/documents/gated/reports/carbon-market-year-in-review-2022.pdf>

13 Xue, Yujie, *Climate change: China's voluntary carbon market a step closer to relaunch after suspension for underuse in 2017*, *SCMP*, 8th February 2023, viewed 20th May 2023, <https://www.scmp.com/business/china-business/article/3209372/climate-change-chinas-voluntary-carbon-market-step-closer-relaunch-after-suspension-underuse-2017>

14 *Call for Methodological Proposals for Voluntary Greenhouse Gas Emission Reduction Projects*, MEE, 30th March 2023, viewed 16th May 2023, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk06/202303/t20230330_1024693.html>

15 *Administrative Measures for Voluntary Emission Reduction Trading of Greenhouse Gases (Trial Implementation)*, MEE, 7th July 2023, viewed 12th July 2023, <https://www.mee.gov.cn/ywgz/ydqhbh/wsqtkz/202307/t20230707_1035606.shtml>

16 *Emissions Trading Worldwide 2023*, ICAP, 22nd March 2023, viewed 10th May 2023, <https://icapcarbonaction.com/en/publications/emissions-trading-worldwide-2023-icap-status-report>

In the EU

Due to the significant impact that Russia's war in Ukraine has had on energy prices overall, the EU ETS experienced large fluctuations. Even though the volume of allowances traded in the EU ETS declined 24 per cent year-on-year, allowance prices remained at record highs, exceeding EUR 80/tonne, representing 50 per cent year-on-year growth, and the overall value of the EU ETS increased 10 per cent year-on-year.[17]

Despite being hit hard by the energy crisis, the EU has kept up with its climate ambitions. In December 2022, the European Parliament and European Council reached a provisional agreement on a major reform of the EU ETS, with a more ambitious carbon reduction target of 62 per cent (below 2005 levels) by 2030; the inclusion of the maritime sector in the EU ETS from 2024 onward; a phase-out of free allocations for some industries accompanied by a phase-in of the Carbon Border Adjustment Mechanism (CBAM) from 2026; revised parameters for the Market Stability Reserve;[18] a new and separate ETS for buildings, road transport and additional sectors (ETS II); and a strengthened commitment to use ETS revenues to address distributional effects and spur innovation. These regulations were formally adopted in April 2023 by the Parliament and Council,[19&20] and were published in the EU's *Official Journal* on 16th May 2023. The reforms set out in the revised ETS Directive will apply from 1st January 2024, while the Social Climate Fund will officially come into operation on 30th June 2024. The *CBAM* will apply from 1st October 2023 (reporting obligation only), with the full compliance obligation for importers applying from 1st January 2026. The new ETS II will come into force in either 2027 or 2028, depending on energy prices.

In 2022, the European Chamber released *Carbon Neutrality: The Role of European Business in China's Race to 2060*, a significant report that identifies areas

17 *Carbon Market Year in Review 2022*, Refinitiv, 6th February 2023, viewed 10th May 2023, <https://www.refinitiv.com/content/dam/marketing/en_us/documents/gated/reports/carbon-market-year-in-review-2022.pdf>

18 The Market Stability Reserve seeks to address the surplus of allowances in the EU ETS and improve the system's resilience to major shocks.

19 *Fit for 55: Parliament adopts key laws to reach 2030 climate target*, European Parliament, 18th April 2023, viewed 23rd April 2023, <https://www.europarl.europa.eu/news/en/press-room/20230414IPR80120/fit-for-55-parliament-adopts-key-laws-to-reach-2030-climate-target>

20 *'Fit for 55': Council adopts key pieces of legislation delivering on 2030 climate targets*, European Council, 25th April 2023, viewed 1st May 2023, <https://www.consilium.europa.eu/en/press/press-releases/2023/04/25/fit-for-55-council-adopts-key-pieces-of-legislation-delivering-on-2030-climate-targets/>

in which EU-China cooperation can be deepened so that China can frontload the technologies it needs to accelerate its carbon neutrality drive.[21] The report finds that 67 per cent of European companies operating in China are already pursuing carbon neutrality, and 40 per cent have established China-focussed decarbonisation teams. The sub-working group looks forward to cooperating proactively with the Chinese authorities to promote an effective and vibrant carbon market that plays a major role in achieving China's climate goals.

Key Recommendations

1. Increase the Accuracy and Transparency of Carbon Emissions MRV in China's National ETS

Concern

Although the accuracy and transparency of emissions data has improved, China's national ETS still lacks detailed rules for information disclosure and a well-functioning, legally binding market oversight mechanism.

Assessment

Transparency: Promoting the disclosure of climate-related information at the enterprise level

A carbon market will only run effectively if an unimpeded flow of information, clear rules and a rigorous oversight mechanism are in place. The sub-working group therefore advocates for more transparency in market activity, aggregated if necessary to protect commercially sensitive information.

The MEE is responsible for regularly disclosing information on the national ETS and on the completion status of carbon emission allowances surrendered by emitting entities each year. Currently, China's national ETS adopts an ex-post allocation approach, which means that the competent authority does not announce the total amount of allowances issued for a compliance cycle until the cycle has ended. This approach leads to uncertainty over the status of compliance and market balances.

In a well-designed system, the regulator should develop a transparent, GHG data disclosure platform that provides access to complete, unrestricted data on trading, emissions and compliance. This would incentivise emitters and audit firms to complete their reporting and verification tasks properly, and promote business confidence in the environmental and financial integrity of China's national ETS. It would also provide an additional level of scrutiny, allowing for early detection of systemic risks. Furthermore, regulators need market information regarding supply and demand imbalances, and CO_2 emissions, in order to design and implement a sound compliance strategy.

Accuracy: Improving data quality and integrity

The reliability of GHG emissions data is the cornerstone of an optimal carbon pricing mechanism. To ensure the credibility of emissions data, it is critical that an effective and accountable regulatory framework for MRV is enforced in relation to CO_2 emissions. It is also important to introduce an appeal mechanism to allow disputes arising from enforcement to be solved in a fair and efficient way.

Currently, China lacks a unified methodology for GHG emissions tallying, which compromises data quality and comparability among regions and entities. In August 2022, the National Development and Reform Commission (NDRC) released comprehensive plans for a nationwide standardised carbon emission accounting system through cooperation among ministries, installing a Leading Small Group as the supreme authority of the national carbon market.[22] However, any matters related to methodology, guidelines or standards of the carbon market must be reported to the Leading Small Group, which creates a bottleneck in the market development process due to the time it takes to receive approval from the group.[23] Observers predict that this could draw out the timeline for expanding the scope of China's national ETS, and for allowing additional players (financial institutions and other non-emitters) to trade.

In December 2022, the MEE published two new guidelines with more detailed MRV instructions for verifiers and which covered entities within the power

21 *Carbon Neutrality: The Role of European Companies in China's Race to 2060*, European Union Chamber of Commerce in China, 25th May 2022, viewed 4th June 2023, <https://www.europeanchamber.com.cn/en/publications-carbon-neutrality-report>

22 *Implementation plan for accelerating the establishment of a unified and standardised statistical accounting system for carbon emissions*, NDRC, 19th August 2022, viewed 16th May 2023, <https://www.ndrc.gov.cn/xwdt/tzgg/202208/t20220819_1333233.html>

23 *Carbon Market Year in Review 2022*, Refinitiv, 6th February 2023, viewed 10th May 2023, <https://www.refinitiv.com/content/dam/marketing/en_us/documents/gated/reports/carbon-market-year-in-review-2022.pdf>

sector.[24] These guidelines are aimed at optimising the formulas involved in emissions reporting and verification, improving the system for data quality control, and adjusting some factors for the calculation of emissions, including coal consumption volumes, carbon content and calorific values. However, several challenges still exist with the accuracy of China's MRV work:

1) The environmental value of green electricity consumption is not fully recognised. The current accounting standards issued by the MEE for the 24 key monitored industries still advise using a uniform regional power grid's emission factor (EF) to calculate the total emissions of all external power purchases. In other words, emissions from purchased green electricity are not deducted or accounted separately.

2) A unified accounting method for product carbon footprint is missing. As of July 2023, the Chinese Government only provides national standards for major industries' enterprise-level carbon footprint calculation.

3) A proper third-party accreditation system for verifiers is lacking. The professionalism, compliance and technical capability of verifiers will affect to a large extent the credibility of the monitoring results; therefore, selection of verifiers should be based purely on objective technical criteria and technical capacity. However, currently, each province selects verification agencies based on their own criteria, due to the absence of a unified national rule. Provincial governments tend to prefer local organisations, which can lead to more experienced and better qualified agencies from other provinces being ruled out. Moreover, only limited local funds have been allocated for paying for verification services, particularly in provinces where public finance faces challenges.[25] In Europe, lists of eligible verifiers are published by national and regional accreditation bodies on a regular basis.

4) Insufficient penalties for non-compliance leave the door open to data fraud. According to current regulations, companies that fail to present accurate reports or refuse to make timely disclosures are only fined between CNY 10,000–30,000 (approximately EUR 1,260–3,780),[26] which is insignificant compared to the potential gain from fraud. Also, the boundaries of responsibility for data quality are unclear among different stakeholders, including emitters, verification agencies, testing agencies and consultancies.

Recommendations

- Issue a specific regulation detailing the exact requirements for the compulsory disclosure of carbon-related data by enterprises, the pace at which disclosure is expected and an overall timeline for the procedure.
- Upgrade the verification management regulations and relevant technical guidelines.
- Build a national-level energy EF database, differentiate between green and grey electricity for grid EF, and issue specific accounting standards or deductions for emissions from purchased green electricity.
- Identify a unified and scientific accounting methodology for product carbon footprints, and integrate it into the international standard system.
- Build a national-level product carbon footprint database, starting with upstream chemical products.
- Establish accreditation authorities that have open, detailed and clear rules for organisations applying for accreditation, regularly conduct in-depth audits of these organisations, and disclose a list of qualified verifiers on an annual basis.
- Impose stricter penalties for non-compliance in emissions reporting and failure to submit allowances, and clarify the boundaries of responsibility for data quality among different participants.

2. Introduce Other Key Emitting Sectors to the National Carbon Market by 2024

Concern

Cost-effective emissions reductions will not be possible unless the coverage of the national carbon market is extended to a broader range of key emitting sectors.

24 *Guidelines for Enterprise Greenhouse Gas Emission Accounting and Reporting (Power Generation Facilities) and Guidelines for Enterprise Greenhouse Gas Emission Verification Technology (Power Generation Facilities),* MEE, 21st December 2022, viewed 16th May 2023, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk06/202212/t20221221_1008430.html>

25 Ritchie, Alistair & Chen, Yi, *Opinion: Better data is key to success of China's carbon market*, China Dialogue, 20th September 2022, viewed 30th May 2023, <https://chinadialogue.net/en/business/better-data-key-to-success-of-china-carbon-market/>

26 *National Measures for the Administration of Carbon Emission Trading (Trial) (2021),* MEE, 5th January 2021, viewed 20th May 2023, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk02/202101/t20210105_816131.html>

Assessment

China's national carbon market so far only covers the power sector. In order to realise the primary goal of cost-effective carbon abatement, it must include a range of key emitting sectors to incentivise trading activities, facilitate carbon price discovery[27] and drive down emissions. This will further contribute to achieving China's 30/60 Goals,[28] while keeping the impact of the EU CBAM on Chinese exports to a minimum.

In 2022, no concrete steps were announced to incorporate new sectors into the national ETS. The sub-working group is glad to see that, finally, in mid-2023, leaders in China's steel and cement sectors have accelerated their research work on the expansion of the national ETS, amid rising pressures stemming from the introduction of the EU's CBAM.[29] But the question is when a clear, precise roadmap and timeframe for inclusion will be published that will allow enterprises to prepare adequately for their participation in the market. Furthermore, the inclusion will require compatible infrastructure, such as the research of allowance allocation approaches for different sectors, benchmark setting and capacity-building for covered enterprises, among others.

Cost-effective Carbon Abatement

China's regional pilot ETSs and the initial phase of the national carbon market have played an important role in establishing MRV systems, establishing allowances exchange platforms, simulating trading, and building capacity and buy-in of various stakeholders. But carbon pricing should ideally go beyond this. The principal advantage that the carbon market offers to Chinese policymakers is that the total cost of reaching its 30/60 Goals would be minimised. This will not be possible unless a wider range of industrial sectors are covered by the market, so that a diverse range of abatement opportunities can be identified and incentivised.

The national ETS was designed to cover the power sector in its initial phase, and eventually expand to seven other key emitting sectors. So far, the national ETS only covers the power sector. Market transactions for the sector were not active during the first compliance cycle, which was one major element that caused little price fluctuation and a relatively low allowance price. The absence of adequate allowance circulation in the market means that its function of exploring and identifying the true carbon abatement costs is not being effectively performed. Only when the number of trading units included in the national ETS increases significantly will both demand and supply in the market expand, allowing emitters to better understand the real impact of allowance prices on their operating costs and thus be able to implement more effective emission reduction strategies.

Meeting the 30/60 Goals

Meeting China's ambitious 30/60 Goals will require substantial efforts to modernise the industrial sectors that are the cornerstone of the national economy. The later that companies in these sectors begin to factor carbon costs into operational decision-making, the harder it will be for them to eventually meet the goals. While the current price of allowances in the national carbon market is low, placing enterprises under obligation to submit allowances equivalent to emissions annually would play an important role in adjusting their investment decisions.

Furthermore, China's national ETS will not effectively contribute to the 30/60 Goals until an absolute cap on emissions is set. As the planned year for peaking emissions (2030) is drawing closer, the inclusion of other key emitting sectors as soon as possible will help the system better transition from an intensity-based system to a cap-and-trade one.[30] Once China sets an absolute cap, enterprises will be able to better plan their production and emissions reduction in a scientific manner, so as to strengthen the synergy between economic growth and pollution/carbon reduction, thereby achieving "high-quality development".

Impacts of the EU's CBAM

The EU's CBAM will initially cover six sectors: iron and steel, cement, aluminium, fertilisers, electricity

27 Price discovery is the process of setting the spot price, but most commonly the proper price, for a security, commodity, or currency.

28 China's '30/60 Goals' are to peak carbon emissions before 2030 and achieve carbon neutrality by 2060: *Full text of Xi's statement at the General Debate of the 75th Session of the United Nations General Assembly*, *Xinhua*, 23rd September 2020, viewed 20th May 2023, <http://www.xinhuanet.com/english/2020-09/23/c_139388686.htm>

29 *Chinese steel, cement speeding up work for national ETS expansion*, Carbon Pulse, 3rd July 2023, viewed 12th July 2023, <https://carbon-pulse.com/210524>

30 A big difference between China's ETS and the EU ETS is that the former is intensity-based, with the cap being adjusted according to actual production levels. The EU ETS holds covered entities accountable for their absolute emissions and decides the overall cap many years into the future (2030), while Chinese firms' compliance obligation relates to their carbon intensity, which is thus not pre-set to a fixed declining trajectory over time.

generation and hydrogen. At present, none of these are included in China's national ETS, which means that once the CBAM enters its full implementation phase from 2026, companies in these exposed sectors will have to pay for the emissions associated with each product exported to the EU. If they were to be included in China's ETS, they would be liable for certain carbon costs under China's carbon market, which would offset some costs under the CBAM.

In the short term, the CBAM will not have a substantial impact on Chinese goods. China's exports of CBAM-covered products account for less than two per cent of its total exports to the EU. Aluminium, iron and steel comprise almost 99 per cent of those exports, worth CNY 2–2.8 billion in carbon border taxes to the EU every year.[31] While the immediate impact on China may seem limited, the CBAM will have a significant effect in the longer term as it transitions to full implementation and its coverage is expanded to more sectors under the EU ETS. Early inclusion of other key emitting industries in China's national ETS can reduce CBAM fees and incentivise domestic technological innovation, thus enhancing China's competitiveness in an increasingly carbon-constrained world.

Recommendations

- Include other key emitting sectors, for example cement and steel, in the national carbon market during the next compliance cycle.
- Ensure the necessary preparatory work is completed before the next compliance cycle by setting relevant benchmarks, publishing allocation mechanisms for other key emitting sectors, and conducting consultations and capacity-building for all covered enterprises.

3. Facilitate Bilateral Government, Civil Society and Business Exchanges on the Latest Decarbonisation Policies and Actions to Reinforce Cooperation in Line with China's 30/60 Goals and the EU Green Deal

Concern

In order to achieve their ambitious climate targets, both the EU and China need to incentivise wide-ranging, exclusive exchanges on the latest policies and actions among multiple stakeholders to achieve political reciprocity and boost bilateral commercial cooperation and trade relations.

Assessment

Climate change requires collective action on a global scale because most GHG emissions accumulate over time and mix globally. Moreover, emissions by any agent—individuals, communities, companies or countries—affect other agents. International climate change negotiations have traditionally been driven at a national level, but the 2015 Conference of the Parties (COP) in Paris resulted in the recognition that an important role can and should be played by local governments, cities, the private sector and civil society.[32]

Though the annual global climate negotiations do not directly affect existing carbon trading systems, they influence national and international climate policies that lead to the creation of such markets or facilitate trading of carbon credits. COP26 in 2021 had been ground-breaking in this regard, finally establishing overall rules and definitions for tradable units representing mitigation outcomes that could be transferred among countries for various purposes.[33] COP27 was rather focussed on the needs of developing countries, with a difficult consensus on the establishment of a 'loss and damage' fund.[34]

The EU Green Deal and China's 30/60 Goals demonstrate that both parties seem to share many common objectives related to achieving both a low-carbon economy and the UN's Sustainable Development Goals (SDGs). Of particular relevance are SDG13 (taking urgent action to combat climate

31 You, Xiaoying, *How will EU's 'green tariff' impact China's carbon market?*, China Dialogue, 6th February 2023, viewed 9th May 2023, <https://chinadialogue.net/en/climate/how-will-eus-green-tariff-impact-chinas-carbon-market/>

32 One example of this multi-stakeholders and bottom-up initiative is the United States' Climate Alliance created in 2017: Crooks, Ed, *US States Form Alliance to Meet Paris Climate Commitments*, *Financial Times*, 6th June 2017, viewed 20th April 2022, <https://www.ft.com/content/27c5bad2-4895-11e7-919a-1e14ce4af89b>

33 The new framework will be comprised of two parts: a centralised system open to the public and private sectors, and a separate bilateral system that will allow countries to trade credits that they can use to help meet their decarbonisation targets.

34 The fact that it exists is an acknowledgement by the developed world that there is a need to compensate the developing world for an issue that it did little to create and is positive in that sense. In two other ways, though, it is less encouraging. See: *COP27 – Achievements and Disappointments*, The Oxford Institute for Energy Studies, December 2022, viewed 30th May 2023, <https://www.oxfordenergy.org/publications/cop27-achievements-and-disappointments/>

change and its impacts), and SDG7 (ensuring access to affordable, reliable, sustainable and modern energy for all). They pave the way for businesses in the EU and China to engage and cooperate to create mutually beneficial commercial opportunities in the transition to a low-carbon economy.

Both China and the EU have recognised that market-based instruments are one of the most cost-effective policy tools for addressing climate change. As such, they have been cooperating on ETSs since 2014, which facilitated the creation of China's national ETS.[35] In view of these successful past exchanges, a Memorandum of Understanding (MoU) to Enhance Cooperation on Emissions Trading was signed in 2018,[36] which saw the establishment of an EU-China policy dialogue on ETSs. This dialogue now takes place regularly at director general-level or vice minister-level. More recently, at the fourth EU-China High-level Environment and Climate Dialogue in 2023, both sides agreed to deepen cooperation on emissions trading based on the 2018 MoU.[37] The sub-working group expects that the EU and China will keep close exchanges and cooperation on ETSs. Regular bilateral policy dialogues on carbon markets are a mutual learning process, given the maturity of the EU ETS and the sheer size and complexity of the Chinese ETS.

Perhaps the most controversial EU carbon-related measure is the aforementioned CBAM. On 13th June 2023, the European Commission published a first call for feedback on the rules governing the implementation of the CBAM during its transitional phase (1st October 2023–31st December 2025), detailing the reporting obligations and information sought from EU importers of CBAM goods, as well as the provisional methodology for calculating embedded emissions released during the production process of CBAM goods. The implementing regulation will be formally adopted by the Commission later in 2023 once approved by the CBAM Committee, composed of representatives from EU Member States.
China exports more manufactured goods and services to the EU than any other country, so it is not surprising that the CBAM's introduction has raised concerns among Chinese stakeholders. At a World Trade Organization meeting in Geneva on 5th June 2023, China's ambassador Li Chenggang criticised a series of EU trade measures, including the CBAM, claiming it would unfairly penalise developing countries.[38] To alleviate these concerns, not only should the EU communicate CBAM polices more transparently and frequently, but China should also proactively conduct rigorous research, carry out effective bilateral and/or multilateral dialogues on pressing climate issues including the CBAM, carbon leakage and the trade-industry decarbonisation nexus, formulate coping strategies and explore a cooperative rule-setting process. Mutual understanding of the CBAM's strengths, weaknesses, opportunities and threats may serve as a key building block in support of effective cooperation to move the global climate agenda forward.[39]

Harmonisation of MRV standards and compliance requirements between the EU and China

China could learn from the EU's emissions MRV experiences.[40] The introduction of standardised reporting frameworks and metrics, as well as mandatory third-party verification, introduced during the EU ETS's third stage (2013–2020) helped to remove systemic flaws. It would also be advisable for China to adopt existing international standards for assessing product carbon footprints rather than trying to develop its own. This is an area where the EU has already done a lot of work, and where there should be strong EU-China cooperation. A bifurcation here would make the development of an international carbon market impossible, and European companies would be unable to meet their decarbonisation commitments.

Recommendations

- Engage with both European and Chinese businesses regarding the latest developments in policymaking and implementation, and as an active part of

35 Norris, James, *Can the EU and China align their carbon markets?*, China Dialogue, 6th May 2022, viewed 17th July 2023, <https://chinadialogue.net/en/climate/can-the-eu-and-china-align-their-carbon-markets/>

36 *EU and China step up cooperation on climate change and clean energy*, European Commission, 16th July 2018, viewed 20th April 2022, <https://ec.europa.eu/info/news/eu-and-china-step-cooperation-climate-change-and-clean-energy-2018-jul-16_en>

37 *Readout of the Fourth EU-China High-Level Environment and Climate Dialogue*, European Commission, 4th July 2023, viewed 17th July 2023, <https://climate.ec.europa.eu/news-your-voice/news/readout-fourth-eu-china-high-level-environment-and-climate-dialogue-2023-07-04_en>

38 *China berates EU at World Trade Organization for policies it calls unfair*, *SCMP*, 6th June 2023, viewed 12th July 2023, <https://www.scmp.com/news/china/article/3223047/china-berates-eu-world-trade-organization-policies-it-calls-unfair>

39 *EU-China Roundtable on Carbon Border Adjustment Mechanism*, Agora Energiewende, July 2021, viewed 17th July 2023, <https://static.agora-energiewende.de/fileadmin/Projekte/2021/2021-02_EU_Lead_markets/A-EW_222_EU-China_CBAM_WEB.pdf>

40 *Carbon Neutrality: The Role of European Companies in China's Race to 2060*, European Union Chamber of Commerce China, 25th May 2022, viewed 4th June 2023, <https://www.europeanchamber.com.cn/en/publications-carbon-neutrality-report>

achieving strategic decarbonisation targets in both the EU and China.

- Support domestic think tanks and facilitate their exchanges with EU peers on the rules, progress and impact of the EU's CBAM on EU-China trade and investment.
- Provide technical and coordination support for the harmonisation of MRV standards and requirements between the EU and China.

Abbreviations

CBAM	Carbon Border Adjustment Mechanism
CCER	Chinese Certified Emission Reduction
CEA	Chinese Emission Allowance
CNY	Chinese Yuan
CO_2	Carbon Dioxide
COP	Conference of the Parties
EF	Emission Factor
ETS	Emissions Trading Scheme
EU	European Union
EUR	Euro
GHG	Greenhouse Gas
ICAP	International Carbon Action Partnership
MEE	Ministry of Ecology and Environment
MOU	Memorandum of Understanding
MRV	Monitoring, Reporting and Verification
NDRC	National Development and Reform Commission
SDG	Sustainable Development Goal

Fashion and Leather Working Group

Key Recommendations

1. Amend the Product Quality Law 6

1.1 Remove the Abstract Term 'Unqualified Product' and Introduce the Concept of 'Safe Product', and Confirm Whether a Product's Conformity with Mandatory National Standards or a Product Having Unreasonable Risk Can Be Used as Criteria for Judging its Safety and Initiating Administrative Penalties

- Remove the term 'unqualified product' and introduce the term 'safe product'.
- Confirm whether a product's conformity with national standards, or its potential to cause unreasonable risk, can be used as criteria in assessing its safety and initiating administrative penalties.
- Ensure that voluntary standards cannot be used as the basis for administrative penalties.
- Allow companies the freedom not to display recommended standards on imported products if they are compliant with Chinese compulsory standards.

1.2 Confirm that if Products Fail to Satisfy their Declared Quality Standards Enterprises Only Assume Civil Responsibility

- Clarify that enterprises shall only bear civil liability for a safe product that does not meet the quality standards claimed by the enterprise, and shall not be subject to administrative penalties.

2. Revise the Mandatory National Standard GB 18401 National General Safety Technical Code for Textile Products 6

- Revise *GB 18401-2010* as soon as possible, and consider adjusting the colour fastness criteria for special products.
- Take the half-grade-difference into consideration as a general safety conformity scale and apply it when judging the conformity of a product.
- Change colour fastness from being a 'key quality item' to a 'normal quality item' when making national-, provincial- or city-level implementation rules for product inspections, and apply it in product inspections, to facilitate a change in the safety scale and judging standard for product conformity.
- Include a test for dyes and auxiliaries that pose a risk of harming personal health in the safety assessment of mandatory standard *GB 18401*.

3. Take Action to Curb the Sale of Fake Goods Online and Promote Industrial Self-governance 5

- Call on grassroots courts, especially local intellectual property courts, to be more proactive in identifying the relevant responsibilities of platforms in individual cases, and ensure various network platforms, including social media, actively fulfil their social and legal responsibilities for intellectual property rights (IPR) protection.
- Supervise and encourage courts at all levels throughout China to actively strengthen IPR protection online by sharing case studies of ground-breaking judgments.

Section Three: Goods

- Classify platforms (for example, traditional e-commerce and social media platforms) according to modes of query, channels of information display, methods of user access, payment and settlement, and other technical features, and set up proper administrative measures.
- Encourage the development and improvement of standards related to the protection of IPR in e-commerce and promote their adoption in relevant legislation.
- Take heed of and respect effective IPR protection models agreed between rights holders and platforms.

4. Adopt any Necessary Administrative or Judicial Measures to Curb Bad-faith Trademark Registration

- Consider the malicious use of the pre-emptive registrant and reduce the evidentiary requirements for prior rights holders in trademark invalidation trials.
- Take timely measures to stop the infringement or unfair competition caused by the malicious use of squatted trademarks in administrative law enforcement and judicial hearings.
- Provide feasible guidance for handling cases of obvious infringement when a registered trademark has been used beyond its approved scope.
- Use injunctions when handling infringement in civil litigation to prevent the malicious use of squatted trademarks from resulting through increased losses to prior rights holders.

5. Proactively Gather Feedback from Enterprises Piloting the Complaints Platform, and Use it to Further Optimise the Content to be Published

- Develop clear disclosure standards and procedures, and announce them on the consumer complaints platform.
- Display the merchant's full explanation for unmediated complaints as part of the disclosed information.

6. Streamline the Customs Acceptance Requirements for Imported Apparels and Add the Fabric Test Report to the Current List of Accepted Reports for Inspection of Adult Apparel

- Optimise the *Acceptance Requirements for Imported Apparel* by allowing fabric test reports for imported adult apparel.
- Collect feedback from enterprises, and formulate practical implementing rules for the acceptance of fabric inspection reports.

Introduction to the Working Group

Established in 2016, the Fashion and Leather Working Group is comprised of 12 members, mainly from the European fashion and leather industry, that produce and import high-end apparel, leather bags, suitcases, shoes and other fashion-related products for the Chinese market. The working group represents the high-end consumer goods industry when communicating with relevant policymakers on common industry issues. Since its establishment, the working group has actively followed relevant legislative developments and offered recommendations for creating an orderly market environment that protects the rights and interests of consumers.

Recent Developments

In 2022, the global personal luxury goods market reached a record-high market value of euro (EUR) 345 billion. This momentum persisted into the first quarter of 2023, with the industry achieving 9–11 per cent growth over 2022.[1] Though the Chinese luxury market saw a 10 per cent decline in 2022, it is still the most promising market globally for luxury goods.[2]

The following recent Chinese policy updates have had a significant impact on European Chamber member companies operating in the industry:

On 20th September 2022, the General Administration of Customs of China (GACC) issued the *Measures for the Administration of Customs Import-Export Commodity Inspection Acceptance*, aimed at both optimising customs supervision and facilitating trade through the adoption of results from not only domestic but also foreign inspection institutions for import and export commodity inspections.[3] These measures came into force on 1st December 2022, when the GACC also announced imported apparel as the first commodity eligible for customs acceptance under these new measures.[4] More information on this can be found in Key Recommendation 6 of this paper.

The updated *Shanghai Municipal Regulations of Consumer Rights Protection*, which came into effect on 1st August 2022,[5] has undergone significant changes compared to its previous version. The new regulation stipulates the obligations of operators with regard to new categories of consumption, such as 'blind box'[6] and online live streaming. Additionally, it explicitly excludes "purchases not for daily consumption needs" from the scope of consumer protection. The working group welcomes these modifications.

On 7th July 2022, the Cyberspace Administration of China (CAC) released the *Measures on Security Assessment of the Cross-border Transfer of Data*,[7] which provide specific assessment guidelines for transferring personal information abroad. Many working group members prepared and submitted applications for security assessments soon after the policy became effective on 1st September 2022, in order to comply with the new policy.[8]

Key Recommendations

1. Amend the Product Quality Law 6

1.1 Remove the Abstract Term 'Unqualified Product' and Introduce the Concept of 'Safe Product', and Confirm Whether a Product's Conformity with Mandatory National Standards or a Product Having Unreasonable Risk Can Be Used as Criteria both for Judging its Safety and Initiating Administrative Penalties

Concern

The concept of 'unqualified product' is too abstract, which results in severe administrative penalties being imposed upon enterprises that make mistakes in labelling.

Assessment

Various local law enforcement authorities have defined 'unqualified products' differently, and the ambiguity of the concept has resulted in the current scope of 'non-conforming products' being too broad. Since the term 'unqualified product', referred to in the Product Quality

1 D'Arpizio, Claudia & Levato, Federica, *Global luxury goods market accelerated after record 2022*, Bain & Company, 23rd June 2023, viewed 27th June 2023, <https://www.bain.com/about/media-center/press-releases/2023/global-luxury-goods-market-accelerated-after-record-2022-and-is-set-for-further-growth--despite-slowing-momentum-on-economic-warning-signs/>

2 Lannes, Bruno & Xing, Weiwei, *Setting a New Pace for Personal Luxury Growth in China*, Bain & Company, 7th February 2023, viewed 27th June 2023, <https://www.bain.com/insights/setting-a-new-pace-for-personal-luxury-growth-in-china/>

3 *Measures for the Administration of Customs Import-Export Commodity Inspection Acceptance*, GACC, 20th September 2022, viewed 13th April 2023, <http://www.customs.gov.cn//customs/302249/302266/302267/4593093/index.html>

4 *No.120 Announcement of General Administration of Customs of China About Acceptance Requirements for Imported Apparel*, GACC, 1st December 2022, viewed 5th May 2023, <http://www.customs.gov.cn/customs/302249/302267/4717164/index.html>

5 *Shanghai Municipal Regulations of Consumer Rights Protection,* Standing Committee of Shanghai Municipal People's Congress, 26th July 2022, viewed 13th April 2023, <http://www.spcsc.sh.cn/n8347/n8467/u1ai247811.html>

6 Blind box business usually refers to the business model in which operators sell a specific range of goods in the form of random sampling by consumers without prior notification of the specific model or style of the goods. *The Compliance Guidelines for Blind Box Operations in Shanghai*, Shanghai Administration for Market Regulation, 10th January 2022, viewed 6th June 2023, <https://scjgj.sh.gov.cn/210/20220114/2c9bf2f67e29b4b3017e5765fe447e2e.html>

7 *Measures on Security Assessment of the Cross-border Transfer of Data*, CAC, 7th July 2022, viewed on 13th April 2023, <http://www.gov.cn/zhengce/zhengceku/2022-07/08/content_5699851.htm>

8 For more details on cross-border data transfer, see the *Cybersecurity Sub-working Group Position Paper 2023/2024.*

Section Three: Goods

Law,[9] has not been clearly defined, considerable administrative resources that could be used to combat unsafe products in the market are instead wasted on supervising safe but substandard products, which ultimately does not protect consumer safety. It also results in companies potentially facing serious administrative penalties for minor labelling defects.

Furthermore, this practice is not in line with certain provisions of the World Trade Organization Agreement on Technical Barriers to Trade (WTO/TBT).[10] For instance, in China, violation of a declared voluntary standard results in classification as an 'unqualified product', for which the enterprise is punished for violating a mandatory standard. However, the WTO/TBT only allows mandatory standards to be applied in consideration of national security, prohibition of fraud, and health, safety and environmental protection.

When comparing foreign and domestic administrative priorities and practices related to product quality, it is clear that the European Union (EU), the United States and other developed countries put more focus on safety-related standards. In the textiles sector, for instance, there are more than a hundred safety-based criteria in Europe—derived from the General Product Safety Directive[11] and the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)[12]—that deal with carcinogens, mutagens, reproductive toxicity, sensitisation, endocrine disorders and environmental protection; whereas in China there are only two safety-related chemical standards – covering azo and formaldehyde.

Due to this lack of safety standards, China's market supervision and inspection authorities are not sufficiently able to protect consumers' health and safety. Meanwhile, the current enforcement focus is more on non-safety-related standards, which hinders innovation and the development of the industry overall as companies concentrate on conforming with these requirements. Therefore, the concept of a 'safe product' should be adopted, and a product's conformity with mandatory national standards and its potential unreasonable risk confirmed as the criteria for judging its safety, to resolve current challenges faced by the industry, including those outlined below.

Challenge 1

Companies that produce and sell goods need to include a large amount of product information on labels, meaning that production and sales involves many departments (which may include foreign agencies). It is therefore inevitable that some faults or translation errors may occur, resulting in incomplete or inaccurate product labelling information. Currently, due to the lack of a clear specification of 'unqualified products' in the Product Quality Law, companies are often subject to high administrative penalties for minor product label defects unrelated to safety, which greatly increases the burden on companies.

Challenge 2

Current voluntary standards are numerous and categorised in different systems, including 'local standards', 'industrial standards' and 'national standards'. For instance, there are over 1,300 voluntary national standards related to textile and leather technology and the garment industry in general, and more than 2,000 voluntary industry standards related to textiles. In some cases, different standards and regulations are misaligned or conflict with one another. As a result, it is challenging and burdensome for enterprises to accurately determine the voluntary standards that are applicable.

Challenge 3

Despite the large number of voluntary standards, they do not address certain special characteristics of specific products. For example, the generalised assessment indicators for the colour fastness of leather products in *QB/T 1333 Handbag and Knapsack*—the widely applied standard for handbag and knapsack products—did not take into account the special characteristics of suede materials, which led to significantly differing opinions among many experienced testing agencies. Some enterprises faced administrative penalties as a result, which provided a basis for professional claimants[13] to purchase such products with the ulterior motive of demanding large amounts of compensation. It was not

9 Product Quality Law, National People's Congress (NPC), 7th January 2019, viewed 10th April 2023, <http://www.npc.gov.cn/npc/c30834/201901/7f507d5963074e9ebc73c986e155b931.shtml>

10 *Agreement* on *Technical Barriers to Trade*, WTO, 1st January 1980, viewed 10th April 2023, <https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm>

11 *General Product Safety Directive*, European Commission, 11th January 2018, viewed 10th April 2023, <https://ec.europa.eu/info/general-product-safety-directive_en>

12 *REACH Regulation*, European Commission, 24th August 2016, viewed 10th April 2023, <http://ec.europa.eu/environment/chemicals/reach/reach_en.htm>

13 Professional claimants usually refer to people who buy products in the knowledge that the items have defect(s) in order to make multiple compensation claims.

until 2018 that special regulations accounting for the special characteristics of suede materials were included in the revised version of QB/T 1333. In view of the sheer number of voluntary standards, revising them to take into consideration the special characteristics of all products would be an extremely onerous task. Therefore, enforcing the law and implementing administrative penalties in line with voluntary standards is not a scientific approach.

Challenge 4

Voluntary standards include requirements and assessment methods for general characteristics of detailed product types, and are significantly influenced by the features of existing products, raw materials and technologies. Enterprises that engage in technological innovation, such as working with new materials or innovative manufacturing processes, or that choose non-harmful natural colourants over artificial synthetic chemical colourants, may risk incurring administrative penalties or being targeted by professional claimants. This leads to some being more risk averse with regard to innovation, which in turn hinders the drive towards creating and sustaining a natural, green environment free from harmful substances. The working group believes that this goes against the original objectives and spirit of the Product Quality Law, which is intended to improve product quality.

Challenge 5

Imported fashion and leather products are usually manufactured according to the standards that apply in their country of production. However, such goods also have to conform with certain Chinese product/production standards (all are recommended standards) by indicating the standard's number on the product's label, otherwise it cannot be sold in the market. In case of non-compliance with a recommended standard, foreign-produced products that can be sold abroad without problem cannot be sold in China; in the case of partial compliance, administrative penalties will be imposed. More information and case studies on this challenge can be found in the *Fashion and Leather Working Group Position Paper 2022/2023*.[14]

In the last three challenges detailed here, if the Product Quality Law were to use voluntary standards as a recommendation and reference—and an enterprise's civil liability were to be based on whether a product or its description actually misleads consumers and causes them losses—it would be more in line with China's legal principles that administrative laws uphold justice, and punishment would be proportional to the damage caused. Such application of the law would give enterprises more room to innovate while raising product quality, and would also be in line with China's current reform blueprint for simplifying administrative procedures.

Recommendations

- Remove the term 'unqualified product' and introduce the term 'safe product'.
- Confirm whether a product's conformity with national standards, or its potential to cause unreasonable risk, can be used as criteria when assessing its safety and initiating administrative penalties.
- Ensure that voluntary standards cannot be used as the basis for administrative penalties.
- Allow companies the freedom not to display recommended standards on imported products if they are compliant with Chinese compulsory standards.

1.2 Confirm that if Products Fail to Satisfy their Declared Quality Standards, Enterprises Only Assume Civil Responsibility

Concern

The application of administrative penalties on enterprises whose products fail to satisfy their declared quality standards is a waste of public resources and overburdens enterprises, as such a failure should only be deemed a breach of contract with consumers.

Assessment

When a product does not meet the quality standards claimed by the enterprise (when such standards are voluntary), but complies with mandatory national standards without unreasonable danger, China's Standardisation Law,[15] the Civil Code[16] and the Protection of Consumer Rights and Interests Law[17]

14 *Fashion And Leather Working Group Position Paper 2022/2023*, European Union Chamber of Commerce in China, 21st September 2022, viewed 15th April 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1056/Fashion_and_Leather_Working_Group_Position_Paper_2022_2023>

15 Standardisation Law, NPC, 4th November 2017, viewed 10th April 2023, <http://www.npc.gov.cn/zgrdw/npc/xinwen/2017-11/04/content_2031446.htm>

16 *Civil Code of the People's Republic of China*, NPC, 28th May 2020, viewed 10th April 2023, <http://www.npc.gov.cn/npc/c30834/202006/75ba6483b8344591abd07917e1d25cc8.shtml>

17 Protection of Consumer Rights and Interests Law, NPC, 25th October 2013, viewed 10th April 2023, <https://gkml.samr.gov.cn/nsjg/fgs/201906/t20190625_302783.html>

clearly state that the enterprise has broken its commitment to the consumer on product quality, and should be liable for liquidated damages.

This stance unfairly increases enterprises' contractual obligations and responsibilities, and unbalances market regulation. Consumer demand for new products, new materials and new processes is constantly increasing, requiring enterprises to focus more on reinvention and continual innovation. Therefore, to protect people's health and safety, the final version of the revised Product Quality Law should provide enterprises with a relatively fair and reasonable legal environment that fosters production innovation and promotes production quality improvements. Frequent fines would have the opposite effect and hinder the development of enterprises, as well as the overall level of national innovation.

The 2017 revision of the Standardisation Law specifies that compulsory national standards must be implemented, while encouraging the adoption of other standards such as voluntary, group and enterprise standards. This was a critical step in making administrative management more efficient and aligned with international practices. The working group welcomed the accurate scoping of voluntary standards in the Standardisation Law, and recommends the alignment of revisions to the Product Quality Law, and ensuring that voluntary standards are indeed, by definition, 'voluntary'; that is, their nature as a standard for regulating civil liability relationships is recognised.

Recommendation

- Clarify that enterprises shall only bear civil liability for a safe product that does not meet the quality standards claimed by the enterprise, and shall not be subject to administrative penalties.

2. Revise the Mandatory National Standard GB 18401 National General Safety Technical Code for Textile Products 6

Concern

Including colour fastness of textiles as a compulsory testing item under standard GB 18401 does not make sense as it is merely a burden to enterprises and is in no way related to a product's safety.

Assessment

The mandatory national standard GB 18401 requires several colour fastness tests,[18] including water resistance, perspiration resistance, dry rubbing resistance and saliva fastness. Colour fastness refers to "the ability of the colour of a textile to withstand various effects during processing and use, expressed in terms of the degree of discolouration and the degree of staining of the lining fabric". It is the consensus of the textile industry that this fastness to dyeing is a physical performance indicator that does not directly affect personal health or the safety of life and property. In other words, it is the dyes and auxiliaries themselves that may have a direct impact on personal health and the safety of life and property, thus the relevant authorities should establish a preventive management mechanism for the chemical hazards of dyes and auxiliaries in the entire textile chain. At present, there are no relevant domestic laws, regulations or mandatory assessments that do this. In other countries' laws and regulations on textiles, the dyeing fastness performance is included in the standards or certifications voluntarily adopted by enterprises. The chemical risks from dyes and auxiliary substances are assessed and controlled separately.

Taking mulberry silk fabric as an example, the colour fastness is generally not high because it is composed of natural protein fibre, which is vulnerable to high temperature, and therefore cannot tolerate high temperature dyeing/colour fixation in the dyeing process. Especially when the colours being used are dark or black, the extra dyestuff cannot be absorbed by fibre within the dyeing time, which results in dye molecules accumulating on the fibre surface and forming floating colours, which impacts the results of colour fastness tests. To improve the colour fastness, fabric factories add various auxiliaries in dyeing in spite of the resulting environmental hazards and health and safety risks.

The short fibres of grinding, lint, velvet and other velvet fabric products are very easily rubbed off. In the rubbing colour fastness test, test institutions hold varying opinions on whether or not short fibres should be taken into account, as well as how it should be done, when assessing the staining level, which leads to inconsistent

18 *National Standard GB 18401 National General Safety Technical Code for Textile Products*, Standardisation Administration of China (SAC), 14th January 2018, viewed 10th April 2023, <https://openstd.samr.gov.cn/bzgk/gb/newGbInfo?hcno=52C1F4CBDE863F5095D7C9D17F8E3F71>

conclusions because the existence of short fibres will directly affect the inspector's visual rating results.

Denim fabric is one of the most popular fabrics globally, but the characteristics of indigo dyes cause the dye to be adsorbed by the cellulose fibres only through van der Waals forces, i.e., physical action, with almost no chemical bonding between the fibres, resulting in a low colour fastness. Although consumers generally accept the wash fading characteristics of denim fabrics, denim manufacturers continue to strengthen the colour fastness of their fabrics in order to meet the standard requirements for colour fastness. In this process, denim manufacturers constantly strengthen the washing and colour-floating treatment of their blanks and finished products, and increase the finishing process, generating a large amount of waste water and emissions, which is not conducive to overall environmental protection and sustainable development requirements.

Assessment of colour fastness is always based on visual measurement by the tester under certain light conditions, and the differences between the skills and capability of the testers, their subjectivity and so on directly impact the test results. In 2020, the State Administration for Market Regulation (SAMR) conducted a project titled 'Verification of the Testing Capacity for Perspiration Resistance Colour Fastness of Textiles and Silk Products (CNCA-20-13)' among national inspection and test institutions.[19] Participants represented nearly all the leading advanced test laboratories and agencies, including provincial quality supervision and inspection centres, customs technical centres, fabric inspection test laboratories, and civil and foreign test agencies. The results show that about a third of laboratories found a half-grade-difference in the test for perspiration colour fastness.[20] This suggests that a half-grade-difference of colour fastness is an approved scale of conformity.

In national-, provincial- and city-level market inspections, colour fastness is a 'key quality item' and mandatory test item. In cases of non-conformity, a product will be determined as unqualified. Despite the half-grade-difference having been verified as an approved scale of conformity, such a result usually causes the product to be downgraded to 'unqualified product'. This results in enterprises being punished by market surveillance authorities and the company's credibility being harmed.

19 *Notice of SAMR Office on the Implementation of 2020 National Testing and Inspection Organisations Capacity Verification*, SAMR, 20th March 2020, viewed 10th April 2023, <https://www.samr.gov.cn/rkjcs/tzgg/art/2020/art_47283f83b62941aab5793dbf04058730.html>

20 32.8 to 39 per cent of institutions reported a half-grade-difference in the test of the staining level of BNH-2 blue cotton sticky fabric; and 21.5 to 35.9 per cent reported a half-grade-difference with RNH-2 red silk fabric.

Recommendations

- Revise GB 18401-2010 as soon as possible, and consider adjusting the colour fastness criteria for special products.
- Take the half-grade-difference into consideration as a general safety conformity scale and apply it when judging the colour fastness of a product.
- Change colour fastness from being a 'key quality item' to a 'normal quality item' when making national-, provincial- or city-level implementation rules for product inspections, and apply it in product inspections, to facilitate a change in the safety scale and judging standard for product conformity.
- Include a test for dyes and auxiliaries that pose a risk of harming personal health in the safety assessment of mandatory standard GB 18401.

3. Take Action to Curb the Sale of Fake Goods Online and Promote Industrial Self-governance

Concern

The lack of effective enforcement regulations means that fake goods are still being sold on e-commerce platforms in China, a situation that has worsened due to negligence on the part of platform operators, which is harming the legitimate rights of a growing number of right holders.

Assessment

Over the last few years, China's e-commerce industry has developed dramatically in both the number and format/structure of platforms and businesses, while various innovative promotion methods have also emerged, placing increasingly higher demands on companies conducting daily supervision and administration. Combatting the sale of fake products through social media is quite different than through e-commerce platforms. For instance, while online platform owners and intellectual property right (IPR) holders can themselves run searches and monitor e-commerce platforms due to their openness to user access, it is more difficult to effectively supervise social media due to the levels of confidentiality involved.

This makes selling counterfeit goods via, for example, WeChat Moments, more convenient, with sales volumes potentially far exceeding that of other online platforms. In addition, more and more mini apps and livestreaming platforms have been taking advantage of the privacy of social circles, the uncertainty of the origin of certain goods and the convenience of third-party payments. The owners of some of these apps and platforms are leveraging these conditions to rampantly sell counterfeit goods through 'livestreaming rooms' and so-called 'group buying'. This makes monitoring counterfeit sales extremely challenging for both rights holders and law enforcement agencies. Due to the difficulty of online investigation and evidence collection, as well as cross-regional law enforcement, it is hard for local market surveillance and public security officers to effectively police such a wide area and such a large volume of sales.[21]

In September 2020, the Supreme People's Court (SPC) issued the *Notice Regarding Issuing Guiding Opinions on the Trial of Intellectual Property (IP) Civil Cases Involving E-commerce Platforms*,[22] which further increases and clarifies the responsibilities and obligations of platforms to prevent and protect IPR in their daily business activities. The notice emphasises that if the platform operator "knows" or "should know" that a business owner operating on the platform infringes upon IPR, it should take necessary measures following the principle of "reasonable prudence"; the reasonableness of the measures taken by platform operators has also been further clarified and refined therein. The *Measures for the Supervision and Administration of Network Transactions*,[23] which went into effect on 1st May 2021, further refine the management responsibilities of e-commerce platforms regarding the review and registration of operators on the platform. It stipulates that operators of third-party trading platforms must take necessary measures to protect the rights of the exclusive use of registered trademarks and the name rights of companies. Not all e-commerce platforms have strictly fulfilled the legal and social responsibilities stipulated by the above regulations and judicial opinions, and have neglected prudent management of platform operators. For example, many stores selling counterfeits do not display business registration information, and stores that have repeatedly been found selling counterfeits remain in operation.

At the same time, the national recommended standard *GB/T 39550-2020 Management of IP Protection on E-Commerce Platforms*[24] puts forward detailed, constructive opinions on the protection and management of IPR on e-commerce platforms, including daily management responsibilities and effective measures to combat IP infringement, as well as some functional requirements, like data sharing with supervision departments or having to establish a dedicated in-house IP department. These kinds of standards should be continually improved, so as to establish good references for further revisions to the E-commerce Law, and potentially for judicial decisions and law enforcement practices.

Recommendations

- Call on grassroots courts, especially local IP courts, to be more proactive in identifying the relevant responsibilities of platforms in individual cases, and ensure various network platforms, including social media, actively fulfil their social and legal responsibilities for IPR protection.
- Supervise and encourage courts at all levels throughout China to actively strengthen IPR protection online by sharing case studies of ground-breaking judgments.
- Classify platforms (for example, traditional e-commerce and social media platforms) according to modes of query, channels of information display, methods of user access, payment and settlement, and other technical features, and set up proper administrative measures.
- Encourage the development and improvement of standards related to the protection of IPR in e-commerce and promote their adoption in relevant legislation.
- Take heed of and respect effective IPR protection models agreed between rights holders and platforms.

21 For more on the issue of online counterfeits, see the *Intellectual Property Rights Working Group Position Paper 2023/2024*.

22 *Notice from the SPC regarding Issuing Guiding Opinions on the Trial of Intellectual Property Civil Cases Involving E-commerce Platforms*, SPC, 10th September 2020, viewed 10th April 2023, <http://www.court.gov.cn/fabu-xiangqing-254931.html>

23 *Measures for the Supervision and Administration of Network Transactions*, SAMR, 15th March 2021, viewed 10th April 2023, <https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/fgs/art/2023/art_d10c269b8ce3452a92eab5d1a93c23a0.html>

24 *GB/T39550-2020 Management of IP Protection on E-Commerce Platforms*, SAMR & SAC, 9th November 2020, viewed 10th April 2023, <http://openstd.samr.gov.cn/bzgk/gb/newGbInfo?hcno=E315E3B122771E0D38B843BC19E6E5F4>

4. Adopt any Necessary Administrative or Judicial Measures to Curb Bad-faith Trademark Registration

Concern

A proliferation of bad-faith trademark registration has severely affected the operations of many brands, which harms China's business environment and deters foreign investment.

Assessment

In recent years, malicious trademark squatting, hoarding of trademarks, and malicious use of squatted trademarks have become increasingly common and severe in China. In order to avoid being identified as malicious trademark registrants, some individuals pre-emptively establish shell companies in Hong Kong or overseas, transfer trademarks to these shell companies, and then authorise themselves to use these trademarks improperly in China.

There are various forms of improper use of squatted trademarks, with the main purpose of blackmailing well-known brands and seeking improper benefits. These include, for example: 1) using trademarks beyond their approved scope of registration, especially when using trademarks on products or services similar to or related to well-known brands of others; 2) distorting logos of squatted trademarks by highlighting the parts of well-known brands, or imitating a well-known brand to the greatest extent possible in terms of font, colour and design; 3) selling squatted trademarks to prior rights holders, and coercing rights holders to purchase trademarks from them at high prices through the initiation of complaints or lawsuits; and 4) using registered trademarks to attract investment and mislead others into using squatted trademarks, leading partners to mistakenly believe that they are cooperating with well-known brands. These improper uses go beyond the scope of the normal use of registered trademarks, and even directly infringe on the legitimate rights and interests of others, which greatly disrupts fair competition, and forces brand owners to spend a lot of money to protect their rights and mitigate the negative impacts of these malicious actions on their brand value.

When enterprises encounter trademark squatters, they usually file an request to invalidate the squatted trademarks. This often requires the prior rights holders to provide extensive evidence to prove the registration involved was malicious, and that the brand of the prior right holder had gained a certain influence prior to the squatted registration. For trademarks that have been registered for a long time or have been transferred several times, it is usually difficult to collect and provide evidence of subjective malice of the registrant. Therefore, in many cases, judges do not support the invalidation of the trademark on these grounds.

In addition, because trademark squatting may also constitute unfair competition, enterprises can file a complaint with the administrations for market regulation. In practice, if the respondent argues that the trademark involved has already been registered, law enforcement agencies usually do not recognise infringement or prefer to take action after the trademark right has been determined. In cases in which the use of a squatted trademark significantly exceeds its registered scope and the infringement is clear, it would be fairer and more efficient for law enforcement officials to scrutinise the case, launch a separate investigation, and prioritise and stop the infringement case in a timely manner. Similarly, in tort civil litigation, the court should have the professional ability to identify and judge infringing acts. For obvious infringements, timely measures such as injunctions should be taken to prevent expansion of the violation.

Trademark invalidation procedures and administrative litigation proceedings may last for two to three years, or even longer. If the administrative law enforcement and judicial departments cannot take timely and enforceable measures to stop an ongoing infringement, and the trademark continues to be abused over a long time, the infringement will have an irreparable impact on the prior rights holder.[25]

Recommendations

- Consider the malicious use of the pre-emptive registrant and reduce the evidentiary requirements for prior rights holders in trademark invalidation trials.
- Take timely measures to stop the infringement or unfair competition caused by the malicious use of squatted trademarks through administrative law enforcement and judicial hearings.
- Provide feasible guidance for handling cases of obvious infringement when a registered trademark

25 For more on trademark enforcement, see the *Intellectual Property Rights Working Group Position Paper 2023/2024*.

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has been used beyond its approved scope.

- Use injunctions when handling infringement in civil litigation to prevent the malicious use of squatted trademarks from resulting in increased losses to prior rights holders.

5. Proactively Gather Feedback from Enterprises Piloting the Consumer Complaints Platform, and Use it to Further Optimise the Content to be Published

Concern

Excluding feedback provided by enterprises piloting the national consumer complaints platform means that a wide range of opinions on how complaints are handled under the pilot are not being taken into consideration, which will result in a suboptimal system that could mislead the public and even harm the reputation of enterprises.

Assessment

Malicious or excessive complaints make up a large proportion of daily consumer disputes. These include requesting a return or replacement of goods bought online beyond the legal deadline of seven-day, no-reason return,[26] or accusing merchants of price fraud in cases when price cuts have been applied during special sales periods.

First, the failure of regulatory authorities to effectively identify the legality and rationality of consumer complaints leads to consumers' excessive complaint information being posted on websites, which can mislead consumers to believe that the quality of the concerned product or service is low. In extreme cases, professional claimants or unscrupulous 'self-media' operators maliciously interpret and then extensively expose such information during major shopping festivals or the '3.15' period (World Consumer Rights Day), which can have a significant adverse impact on brand image.

Second, the current pilot for the national consumer complaints platform only displays consumer's complaints and whether the mediation by administrative body was successful, but excludes the merchant's explanation. This is procedurally flawed. When considering similar disclosure systems, like a court's publishing of a final judgment or an administrative body's disclosure of effective punishment decisions, all have relevant procedural laws that provide institutional guarantees on the published information. The working group understands that responses from enterprises may be excluded due to the diversity of such information, which could place a large burden on administrative departments charged with categorising the feedback, as there is currently a lack of unified criteria for doing so. However, publishing partial information does not objectively reflect the whole situation of a complaint, and discounts both the ability and willingness of merchants to handle it.

If complaints are resolved through a mediation agreement, it may be inferred that the quality of the products or services are inferior. It is also notable that the reason a mediation may be unsuccessful may be down to the consumer. This means that information disclosure can be a double-edged sword – though government departments hope to use it to urge enterprises to improve product and service quality, and to improve their ability to resolve consumer complaints, one-sided information or a failure of mediation—without full explanation of the circumstances—can place significant, unnecessary pressure on enterprises.

Recommendations

- Develop clear disclosure standards and procedures, and announce them on the consumer complaints platform.
- Display the merchant's full explanation for unmediated complaints as part of the disclosed information.

6. Streamline the Customs Acceptance Requirements for Imported Apparel and Add the Fabric Test Report to the Current List of Accepted Reports for Inspections of Adult Apparel

Concern

Fabric test reports are not regarded as acceptable substitutes for apparel test reports in customs' inspections of adult apparel.

Assessment

Since 1st December 2022, the GACC have accepted

26 *Provisional Measures for Free Return and Refund of Online Purchased Products Within Seven Days (2020 Revision)*, SAMR, 23rd October 2020, viewed 13th April 2023, <http://www.gov.cn/zhengce/zhengceku/2020-11/03/content_5557118.htm>

test reports from both domestic and foreign test institutions to facilitate the importation of apparel.[27] For adult apparel to be accepted, however, companies need to do tests on the finished apparel. In practice, if the test institution is in China (as of 18th May 2023, only one of the 66 accepted test institutions is located overseas),[28] companies need to first import the apparel to China and then send it to lab for testing. The goods can only be imported in bulk after a test report verifying compliance has been issued. However, accepting test reports of the fabric of which the apparel is composed would make the process more efficient and convenient, as it would allow companies to send the fabric(s) for testing before production starts and receive the test report during production, after which bulk imports could start immediately. Using the fabric test report is also justified logically, as the test of finished apparel is based on the *National Basic Safety Technical Specification for Textile (GB 18401)*, which is a standard for tests done on textile products for clothing, decoration and household use, and conducted on fabric cut from a sample finished product. Furthermore, a finished product also usually represents a unique design, which carries a value in terms of a company's IP rights. Testing of finished products therefore increases the risk of IP disclosure before the product's launch.

Therefore, while enterprises appreciate the acceptance of foreign inspection institution testing for customs, they are hesitant to make use of these measures. If fabric test reports were added to the current list of accepted reports for imported apparel, it would provide greater assurance for IP protection while also optimising compliance time and costs.

Recommendations

- Optimise the *Acceptance Requirements for Imported Apparel* by allowing fabric test reports for imported adult apparel.
- Collect feedback from enterprises and formulate practical implementing rules for the acceptance of fabric test reports.

27 *No. 120 Announcement of General Administration of Customs China on Acceptance Requirements for Imported Apparel*, GACC, 1st December 2022, viewed 5th May 2023, <http://www.customs.gov.cn/customs/302249/302266/302267/4717164/index.html>

28 *Customs List of the Accepted Institutions for Inspection of Imported Apparel*, GACC, 18th May 2023, viewed 26th June 2023, <http://sjs.customs.gov.cn/sjs/yjts/index.html>

Abbreviations

CAC	Cyberspace Administration of China
EU	European Union
GACC	General Administration of Customs China
GB	*Guobiao*
IP	Intellectual Property
IPR	Intellectual Property Rights
NPC	National People's Congress
REACH	Registration, Evaluation, Authorisation and Restriction of Chemicals
SAC	Standardisation Administration of China
SAMR	State Administration for Market Regulation
SPC	Supreme People's Court
TBT	Technical Barriers to Trade
WTO	World Trade Organization

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Healthcare Equipment Working Group

Key Recommendations

1. Increase the Role of Market Forces in the Procurement of Medical Devices by Giving Greater Weighting to Device Quality and Clinical Needs

1.1 Prioritise Value-based Procurement and Improve Enforcement Procedures in Volume-based Procurement (VBP)

- Establish quality and clinical requirements as the main criteria for deciding VBP tenders, as opposed to procurement prices.
- Maintain the inter-ministerial communication platform to ensure that VBP tendering and implementation of tendering results adhere to generally accepted principles of VBP tenders, particularly regarding realising procurement volume, and terms of delivery and payment as agreed in the tender.
- Grant a transitional period before implementation of VBP tenders at the provincial level or above, to allow winning bidders time to prepare sufficient inventory.
- Set sufficient intervals between VBP tenders to allow procurement agencies to evaluate the clinical application of VBP products in hospitals, quality of services and reliability of supply.
- Increase the number of new innovative consumable medical devices available to patients by procuring outside VBP tenders, and conduct clinical evaluations of these new products to allow them to participate in the next round of VBP with a reasonable and justified price.

1.2 Optimise the Legislative and Administrative Framework of the Hospital Payment Reform to Promote the Use of Innovative Treatment Methods

- Establish a feasible pathway to payment for innovative treatment methods to accelerate patients' access to new medical technologies.
- Regularly update cost and payment calculation parameters in diagnosis-related groups and diagnosis intervention packets, taking into account input from hospitals, to establish a hospital payment mechanism that can keep pace with both technological developments and clinical requirements.

1.3 Regularly Update the Healthcare Service Catalogues to Promote the Use of Innovative Treatment Methods

- Enforce the separation of prices of medical consumables from medical services.
- Schedule plans for national pricing guidelines as well as review criteria and timeframes for provincial pricing guidelines.
- Enforce the ban on the multiple use of disposable medical devices and provide hospitals with sufficient funds so that multiple use will no longer be necessary.
- Accelerate the dynamic adjustment of pricing catalogues to facilitate patients' access to innovative treatment methods and state-of-the-art medical devices.

1.4 Enhance the Role of Commercial Healthcare Insurance and Private Hospitals

- Establish a regulatory framework for commercial healthcare insurance and develop a transparent drug and medical device reimbursement catalogue for commercial insurance companies.
- Promote cooperation between public medical insurance and commercial healthcare insurance by developing customised commercial insurance products that precisely target treatment

costs not covered by public insurance.

- Allow more private hospitals to import cutting-edge medical technologies not yet registered in China, such as the special permits for hospitals in Bo'ao (Hainan) and in the Greater Bay Area.

2. Continue to Advance the Development of Regulatory Science and Accelerate the Promotion of Innovation

2.1 Streamline the Process for Registration Modification

- Establish a notification procedure for approval of simple, non-critical modifications, such as labelling amendments and changes to the instruction for use.
- Establish a special notification channel for modifications caused by product recalls to quickly increase product safety.
- Grant a transitional period for implementing modifications following approval.

2.2 Promote Global Harmonisation of Medical Device Software Regulation

- Classify low-risk software as a medical device (SaMD) as class I devices, and implement rules for risk classification as recommended by the International Medical Device Regulatory Forum (IMDRF) SaMD Working Group (IMDRF/SaMD WG/N12FINAL:2014).
- Define minor and major modifications of medical software, in line with the recommendation by the Global Harmonization Working Party (AHWP/WG2-WG1-WG3/F001:2019), to allow easier upgrades of software versions.
- Allow software components, such as controllers and pre-processing software, to be registered independently from the medical hardware.
- Recognise International Electrotechnical Commission (IEC) 82304 as a standard for medical software development and rescind the requirement to comply with GB/T 25000.51-2016.

2.3 Remove the Requirement for Country of Origin (CoO) Certification in Pre-market Approvals

- Remove the requirement for CoO certification as a precondition for the registration and filing of imported medical devices.

3. Promote the Application of High-quality, High-precision Medical Devices in Public Hospitals

- Promote the concept of value-based procurement to ensure the best outcome when using limited public resources.
- Limit the application of the Government Procurement Law to funds administered by the Ministry of Finance and its local agencies.
- Increase transparency in the evaluation of import applications and invite experts from foreign-invested enterprises to participate in expert panels.

4. Promote Market Access for High-precision and Innovative In-vitro Diagnostics (IVDs)

4.1 Reflect IVDs' Technical Features in Medical Treatment Pricing Catalogues

- Include different diagnosis methods and technologies in procurement catalogues, and purchase according to the clinical demand for different technical features of IVD products and different diagnosis methods.
- Ensure that only validated reagents are used with IVD devices.

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4.2 Shorten the Pre-market Approval Time for IVD Reagents by Aligning and Further Elaborate Clinical Trial Policies

- Reduce the required number of trial sites for IVD reagents in the IVD particular clinical trial guidelines to two, aligning it with the *Good Clinical Practice Regulation*.
- Formulate criteria for acceptance of clinical evidence of IVD reagents in the registration process.

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Introduction to the Working Group

Medical devices, including in-vitro diagnostics (IVD), play a crucial role in the prevention, diagnosis and treatment of diseases, while supporting and monitoring the convalescence of patients in hospitals, clinics and those undergoing homecare. Therefore, medical devices are key to improving the overall health of the population as laid down in the strategic plan Healthy China 2030.[1]

Members of the European Chamber's Healthcare Equipment Working Group invest heavily in developing innovative treatments, and fully support the government's efforts to ensure patients' access to state-of-the-art, safe, efficacious and affordable medical devices. They maintain this commitment by investing in modern Chinese research, development and production facilities, as well as in the education of Chinese doctors and healthcare professionals. The working group has established contact with major stakeholders both in China and in Europe. It organises regular meetings with the National Medical Products Administration (NMPA) as well as Health Security Administrations (HSAs) and Health Commissions at different government levels to get first-hand information on regulatory and healthcare policy developments, and to present suggestions from the European medical device industry.

To enhance international cooperation, in 2007, the working group established contact with the European Coordination Committee of the Radiological, Electromedical and Healthcare Information Technology Industry (COCIR), a major medical technology industry association based in Europe. In April 2014, the European Chamber founded the Consumable and Disposable Medical Devices (CDMD) Advisory Committee, a group consisting of Chinese subsidiaries of international market leaders in the field of consumable medical devices and IVD. This advisory committee has since founded two subgroups – regulatory affairs and government affairs.

The Healthcare Equipment Working Group will continue to engage in constructive dialogue with all relevant government agencies, both at the national and provincial/local levels in China.

Recent Developments

From early 2020 to late 2022, the Chinese Government's focus on containing the COVID-19 pandemic slowed the reform and revealed weaknesses of its healthcare system.

As a result, in March 2023, the Communist Party of China and the State Council jointly published the *Opinions on Further Improving the Healthcare System (Opinions)*,[2] adjusting the pace and scope of its healthcare reform. The original reform plan, Healthy China 2030, was aimed at completing the basic reform process by the end of the decade, but the *Opinions* extended the target to 2035. This reflects the challenge of dealing with different priorities simultaneously: while China's ageing population requires an expansion of and improvements to elderly care and chronic disease facilities, the COVID-19 pandemic illustrated the continuous threat that infectious diseases pose to public health.

In addition, China's healthcare system is still unbalanced. Access to high-quality healthcare must be improved in rural and remote areas, while at the same time cutting-

1 *Outline of Healthy China 2030*, State Council, 25th October 2016, viewed 17th April 2023, <http://www.gov.cn/xinwen/2016-10/25/content_5124174.htm>

2 *Opinions on Further Improving the Healthcare System* (in Chinese), Central Office of the Chinese Communist Party & Office of the State Council, 23rd March 2023, viewed 24th April 2023, <http://www.gov.cn/zhengce/2023-03/23/content_5748063.htm>

edge medical services and innovative medical devices need to be developed.

In 2022, the Chinese medical device market reached Chinese yuan (CNY) 958 billion, an increase of 19 per cent compared with 2021,[3&4] accounting for about a quarter of the global medical device market. However, the market for medicines is still 2.9 times higher than that of medical devices,[5] compared with a rate of 1.4 in most developed economies, indicating there is still above average growth potential for the medical device industry in China.

In contrast, trade figures fell in 2022: exports dropped by 23 per cent year-on-year, while imports dropped by nine per cent. However, the decrease in trade volume was offset by a surge in global demand for specific products during COVID-19, such as life-sustaining equipment imported to, and protective personal equipment exported from, China.

Market access is still restricted for imported medical equipment. In a notice published on 10th August 2021, the Ministry of Finance (MOF) stated that public hospitals carrying out procurement within their regular budget—whatever the source of the budget—must apply government procurement rules.[6] This implies that, in accordance with the Government Procurement Law (GPL),[7] public hospitals must preferably buy medical devices manufactured in China. As a consequence, 94 per cent of surveyed medical device companies in the European Chamber's *Business Confidence Survey 2023* reported missing business opportunities in China as a result of market access restrictions or regulatory barriers, the highest rate among all industries surveyed.[8]

Throughout 2022, several local HSAs published volume-based procurement (VBP) plans at either the provincial or cross-provincial level. The range of products covered by VBP tenders is gradually increasing. While the focus is still on high-value, consumable medical devices, there is already a tendency for VBP to be applied to IVD reagents, as was the case in a cross-provincial VBP project under the Jiangxi HSA.[9] Furthermore, while procurement of reagents for COVID-19 tests were not categorised under VBP, they have set a precedent for procurement of very large volumes of reagents at extremely low prices, which foreign-invested manufacturers have no chance of competing against.[10]

Regulatory Environment

In 2022, a series of regulations were released that provide details on medical device registration, production and distribution, procedures that are regulated by the revised *Regulation on the Supervision and Administration of Medical Devices, Order No. 739*,[11] the highest-level legislation on medical device regulation in China. As part of this series, the *Provisions for Medical Device Manufacture* (State Administration for Market Regulation (SAMR), Order No. 53)[12] and the *Provisions for Medical Device Distribution* (SAMR, Order No. 54)[13] were released in March 2022.

From January to May 2022, the Centre for Medical Device Evaluation (CMDE) issued 95 technical review guidelines, totalling 529 guidelines that cover 87 per cent of China's risk classification catalogue.

Digital health is increasingly driving the growth of the medical device industry, with a growing number of medical devices including software and artificial intelligence,[14] which poses new challenges to

3 *Status and Trends of the Development of China's Medical Device Industry* (in Chinese), Roland Berger, February 2023, viewed 24th April 2023 (registration required), <https://www.fxbaogao.com/view?id=3586485>

4 While this figure includes the additional impact of COVID-19 prevention and treatment, it lies basically within the range of the average growth rate of 17.5 per cent over the last seven years.

5 This is down from four times that of medical devices a few years ago.

6 *Reply of the MOF to Petition No. 8584 on the Fourth Session of the 13th National People's Congress*, MOF, 10th August 2021, viewed 24th April 2023, <http://gks.mof.gov.cn/jytafwgk_8304/2021jytafwgk_1/rddbjyfwgk/202108/t20210810_3744263.htm>

7 Government Procurement Law (2014 Amended Version), National People's Congress, 31st August 2014, viewed 24th April 2023, <http://jrs.mof.gov.cn/zhuanti2019/ppp/zcfbppp/201410/t20141030_1155101.htm>

8 *European Business in China Business Confidence Survey*, European Union Chamber of Commerce in China, 21st June 2023, viewed 21st June 2023, <https://www.europeanchamber.com.cn/en/publications-business-confidence-survey>

9 *Procurement Alliance Work Plan on Hepatic Biochemical Reagents (Draft for Public Consultation)* (in Chinese), Service Centre of Jiangxi Province for Pricing and Procurement of Medical Products, 31st October 2023, viewed 24th April 2023, <http://jxyycg.cn/view-0120fdd94e5d4ae18365b339494cb15b-fc57a3696c6f4ab1b424b5e76fb6ab32.html>

10 For related developments in procurement of pharmaceutical products, please refer to the *European Chamber Pharmaceutical Working Group Position Paper 2023/2024*.

11 *Regulation on the Supervision and Administration of Medical Devices*, State Council, 18th March 2021, viewed 18th April 2023, <http://www.gov.cn/zhengce/content/2021-03/18/content_5593739.htm>

12 *Provisions for Medical Device Manufacture* (in Chinese), SAMR, 10th March 2022, viewed 7th May 2023, <https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/fgs/art/2023/art_fc2666aec99f4b5d996faa13c4aed7a3.html>

13 *Provisions for Medical Device Distribution* (in Chinese), SAMR, 10th March 2022, viewed 7th May 2023, <https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/fgs/art/2023/art_51afc62ef3c84455b28b113a628f9e35.html>

14 *Digital health*, COCIR, 2022, viewed 27th May 2023, <https://www.cocir.org/activities/digital-health.html>

regulators. In 2022, the CMDE increased its efforts to improve evaluation criteria for these kinds of products.

The third edition of the mandatory safety standards International Electrotechnical Commission (IEC) 60601 (in China national standards *guobiao* (GB) 9706) was due to enter force on 1st May 2023. For most medical devices, complying with these new safety standards requires modification of existing registration, including mandatory type tests. As a result, many manufacturers faced the risk of losing market approval. After significant advocacy efforts by the Healthcare Equipment Working Group and others, on 16th March 2023, the NMPA announced extended transition periods for most of the medical devices concerned, to give manufacturers adequate time to meet compliance.[15]

In 2022, the NMPA gave 55 medical devices special approval to be treated as 'innovative devices', which qualifies them for expedited registration via a special green channel. This is the highest number since the NMPA established this mechanism in 2014, underlining China's swift transition towards establishing a medical device market for high-end products.

In February 2023, the NMPA, the National Health Commission (NHC) and the National Health Security Administration (NHSA) jointly released the *Announcement on the Third Group Implementation of Unique Device Identifier (UDI) ([2023] No. 22)*.[16] Starting from 1st June 2024, class II medical devices—including disposable products that have high clinical demand, devices procured through VBP tenders, and beauty medical devices—will need a UDI code printed on their label for market access.

In February 2023, Xu Jinghe, deputy commissioner of the NMPA, was elected chair of the Global Harmonization Working Party (GHWP),[17] an international platform that brings together regulators from 33 countries and regions. The willingness of the NMPA to take this role is an encouraging sign that China pays attention to international coordination of medical device registration and wants to contribute to developing regulatory capacity at the global level.

15 *Announcement of the NMPA on its work related to GB 9760.1 and supporting parallel and special standards ([2023] No. 14),* NMPA, 16th March 2023, viewed 24th April 2023, <https://www.nmpa.gov.cn/ylqx/ylqxggtg/20230314143850152.html>

16 *Announcement on the Third Group Implementation of Unique Device Identifier (UDI) ([2023] No. 22)* (in Chinese), NMPA, 17th February 2023, viewed 7th May 2023, <https://www.nmpa.gov.cn/xxgk/ggtg/qtggtg/20230217152350198.html>

17 *Xu Jinghe elected chairman of GHWP, National Medical Products Newsletter,* China Centre for Food and Drug International Exchange, 2023, vol. 1, 17th April 2023, viewed 4th June 2023, <https://www.ccfdie.org/en/dzqk/webinfo/2023/04/1681339039554363.htm>

Key Recommendations

1. Increase the Role of Market Forces in the Procurement of Medical Devices by Giving Greater Weighting to Device Quality and Clinical Needs

1.1 Prioritise Value-based Procurement and Improve Enforcement Procedures in VBP

Concern

Criteria for deciding VBP tenders tend to focus primarily on price instead of functionality and quality, possibly depriving patients from access to optimal treatment methods.

Assessment

In 2019, the State Council published the *Work Plan on High-value Consumables Governance* (Work Plan),[18] which sets a framework for medical device VBP. Since the Work Plan was released, procurement agencies at different levels have conducted more than 120 VBP tenders with very different procedures and rules. The frequency of VBP tenders and the absence of central guidelines on tender management have posed considerable challenges for the medical device industry. The industry supports the efforts of the NHSA and local HSAs to control expenses and promote economies of scale, justifying lower prices for higher quantities. However, in nationwide VBP tenders, prices decreased by around 80 per cent, meaning that the winning bidders had to streamline their operations to cut costs while maintaining the quality of their products and services.

Moreover, in a few provinces and cities, the actual procurement volume did not meet the contractually agreed volume. In other cases, hospitals asked for additional discounts after the minimum price had already been agreed upon, or delayed payments. Solving these issues requires cooperation among different government departments, as tendering falls under the responsibility of local HSAs while hospital management is under the purview of local Health Commissions.

18 *Reform Concept to Regulate High-value Consumable Medical Devices ([2019] Document 37)* (in Chinese), State Council, 19th July 2019, viewed 10th May 2023, <http://www.gov.cn/zhengce/content/2019-07/31/content_5417518.htm>

Although a certain—often too small—percentage of new and innovative consumable medical devices can be procured outside of VBP, health authorities do not encourage hospitals to use this option.

Recommendations

- Establish quality and clinical requirements as the main criteria for deciding VBP tenders, as opposed to procurement prices.
- Maintain the inter-ministerial communication platform to ensure that VBP tendering and implementation of tendering results adhere to generally accepted principles of VBP tenders, particularly regarding realising procurement volume, and terms of delivery and payment as agreed in the tender.
- Grant a transitional period before implementation of VBP tenders at the provincial level or above, to allow winning bidders time to prepare sufficient inventory.
- Set sufficient intervals between VBP tenders to allow procurement agencies to evaluate the clinical application of VBP products in hospitals, quality of services and reliability of supply.
- Increase the number of new innovative consumable medical devices available to patients by procuring outside VBP tenders, and conduct clinical evaluations of these new products to allow them to participate in the next round of VBP with a reasonable and justified price.

1.2 Optimise the Legislative and Administrative Framework of the Hospital Payment Reform to Promote the Use of Innovative Treatment Methods

Concern

The reform of medical treatment cost calculation and hospital payment methods results in increased financial pressure for hospitals, which may result in reduced procurement and application of innovative and high-quality medical devices.

Assessment

To curb increasing medical expenses, China has initiated reforms to payment methods, introducing two forms of lump payment to cover the total costs of treatment of a disease: diagnosis-related groups (DRG) and the indigenous Chinese diagnosis intervention packet (DIP). The NHSA initiated the *First DRG/DIP Three-year Plan* (2019–2021) to drive hospital payment reform.[19] During this period, the NHSA also started pilot programmes in 101 cities (30 cities for DRG and 71 for DIP),[20&21] and published national DRG/DIP guidelines.

Under DRG/DIP, some public hospitals, and even individual physicians, face penalties if they exceed the DRG cost-control targets, de-incentivising hospitals from purchasing innovative medical devices. Additionally, COVID-19 restriction policies contributed to the decrease in procedure volume and hospital revenues. Together, these factors led to a decline in procurement and adoption of innovative medical devices. In 2021, the NHSA announced the *Three-year Plan for DRG/DIP Payment Reform* (2022–2024),[22] which aims to cover 90 per cent of disease types and 70 per cent of reimbursement payments to public hospitals. Along with the cost reduction as a result of VBP price cuts, the DRG/DIP payment reform continues to be expanded and implemented in provinces and cities.

Currently, the health authorities are fine-tuning the parameters for cost and payment calculations within both DRG and DIP.

Recommendations

- Establish a feasible pathway to payment for innovative treatment methods to accelerate patients' access to new medical technologies.
- Regularly update cost and payment calculation parameters in DRG and DIP, taking into account input from hospitals, to establish a hospital payment mechanism that can keep pace with both technological developments and clinical requirements.

19 *Notice of the National Health Insurance Agency on the issuance of the three-year action plan for DRG/DIP payment reform* (in Chinese), NHSA, 26th November 2021, viewed 6th May 2023, <http://www.nhsa.gov.cn/art/2021/11/26/art_104_7413.html>

20 Peng Yunjia, *NHSA: Within 2021, DRG and DIP will be used as real payment method in trial cities* (in Chinese), *Xinhuanet*, 7th June 2021, viewed 6th May 2023, <http://www.xinhuanet.com/2021-06/07/c_1127540047.htm>

21 *Issuance of China Healthcare Security Technical Specification of Diagnosis-Intervention Packet (DIP) and DIP List* (in Chinese), NHSA, 20th November 2020, viewed 22nd May 2023, <http://www.nhsa.gov.cn/art/2020/11/20/art_37_3987.html>

22 *Three-year Work Plan for DRG/DIP Payment Reform*, NHSA, 19th November 2021, viewed 25th June 2023, <http://www.gov.cn/zhengce/zhengceku/2021-11/28/content_5653858.htm>

1.3 Regularly Update the Healthcare Service Catalogues to Promote the Use of Innovative Treatment Methods

Concern

Unscheduled or delayed updates to the healthcare service catalogues hinder patients' access to innovative treatment methods.

Assessment

One of the NHSA's mandates within China's healthcare reform is to regularly update medical service pricing catalogues. As part of the reform, the NHSA is issuing new pricing catalogues, separating medical services and high-value medical consumables. So far, the NHSA has published a limited number of guidelines for pricing policies, but the schedule for the majority of guidelines is unknown.

The NHSA requires provincial HSAs to report medical service pricing items for central review and final approval, once before application and then for a second time after a trial phase, which delays the introduction of both new treatment methods and medical devices. So far, there is no binding timeframe for central review and no publicly published guideline for the approval of new medical services.

In many surgeries, high-value medical consumables—such as implants—are the most significant price factor. Tightly controlled treatment pricing gives hospitals only one option – to use relatively cheap consumable medical devices, which may compromise the quality of treatment. At the same time, designated prices for some treatments are too low, resulting in the multiple use of disposable medical devices that are only approved for single use. This violates both NMPA and NHC regulations, and puts patients' health at risk. In addition, for certain treatments, several different disposable medical devices are bundled and given an aggregate price, prohibiting surgeons from selecting the most suitable device for a patient's condition.

Recommendations

- Enforce the separation of prices of medical consumables from medical services.
- Schedule plans for national pricing guidelines as well as review criteria and timeframes for provincial pricing guidelines.
- Enforce the ban on the multiple use of disposable medical devices and provide hospitals with sufficient funds so that multiple use will no longer be necessary.
- Accelerate the dynamic adjustment of pricing catalogues to facilitate patients' access to innovative treatment methods and state-of-the-art medical devices.

1.4 Enhance the Role of Commercial Healthcare Insurance and Private Hospitals

Concern

Although China aims to establish a multi-tier medical insurance system, the current lack of development of both commercial healthcare insurance and private hospitals hinders patients' access to innovative and high-value medical products.

Assessment

About 1.4 billion people (over 95 per cent of the total population) are covered by China's basic public medical insurance; however, scope and limits to reimbursement and other benefits vary significantly by province and city.

Over the last two decades, the Chinese Government has gradually improved reimbursement benefits to lower patients' financial burdens. The average rate of out-of-pocket expenses per patient decreased from above 60 per cent in 2001[23] to under 30 per cent of the total cost of treatment in 2019.[24] However, China's economic slowdown has limited the resources available in public insurance funds, which in turn places constraints on the ability to increase reimbursement of healthcare expenses, thereby prompting the development of additional commercial healthcare insurance. The main types of products offered by commercial insurance companies in China are related to critical illness (about 50 per cent of total products).

Currently, high premiums for critical illness products prevent many middle-class consumers from being able to afford commercial insurance. Local HSAs and local departments of the China Banking and

23 *Out-of-pocket Rate Should be Lower than 30% by 2015* (in Chinese), China Pharmaceutical Innovation and Research Development Association, 12th March 2012, viewed 22nd May 2023, <http://www.phirda.com/artilce_12545.html>

24 *Hospital Directors Discuss the Hospital Reforms: Public Welfare and Economic Efficiency of Hospitals are not Contradictory* (in Chinese), *China Business Journal*, 29th October 2019, viewed 7th June 2023, <https://baijiahao.baidu.com/s?id=1648712677589434457&wfr=spider&for=pc>

Insurance Regulatory Commission have worked with several commercial insurance companies to bring in new medical reimbursement products for innovative device add-on payments, including various low-priced affordable commercial insurance products at the city level. However, the reimbursement system for these low-priced commercial insurance products is not yet mature.

In addition, the huge pressure on public hospitals, due to such issues as lack of capacity, has motivated Chinese regulators to open up the private hospital market. The impact of the COVID-19 pandemic has increased awareness among Chinese patients that the public healthcare and insurance system may not be sufficient, which in turn has led to a growth in interest in high-quality private healthcare and adapted commercial insurance.[25] Under the current reforms of procurement and cost calculation, public hospitals face constraints to use and reimburse innovative devices. However, private hospitals, which are not restricted by public procurement limitations, may be able to develop ways to provide high-quality medical treatment as a supplement to public hospitals.

Recommendations

- Establish a regulatory framework for commercial healthcare insurance and develop a transparent drug and medical device reimbursement catalogue for commercial insurance companies.
- Promote cooperation between public medical insurance and commercial healthcare insurance by developing customised commercial insurance products that precisely target treatment costs not covered by public insurance.
- Allow more private hospitals to import cutting-edge medical technologies not yet registered in China, such as the special permits for hospitals in Bo'ao (Hainan) and in the Greater Bay Area.

2. Continue to Advance the Development of Regulatory Science and Accelerate the Promotion of Innovation

2.1 Streamline the Process for Registration Modification

Concern

While the number of medical devices that require registration modification during their life cycle has increased significantly, the current regulatory framework makes it difficult to do so in a timely manner, resulting in challenges for manufacturers and a potential discontinuation of supply on the Chinese market.

Assessment

When medical devices already approved by the NMPA for marketing are upgraded, they need to apply for a modification of registration. Unlike most other economies, the NMPA has no separate, simplified pathway for modifying registration. In fact, modifications need basically the same documentation and approval time as new registrations.

According to international best practices, registration modifications for medical devices are separated into basic and substantial. Basic modifications include changes to labels and instructions for use, while changes to the product specification are considered substantial modifications. In most jurisdictions, basic modifications don't need to undergo an evaluation by the regulatory authorities, but only a simple notification. In China, registration changes for medical devices are similarly categorised as either 'simple' or 'significant'. There is no formal regulatory documentation that differentiates between these two categories. To improve regulatory efficiency, a special notification channel for simple, literal, non-critical modifications—such as labelling amendments and changes to the instruction for use—is therefore advised.

For enterprises that need to apply for registration change because of design changes or changes intended to de-risk, for example product recalls, the process of registration change needs to be expedited to ensure patients' safety.

Furthermore, according to current requirement of NMPA, changes to the product described in an application for registration modification must be implemented immediately following approval. Without a transition period, it is very difficult for manufacturers and traders to switch to a new product version; for example, it may be necessary to discard existing stocks of raw materials or finished products.

Recommendations

- Establish a notification procedure for approval of simple, non-critical modifications, such as labelling amendments and changes to the instruction for use.

25 Dai, Xin, *Critical illness insurance in China*, Swiss Re Institute, 3rd March 2022, viewed 6th May 2023, <https://www.swissre.com/institute/research/topics-and-risk-dialogues/china/critical-illness-insurance-in-china.html>

- Establish a special notification channel for modifications caused by products recalls to quickly increase product safety.
- Grant a transitional period for implementing modifications following approval.

2.2 Promote Global Harmonisation of Medical Device Software Regulation

Concern

The disparities between the NMPA's regulation of software as a medical device (SaMD) and that of other regulatory authorities worldwide hinder both medical device innovation and patients' access to innovative diagnosis and treatment.

Assessment

Unlike similar administrations in other countries, the NMPA does not classify any SaMD as low-risk (class I) medical devices, but rather all are considered to be medium (class II) or high-risk (class III) medical devices, leading to unnecessary administrative overheads for manufacturers.

Manufacturers frequently release new updates to existing SaMD in order to provide new features to customers. Regarding what is considered a significant change to SaMD, the rules in China and the guidelines proposed by the IMDRF differ. Furthermore, in China, an updated version of a software requires modification to the registration, which is a very time-consuming process, and is not in line with international best practices.

Software operating together with medical hardware—for example, controllers and signal processing software—is frequently registered by the NMPA as one system. As innovation cycles of software are much faster than that of hardware, coupling hard- and software registration slows down innovation of software components.

IEC 82304-1 is a worldwide recognised standard for the development of SaMD. However, in China, SaMD needs to comply with GB/T 25000.51-2016, the Chinese version of the international, non-medical standard International Organization for Standardization (ISO)/IEC 25051:2014 *Software Engineering – Systems and Software Quality Requirements and Evaluation – Requirements for Quality of Ready-to-Use Software Products and Instructions for Testing*. This is problematic as GB/T 25000.51-2016 is not recognised as a standard in the medical industry, as it does not take into consideration specific requirements of China's healthcare environment.

Recommendations

- Classify low-risk SaMD as class I devices, and implement rules for risk classification as recommended by the International Medical Device Regulatory Forum (IMDRF) SaMD Working Group (IMDRF/SaMD WG/N12FINAL:2014).
- Define minor and major modifications of medical software, in line with the recommendation by the GHWP (AHWP/WG2-WG1-WG3/F001:2019), to allow easier upgrades of software versions.
- Allow software components, such as controllers and pre-processing software, to be registered independently from the medical hardware.
- Recognise IEC 82304-1 as a standard for medical software development and rescind the requirement to comply with GB/T 25000.51-2016.

2.3 Remove the Requirement for Country of Origin (CoO) Certification in Pre-market Approvals

Concern

Currently, most imported medical devices need to obtain market approval in the CoO before qualifying for registration in China, delaying market access by at least one year.

Assessment

In the *Regulations for the Supervision and Administration of Medical Devices (Order No. 739),* the requirement for market approval in the CoO for innovative devices has been waived, but this does not apply to most devices that do not have the special status of being 'innovative'.[26]

For patients, hospitals, manufacturers and financers of medical services, the most efficacious and cost-efficient way to market new medical devices is to launch them simultaneously in all major markets, avoiding version gaps between different countries. For regulators in China, demanding prior CoO certification has the limited advantage of allowing them to refer to overseas evaluation results. Considering that China's

26 *Regulations for the Supervision and Administration of Medical Devices* (in Chinese), State Council, 18th March 2021, viewed 17th April 2023, <http://www.gov.cn/zhengce/content/2021-03/18/content_5593739.htm>

regulatory environment and level of standardisation is continuously improving in general, the CMDE is fully capable of conducting independent evaluations of imported medical devices without relying on CoO certificates. In addition, the World Health Organization (WHO) is promoting international regulatory cooperation during the evaluation process, which would reduce the burden on regulators if approval is carried out in parallel in several countries.[27]

For comparison, the submission of medicines for registration with the NMPA—a product group with typically even higher risks than medical devices—does not require prior approval in the CoO.

Recommendation

- Remove the requirement for CoO certification as a precondition for the registration and filing of imported medical devices.

3. Promote the Application of High-quality, High-precision Medical Devices in Public Hospitals

Concern

As procurement by public hospitals is to be considered 'government procurement', with a preference for domestic medical devices, this could deprive patients of access to high-quality, high-precision imported devices.

Assessment

After the Foreign Investment Law (FIL) entered into force on 1st January 2020,[28] its slow implementation at the local level became a source of concern for foreign-invested enterprises (FIEs). Despite the FIL's provision that products manufactured in China by FIEs will receive equal treatment in government procurement activities, the 'buy-China policy'—i.e., preferential treatment for Chinese brands—has continued in local procurement.[29]

The working group welcomes the MOF's assurance that products domestically produced in China by FIEs will be treated equally to Chinese brands and expects this to be stringently implemented at the local level. However, with regard to imported medical devices, the MOF's newly expanded definition[30] of government procurement contradicts previous practices where hospitals had the option to buy imported medical devices using their own funds.

Hospitals need a wide variety of medical devices: for example, there are 500,000 different types of medical devices available in the European market, most of which are manufactured in small quantities. It is unrealistic to manufacture all these devices to a high quality in China, therefore imported medical devices help to ensure a high-quality supply. Application of sub-standard medical devices may cause suffering to patients, and in the long-term lead to increased medical expenses. Therefore, international best practices emphasise the clinical value, not just the price, when deciding tenders. Applications for hospital procurement of imported medical devices need to be approved by expert committees. To ensure decisions are fact-based, international expertise is required. Additionally, as medical systems often consist of both locally manufactured and imported components, restrictions on imports may negatively affect FIEs' readiness to invest further resources in the Chinese market.

Recommendations

- Promote the concept of value-based procurement to ensure the best outcome when using limited public resources.
- Limit the application of the GPL to funds administered by the MOF and its local agencies.
- Increase transparency in the evaluation of import applications and invite experts from FIEs to participate in expert panels.

4. Promote Market Access for High-precision and Innovative IVDs

4.1 Reflect IVD's Technical Features in Medical Treatment Pricing Catalogues

Concern

Part of local VBP regulations for procurement of IVD

27 *WHO Technical Report Series (TRS) 1033 - Annex 10: Good reliance practices in the regulation of medical products: high level principles and considerations*, WHO, 9th October 2021, viewed 17th April 2023, <https://www.who.int/publications/m/item/annex-10-trs-1033>

28 Foreign Investment Law, National People's Congress, 2019, viewed 18th April 2023, <http://www.npc.gov.cn/npc/c30834/201903/121916e4943f416b8b0ea12e0714d683.shtml>

29 *Healthcare Equipment Working Group Position Paper 2021/2022*, European Union Chamber of Commerce in China, 23rd September 2021, viewed 18th April 2023, pp. 253–254, <https://www.europeanchamber.com.cn/en/publications-archive/953/Healthcare_Equipment_Working_Group_Position_Paper_2021_2022>

30 *Reply by the MOF to Recommendation No. 8584 of the Fourth Session of the 13th People's National Congress ([2021] Fisc Document 6)*, MOF, 23rd June 2021, viewed 10th May 2023, <http://bgt.mof.gov.cn/zhuantilanmu/rdwyh/tianbanli/2020lh_15366/2020fwgk/202108/t20210810_3744263.htm>

products does not reflect different technical features of IVD products, preventing patient's access to innovative diagnostic methods.

Assessment

Similar to consumable medical devices, local procurement centres increasingly include IVD in centralised procurement.

In clinical practice, IVD devices and reagents are the basis for correct diagnosis of diseases. Manufacturers are permanently developing new IVD products to increase the accuracy, sensitivity, specificity, stability and speed of diagnosis methods. Correct diagnosis is a precondition for efficacious treatment, whereas a wrong diagnosis may be very costly for the healthcare system. Testing for COVID-19 provides a very pertinent example – a false-negative test result may not only delay treatment of one patient but also be a starting point of mass infection.

According to international best practice, IVD products with different diagnosis methods and technical features are procured in separate tenders. Currently in China, in most cases, the same price is assigned to different diagnosis methods. The tendency in procurement to cut prices across the board may lead to the use of reagents that do not suit the designated IVD instrument. IVD instruments and reagents are developed together as one complete system; replacing reagents with cheaper but unvalidated alternatives may lead to a serious deterioration in the accuracy of diagnosis.

Recommendations

- Include different diagnosis methods and technologies in procurement catalogues, and purchase according to the clinical demand for different technical features of IVD products and different diagnosis methods.
- Ensure that only validated reagents are used with IVD devices.

4.2 Shorten the Pre-market Approval Time for IVD Reagents by Aligning and Further Elaborate Clinical Trial Policies

Concern

The requirement for multiple trial sites as well as the lack of criteria for acceptance of clinical trials is obstructing market access for IVD reagents.

Assessment

In March 2022, the NMPA promulgated a new edition of the *Good Clinical Practice (GCP) Regulation*,[31] for the first time also covering clinical trials of IVD products. The new GCP Regulation requires that clinical trials are conducted at least at two different hospitals (trial sites). However, the *Technical Guidelines for Clinical Trials of IVD Reagents*[32] still require at least three different trial sites. In case of doubt, stricter regulation may prevail.

As a comparison, clinical trials for medical devices developed for treatment of diseases—even high-risk ones—need only to be performed at two trial sites.

In addition, there is a lack of criteria on which conditions clinical trials for IVD reagents must fulfil to be accepted by the regulators, hindering a targeted design of clinical trials by manufacturers and possibly leading to the rejection of trial results in the registration process.

Recommendations

- Reduce the required number of trial sites for IVD reagents in the IVD particular clinical trial guidelines to two, aligning it with the *GCP Regulation*.
- Formulate criteria for acceptance of clinical evidence of IVD reagents in the registration process.

Abbreviations

CDMD	Consumable and Disposable Medical Devices
CMDE	Centre for Medical Device Evaluation
COCIR	European Coordination Committee of the Radiological, Electromedical and Healthcare Information Technology Industry
CoO	Country of Origin
DIP	Diagnosis-intervention Package
DRG	Diagnosis-related Groups
EU	European Union
FIE	Foreign-invested Enterprise
FIL	Foreign Investment Law
GB	*Guobiao*
GHWP	Global Harmonization Working Party
GCP	Good Clinical Practice

31 *Specification for Quality Management of Clinical Trials of Medical Devices ([2022] No. 28)*, NMPA & NHC , 31th March 2022, viewed 4th May 2023, <https://www.nmpa.gov.cn/xxgk/fgwj/xzhgfxwj/20220331144903101.html>

32 *Technical Guidelines for Clinical Trials of IVD Reagents ([2021] No. 72)*, CMDE, 27th September 2021, viewed 4th May 2023, <https://www.cmde.org.cn/flfg/zdyz/zdyzwbk/20210929091646387.html>

GPL	Government Procurement Law
HSA	Health Security Administration
IEC	International Electrotechnical Commission
IMDRF	International Medical Device Regulators Forum
ISO	International Organization for Standardization
IVD	In-vitro Diagnostics
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
NHC	National Health Commission
NHSA	National Healthcare Security Administration
NMPA	National Medical Products Administration
OEM	Original Equipment Manufacturer
SAC	Standardisation Administration of China
SaMD	Software as a Medical Device
SAMR	State Administration for Market Regulation
UDI	Unique Device Identifier
USD	United States Dollar
VBP	Volume-based Procurement
WHO	World Health Organization

European Chamber
中国欧盟商会

Maritime Manufacturing and Industrial Services Working Group

Key Recommendations

1. Provide a Comprehensive Roadmap Detailing How the Maritime Sector will be Included in China's 2060 Carbon Neutrality Pledge 2

1.1 Increase Foreign Companies' Access to Green Demonstration Projects and Pilot Projects

- Involve foreign companies in green projects and pilot projects.
- Improve access of foreign companies to participate in demonstration projects and initiatives regarding green power and smart development of inland waterway vessels.
- Develop and implement a transparent and open mechanism that allows all companies—both Chinese and foreign—to contribute to the development and construction of the green infrastructure needed to successfully decarbonise domestic shipping in China.
- Establish a decarbonisation task force involving policymakers and businesses, both Chinese and foreign.
- Allow foreign companies to contribute to standards drafting of low- and zero-carbon emission solutions.
- Ensure that foreign companies have equal access to the market and government incentives to encourage more investment in clean and new energy applications such as liquified natural gas (LNG), methanol, ammonia and hydrogen.

1.2 Support the Decarbonisation of China's Domestic Fleet by Clarifying the Application Process and Timeline for Certification of Maritime Equipment Imported from Abroad for Installation on China-flagged Vessels

- Ensure that the Maritime Safety Administration Type Approval Certificate application process is transparent, and clearly designate a single point of contact to liaise with and to whom relevant documentation should be submitted.
- Issue official documentation once the application has been received.
- Stipulate the timeline for reviewing an application from when it is received to when the permits will be issued.
- Create a mechanism that allows companies to track their applications.

2. Issue Guidance on the Transportation of LNG 2

2.1 Accelerate the Deployment of LNG Bunkering and Ship-to-Ship Regulations along Coastal Areas

- Issue national and local guidelines for LNG bunkering in Chinese coastal areas.
- Issue relevant national guidelines for ship-to-ship transfers in Chinese open sea waters.
- Increase cooperation with European ports offering similar services, to better understand hazard identification analysis and hazard and operability analysis workshop results and the corrective actions that have been implemented.

2.2 Authorise LNG Transportation on Domestic Waterways at Both the National and Provincial Level

- Issue relevant local guidelines promoting safe transportation of LNG on domestic waterways,

making the adoption of large-capacity LNG carriers and LNG storage under atmospheric conditions possible.
- Invite foreign-invested companies and foreign experts to share their insights and recommendations on LNG transportation with the regulators.

3. Clarify the Entry-Exit Polices for Foreign Experts Carrying an M Business Visa Entering China for Short-term Onsite Instruction Work

- Expand the scope of those eligible for M visas by including criteria related to business events, post-sales onsite equipment maintenance and relevant services, project inspection, training and volunteer work.

4. Amend Both Import Duty Regulations on Imported Ship Components from Outside China for Assembly Onboard, and Value-added Tax (VAT) on Onboard Services Provided on International Vessels 2

- Exempt imported ship components for assembly onboard from import duties, in line with international practice, in order to foster the domestic ship-repair-and-conversion business.
- Exempt onboard services provided on international vessels from the VAT requirement.

Introduction to the Working Group

The Maritime Manufacturing and Industrial Services Working Group (previously the Shipbuilding Working Group) represents European companies that design, manufacture, maintain and repair ships, as well as maritime equipment manufacturers and technology providers, classification societies,[1] maritime service providers and cruise operators.

The working group tracks and interprets maritime-related policies and advocates for a better operating environment, while also providing a platform for exchanging information, experiences and best practices among member companies. European companies in the maritime sector have a long track record of contributing to the environmental sustainability and increased energy efficiency of shipping, and they want to continue to contribute their experience to the green and digital transformation of the maritime industry in China.

Recent Developments

According to the China Association for National Shipbuilding Industry (CANSI), in 2022, China retained its position as the largest shipbuilding nation in the world in terms of annual order volume by compensated gross tonnage (CGT), completing 13 million CGT of new ships that year. The country also ranked first in the global market in new orders made during 2022, accounting for 49.8 per cent of the global total of 42.8 million CGT. China's ship exports in 2022 grew by 7.9 per cent year-on-year to reach United States dollar (USD) 23.85 billion, with exports to Europe totalling USD 4.1 billion. Bulk carriers, oil tankers, and container ships continued to dominate China's ship exports, accounting for 51.9 per cent of the total.[2]

There have been several notable regulatory developments in the past year related to China's maritime sector, including the following:

- On 21st January 2022, the Ministry of Transport (MOT) adopted the *14th Five-year Plan for the Development of a Green Transport Industry*, which sets general targets for decarbonisation of China's vessel fleets in the near term.[3] These include reducing carbon

1 Classification societies establish and maintain technical standards for various industries.

2 *Analysis of the Economic Operation of the Shipbuilding Industry in 2022*, CANSI, 28th January 2023, viewed 27th April 2023, <http://www.cansi.org.cn/cms/document/18490.html>

3 China's vessel fleets include the inland waterway vessels, ships in coastal trade, short-sea shipping liners and ocean-going fleets.

dioxide emissions per unit of transport turnover of operating vessels by 3.5 per cent by 2025, and reducing total nitrogen oxide emissions by seven per cent by 2025, both taking 2020 as the baseline.[4] It also states that ports and service areas within the Yangtze River Economic Zone should reach 100 per cent shore power capacity by 2025. The working group advocated that the plan should contain more specific targets with regard to port infrastructure decarbonisation, green-powered vessels and green maritime financing bonds, among others.

- On 18th August 2022, the MOT published the *Standard System for Green Transport (2022)*, which includes standards on pollutant emissions from ships.[5]
- On 18th August 2022, the *Opinions on Accelerating the Equipment and Industrial Development of Cruise and Yacht* was jointly released by the Ministry of Industry and Information Technology (MIIT), the National Development and Reform Commission (NDRC), the Ministry of Finance (MOF), the MOT, and the Ministry of Culture and Tourism. The opinions state that cruise travel should be promoted and that international exchanges and cooperation in the maritime industry should be developed.[6]
- On 28th September 2022, the *Opinions on Promoting the Green and Smart Development of Inland Waterway Vessels* was jointly issued by the MIIT, the NDRC, the MOF, the Ministry of Ecology and Environment and the MOT. The document promotes the development of liquefied natural gas- (LNG-) powered ships and battery-powered ships, the application of methanol and hydrogen, and smart ship standardisation.[7]
- On 18th October 2022, the State Administration for Market Regulation (SAMR) issued the *Implementation Plan for the Establishment of a Standard System for Carbon Peaking and Neutrality*. The plan promotes the development of standards related to energy-saving and low-carbon design in shipbuilding, repairing, operation and dismantling, with a focus on the development of standards for low- and zero-carbon emission ship types, ship design, supporting equipment and key components and materials, and energy-saving devices. It also promotes the development of standards for fuel cell application systems for the transport industry, including the shipping sector.[8]
- On 26th October 2022, the NDRC and the Ministry of Commerce (MOFCOM) released the *2022 Catalogue of Encouraged Industries for Foreign Investment*, covering sectors of design and application of clean and new energy—including LNG-diesel dual fuel, pure battery, hydrogen, methanol, ammonia and biomass—in vessels, yacht design, smart ship design and international cruise shipping.[9]

While these plans are aimed at accelerating market development and green transformation of China's shipbuilding and inland shipping sectors, it is unclear how they will be implemented. There are also currently no policies or regulations geared toward integrating international technology into China's domestic shipping industry. In addition, China's failure to provide a clear indication of its current market—such as size, age and type of fleet—make it difficult for both foreign and domestic companies to accurately assess business potential and identify the right technology mix.

Key Recommendations

1. Provide a Comprehensive Roadmap Detailing How the Maritime Sector will be Included in China's 2060 Carbon Neutrality Pledge 2

1.1 Increase Foreign Companies' Access to Green Demonstration Projects and Pilot Projects

Concern

European companies are largely prevented from participating in China's green maritime demonstration projects and other pilot projects because of unclear tendering processes and a lack of information.

Assessment

Marine equipment and energy-saving technologies

4 *The 14th Five-year Plan for Development of Green Transportation*, MOT, 21st January 2022, viewed 27th April 2023, <https://xxgk.mot.gov.cn/2020/jigou/zhghs/202201/t20220121_3637584.html>

5 *Standard System for Green Transport (2022)*, MOT, 18th August 2022, viewed 27th April 2023, <https://xxgk.mot.gov.cn/2020/jigou/kjs/202208/t20220817_3666571.html>

6 *Opinions on Accelerating the Equipment and Industry Development of Cruise and Yacht,* MIIT, 18th August 2022, viewed 27th April 2023, <https://www.miit.gov.cn/zwgk/zcwj/wjfb/yj/art/2022/art_2d585dc807f8472d969e940b1bb978d8.html>

7 *Opinions on Promoting the Green and Smart Development of Inland Waterway Vessels,* MIIT, 28th September 2022, viewed 27th April 2023, <https://www.miit.gov.cn/zwgk/zcwj/wjfb/yj/art/2022/art_bee1cae3eb6d4efcaf48ad13cd08fb3b.html>

8 *Implementation Plan for the Establishment of Standard System for Carbon Peaking and Neutrality,* SAMR, 18th October 2022, viewed 27th April 2023, <http://www.gov.cn/zhengce/zhengceku/2022-11/01/content_5723071.htm>

9 *2022 Catalogue of Encouraged Industries for Foreign Investment*, NDRC & MOFCOM, 26th October 2022, viewed 12th May 2023, <http://wzs.mofcom.gov.cn/article/n/202210/20221003362982.shtml>

are at the heart of the critical task of decarbonising shipping. In the short-term, there is potential for the use of transition fuels such as fossil LNG on large ships, and batteries and hydrogen on smaller ships. Alternative carbon-neutral fuels such as green ammonia, green methanol, green LNG and green hydrogen—which take 'well-to-wake' emissions, meaning emissions from fuel production, transportation, distribution and eventually combustion onboard into account—may become more dominant fuels in the long-term. This approach is in line with proposals put forward by the European Commission and by China on approaches to decarbonisation.[10&11]

According to a mapping exercise on green demonstration projects carried out by the Getting to Zero Coalition, in 2022, China had 15 maritime zero-emission pilots and demonstration projects.[12] Of these, eight are targeted at domestic shipping. None of the projects identified include a foreign equipment or technology provider as a project partner.[13]

Most working group members do not receive information directly from the Chinese state or regional authorities on green demonstration projects for domestic, inland shipping, but rather tend to hear of them when it is too late to get involved or when no foreign suppliers are being considered. Some recent examples include:

- A state-sponsored project for the Yangtze River Three Gorges 1, the world's largest electrical cruise ship, powered by a battery with a capacity of 7,500 kilowatt hours, allowing it to sail 100 kilometres on a single charge.[14]
- A 'Green Pearl River' project that includes the design and construction of 50 LNG-fuelled river vessels. As far as the working group is aware, foreign suppliers and Chinese suppliers with foreign sub-suppliers were not considered for inclusion.[15]
- The *Workplan to Promote the High-quality Development of Shipbuilding and Marine Engineering Equipment (2021–2023)* was issued by the Fujian Provincial Government, outlining a minimum of 10 demonstration projects for electric inland waterway and coastal ships.[16]
- A project, under the banner 'Norway-China Hydrogen Initiative', to build up the hydrogen value chain deemed necessary to achieve zero-emission domestic shipping on the Yangtze River before 2040, funded by the Beijing-Tsinghua Industrial Research and Development (R&D) Institute (BTIRDI)[17] and the Three Gorges Corporation on the Chinese side.[18] Some working group members reached out to see if there are opportunities to join, as they have a strong interest in entering early into the zero-emission inland waterway transition, but were not successful.[19]
- The China Electric Ship Innovation Alliance was launched on 8th February 2023, coordinated by China Ocean Shipping Company (COSCO). Only Chinese companies are members, and foreign interests were not invited to participate.[20]

These and similar projects around the country are of great interest to European maritime companies. The reasons for foreign companies being unable to join demonstration projects for domestic, inland shipping appear to be threefold. First, for these kinds of projects, the provider must be certified by the China Classification Society (CCS), and foreign-made maritime equipment and technology destined for China-flagged vessels must have additional certification from the Maritime Safety Administration (MSA) (see Key

10 *Proposal for a Regulation of the European Parliament and of the Council on the Use of Renewable and Low-carbon Fuels in Maritime Transport and Amending Directive 2009/16/EC*, EUR-Lex, 14th July 2021, viewed 27th April 2023, <https://eur-lex. europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0562>

11 *The 14th Five-year Plan for Development of Green Transportation*, MOT, 21st January 2022, viewed 27th April 2023, <https://xxgk.mot.gov.cn/2020/jigou/zhghs/202201/t20220121_3637584.html>

12 The Getting to Zero Coalition is a multi-stakeholder, multi-country, industry-led platform for collaboration that brings leading stakeholders from across the maritime and fuels value chains together with the financial sector and other stakeholders committed to making commercially viable zero-emission vessels a scalable reality by 2030: Kilemo, Heidi, Montgomery, Robert & Leitão, Ana Madalena, *Mapping of Zero Emission Pilots and Demonstration Projects Third Edition*, The Getting to Zero Coalition, 31st March 2022, viewed 27th April 2023, <https://www.globalmaritimeforum.org/publications/mapping-of-zero-emission-pilots-and-demonstration-projects>

13 Data shared courtesy of the Getting to Zero Coalition.

14 Yangfei, Z. & Kun, L., *Largest electric cruise ship makes debut, China Daily*, 30th March 2022, viewed 27th April 2023, <http://www.chinadaily.com.cn/a/202203/30/WS62438ffaa310fd2b29e5403b.html>

15 *CSSC commences construction of 50 LNG-fuelled bulk carriers for 'Green Pearl River' project, Manifold Times*, 5th April 2021, viewed 27th April 2023, <https://www.manifoldtimes.com/news/cssc-commences-construction-of-50-lng-fuelled-bulk-carriers-for-green-pearl-river-project/>

16 *Workplan to Promote the High-quality Development of Shipbuilding and Marine Engineering Equipment (2021–2023),* Fujian Government, 26th August 2021, viewed 27th April 2023, <https://fdi.swt.fujian.gov.cn/show-11626.html>

17 The BTIRDI is a public institution jointly established in 1998 and managed by the Beijing Municipal People's Government and Tsinghua University.

18 *China calls for Norwegian tech firms to take part in hydrogen growth industry*, BI Norwegian Business School, 4th October 2019, viewed 27th April 2023, <https://www.bi.edu/about-bi/news/2019/09/China-Calls-for-Norwegian-tech-companies/>

19 It is unclear whether this is due to being blocked or because there are no real activities in this field yet. Although the target deadline is quite distant, in order to reach it, the work needs to start now, with studies, infrastructure and demonstration projects.

20 *COSCO forms the China Electric Ship Innovation Alliance*, Splash, 14th February 2023, viewed 25th May 2023, <https://splash247.com/cosco-forms-the-china-electric-ship-innovation-alliance/>

Recommendation 1.2). Second, budgets and prices tend to be low, meaning that in most cases, only low-end local manufacturers can meet the requirements – this sometimes also discourages mid-range and high-end Chinese suppliers. Finally, China's focus on developing self-sufficiency in the maritime industry means domestic manufacturers are to a certain degree still favoured. All these factors make it challenging for European companies to increase their market share, to the detriment of industry competition.

However, the main issue is that invitations for participation in demonstration projects for domestic, inland shipping projects are not transparent. While foreign companies are sometimes invited to provide training and workshops, and engage in consultancy for domestic shipping projects (most notably foreign classification societies), only domestic companies are invited to join as full-fledged project partners or technology providers. In rare cases, Chinese participants that obtain government funding for R&D projects may subcontract to or partner with a foreign company.

For China to reach its emission reduction targets for domestic and inland shipping, it is imperative to upgrade its existing fleets with new technologies; a task to which European companies could contribute. In view of potential future exports of vessels to Europe through these local projects, cooperation with European suppliers is also in the interests of Chinese shipbuilders, equipment manufacturers and other stakeholders. According to the Getting to Zero Coalition, there were 45 green demonstration projects in the maritime industry in Asia excluding China, and 114 in Europe, in addition to commercial projects.[21] This illustrates just how rapidly both the industry and related technologies are developing, and emphasises why cross-border cooperation on developing and deploying green infrastructure is so necessary in order to successfully reach the targets for decarbonising shipping.

For foreign enterprises to get involved in the development of green domestic shipping, an open mechanism for project bidding and certification of marine equipment and technology destined for China-flagged vessels needs to be established. Moreover, establishing a decarbonisation task force in shipping and maritime manufacturing, involving policymakers and businesses—both Chinese and foreign—would enable best practice sharing and ensure mutually beneficial outcomes in the global fight against climate change.

The CCS has issued several draft standards relevant to low- and zero-carbon emission solutions for shipbuilding, including the *Specification on Green Ecological Ships 2022*, the *Specification on LNG-Fuelled Ships 2023*, and the *Specification on Inland Waterways Green Ships 2023*.[22,23&24] European companies could contribute their expertise and experience to China's green shipbuilding industry if they are allowed to join the standard drafting process. According to the findings of the European Chamber report, *Carbon Neutrality: The Role of European Companies in China's Race to 2060*, 46 per cent of member companies have taken concrete steps to decarbonise their China operations, and around 67 per cent have achieved at least a basic level of preparation.[25]

According to the *2022 Catalogue of Encouraged Industries for Foreign Investment*, foreign investment is encouraged in areas related to the design and application of clean and new energy.[26] However, foreign companies do not have equal access to the market and they struggle to obtain government incentives that encourage investment in clean and new energy applications such as LNG, methanol, ammonia and hydrogen.

Recommendations

- Involve foreign companies in green projects and pilot projects.
- Improve access of foreign companies to participate in demonstration projects and initiatives regarding green power and smart development of inland waterway vessels.
- Develop and implement a transparent and open mechanism that allows all companies—both Chinese

21 Kilemo, Heidi, Montgomery, Robert & Leitão, Ana Madalena, *Mapping of Zero Emission Pilots and Demonstration Projects Third Edition*, The Getting to Zero Coalition, 31st March 2022, viewed 27th April 2023, <https://www.globalmaritimeforum.org/publications/mapping-of-zero-emission-pilots-and-demonstration-projects>

22 *Specification on Green Ecological Ships 2022*, CCS, 25th November 2022, viewed 1st June 2023, <https://www.ccs.org.cn/ccswz/specialDetail?id=202211250199628050>

23 *Specification on LNG-Fuelled Ships 2023*, CCS, 20th February 2023, viewed 1st June 2023, <https://www.ccs.org.cn/ccswz/articleDetail?id=202302200343484488>

24 *Specification on Inland Waterways Green Ships 2023*, CCS, 3rd March 2023, viewed 1st June 2023, <https://www.ccs.org.cn/ccswz/articleDetail?id=202303030266455286>

25 *Carbon Neutrality: The Role of European Companies in China's Race to 2060*, European Union Chamber of Commerce in China, 25th May 2022, p. 3, viewed 11th July 2023, <https://www.europeanchamber.com.cn/en/publications-carbonneutrality-report/383>

26 *2022 Catalogue of Encouraged Industries for Foreign Investment*, NDRC & MOFCOM, 26th October 2022, viewed 12th May 2023, <http://wzs.mofcom.gov.cn/article/n/202210/20221003362982.shtml>

and foreign—to contribute to the development and construction of the green infrastructure needed to successfully decarbonise domestic shipping in China.
- Establish a decarbonisation task force involving policymakers and businesses, both Chinese and foreign.
- Allow foreign companies to contribute to standards drafting for low- and zero-carbon emission solutions.
- Ensure that foreign companies have equal access to the market and government incentives to encourage more investment in clean and new energy applications such as LNG, methanol, ammonia and hydrogen.

1.2 Support the Decarbonisation of China's Domestic Fleet by Clarifying the Application Process and Timeline for Certification of Maritime Equipment Imported from Abroad for Installation on China-flagged Vessels

Concern

The process of applying for and obtaining the MSA Type Approval Certificate (TAC), which is required to install equipment on China-flagged vessels, is not transparent.

Assessment

Foreign-manufactured marine equipment destined for China-flagged vessels needs two TACs: first, a TAC for vessels classified by the CCS and flying a non-Chinese flag; and second, a TAC for vessels flying a China flag from the MSA. Based on the experiences of working group members, while the process for obtaining the first TAC is relatively straightforward, the process for obtaining an MSA-TAC is highly opaque and ambiguous. Among other issues, there is neither a clear point of contact with whom to liaise and submit relevant documentation to, nor a timeframe for, the process.

European manufacturers must obtain the MSA-TAC because China does not accept the European Union (EU) Marine Equipment Directive (MED) certification procedure or 'wheelmark' for equipment, components or materials destined for China-flagged ship classes, despite the CCS being authorised to perform MED certification.[27] As a result, European equipment manufacturers are forced to apply for and obtain CCS certification, which often results in additional costs. This practice is unfair, as Chinese marine manufacturers can automatically obtain a MED certification from the CCS or another classification society approved by the EU, allowing them full access to the European market and vessels flying flags of any member state.

In addition, some European manufacturers are also subject to higher certification costs at the CCS than local manufacturers, even though their products are similar and have similar safety criticality or environmental performance. Likewise, it has in the past been unclear whether Chinese authorities will approve ballast water treatment systems (BWTS) manufactured by European or other foreign equipment manufacturers for instalment on Chinese vessels, regardless of whether it has an International Maritime Organization-TAC issued by the CCS or another classification society.

This TAC issue has been a long-term concern for working group members, as previously detailed in the *Shipbuilding Working Group Position Paper 2019/2020*.[28] One member company noted that although it first applied in 2015, it did not obtain TAC approval until 2018. In addition, the approval was granted as a 'one-off' by the CSS on behalf of the MSA, but did not include approval for China-flagged vessels. While it has since become easier for foreign BWTS manufacturers to obtain both the CCS and the MSA-TAC-approval, the process for certifying other foreign-made energy efficiency technology and marine equipment is still unclear and complicated.

According to the Asian Development Bank (ADB), in 2020, more than 90 per cent of Chinese domestic, inland vessels operated on traditional diesel engines.[29] Depending on sources consulted, estimates of the number of domestic, inland river vessels in China range between 115,000 to 200,000, and all will need to be

27 The MED certification covers a limited number of types of marine equipment, such as life-saving and firefighting equipment and scrubbers, and does not cover ballast water devices. However, it is still considered essential certification for European maritime manufacturers.

28 *Shipbuilding Working Group Position Paper 2019/2020,* European Union Chamber of Commerce in China, 24th September 2019, p. 269, viewed 27th April 2023, <https://www.europeanchamber.com.cn/en/publications-archive/711/Shipbuilding_Working_Group_Position_Paper_2019_2020>

29 *People's Republic of China: Study on the Development of Green Ports and Shipping,* ADB, December 2021, viewed 27th April 2023, <https://www.adb.org/projects/55032-001/main>

replaced or upgraded over the next 40 years.[30&31]

European suppliers would be able to contribute to delivering around a quarter of this upgrading demand if barriers were lowered. Therefore, considering the average price of a new inland ship is approximately euro (EUR) 1.5 million, with equipment representing about 70 per cent of the newbuilding cost, the yearly market potential for European suppliers would be between EUR 650 million and EUR 2 billion. Apart from the business opportunities, the decarbonisation of domestic shipping could be accelerated if foreign-made marine equipment (with suitable technology) could be made readily available to Chinese vessels.

Recommendations

- Ensure that the MSA-TAC application process is transparent, and clearly designate a single point of contact to liaise with and to whom relevant documentation should be submitted.
- Issue official documentation once the application has been received.
- Stipulate the timeline for reviewing an application from when it is received to when the permits will be issued.
- Create a mechanism that allows companies to track their applications.

2. Issue Guidance on the Transportation of LNG 2

2.1 Accelerate the Deployment of LNG Bunkering and Ship-to-Ship Regulations along Coastal Areas

Concern

The current lack of standardised regulations on LNG ship-to-ship transfers and LNG bunkering services presents refuelling challenges to both domestic and international ships bunkering at Chinese ports.

Assessment

National regulation of LNG ship-to-ship transfers has been discussed for many years.[32] In August 2021, the MSA issued the *Measures for the Safety Supervision and Administration of Water Liquified Natural Gas Filling Operations*, which took effect as of 30th September 2021 and will be valid for five years.[33] However, as detailed guidelines are yet to be released by local MSA authorities (branch offices), ship-to-ship transfer remains impossible in most provincial ports. This affects ship-to-ship operations between LNG bunkering vessels and LNG-fuelled merchants' vessels, and transhipment operations from gas carriers to gas carriers are not permitted.

Despite some progress achieved in 2022, LNG bunkering services remain under-developed along coastal areas. To ensure the safety of bunkering operations, it is standard practice to conduct both a concept hazard identification (HAZID) analysis and a hazard and operability (HAZOP) analysis of the intended gas system. Singaporean and many European ports have solid experience in carrying out these studies in order to define dedicated regulations, and, as a result, have welcomed hundreds of safe LNG ship-to-ship transfers. Therefore, establishing a cooperative framework between one of these ports and Chinese ports could help accelerate the implementation of the national rules at the provincial level.

Recommendations

- Issue national and local guidelines for LNG bunkering in Chinese coastal areas.
- Issue relevant national guidelines for ship-to-ship transfers in Chinese open sea waters.
- Increase cooperation with European ports offering similar services, to better understand HAZID analysis and HAZOP analysis workshop results and the corrective actions that have been implemented.

30 Information on the number of domestic ships is not precise and varies largely depending on the sources consulted. Both the ADB and the Chinese consultancy Zhi Yan estimate that there were 115,000 domestic inland vessels in 2020, but Statista estimates there were 126,800 vessels at the end of 2020: Ibid.; *Current Competition and Investment Outlook of Transport Vessel industry in China 2021–2027*, Zhi Yan Consultancy, 3rd June 2021, viewed 27th April 2023, <https://www.chyxx.com/industry/202106/954998.html>; *Number of transport vessels in China from 2008 to 2021 (in 1,000s)*, Statista, 1st February 2022, viewed 27th April 2023, <https://www.statista.com/statistics/258515/number-of-vessels-in-china/>

31 In 2021, the working group held a meeting with the China Transport Planning and Research Institute, which noted that there were approximately 200,000 inland river vessels in China.

32 Bunkering LNG ship-to-ship can take place between two sea-going ships at anchorage or in port.

33 *Notice of the Maritime Safety Administration of the People's Republic of China on Amending and Issuing the Measures for the Safety Supervision and Administration of Water Liquified Natural Gas Filling Operations*, MSA, 27th August 2021, viewed 12th April 2022, <https://www.msa.gov.cn/html/xxgk/tzgg/wgfw/20210830/5C1201AF-E262-4207-91F1-2CD37127635F.html>

2.2 Authorise LNG Transportation on Domestic Waterways at Both the National and Provincial Level

Concern

Existing regulation of LNG transportation on main domestic waterways is insufficient due to a lack of alignment at the local level.

Assessment

There is a clear guideline for the development of LNG transportation on domestic, inland waterways.[34] However, because inner waterways such as the Yangtze River, the Pearl River and the Yellow River flow through several provinces, implementation at the local level—both provincial and county—is evolving very slowly, due to difficulties associated with coordination and different safety concerns.

Following an expert assessment meeting held in late 2020 with MOT officials and 50 LNG industry experts in attendance, approval was granted for LNG carriers to enter the Yangtze River. Provincial branches of the MSA are overseeing implementation and bear responsibility. Soon afterwards, the Jiangsu Province MSA issued detailed trial measures on safety measures for the navigation, operation and bunkering of LNG vessels in its local section of the Yangtze River.[35] However, as the proposal issued by the Jiangsu MSA comes with many restrictions related to safety, as of today no LNG carrier has sailed on the Yangtze River. To resolve this, both Chinese and foreign experts should engage in collaboration activities, especially on the industrial side, to expedite LNG carriers entering the Yangtze River.

Recommendations

- Issue relevant local guidelines promoting safe transportation of LNG on domestic waterways, making the adoption of large-capacity LNG carriers and LNG storage under atmospheric conditions possible.
- Invite foreign-invested companies and foreign experts to share their insights and recommendations on LNG transportation with the regulators.

34 *Guidance on Promoting the Application of LNG in the Water Transport Sector by the Ministry of Transport*, MOT, 23rd October 2013, viewed 27th April 2023, <http://www.gov.cn/gongbao/content/2013/content_2547150.htm>

35 *Notice on the Issuance of the "Safety Measures for Navigation, Berthing and Operation of Bulk LNG Vessels Carriers Sailing on the Jiangsu Section of the Yangtze River (Trial)" by the General Office of Jiangsu Maritime Safety Administration, The Paper*, 20th September 2021, viewed 27th April 2023, <https://m.thepaper.cn/baijiahao_14655892>

3. Clarify the Entry-Exit Polices for Foreign Experts Carrying an M Business Visa Entering China for Short-term Onsite Instruction Work

Concern

China's current visa restrictions make it difficult for foreign, specially-trained experts carrying M business visas to enter China to conduct short-term work related to installation, inspection, drydocking maintenance and repairs, or class surveying.

Assessment

As part of mandatory ship inspections—including technical inspections and assisting with onsite ship upgrades—foreign experts need to enter China on short-term assignments (less than three months). Local shipyards need such experts to provide crucial support, but the difficulties the foreign experts encounter when trying to access Chinese shipyards—an M visa is not applicable and a Z visa is not practical—make them prefer to use other Asian or global shipyards than Chinese local ones.

Foreign experts coming for short-term assignments must apply for a China business visa (M visa), according to the *Regulations of the Administration of the Entry and Exit of Foreigners* (State Council Decree No. 637), released in September 2013, which state, "The M visa is issued to persons who come to China for commercial trade".[36]

However, the *Procedures for Foreigners Entering China to Complete Short-term Work Tasks (Trial) ([2014] No. 78)*, issued by the Ministry of Human Resources and Social Security, which entered into force on 1st January 2015, widens the scope of those eligible for M visas, including, but not limited to, the following criteria:[37]

1. Complementary servicing, installation, commissioning, disassembly, guidance and training for purchase of machinery equipment.
2. Guidance, supervision and inspection for an awarded tender project in China.
3. Completion of short-term work assignment in a branch, subsidiary or representative office in China.

36 *Administration of the Entry and Exist of Foreigners (Decree of the State Council [2013] No. 637)*, State Council, 22nd July 2013, viewed 27th April 2023, <http://www.gov.cn/zhuanti/2013-07/22/content_2610606.htm>

37 *Procedures for Foreigners Entering China to Complete Short-term Work Tasks (Trial)*, Ministry of Human Resources and Social Security, 6th November 2014, viewed 27th April 2023, <http://www.mohrss.gov.cn/xxgk2020/fdzdgknr/qt/201411/t20141121_144780.html>

In order to facilitate the entry of short-term experts that are crucial for the healthy development of the maritime industry, the scope of those eligible for M visas should be further expanded to include the following criteria:

- Business meetings or conferences, business-to-business marketing activities and contract negotiations.
- Post-sales, onsite activities, such as equipment maintenance and repair, installation, testing and dismantling, upgrading and conversion, and coaching and training services.
- Coaching, supervision or inspections related to bid-winning projects in China.
- Performing short-term technical guidance, training, supervision and knowledge transfer for subsidiaries, branches or representative offices in China.
- Providing volunteer work in China without remuneration, or when remuneration is covered by an overseas organisation.

Recommendation

- Expand the scope of those eligible for M visas by including criteria related to business events, post-sales, onsite equipment maintenance and relevant services, project inspection, training and volunteer work.

4. Amend Both Import Duty Regulations on Imported Ship Components from Outside China for Assembly Onboard, and Value-added Tax (VAT) on Onboard Services Provided on International Vessels 2

Concern

Equipment installed in/on ships bound for international routes and onboard manpower services should both be exempt from import duties or VAT.

Assessment

According to international practice, no additional VAT is required on imported components being assembled onboard a seagoing vessel if it is operated for at least 70 per cent navigation on high seas and 100 per cent commercially. In China, the VAT is payable on all *renminbi* (RMB) contracts for both domestic and imported products. However, local suppliers do not need to pay the import duty of 10 per cent if products are destined for international seagoing vessels flying a Chinese flag, though they must pay if the product or components are manufactured outside of China. It should however be noted that China does not impose VAT on components and equipment destined for so-called 'export projects', which include a foreign shipowner and a foreign flag, conducted in foreign currency.

This practice affects Chinese shipbuilding business when it comes to ship repair and conversion, as many ship operators prefer to go to Singapore or elsewhere in Southeast Asia to repair and convert their ships, a trend that strengthened when COVID-19 restrictions were imposed over the past three years. A direct consequence of this is that China's ship-repair-and-conversion business segment is not growing to its full potential, and Chinese shipyards are generating losses. It is notable that it is currently not possible to replace all ship components from overseas with local Chinese components, simply because neither the standards nor the quality assurance is compatible.

Foreign companies operating in China also experience challenges regarding VAT imposed on manpower services. When they issue an invoice to an international customer for a post-sales, onboard service—either in RMB or international currency—six per cent VAT needs to be added, even when the work is carried out on non-Chinese flagged vessels sailing in international waters. Although they can apply for a VAT refund, the application process is not clear, and it takes significant time and resources to navigate. It is therefore suggested to exempt such onboard services provided on international vessels from the VAT requirement, which would benefit the Chinese market through alignment with international industry norms and provide a more level playing field for local and foreign players.

Recommendations

- Exempt imported ship components for assembly onboard from import duties, in line with international practice, in order to foster the domestic ship-repair-and-conversion business.
- Exempt onboard services provided on international vessels from the VAT requirement.

Abbreviations

ADB	Asian Development Bank
BTIRDI	Beijing-Tsinghua Industrial Research and Development Institute
BWTS	Ballast Water Treatment Systems
CANSI	China Association for National Shipbuilding Industry
CCS	China Classification Society
CGT	Compensated Gross Tonnage
COSCO	China Ocean Shipping Company
EU	European Union
EUR	Euro
HAZID	Hazard Identification
HAZOP	Hazard and Operability
LNG	Liquefied Natural Gas
MED	Marine Equipment Directive
MIIT	Ministry of Industry and Information Technology
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
MOT	Ministry of Transport
MSA	Maritime Safety Administration
NDRC	National Development and Reform Commission
R&D	Research and Development
RMB	*Renminbi*
SAMR	State Administration for Market Regulation
TAC	Type Approval Certificate
USD	United States Dollar
VAT	Value-added Tax

European Chamber
中国欧盟商会

Petrochemicals, Chemicals and Refining Working Group

Key Recommendations

1. Legislation and Law Enforcement

1.1 Strengthen Legislation Processes Through Better Communication and Broader Involvement

- Involve chemical companies at all stages of the development of relevant regulations and standards.
- Provide a transition period and clear guidance at the local level when releasing updates to laws and policies.
- Strengthen the current communication channels to better collect feedback from foreign enterprises and associations on regulation drafting and implementation to avoid 'one-size-fits-all' measures, and provide a central platform on which relevant parties can raise questions and publish standard answers to frequently-asked-questions.
- Clarify the distinction in standards between mandatory requirements and good practices.
- Clarify the definition of 'two-high' projects in further detail and provide corresponding industry development guidelines on local project approvals.

1.2 Establish a Standardised Regulatory Environment

- Conduct regulatory training for authorities at every level (town, provincial and national) and companies to align interpretations and enforcement.
- Involve and consult industry-specific experts on law enforcement regarding specialty chemicals to respect the uniqueness and best practices of this complex industry.
- Strengthen the permit approval process for projects and facilities to better align operation requirements between the authorities and companies, based on the regulations relating to chemical plants.

1.3 Provide Clear Official Clarification and Consistent Policy Between Local and Central Levels on the 'One Kilometre Policy' in the Yangtze River Protection Law

- Seek clear official clarification regarding the scope of the tributaries of the Yangtze River.
- Maintain consistency in implemation of the 'one kilometre' policy between the local (city and provincal) and central authorities.

2. Sustainability and Green Chemistry

2.1 Promote Sustainability and Improve the Image of the Chemical Industry Through Effective Communication, Best Practice Sharing and Innovation on Environment, Health, and Safety (EHS) and Carbon Management 7

- Strengthen cooperation between the government and international businesses, and encourage the central authorities to involve companies and international industrial associations as key stakeholders, particularly regarding the Emission Trading Scheme (ETS), 'Responsible Care' and EHS management.
- Further promote the 'Open to the Public' programme to improve societal awareness regarding sustainability and the image of the chemical industry.

- Establish guidance and provide support for power purchase agreements, renewable electricity selling between neighbouring entities, energy storage and other emerging energy transition tools to support the decarbonisation of the chemical industry.
- Strengthen unified planning for the construction and management of industrial gas, public pipelines, heating, hazardous chemical (HC) waste disposal facilities and other public utilities at chemical parks.
- Speed up the deployment of measures geared towards improving energy consumption intensity and efficiency through building, optimising, or sharing common utilities such as steam, wastewater treatment and hazardous waste facilities.
- Encourage renewable energy investment by establishing mechanisms such as a fast-track approval procedure for on-site photovoltaics and distributed wind power project installations in chemical parks.
- Provide incentives and accelerate or simplify the permit approval process for demonstration projects.
- Develop a national product carbon-footprint standard compatible with European standards to promote reduction of scope 3 carbon emissions.

2.2 Improve Policies for Promotion of the Circular Economy Within the Chemical Industry 4

- Foster value chain cooperation as well as regulatory, financial and tax supports to promote the implementation of circular economy principles, for example, re-use of chemical waste as a raw material and energy co-generation.
- Encourage energy and resource sharing and collaboration within chemical parks.
- Simplify the certification and approval requirement to encourage waste recycling and utilisation projects while offering the possibility of case-by-case exemptions.
- Grant tax incentives that promote plastic recycling processes, improve urban waste infrastructure and speed up the construction of a green standard system for recycled plastics.
- Standardise regulatory requirements on the chemical recycling of plastic waste, particularly regarding any necessary onsite pre-treatment as well as transportation into industrial parks for chemical recycling usage.

3. Investment and Manufacturing Costs

3.1 Guarantee Fair and Reasonable Treatment by Local Authorities with Respect to Relocations and Temporary Closures of Enterprises and Chemical Parks 7

- Ensure that any criteria provided and actions undertaken to have businesses relocate or temporarily close are based on law and regulations, transparent and published well in advance.
- Use a ‘case-by-case’ approach to address suggestions for plant relocations, with significant lead-time and lenient timelines to avoid disrupting chemical supply chains.
- Reach mutual agreement with companies on relocation timelines and fair compensation to decrease their associated costs.
- Factor in secondary risks on overall shutdown polices to avoid disruptions to chemical plant operations and and the subsequent possibility of explosions, particularly when measures are given at short notice.

3.2 Simplify the Regulatory Process to Support New Investment, Market and Technology Innovation in Fine Chemical Manufacturing 3

- Simplify the permit allocation process for minor recipe changes within the same product category to promote quick market responses and encourage innovation.

- Simplify the permit allocation process for plant debottlenecking projects that aim to increase production capacity and optimise the workflow without changing the main production process or increasing emissions.
- Establish a standardised permit approval process and provide measures to correct permit applications during the approval procedure.
- Streamline and involve industrial experts with relevant expertise in the permit approval review process.

4. Chemicals Management

4.1 Optimise and Simplify the Chemical Regulation Legislative Framework for a Sustained, Market-orientated and Internationalised Business Environment 10

- Minimise the scope of HC control under the 'one enterprise, one product and one code' policy.
- Prohibit downloading product labels from the online HC registration platform to protect confidential information and optimise the quick response (QR) code system.
- Clarify the inspection requirements for HC to facilitate enterprise compliance.
- Improve the new chemical registration system, and establish a dynamic adjustment mechanism to address new issues discovered by enterprises during registration.
- Unify customs law enforcement standards, and strengthen their rollout and implementation.
- Accelerate and standardise the sampling process and feedback time to help enterprises reduce compliance costs.

Introduction to the Working Group

The Petrochemicals, Chemicals and Refining (PCR) Working Group represents the leading European companies in the petroleum and chemical industry in China, many of which are Fortune Global 500 companies. The aim of the working group is to improve the operating conditions for PCR companies in China by facilitating communication between member companies, the government and Chinese industrial associations. In addition, the working group provides up-to-date information on pressing issues related to the chemical industry and the effects from various locally enacted regulations.

Over the past several years, the working group has built close relationships with the Ministry of Ecology and Environment (MEE), the Ministry of Emergency Management (MEM), the Ministry of Commerce, the Ministry of Transportation, the State Administration for Market Regulation, the Ministry of Industry and Information Technology (MIIT) and the National Development and Reform Commission (NDRC). The working group also has a close relationship with several chemical industry associations, including the China Petroleum and Chemical Industry Federation (CPCIF) and the Association of International Chemical Manufacturers (AICM), which share the aim of facilitating the Chinese manufacturing industry in becoming more sustainable and innovative.

Recent Developments

In 2022, global manufacturing output dropped. This was the result of many factors, including lockdowns in China, supply-chain bottlenecks and disruptions due to the Russian invasion of Ukraine. Consequently, the global chemical output growth was also slower.[1] The Russian invasion also impacted oil prices: in the first half of 2022, the Brent price averaged United States dollars (USD) 107 per barrel, an increase of USD 42 year-on-year. This hike affected the financial health of international chemical producers. Despite a decline in oil prices in the second half of 2022 as a result of weaker demand and economic concerns, the effect of the price volatility still

1 *2023 Chemicals Industry Outlook: Brace for Challenges,* Chemical Processing, 21st December 2022, viewed 5th June 2023, <https://www.chemicalprocessing.com/asset-management/economics/article/21439097/2023-chemicals-industry-outlook-brace-for-challenges>

reverberated into early 2023.[2] The biggest risk to the overall chemical industry outlook is persistent inflation and continued increases in interest rates that will prolong and deepen the coming downturn.

Legislation and Law Enforcement

The working group is pleased to see improvements in the legislative processes, with more public involvement during the drafting of regulations. In 2023, more specific instructions have also been provided on operational requirements, such as the *Rules for Marking Equipment for Automatic Monitoring of Pollutant Discharge*,[3] the *Standard for Pollution Control for Hazardous Waste Storage*,[4] and the *Technical Guide for the Setting of Monitoring Points at Fixed Pollution Source Emissions (Draft for Comments)*,[5] among others. The reinforced legislation and law enforcement have greatly improved the industry's overall management and environment, health and safety (EHS) performance.

Sustainability and Green Chemistry

In 2021, China announced its 30/60 Goals,[6] after which the MEE proposed an emissions trading scheme (ETS) regulation to create a new centralised emissions trading market. [7] The national ETS completed its first compliance period task by the end of 2021.[8] However, due to the poor quality of reported data, plans to expand the ETS market to include aluminium, cement, petrochemical and other high-emitting industries have been delayed, hindering China's progress towards decarbonisation.[9] On 1st August 2022, the NDRC, MIIT and MEE jointly issued the *Implementation Guidelines to Peak Carbon Emission in the Industrial Domain*,[10] followed by specific guidelines regarding non-ferrous metals and the construction material industry issued within the year. However, the guideline for the chemical industry has not yet been issued or published. Besides, according to the European Chamber's *Carbon Neutrality: The Role of European Companies in China's Race to 2060,* published in 2022, the ETS's impact remains limited due to its restricted scope, the low price of carbon and the lack of an absolute cap on emissions.[11]

Following the release of the Implementation Plan to Enhance Hazardous Waste Supervision and Improve the Utilisation and Disposal Capacity in 2021,[12] at least 14 cities and provinces have published detailed rollout plans to support 'point-to-point' hazardous waste utilisation as well as multiple demonstration projects.

Investment and Manufacturing Costs

The Yangtze River Protection Law, which entered into force in March 2021, prohibits constructing or expanding chemical parks and projects within one kilometre of the river, with no recognition for projects intended to upgrade plants' safety and ecological protection. Several working group members have since reported that local authorities ordered them to shut down within unreasonably short timeframes. In addition, many companies received conflicting information from different government departments and encountered difficulties establishing direct negotiation channels with the relevant authorities. The government should avoid a 'one-size-fits-all' approach to closures, and provide transparent and fair criteria, and adequate timeframes, for plant shutdowns to mitigate business disruption.

Chemicals Management

On 5th January 2022, the State Council Safety Commission issued a notice on the *National Plan for*

2 *2023 chemical industry outlook*, Deloitte, viewed 5th June 2023, <https://www2.deloitte.com/us/en/pages/energy-and-resources/articles/chemical-industry-outlook.html>

3 *Notice on the Publication of the Rules for Marking of Automatic Pollutant Discharge Monitoring Equipment,* MEE, 19th July 2022, viewed 18th April 2023, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk01/202208/t20220801_990434.html>

4 *Standard for pollution control on hazardous waste storage,* MEE, 1st July 2023, viewed 14th July 2023, <https://www.mee.gov.cn/ywgz/fgbz/bz/bzwb/gthw/wxfwjbffbz/202302/t20230224_1017500.shtml>

5 *Notice of Public Consultation on the National Ecological Environment Standard 'Technical Guide for the Setting of Monitoring Points at Fixed Pollution Source Emissions (Draft for Comments)'*, MEE, 22nd March 2023, viewed 18th April 2023, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk06/202303/t20230322_1021375.html>

6 Further to its obligations under the Paris Agreement, China announced its commitment to peak its national carbon emissions by 2030 and to achieve carbon neutrality by 2060: *China headed towards carbon neutrality by 2060; President Xi Jinping vows to halt new coal plants abroad*, United Nations, 21st September 2021, viewed 16th June 2023, <https://news.un.org/en/story/2021/09/1100642>

7 *Measures for the Administration of Carbon Emission Trading (Trial),* MEE, 5th January 2021, viewed 16th June 2023, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk02/202101/t20210105_816131.html>

8 *Ministry of Ecology and Environment Releases Report on the First Compliance Cycle of the National Carbon Emissions Trading Market*, MEE, 1st January 2023, viewed 18th April 2023, <https://www.mee.gov.cn/ywgz/ydqhbh/wsqtkz/202301/t20230101_1009228.shtml>

9 *National Carbon Market Expansion May Be Delayed to 2023*, China Dialogue, 19th May 2022, viewed 18th April 2023, <https://chinadialogue.net/en/digest/national-carbon-market-expansion-may-be-delayed-to-2023/>

10 *Ministry of Industry and Information Technology, National Development and Reform Commission and Ministry of Ecology and Environment Notice on the Issuance of the Implementation Plan for Carbon Peaking in the Industrial Sector,* State Council, 7th July 2022, viewed 18th April 2023, <http://www.gov.cn/zhengce/zhengceku/2022-08/01/content_5703910.htm>

11 *Carbon Neutrality: The Role of European Companies in China's Race to 2060*, European Union Chamber of Commerce in China, 25th May 2022, viewed 5th June 2023, <https://www.europeanchamber.com.cn/en/publications-carbon-neutrality-report>

12 *General Office of the State Council on the Issuance of the Strengthening of Hazardous Waste Supervision and Implementation Plan for the Reform of Utilization and Disposal Capacity,* State Council, 25th May 2021, viewed 18th April 2023, <http://www.gov.cn/zhengce/content/2021-05/25/content_5611696.htm>

Centralised Management of Hazardous Chemical Safety Risks.[13] The plan explicitly proposes enhancing the digital and intelligent control of hazardous chemical (HC) risks, and makes the MEM responsible for promoting the upgrading and transformation of the chemical registration system, as well as implementing "one enterprise, one product and one code" management. This new policy aims to enhance the digital management of hazardous products to allow HC data to be transferred efficiently throughout a product's entire life-cycle.

On 24th May 2022, the State Council released the *Action Plan for New Pollutants Treatment*,[14] aiming to significantly improve China's new pollutants treatment capacity by 2025. On 30th December 2022, the MEE issued the *List of New Pollutants for Priority Management (2023)*,[15] China's first such official list. In addition, many provinces have drafted or published their local *Work Plan for New Pollutants Treatment* to promote the management of new pollutants based on the National Plan and local contexts. However, enterprises currently lack guidance on the precise and compliant management of new pollutants. The working group will closely monitor the progress of the relevant regulations and expects the timely release of supporting guidelines.

The General Administration of Customs of China (GACC) *Announcement on Questions Regarding the Inspection of Imported and Exported Hazardous Chemicals and Their Packaging (GACC Announcement [2020] No. 129)*,[16] which is considered the guiding document on inspection of imported and exported HC and their packaging, entered into force on 10th January 2021. On 7th April 2023, after a four-month-long pilot in Shanghai, the GACC released *Announcement [2023] No. 29*,[17] regarding the nationwide rollout of a new inspection mode for imported HC from 13th April 2023. Under this new mode, documentation review and verification, and port/destination inspection will be implemented for batches of imported HC, with inspection locations and proportions set according to the attributes of the imported HC and the packaging of dangerous goods.

13 *National Plan for Centralized Management of Hazardous Chemical Safety Risks*, MEM, 5th January 2022, viewed 18th April 2023, <https://www.mem.gov.cn/gk/zfxxgkpt/fdzdgknr/202201/t20220105_406261.shtml>

14 *The Action Plan for New Pollutants Treatment,* MEE, 24th May 2022, viewed 18th April 2023, <https://www.mee.gov.cn/zcwj/gwywj/202205/t20220524_983032.shtml?keywords=%E6%96%B0%E6%B1%A1%E6%9F%93%E7%89%A9>

15 *List of New Pollutants for Priority Management (2023),* MEE, 30th December 2022, viewed 18th April 2023, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk02/202212/t20221230_1009167.html?keywords=>

16 *GACC Announcement [2020] No. 129: Announcement on Questions Regarding the Inspection on Imported and Exported Hazardous Chemicals and Their Packaging*, GACC, 18th December 2020, viewed 21st April 2023, <http://jiangmen.customs.gov.cn/customs/302249/302266/302267/3476363/index.html>

17 *GACC Announcement [2023] No. 29: Announcement on Further Strengthening the Inspection and Supervision of Imported Hazardous Chemicals*, GACC, 7th April 2023, viewed 21st April 2023, <http://www.customs.gov.cn/customs/302249/2480148/4945781/index.html>

Key Recommendations

1. Legislation and Law Enforcement

1.1 Strengthen Legislation Processes Through Better Communication and Broader Involvement

Concern

The lack of communication and engagement between companies and government creates ambiguity in the implementation of regulations.

Assessment

Although the Chinese Government has ambitious plans for greening the economy and promoting innovation, there is a lack of mechanisms for facilitating cooperation between companies and institutions, and regulations often do not distinguish between mandatory requirements and good practices. The standard for volatile organic compounds (VOCs), for example, requires manufacturers to remove 90 per cent of VOCs even if emissions are already limited. This comes at a high cost in terms of both investment and energy efficiency. Meanwhile, in the *Guiding Opinions on Promoting the Development of the Petrochemical and Chemical Industry in the 14th Five-year Plan Period*,[18] jointly issued by the MIIT and five other departments, requirements include significantly reducing energy consumption and carbon emissions per unit of bulk products, and reducing total VOC emissions by more than 10 per cent compared to the 13th Five-year Plan period.

Vaguely written regulations lead to difficulties in interpreting laws and regulations, resulting in major inconsistencies in enforcement. For example, if a new regulation is not clear enough, local government departments may stop issuing permits until they receive more specific guidelines from a higher department. This has occurred frequently in the past few years in relation to environment and safety management and is currently a concern for classifying projects under the

18 *Guiding Opinions on Promoting the Development of the Petrochemical and Chemical Industry in the 14th Five-year Plan Period*, MIIT, 28th March 2022, viewed 16th June 2023, <https://www.gov.cn/zhengce/zhengceku/2022-04/08/content_5683972.htm>

'two-high' requirement.[19&20] In addition, interpretation should be clarified and aligned among local and central authorities before new regulations go into force. Even when clarifications are provided, policies might still not be adequately enforced, as in the case of the Pollutant Discharge Permit. The MEE has clarified that it will be the only management tool for site-specific supervision in multiple policy documents.[21] However, this policy is still not adequately enforced, despite being in place since 2018.[22]

Recommendations

- Involve chemical companies at all stages of the development of relevant regulations and standards.
- Provide a transition period and clear guidance at the local level when releasing updates to laws and policies.
- Strengthen the current communication channels to better collect feedback from foreign enterprises and associations on regulation drafting and implementation to avoid 'one-size-fits-all' measures, and provide a central platform on which relevant parties can raise questions and publish standard answers to frequently-asked-questions.
- Clarify the distinction in standards between mandatory requirements and good practices.
- Clarify the definition of 'two-high' projects in further detail and provide corresponding industry development guidelines on local project approvals.

1.2 Establish a Standardised Regulatory Environment

Concern

Inconsistent regulatory enforcement negatively impacts companies' operations.

Assessment

The chemical industry is complex, and while current regulations and standards can cover most commodity products and processes, some requirements will not be suitable for specialty chemical companies. Therefore, it is important to respect best practices in specific sub-industries and involve industry-specific experts in the implementation processes for risk-based management.

In addition, inspection and law enforcement officials do not necessarily have chemical expertise. Therefore, when implementing regulations relating to chemical manufacturing sites, targeted training for officials is essential to avoid uncertainty and achieve alignment between companies and the authorities.

Another issue commonly encountered by chemical companies is inconsistency across certain standards and guidelines, which makes it difficult for them to determine the correct criteria or requirements regarding EHS management, findings and even penalties for certain items.

Recommendations

- Conduct regulatory training for authorities at every level (town, provincial and national) and companies to align interpretations and enforcement.
- Involve and consult industry-specific experts on law enforcement regarding specialty chemicals to respect the uniqueness and best practices of this complex industry.
- Strengthen the permit approval process for projects and facilities to better align compliance requirements between the authorities and companies, based on the regulations relating to chemical plants.

1.3 Provide Clear Official Clarification and Consistent Policy Between Local and Central Levels on the 'One Kilometre Policy' in the Yangtze River Protection Law

Concern

The ambiguous interpretation of the Yangtze River Protection Law potentially prevents all chemical companies from building new projects in the Yangtze River basin area.

Assessment

The *Outline of the Development Plan for the Yangtze River Economic Belt*,[23] issued by the Central Committee of the Communist Party of China in 2016, explicitly proposed the formulation of the Yangtze River Protection

19 In the transition to a low-carbon economy, China has curbed 'two-high' projects (high energy consumption, high pollution including carbon emissions), which focusses on carbon-intensive industries such as steel manufacturing, nonferrous metals and petrochemicals.

20 *Plan for Improving the Dual Control System of Energy Consumption Intensity and Total Amount,* State Council, 11th September 2021, viewed 18th April 2023, <http://www.gov.cn/zhengce/zhengceku/2021-09/17/content_5637960.htm>

21 *MEE Answered the Reporter's Questions on the Technical Specifications for the Application and Issuance of Pollutant Discharge Permit and Industrial Solid Waste,* MEE, 15th November 2021, viewed 18th April 2023, <https://www.mee.gov.cn/ywdt/zbft/202111/t20211115_960421.shtml>

22 *Suggestions on Comprehensively Promoting Post-Pollution Permit Management,* Guangmingwang News, 24th April 2020, viewed 18th April 2023, <https://theory.gmw.cn/2020-04/24/content_33766478.htm>

23 *The Outline of the Development Plan for the Yangtze River Economic Belt, Xinhua*, 12th September 2016, viewed on 18th April 2023, <http://www.gov.cn/xinwen/2016-09/12/content_5107501.htm>

Law. The law was issued in 2020, and took effect on 1st March 2021.

According to the law, it is prohibited to build or expand chemical parks and chemical projects within one kilometer of the main tributaries of the Yangtze River. However, the scope of 'tributary' has not been clearly defined in the law, leaving it unclear whether 'tributary' refers to the primary tributary or tributaries of all grades. If it is in fact all grades, this would mean most chemical companies are forbidden from building new projects in the Yangtze River basin, as all rivers in the area can be considered tributaries of the Yangtze. Although some provincial-level guidance has been issued regarding these classifications, not all locations are covered or have clear explanations provided. Therefore, even, for example, if city-level authorities grant an exemption, potential compliance risks remain for companies remain due to the possibility of inspection or permit processes falling under the remit of provincial- or national-level authorities with differing interpretations.

Recommendations

- Seek clear official clarification regarding the scope of the tributaries of Yangtze River.
- Maintain consistency in implemation of the 'one kilometre' policy between the local (city and provincal) and central authorities.

2. Sustainability and Green Chemistry

2.1 Promote Sustainability and Improve the Image of the Chemical Industry through Effective Communication, Best Practice Sharing and Innovation on EHS and Carbon Management

Concern

Recent government policies reinforced negative views concerning the chemical industry in China, and ignored its significant contributions to promoting the responsible, green and innovative economy necessary to realise China's 30/60 Goals.

Assessment

Many accidents in the industry stem from a lack of risk awareness and knowledge about best practices. Multinational corporations' maturity on EHS matters are not recognised by the Chinese authorities, who still insist on a 'one-size-fits-all' approach to the industry, such as bans affecting compliant and non-compliant companies alike.[24] Therefore, a formal channel of communication and cooperation between chemical companies and government officials is necessary to promote the implementation of responsible and sustainable practices, and improve preventative measures. This collaboration should include chemical parks or associations such as the AICM, the CPCIF and Together for Sustainability. The working group also recommends further promoting 'Responsible Care' in the chemical industry and involve more stakeholders,[25] and enhancing the 'Open to the Public' programme to improve societal awareness regarding sustainability and the chemical industry overall.[26]

Chemical parks face challenges in realising the transition to green development. Renewable energy investments, such as installing onsite photovoltaics and distributed wind power, could be encouraged through the establishment of certain fast-track approval procedures that streamline the process. Establishing guidance and provide support for energy transition tools such as power purchase agreements (PPA), trade in renewable electricity between neighbouring entities, and energy storage would also accelerate green development in the industry. Although the MIIT released the *Guiding Opinion for Promoting Standardised Development of Chemical Parks* in 2015,[27] there is insufficient infrastructure and utilities to support development, while energy curbs are often imposed on energy-intensive industries. The lack of facilities is mainly due to the pressure on park management to attract further economic investment, leading to the neglect of planning issues such as public utilities, electricity supplies, heating and industry gas. To reach the 30/60 Goals, chemical parks should optimise industrial waste treatment, steam generation, carbon capture, utilisation and storage (CCUS), and other public utilities. Furthermore, developing a national product carbon-footprint standard compatible with European standards, to promote reduction of scope 3 carbon emissions,[28] is recommended.

24 *AICM Points Out Barriers to Responsible Care in China*, Chemical Watch, 28th July 2016, viewed 18th April 2023, <https://chemicalwatch.com/48853/aicmpoints-outbarriers-to-responsible-care-in-china>

25 *Responsible Care*, International Council of Chemical Associations, viewed 26th June 2023, <https://icca-chem.org/focus/responsible-care/>

26 Chemical companies and associations in China regularly organise 'open to public' events for the public to learn more about the industry and its sustainability efforts and plans.

27 *Guiding Opinion to Promote the Standardised Development of Chemical Industry Parks*, MIIT, 10th December 2015, viewed 18th April 2023, <https://www.miit.gov.cn/zwgk/zcwj/wjfb/qt/art/2020/art_568c1587f2af497192c10290a277c2cc.html>

28 *Briefing: What are Scope 3 emissions?*, Carbon Trust, viewed 1st June 2023, <https://www.carbontrust.com/our-work-and-impact/guides-reports-and-tools/briefing-what-are-scope-3-emissions>

Recommendations

- Strengthen cooperation between the government and international businesses, and encourage the central authorities to involve companies and international industrial associations as key stakeholders, particularly regarding the ETS, Responsible Care and health, safety and environment (HSE) management.
- Further promote the 'Open to the Public' programme to improve societal awareness regarding sustainability and the image of the chemical industry.
- Establish guidance and provide support for PPA, trade in renewable electricity between neighbouring entities, energy storage and other emerging energy transition tools to support the decarbonisation of the chemical industry.
- Strengthen unified planning for the construction and management of industrial gas, public pipelines, heating, HC waste disposal facilities and other public utilities at chemical parks.
- Speed up the deployment of measures geared towards improving energy consumption intensity and efficiency through building, optimising or sharing common utilities such as steam, wastewater treatment and hazardous waste facilities.
- Encourage renewable energy investment by establishing mechanisms such as a fast-track approval procedure for on-site photovoltaics and distributed wind power project installations in chemical parks.
- Provide incentives, and accelerate or simplify the permit approval process for demonstration projects.
- Develop a national product carbon-footprint standard compatible with European standards to promote reduction of scope 3 carbon emissions.

2.2 Improve Policies for Promotion of the Circular Economy Within the Chemical Industry 4

Concern

China lacks flexible enforcement to promote circular innovation within the chemical industry and establish a complete plastic waste collection and recovery system.

Assessment

As chemicals are essential for many industries, chemical manufacturers are key players in the midstream of many supply chains.[29] Foreign chemical companies operating in China already have a strong focus on sustainability throughout a product's whole life cycle, as well as on developing products that are recyclable by design at the end of their lifespan. In China, incomplete physical and policy infrastructures hinder the mass adoption of chemical recycling of waste plastics, which is generally sourced from the 'dry waste' category of urban waste. However, it is often difficult to separate waste plastics that are of sufficient high quality to be used as raw materials from other dry waste. Advancements in urban domestic waste infrastructure are therefore necessary to improve recycling processes. A cross-provincial disposal system that can combine capacity and facilities for all types of waste should also be established. The working group also recommends standardising the regulatory requirements for chemical recycling of plastic waste, particularly regarding onsite pre-treatment as well as transportation to industrial parks for chemical recycling usage.

Meanwhile, authorities and industry can collaborate to create green standards for the whole plastic recycling supply chain. Tax reforms that exempt green products and services from consumption tax and moving tax collection to the end of retail consumption would be reforms beneficial to the development of the chemical recycling industry. Furthermore, full value-added tax refunds, and extending or expanding various existing preferential tax treatments (for example, the catalogues of preferential corporate income tax treatments for specialised equipment in the areas of environmental protection, water conservation or energy usage reduction),[30] could likewise offset investment costs of the sophisticated equipment and technology required by chemical recycling industries.

In general, the authorities should ensure that the applicability of regulations and standards to specific cases is considered. Overly detailed requirements ignore a project's overall environmental footprint. Simplifying the permit allocation process for projects with favourable impacts on the circular economy, and applying a flexible approach based on specific situations instead of 'one-size-fits-all' enforcement, would encourage more plants and chemical parks to carry out innovative pilot projects.

29 *2019 AICM Sustainable Development Report*, AICM, 4th June 2019, viewed 18th April 2023, <http://aicm.cn/upload/files/20190604/1559634731364010712.pdf>

30 *A Summary of China's Corporate Income Tax Incentives*, Jones Day, July 2008, viewed 18th April 2023, <https://www.jonesday.com/en/insights/2008/07/a-summary-of-chinas-corporate-income-tax-incentives>

Recommendations

- Foster value chain cooperation as well as regulatory, financial and tax supports to promote the implementation of circular economy principles, for example, re-use of chemical waste as a raw material and energy co-generation.
- Encourage energy and resource sharing and collaboration within chemical parks.
- Simplify the certification and approval requirement to encourage waste recycling and utilisation projects while offering the possibility of case-by-case exemptions.
- Grant tax incentives that promote plastic recycling processes, improve urban waste infrastructure and speed up the construction of a green standard system for recycled plastics.
- Standardise regulatory requirements on the chemical recycling of plastic waste, particularly regarding any necessary onsite pre-treatment as well as transportation to industrial parks for chemical recycling usage.

3. Investment and Manufacturing Costs

3.1 Guarantee Fair and Reasonable Treatment by Local Authorities with Respect to Relocations and Temporary Closures of Enterprises and Chemical Parks 7

Concern

The implementation of measures to prevent the unfair shutdown or relocation of EHS-compliant chemical facilities has been inconsistent, particularly at the local level.

Assessment

The chemical industry, with its high production value and high tax rates, has played a significant role in the economic development of China and is regarded by many local governments as one of the main pillars of finance and taxation revenue.

However, one-size-fits-all enforcement focusses on quotas rather than performance, which can damage the chemical supply chain and have negative industrial repercussions. Closure or relocation initiatives should involve continuous communication between authorities and enterprises, and employ a 'one enterprise, one policy' customised approach. Working group members have reported that the time allowed for relocation is often also unrealistic in terms of the requirements involved in moving entire operations and workforces. Furthermore, provincial safety and environmental offices advise municipal governments on which plants should be closed or relocated. Enterprises are unable to communicate directly with these offices and therefore rely on information from local industry and information bureaus, which take the advice of the provincial offices as orders rather than suggestions, even if there is no evidence that the operations concerned cause environmental hazards. Factoring in secondary risks in overall shutdown polices is advised to avoid disruptions to chemical plant operations and the risk of explosions, particularly when measures are given at short notice.

Recommendations

- Ensure that any criteria provided and actions undertaken to have businesses relocate or temporarily close are based on law and regulations, transparent and published well in advance.
- Use a 'case-by-case' approach to address suggestions for plant relocations, with significant lead-time and lenient timelines to avoid disrupting chemical supply chains.
- Reach mutual agreement with companies on relocation timelines and fair compensation to decrease their associated costs.
- Factor in secondary risks in overall shutdown polices to avoid disruptions to chemical plant operations and the subsequent possibility of explosions, particularly when measures are given at short notice.

3.2 Simplify the Regulatory Process to Support New Investment, Market and Technology Innovation in Fine Chemical Manufacturing 3

Concern

Strict permit allocation requirements for increasing production capacity or making minor changes to product recipes hinder fine chemical manufacturers from quickly adapting to market conditions.

Assessment

The permit allocation process for fine chemicals manufacturing is very stringent, and includes requirements for safety, environmental impact and occupational health assessments, as well as capital expenditure thresholds. To adapt to market changes, downstream fine chemical manufacturers sometimes need to adjust recipes or technologies. If these adjustments involve raw materials that are not on the plant's list of registered chemicals, the new materials must undergo an entirely new permit allocation process, even if they are replacing an ingredient with similar properties and do not bring any additional operational risk or pollution.

The same constraint is true for production increases. Permit allocation processes stipulate maximum production capacity. Therefore, to increase manufacturing capacity—for instance, when debottlenecking[31] is required—manufacturers must relaunch the permit process, which usually takes six months to one year. Creating a simplified permit allocation process for minor replacements of fine chemical ingredients or slight capacity increases would reduce administrative burdens and allow manufacturers to respond more competitively to market advancements. Since China implemented the HSE-related regulatory system in 2011,[32] many companies have faced challenges in closing the gap between existing facilities and new requirements. This is partly due to the lack of mechanisms to support companies on both compliance and safety training. As each chemical producer handles thousands of different products, professional expertise including sufficient industrial knowledge is required to conduct risk-based permit reviews. Therefore streamlining permit approval procedures would prevent unreasonable delays and onerous requirements.

Recommendations

- Simplify the permit allocation process for minor recipe changes within the same product category to promote quick market responses and encourage innovation.
- Simplify the permit allocation process for plant debottlenecking projects that aim to increase production capacity and optimise the workflow without changing the main production process or increasing emissions.
- Establish a standardised permit approval process and provide measures to correct permit applications during the approval procedure.
- Streamline the permit approval review process, and involve industrial experts with relevant expertise.

31 *Debottlenecking: What It Is and How It Can Help Optimize Downstream Processes*, Audubon, 21st August 2014, viewed 19th April 2023, <https://auduboncompanies.com/debottlenecking-what-it-is-and-how-it-can-help-optimize-downstream-processes/>

32 *Health, Safety and Environment (HSE),* Workplace Testing, 14th March 2021, viewed 19th April 2023, <https://www.workplacetesting.com/definition/16/health-safety-and-environment-hse>

4. Chemicals Management

4.1 Optimise and Simplify the Chemical Regulation Legislative Framework for a Sustained, Market-orientated and Internationalised Business Environment 10

Concern

New regulations lack clear implementation and enforcement guidance for enterprises and regulatory bodies, causing the overall compliance cost of chemical regulations for enterprises in China to remain much higher than that of other countries.

Assessment

A 'one enterprise, one product and one code' policy has been promoted and piloted in Guangdong and Shandong provinces since 2021 and is expected to be implemented nationwide soon. On 16th February 2022, a new comprehensive online service system for the registration of HC was launched.[33] The working group welcomes the introduction of new features to the online system, such as batch quick response (QR) code downloads and fusion codes, which have alleviated pressure on enterprises. However, further improvements could be made, such as increasing the QR code batch download volume to 1,000 codes a time, and supporting cross-page merging of HC information in fusion codes. The control scope of HC could also be minimised to reduce administrative burdens. For example, considering the current catalogue and classification principles for HC, the number of QR codes needed are beyond what is reasonable, and may lead to excessive enterprise compliance and government supervision pressure. Furthermore, preventing the downloading of labels by QR code scanning or permitting enterprises to use their own self-generated QR codes would help to protect intellectual property and reduce the administrative burden on both the authorities and enterprises.

In order to promote the QR code policy, the government has increased inspections of HC enterprises, a process that is important for strengthening the safety management of HC, raising risk awareness and precision control, and preventing accidents. In 2022, in Shanghai alone, the MEM conducted HC-related

33 Aoki, Kenji, *China launches new hazardous chemical registration system supporting generation of 2D barcode for chemicals*, Enviliance Asia, 23rd February 2022, viewed 26th June 2023, <https://enviliance.com/regions/east-asia/cn/report_5455>

Section Three: Goods

inspections on more than 90 enterprises. With the number of inspections anticipated to rise, the working group expects local MEM offices to clarify the inspection standards and documents required so that enterprises can maximise their compliance.

The online registration system for new chemicals under *Order 12* has now been in operation for over two years.[34] The MEE has recently taken many positive steps in this domain; for example, adopting companies' suggestions to increase the upper limit of substances in a single filing. Nevertheless, further updating the system to automatically identify substances that have been repeatedly registered, to avoid duplicate registration and increase enterprise compliance, is advised. In addition, establishing a dynamic adjustment mechanism to address new issues discovered by enterprises during registration would help to continuously improve the system.

Draft updates to the *Regulations on Environmental Risk Management of Toxic and Hazardous Chemicals*,[35] which are not available publically as of June 2023, and to the Hazardous Chemical Safety Law[36] suggest the possibility of low volume exemption for HC and new chemicals. However, progress of the updates is relatively slow. As these rules will provide a scientific and regulatory basis for chemical management in China, accelerating the legislative process is recommended.

On 7th April 2023, after four months of pilot testing of *GACC Announcement [2020] No. 129* in Shanghai, which regulates the inspection and supervision of import and export of HC and their packaging, the GACC issued *Announcement [2023] No. 29*, and rolled out this new inspection mode nationwide. However, some problems remain unaddressed.

First, different ports or customs have inconsistent requirements for reviewing declaration information and related security documents. Therefore, the working group recommends providing a frequently-asked-questions section on local and central customs official websites relating to the Globally Harmonized System (GHS)[37] and relevant Chinese national standards. This can effectively avoid duplicate discussions and disagreements on the same compliance issue at different checkpoints, reduce the workload of government and enterprises, and improve the efficiency of import and export customs clearance.

Secondly, the implementation of new policies has led to stricter sampling standards, with a subsequent significant increase in sampling rates and testing times. This, coupled with the prohibition of sale and use of goods before test results are issued, means many enterprises face disruptions to their logistics and supply chain, which may in turn impact social production and technological innovation. Consequently, the working group recommends simplifying and accelerating the sampling process, as well as providing more sampling-free possibilities. For example, customs could gradually accept and recognise the internal inspection reports of enterprises with the ability to conduct testing.

Additionally, the working group suggests reducing the time for issuing test results, and in appropriate cases (such as 'white-listed' enterprises), allowing enterprises to use or sell goods before results are provided.

Recommendations

- Minimise the scope of HC control under the 'one enterprise, one product and one code' policy.
- Prohibit downloading product labels from the online HC registration platform to protect confidential information and optimise the QR code system.
- Clarify the inspection requirements for HC to facilitate enterprise compliance.
- Improve the new chemical registration system and establish a dynamic adjustment mechanism to address new issues discovered by enterprises during registration.
- Unify customs law enforcement standards and strengthen their publicity and implementation.
- Accelerate and standardise the sampling process and feedback time to help enterprises reduce compliance costs.

34 *Measures for the Environmental Management Registration of New Chemical Substances ([2020] Order No. 12)*, MEE, 29th April 2020, viewed 18th April 2023, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk02/202005/t20200507_777913.html>

35 *Reply to Recommendation No. 3358 of the Fifth Session of the 13th National People's Congress*, MEE, 12th September 2022, viewed 18th April 2023, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk13/202301/t20230117_1013354.html>

36 Hazardous Chemical Safety Law (Draft for Comments), MEM, 2nd October 2020, viewed 18th April 2023, <https://www.mem.gov.cn/gk/tzgg/tz/202010/t20201002_368140.shtml>

37 The Globally Harmonized System of Classification and Labelling of Chemicals (GHS) addresses classification of chemicals by types of hazard and proposes harmonised hazard communication elements, including labels and safety data sheets.

Abbreviations

AICM	Association of International Chemical Manufacturer
CCUS	Carbon Capture, Utilisation and Storage
CPCIF	China Petroleum and Chemical Industry Federation
EHS	Environmental, Health and Safety
ETS	Emissions Trading Scheme
GACC	General Administration of Customs China
GHS	Globally Harmonized System
HC	Hazardous Chemicals
HSE	Health, Safety and Environment
LPG	Liquefied Petroleum Gas
MEE	Ministry of Ecology and Environment
MEM	Ministry of Emergency Management
MIIT	Ministry of Industry and Information Technology
NDRC	National Development and Reform Commission
PCR	Petrochemicals, Chemicals and Refining
PPA	Power Purchase Agreement
QR	Quick Response
VOC	Volatile Organic Compound

European Chamber
中国欧盟商会

Pharmaceutical Working Group

Key Recommendations

1. Advance Further Regulatory Harmonisation and Convergence with International Standards 4

- Encourage greater harmonisation of the China Pharmacopeia with international standards and monographs.
- Implement more effective and efficient post-approval change management to ensure continuity of supply.
- Advance the implementation of the marketing authorisation holder system to promote manufacturing flexibility.
- Explore pilots of cross-border manufacturing and segmented manufacturing of biological products.
- Establish an efficient and effective regulatory mechanism for research and development (R&D) data based on the pharmaceutical industry's characteristics to ensure timely transmission and reasonable utilisation of the data globally.
- Adopt a definition of 'new drug' aligned with international norms, i.e. 'new to China' and not "new to the world".

2. Expedite New Pharmaceutical Patent Legislation and Ensure Consistent Implementation among Central and Local Government Agencies to Better Foster Pharmaceutical Innovation for Chinese Patients 2

- Implement a patent term extensions (PTE) mechanism that benefits drugs that are "new to China" and provides a reasonably broad protection scope during PTE, for example, a basic compound patent, during its extended patent term, shall cover the first approved indication and expanded indication(s) of the concerned drug.
- Expedite the implementation of regulatory data protection for new drugs (i.e., small molecule drugs and biologics that are new to China, not new to the world, in line with international standards) and marketing exclusivities for paediatric and orphan drugs by publishing the *Drug Administration Law Implementation Regulations* in a timely fashion.
- Improve patent linkage rules to clarify that the system is equally applicable to chemical drugs, biological products and traditional Chinese medicines, include all types of patents, allow conditional approval or delay of approval for generics making category 3 patent declarations, and provide remedies for erroneous declaration.
- Optimise standards for post-filing data admission and inventive step tests to reduce the invalidation rate of pharmaceutical patents.
- Implement the new measures for strengthening intellectual property (IP) protection in drug procurement procedures for both the central and local authorities and optimise them during practice.

3. Strengthen Rare Disease Legislation, Establish a Multi-layer Insurance System for Rare Disease Drugs, and Optimise Regulatory Policies and Patent Protection to Foster Innovation

- Build a dedicated, national, multi-party innovative access review and payment model for ultra-rare disease, that works seamlessly with basic medical insurance (BMI), exploring additional funding for rare disease drugs, including commercial health insurance (CHI) and charity funds, to keep rare disease patients' co-pay at a reasonable level.

- Eliminate the Chinese yuan (CNY) 300,000 annual price threshold for *National Reimbursement Drug List* (NRDL) negotiation for rare disease drugs.
- Adopt a fit-for-purpose value assessment framework that meets the unique characteristics of rare diseases, considers all relevant elements of product value in an appropriate multi-dimensional system, and reflects patient benefit and social value.
- Exempt cost-effective analysis models or increase incremental cost-effective ratio threshold when conducting value assessment for rare disease drugs, especially for breakthrough therapies for rare diseases.
- Encourage local governments to continue provincial-level coverage for rare diseases, leveraging provincial funding, CHI and charity funds, and exempting rare disease drugs from provincial reimbursement schemes delisting.
- Accelerate CHI development, include more rare disease drugs in city CHI special drug lists, increase the reimbursement ratio and develop special CHI for rare disease drugs.
- Accept the commercial importation inspection application for rare disease drugs to meet the urgent clinical needs of rare disease patients.
- Pilot commercial importation test waivers for rare disease drugs.
- Expedite the promulgation of the draft DALIR and implement the marketing exclusivity for rare disease drugs to encourage innovation.

4. Optimise the Access, Payment and Reimbursement System for Innovative Pharmaceuticals Towards Value-based Healthcare and Promote a Multi-layer Medical Security System

- Reward innovation adequately, include value-based assessments in the NRDL process, and determine pricing and reimbursement in line with fund affordability.
- Continue to improve the implementation of the NRDL in hospital listing and dual-channel management to meet patient needs.
- Strengthen the collaboration between the National Health Commission (NHC) and the National Healthcare Security Administration to improve access to innovative drugs and associated biomarker testing for standardising disease diagnosis and treatment.
- Develop a long-term follow-up evaluation mechanism on the medical expenses and quality of all volume-based procurement (VBP) products, and fully respect the opinions of doctors and patients based on the actual situation of clinical treatment practice, to accumulate and supply evidence for VBP policy improvement.
- Caution and restrain regional authorities from piloting VBP on biologics, considering the high risk of substitution and treatment discontinuation outweighing benefits to patient.
- Exclude patented medicines (including but not limited to patents on compounds) in VBP, which abrogate innovators' IP rights and, in regard to therapeutic class tendering, treats as interchangeable products with very different clinical characteristics and performance.
- Improve the Diagnosis-related Group/Diagnosis-intervention Packet mechanism so as to make sure the reduction of costs does not imply a reduction in quality of care.
- Improve the procedures for accepting the first-offer pricing of newly approved drugs and the provincial price coordination mechanism, and implement centralised and nationwide acceptance of, and open green channels for, the newly approved drugs.

- Support the establishment of a multi-layer medical security system, via integrating CHI and BMI, and encourage the roll out of CHIs to meet the demands of high-quality healthcare.

5. Harmonise the Vaccine Policy Environment with International Standards and Promote All-age-groups Vaccinations to Improve and Accelerate Access to Innovative Vaccines for the Chinese Population 3

- Increase the availability of innovative vaccines and immunisation to the Chinese population through harmonising the regulatory environment with international standards, including but not limited to the requirements for international multi-centre trial blood samples, technical guidance, pharmacopeia and a science-based strategy to introduce real world evidence.
- Reform the procurement criteria and process to include all National Medical Products Administration- (NMPA-) approved vaccines, both imported and locally manufactured, for its National Immunisation Programmes (NIPs) to enable access for more innovative vaccines and build a more sufficient and sustainable supply to address public health needs.
- Create a communication platform between industry and provincial authorities to improve the current payment cycle for non-NIP vaccines.
- Expand influenza immunisation programmes in Chinese provinces and cities.
- Raise awareness on routine vaccination and develop vaccination strategies for respiratory diseases, such as influenza, pertussis and respiratory syncytial virus (RSV), to avoid dual infection with COVID-19.
- Launch vaccines in pilot zones to provide the Chinese population faster access to and more choices on disease prevention.
- Update the current categorisation and regulatory approach for prophylactic bio-products to properly categorise and guide their usage, boost innovation and enhance the diversity and accessibility of advanced measures for disease prevention.
- Prioritise prevention and realise healthy ageing through promoting the construction of adult vaccine infrastructure and improve public awareness of adult disease prevention.
- Encourage community health centre general practitioners to prescribe vaccines.

6. Define the Projects and Scope of Prohibited Investment in the Development and Application of Human Stem Cells, Genetic Diagnosis and Treatment Technologies in the Foreign Investment Negative List, Lift Restrictions on Items with Mature Technology and Low Risk, and Gradually Ease Restrictions on Foreign Investment in this Area For Better Global Simultaneous Development 2

- Issue unified, consistent and risk-based guidelines from all relevant authorities to define the scope of prohibited investment.
- Gradually open relatively matured technology with low risk to facilitate investment and R&D planning by foreign companies.
- Implement and support pilot projects in selected areas, for example, the ‘two zones’ of Beijing, the Pudong New Area of Shanghai, Tianjin Free Trade Zone, the Greater Bay Area and Hainan Free Trade Port, to gradually ease foreign investment restrictions before applying successful outcomes nationwide.
- Organise regular discussions between relevant regulatory authorities, such as the Ministry of Science and Technology, the NHC and the NMPA, and industry stakeholders (enterprises, industry associations and chambers of commerce), to map out a unified standard for risk

assessment that balances innovation and safety.
- Strengthen the supervision capacity and mechanisms of relevant departments, such as the NMPA, the Human Genetic Resources Administration of China and the NHC, to support post market surveillance once *Negative List* restrictions are lifted.
- Re-define the scope of technologies prohibited and restricted from export, and lift restrictions on "CRISPR gene editing technology" and "synthetic biology technology" based on adequate technical analysis and assessment.

Introduction to the Working Group

The Pharmaceutical Working Group represents nearly 40 international leading pharmaceutical manufacturing companies operating in China. The working group engages in constructive dialogue with Chinese and European Union (EU) authorities to support the development of a sustainable pharmaceutical ecosystem, and government policies that foster patients' access to affordable, innovative and high-quality pharmaceuticals.

Recent Developments

The healthcare system in China is currently undergoing significant reforms aimed at expanding access to healthcare and promoting innovation, in line with the 14th Five-year Plan (14FYP)[1] and the Healthy China 2030 blueprint.[2] This emphasis on innovation has also been reiterated during recent key events, such as the 20th National Congress of the Communist Party of China and the 2023 Two Sessions. These reforms are supported by China's evolving regulatory landscape, legislative steps in intellectual property (IP) protection, and special access policies in certain regions (such as the Guangdong-Macau-Hong Kong Greater Bay Area (GBA),[3] Shanghai Pudong Zhangjiang,[4] and Shenzhen[5]).

China's pharmaceutical market has become the second largest globally in terms of investment, with total spending of euro (EUR) 137 billion in 2018. By 2025, this spending is projected to exceed EUR 170 billion.[6] However, cost control remains a central focus of China's reimbursement and pricing regimes for pharmaceuticals, with volume-based procurement (VBP) schemes and *National Reimbursement Drug List* (NRDL) negotiations maturing.

To achieve a healthcare system that encourages innovation while achieving adequate cost control, further reform efforts, policies and implementation rules are needed. Several important regulations and public consultations related to the pharmaceutical industry have been published since mid-2022, including the public consultation on *Implementation Regulations of the Drug Administration Law*,[7] the public consultation on the *Patent Examination Guidelines*,[8] and the

1 *14th Five-year Plan for National Economic and Social Development of the People's Republic of China and the Long-term Goals for 2035*, State Council, 13th March 2021, viewed 24th April 2023, <http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm>

2 *Healthy China 2030 Blueprint,* Chinese Communist Party Central Committee & State Council, 25th October 2016, viewed 24th April 2023, http://www.gov.cn/zhengce/2016-10/25/content_5124174.htm

3 Wang, Zhongyao & Wu, Chunyan, '*Hong Kong-Macau Drug and Medical Device Pass' Policy Landed in Nine Cities in the Greater Bay Area*, Guangming Net, 28th August 2021, viewed 27th April 2023, <https://news.gmw.cn/2021-08/28/content_35119407.htm>

4 *Announcement of the Shanghai Municipal People's Congress on Passing the Regulations of Shanghai Pudong New Area on Promoting Zhangjiang Biomedical Industry Innovation,* Shanghai Municipal People's Congress, 30th December 2021, viewed 27th April 2023, <http://www.spcsc.sh.cn/n8347/n8467/u1ai241152.html>

5 *Opinions on the Several Special Measures for Relaxing Market Access in Building Shenzhen into a Pilot Demonstration Area of Socialism with Chinese Characteristics*, State Council, 26th January 2022, viewed 27th April 2023, <http://www.gov.cn/zhengce/zhengceku/2022-01/26/content_5670555.htm>

6 *The Global Use of Medicine in 2019 and Outlook to 2023,* IQVIA, 19th January 2019, viewed 24th May 2023, <https://www.iqvia.com/insights/the-iqvia-institute/reports/the-global-use-of-medicine-in-2019-and-outlook-to-2023>

7 *Call for Public Consultation on the Implementation Regulations of the Drug Administration Law*, National Medical Products Administration (NMPA), 9th May 2022, viewed 4th May 2023, <https://www.nmpa.gov.cn/xxgk/zhqyj/zhqyjyp/20220509222233134.html>

8 *Call for Public Consultation on the Patent Examination Guideline*, China National Intellectual Property Administration (CNIPA), 31st December 2022, viewed 23rd April 2023, <http://www.cnipa.gov.cn/art/2022/10/31/art_75_180016.html>

Implementation Rules for the Regulation on Human Genetic Resources Management.[9]

The Chinese Government should continue to take steps towards a sustainable healthcare system and incentivising innovation and fair competition. The working group is committed to working alongside Chinese authorities and policymakers to achieve these goals.

Key Recommendations

1. Advance Further Regulatory Harmonisation and Convergence with International Standards 4

Concern

Gaps in the harmonisation and convergence of China's regulatory framework with international standards continue to hinder patients' timely access to innovative medicines.

Assessment

China's National Medical Products Administration (NMPA) has taken important steps in recent years to encourage simultaneous research and development (R&D) and the registration of innovative drugs in China and overseas. After joining the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH) in 2017, China has implemented over 59 ICH guidelines (as of July 2023).[10] The NMPA has established new regulations providing more regulatory efficiency and transparency through greater alignment with international practice. The 2019 Drug Administration Law (DAL) and the 2020 *Drug Registration Regulation* (DRR) have significantly streamlined and sped up the drug approval process. Accelerated pathways have also been created to allow faster approval for innovative drugs. The NMPA is also taking steps to establish a marketing authorisation holder (MAH) system that further fosters innovation, notably through the draft *Drug Administration Law Implementation Regulations* (DALIR) issued in May 2022.

However, there are still gaps in the harmonisation and convergence of China's regulatory framework with international standards that hinder patients' timely access to innovative medicines. These gaps include the following:

China Pharmacopeia (ChP)

The further harmonisation of quality standards and the requirements of the ChP with international standards are crucial for pharmaceutical companies that develop and manufacture drug products globally, independent of whether their location is in China or overseas. However, there are still gaps for the general monographs in the ChP that are already harmonised by the Pharmacopeial Discussion Group (PDG), and differences in the requirements of some ICH guidelines.

Post-approval changes management protocols

Issues linked to post-approval variation management, in particular the definition of the 'implementation date', hinders the continuous supply of marketed products. For chemistry, manufacturing and control (CMC) variations, the application for review and approval of post-marketing CMC changes cannot be submitted simultaneously in China and overseas. There is also a requirement that the drug may only be manufactured after the change approval is granted. Hence, the time lag between the implementation of such changes outside China and the supply of the post-change drugs to the Chinese market has taken up to 19 months. As a result, companies have no other choice but to store manufacturing materials in advance, sometimes valued at up to hundreds of millions of euros, to ensure supply to the Chinese market during this period. However, such reserves can only maintain supply for nine months at most, bearing a high risk of supply failure.

Regarding labelling updates, as no grace period has been mentioned in the regulations, the manufacturer has to implement the new labelling immediately upon approval. This is not practical and may lead to out-of-stock and/or resource wasting for the old-materials write-off.

Segmented manufacturing for biologics

Segmented manufacturing is a key feature of the MAH system in the EU and the United States (US) to enable more flexible drug manufacturing across different manufacturing facilities and ensure better patient supply. In China, according to the 2019 DAL and the

9 *Implementation Rules for the Regulation on Human Genetic Resources Management*, Ministry of Science and Technology (MOST), 1st June 2023, viewed 20th June 2023, <https://www.most.gov.cn/xxgk/xinxifenlei/fdzdgknr/fgzc/bmgz/202306/t20230601_186416.html>

10 *Summary of the Implementation of ICH Guidelines,* Centre for Drug Evaluation (CDE), 17th July 2023, viewed 17th July 2023, <https://www.cde.org.cn/ichWeb/guideIch/toGuideIch/5/1>

2020 DRR, the production of a drug at more than one manufacturing site is allowed. However, China's current regulatory practice prohibits segmented manufacturing for biologics, meaning the entire manufacturing process must be conducted in one single manufacturing site. This is a major hurdle to the optimisation of production and supply, and leaves Chinese manufacturing sites unable to contribute to global production.

In Article 69 of the 2022 draft DALIR,[11] the NMPA has taken a positive step by issuing a written opinion on segmented manufacturing issues for the first time, but with a vague and very narrow condition on the types of drugs eligible for segmented manufacturing.

Cross-border holding and manufacturing

Even though there are no specific requirements in the current laws and regulations, the bundling of nationality of the MAH/applicant holding the drug and location of the site manufacturing the drug is mandatory. The MAH and the manufacturing site must be either both in China or both outside of China, meaning cross-border MAH and manufacturing sites are not allowed. For example, a domestic biological product cannot use a drug substance from a foreign manufacturing site, and vice versa.

Transfer of investigational drug products and marketed drug products

For investigational drug products,[12] there are no Chinese regulatory procedures allowing the applicant to transfer during clinical trials from foreign investigational drug products to domestic ones, or vice versa, even if such products are commonly or often need to be transferred by the industry.

For marketed drug products, the draft *Dossier Requirements on Marketing Authorisation Application for Marketed Drug Product Transferring from Foreign to Domestic (for Chemical Drugs)*[13] implies that the authority would treat a transferred brand drug as a generic drug held by a domestic MAH, instead of manufacturing site change of the brand drug held by the original foreign MAH, when the manufacturing site is transferred from foreign to domestic.

Cross-border transfer of clinical trial data

Multinational pharmaceutical companies need to carry out clinical development in China as a part of global development programmes. Streamlined and timely cross-border transmission of clinical trial data is a prerequisite for China to join global simultaneous R&D.

However, China's Personal Information Protection Law (PIPL), and related measures, do not take into account the characteristics of the pharmaceutical industry, and have set up obstacles for such data transmission. For example, the PIPL does not regard de-identified information as anonymised data, and requires the informed consent of the patient to be obtained a second time (including critically ill patients) if there are any changes in the data transmission process.

There is also a lack of regulatory pathways for R&D data based on the characteristics of the pharmaceutical industry, such as reasonable and relative anonymisation standards for clinical trial data, a definition of personal information, recognition of 'important data' under the Data Security Law, and coverage of ethical reviews of technology. Multiple authorities, including the Human Genetic Resources Administration of China (HGRAC), the Cyberspace Administration of China and the MOST, oversee cross-border transfer of clinical data, which leads to complicated and overlapping approval processes. Such processes should be optimised to help explore regulatory paths beneficial to drug innovation and R&D, and enable patients' early access to innovative drugs.

'New drug' definition

China's 'new drug' definition remains misaligned with international standards, with the 2019 DAL and 2020 DRR still failing to officially define the term. While 'new drug' definition is not codified in any law or regulation in China, in practice, a new drug is considered as one that has not yet been marketed anywhere in the world, and not simply new to China, which is inconsistent with international standards.

Recommendations

- Encourage greater harmonisation of the ChP with international standards and monographs.

11 *Call for Public Consultation on the Implementation Regulations of the Drug Administration Law*, NMPA, 9th May 2022, viewed 4th May 2023, <https://www.nmpa.gov.cn/xxgk/zhqyj/zhqyjyp/20220509222233134.html>

12 Investigational drug products refer to the drug products are under development and not yet approved.

13 *Call for Consultation on the Draft Dossier Requirements on Marketing Authorisation Application for Marketed Drug Product Transferring from Foreign to Domestic (for chemical drugs)*, CDE, 23rd Mar 2023. viewed 6th May 2023, <https://www.cde.org.cn/main/news/viewInfoCommon/f5e9b5c46d3617a84fc4f0a964df5148>

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- Implement more effective and efficient post-approval change management to ensure continuity of supply.
- Advance the implementation of the MAH system to promote manufacturing flexibility.
- Explore pilots of cross-border manufacturing and segmented manufacturing of biological products.
- Establish an efficient and effective regulatory mechanism for R&D data based on the pharmaceutical industry's characteristics to ensure timely transmission and reasonable utilisation of the data globally.
- Adopt a definition of 'new drug' aligned with international norms, i.e. 'new to China' and not "new to the world".

2. Expedite New Pharmaceutical Patent Legislation and Ensure Consistent Implementation among Central and Local Government Agencies to Better Foster Pharmaceutical Innovation for Chinese Patients 2

Concern

The protection of pharmaceutical IP in China is hindered by delayed implementation of pharmaceutical patent term extensions (PTE), a lack of regulatory data protection (RDP), and a high rate of invalidation of pharmaceutical patents.

Assessment

IP rights are crucial for pharmaceutical companies, as they provide incentives for R&D to address unmet medical needs. The Chinese economy, now the second largest in the world, is on a path to innovation in all sectors, including healthcare and pharmaceuticals. An optimal IP system is essential for furthering the development of China's pharmaceutical industry, promoting innovation and benefitting Chinese patients. While China has implemented several laws and policies to advance IP reforms, further work is necessary to ensure that the pharmaceutical IP system can effectively promote innovation and patient access.

Patent term extension (PTE)

Although China has provided PTE and patent term adjustment (PTA) mechanisms since 2021,[14] the associated detailed rules still have not been issued. In particular, drugs eligible for PTE benefits should include any drug that is 'new to China', i.e., a drug for which marketing authorisation from the NMPA is firstly obtained. Additionally, PTE mechanisms should provide a reasonably broad protection scope for pharmaceutical patents, for example, a basic compound patent, during their extended patent terms, such as covering the first approved indication and expanded indication(s) of the concerned drug. Existing drugs should also benefit from retroactive application of PTE, so as not to penalise innovative companies that made their products available to Chinese patients early rather than tactically waiting for PTE to be implemented in China.

Regulatory data protection (RDP)

Provisions in China's draft DALIR related to RDP for "certain drugs" and marketing exclusivities for paediatric and orphan drugs are a positive development. However, the terminology "certain drugs" is vague, and further work is necessary to ensure a clear scope of protection. Furthermore, RDP should be granted to both small molecule drugs and biologics that are 'new to China' in line with international standards.

Patent linkage

Despite the implementation of the patent linkage system, certain aspects of concern to drug innovators' remain, including short stay periods for chemical drugs (nine months only); the lack of a stay period for biological drugs; limited types of patents eligible for patent linkage, particularly for biologics; and the lack of a remedy where a generic or biosimilar manufacturer submits erroneous or inconsistent declarations or provides no evidence to support its declaration as required. Furthermore, the prevailing linkage rules do not prevent the premature launch of a generic that has made a category 3 patent declaration[15] under the linkage system. Patent linkage related rules should be further improved to address the above concerns.

Invalidation of pharmaceutical patents

The high invalidation rate of pharmaceutical patents in China is a concern for the industry, particularly when it concerns patents for important drugs. Rules related to post-filing data admission and inventive step tests of pharmaceutical patents should be optimised to mitigate the invalidation rate.

14 Patent Law of the People's Republic of China, National People's Congress (NPC), 19th November 2022, viewed 20th June 2023, <http://www.npc.gov.cn/npc/c30834/202011/82354d98e70947c09dbc5e4eeb78bdf3.shtml>

15 Category 3 patent declaration means that the patent information registration platform for drugs marketed in China includes a patent related to the relevant originator drug, and the generic drug applicant undertakes that the generic drug will not be marketed before the expiration date of the relevant patent.

New measures for IP protection in drug procurement

In December 2022, the China National Intellectual Property Administration (CNIPA) and the National Healthcare Security Administration (NHSA) jointly issued a new measure on IP protection in drug procurement procedures,[16] including drug listings on provincial tendering platforms and VBP. Originator companies are encouraged by the new measures and anticipate good cross-government and agency collaboration to ensure their smooth implementation by both central and local authorities.

Recommendations

- Implement a PTE mechanism that benefits drugs that are "new to China" and provides a reasonably broad protection scope during PTE, for example, a basic compound patent, during its extended patent term, shall cover the first approved indication and expanded indication(s) of the concerned drug.
- Expedite the implementation of RDP for new drugs (i.e., small molecule drugs and biologics that are new to China, not new to the world, in line with international standards) and marketing exclusivities for paediatric and orphan drugs by publishing the DALIR in a timely fashion.
- Improve patent linkage rules to clarify that the system is equally applicable to chemical drugs, biological products and traditional Chinese medicines, include all types of patents, allow conditional approval or delay of approval for generics making category 3 patent declarations, and provide remedies for erroneous declaration.
- Optimise standards for post-filing data admission and inventive step tests to reduce the invalidation rate of pharmaceutical patents.
- Implement the new measures for strengthening IP protection in drug procurement procedures for both the central and local authorities and optimise them during practice.

16 *Opinions on Strengthening the Protection of Intellectual Property in the Field of Centralised Drug Procurement,* NHSA & CNIPA, 20th December 2022, viewed 17th July 2023. <http://www.nhsa.gov.cn/art/2022/12/30/art_104_9968.html>

3. Strengthen Rare Disease Legislation, Establish a Multi-layer Insurance System for Rare Disease Drugs, and Optimise Regulatory Policies and Patent Protection to Foster Innovation

Concern

The lack of an established National Strategic Plan on Rare Diseases and insufficient funding schemes continue to hinder patients' sustainable access to treatment, while inadequate regulatory policies and patent protection fail to incentivise innovation.

Assessment

China has made significant reform efforts to allow greater access to innovative treatment for rare diseases patients. The NMPA Centre for Drug Evaluation (CDE) published lists of *Clinically-needed Drugs Launched Abroad*, including several rare disease drugs, in 2018 and 2019.[17] The *Drug Registration Administrative Measures*, effective from 1st July 2020, made innovative and rare disease drugs eligible for priority review and approval.[18] In 2022, the draft DALIR outlines giving at most seven years' marketing exclusivity for newly approved rare disease drugs.

At the national level, China's current reimbursement system is inadequate to provide sustainable coverage for rare disease patients, with a lack of NRDL coverage for ultra-rare disease drugs and a patient co-pay of 20 to 30 per cent for NRDL-listed drugs, and even higher for prescriptions in outpatient settings. NRDL negotiation sets a Chinese yuan (CNY) 300,000 annual price-threshold for all drugs, which hinders the entry of high-value rare complex disease drugs. Current economic evaluation is also a major challenge for rare disease drugs pricing in NRDL negotiation, such as the cost-effectiveness modelling and incremental cost-effective ratio (ICER) threshold. Moreover, there are limited examples of commercial health insurance (CHI) and charity funds providing supplemental coverage to rare disease patients' co-pay.

17 *China Publishes the First List of Clinically Urgently Needed New Overseas Drugs,* Sohu, 2nd November 2018, viewed 20th July 2023, <https://www.sohu.com/a/272875258_439958>; *China Publishes the Second List of 30 Clinically Urgently Needed New Overseas Drugs,* Sohu, 29th March 2019, viewed 20th July 2023, <https://www.sohu.com/a/304651844_374886>

18 *Administrative Measures of Drug Registration,* State Administration for Market Regulation, 30th March 2020, viewed 3rd April 2023, <http://gkml.samr.gov.cn/nsjg/fgs/202003/t20200330_313670.html>.

At the regional level, several provinces (including Hunan, Hebei, Zhejiang, Jiangsu and Shandong) have successfully piloted innovative models to cover rare disease treatment costs, benefitting from more agility at the local level. However, in 2021, the NHSA mandated provinces to strictly follow NRDL and not develop additional lists.[19] In 2022, the State Council's *Government Work Report* stated that "the reimbursement scope should be unified".[20] Ending the current provincial reimbursement schemes may discourage regional authorities from further exploring innovative and sustainable payment models for rare diseases.

From a regulatory perspective, China's current import inspection policy hinders the supply of rare disease drugs to patients. Although a recent National Institutes for Food and Drug Control (NIFDC) notice stipulates that clinically-urgent drugs are qualified for importation inspection application of production batches prior to approval in China,[21] the list of clinically-urgent drugs has not been updated since 2020. Additionally, rare disease drugs typically arrive in very small quantities, and existing 'commercial importation test' rules can result in up to 45 per cent loss of the imported batch due to testing requirements.[22] This delays patient access by, on average, three months and adds significant cost.

From an IP perspective, while the draft DALIR outlines marketing exclusivity policy for rare disease drugs, it remains unpublished at the time of writing, and lacks special consideration and evaluation for the clinical trial requirements of rare disease drugs, for example, on Chinese patients' data and trial samples.

Recommendations

- Build a dedicated, national, multi-party innovative access review and payment model for ultra-rare disease, that works seamlessly with basic medical insurance (BMI), exploring additional funding for rare disease drugs, including CHI and charity funds, to keep rare disease patients co-pay at a reasonable level.
- Eliminate the CNY 300,000 annual price threshold for NRDL negotiation for rare disease drugs.
- Adopt a fit-for-purpose value assessment framework that meets the unique characteristics of rare diseases, considers all relevant elements of product value in an appropriate multi-dimensional system, and reflects patient benefit and social value.
- Exempt cost-effective analysis models or increase ICER threshold when conducting value assessment for rare disease drugs, especially for breakthrough therapies for rare diseases.
- Encourage local governments to continue provincial-level coverage for rare diseases, leveraging provincial funding, CHI and charity funds, and exempting rare disease drugs from provincial reimbursement schemes delisting.
- Accelerate CHI development, include more rare disease drugs in city CHI special drug lists, increase the reimbursement ratio and develop special CHI for rare disease drugs.
- Accept the commercial importation inspection application for rare disease drugs to meet the urgent clinical needs of rare disease patients.
- Pilot commercial importation test waivers for rare disease drugs.
- Expedite the promulgation of the draft DALIR and implement the marketing exclusivity for rare disease drugs to encourage innovation.

4. Optimise the Access, Payment and Reimbursement System for Innovative Pharmaceuticals Towards Value-based Healthcare and Promote a Multi-layer Medical Security System

Concern

Steep price cuts, hospital listing restrictions, VBP schemes, and the lack of a value-based pricing and reimbursement system, continue to hinder pharmaceutical innovation and patient access.

Assessment

Sustainable pricing, reimbursement and payment policies are essential to encourage industry innovation and ensure patients' access to innovative drugs. In recent years, the Chinese Government has taken a series of steps to further its access, payment and reimbursement system. Since 2017, China has been

19 *Opinions on the Establishment of a Medical Insurance Treatment List System*, NHSA, 10th August 2021, viewed 3rd May 2023, <http://www.nhsa.gov.cn/art/2021/8/10/art_37_5767.html>

20 *2022 Government Work Report*, State Council, 12th March 2022, viewed 3rd May 2023, <http://www.gov.cn/premier/2022-03/12/content_5678750.htm>

21 According to an internal document issued by NIFDC, titled *Notice on the Acceptance Conditions for Application for Importation Inspection of Production Batches Before Registration Approval (2021)*.

22 According to China's *Administrative Measures for the Import of Drugs (2012 Revision)*, imported drugs need to undergo sample testing upon arrival at customs. Pharmaceutical Working Group members, in practice, have experienced losses of up to 45 per cent during testing.

conducting annual NRDL updates. Since 2018 and 2019, VBP has been established to improve affordable access to off-patent medicines. In September 2021, the State Council published the *Notice on the National Medical Security Plan in the 14th Five-year Plan*, setting a clear target for universal medical VBP to cover 500 drugs by 2025.[23] In 2021, the national comprehensive clinical evaluation system was announced by the NHC for more efficient utilisation of healthcare resources and for adoption of more rationale and evidence-based drug usage.[24] In February 2023, the NHSA called for the exploration of the use of first-offer pricing management mechanism for newly approved drugs, which previously has only been used for COVID-19 drugs.[25]

However, a few problems remain. First, these reforms are dominated by sharp price cuts. Second, there are no value-based pricing approaches. Third, implementation of these policies remains inconsistent and restricted. Consequently, pharmaceutical innovations are not adequately incentivised, and patients access to innovative drugs remains limited.

NRDL

In January 2023, the NHSA released the 2022 NRDL.[26] A total of 121 drugs were listed, with an average price-cut of 60 per cent.[27] Since the introduction of annual NRDL updates in 2017, China has also sped up the accessibility of drugs: time lags from a drug's marketing authorisation gained from NMPA to NRDL inclusion have been significantly shortened.

However, the NRDL negotiation mechanism does not recognise the value of innovative drugs, especially those that cannot be adequately measured by traditional cost-effectiveness or ICER, such as rare diseases (including rare tumours) or mental health diseases. It is difficult for high-value drugs to enter NRDL without compromising on price. Optimising the negotiation mechanism, and improving transparency behind price comparator selection and premium determination, will not only better reflect the value of innovative drugs but will also make them more willing to enter the China market. In addition, though China continues to promote the use of precision medicine,[28] reimbursement of biomarker testing required for precision treatment is still limited. The advancement of access to precision diagnosis and treatment is critical.

Another common issue is hospital listing of NRDL drugs. In May 2021, the NHSA and the NHC jointly published *the Guidance on Establishing and Improving the Dual Channel Management Mechanism of NRDL Negotiation Drugs*, aimed at accelerating access at both the hospital and the pharmacy level.[29] In Shanghai, local authorities mandate hospitals to host Drug Committee Meetings (DCMs), from whom hospitals need approval to grant drugs access to their formulary. However, as most hospitals do not host DCMs regularly, the latest NRDL-listed drugs cannot get access to hospitals in a timely manner.

VBP

The pharmaceutical VBP system[30] in China has matured over the years since it was first introduced in 2018, but low price is still the key factor in winning bids. In 2021, the NHSA began to expand VBP to biologics. Several regional VBPs involve generic medicines that have not passed the Generic Quality Consistency Evaluation. Such VBP and other 'forced-switch' policies can put patient safety and therapeutic continuity at risk, due to the high complexity of biologics and the conditions that they treat.

Moreover, concerns have emerged regarding IP protection. Members of the working group noted that the list of products for the fourth national VBP included a compound for which the patent was still valid and for which an administrative lawsuit was in progress. Additionally, the announced procurement for the sixth national VBP (insulin) group included patented and off-patent products in the same class for competitive lowest price bidding.

23 *Notice on the 14th Five-year Plan for National Medical Security*, State Council, 23rd September 2021, viewed 3rd May 2023, <http://www.gov.cn/gongbao/content/2021/content_5643264.htm>

24 *Notice on standardisation of the comprehensive clinical evaluation of drugs*, NHC, 21st July 2021, viewed 24th July 2023, <http://www.nhc.gov.cn/yaozs/s2908/202107/532e20800a47415d84adf3797b0f4869.shtml>

25 *Circular on Effectively Carrying out Centralised Drug Procurement and Price Management in 2023*, NHSA, 22nd February 2023, viewed 4th May 2023. <http://www.gov.cn/zhengce/zhengceku/2023-03/02/content_5744059.htm>

26 *2022 National Reimbursement Drug List,* NHSA, 18th January 2022, viewed 3rd May 2023. <http://www.nhsa.gov.cn/art/2023/1/18/art_14_10082.html>

27 *China on the Move: Lressons from China's National Negotiation of Drug Prices in 2022, National Law Review,* 27th February 2023, viewed 3rd May 2023. <https://www.natlawreview.com/article/china-move-lesson-china-s-national-negotiation-drug-prices-2022>

28 *Guidance on the Clinical Application of Novel Antineoplastic Drugs (2022 Version),* NHC, 29th Dec 2022, viewed 4th May 2023. <http://www.nhc.gov.cn/yzygj/s7659/202212/8df034c9afb44a9d95cd986d4e12fbd8.shtml>

29 *Guidance on Establishing and Improving the 'Dual Channel' Management Mechanism of NRDL Negotiation Drugs,* NHSA & NHC, 10th May 2021, viewed 3rd May 2022, <http://www.nhsa.gov.cn/art/2021/5/10/art_37_5023.html>

30 China's VBP is a centralised procurement mechanism which tenders the market volume of provinces and cities to companies with the lowest price. VBP consists of VBP for pharmaceuticals and VBP for consumable medical devices.

Diagnosis-related group (DRG)/ Diagnosis-intervention packet (DIP)

Since 2021, China has been fully promoting DRG/DIP payment method reform as important tools for measuring the quality and efficiency of medical services and for making medical insurance payments.[31]

However, in other countries, DRG/DIP has created distortions, resulting in a decrease in the value of the service provided by the hospitals.[32] DRG determines diagnosis and treatment groups, as well as budget, based on past diagnosis and treatment, which makes it difficult for innovative drugs and therapies to be applied within budget. The working group is concerned China may face similar issues.

CHI and multi-layer medical security system

Currently, the Chinese Government remains the largest payer of the pharmaceuticals and healthcare service, via the BMI fund. The 14FYP states that China should establish a multi-layer medical security system,[33] and proposes that CHI be leveraged to partly cover innovative treatments and technologies that may not be affordable under the BMI alone.[34] However, China's proposal to establish a multi-layer medical security system through integrating CHI and BMI has a long way to go. The CHI is still in the early stage of development, facing critical barriers such as low enrolment and pay-out ratio, and limited public benefits.

Recommendations

- Reward innovation adequately, include value-based assessments in the NRDL process, and determine pricing and reimbursement in line with fund affordability.
- Continue to improve the implementation of NRDL in hospital listing and dual-channel management to meet patient needs.
- Strengthen the collaboration between the NHC and the NHSA to improve access to innovative drugs and associated biomarker testing for standardising disease diagnosis and treatment.
- Develop a long-term follow-up evaluation mechanism on the medical expenses and quality of all VBP products, and fully respect the opinions of doctors and patients based on the actual situation of clinical treatment practice, to accumulate and supply evidence for VBP policy improvement.
- Caution and restrain regional authorities from piloting VBP on biologics, considering the high risk of substitution and treatment discontinuation outweighing benefits to patient.
- Exclude patented medicines (including but not limited to patents on compounds) in VBP, which abrogate innovators' IP rights and, in regard to therapeutic class tendering, treats as interchangeable products with very different clinical characteristics and performance.
- Improve the DRG/DIP mechanism so as to make sure the reduction of costs does not imply a reduction in quality of care.
- Improve the procedures for accepting the first-offer pricing of newly approved drugs and the provincial price coordination mechanism, and implement centralised and nationwide acceptance of, and open green channels for, the newly approved drugs.
- Support the establishment of a multi-layer medical security system, via integrating CHI and BMI, and encourage the roll out of CHIs to meet the demands of high-quality healthcare.

5. Harmonise the Vaccine Policy Environment with International Standards and Promote All-age-groups Vaccinations to Improve and Accelerate Access to Innovative Vaccines for the Chinese Population 3

Concern

Access to innovative vaccines in China remains significantly behind developed countries due to the lack of harmonisation of its vaccine regulatory framework with international standards, the insufficient inclusion of vaccines in the National Immunisation Programme (NIP) and the national Expanded Programme of Immunisation (EPI), and policy hesitation towards extending regional pilot launches of healthcare products to vaccines.

Assessment

'Prevention first' serves as a core strategy of national Healthy China initiatives. With COVID-19 ceasing to be a global health concern, the Chinese Government has returned to reforming the national disease control

31 *The Three-year Action Plan on DRG/DIP Payment Reform*, NHSA, 26th Nov 2021, viewed 3rd May 2023, <http://www.nhsa.gov.cn/art/2021/11/26/art_104_7413.html>

32 As experienced by a Pharmaceutical Working Group member that has decades of experience working in the health and pharmaceutical sector in the EU.

33 *The 14th Five-year Plan for National Economic and Social Development of the People's Republic of China and the Outline of Vision Goals for 2035*, State Council, 13th March 2021, viewed 20th July 2023, <https://www.gov.cn/xinwen/2021-03/13/content_5592681.htm>

34 In 2021, the NHSA and the China Banking and Insurance Regulatory Commission both issued policies to encourage the development of CHI and provide guidance on the development of City Supplementary Insurance (CSI).

system, while emphasising the upgrading of technology platforms for COVID-19 vaccines, as outlined in the *2023 Government Work Report*.[35] While the working group commends these developments, it expects to see further regulatory and medical reforms and implementational clarity to foster the building of an innovative vaccine ecosystem in China. The harmonisation of China's vaccine regulatory framework with international standards will not only help people get quicker access to more innovative vaccines, but also potentially attract more foreign investment in vaccine manufacturing in China.

The lengthy process for vaccine registration and approval in China remains challenging and affects simultaneous global development. Additionally, there is the lack of clarity regarding requirements on international multi-centre trial (IMCT) blood samples, technical guidance, ChP and a science-based strategy to introduce real world evidence. Although pilot zone policies in Hainan and the GBA have greatly benefitted from the fast launch of innovative drugs, vaccines have not been included in the process. Prophylactic agents such as monoclonal antibodies/insulin have emerged to protect the populations from infectious diseases, but there is no corresponding categorisation in China's regulation for such innovative prophylactics.

Vaccine manufacturers are also facing financial challenges, due to lagged payment cycles for non-NIP vaccines. A specific communication platform with provincial authorities is much needed to solve this problem.

In addition, procurement of NIP vaccines is open to domestically produced products only. Imported vaccines that are safe, urgently needed, and affordable should be included in the NIPs to provide Chinese people with better access to innovative vaccines. The adult vaccination system in China remains underdeveloped, and adult vaccines are not listed in the national EPI, which requires a strategic approach for overseeing adult vaccination. Raising the awareness on routine vaccination and the prevention and control of other respiratory diseases, such as influenza, pertussis and respiratory syncytial virus (RSV), should also be prioritised to avoid dual infection with COVID-19.

35 *2023 Government Work Report*, NPC, 5th March 2023, viewed 28th April 2023. <http://www.gov.cn/zhuanti/2023lhzfgzbg/index.htm>

Recommendations

- Increase the availability of innovative vaccines and immunisation to the Chinese population through harmonising the regulatory environment with international standards, including but not limited to the requirements for IMCT blood samples, technical guidance, pharmacopeia and a science-based strategy to introduce real world evidence.
- Reform the procurement criteria and process to include all NMPA-approved vaccines, both importer and locally manufactured, for its NIPs to enable access for more innovative vaccines and build a more sufficient and sustainable supply to address public health needs.
- Create a communication platform between industry and provincial authorities to improve the current payment cycle for non-NIP vaccines.
- Expand influenza immunisation programmes in Chinese provinces and cities.
- Raise awareness on routine vaccination and develop vaccination strategies for respiratory diseases, such as influenza, pertussis and RSV, to avoid dual infection with COVID-19.
- Launch vaccines in pilot zones to provide the Chinese population faster access to and more choices on disease prevention.
- Update the current categorisation and regulatory approach for prophylactic bio-products to properly categorise and guide their usage, boost innovation and enhance the diversity and accessibility of advanced measures for disease prevention.
- Prioritise prevention and realise healthy ageing through promoting the construction of adult vaccine infrastructure and improve public awareness of adult disease prevention.
- Encourage community health centre general practitioners to prescribe vaccines.

6. Define the Projects and Scope of Prohibited Investment in the Development and Application of Human Stem Cells, Genetic Diagnosis and Treatment Technologies in the Foreign Investment Negative List, Lift Restrictions on Items with Mature Technology and Low Risk, and Gradually Ease Restrictions on Foreign Investment in this Area For Better Global Simultaneous Development 2

Concern

Article 19 of the *Foreign Investment Negative List (2021 Edition)* is obstructing China's harmonisation with global frontier biotechnology R&D development trends, reducing cooperation between domestic and foreign enterprises, hindering sustainable foreign investment, and delaying patient access to new innovative therapies developed overseas, which is leading to isolation from the ecosystem and limiting the development potential of these technologies locally.

Assessment

Cell and gene therapy (CGT) has transformed the way genetic and other challenging diseases are being treated globally. Investment in the CGT industry reached EUR 11.5 billion globally in 2022, with over 1,457 CGT developers in the industry[36] and more than 2,000 clinical trials underway.[37&38] However, the Chinese CGT ecosystem faces multiple barriers, including limitations on foreign investment, the localisation of technology and IP, varying levels of capabilities among medical organisations and inconsistent reimbursement periods. These significantly hinder the commercialisation of CGT products and delay patient access to innovative therapies.

R&D and the production of cell therapy products are encouraged in the *Catalogue of Industries for Encouraged Foreign Investment (2020)*.[39] However, the *Negative List for Foreign Investment* prohibits investment in the development and application of human stem cells, genetic diagnosis and treatment technologies,[40] without providing a detailed interpretation of "prohibited investment" or defining "development and application". This lack of clarity causes confusion and uncertainty for foreign companies regarding CGT clinical trials, new drug applications and investment planning. Despite the CDE recently publishing technical guidelines for CGT,[41] concerns remain about whether products can be successfully commercialised and launched in China after completing clinical development. With a great variety in different CGT's technological maturity and associated risks, relatively matured technology with low risk should be gradually opened to facilitate investment and R&D planning by foreign companies.

China also has export control restrictions on CGT technologies, impacting local R&D and business. In August 2020, China unveiled revisions to the *Catalogue of Technologies Prohibited and Restricted from Export*.[42&43] The *Catalogue* has prohibited the export of some use of "CRISPR gene editing technology", and restricted the export from China of "CRISPR gene editing technology" and "synthetic biology technology", two foundational technologies that are critical for advances in basic biomedical research and pharmaceutical R&D. Export control of these CGT technologies will have significant unintended impact on collaborative research between local and global affiliates, for example, patent applications by global headquarters, and patent or technology transfer or license-out to global affiliates. This leads to the further isolation of China's innovation ecosystem.

36 Kakkaiyadi, Krishna, *Cell and Gene Therapies: Resilience the Aim in 2023 Amidst Regulatory Flux*, Pinsent Masons, 27th January 2023, viewed 22th April 2023,<https://www.pinsentmasons.com/out-law/analysis/cell-and-gene-therapies-resilience-the-aim-in-2023-amidst-regulatory-flux>

37 Hunt, Timothy, *The Cell And Gene Therapy Sector In 2023: A Wave Is Coming – Are We Ready?*, Pharma Intelligence, 9th January 2023, viewed 22th April 2023, <https://invivo.pharmaintelligence.informa.com/IV146781/The-Cell-And-Gene-Therapy-Sector-In-2023-A-Wave-Is-Coming--Are-We-Ready>

38 Cancer treatments are a heavy focus of much ongoing research, but the pipeline for 2023 also promises progress towards better treatment of sickle cell disease and haemophilia, among other rare diseases.

39 *Catalogue of Industries for Encouraged Foreign Investment (2020)*, National Development and Reform Commission (NDRC), 27th December 2020, viewed 17th July 2023. <https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202012/t20201228_1260594.html>

40 *Foreign Investment Negative List 2021 Edition*, NDRC & MOFCOM, 27th December 2021, viewed 22nd April 2023, <http://www.gov.cn/zhengce/zhengceku/2021-12/28/content_5664886.htm>

41 The CDE has issued over 20 technical guidelines on CGT over the years. See: *CDE's Wei Wei: Advancing China's CGT Technical System, Caixin*, 21st April 2023, viewed 22nd May 2023, <https://www.caixin.com/2023-04-21/102022116.html>

42 Ouyang, Shijia, *List of Technologies Banned from Export Released, China Daily,* 29th August 2020, viewed 3rd May 2023, <https://global.chinadaily.com.cn/a/202008/29/WS5f495f8aa310675eafc56330.html>

43 In December 2022, the MOFCOM and the MOST called for public consultation to the *Catalogue*, which is still pending.

Recommendations

- Issue unified, consistent and risk-based guidelines from all relevant authorities to define the scope of prohibited investment.
- Gradually open relatively matured technology with low risk to facilitate investment and R&D planning by foreign companies.
- Implement and support pilot projects in selected areas, for example, the 'two zones' of Beijing, the Pudong New Area of Shanghai, Tianjin Free Trade Zone, the GBA and Hainan Free Trade Port, to gradually ease foreign investment restrictions before applying successful outcomes nationwide.
- Organise regular discussions between relevant regulatory authorities, such as the MOST, the NHC and the NMPA, and industry stakeholders (enterprises, industry associations and chambers of commerce), to map out a unified standard for risk assessment that balances innovation and safety.
- Strengthen the supervision capacity and mechanisms of relevant departments, such as the NMPA, the HGRAC and the NHC, to support post market surveillance once *Negative List* restrictions are lifted.
- Re-define the scope of technologies prohibited and restricted from export, and lift restrictions on "CRISPR gene editing technology" and "synthetic biology technology" based on adequate technical analysis and assessment.

Abbreviations

14FYP	14th Five-Year Plan
BMI	Basic Medical Insurance
CDE	Centre for Drug Evaluation
CGT	Cell and Gene Therapy
CHI	Commercial Health Insurance
ChP	China Pharmacopeia
CMC	Chemistry, Manufacturing and Control
CNIPA	China National Intellectual Property Administration
CNY	Chinese Yuan
CSI	City Supplementary Insurance
DAL	Drug Administration Law
DALIR	Drug Administration Law Implementation Regulations
DCM	Drug Committee Meeting
DIP	Diagnosis-intervention Packet
DRG	Diagnosis-related Group
DRR	Drug Registration Regulation
EPI	Expanded Programme of Immunisation
EUR	Euro
HGRAC	Human Genetic Resource Administration of China
ICER	Incremental Cost-effective Ratio
ICH	International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use
IP	Intellectual Property
IMCT	International Multi-centre Trial
MAH	Marketing Authorisation Holder
MOFCOM	Ministry of Commerce
MOST	Ministry of Science and Technology
NHC	National Health Commission
NHSA	National Healthcare Security Administration
NIFDC	National Institutes for Food and Drug Control
NIP	National Immunisation Programme
NMPA	National Medical Products Administration
NRDL	National Reimbursement Drug List
PDG	Pharmacopeial Discussion Group
PIPL	Personal Information Protection Law
PTA	Patent Term Adjustment
PTE	Patent Term Extension
R&D	Research and Development
RSV	Respiratory Syncytial Virus
RDP	Regulatory Data Protection
VBP	Volume-based Procurement

European Chamber
中国欧盟商会

Rail Working Group

Key Recommendations

1. Continue to Expand Market Access and Improve Fair Competition in the Rail Industry 3

- Recognise that foreign-invested enterprises' (FIEs') and joint ventures' (JVs') technologies meet "autonomous and controllable" requirements under certain circumstances pursuant to the principle of treating all company entities equally under the Foreign Investment Law.
- Ensure the full participation of FIEs and JVs in construction and after-sales services projects to China's 'large rail' and 'urban rail' markets.
- Eliminate the 'one-point scoring system' for subway projects and treat domestic and foreign companies equally.
- Encourage innovation of different market entities to continuously improve product quality, services, technology and safety in the rail industry.
- Remove barriers in the field of bidding and treat all market entities fairly.

2. Increase the Participation of FIEs and Utilise Their Advantages in National Initiatives and Projects in Order to Boost the Economy 3

- Strengthen the dialogue mechanism especially with FIEs' headquarters to take into account the views of FIEs in China when formulating and implementing national initiatives such as 'new infrastructure' and the Belt and Road Initiative (BRI).
- Provide more support on innovation and research and development (R&D) for FIEs.
- Facilitate the exchange of leading global industrial practices, innovations and technologies for rail tracks, adjacent property assets, and systems operation and maintenance, through collaborative European Union-China infrastructure projects, both within China and overseas.

3. Promote the Adoption and Absorption of FIEs' Advanced Technologies in the Rail Industry in Order to Help the Formulation of Domestic Standards and Technical Specifications, and Improve the Participation of FIEs and JVs in, and Transparency of, the Formulation Process 3

- Provide equal access to all companies legally registered in China to participate in the standardisation activities of relevant technical committees or working groups, and give them the right to vote.
- Ensure FIEs can participate equally in the formulation of national standards, industry standards, social organisation standards and enterprise standards, and encourage close and non-discriminatory coordination between standards-setting bodies and FIEs.
- Encourage the adoption of advanced technologies in Chinese standards, and their convergence with international standards.
- Accelerate the modernisation of the rail standards system to make it fair, reasonable, inclusive, and transparent, and make the extensive participation of stakeholders in the standards setting process an important evaluation indicator.

- Regulate the standardisation activities of associations and recognise standards of associations as national standards or industry standards before applying them to the product certification system.
- Establish a mechanism for regular exchanges between key stakeholders in Europe and China, in particular with major Chinese state-owned enterprises, to promote understanding of the direction of technology and standards development.

4. Optimise the Rail Industry Supply Chain by Further Improved Intellectual Property Rights (IPR) Enforcement 3

- Protect IPR in order to encourage increased investment in the rail industry and to foster the participation of small and medium-sized enterprises in the supply chain.

Introduction to Working Group

The Rail Working Group consists of manufacturers of vehicles, infrastructure, and signal, traction and braking systems, as well as service providers, in the rail industry. It represents the common interests of the European rail transport industry, promoting market access and fair competition, as well as participation in national and third-country infrastructure projects and standardisation activities.

Recent Developments

In 2022, the length of railways in operation in China totalled 155,000 kilometres (km). High-speed railway accounted for 42,000km of the total, making it the world's longest high-speed rail network.[1] The total length of operational urban rail was approximately 10,300km, including more than 8,000km of subways, which accounts for nearly 78 per cent of total urban rail. Some 1,100km of new urban rail transit lines were added in 2022, with 25 new lines coming into operation.[2]

However, compared with developed countries, China's rail industry still has much room for development. The Chinese Government has issued a series of national guiding policies and documents aimed at developing "a country with a strong transportation network".[3] In August 2020, the China State Railway Group Co Ltd (China Railway) released the *Outline of Advanced Railway Planning Towards Becoming a Transport Powerhouse in the New Era*, which described the two main goals for 2035 and 2050: building a strong and modernised transportation system that is advanced by international standards by 2035; and becoming an important player in global railway development and the formulation of global railway standards by 2050.[4]

On 11th March 2021, the National People's Congress (NPC) adopted the *Outline of the 14th Five-year Plan for National Economic and Social Development and the Long-range Objectives Through the Year 2035* (14FYP),[5] which, among other things, states China's intention to "speed up the construction of a country with a strong transportation network, by building a modern and comprehensive transportation system". The 14FYP includes the planning of strategic backbone channels,[6] high-speed railway, ordinary railway, urban agglomeration and urban rail transportation.

1 *Length of China's Transport Network Exceeds 6 million km as of End of 2022*, State Council, 27th February 2023, viewed 17th April 2023, <http://www.gov.cn/xinwen/2023-02/27/content_5743414.htm>

2 *2022 Statistics and Analysis Report of China's Urban Rail Transit,* China Association of Metros (CAMET), 31st March 2023, viewed 17th April 2023, <https://www.camet.org.cn/tjxx/11944>

3 *The Communist Party of China Central Committee and the State Council Issued the Programme of Building National Strength in Transportation*, State Council, 19th September 2019, viewed 17th April 2023, <http://www.gov.cn/zhengce/2019-09/19/content_5431432.htm>

4 *Xinhua: The "Outline of Advanced Railway Planning Towards Becoming a Transport Powerhouse in the New Era" was introduced*, China Railway, 13th August 2020, viewed 17th April 2023, <http://www.china-railway.com.cn/xwzx/rdzt/ghgy/mtbd/202008/t20200813_107702.html>

5 *The Outline of the 14th Five-Year Plan for National Economic and Social Development and the Long-Range Objectives Through the Year 2035 of the People's Republic of China,* State Council, 13th March 2021, viewed 17th April 2023, <http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm>

6 China's strategic backbone channels include comprehensive transportation corridors, exit and entry channels to and from Xinjiang and Tibet, central and western region channels, and river and coastal channels: *The draft outline of the 14FYP and the long-range objectives through the year 2035 proposed the acceleration of the construction of a country with a strong transportation network and to improve the network effect and operational efficiency*, Ministry of Transport (MOT), 8th March 2021, viewed 17th April 2023, <https://www.mot.gov.cn/jiaotongyaowen/202103/t20210308_3529817.html>

In October 2022, the Ministry of Transport (MOT) issued the *Management Measures for the Pilot Work of China's Construction Towards a Transportation Powerhouse (Trial)*. The measures encourage active participation of the private sector in the pilot programme, in order to create a favourable environment in which all stakeholders can contribute to the development of a strong transportation network.[7] In addition, several rail transportation proposals were presented during the 2023 'Two Sessions',[8] including ones advocating the development of green and intelligent urban rail.[9]

Despite these promising developments, tighter national restrictions have also been imposed on urban rail and subway projects in recent years, based on a series of policy documents such as the *Opinions on Further Improving Railway Planning and Construction Work* issued by the National Development and Reform Commission (NDRC) in 2021,[10&11] which emphasises preventing and addressing debt risks. During the 14FYP period, local governments are urged to strictly manage the risks incurred by taking on debt in order to invest in urban rail. Plans to construct urban railways will not be accepted from cities that do not have the basic conditions required for urban rail construction and ordinary prefecture-level cities; for cities that have not met passenger flow targets for three years of operation, a new round of construction planning cannot be submitted.

In addition, the COVID-10 pandemic led to a decline in passenger flows and increased local financial pressure, which in turn resulted in an overall decline in railway investments and the number of new lines coming into operation over the past three years. Fixed-asset investment in China's railway system had remained above Chinese yuan (CNY) 800 billion from 2014 to 2019, but began to decline from 2020 (see Figure 1).

In 2022, the total investment was CNY 710.9 billion, down 5.1 per cent year-on-year, compared with 748.9 billion yuan in 2021 and 781.9 billion yuan in 2020.[12&13] In 2020, nearly 5,000km of new lines were put into operation, including over 2,500km of high-speed rail. In 2021, more than 4,200km of new lines were put into operation, including nearly 2,200km of high-speed rail; in 2022, this figure dropped to 4,100km and just over 2,000km respectively.[14]

State-owned enterprises (SOEs) have served as the backbone of China's rail transportation industry. The Chinese Government put forward new requirements for SOEs in 2021, as part of a three-year reform plan for the public sector. One of the stated goals is for SOEs to further strengthen overseas outreach and cross-border acquisitions, with a focus on the integration and development of enterprises.[15] With these supportive policies, the working group believes foreign-invested enterprises (FIEs) and SOEs will be able to deepen cooperation in technology innovation and green development and create a mutually beneficial situation.

On 23rd December 2021, the National Railway Administration (NRA) issued the *14th Five-year Plan for Railway Science and Technology Innovation*, which emphasises that the rail industry should "focus on promoting the deep integration of cutting-edge technologies with the railway sector, strengthen the research and application of intelligent railway technologies, and promote the sharing of transport big data."[16] The *Guidelines for the Development of a Smart Logistics Standards System*, introduced in October 2022, put forward the requirements for data interaction

7 *Management Measures for the Pilot Work of China's Construction Towards a Transportation Powerhouse (Trial)*, MOT, 12th October 2022, viewed 12th April 2023, <https://xxgk.mot.gov.cn/2020/jigou/zhghs/202210/t20221012_3693743.html>

8 The 'Two Sessions' are the annual conferences of the National Committee of the Chinese People's Political Consultative Conference, the country's main political advisory institution, and the NPC, its top legislative body.

9 *How Does H3C Drive the Digital Future of Urban Rail in the Era of Pursuing Green and Intelligent Rail Transportation?*, *China Daily*, 29th January 2023, viewed 17th April 2023, <https://tech.chinadaily.com.cn/a/202301/29/WS63d5d5a0a3102ada8b22cd70.html>

10 *General Office of the State Council Notification on the Opinions of the National Development and Reform Commission and Other Units on Further Improving Railway Planning and Construction Work,* State Council, 29th March 2021, viewed 14th April 2023, <http://www.gov.cn/zhengce/content/2021-03/29/content_5596585.htm>

11 *Focussing on Science and Technology Innovation, Three-year Action Campaign to Reform State-owned Enterprises Begins,* State Council, 12th March 2021, viewed 23rd April 2023, <http://www.gov.cn/xinwen/2021-03/12/content_5592630.htm>

12 *Railways to complete fixed asset investment of RMB 781.9 billion by 2020,* State Council, 5th January 2021, viewed 12th June 2023, <https://www.gov.cn/xinwen/2021-01/05/content_5576987.htm>

13 *Statistical Bulletin on the Development of the Transport Sector 2021,* State Council, 25th May 2022, viewed 12th June 2023, <https://www.gov.cn/xinwen/2022-05/25/content_5692174.htm?eqid=d18cfcf5000b82b7000000036458baa9>

14 *As Window of Opportunity Emerges for Railway Planning and Construction, Multiple Local Delegations Pursue Projects During the Two Sessions, China News*, 16th March 2023, viewed 12th April 2023, <https://www.chinanews.com/cj/2023/03-16/9972617.shtml>

15 *General Office of the State Council Notification on the Opinions of the National Development and Reform Commission and Other Units on Further Improving Railway Planning and Construction Work,* State Council, 29th March 2021, viewed 14th April 2023, <http://www.gov.cn/zhengce/content/2021-03/29/content_5596585.htm>

16 *14th Five-year Plan for Railway Science and Technology Innovation,* NRA, 14th December 2021, viewed 12th April 2023, <http://www.gov.cn/zhengce/zhengceku/2021-12/24/content_5664357.htm>

Figure 1. Fixed-asset Investment in China's railway system 2020—2022

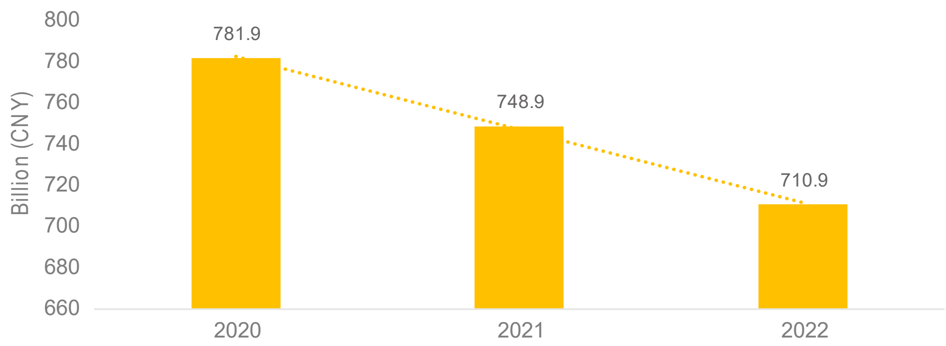
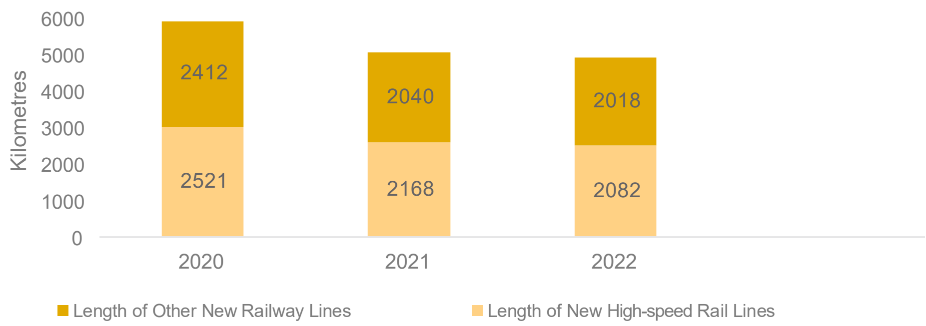


Figure 2. Length of new railway lines in operation 2020—2022



and sharing in the development of rail multimodal transport.[17] FIEs possess rich experience in, and cutting-edge technologies for, industrial digitalisation and interconnection of China's rail transportation system, which can benefit the development of all parts of the rail industrial chain, and ultimately contribute to an intelligent and digitalised domestic industry.

Driven by national strategic carbon peak and neutrality goals,[18] China is gradually implementing its green development philosophy of "green transportation and low-carbon travel" in the rail transportation sector, one of the key areas where carbon emissions need to be reduced.

17 *Notice of the Ministry of Transport and Standardisation Administration of China on the Guidelines for the Development of Smart Logistics Standard System*, MOT, 24th October 2022, viewed 12th April 2023, <https://xxgk.mot.gov.cn/2020/jigou/kjs/202210/t20221024_3699366.html>

18 On 22 September 2020, President Xi Jinping announced at the 75th General Assembly of the United Nations that China would strive to peak its carbon dioxide emissions by 2030 and work towards achieving carbon neutrality by 2060 (30/60 Goals).

On 21st January 2022, the MOT issued the *14th Five-year Plan for Green Transportation*, which focusses on accelerating energy-saving and carbon reduction efforts for the whole transportation industry, and establishing more international exchanges and collaboration on green transportation.[19] In August 2022, the China Association of Metros (CAMET) released the *Action Plan for the Development of Green Urban Rail in China* to guide the green transition of the urban rail industry.[20] The working group supports these efforts, and its members have already established decarbonisation targets and plans. Some member companies have taken the lead in the transition to carbon neutrality, and are actively promoting the measurement and analysis of carbon emissions throughout all parts of the industrial chain.

19 *14th Five-year Plan for Green Transportation*, MOT, 21st January 2022, viewed 14th April 2023, <https://xxgk.mot.gov.cn/2020/jigou/zhghs/202201/t20220121_3637584.html>

20 *Notice on the Action Plan for the Development of Green Urban Rail in China*, CAMET, 19th August 2022, viewed 17th April 2023, <https://www.camet.org.cn/xyxw/10632>

European Chamber
中国欧盟商会

Key Recommendations

1. Expand Market Access and Improve Fair Competition in the Rail Industry 3

Concern

Wholly foreign-owned enterprises (WFOEs) and joint ventures (JVs) controlled by foreign investors are at a disadvantage to domestic enterprises under the requirement for 'autonomous and controllable' technology in the Chinese rail industry.

Assessment

Market access restrictions and regulatory barriers are still a major problem for FIEs wanting to invest in China's rail industry; the European Chamber's *Business Confidence Survey 2023* found that 62 per cent of all respondents missed out on business because of these, a figure that is up 20 per cent year-on-year and the highest on record. Meanwhile, 73 per cent of respondents in the transportation, logistics and distribution industry reported that business became more difficult compared with 2021.[21]

Further adding to this challenge is the concept that has emerged in recent years for technology in China to be 'autonomous and controllable', which has been mentioned frequently in important industry documents. In November 2017, the NDRC stated in the *Three-year Action Plan on Enhancing Core Competitiveness in the Manufacturing Sector (2018–2020)* that it is necessary to "develop products that are internationally advanced and that have independent intellectual property rights (IPR)" to realise the "industrialisation of key rail equipment technologies".[22] One of the development goals stipulated in the *Outline of Advanced Railway Planning Towards Becoming a Transport Powerhouse in the New Era* (*Outline*), issued by China Railway in August 2020, is to "develop advanced and independent technology through innovation"; that is, to "improve the independent innovation capacity and the level of industry chain modernisation of railways, improve the science and technology (S&T) innovation systems of railways, and ensure that the key core technology and equipment is autonomous and controllable, advanced, suitable, safe and efficient."[23]

Furthermore, in August 2021, the MOT and the Ministry of Science and Technology stated in the *Opinions on Speeding up the Building of National Strength in Transportation with Scientific and Technological Innovation* that the "basic research and original innovation capabilities in the transport sector shall be comprehensively enhanced, core technologies shall become autonomous and controllable, leading technologies shall be fully integrated into the transport sector, and a basic S&T innovation system shall be created to meet the needs to build a transportation powerhouse by 2035."[24] The Central Economic Work Conference—held in Beijing from 15th to 16th December 2022—identified the government's priorities for 2023, including "ensuring that the industrial system is autonomous, controllable, safe and reliable".[25]

China's determination to enhance the security of industrial and supply chains, particularly in an increasingly complex global environment, is understandable, and FIEs are willing to support this policy by utilising their own technological advantages and localisation strategies. However, the process of formulating and implementing specific policies in the rail industry often follows a 'one-size-fits-all' approach, which excludes FIEs and JVs controlled by foreign investors on the grounds of upholding the 'autonomous and controllable' guidelines. This means FIEs are unable to compete fairly with domestic enterprises.

This happens particularly frequently in new construction and after-sales projects for railways, urban rail and subways. For example, when participating in bids for rail projects in recent years, WFOEs and JVs controlled by foreign investors often receive no points in the category of 'localisation'; JVs in which Chinese and foreign stakeholders have equal shares can receive half a point; while Chinese domestic enterprises or JVs controlled by Chinese investors receive a full point.

21 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, 21st June 2023, viewed 21st June 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

22 *Notice of the National Development and Reform Commission on the Three-year Action Plan on Enhancing Core Competitiveness in the Manufacturing Sector*, State Council, 29th November 2017, viewed 20th April 2023, <http://www.gov.cn/xinwen/2017-11/29/content_5243125.htm>

23 *The Outline of Advanced Railway Planning Towards Becoming a Transport Powerhouse in the New Era*, China Railway, 12th August 2020, viewed 20th April 2023, <http://www.china-railway.com.cn/xwzx/rdzt/ghgy/gyqw/202008/t20200812_107636.html>

24 *Opinions of the Ministry of Transport and the Ministry of Science and Technology on Speeding up the Building of National Strength in Transportation with Scientific and Technological Innovation*, MOT, 26th August 2021, viewed 14th April 2023, <https://xxgk.mot.gov.cn/2020/jigou/kjs/202108/t20210826_3616711.html>

25 *Central Economic Work Conference Held, Xi Jinping, Li Keqiang and Li Qiang Made Important Speeches*, State Council, 16th December 2022, viewed 20th April 2023, <http://www.gov.cn/xinwen/2022-12/16/content_5732408.htm>

This differential treatment is referred to as the 'one-point scoring system' within the industry, and was still happening in some local subway bidding projects in early 2022. With fierce market competition in the sector, a single point may determine which original equipment manufacturer (OEM) wins a bid. Therefore, in order to win bids, OEMs tend to play it safe and no longer choose foreign equipment suppliers.

In addition, the *Tender Evaluation Method for Urban Rail Transit Vehicles (Trial Version)*,[26] issued by the NDRC in August 2014, has a tender document template, which includes a localisation evaluation form that has a section on 'Application of localisation of key components'. In this template, different scoring criteria are clearly set for domestic and foreign ownership. As of July 2023, this evaluation method is still used by some local rail authorities. A document that has been in place for many years on a trial basis may no longer meet the needs of today's development in the rail transport industry. In addition, such unfair scoring systems in public tenders prevent FIEs from providing competitive pricing, technologies and services, thus undermining their confidence in long-term development and investment in China. Some FIEs have already had internal discussions on adjusting their long-term development strategies in the Chinese market.

Despite such discrimination against foreign investment taking place in practice, the government has taken some measures to try and level the playing field. For example, in September 2020, the NDRC mentioned in the *Notice on Further Standardising Business Qualification Review in the Bidding Process (Notice)* that it should "remove hidden barriers and unreasonable thresholds in bidding to maintain a fair and competitive bidding environment. All types of market entities should be treated fairly."[27] In addition, on 13th October 2021, the Ministry of Finance (MOF) stated in the *Notice on Implementing the Policies on Equal Treatment of Domestic and Foreign-invested Companies in Government Procurement Activities (Notice 1)* that it is necessary to "ensure that domestic and foreign companies participate equally in government procurement", "treat domestic and foreign companies equally in government procurement activities" and "equally protect the rights of domestic and foreign companies in order to build an integrated, open, competitive and orderly government procurement market system and encourage fair competition in government procurement".[28] The working group hopes that the matters mentioned in the *Notice* and *Notice 1* can be implemented to further ensure the government's equal treatment of domestic and foreign enterprises in the procurement process.

Premier Li Qiang likewise mentioned during the 2023 Two Sessions that China would be steadfast in expanding reform and opening up, continue to expand international economic collaboration and trade, and encourage deep reforms and high-quality development by opening up to the world at a higher level. He also said that China would make more efforts to attract and make greater use of foreign investments, widen market access for foreign capital and ensure that FIEs enjoy national treatment.[29]

The 'one-point scoring system' contradicts the Foreign Investment Law, which "encourages further opening up, actively promotes foreign investment, and protects the legal rights and interests of foreign investment".[30] At the same time, the system prevents WFOEs and JVs controlled by foreign investors from better integrating into China's 'dual circulation' strategy. It is therefore recommended that the 'one-point scoring system' be rescinded, and other discriminatory practices be ceased, in keeping with China's move towards creating a more open and competitive market.

Recommendations

- Recognise that FIEs' and JVs' technologies meet 'autonomous and controllable' requirements under certain circumstances pursuant to the principle of treating all company entities equally under the Foreign Investment Law.
- Ensure the full participation of FIEs and JVs in construction and after-sales services projects to China's 'large rail' and 'urban rail' markets.

26 This is an internal document that has not been published. It was approved by the Department of Industrial Coordination, formerly of the NDRC, in August 2014, and issued to the Technical Equipment Professional Committee of the CAMET for trial use by urban rail transit companies when conducting public tenders.

27 *Notice of National Development and Reform Commission General Office and State Administration for Market Regulation General Office on Further Standardising Business Qualification Review in the Bidding Process*, NDRC & State Administration for Market Regulation (SAMR), 22nd September 2020, viewed 14th April 2023, <https://www.ndrc.gov.cn/xxgk/zcfb/tz/202009/t20200928_1239758.html?code=&state=123>

28 *Notice on Implementing the Policies on Equal Treatment of Domestic and Foreign-invested Companies in Government Procurement Activities*, MOF, 13th October 2021, viewed 14th April 2023, <http://gks.mof.gov.cn/guizhangzhidu/202110/t20211020_3759590.htm>

29 *Premier Li Qiang attends a press conference and answers questions from Chinese and foreign journalists*, State Council, 13th March 2023, viewed 4th May 2023, <http://www.gov.cn/zongli/2023-03/13/content_5746555.htm>

30 Foreign Investment Law, NPC, 15th March 2019, viewed 17th April 2023, <http://www.npc.gov.cn/zgrdw/npc/xinwen/2019-03/15/content_2083532.htm>

- Eliminate the 'one-point scoring system' for subway projects and treat domestic and foreign companies equally.
- Encourage innovation of different market entities to continuously improve product quality, services, technology and safety in the rail industry.
- Remove barriers in the field of bidding and treat all market entities fairly.

2. Increase the Participation of FIEs and Utilise Their Advantages in National Initiatives and Projects in Order to Boost the Economy 3

Concern

Unless FIEs' participation in national initiatives and projects is better encouraged, their level of investment and contribution to China's economic development will remain relatively low.

Assessment

Since its announcement in 2013, the Belt and Road Initiative (BRI) has introduced new opportunities across the Eurasian continent. It provides more regional opportunities for multinational enterprises to invest and develop in China, and also has the potential to enhance the scope of, and opportunities for, cooperation between FIEs and Chinese enterprises. From 2013 to 2022, China's trade in goods with countries along the Belt and Road expanded from United States dollar (USD) 1.04 trillion to USD 2.07 trillion, with an average annual growth rate of 8 per cent, and more than 3,000 cooperation projects and 420,000 jobs were created for the countries along the route.[31] The *2023 Government Work Report* highlights that China will continue to encourage high-quality collaboration pursuant to the BRI.[32] However, according to a report by the European Chamber on the BRI, out of the small number of European companies in China that are involved in construction for the initiative, "nearly 40 per cent of [surveyed] companies believe that procurement systems for BRI projects are not transparent enough".[33]

Rail transport has significant advantages over other modes of transport in terms of cost effectiveness and carbon emissions reduction,[34] and many European rail companies have built up a strong presence in in BRI regions, having established stable, solid and well-recognised local service and operation teams. However, to maintain a stable market, there is a need for fair market competition, as well as sharing and reciprocity with regard to investment opportunities. Allowing more European companies to participate in the BRI and other national strategies would help to raise the quality, feasibility and sustainability of rail projects through increased competition and the introduction of world-class technologies and services. In addition, the expertise of European equipment manufacturers and service providers can help to develop the international competitiveness of Chinese OEMs.

Since 2018, 'new infrastructure' construction has been one of the most significant aspects of China's domestic development, in which rail transportation plays an essential part.[35] The NDRC first identified the scope of 'new infrastructure' in April 2020, with an emphasis on intelligent transportation infrastructure,[36] and in January 2023, it said it would further increase its support for the construction of new infrastructure and guide social capital to increase investment in related areas.[37] Members of the working group welcome these national policies and are willing to deepen their presence in the Chinese market, share their technology and experience, and increase their investment. However, the participation of FIEs in the rail industry is still relatively low, the dialogue between the headquarters of FIEs and Chinese authorities is insufficient, and only a few are still participating in large rail projects, with many excluded due to 'autonomous and controllable' guidelines.

If European companies can be given equal treatment and support in national projects, they could further help accelerate the development of China's rail industry, which would be in line with the government's long-term sustainability goals.

31 *Building an open world economy with the "Belt and Road", People's Daily*, 10th June 2023, viewed 13th June 2023, <http://news.cctv.com/2023/06/10/ARTIUXJN2NHGCCROdl46VJSl230610.shtml>

32 *2023 Government Work Report*, State Council, 5th March 2023, viewed 19th April 2023, <http://www.gov.cn/zhuanti/2023lhzfgzbg/index.htm>

33 *The Road Less Travelled: European Involvement in China's Belt and Road Initiative*, European Union Chamber of Commerce in China, 16th January 2020, viewed 15th April 2023 <http://europeanchamber.com.cn/en/publications-archive/762/The_Road_Less_Travelled_European_Involvement_in_China_s_Belt_and_Road_Initiative>

34 Ibid.

35 *What is New Infrastructure, Xinhua*, 26th April 2020, viewed 19th April 2023, <http://www.xinhuanet.com/politics/2020-04/26/c_1125908061.htm>

36 *NDRC Identified the Scope of New Infrastructure for the First Time,* Ministry of Commerce, 21st April 2020, viewed 20th April 2023, <http://www.mofcom.gov.cn/article/i/jyjl/e/202004/20200402957398.shtml>

37 *January Press Conference of the National Development and Reform Commission,* NDRC, 18th January 2023, viewed 20th April 2023, <https://www.ndrc.gov.cn/xwdt/wszb/1yfxwfbh/>

Recommendations

- Create a dialogue mechanism, including with FIEs' headquarters, to take into account the views of FIEs in China when formulating and implementing national initiatives.
- Provide more support on innovation and research and development (R&D) for FIEs.
- Facilitate the exchange of leading global industrial practices, innovation and technologies for rail tracks, adjacent property assets, and systems operation and maintenance, through collaborative European Union-China infrastructure projects, both within China and overseas.

3. Promote the Adoption and Absorption of FIEs' Advanced Technologies in the Rail Industry in Order to Help the Formulation of Domestic Standards and Technical Specifications, and Improve the Participation of FIEs and JVs in, and Transparency of, the Formulation Process 3

Concern

FIEs in the rail industry generally do not have the same opportunities to participate in the formulation of standards and specifications as local enterprises, and they also have very limited opportunities to put forward opinions and suggestions, which may create market entry barriers and result in unfair competition.

Assessment

FIEs in the rail industry face several key issues when trying to participate in standards setting.

First, following the standardisation reform in China, social organisations[38] have been endowed with the legal status to formulate social organisation standards for themselves.[39] Such standards are often applied in mandatory product certification. However, FIEs in the rail industry are usually unable to participate equally in the formulation of standards and regulations and provide their input into the decision-making process compared to local enterprises.

Second, large domestic SOEs have been pressuring external suppliers to adopt their internal standards in recent years. Due to the lack of involvement of stakeholders along the industry chain in their formulation, these internal standards often lack sophistication and have low universality. This has affected the application of advanced technologies in China to an extent, and it has become a significant hidden barrier to FIEs trying to enter the market.

Third, Chinese rail sector standards lack both information and transparency, with some only made available to certain selected FIEs, and updates to the content of standards are normally confidential and not accessible.[40]

The *Opinions of the Ministry of Transport on Several Issues Concerning Promoting the Modernisation of the Transport Governance System and Governance Capability*, released in October 2020, emphasise "improving the standard system in transportation sector, strengthening effective supply of standards in key areas, and making use of the guiding role of standardisation".[41]

Both *the 14th Five-year Plan for Transportation Standardisation* and the *14th Five-year Plan of Railway Standardisation Development*, issued in November and December 2021, respectively, highlight standards-setting requirements, including strengthening standardisation management systems, promoting the collaborative development of and convergence with international standards. They also encourage active participation of enterprises in the formulation of national standards, social organisation standards and industry standards, and the application of standards in industry promotion, industry management, market access and safety and quality supervision.[42&43] In addition, on 23rd February 2022, 17 government agencies, including the Standardisation Administration of China and the

38 A literal translation of the Chinese term *Shehui Tuanti* is preferred here to the more usual English usage of non-governmental organisation. This includes both the more autonomous organisations and those set up by state agencies specifically to carry out social welfare functions.

39 *Notice of the State Council on Printing and Distributing the Report Plan for Deepening the Standardisation Work*, State Council, 26th March 2015, viewed 18th April 2023 <http://www.gov.cn/zhengce/content/2015-03/26/content_9557.htm>

40 *The Shape of Things to Come: The Race to Control Technical Standardisation*, European Union Chamber of Commerce in China, 2nd December 2021, viewed 18th April 2023, <https://europeanchamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/The_Shape_of_Things_to_Come_English_Final[966].pdf>

41 *Opinions of the Ministry of Transport on Several Issues Concerning Promoting the Modernisation of the Transport Governance System and Governance Capability*, MOT, 24th October 2020, viewed 20th April 2023, <http://xxgk.mot.gov.cn/2020/jigou/zcyjs/202010/t20201024_3479808.html>

42 *14th Five-year Plan for Transportation Standardisation*, MOT, 15th November 2021, viewed 19th April 2023, <https://xxgk.mot.gov.cn/2020/jigou/kjs/202111/t20211112_3625878.html>

43 *14th Five-year Plan of Railway Standardisation Development*, NRA, 27th December 2021, viewed 11th April 2023, <https://www.nra.gov.cn/jglz/kjgl/zywj/202112/t20211227_272220.shtml?eqid=e94056d00000cb7b00000003647eeaef>

MOT, jointly issued the *Opinions on Encouraging the High-quality and Standardised Development of Social Organisation Standards*, requiring the participation of a wide range of stakeholders including production, operation, management, construction, consumption, testing and certification, and other entities. It also encourages standards-setting organisations to establish systems to attract FIEs and foreign experts to participate in the development of social organisation standards.[44] The *14th Five-year Plan of Railway Standardisation Development* also indicated that China should deepen railway standardisation exchange and cooperation, ensure timely tracking of international and foreign railway technical standards developments, and strengthen international standards research.[45]

As such, the relationship among social organisation standards, enterprise standards and industry access and market supervision in the field of rail transportation should become closer. Given that FIEs in China's rail industry also need to comply with relevant standards and technical specifications, it is particularly important to support and encourage them to cooperate closely with the relevant standard-setting bodies, and to allow them to participate as equal market players in the formulation of standards and technical specifications. However, while adopting suggestions from FIEs in the standard-setting process has been clearly promoted in relevant documents, implementation has been poor.

FIEs' interest in taking part in the setting of rail-related standards and technical specifications derives from their willingness to access the Chinese rail market and specific projects, and is without prejudice to the economic and technological security objectives that China's indigenous innovation policies seek to ensure.

European companies operating in China have actively participated in formulating several international railway standards, and have accumulated rich experience in the development, applicability and trends of rail transportation industry standards. They have also actively participated in the analysis and research of international standards, and can thus make valuable contributions. Therefore, FIEs should be allowed equal participation in China's standardisation activities, as enshrined in the Foreign Investment Law and the Standardisation Law,[46] and that the standards-setting process remain market-orientated and technology-neutral. Furthermore, fairness, rationality, openness and transparency, as well as extensive participation by all stakeholders, in the standard-setting process should be taken as important indicators for improving the modernisation of the standards system for the rail industry.

Recommendations

- Provide equal access to all companies legally registered in China to participate in the standardisation activities of relevant technical committees or working groups, and give them the right to vote.
- Ensure FIEs can participate equally in the formulation of national standards, industry standards, social organisation standards and enterprise standards, and encourage close and non-discriminatory coordination between standards-setting bodies and FIEs.
- Encourage the adoption of advanced technologies in Chinese standards, and their convergence with international standards.
- Accelerate the modernisation of the rail standards system to make it fair, reasonable, inclusive and transparent, and make the extensive participation of stakeholders in the standards setting process an important evaluation indicator.
- Regulate the standardisation activities of associations and recognise standards of associations as national standards or industry standards before applying them to the product certification system.
- Establish a mechanism for regular exchanges between key stakeholders in Europe and China, in particular with major Chinese SOEs, to promote understanding of the direction of technology and standards development.

4. Optimise the Rail Industry Supply Chain by Improving IPR Enforcement 3

Concern

Inadequate IPR enforcement discourages technological innovation in the rail industry, especially by specialised small and medium-sized enterprises (SMEs).

44 *Opinions on Encouraging the High-quality Development of Association Standards and Regulations,* SAMR, 23rd February 2022, viewed 13th April 2023, <https://www.samr.gov.cn/bzcxs/zcwj/art/2022/art_e7fbf6100ec3419ca1ad1e1bfa6e06c3.html>

45 *14th Five-year Plan of Railway Standardisation Development,* NRA, 27th December 2021, viewed 13th April 2023, <https://www.nra.gov.cn/jglz/kjgl/zywj/202112/t20211227_272220.shtml?eqid=e94056d00000cb7b00000003647eeaef>

46 Standardisation Law, NPC, 4th November 2017, viewed 18th July 2023, <http://www.npc.gov.cn/npc/c30834/201711/04d8afd2637d4f68bea84391e46d986f.shtml>

Assessment

In the European Chamber's *Business Confidence Survey 2023*, while 80 per cent of respondents reported that China's written intellectual property laws and regulations are excellent or adequate, 45% of respondents reported that IPR enforcement is inadequate.[47] As a result, many are hesitant to bring their latest technology to China, a hesitancy that has the potential to negatively affect both their China operations and their partnerships with Chinese companies. In addition, according to a recent European Chamber study on China's innovation ecosystem, the country's weak IPR protection systems is the factor that has the most negative impact on the R&D/innovation activities of European companies in China, as reported by 33.7 per cent of respondents to the survey that accompanied the report.[48]

In the rail industry, SMEs drive innovation and technological progress for the industrial supply chain. They have the flexibility and specialised expertise to actively promote innovation and provide necessary products and services for larger rail companies. However, for those SMEs that are still willing to come to China, many are still being compelled to do so by transferring technology to Chinese enterprises or business partners to maintain market access.

To ensure the healthy development of the rail industry, China needs to secure the participation of SMEs, while continuing to improve its IPR enforcement regime.

Recommendation

- Improve IPR enforcement in order to encourage increased investment in the rail industry and to foster the participation of SMEs in the supply chain.

Abbreviations

BRI	Belt and Road Initiative
CAMET	China Association of Metros
CNY	Chinese Yuan
FIE	Foreign-Invested Enterprise
FYP	Five-year Plan
IPR	Intellectual Property Rights
JV	Joint Venture
km	Kilometre
MOF	Ministry of Finance
MOT	Ministry of Transport
NDRC	National Development and Reform Commission
NPC	National People's Congress
NRA	National Railway Administration
OEM	Original Equipment Manufacturer
S&T	Science and Technology
SAMR	State Administration for Market Regulation
SME	Small and Medium-sized Enterprise
SOE	State-owned Enterprise
USD	United States Dollar
WFOE	Wholly Foreign-owned Enterprise

47 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, 21st June 2023, viewed 21st June, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

48 *China's Innovation Ecosystem: The Localisation Dilemma*, European Union Chamber of Commerce in China, 21st April 2023, viewed 22nd April 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1077/China_s_Innovation_Ecosystem_the_localisation_dilemma>

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4 Section Four

Services

Services

The Services section of the *Position Paper* includes papers from four working groups and three sub-working groups of the European Chamber:

- Aviation and Aerospace
- Construction
  - Heating
- Information and Communication Technology (ICT)
  - Cybersecurity
- Logistics
  - International Liner Shipping

In 2022, China's gross domestic product (GDP) achieved three per cent growth year-on-year (y-o-y),[1] below the 5.5 per cent growth rate that had been set in March 2022;[2] while the y-o-y growth rate of the service industry was 2.3 per cent, significantly lower than the 8.2 per cent growth in 2021.[3&4]

According to the European Chamber's *Business Confidence Survey 2023* (BCS 2023), European companies' China operations suffered considerably in 2022 due to stringent 'zero-COVID' policies, with a third of surveyed companies reporting revenue decreases.[5] In certain services sectors, the proportion of respondents reporting revenue decreases was well above the average. For example, in aviation and aerospace, and civil engineering and construction, they were reported by 90 per cent and 60 per cent of respondents respectively.[6]

Whereas COVID-19 was reported as the most significant challenge to European business in China in the BCS 2021 and the BCS 2022, this was replaced in the BCS 2023 by the slowdown of the Chinese economy following China's abrupt ending of its 'zero-COVID' management approach.[7] During the 2023 Two Sessions, China's economic growth target was set at a relatively conservative five per cent for 2023.[8] In the first quarter (Q1), GDP grew at 4.5 per cent y-o-y,[9] and increased 7.3 per cent y-o-y in Q2. Although this seems positive on the face of it, the increase was coming off a very low base in 2022, and there are clear signs that momentum is waning.[10] At the time of writing,

1 *National Economy Withstood Pressure and Reached a New Level in 2022*, National Bureau of Statistics (NBS). 17th January 2022, viewed 13th July 2023, <http://www.stats.gov.cn/english/PressRelease/202301/t20230117_1892094.html>

2 *China sets 2022 GDP growth target at around 5.5%, Xinhua*, 5th March 2022, viewed 13th July 2023, <https://english.www.gov.cn/premier/news/202203/05/content_WS6222c1cdc6d09c94e48a5f67.html>

3 *National Economy Withstood Pressure and Reached a New Level in 2022*, NBS, 17th January 2022, viewed 13th July 2023, <http://www.stats.gov.cn/english/PressRelease/202301/t20230117_1892094.html>

4 *Statistical Communiqué of the People's Republic of China on the 2021 National Economic and Social Development,* NBS, 28th February 2022, viewed 13th July 2023, <http://www.stats.gov.cn/english/PressRelease/202202/t20220227_1827963.html>

5 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, 21st June 2023, viewed 13th July 2022, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

6 Ibid.

7 Ibid.

8 *Decoding China's economic recovery at the 'two sessions', Xinhua,* 7th March 2023, viewed 13th July 2023, <http://english.www.gov.cn/news/videos/202303/07/content_WS640688ecc6d0a757729e7cf1.html>

9 *China's GDP expands 4.5 pct year on year in Q1, Xinhua,* 18th April 2023, viewed 13th July 2023, <https://english.www.gov.cn/archive/statistics/202304/18/content_WS643e022bc6d03ffcca6ec62e.html>

10 *China's Q2 GDP seen rising 7.3% year over year but on low base, recovery fades: Reuters poll, Reuters,* 13th July 2023, viewed 13th July 2023, <https://www.reuters.com/markets/asia/chinas-q2-gdp-seen-rising-73-yy-low-base-recovery-fades-2023-07-13/>

doubts have become widespread that the economy can rebound as expected in the second half of 2023, unless economic stimulus measures are swiftly introduced.[11]

On top of concerns over China's economic performance, the persistence of an unlevel playing field has further diminished European business confidence in China. This long-standing challenge is reflected in the fact that, over a 10-year period from 2013 onwards, the percentage of surveyed European companies that regard China as their top investment destination has dropped from around a third to less than a fifth.[12] Senior Chinese leaders have recognised the importance of foreign business as an important contributor to China's economy, and emphasised many times that the country will continue to open up and welcome foreign investors.[13] However, many market access barriers remain in place, and little has been seen in terms of concrete action to make the country a more attractive investment destination.

For example, in the aviation sector, international computer reservation system providers are prevented from fully operating in China due to the *Interim Permit Management Measures of Using and Entering the Foreign Computer Tickets Reservation System by the Sales Agency Appointed by Foreign Airline Carriers in China* (CCAR315) and other relevant policies, even though the sector is not on the *Negative List for Foreign Investment*.[14]

Certain investment barriers could impede China's carbon neutrality ambitions. For example, China's construction sector discharged roughly 20 per cent of both the country's total emissions and global construction emissions in 2020,[15] making decarbonisation of this sector crucial for China to reach its 30/60 Goals.[16] Although weaker economic growth, declining construction activity and strict COVID-19 containment measures resulted in relatively flat emissions levels from the sector in 2022,[17] in the medium- to long-term, China is aiming to invest further in infrastructure construction, which will lead to a significant increase in emissions from the sector. According to Wu Yong, president of the China Association of Building Energy Efficiency, without introducing any new technologies or approaches, peaking emissions in the construction sector will only be possible by 2040, which would be a real blow to China's carbon neutrality drive.[18] Key to greening the sector will be introducing a clear and transparent legal framework for the certification of 'green' buildings. However, there are currently more than 10 different standards used for assessing different types of buildings at different stages of the construction process. On top of this, because the application of green building labels is voluntary, it is difficult for European businesses to effectively promote their leading green technologies, building materials and expertise that could help to accerate the greening of China's construction sector.[19]

As digitalisation looks set to underpin China's economic growth in the coming decades, the challenges

11 *China should not hesitate on needed economic stimulus, Nikkei Asia,* 19th July 2023, viewed 19th July 2023, <https://asia.nikkei.com/Opinion/The-Nikkei-View/China-should-not-hesitate-on-needed-economic-stimulus>
12 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, 21st June 2023, viewed 13th July 2022, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>
13 *Xi urges Jiangsu to take lead in advancing Chinese modernization, Xinhua*, 7th July 2023, viewed 13th July 2023, <http://english.www.gov.cn/news/202307/09/content_WS64a9ef3dc6d0868f4e8dd9c9.html>
14 For more information, please see the *Aviation and Aerospace Working Group Position Paper* on page 296.
15 Wang, Yuanfeng, *China's carbon neutrality challenge*, *China Daily,* 27th November 2020, viewed 14th July 2022, <https://www.chinadailyhk.com/article/150772>
16 China's 30/60 Goals are to peak carbon emissions before 2030 and to achieve carbon neutrality by 2060.
17 Emissions dropped 23 metric tonnes, or 0.2 per cent y-o-y. For more information, please see the *Construction Working Group Position Paper* on page 306.
18 *Interview with President of China Association of Building Energy Efficiency Wu Yong*, China Association of Building Energy Efficiency, 7th September 2021, viewed 13th July 2023, <https://www.cabee.org/site/content/24137.html>
19 For more information, please see the *Construction Working Group Position Paper* on page 306.

facing European companies in the ICT industry unfortunately will increase, as China continues to aim for self-reliance in related technologies under the banner of 'national security'. Although European ICT companies have played an important role in supplying infrastructure, devices, services and applications to and in China, they have, by and large, been excluded from new opportunities in the market. This can be clearly seen in the level of involvement of European providers in China's fifth generation (5G) mobile technology market. According to Ministry of Industry and Information Technology statistics,[20] by the end of 2022, China had deployed 2.3 million 5G base stations (more than 60 per cent of the global total) and developed 561 million 5G subscribers. China's total 5G investment in 2022 amounted to Chinese yuan (CNY) 180.3 billion.[21] Meanwhile, the percentage market share of European 5G service providers dropped to a single digit after having been around 30 per cent for the provision of 4G services. This has seriously weakened the strategic importance of the China market to European investors in key ICT market segments, led to a de-prioritisation of China in global investment planning, and jeopardised the outlook for European Union-China global collaboration in the broader ICT industry.[22] Ongoing restrictions on foreign shareholders in value-added telecommunication services also remain a key concern for the sector.[23]

Burdensome and vaguely-defined requirements for data localisation, data security and cybersecurity are also major concerns for European companies, and not just those in the ICT industry. They apply to all companies that need to communicate with either their headquarters or overseas branches, as well as those providing services to their clients outside China. The current application procedure for cross-border data transfer is opaque and lacks clear guidance, creating uncertainty and huge administrative burdens for European companies in China.[24]

Last but not least, the State Council's 2021 announcement of the pilot permitting foreign carriers to carry out cargo relay to/from three northern China ports for transshipment at Yangshan still has room for improvement to ensure all European companies can fully benefit. Currently, the new policy gives European companies limited choice in transportation routes, as it is only permitted between Yangshan and the three northern ports of Qingdao, Dalian and Tianjin. The pilot is also currently limited to owned vessels, excluding more than half of all carriers' capacity, which are chartered vessels.[25]

20 *Interpretation of the ICT Industry Statistical 2022,* MIIT, 20th January 2023, viewed 13th July 2023, <https://wap.miit.gov.cn/zwgk/zcjd/art/2023/art_9f5022af3cdf48789484117d9da03c58.html>
21 For more information, please refer to the *Information and Communication Technology Working Group Position Paper* on page 325.
22 Ibid.
23 Ibid.
24 For more information, please refer to the *Cybersecurity Sub-working Group Position Paper* on page 337.
25 For more information, please read the *International Liner Shipping Sub-working Group Position Paper* on page 358.

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Aviation and Aerospace Working Group

Key Recommendations

1. Accelerate Full Resumption of Air Transportation for People and Cargo between China and the European Union (EU) 3

- Extend the summer-autumn slot waiver policy for international airlines to the 2023 winter season.
- Facilitate the changing slots due to geopolitical tensions and airlines' operational challenges.
- Simplify the health declaration process and allocate additional resources to optimise the inbound passenger clearance process.
- Use internationally recognised wording and terminology in the visa application form and streamline the application process.

2. Realise the Full Potential of the Negative List (2021), and Relevant International, Regional or Bilateral Agreements Signed by the EU and China 2

- Review all policies and regulations and promptly abandon those that are not in compliance with the *Negative List (2021)*.
- Stipulate a new regulation to fully open up the Chinese Computer Reservation System (CRS) market including domestic and international air tickets of Chinese domestic and foreign airlines.
- Simplify previous regulations to provide meaningful market access to foreign CRS providers.
- Clarify the authorisation process for foreign global distribution system providers to operate Itinerary printing software and validation website services.
- Accelerate the implementation of the Level of Involvement validation based on the Bilateral Aviation Safety Agreement and Technical Implementation Procedures, and simplify the airworthiness approval processes between the EU and China.

3. Increase the Efficiency of Airspace Utilisation in China 7

- Enhance the utilisation of new data exchange technologies and systems interoperability in the aviation sector to ease airspace congestion and improve efficiency in the short term.
- Develop innovative operational concepts, procedures and human resources to maintain a high level of safety of air traffic management (ATM) services, while increasing flexibility, capacity and service orientation, and reducing the environmental impact of flying.
- Utilise EU and China expertise to implement a nation- and system-wide information management-based data communication platform with a centralised pool of data.
- Increase EU-China cooperation in the field of new applications and operational concepts covering airspace design, flow management and interoperable flight management between flight information regions.
- Improve aircraft arrival capacity at major airports by implementing distance-based and time-based separation.
- Enhance exchanges between the European and Chinese authorities and industries to enable harmonisation of unmanned aerial vehicle standards and regulations, and integration of ATM

and unmanned aircraft systems traffic management.

- Increase communication and explore a new framework that will comply with both EU and Chinese requirements for data management to improve collaboration on data-driven applications and platforms.
- Strengthen exchanges with departments/organisations in charge of both low-altitude airspace reform and the existing pilot zones to provide a better understanding of the helicopter market and development trends of helicopter operations.

4. Accelerate the Deployment of a Sustainable Ecosystem in China and Europe by Deepening Business-driven Actions Related to Decarbonisation of the Aviation Industry 4

- Create a trusted and long-term communication channel between the EU and China, dedicated to the development of sustainable aviation.
- Cooperate on scenarios to prepare for the future of decarbonised aviation, including but not limited to sustainable aviation fuel (SAF), power-to-liquid technology and hydrogen.
- Create a detailed policy framework to enhance the use of SAF and other sustainable fuel in commercial flights.
- Relaunch projects on industrialisation of alternative fuels including power-to-liquid technologies and hydrogen by creating concrete-use cases.
- Leverage existing and previous cooperation frameworks, such as Horizon Europe, to implement concrete bilateral projects on sustainable aviation technology.

Introduction to the Working Group

The Aviation and Aerospace Working Group includes over 50 passenger and freight air carriers, and manufacturers of a wide range of aerospace products, including civil aircraft, engines, helicopters, space systems and other products across the supply chain. It is also composed of maintenance and service companies that carry out repairs, training and other activities that support the aviation and aerospace industries.

The working group focusses on European Union (EU) and China aviation cooperation and facilitating European business in China. Activities have been focussed on the 14th Five-year Plan (14FYP) in the areas of civil aviation and transportation, unmanned aerial vehicle (UAV) technology and market development in China and Europe, and sustainable development and emissions reduction.

The working group values its relations with key stakeholders, including the Civil Aviation Administration of China (CAAC), the Ministry of Industrial Information and Technology, the China Air Transport Association (CATA), the International Air Transport Association (IATA), the International Civil Aviation Organization (ICAO), the European Union Aviation Safety Agency (EASA), the Directorate General for Transportation at the European Commission, and the embassies of European Union (EU) Member States in China. The working group also maintains communication with other Chinese entities including the China-Europe Association for Technical and Economic Cooperation, the International Aviation Supply Chain, and industrial actors including the Aviation Industry Corporation of China, the Commercial Aircraft Corporation of China (COMAC), and several Chinese airlines, among others.

Recent Developments

COVID-19 had a devastating impact on the aviation and aerospace industries. The working group has worked relentlessly to address several directly and indirectly related issues. These include discussions with the authorities on the resumption of flights, the waiver of slot

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rights in China and Europe, airworthiness certification and implementation of the EU-China Bilateral Aviation Safety Agreement (BASA).

At the beginning of 2022, China announced its target of recovering international air flights to and from the country from 2023 to 2025.[1] At the end of 2022, the Chinese Government lifted the 'circuit breaker' policy,[2&3] the 'five-ones' policy,[4&5] and the on-arrival polymerase chain reaction (PCR) test and quarantine requirements for inbound travellers.[6]

These measures led to the start of a notable recovery of the civil aviation industry. In January 2023, the CAAC set an overall target to achieve around 75 per cent of the pre-pandemic level of flights and to break even in 2023.[7] In the first quarter of the year, domestic air travel in China recovered to around 80 per cent of the pre-pandemic level, and in March 2023, international passenger air traffic was 18.1 per cent of that of the same period in 2019.[8] In the second quarter, domestic air travel was 5.4 per cent higher than that of the same period in 2019, and international passenger air traffic recovered to 33.7 per cent of that of the same period in 2019.[9]

1 *The 14th Five-year Plan for Civil Aviation Development in China*, CAAC, 14th December 2021, viewed 11th May 2023, <http://www.caac.gov.cn/XXGK/XXGK/FZGH/202201/t20220107_210798.html>

2 Introduced by the CAAC on 4th June 2020, the circuit breaker policy was used as punishment for transporting COVID-infected passangers to China, whereby airlines' operations were suspended on a route for one week if five to nine passengers tested positive upon arrival in one flight on that specific route. The circuit breaker policy was adjusted on 28th April 2021 and 7th August 2022, and was then rescinded on 11th November 2022.

3 *Notice on Measures to further Optimise COVID-19 Prevention and Control*, National Health Commission (NHC), 11th November 2022, viewed 11th May 2023, <http://www.gov.cn/xinwen/2022-11/11/content_5726122.htm>

4 The 'five-ones' policy was introduced by the CAAC on 26th March 2020, allowing each Chinese airline company to retain one route to any specific country out of China with up to one flight per week, and each foreign airline carrier to retain one route to China from any specific country with no more than one weekly flight, on the basis of the international flight plan released on 12th March 2020. The CAAC adjusted the 'five-ones' policy on 4th June 2020, and then rescinded it on 28th December 2022.

5 *Measures for Resuming International Passenger Flights*, CAAC, 28th December 2022, viewed 11th May 2023, <http://www.caac.gov.cn/en/XWZX/202212/t20221230_216743.html>

6 *Notice on Overall Programme of Category B Management on COVID-19 as Class B Infectious Disease*, NHC, 27th December 2022, viewed 11th May 2023, <http://www.gov.cn/xinwen/2022-12/27/content_5733739.htm>

7 *2023 National Civil Aviation Work Conference Held*, CAAC, 6th January 2023, viewed 26th April 2023, <http://www.caac.gov.cn/XWZX/MHYW/202301/t20230106_216778.html>

8 *Industry Recovery Developments in the First Quarter of 2023 (including Data and Related Features)*, CAAC, 18th April 2023, viewed 26th April 2023, <http://www.caacnews.com.cn/special/2023nzt/7551/20191zbzy/202304/t20230418_1366520.html>

9 *China Air Transport Association Held Quarterly Information Communication Session of Governing Bodies for the Second Quarter of 2023*, CATA, 13th July 2023, viewed 24th July 2023, <https://mp.weixin.qq.com/s?__biz=MzIxMzY3NTU1NA==&mid=2247527526&idx=1&sn=009392d689e606f115e7a1b8984bccdf&chksm=97b1172ba0c69e3d958de93cec2e1451862f657e4caad2a3695ccf7bb60da2f9f1e1b6b92725&scene=27>

According to the *14th Five-year Plan for Green Development of Civil Aviation, and the 14th Five-year Plan for Civil Aviation Development in China*, published by the CAAC in December 2021 and January 2022 respectively, China is committed to developing a smarter, greener and more efficient aviation sector during the 14th Five-year Plan (14FYP) period.[10&11] The *14th Five-year Plan for Green Development of Civil Aviation highlights* that China will promote the application of sustainable aviation fuels (SAFs), develop a market-orientated emission reduction mechanism, and accelerate the circular economy of aircraft. China is targeting an increase in utilisation of SAFs by 50,000 tonnes from 2021 to 2025, and is aiming to promote the development of electric and gas-electric aeroplanes. There is also a plan to increase the digitalisation of the civil aviation industry and develop a high-quality air logistics system, according to the Roadmap for Smart Development of Civil Aviation and the *14th Five-year Special Plan for Air Logistics Development*.[12&13]

As of 2022, the aviation industry has participated in the EU emissions trading scheme (ETS)—the world's first international ETS—for 10 years. Over the last decade, all airlines operating in Europe have been required to monitor, report and verify their carbon dioxide (CO_2) emissions.[14] In December 2019, the EU launched the European Green Deal, which sets a goal for the transport industry to reduce carbon emissions by 90 per cent by 2050 compared to 1990 levels.[15] A group of new proposals was approved by the European Commission's Directorate-General for Climate Action in July 2021 to facilitate the EU's climate neutrality commitments, which emphasises a "route-based approach" in aviation emissions calculations.[16]

10 *The 14th Five-year Special Plan for Green Development of Civil Aviation*, CAAC, 21st December 2021, viewed 26th April 2023, <https://www.gov.cn/zhengce/zhengceku/2022-01/28/5670938/files/c22e012963ce458782eb9cb7fea7e3e3.pdf>

11 *The 14th Five-year Plan for Civil Aviation Development in China*, CAAC, 14th December 2021, viewed 26th April 2023, <http://www.caac.gov.cn/XXGK/XXGK/FZGH/202201/t20220107_210798.html>

12 *Roadmap for Smart Development of Civil Aviation*, CAAC, 21st January 2022, viewed 26th April 2023, <http://www.caac.gov.cn/XXGK/XXGK/ZCFB/202201/t20220121_211212.html>

13 *The 14th Five-year Special Plan for Air Logistics Development*, CAAC, 16th February 2022, viewed 26th April 2023, <http://www.caac.gov.cn/XWZX/MHYW/202202/t20220216_211783.html>

14 *Aviation and the EU ETS*, European Commission, viewed 26th April 2023, <https://ec.europa.eu/clima/eu-action/european-green-deal/delivering-european-green-deal/aviation-and-eu-ets_en>

15 *Providing Efficient, Safe and Environmentally Friendly Transport*, European Commission, viewed 26th April 2023, <https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/transport-and-green-deal_en>

16 *Aviation and the EU ETS*, European Commission, viewed 26th April 2023, <https://ec.europa.eu/clima/eu-action/european-green-deal/delivering-european-green-deal/aviation-and-eu-ets_en>

In light of the development of these EU environmental regulations, a number of EU companies have become pioneers in green technologies, digital management and capitalisation in the aviation industry. These same companies and members of the working group are keen to contribute to China's commitment to carbon neutrality and digitalisation. According to the findings of the European Chamber's report, *Carbon Neutrality: The Role of European Companies in China's Race to 2060*, 46 per cent of member companies have already taken concrete steps to decarbonise their China operations, and around 67 per cent have achieved at least a basic level of preparation.[17]

Key Recommendations

1. Accelerate Full Resumption of Air Transportation for People and Cargo between China and the EU

Concern

Now that air traffic restrictions in China—imposed as pandemic prevention measures—have basically been lifted, extending slot waivers and abolishing the remaining COVID-19 travel restrictions and requirements will be vital for airlines to rebuild their network to China.

Assessment

China's lifting of the air traffic restrictions that were imposed since the coronavirus outbreak in 2019 was an extremely positive development. In November 2022, the National Health Commission (NHC) announced the cancellation of the circuit-breaker as one of 20 measures to optimise the COVID-19 prevention and control.[18] On 28th December 2022, the CAAC announced the lifting of the 'five-ones' policy.[19] This was followed by the CAAC's January 2023 announcement that it would strive for an overall recovery of the civil aviation industry to about 75 per cent of the pre-epidemic level in 2023.[20]

In March 2023, the CAAC announced both the international slot allocation policy for the 2023 summer season and the flight schedule for March to October 2023, with the expectation of a steep increase in international passenger flights compared to the 2022 summer-autumn season.[21&22] According to the slot allocation policy, international airlines are allowed to enjoy a slot waiver and can retain the slots for the 2024 summer-autumn season provided they meet relevant requirements.[23]

However, European airlines have so far found it difficult to realise a full recovery in 2023. Given that longer flight routes due to closed Russian air space are resulting in longer block times for flights between China and the EU, they are unable to operate as many flights compared to pre-COVID years with the same number of aircraft, and the landing and take-off slots have to be adjusted accordingly.

The working group welcomes the third batch of country and region list for travel agency operations of outblound group tours for Chiene citizens, released by the Ministry of Culture and Tourism in August 2023.[24] This move is beneficial to the whole aviation industry chain, including the airline companies, to re-develop the market. However, due to the complexity of the operations and processes involved in the aviation industry, it is expected to take a long time for outbouund group travel to return to the pre-pandemic level. It is therefore necessary for the CAAC to be as flexible as possible in the management of flight schedules.

It is extremely positive that several entry requirements have already been removed. The General Administration of Customs of China (GACC) rescinded the PCR test requirements for inbound travellers after their arrival in China as of 8th January 2023.[25] On 14th March 2023,

17 *Carbon Neutrality: The Role of European Companies in China's Race to 2060*, European Union Chamber of Commerce in China, 25th May 2022, viewed 26th April 2023, <https://www.europeanchamber.com.cn/en/publications-carbon-neutrality-report>

18 *China Releases Measures to Optimize COVID-19 Response*, State Council, 12th November 2022, viewed 20th April 2023, <http://english.scio.gov.cn/chinavoices/2022-11/12/content_78515361.htm>

19 *Measures for Resuming International Passenger Flights*, CAAC, 28th December 2022, viewed 20th April 2023, <http://www.caac.gov.cn/en/XWZX/202212/t20221230_216743.html>

20 *CAAC targets return to 75% of 2019 level as aviation market recovers, Global Times*, 7th January 2023, viewed 20th April 2023, <https://www.globaltimes.cn/page/202301/1283360.shtml>

21 *Notice on China Civil Aviation International Slot Allocation Policy for the 2023 Summer Season*, CAAC, 3rd March 2023, viewed 20th April 2023, <http://www.caac.gov.cn/XXGK/XXGK/TZTG/202303/t20230313_217524.html>

22 *Summer-Autumn 2023 flight schedule from 26th March*, CAAC, 24th March 2023, viewed 20th April 2023, <http://www.caac.gov.cn/XWZX/MHYW/202303/t20230324_217694.html>

23 Airlines need to either return the time slots four weeks ahead of schedule due to the impact of either *force majeure* or airline market recovery, or use at least 80 per cent of scheduled time slots, to retain the slots for the same season in the following year.

24 *Notice on the Resumption of Travel Agency Operations of Outbound Group Tours for Chinese Citizens to Relevant Countries and Regions (Third Batch)*, Ministry of Culture and Tourism, 10th August 2023, viewed 17th August 2023, <https://zwgk.mct.gov.cn/zfxxgkml/scgl/202308/t20230810_946592.html>

25 *China to adjust nucleic acid testing requirements for int'l arrivals,* State Council, 28th December 2022, viewed 20th April 2023, <https://english.www.gov.cn/statecouncil/ministries/202212/29/content_WS63acd626c6d0a757729e4dae.html>

the National Immigration Administration announced the resumption of all visas to China-bound tourists.[26] The Ministry of Foreign Affairs announced that all incoming passengers could use antigen instead of PCR tests within 48 hours before boarding, with the requirement for airlines to check them being removed as of 29th April 2023. However, as of June 2023, some travel restrictions remain for China-bound travellers.[27]

For example, some of the English wording used in both the visa application and the health declaration form need to be more intuitive.[28] For instance, it is unlikely that people without knowledge of the Chinese language will understand 'Chaoyangqu' when they select their destination in Beijing, China. Instead, 'Chaoyang District' would be more internationally recognised. Furthermore, the extensive question list in the visa application and the fingerprint collection requirement makes it more onerous for foreigners to enter China.

In addition, China-bound passengers are required to fill out a health declaration either by scanning a quick response (QR) code to access a WeChat mini programme or via an official website before entry.[29] Both Chinese and non-Chinese passengers regularly arrive without the health declaration prepared, which creates bottlenecks leading to long waiting times for travellers. Airports and land borders should therefore be equipped with sufficient scanning equipment to prevent congestion and optimise arrival procedures.

Recommendations

- Extend the summer-autumn slot waiver policy for international airlines to the 2023 winter season.
- Facilitate the changing of slots due to geopolitical tensions and airlines' operational challenges.
- Simplify the health declaration process and allocate additional resources to optimise the inbound passenger clearance process.
- Use internationally recognised wording and terminology in the visa application form and streamline the application process.

26 *Further Adjustment of Visa and Entry Policy for Foreigners to China,* National Immigration Administration, 14th March 2023, viewed 24th April 2023, <http://www.gov.cn/xinwen/2023-03/14/content_5746607.htm>

27 *Foreign Ministry Spokesperson Mao Ning's Regular Press Conference on April 25, 2023,* Ministry of Foreign Affairs, viewed 27th April 2023, <http://russiaembassy.fmprc.gov.cn/fyrbt_673021/202304/t20230425_11065451.shtml>

28 *Application Process*, Chinese Visa Application Service Center, viewed 24th April 2023, <https://www.visaforchina.cn/#/nav/applications/applicationFormSection1>

29 *Updated Notice on Outbreak Prevention and Control Requirements for Travellers to China,* Chinese Embassy in Germany, 25th April 2023, viewed 26th April 2023, <http://de.china-embassy.gov.cn/chn/sgyw/202304/t20230425_11065597.htm>

2. Realise the Full Potential of the Negative List (2021), and Relevant International, Regional or Bilateral Agreements Signed by the EU and China 2

Concern

While numerous EU-China initiatives have been introduced that cover aviation investment and airworthiness, thorough implementation of the signed agreements is required to improve bilateral aviation cooperation.

Assessment

Although China included among its commitments to the World Trade Organization (WTO) in 2001 the liberalisation of its Computer Reservation System (CRS) market, foreign CRS providers still do not have market access.

China's WTO commitments on CRS include:

- When agreements are in place with Chinese aviation enterprises and Chinese CRS providers, foreign players may provide CRS services to Chinese aviation enterprises and Chinese aviation agents by connecting with the Chinese CRS.
- Foreign players may provide CRS services to representative offices and sales offices established in China by foreign aviation enterprises that have the right to engage in business according to bilateral aviation agreements.
- Direct access to and use of foreign CRS by Chinese aviation enterprises and agents of foreign aviation enterprises is subject to approval of the CAAC.[30]

Modern CRS services offered by European providers could benefit "passengers, travel agencies, and airlines operating in China", as pointed out in the EU-China High-level Economic and Trade Dialogue in 2009.[31]

In August 2012, the CAAC promulgated the *Interim Permit Management Measures of Using and Entering the Foreign Computer Tickets Reservation System by the Sales Agency Appointed by Foreign Airline Carriers in China (CCAR315)*, which marked the first

30 *Report of the Working Party on the Accession of China (WT/MIN(01)/3/Add.2)*, WTO, 10th November 2001, viewed 18th May 2023, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN01/3A2.pdf&Open=True>

31 *Second meeting of the EU-China High-level Economic and Trade Dialogue: 7 and 8 May 2009 in Brussels*, European Commission, 8th May 2009, viewed 18th May 2023, <https://ec.europa.eu/commission/presscorner/api/files/document/print/en/memo_09_226/MEMO_09_226_EN.pdf>

important step by China to open up its CRS market.[32] According to the *CCAR315*, foreign players can offer global distribution system (GDS) services in China to sales agencies that are authorised by foreign airline companies provided they have obtained a relevant CAAC licence. However, the CAAC's procedure for licence verification for sales agencies takes more than 50 business days, which is too long for most companies to follow through with. In addition, the Chinese CRS market was opened up in a limited way, with foreign GDS providers only allowed to offer services for international flights, with domestic flights being excluded, which is not in compliance with China's WTO commitments.

The State Taxation Administration (STA) and the CAAC issued *the Administration Measures of Air Transport Itineraries of Electronic Tickets (Interim) (STA No. 54 [2008])* in 2008, and its subsequent notice on the *Issues on International flights using Air Transport Itineraries of Electronic Tickets (STA No. 83 [2012])* in 2012.[33&34] According to the measures, the itinerary printing software and validation website must be developed, operated and maintained by units authorised by the CAAC. However, in practice, it is not clear how the authorisation process applies to foreign GDS providers. As a result of the invisible market access barriers, although European GDS providers were able to provide CRS services as of 2015, this lasted less than one year.

Following the release of the *Special Measures on Foreign Investment (Negative List 2021)* by the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) on 27th December 2021, government agencies were urged to review previous policies and regulations and promptly abandon those not in compliance with the updated list. However, some incumbent regulations that are not consistent with the *Negative List 2021* are still in force and need to be rescinded or replaced, including but not limited to: *CCAR315*, *STA No. 54 [2008]* and *STA No. 83 [2012]*.

Given that the implementation of the European CRS system in China requires cooperation and support from relevant Chinese government departments, following the cancellation of the *CCAR315* and the *STA No. 83 [2012]*, it is recommended that the CAAC formulate positive management measures that encourages the deployment of European CRS systems in China.

Signed in September 2020, the Bilateral Aviation Safety Agreement (BASA) and the Technical Implementation Procedures (TIP) were aimed at improving aviation safety administration and facilitating mutual market access.[35] The implementation of the 'automatic acceptance' of certain aviation products from European original equipment manufacturers (OEMs) based on the BASA/TIP agreement by the Chinese side is a positive development.[36] It reduces the burden on OEMs with regard to cross-validation of aviation products between EU and China. The EASA and CAAC have started to cross-validate some aviation products according to the Level of Involvement (LOI) procedure defined in the BASA/TIP. However, the process of these cross-validations is slower than anticipation partially due to the fact that this is the early stage to implement the LOI validation. Accelerate the implementation of the BASA/TIP regarding Level of Involvement (LOI) validation and simplification of airworthiness approval processes will help take EU-China aviation cooperation to a higher level.

Recommendations

- Review all policies and regulations and promptly abandon those that are not in compliance with the *Negative List (2021)*.
- Stipulate a new regulation to fully open up the Chinese CRS market, including domestic and international air tickets of Chinese domestic and foreign airlines.
- Simplify previous regulations to provide meaningful market access to foreign CRS providers.
- Clarify the authorisation process for foreign GDS

32 *Interim Permit Management Measures of Using and Entering the Foreign Computer Tickets Reservation System by the Sales Agency Appointed by Foreign Airline Carriers in China*, CAAC, 28th March 2016, viewed 8th May 2023, <http://www.caac.gov.cn/XXGK/XXGK/MHGZ/201605/t20160530_37632.html>

33 *Administration Measures of Air Transport Itineraries of Electronic Ticket (Interim)*, STA & CAAC, 9th July 2008, viewed 19th May 2023, <http://www.gov.cn/gongbao/content/2008/content_1157921.htm>

34 *Issues on International Flights Using Air Transport Itineraries of Electronic Ticket*, STA & CAAC, 30th August 2012, viewed 19th May 2023, <http://www.shuiwu114.com/zcfgkShow/43691.aspx>

35 *EU-China Bilateral Agreement*, EASA, 3rd September 2020, viewed 31st May 2023, <https://www.easa.europa.eu/en/document-library/bilateral-agreements/eu-china#group-easa-downloads>

36 According to the BASA/TIP, certain certificates are subject to automatic acceptance while others are subject to validation. If a European aeronautical product has non-significant major changes and major repairs, its design certificate is subject to automatic acceptance, during which the validating authority recognises and accepts the certification authority's certificates without any technical investigation or validation exercise. For validated certificates, the validating authority grants a certificate for a foreign civil aeronautical product through a process implying a reduced level of involvement compared with an exclusive, full and in-depth examination of the design or design change. *EASA-CAAC Technical Implementation Procedures (TIP) for Airworthiness and Environmental Certification*, EASA, 3rd September 2020, viewed 31st May 2023, <https://www.easa.europa.eu/en/document-library/bilateral-agreements/eu-china#group-easa-downloads>

providers to operate itinerary printing software and validation website services.

- Accelerate the implementation of the LOI validation based on the BASA/TIP and simplify the airworthiness approval processes between the EU and China.

3. Increase the Efficiency of Airspace Utilisation in China 7

Concern

Congested airspace in China—caused by both limited air routes and a lack of data exchange/communication, in conjunction with inefficient air traffic management (ATM)—leads to additional costs, longer flying times and increased environmental damage for air carriers, while restricted access to low-altitude airspace further hinders the development of the industry.

Assessment

The rapid increase in air traffic demand globally calls for further development of ATM organisations, operational concepts, systems, human resources and procedures, as well as civil-military cooperation, in order to further improve services and increase safety, efficiency and environmental performance. In view of traffic hotspots, as well as EU-wide regulatory developments regarding all these aspects, considerable experience has been built up in Europe, which—while it may not be directly transferrable to China—can serve to accelerate the development of China's aviation industry, especially in the context of achieving significant air traffic recovery following the country's lifting of COVID-19-related travel restrictions.

China has been investing heavily in the expansion of its ATM systems to support the rapid growth in air travel. To allow airports to reach their full capacities, many construction and expansion projects are being carried out at an accelerated pace throughout the country.

However, different types of systems are being implemented in different projects, making it increasingly challenging to achieve seamless interoperability and data exchange between them. This has been compounded by insufficient ability to centralise ATM data or utilise concepts such as big data, despite the early implementation of the Central Air Traffic Flow Management (C-ATFM) system. This represents a significant missed opportunity to study ways to improve the efficiency of air traffic flows in China and increase the capacity of airport resources, as well as to better utilise airspace.

If dataflow is the bloodstream of ATM systems, then having an interoperable data exchange and information management platform would form a critical vein, linking every system and sub-system within the ATM ecosystems. A well-connected infrastructure would unlock huge potential in operational concepts to improve airspace congestion. For instance, better air traffic flow management coordination could be achieved; landing and take-off sequences dynamically exchanged between airports and transmitted across different system platforms; aeroplane separation safely reduced to increase airspace capacity; and coordination between heterogeneous ATM systems could be more seamless, thereby reducing the workload of air traffic controllers.

It is positive that the CAAC has set out a roadmap for smart development of civil aviation,[37] and that there are ongoing actions to push development, for example, the publication of a series of regulations on Smart Civil Aviation Data Management.[38] To leverage the expertise and intelligence from both the EU and China, it is recommended to engage in more cooperation and international exchanges to support better data usage under proper governance and to ensure the consistency of regulations among different regions.

The *14FYP for Civil Aviation Development in China* includes regional projects, such as the Greater Bay Area, which calls for harmonisation of ATM across Guangzhou, Shenzhen, Zhuhai, Hong Kong and Macau.[39] These regional projects require a re-planning of ATM that spans different government administrations, allowing for efficient ATM concepts, smooth coordination and effective operational procedures. They also require flow management tools that can optimise airspace efficiency and runway capacities of different airports.

To facilitate this process, the EU and China need to

37 *Notice on issuing the Roadmap for Smart Development of Civil Aviation by the CAAC*, CAAC, 21st January 2022, viewed 8th May 2023, <http://www.caac.gov.cn/XXGK/XXGK/ZCFB/202201/t20220121_211212.html>

38 *CAAC issued a Series of Regulations on Smart Civil Aviation Data Management*, CAAC, 5th January 2022, viewed 8th May 2023, <http://www.caacnews.com.cn/1/1/202201/t20220105_1337422.html>

39 *The 14th Five-year Plan for Civil Aviation Development in China*, CAAC, 14th December 2021, viewed 11th May 2023, <http://www.caac.gov.cn/XXGK/XXGK/FZGH/202201/t20220107_210798.html>

engage in long-term cooperation on ATM modernisation plans. This would enhance cooperation between service providers and industries in the EU and China, while also encouraging the adoption of common standards and the sharing of best practices.

In the meantime, to improve controllers' career planning, professional development and training, a working-level partnership between the ATM Bureau of the CAAC and leading European Air Navigation Service Providers should be implemented. Integration of civil/military and international/domestic airspace and routing would also help increase the flexibility and punctuality of flights, and provide room for future growth in aircraft movements. Being able to fly the shortest routes, without having to circumnavigate restricted airspace, has clear implications on both costs and time, as well as the environment, as suggested in the report, *In for the Long Haul: Developing a Sustainable Operating Environment for Airlines in China*, released by the European Chamber in 2020.[40]

Another issue that requires improvements to China's ATM is the rapid development of the unmanned aircraft systems (UAS) industry, which has exacerbated safety and security challenges. Public safety incidents and airspace conflicts between UAVs and civil transport aircraft are not uncommon. It is therefore recommended that the Chinese authorities safeguard civil manned air traffic while promoting UAS usage. From an industry perspective, UAS traffic management (UTM) and the insertion of UAS into civil airspace should be subjects of future research in order to optimise the usage of airspace by different stakeholders while maintaining and further developing civil air traffic safety and capacity.

In addition, the efficiency of low-altitude airspace, which is the main area for general aviation activities, has scope for improvement. The use and management of China's low-altitude airspace follows the same approach as for medium and high-altitude airspace in terms of approval and control, leading to all low-altitude airspace flight activities being subject to approvals, which largely restricts industry development.

As per the working group's understanding of China's low-altitude airspace reform, one of the main steps can be synthesised as follows:

- The *14FYP* mentions that the reform of low-altitude airspace management should be effectively promoted in terms of airspace classification, as well as low-altitude air route network planning, and supervision and management. However, it seems there is no clear roadmap that leads to low-altitude airspace opening.

Hunan, Jiangxi, Anhui, Sichuan and Hainan provinces have already successively launched experimental projects of low-altitude airspace, and designated airspace at altitudes below 3,000 metres in their territories to implement classification management. It is therefore of paramount importance for European companies operating in the helicopter business in China to understand these projects, how they are practically applied on a day-to-day basis for helicopter operations, and what their impact is on the development of helicopter sales, flying hours and missions in China. This will help them to anticipate the market's development, and allow them to bring their best practices and know-how to jointly grow China's general aviation market safely, smartly and sustainably.

Recommendations

- Enhance the utilisation of new data exchange technologies and systems interoperability in the aviation sector to ease airspace congestion and improve efficiency in the short term.
- Develop innovative operational concepts, procedures and human resources to maintain a high level of safety of ATM services, while increasing flexibility, capacity and service orientation, and reducing the environmental impact of flying.
- Utilise EU and China expertise to implement a nation- and system-wide information management-based data communication platform with a centralised pool of data.
- Increase EU-China cooperation in the field of new applications and operational concepts covering airspace design, flow management and interoperable flight management between flight information regions.
- Improve aircraft arrival capacity at major airports by implementing distance-based and time-based separation.
- Enhance exchanges between the European and Chinese authorities and industries to enable harmonisation of UAV standards and regulations, and integration of ATM and UTM.
- Increase communication and explore a new framework

40 *In for the Long Haul: Developing a Sustainable Operating Environment for Airlines in China*, European Union Chamber of Commerce in China, 2nd June 2020, viewed 8th May 2023, <https://www.europeanchamber.com.cn/en/press-releases/3228>

that will comply with both EU and Chinese requirements for data management to improve collaboration on data-driven applications and platforms.

- Strengthen exchanges with departments/organisations in charge of both low-altitude airspace reform and the existing pilot zones to provide a better understanding of the helicopter market and development trends in helicopter operations.

4. Accelerate the Deployment of a Sustainable Ecosystem in China and Europe by Deepening Business-driven Actions Related to Decarbonisation of the Aviation Industry

Concern

Although China and Europe have both committed to the Paris Agreement, differences in political strategies for reaching the targets set out in this agreement constitute a barrier on route to the overall goal.

Assessment

The end of China's 'zero-COVID' policy has enabled direct contact through the re-establishment of international travel, presenting an opportunity to re-invigorate the dialogue on sustainable aviation and increase the pressure on all players in order to build a greener aviation industry. However, certain issues between the EU and China have evolved in such a way that existing cooperation schemes have been negatively impacted. These issues include the position of the EU regarding China as "a competitor, rival and partner",[41] and the evolution of the Chinese industry and subsequent political moves to protect it. Negotiations on the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) are still ongoing between the ICAO and the Chinese authorities.

In order to realise emission reduction commitments while accommodating the growing demand for flights, the aviation industry needs to develop climate/energy scenarios for China and Europe that take into consideration the evolution of air traffic, energy pathways, competition with other industries for access to renewable energy, regulations and the ecosystem in general. Through such cooperation, both the EU and China can maximise the benefits of a decarbonised aviation industry.

The use of SAF is a common short-term strategy in the EU and China on the path to achieving a sustainable aviation industry. Promising cooperation initiatives have already been launched to create a SAF industry in China for the benefit of both OEMs and airlines.[42] EU-China cooperation on SAFs has also already taken place, with test flights successfully carried out in Shanghai in 2012. Unfortunately, because Chinese standards are not compatible with international standards, the cooperation was suspended. In 2022, Airbus worked with Sinopec and Chinese airlines to pilot the use of aviation fuel blended with SAF in delivery flights – when a plane is being transported to a location without either cargo or passengers. However, China's domestic production volume of SAF remains low, and it is challenging for airlines to absorb the high production costs. Nevertheless, following the launch of the CAAC roadmap for sustainable aviation,[43] more opportunities now exist for more commercial flights to utilise SAF during the *14FYP* period. In the medium- to long-term, the development and industrialisation of power-to-liquid technologies and hydrogen will be key to ensuring decarbonisation of the aviation industry. It is therefore imperative that bilateral discussions on the promotion of industrialisation and use of new fuels are relaunched.

With regard to joint green aviation research, the EU and China have launched a number of coordination and support actions (CSA) since 2005, as well as several successful research and innovation actions, which have benefited both Chinese and European industries. The long-term CSA within the Seventh Framework Programme, the Greener Aeronautics International Networking 2 (GRAIN2),[44] under Horizon 2020, has now closed and there are no other joint calls scheduled for the near future. It is therefore recommended that the EU and China launch new cooperation schemes on the standardisation and certification of new technologies, products and services for green aviation development.

41 *"China is a partner, competitor and rival": Interview by Foreign Minister Heiko Maas with Redaktionsnetzwerk Deutschland*, German Federal Foreign Office, 12th July 2020, viewed 26th April 2023, <https://www.auswaertiges-amt.de/en/newsroom/news/maas-rnd/2367552>

42 *The Business Aviation Sustainable Aviation Fuel Alliance (SAF Alliance) has released new SAF guidelines*, Tanpaifang, 27th August 2020, viewed 26th April 2023, <http://www.tanpaifang.com/tanguwen/2020/0827/73530.html>

43 *The 14th Five-year Special Plan for Green Development of Civil Aviation*, CAAC, 21st December 2021, viewed 26th April 2023, <http://www.caac.gov.cn/XXGK/XXGK/FZGH/202201/t20220127_211345.html>

44 *Coordination and support action: Seventh Framework Programme – GRAIN2*, European Commission, 31st March 2015, viewed 8th May 2023, <https://trimis.ec.europa.eu/sites/default/files/project/documents/10294/final1-grain2-m36-final-report.pdf>

Recommendations

- Create a trusted and long-term communication channel between the EU and China, dedicated to the development of sustainable aviation.
- Cooperate on scenarios to prepare for the future of decarbonised aviation, including but not limited to SAF, power-to-liquid technology and hydrogen.
- Create a detailed policy framework to enhance the use of SAF and other sustainable fuel in commercial flights.
- Relaunch projects on industrialisation of alternative fuels including power-to-liquid technologies and hydrogen by creating concrete-use cases.
- Leverage existing and previous cooperation frameworks, such as Horizon Europe, to implement concrete bilateral projects on sustainable aviation technology.

Abbreviations

14FYP	14th Five-year Plan
ATM	Air Traffic Management
BASA	Bilateral Aviation Safety Agreement
CAAC	Civil Aviation Administration of China
CATA	China Air Transport Association
CORSIA	Carbon Offsetting and Reduction Scheme for International Aviation
CRS	Computer Reservation System
EASA	European Union Aviation Safety Agency
ETS	Emissions Trading Scheme
EU	European Union
GDS	Global Distribution System
ICAO	International Civil Aviation Organization
LOI	Level of Involvement
MOFCOM	Ministry of Commerce
NDRC	National Development and Reform Commission
OEM	Original Equipment Manufacturer
PCR	Polymerase Chain Reaction
SAF	Sustainable Aviation Fuel
STA	State Taxation Administration
TIP	Technical Implementation Procedure
UAS	Unmanned Aircraft System
UAV	Unmanned Aerial Vehicle
UTM	UAS Traffic Management
WTO	World Trade Organization

European Chamber
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Construction Working Group

Key Recommendations

1. Accelerate the Decarbonisation of the Built Environment and Support the Construction of Zero-carbon Buildings 2

- Turn the voluntary green building labelling scheme into a mandatory one, ensuring coherence and compatibility with international standards.
- Develop certified databases and tools to assess building sustainability performance and support the industry's transition to a carbon-neutral, more resilient future.
- Include life-cycle costing approaches in public procurement procedures and increase the weight of energy efficiency performance on procurement scorecards.
- Ensure equal access for European investments and technologies in China's construction sector.
- Involve European companies in the implementation process for green building standards / calculation of carbon emission standards.
- Develop knowledge-sharing platforms, practical training of building practitioners and education programmes, drawing on the expertise of European companies and institutions.
- Actively promote zero-carbon building renovation as a way to reach carbon reduction targets and boost local economies

2. Allow European Companies Greater Access to the Bidding Process for Government Procurement Work 5

- Join the World Trade Organization's Government Procurement Agreement to allow foreign companies greater access to the bidding process for government procurement work, and ensure that construction services are covered.

3. Facilitate Market Access for European Planning, Architecture and Design, Construction, Manufacturers and Real Estate Service Providers to Enable Fair Competition and Encourage Expertise Sharing 14

- Foster mutual recognition of degrees, certificates and experience to further level the playing field for foreign-invested construction and design firms.
- Allow qualification exams to be conducted in English to offer fair opportunities for foreign professionals.

4. Continue to Ensure a Fair, Balanced and Open Market for Foreign Investment in the Real Estate Sector 14

- Issue further clarifications or implementation rules regarding *Circular No. 122* and the Qualified Foreign Limited Partnership Fund Investment to create a fair market environment for foreign companies investing in the Chinese real estate market.
- Facilitate market access of foreign-invested real estate enterprises to absorb immovable assets from illiquid or insolvent Chinese developers.

Heating Sub-working Group Key Recommendations

1. Update the Standard for Energy Efficiency of Domestic Gas Appliances and Introduce National Policies to Promote the Usage of Full Premixed Condensing Gas Wall-hung Boilers with Level I Energy Efficiency 3

1.1 Update the Energy Efficiency Standard and Refine Requirements for Domestic Gas Appliances

- Update the energy efficiency standards for domestic gas appliances.
- Refine the efficiency requirements for domestic gas appliances.
- Establish energy efficiency requirements for major components while keeping the overall requirements coherent.
- Abandon outdated energy efficiency evaluation methods and implement a standardised carbon efficiency evaluation system alongside primary energy to compare the thermal efficiency rates of different primary energies and the wiring system efficiencies of various heating products.

1.2 Issue Policies to Promote Energy-saving and Low-emission Gas Boiler Technologies

- Issue policies for promoting energy-saving and low-emission technologies, starting in key cities and regions.
- Issue policies to encourage consumers to buy full premixed condensing boilers for the first heating installation in a building.
- Encourage research projects on full premixed condensing technology, including its application, energy-saving and emission-reducing effects.

2. Improve Requirements for the Installation and Maintenance of Heating Boilers, and Educate Consumers on the Need for Regular Maintenance and Replacement 3

2.1 Strengthen the Standardisation and Management of the Installation of Heating Boilers

2.1.1 Improve the Installation Quality Standards for Heating Boilers and Strengthen the Standardisation and Management of Enterprises and Personnel Responsible for Installation

- Formulate and implement regulations for the installation of heating boilers.
- Emphasise and introduce the use of water treatment products for new installations.
- Improve the training for personnel and enterprises responsible for installation and establish a vocational certification system.

2.1.2 Adjust the Content and Cycle of Product Tests for Local Market Access based on the China Compulsory Certification (CCC) Policy

- Reduce repetitive test items reasonably for local market access and extend the test cycle.

2.2 Strengthen Consumer Awareness of the Need for Effective Maintenance of Heating Boilers

- Strengthen effective supervision of regular maintenance of heating boilers and educate consumers accordingly.
- Issue regulations for periodic maintenance of heating boilers to ensure their efficient and safe operation.
- Improve awareness of overall heating system safety, as well as service employee and user knowledge of the benefits of using water treatment products in heating systems.

- Encourage factory and gas management departments to work together to raise awareness of the requirements for regular maintenance of heating boilers

2.3 Cultivate Consumers' Awareness of the Need for Timely Removal and Replacement of High Energy Consumption or End-of-Life Heating Boilers

- Cultivate consumers' awareness of the need for timely removal and replacement of heating boilers with high energy consumption and emissions or those at the end of their service life.
- Assist users in ensuring regular maintenance and repairment of heating boilers, providing guidance to end-users and raising gas safety awareness.
- Formulate policies to encourage and support consumers to replace low-efficiency and high-energy-consumption heating boilers that have reached the end of their service life with more efficient and eco-friendly full premixed condensing gas wall-hung boilers.

3. Research and Discuss the Role of Hydrogen-mixed Technology in the Laying of Gas Pipeline Networks for Domestic Appliances in China 2

- Set up pilot areas, build demonstration projects and promote the concept of zero-carbon heating via hydrogen.
- Draft related standards and regulations to guide the standardised development of products and industries.
- Encourage the creation of technical standards, such as manufacturing standards and standards for the installation and inspection of hydrogen blending and pure hydrogen combustion equipment.

Introduction to the Working Group

The Construction Working Group is the voice of European, world-leading real estate investors, land developers, architects, engineers, project managers, main contractors, suppliers, manufacturers, certification bodies and other professional consultants specialising in the construction industry operating in China.

The Construction Working Group was established in 2003 to represent European construction service providers (CSPs) operating in China. In 2016, the European Heating Industry Desk became a sub-working group of the Construction Working Group.

The main objective of the Construction Working Group is to engage in dialogue with key stakeholders, including the Ministry of Housing and Urban-rural Development (MOHURD), the National Development and Reform Commission (NDRC), the Ministry of Land and Natural Resources, the Ministry of Industry and Information Technology (MIIT), the Ministry of Science and Technology, European Union (EU) institutions, and construction-related organisations and associations. This cooperation provides feedback on and support for Chinese construction policies, focussing on sustainable urban development and promoting investment in high-quality, energy-efficient buildings.

Recent Developments

Market Performance in 2022

The construction sector in China includes three core segments: residential property, commercial property and infrastructure. In 2022, the overall output value of China's construction sector grew to a new high of Chinese yuan (CNY) 31.2 trillion, an increase of six per cent year-on-year (y-o-y). [1]

By segment, infrastructure was the only one showing positive growth, boosted by policy support, while the residential property market fell y-o-y due to lower housing demand, and the commercial property market

1 *Construction output value in China from 2011 to 2022*, Statista, February 2023, viewed 4th April 2023, (subscription required) <https://www.statista.com/statistics/279244/construction-output-value-in-china/>

fell due to slower investment activities. In 2022, investment in infrastructure climbed by 9.4 per cent,[2] while investment in property development declined by 10 per cent y-o-y. The floor area of housing projects and new housing project starts fell by 7.2 per cent and 39.8 per cent y-o-y respectively,[3] indicating a depression in housing construction activities.

Regulatory tightening to reduce excessive credit leverage also contributed to the slowdown in property sector activities, constraining investments, land purchases and new construction projects. COVID-related uncertainty and concerns over unfinished presold homes also hit market demand.[4]

Highly indebted developers faced pressure to deleverage and constrained channels for short-term funds, resulting in credit defaults and missed payments across the industry in the summer of 2022. Surviving developers were then asked to guarantee the delivery of unfinished projects to ensure mortgage accounts were not halted and to prevent systemic risks.[5] As a result, while the floor area of completed housing projects in 2022 fell by 14.3 per cent y-o-y,[6] the outlook of housing project deliveries was more encouraging by year end.

Infrastructure construction, on the contrary, boosted the sector and offset the weaknesses of the property market. Investment in infrastructure (excluding power, heat, gas and water production and supply industries) increased by 9.4 per cent y-o-y. This included an increase in investment in water conservancy management of 13.6 per cent y-o-y, public facilities management of 10.1 per cent, road transportation by 3.7 per cent, and railway transportation was up 1.8 per cent.[7]

By the end of 2022, China's urbanisation rate reached 65.2 per cent, 0.5 percentage points higher than 2021.[8] Demographic shifts have contributed to the fragmentation of the Chinese housing market and diverging house prices across different tiers of cities. First-tier cities like Shanghai have large housing stocks that are both expensive and in high demand, while demand for housing in second- and third-tier cities has been eroding. In 2022, to stimulate the market, the People's Bank of China and other authorities lowered mortgage interest rates, offered tax breaks and eased home-purchase restrictions. However, these measures had limited impact on reviving buyer demand.[9] Both housing sales and prices have continued to fall, with prices back to levels last seen at the start of 2021, as over-supply remains a common issue for many cities.[10] Moody's has predicted that China will experience a difficult transition from COVID-related economic stress as the property sector is unlikely to regain its role as a major growth driver in 2023.[11]

A Greener, Smarter and Safer Path Towards Carbon Neutrality

Based on the life-cycle assessment (LCA) method,[12] the built environment worldwide generates 40 per cent of annual global carbon dioxide (CO_2) emission. Of that, building operations are responsible for 27 per cent, and infrastructure materials and construction (concrete, steel and aluminium) for 13 per cent.[13] China's rapid urbanisation in recent decades has boosted its land use, massively expanding construction activities and increasing its CO_2 emissions. A 2018 research paper found that China accounted for 23 per cent of direct CO_2 emissions, 42 per cent of indirect CO_2 emissions, and 41 per cent of global construction activities CO_2

2 Zhang Hongpei, *China ramps up infrastructure construction at year's start, with more special-purpose bonds in pipeline, Global Times*, 30th January 2023, viewed 20th June 2023, <https://www.globaltimes.cn/page/202301/1284473.shtml>

3 *National Real Estate Development and Sales in 2022*, National Bureau of Statistics (NBS), 18th January 2023, viewed 4th April 2023, <http://www.stats.gov.cn/english/PressRelease/202301/t20230118_1892298.html>

4 *Navigating Uncertainty, China's Economy in 2023*, World Bank, 8th December 2022, viewed 6th April 2023, <https://thedocs.worldbank.org/en/doc/b8644c8a79ee3376b2cd3c16a9f90cc7-0070012022/original/CEU-December-2022-ENG.pdf>

5 *Policies to guarantee project delivery and stablise people's livelihood out by multi-ministries*, MOHURD, 23rd August 2023, viewed 19th June 2023, <https://www.mohurd.gov.cn/xinwen/gzdt/202208/20220823_767672.html>

6 *National Real Estate Development and Sales in 2022*, NBS, 18th January 2023, viewed 4th April 2023, <http://www.stats.gov.cn/english/PressRelease/202301/t20230118_1892298.html>

7 *Investment in Fixed Assets from January to December 2022*, NBS, 18th January 2023, viewed 4th April 2023, <http://www.stats.gov.cn/english/PressRelease/202301/t20230118_1892297.html>

8 *National Economy Withstood Pressure and Reached a New Level in 2022*, NBS, 17th January 2023, viewed 6th April 2023, <http://www.stats.gov.cn/english/PressRelease/202301/t20230117_1892094.html>

9 *Navigating Uncertainty, China's Economy in 2023*, World Bank, 8th December 2022, viewed 20th April 2023, <https://thedocs.worldbank.org/en/doc/b8644c8a79ee3376b2cd3c16a9f90cc7-0070012022/original/CEU-December-2022-ENG.pdf>

10 Liu, Zongyuan Zoe & Stemp, Daniel, *The PBoC Props Up China's Housing Market*, Council on Foreign Relations, 21st March 2023, viewed 20th April 2023, <https://www.cfr.org/blog/pboc-props-chinas-housing-market>

11 *China property sales will continue to fall this year, adding to debt pressures on local governments and weaker banks: Moody's, SCMP,* 16th February 2022, viewed 20th April 2023, <https://www.scmp.com/business/article/3210341/china-property-sales-will-continue-fall-year-adding-debt-pressures-local-governments-and-weaker>

12 LCA is the method measuring a building's generated environmental impacts throughout its life cycle. The various stages of a typical life cycle as defined in LCA are: the production and construction stages; the use stage; the end-of-life stage and the externalised impacts beyond the system boundary.

13 *Why the built environment?,* Architecture2030, 2022, viewed 20th April 2023, <https://architecture2030.org/why-the-building-sector/>

emissions.[14]

Despite a rebound of CO_2 emissions in early 2021, China's emissions were relatively flat in 2022, dropping by 23 metric tonnes or 0.2 per cent y-o-y.[15] Weaker economic growth, declining construction activity and strict COVID-19 containment measures led to reductions in industrial and transport emissions; while the decline of industrial processes offset the growing emissions from coal combustion. China's rate of growth in infrastructure construction is falling, which, coupled with the slowdown in the property sector, means demand for building materials such as cement, steel and aluminium is likely to fall in the long run. However, in the short- to medium-term, the country still needs to strengthen its infrastructure construction.

Technology breakthroughs in emission reduction and carbon re-use in the construction sector, combined with policy support, will perform a pivotal role in achieving the country's zero-emission pledge. In January 2022, the MOHURD outlined its 14th Five-year Plan (14FYP),[16] aiming to further push the construction industry onto a greener, smarter and safer path.[17]

The MOHURD also released the *General Specification for Building Energy Conservation and Renewable Energy Utilisation*,[18] effective from 1st April 2022, to improve standards relating to engineering construction. This mandatory code covers specifications for new buildings, expanded and renovated buildings, and existing buildings. It also covers renewable energy systems, facilitating energy-saving designs and energy-efficient buildings. Its implementation will not only help to realise China's 2060 sustainability targets, but promoting a renovation market will also boost local manufacturing, employment and regional gross domestic product.

In terms of technology, carbon capture, utilisation and storage (CCUS) is a vital part of emissions reduction in the construction sector. CCUS was first promoted in China in 2013 by the NDRC for experimental demonstration in thermal power, coal chemical, cement and steel industries.[19] Although utilised since in many projects, nationwide CCUS remains at an experimental stage. China lags the EU and United States (US) in some key technological know-how, for instance in technology integration, subsea storage solutions and industrial applications. By 2050, industry experts expect CCUS to be more widespread in the Chinese power, chemicals, hydrogen and fertiliser sectors, as well as the aforementioned, at a scale needed to achieve carbon neutrality.

Lastly, as reducing carbon emissions is likely to increase the costs along the entire construction supply chain, carbon pricing and trading mechanisms will be critical. Therefore, the working group welcomes the announcement that the cement and steel sectors will be covered in China's national emission trading scheme (ETS) during the 14FYP period.[20] Meanwhile, as the European Chamber's report on carbon neutrality unveils, although European business consider China's 2030 peak carbon and 2060 carbon neutrality targets (30/60 Goals) and believe CO_2 emissions will be mitigated, other harmful emissions may be neglected and allowed to get worse. The report recommends further actions are needed to ensure decarbonisation and environmental protection than focussing on CO_2 emissions alone.[21]

Coordinated Regional Development to Pursue Common Prosperity

Regional development stands out as one of the

14 Huang, Lizhen et all, *Carbon emission of global construction sector, Renewable and Sustainable Energy Reviews*, vol. 81, no. 2, January 2018, pp. 1906–1916, viewed 20th April 2023, <https://www.sciencedirect.com/science/article/abs/pii/S1364032117309413>; Cheng, Min et all, *Measuring CO_2 emissions performance of China's construction industry: A global Malmquist index analysis, Environmental Impact Assessment Review*, vol. 92, January 2022, viewed 20th April 2023, <https://www.sciencedirect.com/science/article/abs/pii/S0195925521001232>

15 *CO_2 Emissions in 2022*, International Energy Agency, March 2023, viewed 20th April 2023, <https://www.iea.org/reports/co2-emissions-in-2022>

16 *Circular of China's Development Plan for Construction Sector in the 14th Five-year Plan*, State Council, 19th January 2022, viewed 20th April 2023, <http://www.gov.cn/zhengce/zhengceku/2022-01/27/content_5670687.htm>

17 The concept of 'green building', which plays a significant role in resource conservation, environment, and public health protection, was introduced to China in the 1980s following the 1970s energy crisis. China has made remarkable achievements in formulating standards, engineering design and construction over the past four decades. Between 1986, when the MOHURD published the *Energy-saving Design Standards for Civil Buildings*, and 2019, a total of 199 green building policies were issued.

18 *General Specification for Building Energy Conservation and Renewable Energy Utilisation*, MOHURD, 13th October 2021, viewed 31st May 2023, <https://www.mohurd.gov.cn/gongkai/zhengce/zhengcefilelib/202110/20211013_762460.html>

19 *Notice of National Development and Reform Commission on Promoting Carbon Capture, Utilisation and Storage Pilot and Demonstration*, NDRC, 9th May 2013, viewed 20th April 2023, https://www.globalccsinstitute.com/archive/hub/publications/102106/notice-national-development-reform-commission-ndrc.pdf; <http://www.gov.cn/zwgk/2013-05/09/content_2398995.htm>

20 *Steel, cement, petrochemicals and other industries will be included in China's ETS, CCTV News*, 13th January 2021, viewed 19th June 2023, <https://baijiahao.baidu.com/s?id=1688774677726994359&wfr=spider&for=pc>

21 *Carbon Neutrality: The Role of European Business in China's Race to 2060*, European Union Chamber of Commerce in China, 25th May 2023, viewed 19th June 2023, <https://www.europeanchamber.com.cn/en/publications-archive/974/Carbon_Neutrality_The_Role_of_European_Business_in_China_s_Race_to_2060>

major components of China's 14FYP.[22] Amid its efforts to pursue 'common prosperity', China aims for increasingly balanced development among its regions, working toward developing the West, revitalising the northeastern region and accelerating the modernisation of the East. As a result, the NDRC approved a total of 109 fixed-asset investment projects in late 2022, with a combined investment value of 1.48 trillion yuan, covering transportation, energy and water conservancy.[23] With these fresh efforts, the northeastern region will strengthen the high-quality development of independent manufacturing and high-tech innovations.

China's 14FYP also emphasises the development of urban agglomerations, putting forward the strategy of "two horizontals and three verticals" to upgrade five urban clusters, i.e., Beijing-Tianjin-Hebei, the Yangtze River Delta, the Pearl River Delta, Chengdu-Chongqing and the middle reaches of the Yangtze River.[24]

The New Implementation Plan for Coordinated Development of Industries in Beijing-Tianjin-Hebei Region (Jing-Jin-Ji), unveiled in May 2023,[25] aims to improve China's technological self-reliance and competitiveness in global supply chains, prioritising the development of emerging sectors such as integrated circuits, network security and power equipment, and biopharmaceuticals. However, a connected industrial chain for the green economy among the three regions has yet to be formed, and no efficient mechanism for coordinated development has been set up, delaying further integration of the area.

As 2023 marks the fifth anniversary of the Yangtze River Delta's integrated development becoming a national strategy, the region plans to speed up integration among different industrial chains and the surrounding economic belts. The Shanghai municipal and the Jiangsu, Zhejiang and Anhui provincial governments reached an agreement in 2023 to build the region into a major hub for the national computing power network. With optimised allocation of computing power and high-speed data transmission networks under the integration plan, the region will be endowed with stronger capacity for data processing.[26]

In October 2021, the State Council issued a master plan calling for the Chengdu-Chongqing Economic Circle to become China's fourth economic growth cluster by 2035.[27] The plan focusses on infrastructure development, including upgrading the two cities' international airports and the regional airport network, as well as developing high-speed rail connections, highway network expansions in underdeveloped areas, and the upper Yangtze River's shipping capacity. Also as the European Chamber's *Southwest China Position Paper* notes, the further easing of restrictions in policies would allow private foreign companies, in particular small and medium-sized enterprises (SMEs), to contribute to Chengdu's economic development.[28]

Key Recommendations

1. Accelerate Decarbonisation of the Built Environment and Support the Construction of Zero-carbon Buildings

2

Concern

Procedural and legal inefficiencies prevent the deployment of new technologies and alternative building materials, hindering both the construction sector and China from meeting their emission reduction targets.

Assessment

Between the State Council's first regulation related to building energy conservation in 1986 and the *Green Label Management Scheme* published by the MOHURD in January 2021,[29] technical criteria,

22 *Outline of the People's Republic of China 14th Five-year Plan for National Economic and Social Development and Long-range Objectives for 2035*, National People's Congress (NPC), 12th March 2021, viewed 20th April 2023, <http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm>

23 Lin, Xiaoyi & Shan, Jie, *Encouraged by Xi's words, Northeast China explores Chinese modernization with fresh efforts for revitalization, Global Times*, 1st March 2023, viewed 20th June 2023, <https://www.globaltimes.cn/page/202303/1286479.shtml>

24 *Outline of the People's Republic of China 14th Five-year Plan for National Economic and Social Development and Long-range Objectives for 2035*, NPC, 12th March 2021, viewed 20th April 2023, <http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm>

25 *New round of key platforms for Jing-Jin-Ji industrial cooperation released*, State Council, 30th May 2023, viewed 19th June 2023, <https://www.gov.cn/lianbo/difang/202305/content_6883726.htm>

26 *New outlook for Yangtze River Delta, joint efforts for new economic track, Xinhua*, 8th June 2023, viewed 19th June 2023, <http://www.news.cn/fortune/2023-06/08/c_1129678121.htm>

27 *Outline of the Plan for the Construction of the Chengdu-Chongqing Region Two-City Economic Circle*, State Council, 21st October 2021, viewed 18th February 2022, <http://www.gov.cn/zhengce/2021-10/21/content_5643875.htm?mc_cid=859f2e0410&mc_eid=bef9c754ec>

28 *Southwest China Position Paper 2021/2022*, European Union Chamber of Commerce in China, 20th April 2022, viewed 20th June 2023, <https://www.europeanchamber.com.cn/en/publications-archive/971/Southwest_China_Position_Paper_2021_2022>

29 *Green Label Management Scheme*, MOHURD, 8th January 2021, viewed 20th April 2023, <http://www.gov.cn/zhengce/zhengceku/2021-01/17/5580528/files/6f59e30c120043da8eb221f3ab18a665.pdf>

assessment standards and grade setting have improved, which is helping to guide the industry towards carbon neutrality.[30] However, the procedural and legal landscape is fragmented, with more than 10 standards used for assessing different types of buildings at various stages of the construction process. At the same time, the application of green-building labels remains voluntary.[31] To decarbonise the built environment and the construction of green buildings faster and more efficiently, moving from a voluntary system to one based on mandatory standards would be preferable.

Green building design and development require a thorough understanding of the different parameters influencing the overall performance of a building. Buildings consume resources and energy, and emit greenhouse gases, at each stage of their life cycles. In Europe, open databases and tools to calculate the environmental performance of building elements and buildings uniformly are available for industry professionals, certification bodies and other stakeholders.[32] Thanks to data sharing and industry cooperation, inefficiencies can be avoided; lessons learned from other projects can be applied to increase time and cost efficiency, and progress measured consistently. Furthermore, identifying and calculating energy consumption and emission data is necessary to formulate effective policy interventions. Therefore, the working group recommends that the relevant Chinese authorities develop databases and tools to support the industry's transition to a low-carbon, more resilient future. Including life-cycle costing approaches in public procurement procedures and increasing the weight of energy-efficiency performance on procurement scorecards are also recommended.

The 14FYP encourages more widespread application and integration of new technologies, such as the Internet of Things, artificial intelligence and big data processing, in the construction sector. Such technologies can facilitate information collection, data analysis, real-time monitoring, early risk warning and decision-making assistance, which can not only help optimise construction processes and improve site safety but also raise the general quality of construction. The working group believes European companies' expertise and high-efficiency products align with China's 30/60 Goals and could greatly benefit China's ongoing development.

In addition, on 21st October 2021, the State Council issued the *Opinions on Promoting Green Development in Urban and Rural Construction* as a policy support to promote the development of zero-carbon buildings.[33] The ultimate goal is to have comprehensive green development in linked urban-rural constructions; and vigorous promotion of buildings with ultra-low energy, near-zero-energy consumption and zero-carbon emissions by 2035.

Decarbonising the sector will ultimately come down to finding and using greener and lighter materials, as more than 90 per cent of the construction industry's carbon emissions come from materials used. For instance, the steel industry alone burns more than a fifth of China's coal. Cement is another high-polluting sector in China because its production is coal-fuelled and energy-intensive.[34] Even though special preference is given to companies and products that meet environmental standards and a *National Recommended Catalogue of Energy-saving Technologies and Equipment for Industry* has been compiled,[35] there is no database of eco-friendly building materials that lists their environmental performance in a standardised way.

While the transition to green construction is gaining momentum in China, it is hampered by a lack of understanding among key players and decision-makers of sustainability and green building principles. Professional training in green building practices and technology is therefore essential to optimise the development of the industry.

Internationally, three major certification systems for green buildings were established in the 1990s, starting

30 Between the MOHURD publishing the *Energy-saving Design Standards for Civil Buildings* in 1986 and 2019, a total of 199 green building policies were issued: Wu, Z. et all, *Investigating the Dynamics of China's Green Building Policy Development from 1986 to 2019, International Journal of Environmental Research and Public Health*, January 2021, vol. 18, no. 1, p. 196, viewed 20th April 2023, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7795857/>

31 *Green Label Management Scheme*, MOHURD, 8th January 2021, viewed 20th April 2023, <http://www.gov.cn/zhengce/zhengceku/2021-01/17/5580528/files/6f59e30c120043da8eb221f3ab18a665.pdf>

32 *About TOTEM*, TOTEM Create | Evaluate | Innovate, 2023, viewed 20th April 2023, <https://www.totem-building.be/pages/about.xhtml#2.1>

33 *Opinions on Promoting Green Development in Urban and Rural Construction*, State Council, 21st October 2021, viewed 19th June 2023, <https://www.gov.cn/zhengce/2021-10/21/content_5644083.htm>

34 *The Chinese Companies Polluting the World More Than Entire Nations, Bloomberg News*, 25th October 2021, viewed 20th April 2023, <https://www.bloomberg.com/graphics/2021-china-climate-change-biggest-carbon-polluters/>

35 *Notice on the Announcement of the Fifth Batch of Green Manufacturing List*, MIIT, 16th October 2020, viewed 20th April 2023, <https://www.miit.gov.cn/zwgk/zcwj/wjfb/zh/art/2020/art_6dc9386121b945b3927fdcca5c79cd1b.html>

with the British Building Research Establishment Environmental Assessment Method in 1990, followed by the High Environmental Quality developed by the French in 1996 and finally, the Leadership in Energy and Environmental Design by the US Green Building Council in 1998.[36&37] European land developers, material suppliers and distributors, architects, engineers and project managers have extensive expertise and deep knowledge from working with such technical requirements. The working group, therefore, recommends that China develops knowledge-sharing platforms, practical training and education programmes in cooperation with and drawing on the expertise of European companies and institutions.

Recommendations

- Turn the voluntary green building labelling scheme into a mandatory one, ensuring coherence and compatibility with international standards.
- Develop certified databases and tools to assess building sustainability performance and support the industry's transition to a carbon-neutral, more resilient future.
- Include life-cycle costing approaches in public procurement procedures and increase the weight of energy efficiency performance on procurement scorecards.
- Ensure equal access for European investments and technologies in China's construction sector.
- Involve European companies in the implementation process for green building standards/calculation of carbon emission standards.
- Develop knowledge-sharing platforms, practical training of building practitioners and education programmes, drawing on the expertise of European companies and institutions.
- Actively promote zero-carbon building renovations as a way to reach carbon reduction targets and boost local economies.

36 Zeinal Hamedani, A., & Huber, F., 2012, *A Comparative Study of DGNB, LEED and BREEAM Certificate Systems in Urban Sustainability, The Sustainable City VII: Urban Regeneration and Sustainability* (WIT *Transactions on Ecology and The Environment*, vol. 155), vol. 1, pp. 121–132, viewed 20th April 2023, WIT Press ISSN 1743-3541 1, <https://www.witpress.com/Secure/elibrary/papers/SC12/SC12011FU1.pdf>

37 For more information on standards, please refer to the *Standards and Conformity Assessment Working Group Position Paper 2023/2024* on page 119.

2. Allow European Companies Greater Access to the Bidding Process for Government Procurement Work 5

Concern

Foreign-invested enterprises (FIEs) face many constraints when bidding for government procurement projects.

Assessment

China currently has two sets of laws governing public tendering: the Government Procurement Law (GPL) and the Tender and Bidding Law (TBL).[38&39]

After its accession to the World Trade Organization (WTO) in 2001, China committed to join the organisation's Government Procurement Agreement (GPA) "as soon as possible".[40,41&42] On 21st October 2019, China submitted its seventh offer (sixth revised offer) for accession to the agreement,[43] which included further commitments to open up market access to foreign companies. China currently has GPA observer status.

In this context, on 3rd December 2019, the NDRC proposed revisions to the TBL and invited public comments. These revisions are part of a broader effort by China to give a new look to its public procurement framework, which is now approaching a quarter of a century in age.[44]

38 Broadly speaking, the GPL covers central and sub-central government purchases. See: The Government Procurement Law, Standing Committee of the NPC, 29th June 2002, viewed 20th April 2023, <http://www.ccgp.gov.cn/zcfg/gjfg/201310/t20131029_3587339.htm>

39 The TBL regulates all state-owned enterprise tenders, in particular, large-scale infrastructure projects (such as in construction, aviation, shipping, engineering, architecture, transportation, power and water), as well as large-scale, privately invested projects for public interest (mainly joint ventures). See: Tender and Bidding Law, China.org.cn, 12th February 2011, viewed 20th April 2023, <http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/12/content_21908008.htm>

40 The GPA is a plurilateral agreement between 48 WTO member countries that have agreed to open up their non-defence public procurement markets to each other. Suppliers of each GPA member country can participate in the public procurement bids of other GPA member countries and be treated no less favourably than local bidders in the award of government contracts. However, out of these, 11 members are in the process of acceding to the Agreement (including China). See *Agreement on Government Procurement*, WTO, viewed 20th April 2023, <https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm>

41 Heilman Grier, Jean, *Do Open Markets Decrease China's Incentive to Join GPA?, Perspectives on Trade: Perspectives and Observations*, 2nd November 2017, viewed 20th April 2023, <https://trade.djaghe.com/?p=4414>

42 Wang, P., 2009, *China's accession to the WTO – challenges and the way forward, Journal of International Economic Law*, vol. 12, no. 3, pp. 663–706, viewed 20th April 2023, <https://academic.oup.com/jiel/article-abstract/12/3/663/817776>

43 *China Submits Revised Offer for Joining Government Procurement Pact*, WTO, 23rd October 2019, viewed 20th April 2023, <https://www.wto.org/english/news_e/news19_e/gpro_23oct19_e.htm>

44 Heilman Grier, Jean, *China: Revising Tendering and Bidding Law, Perspectives on Trade: Perspectives and Observations*, 13th April 2020, viewed 20th April 2023, <https://trade.djaghe.com/?p=6363>

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The Ministry of Finance (MOF) is examining how application of the GPL conflicts with the TBL, China's GPA accession and recent reforms in the country's procurement regime.[45] This is also in line with the Foreign Investment Law that took effect at the beginning of 2020.[46] The GPL "is much more closely aligned with GPA requirements than the TBL".[47]

The proposed revisions to the TBL by the NDRC could positively impact and lead to increased transparency and improved fairness in tendering activities, which would bring it more in line with GPA requirements.[48] This would help China pave the way towards fulfilling its WTO commitments. However, it remains to be seen how the revisions will be implemented, as foreign companies still face many issues in obtaining government procurement work. It is also worth mentioning that the longer China fails to accede to the GPA and open up its procurement markets, the more likely it is to end up in the crosshairs of the EU's International Procurement Instrument that came into force on 29th August 2022.[49]

The European Chamber's *Business Confidence Survey 2022* registered that 28 per cent of civil engineering and construction companies reported missing business opportunities due to market access restrictions and regulatory barriers, which include barriers to government procurement processes.[50] This data illustrates the importance of a timely accession of China to the GPA and an accurate revision of the TBL.

45 Government Procurement Law (Draft for Comments), MOF, 8th December 2020, viewed 20th April 2023, <http://www.gov.cn/hudong/2020-12/08/content_5567837.htm>; *Administrative Measures for the Management of Government Procurement Demand*, MOF, 10th May 2021, viewed 18th April 2023, <http://gks.mof.gov.cn/guizhangzhidu/202105/t20210510_3699403.htm>

46 Foreign Investment Law of the People's Republic of China, Investment Policy Hub, UNCTAD, 19th March 2019, viewed 18th April 2023, <https://investmentpolicy.unctad.org/investment-laws/laws/317/china-foreign-investment-law-of-the-people-s-republic-of-china>

47 Heilman Grier, Jean, *China: Revising Tendering and Bidding Law, Perspectives on Trade: Perspectives and Observations*, 13th April 2020, viewed 18th April 2023, <https://trade.djaghe.com/?p=6363>

48 Ibid.

49 *The EU's International Procurement Instrument (IPI)*, EUR-Lex, 8th November 2022, viewed 20th June 2023, <https://eur-lex.europa.eu/EN/legal-content/summary/the-eu-s-international-procurement-instrument-ipi.html>

50 Even if improvements were seen in the civil engineering and construction sector, members report that barriers remain and that the decrease is partly attributable to the change in business strategies they have adopted in China. They are either increasingly providing design and consulting services to domestic players or pursuing joint projects with local government or private players, to enable them to circumvent regulatory barriers. *European Business in China Business Confidence Survey 2022*, European Union Chamber of Commerce in China, 20th June 2022, viewed 19th June 2023, <https://www.europeanchamber.com.cn/en/publications-business-confidence-survey>

Recommendation

- Join the WTO's GPA to allow foreign companies greater access to the bidding process for government procurement work, and ensure that construction services are covered.

3. Facilitate Market Access for European Planning, Architecture and Design, Construction, Manufacturers and Real Estate Service Providers to Enable Fair Competition and Encourage Expertise Sharing 14

Concern

CSPs—including architects, quantity surveyors, project managers and contractors—face difficulties entering the Chinese market, preventing them from sharing their world-class expertise and cutting-edge technology with Chinese CSPs.

Assessment

Construction is one of the key drivers of a country's economy, especially for a large country like China amid rapid urbanisation. The healthy development of the construction industry is paramount to ensuring the effective use of resources and providing optimum living standards and environmental protection. For instance, good city planning can: optimise land use and ensure the long-standing quality of construction; positively influence peoples' moods by providing visually attractive architecture; and ensure the overall quality of a city's construction by utilising advanced technology and management skills—including the proper application of new materials—which reduces the total amount of labour and financing needed while also minimising disturbance to the environment. Unfortunately, in most cases, European CSPs are not allowed to bid for third-parties contracts in Chinese government projects. As a result, European service providers gain no recognition for the value they add, cannot control the quality of the final design, and their business opportunities in China are extremely limited.

Foreign construction companies have been permitted to establish wholly foreign-owned construction enterprises in China for more than 15 years, and relevant limitations on the performance of so-called wholly foreign-owned projects were abolished in connection with the Foreign Investment Law, which is much appreciated. However, to further level the playing field, fostering the mutual recognition of certificates, degrees and experience between China and the EU may help facilitate the issuance of construction and design licences to European CSPs operating in China. The working group also recommends that foreign professionals in the field of architecture be allowed to conduct the exams needed to gain local Chinese qualifications in English, with the qualification based on knowledge of local codes and rules. This would guarantee fair and equal opportunities for foreign professionals in China.

Recommendations

- Foster mutual recognition of degrees, certificates and experience to further level the playing field for foreign-invested construction and design firms.
- Allow qualification exams to be conducted in English to offer fair opportunities for foreign professionals.

4. Continue to Ensure a Fair, Balanced and Open Market Exists for Foreign Investment in the Real Estate Sector 14

Concern

China's procedural and regulatory hurdles mean European land developers remain locked out of the real estate market.

Assessment

FIEs continue to face stringent regulations that limit market access to China's real estate sector. For example, the *Opinions for Regulating the Access by and Administration of Foreign Investment in the Real Estate Market (Circular No. 171)*,[51] issued in July 2006, addresses a variety of measures for controlling the flow of foreign capital in the real estate sector. Besides requiring a 50 per cent proportion between registered capital and investment, *Circular No. 171* lists three more conditions that affect FIEs: they are not allowed to obtain loans from Chinese or overseas sources before having fully paid their registered capital, getting land-use rights certification or before realising 35 per cent of their total investment.[52] This creates unfair competition between local and foreign companies, especially in relation to the different requirements for registering capital.

In 2015, the *Notice to Adjust Policies regarding Market Access and Administration of Foreign Investment in China's Real Estate Market (Circular No. 122)* rescinded the requirements relating to the full payment of registered capital by real estate FIEs and on the proportion of registered capital having to equal up to 50 per cent of total investment. Furthermore, *Circular No. 122* simplified the procedure for foreign-invested real estate companies to register foreign currencies, allowing direct registration with their bank.[53]

The working group welcomed this improvement and recognised the positive steps undertaken by the Chinese authorities to promote a more mature and international investment environment. However, the working group believes that the outdated or obsolete terms and restrictions carried forward from *Circular No. 171* must be clarified. It has been seven years since *Circular No. 122* was released as an update, and no significant improvement has yet been seen on this issue.

Furthermore, the *Notice on Further Strengthening and Regulating the Examination, Approval and Supervision of Foreign Direct Investment in the Real Estate Industry (Circular No. 50)*, issued in 2007, introduced rigid controls on foreign investment in high-end real estate projects, particularly for the acquisition of and investment in domestic real estate enterprises.[54] Some of the stringent measures introduced in this circular have not yet been rescinded.

For instance, *Circular No. 122* does not expressly address a significant practical hurdle that real estate FIEs face when seeking foreign loans, i.e., according to relevant regulations issued by the State Administration of Foreign Exchange (SAFE),[55] any real estate FIE approved and registered with the Ministry of Commerce

51 *China introduces further measures to regulate foreign investment in its real estate market,* Jones Day, Lexology, 3rd July 2007, viewed 18th April 2023, (registration required) <https://www.lexology.com/library/detail.aspx?g=e20cc2f7-a984-4d1e-83d0-6a8bc3303c3c>

52 Regarding the realisation of total investment, the rate is also 35 per cent for domestic companies. See, *Guidance to Risk Management of Real Estate Loan for Commercial Banks [2004] No. 57*, Central People's Government of the People's Republic of China, 30th June 2006, viewed 18th April 2023, <http://www.gov.cn/ztzl/2006-06/30/content_323806.htm>.

53 *Circular of the MOHURD and Other Departments on Adjusting Policies Regarding Market Access and Administration of Foreign Investment in China's Real Estate Market*, Ministry of Commerce (MOFCOM), 19th August 2015, viewed on 18th April 2023, <http://wzs.mofcom.gov.cn/article/n/201508/20150801093662.shtml>

54 *Notice on Further Strengthening and Regulating the Examination, Approval and Supervision of Foreign Direct Investment in the Real Estate Industry,* MOFCOM, 23rd May 2007, viewed 18th April 2023, <http://www.mofcom.gov.cn/aarticle/b/g/200707/20070704900232.html>

55 *Notice of the Measures for the Administration of Foreign Debt Registration*, SAFE, 28th April 2013, viewed 18th April 2023, <http://www.gov.cn/zwgk/2013-05/03/content_2395170.htm>

(MOFCOM) on or after 1st June 2007 is not permitted to register its foreign debts with the SAFE. Therefore, unless the SAFE rescinds this restriction, the benefits and flexibility of *Circular No. 122* will be limited.

The *Circular of Private Real Estate Fund Investment (Trial)*,[56] announced by the China Securities Regulatory Commission on 20th February 2023, offers eligible investors a range of options for investing in specialist fund management companies operating in the construction space. Foreign investors are encouraged to participate through an inbound investment programme called the Qualified Foreign Limited Partnership (QFLP).[57] However, threshold requirements for QFLP Fund investors are not consistent at local level. For instance, Beijing authorities stipulate extra requirements relating to foreign investors' investment experience, internal control systems and asset amount, while the Zhuhai Government sets preferential policies for Hong Kong and Macao investors.[58] Most local pilots do not specify requirements for domestic investors. The working group understands that local cities have different development histories and regional characteristics, resulting in differing approaches to QFLP applications. However, inconsistent requirements between the central and local levels, as well as different treatment of foreign and domestic investors, decreases the transparency of and harms the principle of equity in national policy-making and implementation. In this case, the working group expects fairer and more consistent policies to be released to address the current imbalance.

Recommendations

- Issue further clarifications or implementation rules regarding *Circular No. 122* and QFLP Fund Investment to create a fair market environment for foreign companies investing in the Chinese real estate market.
- Facilitate market access of foreign-invested real estate enterprises to absorb immovable assets from illiquid or insolvent Chinese developers.

56 *Announcement on the Release of the Pilot Filing Guidelines for Real Estate Private Equity Investment Funds (Trial)*, China Securities Regulatory Commission, 20th February 2023, viewed 18th April 2023, <https://www.amac.org.cn/governmentrules/czxgf/zlgz/zlgz_smjj/zlgz_smjj_cpba/202302/t20230220_14478.html>

57 *China launches pilot scheme to boost private investment in real estate*, *Reuters*, 20th February 2023, viewed 18th April 2023, <China launches pilot scheme to boost private investment in real estate>

58 Yuan, Kevin, Li, Lucca & Chen, Jocelyn, *China: An Overview of the QFLP Pilot Program and Expectation*, Baker Mckenzie, 24th October 2022, viewed 8th May 2023, <https://financialinstitutions.bakermckenzie.com/2022/10/24/overview-of-qflp-pilot-program-and-expectation/>

Abbreviations

30/60 Goals	China's plans to peak carbon by 2030 and achieve carbon neutrality by 2060
CCUS	Carbon Capture, Utilisation and Storage
CNY	Chinese Yuan
CO_2	Carbon Dioxide
CSP	Construction Service Provider
ETS	Emission Trading Scheme
EU	European Union
FIE	Foreign-invested Enterprise
FYP	Five-year Plan
GPA	Government Procurement Agreement
GPL	Government Procurement Law
LCA	Life Cycle Assessment
MIIT	Ministry of Industry and Information Technology
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
MOHURD	Ministry of Housing and Urban-Rural Development
NBS	National Bureau of Statistics
NDRC	National Development and Reform Commission
QFLP	Qualified Foreign Limited Partnership
SAFE	State Administration of Foreign Exchange
TBL	Tender and Bidding Law
US	United States
WTO	World Trade Organization
y-o-y	Year-on-year

Heating Sub-working Group

Introduction to the Sub-working Group

The Heating Sub-Working Group, also known as the Europe China Heating Initiative (ECHI), is dedicated to promoting eco-friendly and sustainable heating technologies and components from Europe. Its goal is to ensure that energy resources are conserved while improving air quality by significantly reducing pollutant emissions. To achieve this, the sub-working group is working closely with China's 'coal-to-gas' (CTG) transition programme,[1] which is one of the country's national strategies to reduce particulate matter and nitrogen oxide (NO_X) emissions and increase energy efficiency.[2] European heating manufacturers can play a crucial role in helping China achieve its carbon neutrality goals (30/60 Goals)[3] while contributing to successfully implementing the CTG strategy. The recommendations in this position paper aim to provide valuable industry insights and experience to Chinese stakeholders and improve the heating industry's regulatory environment in China, thereby benefitting the Chinese population.

The European heating industry has been represented in China since 2002. The sub-working group currently has 14 enterprises involved in the manufacturing of highly efficient and renewable-based heating technologies and heating components. These enterprises manufacture heating appliances, burners, water heaters, pumps powered by renewables such as solar and heat, and industrial components. In 2016, the Heating Working Group became a sub-working group of the Construction Working Group, allowing it to collaborate more closely to promote advanced European heating technology and provide information on the latest trends and developments in the heating industry.

Recent Developments

Regulatory Environment

In 2021, the Chinese authorities set stricter technical product requirements to strengthen the heating appliance industry management. On 6th July 2021, the Certification and Accreditation Administration (CNCA) published the *Notice on Amending the Compulsory Product Certificate Rules for Domestic Gas Equipment*,[4] which updated the requirements for the safety testing programme. Additionally, on 1st November 2021, the national standard *GB 25034-2020 Gas-fired Heating and Hot Water Combi-Boilers* went into effect. This standard supervises and urges companies to produce safer, standardised products under the new requirements, with the aim of reviving the sluggish domestic market for heating boilers.[5] However, the *Compulsory Product Certification Catalogue Description and Definition Table (2020 version)* was not updated along with *GB 25034-2020*. This catalogue continues to restrict the certification of products using more than 70 kilowatts (kW) and products with maximum heating water pressure greater than 0.3 megapascal (MPa). The certification scope is expected to be updated by the appropriate agencies in the near future.[6]

On 10th June 2022, the Ministry of Ecology and Environment (MEE), the National Development and Reform Commission and seven other departments jointly issued the *Notice on the Issuance of the Implementation Plan for Carbon Reduction and Synergies*.[7] This plan proposes to continuously promote clean heating during the winter season in northern China, expand the scope of fiscal policy for clean heating to the entire northern region, and promote replacing industrial and agricultural coal burning with natural gas. On 23rd November 2022, the Ministry of Finance (MOF) issued an *Advanced Notice on the Budget for Air Pollution Prevention and Control Funds for 2023*, under which a total of Chinese yuan (CNY) 21.1 billion was allocated for 2023. Of this amount, CNY

1 The CTG strategy refers to the energy-efficiency policy of the Chinese central government and the Beijing-Tianjin-Hebei governments to promote replacing coal with natural gas.

2 *Notice on the Action Plan for Comprehensive Management of Air Pollution in the Autumn and Winter of 2021/22 in Beijing-Tianjin-Hebei and Surrounding Areas*, Ministry of Ecology and Environment (MEE), 29th October 2021, viewed 12th April 2023, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk03/202110/t20211029_958394.html>

3 Farand, Chloé & Darby, Megan, *Xi Jinping: China will aim for carbon neutrality by 2060, Climate Home News*, 22nd September 2020, viewed 4th April 2023, <https://www.climatechangenews.com/2020/09/22/xi-jinping-china-will-achieve-carbon-neutrality-2060/>

4 *Notice of the CNCA on Amending the Compulsory Product Certificate Rules for Domestic Gas Equipment*, China Quality News, 8th July 2021, viewed 12th April 2023, <www.cqn.com.cn/cj/content/2021-07/08/content_8710664.htm>

5 *Conferences to Promote Mandatory National Standard for Gas-fired Heating and Hot Water Combi-boilers GB 25034-2020 were Held in Shanghai, Guangdong and Tianjin*, bgl88.com (*Zhōngguó Biguà Lú Wǎng*), 21st December 2020, viewed 12th April 2023, <http://www.bgl88.com/cms/show-11363.html>

6 *Notice of the State Administration for Market Regulation on Optimising the Compulsory Product Certificate Catalogue*, State Council, 21st April 2020, viewed 12th April 2023, <https://www.gov.cn/zhengce/zhengceku/2020-04/28/content_5506967.htm>

7 *Notice on the Issuance of the Implementation Plan for Carbon Reduction and Synergies*, MEE, 10th June 2022, viewed 12th April 2023, <http://www.gov.cn/zhengce/zhengceku/2022-06/17/content_5696364.htm>

13.4 billion was allocated for clean heating during the winter season in northern China.[8]

The National Energy Administration's (NEA's) *Energy Work Guidelines 2023* outlines the future direction for the energy and heating sector. It aims to "enhance energy security capabilities, expedite clean and low-carbon development, achieve harmonious development of both energy and ecology, increase clean heating, carry out clean heating conversion according to local conditions, and implement and improve the clean heating policy system to ensure the safe and stable operation of heating facilities".[9] However, the guidelines could go further and also promote studying and testing hydrogen blending standards, in order to encourage the development of large-scale, long-distance hydrogen blending and pure hydrogen transportation.

With China's emphasis on energy efficiency and the reduction of environmental pollution in the 14th Five-year Plan, the heating industry anticipates a surge in demand for highly efficient and energy-saving boilers. The China Gas Association has called on all parties in the heating boiler industry to improve collaborative technological innovation and technology sharing.[10] This will encourage the widespread use of energy-saving technologies such as condensation technology in heating boilers. The association also suggests efforts should be made to deepen consumer and industry awareness and push ahead with marketing energy-saving products such as condensing boilers.[11]

The heating industry can help China achieve its environmental protection goals by contributing and sharing its experience in the policymaking process. In return, the hope is that Chinese government agencies will fully consider protecting the interests of all companies, reducing the administrative burden on companies, and facilitating collaborative and healthy industry development.

Key Recommendations

1. Update the Standard for Energy Efficiency of Domestic Gas Appliances and Introduce National Policies to Promote the Usage of Full Premixed Condensing Gas Wall-hung Boilers with Level I Energy Efficiency

1.1 Update the Energy Efficiency Standard and Refine Requirements for Domestic Gas Appliances

Concern

The energy efficiency standard for gas-fired wall-hung boilers is outdated and does not reflect the actual energy efficiency levels that these appliances can achieve.

Assessment

The *GB 20665-2015 Minimum Allowable Values of Energy Efficiency and Energy Efficiency Grades for Domestic Gas Instantaneous Water Heaters and Gas-fired Heating and Hot Water Combi-Boilers (Heating Boilers)*,[12] which came into effect in June 2016, has played a vital role in promoting the structural upgrading of gas-fired wall-hung boilers, and implementing energy-saving and emission-reduction requirements for gas appliances. The standard divides energy efficiency into three levels based on the thermal efficiency value (per cent): Level I with a minimum of 96 per cent, Level II with a minimum of 88 per cent, and Level III with a minimum of 84 per cent. Only gas-fired wall-hung boilers of Level II or higher can enter the market. Some regions and cities already promote large-scale utilisation of Level I energy efficiency gas-fired wall-hung boilers only, with Levels II and III becoming obsolete. However, the energy efficiency of the latest full premixed condensing boilers can reach 108 per cent of this standard.[13] Updating *GB 20665-2015* would help to promote the use of the most efficient products on the market while continuing to phase out products with lower energy-efficiency rates.

8 *Notice from the Ministry of Finance on the Advance of the Budget for Air Pollution Prevention and Control Funds for 2023*, MOF, 28th October 2022, viewed 12th April 2023, <http://zyhj.mof.gov.cn/zxzyzf/dqwrfzzj/202211/t20221108_3850350.htm>

9 *Notice of the National Energy Administration on Printing and Distributing the "Guiding Opinions on Energy Operations in 2023"*, NEA, 6th April 2023, viewed 14th April 2023, <http://zfxxgk.nea.gov.cn/2023-04/06/c_1310710616.htm>

10 *Gas-fired Heating and Hot Water Combi-Boilers 2022 Market Statistics*, China Gas Association, 3rd March 2023, viewed 17th April 2023, <https://www.chinagas.org.cn/4639/202303/56394.html>

11 Ibid.

12 *GB 20665-2015 Minimum Allowable Values of Energy Efficiency and Energy Efficiency Grades for Domestic Gas Instantaneous Water Heater and Gas-fired Heating and Hot Water Combi-boilers*, National Standardisation Administration, 15th May 2015, viewed 18th April 2023, <https://openstd.samr.gov.cn/bzgk/gb/newGbInfo?hcno=75D38814EF3EE95E56E53DC00CF759C6>

13 *Gas Condensing Technology: Key for Efficiency and Clean Air in China*, Federation of German Heating Industry, 3rd June 2019, viewed 18th April 2023, <https://www.bdh-industrie.de/fileadmin/user_upload/ISH2019/Broschueren/broschuere_februar_2019_gas_condensing_technology_cn.pdf>

In 2020, coal-fired power generation accounted for 63.2 per cent of China's total power generation.[14] However, it is important to note that power transmission losses will lower the actual efficiency rate of the power generation process. When electricity is transmitted through power lines, energy is lost as heat due to resistance in the wires. This means that the amount of energy available to end-users is lower than the amount of energy generated. Hence, when comparing the energy efficiency of gas and electrical appliances, it is important to consider the primary energy thermal efficiency, rather than simply comparing energy efficiency, to accurately measure actual carbon emissions between different heat sources and actual product energy efficiency.[15]

Heat source products[16] should be tested at various outdoor temperatures or simulated indoor temperatures to accurately reflect their actual energy efficiency. For example, the tests should be performed at 10 degrees Celsius (°C), 0°C and -10°C, as heat source products are mainly used in winter. The energy efficiencies of various heat source products, such as air-source heat pumps, vary based on the outdoor temperature. Heat pumps have relatively low energy efficiency when operating at below-freezing temperatures.[17]

Heat pumps are generally more energy efficient when evaluated alongside several other heating products. However, given China's energy endowment restrictions, the carbon emissions of heat pumps are higher than full premixed condensing boilers due to heat pumps' reliance on only a single heat source for power generation.

While European standards for energy efficiency of domestic appliances differ from Chinese standards, a more refined evaluation system in China would encourage manufacturers to pursue higher energy efficiency. In Europe, energy labels for household heating products display 10 levels and have specific requirements relating to energy efficiency, which helps to better categorise products.

14 *China Coal-fired Power Generation Report in 2021*, China Power, 21st July 2021, viewed 18th April 2023, <http://mm.chinapower.com.cn/zx/zxbg/20210721/89863.html>

15 *Carbon Neutrality: The Role of European Companies in China's Race to 2060*, European Union Chamber of Commerce in China, 25th May 2022, viewed 25th June 2023, <https://www.europeanchamber.com.cn/en/publications-carbon-neutrality-report>

16 Devices or systems that produce heat, such as boilers, furnaces, heat pumps, or solar thermal collectors. These products generate heat that can be used for space heating, water heating or other applications.

17 For example, in the air-source heat pump cycle, heat energy is drawn from outside air or flowing water that is at a temperature higher than the evaporation temperature, which then is heated mechanically and supplied to the indoor heating system. As a result, heat pumps have relatively low energy efficiency when operating at below-freezing temperatures.

Recommendations

- Update the energy efficiency standards for domestic gas appliances.
- Refine the efficiency requirements for domestic gas appliances.
- Establish energy efficiency requirements for major components while keeping the overall requirements coherent.
- Abandon outdated energy efficiency evaluation methods and implement a standardised carbon efficiency evaluation system alongside primary energy to compare the thermal efficiency rates of different primary energies and the wiring system efficiencies of various heating products.

1.2 Issue Policies to Promote Energy-saving and Low-emission Gas Boiler Technologies

Concern

The government does not sufficiently encourage energy-efficient and low-emission heating technology, such as full premixed condensing technology, and relevant applications and research is limited, resulting in the reduced promotion of air pollution control and energy efficiency policies.

Assessment

There are two main types of gas-fired wall-hung boilers: conventional and condensing. Condensing boilers increase energy efficiency by up to 20 per cent and reduce pollutant emissions. For example, they can cut NO_X emissions by up to 75 per cent compared with non-condensing models.[18] Therefore, it is better to promote the use of condensing boilers from the first installation when formulating policies on energy efficiency and pollution control in construction projects. Doing so will eliminate the need to rearrange corresponding accessories and pipes in order to replace conventional gas boilers in the future.

In the People's Government of Beijing Municipality's *Three-year Action Plan for Winning the Battle of Blue Sky Protection*, Article 26 states that the use of heating

18 *Gas Condensing Technology: Key for Efficiency and Clean Air in China*, Federation of German Heating Industry, 3rd June 2019, viewed 18th April 2023, <https://www.bdh-industrie.de/fileadmin/user_upload/ISH2019/Broschueren/broschuere_februar_2019_gas_condensing_technology_cn.pdf>

boilers with Level II energy efficiency or below is prohibited in new, renovation, and expansion projects, and NOx emissions must meet the Level V requirement of the heating boilers national standard.[19] This guideline has helped to effectively control pollutant emissions while reducing consumers' gas fees.

However, the relevant institutions lack a full understanding of premixed condensing technology applications and their energy-conserving and emission-reducing benefits. Moreover, China lacks supporting policies to encourage high-efficiency and low-emission heating technologies, such as full premixed condensing technology, which offers high energy efficiency and low NO_X emissions and has relatively low replacement costs.

Most studies on premixed condensing technology applications are from enterprises and associations, such as the Beijing Association of Building Energy Efficiency and Environmental Engineering. Few universities have relevant departments or research programmes, except for Tongji University and Tianjin Chengjian University, which have research projects on condensing technology and full premixed combustion. The working group recommends that industry stakeholders and authorities consider the advantages of full premixed condensing technology and strengthen relevant Chinese institutions' research in full premixed condensing technology applications and the effects on energy conservation and emission reduction. Providing subsidies for high-efficiency and low-emission technologies—such as full premixed condensing boilers—in major cities and regions, and further expanding the projects to more areas to attract more consumers will help to promote high-efficiency and low-emission heating technologies while supporting implementation of the 14th Five-year Plan.

Recommendations

- Issue policies for promoting energy-saving and low-emission technologies, starting in key cities and regions.
- Issue policies to encourage consumers to buy full premixed condensing boilers for the first heating installation in a building.
- Encourage research projects on full premixed condensing technology, including its application, energy-saving and emission-reducing effects.

2. Improve Requirements for the Installation and Maintenance of Heating Boilers, and Educate Consumers on the Need for Regular Maintenance and Replacement 3

2.1 Strengthen the Standardisation and Management of the Installation of Heating Boilers

2.1.1 Improve the Installation Quality Standards for Heating Boilers and Strengthen the Standardisation and Management of Enterprises and Personnel Responsible for Installation

Concern

The market development of heating boilers is hindered by inadequate technical and installation guidelines, and the varying competence of installers has led to safety concerns.

Assessment

Heating boilers are complex products that require the installation of heating and hot water systems. The operation of these products involves the use of gas, running water, electricity, air intake and exhaust pipes. To ensure long-term efficient use and stable and safe operation, equipment manufacturers should provide a complete set of products and systems as well as periodic servicing and maintenance (see Key Recommendation 2.2).

Water quality also plays a critical role in the operating efficiency and service life of domestic heating systems. However, installation companies and consumers often overlook this aspect, leading to issues like clogging, higher after-sales costs, and lower heating efficiency rates due to limescale and corrosion. This is contrary to the Chinese Government's energy conservation and emission reduction efforts. The use of good quality chemical protectors and magnetic filters can avoid such problems, and advance energy conservation and emission reduction efforts.

While the Chinese Government and authorities have issued new national standards for heating boilers and formulated industry standards for product

19 *Three-Year Action Plan for Winning the Battle of Blue-Sky Protection of Beijing*, People's Government of Beijing Municipality, 14th September 2018, viewed 18th April 2023, <https://www.beijing.gov.cn/zhengce/zhengcefagui/201905/t20190522_61552.html>

applications, there is still a lack of effective monitoring and maintenance after installation. The authorities lack effective rules and regulations for monitoring practitioners' and enterprises' capabilities, as well as for supervising installations. Based on feedback from member companies, low-quality installation is the main reason for issues arising during the warranty. If installation quality cannot be effectively controlled and improved, it will hinder the further development of the industry.

In contrast, European Union (EU) Member States have over 50 years of rich experience in using heating boilers, with mature and comprehensive standards, products, applications and services. EU Member States also have well-regulated and mature methods and systems for certifying the qualifications of installation engineers and providers, as well as for supervising installation quality. European enterprises represented by the ECHI have experience from both Europe and China, and can assist the Chinese authorities in formulating relevant regulations. Establishing a training mechanism for heating boiler installers and a vocational certification system would promote the technical skills of qualified installers and ensure the quality of the installation as well as safety during subsequent usage.

Recommendations

- Formulate and implement regulations for the installation of heating boilers.
- Emphasise and introduce the use of water treatment products for new installations.
- Improve the training for personnel and enterprises responsible for installation and establish a vocational certification system.

2.1.2 Adjust the Content and Cycle of Product Tests for Local Market Access based on the China Compulsory Certification (CCC) Policy

Concern

Requiring manufacturers to undergo type tests to access each local market is time-consuming and costly.

Assessment

In recent years, China amended its standards and requirements relating to natural gas supply, resulting in improved and stabilised fuel quality. Since October 2020, domestic gas appliances have been managed by the CCC, which imposes high-level requirements for product quality control and management of gas appliance companies. The CCC system is applied to products involving public health, safety and environmental protection to unify certification standards and simplify the industrial product approval procedure, as stated in the *Decision of the State Council on Further Reducing the Catalogue of Production Licenses for Industrial Products and Simplifying the Examination and Approval Procedures*.[20]

However, tests for domestic gas appliances under the previous production certification system and tests on the compatibility of local gas sources are not aligned in terms of test items or standards, and also overlap with or exceed test items under the new CCC system. The sub-working group believes that the various tests could be integrated and optimised alongside the CCC system and implementation of *GB 25034-2020 Gas-fired Heating and Hot Water Combi-boilers*.

Recommendation

- Reduce repetitive test items reasonably for local market access and extend the test cycle.

2.2 Strengthen Consumer Awareness of the Need for Effective Maintenance of Heating Boilers

Concern

Consumers tend to focus on the initial investment in purchasing and installing heating boilers, leading them to overlook the necessary servicing and maintenance for long-term operation.

Assessment

In European countries, where technologies and applications for heating boilers are quite developed, the necessity for regular maintenance has been accepted by the public. The EU has mature supervision measures that can serve as examples for Chinese market regulators and consumers. However, cultivating consumers' awareness of the need to regularly maintain heating boilers depends on vigorous publicity, effective supervision by relevant authorities, and appeals and calls from the industry.

20 *Decision of the State Council on Further Reducing the Catalogue of Production Licenses for Industrial Products and Simplifying the Examination and Approval Procedures,* State Council, 30th September 2018, viewed 18th April 2023, <http://www.gov.cn/zhengce/content/2018-09/30/content_5327123.htm>

In China, after-sales services provided by manufacturers and the regular maintenance provided by systems installers usually focus only on the main system component, leading to incomplete maintenance. However, maintaining the entire system is necessary to ensure efficient operation and prolong the service life of heating boilers. For example, poor water quality can significantly impact gas furnaces used for heating hot water in closed water systems. Maintaining the whole gas furnace system appropriately can prevent problems arising from poor water quality from impacting energy efficiency or leading to boiler operational failures.

Regular maintenance guarantees the efficient operation of heating boilers, increases reliability, prolongs service life, and reduces operating costs and risks. Periodic inspection for flue combustion emissions leakage (such as carbon monoxide and NO_X), originally established for environmental protection reasons, is also an indispensable part of maintenance in Europe. However, as gas security is also an environmental and livelihood protection issue, the regular maintenance of heating boilers is vital. To raise awareness of these issues, manufacturers need to effectively promote them, and gas companies should cooperate to gain consumers' trust and acceptance of the necessity of regular maintenance for heating boilers.

Recommendations

- Strengthen effective supervision of regular maintenance of heating boilers and educate consumers accordingly.
- Issue regulations for periodic maintenance of heating boilers to ensure their efficient and safe operation.
- Improve awareness of overall heating system safety, as well as service employee and user knowledge of the benefits of using water treatment products in heating systems.
- Encourage factory and gas management departments to work together to raise awareness of the requirements for regular maintenance of heating boilers

2.3 Cultivate Consumers' Awareness of the Need for Timely Removal and Replacement of High Energy Consumption or End-of-Life Heating Boilers

Concern

Chinese consumers are not accustomed to replacing heating boilers that have reached the end of their service lifespan or that do not meet relevant regulations.

Assessment

Replacement of heating boilers with high energy consumption and high emissions is conducive to improving environmental protection and helps reduce maintenance requirements and costs for users. However, heating boilers have been installed and used in China for more than 20 years, and a certain number of products in the market have now exceeded their intended service life. Failure to replace these old products is not in line with relevant regulations, and emissions of carbon dioxide and NO_X not reducing as fast as is needed to meet China's 30/60 Goals. EU Member States have programmes that assess the age and efficiency of previously installed condensing boilers, which has raised awareness among consumers that some products need replacing and that energy and household expenses could be saved by doing so.

In Beijing, new, renovation and expansion projects prohibit the use of heating boilers with Level II energy efficiency or below. The government also plans to replace about 800,000 low-efficiency and high-emission heating boilers in the near future,[21] which will improve regional air quality and save energy. Such replacement work can also be embarked on in other locations nationwide.

To develop consumer awareness, it is necessary to focus on the immediate interests of users. For example, replacing energy-intensive and high-emission heating boilers with environmentally friendly and energy-efficient condensing boilers can reduce gas fees in the long-term, while replacing worn-out heating boilers ensures users' personal and property safety. Therefore, gas companies should regularly conduct safety inspections to supervise and optimise heating boilers' energy efficiency and lifespans and to encourage regular maintenance or replacement of the equipment.

Recommendations

- Cultivate consumers' awareness of the need for timely removal and replacement of heating boilers with high energy consumption and emissions or those at the end of their service life.
- Assist users in ensuring regular maintenance and repairment of heating boilers, providing guidance to

21 *Beijing Building Energy-Efficiency & Environment Engineering Association, China Quality Supervising and Test Centre for Gas Appliances, Guangdong Gas Combi-Boiler Chamber of Commerce and the ECHI jointly submit a report on the research project of BCEMA on replacing heating boiler policy in Beijing-to-Beijing Municipal Government in 2022,* BCEMA, 2023, report not available publicly.

end-users and raising gas safety awareness.

- Formulate policies to encourage and support consumers to replace low-efficiency and high-energy-consumption heating boilers that have reached the end of their service life with more efficient and eco-friendly full premixed condensing gas wall-hung boilers.

3. Research and Discuss the Role of Hydrogen-Mixed Technology in the Laying of Gas Pipeline Networks for Domestic Appliances in China

Concern

The government's insufficient encouragement, limited research and applications, and lack of related national or industry standards for hydrogen mixing in natural gas pipelines hinders development in this area.

Assessment

China's economic development and improvements in living standards have led to a significant increase in energy consumption and carbon emissions, with China now accounting for a third of global carbon emissions.[22] President Xi Jinping's announcement in September 2020 of the 30/60 Goals, which aim to achieve carbon neutrality by 2060 with a peak in carbon emissions by 2030, has led the government to determine a path for low-carbon development across various industries,[23] including construction.[24] A rapid and efficient energy transition is critical to achieving these goals.

The heating industry alone is responsible for almost one-third of global carbon emissions, making it a crucial area in the energy transition.[25] European heating equipment and solution vendors have been promoting low-carbon and zero-carbon energy solutions in recent years, with over 80 projects on the use of hydrogen in buildings in several European countries. These projects, carried out in collaboration with national energy departments, have set up pilot projects to promote zero-carbon heating technology, of which public awareness and acceptance is growing.

China's West-East Hydrogen Transmission pipeline demonstration project has been included in the *National Oil and Gas One Network Construction Implementation Plan*, marking a new development stage for domestic long-distance hydrogen transmission pipelines.[26] However, there are few policies in place to create the conditions and opportunities that will assist the domestic heating industry in taking its first step toward zero-carbon emissions. Therefore, progress in this area is slow, regardless of technological developments, product iteration or concept development at the consumption level.

Hydrogen blending—which involves an appropriate proportion of hydrogen mixed into existing natural gas pipeline networks—can help Chinese stakeholders accumulate experience for future large-scale, long-distance and low-cost hydrogen delivery. Hydrogen blending can play a role in energy storage, power-load shifting and peak shaving, effectively reducing carbon emissions. Although the *Medium and Long-term Plan for the Development of Hydrogen Energy Industry (2021–2035)* defines hydrogen energy as new energy and supports hydrogen delivery through natural gas pipelines,[27] there are no additional supporting policies, technical measures or technical standards for implementation. As a result, stakeholders still regard hydrogen as a hazardous chemical based on the *Catalogue of Hazardous Chemicals 2015*,[28] thus restricting the application of hydrogen energy[29] in a broader range of fields.

The Chinese Government's energy supply departments should develop top-level designs, and expedite the research and development of standards and technical specifications related to hydrogen blending in natural

22 *White Paper on Low Carbon Transition of Chinese Energy Companies*, Accenture, 6th November 2021, viewed 18th April 2023, <https://www.accenture.com/cn-zh/insights/energy/chinese-energy-enterprises-low-carbon-transition>

23 *The Strategy and Challenges of Realising the Double Carbon Policy*, Guangming.com, 7th July 2021, viewed 18th April 2023, <https://www.gmw.cn/xueshu/2021-07/07/content_34976788.htm>

24 *State Council: Notice on the Issuance of the Carbon Peaking Action Plan by 2030,* State Council, 26th October 2021, viewed 18th April 2023, <http://www.gov.cn/zhengce/content/2021-10/26/content_5644984.htm>

25 *Why the Built Environment?* Architecture 2030, viewed 18th April 2023, <https://architecture2030.org/why-the-building-sector/>

26 *National Oil and Gas One Network Construction Implementation Plan*, NEA, 17th April 2023, viewed on 18th April 2023, <http://www.nea.gov.cn/2023-04/17/c_1310711260.htm>

27 *China releases medium- and long-term development plan for hydrogen energy, Tank News International,* 5th April 2022, viewed 18th April 2023, <https://tanknewsinternational.com/china-releases-medium-and-long-term-development-plan-for-hydrogen-energy/>

28 *Catalogue of Hazardous Chemicals 2015*, Ministry of Emergency Management, 31st March 2015, viewed 18th April 2023, <https://www.mem.gov.cn/gk/zcjd/201503/t20150331_233183.shtml>

29 Infrastructure (such as hydrogen production, hydrogen-blending technology, and pipeline network coverage) is necessary for applying hydrogen energy technology. Despite downstream hydrogen and heating equipment manufacturers having the latest technologies and products at their disposal, the market lacks the necessary application environment and implementation conditions. Therefore, downstream hydrogen and heating equipment manufacturers cannot play a leading role and take social responsibility in the zero carbon field.

gas pipelines for civil construction. The authorities should also clarify that hydrogen production stations used for blending and transporting natural gas and hydrogen are not subject to the relocation of hazardous chemical production projects to designated chemical parks[30] and that natural gas blending pipelines are still managed as natural gas pipelines. Additionally, under the guidance and participation of the NEA, hydrogen blending standards should be researched and tested, with a focus on hydrogen blending ratios (5 per cent, 10 per cent, 15 per cent, 20 per cent), the impact on the natural gas combustibility and the Wobble Index,[31] as well as the degree of damage caused by pipeline materials. This will help to provide a theoretical basis for the development of large-scale, long-distance hydrogen blending, and pure hydrogen transportation. Technical standards for natural gas pipelines blended with hydrogen should be prepared for the civil heating, ventilation, air conditioning industry, as well as for the construction industry. Demonstration projects on the application of natural gas blending and hydrogen combustion condensing boilers in construction should also be established to provide data for improvement and large-scale implementation.

Key Recommendations

- Set up pilot areas, build demonstration projects, and promote the concept of zero-carbon heating via hydrogen.
- Draft related standards and regulations to guide the standardised development of products and industries.
- Encourage the creation of technical standards, such as manufacturing standards and standards for the installation and inspection of hydrogen blending and pure hydrogen combustion equipment.

30 *Implementation Measures for Safety Production Permit for Hazardous Chemical Production Enterprises,* MEM, 6th March 2017, viewed 18th April 2023, <https://www.mem.gov.cn/gk/zfxxgkpt/fdzdgknr/gz11/201112/t20111201_405679.shtml>

31 The Wobbe Index is a measure of the interchangeability of fuel gases and their relative ability to deliver energy. It gives an indication of whether a turbine or burner will be able to run on an alternative fuel source without tuning or physical modifications.

Abbreviations

°C	Celsius
CCC	China Compulsory Certification
CNCA	Certification and Accreditation Administration
CNY	Chinese Yuan
CTG	Coal-to-gas
ECHI	Europe China Heating Initiative
EU	European Union
kW	Kilowatt
MEE	Ministry of Ecology and Environment
MOF	Ministry of Finance
NEA	National Energy Administration
NO_x	Nitrogen Oxide

Information and Communication Technology Working Group

Key Recommendations

1. Remove Indirect Barriers to European ICT Companies' Market Access and Market Share 2

- Implement measures to improve market access for the European information and communication technology (ICT) industry to ensure and maintain equal treatment for European ICT companies in the China market in the long run.
  - Identify all ICT market segments where market access is lacking and develop actions—jointly defined by Chinese and European stakeholders—that address the imbalances.
  - Review the status of market openness and market share regularly.
- Establish an open and effective monitoring and correction mechanism for equal ICT market access for European ICT companies, with bilateral sponsorship, in order to address the current, prominent issues.

2. Ensure that Efforts to Build Safe and Controllable Industrial and Supply Chains Serve to Secure Foreign Investment and Embed China More Deeply into the Global System 2

- Give full play to the role of international companies in stabilising the ICT supply chain.
- Ensure that regulatory controls improve overall supply chain security, instead of pursuing self-sufficiency at the expense of long-term interdependencies and cooperation prospects.
- Narrowly define the concept of 'national security' to avoid generalisation.
- Allow voluntary standards and certification programmes to remain truly so.
- Rely on international standards to the largest extent possible, rather than imposing undue restrictions on both the usage of such standards, and the scenarios in which they can be used.
- Ensure technology neutrality in supply chain regulations to drive competition and long-term growth.
- Ensure foreign access to Chinese research, and product and solution development, activities.
- Clarify what constitutes 'domestic' products and services and therefore what is accepted under the various security and procurement regimes.

3. Develop and Implement Commercial Cryptography Laws, Regulations, Standards and Conformity Assessment System so that They are Clear, Fair and Conducive to International Harmonisation 4

- Allow the adoption of international standards related to commercial cryptography.
- Adopt the primary function test in further rule-making and in the roll-out of relevant mechanisms.
- Limit the scope of commercial cryptography testing, certification and application security assessment to critical information infrastructure (CII), rather than Grade III networks under the classified cybersecurity protection system (CCPS).
- Clarify the requirements relating to the export control of commercial cryptography.
- Ensure technology-neutral and streamlined conformity assessment processes for commercial cryptography, and the protection of intellectual property and trade secrets.

Section Four: Services

- Define 'mass consumer products' as 'cryptography features in components and products openly available to the public, that can be either charged or free, for personal or business use, and where the cryptographic functionality cannot be modified by the end user'.
- Allow the use of both Chinese chipsets with domestic Chinese algorithms and international chipsets with international algorithms for eSIM connectivity products.
- Add international chipsets without domestic Chinese algorithms to Chinese MNOs eSIM product whitelist.
- Provide a transition period for eSIM products that support domestic Chinese algorithms.
- Ensure that any implementing regulations and standards are fully in line with the Cryptography Law.

4. Open up Value-added Telecoms Services (VATS) and Internet Sectors for International Companies 14

- Reduce further the *Negative List* and allow increased international participation in the telecoms- and internet-related sectors.
- Continue to open up the *Telecoms Catalogue* and allow international companies in China to obtain VATS licences, particularly for internet resource collaboration, internet protocol virtual private network, internet access services, online data processing and transaction processing services, and information services.

5. Ensure Timely and Globally-harmonised Spectrum Allocations for Key Technologies and Applications Development 2

- Ensure the timely availability for usage of fifth generation mobile (5G) spectrum, the 60 gigahertz (GH) band and the 79–81GHz band.
- Strengthen exchanges and coordination between China and the European Union (EU) regarding spectrum regulation in the lead-up to the World Radiocommunication Conference-23, including by integrating the spectrum topic in relevant government-to-government dialogues.

Cybersecurity Sub-working Group

1. Ensure that Chinese Cybersecurity Legislation Does Not Create Discriminatory Market Access Barriers 7

- Define 'national security' as narrowly as possible, and differentiate it from 'commercial security' in a clear manner.
- Narrow the scope of industries subject to foreign investment security review and scenarios subject to the *Cybersecurity Review Measures*.
- Refrain from imposing undue restrictions on the use of ICT products and services in level three networks under the CCPS.
- Limit the applicability and influence of non-binding cybersecurity regimes, in such a manner that they do not go beyond binding legislation.
- Minimise the scope of mandatary product certification only to what is absolutely necessary, to reduce market access barriers.
- Promote mutual recognition, adoption and reliance upon applicable international standards and global industry best practices.

- Ensure that multinational corporations' (MNCs') intellectual property and trade secrets are protected.

2. Minimise Unnecessary Operational Burdens Created by Extensive, Ambiguous and Discretionary Security Schemes 8

- Avoid a 'one-size-fits-all' approach in regulatory cross-border data transfer security assessments, and give due consideration to the uniqueness of different industries and companies' respective business models.
- Avoid an overly restrictive interpretation of the 'necessity' threshold in regulatory cross-border data transfer security assessments.
- Clearly and narrowly define the scope of 'important data', and provide a sufficient grace period between any future release of important data identification guidelines and catalogues, and their implementation.
- Avoid over-reliance on regulatory cross-border data transfer security assessments, and allow data handlers to choose the cross-border data transfer mechanism that best suits their situation.
- Publish official assessment opinions about the data security protection policies and regulations, as well as the network security environment of the country or region where the foreign recipient is located, for individual data handlers to refer to.
- Ensure a central point of contact for all filing and reporting activities instead of asking data handlers to make similar submissions to different regulators.
- Avoid introducing across-the-board data localisation requirements.
- Strengthen EU-China dialogue and cooperation to identify common grounds and alleviate data-related operational burdens.
- Avoid mandating the disclosure to parties irrelevant to the coordinated vulnerability disclosure process of information related to unmitigated vulnerabilities.
- Ensure a coordinated and unified approach for oversight and enforcement among the government authorities involved.
- Clearly delineate the boundaries between CII and non-CII, and avoid interpreting and applying relevant requirements in an expansive manner to cover broader networks, in order to leave enough room for normal business activities.

3. Ensure Transparency, Consistency, Non-discrimination and Proportionality in Cybersecurity-related Rulemaking and Law Enforcement 4

- Provide in a timely and meaningful manner an open and transparent platform that allows European businesses to engage in security rulemaking.
- Review existing and planned security-related laws and regulations, and release unambiguous implementation guidelines to ensure consistent requirements and enforcement.
- Clarify the roles and responsibilities of government authorities involved in security rulemaking.
- Recognise MNCs with operations in China as Chinese companies and avoid extensive interpretations of "national security".
- Give more consideration to the operational needs of MNCs and provide effective guidelines to help companies obtain feedback from relevant regulatory authorities in a timely manner.
- Ensure security regulations are appropriate and commensurate with the risk.

European Chamber
中国欧盟商会

Introduction to the Working Group

Formed in 2001, the Information and Communication Technology (ICT) Working Group consists of major European telecommunications vendors, service providers, digital content providers and other companies that meet on a regular basis to assess reforms that can affect the ICT industry. The working group also serves as a platform for information exchange on developments in the ICT industry, including but not limited to standardisation and conformity assessment, services, technical regulations, research and development (R&D), interoperability and global harmonisation. The Information and Communication Technology Working Group includes the Cybersecurity Sub-working Group.

Recent Developments

On 27th June 2023, the Ministry of Industry and Information Technology (MIIT) updated its *Radio Frequency Allocation Provisions*, effective as of 1st July 2023.[1] The update counts several notable revisions, including the allocation of the 6425-7125 megahertz (MHz) frequency band for International Mobile Telecommunications (IMT), including fifth generation mobile technology (5G) and 6G, making China the first country worldwide to do so. It also made clear that the 79-81 gigahertz (GHz) frequency band will be reserved for applications like automotive radar on a priority basis.

On 24th May 2023, the State Council released the revised *Commercial Cryptography Regulations,* effective 1st July 2023.[2] The revised regulations apply to commercial cryptography activities, such as scientific research, production, sale, service, testing, certification, import and export, as well as the supervision and administration of such activities, and further details about relevant mechanisms stipulated in the Cryptography Law, effective since 2020. The revised regulations contain several notable changes compared to a previous draft, as they no longer explicitly mandate commercial cryptography application security assessments and testing and certification for networks other than critical information infrastructure (CII), and allow for commercial cryptography used in mass-marketed consumer goods to be eligible for exemption from import licence and export control requirements.

On 9th June 2023, the State Cryptography Administration (SCA) released for public consultation two sets of draft rules to support the roll-out of the regulations, one being the draft *Administrative Measures on the Security Assessment of Commercial Cryptography Applications*.[3] According to the draft measures, operators of networks and information systems that are "required by laws, administrative regulations and other relevant provisions of the state" to be protected by commercial cryptography shall carry out regular security assessment of commercial cryptography applications. This is a highly controversial requirement that could potentially lead to further market access barriers, as discussed in Key Recommendation (KR) 3 of this paper.

On 14th December 2022, the Communist Party of China (CPC) Central Committee and the State Council released an *Outline of the Plan for the Strategy to Expand Domestic Demand (2022–2035)*.[4] The plan aims to scale up China's investment and consumption, and establish a complete system of domestic demand by 2035. The outline emphasises the need to accelerate the development of new industries and products, including artificial intelligence, advanced communications, integrated circuits, new displays, advanced computing and other technological innovation and applications. It also focusses on core parts and components, key basic materials, next-generation information technology, high-end equipment, new energy vehicles, 5G and other core links of the industrial chain, and the development of key industry clusters.

On 19th December 2022, the CPC Central Committee and the State Council jointly released guidelines on building basic systems for data and the optimal utilisation of data resources.[5] These systems will consist of 20 specific action items that focus on the creation of a data property rights system, a circulation and trading system, an income distribution system and a security governance system. The guidelines aim to increase

1 *Radio Frequency Allocation Provisions*, MIIT, 27th June 2023, viewed 18th July 2023, <https://wap.miit.gov.cn/gyhxxhb/jgsj/cyzcyfgs/bmgz/wxdl/art/2023/art_1e98823e689f42ca9ed14dcb6feec07a.html>

2 *Commercial Cryptography Regulations,* State Council, 24th May 2023, viewed 7th June 2023, <https://www.gov.cn/zhengce/zhengceku/202305/content_6875928.htm>

3 *Administrative Measures on the Security Assessment of Commercial Cryptography Applications (Draft for Comments),* SCA, 9th June 2023, viewed 18th July 2023, <http://www.sca.gov.cn/sca/hdjl/2023-06/09/content_1061072.shtml>

4 *Outline of the Plan for the Strategy to Expand Domestic Demand* (2022–2035), State Council, 14th December 2022, viewed 7th June 2023, <https://www.gov.cn/zhengce/2022-12/14/content_5732067.htm>

5 *Opinions of the CPC Central Committee and the State Council on Establishing a Data Base System to Maximise a Better Role for Data Elements,* State Council, 19th December 2022, Viewed 7th June 2023, <https://www.gov.cn/zhengce/2022-12/19/content_5732695.htm>

the value of data resources, reduce the barriers for market entities to gain access to data, and ensure the development dividends of the digital economy are shared by all. Steps will be taken to promote the efficient use and circulation of data, improve the governance efficiency of data resources and actively participate in the formulation of international rules on cross-border data flows.

2023 is the third year of the 14th Five-year Plan and the fourth year for the commercialisation of 5G. China has entered a critical stage in the large-scale development of 5G applications. On 4th June 2023, the Ministry of Industry and Information Technology (MIIT) announced that China would continue to enhance the advantages of the whole industry chain in the fields of mobile communication and optical communication, proactively plan for next-generation internet and other frontier areas, and comprehensively promote 6G technology R&D.[6]

Key Recommendations

1. Remove Indirect Barriers to European ICT Companies' Market Access and Market Share 2

Concern

Unbalanced reciprocity in key ICT market segments can weaken the importance of China to European Union (EU) industry, causing de-prioritisation of its market in global investment planning and jeopardising the future of bilateral ICT industry collaboration and technology acceleration.

Assessment

EU-China trade and investment relations in the ICT sector have undergone significant developments over the past decades, but nonetheless have been disrupted by indirect market access barriers in the Chinese market in recent years, leading to a decrease in European companies' market share. Ensuring reciprocity in market access, but more importantly in market share—one way to confirm meaningful access—is undisrupted by non-commercial considerations is crucial to maintaining and further promoting such vital interdependencies. In this regard, the current dynamic of the 5G market landscape is emblematic of the loss of market share due to excessive regulatory controls, as discussed in KR 2, and has become a major issue of concern.

In 2019, China began a massive deployment of 5G technology, and now has the world's largest and most advanced 5G network. According to MIIT statistics,[7] by the end of 2022, China had deployed 2.312 million 5G base stations (more than 60 per cent of the global total) and developed 561 million 5G subscribers. China's total 5G investment in 2022 amounted to Chinese yuan (CNY) 180.3 billion.

The global success of the mobile industry relies on harmonised standards. In this field, China and the EU have made the most contributions and have cooperated both in the 4G era and now towards 5G, to great mutual benefit. However, as China's commercial development of 5G has exploded, the EU industry's market share dropped from around 30 per cent in 4G to single digits in 5G, a drop so sharp it cannot be explained by commercial reasons alone. According to one market report published in February 2022,[8] the EU industry's accumulated 5G market share in China sank to just 2.9 per cent by the end of 2021, while that of domestic vendors hit a record-high of 97.1 per cent. Meanwhile, Chinese vendors had won more than 30 per cent of 5G market share in the EU market by the end of 2021, representing a 10-fold imbalance in reciprocity.[9]

This increasing imbalance is a significant concern and has seriously weakened the importance of the China market to EU investors in key ICT market segments, led to a de-prioritisation of China in global investment planning, and jeopardised the outlook for EU-China global collaboration in the broader ICT industry.

Recommendations

- Implement measures to improve market access for the European ICT industry to ensure and maintain equal treatment for European ICT companies in the China market in the long run.

6 *Graph: The MIIT will comprehensively promote the research and development of 6G technology, Xinhua,* 5th June 2023, viewed 12th June 2023, <https://www.gov.cn/zhengce/jiedu/tujie/202306/content_6884571.htm>

7 *Interpretation of the ICT Industry Statistical 2022,* MIIT, 20th January 2023, viewed 19th May 2023, <https://wap.miit.gov.cn/zwgk/zcjd/art/2023/art_9f5022af3cdf48789484117d9da03c58.html>

8 *2021 5G global market report*, Dell'Oro Group, 24th February 2022, viewed 10th May 2023, <https://www.delloro.com/market-research/telecommunications-infrastructure/mobile-radio-access-network/>

9 *Dell'oro Report: Global Ran Market to Grow Over 10% By 2021 Huawei maintains share lead,* C114.net.cn, 24th February 2022, viewed 10th May 2023, <http://www.c114.com.cn/news/116/a1188479.html>

Section Four: Services

- Identify all ICT market segments where market access is lacking and develop actions—jointly defined by Chinese and European stakeholders—that address the imbalances.
- Review the status of market openness and market share regularly.

• Establish an open, effective monitoring and correction mechanism for equal market access for European ICT companies, with bilateral sponsorship, to address current, prominent issues.

2. Ensure that Efforts to Build Safe and Controllable Industrial and Supply Chains Serve to Secure Foreign Investment and Embed China More Deeply into the Global System 2

Concern

The excessive pursuit of safe and controllable supply chains through policies and regulatory controls is causing industrial supply chains to be dismantled.

Assessment

It is costly and impossible for any country alone to try to indigenise the entire ICT supply chain, which is the most complex and globalised of any industry. To improve supply chain security therefore, a country needs to strike a proper balance between: 1) finding ways to anchor itself more deeply into the global ecosystem; and 2) developing a certain level of technological autonomy, which should only act as a fail-safe, to ultimately ensure better coupling across different layers of the supply chain.

In April 2020, President Xi Jinping stated in a speech to the CPC's Central Economic and Financial Affairs Commission that the way forward for China is to deepen its "involvement in global industrial chains".[10] Self-reliance should be treated as one of many means, and not as an end in itself that becomes an absolute priority. The EU has recognised this, stating in an industrial policy aimed at improving its supply capacities for certain ICT components that the objective is not for the EU "to become self-sufficient, which is not an achievable target", but to "strengthen its strengths and work with third countries in a supply chain where interdependencies will remain strong."[11]

To maintain interdependencies, efforts to build safe and controllable industrial and supply chains must be made in such a way that regular contractual activities are still permissible, minimum regulatory certainty provided, and economies of scale and returns on investment necessary for sustainable long-term investment still achievable. Yet, in the ICT industry and its related upstream and downstream industries, China's policies ensuring technical and non-technical security, boosting indigenous innovation, and securing local production and supplies are intertwined. This contradicts the desired objective of attracting foreign investment, as FIEs are put at a significant competitive disadvantage. For example, certain regulatory controls are broad and opaque, and involve lengthy processes and heavy documentation requirements, as with the *Cybersecurity Review Measures*.[12] Also, in some commercial market segments, China-specific standards, technology roadmaps and product implementations are being mandated, as foreign technology is unreasonably considered to be inherently less secure.[13]

Some of these controls are imposed in a sophisticated way, such as broadening the 'national security' concept to commercial fields,[14] and the mandating of non-mandatory standards and certification programmes.[15] Another method is by cascading, including in a verbal or non-public manner, relevant targets down to government-supported industry alliances, CII operators that are encouraged to procure 'secure and controllable' ICT,[16] and state-owned enterprises that are considered commercial players yet expected to support and drive industrial and supply chain development.[17] The working group has been made aware of cases in which Chinese

10 Xi Jinping, *China's Medium- and Long-Term Economic, Social Development Strategy, Qiushi,* 31st October 2020, viewed 5th May 2023, <http://www.qstheory.cn/dukan/qs/2020-10/31/c_1126680390.htm>

11 *Proposal for a Council Regulation amending Regulation (EU) 2021/2085 establishing the Joint Undertakings under Horizon Europe, as regards the Chips Joint Undertaking,* EUR-Lex, 8th February 2022, viewed 5th May 2023, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52022PC0047>

12 *Cybersecurity Review Measures,* Cyberspace Administration of China (CAC), 4th January 2022, viewed 5th May 2023, <http://www.cac.gov.cn/2022-01/04/c_1642894602182845.htm>

13 Please refer to KRs 2 and 3 of this paper, KR 1 of the *Cybersecurity Sub-working Group Position Paper 2023/2024*, and KR 1 of the *Rail Working Group Position Paper 2023/2024*.

14 Please refer to KR 2 of this paper and KR 1 of the *Cybersecurity Sub-working Group Position Paper 2023/2024*.

15 Please refer to KR 1 of the *Standards and Conformity Assessment Working Group Position Paper 2023/2024*, and KR 3 of this paper.

16 While 'secure and controllable' itself can be interpreted in a risk-based and non-discriminatory way, certain real-life regulations and/or practices run contrary to this positive direction.

17 *Full Text: Report on the Work of the Government, Xinhua,* 12th March 2022, viewed 5th May 2023, <http://www.xinhuanet.com/english/2021-03/12/c_139806315.htm>

customers have excluded European companies from tender participation due to their 'nationality'.

As a result of such a subtle approach, checks imposed by such multilateral agreements as the World Trade Organization Technical Barriers to Trade (WTO/TBT) could be circumvented. Therefore, the negative impact of opaque, overly stringent and discriminatory policies, regulatory controls and related practices on overall business confidence, regardless of whether they are legally well-founded, should be assessed. According to the European Chamber's *Business Confidence Survey 2023*, 39 per cent of respondents expect negative impacts as a result of CII guidelines/requirements. More broadly, a record-breaking 62 per cent of respondents missed out on business opportunities in 2022 due to market access restrictions and regulatory barriers, and 50 per cent expect the number of regulatory obstacles to increase over the next five years. Eroded trust could affect broader aspects like innovation, talent and international cooperation, which would not be conducive to supply chain security.

A further reduction in policy, regulatory and other related barriers would help to boost business confidence among European investors in the ICT sector. The working group also seeks clarification on what constitutes local products and services, and are therefore permissible under the various security and procurement regimes.

Recommendations

- Give full play to the role of international companies in stabilising the ICT supply chain.
- Ensure that regulatory controls improve overall supply chain security, instead of pursuing self-sufficiency at the expense of long-term interdependencies and cooperation prospects.
- Narrowly define the concept of 'national security' to avoid generalisation.
- Allow voluntary standards and certification programmes to remain truly so.
- Rely on international standards to the largest extent possible, rather than imposing undue restrictions on both the usage of such standards, and the scenarios in which they can be used.
- Ensure technology neutrality in supply chain regulations to drive competition and long-term growth.
- Ensure foreign access to Chinese research, and product and solution development, activities.
- Clarify what constitutes 'domestic' products and services and therefore what is accepted under the various security and procurement regimes.

3. Develop and Implement Commercial Cryptography Laws, Regulations, Standards and Conformity Assessment Systems so that They are Clear, Fair and Conducive to International Harmonisation 4

Concern

The Cryptography Law's roll-out and the development of its implementing regulations do not accurately reflect the language used in the law itself, which could result in less market access for European companies in China.

Assessment

While most jurisdictions do not apply strict restrictions to the domestic production and use of cryptography, China has long been one of the most challenging environments in this regard for foreign-invested enterprises (FIEs) to navigate. The Chinese commercial cryptography regulatory system needs to significantly improve for it to remain aligned with the Cryptography Law,[18] established international practices and the World Semiconductor Council principles, which call for deregulating commercial cryptography in mass-marketed ICT products. In particular, the regulatory system should continue to rely on the 'core function' principle clarified by the SCA in 2000,[19] or on a similar concept.

a. Testing and certification

The Cryptography Law replaced the previous administrative licensing-based market access system with one that features mandatory and voluntary testing and certification.[20] Given the product certification

18 Cryptography Law, National People's Congress Standing Committee, 27th October 2019, viewed 5th May 2023, <http://www.npc.gov.cn/npc/c36798/201910/6f7be7dd5ae5459a8de8baf36296bc74.shtml>

19 In March 2000, the Office of State Commercial Cryptography Administration (OSCCA) released the *Year 2000 Clarification: Relevant Questions Regarding Commercial Cryptography Management*, which clarifies that the OSCCA's 1999 *Commercial Cryptography Regulations* only apply to "specialised hardware and software for which encryption and decryption operations are core functions".

20 *Announcement on Releasing the Commercial Cryptographic Products Certification Catalogue (First Batch) and the Commercial Cryptographic Products Certification Rules*, SCA, 11th May 2020, viewed 20th July 2023, <http://www.oscca.gov.cn/sca/xwdt/2020-05/11/content_1060749.shtml>; *General Administration of Market Supervision, State Cryptography Administration Announcement on the release of the Commercial Password Product Certification Catalogue (Second Batch)*, SCA, 14th July 2022, viewed 21st July 2023, <http://www.sca.gov.cn/sca/xwdt/2022-07/14/content_1060931.shtml>

catalogue's significance to market entry, it is critical to align with the industry, FIEs included, on its scope before any eventual release. Unfortunately, the actual drafting process of the catalogue lacks transparency and public consultation. More importantly, the voluntary certification system needs to remain truly voluntary and open to FIEs for every specific product category in the certification catalogue in a reciprocal manner. Significantly, while no international chip makers have so far managed to obtain a certificate for security chips, their Chinese counterparts can obtain all qualifications necessary to operate in the European market. For example, Tongxin Microelectronics passed the SOGIS Common Criteria Evaluation Assessment Level (EAL) 6+ security certification in 2020,[21] and it only took Huada Electronic Design three months to pass the same EAL.[22] In February 2022, Shenzhen Goodix's first eSE (embedded Secure Element) chip also passed the EAL 5+ security certification.[23]

It is particularly worth noting that, in China's telecommunication sector, mobile network operators (MNOs) have started requesting that new eSIM connectivity products contain commercial cryptographic algorithms to pass the commercial cryptography product certification.[24] Since international semiconductor companies are facing challenges obtaining this certification, these requirements are becoming a *de facto* market entry barrier regardless of the certification's *de jure* voluntary nature.

To ensure that cryptography regulations and policies do not constitute an unfair advantage for domestic enterprises, SCA-approved technologies should include international ones; the certification programme should be designed so as to remain technology-neutral and focussed only on elements conducive to improving overall security; and that FIEs' products need to be certified in a timely, transparent and reciprocal manner. Furthermore, commercial cryptography—to the extent considered for testing and certification—needs to be limited to cases where encryption is the primary function. That means a component in a product should not be considered the product's primary function if encryption is not the core function or set of functions of the component; or the feature set is not specifically designed or fixed and cannot be modified to customer specification. There also needs to be adequate protection for applicants' intellectual property (IP) and trade secrets, ensuring that source code, non-public design information and trade secrets cannot be systematically demanded, and that international laboratories are allowed to conduct relevant testing activities.

b. Application promotion

As argued in KR 1 of the *Cybersecurity Sub-working Group Position Paper 2023/2024*, there is a clear risk for the classified cybersecurity protection system (CCPS)—which classifies networks into five ascending protection levels based on importance—to be used to advance restrictions on commercial cryptography, sometimes under the guise of "application promotion". The working group is therefore pleased to note that, in line with the Cryptography Law, the revised *Commercial Cryptography Regulations* narrowed down the application scope of commercial cryptography application security assessments and testing and certification, from ill-defined "important networks" under a previous draft to "critical information infrastructure".

This positive development risks being watered down by two provisions in the regulations and the draft *Administrative Measures on the Security Assessment of Commercial Cryptography Applications*. The regulations' newly added Article 41 demands that the security assessment requirements for the use, management and application of commercial cryptography be based on the security protection levels of networks. According to the draft measures, for networks and information systems that are "required by laws, administrative regulations and other relevant provisions of the state to be protected by commercial cryptography", their operators shall carry out regular security assessment of commercial cryptography applications.

21 *Applus+ Laboratories evaluates TMC secure microcontroller 'THD89', the first Chinese chip to achieve Common Criteria EAL6+ high assurance certification,* Applus+ Laboratories, 9th August 2020, viewed 5th May 2023, <https://www.appluslaboratories.com/global/en/news/applus+-laboratories-evaluates-tmc-secure-microcontroller-%E2%80%98thd89%E2%80%99,-the-first-chinese-chip-to-achieve-common-criteria-eal6+-high-assurance-accreditation->

22 *CEC Huada Electronics Design Co Ltd achieves SOGIS EAL6+ certificate within 3 months of applying to the Dutch Common Criteria scheme (NSCIB),* SGS Brightsight, 18th November 2020, viewed 5th May 2023, <https://www.brightsight.com/blogs/post/cec-huada-electronics-design-co-ltd.-achieves-sogis-eal6-certificate-within-3-months-of-applying-to>

23 *Shenzhen Goodix Technology Co., Ltd. eSE security chip passed international SOGIS CC EAL5+ certificate,* Goodix, viewed 5th May 2023, <https://www.goodix.com/en/product/security_products/ese>

24 As of 1st January 2023, the working group has learned that one major Chinese MNO requires new eSIM products to contain only OSCCA-certified algorithms. Two other MNOs are also considering this, since the overarching Telecommunication Terminal Industry Forum Association (TAF) is currently assessing the mandatory application of OSCCA certified algorithms in China's overall eSIM market.

It will thus be crucial that the relevant government agencies avoid expanding, via "laws, administrative regulations and other provisions of the state", which include but are not limited to the upcoming *CCPS Regulation*, the scope of commercial cryptography security assessments and testing and certification to Grade III networks under the CCPS, as these networks are vast in number, and present no significant risk to national security, public order and social interests. Procedural-wise, the working group also cautions against the unauthorised and discretionary expansion, via lower-level state provisions, of the scope of regulatory requirements.

c. Standardisation

China's national standardisation body for cryptography, the National Information Security Standardisation Technical Committee's (TC260's) Working Group 3 on Cryptographic Solutions, and the industry standardisation body, the Cryptography Standardisation Technical Committee, have long been closed to foreign participation. While the TC260's Working Group 3 has recently taken in two FIEs as a goodwill gesture, other international applications remain pending. The working group hopes that European companies can be granted equal access to these standardisation bodies, as they are equally bound by relevant standards.[25]

At the same time, certain standards developed by these closed or semi-closed bodies contain requirements that are not only incompatible with China's WTO/TBT commitments and the Cryptography Law, but also unconducive to improving overall security. For example, although the TC260 has been actively pushing domestic Chinese algorithms to become international standards, and with some success, certain standards for information system cryptography application still demand compliance with national and industry standards, while referring to international standards only where global interconnection is needed.[26]

d. Import licence and export controls

China released both the import licence and export control lists dedicated to commercial cryptography and the revised *Catalogue of Technologies Subject to Import Prohibition and Restriction*,[27] which lists foreign "data encryption technology employing a key strength greater than 256 bits" as a technology that requires an import permit. The following aspects in the lists and the catalogue would benefit from additional clarification in explicit, written form, in order to facilitate import and export compliance, especially in the face of technological advancements such as post-quantum cryptographic algorithms:

- **Mass consumer product exemption:** While the lists seem to have implicitly exempted "commercial cryptography in mass consumer products" as per the Cryptography Law, this term should be clearly defined as "cryptography features in components and products openly available to the public, that can be either charged or free, for personal or business use, and where the cryptographic functionality cannot be modified by the end user".
- **Scope of security chips:** A clearer definition is needed for 'security chips' subject to export control, excluding general-purpose chips, and including only security chips with indigenous, non-public algorithms tailor-made for such sectors as electricity, taxation, public security and finance, and which meet the technical thresholds.
- **Key strength:** The threshold of "key strength greater than 256 bits" should explicitly refer to symmetric algorithm keys, as asymmetric algorithms generally have much longer keys for equivalent resistance to attack.

Recommendations

- Allow the adoption of international standards related to commercial cryptography.
- Adopt the primary function test in further rule-making and in the roll-out of relevant mechanisms.
- Limit the scope of commercial cryptography testing, certification and application security assessment to CII, rather than Grade III networks under the CCPS.
- Clarify the requirements relating to the export control of commercial cryptography.
- Ensure technology-neutral and streamlined conformity assessment processes for commercial cryptography, and the protection of IP and trade secrets.
- Define 'mass consumer products' as "cryptography

25 KR 3 of the *Standards and Conformity Assessment Position Paper 2023/2024* also discusses FIEs' lack of access to certain Chinese standards developing organisations.

26 KR 4 of the *Standards and Conformity Assessment Position Paper 2023/2024* discourages the adoption of recommended national standards as market access requirements, and calls for improving the adoption rate of international standards.

27 *Catalogue of Technologies Subject to Import Prohibition and Restriction*, MOFCOM, 19th November 2021, viewed 5th May 2023, <http://cnzh.gov.cn/UploadFile/SiteFile/798/2021/11/19/9e1ff36542654997ae508932492c9b9c.pdf>

features in components and products openly available to the public, that can be either charged or free, for personal or business use, and where the cryptographic functionality cannot be modified by the end user".

- Allow the use of both Chinese chipsets with domestic Chinese algorithms and international chipsets with international algorithms for eSIM connectivity products.
- Add international chipsets without domestic Chinese algorithms to Chinese MNOs eSIM product whitelist.
- Provide a transition period for eSIM products that support domestic Chinese algorithms.
- Ensure that any implementing regulations and standards are fully in line with the Cryptography Law.

4. Open up Value-added Telecoms Services (VATS) and Internet Sectors to FIEs 14

Concern

Although many European companies have attempted to enter or expand into the Chinese VATS and internet market, VATS and internet business operating licences act as a major barrier to their participation.

Assessment

According to China's *2021 Negative List for Foreign Investment*,[28] and *Telecom Service Catalogue 2015*,[29] generally only companies that are less than 49 per cent foreign-invested can apply for a Basic Telecoms Services licence. Also, only companies that are less than 50 per cent foreign-invested can apply for a VATS licence, with the exception of e-commerce, domestic multi-party communications services, store-and-forward services and call centre services. The majority of VATS remain restricted: according to the China Academy of Information and Communication Technology (CAICT), as of December 2022, FIEs accounted for only 4.04 per cent of the VATS business operators permitted by the MIIT.[30]

a. Cloud Services

Cloud services are commonly understood as comprising infrastructure-as-a-service (IaaS), platform-as-a-service (PaaS) and software-as-a-service (SaaS). While China has issued numerous policies promoting cloud services domestically, international providers still encounter market access barriers in the form of licensing requirements. Among the various types of VATS under the *Telecom Service Catalogue 2015*, internet resource coordination (IRC) is one that foreign players most want to provide.[31] In addition, the provision of SaaS, of which there is no clear definition in Chinese policies, could also be subject to licensing, as some types of SaaS might fall within the scope of various telecom services under the *Telecom Service Catalogue*, such as IRC or information services. Licences for these services remain difficult for FIEs, or those not meeting a certain domestic shareholding cap, to obtain.

b. IP-VPN

FIEs in China have limited access to domestic Internet Protocol-Virtual Private Network (IP-VPN) services. Businesses, innovation, cross-border transactions and ultimately investments are all underpinned by free access to, and flow of, information. Further opening-up of domestic IP-VPN services to FIEs would therefore help increase competition and bring more affordable solutions to companies, and small and medium-sized enterprises in particular.

c. Internet access services

The working group welcomes the trial policy allowing foreign participation in internet access services announced by the Beijing Government and the State Council in February 2019.[32] Large-scale opening in internet access services is strongly needed at the national level, so this trial will have a positive impact on guiding industry openness and development. However, implementation plans are needed to provide clarity to FIEs that want to apply for such a licence or trial qualification.

d. Online data processing and transaction processing services (except e-commerce services)

Online data processing and transaction processing services are growing in relevance for big data service providers and other data platform businesses. However,

28 *Special Management Measures for Foreign Investment Access (Negative List) (2021)*, National Development and Reform Commission, 27th December 2020, viewed 10th May 2023, <http://www.gov.cn/zhengce/zhengceku/2021-12/28/content_5664886.htm>

29 *Telecom Service Catalogue 2015*, MIIT, 28th December 2015, viewed 10th May 2023, <https://www.miit.gov.cn/zwgk/zcwj/wjfb/tg/art/2020/art_e98406cd89844f7e92ea1bcf3b5301e0.html>

30 *Analysis Report on Domestic Value-added Telecommunications Business Licensing*, CAICT, December 2022, viewed 5th May 2023, <http://www.caict.ac.cn/kxyj/qwfb/qwsj/202301/P020230110744722852234.pdf>

31 IRC is defined as a sub-category of internet data centre (IDC) services, while IaaS is a type of IDC services (IDC with or without IRC), and PaaS likely falling into the category of IRC.

32 *Reply of The State Council on the Comprehensive Pilot Work Plan for Deepening the Expansion and Opening Up of Beijing's Service Industry*, State Council, 7th September 2020, viewed 11th July 2023, <https://www.gov.cn/zhengce/zhengceku/2020-09/07/content_5541291.htm>

many FIEs are concerned about regulatory uncertainty when introducing new data platform business models in China.

e. Information services (except applications (app) store services)

Information services are another VATS of particular interest to international companies operating in China, but is also highly regulated. As mobile Internet and the Internet of Things continue to develop, these kinds of restrictions are increasingly burdensome to European businesses that wish to bring their expertise to the Chinese market.

Recommendations

- Reduce further the *Negative List* and allow increased international participation in the telecoms- and internet-related sectors.
- Continue to open up the *Telecom Services Catalogue* and allow FIEs to obtain VATS licences, particularly for IRC, IP-VPN, internet access services, online data processing and transaction processing services, and information services.

5. Ensure Timely and Globally-harmonised Spectrum Allocations for Key Technologies and App Development 2

Concern

Fragmented spectrum allocation risks jeopardising global ecosystem and technological development.

Assessment

Successful spectrum management is key to the radio industry and serves as an enabler of the ICT industry and broader economic sectors. Therefore, as an important global stakeholder, China should identify key spectrum in a timely and globally harmonised manner to underpin growth and secure long-term competitive advantages in the global ecosystem.

a. 5G spectrum

A proper spectrum mix is needed to support cost-effective 5G deployment. While the MIIT has already identified 3,300–3,600 MHz, 4,800–5,000MHz[33] and 703–733/758–788MHz as 5G frequency bands,[34] it is becoming increasingly important to identify additional, high-quality spectrum resources to accommodate accelerated 5G roll-out across China.

At the International Telecommunication Union (ITU) World Radiocommunication Conference in 2019 (WRC-19), several millimetre wave bands, including the 24.25–27.5 GHz, 37–43.5GHz, 45.5–47GHz, 47.2–48.3GHz, and 66–71GHz bands, were identified for IMT. In China, in 2017, the MIIT had sought public opinions on 24.75–27.5GHz, 37–42.5GHz and other possible bands for 5G in the millimetre wave range,[35] and approved 5G trial frequencies usage in the 24.75–27.5GHz and 37–42.5GHz bands the same year. As mentioned in the Recent Developments section, the *Radio Frequency Allocation Provisions* published in June 2023 also contain important allocations relating to IMT. According to the *14th Five-year Plan for Developing the Information and Communications Industry*,[36] the MIIT will make dedicated usage plans for 5G/6G frequencies and release 5G millimetre wave frequencies in different stages. The working group looks forward to communicating with the MIIT to better prepare the industry for upcoming allocations.

Currently, efforts are still needed to harmonise the use of spectrums for IMT between different countries and regions, especially regarding agenda item 1.2 of the WRC-23 on frequency-related matters in IMT identification.[37] The EU and China should increase exchanges on this agenda item, conclude relevant technical studies as soon as possible, and jointly ensure the optimal assignment of the relevant bands at the upcoming WRC.

b. 60GHz frequency band

Unlicensed spectrum is the backbone for many new technologies and key economic sectors. One very promising band is 60GHz, as it enjoys a large and contiguous bandwidth, allowing for communication links with high-speed data transmission with very high data

33 *Notice on Matters Concerning the Usage of 3300-3600MHz and 4800-5000MHz Frequency Bands by 5G Systems*, MIIT, 15th November 2017, viewed 5th May 2023, <https://ythxxfb.miit.gov.cn/ythzxfwpt/hlwmh/zcwj/xzxk/wxdhwxtx/art/2020/art_8e89ad16e5b44fb89c5bc316c259fd3c.html>

34 *Notice on Adjusting the Usage Plan of the 700MHz Frequency Band*, MIIT, 21st May 2020, viewed 11th July 2023, <https://ythxxfb.miit.gov.cn/ythzxfwpt/hlwmh/tzgg/xzxk/wxdhwxtx/art/2020/art_9696e32a420f4ecfafc1f5e5bdc443e4.html>

35 *Public Call for Comments on Planning Millimetre-wave Spectrum for 5G Use*, MIIT, 8th June 2017, viewed 5th May 2023, <https://www.miit.gov.cn/gzcy/yjzj/art/2020/art_55b1cecbe2b2416094d70922057b4ed9.html>

36 *14th Five-year Plan for Developing the Information and Communications Industry*, MIIT, 11th November 2021, viewed 11th July 2023, <https://wap.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art_3a0b0c726bd94b7d9b5092770d581c73.html>

37 *ITU-R Preparatory Studies for WRC-23*, ITU, viewed 5th May 2023, <https://www.itu.int/en/ITU-R/study-groups/rcpm/Pages/wrc-23-studies.aspx>

Section Four: Services

rates and, for radar, a much higher range resolution that enables detection of micro motions in the millimetre range. In addition, the high free-space path loss and strong oxygen absorption at 60GHz effectively reduce interference risks between devices. These features make this band unsuitable for IMT, but one of the best candidates for such short-range technologies as radar, contactless connector and WiGig (wireless gigabit protocol). Many working group members have either been commercialising 60GHz devices, or stand to benefit from the innovative, smart, energy-saving and safety features that these devices offer. There is similarly strong interest from Chinese companies along the value chain.

China is among the pioneers in 60GHz allocation, with the MIIT allowing the band to be used by low-power, short-range devices as early as October 2006.[38] Today, nearly all major economies—including the EU and the United States—have opened, or are in the process of opening up, the band for unlicensed applications such as in-cabin sensing, consumer electronics, smart building, robotics, healthcare and augmented/virtual reality. Many of these economies are important export markets for Chinese companies. Significant growth in the 60GHz device market in the coming years has been forecasted. To benefit, regulators and market players need to take immediate actions. It is therefore important for the MIIT to clarify that the 60GHz band remains an unlicensed band, and that existing technical parameters specified in 2006 remain valid until the release of new rules.

c. 79–81GHz frequency band

Another frequency band of interest to the working group is 79–81GHz. In December 2021, the MIIT released the *Interim Provisions on Automotive Radar Radio Management*, officially allocating 76–79GHz, for advanced driver assistance systems (ADAS).[39] This move is welcomed, as it represents further international harmonisation. As a next step, the 79–81GHz band should be equally reserved for ADAS applications, to enable next-generation automotive radars to further improve resolution, boost automotive safety and benefit China as it seeks to become a world leader in intelligent and connected vehicles.

Recommendations

- Ensure the timely availability for usage of 5G spectrum, the 60GHz band and the 79–81GHz band.
- Strengthen bilateral exchanges and coordination regarding spectrum regulation in the lead-up to the WRC-23, including by integrating the spectrum topic in relevant government-to-government dialogues.

Abbreviations

5G	Fifth Generation
ADAS	Advanced Driver Assistance System
CAC	Cyberspace Administration of China
CAICT	China Academy of Information and Communication Technology
CII	Critical Infrastructure Information
CNY	Chinese Yuan
EAL	Evaluation Assessment Level
EU	European Union
IaaS	Infrastructure as a Service
ICT	Information and Communication Technology
IDC	Internet Data Centre
IMT	International Mobile Telecommunications
IP	Intellectual Property
IP-VPN	Internet Protocol Virtual Private Network
IRC	Internet Resource Collaboration
ITU	International Telecommunication Union
MNO	Mobile Network Operator
MIIT	Ministry of Industry and Information Technology
MOFCOM	Ministry of Commerce
OSCCA	Office of State Commercial Cryptography Administration
PaaS	Platform as a Service
R&D	Research and Development
SCA	State Cryptography Administration
SaaS	Software-as-a-Service
TBT	Technical Barriers to Trade
TC260	National Information Security Standardisation Technical Committee
VATS	Value-added Telecoms Services
WiGig	Wireless Gigabit
WRC	World Radiocommunication Conference
WTO	World Trade Organisation

38 *Notice on Relevant Matters Concerning the Use of Low-power Short-range Technology in 60GHz*, MIIT, 23rd October 2006, viewed 5th May 2023, <https://www.miit.gov.cn/n1146295/n1146592/n3917132/n4062354/n4062391/n4062397/n4062399/c4148141/part/4148142.pdf>

39 *Interim Provisions on Automotive Radar Radio Management*, MIIT, 6th December 2021, viewed 5th May 2023, <https://wap.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art_289b278b60dc47d7a01292d15a0a2bde.html>

Cybersecurity Sub-working Group

Introduction to the Sub-working Group

In view of the increasingly strengthened Chinese regulatory environment, the Cybersecurity Sub-working Group was established in February 2016 under the European Chamber's Information and Communication Technology (ICT) Working Group, focussing on security legislation, standardisation and enforcement that impact multiple industries.

Recent Developments

Security Legislation

Effective 1st June 2017,[1] the Cybersecurity Law (CSL) outlines a series of general and specific compliance requirements for network operators. Since its promulgation, other pieces of security legislation have been released to complement the CSL, including, notably, the Data Security Law (DSL), the Personal Information Protection Law (PIPL) and the Cryptography Law. On 14th September 2022, the Cyberspace Administration of China (CAC) released the *Decision on Amending the Cybersecurity Law of the People's Republic of China (Draft for Comments)*,[2] which proposes the imposition of more stringent legal liabilities for certain violations of the CSL.

Critical Information Infrastructure (CII) Protection

On 1st September 2021, the *Critical Information Infrastructure Security Protection Regulation* came into force,[3] demanding strengthened protection of CII. It encourages the procurement of "secure and trustworthy" network products and services, a request that often translates into Chinese companies' products being favoured in public procurement. A CII-designation will also trigger other obligations, such as mandatory certification and assessment, and cybersecurity review. China's very first CII protection standard, *GB/T 39204-2022 Information Security Technology – Cybersecurity Requirements for Critical Information Infrastructure Protection* became effective on 1st May 2023.[4]

Cybersecurity Review

On 4th January 2022, the *Cybersecurity Review Measures* (CSRM) were revised,[5] making it mandatory for CII operators procuring network products and services, and online platform operators conducting data handling activities that influence or may influence national security, to proactively apply for a cybersecurity review.[6] The review, though an opaque process, assesses several factors, including the "security, openness, transparency, and diversity of sources of products and services; the reliability of supply channels, as well as the risk of supply disruptions due to political, diplomatic, and trade factors". In March 2023, the CAC announced that it had launched a cybersecurity review of the products of an American semiconductor company that are sold in China.[7] In May 2023, the CAC said that the company had failed the review, and demanded that CII operators stop purchasing its products.[8]

Data Protection

China promulgated the PIPL and the DSL in 2021, which complement the CSL by serving as superordinate laws for China's data protection framework, and for industry authorities to base their data regulations on. Another important horizontal regulatory development is the draft *Regulations on Network Data Security Management*, released by the CAC in November 2021,[9]

1 Cybersecurity Law, National People's Congress Standing Committee, 7th November 2016, viewed 4th May 2023, <http://www.gov.cn/xinwen/2016-11/07/content_5129723.htm>

2 *Decision on Amending the Cybersecurity Law of the People's Republic of China (Draft for Comment)*, CAC, 14th September 2022, viewed 4th May 2023, <http://www.cac.gov.cn/2022-09/14/c_1664781649609823.htm>

3 *Critical Information Infrastructure Security Protection Regulations*, State Council, 17th August 2021, viewed 4th May 2023, <http://www.gov.cn/zhengce/content/2021-08/17/content_5631671.htm>

4 *GB/T 39204-2022 Information Security Technology—Cybersecurity Requirements for Critical Information Infrastructure Protection,* Standardisation Administration of China, 12th October 2022, viewed 4th May 2023, <https://openstd.samr.gov.cn/bzgk/gb/newGbInfo?hcno=1D986D9DCCC518D19DAD9431DD76053E>

5 *Cybersecurity Review Measures,* CAC, 4th January 2022, viewed 4th May 2023, <http://www.cac.gov.cn/2022-01/04/c_1642894602182845.htm>

6 A CII operator is an entity that operates CII. The CII is defined in the Cybersecurity Law as important network facilities, information systems etc. in important industries and fields such as public communications and information services, energy, transportation, water, finance, public services, e-government affairs and defense technologies, which, in the event of damage thereto, loss of function thereof or leak of data therefrom, could seriously jeopardise national security, national economy and people's livelihoods, or the public interest.

7 *Announcement on the Launch of Cybersecurity Review of Micron's Products Sold in China*, CAC, 31st March 2023, viewed 10th May 2023, <http://www.cac.gov.cn/2023-03/31/c_1681904291361295.htm>

8 *Micron fails cybersecurity review in China, meaning its products could be banned, Global Times*, 21st May 2023, viewed 24th May 2023, <https://www.globaltimes.cn/page/202305/1291098.shtml>

9 *Regulations on Network Data Security Management (Draft for Comments)*, CAC, 14th November 2021, viewed 4th May 2023, <http://www.cac.gov.cn/2021-11/14/c_1638501991577898.htm>

which apply to the use of networks that conduct data-handling activities within Mainland China, as well as to the supervision and management of network data security. The regulations were featured in the State Council's 2022 legislative plan.[10]

A number of recommended national standards have been released as important references for rolling out the data protection requirements, one of them being *GB/T 42574-2023 Information Security Technology – Implementation Guidelines for Notices and Consent in Personal Information Processing*.[11]

Cross-border Data Transfer

China's cross-border data transfer mechanism, comprising three different transfer channels, is finally taking shape. On 7th July 2022, the CAC published the *Measures on Security Assessment of the Cross-border Transfer of Data*, effective as of 1st September 2022.[12] The measures lay out the requirements for cross-border transfer of important data and personal information by CII operators and other companies that reach certain thresholds of data. On 24th February 2023, the CAC published the *Measures on the Standard Contract Cross-border Transfer of Personal Information*,[13] effective as of 1st June 2023, demanding standard contracts signed for cross-border data transfer purposes to be filed with the regulators. Additional guidelines for standard contract filing were later made available by the CAC.[14]

To support the roll-out of the certification mechanism, in June 2022, the National Information Security Standardisation Technical Committee (TC260) released the *Practice Guidelines for Cybersecurity Standards – Technical Specification for the Certification of Cross-border Handling of Personal Information*.[15] These guidelines are being elevated into a recommended national standard titled *Information Security Technology – Certification Requirements for Cross-border Transmission of Personal Information (Draft for Comments)*,[16] fleshing out a certification system for the cross-border processing of personal information within a multinational corporation (MNC), or a similar economic or business entity, as well as for the handling of personal information of natural persons in China by foreign personal information handlers outside China.

Critical Network Equipment and Specialised Cybersecurity Products

Article 23 of the Cybersecurity Law defined "critical network equipment" and "specialised cybersecurity products". Those products falling under these two categories that are subsequently listed in a dedicated catalogue will need to be mandatorily certified. The catalogue was initially released by the CAC and several other government agencies in 2017, and updated in July 2023. Compared with the previous version, the latest catalogue significantly expanded the scope of specialised cybersecurity products from 11 to 34 product categories, covering secure storage, security management, traffic control, load balance, log analysis and many others.[17] Additionally, while the previous catalogue defined the affected product categories by performance, the updated catalogue removed all references to technical parameters, so that both high-end and low-end products are covered.

Emerging Technologies

A number of recent regulatory developments aim at keeping pace with the rapid evolvement of emerging technologies. On 4th January 2022, the CAC published the *Provisions on the Administration of Algorithmic Recommendation of Internet Information Services*,[18] according to which algorithm recommendation

10 *The State Council's 2022 Legislative Work Plan,* State Council, 14th July 2022, viewed 10th May 2023, <http://www.gov.cn/zhengce/content/2022-07/14/content_5700974.htm>

11 *Release of 19 National Cybersecurity Standards*, National Information Security Standardisation Technical Committee (TC260), 31st May 2023, viewed 1st June 2023, <https://www.tc260.org.cn/front/postDetail.html?id=20230531114357>

12 *Measures on Security Assessment of the Cross-border Transfer of Data*, CAC, 7th July 2022, viewed 4th May 2023, <http://www.cac.gov.cn/2022-07/07/c_1658811536396503.htm>

13 *Measures on the Standard Contract Cross-border Transfer of Personal Information,* CAC, 24th February 2023, viewed 4th May 2023, <http://www.cac.gov.cn/2023-02/24/c_1678884830036813.htm>

14 *Guidelines for Filing Standard Contracts for the Cross-border Transfer of Personal Information*, CAC, 30th May 2023, viewed 7th June 2023, <http://www.cac.gov.cn/2023-05/30/c_1687090906222927.htm>

15 *Practice Guidelines for Cybersecurity Standards – Technical Specification for the Certification of Cross-border Handling of Personal Information*, TC260, 24th June 2022, viewed 4th May 2023, <https://www.tc260.org.cn/front/postDetail.html?id=20220624175016>

16 *Information Security Technology-Certification Requirements for Cross-border Transmission of Personal Information (Draft for Comments),* TC260, 16th March 2023, viewed 4th May 2023, <https://www.tc260.org.cn/front/bzzqyjDetail.html?id=20230316143506&norm_id=20221102152946&recode_id=50381>

17 *Catalogue of Critical Network Equipment and Specialised Cybersecurity Products,* CAC, 3rd July 2023, viewed 18th July 2023, <http://www.cac.gov.cn/2023-07/03/c_1690034742530280.htm>

18 *Provisions on the Administration of Algorithmic Recommendation of Internet Information Services,* CAC, 4th January 2022, viewed 19th May 2023, <http://www.cac.gov.cn/2022-01/04/c_1642894606364259.htm>

service providers with public opinion attributes or social mobilisation capabilities should complete filing procedures through the algorithm filing system. On 11th December 2022, the CAC published the *Provisions on the Administration of Deep Synthesis Internet Information Services*,[19] demanding deep synthesis service providers to fulfil compliance obligations such as identification, algorithm filing and safety assessment. On 13th July 2023, the CAC and other government authorities published the *Interim Measures for the Administration of Generative Artificial Intelligence Services*.[20] The interim measures encourage the development of generative artificial intelligence services, while imposing certain compliance obligations for generative artificial intelligence service providers, including submitting security assessments, completing algorithm filings and strengthening the training data's veracity, accuracy, objectivity and diversity.

Key Recommendations

1. Ensure that Chinese Cybersecurity Legislation Does Not Create Discriminatory Market Access Barriers

Concern

Certain cybersecurity schemes may lead to the creation of a business environment that is discriminatory towards international businesses, in which they are restricted or even prohibited from providing products and services to segments of the Chinese market.

Assessment

Certain requirements under Chinese security legislation, notably the CSL, the DSL, the PIPL and the Cryptography Law, may present *de facto* market access barriers for international businesses.

a) Classified Cybersecurity Protection System (CCPS)

The CCPS classifies networks into five ascending protection levels based on their sensitivity to individuals' rights and interests, as well as general public and national security, and specifies the corresponding security safeguards for each level. The system is based on a draft *CCPS Regulation* released by the Ministry of Public Security (MPS) in June 2018,[21] as well as a number of already effective standards.

In addition to being burdensome, the CCPS is increasingly being leveraged to advance restrictions on ICT products and services. For example, it requires networks above level three to use cryptography technology, products and services accredited by the State Cryptography Administration (SCA), and that these networks undergo security assessment for commercial cryptography. Such accreditation and assessment processes favour domestic technology, and have long remained an obstacle for many MNCs in China. As these requirements go beyond the Cryptography Law, it is of paramount importance that they are removed from the final version of the *CCPS Regulation*.

The draft *CCPS Regulation* is also affecting market entry of ICT products and services, as it requires products and services purchased by network operators above level three to pass a security review when such purchases have the potential to impact national security. The security review is further discussed in the section on the CSRM.

b) Foreign Investment Security Review in Information Technology (IT) and Internet Services

The foreign investment security review has been in force since 18th January 2021, following the release of the *Foreign Investment Security Review Measures* by the National Development and Reform Commission and the Ministry of Commerce.[22] The security review requires foreign investors to pass relevant reviews from the perspective of national security when investing in "important IT and internet products and services, key technologies and other important fields deemed as being related to national security", the scope of which remains unclear, possibly leading to regulatory discretion. Uncertainty over the applicability of security reviews increases the burden on foreign investors, as they must conduct an assessment and consult with regulatory authorities in advance to identify if they will be liable for a security review. The consultation process may involve the disclosure of transactions and other

19 *Provisions on Deep Synthesis Internet Information Services*, CAC, 11th December 2022, viewed 19th May, <http://www.cac.gov.cn/2022-12/11/c_1672221949354811.htm>

20 *Interim Measures for the Administration of Generative Artificial Intelligence Services*, CAC, 13th July 2023, viewed 3rd August 2023, <http://www.cac.gov.cn/2023-07/13/c_1690898327029107.htm>

21 *Regulation on Classified Cybersecurity Protection (Draft for Comments)*, MPS, 27th June 2018, viewed 25th May 2023, <http://www.mps.gov.cn/n2254536/n4904355/c6159136/content.html>

22 *Foreign Investment Security Review Measures*, Ministry of Commerce, 19th December, 2020, viewed 11th July 2023, <http://www.mofcom.gov.cn/zfxxgk/article/xxyxgz/202112/20211203230801.shtml>

documents, which could potentially expose foreign investors to the risk of confidential data being revealed.

c) Cybersecurity Review Measures (CSRM)

The CSRM mandate that CII operators must proactively apply for a non-transparent cybersecurity review when their purchases of network products and services affect or may affect national security. The CSRM includes broadly defined triggers, including supply chain, political, diplomatic and trade factors.[23] These non-technical factors, as well as the review's lengthy processes and lack of transparency, pose market access restrictions for MNCs. Furthermore, suppliers may be put at risk of data exposure through the need to disclose confidential information and trade secrets, since disclosure of transactions and other documents may be required.

d) Cryptography Law

Ambiguities in both the Cryptography Law and its implementing regulations have given rise to requirements that are incompatible with well-established international principles, which call for governments to avoid restrictive or burdensome licensing, certification and other obligations that limit or delay the import, trade and export of mass-marketed ICT products to which commercial cryptography is ubiquitous.[24&25]

To avoid unnecessary market access barriers, it is important that the various regulatory mechanisms the law seeks to establish remain transparent and narrow in scope. This includes ensuring that commercial products with cryptography as a secondary feature are not subject to certification and import and export restrictions; that terms such as 'national security', 'national economy and people's livelihood', and 'public interests' are *not* interpreted extensively; that the category of mass consumer products exempted from import and export restrictions is broadly defined; that voluntary certification is not enforced as a *de facto* mandatory requirement; that requirements applicable only to CII and party and government organs are not expanded—through the *CCPS Regulation* and associated standards—to networks above level three; and that the adoption of international standards, protection of sensitive intellectual property and mutual recognition for certification and attestation are all taken into consideration.

e) Data Localisation and Cross-border Data Transfer

In view of the relatively low triggers for regulatory cross-border data transfer security assessment defined by the CAC, which are discussed in the next key recommendation (KR), data localisation and cross-border data transfer restrictions can essentially act as market access barriers for MNCs in China that have to transfer data across borders at a higher frequency for normal business reasons and in response to their headquarters' requests.

MNCs in China generally find themselves at a competitive disadvantage, as they need to put in extra resources to comply with China-specific regulations, and their ability to provide innovative products and timely services is curtailed as a result of onerous data restrictions. They may also receive less favourable treatment compared to domestic competitors by being given lower security ratings in bidding processes because they have to transfer data across borders. European Chamber members have reported that, in certain extreme circumstances, suppliers seeking certain qualifications are being pushed to localise their production in China on the grounds that the cross-border transfer of data during production processes poses unnecessary risks. Finally, such restrictions inhibit cross-border business activities,[26] thereby leading to a reduced need in the Chinese market for cross-border services, the provision of which by members of the Cybersecurity Sub-working Group is an essential part of today's interconnected digital economy.

f) Critical Network Equipment and Specialised Cybersecurity Products

As illustrated in the Recent Developments section, the overly extensive mandatory product certification requirements resulting from the expanded scope of "specialised cybersecurity products" could create significant and unnecessary economic burden to the industry, delay product delivery, and create meaningless market access barriers. It is thus important for the

23 *Cybersecurity Review Measures (Revised Draft for Comment),* CAC, 10th July 2021, viewed 25th May 2023, <http://www.cac.gov.cn/2021-07/10/c_1627503724456684.htm>

24 *Joint Statement of the 17th Meeting of the World Semiconductor Council,* World Semiconductor Council, 23rd May 2013, viewed 25th May 2023, <http://www.semiconductorcouncil.org/wp-content/uploads/2016/07/May_2013_WSC_-_GAMS_version_Joint_Statement_of_the_17th_Meeting_of_the_WSC_Final_23_M-1.pdf>

25 For more details on cryptography-related market access issues, please refer to Key Recommendation (KR) 3 of the *Information and Communication Technology Working Group Position Paper 2023/2024.*

26 This is the case, for example, with the CSRM's restriction on the overseas listing of online platform operators holding large amounts of personal information, which has been discussed further above.

regulators to avoid unnecessary mandatory product certification, and to fully align with the industry in adopting new product categories subject to such certification, ensuring that every new addition is fully communicated and publicly reviewed before the eventual release.

Recommendations

- Define 'national security' as narrowly as possible, and differentiate it from 'commercial security' in a clear manner.
- Narrow the scope of industries subject to foreign investment security review and scenarios subject to the CSRM.
- Refrain from imposing undue restrictions on the use of ICT products and services in level three networks under the CCPS.
- Limit the applicability and influence of non-binding cybersecurity regimes, in such a manner that they do not go beyond binding legislation.
- Minimise the scope of mandatary product certification only to what is absolutely necessary, to reduce market access barriers.
- Promote mutual recognition, adoption and reliance upon applicable international standards and global industry best practices.
- Ensure that MNCs' intellectual property and trade secrets are protected.

2. Minimise Unnecessary Operational Burdens Created by Extensive, Ambiguous and Discretionary Security Schemes 8

Concern

Certain security schemes and their implementation risk raising uncertainty and creating disproportionate administrative, operational and cost challenges for organisations, while having adverse effects on competitiveness and innovation, and the security of IT systems.

Assessment

Data restrictions

Chinese legislation sets forth different avenues for data handlers to transfer their data abroad, namely passing a regulatory security assessment, signing a standard contract, and being certified in respect of personal information protection. The details of these mechanisms have finally been fleshed out over the course of 2022/2023, as demonstrated in the Recent Developments section of this paper.

As discussed in the *Cybersecurity Sub-working Group Position Paper 2022/2023*, some of these requirements appear overly stringent in places and could lead to increased operational burdens for foreign companies in China. Despite this, as the regulatory framework is already in place, members of the sub-working group are making significant investments in compliance, and see several ways that such operational burdens could be alleviated through appropriate enforcement.

First, as the regulatory security assessment focusses, among other aspects, on the legality, legitimacy and necessity of the cross-border data transfer, it is critical to ensure that these key concepts are not interpreted in an overly restrictive manner by regulators, to strike a balance between data security concerns and other legitimate business interests. In particular, the necessity test should not be considered as being met only if business operations are no longer possible without the transfer of data, or if there is no domestic vendor that can substitute for a foreign vendor. Due consideration should be given to the uniqueness of different industries and their respective business models, to the need for differentiated product and service offerings that are not possible without seamless data flows, and also to different corporate cultures, some of which rely more heavily on intra-company data sharing. The free cross-border transfer of company-internal data should be the normal case.

Second, the Chinese regulatory security assessment will be mandatorily triggered as soon as 'important data' is involved. As previously mentioned, the definition of 'important data' and important data catalogues have yet to be finalised, bringing significant uncertainty for data handlers in some key sectors. The sub-working group urges for the scope of important data to be clearly and narrowly defined, with regulators providing a sufficient grace period between any future releases of guidelines related to the definition of 'important data' and catalogues, and their implementation. Important data generally should not include the production and operation information, internal management information and personal information of employees of enterprises.

Third, the current Chinese regulatory framework relies heavily on regulatory security assessment, which can be easily triggered by most large firms and consumer-facing firms.[27] Those who are subject to the security assessment will no longer be able to resort to the standard contract or the certification. As a next step, the regulators should identify ways to reduce over-reliance on one single mechanism, allowing data handlers to choose cross-border data transfer methods that suit their own situation.

Fourth, the regulatory security assessment takes into account data security protection policies and regulations, as well as network security environment, of the country or region in which the foreign recipient is located. Since such assessments are generally company-agnostic, the regulators or related agencies could consider publishing official assessment opinions for individual data handlers to refer to.

Another problem lies in the existence of multiple regulators. In addition to the general cross-border data transfer rules published by the CAC, many industries with strong industry regulators—such as automotive, healthcare and IT—have their own industry-specific rules, with similar/overlapping filing, assessment and reporting requirements. In the interests of efficiency, regulators should ensure alignment with regard to both the regulatory requirements and their enforcement, including by ensuring a central point of contact for all filing and reporting activities.

Finally, while passing the regulatory security assessment is not conditional upon data localisation, this factor has been gaining traction recently, especially given the prospects of failure to pass the security assessment. The sub-working group strongly discourages the tightening of the security assessment, which will lead to *de facto* data localisation requirements, or the introduction of across-the-board localisation requirements, and urges that any future regulatory discussions in this regard give due consideration to MNCs' legitimate business and operational needs. While localisation of data might be technically feasible in some circumstances, setting up duplicate IT systems within China just to meet administrative requirements and service local employees, customers and business partners can be problematic. This is not only because of the extra infrastructure costs, but also because MNCs would need to custom build and maintain interfaces to synchronise data for reporting, analysis and other normal business purposes, hire staff with expertise to support the infrastructure, and even significantly alter their established global and local operational and production processes. This is not a scalable approach for running a global business, and could eventually hamper foreign investment, as well as the provision of innovative products in the China market.

The sub-working group calls on the EU and China to strengthen bilateral dialogue and cooperation to address the aforementioned data-related operational issues, to identify common grounds, and to increase harmonisation in rule-making and enforcement.

Cybersecurity vulnerability management and incident notification

In July 2021, the Ministry of Industry and Information Technology (MIIT), the CAC and the MPS jointly released the *Administrative Provisions on Security Vulnerabilities of Network Products (Administrative Provisions)*,[28] complemented by a mandatory national standard titled *Critical Network Devices Security Common Requirements*,[29] which contains provisions related to coordinated vulnerability disclosure (CVD). The *Administrative Provisions* includes a specific provision mandating the reporting of vulnerabilities to the MIIT, an obligation which significantly diverges from well-established best practices and international standards in the field of CVD and vulnerability handling—as articulated in standards such *as International Standardisation Organisation (ISO)/International Electrotechnical Commission (IEC) 29147 (2018) and ISO/IEC 30111 (2019)*—and is being monitored with concern by the international community.[30]

The process of CVD is a standardised, multi-step process through which stakeholders identify, develop, validate, distribute and deploy mitigations for security vulnerabilities. To minimise users' risk and potential

27 For example, under the *Measures on Security Assessment of the Cross-border Transfer of Data*, a regulatory security assessment must take place as long as one of the several easily attainable thresholds—considering that MNCs typically handle large volumes of customer and employee data—is reached by the data handler, including in cases where the personal information of over one million people is being handled; or where the personal information of over 100,000 people or the sensitive personal information of 10,000 people has been cumulatively provided abroad by the handler since 1st January of the previous year.

28 *Administrative Provisions on Security Vulnerabilities of Network Products*, MIIT, CAC & MPS, 12th July 2021, viewed 4th May 2023, <http://www.gov.cn/zhengce/zhengceku/2021-07/14/content_5624965.htm>

29 *Critical Network Devices Security Common Requirements*, MIIT, 20th February 2021, viewed 4th May 2023, <http://std.samr.gov.cn/gb/search/gbDetailed?id=BBE32B661B848FC8E05397BE0A0AB906>

30 *Coordinated Vulnerability Disclosure Policies in the EU*, European Union Agency for Cybersecurity, p. 37, 13th April 2022, viewed 4th May 2023, <https://www.enisa.europa.eu/publications/coordinated-vulnerability-disclosure-policies-in-the-eu>

harm and costs associated with the vulnerability, CVD directs the recipient of a vulnerability to only disclose information about the vulnerability to other parties that are absolutely required to develop and deploy a mitigation, fix or 'patch'.

Unmitigated vulnerability information should only be communicated on a need-to-know basis, to prevent it from being exploited. This is particularly important considering the interdependencies between products nowadays. The sub-working group strongly urges a clear clarification that "reporting vulnerabilities to the MIIT within two days" is only required after remediations and mitigations are made available, and recommends disclosing information related to unmitigated vulnerabilities in a confidential manner, and only to the parties necessary to develop and test the proposed remediation or mitigation during the CVD process.

It should also be recognised that in certain limited cases, disclosure of information on an unmitigated vulnerability can support users' response when, for example, the vendor no longer exists or the vulnerability concerns an open-source software/module or a commonly-used protocol, and there is no owner of the technology or a different coordinator that is developing a mitigation and leading a CVD process.

Another concern is that of mandatory incident notification to "relevant competent authorities" in cases of cyber incidents and "relevant authorities" in case of data breaches. In this regard, it is important to have a unified regulatory framework, with one agency coordinating the different authorities on incident notification. Multiple notifications to different authorities on the same incident may result in potentially different—if not conflicting—responses or demands in response, which will increase both the administrative burden and the level of uncertainty over the potential outcome.

CII protection

The CII protection requirements contained in various Chinese security legislation are being broadened in ways that bring about significant operational burdens to the business community. For example, the addressees of such requirements have been expanded in many instances, regardless of whether the networks/infrastructure in question are truly critical for the normal functioning of the core business. Also, many requirements that originally were only destined for CII have been, or risk being, expanded to cover networks with classified cybersecurity protection above level three, or even broader network operators, as is the case with the data localisation and cross-border data transfer security assessment obligation outlined above, as well as with the use of commercial cryptography products.[31]

It is important for regulators to clearly delineate the boundaries between what falls within the scope of CII and what falls outside, and to avoid interpreting and applying relevant requirements in an expansive manner, in order to increase legal certainty, reduce burdensome obligations and leave room for normal business activities, as well as international exchange and cooperation.

Recommendations

- Avoid a 'one-size-fits-all' approach in regulatory cross-border data transfer security assessments, and give due consideration to the uniqueness of different industries and companies' respective business models.
- Avoid an overly restrictive interpretation of the 'necessity' threshold in regulatory cross-border data transfer security assessments.
- Clearly and narrowly define the scope of 'important data', and provide a sufficient grace period between any future release of important data identification guidelines and catalogues, and their implementation.
- Avoid over-reliance on regulatory cross-border data transfer security assessments, and allow data handlers to choose the cross-border data transfer mechanism that best suits their situation.
- Publish official assessment opinions about the data security protection policies and regulations, as well as the network security environment of the country or region where the foreign recipient is located, for individual data handlers to refer to.
- Ensure a central point of contact for all filing and reporting activities instead of asking data handlers to make similar submissions to different regulators.
- Avoid introducing across-the-board data localisation requirements.
- Strengthen EU-China dialogue and cooperation to identify common grounds and alleviate data-related operational burdens.
- Avoid mandating the disclosure to parties irrelevant to the CVD process of information related to

31 Please refer to KR 3 of the *Information and Communication Technology Working Group Position Paper 2023/2024*.

unmitigated vulnerabilities.

- Ensure a coordinated and unified approach for oversight and enforcement among the government authorities involved.
- Clearly delineate the boundaries between CII and non-CII, and avoid interpreting and applying relevant requirements in an expansive manner to cover broader networks, in order to leave enough room for normal business activities.

3. Ensure Transparency, Consistency, Non-discrimination and Proportionality in Cybersecurity-related Rulemaking and Law Enforcement 4

Concern

Transparency, consistency, non-discrimination and proportionality are becoming increasingly important in order to create a healthy security environment for domestic companies and MNCs alike, but are not always ensured in current rule-making and law enforcement practices.

Assessment

To reassure the business community that China's security environment will remain predictable in the face of a rapidly evolving regulatory framework, it is of paramount importance when formulating and implementing security-related laws, regulations and standards that China ensures the following:

a) Transparency

The sub-working group recognises and appreciates the efforts made by relevant government agencies to communicate with the industry in the making and roll-out of certain horizontal and sectoral data regulations. Transparency can be further improved by increasing communication with industry associations representing both domestic and MNCs in the development of broader rules, as endorsed by the State Council in 2019.[32]

In addition to data regulations, transparency is also needed in the development of other laws, regulations and standards that can be disruptive to normal business operations, including those relating to CCPS, cybersecurity review, cybersecurity vulnerability management, and commercial cryptography. Proper public consultation needs to be guaranteed when new legal obligations are being introduced or if there is major conflict with a previous draft. In this regard, the sub-working group calls on the Ministry of Justice to ensure that the forthcoming *CCPS Regulation* undergo an additional round of public consultation before being finalised.

b) Consistency

Consistency is important in delineating the roles and responsibilities of different government authorities. It is therefore concerning that a growing number of government agencies—including, but by no means limited to, the CAC, the MPS and the MIIT—are having their say in data protection, with overlapping or at least unclear responsibilities. The co-existence of different, unsupervised regulators may lead to inconsistencies, and adverse effects and, thus necessitating an effective, clear, and transparent coordination mechanism.

With respect to commercial cryptography, consistency is needed at different levels. First, it is needed between the Cryptography Law and its own implementing regulations, in particular the *Commercial Cryptography Regulation*;[33] and second, between the CSL and the Cryptography Law, with regard to the various security assessments, reviews, testing and certification systems. One notable example of inconsistency is the fact that certain cybersecurity standards currently mandate compliance with recommended national and industry standards related to cryptography, as well as the use of commercial cryptography products that have been approved or certified by the SCA, although such products are not included in the product catalogue for mandatory certification. It is also important, as argued in KR 1, that the draft *CCPS Regulation* remain consistent with the Cryptography Law and the Cybersecurity Law by not expanding commercial cryptography certification and security assessments to non-CII.

c) Non-discrimination

The sub-working group calls on China to eliminate any elements in laws, regulations, standards and practices that risk discriminating against foreign-invested companies. One example of this is that it is currently impossible for international companies to access certain security-related standardisation bodies,

32 *Notice on Fully Listening to Opinions of Enterprises, Industry Associations and Chambers of Commerce in the Making of Administrative Measures, Provisions and Normative Documents*, State Council, 13th March 2019, viewed 10th May 2023, <http://www.gov.cn/zhengce/content/2019-03/13/content_5373423.htm>

33 For more details, please refer to KR 3 of the *Information and Communication Technology Working Group Position Paper 2023/2024.*

and to receive state accreditation for commercial cryptography, a process that is nonetheless mandated by an increasing number of government agencies. Also, despite reassurances from the CAC that the emphasis on "secure and trustworthy" (and other similar terms) ICT products and services is not targeting international companies, in reality this term still has a close connotation with indigenous innovation.

d) Proportionality

Security laws and regulations need to be technically credible and innovation-friendly. Intervention at all levels, from national regulations to business security measures, should be appropriate to and commensurate with the risk, and neither limit the opportunities offered by digital transformation nor create unreasonable costs for businesses. One telling example of the lack of proportionality is the fact that a regulatory cross-border transfer security assessment is often currently needed when transferring data containing personal information, though in reality many normal business activities require such information to be easily shared across borders. Going through the security assessment is very time-consuming, and even impractical in some circumstances, which disrupts business operations.

While China—like all other countries and regions—has a legitimate right to strengthen the resilience of its supply chains, such efforts should remain inclusive and not place an overly strong emphasis on indigenous innovation and supply chain controls to the extent that normal business activities are significantly jeopardised, as detailed in KR 2 of the *Information and Communication Technology Working Group Position Paper 2023/2024*.

The Cybersecurity Sub-working Group advocates that adoption of the above process-related recommendations would lead to the removal of excessive market access barriers and operational burdens, and to more business-friendly security rules being promulgated nationwide across all sectors.

Recommendations

- Provide in a timely and meaningful manner an open and transparent platform that allows European businesses to engage in security rulemaking.
- Review existing and planned security-related laws and regulations, and release unambiguous implementation guidelines to ensure consistent requirements and enforcement.
- Clarify the roles and responsibilities of government authorities involved in security rulemaking.
- Recognise MNCs with operations in China as Chinese companies and avoid extensive interpretations of "national security".
- Give more consideration to the operational needs of MNCs and provide effective guidelines to help companies obtain feedback from relevant regulatory authorities in a timely manner.
- Ensure security regulations are appropriate and commensurate with the risk.

Abbreviations

CAC	Cyberspace Administration of China
CCPS	Classified Cybersecurity Protection System
CII	Critical Information Infrastructure
CSL	Cybersecurity Law
CSRM	Cybersecurity Review Measures
CVD	Coordinated Vulnerability Disclosure
DSL	Data Security Law
EU	European Union
ICT	Information and Communication Technology
IEC	International Electrotechnical Commission
ISO	International Standardisation Organisation
IT	Information Technology
KR	Key Recommendation
MIIT	Ministry of Industry and Information Technology
MNC	Multinational Corporation
MPS	Ministry of Public Security
PIPL	Personal Information Protection Law
SCA	State Cryptography Administration
TC260	National Information Security Standardisation Technical Committee

European Chamber
中国欧盟商会

Logistics Working Group

Key Recommendations

1. Improve the Efficiency of Customs

1.1 Ensure Consistent Interpretation and Implementation of the General Administration of Customs China's (GACC's) Policies at the Local Level

- Provide interpretation of national policies for local authorities.
- Publish local interpretation of policies issued by central government.

1.2 Provide Better Training for Industry Players to Improve their Understanding of Customs Policies

- Arrange regular training sessions for companies on policy updates and publish a list of frequently asked questions on the topic.
- Establish official hotlines for companies to consult on customs policies.

1.3 Improve the Declaration Model for Low-value Shipments 3

- Further facilitate trade by extending the National Declaration Model for low-value shipments, in order to support remote declarations and allow shipments to transit through Chinese cities for clearance.
- Adopt international best practices on customs clearance procedures on low-value goods.
- Increase the limit for declaring Category B items to Chinese yuan (CNY) 5,000 to ensure consistent policies regarding the single transaction limit for cross-border e-commerce retail imports and the limit for declaring imported Category B personal items.

1.4 Optimise the Authorised Economic Operator (AEO) Programme 2

- Simplify the AEO re-verification audit requirements.
- Introduce penalty criteria for a downgraded AEO status that are proportional to the yearly actual value of import and export declarations.
- Allow companies that have underpaid duty and import taxes to retain their AEO status and customs rating without suspension or downgrading—except for non-compliance cases related to smuggling—by paying extra duty and import taxes, when the amount underpaid does not exceed a defined threshold.
- Grant more beneficial treatment to AEO companies.

2. Support the Green Transition of the Logistics Industry

2.1 Establish a Mechanism for Calculating Carbon Emissions Along the Logistics Supply Chain

- Evaluate the disparity between current standards and the practices employed along the entire logistics supply chain in order to establish comprehensive standards and methodologies for accurately measuring carbon emissions.
- Implement effective mechanisms to guarantee the continuous enhancement of standards and methodologies through consistent input from businesses and experts knowledgeable in carbon emissions.

2.2 Improve Both Infrastructure and Related Policies that Can Support the Deployment of More New Energy Vehicles (NEVs) in the Logistics Industry

- Consider the characteristics of the logistics industry when formulating requirements for the use of NEVs.
- Introduce supporting policies that support the right of way for NEVs in the logistics industry,

such as reducing traffic restrictions on NEVs across cities.

- Accelerate the construction of infrastructure for express NEVs, such as charging piles and special parking spaces for delivery services.
- Provide more incentives to encourage logistics companies to switch to e-trucks, including prioritising the right of way of e-trucks over traditional trucks.

3 Create a Transparent and Predictable Data Regulatory Scheme for European Logistics Service Providers

3.1 Consult Logistics Companies when Drafting Cross-border, Data-transfer-related Policies

- Share relevant legislation with industry in advance of its implementation.
- Allow a sufficient grace period for companies to comply with any new legislation.
- Permit companies with good safety assessment records to continue carrying out outbound data transfer activities during the safety assessment period.
- Avoid using cross-border data transmission compliance as a precondition for licensing applications or extensions without prior notification to the industry.

3.2 Exempt International Express Delivery Businesses from the De-identification Requirement in Relevant Regulations and Standards

- Exempt international express delivery businesses from the de-identification requirement in relevant regulations and standards.
- Establish additional requirements for international express delivery on de-identification if necessary, while taking international best practice into consideration.

4 Improve Transparency in Policy Drafting as well as in the Issuance and Implementation of Government Incentives

4.1 Publish Licence Application Procedures for Express Delivery Service Companies 4

- Publish written notices on all the materials and specific requirements for business licence applications.
- Inform express delivery service enterprises of any newly added licence management requirements in a timely manner, and set up a reasonable timeline for preparing the materials.
- Set up an adequate transition period for the implementation of any new requirements.
- Provide annual training for industry on business licence management.

4.2 Ensure Transparency Regarding Access to Subsidies and Incentives

- Publish in advance calls for comments on draft policies and regulations before promulgating them.
- Consolidate the opinions and suggestions of all industry players before making decisions, and ensure foreign-invested enterprises have the same access to information as their Chinese counterparts.
- Merge, simplify and unify all regulatory requirements.

International Liner Shipping Sub-working Group

1. Extend the International Cargo Relay Trial to Include More Chinese Ports and Chartered Vessels 2

- Obtain full support from the connected ports to deploy a practicable international cargo relay network together with the carriers.

- Enlarge the international cargo relay trial to include more Chinese ports and chartered vessels, in order to facilitate more transhipments.

2. Simplify the Custom Declaration Procedures in the International Cargo Relay Trial 2

- Simplify the customs declaration procedures in the international cargo relay trial via remote checks and paperless submission.

3. Establish Transparent Filing Rules for Ocean Freight and Local Shipping Surcharges 4

- Follow the regulatory requirement of only filing any new or increased tariffs, without any pre-approval obligations.
- Create certainty in filing by providing a clear definition of maritime-related charges, specifying the required documents and procedures.
- Impose tariff filing and audit requirements on non-vessel operating common carriers, freight forwarders and booking agents similar to those imposed on carriers.

4. Amend Current Regulations that Hold Carriers of Dangerous Goods (DG) Liable for Misdeclarations by Shippers 3

- Amend current regulations that hold carriers liable for DG misdeclarations, and impose administrative/civil/criminal liabilities upon the party that initially submits false information.

5. Strengthen the Supervision of Port/Terminal Groups and Promote Fair Competition 4

- Closely monitor the potential infringement of competition law by port groups and other logistics conglomerates.
- Implement measures and controls to prevent post-merger port groups and logistics conglomerates from creating monopolies, both horizontally and vertically.

6. Grant Flexibility to Carriers for Maximum Empty Containers' Dwell Time 3

- Amend the regulations and grant flexibility to carriers in container deployment by removing limits on dwell time.

7. Collaborate with the International Liner Shipping Community to Decarbonise the Shipping and Logistics Industry by Establishing an Adequate Infrastructure and Legal Framework 3

- Build partnerships between research institutions, shipping companies, shipbuilders and suppliers in China and the European Union (EU) to develop and adapt carbon-neutral technologies.
- Agree on technical standards for low-carbon technologies and alternative fuel certification to avoid potential inefficiencies and waste, through approaches such as enhanced cooperation within the International Maritime Organization.
- Set up an adjustment mechanism for the conversion of different pricing methods, and a

dispute resolution mechanism for emissions trading, between China and the EU.
- Cooperate on establishing and upgrading global shipping and logistics infrastructure, to ensure the availability and bunkering of carbon-neutral fuels such as liquified natural gas and methanol.

Introduction to the Working Group

The Logistics Working Group was founded in 2003. It represents a wide range of logistics service providers in freight forwarding, including sea, air, land and express delivery, as well as warehousing and distribution. The Logistics Working Group is also composed of the International Liner Shipping Sub-working Group, with core members from leading international maritime transport enterprises.

Recent Developments

Despite the challenges caused by China's COVID-19 control policies in 2022, the logistics industry achieved positive growth, largely attributable to the growth of China's exports. According to the General Administration of Customs of China (GACC), the country's annual foreign trade value exceeded Chinese yuan (CNY) 40 trillion, up 7.7 per cent year-on-year.[1] State Post Bureau (SPB) statistics showed that, in 2022, the volume of express delivery reached 110.5 billion items, which represented a slight increase of 2.1 per cent, while the international/Hong Kong and Macau express delivery business suffered a decrease of 4.1 per cent to 2.02 billon items.[2]

On 11th November 2022, the Joint Prevention and Control Mechanism of the State Council released 20 measures aimed at optimising COVID-19 control polices,[3] with the State Council releasing a further 10 measures on 7th December 2022.[4] This was envisaged to result in the recovery of domestic consumption, resumption of the manufacturing sector and an easing of restrictions on cross-provincial traffic, which in turn was expected to support the development of the logistics sector. In the first quarter of 2023, the total value of social logistics goods[5] rose 3.9 per cent year-on-year to CNY 84.3 trillion (approximately United States dollar (USD) 12.21 trillion); logistics services for industrial products grew 3.0 per cent year-on-year; and China's total revenue from the logistics industry rose 6.7 per cent year-on-year to nearly CNY 3 trillion during this period.[6]

European logistics companies operating in China are still encountering a number of challenges related to the regulatory environment. Throughout 2022 and into 2023, several draft laws, regulations and standards relevant to the industry were published for consultation:

- On 7th January 2022, the SPB published the draft *Administrative Measures on Express Delivery Market (Amendment Draft)* for public consultation.[7]
- In March 2022, the Department of Policy and Law of the SPB invited certain industry associations and companies to comment on the national standard *Express Delivery Services (Draft for Comments)*, and in November 2022, the draft was published for comments from the general public.[8]
- On 2nd April 2022, the National Technical Committee of Postal Standardisation organised consultations

1 *China's foreign trade up 7.7 pct in 2022 to new high, Xinhua News*, 13th January 2023, viewed 14th May 2023, <https://english.news.cn/20230113/6d5f86a1e7034d52923ec82cfb455253/c.html>

2 *State Post Bureau released statistics on postal industry operation in 2022*, Ministry of Transportation (MOT), 18th January 2023, viewed 14th May 2023, <https://www.mot.gov.cn/tongjishuju/youzheng/202301/t20230130_3747917.html>

3 *China releases measures to optimise COVID-19 response*, State Council, 11th November 2022, viewed 12th May 2023, <https://english.www.gov.cn/news/topnews/202211/11/content_WS636e31efc6d0a757729e2e63.html>

4 *COVID-19 response further optimised with 10 new measures,* State Council, 8th December 2022, viewed 12th May 2023, <https://english.www.gov.cn/statecouncil/ministries/202212/08/content_WS63913c92c6d0a757729e4135.html>

5 Total value of social logistics good refer to the total value generated from the transportation of all goods, which are launched in the domestic demands market, from producers to end users.

6 *China's logistics sector posts stable growth in Q1, China Daily,* 5th May 2023, viewed 9th June 2023, <https://global.chinadaily.com.cn/a/202305/04/WS6453415fa310b6054fad1064.html>

7 *SPB's Notice on Public Consultation on draft Administrative Measures on Express Delivery Market (Amendment Draft),* SPB, 7th January 2022, viewed 29th May 2023, <https://www.spb.gov.cn/gjyzj/c100025/c100029/202201/0bbcd6727cd3411792ed15d369802595.shtml>

8 *Notice on Public Consultation on Express Delivery Service National Standard (Draft for Comments)*, National Technical Committee of Postal Standardisation, 15th November 2022, viewed 29th May 2023, <http://yn.spb.gov.cn/ynsyzglj/c105007/dqhd/c106941pb/202211/ac7c1ee72c164f20866cb30fcefee125.shtml>

on three recommended industry standards, including the *Technical Specifications of Postal Delivery Vehicles' Smart Monitoring Surveillance System (Draft for Comments);* the *Technical Specifications of Postal Smart Monitoring Surveillance System Collection Equipment (Draft for Comments)*; and the *Requirements of Postal Smart Monitoring Surveillance System Interface (Draft for Comments)*. All three became effective on 1st February 2023.[9]

- On 27th June 2022, the Department of Policy and Law of the SPB organised internal consultation through the China Express Association on the revision of the *Interim Regulation on Express Services*.
- In August 2022, the Department of Policy and Law of the SPB organised internal consultations with industry stakeholders through the China Express Association on the recommended industry standard *Requirements on Post and Delivery Users' Personal Information Protection (Draft for Comments)*. This recommended industry standard became effective on 1st April 2023.[10]
- On 25th October 2022, the SPB published *Administrative Measures on Post and Delivery Users' Personal Information Protection (Draft for Comments)* for public consultation.[11] The name of the final version was changed to the *Administrative Measures on Personal Information Protection of Users of Post and Delivery Services*, and became effective on 13th February 2023.[12]

However, some of these draft regulations were not published for public consultation, but rather through domestic industry associations. This meant that European logistics companies were therefore unable to raise their concerns and comments or prepare adequately for implementation of the regulations. This approach creates an unfair business environment for European logistics companies operating in China.

9 *Industry Standards Monthly Log of People's Republic of China*, Standardisation Administration of China, 1st January 2023, viewed 29th May 2023, <https://std.sacinfo.org.cn/gnocHb/queryInfo?id=4EF3C77E2D425D465FD6985745E2DF578902913607806FC4E00D8F06EDEEF534>

10 *SPB Notice on Post Industry Standards on Requirements on Post and Delivery Users' Personal Information Protection*, SPB, viewed 29th May 2023, <https://www.spb.gov.cn/gjyzj/c200030/202301/e8b07a32cb1f4a0298a1c5f7a9bb9c28.shtml>

11 *SPB Notice on Public Consultation on Administrative Measures on Post and Delivery Users' Personal Information Protection (Draft for Comments)*, SPB, 25th October 2022, viewed 28th May 2023, <https://www.spb.gov.cn/gjyzj/c100025/c100029/202210/6cc8f86491ca49c5b70bcfd26f1b723e.shtml>

12 *Administrative Measures on Personal Information Protection of Users of Post and Delivery Services*, SPB, 24th February 2023, viewed 28th May 2023, <http://zj.spb.gov.cn/zjsyzglj/c102713/202302/1de262d487284eb1a590b87e499aa982.shtml>

Key Recommendations

1 Improve the Efficiency of Customs

1.1 Ensure Consistent Interpretation and Implementation of the GACC's Policies at the Local Level

Concern

Policies promulgated by the GACC are interpreted and implemented inconsistently by different local-level authorities.

Assessment

Policies promulgated by the GACC represent a general and national perspective, which might not apply directly to certain local situations. In such cases, local officials will need to interpret the policy by themselves. The varying levels of both the awareness of the importance of certain policies and the professional skills of local officials can result in divergent approaches due to different interpretations. This can result in discretionary enforcement of policies, which raises uncertainty for business.

Recommendations

- Provide interpretation of national policies for local authorities.
- Publish local interpretation of policies issued by central government.

1.2 Provide Better Training for Industry Players to Improve their Understanding of Customs Policies

Concern

The lack of understanding of customs policies among industry players affects business efficiency.

Assessment

Many companies either only have a small team to handle customs issues or must outsource to external partners. They therefore may lack the capacity to remain up to date with the most recent customs policies, which—given that customs policies frequently change to meet the government's most recent domestic and international strategies—compromises corporate efficiency. When a company has concerns and questions about policies, they have few channels for consultation and/or do not know which official channel to consult with. Even in cases in which written explanations on customs policies are available, companies may not have the knowledge to fully interpret and understand the policy, which raises compliance risks.

Recommendations

- Arrange regular training sessions for companies on policy updates and publish a list of frequently asked questions on the topic.
- Establish official hotlines for companies to consult on customs policies.

1.3 Improve the Declaration Model for Low-value Shipments 3

Concern

The current declaration scheme for low-value goods impacts efficiency and increases operational workload.

Assessment

The GACC initiated national customs clearance integration reform in 2017 with the release of *Announcement No. 25 [2017]*.[13] Since then, national customs risk prevention and control centres and tariff collection administration centres have been set up to support remote declarations and allow shipments to transit through Chinese cities for clearance. However, low-value shipments, including samples and low-value items under CNY 5,000 (Category C) were not included in this system.

The rapid development of international trade and cross-border e-commerce has resulted in a substantial increase in the volume of low-value goods being shipped. The majority of low-value shipments are samples and advertising materials, which are very time-sensitive and require fast customs clearance. While the GACC recently expanded the national customs clearance integration reform to include Category C items through the express delivery channel, they are still not eligible for the National Declaration Model (NDM). In consideration of the increasing volumes of low-value shipments, extending the NDM to Category C items would greatly reduce the administrative burden on businesses and improve customs clearance efficiency.

Second, many countries and regions, including the European Union (EU) and the United States (US), have introduced policies to simplify customs clearance procedures for low-value goods. Countries around the world have tax exemption policies for low-value goods. For example, as of 10th March 2016, the US has raised its low-value tax exemption threshold for imported goods (*de minimis* value) from USD 200 to USD 800.[14] Based on this change, all goods with a declared value of USD 800 or less are exempt from import duties and value-added tax, except for certain restricted goods (those in special categories).

China's customs clearance efficiency can be improved by aligning its procedures for low-value goods with International best practices. For low-value goods, simplified customs clearance procedures, such as increasing the monetary threshold of low-value goods, reducing the number and scope of documents required to complete the customs declaration, simplifying the classification and declaration framework for low-value goods, and adopting a single tax rate, can be introduced. This will help improve customs clearance times, and reduce costs and fees for business. Adopting these measures will also reduce the administrative resources expended by the GACC and the administrative burden on companies that can benefit from accelerated customs clearance.

Further, the current limit for declarations of inward/outward Category B (personal items) is CNY 800 (Hong Kong, Macao and Taiwan) or CNY 1,000 (in countries or regions other than Hong Kong, Macao and Taiwan) in China. However, the Ministry of Finance, the GACC and the State Administration of Taxation stipulated in the *Notice on Improving Tax Policies on Cross-border E-commerce Retail Imports* that, beginning 1st January 2019, the single transaction limit for retail goods imported through cross-border e-commerce channels would increase from CNY 2,000 to CNY 5,000. Such a regulatory gap between the two approaches creates confusion and uncertainties for business and consumers.

Recommendations

- Further facilitate trade by extending the NDM for low-value shipments, in order to support remote declarations and allow shipments to transit through Chinese cities for clearance.
- Adopt international best practices on customs clearance procedures on low-value goods.

13 *GACC Announcement No. 25 [2017] (Announcement on Promoting the Reform of National Customs Clearance Integration)*, GACC, 28th June 2017, viewed 29th April 2023, <http://guangzhou.customs.gov.cn/ customs/302249/302266/302267/711020/index.html>

14 *De Minimis Value Increases to $800*, US Customs and Border Protection, 3rd November 2016, viewed 17th July 2023, <https://www.cbp.gov/newsroom/national-media-release/de-minimis-value-increases-800>

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- Increase the limit for declaring Category B items to CNY 5,000 to ensure consistent policies regarding the single transaction limit for cross-border e-commerce retail imports and the limit for declaring imported Category B personal items.

1.4 Optimise the Authorised Economic Operator (AEO) Programme 2

Concern

Despite the significant investments that companies have made in applying for and obtaining the AEO qualification, the benefits are not immediately apparent, which restricts these companies' operational efficiency.

Assessment

An AEO is defined in the World Customs Organization's (WCO) Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework) as "a party involved in the international movement of goods in whatever function that has been approved by or on behalf of a national customs administration when complying with WCO or equivalent supply chain security standards".[15] This concept, which originally appeared in the Community Customs Code,[16] is one of the core concepts in the SAFE Framework. In the AEO system, customs authorities work with qualified business partners to gain additional competitiveness and effectiveness in the facilitation of international supply chains by reducing customs clearance lead time and cost. The AEO certification system is an important part of the national credit system, and customs authorities can use it to reduce any conflict that may arise between customs supervision and trade facilitation.

The working group welcomes the efforts of the GACC to enhance China's AEO programme in recent years, and recommends it continues its efforts to provide more benefits for enterprises in the future. For instance, based on the GACC's current AEO rules, AEO enterprises need to be re-verified by customs authorities every five years to maintain their qualification, which costs enterprises greatly in terms of money, manpower, time and other resources. In order to reduce the burden on enterprises and improve efficiency, some of these re-verification requirements or processes should be simplified. For example, as the internal policies, systems or structure of most multinational companies (MNCs) do not change very frequently, repeating certain processes each time during re-verification is a waste of resources for all parties.

Furthermore, the AEO rules also clearly state that any enterprise will be downgraded and lose their AEO qualification if they are penalised with a single fine over CNY 30,000, or fines that exceed CNY 50,000 within a year (for brokerage enterprises, a single fine over CNY 10,000 or fines that exceed CNY 30,000). In other words, a relatively small fine imposed as a consequence of minor non-compliance can result in the loss of AEO qualification for MNCs, which would significantly impact their daily operations. At the same time, AEO enterprises that have demonstrated considerable internal control and compliance capabilities should be eligible for more preferential treatment.

It is very encouraging to see the progress China has made in signing AEO mutual recognition agreements with other countries. China should continue to establish such agreements, as they will help to improve efficiency and reduce the expense of cross-border activities.

Recommendations

- Simplify the AEO re-verification audit requirements.
- Introduce penalty criteria for a downgraded AEO status that are proportional to the yearly actual value of import and export declarations.
- Allow companies that have underpaid duty and import taxes to retain their AEO status and customs rating without suspension or downgrading—except for non-compliance cases related to smuggling—by paying extra duty and import taxes, when the amount underpaid does not exceed a defined threshold.
- Grant more beneficial treatment to AEO companies.

2 Support the Green Transition of the Logistics Industry

2.1 Establish a Mechanism for Calculating Carbon Emissions Along the Logistics Supply Chain

Concern

Without a transparent mechanism for calculating carbon emissions, businesses are unable to make informed investment decisions in line with their corporate decarbonisation commitments.

15 *AEO Template*, WCO, June 2018, viewed 27th April 2023, <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/aeo-template.pdf?la=en>

16 *Community Customs Code*, European Union regulations | European Encyclopedia of law, viewed 1st April 2023, <https://europeanlaw.lawlegal.eu/community-customs-code/>

Assessment

Transport is responsible for over 30 per cent of final energy consumption.[17&18] Because of this, there is a heavy emphasis among different stakeholders in the logistics supply chain on meeting overall corporate decarbonisation commitments. China's regulatory authorities have established ambitious decarbonisation targets. In September 2020, Chinese President Xi Jinping made the commitment that China will "aim to have CO_2 emissions peak before 2030 and achieve carbon neutrality before 2060".[19] It is therefore now more crucial than ever for companies to be able to understand how to measure the carbon emissions of their supply chains, both to comply with regulations and to refine their own sustainability strategies.

Committees such as the European Committee for Standardization (CEN: in French, Comité Européen de Normalisation) have formulated standards that propose calculation methods and criteria for measuring energy consumption and greenhouse gas emissions.[20] The CEN standard has been established in order for companies to determine their environmental footprint and seek ways to reduce it.[21] According to a report published by a consulting group, in the effort to decarbonise supply chains, "companies struggle to get the data they need and to set clear targets and standards to which their suppliers must adhere. Engaging an often-fragmented supplier landscape is challenging – especially when emissions are deeply embedded in the supply chain, or when addressing them might require collective action at the industry level."[22] Therefore, it is important to engage all stakeholders along the supply chain when discussing standards and policies to try and gain consensus from the diverse interests and issues along the entire supply chain. Transparent standards and methodologies should take into account the global nature of logistics supply chains, ensuring they are both comprehensible and applicable across diverse locations. Once established, these standards should undergo periodic review to accommodate advances in both industry practices and technology.

Recommendations

- Evaluate the disparity between current standards and the practices employed along the entire logistics supply chain in order to establish comprehensive standards and methodologies for accurately measuring carbon emissions.
- Implement effective mechanisms to guarantee the continuous enhancement of standards and methodologies through consistent input from businesses and experts knowledgeable in carbon emissions.

2.2 Improve Both Infrastructure and Related Policies that Can Support the Deployment of More New Energy Vehicles (NEVs) in the Logistics Industry

Concern

Current infrastructure and supporting policies are not sufficient to support the transition towards the use of NEVs in the logistics industry.

Assessment

Compared with traditional trucks, e-trucks are often heavier and can carry less goods. The charging time of e-trucks also needs to be taken into consideration during daily operation. Therefore, more incentives are necessary to encourage logistics service providers to switch from traditional to e-trucks. The central and local governments at all levels have issued policies and opinions to promote the replacement of traditional fuel vehicles with NEVs. These include special requirements for transportation and distribution vehicles used in the logistic industry. Some regions have already stipulated the proportion of NEVs that must be used in express logistics operations when vehicles are updated or added to fleets. However, some provinces and cities

17 "Total final consumption, also referred to as gross final energy consumption, is the aggregate of all of the end use energy that is used for providing various energy services. This means that this total focusses on energy currencies like electricity and secondary fuels like gasoline. Electricity must be made by power plants, and most of these power plants are heat engines and have a fair amount of waste heat. Usually, this sum subtracts off the energy used in transporting the electricity or the energy used at a power plant as energy industry own use. The amount of energy that a country uses depends on where in the energy supply chain one is looking. The subtlety is that consumers don't use coal, they use electricity which requires an infrastructure that often uses coal.": *Total Final Consumption*, University of Calgary, viewed 9th June 2023, <https://energyeducation.ca/encyclopedia/Total_final_consumption>

18 Schmied, Martin & Knörr, Wolfram, *Calculating GHG emissions for freight forwarding and logistics services in accordance with EN 16258*, European Association for Forwarding, Transport, Logistics and Customs Services (CLECAT), viewed 20th May 2023, <https://www.clecat.org/media/CLECAT_Guide_on_Calculating_GHG_emissions_for_freight_forwarding_and_logistics_services.pdf>

19 *An Energy Sector Roadmap to Carbon Neutrality in China. Executive Summary,* IEA, viewed 7th June 2023, <https://www.iea.org/reports/an-energy-sector-roadmap-to-carbon-neutrality-in-china/executive-summary>

20 Schmied, Martin & Knörr, Wolfram, *Calculating GHG emissions for freight forwarding and logistics services in accordance with EN 16258*, CLECAT, viewed 20th May 2023, <https://www.clecat.org/media/CLECAT_Guide_on_Calculating_GHG_emissions_for_freight_forwarding_and_logistics_services.pdf>

21 Ibid.

22 *How Companies Can Decarbonise Their Supply Chains,* BCG, viewed 7th June 2023, <https://bcg.ft.com/article/companies-decarbonise-their-supply-chains>

have not taken into account the differences between international and domestic express delivery business when formulating relevant indicators and requirements. For example, international express delivery service providers usually use trucks or mini vans for both port-to-sorting-stations routes and sorting-station-to-final-customers routes, while domestic express delivery business usually use electric tricycles to deliver goods to final customers.

To meet stricter timeliness requirements from companies and consumers, motor vehicles used in international express services not only carry out transportation from port to outlet, but also undertake the 'last mile' delivery from outlet to user. In addition, supporting infrastructure such as charging piles for electric vehicles used in the express industry and right-of-way policies in some regions are not yet complete. This means that if express companies are required to replace large parts of their fleets with electric vehicles in a short time period, they may incur significant economic and administrative costs.

Recommendations

- Consider the characteristics of the logistics industry when formulating requirements for the use of NEVs.
- Introduce supporting policies that support the right of way for NEVs in the logistics industry, such as reducing traffic restrictions on NEVs across cities.
- Accelerate the construction of infrastructure for express NEVs, such as charging piles and special parking spaces for delivery services.
- Provide more incentives to encourage logistics companies to switch to e-trucks, including prioritising the right of way of e-trucks over traditional trucks.

3 Create a Transparent and Predictable Data Regulatory Scheme for European Logistics Service Providers

3.1 Consult Logistics Companies when Drafting Cross-border, Data-transfer-related Policies

Concern

The lack of consultation with companies during the drafting process for cross-border, data-transfer-related policies has created uncertainty for business operations.

Assessment

In the international express industry, cross-border transmission of data is a necessary business function for fulfilling enterprise and customer service contracts. As part of this process, personal information directly related to international express services—such as the name, phone number, address, and other personal information of the sender/recipient—inevitably needs to be transferred overseas. This information is essential to the process of international trade and cross-border transportation, and is sometimes required by overseas regulatory agencies, such as customs. Effective management of international express cross-border data transmission requires close cooperation and information sharing between relevant authorities and industry to facilitate better communication and collaboration between enterprises, their headquarters and other overseas branches, and to ensure compliance.

It is important that relevant authorities share legislation with the industry in advance of its implementation in order to help enterprises clarify key compliance points, such as whether the international express industry will be recognised as a critical information infrastructure operator, what is to be considered 'important data', and if detailed data exit security assessment rules will be issued and applied to international express companies.

Once relevant legislation has been issued, enterprises will need sufficient time to prepare and gather data evaluation results. For industries in which data is continuously updated, including international express delivery, data may be transferred frequently across borders. To prevent any delays or interruptions to international delivery service operations, enterprises that have not previously had a poor safety assessment record should be allowed to continue outbound data transfer activities during the safety assessment period.

Industry authorities should avoid using cross-border data transmission compliance as a precondition for licensing applications or extensions without prior notification to the international express industry. If the relevant authorities consider incorporating data exit security assessments into the approval conditions for permit applications or extensions, it should formally notify the relevant enterprises in advance to allow time for preparation.

Recommendations

- Share relevant legislation with industry in advance of its implementation.

- Allow a sufficient grace period for companies to comply with any new legislation.
- Permit companies with good safety assessment records to continue carrying out outbound data transfer activities during the safety assessment period.
- Avoid using cross-border data transmission compliance as a precondition for licensing applications or extensions without prior notification to the industry.

3.2 Exempt International Express Delivery Businesses from the De-identification Requirement in Relevant Regulations and Standards

Concern

The de-identification requirement in standard *GB/T 41833-2022 Express Electronic Waybill and the Personal Information Protection Requirements for Delivery Users (Draft for Comments)* should not be made applicable to international express delivery businesses.

Assessment

In the past couple of years, the SPB, in conjunction with relevant ministries, has continuously promoted and improved the system for protecting personal information in the express and postal industries.[23] The de-identification of express delivery forms is an important part of this system.

In 2022, many regulations and standards on requirements for encrypting or de-identifying express delivery waybill information were in the drafting process, including the *Express Market Management Measures (Revised Draft for Comments)*,[24] the *Measures for the Administration of the Express Delivery Market (Revised Draft for Comments)* and the *Personal Information Security Management Regulations for Delivery Service Users (Draft for Comments)*.[25] For example, Article 49 of the *Measures for the Administration of the Express Delivery Market (Revised Draft for Comments)* stipulates that:

> "[E]nterprises operating express delivery business shall establish express waybills (including electronic waybills) in accordance with laws, administrative regulations and the provisions of the postal administration department of the State Council. Management systems and operating procedures such as production, use, storage and destruction, and security technical measures such as encryption and de-identification must be taken to protect the security of express waybill information. It is not permitted to display in its entirety the identity information of natural persons."[26]

Unlike domestic express delivery, which does not involve cross-border transportation, international express waybills need to meet the relevant requirements of regulatory authorities in different countries and regions. It is therefore not applicable to impose the use of encryption, de-identification and other requirements that are mandated for domestic express delivery. At this stage, in practice, authorities at all levels only impose de-identification requirements on domestic express delivery business, not international express delivery business. However, there is a lack of clarity over the application of this requirement in regulations and standards for international express delivery. For example, while the national standard *GB/T 41833-2022 Express Electronic Waybill*, implemented on 1st February 2023, specifies that the scope of application of this standard covers domestic electronic waybills, it does not specify the relevant requirements for international express delivery business.[27]

Recommendations

- Exempt international express delivery businesses from the de-identification requirement in relevant regulations and standards.
- Establish additional requirements for international express delivery on de-identification if necessary, while taking international best practice into consideration.

23 *State Administration for Market Regulation Held Themed Press Conference on National Standard,* State Administration of Market Regulation, 9th April 2023, viewed 10th May 2023, <https://www.samr.gov.cn/xw/xwfbt/202304/t20230407_354441.html>

24 *Express Market Management Measures (Revised Draft for Comment),* MOT, 7th January 2022, viewed 10th May 2023, <http://zqyj.chinalaw.gov.cn/readmore?id=4749>

25 *State Post Bureau Notice on Call for Comments on Personal Information Security Management Regulations for Delivery Service Users (Draft for Comments),* SPB, 25th October 2022, viewed 10th May 2023, <https://www.spb.gov.cn/gjyzj/c100025/c100029/202210/6cc8f86491ca49c5b70bcfd26f1b723e.shtml>

26 *State Post Bureau Notice on Call for Comments on Measures for the Administration of the Express Delivery Market (Revised Draft for Comments),* SPB, 7th January 2022, viewed 10th May 2023, <https://www.spb.gov.cn/gjyzj/c100025/c100029/202201/0bbcd6727cd3411792ed15d369802595.shtml>

27 *Catalogue of Existing Postal Service Standards*, SPB, 28th January 2022, viewed 10th May 2023, <https://www.spb.gov.cn/gjyzj/c100009/c100012/202201/a9ce0525855b4c13a743b5de42813233.shtml>

4. Improve Transparency in Policy Drafting as well as in the Issuance and Implementation of Government Incentives

4.1 Publish Licence Application Procedures for Express Delivery Service Companies 4

Concern

There is no publicly available information on how to apply for express delivery service licences, which leaves room for discretionary interpretation of related policies at the local level.

Assessment

Because the express delivery service licence is one of the most fundamental licences for the industry, international express businesses attach particular importance to its maintenance and management. Since 2020, the authorities have started to systematise and standardise the express delivery service licensing process, and linked the licensing portal to the State Council's national integrated government online service platform to ensure accuracy and prudence of the approval process.[28] However, enterprises still encounter many challenges with the application process, as well as with licence extensions and access to relevant information.

At present, neither the SPB nor provincial and municipal postal administrations have officially released to the public the specific list of documentation required for licence approval. In lieu of a convenient communication channel through which enterprises can understand the documents required for applications for, as well as changes or extensions to, licences, the requirements can only be understood indirectly through the Express Business Licensing Management Information System. This makes it difficult for companies to prepare adequately in advance for any changes.

Recommendations

- Publish written notices on all the materials and specific requirements for business licence applications.
- Inform express delivery service enterprises of any newly added licence management requirements in a timely manner, and set up a reasonable timeline for preparing the materials.
- Set up an adequate transition period for the implementation of any new requirements.
- Provide annual training for industry on business licence management.

28 SPB Service Portal (trial), <https://zwfw.spb.gov.cn/gjj/corp/login>

4.2 Ensure Transparency Regarding Access to Subsidies and Incentives

Concern

Without official and transparent policies on subsidies and incentives, it is difficult for European logistics companies to access and benefit from them, which creates unfair competition between local and European companies.

Assessment

There is a need for greater transparency in the process of formulating legislation, incentives or subsidies, regulations and standards that apply to the international express business, and specific requirements and standards that apply to express delivery supervision. Currently, often only certain domestic enterprises are invited to participate in preliminary research and consultation, without sufficient prior communication with the entire industry. International express delivery service enterprises, especially foreign-invested ones, are therefore unable to obtain timely information on the details of policy formulation and regulatory requirements. This leaves them with insufficient time to prepare for any regulatory changes, or to apply for any subsidies that could support their business operations.

At the Central Economic Work Conference, held in December 2022, China's leadership stressed that national treatment should be implemented for foreign-invested enterprises (FIEs), and that FIEs should be guaranteed "equal participation [...] in government procurement, bidding, and standard setting in accordance with laws and regulations."[29] Equal participation of FIEs in the formulation of policies and standards is a fundamental part of providing national treatment. It would help to ensure compliance and operational stability, as well as healthy and orderly development of the logistics industry. It would also help to further promote a high level of opening-up, and facilitate economic recovery now China has lifted its 'zero-COVID' management measures.

Compared to their Chinese competitors, FIEs need

29 *Central Economic Work Conference Held, Xi Jinping & Li Keqiang Delivered Important Speeches, Xinhua News*, 16th December 2022, viewed 5th May 2023, <http://www.news.cn/politics/leaders/2022-12/16/c_1129214446.htm>

more time for decision-making when major policies and standards are released, as they need to communicate with their headquarters overseas. The short timeline for policy implementation often does not provide them with sufficient time to make prudent changes. FIEs also do not have sufficient communication channels with relevant government agencies to get authoritative policy interpretation and compliance guidance.

Recommendations

- Publish in advance calls for comments on draft policies and regulations before promulgating them.
- Consolidate the opinions and suggestions of all industry players before making decisions, and ensure FIEs have the same access to information as their Chinese counterparts.
- Merge, simplify and unify all regulatory requirements.

Abbreviations

AEO	Authorised Economic Operator
CEN	Comité Européen de Normalisation
CLECAT	European Association for Forwarding, Transport, Logistics and Customs Services
CNY	Chinese Yuan
EU	European Union
FIE	Foreign-invested Enterprise
GACC	General Administration of Customs China
MNC	Multinational Company
MOT	Ministry of Transport
NDM	National Declaration Model
NEV	New Energy Vehicle
SPB	State Post Bureau
US	United States
USD	United States Dollar
WCO	World Customs Organization

International Liner Shipping Sub-working Group

Introduction to the Working Group

Ocean shipping accounts for the transportation of more than 80 per cent of global trade. It is the most efficient and cost-effective method of international transportation for most goods and helps to create prosperity among nations and peoples. The maritime industry has been a key enabler of economic growth in, and an indispensable partner to, China as it developed into the world's largest trading nation, meaning that both the Chinese and global economies depend on a well-functioning and healthy maritime transport industry.

The International Liner Shipping Sub-working Group—originally the Maritime Transport Working Group—was established in 2000 to represent international maritime transport enterprises operating in China. The working group's objective is to work towards a more efficient, environmentally sustainable and competitive maritime transport environment in China by engaging in dialogue with relevant government institutions.

Recent Developments

State of Global and Chinese Shipping Market in 2022

In 2022, global shipping underwent dramatic changes due to supply chain disruptions and subsequent market adjustments. In addition, the macro-environment faced strong headwinds and was impacted by factors such as soaring inflation, Russia's war in Ukraine and increased fuel costs.

COVID-19 caused supply chain disruptions that led to port congestion and other bottlenecks in global transport chains, significantly impairing shipping schedule reliability and leading to substantially higher transport costs compared to historical averages. In the second half of 2022, congestion pressures and inefficiencies eased, freeing up additional capacity and leading to a sharp drop in the Shanghai Containerised Freight Index. By early 2023, the spot freight rates had dropped to pre-COVID-19 levels.[1&2]

The pandemic highlighted the vulnerability of modern supply chains, and the focus is now on making them more resilient and efficient. A major lesson learnt is that pre-COVID supply chains had become too lean through an excessive focus on cost over durability. Relationships between shippers and carriers had become too opportunistic in many cases. Investments in digitalisation, and increasing transparency and flexibility, must be made collectively throughout the entire transport chain to enhance efficiency. More committed relations must also be forged, for example, through two-way commitments that apportion costs to both parties in the event that agreements, such as bookings, are not kept or if cargoes are not leaving ports as promised.

Getting to Carbon Neutrality

Greenhouse gas emissions in the shipping sector account for around three per cent of total emissions.[3] The sector is working with various global institutions, including the International Maritime Organisation (IMO), to achieve carbon neutrality. If China is to assist the IMO in realising its goal to reduce greenhouse gas emissions from shipping by 50 per cent, compared to 2008 levels, by 2050, economically competitive, zero-emissions vessels must be operating on a global scale by 2030.[4]

Biofuel and e-fuel have been identified as the most promising pathway to maritime decarbonisation. Unlike traditional fuel oil, which relies on imports, China has an evident advantage in producing and supplying biofuel and e-fuel, thanks to a significant biomass feedstock, cost-competitive renewable energy and whole value-chain manufacturing capacity. Biofuels could offer China the opportunity to transform into an energy exporter in maritime transportation, reducing its reliance on imported energy products and increasing its energy security.

The Clydebank Declaration at the 2021 United Nations Climate Change Conference pledged to establish six

1 *Shanghai Containerized Freight Rate*, Shanghai Shipping Exchange (SSE), 7th April 2023, viewed 10th April 2023, <https://en.sse.net.cn/indices/scfinew.jsp>

2 A spot rate is a one-off rate obtained for transporting a shipment by sea or air freight. In normal market conditions, securing a low freight rate can set the floor of transport costs relatively low and makes the whole supply chain cost-efficient.

3 *Emissions-free sailing is full steam ahead for ocean-going shipping, Horizon, The EU Research and Innovation Magazine,* European Commission, 6th September 2022, viewed 5th May 2023, <https://ec.europa.eu/research-and-innovation/en/horizon-magazine/emissions-free-sailing-full-steam-ahead-ocean-going-shipping>

4 *Carbon Neutrality: The Role of European Business in China's Race to 2060*, European Union Chamber of Commerce in China, 25th May 2022, viewed 8th June 2023, <https://www.europeanchamber.com.cn/en/publications-carbon-neutrality-report>

green shipping corridors globally.[5] Under the agreement, the ports and cities of Los Angeles and Shanghai, along with industry partners, set a goal of developing a Green Shipping Corridor Implementation Plan by the end of 2022, the first to go into development.[6]

In recent years, China has formulated a package of new policies to propel the development of the green shipping sector. Aligning with the 14th Five-year Plan, policies encouraging shore power usage by carriers and shore power engineering promote the increase of power reserves and production, technological innovation and green development. On 17th May 2023, the Huludao coastal power project in Liaoning became operational,[7] with further coastal power projects in Hebei and Shandong under development and expected to come online in late 2023.

Key Recommendations

1. Extend the International Cargo Relay Trial to Include More Chinese Ports and Chartered Vessels 2

Concern

The international relay trial via Shanghai Yangshan Port is currently only connected to three northern ports, and only open to owned vessels, reducing carriers' flexibility for network connections.

Assessment

On 18th November 2021, the State Council announced permission for foreign vessels to carry out cargo relays between three northern China ports—Qingdao, Dalian and Tianjing—and Shanghai Yangshan Port for trans-shipment.[8] However, a vast number of shipments on foreign vessels originate from east and south China, stop over at Shanghai and are then trans-shipped at Busan Port in South Korea. Permitting trans-shipment in more Chinese ports would provide customers with quantitative network advantages, more choice in transportation routes and shorten the transit time for relay trans-shipment.

Furthermore, at least half of carriers' capacity are charter vessels operated by carriers. Therefore, allowing only owned vessels to carry out international cargo relays limits the utilisation of the cargo relay policy. For instance, a liner service loop operating with multiple vessels cannot participate in cargo relay if even one of their vessels is chartered.

Recommendations

- Obtain full support from the connected ports to deploy a practicable international cargo relay network together with the carriers.
- Enlarge the international cargo relay trial to include more Chinese ports and chartered vessels, in order to facilitate more transhipments.

2. Simplify the Custom Declaration Procedures in the International Cargo Relay Trial 2

Concern

The current customs procedures for relay shipments are time-consuming, resulting in reduced efficiency for carriers.

Assessment

The aim of relay trans-shipment is to shorten transit time to increase efficiency and benefit customers; however, current customs clearance procedures are time-consuming. For example, for import cargo relay shipments, customs will only release the shipments after a physical onsite check is completed and hard copies of documentation are submitted. This procedure could be simplified by remote check and paperless submission, as is common in the European Union (EU).

Recommendation

- Simplify the customs declaration procedures in the international cargo relay trial via remote checks and paperless submission.

5 *19 countries sign Clydebank Declaration to create green shipping corridors,* Nautilus International, 11th November 2021, viewed 19th June 2023, <https://www.nautilusint.org/en/news-insight/news/19-countries-sign-clydebank-declaration-to-create-green-shipping-corridors/>

6 *Los Angeles and Shanghai Plan World's First Green Shipping Corridor, The Maritime Executive,* 31st January 2022, viewed 20th June 2023, <https://www.maritime-executive.com/article/los-angeles-and-shanghai-plan-world-s-first-green-shipping-corridor>

7 *Liaoning: Huludao successfully put 500 kilovolt wide-range transmission and distribution project into operation,* North Star Transmission and Distribution Grid, 29th May 2023, viewed 21st June 2023, <https://news.bjx.com.cn/html/20230116/1283424.shtml>

8 *Approval of the Temporary Adjusted Implementations of Relevant Administrative Regulations in Shanghai Pilot Free Trade Zone Lingang New Area by State Council,* State Council, 18th November 2021, viewed 19th April 2022, <http://www.gov.cn/zhengce/content/2021-11/18/content_5651689.htm>

3. Establish Transparent Filing Rules for Ocean Freight and Local Shipping Surcharges 4

Concern

The process for determining the required documents, procedures and charges for ocean freight lacks transparency, causing carriers to frequently receive unexplained rejections from the Shanghai Shipping Exchange (SSE).

Assessment

Chinese regulators acknowledge the EU and the Chinese Ministry of Transport (MOT) consensus that ocean freight rates and associated charges should be determined by the market, not by government interventions or instructions.[9] This consensus underpins the collection of charges by carriers, including freight, surcharges, behavioural charges and fees for value-added services, which should be determined by market principles.

Due to high demand and congestion at ports from 2020 to 2022, ocean freight rates grew to historically high levels. Despite the aforementioned consensus reached between the EU and the MOT, due to the vagueness of relevant Chinese regulations, carriers face difficulties filing freight rate increases and new value-added services requested by customers with the SSE. The vague regulations also make it difficult for carriers to achieve compliance or recover increased costs based on market principles. For instance, Article 15 of the *Regulations of the People's Republic of China (PRC) on International Maritime Transportation* only refers to the filing of public and negotiated freight rates, with no reference to the filing of additional surcharges.[10] Likewise, the SSE's freight-filing rules only specify ocean freight and maritime-related surcharges, including terminal handling charges (THC), without specifying the definition, requirements or necessary supporting documents. Both Article 15 and the SSE's freight-filing rules oblige the carriers to undertake filing, which many carriers interpret as 'recordation' to officials rather than a need for approval requests. In this regard, it is unreasonable to reject the filing of some charges, as some working group members report has been the case in certain circumstances. Moreover, many carriers doing business in China have experienced significant increases in dockworker charges by terminals but, due to the vagueness of the regulations, faced difficulties in filing THC increases.

It is important to note that the extremely high freight rates reported by media that some shippers experienced were most likely a result of inflation initiated by market players in the logistics chain who are not subject to ceiling rates as filed by carriers with the SSE. Rising transport costs led to unfair and misdirected criticism towards carriers. In the interests of fairness and transparency, non-vessel operating common carriers (NVOCCs), freight forwarders and booking agents should also be subject to tariff filing and audit requirements similar to those imposed on carriers.

Recommendations

- Follow the regulatory requirement of only filing any new or increased tariffs, without any pre-approval obligations.
- Create certainty in filing by providing a clear definition of maritime-related charges, specifying the required documents and procedures.
- Impose tariff filing and audit requirements on NVOCCs, freight forwarders and booking agents similar to those imposed on carriers.

4. Amend Current Regulations that Hold Carriers of Dangerous Goods (DG) Liable for Misdeclarations by Shippers 3

Concern

Carriers are being held liable for shippers' misdeclaration of DG and subjected to penalties, which is unreasonable as they have no means of detecting or preventing such misdeclarations.

Assessment

Although administrations at certain ports have ceased to hold carriers liable for DG misdeclaration, the situation in other ports remains the same. For example, Ningbo and Tianjin[11] still refer to the *Regulation on Safety*

9 The long-term consensus reached between the EU and the MOT that "ocean freight rates should be determined by the market, not by government interventions or instructions," was cited in a MOT media press: *The Ministry of Transport answered netizens' comments about "the recent high sea freight"*: State Council, 24th June 2021, viewed on 4th Apr 2023, <http://www.gov.cn/hudong/2021-06/24/content_5620615.htm>

10 *Regulations of the People's Republic of China on International Maritime Transportation*, State Council, 2019, viewed 4th Apr 2023, http://www.gov.cn/gongbao/content/2019/content_5468927.htm

11 Tianjin only for import cargo.

Administration of Dangerous Goods in Ports,[12] issued by the MOT in 2017, which stipulates that carriers are the ultimate entrusted parties for terminal operation and liable for misdeclarations of DG. However, carriers only receive cargo information from shippers, booking agents or freight forwarders during the booking stage and have neither the right nor ability to check a container's content upon cargo receipt. As such, holding carriers responsible and liable for the legal consequences of any DG misdeclaration is both unfair and contrary to international practice.

Recommendation

- Amend current regulations that hold carriers liable for DG misdeclarations, and impose administrative/civil/criminal liabilities upon the party that initially submits false information.

5. Strengthen the Supervision of Port/Terminal Groups and Promote Fair Competition 4

Concern

The formation of port groups and insufficient oversight of their market monopolisation is eroding fair competition among Chinese ports.

Assessment

The integration of ports in China over the past four years has weakened free market competition. These integrations create monopolies and limit the carriers' choices of terminal operators, as the integrated ports are all controlled by the same operator. This has resulted in ports increasing handling charges, indicating terms of service agreements and offering little room for carriers to negotiate claims. Such abuse of their dominant position leaves carriers with no alternatives.

The integration of port groups and other conglomerates also leads to vertical integration (such as with container manufacturers, depots, feeders, truckers and NVOCCs), significantly reducing competition in various sectors of the logistics supply chain. This puts ocean carriers at a disadvantage when choosing vendors. For instance, when such conglomerates operate both NVOCCs and feeders, ocean carriers have no choice but to use those feeders.

12 *Regulation on Safety Administration of DG in Ports*, MOT, 4th September 2017, viewed 19th April 2023, <http://www.gov.cn/gongbao/content/2017/content_5241924.htm>

Recommendations

- Closely monitor the potential infringement of competition law by port groups and other logistics conglomerates.
- Implement measures and controls to prevent post-merger port groups and logistics conglomerates from creating monopolies, both horizontally and vertically.

6. Grant Flexibility to Carriers for Maximum Empty Containers' Dwell Time 3

Concern

The dwell time[13] management policy lacks flexibility and suitability for current market conditions, limiting carriers' ability to handle empty containers, which causes supply chain disruptions and may potentially reduce port throughput.

Assessment

Customs allow empty containers a maximum of six months stay in China, plus another three months subject to customs approval.[14] While these limitations could be met under normal market conditions, in certain situations—for example, a sustained drop in market demand, trade disputes or customs investigations—empty containers may need to remain longer.

Carriers always position empty containers close to the local market to ensure prompt and sufficient supply. Hence, abundant surplus only occurs when there is severe disruption in the market, causing a dramatic drop in market demand for a period lasting over six months.

Furthermore, ports prefer to sign long-term contracts with carriers in relation to providing empty container storage, as they can include the empty container lifting in their port throughputs. Therefore, the authorities should grant carriers flexibility in container deployment.

Recommendation

- Amend the regulations and grant flexibility to carriers in container deployment by removing limits on dwell time.

13 Dwell time refers to how long carriers' containers could stay within China for one entry.
14 *Regulation on Containers and Containerized Van Used to Contain Cargo under Customs Supervision*, General Administration of Customs China, 29th January 2004, viewed 19th April 2023, <http://www.gov.cn/gongbao/content/2004/content_62927.htm>

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7. Collaborate with the International Liner Shipping Community to Decarbonise the Shipping and Logistics Industry by Establishing an Adequate Infrastructure and Legal Framework

Concern

Support for port infrastructure and national regulations are inadequate to deliver on the decarbonisation targets prescribed by governments in China and Europe.

Assessment

Port activities are connected to a variety of indirect and direct carbon emissions, such as from shore-side infrastructure for moving containers and cranes; non-renewable electricity used to power buildings; lighting and various machinery; and other indirect emissions from the vehicles for delivery, loading and warehousing.[15] Without government support for infrastructure upgrades, particularly regarding investment, and a coordinated legal framework between different jurisdictions, ports' capabilities to integrate into global green supply chains will be limited.

For emission reduction targets to be achieved, new technologies need to be adopted, and multiple stakeholders need to work together: government authorities, industry and consumers. Furthermore, to ensure maximum efficiency, countries and companies must be aligned on low-carbon technologies and alternative fuel certification standards.

For example, a modern port needs to deploy advanced technology for monitoring and managing energy systems remotely, sharing data and optimising the generation and storage of renewable energy through smart hubs while shipyards need to ramp up the production of methanol-powered vessels. In 2022, China took further steps, including legislative support and pilot demonstrations, to increase its liquefied natural gas (LNG) bunkering capacity.[16] Significant investment will be needed to build the ecosystem for the production, logistics and bunkering of alternative fuels, which can be made possible with the right incentives. To finance such upgrades, the working group recommends additional rounds of governmental special funds to support the construction of an alternative fuel ecosystem.

As China and Europe are global maritime leaders, they are also natural partners to collaborate on developing technologies, establishing infrastructure and agreeing on standards for carbon neutral shipping. Meanwhile, to ensure better global coordination of different legal and policy frameworks, countries and companies must align on low-carbon technologies and alternative fuel certification standards. With the IMO's new rules on the Energy Efficiency Existing Ship Index (EEXI) and Carbon Intensity Indicator (CII) coming into effect,[17] the working group welcomes more technical standards from both the EU and China to better align with the international organisation.

Debates about the pricing mechanism of carbon in China and EU, and cargo ship-owners forming alliances to reduce the environmental footprint of their global supply chains, are on-going. With China developing its emission trading system and the EU introducing a carbon tax, an adjustment mechanism for the conversion of different pricing methods should be introduced, and a dispute resolution mechanism for emission trading set up among different jurisdictions.

Recommendations

- Build partnerships between research institutions, shipping companies, shipbuilders and suppliers in China and the EU to develop and adapt carbon-neutral technologies.
- Agree on technical standards for low-carbon technologies and alternative fuel certification to avoid potential inefficiencies and waste, through approaches such as enhanced cooperation within the IMO.
- Set up an adjustment mechanism for the conversion of different pricing methods, and a dispute resolution mechanism for emissions trading, between China and the EU.
- Cooperate on establishing and upgrading global shipping and logistics infrastructure, to ensure the availability and bunkering of carbon-neutral fuels such as LNG and methanol.

15 A practical guide to decarbonising ports, InnoEnergy, 9th June 2022, viewed 25th May 2023, <https://eit.europa.eu/library/practical-guide-decarbonising-ports-catalogue-innovative-solutions>

16 *Shanghai Port to become first in China with LNG bunkering service capability, Hellenic Shipping News,* 26th February 2022, viewed 20th June 2023, <https://www.hellenicshippingnews.com/shanghai-port-to-become-first-in-china-with-lng-bunkering-service-capability/>; *Chinese giant plans massive LNG network expansion, Upstream Online*, 16th February 2023, viewed 20th June 2023, (subscription required), <https://www.upstreamonline.com/lng/chinese-giant-plans-massive-lng-network-expansion/2-1-1404630?zephr_sso_ott=hHwRnt>

17 *EEXI and CII - ship carbon intensity and rating system*, IMO, viewed 19th June 2023, <https://www.imo.org/en/MediaCentre/HotTopics/Pages/EEXI-CII-FAQ.aspx>

Abbreviations

CII	Carbon Intensity Indicator
DG	Dangerous Goods
EEXI	Energy Efficiency Existing Ship Index
EU	European Union
IMO	International Maritime Organization
LNG	Liquefied Natural Gas
MOT	Ministry of Transport
NVOCC	Non-vessel Operating Common Carrier
SSE	Shanghai Shipping Exchange
THC	Terminal Handling Charges

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5 Section Five

Financial Services

Financial Services

The European Chamber has three separate working groups that cover the financial services sector, each focussing on a different segment:

- Banking and Securities
- Non-banking Financial Institutions
- Insurance

European financial service companies in China have witnessed an overall acceleration of opening-up in the sector, marked by the release of a series of financial industry and capital market policies, and further relaxation of market access restrictions. Since 2018, there has been an easing of restrictions on foreign ownership of financial institutions—such as commercial banks, securities and futures firms, fund management and life insurance firms—and the requirements for the qualification of foreign shareholders.[1]

Meanwhile, China's financial regulatory system has been undergoing significant changes. In March 2023, the first session of the 14th National People's Congress approved the State Council's proposal to restructure government bodies, including the new National Administration of Financial Regulation (NAFR). The NAFR absorbed the China Banking and Insurance Regulatory Commission (CBIRC), and took over certain responsibilities from the People's Bank of China (PBOC) and the China Securities Regulatory Commission (CSRC) to oversee the financial industry, including banking and insurance but excluding securities.[2]

In 2023, China took additional steps to further open its financial markets. For example, in April, the Shanghai Municipal People's Government issued measures to attract foreign investment by implementing the latest versions of the nationwide negative lists for foreign investment.[3] The measures also support foreign-funded securities, funds, futures, life insurance, pension management, wealth management and financial companies' expansion.[4] In June, the NAFR and the Shanghai Municipal Government jointly established the Shanghai Reinsurance International Board and issued reinsurance implementation measures to open up the global reinsurance trading market.[5] This was followed by Guangzhou's announcement the same month of plans to build a comprehensive financial platform in the GBA to encourage cross-border investment, financial openness and the development of an international financial hub.[6]

The working groups appreciate China's continuous efforts to reform and open its financial services

1 In April 2018, Yi Gang, then governor of China's central bank, announced at the Boao Forum for Asia measures to further open up the domestic financial market. The Boao Forum is modelled on the World Economic Forum and is committed to promoting economic integration and supporting Asian countries' development goals.

2 *State Council restructuring plan submitted for deliberation,* State Council, 8th March 2023, viewed 28th July 2023, <http://english.www.gov.cn/statecouncil/xiaojie/202303/08/content_WS6407da4cc6d0a757729e7dc6.html>

3 This includes the *Negative List for Foreign Investment* and the *Negative List for Foreign Investment in Pilot Free Trade Zones*.

4 *Several Measures to Further Attract and Utilise Foreign Investment in Shanghai,* Shanghai Municipal People's Government, 3rd April 2023, viewed 7th July 2023, <https://www.shanghai.gov.cn/nw12344/20230404/6ebb74adcc9241ef87e3fe8eaff578aa.html>

5 *Shanghai Reinsurance "International Board" officially launched,* State Council, 8th June 2023, viewed 11th July 2023, <https://www.gov.cn/lianbo/difang/202306/content_6885302.htm>

6 *Notice on the Action Plan for Promoting Financial Opening-up and Innovation in Guangzhou,* Guangzhou Municipal People's Government, 12th June 2023, viewed 7th July 2023, <https://www.gz.gov.cn/gkmlpt/content/9/9037/post_9037402.html#12624>

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sector, and welcome the policies and measures taken to stabilise the financial market against the backdrop of the economic downturn. Despite these reforms, members of the working groups report ongoing restrictions and barriers related to market access and competition with local enterprises. For example, in the banking sector, foreign banks' access to the China Foreign Exchange Trade System interbank market is capped at two times their operative capital in China. This restriction severely impacts their operations, given their limited capital compared to their local competitors. This issue has been raised in the *Banking and Securities Working Group Position Paper* for almost 16 consecutive years. Lifting this restriction would result in a more active and liquid *renminbi* interbank market, benefiting all banks.

In addition, the Carbon Emission Reduction Facility programme, launched in November 2021 by the PBOC, has been renewed until the end of 2024. The working groups have noticed that the programme expanded the scope of qualified financial institutions to include some locally incorporated and foreign-funded financial institutions. The Carbon Emission Reduction Supporting Tool and the Targeted Re-lending Facility to Support the Clean and Efficient Use of Coal will also be implemented in parallel to support China's transition to a green and low-carbon economy while ensuring energy supply security, and to help achieve its carbon peaking and carbon neutrality targets.[7] However, foreign bank branches lack equal access to the programme, hindering their ability to support international clients' green financing demands, and limiting competition in the market.

The non-banking sector has also faced challenges. On 31st December 2021, the PBOC issued the *Regulations on Local Financial Supervision and Administration (Draft for Comments) (Draft Regulation)*.[8] If enforced as proposed, the *Draft Regulation* would prevent financial leasing companies from conducting cross-provincial business, while 'golden' financial leasing companies[9]—all majority-owned by Chinese banks or state-owned enterprises—would be exempt from the scope of the *Draft Regulation* and continue to work nationwide.

The evolving cybersecurity and data governance landscape in China also poses significant challenges for businesses, particularly foreign financial service providers. Data localisation requirements compel foreign banks to partly disconnect their China operations from their global systems, hindering their ability to provide cross-border services – one of the few areas in which they can currently add value in the Chinese market. This outcome is detrimental to their foreign clients in China and their Chinese clients looking to expand overseas.[10] Therefore, the working groups urge a shift away from mandating banks and financial institutions to localise their data or their entire information technology systems. Instead, the adoption of a risk-based approach in line with global best practices should be prioritised.

The financial services working groups will continue to monitor progress in the opening up of China's financial sector. Through careful observations and detailed recommendations in the following papers, the working groups hope to make meaningful contributions to this end.

7 *PBOC launches new tool to boost low-carbon financing,* State Council, 8th November 2021, viewed 28th July 2023, <https://english.www.gov.cn/statecouncil/ministries/202111/08/content_WS61892c79c6d0df57f98e4ace.html>
8 *Regulations on Local Financial Supervision and Administration (Draft for Comments),* PBOC, 31st December 2021, viewed 28th July 2023, <http://jr.jl.gov.cn/jrzc/gjbwgzjwj/202201/t20220104_627855.html>
9 Under the current regulatory framework, leasing institutions fall into two categories: the so-called 'golden' financial leasing companies (金融租赁公司), regulated from the beginning by the CBIRC, and the financial leasing companies (融资租赁公司), originally regulated by the Ministry of Commerce.
10 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, 21st June 2023, viewed 10th July 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

Banking and Securities Working Group

Key Recommendations

1. Lift the Constraints that Inhibit Foreign Banks' Scale Efficiencies

1.1 Allow Foreign Banks to Become Bond Connect Market Makers Without the Precondition of Being a Chinese Interbank Bond Trial Market Maker 4

- Grant qualified foreign banks the status of Bond Connect market makers without requiring them to first become a Chinese Interbank Bond trial market maker.

1.2 Alleviate Funding Pressures for Foreign Banks Branches 16

- Ease the 'two-times' capital restriction for small and medium-sized banks in China.

1.3 Enhance the Extent of Regulatory Forbearance on Ratios, Especially Monitoring Ones, and Allow Proper Justification Based on De Facto Situations 4

- Add special recognition of local Tier 1 capital as a stable resource in the liquidity ratios (liquidity matching ratio (LMR)) and loan-to-deposit ratio (LDR), and treat deposits from parent institutions as corporate deposits.
- Give intragroup funding the same value as 'corporate deposits' in the liquidity ratio.
- Distinguish between funding sources from intragroup and external interbank borrowing when calculating 'interbank lending' in LMR calculations.
- Increase the weight for bonds and Certificates of Deposit below three months (zero per cent) in LMR calculations.
- Consider foreign banks' situation and be flexible on or waive the requirement of deposit deviation ratio (DDR) for banks with a small balance sheet in order to address compliance conflicts between the LDR and DDR.

1.4 Extend Foreign Banks Equal Access to Apply for the People Bank of China's (PBOC) Carbon Emission Reduction Facility 2

- Extend equal access to foreign banks to apply for the PBOC's carbon emission reduction facility.

2. Develop China's Futures and Derivatives Market 2

2.1 Release Qualification Requirements for Foreign Banks Applying to Trade China Government Bond Futures 2

- Release clear qualification requirements for foreign banks that wish to trade China Government Bond Futures.

2.2 Allow Onshore Banks to Engage in Non-hedging, Cross-border Derivatives Transactions with Parent Banks 2

- Allow onshore banks to engage in non-hedging, cross-border derivatives, and either remove the relative prohibition from Article 17 of the *Draft Guidance* or define certain cross-border derivatives transactions that could be carved out from the prohibition.

Section Five: Financial Services

3. Facilitate Intra-group Data Access and Optimise Local Supervisory Approaches to Data Governance, Cybersecurity and Cloud Use 4

3.1 Refine the Scope of 'Important Data', Allow Transborder Intra-group Data Flows and Facilitate Cross-affiliate Information Sharing 4

- Refrain from mandating banks to localise their data or their entire information technology systems.
- Allow companies and their headquarters or subsidiaries to conduct intra-party, cross-border data transfers.
- Remove unnecessary information-sharing firewall rules and allow cross-affiliates to share information.
- Coordinate with the Cyberspace Administration of China on narrowing the scenarios needing cross-border data transfer security assessments to those related to core national security.
- Define clearly 'critical data' in relation to the banking industry as guidance for financial institutions on critical data identification, taking into account industry feedback to avoid creating unreasonable compliance risks and costs for multinational financial institutions.

3.2 Adopt A Risk-based Regulatory Approach to the Cybersecurity Management Framework 4

- Adopt a risk-based regulatory approach to cybersecurity and critical information infrastructure (CII) management.
- Allow global technical support for multi-level protection scheme level 3 systems so that global financial institutions can continue to fully leverage expertise available firmwide.
- Avoid mandating the use of certain products and services and allow global firms' to leverage international industry best practice and maintain uniform technology stacks in China.
- Narrowly scope CII to ensure efficient and effective protection.
- Formulate and improve the national security standards for CII to guide and standardise their protection.

3.3 Adopt Secure Cybersecurity Inspections and Penetration Testing Practices to Reduce Risk to Financial Institutions' Sensitive Information 4

- Recognise the risks associated with mandated penetration testing and allow for firm-led penetration testing for firms with such capabilities and resources.
- Recognise the validity of the vulnerability assessments and penetration testing reports independently issued by the operating bank's professional teams.
- Practice secure regulatory approaches, limit the collection of sensitive data and provide sufficient protection to submitted data.

3.4 Provide Clear Guidelines on Global Financial Institutions' Use of Cloud Services

- Encourage regulators to work with the industry on frameworks for effective cloud-specific risks management.
- Provide clear guidance on financial institutions' use of cloud services for locally deployed systems.
- Allow global financial institutions' China entities to continue to leverage firmwide cloud services (for example, internal management systems and internal collaborative office systems) as long as risks are suitably managed.

Introduction to the Working Group

The Banking and Securities Working Group represents around 40 banking and securities financial institutions in China. Composed of foreign incorporated banks and branches who offer corporate banking and investment strategies to international clients, the working group has a long history of engaging with financial regulators to improve the operating environment for European banking and securities enterprises in China.

Recent Developments

On 10th March 2023, the first session of China's 14th National People's Congress announced major reforms to its financial regulatory bodies. The National Administration of Financial Regulation (NAFR) was created, replacing the China Banking and Insurance Regulatory Commission (CBIRC). Jointly with the People's Bank of China (PBOC) and China Securities Regulatory Commission (CSRC), the NAFR will be directly under the supervision of the State Council.

The NAFR will oversee most of the financial industry, including financial holding groups but excluding the securities industry, which will continue to be supervised by the CSRC. The NAFR will also oversee financial consumer protection. The PBOC will retain its mandates for monetary policy, macro-prudential policy and those policies sharing certain tools with micro-prudential policies, but the central bank will consolidate its local branches for greater central-level governance.

This reshuffle of certain mandates alongside the setting up of an institutional supervisory framework are designed to synergise different governing functions as well as eliminate conflicting goals, in order to minimise risks of regulatory vacuums, arbitrages and overlaps.

Draft Updates on Regulatory Approach to Capital Management Released

On 18th February 2023, the CBIRC released the draft *Revised Measures for Capital Management of Commercial Banks (Measures)*,[1] which are to take effect on 1st January 2024. The *Measures* are aimed at implementing the final Basel III's standard for commercial banks,[2] especially large and medium-sized banks. It classifies banks into three types based on a scale of adjusted on-and-off-balance sheet and cross-border exposures, with more disclosure requirements for those with greater exposure. The *Measures* will also specify how to calculate the risk weights for asset-management products based on the level of detail available on the underlying investments' and their risk profile. In general, it reinforces the use of the standardised approach in the calculation of credit risk, credit adjustment risk and operational risk to increase the sensitivities of the measures, while the use of internal rating-based approach is conditioned to minimise the arbitrage opportunities.

In contrast to Basel III, the *Measures'* minimum requirement on leverage ratio, capital adequacy ratio and the adoption of the internal rating-based approach remain stringent while some risk weights are designed in better alignment with China's *de facto* terms. The repercussions of these amended *Measures* for foreign banks will vary depending on their business scale in China, with the *Rules on Risk Classification of Financial Assets of Commercial Bank*—released by the CBIRC and the PBOC on 11th February 2023—a standard by which to accurately identify credit risks and assess asset qualities.[3]

Close-out Netting in China

Enacted in April 2022 and effective from 1st August 2022, China's Futures and Derivatives Law (FDL)[4] introduces a comprehensive framework for the operation and regulation of the derivatives market, in which Article 32 and Article 37 provide judiciary recognition of enforceability of the 'single agreement' and 'close-out netting'[5] in derivatives transactions respectively. However, detailed implementation rules concerning several aspects of the FDL are still pending.

1 *Revised Measures for Capital Management of Commercial Banks (Draft for Public Consultation)*, CBIRC, 18th February 2023, viewed 19th April 2023, <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1096437&itemId=917&generaltype=0>

2 The final Basel III refers to the finalised post-crisis reform standards, sometimes called Basel 3.1 or Basel IV, which are changes to international standards for bank capital requirements that were agreed by the Basel Committee on Banking Supervision in 2017 and are for implementation in January 2023: See: The Basel III Accord website, viewed 3rd July 2023, <https://www.basel-iii-accord.com/>

3 *Rules on Risk Classification of Financial Assets of Commercial Banks*, CBIRC & PBOC, 11th February 2023, viewed 21st April 2023, <https://www.cbirc.gov.cn/cn/view/pages/governmentDetail.html?&docId=1095372&itemId=861&generaltype=1>

4 *China's Futures and Derivatives Law*, Central Government of PRC, 21st April 2022, viewed 21st April 2023, <http://www.gov.cn/xinwen/2022-04/21/content_5686377.htm>

5 Close-out netting refers to a process involving termination of obligations under a contract with a defaulting party and subsequent combining of positive and negative replacement values into a single net payable or receivable.

For instance, the registration requirements of the master agreement under Article 33 are not clear yet, causing compliance issues. Risk mitigation measures similar to those adopted by other G20 countries, such as regulatory margins, would also be expected and welcomed.

Furthermore, legislative developments in other domains of financial laws in China—for instance, the revised draft of the People's Republic of China (PRC) Commercial Banks Law[6] and the draft PRC Financial Stability Law[7]—may impact close-out netting provisions under the FDL. While temporary stays of close-out netting may be imposed under these laws when finalised, the working group suggests the length of temporary stays required is kept consistent with international practice based on the principles; for instance, principles for financial market infrastructures and core principles for effective banking supervision, set out by the Financial Stability Board.[8]

Key Recommendations

1. Lift the Constraints that Inhibit Foreign Banks' Scale Efficiencies

1.1 Allow Foreign Banks to Become Bond Connect Market Makers Without the Precondition of Being a Chinese Interbank Bond Trial Market Maker 4

Concern

Foreign banks encounter difficulties in qualifying to become Bond Connect market makers, which limits their ability to serve their offshore clients' needs for bond price quotes on this channel.

Assessment

Foreign banks in China often face stricter compliance requirements and have smaller balance sheets than their Chinese peers, making it difficult to compete on bond-trading turnover and inventory size. However, foreign banks usually have bigger overseas client bases that are eager to trade with them via Bond Connect, and to get market updates and recommendations to access the onshore Chinese Interbank Bond Market. Therefore, difficulties in qualifying to become Bond Connect market makers are limiting foreign banks' ability to develop business and bring investment into China.

Recommendation

- Grant qualified foreign banks the status of Bond Connect market makers without requiring them to first become a Chinese Interbank Bond trial market maker.

1.2 Alleviate Funding Pressures for Foreign Bank Branches 16

Concern

Foreign bank branches, which act as global liquidity insurers, are limited in their ability to grow due to funding constraints.

Assessment

Foreign bank branches' are important suppliers of corporate loans, however, their access to China's wholesale funding market is constrained due to regulatory barriers.

Access to the China foreign exchange trade system (CFETS) interbank market for foreign branches is capped at two times their operative capital in China, which heavily impacts their operations as these banks have limited capital. Lifting this restriction would result in a more active and liquid *renminbi* (RMB) interbank market that would benefit all banks.

In addition, the State Administration of Foreign Exchange (SAFE) requires approval before the foreign debt of international financial institutions can be exchanged to RMB or sold through a swap deal. Given foreign banks' limited access to onshore liquidity, allowing them to swap overseas sources into RMB would help originate commercial loans to Chinese clients and support the local economy.

Recommendation

- Ease the 'two-times' capital restriction for small and medium-sized banks in China.

6 *Notice on the Commercial Bank's Law of the PRC (Draft for Revision)*, PBOC, 16th October 2020, viewed 3rd July 2023, <http://www.pbc.gov.cn/tiaofasi/144941/144979/3941920/4111225/index.html>

7 *Notice on the Financial Stability Law of the PRC (Draft for Comments)*, PBOC, 6th April 2022, viewed 3rd July 2023, <http://www.pbc.gov.cn/tiaofasi/144941/144979/3941920/4525751/index.html>

8 *Key Standards for Sound Financial Systems*, Financial Stability Board, 7th January 2021, viewed 3rd July 2023, <https://www.fsb.org/work-of-the-fsb/about-the-compendium-of-standards/key_standards/>

1.3 Enhance the Extent of Regulatory Forbearance on Ratios, Especially Monitoring Ratios, and Allow Proper Justification Based on De Facto Situations 4

Concern

The close control exercised over many ratios, including the loan-to-deposit ratio (LDR) and the deposit deviation ratio (DDR), disrupts foreign banks' daily activities.

Assessment

According to the *Administrative Measures on Liquidity Risk of Commercial Banks*,[9] banks must maintain a liquidity matching ratio (LMR) and a high-quality liquid asset adequacy ratio (HQLAAR) of over 100 per cent, as well as a low LDR. However, easing some of the constraints on the local liquidity ratio could greatly improve the development of a bank's corporate lending capabilities for its local clients:

- Local Tier 1 capital is not considered a stable resource for 'sources of weighted funds' in the LMR[10&11] and is also not counted as a resource for the LDR, even though in practice it is a stable source of funding used to develop a foreign bank's corporate lending capacity.
- For the LMR, 'interbank lending' does not distinguish between intragroup and external interbank borrowing, although the funding comes from different types of sources.[12]
- In the HQLAAR, the intragroup deposit is treated as an interbank deposit for financing purposes, with a less favourable weight (100 per cent) than a corporate deposit (35 per cent), even though it is a stable source of funding that tends to stay with the subsidiary in China for longer periods than normal corporate deposits.[13]
- In the LMR, the weight for bonds issued and certificates of deposit (CD) below three months (zero per cent), similar to interbank borrowing or deposits from banks, are too low.

Additionally, small banks face difficulties in managing the DDR variation due to passive deposit banking. They may have to sacrifice customer deposit needs and service quality to meet the DDR ratio requirement or face regulatory penalties such as access restrictions, downgraded ratings, business restrictions and punitive DDR requirements. Even though the CBIRC had previously allowed some flexibility for small foreign banks in cases of DDR ratio overshoots, this was prohibited as of June 2018.[14]

Recommendations

- Add special recognition of local tier 1 capital as a stable resource in the liquidity ratios (LMRs and LDRs), and treat deposits from parent institutions as corporate deposits.
- Give intragroup funding the same value as 'corporate deposits' in the liquidity ratio.
- Distinguish between funding sources from intragroup and external interbank borrowing when calculating 'interbank lending' in LMR.
- Increase the weight for bonds issued and CD below three months (zero per cent) in LMR calculations.
- Consider foreign banks' situation and be flexible on or waive the requirement of DDR for banks with a small balance sheet size in order to address compliance conflicts between LDR and DDR.

1.4 Extend Foreign Banks Equal Access to Apply for the PBOC Carbon Emission Reduction Facility 2

Concern

Unequal access to applications for the PBOC's carbon emission reduction facility for foreign banks restricts both their clients and their own capabilities to fulfil net-zero emission pledges.

Assessment

The Carbon Emission Reduction Facility programme, launched in November 2021 by the PBOC, has

9 *Measures to Manage Liquidity Risks for Commercial Banks, CBIRC*, State Council, 25th May 2018, viewed 3rd July 2023, <https://www.gov.cn/gongbao/content/2018/content_5312246.htm>

10 Tier 1 capital describes the capital adequacy of a bank and refers to core capital that includes equity capital and disclosed reserves. From a regulator's point of view, tier 1 capital is the core measure of the financial strength of a bank because it is composed of core capital. See *What Is Tier 1 Capital?*, Investopedia, 9th May 2019, viewed 20th April 2023, <https://www.investopedia.com/terms/t/tier1capital.asp>

11 *CBIRC Issues Measures to Manage Liquidity Risk for Commercial Banks, Moody's Analytics*, 25th May 2018, viewed 20th April 2023, <http://www.cbrc.gov.cn/chinese/newShouDoc/8189EEE949DB48F8993ACCCA638ED24B.html>

12 Intra-group funding is more stable than interbank funding given the relation between the subsidiary and its parent entity.

13 In the same fashion, in the HQLAAR, corporate finance companies (CFCs) deposits are treated as interbank deposits. However, CFCs' funding is largely made up of deposits of group member entities that are more than three months old, and hence are very stable.

14 *Order [2018] No. 48*, CBIRC, 18th June 2018, viewed 20th April 2023, <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=181941&itemId=928&generaltype=0>

been renewed until the end of 2024.[15] The aim of the programme, in line with international high-level zero-emissions goals, is to support enterprises registered in China—mainly in the field of clean energy, energy saving and carbon abatement technology—to meet their pledges of achieving net-zero carbon emissions by 2060. Currently, foreign bank branches do not have equal access to apply for the facility, which hinders their ability to support international clients' green financing demands, and thereby their ability to compete in the market.

The working group encourages equal treatment for all eligible foreign banks, including foreign branches. Furthermore, as foreign banks have to meet performance indicators set by the CBIRC on harmonising green financing activities in China, it is reasonable to expect that they are treated equally in order for them to fulfil this regulatory requirement.

Recommendation

- Extend equal access to foreign banks to apply for the PBOC's carbon emission reduction facility.

2. Develop China's Futures and Derivatives Market 2

2.1 Release Clear Qualification Requirements for Foreign Banks Applying to Trade China Government Bond Futures 2

Concern

Unclear qualification requirements for foreign banks that wish to trade China Government Bond Futures affects their application success rates.

Assessment

On 21st February 2020, the Ministry of Finance (MOF) and the CSRC launched a pilot programme for eligible commercial banks and insurance companies to trade China Government Bond Futures on the China Financial Futures Exchange. However, the requirements for application remain unclear to foreign banks and, as of June 2023, only one foreign bank has successfully participated in this pilot.

Recommendation

- Release clear qualification requirements for foreign banks that wish to trade China Government Bond Futures.

2.2 Allow Onshore Banks to Engage in Non-hedging, Cross-border Derivatives Transactions with Parent Banks 2

Concern

Prohibiting onshore banks from carrying out cross-border, over-the-counter (OTC) derivatives transactions for non-hedging purposes is having a negative impact on the market.

Assessment

The recognition of foreign banks' legitimate and traditional business needs in relation to cross-border derivatives hedging transactions between their entities in Mainland China (inclusive of incorporated banks and branches) and their offshore affiliates (normally their head office, or parent banks) during working group meetings with the Chinese regulators was a welcome development.

However, Article 2 and Article 17 of the *Guidance on Promoting the Proper Development of Derivatives Business (Draft for Public Comments) (Draft Guidance)*, jointly issued by the PBOC, the CBIRC, the CSRC and the SAFE on 3rd December 2021,[16] prohibits cross-border OTC derivatives transactions for non-hedging purposes for all onshore licensed financial institutions in China, except when otherwise stipulated.

According to the *Draft Guidance*, together with Article 4 of the *Revised Interim Administrative Measures for Derivative Business of Banking Financial Institutions*, issued by the CBIRC in 2011,[17] derivatives for non-hedging purposes include:

1. RMB/foreign exchange derivatives initiated by foreign banks' institutional clients;
2. cross-border derivatives embedded in structured deposits and traded between the onshore banks and their offshore counterparties; and
3. cross-border derivatives transacted intra-group,

15 *PBOC to renew three structural monetary policy tools including the carbon emission reduction facility,* State Council, 29th January 2023, viewed 20th April 2023, <http://www.gov.cn/xinwen/2023-01/29/content_5739092.htm>

16 *Guidance on Promoting the Proper Development of Derivatives Business (Draft for Public Comments),* PBOC, CBIRC, CSRC & SAFE, 3rd December 2021, viewed 20th April 2023, <http://www.pbc.gov.cn/tiaofasi/144941/144979/3941920/4406767/2021120317533996960.pdf>

17 *Revised Interim Administrative Measures for Derivative Business of Banking Financial Institutions*, CBIRC, 27th January 2011, viewed 20th April 2023, <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=3830&itemId=928&generaltype=0>

although intra-group exposure was already exempted in the *Circular on Clarification of Supervisory Requirement of Large Amount Exposure of Foreign-invested Legal Person Banks to Parent Bank Group*, issued by the CBIRC on 2nd April 2021.[18]

As foreign banks need to engage in cross-border derivatives transactions with parent banks for risk management, banning non-hedging cross border derivatives will lead to market inefficiencies in managing foreign banks' risk exposure.

Recommendation
- Allow onshore banks to engage in non-hedging, cross-border derivatives, and either remove the related prohibition from Article 17 of the *Draft Guidance* or define certain cross-border derivatives transactions that could be carved out from the prohibition.

3. Facilitate Intra-group Data Access and Optimise Local Supervisory Approaches to Data Governance, Cybersecurity and Cloud Use 4

3.1 Refine the Scope of 'Important Data', Allow Transborder Intra-group Data Flows and Facilitate Cross-affiliate Information Sharing 4

Concern

Current 'one-size-fits-all' approaches to data localisation regulations impose burdens on financial institutions' global operating models and compliance costs.

Assessment

As banks manage large-scale customer assets and deal with high volumes of financial information daily, the banking sector has a strong interest in cybersecurity. In 2021, China released the Personal Information Protection Law and the Data Security Law, which, along with the Cybersecurity Law (CSL), established an overarching regulatory framework on data and cross-border data flow. In July 2022, the Cyberspace Administration of China (CAC) released the *Outbound Data Transfer Security Assessment Measures*,[19] which aim to stipulate what type of "important data" and "sensitive data" will require assessment. However, the definition and scope of such data remains unclear,[20] and foreign banks need further refinement of the *Measures* in order to standardise, categorise, tag and streamline data compliance work.

In addition, there are already stringent data localisation requirements in the financial sector that predate the CSL,[21] creating operational challenges for existing financial institutions and raising the threshold for new financial institutions entering the Chinese market.

Recommendations
- Refrain from mandating banks to localise their data or their entire information technology (IT) systems.
- Allow companies and their headquarters and subsidiaries to conduct intra-party, cross-border data transfers.
- Remove unnecessary information-sharing firewall rules and allow cross-affiliates to share information.
- Coordinate with the CAC on narrowing the scenarios needing cross-border data transfer security assessment to those related to core national security.
- Define clearly 'critical data' in relation to the banking industry as guidance for financial institutions on critical data identification, taking into account industry feedback to avoid creating unreasonable compliance risks and costs for multinational financial institutions.

3.2 Adopt a Risk-based Regulatory Approach to Cybersecurity Risk Management Framework 4

Concern

Current prescriptive cybersecurity and technology requirements severely impact financial institutions'

18 *Circular on Clarification of Supervisory Requirement of Large Amount Exposure of Foreign-invested Legal Person Banks to Parent Bank Group*, CBIRC, 2nd April 2021, viewed 21st April 2023, <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=981215&itemId=928&generaltype=0>

19 The *Measures* require firms transferring 'important data', firms with 1 million personal information (PI) transferring PI overseas, and firms with cumulative provision of PI of 100,000 people or sensitive PI of 10,000 abroad among others to go through the CAC-led security assessment: *Outbound Data Transfer Security Assessment Measures*, CAC, 7th July 2022, viewed 21st April 2023, <http://www.cac.gov.cn/2022-07/07/c_1658811536396503.htm>

20 For more information, please see the *Cybersecurity Sub-working Group Position Paper 2023/2024*.

21 *Commercial Bank Information Technology Risk Management Guideline*, State Council, 1st June 2009, viewed 21st April 2023, <https://www.gov.cn/gzdt/2009-06/01/content_1329547.htm>; *Notice Requiring Financial Institutions to Properly Conduct Personal Financial Information Protection*, PBOC, 24th January 2011, viewed 21st April 2023, <http://www.pbc.gov.cn/tiaofasi/144941/3581332/3586796/index.html>; *Banking Financial Institutions Anti-money Laundering and Counter Terrorist Financing Management Measures*, State Council, 15th April 2021, viewed 21st April 2023, <http://www.gov.cn/gongbao/content/2021/content_5616160.htm>

ability to optimise their cybersecurity strategies.

Assessment

The CSL requires multi-level protection scheme 2.0 (MLPS 2.0) compliance from all network operators in China, with focussed protection for critical information infrastructure (CII) in important sectors based on the MLPS 2.0. The draft *MLPS Regulations*,[22] released by the Ministry of Public Security in 2018, outline several significant requirements with respect to the structure and maintenance of networks operating within China. The draft *MLPS Regulations* and MLPS 2.0 national standards require local support and maintenance for level 3 systems;[23] mandate the use of certain network products and services and require certified commercial encryption products, services and technologies, according to the draft *Commercial Encryption Administrative Measures* released in 2020.[24] These requirements, though prescriptive, impact compliance work as well as global systems, and raise concerns of over-regulation at a local level in some circumstances where approaches are not risk-based.

Global financial institutes benefit from having a global operation and support model, and sometimes leverage firmwide expertise by working with global teams for technical support and maintenance. The working group would like the Chinese authorities to confirm whether such global technical support will be allowed under the *MLPS Regulations*. In addition, global firms often utilise uniform technology infrastructure in order to reduce complexity and risks. The global financial community calls on China to allow global firms to continue to leverage current international industry best practices and maintain a uniform technology stack in China.

Additionally, the working group advocates for CII to be narrowly scoped to prioritise the protection of critical systems. In view of foreign financial institutions' already limited portion of the Chinese market, including them in the scope of CII would deviate from the prioritised protection approach demanded by the CSL, and be counterproductive from both a security and cost-effectiveness perspective.

Recommendations

- Adopt a risk-based regulatory approach to cybersecurity and CII management.
- Allow global technical support for MLPS level 3 systems so that global financial institutions can continue to fully leverage expertise available firmwide.
- Avoid mandating the use of certain products and services, and allow global firms to leverage international industry best practice and maintain uniform technology stacks in China.
- Narrowly scope CII to ensure efficient and effective protection.
- Formulate and improve the national security standards for CII to guide and standardise their protection.

3.3 Adopt Secure Cybersecurity Inspections and Penetration Testing Practices to Reduce Risk to Financial institutions' Sensitive Information 4

Concern

The increase of cybersecurity inspections and penetration testing through non-certificated third-party service providers makes financial institutions more vulnerable to data leakage and cyber risks.

Assessment

In 2020, the CBIRC kicked off a round of penetration testing (also known as pen-testing) on banks' IT systems, and similar requirements have been observed in the CSRC's *Measures for the Information Technology Management of Securities and Fund Operators* (2019)[25] and draft *Cybersecurity Measures in Securities and Futures Industries* (2022).[26] While the regulators' intention of underpinning financial institutions' cyber resiliency is understandable, this approach may increase or exacerbate existing risks, as pen-testing has the potential to introduce new vulnerabilities and

22 *Draft Regulations on the Cybersecurity Multi-level Protection Scheme,* Ministry of Public Security, 27th June 2018, viewed 4th May 2023, <https://www.mps.gov.cn/n2254536/n4904355/c6159136/content.html>

23 According to the *Guideline for MLPS Classification*, companies must determine the protection level of their system or application based on two major considerations. A network's protection level is graded according to its degree of societal impact. As such, networks that do not affect national security, social order or public interests are usually classified as Level 1, while networks that may affect social order and public interest are classified as Level 2 or above. Systems or applications with higher degrees of impact are more likely to be classified as Level 3 or even Level 4. Level 5 is usually reserved for state-owned military systems.

24 *Draft 2020 Commercial Encryption Administrative Measures*, State Cryptography Administration, 20th August 2020, viewed 4th May 2023, <http://www.sca.gov.cn/sca/hdjl/2020-08/20/content_1060779.shtml>

25 *Order No. 152*, CSRC, 19th December 2018, viewed 20th April 2023, <http://www.csrc.gov.cn/csrc/c101838/c1021955/content.shtml>

26 *Order No. 218*, CSRC, 3rd March 2023, viewed 20th April 2023, <http://www.csrc.gov.cn/csrc/c100028/c7202729/content.shtml>

unintentionally, or needlessly expose such institutions' most sensitive information to unintended third parties.

In addition, the industry also noted the PBOC's efforts in 2021 to collect information on IT assets, such as device models and software versions. The working group would like to highlight the risks associated with such sensitive data collection and encourage financial regulators to collect only the relevant and minimally required data to meet supervisory objectives.[27]

Recommendations
- Recognise the risks associated with mandated penetration testing and allow for firm-led penetration testing for firms with such capabilities and resources.
- Recognise the validity of the vulnerability assessment and penetration testing report independently issued by the operating bank's professional team.
- Practice a secure regulatory approach, limit collection of sensitive data and provide sufficient protection to submitted data.

3.4 Provide Clear Guidelines on Global Financial Institutions' Use of Cloud Services

Concern

Unclear guidance on the use of cloud services in China creates confusion and uncertainty for financial institutions.

Assessment

Globally, financial institutions are using cloud migration to leverage increased computing capabilities and greater access to innovative technologies in order to mitigate risk and increase operational resiliency. Multinational financial institutions are increasingly adopting a cloud-first strategy firmwide that supports headquarters and their affiliated entities around the world. China entities are among the beneficiaries of such firmwide cloud arrangements. However, the current lack of clear guidance on the use of cloud services in China creates confusion and uncertainty among financial institutions. In addition, as multinational financial institutions leverage global cloud service providers, they face stringent localisation requirements in China that challenge global and consistent cloud deployment.

Recommendations
- Encourage regulators to work with the industry on frameworks for effective cloud-specific risk management.
- Provide clear guidance on financial institutions' use of cloud services for locally deployed systems.
- Allow global financial institutions' China entities to continue to leverage firmwide cloud services (for example, internal management systems and internal collaborative office systems) as long as risks are suitably managed.

Abbreviations

CAC	Cyberspace Administration of China
CBIRC	China Banking and Insurance Regulatory Commission
CD	Certificate of Deposit
CFC	Corporate Finance Company
CFETS	China Foreign Exchange Trade System
CII	Critical Information Infrastructure
CNY	Chinese Yuan
CSL	Cybersecurity Law
CSRC	China Securities Regulatory Commission
DDR	Deposit Deviation Ratio
DPL	Data Protection Law
EU	European Union
FDL	Futures and Derivatives Law
HQLAAR	High-quality Liquid Asset Adequacy Ratio
IT	Information Technology
LDR	Loan to Deposit Ratio
LMR	Liquidity Matching Ratio
MLPS	Multi-level Protection Scheme
NAFR	National Administration of Financial Regulation
OTC	Over-the-counter
PBOC	People's Bank of China
PRC	People's Republic of China
RMB	*Renminbi*
SAFE	State Administration of Foreign Exchange

27 'Penetration testing, also called pen testing or ethical hacking, is the practice of testing a computer system, network or web application to find security vulnerabilities that an attacker could exploit. Pen-testing can be automated with software applications or performed manually. The process involves gathering information about the target beforehand, identifying possible entry points, attempting to break in—either virtually or for real—and reporting back the findings. See *pen test (penetration testing)*, TechTarget, viewed 20th April 2023, <https://searchsecurity.techtarget.com/definition/penetration-testing>

Non-banking Financial Institutions Working Group

Key Recommendations

1. Remove all Restrictions to Financial Leasing Companies Over Cross-provincial Operations 2

- Review Article 11 of the draft *Local Financial Supervision and Administration Regulation* to lift geographical restrictions on financial leasing companies.
- Ensure that local government and finance bureaus do not issue specific regulations requesting the establishment of a local subsidiary to run provincial leasing businesses.

2. Secure the Protection of Ownership of Leased Assets 4

- Ensure that asset registration on the Zhongdengwang platform is sufficient to protect the ownership right of the equipment leasing company (ELC), whether it is a financial or leasing product.
- Confirm that when an ELC is financing equipment other than vehicles under a SALB contract, the sole asset registration on the Zhongdengwang platform protects the ownership right of the ELC.
- Ensure that the transfer of the vehicle registration certificate cannot be completed by any local bureaus of the Department of Motor Vehicles (DMV) without properly checking the Zhongdengwang platform.
- Improve the Zhongdengwang platform by creating a dedicated field to enter the invoice number and additional unique identification of an asset, in order to ensure ELCs' ownership rights.

3. Promote Innovation in Financial Services by Enabling ELCs to Finance Intangible Assets 4

- Promote innovation in financial services by allowing ELCs' right to provide financing to intangible assets and by enabling ELCs to develop new intangibles leasing solutions.

4. Allow ELCs to Obtain Cross-border Corporate Guarantees and Cross-border Bank Guarantees 4

- Allow ELCs to obtain cross-border corporate guarantees and cross-border bank guarantees in order to promote access to credit facilities in China

5. Include Consumer Finance Companies (CFCs) in the Pilot Programme to Sell Non-Performing Loans (NPLs) in Batches to Asset Management Companies (AMCs) 7

- Lift restrictions on batch transfers of NPLs in the consumer finance by issuing clear and supportive guidance on this process.
- Include CFCs in the NPL pilot project and set up relevant rules and policies to support/facilitate the sale of NPLs by CFCs, including an end-to-end process for realising NPL transfer to sale.

Introduction to the Working Group

The Non-banking Financial Institutions (NBFI) Working Group was established in 2008. It includes leading European consumer finance specialists who operate consumer finance companies (CFCs), auto finance companies (AFCs), small loan companies and other entities engaged in consumer finance services in cooperation with third parties (for example, guarantee companies) in China. As of 2020, the working group also includes equipment leasing companies (ELCs).

Recent Developments

During the annual Central Economic Work Conference, held from 15th to 16th December 2022, China's new leadership announced the country's key goals of maintaining economic stability, boosting domestic demand and consumption, and managing risks through the frequently quoted formula of "[p]roactive fiscal policy and prudent monetary policy".[1]

To do this will require taking additional and specific measures such as bolstering fiscal sustainability, limiting local government risks, and providing liquidity for micro, small and medium-sized enterprises (MSMEs) as well as for technological and green development initiatives. These points were echoed in the *2023 Government Work Report*, published during the annual meetings of the National People's Congress (NPC) and the Chinese People's Political Consultative Conference – the 2023 'Two Sessions'.[2]

One of the key outcomes of the 'Two Sessions' was the approval to overhaul the country's financial regulatory system, with a National Administration for Financial Regulation to be established under the State Council to oversee all financial sectors except for securities. The new regulatory body will replace the China Banking and Insurance Regulatory Commission (CBIRC), and will absorb some of the competencies of the People's Bank of China (PBOC) and the China Securities Regulatory Commission (CSRC). The new regulator will also be in charge of dispatching agencies at the local level.[3] In the meantime, the PBOC is set to cut county-level sub-branches and cross-provincial branches, and the CSRC will absorb the National Development and Reform Commission's oversight of corporate bond issuance approval. The regulatory overhaul is in line with the government's stated goal of reducing financial risks and streamlining policy development and implementation processes. At the Party level, a Central Financial Commission will replace the Financial Stability and Development Committee under the State Council.[4]

Within the context of this plan, NBFIs can play a significant role. They are an important source of alternative financial services, such as investment, risk pooling, financial consulting, brokering, money transmission and consumer credit. By providing individuals and businesses—MSMEs in particular—with access to financing, they facilitate domestic consumption and economic development,[5] while contributing to people-centred development and reducing regional disparities, thus helping the Chinese Government reach its goals.

Updates on Financial Leasing Companies

As of June 2022, China had roughly 11,500 leasing companies,[6,7&8] 70 of which were licensed by the CBIRC, with the remainder, including ELCs, licensed by the Ministry of Commerce (MOFCOM). Under the current regulatory framework, leasing institutions fall into two categories: the so-called 'golden' financial leasing companies, regulated from the beginning by the CBIRC, and financial leasing companies originally regulated by the MOFCOM,[9] despite the fact that the two types essentially conduct the same business.

1 *China holds Central Economic Work Conference to plan for 2023*, State Council, 17th December 2022, viewed 25th April 2023, <https://english.www.gov.cn/news/topnews/202212/17/content_WS639d0051c6d0a757729e4885.html>

2 *Full Text: Report on the Work of the Government,* State Council, 15th March 2023, viewed 25th April 2023, <http://english.www.gov.cn/news/topnews/202303/15/content_WS64110ba2c6d0f528699db479.html>

3 *China to deepen reform of local financial regulatory mechanism*, State Council, 7th March 2023, viewed 25th April 2023, <http://english.www.gov.cn/news/topnews/202303/07/content_WS6406ffebc6d0a757729e7d75.html>

4 Tang, Frank, *China's financial overhaul brings more power to the party, with US$58 trillion in assets at stake, SCMP,* 18th March 2023, viewed 25th April 2023, <https://www.scmp.com/economy/china-economy/article/3213938/chinas-financial-overhaul-brings-more-power-party-us58-trillion-assets-stake>

5 *Non-banking Financial Institution*, World Bank, viewed 25th April 2023, <https://www.worldbank.org/en/publication/gfdr/gfdr-2016/background/nonbank-financial-institution>

6 Until 20th April 2018, China's leasing companies were either supervised by the CBIRC as NBFIs or by the MOFCOM and its authorised provincial-level commerce departments as corporations: Herrera Tio, Bernadette, *Moody's: China's financial leasing sector to benefit from new supervisory regime,* S&P Global, 17th May 2018, viewed 25th April 2023, <https://www.spglobal.com/marketintelligence/en/news-insights/trending/tjaqbuyafski2hqbalyhdw2>

7 The MOFCOM regulated the financial leasing business in accordance with the *Measures for Supervision and Administration of Financial Leasing Enterprises* and relevant laws before transferring the responsibilities and duties to the CBIRC in 2018: *Measures for Supervision and Administration of Financial Leasing Enterprises*, MOFCOM, 24th September 2013, viewed 25th April 2023, <http://ltfzs.mofcom.gov.cn/article/ae/201309/20130900320558.shtml>

8 *A primer on China's equipment lease ABS market,* S&P, 2nd March 2023, viewed 25th April 2023, <https://www.spglobal.com/ratings/en/research/articles/230302-a-primer-on-china-s-equipment-lease-abs-market-12646546>

9 'Golden' financial leasing companies: 金融租赁公司 in Chinese; and financial leasing companies: 融资租赁公司 in Chinese.

Updates on AFCs

On 29th December 2022, the CBIRC launched a public consultation on the *Administrative Measures for Auto Finance Companies (Draft for Comment)*.[10] The draft regulations aim to establish more stringent requirements in terms of liquidity support from shareholders, corporate governance, risk management and internal control of companies.[11]

Key Recommendations

1. Remove all Restrictions on Financial Leasing Companies' Cross-provincial Operations 2

Concern

Restricting cross-provincial operations has significant consequences for both European financial leasing companies and the real economy in the less privileged provinces, as only a limited volume of business is carried out in the province where the company is registered.

Assessment

On 31st December 2021, the PBOC issued the *Local Financial Supervision and Administration Regulation (Draft for Comments) (Draft Regulation)*.[12] The purpose of the *Draft Regulation* is to further clarify the responsibilities and missions of local financial authorities and improve the local financial supervision system, to ensure the implementation of the central government's requirements on serving the real economy, preventing and controlling financial risks, and deepening financial reform.[13] However, Article 11 of the *Draft Regulation*, which restricts financial leasing companies' cross-provincial business and operations, is of great concern to European companies.[14]

Although so-called 'golden' financial leasing companies and financial leasing companies essentially carry out the same business nationwide, if the *Draft Regulation* were to be enforced as proposed, financial leasing companies would, in principle, not be allowed to engage in cross-provincial business. Meanwhile, the 'golden' financial leasing companies—all majority-owned by Chinese banks or state-owned enterprises—would be excluded from the scope of the *Draft Regulation* and could continue to work nationwide. This would have negative consequences for European financial leasing companies—which fall under the category of financial leasing companies—for several reasons.

First, quite a few European financial leasing companies are registered either in Beijing or in Shanghai. Only a limited volume of their business is carried out within the province of registration, as their customers, mainly small and medium-sized enterprises (SMEs), are scattered across the country. Preventing financial leasing companies from operating across provinces would lead to a substantial increase of their operating and compliance costs; companies would either lose income from other provinces, or be forced to open new branches – and it remains unclear from the *Draft Regulation* if that would even be an option. Financial leasing companies would also have to spend a tremendous amount of time and resources communicating with the different provincial regulators. Non-compliance or delays in complying with the requirements of the *Draft Regulations* might impede European leasing companies' normal operations, or even force them to leave the Chinese market altogether. This runs contrary to the purpose of European leasing companies in China, which is to serve the Chinese real economy by financing their domestic and international customers wherever they are based in China.

More importantly, the business model of European financial leasing companies is often vendor-orientated, meaning they support the sales of vendor partners by providing financing solutions attached to the sale of new equipment. European financial leasing companies have particularly strong expertise in asset collateralisation and in sectors in which their partner's equipment is used, enabling optimal control of risk and operations. Therefore, restricting cross-provincial operations cannot be considered directly related to preventing financial risks. In fact, limiting European financial leasing companies' ability to support their vendors could be

10 *Announcement of the China Banking and Insurance Regulatory Commission on Public Comments on the Administrative Measures for Auto Finance Companies (Draft for Comment)*, CBIRC, 29th December 2022, viewed 25th April 2023, <https://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1087515&itemId=925&generaltype=0>

11 *China's Draft Rules Credit-Positive for Auto Finance Companies*, Fitch Wire, Fitch Ratings, 16th January 2023, viewed 25th April 2023 <https://www.fitchratings.com/research/corporate-finance/chinas-draft-rules-credit-positive-for-auto-finance-companies-16-01-2023>

12 *Local Financial Supervision and Administration Regulation (Draft for Comments)*, PBOC, 31st December 2021, viewed 25th April 2023, <http://www.pbc.gov.cn/rmyh/105208/4436903/index.html>

13 *Annex 2: Draft Instructions for the Local Financial Supervision and Administration Regulation (Draft for Comments)*, PBOC, 31st December 2021, viewed 25th April 2023, <http://www.pbc.gov.cn/rmyh/105208/4436903/index.html>

14 *Local Financial Supervision and Administration Regulation (Draft for Comments)*, PBOC, 31st December 2021, viewed 25th April 2023, <http://www.pbc.gov.cn/rmyh/105208/4436903/index.html>

perceived by some as unintentionally favouring Chinese state-owned and Chinese bank-owned 'golden' financial leasing companies.

Historically, there has never been any mention of imposing geographical restrictions on financial leasing companies' operations in regulations published by either the MOFCOM or the CBIRC,[15&16] nor in any local interim measures introduced in Beijing and Shanghai.[17&18] In fact, when European financial companies entered the Chinese market and established their leasing subsidiaries, they did so based on a nationwide business plan.

The working group welcomes the policies and measures taken by the Chinese Government and financial regulators to address current economic challenges and ensure financial market stability. However, financial leasing transactions are not purely financial activities, they also combine financing and assets. As China is a unified market, cross-provincial transactions in the real economy are a normal phenomenon, and financial leasing transactions that are closely linked to assets and the real economy cannot simply be divided among different regions. By definition, the financial leasing industry does not align with the concept of 'regional' or 'local' finance due to its nature, characteristics and status of operations, or from the perspective of continuity of supervision. Furthermore, inhibiting the development of the financial leasing industry in the interests of making supervision more convenient would not be in line with the central government's requirements for serving the real economy, preventing and controlling financial risks, and deepening financial reform.[19] It was therefore a positive development that during the ninth European Union (EU)-China High Level Economic and Trade Dialogue, which took place on 19th July 2022, China committed to ensuring that future domestic regulations will not curtail the ability of European leasing companies to provide services throughout its territory.[20] The working group expects this commitment to be translated into concrete steps in terms of regulatory updates and implementation at both the national and local level.

Recommendations

- Revise Article 11 of the draft *Local Financial Supervision and Administration Regulation* to lift geographical restrictions on financial leasing companies.
- Ensure that local government and finance bureaus do not issue specific regulations requesting the establishment of a local subsidiary to run provincial leasing businesses.

2. Secure the Protection of Ownership of Leased Assets 4

Concern

Registration of an asset with the Department of Motor Vehicles (DMV) under the Vehicle Administrative Office (VAO) is not recognised as registration of ownership, therefore the owning leasing company is at significant risk of a leased asset title being transferred without its consent or knowledge to one or multiple third parties.

Assessment

When leasing a vehicle, registration with the DMV is done in the name of the lessee (the customer/permit holder). The name of the lessor is not mentioned in the registration certificate, which places the ELC at risk of the registration certificate being transferred without consent to one or multiple third parties. The lessor could potentially lose ownership of the vehicle due to the *bona fide* position of the new registered party with the DMV, despite the ELC's ownership of the vehicle being stipulated under the sale and leaseback (SALB) contract. To guard against this, ELCs follow the practice of registering a mortgage on the vehicle in the DMV platform (mortgage of self-owned property)

15 This has been the case since the earliest supervision by the Ministry of Foreign Trade and Economic Cooperation, to supervision by the MOFCOM with the *Measures for the Administration of Foreign Investment in the Leasing Industry*, MOFCOM, 17th February 2005, viewed 25th April 2023, <http://tfs.mofcom.gov.cn/article/date/i/r/cx/200503/20050300022951.shtml>; Nor is the imposition of geographical restrictions mentioned in the *Measures for Supervision and Administration of Financial Leasing Enterprises,* MOFCOM, 24th September 2013, viewed 25th April 2023, <http://ltfzs.mofcom.gov.cn/article/ae/201309/20130900320558.shtml>

16 *Interim Measures for the Supervision and Administration of Financial Leasing Companies*, CBIRC, 26th May 2020, viewed 25th April 2023, <http://www.gov.cn/gongbao/content/2020/content_5537939.htm>

17 *Guidelines for the Supervision and Administration of Beijing Financial Leasing Companies (for Trial Implementation)*, Beijing Local Financial Supervision and Administration Bureau, 16th April 2020, viewed 25th April 2023, <http://www.bjzl.org.cn/h-nd-1402.html>

18 *Interim Measures for the Supervision and Administration of Financial Leasing Companies in Shanghai (Draft for Comment)*, Shanghai Local Financial Supervision and Administration Bureau, 1st February 2021, viewed 25th April 2023, <http://jrj.sh.gov.cn/zwdt-gg/20210201/0c0e8f2715cb4bba8c2d797a867308d3.html>

19 *Annex 2: Draft Instructions for the Local Financial Supervision and Administration Regulation (Draft for Comments)*, PBOC, 31st December 2021, viewed 25th April 2023, <http://www.pbc.gov.cn/rmyh/105208/4436903/index.html>

20 *EU-China: A stable global economy is a shared responsibility*, European Commission, 19th July 2022, viewed 25th April 2023, <https://ec.europa.eu/commission/presscorner/detail/en/IP_22_4547>

as well as registering the vehicle in the PBOC's Credit Reference Centre of Movable Financing Registry Platform (Zhongdengwang).[21&22] However, this double registration process increases the ELC's administrative and financing costs, and negatively impacts financing pricing.

On 28th May 2020, the NPC adopted the *Civil Code*, which took effect on 1st January 2021.[23] Article 745 states that, "The lessor's ownership over the leased object shall, without being registered, not be asserted against a *bona fide* third person."

Following the promulgation of the *Civil Code*, the State Council issued the *Decision of the State Council on the Implementation of Unified Registration of Guarantee over Chattels and Rights (Decision)* on 22nd December 2020.[24] In this document, the Zhongdengwang is designated as the unified centre for registering financial leasing transactions. By registering financial leasing transactions on the Zhongdengwang, the lessor's ownership should be protected. This policy is intended to cover all leasing types (regardless of whether direct lease or SALB) and leased assets (regardless of whether general equipment or vehicles).

As a result, on 29th December 2020, China's Supreme People's Court amended some earlier judicial interpretations.[25] For instance, Article 9 of the *Decision* recommended that the mortgage self-owned leasing assets option, as in the *Interpretation of the Supreme People's Court on Issues Concerning the Application of Law in the Trial of Cases Involving Disputes over Financial Leasing Contracts*, promulgated on 24th February 2014,[26] be deleted.

After all these legal developments, it is clear that for general equipment (excluding specialised types of assets like vehicles, ships or vessels), the ownership of an ELC is sufficiently protected by registering the financial leasing on the Zhongdengwang under both direct leasing and SALB structures. The working group understands that there is no need to register an additional mortgage on the Zhongdengwang for self-owned leased assets. However, there is still some uncertainty in the case of the leasing of vehicles, as it remains unclear whether ELCs still need to register a mortgage at the DMV in order to avoid losing the position of *bona fide* third party. In addition, a mortgage of leased assets by ELCs under the current new legal environment may become counter-productive, as it may lead to a different interpretation of the transaction nature from financial leasing to mortgage loans.

This concern was highlighted in a 2020 case of vehicle financing in the city of Ningbo, whereby an ELC financed a vehicle by SALB and registered a mortgage in the DMV platform to protect its ownership rights. However, the court rejected the claim that the lessor had obtained vehicle ownership because there was no registration under the lessor's name in the DMV and thus reclassified the financing from SALB to a mortgage loan.[27] This case has raised concern among industry players that there is no proper methodology for an ELC to have its ownership recognised unconditionally through SALB. In December 2021, the PBOC released the *Uniform Registration Measures for Moving Property and Rights Guarantees*, which are implementation measures of the *Civil Code*.[28] Although, during the public consultation period, the Non-banking Financial Institutions Working Group had submitted comments advocating for the removal of the exclusion of vehicles, this clause was still added in the final regulation.

In the EU and other mature markets, the interests of ELCs are legally protected through registration on

21 Credit Reference Centre of the PBOC website, viewed 25th April 2023, <http://www.pbccrc.org.cn/>

22 CCRC Movable Financing Registration Platform (Zhongdengwang), 2015, viewed 25th April 2023, <https://www.zhongdengwang.org.cn/>

23 *People's Republic of China Civil Code*, NPC, 2nd June 2020, viewed 25th April 2023, <http://www.npc.gov.cn/npc/c30834/202006/75ba6483b8344591abd07917e1d25cc8.shtml>

24 *Decision of the State Council on the Implementation of Unified Registration of Guarantee over Chattels and Rights*, State Council, 22nd December 2020, viewed 25th April 2023, <https://www.pkulaw.com/en_law/6938bfb6624beb87bdfb.html>

25 *Decision of the Supreme People's Court to Amend 27 Civil Judicial Interpretations Including the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Trade Union Law of the People's Republic of China in Civil Trials*, Supreme People's Court, 29th December 2020, viewed 25th April 2023, <https://www.court.gov.cn/fabu/xiangqing/282621.html>

26 *Interpretation of the Supreme People's Court on Issues concerning the Application of Law in the Trial of Cases Involving Disputes over Financial Leasing Contracts*, Supreme People's Court, 24th February 2014, viewed 25th April 2023, <https://www.court.gov.cn/fabu-xiangqing-6314.html>

27 *Summary of Financial Lease Contract Dispute*, Ningbo Intermediate People's Court, 28th September 2020, viewed 25th April 2023,<https://wenshu.court.gov.cn/website/wenshu/181010CARHS5BS3C/index.html?https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=ec1d55fdefbc4bafaa93ac86009f3c6d>

28 *Uniform Registration Measures for Moving Property and Rights Guarantees*, PBOC, 29th December 2021, viewed 25th May 2023, <http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/4435531/index.html>

similar platforms.[29,30&31] The Zhongdengwang has the same potential because it provides a favourable basis for the process of taking back defaulted vehicles and indirectly supports the development of a healthy market. In addition, the platform already allows for a serial number to be entered or for the uploading of invoice documents when registering, but it is neither a mandatory nor a recommended field.

In addition, the Zhongdengwang and the DMV's identification codes for vehicles currently do not correspond, which could lead to the same vehicle being registered by different parties. DMV bureaus should therefore be granted access to the Zhongdengwang platform for the purpose of checking the existence of any right privilege on a vehicle, and be permitted to obtain consent from the legal owner prior to authorising any change to or transfer of the registration certificate. The VAO should also confirm whether the sole asset registration on the Zhondengwang is sufficient to protect the ownership of an ELC under SALB contract.

It is notable that the financing of equipment/assets other than vehicles are also of concern, as mortgage registration in the DMV is limited to vehicles only. It also needs to be clarified whether the registration of an asset on the Zhongdengwang platform by an ELC is sufficient to protect its ownership rights under a SALB contract.

Recommendations

- Ensure that asset registration on the Zhongdengwang platform is sufficient to protect the ownership right of the ELC, whether it is a financial or leasing product.
- Confirm that when an ELC is financing equipment other than vehicles under a SALB contract, the sole asset registration on the Zhongdengwang platform protects the ownership right of the ELC.
- Ensure that the transfer of the vehicle registration certificate cannot be completed by any local bureaus of the DMV without properly checking the Zhongdengwang platform.
- Improve the Zhongdengwang platform by creating a dedicated field to enter the invoice number and additional unique identification of an asset, in order to ensure ELCs' ownership rights.

3. Promote Innovation in Financial Services by Enabling ELCs to Finance Intangible Assets 4

Concern

Preventing ELCs from financing intangible assets limits both innovation and Chinese consumers' access to advanced methods of financing.

Assessment

Financing of intangible assets, such as licence-based software and supply chains, is an emerging trend that is a crucial way of providing financial support to China's information technology (IT) industry, which in turn supports the development of both China's real economy and ELCs in the country.

According to technological research firm Gartner, the total investment in global IT in 2021 was United States dollar (USD) 4.24 trillion, accounting for 4.57 per cent of global gross domestic product. Software and service investment accounted for 76 per cent of this investment, with hardware equipment investment accounting for the rest.[32] An important characteristic of the IT industry is that the proportion of software and service investment far exceeds that of hardware investment, and the growth rate of software and service investment is also higher than that of hardware. Supporting the development of software is therefore inseparable from supporting the overall development of technology-related industries. With IT investment in the Chinese market expected to grow at a rate higher than the global average for the foreseeable future,[33] allowing ELCs to offer financing solutions for intangible assets will greatly support this new development.

Before the CBIRC issued its *Interim Measures for the*

29 In Spain, a property register in communique with the Traffic Department ensures that there is a limitation over the vehicle in the name of the leasing company until the contract period is terminated. To remove this limitation, a special document from the leasing company has to be sent to the register or the customer. See: *Register of Movable Property*, Registradores de España, 2022, viewed 25th April 2023, <https://www.registradores.org/el-colegio/registro-de-bienes-muebles>

30 In Portugal, registration is done directly in the Traffic Department. See: *Vehicles*, Instituto da Mobilidade e dos Transportes, 1st January 2012, viewed 25th April 2023, <https://www.imt-ip.pt/sites/IMTT/Portugues/Veiculos/Paginas/Veiculos.aspx>

31 A by-the-book example is the Personal Properties Security Register (PPSR) Platform covering Australia and New Zealand. The platform includes a direct link from the enterprise resource planning software to the government website to register pledges. ELCs may also register their encumbrance on the vehicle using the vehicle identification number and register it against the customer. The PPSR Platform allows for registration by multiple customers, for example, borrower and operator. The customer still registers the vehicle in their name, but ELCs maintain the legal rights to the vehicle. See the PPSR Platform website: <https://www.ppsr.gov.au/>

32 *Gartner Forecasts Worldwide IT Spending to Grow 2.4% in 2023*, Gartner, 18th January 2023, viewed 15th May 2023, <https://www.gartner.com/en/newsroom/press-releases/2023-01-18-gartner-forecasts-worldwide-it-spending-to-grow-2-percent-in-2023>

33 Ibid.

Supervision and Administration of Financial Leasing Companies in May 2020,[34] members of the Non-banking and Financial Institutions Working Group reported that intangible assets and supply chain financing represented up to 40 per cent of their overall financing, and that these financing activities were conducted through a factoring contract. After the issuance of the measures—which stipulate that leased items applicable to financial leasing transactions are fixed assets, unless otherwise specified—it was no longer possible for leasing companies to employ these methods of financing for intangible assets.

Despite the financing activities of working group members having been conducted through factoring contracts, they do not perform the same business as factoring companies. ELCs use factoring to finance intangibles and/or non-remarketable assets—which are therefore considered intangible assets—with a tenure of up to five years, whereas factoring companies purchase short-term receivables (up to 90 days in most cases). The know-how that European ELCs have developed over the years has given their customers the opportunity to access expensive IT and industrial software, enabling them to achieve higher efficiency, and become more sophisticated and technologically advanced. European ELCs are keen to bring this solution to the Chinese market.

While there are some pilot cases of intangible assets financing through leasing in the cultural industry in China, the working group would like the regulator to consider creating a new innovative corridor for ELC engagement in offering financing solutions to intangible assets, be it through software leasing or lean factoring.[35]

Recommendation

- Promote innovation in financial services by permitting ELCs to use leasing solutions and lean versions of factoring solutions to finance intangible assets, and by enabling ELCs to develop new intangibles' leasing solutions.

34 *Interim Measures for the Supervision and Administration of Financial Leasing Companies*, CBIRC, 26th May 2020, viewed 25th April 2023, <http://www.gov.cn/gongbao/content/2020/content_5537939.htm>

35 *The State Council on comprehensively promoting Beijing's service industry; Approval of the Comprehensive Pilot Work Plan for Expanding Opening-up,* State Council, 22nd February 2019, viewed 16th May 2023, <http://www.gov.cn/zhengce/content/2019-02/22/content_5367708.htm>

4. Allow ELCs to Obtain Cross-border Corporate Guarantees and Cross-border Bank Guarantees

Concern

European leasing companies can use their international connections to finance the Chinese subsidiaries of multinational companies they have strong business ties with in their home country, but certain restrictions remain in this respect.

Assessment

According to the *Regulations on the Administration of Foreign Exchange for Cross-border Guarantees,* issued by the State Administration of Foreign Exchange (SAFE) on 15th May 2015, only banks and financial institutions registered in Mainland China are allowed to obtain cross-border guarantees.[36] This limits the ability of European ELCs in terms of risk appetite to support foreign investment in China. As a result, Chinese SME subsidiaries of foreign companies have difficulties accessing local structured financing.

Foreign-invested ELCs receive cross-border guarantees in some lease contracts for securing the lessee in China (to fulfil the rental payment obligation under the lease agreement). Currently, it is difficult to receive real payment from the parent company outside of China if the lessee is in default. Although leasing companies should be treated as NBFIs according to local financial supervision regulations,[37] in practice they are not regarded in China as such, and therefore are not eligible for the *Onshore Borrowing with Offshore Guarantee (waibao neidai)*, which allows ELCs to receive guarantees from the lessee's parent company, the registration place of which is outside of China.[38] This constraint on foreign ELCs means that an estimated 20 to 30 per cent of additional business is going unrealised.

36 *Notice of the State Administration of Foreign Exchange on the Issuance of the Regulations on the Administration of Foreign Exchange for Cross-border Guarantees [2014] No. 29,* SAFE, 15th May 2015, viewed 25th April 2023, <http://www.safe.gov.cn/shenzhen/2015/0515/133.html>

37 See for instance the *Shanghai Local Financial Supervision and Management Regulations* or the *Zhejiang Local Financial Supervision and Management Regulations: Shanghai Local Financial Supervision and Management Regulations*, Shanghai Bureau for Financial Supervision, 10th October 2020, viewed 24th June 2023, <https://jrj.sh.gov.cn/YWTBZCCX166/20200520/eaadcfee05c9440581f657425204141d.html>; *Zhejiang Local Financial Supervision and Management Regulations*, Zhejiang Bureau for Financial Supervision, 16th May 2020, viewed 24th June 2023; <http://sjrb.zj.gov.cn/art/2020/5/16/art_1370340_43103760.html>

38 *Notice on the Measures for the Administration of the Registration of External Debt,* SAFE, 3rd May 2013, viewed 25th April 2023, <http://www.gov.cn/zwgk/2013-05/03/content_2395170.htm>

Recommendation

- Allow ELCs to obtain cross-border corporate guarantees and cross-border bank guarantees.

5. Include CFCs in the Pilot Programme to Sell Non-performing Loans (NPLs) in Batches to Asset Management Companies (AMCs)

Concern

According to the current regulations, it is not feasible for CFCs to sell NPLs, as individual loans cannot be transferred in batches and other NPLs sold in batches can only be assigned to financial AMCs or a locally recognised AMC.

Assessment

With the development of the CFC and AFC industries in China, a large amount of NPLs have accumulated in the market. It is difficult for CFCs to dispose of NPLs, as individual loans (including all kinds of loans with individuals as the main borrowers, such as housing, automobile or student loans, and credit card debts) cannot be transferred in batches (equal to 10 or more NPLs). Other NPLs sold in batches can only be assigned to AMCs or a locally recognised AMC.[39] CFCs' business particularity is to grant small ticket loans to multiple individual borrowers. Considering this, it is not practical for CFCs to dispose of NPLs in batches of less than 10 loans. As NPLs accumulate, CFCs must often resort to writing them off.

Unfortunately, China still has no regulatory mechanism that allows and guides the sale of NPLs by CFCs; however, there have been some, albeit small, positive developments on this front. For example, on 29th December 2022, the CBIRC issued a *Notice on Carrying out the Pilot Work of the Second Batch of Non-performing Loan Transfer (Notice of the Banking and Insurance Regulatory Office [2022] No. 1191)*, which AFCs can participate in.[40] However, there is still a need to clarify the extent to which AFCs can participate.

Changes to the way that NPLs can be sold in batches are now expected to rapidly evolve. This will help to improve the asset quality of banks and financial institutions in China. Therefore, if the pilot is successful and opening is consolidated, CFCs should be included in the programme, and relevant rules and policies should be formulated that support and facilitate NPL sales, including an end-to-end process for realising NPL sales.

Recommendations

- Lift restrictions on batch transfers of NPLs in the consumer finance industry and the automotive finance industry and issue clear supportive guidance on this process.
- Include CFCs in the NPL pilot project and set up relevant rules and policies to support/facilitate the sale of NPLs by CFCs, including an end-to-end process for realising NPL transfer to sale.

Abbreviations

AFC	Auto Finance Company
AMC	Asset Management Company
CBIRC	China Banking and Insurance Regulatory Commission
CFC	Consumer Finance Company
CSRC	China Securities Regulatory Commission
DMV	Department of Motor Vehicles
ELC	Equipment Leasing Company
EU	European Union
IT	Information Technology
MOFCOM	Ministry of Commerce
MSME	Micro, Small and Medium-sized Enterprise
NBFI	Non-banking Financial Institution
NPC	National People's Congress
NPL	Non-performing Loan
PBOC	People's Bank of China
SAFE	State Administration of Foreign Exchange
SALB	Sale and Leaseback
SME	Small and Medium-sized Enterprise
USD	United States Dollar
VAO	Vehicle Administrative Office

39 Local AMCs are financial institutions with special permissions to engage in the wholesale purchase of financial non-performing assets, but they do not have financial institution licences. In August 2021, local regulators solicited the opinions of members of the *local AMC sector on the draft version of the Local Asset Management Company Supervisory and Regulatory Provisional Measures* (地方资产管理公司监督管理暂行办法) to "seek to remedy gaps in local AMC regulation in China, amid a broader push to step up oversight of the Chinese financial sector." *Local Asset Management Companies Set for New Rules to Address Regulatory Gaps, China Banking News*, 4th August 2021, viewed 25th April 2023, <https://www.chinabankingnews.com/2021/08/04/local-asset-management-companies-set-for-new-rules-to-address-regulatory-lacunas/>

40 *Notice of the General Office of the China Banking and Insurance Regulatory Commission on Carrying out the Pilot Work of the Second Batch of Non-performing Loan Transfer (Notice of the Banking and Insurance Regulatory Office [2022] No. 1191): Applicable to Financial Leasing Companies*, Flleasing, 7th January 2023, viewed 25th April 2023, <http://www.flleasing.com/onews.asp?id=30830>

European Chamber
中国欧盟商会

Insurance Working Group

Key Recommendations

1. Allow Foreign-invested Insurers to Shape their Distribution Networks as They See Fit 21

- Allow foreign-invested insurance companies to apply at any time for approval licences to open new branches in as many provinces as they believe necessary, and to apply for branch licences in batches.
- Ensure that provincial licences cover the whole province without any further requirements at the sub-provincial level.
- Train, support and empower local National Administration for Financial Regulation (NAFR) offices to handle licence applications from foreign-invested insurers.

2. Clarify that Foreign Shareholders Can Exercise their Equity Right Proportional to their Equity Shares 3

- Clarify how the *Guidelines for Corporate Governance of Banking and Insurance Institutions* apply to foreign-invested insurance companies in joint ventures, and more specifically how historical arrangements such as 50/50 governance models can be preserved in the future.

3. Build an Open, Fair and Comprehensive Regulatory Environment that Encompasses Different Insurance Business Models 3

- Implement a level playing field for insurers of any size, as well as between insurers and online intermediaries, to ensure undistorted competition and fair treatment of consumers, and to support ongoing product innovation.
- Ensure more foreign players, private or state-owned, can be involved in a fairer share of state-owned projects, including but not limited to public-private partnership (PPP), employee benefits, commercial insurance and index insurance.

4. Ensure Cross-Border Data Transfer and Data Protection Requirements are Clear and Set a Reasonable Scope for Concepts Like 'Important Data'

- Apply a simplified security review process to the transfer of low-risk data within multinational companies for management purposes, including employee information and financial data.
- Introduce a practical standard for anonymisation of personal information as soon as possible and adjust the anonymisation standard so that the data recipient, rather than the data sender, is unable to identify a specific natural person in a reasonable manner.
- Set the scope of 'important data' prudently, allowing normal data flow and giving full play to data value.

5. Recognise the Specificities of Bancassurance Companies and Adjust Relevant Risk Rating Indicators Accordingly

- Adjust the 'related party transaction' indicators in company ratings to reflect the risk profile of bancassurance companies more accurately.

Introduction to the Working Group

The Insurance Working Group is the voice of Europe's insurance industry in China, and was the first of the European Chamber's working groups to be established. It represents leading European insurers, brokers and other service providers engaged in life, non-life, reinsurance and speciality insurance. Insurance is a form of safety in an unpredictable world – it shields families, individuals and businesses alike from all kinds of risks that may arise from our modern and complex society. Insurance is therefore a key element for economic freedom, as it enables companies and households to deploy their resources without having to worry about unforeseen events. Insurance is also a formidable engine of local and regional economic growth because it enables trade, innovation and risk protection. The insurance industry plays a vital role in improving the livelihoods, quality of life and wellbeing of all people, which is a key focus of China's common prosperity policy.[1]

While members of the Insurance Working Group have varying operational structures, all of them consider China a long-term priority market. They are fully committed to contributing to the sustainable growth of the Chinese insurance market and they are aware of the crucial role commercial insurance plays in China's economy and society. To this end, they want to provide added value to the industry by introducing best practices and technical know-how.

Recent Developments

China is now the world's second-largest insurance market after the United States. However, its growth has largely been based on the activities of domestic players, with no single foreign or Sino-foreign joint venture (JV) insurers holding more than two per cent market share. Most foreign-invested insurance companies that have entered the Chinese market are relatively small JVs, as regulatory restrictions still limit the rate of branch expansion and the percentage of foreign ownership.[2] However, as a result of a number of steps being taken in the past few years to open up China's financial services sector (including insurance), a few foreign players have established wholly or majority foreign-owned companies or have increased their shareholding in JVs since 2019.[3]

Market Overview

While there was slight year-on-year growth in original insurance premiums in 2022, net assets decreased compared to the beginning of the year.

Items	Value (CNY billion)	Growth
Original insurance premium	4,695.7	+4.58% (year-on-year)
Claim and benefit payments	1,548.5	-0.79% (year-on-year)
Balance of capital utilisation	25,050.9	+7.85% (compared with the beginning of the year)
Total assets	27,146.7	+9.10% (compared with the beginning of the year)
Net assets	2,701.1	-7.83% (compared with the beginning of the year)

Source: China Banking and Insurance Regulatory Commission (CBIRC)[4]

Outside of property insurance, the percentage change in total assets compared to the beginning of the year reflected a slowdown in growth. According to the Insurance Association of China, in 2022, life insurance companies experienced a 57.3 per cent drop in net profits year-on-year.[5] Meanwhile, data collected by Bank of China Insurance News from the annual disclosures of 31 asset management insurers shows that, in 2022, players in this segment experienced on average a 7.19 per cent year-on-year decline in net profits.[6]

Policy and Regulatory Developments

In 2022, the CBIRC released several policies and regulations relevant to the insurance industry: the *Guidance on Digital Transformation of Banking and*

1 Chipman Koty, Alexander, *How to Understand China's Common Prosperity Policy*, China Briefing, 21st March 2022, viewed 21st June 2023, <https://www.china-briefing.com/news/china-common-prosperity-what-does-it-mean-for-foreign-investors/#healthcareandwellnessHeader>

2 *China market opportunities for foreign insurance companies under the new opening-up policies,* Deloitte, June 2020, viewed 22nd April 2023, <https://www2.deloitte.com/cn/en/pages/financial-services/articles/china-market-opportunities-for-foreign-insurance-companies-under-the-new-opening-up-policies.html>

3 Ibid.

4 *The data of the main regulatory indicators of the banking and insurance industries in the fourth quarter of 2022,* CBIRC, 15th February 2023, viewed 27th April 2023 <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1096018&itemId=915&generaltype=0>

5 Wu, Yujian & Zhang, Ziyu, *Chinese Regulator Tells Life Insurers to Slash Estimated Returns for Investors, Caixin Global*, 9th May 2023, viewed 10th May 2023, <https://www.caixinglobal.com/2023-05-09/chinese-regulator-tells-life-insurers-to-slash-estimated-returns-for-investors-102050551.html>

6 Yang, Yumeng, *The performance disclosure of 31 insurance asset management institutions in 2022 will focus on third-party business and become the consensus of insurance capital,* China Economic Net, 12th May 2023, viewed 12th May 2023, <https://finance.china.com.cn/money/insurance/20230512/5982446.shtml>

	2022		2021		2020		2019	
	Total assets (CNY trillion)	Percentage change from the beginning of the year	Total assets (CNY trillion)	Percentage change from the beginning of the year	Total assets (CNY trillion)	Percentage change from the beginning of the year	Total assets (CNY trillion)	Percentage change from the beginning of the year
Industry overview	27.1	9.1%	24.9	11.5%	23.3	13.3%	20.6	12.2%
Property insurance	2.7	9%	2.5	6%	2.3	2.1%	2.3	-2.3%
Life insurance	23.4	9.3%	21.4	12.4%	20	17.8%	17	16.1%
Reinsurance companies	671.9 *billion	10.9%	605.7 *billion	22.2%	495.6 *billion	16.3%	426.1 *billion	16.8%
Management companies	103.6 *billion	0.6%	103 *billion	35.4%	76.1 *billion	18.7%	64.1 *billion	15%

Source: CBIRC[7]

Insurance Sectors and the *Green Finance Guidelines for Banking and Insurance Sectors* are linked to guiding the twin transitions (green and digital) in the industry;[8&9] the *Rules on Insurance Asset Management Companies* are aimed at improving the regulatory framework for specific segments of the insurance industry;[10] while the *Notice on Expanding the Exclusive Commercial Pension Insurance Pilot Programmes* focussed on developing sandboxes for innovative products and services.[11]

Due to a number of recent events of both global and domestic significance, including the COVID-19 pandemic, rising geopolitical tensions and China's property market crisis, maintaining economic stability has become a key policy priority of the Chinese Government. This, together with the importance of deleveraging and de-risking in the financial services sector, was reiterated in the *2023 Government Work Report* issued during the annual plenary meetings of the National People's Congress (NPC) and the Chinese People's Political Consultative Conference (Two Sessions).[12] One of the major outcomes of the Two Sessions that carries potentially far-reaching implications for the insurance industry was the announced overhaul of the financial regulatory system. A National Administration for Financial Regulation (NAFR) was created, which absorbed the CBIRC, as well as some of the competencies of the People's Bank of China and the China Securities Regulatory Commission. In a move towards centralisation, this new body was also made

7 Various CBIRC sources: *The data of the main regulatory indicators of the banking and insurance industries in the fourth quarter of 2022*, CBIRC, 15th February 2023, viewed 27th April 2023, <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1096018&itemId=915&generaltype=0>; The *data of the main regulatory indicators of the banking and insurance industries in the fourth quarter of 2021*, CBIRC, 11th February 2022, viewed 27th April 2023, <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1037852&itemId=915&generaltype=0>; *The data of the main regulatory indicators of the banking and insurance industries in the fourth quarter of 2020*, CBIRC, 9th February 2021, viewed 27th April 2023, <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=966704&itemId=915&generaltype=0>; *The data of the main regulatory indicators of the banking and insurance industries in the fourth quarter of 2019*, CBIRC, 17th February 2020, viewed 27th April 2023, <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=890683&itemId=915&generaltype=0>

8 *Guidance on Digital Transformation of Banking and Insurance Sectors*, CBIRC, 17th January 2022, viewed 12th May 2023, <https://www.cbirc.gov.cn/cn/view/pages/governmentDetail.html?docId=1034763&itemId=861&generaltype=1>

9 *Circular of the CBIRC on Issuing Green Finance Guidelines for Banking and Insurance Sectors*, State Council, 1st June 2022, viewed 12th May 2023, <https://www.gov.cn/zhengce/zhengceku/2022-06/03/content_5693849.htm >

10 *Rules on Insurance Asset Management Companies*, State Council, 8th August 2022, viewed 12th May 2023, <https://www.gov.cn/zhengce/zhengceku/2022-08/06/content_5704449.htm>

11 *Notice on Expanding the Exclusive Commercial Pension Insurance Pilot Programmes*, CBIRC, 15th February 2022, viewed 12th May 2023, <https://www.cbirc.gov.cn/cn/view/pages/governmentDetail.html?docId=1039036&itemId=861&generaltype=1>

12 *Full Text: Report on the Work of the Government,* State Council, 15th March 2023, viewed 25th April 2023, <http://english.www.gov.cn/news/topnews/202303/15/content_WS64110ba2c6d0f528699db479.html>

responsible for dispatching agencies at the local level.[13] At the Party level, a Central Financial Commission replaced the Financial Stability and Development Committee under the State Council.[14]

Key Recommendations

1. Allow Foreign-invested Insurers to Shape their Distribution Networks as They See Fit

21

Concern

It is challenging for foreign insurers to obtain approval from the CBIRC and its local bureaus to open or close provincial branches.

Assessment

The current regulatory treatment of domestic and foreign insurance players is equal on paper, but because the Chinese market is perceived to be a very expensive investment, the number of new market entrants is low. In addition, the insurance market is still dominated by large domestic players that have the advantage of established branch networks. This is a significant disincentive for new foreign-invested entrants, which—as in practice they can only open an average of one branch per year—face a seven-to-ten-year waiting period just to be able to cover less than one third of all Chinese provinces. Most companies that have already entered the China market found it more profitable to build their network with a Chinese partner; however, this may lead to other challenges, as the appetite for risk and profit between the two partners in such a JV is often different.

These dynamics impact the opening-up and reform of China's insurance sector because, if foreign insurers do not perceive the Chinese market to be profitable, the overall growth rate of the market will slow down. If foreign-invested insurers could apply for branch licences in batches, instead of one province at a time, more players would be encouraged to enter the market, which in turn would help to foster a more competitive landscape. Once an insurance company has obtained a provincial licence, it would also be positive for China's insurance industry if this licence could cover the whole province without any further requirements at the sub-provincial level, such as the opening of sub-branches.

For insurance companies already based in China, part of the problem in expanding branches is that local CBIRC offices lack experience in dealing with foreign-invested insurers. This has an impact on licence applications and business development. Additional requirements at the sub-provincial level further impede market access or make it economically difficult for small insurers, including all foreign ones. In July 2021, the CBIRC delegated powers and authorities regarding the supervision of property and casualty (P&C) and life insurance companies to its provincial bureaux. In December 2020, the CBIRC issued the *Circular on Deepening the Reform of Streamlining Administration and Delegating Power, Improving Regulation and Upgrading Services and Optimising the Business Environment in the Banking and Insurance Industries*.[15] However, based on the working group's observations, local CBIRC offices are not familiar with the procedures and have to consult with headquarters before making decisions, which prolongs the approval process and adds more uncertainty for applicants. Therefore, local offices under the NAFR (previously local CBIRC offices) should be trained, supported and empowered to handle licence applications from foreign-invested insurers. The NAFR and its local offices should also further clarify their powers and authority, based on which of the local offices publish guidelines concerning administrative licensing/approval management, and endeavour to accelerate the approval process.

Recommendations

- Allow foreign-invested insurance companies to apply at any time for approval licences to open new branches in as many provinces as they believe necessary, and to apply for branch licences in batches.
- Ensure that provincial licences cover the whole province without any further requirements at the sub-provincial level.
- Train, support and empower local offices under the NAFR to handle licence applications from foreign-invested insurers.

13 *China to deepen reform of local financial regulatory mechanism*, State Council, 7th March 2023, viewed 25th April 2023, <http://english.www.gov.cn/news/topnews/202303/07/content_WS6406ffebc6d0a757729e7d75.html>

14 Tang, Frank, *China's financial overhaul brings more power to the party, with US$58 trillion in assets at stake, SCMP,* 18th March 2023, viewed 25th April 2023, <https://www.scmp.com/economy/china-economy/article/3213938/chinas-financial-overhaul-brings-more-power-party-us58-trillion-assets-stake>

15 *Circular on Deepening the Reform of Streamlining Administration and Delegating Power, Improving Regulation and Upgrading Services and Optimising the Business Environment in the Banking and Insurance Industries,* CBIRC, 30th December 2020, viewed 22nd April 2023, <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=956594&itemId=928&generaltype=0>

European Chamber
中国欧盟商会

2. Clarify that Foreign Shareholders Can Exercise their Equity Right Proportional to their Equity Shares 3

Concern

Under the *Guidelines for Corporate Governance of Banking and Insurance Institutions (Guidelines)* published by the CBIRC in June 2021, it is unclear whether foreign shareholders will be able to exercise their full right to nominate directors for the board, or independent directors and supervisors, based on their proportion of equity shares.

Assessment

The *Guidelines* stipulate that one shareholder, including its affiliates, shall not nominate directors for more than one third of all board seats, and imposes similar limitations on nominations for independent directors and supervisors.[16] This means that for foreign life JV insurance companies with foreign shareholders' holdings equal to or higher than 50 per cent, the foreign shareholders will not be able to exercise their equity right based on the proportion of equity shares they hold. This limitation imposed on director nomination rights is consistent with the requirement that one shareholder shall not hold more than one third of equity shares for local insurance companies as stipulated in the CBIRC's *Administrative Measures for the Equity of Insurance Companies*.[17] However, foreign shareholders can now hold up to 100 per cent of shares of a foreign-invested life or P&C insurance company. Therefore, the limitation in the *Guidelines* is not consistent with rules stipulated in the CBIRC's *Circular on Clarifying the Time Point for Removing the Foreign Shareholding Percentage Limit on Joint Venture Life Insurance Companies*.[18] The regulator should further clarify whether foreign-invested insurance companies in JVs are excluded from the limitations imposed on director (as well as independent director and supervisor) nominations for shareholders.

The *Guidelines* also put a strong emphasis on the Communist Party of China's (CPC's) role in corporate governance, requiring state-owned banks and insurance companies to ensure that: 1) CPC leaders are integrated into all aspects of corporate governance and their articles of association; 2) CPC members sit on the board of directors and senior management team; and 3) the CPC committee participates in the decision-making of major issues within the enterprise. Privately-owned banks and insurance companies are only required to establish a CPC organisation to ensure "the core role of the Party and the implementation of the Party's lines and policies".[19] The *Guidelines* do not define "state-owned" banks and insurance companies, which creates ambiguity, as the extent to which these requirements will apply to foreign-invested insurance JVs will depend on the relevant authorities' interpretation. The working group, therefore, suggests that the regulator further clarifies whether foreign-invested insurance companies in JVs are subject to the requirements to integrate the corporate CPC leadership into all aspects of corporate governance.

Recommendation

- Clarify how the *Guidelines for Corporate Governance of Banking and Insurance Institutions* apply to foreign-invested insurance companies in JVs, and more specifically how historical arrangements such as 50/50 governance models can be preserved in the future.

3. Build an Open, Fair and Comprehensive Regulatory Environment that Encompasses Different Insurance Business Models 3

Concern

The current regulatory framework, coupled with increasing compliance costs, results in an unlevel playing field and discourages innovation in the insurance industry.

Assessment

Online Distribution

Insurance companies are having to change their business models due to increased digitalisation. This is reflected in the December 2020 CBIRC *Measures for Internet Insurance Business*, in which insurance companies using online platforms are included.[20]

16 *Guidelines for Corporate Governance for Banking and Insurance Institutions*, CBIRC, 8th June 2021, viewed 22nd April 2023, <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=989067&itemId=915&generaltype=0>

17 *Administrative Measures for the Equity of Insurance Companies*, State Council, 2nd March 2018, viewed 22nd April 2023, <http://www.gov.cn/gongbao/content/2018/content_5294432.htm>

18 *Circular on Clarifying the Time Point for Removing the Foreign Shareholding Percentage Limit on Joint Venture Life Insurance Companies*, CBIRC, 6th December 2019, viewed 22nd April 2023, <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=858344&itemId=928&generaltype=0>

19 *Guidelines for Corporate Governance for Banking and Insurance Institutions*, CBIRC, 8th June 2021, viewed 22nd April 2023, <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=989067&itemId=915&generaltype=0>

20 *Measures for the Supervision of Internet Insurance Business*, State Council, 7th December 2020, viewed 13th May 2023 <https://www.gov.cn/zhengce/zhengceku/2020-12/14/content_5569402.htm>

Members of the Insurance Working Group increasingly see different types of insurance models being established, with a particular trend in insurers partnering up with technology companies. This has reshaped the value chain, with disruptive innovations and big data now enabling smarter solutions for processes and automation. This in turn poses a challenge for both the regulator, which must draft and promulgate many dedicated regulations, and for insurance companies, which must comply with a growing number of regulations that are sometimes contradictory.

The access to online distribution for all insurance product categories should be identical for insurers of all sizes, i.e., qualitative prerequisites and any financial ratio thresholds should be the same. There should be no nominal thresholds, such as a minimum solvency capital, because this would exclude small and medium-sized insurers—potentially most or all European insurers operating in China—from important segments of online distribution, especially life insurance-related. Insurers that are small in terms of premium income, profit, nominal solvency capital or other key performance indicators should not be excluded from the online distribution of certain types of products. The product scope should reflect the recent low interest rate environment and differentiated consumer needs. Furthermore, life insurers should be allowed to sell online not only traditional life, annuity and pension products, but also products with profit participation and unit-linked products, while providing full transparency to consumers on what is guaranteed and what is not.

Most European life insurers have developed relevant expertise and a track record in their home markets to help mitigate the impact of lower interest rates on clients. Based on this experience, they can contribute to the further development of the Chinese life insurance market.

Access to State-owned Projects by Foreign Insurers

Recent opening-up policies such as the *Opinions on Further Improving the Utilisation of Foreign Investment* have brought unprecedented opportunities for foreign insurers in the Chinese market.[21] However, they have not yet fully come into effect, despite the acceleration in policy rollouts. In fact, current trends point towards a market increasingly dominated by domestic insurers, especially the local giants for certain projects, such as public-private partnerships (PPPs), employee benefits and index insurance.[22]

There has been a tendency towards prioritising or favouring cooperation with local insurers, even state-owned insurers only. That leaves foreign insurers facing restrictions and limitations in distributing their products, making it difficult for them to formulate a consistent and sustained business strategy, and resulting in low profitability and slow business growth.

A fairer share of foreign insurers should be allowed to participate in the tenders for those projects. This would be beneficial to the overall Chinese market, as foreign insurers are uniquely positioned to utilise their expertise, financial clout, data, and analytical and modelling capabilities to transform and build a more resilient industry in China.

Recommendations

- Implement a level playing field for insurers of any size, as well as between insurers and online intermediaries, to ensure undistorted competition and fair treatment of consumers, and to support ongoing product innovation.
- Ensure more foreign players, private or state-owned, can be involved in a fairer share of state-owned projects, including but not limited to PPPs, employee benefits, commercial insurance and index insurance.

4. Ensure Cross-border Data Transfer and Data Protection Requirements Are Clear and Set a Reasonable Scope for Concepts Like 'Important Data'

Concern

Some of China's cross-border data transfer regulatory requirements are not very clear or practical, which creates significant uncertainties and, in many cases, results in unfair disadvantage for foreign-invested insurance companies due to expansive interpretation.

21 *Opinions on Further Improving the Utilisation of Foreign Investment,* State Council, 30th October 2019, viewed 27th April 2023 <http://www.gov.cn/gongbao/content/2019/content_5456805.htm>

22 Index insurance is a relatively new but innovative approach to insurance provision that pays out benefits on the basis of a predetermined index (for example, rainfall level) for loss of assets and investments, primarily working capital, resulting from weather and catastrophic events. See: *What is Index Insurance?* Index Insurance Forum, World Bank, viewed 27th April 2023 <https://www.indexinsuranceforum.org/faq/what-index-insurance>

Assessment

a. Mandatory security assessments for cross-border data transfers do not provide for different approval processes in accordance with the risk level

Due to the large amount of personal information involved in the underwriting and claims processes, insurance and reinsurance companies often meet the regulatory requirements for mandatory security assessments (especially the "handling personal information of more than one million people" standard in the *Measures for Security Assessment of Outbound Data Transfers*),[23] which results in them having to obtain approval from the Cyberspace Administration of China (CAC) for all subsequent cross-border transfers of personal information.

However, there are other internal operational scenarios, for example in human resources management, that require personal information to be shared with group entities outside of China. Although the risk of infringing the legitimate rights of individuals is significantly lower than in the case of cross-border transfers of consumers' personal information, under the current legal and regulatory framework it is still necessary to conduct the same governmental approval process every two years. The compliance burden for companies is heavy and does not match the risk level of the employee information being transferred.

b. Current anonymisation standards for personal information are not practical

The Personal Information Protection Law (PIPL) defines 'personal information' as "all kinds of information relating to an identified or identifiable natural person recorded by electronic or other means, excluding information after anonymisation".[24] The PIPL also stipulates that 'anonymisation' refers to the process by which personal information is processed "in such a way that a specific natural person cannot be identified, and such process is irrecoverable".

Personal information that has been anonymised is no longer personal information. That means the anonymisation process can effectively reduce the risk and burden linked to processing data, and therefore significantly facilitate and promote data flows and utilisation. However, Chinese laws and regulations have not yet provided specific explanations or standards for what constitutes 'irrecoverable'. From the current wording of the law, it is generally understood as irrecoverable "by anybody in any way". However, if this strict approach is implemented, there is hardly any technology that can achieve the processing of information in a way that is completely 'irrecoverable' while preserving necessary individual information levels. As a result, the 'anonymisation' tool in its current form is in practice not accessible for companies.

c. The scope of what constitutes 'important data' is still not clear

The provisions of the Cybersecurity Law, Data Security Law and *Measures for the Security Assessment of Outbound Data Transfers* impose strict regulatory requirements on important data. Each region and/or industry regulator is required to develop its own important data directory or catalogues, and provide a high level of protection for important data contained in the catalogues.[25]

However, in many industries, including the insurance and reinsurance industry, such catalogues have not yet been published. Meanwhile, several national standards involving the identification of important data, such as *Information Security Technology – Security Assessment of Outbound Data Transfers Guide (Draft for Comments)*, *Information Security Technology – Important Data Identification Guide (Draft for Comments)* and *Information Security Technology – Important Data Identification Rules (Draft for Comments)*, also have not been formally promulgated after many rounds of consultation and adjustment.[26]

23 *Measures for Security Assessment of Outbound Data Transfers*, State Council, 7th July 2022, viewed 13th May 2023 <https://www.gov.cn/zhengce/zhengceku/2022-07/08/content_5699851.htm>

24 Personal Information Protection Law of the People's Republic of China, National People's Congress (NPC), 20th August 2021, viewed 27th April 2023, <http://www.npc.gov.cn/npc/c30834/202108/a8c4e3672c74491a80b53a172bb753fe.shtml>

25 Cybersecurity Law of the People's Republic of China, NPC, 7th November 2016, viewed 27th April 2023 <http://www.npc.gov.cn/zgrdw/npc/xinwen/2016-11/07/content_2001605.htm>; Data Security Law of the People's Republic of China, NPC, 10th June 2021, viewed 27th April 2023, <http://www.npc.gov.cn/npc/c30834/202106/7c9af12f51334a73b56d7938f99a788a.shtml>; *Measures for the Security Assessment of Outbound Data Transfers*, State Council, 7th July 2022, viewed 27th April 2023, <http://www.gov.cn/zhengce/zhengceku/2022-07/08/content_5699851.htm>

26 *Information Security Technology - Security Assessment of Outbound Data Transfers Guide (Draft for Comments)*, CAC, 31st August 2022, viewed 27th April 2023, <http://www.cac.gov.cn/2022-08/31/c_1663568169996202.htm>; *Information Security Technology - Important Data Identification Guide (Draft for Comments)*, National Information Security Standardisation Technical Committee, 13th January 2022, viewed 27th April 2023, <https://www.tc260.org.cn/front/bzzqyjDetail.html?id=20220113195354&norm_id=20201104200036&recode_id=45625>

The absence of official clarification and further instruction on the scope of 'important data' causes significant uncertainty for companies. The original legislative intent and purpose of the important data protection regime is to protect specific data of significant importance (national security/public interests). As an effective tool to achieve this purpose, the establishment of the important data directory/catalogue should adhere to the original intent and prevent unnecessary expansion to cover data of a different nature. In addition, to improve the effectiveness and efficiency of data control, important data control obligations should be imposed on the source or upstream of data flow. From an industry perspective, it is much more effective and reasonable to prevent relevant data from entering the public reinsurance market than having independent judgements of the nature of the data by different market participants.

Recommendations

- Apply a simplified security review process to the transfer of low-risk data within multinational companies for operational purposes, including employee information and financial data.
- Introduce a practical standard for anonymisation of personal information as soon as possible and adjust the anonymisation standard so that the data recipient, rather than the data sender, is unable to identify a specific natural person in a reasonable manner.
- Set the scope of 'important data' prudently, allowing normal data flows and giving full play to data value.

5. Recognise the Specificities of Bancassurance Companies and Adjust Relevant Risk Rating Indicators Accordingly

Concern

The unique business model of bancassurance makes differentiation in certain areas of regulations and supervisory measures, particularly those related to risk ratings, necessary for the smooth operation of companies in this field.

Assessment

Bancassurance heavily relies on strong cooperation/integration between insurance companies and banks.[27] Bancassurance players also differentiate themselves in terms of product offering to fulfil the needs of bank clients buying products through bank branches. Given this unique business model, it is very important to manage it from the combined angle of banking and insurance. Thus, differentiation in certain areas in regulations and supervisory measures is necessary.

The CBIRC's Comprehensive Solvency Risk Score and Rating reflects that life insurance companies are required to attain a risk level and risk rating of 'A' to be qualified to conduct certain types of normal life insurance business.[28] Related party transactions' risks are given high weights (40 per cent) in the 'company governance' section of the Comprehensive Solvency Risk Scoring and Rating system and a minimum score of 70 in this category is one of the pre-conditions for being awarded an 'A or above' rating. The current scoring rules for related party transactions are solely based on the simple ranking of the proportion of such transactions among all life insurance companies, which generally leads to a lower score for bancassurance companies.

As stated earlier, the business model of bancassurance companies is built on the close interaction between life insurance companies and banks, in particular on the close relationship with the bank shareholder(s). Having channel fees with shareholder banks, conventional bank deposits with shareholder banks and market-orientated assets guaranteed by shareholder banks are part of day-to-day bancassurance business, and are mostly low-risk activities. However, based on the current rules, these activities are all put in the same basket as 'other potentially high-risk related party transactions' when deciding the score for industry peer ranking. This results in bad rankings and creates great difficulties for bancassurance companies trying to get an 'A' for the Comprehensive Solvency Risk Rating.

In view of the above, the working group recommends

27 Bancassurance refers to an agreement between a bank and an insurance company. In bancassurance, the insurance company can use the bank's distribution channels to sell products. Banks, in return, receive a certain fee from the insurance company. Source: *Bancassurance*, Corporate Finance Institute, viewed 16th May 2023, <https://corporatefinanceinstitute.com/resources/wealth-management/bancassurance/>

28 *Notice of CBIRC on Releasing the Solvency Regulatory Rules II for Insurance Companies,* CBIRC, 30th December 2021, viewed 27th April 2023, <https://www.cbirc.gov.cn/cn/view/pages/governmentDetail.html?%20docId=1027892&itemId=861&generaltype=1>

that regulators improve the risk assessment dimension of related party transaction indicators by categorising and weighting such transactions according to their business nature and the true risk level. Doing so would ensure that rankings and scores reflect more accurately the risk profile of the company in related party transactions.

Recommendation

- Adjust the 'related party transaction' indicators in company ratings to reflect the risk profile of bancassurance companies more accurately.

Abbreviations

CAC	Cybersecurity Administration of China
CBIRC	China Banking and Insurance Regulatory Commission
CNY	Chinese Yuan (currency)
CPC	Communist Party of China
JV	Joint Venture
NAFR	National Administration of Financial Regulation
NPC	National People's Congress
P&C	Property and Casualty
PBOC	People's Bank of China
PIPL	Personal Information Protection Law
PPP	Public-private Partnership

Section Six 6

Forums

Corporate Social Responsibility Forum

The Corporate Social Responsibility (CSR) Forum is an event-driven platform that regularly organises meetings, training courses and events of interest to all European Chamber members. Established in 2005, it is now comprised of more than 250 member companies that cover a wide range of corporate functions, such as sustainability/CSR, marketing and communications, public relations, government relations, corporate governance and compliance, human resources, the environment, and health and safety.

The CSR Forum promotes best practices established by European companies and emphasises the importance of a strategic and innovative approach to CSR. Furthermore, the forum fosters CSR collaboration and co-innovation between the European Chamber, Chinese government agencies, professional organisations and local non-governmental organisations.

As the shared goal and common interest of both the European Union (EU) and China, carbon neutrality is and will continue to be the focus of the CSR community. The EU launched its Green Deal strategy in 2019,[1] stating its aim to be climate neutral—an economy with net-zero greenhouse gas emissions—by 2050. The Chinese Government has also repeatedly emphasised the importance of establishing a sustainable economy as part of its national strategy to reach 'carbon peak' by 2030 and 'carbon neutrality' by 2060. According to the European Chamber's *Business Confidence Survey 2023*, 95 per cent of respondents that are aiming to decarbonise their China operations are planning to do so by 2050. Growing consumer demand for green products and services, global corporate targets and strict EU regulations are the main drivers behind this push.[2]

In addition, in 2022, the European Commission adopted a proposal for the Corporate Sustainability Reporting Directive (CSRD),[3] which will introduce strict reporting requirements that oblige large public-interest companies to report on sustainability issues such as environmental, social and governance, and human rights. The CSDR requires companies' sustainability reports to be certified by independent, European or third-country auditors, and to be published in a dedicated section of company management reports.[4] The forum will continue to hold events on these important topics to ensure that European Chamber companies fully understand them and the potential implications, and are aware of how to fulfil their responsibilities.

The CSR Forum held a total of 35 activities in 2022—including meetings, seminars, and conferences—in Beijing and Shanghai on topics such as the EU Carbon Border Regulation Mechanism, sustainability due diligence, corporate renewable energy procurement, rural revitalisation, women empowerment and sustainable supply chain management.

The European Chamber held its 6th Sustainable Business Awards and its 9th CSR Awards in 2022, and continues to host dialogues on topics related to CSR through its Corporate Social Profitability Chief Executive Officer/VIP Talk series. This series brings together corporate leaders for high-level discussions on the importance of incorporating sustainability and innovation into strategic decision-making to improve companies' bottom lines. The European Chamber has established strong partnerships with governmental stakeholders and affiliated associations to advocate CSR awareness and responsible business conduct in the business community. In 2023/2024, the Corporate Social Responsibility Forum will continue to foster dialogue between European Chamber member companies and Chinese stakeholders to promote the best European CSR practices and explore new, innovative ways to act sustainably.

1 *A European Green Deal - Striving to be the first climate-neutral continent*, European Commission, 11th December 2019, viewed 26th April 2023, <https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en>

2 *Business Confidence Survey 2023*, European Union Chamber of Commerce in China, 21st June 2023, viewed 21st June 2023, <https://www.europeanchamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>

3 *Corporate Sustainability Reporting Directive*, European Commission, 14th December 2022, viewed 7th April 2023, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464>

4 A provisional agreement has already been reached between the European Council and the European Parliament on the CSRD with approval pending at the time of writing: *New rules on corporate sustainability reporting: provisional political agreement between the Council and the European Parliament*, European Council, Council of the European Union, 21st June 2022, viewed 24th April 2023, <https://www.consilium.europa.eu/en/press/press-releases/2022/06/21/new-rules-on-sustainability-disclosure-provisional-agreement-between-council-and-european-parliament/>

Government Affairs Forum

Established in 2011, the Government Affairs Forum consists of government affairs (GA) professionals from European Chamber member companies that represent a wide range of industries. Most of the forum's participants have extensive experience in GA and policy advocacy at the local and national level in both Europe and China. So far, the forum has established itself as a platform for sharing best practices, social networking and where members can learn more about China's political and economic environment, recently-enacted policies and the latest GA trends.

Looking back over 2022, the world economy struggled with geopolitical conflicts and COVID-19 pandemic, contributing to a significant slowdown in global growth and obstacles to business operation, which also posed challenges to government affairs professionals to support their business development. Against this backdrop, the Government Affairs Forum organised several events and government dialogue last year to help member companies navigate this tumultuous moment.

For example, in March 2022, the forum briefed members on China's macroeconomic outlook in 2022 as well as 2022 China's Two Sessions. In May and September 2022, the forum met with officials from the Beijing Development and Reform Commission and the Beijing Daxing District Government respectively, to explain the operational difficulties foreign companies were facing due to China's stringent COVID-19 management policies.

In recent years, China has continued to strenghten its environment protection and pursue green and low-carbon development. To echo this state direction, in October 2022, the forum held a policy briefing on Beijing's 14th Five-year Plan for Climate Change and Energy Conservation, with officials from the Beijing Municipal Ecology and Environment Bureau. And in November 2022, the forum and China News Network jointly organised a national high-level roundtable with China's Ministry of Ecology and Environment to introduce the policies and measures related to the construction of China's carbon market.

In 2023/2024, as China reopens its border and back to the track of securing economic recovery, the Government Affairs Forum will continue to promote dialogue between member companies and Chinese stakeholders to build a more open and pragmatic communication platform.

Manufacturing Forum

Since its establishment in 2012, the Manufacturing Forum has kept pace with the challenges faced by European manufacturing companies operating in China.

The forum is comprised of 150 member companies that cover a wide range of industries, such as automotive, consumer goods, electronics, energy, healthcare, machinery, petrochemicals and telecommunications. It functions as a platform for sharing practical information between members and supporting their operations in China, in formats including:

- local regulation updates;
- business intelligence sharing;
- requests for help from the European Chamber; and
- requests for help from other members.

Throughout 2022 and the greater part of 2023, the forum organised many events, such as monthly roundtables, seminars, factory tours and training courses.

During the monthly roundtables, participants shared their practical experiences and together sought possible solutions for common issues. The topics discussed included: talent recruitment, fostering self-management skills in employees, designing key performance indicators for production, and cost management. At the end of each year, individual members give a summary of their company's performance in China.

The forum also regularly invited experts to share their knowledge and views on subjects as varied as data security, green industrial development and the metaverse.

During the factory visits, members were given opportunities to attend presentations and discuss topics of relevance, such as automation, digital transformation and intelligent warehousing.

Through participating in the Canton Fair, the China Hi-Tech Fair, and the High-quality Development of the Automotive Industry Fair, forum members met with representatives of the Chinese Government at various levels as well as Chinese enterprises, and had exchanges on trade, technology and talent development.

Looking forward to 2023/2024, the Manufacturing Forum will focus on the high-quality development of the industry, through presentations and exchange of practical experience on topics chosen by its members, such as product innovation and carbon neutrality. These activities will be aimed at highlighting potential future opportunities in respect to new technologies such as artificial intelligence and decarbonisation tools.

Marketing and Communications Forum

The Marketing and Communications Forum comprises marketing and communications professionals from a wide range of industries. This forum provides a platform to exchange information, experiences and best practices among members companies on the use of marketing and communications to achieve their business objectives in China by organising activities including meetings, seminars and training sessions. It represents nearly 400 member companies based in the European Chamber's Beijing, Shanghai and South China chapters.

Throughout 2022, the forum hosted 11 events across the three chapters to help members understand innovative marketing technologies.

As interest in the concept of the metaverse—a single, shared three-dimensional digital space—continued to grow in 2022, the forum organised three events on this topic. On 31st March, the event 'Metaverse and Opportunities for Brands' explored the potential of the metaverse for marketing and the challenges in as well as opportunities for enhancing customer experience. On 28th June, a follow-up event, 'Metaverse Marketing: Hype or Real Game Changer?' examined the practical implications of metaverse marketing in real-world scenarios. On 25th July, the forum co-organised an event with the Manufacturing Forum to further investigate the opportunities the metaverse brings to manufacturing and retail companies.

Two forum events focussed on the impact of COVID-19 on businesses in China. On 10th May, the event 'Working from Home During the Lockdown - IT and Legal Solutions' addressed the challenges faced by businesses during the pandemic, offering practical solutions for remote working—in particular in terms of information technology (IT)—and legal compliance for maintaining business continuity. On 28th July, the 'Snapshot of KOL and KOC: Emerging in the Pandemic' event discussed the latest developments in key opinion leaders (KOLs) and key opinion consumers (KOCs) marketing, and opportunities for brands during and after the COVID-19 pandemic.

The increasing focus on sustainability triggered the event 'Enhancing Corporate Branding and Growth with Sustainability Communication', which took place also on 28th July, sharing best practices for communicating brands' sustainability stories to Chinese audiences and localising sustainability actions in China.

On 23rd August, the forum organised the event, '"In China, for China" Strategy for Multinational Corporations in China', to discuss ways for multinationals to eliminate potential risks and better localise in today's digital economy in China.

To provide members with best practices for using various marketing tools and platforms, the forum hosted three relevant events. On 31st August, a session delved into marketing strategies on Zhihu, one of China's most popular knowledge-sharing platforms. On 14th September, an event explored the growing importance of social channels for e-commerce. On 15th September, the forum hosted an experience-sharing event to showcase how brands can partner with podcast shows and use the format as a marketing tool.

In the coming year, the Marketing and Communications Forum will continue to monitor market trends and assist member companies in recovering from the impact of the past three years of COVID-19 measures.

Small and Medium-sized Enterprise Forum

Comprised of more than 200 European small and medium-sized enterprises (SMEs), the European Chamber's Small and Medium-sized Enterprise Forum was established in 2005 to provide a platform for SME members to share experiences and gain practical information on how to successfully operate in China. Relevant stakeholders also include European and Chinese government officials and SME support service organisations, such as the European Union (EU) SME Centre and China Intellectual Property (IP) SME Helpdesk.

2022 was a difficult year for all businesses in China, but particularly so for SMEs. Strict COVID-19-related restrictions were the biggest challenge for SMEs, as they lead to increased costs, decreased predictability and business closures. Another common issue faced by EU-invested SMEs was the lack of support from financial institutions in China. It was also extremely onerous for European SMEs to obtain loans from banks.

In 2023, with the relaxation of epidemic prevention and control measures in China, the government has implemented various support policies as part of efforts to kick-start the economy, including several targeting SMEs in particular. On 11th January 2023, the Office of the Leading Group for Promoting the Development of SMEs under the State Council published the *Notice on Printing and Distributing Several Measures to Assist Micro, Small and Medium-sized Enterprises in Stable Growth, Structural Adjustment and Strong Capacity*.[1] Measures have been clearly defined to increase financial support for SMEs. As a result, the People's Bank of China and the China Banking and Insurance Regulatory Commission are increasing the numbers of first-time loans, credit loans, and medium- to long-term loans made available to SMEs. The measures also stipulate assisting SMEs in expanding market demand. For example, the quota of government procurement projects reserved for SMEs will be gradually increased to over 40 per cent, up until the end of 2023. Large enterprises and online sales platforms have also been encouraged to release procurement lists targeting SMEs. Furthermore, the *2023 Government Work Report* mentioned speeding up the digital transition for SMEs and generally supporting micro, small and medium-sized enterprises in their business development.[2]

However, according to the SME Development Index (SMEDI) for June 2023, released by the China Association of SMEs (CASME) on 10th July 2023, the average index for the first half of the year was 89.1, still below the critical threshold of 100.[3] This indicates that the profitability of SMEs remains suboptimal, with insufficient market demand and numerous challenges in production and operation. Micro and small enterprises in particular face major difficulties, including ongoing declines in domestic and international orders, increasing costs, falling profits and outstanding accounts receivable, among others. The business environment urgently needs to be improved in order to boost market expectations and entrepreneurial confidence.

In 2022, the Small and Medium-sized Enterprise Forum organised 23 activities, including meetings and roundtable discussions, in Beijing, Shanghai, Tianjin, Guangzhou and Shenzhen. These activities focussed on areas such as low carbon, green development, sustainable supply chain management, digitalisation, policy environment, regional business opportunities and IP. The Small and Medium-sized Enterprise Forum also worked closely with the EU SME Centre on training workshops and advocacy actions for EU SMEs. The forum likewise works in close collaboration with other European Chamber working groups to raise its voice on other topics such as open financing, easier administrative access, transparent policies, lowered subsidy thresholds, better talent recruitment and retention, and strengthened communication between businesses and the government.

In 2023/2024, the forum will continue to provide regular policy updates and insights on topics such as talent management, IP protection, and new regulations and guidelines that may impact SME operations. The forum will also continue to provide a platform and opportunities for European SMEs to share solutions to common problems and foster success.

1 *Notice on Printing and Distributing Several Measures to Assist Micro, Small and Medium-sized Enterprises in Stable Growth, Structural Adjustment, and Strong Capacity,* State Council, 11th January 2023, viewed 6th July 2023, <http://www.gov.cn/zhengce/zhengceku/2023-01/15/content_5737024.htm>

2 *2023 Government Work Report*, State Council, 5th March 2023, viewed 6th July 2023, <http://www.gov.cn/zhuanti/2023lhzfgzbg/index.htm>

3 *The development index of small and medium-sized enterprises in China stopped falling and rebounded in June 2023*, CASME, 10th July 2023, viewed 10th July 2023, <https://ca-sme.org/content/Content/index/id/40295>

Sports Forum

The Sports Forum was established in November 2020 and has 29 member companies. It is a platform that brings together European sports companies, government stakeholders and local communities through the integration of sports, education and business. It contributes to the development of the sports environment in China in a cooperative and non-politicised manner.

Sports play a vital role in promoting economic and social development. Not only do they enrich people's intellectual and cultural life, but they can also demonstrate a country's soft power. Since hosting the 2008 Summer Olympics, China has announced a series of national plans indicating its aspiration to become a strong sports nation by 2025.[1] Apart from policy changes, the enormous market potential among middle-class and female customers, e-commerce and digitalisation are the main growth drivers of the Chinese sports market. The Chinese Government should promote the construction, operation and maintenance of sports facilities, while also embedding sports venues and facilities into urban renewal and smart city construction plans.

Prior to the Beijing Winter Olympics 2022, the European Chamber met with Gou Zhongwen, former minister of the General Administration of Sports (GAS) and chair of the Beijing Olympic Committee, to discuss how to promote the development of sports and the Olympic spirit in China. One way of achieving this is to support China's ambitions of being a world-class ice and snow sports industry by developing centres for related research and development and training.

The European Chamber has established a strong partnership with the GAS, as well as the Shanghai Administration of Sports (SAS). On 1st November 2021, the Chamber signed a five-year cooperation agreement with the GAS, committing both sides to cooperating on the development of sporting activities, and the promotion of sports-related industries and events. The Sports Forum supports China's national Integration of Sports and Education Strategy,[2] and will set up task forces within the sports forum to cooperate with Chinese sports associations that are under GAS supervision.

Since its formation, the forum has organised 16 activities, including meetings and roundtable discussions, in both Beijing and Shanghai. In the coming year, the Sports Forum will continue to organise events and foster dialogue between European Chamber member companies and Chinese stakeholders to promote the benefits of sports, and work with relevant government agencies and other stakeholders to exchange best practices in sports in both the EU and China.

1 *Notice of the General Administration of Sports on the issuance of the 14th Five-year Plan for the Development of Sports*, State Council, 8th October 2021, viewed 25th April 2023, <http://www.gov.cn/zhengce/zhengceku/2021-10/26/content_5644891.htm>

2 *Notice of the General Administration of Sports and the Ministry of Education on the Issuance of Opinions on Deepening the Integration of Sports and Education and Promoting Healthy Youth Development,* GAS & Ministry of Education, 31st August 2020, viewed 10th March 2023, <http://www.gov.cn/zhengce/zhengceku/2020-09/21/content_5545112.htm>

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7 Section Seven

Appendix

Abbreviations

14FYP	14th Five-year Plan
5G	Fifth Generation
ACI	Anti-coercion Instrument
ADAS	Advanced Driver Assistance System
ADB	Asian Development Bank
AEO	Authorised Economic Operator
AFB	Agriculture, Food and Beverage
AFC	Auto Finance Company
AI	Artificial Intelligence
AICM	Association of International Chemical Manufacturer
AMC	Asset Management Company
AML	Anti-monopoly Law
APA	Advance Pricing Agreement
Art.	Article
ART	Antigen Rapid Test
ASTM	American Society for Testing Material
ATEX	Equipment for Potentially Explosive Atmospheres
ATM	Air Traffic Management
BAPA	Bilateral Advance Pricing Arrangement
BASA	Bilateral Aviation Safety Agreement
bcm	Billion Cubic Metres
BCS	Business Confidence Survey
BMI	Basic Medical Insurance
BRI	Belt and Road Initiative
BTIRDI	Beijing-Tsinghua Industrial Research and Development Institute
BWTS	Ballast Water Treatment Systems
CAAC	Civil Aviation Administration of China
CAAM	China Association of Automotive Manufacturers
CAC	Cyberspace Administration of China
CAICT	China Academy of Information and Communication Technology
CAMET	China Association of Metros
CANSI	China Association for National Shipbuilding Industry
CBAM	Carbon Border Adjustment Mechanism
CBIRC	China Banking and Insurance Regulatory Commission
CCC	China Compulsory Certification
CCDI	Central Commission for Discipline Inspection
CCER	China Certified Emission Reduction
CCPS	Classified Cybersecurity Protection System
CCS	China Classification Society
CCU	Carbon Capture and Utilisation
CCUS	Carbon Capture, Utilisation and Storage
CD	Certificate of Deposit
CDE	Centre for Drug Evaluation
CDMD	Consumable and Disposable Medical Devices
CEA	Chinese Emission Allowance
CEN	Comité Européen de Normalisation

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CEPL	Circular Economy Promotion Law
CFC	Consumer Finance Company
CFC	Corporate Finance Company
CFDA	China Food and Drug Administration
CFE	Centre for Food Evaluation
CFETS	China Foreign Exchange Trade System
CFSA	China National Centre for Food Safety Risk Assessment
CGT	Cell and Gene Therapy
CGT	Common Ground Taxonomy
CGT	Compensated Gross Tonnage
CHC	Chinese Holding Company
CHI	Commercial Health Insurance
ChP	China Pharmacopeia
CIFER	China Import Food Enterprise Registration
CIFST	Chinese Institute of Food Science and Technology
CII	Critical Infrastructure Information
CIT	Corporate Income Tax
CLECAT	European Association for Forwarding, Transport, Logistics and Customs Services
CM2025	China Manufacturing 2025
CMA	China Metrology Association
CMC	Chemistry, Manufacturing and Control
CMDE	Centre for Medical Device Evaluation
CNCA	Certification and Accreditation Administration of China
CNIPA	China National Intellectual Property Administration
CNKI	China National Knowledge Database
CNY	Chinese Yuan
CO_2	Carbon Dioxide
COCIR	European Coordination Committee of the Radiological, Electromedical and Healthcare Information Technology Industry
COP	Conference of the Parties
CoO	Country of Origin
COSCO	China Ocean Shipping Company
CPC	Communist Party of China
CPCCC	Communist Party of China Central Committee
CPCIF	China Petroleum and Chemical Industry Federation
CRS	Computer Reservations System
CSAR	Cosmetics Supervision and Administration Regulation
CSDDD	Corporate Sustainability Due Diligence Directive
CSI	City Supplementary Insurance
CSL	Cybersecurity Law
CSP	Construction Service Provider
CSRC	China Securities Regulatory Commission
CSRD	Corporate Sustainability Reporting Directive
CSRM	Cybersecurity Review Measures
CTG	Coal-to-gas
CV	Commercial Vehicle
C-V2X	Cellular Vehicle-to-everything
CVD	Coordinated Vulnerability Disclosure
DAL	Drug Administration Law
DALIR	Drug Administration Law Implementation Regulations

DCM	Drug Committee Meeting
DDR	Deposit Deviation Ratio
DG	Dangerous Goods
DIP	Diagnosis-intervention Package
DMV	Department of Motor Vehicles
DNA	Deoxyribonucleic Acid
DOJ	Department of Justice
DPL	Data Protection Law
DRG	Diagnosis-related Groups
DRR	Drug Registration Regulation
DSL	Data Security Law
DRS	Deposit and Return System
DVFA	Danish Veterinary and Food Administration
EAL	Evaluation Assessment Level
EASA	European Union Aviation Safety Agency
ECHI	Europe China Heating Initiative
EE	Energy Efficiency
EEXI	Energy Efficiency Existing Ship Index
EF	Emission Factor
EHS	Environmental, Health and Safety
ELC	Equipment Leasing Company
EPI	Expanded Programme of Immunisation
ESG	Environmental, Social and Governance
ETS	Emissions Trading System
EU	European Union
EUIPO	European Union Intellectual Property Office
EUR	Euro
EUROPOL	European Union Agency for Law Enforcement Cooperation
EV	Electric Vehicle
FCEV	Fuel Cell Electric Vehicles
FCPA	Foreign Corrupt Practices Act
FDI	Foreign Direct Investment
FDL	Futures and Derivatives Law
FICLS	Foreign-invested Company Limited by Shares
FIE	Foreign-invested Enterprise
FIL	Foreign Investment Law
FIVA	International Federation of Historic Vehicles
FOP	Front-of-Package
FSMP	Food for Special Medical Purpose
FTZ	Free Trade Zone
FYP	Five-year Plan
G7	Group of 7
GACC	General Administration of Customs China
GB	*Guobiao*
GCP	Good Clinical Practice
GDP	Gross Domestic Product
GDS	Global Distribution System
GEC	Green Electricity Certificate
GHG	Greenhouse Gas
GHWP	Global Harmonization Working Party

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GI	Geographical Indication
GLP	Good Laboratory Practice
GM	Genetically Modified
GMM	Genetically Modified Microorganism
GPA	Government Procurement Agreement
GPL	Government Procurement Law
GST	Goods and Services Taxes
GW	Gigawatt
HAZID	Hazard Identification
HAZOP	Hazard and Operability
HC	Hazardous Chemicals
HGRAC	Human Genetic Resource Administration of China
HIS	Hospital Information System
HMO	Human Milk Oligosaccharides
HNTE	High and New Technology Enterprise
HQ	Headquarters
HQLAAR	High-quality Liquid Asset Adequacy Ratio
HR	Human Resources
HSA	Health Security Administration
HSE	Health, Safety and Environment
IaaS	Infrastructure as a Service
ICAO	International Civil Aviation Organization
ICAP	International Carbon Action Partnership
ICER	Incremental Cost-effective Ratio
ICH	International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use
ICT	Information and Communications Technology
ICV	Intelligent and Connected Vehicle
ID	Identification
IDC	Internet Data Centre
IDF	International Dairy Federation
IEC	International Electrotechnical Commission
iFSMP	Infant Food for Special Medical Purpose
IIT	Individual Income Tax
IMCT	International Multi-centre Trial
IMDRF	International Medical Device Regulators Forum
IMF	International Monetary Fund
IMO	International Maritime Organization
IMT	International Mobile Telecommunications
IoT	Internet of Things
IP	Intellectual Property
IPR	Intellectual Property Rights
IP-VPN	Internet Protocol Virtual Private Network
IRC	Internet Resource Collaboration
ISO	International Organization for Standardization
IT	Information Technology
ITU	International Telecommunication Union
IVD	In-vitro Diagnostics
JV	Joint Venture
KR	Key Recommendation

kW	Kilowatt
LCA	Life Cycle Assessment
LDR	Loan to Deposit Ratio
LMR	Liquidity Matching Ratio
LNG	Liquefied Natural Gas
LOI	Level of Involvement
LPG	Liquefied Petroleum Gas
M&A	Mergers and Acquisitions
MAH	Marketing Authorisation Holder
MARA	Ministry of Agriculture and Rural Affairs
MCT	Ministry of Culture and Tourism
MED	Marine Equipment Directive
MEE	Ministry of Ecology and Environment
MEM	Ministry of Emergency Management
MEPS	Minimum Energy Performance Standards
MERICS	Mercator Institute for China Studies
MiC2025	Made in China 2025
MIIT	Ministry of Industry and Information Technology
MLP	National Medium- and Long-term Programme for Science and Technology Development
MLPS	Multi-level Protection Scheme
MNC	Multinational Corporation
MNO	Mobile Network Operator
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
MOH	Ministry of Health
MOHRSS	Ministry of Human Resources and Social Security
MOHURD	Ministry of Housing and Urban-Rural Development
MOJ	Ministry of Justice
MOST	Ministry of Science and Technology
MOT	Ministry of Transport
MOU	Memorandum of Understanding
MPS	Ministry of Public Security
MSA	Maritime Safety Administration
MSME	Micro, Small and Medium-sized Enterprise
MRV	Monitoring, Reporting and Verification
NAFMII	National Association of Financial Markets Institutional Investors
NAFR	National Administration of Financial Regulation
NBFI	Non-banking Financial Institution
NBS	National Bureau of Statistics
NDM	National Declaration Model
NDRC	National Development and Reform Commission
NEA	National Energy Administration
NEV	New Energy Vehicle
NG	Natural Gas
NHBPC	National Health and Birth Planning Commission
NHC	National Health Commission
NHSA	National Healthcare Security Administration
NIP	National Immunisation Programme
NMPA	National Medical Product Administration
NO_x	Nitrogen Oxide

NPC	National People's Congress
NPCSC	Standing Committee of the National People's Congress
NPL	Non-performing Loan
NRA	National Railway Administration
NRDL	National Reimbursement Drug List
NSR	National Security Review
NVOCC	Non-vessel Operating Common Carrier
OECD	Organisation for Economic Co-operation and Development
OEM	Original Equipment Manufacturer
OSCCA	Office of State Commercial Cryptography Administration
OTC	Over-the-counter
P&C	Property and Casualty
PaaS	Platform as a Service
PBOC	People's Bank of China
PCR	Petrochemicals, Chemical and Refining
PCR	Polymerase Chain Reaction
PDG	Pharmacopeial Discussion Group
PET	Polyethylene Terephthalate
PIPL	Personal Information Protection Law
PoA	Power of Attorney
PPA	Power Purchase Agreement
PPP	Public-private Partnership
PRC	People's Republic of China
PRDL	Provincial Reimbursement Drug Lists
PTA	Patent Term Adjustment
PTE	Patent Term Extension
PTE	Purchase Tax Exemption
PV	Photovoltaic
QFLP	Qualified Foreign Limited Partnership
QR	Quick Response
QSAR	Quantitative Structure-activity Relationship
QSS	Quality and Safety Services
R&D	Research and Development
RDP	Regulatory Data Protection
RE	Renewable Energy
REACH	Registration, Evaluation, Authorisation and Restriction of Chemicals
REC	Renewable Energy Certificate
RMB	*Renminbi*
ROP	Refined Oil Products
rPET	Recycled Polyethylene Terephthalate
RPS	Renewables Portfolio Standard
RSV	Respiratory Syncytial Virus
S&T	Science and Technology
SaaS	Software-as-a-Service
SAC	Standardisation Administration of China
SAF	Sustainable Aviation Fuel
SAFE	State Administration of Foreign Exchange
SALB	Sale and Leaseback
SaMD	Software as a Medical Device
SAMR	State Administration of Market Regulation

SASAC	State-owned Assets Supervision and Administration Commission
SDG	Sustainable Development Goal
SCA	Standards and Conformity Assessment
SCA	State Cryptography Administration
SEC	Securities and Exchange Commission
SEI	Strategic Emerging Industries
SF6	Sulphur Hexafluoride
SME	Small and Medium-sized Enterprise
SOE	State-owned Enterprise
SPB	State Post Bureau
SPC	Supreme People’s Court
SRTT	Standard Reference Testing Tyre
SSE	Shanghai Shipping Exchange
SSE	Shanghai Stock Exchange
STA	State Taxation Administration
STEM	Science, Technology, Engineering and Mathematics
T&D	Transportation and Development
TAC	Type Approval Certificate
TBL	Tender and Bidding Law
TBT	Technical Barriers to Trade
TC	Technical Committee
TC260	National Information Security Standardisation Technical Committee
THC	Terminal Handling Charges
TIC	Testing, Inspection and Certification
TIP	Technical Implementation Procedure
TP	Transfer Pricing
TPA	Third-party Access
TPA	Transfer Pricing Adjustment
TTC	Threshold of Toxicological Concern
UAS	Unmanned Aircraft System
UAV	Unmanned Aerial Vehicle
UDI	Unique Device Identifier
UN	United Nations
US	United States
USD	United States Dollar
UTM	UAS Traffic Management
VAO	Vehicle Administrative Office
VAT	Value-added Tax
VATS	Value-added Telecoms Services
VBP	Volume-based Procurement
VIN	Vehicle Identification Number
VOC	Volatile Organic Compound
WCO	World Customs Organization
WEEE	Waste from Electrical and Electronic Equipment
WFOE	Wholly Foreign-owned Enterprise
WHO	World Health Organization
WiGig	Wireless Gigabit
WIPO	World Intellectual Property Organization
WRC	World Radiocommunication Conference
WTO	World Trade Organization
y-o-y	Year-on-year

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