Journal of the European Union Chamber of Commerce in China

EURObiz

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EU-CHINA
40 YEARS OF DIPLOMATIC RELATIONS

FROM STRENGTH TO STRENGTH
The EU-China trade relationship

STATE OF FLUX
40 years of change to China's legal landscape.

BOTH SIDES OF THE COIN
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European Chamber
中国欧盟商会

Anshan Economic Development Zone set to take off

Anshan Economic Development Zone is a provincial-level economic development zone situated in the west part of Anshan city, covering a planned area of 105 square kilometres. It was recognised by the State Council as a National New-type Industrialisation Demonstration Base, a National Value-added Steel Products Manufacturing Base, a National Production-related Services Industry Demonstration Base and a Liaoning Provincial Modern Service Industry Demonstration Zone. Making full use of its advantageous location, abundant resources and solid industrial foundations, it has become a new growth engine fuelling Anshan's economic development. The zone neighbours Anshan Iron and Steel Group Corporation, one of China's top steel producers.

So far a total of 1,028 projects have settled in the zone with combined investments worth RMB 101.5 billion. Currently, it is home to 2,651 enterprises, including 821 manufacturing enterprises. Twenty-five specialised markets are operating here, the most notable of which is Red Star Macalline.

The zone has fostered four leading sectors, including value-added steel products manufacturing, high-end valves manufacturing, processed coal tar products and the modern services industry. It houses a number of important facilities such as the Anshan Vocational Education Town which trains 100,000 students, the Anshan Olympic Sports Centre and the Anshan West High-speed Railway Station. The Shenyang-Dalian Highway and the Harbin-Dalian High-speed Railway run through the zone, and it is also home to Anshan airport.

Key investment projects

Business tower: the 'Gate of Anshan'

The 'Gate of Anshan' is one of Anshan's well-known buildings. Access to this landmark business tower is extremely convenient as it situated next to the Shenyang-Dalian Highway and the Anshan West High-speed Railway Station. Positioning itself as a multi-functional business centre, it provides office spaces, accommodation, catering, conference and entertainment facilities. Its aim is to become the only star-rated hotel in western Anshan.

The project comprises two towers: tower A is a 24-storey building with a total floor area of 96,800 square metres; tower B, also 24-storeys, has a total floor area of 72,100 square metres. So far 90 per cent of construction work has been completed – the roof has been sealed and outer walls are in place.

Favourable policies: Anshan Municipal Government will give greater priority to investments that are directly related to supporting facilities in the tower.

Investment method: investors can wholly own the units at cost price or partner with us in other ways.

Modern logistics base

Adopting supply chain management backed by information technology, this project aims at developing the zone into a comprehensive warehousing and logistics base providing various services such as warehousing, distribution, logistics and property management.

The project consists of an e-commerce industrial park and a logistics park. The e-commerce industrial park has

12 buildings with a gross floor area of 148,000 square metres; the logistics park houses 13 buildings with a gross floor area of 87,000 square metres. A combined total area of 400,000 square metres is available for development.

Favourable policies: The Anshan Municipal Government will give greater priority to related supporting facilities. Existing projects will be sold at cost price; for new projects, incentives such as tax breaks and subsidies will be available to investors.

High-speed rail new town

The Harbin-Dalian High-speed Railway runs through three northeastern provinces of China and serves as the major transportation line across these areas. The high-speed rail new town is situated in the west part of Anshan city, with the Anshan West High-speed Railway Station at its centre. The new town plans to occupy a total area of 10 square kilometres, and its startup area plans to cover 2.4 square kilometres. A number of important facilities are located within a two kilometre radius of the new town, including 25 specialised markets, the Anshan Olympic Sports Centre and the Anshan Vocational Education Town. Close to the Shenyang-Dalian Highway exit and the Anshan airport, the new town enjoys very convenient traffic access.

The core area of new town is designed to develop office buildings and residential communities, and plans to promote commerce, financial and logistics services. The new town as a whole aims to be a liveable and business-friendly place.

Favorable policies: The Anshan Municipal Government will give greater priority to related supporting facilities, such as power supply, water supply and sewage treatment. Investors are also eligible for preferential policies offered by the Shenyang Metropolitan Area Comprehensive Supporting Reform Pilot Zone.

Overview of Anshan

Anshan, located in the mid-south of Liaodong Peninsula and richly endowed in mineral resources, is hailed as the 'steel capital' of China. With the famous port city of Dalian to its south and Liaoning's provincial capital city of Shenyang to its north, Anshan has three counties and four urban districts under its jurisdiction. Covering a total area of 9,252 square kilometres, Anshan is home to four million people, including 2.3 million people living in the urban area which spans 800 square kilometres. The GDP of Anshan hit RMB 272.1 billion in 2014. It is the third largest city in Liaoning province and the fifth largest in Northeast China.

Anshan owns distinct geographical advantages and boasts a widespread transportation network covering air, railway and highway. High-speed railways and highways running through Anshan include the Harbin-Dalian High-speed Railway, the Beijing-Shenyang High-speed Railway, the Beijing-Harbin Highway and the Shenyang-Haicheng Highway. Anshan is only 260 kilometres to Dalian Port, 90 kilometres to Taoxian International Airport and 90 kilometres to Bayuquan Port. Anshan airport operates daily direct flights to a range of cities including Beijing, Shanghai and Guangzhou.

Embracing the national strategy of rejuvenating Northeast China, Anshan Economic Development Zone is keen to attract investors from around the world. To find out more please visit our website at ***www.aswjm.gov.cn*** *or contact us on* ***aswjmwlc@163.com.***

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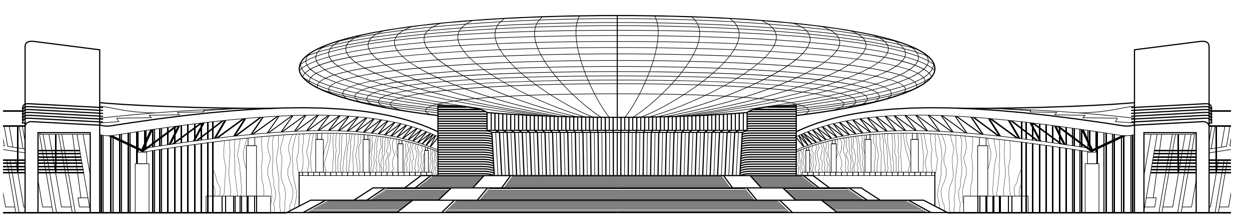
EURASIA COMMODITY AND TRADE EXPO 2015

EACT EXPO
亚欧商品贸易博览会
EURASIA COMMODITY AND TRADE EXPO

China-Eurasia Expo has been hosted successfully for four sessions and achieved substantial results as a platform for China's summit diplomacy and economic and trade exchanges with its neighboring countries. Chinese state leaders including Li Keqiang, Wen Jiabao, Li Yuanchao and Wang Yang, 21 leaders and former dignitaries of Eurasian countries, as well as over 800 Chinese and foreign minister-level guests attended the exposition. During the previous four editions of exposition, the sponsors and organizers (27 Chinese state ministries and commissions and Xinjiang's over 60 competent governmental departments) organized diverse and inclusive special forums and economic and trade promotion activities which covered a wide range of fields such as agriculture, finance, food security, news, technology and communications. Relevant international organizations and overseas trade and industry departments held over 100 activities such as investment trade fair, tourism promotion and national pavilion day. With the constant improvement of its brand influence and internationalization level, the China-Eurasia Expo is becoming a major platform under the strategy of the "Silk Road Economic Belt".

In light of the actualities of participation by domestic and overseas enterprises and institutions in recent years, the Secretariat of China-Eurasia Expo has planned to host Eurasia Commodity and Trade Expo 2015 .

The Eurasia Commodity and Trade Expo 2015, to be held from Aug.12-16, 2015 in Urumqi Xinjiang China, is proposed to be themed "Building Silk Road Business Platform to Advance Mutually-beneficial Cooperation between Asian and European Industries". The exposition will involve three specialized exhibitions: textile and garment exhibition, agricultural product and food exhibition, jewelry and jade craft exhibition. To fully display Eurasian countries' superior industries and characteristic products, the Secretariat will invite trade and investment promotion agencies from key countries and regions to present relevant fine items, and will invite other overseas exhibitors to participate in the specialized industrial exhibitions above by category.



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THE EU AND CHINA – 40 YEARS AND STILL GOING STRONG

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

This year is very significant for EU-China bilateral relations as it has been 40 years since their establishment on 6th May, 1975. This occasion presents the perfect opportunity to take a walk down memory lane and reflect on some of the key events that have taken place along the way. Though the Chamber has only been around for 15 years, many of the nearly 1,800 companies we represent have been in China for several decades.

Back in 1975, the EU consisted of only nine member states and did not yet have the power to negotiate trade matters on their behalf. China had not yet started out on its game-changing path of reform and opening-up that Deng Xiaoping kick-started three years later. Fast forward to the present and things have changed dramatically as both the EU and China have grown together.

Over these four decades, bilateral trade has been one the most important drivers of the EU-China relationship and it has come a long way from its humble beginnings in 1978. That year, when the first bilateral trade agreement was signed, our trade volume was only a little over EUR 2 billion per year. Today, the EU-China trade relationship is the second biggest in the world and our two economic blocs trade goods and services worth well over EUR 1 billion *per day*.

Our closer trade integration and harmonisation over the decades that followed has helped to guarantee a shared prosperity between China and the EU's Member States. The subsequent bilateral treaties the EU and China signed since China's accession to the World Trade Organisation in 2001 are important here. As Commissioner Federica Mogherini stated, "From the establishment of our Strategic Partnership back in 2003, our trade exchanges have more than quadrupled." This was followed by the establishment of the High Level Economic and Trade Dialogue in 2009 and the High Level Strategic Dialogue in 2010, both of which further improved and intensified EU-China cooperation.

Admittedly, as in any relationship between two strong, assertive partners, there have been periods of friction, but also many instances when we saw what can be achieved through mutual resolve and amicable dialogue: what springs to mind here are the recent resolutions to the wine and photovoltaic trade cases.

Currently, our bilateral relations revolve around three so-called 'pillars': a political dialogue, an economic and sectoral dialogue and a people-to-people dialogue. These are governed by the *EU-China Strategic 2020 Agenda for Cooperation* that was agreed during the 16th EU-China Summit, held in Beijing in November 2013. Running concurrently was the EU-China Business Summit, co-hosted by the European Chamber and attended by Chinese Premier Li Keqiang and then European Commission President Manuel Barroso.

During this momentous event both sides also announced the launch of negotiations for an EU-China Comprehensive Agreement on Investment (CAI). This will simplify the investment relations between individual EU Member States and China by consolidating the 27 existing Bilateral Investment Treaties into one agreement that would be—as the EU envisages it—"comprehensive and ambitious". One of the articles in this edition of *EURObiz* looks at how the EU and China are looking to "unleash the untapped potential of their relationship for mutual benefit" – the CAI is arguably the best opportunity to do so.

The European Chamber has very much welcomed the CAI negotiations and we have undertaken a great deal of advocacy directed at both sides. It is our hope that the negotiations will be concluded swiftly and that the agreement will include an Investor-State Dispute Settlement Mechanism as well as a dedicated chapter on small and medium-sized enterprises – we placed particular emphasis on this latter point during our European Tour to Brussels in January this year. We will soon be going to Brussels again to attend the next EU-China Summit, taking place at the end of June. European Chamber representatives will once again be ensuring that the voice of European business invested in China is clearly heard.

The European Chamber is proud of how far the EU and China have come together and we are honoured to have been the representative voice of EU companies over the past decade and a half. Although there is still much work to be done, now is a good time for us to pause momentarily and celebrate the friendship and good fortune of this great relationship and to look forward to a bright future together.

THE RIGHT FIT

EU-CHINA INSTITUTIONAL RELATIONS

The European Union's (EU's) High Representative for Foreign and Security Policy and Vice President of the Commission Federica Mogherini was recently in China for an official two-day visit. During her time in Beijing she attended high-level meetings, including with Prime Minister Li Keqiang, and also partook in the celebrations for the 40th anniversary of EU-China bilateral relations. **Marcin Grabiec**, First Secretary, **Delegation of the European Union to China**, looks at how EU-China institutional relations have developed since the very first EU Commissioner came to China in 1975.

The world has truly changed since 6th May, 1975, when Sir Christopher Soames became the first EU Commissioner to visit Beijing and agreed the establishment of diplomatic relations between the EU and China with then Chinese Prime Minister Zhou Enlai. The world has changed and Europe and China have changed with it. The EU has increased in size from nine to 28 Member States, has seen the wounds of the Cold War healed and has torn down borders. The EU has spread prosperity among its citizens thanks to a single, integrated market. Now, as it turns the corner of a deep crisis, Europe has been able to show a stronger and more united face.

Forty years ago China was still recovering from the Cultural Revolution. The reforms and opening up, which would be key for its incredible economic development, were still unthinkable. Since then, China has lifted 600 million people out of poverty and has emerged among the concert of nations. China now faces the so-called 'new normal', an era that will be defined by the reshaping of its economic growth model to deliver structurally lower, but qualitatively higher and more sustainable growth.

Three years after the visit of Commissioner Soames, in 1978, the first trade agreement between the EU and China was signed. Back then, trade volume was slightly over Euro (EUR) 2 billion a year; today it is more than EUR 1 billion *every day*. The EU-China trade and investment relationship has become an important source of wealth, jobs, development and innovation for both sides.

In 1979, Roy Jenkins became the first president of the EU Commission to visit China, where he was received by President Deng Xiaoping. Since Jenkins' visit there has been extensive high-level exchanges between Brussels and Beijing, but it wasn't until 1998 that regular meetings between top leaders of the EU and China began, with the first EU-China Summit. Since then the EU and China have become increasingly interdependent. In 2003, the EU-China relationship was elevated to a Comprehensive Strategic Partnership. The High Level Economic and Trade Dialogue was established in 2009, and further complemented in 2010 by the political High Level Strategic Dialogue. These two pillars were finally completed by the EU-China High Level People-to-people Dialogue in 2012.

In March 2014, President Xi Jinping became the first Chinese Head of State to visit the EU institutions in Brussels, and in October 2014, Chinese Premier Li Keqiang met with the outgoing President of the European Council Herman Van Rompuy and President of the European Commission José Manuel Barroso.

Last year saw a new EU leadership being installed in Brussels, and EU-China contact further intensified. Following the visit of the President of the European Parliament, Martin Schulz, in April, and that of Vice President Mogherini in May, the EU and China are now preparing for their 17th summit in June and the High Level Economic and Trade Dialogue later this year. In addition, the President of the European Council, Donald Tusk, has been invited by President Xi Jinping to visit China.

Despite these considerable achievements, there is no room for complacency. The EU and China are looking for ways to unleash the untapped potential of their relationship for mutual benefit, and after 40 years the relationship has become mature enough to allow frank discussions on issues where there are clear differences, including on human rights.

At the 2013 summit in Beijing the EU-China 2020 Agenda for Strategic Cooperation was agreed. It serves as a blueprint for the further development of strategic, economic, trade and people-to-people exchanges. It maps out cooperation in foreign and security policy, trade and economy, urbanisation, green growth, energy security, legal affairs and a large number of other issues, including human rights. The agenda will constitute the main document on which the EU-China summit—and the nearly 60 additional regular, high-level and senior official dialogues that underpin the summit—will be based for years to come.

So what lies ahead in 2015, a key year in EU-China relations? This is a crucial year for global climate change negotiations. An ambitious, legally-binding agreement is needed in Paris at the end of the year. This is a common and joint responsibility, one which carries huge expectations of people from all over the world. All eyes will be trained on the summit with the hope that the EU and China can agree an approach and display a common stance on this very important global issue.

The EU and China will continue to pursue negotiations for a Comprehensive Agreement on Investment (CAI). Both sides are aware that this is a game changer, that should provide meaningful market access and investment protection in both directions.

There will be further discussion on the need to find synergies between their respective infrastructure and connectivity policies, such as the European Fund for Strategic Investment and China's One Belt, One Road initiative. The summit in June should provide the opportunity to move ahead on this.

Follow up will also take place on the negotiations on the Iranian nuclear programme, together with the E3/EU+3 countries and Iran. Continuation of that work has already started on the technical details in preparation of reaching an agreement in the coming weeks.

Finally, in the context of the 70th anniversary of the end of World War II, the EU pays tribute to the enormous sacrifices made by the Chinese people and supports the efforts made in the region towards establishing a common, peaceful future – the best way to do this is to learn from the lessons of the past.

The EU and China were very different 40 years ago, now they both share in the responsibility for global affairs. What further proof of a successful relationship is needed? Eb

FROM STRENGTH TO STRENGTH

EU-CHINA TRADE RELATIONS

On 6th May, 2015, the European Union (EU) and the People's Republic of China (PRC) celebrated 40 years of diplomatic relations. In the following article, **Christophe Besse**, First Counsellor, Trade Section, **Delegation of the European Union to China**, traces some of the key recent developments that have contributed towards stronger trade ties and outlines some of the remaining challenges.

"Increasing transparency and continuing the fight against corruption are both essential if business confidence is to be increased."

Commercial relations between the EU and China are dynamic and continue to grow. Between 1995 and 2013, EU imports from China increased 11-fold; over the same period exports multiplied by 10.5. These exports support over three million jobs in Europe, and today China is the EU's second largest trading partner behind the United States (US). The relationship still has huge untapped potential: currently only two per cent of the EU's foreign direct investment (FDI) goes to China, while 30 per cent goes to the US.

There have been positive recent developments to the EU-China trade relationship. The adequate resolution of trade disputes made an important contribution to a broader positive agenda. The solar panels case, which was the catalyst for the trade disputes on polysilicon and European wine, was settled through a price agreement in 2013; solutions were then found for settling the disputes over polysilicon, wine and telecoms equipment.

Trade and investment aspects took on unprecedented importance during the Third Plenum sessions of the National People's Congress (NPC) and the Chinese People's Political Consultative Conference (CPPCC), both as a central instrument to achieve reform and as a pillar of foreign policy. As China edges towards an era of reforms, its agenda is orientated towards allowing the market to play a more decisive role and further opening up of its economy. 'Opening up' is considered to be fundamental to reform, and is a crucial tool for forging a more competitive Chinese economy. Explicitly mentioned at the top of China's trade agenda are the investment negotiations with the EU and the US and free-trade agreement (FTA) negotiations with Korea and Australia. Such strong political signals have not gone unnoticed in Brussels.

In light of the reforms announced at the Third Plenum, the decisions taken at the Fourth Plenum of the Communist Party of China(CPC) were of great importance. A mature society and economy can only function within a predictable, impartial and non-discriminatory legal framework, and as far as Europe is concerned a predictable and non-discriminatory atmosphere for foreign business is essential. There is no better message that can be conveyed than the importance of the rule of law and the EU stands ready to share its extensive experience with China in this regard.

Increasing transparency and continuing the fight against corruption are both essential if business confidence is to be increased. The pledges made during the Third Plenum—and reaffirmed in the fourth—to strengthen the rule of law and human rights protection and to promote independence of the judiciary, were welcomed. Further concrete actions now need to be delivered by China.

In 2001, accession to the World Trade Organisation (WTO) provided a boost to China's openness, which was central to China's remarkable success over the following years. If China is to succeed with its ambitious reform agenda, further opening up will be essential. China must liberalise at a level commensurate with its global stature, doing so will be important to tackling outstanding issues in the Doha Round as well as advancing many areas of plurilateral work, notably the green goods agreement and the definition of rules on export credit.

Export finance is vital for the proper functioning of international trade, and China and Europe are two of the world's most important providers. However, export credits need to be based on clear rules to make sure they don't distort competition. A group of economies—including the EU and China—have been working on new international guidelines for the past two years, so it is now time to step up the pace of our work.

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

Partners are looking for unequivocal signals that China is ready to exercise leadership, though. An im-

portant step in this direction would be a credible, comprehensive revised offer to enter into the Government Procurement Agreement, which China already committed to join at the time of its WTO accession. China's full implementation of its commitments is necessary for the credibility of the WTO system as a whole.

The Comprehensive Agreement on Investment (CAI), currently under negotiation, is the 'flagship project' of the EU-China trade relationship. It would simplify the 26 existing bilateral investment treaties with China, provide more legal certainty for both Chinese and European actors, and improve foreign investors' access to the Chinese market. Eventually, a deep investment relationship can benefit both economies in different ways. More European investments in China will bring more of the cutting edge technologies and business practices that are already helping China's economic modernisation. On the flipside, the European economy badly needs investment to drive its recovery from the crisis. An acceleration of the pace of these negotiations would be welcomed.

The EU and China are both satisfied with the progress made in the first rounds of negotiations. Covering investment protection and market access, they completed the conceptual exchanges on the main elements of a possible agreement, opening the way for text-based discussions. Both sides are eager to complete CAI negotiations as soon as possible: their conclusion could open up the possibility of negotiating a broader agreement, namely a FTA.

In the field of customs and trade facilitation, a landmark EU-China mutual recognition agreement of programmes of trusted traders, signed by the EU and China in 2014, will enter into force this year. Trusted EU-China traders will enjoy lower costs, simplified customs procedures and greater predictability in their trading activities.

Another positive development for 2015, is the negotiations for the EU-China Agreement on Geographical Indications (GIs), which are anticipated to conclude this year. The 40th anniversary of EU-China relations coincides with the launch of the 'Tastes of Europe' China campaign, which aims to underline the common importance of GIs for China and the EU.

While overall EU-China relations are mostly positive, several areas remain where the EU would like to see China adopt different policies and attitudes. These are: the way financial support has caused over-capacity in many sectors, resulting in dumping practices; the way financial support has led to overcapacity in many sectors, and how that in turn stimulates exports at dumped prices; the way the standardisation and regulatory systems treat outsiders; and the subsidies and other advantages enjoyed by state-owned enterprises.

It is worth noting that China has made significant efforts to improve its intellectual property rights (IPR) legal framework in recent years. However, it remains the main country of origin of goods suspected of infringing IPR: in 2013, 65 per cent of all counterfeit goods seized at European borders came from China. Since 2004, the EU and China have established an IP Regulatory Dialogue and in 2014, the EU launched two new initiatives: the EU-China Action Plan on IPR customs enforcement and a technical cooperation project named IP-Key for Sustainable Competitiveness. It aims at supporting European innovators and rights holders dealing with China through the development of an IP framework or environment in China that is increasingly effective, fair, transparent and otherwise based upon international best practices.

The extent of Internet censorship in China seriously impedes normal business functions, trade globalisation and e-commerce. Internet instability, slowness of data transmission and lack of access to certain web pages seriously impact activities for business stakeholders. It is also adversely affecting China's ability to attract top researchers.

These are problems for European companies exporting to and investing in China, but China needs to tackle these issues for domestic reasons too. They would help achieve the goal of assigning prices and resources in a more efficient way, and would introduce more space for Chinese start-ups and newcomers—as well as international firms—to compete with and challenge today's big players. Eb

JOURNEY FROM THE WEST

Originally trained as a barrister, **Jeanne-Marie Gescher** first came to China in 1987 to teach at Peking University (Beida). Since then she has worked with global business, Chinese policy-makers and institutions and has contributed to the development of China's continually evolving regulatory landscape. In this interview she gives us some personal insights on China and the remarkable journey she has shared with it.

What brought you to China?

I thought that China would have the most deliberate approach to what was then considered the question of 'development'.

What had you been doing previously?

When I left university in the early 1980s, I became a barrister, specialising in European competition law. It was intellectually extraordinary but humanly less so. I became legal advisor to a small UN agency in Rome as a result of which I worked with the Grameen Bank in Bangladesh and with a host of 'developing countries' on the idea of 'development' – one of those countries was China. I was given the chance to create courses on law and development at the School of Oriental and African Studies (SOAS, London University) and to help build courses on Asian law, including India and China. While at SOAS, I invited a group of city law firms with an interest in China to join a legal practitioners group which I had established at SOAS. One of those firms—Clifford Chance—asked me to establish an office for them in China.

What were your first impressions of China when you arrived?

I arrived at the old airport and fell in love with the old road that travelled into the city – with willow trees on either side, with donkey carts and bicycles meandering along its open spaces. At Beida, surrounded by huge statues of Mao Zedong and finding myself in canteens with steaming baozi, I was in a world which seemed dramatically different from anything else I had ever seen. Travelling down to Shanghai, I sat in the back seat of a car of a Hong Kong Chinese friend whose driver and Ayi were sitting in the front discussing the ups and downs of the US dollar (at a time when foreign currency was illegal). And then I watched CCTV's *Hongloumeng* (Dream of the Red Chamber) on television, and heard two phrases that I have never forgotten: "shenme shi zhende, shenme shi jiade" (what is real and what is not real?), and the observations of the Jade Emperor that, "These creatures in the world below were compounded of the essence of heaven and earth, and nothing that goes on there should surprise us." One could perhaps say the same of the West, but I wonder. I knew then that China would be a magical combination of grand ideas on the one hand, and the fascinating fabric of human life on the other.

I came to live in China on 12th June, 1989. I was the only person on a large plane coming to pick up foreigners who wanted to leave. In fact, I wasn't the only person, there was one other, but the plane was so big and empty that we didn't find each other until we got off the plane. It was a sad time to arrive but every foreign newspaper and every embassy sent the best of their China scholars to try to understand what had happened and what might happen, and young Chinese who thought their dreams had been lost were eager to build conversations with the few foreigners who had remained. The conversations were extraordinary.

What has been the most significant change that you have witnessed taking place in China?

Urbanisation. The mass, rapid process of urbanisation, which has transformed not only Beijing but its society as a

"The single biggest challenge to China is the absence of the rule of law."

whole and its people. Of course, it has also transformed its environment as well. Like all great transformations, it was positive and negative. Hugely exciting and a tremendous privilege to have watched a process which had hitherto only been described in textbooks and across much longer movements of time. It was extraordinary to see such vast energies unleashed in such a short period of time and to see the changes in the lives of so many close friends, including so many of the Chinese who I had come to know in the months after Tian'anmen. At the same time, it was sad to see the Beijing I first knew, with its very human landscape, disappear and become a new Beijing – not just once or twice but many times. Each time bigger, but each time with something of its human past lost.

What is the biggest regulatory improvement you have seen since being here?

I am not sure I would say it was an improvement, but the most remarkable thing I have observed, from the earliest days, was how much China wanted to learn. Within my own advisory firm, our early years of work involved deep and complex discussions about building new regulatory frameworks, understanding the mechanics of business, working out what the 'new' Chinese world was going to be and trying to understand which foreign experiences would be valuable and which might not.

What do you think China's biggest challenge will be over the coming years, particularly in light of its slowing economy?

The single biggest challenge to China is the absence of the rule of law. By rule of law, I do not mean lots of rules with legal status.

When you first took an interest in China, did you envisage where it would end up today?

I thought China would 'do development' more deliberately than any other country I knew. I never imagined the scale of that deliberation.

What are you expectations for the Comprehensive Agreement on Investment between the EU and China?

I think that without the rule of law, everything else is detail.

What do you think the EU-China relationship will be like in another 40 years?

I hope that, like so many other bilateral relationships, it will evolve from one which has an almost exclusive focus on economics and business, to one which is grounded on a deeper understanding of fundamental ideas – with a far wider dialogue between people, including businessmen engaging as human beings. There are many reasons why such engagement is difficult – with different reasons on either side. On the European side, I think that the quality of the relationship will be defined by our ability to look beyond formal policy and regulation and see the story of how China and its many very different people came to think the way they do. And of course, through that, to understand how they think on a wide range of issues which go well beyond economics. Of course, those issues shape economics.

Do you think chambers of commerce will continue to play a strong role in helping to shape policy in China in the future?

There is a very considerable difference between Chinese chambers of commerce or industry associations and Western ones. As far as Western chambers of commerce are concerned, I think the challenge is not just to shape policy (indeed I would be rather sceptical about the possibility of doing this in any direct sense) but to work with members to understand both the policy making process and the context within which that process takes place – and to continue to work with China in terms of explaining why the West thinks the way it does. The biggest policy issues in China are fundamental. Many of the questions surrounding those very big issues can only be addressed by China and the Chinese people. Chambers of commerce can be hugely valuable in offering perspective. Eb

Jeanne-Marie Gescher *has been honorary legal advisor to successive British Ambassadors to the PRC since 1988. She was a twice-elected chair of the British Chamber of Commerce in China; she is a longstanding advisor on China to a number of businesses and government and non-government organisations. Jeanne-Marie is also an advisor to Beijing-based China Policy.*

In 2002, Jeanne-Marie received an OBE for her work on China-UK dialogue. She is a global ambassador for Leaders Quests and has just completed her first book All Under Heaven: China's Dreams of Order*, which will be published in early October.*

STATE OF FLUX

CHINA'S CHANGING LEGAL LANDSCAPE

In the following article, **Omar Puertas** and **Conchi Bargalló** of law firm **Cuatrecasas, Gonçalves Pereira** reflect on 40 years of change in China's legal landscape. They look at some of the key factors that have influenced the development of Chinese law and identify areas that need to improve if China is to create a sustainable investment environment and maintain its increasingly dominant position in the global economy.

Over the past 40 years China has been through several different stages of development, changes to its investment models—both inbound and outbound—and levels of economic growth that have determined and shaped its legal landscape. Forty years ago China's legal system was not fully developed according to Western standards. It was not until Deng Xiaoping's rise to power in 1978 that China began the process of opening its economy and gradually shifting from a centrally-planned economic system to a more market-orientated one. It was this economic paradigm that necessitated the updating of China's legal system.

The legal system that China has created since is based in part on Continental Europe's civil law system and several principles taken from Anglo-Saxon common law, a practical approach that has provided a degree of adaptability when sculpting their legal landscape. The primary source of Chinese law, however, is statutory law, developed mostly through regulation – case law is not binding in China.

China stepped up the process of updating its legal system following its accession to the World Trade Organisation (WTO) in 2001. This earned China the benefit of international recognition for abiding by its rules and offered a channel to make public and promote its concerns and demands regarding the equal treatment of developing countries. Joining the WTO also led to China making several changes to its trade regulations (in order for it to conform to the organisation's standards), gradually opening up several economic sectors and certain industries to foreign investment, and the liberalisation of its foreign exchange market.

Being a member of the WTO, as well as working with other international institutions such as the World Bank (or more recently, the Organisation for Economic Cooperation and Development—of which China is not actually a member—to fight aggressive tax planning, base erosion and profit shifting internationally), has enabled Chinese lawmakers and the country's business community to become more au fait with international standards of law. However, because of what the Chinese leadership consider to be special characteristics of the country and the areas they feel still need close monitoring, China has been reluctant to completely adopt those standards.

So China's legal system is still very much a work in progress: laws and regulations have gaps and ambiguities that cannot be handled through unified interpretation as long as case law remains unbinding. The different local authorities follow diverse practical approaches and interpretations, and the continuous, rapid policy changes weaken legal certainty and have a negative impact on foreign investors' perceptions of the commercial opportunities in the Chinese market.

The three main drivers of China's economy and the subsequent rise in gross domestic product (GDP) that have made China's the second largest economy in the world are exports, domestic consumption and foreign investment. Therefore, legal efforts, policies and developments have traditionally focused on regulating trade and the financial and foreign investment sectors. However, the scope has recently expanded to ensure legal institutions' independence, professionalism and reliability, and to tackle local challenges such as environmental issues, intellectual property rights, contractual rights and consumer protection.

To reinforce its status and influence as an international player and to continue to attract foreign investment, China is working towards establishing trust, easier processes and transparency. But there are still certain issues that Chinese lawmakers must improve for the legal system to reach maturity and ensure steady development:

- The rule of statutory law must be strengthened and legal certainty reinforced by setting out clearer law-making policies. When planning their business in China, both local and foreign investors need legal predictability, a clear legal enforceability timeframe and timely access to laws and regulations through an official publication system.
- Regarding the application of law, and also to reinforce legal certainty and transparency, nationwide implementation of laws and regulations must be guaranteed and consultation channels enabled to grant reliable public access to judgements and relevant cases, even if they are not binding. A tax ruling system must be implemented as a way of ascertaining the tax treatment of relevant transactions (which we believe would result in cost reductions and a boost in efficiency for Chinese tax authorities in terms of resources and time).
- Unfair discrimination against foreign investment must be avoided by granting foreign investors treatment equal to that of Chinese individuals and businesses overseas (e.g. revising the application rules of double tax treaties that, in practice, imply that double tax treaty reliefs or benefits are not recognised).

China's continuous changes in legal practices directly impact the way lawyers understand their profession and present constant challenges. Inbound investment was the focus of legal services in the past, but outbound investment has become more and more important recently, almost reaching the levels of inbound investment in the past year.

Despite being one of the countries with most foreign lawyers, there are many regulatory constraints that, in practice, imply that foreign law firms cannot compete on equal terms with local firms. Some improvements have recently been made in this area with the approval of the first joint operation between a Chinese law firm and a foreign law firm in the China (Shanghai) Pilot Free Trade Zone. However, not liberalising the legal services sector further will only serve to maintain discrimination against foreign investors who may not have a complete understanding of the Chinese legal system and the procedures they must undergo if—in addition to the services they may receive from local advisors—they are denied full assistance from law firms from their own legal systems that can channel their legal advice, and share and balance their needs in the different jurisdictions in which they are present. Eb

__Cuatrecasas, Gonçalves Pereira__ is a leading law firm in Spain and Portugal. Its 25 offices worldwide (including Shanghai since 2007) and over 950 lawyers offer added-value legal advice on all areas of business law. With a multidisciplinary team of Chinese, Spanish and Portuguese lawyers and first-hand understanding of China's legal system, business world and culture, it has been supporting and accompanying Chinese companies investing in Spain, Portugal, Latin America and Africa for the last two decades, as well as European and Latin American companies on their investments in China and Asia.

BOTH SIDES OF THE COIN

EU-CHINA RELATIONS IN THE CONTEXT OF THE WTO

Trade has been the cornerstone of the relationship between the European Union (EU) and China since diplomatic ties were first established in 1975. Back then, Deng Xiaoping's economic reforms were still three years away and the EU was made up of just nine Member States. Ten years later, the EU and China defined the framework of the bilateral economic and commercial cooperation that has shaped their relationship up to the present day. The EU supported China's accession to the World Trade Organisation (WTO) and an agreement on trade and economic cooperation was signed in May 1985,[1] both to promote China's right to WTO membership and to monitor its level of compliance. In the following article **Rosanna Terminio** of **AsecorpChina,** traces the development of the increasingly interdependent EU-China relationship within the context of the WTO.

1 EU-China Relations: Chronology, European Commission, viewed 5th May, 2015, <http://eeas.europa.eu/china/docs/chronology__2014_en.pdf>

Relations between the EU and China advanced rapidly over a relatively short space of time. Since the initial EU-China agreement was established in 1985, it has developed and been added to with informal political dialogues and sectoral and multilateral agreements, moving towards a 'strategic partnership' in 2005. China's accession to the WTO on 11th December, 2001, further boosted the development of EU-China relations: since then China has gone on to become the world's second largest economy and the world's largest exporter; by 2004, the EU had become China's largest trading partner, and China is now the EU's second largest after the United States (US). Since 2008, the High-level Economic Trade Dialogue (HED) has engaged both the EU and China with the aim of addressing market access, intellectual property rights (IPR) and other trade-related issues. On 21st November, 2013, during the EU-China Business Summit, both sides adopted the EU-China 2020 Strategic Agenda for Cooperation, which included "key initiatives in the area of trade and investment policies"[2] with a special focus on the negotiation of a Comprehensive Agreement on Investment (CAI). The development of a reciprocal trade dialogue is clear indication of the EU's recognition of China's ever-expanding economic clout and its desire to strengthen relations with such a strong partner, yet the EU still doesn't recognise China as having market economy status.

The EU had anticipated that China's WTO membership would provide an opportunity for increased access to China's growing market for foreign direct investment (FDI) and export in a plurality of sectors, including those for services and finance. On a deeper level, China's accession was seen as an important step towards its integration into the global, market-ruled system, with its uniform application of the economic rule of law.[3] In reality, the journey has not been so smooth.

The bumpy road to cooperation

China's WTO accession represented a turning point in the ongoing process of harmonising Chinese laws with the global legal system. Generally speaking, China has demonstrated serious commitment to achieving conformity with WTO requirements. By successfully implementing tariff reductions and launching an ambitious programme of reforms China has positioned itself as an international player, yet the World Bank's report *Doing Business 2015* only ranks China 90th place for ease of doing business out of a total of 189 countries. And while China may increasingly use trade dispute instruments (TDIs) against protectionism from other WTO members, it remains the most-targeted country for anti-dumping and anti-subsidisation investigations launched by other WTO member countries.

Many countries hold grievances against China's implementation of WTO rules. These include: lack of transparency and the use of non-tariff barriers, like trading licensing; restrictions to FDI in some sectors; IPR violations; restraints on export of strategic raw materials reserved for domestic firms; and unwritten rules applied to foreign-invested enterprises (FIEs) to protect domestic ones, mainly SOEs. Many foreign firms, especially multinationals, have the feeling that they have been invited to enter the market just to teach China their valuable technology. China's increasing protectionism is even considered by some to be a contributing factor towards the failure of Doha Development Agenda, the objectives of which are to further strengthen the WTO legal and trade framework.

While the EU has accused China of anti-competitive practices it is the EU's remedies for Chinese producers' dumping practices that remain China's biggest export concern. They pose the biggest challenge to bilateral relations and have resulted in disputes before the European Court of Justice and the WTO, yet China's barriers to global trade have often been exaggerated and used as an excuse for protectionist measures. In fact many non-official restrictions to FIEs in China, although unwelcome, are not so different from those that can be found in other developing countries. In the case of the EU and China market openness should be based on reciprocity and compliance with their obligations as WTO members.

The future: EU-China CAI

The launch of negotiations for the EU-China CAI was announced in Beijing on 21st November, 2014. According to the European Commission, "The Agreement will provide for progressive liberalisation of investment and the elimination of restrictions for investors to each other's market. It will provide a simpler and more secure legal framework to investors of both sides by securing predictable long-term access to EU and Chinese markets respectively and providing for strong protection to investors and their investments."[4] The main focus of the CAI is to release untapped potential – the services and finance

2 Countries and Regions>China, European Commission, viewed 5th May, 2015, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/china/>

3 Snyder, Francis, *The EU, the WTO and China: Legal Pluralism and International Trade Regulation,* Hart Publishing, Oxford, Series: China and International Economic Law, 2010, pp 2 to 7

sectors, the increase of EU FDI into China (now accounting for just two to three per cent of all EU investment abroad) and an increase of China FDI into Europe. As the EU and China prepare to celebrate 40 years of diplomatic relations the negotiations for this ambitious agreement have already entered the fifth round.

To make these negotiations worthwhile both parties need to assume responsibility for reducing potential sources of conflict. For China's part, it must address the lack of transparency that arises from the responsibility for approval processes being split between multiple agencies; it needs to provide more information translated into one of the EU's official languages; and it should cease the practice of enforcing temporary bans without any notification and reasonable evidence. What we have seen since 2001 until the present is actually 'rule of law' with Chinese characteristics, which is not globally harmonious and remains limited to secure trade areas or special economic zones.

For the EU: China desires market economy status recognition and to receive a fair application of WTO rules for the import of made-in-China products. Furthermore, China would like to see a modification of EU TDIs, particularly the anti-dumping instrument that has been applied to some Chinese products. No less important is that the Chinese Government currently recognises that full unity among EU Member States is yet to be fully realised. To be accepted by China as a real bilateral actor and as a necessary third-party mediator to reduce US-China frictions, a politically united EU—willing to act as a strategic player in world affairs—is a prerequisite. Eb

AsecorpChina *is a strategic consultancy firm specialised in the Chinese market. Since 2006 we have partnered European companies looking to succeed in China, providing tailor-made solutions. Our specialties are the forecast and management of cross-cultural challenges in all stages of interaction within the Chinese business environment. AsecorpChina-ZhongDao HRS division applies this same perspective to the scouting, development and retention of key talent.*

4 Countries and regions>China, European Commission, viewed 4th May, 2015, <http://ec.europa.eu/trade/policy/countries-and-regions/countries/china/>

TOWARDS THE RULE OF LAW

DEVELOPMENT OF PRC FDI LEGISLATION

Since the foundation of the People's Republic of China (PRC) in 1949, China has been through two 'thirty-year periods'. During the first, up until 1978, China had been isolated from the world and operated a form of planned economy, with barely any real foreign direct investment (FDI). Over the second, from 1978 onwards, China gradually opened up to the West, carried out reform policies and started the process of merging with the global economy. Foreign direct investment has formed a critical part of China's expanding economy since the establishment of the very first Sino-foreign joint venture, Beijing Aviation Food Co Ltd, on 1st May, 1980. In this article **Cody Chen** gives an overview of the legislation that has guided FDI in China up to the present day.

During the 80s and 90s, foreign (including Hong Kong, Macau and Taiwan) investors often found themselves in a position where a specific legal issue they were facing was not touched upon in any Chinese statutory law. Basic FDI legislation at the time included the Sino-Foreign Equity Joint Venture Law, the Sino-Foreign Contractual Joint Venture Law, the Wholly Foreign-Owned Enterprise Law and their respective implementing regulations (FIE Laws). Government authorities maintained substantial discretionary power over FDI projects.

Foreign direct investment legislation can be broadly divided into the categories of market access-related and corporate regulatory-related.

Market access

Before embarking on an FDI project the very first thing for a foreign investor and the China legal counsel to do is to check the *Foreign Investment Industry Guidance Catalogue* (*Catalogue*). Jointly issued by the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM), the first catalogue appeared on 28th June, 1995, implying that prior to this FDI project approval was based on an internal review and assessment processes carried out by the relevant authorities.

Amendments to the *Catalogue* have coincided with major shifts in market access liberalisation, such as China's accession to the World Trade Organisation in 2001, and the opening up of trading to foreign-invested enterprises (FIEs) in 2004. In general, amendments have resulted in a reduced number industries in the 'restricted' and 'prohibited' categories and an increased number in the 'encouraged' category.

By law, any industry not featured in the *Catalogue* should be viewed as being 'permitted' to foreign investment. In practice, though, foreign investors in industries that are not clearly defined in the *Catalogue* and that are not clearly understood by approval officials may find that approval is not immediately forthcoming. It is these kind of approval process issues that triggered the most recent development in FDI legislation – the negative-list approach.

In 2013, the China (Shanghai) Pilot Free Trade Zone (CSPFTZ or Zone) launched its FDI market access administration model in the form of a negative list, which has been reviewed and updated a couple of times since. In early 2015, the CSPFTZ was expanded and three new free trade zones in Tianjin, Fujian and Guangdong were approved by the central government. On 20th April, 2015, the MOFCOM issued the integrated *Pilot Foreign Investment Filing Measures in Pilot Free Trade Zones.* This suggests that the pilot scheme—including the negative-list approach to FDI administration—has been successful to date and could be gradually rolled out nationwide.

In the latest draft Foreign Investment Law, Chinese lawmakers appear to have widely adopted the negative-list approach. The draft expressly says that any restrictions towards foreign investors must be stipulated in only national laws, State Council regulations or decisions and compiled into a special catalogue. Foreign investment in an area which does not fall under such a catalogue shall be exempt from market entry approval. This is a great step forward in terms of foreign investment market entry liberalisation, though practical implementation rules are still required.

In addition to thoroughly reviewing the *Catalogue*, foreign investors—particularly those seeking to enter the Chinese market via acquisition—need to undergo the national security and antitrust reviews, both of which were only recently introduced into the Chinese legal system.

Corporate regulatory

Before the PRC Company Law was first issued in 1993, establishment and operation of a FIE seemed to be subject to separate legislation with respect to prior approval, company names, business scope, capital requirements and foreign exchange control. However, there has been a general trend towards slowly liberalising the company registration regulatory system for FIEs and providing national treatment for all companies registered in China.

It has been a standard procedure that establishment of a FIE is subject to prior approval by the MOFCOM and its local branches. The same also applies to major corporate changes, including capital increase, change in business scope and equity fluctuations. In practice, such prior procedures should take just a few weeks to a few months to complete. However, in a 2009 absorption merger between two Shanghai affiliates of a European company, approval procedures took more than two years. In the CSPFTZ such FDI prior approvals have been replaced by a much simpler online filing procedure, unless the respective industry is included in the *Negative List*.

The business operations of a FIE are strictly limited to the permitted business scope, as approved and displayed in its articles of association and on its business licence, with the possibility of administrative penalties being

"In the latest draft Foreign Investment Law, Chinese lawmakers appear to have widely adopted the negative-list approach."

brought to bear if a FIE goes beyond its permitted scope. It is therefore critical that foreign investors formulate a business scope that is as broad as possible prior to approval.

Before the amended PRC Company Law was released in 2005, capital requirements for domestic companies were totally different to those of FIEs. Domestic companies followed strict paid-in capital rules, where the registered capital had to be fully paid in and capital verification was completed before the business licence was issued, while in China's very first FDI laws the subscribed capital rule was adopted under a common law system for FIEs. A 'total amount of investment' concept was also adopted for FIEs with respect to the quantity of the overall required capital investment for a foreign investment project. The difference between the total amount of investment and the registered capital of a FIE—known as the debt equity ratio—was then used by the foreign exchange administration to restrict the financing of FIEs using foreign exchange. The recent liberalisation of the conversion of foreign currency capital into *renminbi* again brings back the voice to abolish the concept of debt equity ratio. However, this was not touched on in the draft Foreign Investment Law so it will be interesting to see if and how this develops in the final Foreign Investment Law and its implementing regulations.

Draft Foreign Investment Law

The long-awaited draft Foreign Investment Law was issued by the MOFCOM on 19th January, 2015. According to the draft, market entry review will be based on a special administration category, which basically contains lists of restricted industries and prohibited industries for foreign investment. Foreign investment generally shall enjoy national treatment, with exceptions to be stipulated in national laws, State Council regulations or special decisions. This means ministerial authorities will not be able to set up foreign investment market entry restrictions or any measures contrary to the national treatment principle.

The draft Foreign Investment Law seems, for the first time in the Chinese law-making history, to be adopting the concept of actual control. It provides rules on differentiating 'foreign-invested enterprises' actually controlled by Chinese nationals and 'domestic companies' actually controlled by foreign investors. Eb

***Cody Chen** is a Shanghai-based lawyer with a strong focus on corporate, M&A, real estate and construction sectors. He has over 12 years experience in advising European and international clients in their China investment and business related legal issues. For more information please contact him via codychen@qinlilawfirm.com.*

EUROPEAN CHAMBER LOBBYING HIGHLIGHTS

From L-R: Jörg Wuttke, Federica Mogherini, Andrew Page (Nokia) and Chamber President Emeritus Davide Cucino (Finmeccanica) at the Europe Day Reception on 6th May

Meeting with CFDA's Vice Commissioner, Wu Zhen

Meeting with Commissioner Mogherini

On 5th May, European Chamber President Jörg Wuttke attended a roundtable of European Union and Chinese business leaders with Federica Mogherini, Vice President and High-Representative of the European Commission. President Wuttke briefed Vice President Mogherini on the key regulatory issues and market access barriers that European businesses face in China.

Meeting with CFDA's Vice Commissioner

On 8th May, a European Chamber delegation led by President Jörg Wuttke presented the *Position Paper 2014/2015* to Vice Commissioner Wu Zhen of the China Food and Drug Administration (CFDA). Relevant working group representatives and departmental heads exchanged over the impact of the new Food Safety Law on businesses, as well as issues concerning the recently revised *Cosmetics Supervision and Administration Regulation,* and the ongoing reforms in medical device evaluation and pharmaceutical registration.

Meeting with Director-General, DG AGRI

On 6th May, Chamber Vice President Mats Harborn led a delegation to meet with Jerzy Plewa, Director General of DG AGRI, to present the *Position Paper 2014/2015* and to brief him on concerns over the food industry in China. Director General Plewa was in Beijing to hold bilateral meetings with several relevant Chinese government departments.

Briefing EU Ambassador on COCIR Challenges

On 25th March, a COCIR industry delegation met with the European Union's ambassador to China, HE Hans-Dietmar Schweisgut, and briefed him on several key topics, including the regulatory framework in China and sub-regulation on clinical trials, registration fees on imported products and local production preferential treatment, and how the European Commission can help and support COCIR companies in China.

Meeting with European Parliament

President Jörg Wuttke led a delegation to meet with the chairs and vice chairs of the European Parliament's Delegation for Relations with the People's Republic of China on 8th May. The delegation provided input that will feed into the ongoing EU-China Comprehensive Agreement on Investment (CAI) negotiations. President Wuttke explained that the CAI is the biggest opportunity for improving access to the Chinese market since the country's WTO accession in 2001.

Two Meetings with DG MOVE

Two delegations, one from the Aviation and Aerospace working groups and one from the Logistics and Rail working groups, had two separate meetings on 12th May, with João Aguiar Machado, Director General, DG Move. DG Machado briefed attendees on his meeting with the NDRC that same morning, and answered questions from industry representatives. Representatives from both aerospace and aviation industry provided comments to DG Machado on China's current regulatory environment.

Other Lobby Activities:

Beijing Position Paper Roll-out

Chamber Vice President Mats Harborn presented the *Beijing Position Paper 2015/2016* to various agencies of the Beijing Municipal Government:

- Director General Sun Yongfu, European Affairs Department, MOFCOM, 28th April.
- Director General Zhou Weimin, Beijing Municipal Investment Promotion Bureau, 30th April.
- Chief Engineer Li Xiaohua, Beijing Municipal Environmental Protection Bureau, 30th April.
- Director General Chen Yong, Beijing Municipal Administration for Industry and Commerce, 7th May.
- Deputy Director General Yan Ying, Beijing Development and Reform Commission, 27th May.

Shanghai Position Paper Roll-out

Chamber Vice President and Shanghai Chapter Chairman, Dr Stefan Sack, Shanghai Board Member Mr Carlo D'Andrea and others continued the roll-out of the *Shanghai Position Paper 2014/2015* to various agencies of the Shanghai Municipal Government:

- Deputy Director General Gu Honghui, Shanghai Municipal Development and Reform Commission, 6th May.
- Chairman Yu Weifeng, Shanghai Bar Association, on 29th May.

Meetings with CAC and CBRC – lobby success

Since the beginning of 2015, the Chamber has lobbied to halt the implementation of a set of guidelines on the procurement of IT products in the banking sector – the *CBRC Guidelines*. On 10th April, a Chamber delegation from the Banking and Securities, ICT and Information Security working groups met with the China Banking Regulatory Commission (CBRC). During this meeting the CBRC informed the delegation that the implementation of the *CBRC Guidelines* would be postponed. This was further confirmed to Secretary General Adam Dunnett by Director General Zhao Zeliang, Bureau of Cyber Security, Cyberspace Administration of China (CAC) during a meeting on 16th April.

Lobby Letter to MOF and MOFCOM on Circular 62

On 13th March, the European Chamber submitted a lobby letter to the Ministry of Finance (MOF), with the Ministry of Commerce (MOFCOM) in copy, concerning *Circular 62* and the guidance on *Cleaning up and Regulating Tax and Other Preferential Policies*. On 10th May, the State Council published Guo Fa [2015] 25, *Notice on Issues Related to Tax and Other Preferential Policies*, which offers further clarification of *Circular 62* and directly addresses the concerns expressed in the Chamber's lobby letter.

Joanna Drake speaking at the EU SME Centre in Beijing

IT'S GOOD TO TALK

This year marks the 6th anniversary of the EU-China SME Dialogue. During a recent visit to China to take part in the latest dialogue **Joanna Drake, Director for Entrepreneurship and SMEs** – Deputy Special Envoy for SMEs, DG Internal Market, Industry, Entrepreneurship and SMEs (DG GROW), spoke with Carl Hayward to reflect on the progress made so far and to outline her expectations for the future.

Generally speaking, has the dialogue lived up to expectations so far?

The thing that really works best between two nations—although in this case one side is a European institution—is to get to know the minds, the policies and the strategic vision of the people you are engaging with. From our side we are looking at the strategic vision of what we need for our SMEs – a good business environment, access to finance, reduced administrative burdens, increased market access and perhaps even entrepreneurship, and then see how we compare with China. I think the way to evaluate this properly is to exchange information and I think we have made a good start.

What are your general expectations from the dialogue in 2015?

We would like to concentrate on particular areas. We have a new chairman in Mr Mao Weimin, a vice minister from the MIIT. This gives us the opportunity to set new goals, perhaps new timetables and a set of measurable objectives, too. It also gives us the opportunity to try a different approach. This time we are very keen to concentrate on three things in particular.

First is access to finance. It is a different challenge here in China compared to Europe because of the issue of accessibility – this is a challenge to Chinese companies as well but more importantly to European companies who face some discrimination in this respect. Second is cluster collaboration – we hope to achieve concrete cooperation methods on clusters. Third is the Enterprise Europe Network (EEN), which is an old tool in Europe, about 20 years old. It has gained credibility because of the standing that the advisory service providers have with the SMEs they are helping within their particular vicinity.

The Competitiveness of Enterprises and SMEs (COSME) programme was launched in 2014, under which EU SMEs are provided with financial instruments: The Loan Guarantee Facility (LGF) and The Equity Facility for Growth (EFG). Are EU SMEs in China eligible for these instruments?

It depends on whether they are present in a participating country, which would mean any EU Member State or other COSME participating countries, for example Moldova, Turkey or Iceland who contribute financially to the programme without being a member of the European

Union. What do we mean by being 'present'? It means that you have to go beyond having a legal presence there or an address for the company. It means that you have to have staff, a marketing department or research facilities. It means you have to have real, operative presence. Any European company that is present in China and also present in this way in a COSME participating country would be eligible for these financial instruments.

Are there any other financial instruments that China-based EU SMEs can access?

Not specifically, but there is also a financial instrument under the Horizon 2020 programme called the SME Instrument. Eligibility would require the same presence I just described but this programme differs in that it supports bottom-up innovation that has not yet been tested on the market but has viable market potential. The SME Instrument has a budget of EUR 2 billion over seven years.

There is also the EU Gateway to China under the Partnership Instrument. This has, I think, not yet been launched, but it is definitely there conceptually. It has a budget of EUR 4.2 million to start with. The idea is to target SMEs that intend to internationalise and provide them with a sort of package of services, like coaching, information, advisory services, interlocutors—who to contact and where—and getting advice on IPR. For companies that want to grow and internationalise, especially coming to a market like China, the big barrier is information and its availability.

Is this something that you will be discussing with your Chinese counterparts?

There needs to be a concerted effort in this respect. If you really want to attract investors, in addition to making financial products available in a non-discriminatory way, making efforts to reduce administrative burdens and improving access to finance, we also need to tackle the linguistic barriers to ensure that SMEs have access to clear and reliable information about the Chinese market. I think this is the way forward – we need transparency and also to simplify the information that is available. It takes us back to the Think Small First principle.

Getting financing in China is very expensive. The most common way is for SMEs to receive loans from banks. However, banks are reluctant to lend to SMEs let alone foreign SMEs. Have there been any significant discussions on this topic during the EU-China SME Dialogue?

We do intend to bring this up, as we have on other occasions as well. We highlight the problem from our side and also encourage the Chinese authorities to do something about it. But it is ultimately a Chinese Government matter that needs to be taken up internally.

There are existing EU-funded support mechanisms to help EU SMEs internationalise – the EU SME Centre and the China IPR SME Helpdesk. How important are they for helping EU SMEs to become more competitive and sustainable?

Since these tools have existed for five years we can take stock a little bit. I think the main idea behind these projects is that they've been available to everyone, to all SMEs whichever EU country they come from. These companies need leverage, and I think these European tools have provided that. Have they changed the world, or brought about a paradigm shift? I would say not, but their existence should be acknowledged, and I would say needs to be boosted as well. I would say this is one way that European added value has gained recognition. European added value means just that – it is 'added', it is a complimentary tool. Whatever the Member States are doing we have absolutely no ambition to replace that, we only want to fill in gaps that otherwise would not be filled. In this respect I think the China IPR SME Helpdesk and the EU SME Centre have gone a long way in proving that European added value is oiling the machine further. We should make more of an effort to make these services better known and more visible to smallest of the small companies in whichever part of Europe they come from and we need to set ourselves measurable targets.

What is your message for EU SMEs in China, particularly now an economic slowdown has been projected for the coming years?

I think when you talk about the slowdown you need to be realistic – it's relative. China is still by far the fastest growing economy in the world. China remains the EU's second largest partner and the EU is China's largest trading partner, so I think all Europeans are going to continue looking at China as the natural place to be if they wish to grow.

Despite the opportunities in China there are also many challenges and I do not think these challenges will go away very quickly. So it is up to us, the European Union and the Member States, to put our heads together to try and overcome these challenges and help our SMEs turn opportunities into reality, and to give more SMEs growth opportunities in China. I think this is the main message. Eb

SEEKING GUIDANCE?

CHINA'S NEW FOREIGN GUIDANCE CATALOGUE AND WHAT SMEs SHOULD KNOW

China adopted the new *Foreign Investment Industry Guidance Catalogue* (2015 Amendment) (*Foreign Investment Catalogue*) on 10th April this year. Last amended in 2011, the new catalogue changes the conditions and rules for foreign investment in China. Below the **EU SME Centre** highlight some of the major changes and provides advice for SMEs.

The *Foreign Investment Catalogue* is a list of industrial sectors, subsectors and services that reflect the Chinese Government's view on the relevant sectors' needs for foreign investment. First published in 1995, it is considered a small bible of legal regulation of foreign investment in China.

Encouraged, permitted, restricted and prohibited

The *Foreign Investment Catalogue* divides economic sectors and activities into three categories – 'encouraged', 'restricted' and 'prohibited'. Industries not mentioned in the catalogue are deemed 'permitted'. Differences among these categories, simply put, lie in the presence or absence of one or both of the following conditions:

- Whether it is possible for the particular business activity in question to establish a 100 per cent foreign-owned enterprise (a wholly foreign-owned enterprise, or WFOE) or whether there is a need to establish a joint venture (JV) with a Chinese partner, and whether the Chinese partner must have a majority stake in the JV.
- How many permits and special licences need to be obtained from the relevant authorising and supervisory bodies, as well as how supportive local authorities will be during establishment and operation of the enterprise.

The amended *Foreign Investment Catalogue* has opened and released many sectors, with the 'restricted' category—originally consisting of 79 items—being reduced by more than half. Despite the overall liberalisation, however, there are still significant limitations in certain sectors such as health and education, with some industries even being moved from 'restricted' to 'prohibited'.

Manufacturing

It is evident that release has taken place across the manufacturing sector. For example, production of manufacturing equipment and tools for routine and special productions, pharmaceutical products, beverages and many others. The exception is the automobile sector (manufacture of motor vehicles), which has been moved from 'permitted' to 'restricted'.

Liberalisation can also be seen in the decrease of:

- areas that require the establishment of a JV;
- activities where the Chinese party previously had to have a controlling stake in the JV; and
- areas that prohibit a WFOE.

Concrete examples include the design and manufacture of transportation equipment, such as aircraft engines and parts, equipment for civilian aircraft and yachts, the manufacture of electrical machinery and equipment for the transmission and transfer of electrical energy.

Real estate development and the finance industry

A number of real estate development projects have been moved to the 'permitted' category, including large amusement parks, cinemas, villas and golf courses. From the 'restricted' category, some non-banking financial institutions have been removed, such as trust companies.

Healthcare and higher education

While many areas of the healthcare sector belong to the 'encouraged' category, medical institutions were moved from 'permitted' to 'restricted'.

They can now be established and operated only as a so-called cooperative joint venture (CJV). In this case, the move to the 'restricted' category was rather a confirmation of the status quo. Although under the previous *Foreign Investment Catalogue* it was theoretically possible to establish healthcare facilities as a WFOE, in practice there were not many such cases.

In addition, higher learning institutions and ordinary senior high schools are now allowed to be established only as a CJV with the Chinese partner having a controlling stake.

Advice for SMEs

This amendment is a clear sign of liberalisation in foreign investment in many sectors. However, what is equally important is how the supervising and local authorities will implement its provisions.

The amendment often stipulates the requirement to establish CJVs, which are different to equity JVs, the former being a more uncommon form of JV. The CJV allows for greater flexibility in agreements and arrangements between the JV partners where there is no extensive experience either from the side of the local administration or from the side of investors and Chinese partners.

Despite overall positive changes, SMEs still have to spend time preparing to enter the Chinese market. This means they should gather information on the market, legislation, administrative practices, protection of know-how and other intellectual property rights, carefully choose trusted business partners and be ready for the long road ahead.

If you would like to understand how the changes in the new *Foreign Investment Catalogue* will affect your business in China, contact the EU SME Centre legal expert by visiting http://www.eusmecentre.org.cn/expert. Eb

The EU SME Centre helps EU SMEs prepare to do business in China by providing them with a range of information, advice, training and support services. Established in October 2010, and funded by the European Union, the Centre has entered its second phase which will run until July 2018.

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

All services are available on the Centre's website after registration, please visit: www.eusmecentre.org.cn.

EUSME Centre

A WORK IN PROGRESS

FOUR DECADES OF IPR IN CHINA

In the following article experts from the **China IPR SME Helpdesk** plot the development of China's treatment of intellectual property (IP) over the past forty years. They find that huge progress has been made over a short period of time, but there is still plenty of scope for improvement.

The People's Republic of China (PRC) started to develop its IP system relatively late, during the early stages of China's reform and opening up to the outside world. It was recognised by early reformers as essential for development in areas such as science and technology, and an incentive to spur creativity. Despite the volume of infringement claims made by foreign companies and some very high profile law suits, China does have an interest in IP and very few countries, if any, can boast the speed of progress that China has made in IP since joining the World Intellectual Property Organisation (WIPO) 35 years ago.

Last year, China was the highest receiver of patent applications globally. The number of invention patent applications received by China's State Intellectual Property Office (SIPO) stood at 928,000, an increase of 12.5 per cent from 2013. This follows a trend of double-digit percentage increases over the last four years, which suggests that China is taking Intellectual Property Rights (IPR) seriously and the government's priority for boosting innovation by improving IPR protection is paying off.

After joining the WIPO in 1980, a vast amount of ground was covered over the next 20 years, starting with the adoption of the PRC Trademark Law in 1983, and followed two years later with the adoption of the Patent Law, signalling the establishment of China's modern legal system for the protection of IPR.

Further down the line in 1985, China became a member of the Paris Convention for the Protection of Industrial Property. The following year the *General Principles of the Civil Law* of the PRC were promulgated, coming into effect in 1987. This legislation clearly marked IPR in China's basic civil law as the civil right of citizens and legal persons, therefore confirming to Chinese citizens—for the first time—the right of authorship.

Later on in 1989, China became a member of the Madrid Agreement for the International Registration of Trademarks, which is the main international system for facilitating the registration of trademarks in various jurisdictions globally.

The Copyright Law was adopted in 1991, and in 1992 the Chinese Government acceded to both the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) and to UNESCO's Universal Copyright Convention. China's IPR laws have been modelled on the Berne Convention as well as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which they joined in 1994.

China's Law on Combating Unfair Competition and the Patent was adopted in 1993, and in 1994 China became a member of the Patent Cooperation Treaty to the WIPO. China also entered into a memorandum of understanding with the United States (US) in 1992, over copyright protection for all American and foreign works, which has been revised over the years, as well as several other bilateral negotiations between the two governments over the years.

Above are just a handful of accounts of China's IP legislation and its participation in various agreements and organisations in relation to IP, demonstrating the importance that China has put on protecting IP, not only within China but also abroad as well. However, despite China's active involvement in international negotiations, issues surrounding infringement still exist – this is especially true for trademark and copyright. This may be due in part to the relatively short time that IPR has been in place in China, and for that reason a proportion of the population still have an incomplete understanding of IPR. This is gradually improving, for example, after changes made to the Patent Law in 1992, the revisions were disseminated to the public via classes, training programmes and forums all provided by local governments throughout the country. It is also perhaps fair to say that it is often the differences in IP systems between China and Europe that trip up some foreign companies.

In terms of trademarks and patents, China operates under a first-to-file jurisdiction, whereas Europe uses a first-to-use system, meaning that if a Chinese company, or any company for that matter, registers a trademark in China first, they are the legal holders of that trademark: buying back that trademark can be very costly. Another difference to take into consideration is that IP is territorial, which means that IP registered in Europe does not guarantee protection in China and any IP registered in the PRC is not protected in Hong Kong, Taiwan or Macao, which all have separate legal systems. As for copyright, like Europe, automatic rights are granted to the creator of a piece of work but it is advisable to register as proof.

To date, the government has reacted quickly to any changes in the business environment that may have an effect on IP, such as the announcement last month of the drafting of the first e-commerce law to crack down on infringement on online platforms such as Alibaba.com and Taobao. Both sites are unfortunately being used by businesses for illegal activity, including trademark violation and copyright infringement, something that was brought to light after Alibaba's IPO in September last year.

For any company wishing to conduct business in China it is essential to fully realise the importance of having a good understanding of protection and valuation of IP assets, as well as having knowledge of IP systems in different countries and regions. Considering China has only been recognising IPR for the last four decades, their current status as being the largest recipient of patents worldwide is staggering and shows that China is keen to improve on existing IP laws and practices. This at least should inspire some confidence in European businesses thinking about entering China and reassure them that if they take the available steps to protect their assets it will more often than not pay off.

CHINA IPR SME HELPDESK

*The **China IPR SME Helpdesk** is a European Union co-funded project that provides free, practical, business advice relating to China IPR to European SMEs. To learn about any aspect of intellectual property rights in China, including Hong Kong, Taiwan and Macao, visit our online portal at www.china-iprhelpdesk.eu. For free expert advice on China IPR for your business, e-mail your questions to: question@china-iprhelpdesk.eu. You will receive a reply from one of the Helpdesk experts within three working days. The China IPR SME Helpdesk is jointly implemented by DEVELOPMENT Solutions, the European Union Chamber of Commerce in China and European Business Network (EBN).*

PREPARING TO EMBRACE THE 'NEW NORMAL'

EUROPEAN BUSINESS IN CHINA BUSINESS CONFIDENCE SURVEY 2015

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

The European Chamber invited its members to take part in the 2015 survey over a four-week period during February and March. The survey was conducted in cooperation with Roland Berger Strategy Consultants and was officially launched on 10th June, 2015.

China's economic slowdown is here. It is already significantly impacting the performance of European business in China, which is increasingly concerned about the heightened threats that a deepening downturn will pose. In this year's survey the percentage of European companies that ranked concerns over the Chinese economic headwinds as one of their top three business challenges is almost double that of any other challenge.

As China's economy still has room for growth, more than half of European companies remain optimistic about their growth prospects, though this number has dropped 10 points year-on-year. However, nearly a quarter are pessimistic about their profitability outlook within the next two years and two fifths are planning to cut costs—a large jump from less than just one quarter in 2014—with most of them planning employee lay-offs. As a corollary, far fewer companies, i.e. 56 per cent—down from 86 per cent two years ago—are planning to expand their China businesses, and now only 59 per cent regard China as a top three future investment destination, down from 76 per cent in 2012. All of these developments mark significant departures from previous years, as European companies are forced to reconsider their overall China strategies in the face of a protracted slowdown of China's economy.

The Chinese economy is facing a paradigm shift. China wants to discard the 'old toolbox' of high, fixed-asset investments and export-driven growth, which created unprecedented overcapacity levels and debt burden in most industrial segments. The new leadership has clearly articulated its reform vision to move the Chinese economy up the value chain.

European companies are prepared embrace the 'new normal', an era that will be characterised by a lower, but more qualitative economic growth pattern. The 'new toolbox' for this qualitative growth is still to be put in place, meaning that, while the growth pattern has already slowed, the shift up the value chain to more quality growth has yet to be realised. As Premier Li Keqiang put it in April 2015, the "new dynamics have yet to grow strong, while the old ones are losing steam." The transition period will be difficult.

The Chinese Government is well aware that innovation will be one of the most critical drivers of this economic paradigm. However, more than two thirds of European companies that engage in research and development (R&D) do not have a R&D centre in China, and those with a R&D presence still tend to use those centres heavily for product localisation. They would contribute more to the Chinese economy if they felt more secure from threats like import substitution and technology transfer attempts, were afforded better protection under China's intellectual property rights (IPR) laws through improved enforcement and had improved Internet access.

Foreign investment lacks a level playing field in China's business environment, evident in the fact that 55 per cent of European companies perceive that foreign-invested enterprises (FIEs) tend to receive unfavourable treatment compared to domestic Chinese firms in their respective industries. The ongoing reform agenda has not helped in addressing this, as indicated by a fairly evenly divided response rate: one third of European companies stated that the agenda has helped to create an even playing field for foreign investors in China; one third reported that it has not; and the final third remained uncertain. The promises of China's reforms are clearly yet to be realised.

European companies continue to view better implementation of the rule of law as the top driver for China's economic development in the coming years. However, the three main regulatory obstacles to doing business in China—the unpredictable legislative environment, administrative issues and discretionary enforcement of regulations—remain the same as in previous years. This despite the fact that half of European companies regard the efforts of the Chinese leadership towards improving rule of law as meeting their expectations, and 85 per cent applaud the ongoing anti-corruption campaign.

Pessimism about growth and profitability outlook is at an all-time high. Persistent regulatory barriers, coupled with a disappointing lack of impact of China's reform agenda, have served to reinforce European companies' perceptions that progress is not being made on market access issues.

Only through more uniform, strict and transparent enforcement of laws and regulations, increased market opening and support for higher value-added activities can China remain attractive to European companies. Eb

To download a free copy of the European Business in China Business Confidence Survey 2015 *please go to www.europeanchamber.com.cn/en/publications-business-confidence-survey-2015.*

ADDING TO THE MASTER PLAN: THE BEIJING POSITION PAPER 2015/2016

On 9th April, the European Chamber launched the *Beijing Position Paper* as a standalone publication for the first time: previously, local chapter papers had nestled in the back pages of the Chamber's main *Position Paper*. It was decided that more prominence should be given to our local chapters in order to engage more effectively with local government authorities and to raise the specific concerns of our member companies operating in these locales. What follows is an overview of the executive summary of the *European Business in China – Beijing Position Paper 2015/2016.*

In 2004, the State Council of the People's Republic of China approved the Beijing Municipal Commission of Development and Reform's *Beijing Master Plan 2004–2020 (Beijing Master Plan)*, a plan to establish Beijing as a global city by 2020. Ten years after its promulgation President Xi Jinping laid out four core functions that Beijing should focus its development on. They are for Beijing to become a centre of government, culture, international exchange and technology.

European business in Beijing supports these goals. However, the European Chamber believe's that a fifth core function should be added – for Beijing to become a centre of business. This, after all, is the reason why European companies set up business units in Beijing. A continent-sized country like China must have several centres of business, and Beijing should certainly be in the top tier of these.

The *Beijing Position Paper* aims to highlight to all stakeholders why Beijing should have this fifth core function added to the *Beijing Master Plan*. The paper includes the synthesised recommendations of the more than 470 member companies of the Beijing Chapter, which are provided in support of the Beijing Government's long-term 2020 goals. The government hopes to achieve these goals while making decisive progress with the city's economic, societal, regional, environmental and urban spatial development.

The master plan

One existing element of the *Beijing Master Plan* that relates to the idea of creating a centre of business is the plan to transform Beijing into a 'headquarter (HQ) economy'. By attracting multinational corporations (MNCs) to set up their global or regional HQs in the city, Beijing aims to create valuable cluster effects. Shared technologies and infrastructure items (e.g. broadband), as well as an increase in the overall local talent pool, is expected to result in an even greater attraction of highly skilled human capital. This will in turn help the development of strategic emerging industries and advanced manufacturing capabilities that increase the industrial economy's value-added.

The following are other areas that would increase the likelihood of Beijing becoming a centre of business, which the *Beijing Position Paper* addresses in detail:

- Facilitating registration and tax issues.
- Increasing Internet speed and access.
- Focusing more on the private sector.
- Supporting SMEs.
- Increasing incentives for foreign companies to undertake research and development activities in Beijing.

- Increasing Beijing's talent pool.
- Leveraging the Beijing 2014 Catalogue.
- Attracting European financial services to Beijing.

Liveability

As China's cities have gradually become more polluted, their inhabitants have simultaneously become more affluent and environmentally conscious. This has naturally led to an increased focus on these cities' 'liveability'. A 2014 study on liveability, undertaken by the Asian Development Bank, ranked Beijing 18th out of 33 cities in China. Beijing's liveability is adversely affected by the two following issues in particular.

Water scarcity and poor water quality
Beijing's annual water availability per capita is well below the United Nations absolute water scarcity threshold. A large amount of both ground and surface water in Beijing's vicinity is either highly polluted or has already been depleted.

Air pollution
Beijing's air quality consistently fails to meet acceptable quality levels. Highly polluting industries, such as glass, cement and steel—all of which use power generated through the burning of cheap coal—located in neighbouring Hebei province, and pollution from vehicles within the city are primarily responsible.

The highly emotive issue of Beijing's poor environmental standards is addressed in detail in the *Beijing Position Paper*.

Urban Development

The scale and scope of Beijing's urban development is breathtaking. Over the last decade, its population has grown by over 40 per cent and now stands at over 21 million official registered inhabitants (not including the unregistered migrants without Beijing urban *hukou*). European companies want to be partners to Beijing in the city's drive to progress with its urban development in a sustainable way.

Integration between Beijing-Tianjin-Hebei
The Chinese Government has drawn up broad plans for the development of large megacities in China to accrue large-scale agglomeration effects. This is in line with China's urbanisation agenda as set out in 2014's *National New-Type Urbanisation Plan*, which called for 'city clusters' as a "major form of urbanisation".

The creation of the Bohai Economic Rim, of which Beijing will be the centre city, combines the areas of the self-governed municipalities of Beijing and Tianjin as well as Hebei Province. The challenge is to release potential benefits from such integration without placing additional ecological and social strain on the region. For this, coordinated development with the citizens and companies operating in this area will be essential.

Government announcements over the last two years suggest that through its prioritisation of administrative reforms, application of 'rule of law' and giving the market a more decisive role in general, individual cities will play an even bigger role in their own development; at the same time they will be held accountable for their results. By implementing such policies in a way that recognises and promotes a 'centre of business' concept, European business believes it can play a positive and significant contributing role to the realisation of the *Beijing Master Plan*. Eb

The Beijing Position Paper 2015/2016 *can be downloaded free of charge in PDF and e-book formats from http://www.europeanchamber.com.cn/en/publications-archive/331/Beijing_Position_Paper_2015_2016.*

Beijing General Manager and Head of Government Affairs Maggie Xie speaking at the *Beijing Position Paper* launch event.

THE TIMES THEY ARE A-CHANGIN'

HOW CHANGES TO CHINA'S LEGAL SYSTEM IS AFFECTING FDI

China's opening up in the late 70s necessitated an overhaul of its legal system. Significant events that have taken place since, such as the beginning of EU-China diplomatic relations and China's accession to the World Trade Organisation (WTO), prompted further, large-scale changes. As China continues to assume a more dominant role in world affairs and becomes more integrated into the global economy, legislation is constantly being introduced and modified that impacts foreign-invested enterprises (FIEs) in different ways – for better and for worse. In the following article **Dr Joachim Glatter** highlights some of the areas affecting FIEs the most and outlines China's challenges going forward.

Foreign direct investment

The very rudimentary Equity Joint Venture Law was passed in 1979, with laws permitting wholly foreign-owned enterprises (WFOEs) and contractual joint ventures following in 1986 and 1988 (the foreign investment laws). After the general Company Law was promulgated in 1993, the foreign investment laws still remained in effect and prevailed to the extent that they contained certain regulations different to those under the Company Law. To some degree FIEs are still regulated by a special set of corporate law rules, however, experiments in the China (Shanghai) Pilot Free Trade Zone (CSPFTZ) and revisions of the existing foreign investment laws—as well as the recently released draft Foreign Investment Law, which looks set to unify these three laws—indicate moves to harmonise corporate laws applicable to FIEs and domestic companies.

Initially, foreign investment was only permitted in China's manufacturing sector. China's accession to the WTO in 2001 represented a major breakthrough – China's WTO commitments necessitated the passing of legislation permitting FIEs to trade, and the liberalisation of foreign investment in numerous sectors followed. Nevertheless, control of foreign investment still persists to this day and continues to cause substantial obstacles and delays to investment processes. For example, national treatment is not granted to foreign investors, as the

incorporation and restructuring of FIEs still requires approval from the Ministry of Commerce (MOFCOM) or its local counterparts. It is encouraging that there has been some progress in this area: limiting approval processes to investment in certain restricted industries listed in the CSPFTZ's *Negative List*—a move which has also been included in the draft Foreign Investment Law—is a major step forward. However, the positive effects of this will be nullified if more industries are added to the *Negative List* and other, stricter control instruments like a national security review are implemented.

Technology and IP

In many industries, technology transfer has been a precondition for granting market access to foreign companies. Related laws are still drafted in favour of the (Chinese) licensee of technology and foreign investors face pressure from Chinese authorities to make the latest know-how available as part of their investment in China, rather than letting business partners and the market determine the necessity to do so.

A major problem for foreign companies doing business in China was and continues to be the violation of their intellectual property rights (IPR). Over the last decades China has promulgated a comprehensive set of intellectual property (IP) legislation. Although this represents substantial progress, the main concern—for foreign and domestic IP owners alike—continues to be the efficient enforcement of IPR.

Other important legislative areas

A very important piece of basic legislation introduced in 1999 was the Contract Law, which regulates the basic principles of concluding, modifying, fulfilling and terminating contracts as the essential legal basis for business activities.

In 2008, the Anti-Monopoly Law (AML) was introduced and has had a huge impact on a number of business practices, which prior to the AML were largely unregulated or could be neglected by companies. For example, under the AML, mergers and acquisitions (including the establishment of joint ventures) are now increasingly subject to merger control. Also price fixing cartels, retail price maintenance agreements and the abuse of a dominant market position by a licensor (e.g. by charging unfairly high licence fees) are all practices that have come under increasing scrutiny from authorities and courts since the AML's promulgation. The challenge now is for companies to adjust where necessary to ensure that they are fully complying with the AML.

China's biggest challenge: rule of law

Although substantial work is still required legal developments in China over the last few decades have been impressive. The decisive test for any legal system, though, is ensuring that laws and regulations are abided by and properly enforced – this is undoubtedly China's biggest challenge. The general attitude of ordinary people towards law appears to be slowly changing, at least in that there is an increased willingness to use legal regulations to raise claims and enforce rights with the help of the court system. Nonetheless, it will require a sustained effort by government authorities and the courts to build trust in China's legal system. By focussing on the rule of law during the recent Fourth Plenum, the Chinese Government made it clear that it is aware of the necessity of creating a transparent and reliable legal environment and is willing to address current deficiencies. It is the hope of foreign business in China that in areas such as creating an independent judiciary and limiting government intervention substantial progress can be made. Eb

***Dr Joachim Glatter** first came to China in 1986. Between 1990 and 1996 and from 2000 to 2001 he headed the Beijing and the Shanghai offices of a leading international law firm. His focus areas included the formation and restructuring of FIEs as well as arbitration. He is a nominated arbitrator of the panel of arbitrators of the China International Economic and Trade Arbitration Commission and of the Shanghai International Arbitration Centre. In 2002, he became a partner in Taylor Wessing's Shanghai office where he remained until his retirement at the end of 2014.*

From L-R: Vice President Stefan Sack, Vice President Sara Marchetta, President Jörg Wuttke, Vice President Bertrand de la Noue and Vice President Mats Harborn. (not pictured: Treasurer Lars Eckerlein who joined via video link).

TAKE ME TO YOUR LEADERS

Chamber 2015 Election Results

Executive Committee

The European Union Chamber of Commerce in China is pleased to announce that member company representatives confirmed Jörg Wuttke as president during the European Chamber's Annual General Meeting (AGM) on 23rd April. At the AGM, the three incumbent vice presidents and a new treasurer were also confirmed to sit on the Chamber's Executive Committee. The Executive Committee is composed of elected members and is collectively responsible for managing the European Chamber and representing its nearly 1,800 member companies.

The confirmed president, vice presidents and treasurer of the European Union Chamber of Commerce in China Executive Committee 2015/2016 are:

President

Jörg Wuttke, BASF

Vice Presidents

Bertrand de la Noue, TOTAL

Mats Harborn, Scania

Sara Marchetta, Chiomenti

Treasurer

Lars Eckerlein, ABB

In the days leading up to the AGM, local board elections were held in the European Chamber's six other chapters across China. The elected chairperson of the Shanghai Chapter has also been appointed as vice president of the European Chamber's Executive Committee:

Vice President

Stefan Sack, Comau

On 27th April, the 28 EU National Representatives on the Supervisory Board also confirmed three Member State representatives to serve on the European Chamber's Executive Committee:

State Representatives

Massimo Bagnasco, Progetto CMR

Bruno Gensburger, Sanofi

Eduardo Morcillo, InterChina

Nanjing

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

Chairman

Helmut Güsten, EMZ

Board members

Petra Grandinson, Atlas Copco

Udo Looser, Willi Elbe Steering Systems

Andrea Raviolo, Brembo

Bernhard Weber, BSH

Shanghai

The European Chamber Shanghai Chapter completed its elections on 21st April, with the following results:

Chairman

Stefan Sack, Comau

Vice Chairmen

Mick Adams, Somerly

Carlo D'Andrea, D'Andrea & Partners

Board members


European Chamber AGM, 23rd April, 2015

Celina Chew, Bayer

Iris Duchetsmann, Clyde & Co

Manuel Ramos, Bureau Veritas

Marcus Wassmuth, Landesbank Baden-Würtemberg

Shenyang

Taking place on the 13th April, the elections for the Chamber's Shenyang Chapter returned the following results:

Chairman

Florian Schmiedt, Shenyang Qianyuan ESI Real Estate

Board Members

Harald Kumpfert, Smartheat

Stephen Magor, Individual Member

Martin Winter, BMW

Kemal Yener, Star Mall Real Estate

South China

Held on 2nd April, the South China Chapter elections returned the following results:

Chairman

Alberto Vettoretti, Dezan Shira & Associates

Vice Chairman

Vivian Desmonts, DS Avocats Law Firm (Guangzhou)

Board Members

Sarah Fuld, International SOS

Pan Huaiyu, Siemens Shenzhen Magnetic Resonance Ltd

Donato Vairo, Meta System Electronics (Shenzhen) Co Ltd

Saul Vazquez Natal, Gates Management

Yushun Wong, TÜV Rheinland (Guangdong) Ltd

Southwest

The local board elections for the Chamber's Southwest Chapter took place on 20th April, returning the following results:

Chairman

Ulrich O Birch, Consenec Ltd (ABB Group)

Vice Chairman

Paul Sives, Proton Products

Board Members

Alan Chen, Leman International School

Shirley Ling, KPMG Advisory

Robin Niethammer, Bayer Healthcare

Tianjin

The local board elections for Tianjin were held on 13th April, returning the following results:

Chairman

Christoph Schrempp, Airbus

Board members

Gabriele Castaldi, Flexbo

Stephane Metay, Veolia

Frank Redecker, Asia Power Systems

Michael Stengele, Siemens

EXECUTIVE COMMITTEE OF THE EUROPEAN CHAMBER


President
Jörg Wuttke
BASF


Vice President
Bertrand de la Noue
TOTAL


Vice President
Mats Harborn
Scania


Vice President
Sara Marchetta
CHIOMENTI


Vice President
Stefan Sack
Comau


Treasurer
Lars Eckerlein
ABB


States
Representative
Massimo
Bagnasco
Progetto CMR


States
Representative
Bruno Gensburger
Sanofi


States Representative
Eduardo Morcillo
InterChina


Secretary General
Adam Dunnett

NANJING BOARD


Chairman
Helmut Güsten
EMZ


Petra Grandinson
Atlas Copco


Udo Looser
Willi Elbe Steering
Systems


Andrea Raviolo
Brembo


Bernhard Weber
BSH Home
Appliances Holding
(China) Co Ltd

SHANGHAI BOARD


Chairman
Stefan Sack
Comau


Vice Chairman
Mick Adams
Somerley


Vice Chairman
Carlo D'Andrea
D'Andrea &
Partners


Celina Chew
Bayer


Iris Duchetsmann
Clyde & Co


Manuel Ramos
Bureau Veritas


Marcus Wassmuth
Landesbank
Baden-
Würtemberg

SHENYANG BOARD


Chairman
Florian Schmied
Shenyang
Qianyuan ESI Real
Estate


Harald Kumpfert
Smartheat


Stephen Magor
Individual Member


Martin Winter
BMW


Kemal Yener
Star Mall Real
Estate

SOUTH CHINA BOARD


Chairman
Alberto Vettoretti
Dezan Shira & Associates


Vice Chairman
Vivian Desmonts
DS Avocats Law Firm (Guangzhou)


Sandra Fuld
International SOS


Pan Huaiyu
Siemens Shenzhen Magnetic Resonance Ltd


Donato Vairo
Meta System Electronics (Shenzhen) Co Ltd


Saul Vazquez
Gates Management


Yushun Wong
TÜV Rheinland (Guangdong) Ltd

SOUTHWEST BOARD


Chairman
Ulrich O. Birch
Consenec Ltd (ABB Group)


Vice Chairman
Paul Sives
Proton Products


Alan Chen
Leman International School


Shirley Ling
KPMG Advisory


Robin Niethammer
Bayer Healthcare

TIANJIN BOARD


Chairman
Christoph Schrempp
Airbus


Gabriele Castaldi
Flexbo

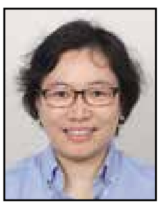

Stephane Metay
Veolia


Frank Redecker
Asia Power Systems


Michael Stengele
Siemens

EUROPEAN CHAMBER OFFICE TEAM


Beijing Office General Manager
Maggie Xie


Nanjing Office General Manager
Mei Zhang


Shanghai Office General Manager
Ioana Kraft


Shenyang Office Office Manager
Oliver Schlaebitz


South China Office General Manager
Francine Hadjisotiriou


Southwest Office General Manager
Sally Huang


Tianjin Office General Manager
Kitty Wang


Secretary General
Adam Dunnett

EUROPEAN CHAMBER EVENTS GALLERY

BEIJING CHAPTER


1

2


3

Capital Beat: Lianghui Inside Out (1)
Political experts dissected the *lianghui* and explained how it will impact businesses in China, at 2015's first edition of Capital Beat on 27th March.

Launch of the European Business in China – Beijing Position Paper 2015/2016 (2)
On 9th April the European Chamber launched the *Beijing Position Paper* as a standalone paper for the first time. Chamber Vice President Mats Harborn gave an overview of the paper, which offers constructive criticism to Beijing's policy-makers.

Annual General Meeting 2015 (3)
During the Chamber's Annual General Meeting on 23rd April the European Chamber's Executive Committee was confirmed (please see page 44 for a full list of election results).

NANJING CHAPTER


1


2


5


3


4

Career Fair: Foreign Companies and Young Talent (1)
On 21st March, almost 100 job vacancies from 15 well-known foreign companies attracted more than 1,000 graduated students from the most promising Universities in Jiangsu to this career fair dedicated to foreign companies.

The 7th Spring Garden Party (3, 4 & 5)
On 29th March, the Nanjing Chapter hosted its 7th Spring Garden Party, attracting 200 people.

European Chamber Nanjing Chapter 2015 Board Elections (2)
The Nanjing Chapter held its 2015 board elections on 14th April (please see page 44 for a full list of results).

SHANGHAI CHAPTER

1

2

Board elections and discussion on China's future (1 & 2)

The European Chapter Shanghai Chapter held its 2015 board elections on 21st April (please see page 44 for full list of results). The election was followed by a panel discussion on *China – Soft or Hard landing ahead*? with Simon Rabinovitch, Asia Economics Editor, *The Economist*, Joerg Wuttke, European Chamber President, and Stefan Sack, Vice President and Chairman of the Board, European Chamber Shanghai.

SOUTH CHINA CHAPTER

Carnival comes to South China (1 & 2)

The European Chamber South China Chapter's fourth annual gala dinner was held on 11th April. Around 300 members and VIP guests enjoyed a great Venetian Carnival-themed night.

1

2

Chamber News

The European Chamber is a people-based organisation whose operational success depends on the hard work and dedication of its staff. We are particularly proud to honour those staff who are celebrating milestones in service to the Chamber. In this issue we recognise and thank:

Joy Yu
Finance Manager
Ten years of service

Sun Min
Ayi, Beijing Office
Ten years of service

Remei Lluch-Pont
National Member Relations Manager
Five years of service

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THE ADVISORY COUNCIL OF THE EUROPEAN CHAMBER

The 31 members of the European Chamber's Advisory Council are particularly active in representing and advising the Chamber, and make an enhanced contribution to the Chamber's funding.

ABB
AIRBUS
AkzoNobel
amadeus
Atlas Copco
BASF We create chemistry
Bayer
BNP PARIBAS 法国巴黎银行
Deutsche Bank 德意志银行
engie
ESI Euro Sino Invest
EVONIK INDUSTRIES
FINMECCANICA
KPMG
MAERSK
米其林轮胎 MICHELIN
NOKIA
novozymes Rethink Tomorrow
PHILIPS
Progetto CMR Massimo Roj Architects
Roland Berger Strategy Consultants
SCANIA Scania Sales (China) Co., Ltd
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VEOLIA
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There's a new artist in
Amsterdam
QATAR