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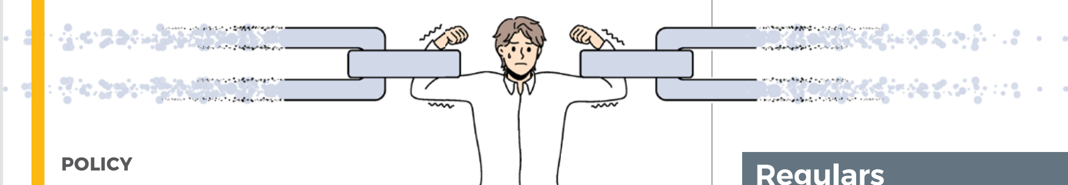

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BEIJING

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

TIANJIN

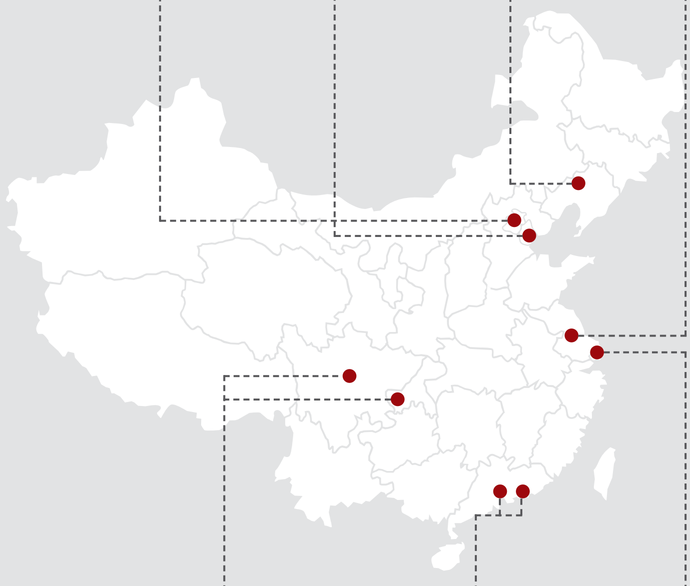
41F, The Executive Centre, Tianjin World Financial Centre, 2 Dagubei Lu, Heping District, Tianjin, 300020, PR China
天津市和平区大沽北路 2 号
天津环球金融中心 41 层德事商务中心
Tel: +86 (22) 5830 7608
tianjin@europeanchamber.com.cn

SHENYANG

Room 1208, World Financial Center 2, No. 43, Beizhan Road 1, Shenhe District, Shenyang
沈阳市沈河区北站一路 43 号
环球金融中心二期 1208 室
Tel: +86 (24) 3198 4229
Fax: +86 (24) 3198 4229
shenyang@europeanchamber.com.cn

NANJING

Room 951, World Trade Center, 2 Hanzhong Road, Gulou District, Nanjing, 210008, PR China
南京市鼓楼区汉中路 2 号
世界贸易中心 951 室
Tel: +86 (25) 83627330
Fax: +86 (25) 83627331
nanjing@europeanchamber.com.cn



SOUTHWEST CHINA CHENGDU

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

SOUTHWEST CHINA CHONGQING

105, A2 Block, SinoSwiss Technopark, Jinzhou Avenue, Yubei District, Chongqing, 401147, PR China
中国重庆市渝北区金州大道平和路 5 号，中瑞产业园 A2 栋 105
Tel: +86 (23) 63085669
chongqing@europeanchamber.com.cn

SOUTH CHINA GUANGZHOU

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

SOUTH CHINA SHENZHEN

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

SHANGHAI

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

President's Foreword

Supply Chains Under the Spotlight

Jörg Wuttke

President

European Union Chamber of Commerce in China

Over the past two years, the fragility of global supply chains has been exposed. While there are many reasons for this, COVID-19 and Russia's invasion of Ukraine, inadequate infrastructure, a lack of truck drivers in many markets, as well as freak occurrences such as the container ship that ran aground and blocked the Suez Canal, are some of the main factors that are now forcing companies to re-evaluate their production and distribution networks. Legislation is an additional driver of change as new laws have, or will, come into force that will compel companies to carry out thorough due diligence, both up- and downstream.[1&2]

As a result, China's position at the centre of global supply chains looks set to be challenged. There will not be full decoupling, with companies leaving China altogether – the potential of the market is still too great to ignore. Instead, more nuanced strategies will emerge.

Prior to the Omicron outbreaks that led to full or partial lockdowns in at least 45 Chinese cities, several European companies were considering further onshoring supply chains into China to better service the domestic market and isolate themselves from potential global shocks. However, onshoring is not without significant drawbacks: initial costs will be steep, and communication and data flows between headquarters and China operations will suffer for those that pursue this option. Furthermore, according to the Chamber's *Business Confidence Survey 2022*, 31 per cent of European manufacturers import critical components into China for which they cannot source alternatives; meaningful onshoring for them is not possible.

Several companies had begun or were exploring the possibility of creating separate supply chains, one to serve China and one for the rest of the world. However, this approach also carries considerable risk, for both business and China. Operating costs will increase while efficiency and economies of scale decrease, and China will become more isolated from the rest of the world. This of course has the potential knock-on effect of increasing misunderstandings between the EU and China, something that should be avoided at all costs with geopolitical tensions rising and negative sentiment towards China at an all-time high in many nations.[3]

After the lockdowns, which paralysed supply chains, there has been a shift in priorities, from efficiency and economies of scale to reliability and resilience. Reshoring, 'friend-shoring' and 'nearshoring' are now increasingly being discussed in boardrooms, and operational mentality is changing from 'just in time' to 'just in case'.[4&5] This trend will likely continue, as European companies look to maintain a strong presence in this important market, while ensuring that they do not become over-reliant and have strong back-up options.

These are just some of the important topics that will be addressed in the European Chamber's forthcoming *Business in China Position Paper 2022/2023*, our annual bible of recommendations. I look forward to presenting the report to you in September. Until then, I wish you all a relaxing and enjoyable summer.

[1] Blinken, Anthony J., *Implementation of the Uyghur Forced Labor Prevention Act*, United States Department of State, 21st June 2022, viewed 13th July 2022, <https://www.state.gov/implementation–of–the–uyghur–forced–labor–prevention–act/>

[2] *New rules on corporate sustainability reporting: provisional political agreement between the Council and the European Parliament,* European Council, Council of the European Union, 21st June 2022, viewed 13th July 2022, <https://www.consilium.europa.eu/en/press/press–releases/2022/06/21/new–rules–on–sustainability–disclosure–provisional–agreement–between–council–and–european–parliament/>

[3] *Large majorities continue to hold unfavorable view of China, Pew Research Center,* 27th June 2022, viewed 12th July 2022, <https://www.pewresearch.org/global/2022/06/29/negative–views–of–china–tied–to–critical–views–of–its–policies–on–human–rights/pg_2022–06–29_views–of–china_00–02/?utm_source=substack&utm_medium=email>

[4] These are all terms related to the reshaping of supply chains to fix weaknesses and increase economic resilience. Reshoring is the act of bringing manufacturing from a remote location to the company's home country; nearshoring is the act of bringing manufacturing nearer to the point of use; and friendshoring is relocating manufacturing to a country considered a trusted partner to the company's home country.

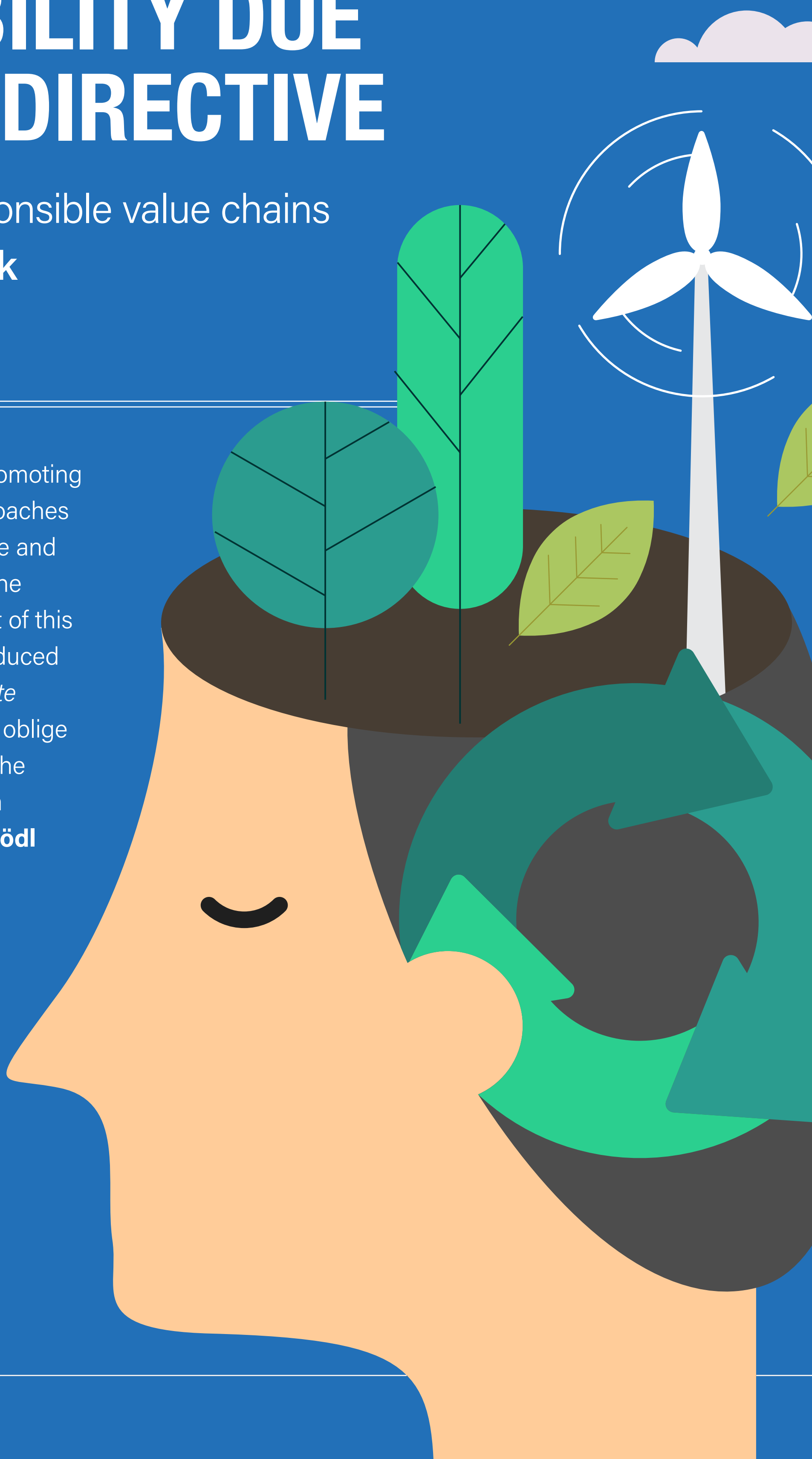
[5] Masters, Brooke, and Edgecliffe–Johnson, Andrew, *Supply chains: companies shift from 'just in time' to 'just in case', Financial Times,* 20th December 2021, viewed 11th July 2022, <https://www.ft.com/content/8a7cdc0d–99aa–4ef6–ba9a–fd1a1180dc82>

EU PROPOSAL FOR A CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

A new rulebook for responsible value chains

by **Sebastian Wiendieck** and **Felix Engelhardt**

The European Union (EU) has been promoting the adoption of more sustainable approaches to all aspects of life—social, governance and corporate—as the bloc recovers from the COVID-19 shock to the system. As part of this effort, the European Commission introduced the *Proposal for a Directive on Corporate Sustainability Due Diligence* (CSDD) to oblige business to protect human rights and the environment. This article by **Sebastian Wiendieck** and **Felix Engelhardt** of **Rödl & Partner** introduces the main pillars of the proposed CSDD and draws readers' attention to the far-reaching implications the directive will have on companies' operations around the globe.



Sustainability and the role of business

The need for a swift transition towards an ecologically sustainable and socially responsible economy and society is recognised by the majority of countries and stakeholders around the world. Under international law, it has traditionally been states who had to bear sole responsibility for ensuring protection of human rights and common goods such as natural resources or entire ecosystems. The indispensable role of business in pursuing fair and sustainable societies only started to find its way onto political and legislative agendas in the early 21st century. Since then, important international initiatives like the United Nations (UN) Global Compact, the UN *Guiding Principles on Business and Human Rights*, the Organisation for Economic Co-operation and Development (OECD) *Guidelines on Multinational Enterprises* and the OECD *Due Diligence Guidance on Responsible Business Conduct* paved the way for what is expected to become the most impactful due diligence regime the business world has seen so far.

The European Commission, on request from the European Parliament and Council, and following two large studies[1] as well as an open public consultation, has incorporated the above-mentioned principles into a widely discussed *Proposal for a Directive on Corporate Sustainability Due Diligence* (CSDD), which was published on 23rd February 2022.[2]

Purposes of the CSDD

The CSDD's overarching objective is to foster a "culture of no harm" in EU companies' global value chains through mandatory obligations and in line with other EU legislation, initiatives and projects, such as the *Taxonomy Regulation* or the proposed Corporate Sustainability Reporting Directive. Furthermore, the CSDD is the EU's response to increasing fragmentation of member states' related rules (such as the German *Sorgfaltspflichtengesetz*, the French *Loi relative au devoir de vigilance* and the *Wet zorgplicht kinderarbeidm* in The Netherlands). The CSDD aims to reduce administrative costs and burdens for companies while achieving legal certainty and predictability. In the Commission's view, the CSDD will bring benefits for individuals, companies and developing countries alike.

Who does the CSDD apply to?

The CSDD is directed towards two main groups of companies:

- Group 1 are all large EU limited liability companies that on average employ more than 500 people and whose worldwide annual net turnover surpasses euro (EUR) 150 million.
- Group 2 comprises other EU limited liability companies that do not reach these two thresholds but which operate in certain high-risk sectors (for example, the garment, agriculture and food manufacturing, and extractive and mineral resources industries),[3] have on average more than 250 employees and a worldwide annual net turnover of over EUR 40 million.

In addition, the CSDD also applies to non-EU companies that generate income within the EU according to the Group 1 or Group 2 thresholds. The European Commission estimates that currently around 13,000 EU and around 4,000 non-EU companies would meet these criteria.

Small and medium-sized enterprises (SMEs) do not directly fall within the CSDD's scope, but will inevitably be affected indirectly through due diligence activities of their large trading partners and affiliated companies.

What the CSDD requires companies to do

The CSDD sets up stringent obligations for affected companies and their directors. In short, companies are required to conduct comprehensive due diligence to protect human rights and the environment from adverse impacts caused by their own operations, the operations of their subsidiaries or by any entity in their value chain (upstream and downstream) with whom the company has an "established business relationship" (i.e., direct or indirect business relationship that is or is expected to be lasting, in view of its intensity or duration, and which is not a negligible or merely ancillary part of the value chain).

Due diligence activities must focus on human rights and environment-related obligations that emanate from international agreements, outlined in Annex I and II to the CSDD. To this end, companies must:

- integrate due diligence into their policies;
- identify actual or potential adverse human rights and environmental impacts;
- prevent or mitigate potential impacts;
- bring to an end or minimise actual impacts;
- establish and maintain a complaints procedure;
- monitor the effectiveness of the due diligence policy and measures; and

1 Torres–Cortés, F., Salinier, C., Deringer, H., et al., *Study on due diligence requirements through the supply chain : final report*, European Commission, 2020, viewed 22nd July 2022, <https://data.europa.eu/doi/10.2838/39830>, https://op.europa.eu/en/publication–detail/–/publication/e47928a2–d20b–11ea–adf7–01aa75ed71a1/language–en

2 *Proposal for a Directive on Corporate Sustainability Due Diligence*, European Commission, 23rd February 2022, viewed 22nd July 2022, <https://eur–lex.europa.eu/legal–content/EN/TXT/HTML/?uri=CELEX:52022PC0071&from=EN>

3 *Article 2 (1)(b), Proposal for a Directive on Corporate Sustainability Due Diligence*, European Commission, 23rd February 2022, viewed 22nd July 2022, <https://eur–lex.europa.eu/legal–content/EN/TXT/HTML/?uri=CELEX:52022PC0071&from=EN>

- publicly communicate on due diligence.

In addition, Group 1 companies must align their business model and strategy with the Paris Agreement goal to limit global warming, identify how climate change may be or is impacted by their operations and draw up concrete emission reduction objectives.

Directors' due diligence responsibilities are specifically and separately addressed by the CSDD, which places directors are in charge of:

- setting up and overseeing the implementation of the company's due diligence processes;
- integrating due diligence into the corporate strategy; and
- taking into account the short, medium and long-term impacts of their decisions on human rights, the environment and climate change.

The CSDD stipulates that a director's fulfilment of their obligations regarding the corporate climate change plan must be taken into account when setting any variable remuneration linked to their contribution to the company's business strategy, long-term interests and sustainability.

Enforcement of non-compliance

The CSDD's approach to enforcing due diligence obligations is a combination of sanctions (public enforcement) and civil liability (private enforcement). The proposal introduces various administrative tools for EU Member States, including establishing effective complaint mechanisms, administrative supervision and investigations, non-pecuniary sanctions and fines by member states' designated supervisory authorities as well as EU-wide enforcement coordination through a newly established European Network of Supervisory Authorities.

Regarding civil liability, the CSDD provides for a differentiated liability regime, depending on whether violations occur: a) within a company's own operations or those of its subsidiaries; or b) in the sphere of its established business relations. Companies may not be held liable for violations by their indirect business partners if they can prove inclusion of (yet to be adopted) compliance assurances in business contracts with their partners and suitable verification of compliance (in particular through independent third-party verification).

What's next?

Before formal adoption, the CSDD requires approval by both the European Parliament and Council. EU Member States will then have two years to transpose the CSDD into national law. Based on the slew of feedback and comments the proposal has triggered so far, it is likely that some considerable adjustments will be made in the final version. European companies are currently facing multiple challenges in relation to their global supply and value chains. The CSDD and its "value chain approach" calls for a reassessment of internal compliance systems and will undoubtedly lead to additional costs for initial establishment, strengthening and operating the required due diligence system. Added to that will be transition costs related to adjusting companies' own operations and value chains.

It cannot be ruled out that application of the CSDD might force companies to withdraw entirely from certain markets. Therefore, the CSDD proposal contains several accompanying measures to prevent or at least mitigate these negative effects, with special attention given to particularly vulnerable SMEs.

Another important question will be how to appropriately align the provisions under the CSDD with already existing Member State laws, especially those enacted only recently, like the German Supply Chain Act. The Commission seems to be well aware of the potential disruptive implications of the CSDD, as can be seen from the proposal's recitals, the legal text itself as well as the supportive information provided on the Commission's website.[4]

In any case, because the CSDD will penetrate global value chains as no sustainability initiative has done before, companies of all sizes will have no alternative than to start assessing how the directive will impact their global business activities and what needs to be done to keep playing by the rules. EB

As attorneys, tax advisors, management and IT consultants and auditors, **Rödl & Partner** is present in 50 countries with 107 own offices and around 5,260 experts. In China, Rödl & Partner assists clients from four wholly-owned offices in Beijing, Guangzhou, Shanghai and Taicang. Sebastian Wiendieck is partner and head of Legal at Rödl & Partner in China, and is based in Shanghai. Felix Engelhardt is senior associate at Rödl & Partner in Shanghai.

4 *Corporate sustainability due diligence*, European Commission, viewed 22nd July 2022, <https://ec.europa.eu/info/business–economy–euro/doing–business–eu/corporate–sustainability–due–diligence_en>

Decarbonising Supply Chains Globally

What if?

… European companies could benefit from decarbonising Chinese supply chains?

by **Johnny Browaeys, Rob Gierke, Soraya Kadra, Gunther Walden** and **Joerg Walden**

While many European companies have started measuring and managing their Scope 1 and 2 carbon emissions, most are still completely in the dark when it comes to Scope 3 – a company's end-to-end supply chain emissions. New legislation is now requiring disclosure of these emissions also. Most supply chains still begin and end in China, regardless of where a company is located. As this article explains, China's push to digitalise carbon disclosure means its supply chains may be the easiest to engage in decarbonisation programmes, and hence be an opportunity for European companies to achieve scope 3 decarbonisation.

Scope 3?

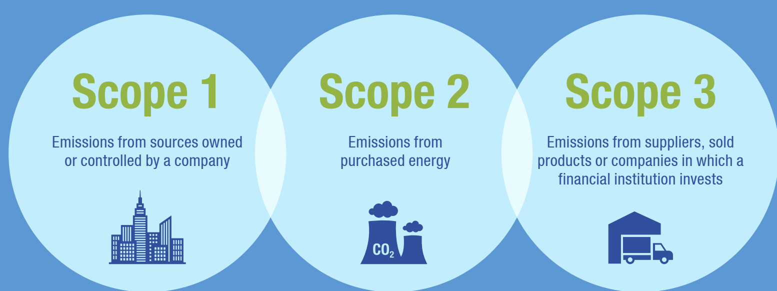
Indirect scope 3 emissions are on average 11 times higher than operational emissions, according to the Carbon Disclosure Project.[1]

Companies have little visibility over their Scope 3 emissions, due to low levels of data collection and digitalisation. According to the MSCI's Net Zero Tracker 2022, only a quarter of companies currently make scope 3 emissions disclosures.[2] Demand for such data will increase, as investors need well-rounded emissions data to properly assess climate-related risks. Emissions quantification is the foundation for potential integration into the Chinese emission trading system (ETS).

[1] Hollinger, P., *COP26: Why companies must broaden the emissions fight through supply chains, Financial Times*, 20th October 2021, viewed 2nd August 2022, <https://www.ft.com/content/116af7f0–944f–4096–81b3–87717f3e4a99>

[2] *The MSCI Net–Zero Tracker*, MSCI, March 2021, viewed 2nd August 2022, <https://www.msci.com/documents/1296102/26195050/MSCI–Net–Zero–Tracker–Mar2022.pdf>

There are three categories of corporate greenhouse gas emissions



Carbon disclosure in Europe

The Green Deal for Europe made clear the European Union's (EU) objective of becoming climate neutral by 2050 and transitioning towards a circular economy. In April 2021, the European Commission adopted the Corporate Sustainability Reporting Directive (CSRD), which will cover all greenhouse gas (GHG) emissions of European companies and large EU-based subsidiaries of multinationals.[3]

Supply chain regulations in Europe

The European Commission proposal for a directive on corporate sustainability due

[3] Latham & Watkins (2022) What the CSRD Could Mean for Companies in the EU. Laham & Watkins Environmental, Social & Governance Practice. https://www.lw.com/thoughtLeadership/What–the–CSRD–Could–Mean–for–Companies–in–the–EU

diligence across global value chains aims to ensure all European companies comply with applicable human rights and environmental protection standards, including scope 3 emissions. The law applies to European companies, as well as organisations from other regions operating in the EU, that have 500 employees and an annual turnover of euro (EUR) 150 million. High-risk industries such as leather, agriculture and mining have lower thresholds of 250 employees and EUR 40 million turnover. Once the text of the directive is finalised, EU Member States will have two years to integrate it into their respective national law. During that time, 'first movers' in the corporate sector can gain competitive advantages over their rivals.

Carbon disclosure in China via public digital platforms

In 2020, the People's Bank of China issued trial guidelines for financial institutions' environmental information disclosure. In 2021, the central government released an action plan to peak carbon emissions before 2030,[4] and China's Securities Regulatory Commission (CSRC) revised the reporting standards of listed companies.

The Ministry of Ecology and Environment's *Measures for the Administration of Legal Disclosure of Enterprise Environmental Information* took effect in February 2022 to standardise and mandate environmental reporting by companies with "a high environmental impact and that receive a high level of public attention".[5] Major emitters with quotas will have to disclose information on quota settlement for the current and the previous year's emission data, uploaded to public digital platforms set up by the local authorities.[6]

The new rules apply to five categories of companies: 1) key pollutant-discharging entities; 2) enterprises subject to mandatory clean production examination; 3) Shanghai and Shenzhen-listed companies and their subsidiaries; 4) bond issuing enterprises; and 5) entities that were subject to environmental penalties.

While this is a big step towards more transparency, the current standards do not cover scope 3 emissions. The main challenges for boosting emissions reporting lie in data availability and quality, and disclosure standards – challenges the Chinese Government is taking steps to address. In June 2022, a new set of voluntary guidelines called for reporting of ESG-related metrics published in the *Guidance for Enterprise ESG Disclosure*, the country's first disclosure standards. These seek to fill gaps in corporate reporting through guidelines, including a comprehensive indicator system of 118 metrics.[7] The standards are intended for self and third-party evaluation, and cover enterprises of different types, industries and sizes. However, no metric for scope 3 GHG emissions disclosure has been included. Investors hope such a framework will incorporate scope 3 emissions and eventually become mandatory.

Chinese companies have been making ESG disclosures over the past decade with continuous improvements, which indicates the market is ready for stricter requirements. Furthermore, Chinese business leaders are increasingly conscious that broad and sophisticated ESG reporting is a key element of transitioning to a low-carbon business model.

Supply chain transparency in China

The Institute of Public and Environmental Affairs (IPE), a non-profit environmental research organisation, designed a Corporate Climate Action Transparency Index (CATI) in 2021, upgraded in 2022, to assess both manufacturers that outsource production to suppliers and manufacturers that consume a lot of energy during production. The CATI uses five dimensions: 1) corporate climate policies and mechanisms, 2) GHG measurement and disclosure, 3) carbon target settings, 4) carbon emissions reduction performance tracking, and 5) climate actions in owned operations and supply chains.

The CATI is distinguished by its ability to motivate entities to push their affiliates and suppliers to measure and disclose carbon data at the facilities level. In the first six months of 2022, nearly 30 brands have encouraged more than 1,050 facilities in China to publicly disclose their carbon data. These facilities primarily deal with textile and apparel, and information technology (IT), with a growing carbon-intensive industry presence, such as chemical, fibre, and iron and steel.

An online digital platform for measurement, reporting and verification (MRV) is enabling more cost-effective GHG management, and encouraging certification of operations and supply chain decarbonisation. Meanwhile, advanced technology is facilitating collaboration for better MRV efficiency and accuracy.

In 2021, carbon trading started on China's national ETS, covering the power generation sector and with plans to expand to sectors like cement and non-ferrous metals. The overarching regulation for the ETS, and rules for registry, trading and clearing of allowance put in place the building blocks for trading in carbon allowances between large emitters. There is also potential to create a broader and deeper emissions disclosure system, as companies realise the financial value in participation and decarbonisation.

[4] Zhang, Z. (2022) What is ESG Reporting and Why is it Gaining Traction in China? China Briefing. https://www.china–briefing.com/news/what–is–esg–reporting–and–why–is–it–gaining–traction–in–china/

[5] Huld, A. (2022) China ESG Reporting – New Measures on Disclosure of Enterprise Environmental Information. China Briefing. https://www.china–briefing.com/news/china–esg–reporting–disclosing–enterprise–environmental–information/

[6] Ziying, S. (2022) How should businesses in China react to new environmental disclosure requirements? China Dialogue. https://chinadialogue.net/en/business/how–should–businesses–in–china–react–to–new–environmental–disclosure–requirements/

[7] Roberts, A.; Hutchinson, G.; Ding, A. (2022) China's new ESG Disclosure Standards. Sustainablefutures. https://sustainablefutures.linklaters.com/post/102hpkx/chinas–new–esg–disclosure–standards

Europe's experience with building collaborative ecosystems

Companies are joining forces to tackle regulatory and sustainability issues collaboratively in various consortia, networks and associations, such as the International Material Data System (IMDS). This data-reporting tool was initially designed for the EU's 2000 End of Life Vehicles Directive on the safe dismantling and recycling of vehicles. The IMDS today is not only the leading automotive industry data collection/ management tool, but also became recognised by many other industries and used by over 100,000 suppliers worldwide.

Getting to a carbon ecosystem

The World Business Council for Sustainable Development's Pathfinder Initiative, launched in March 2021—also labelled 'Partnership for Carbon Transparency' or PACT—brings together stakeholders from across value chains and industries, industry-focussed initiatives, standard-setting organisations, leading technology companies and regulators to accelerate decarbonisation by standardising carbon emissions data exchange. PACT creates interoperability to ensure all organisations and value chains can connect and access primary emissions data associated with their products.

An ecosystem for decarbonising Chinese supply chains

Scope 3 regulations are paving the road to decarbonisation of global supply chains. Carbon technology and solution providers (carbon reducers) can facilitate carbon reduction by engaging companies to decarbonise their operations and supply chains. Carbon markets turn the challenges involved into opportunities, while fintech enable working together across regions and industries as an ecosystem, facilitated via digitalised platforms such as in China.

The map of global carbon flows shows the size of the opportunity.

Companies should bear initiatives like the EU's CBAM in mind which will impact the competitiveness of Chinese products. "We all should also bear in mind the term 'coopetition'—a portmanteau of cooperation and competition—we need to ensure the planet survives so we all have the chance to compete in whatever way we want." [8]

Carbon emissions could well become the first common denominator for collaboration across regions and industries.

In summary

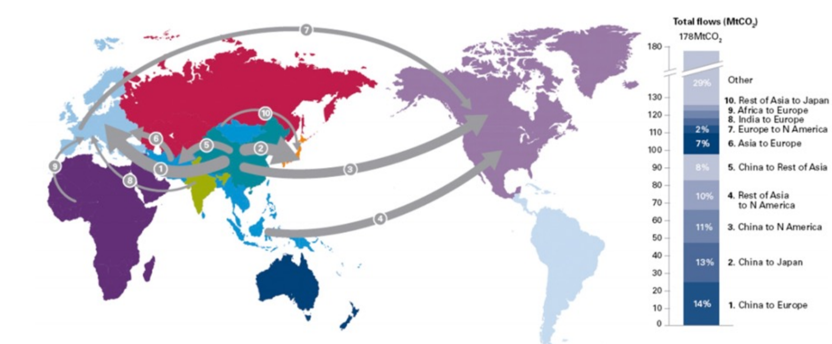
How can companies achieve scope 3 decarbonisation of China supply chains?

1) Access your suppliers via China's public digital platform
2) Run scope 3 decarbonisation programmes
3) Share value from decarbonisation

How can organisations facilitate this collaborative ecosystem to grow naturally?

1) Align standards
2) Enable trading via collaborative market mechanisms
3) Leverage China's public digital platforms

Carbon Flows Mainly Originated from Developing Regions, Particularly China



Source: Carbon Trust

Source: International Carbon Flows - Global Flows, The Carbon Trust, May 2011.

[8] *Blockchain, Coopetition and Aligning Incentives in the Emerging Economy, Unshrugging Atlas*, episode 2, SingularDTV, 21st June 2018, viewed 7th July 2022, <https://medium.com/singulardtv/blockchain–coopetition–and–aligning–incentives–in–the–emerging–economy–86c7ab25abe6>

The authors of this article will release a White Paper which explains in more detail:

1) how to get 'coopetitive' supply-chain-wide exchange of sustainability-related data?
2) how to determine the business value of decarbonising?
3) how to reduce cost, time, and effort to decarbonize product and supply chain?

The White Paper will be accessible on the LinkedIn company page of Decarbsupplychains.

Authors

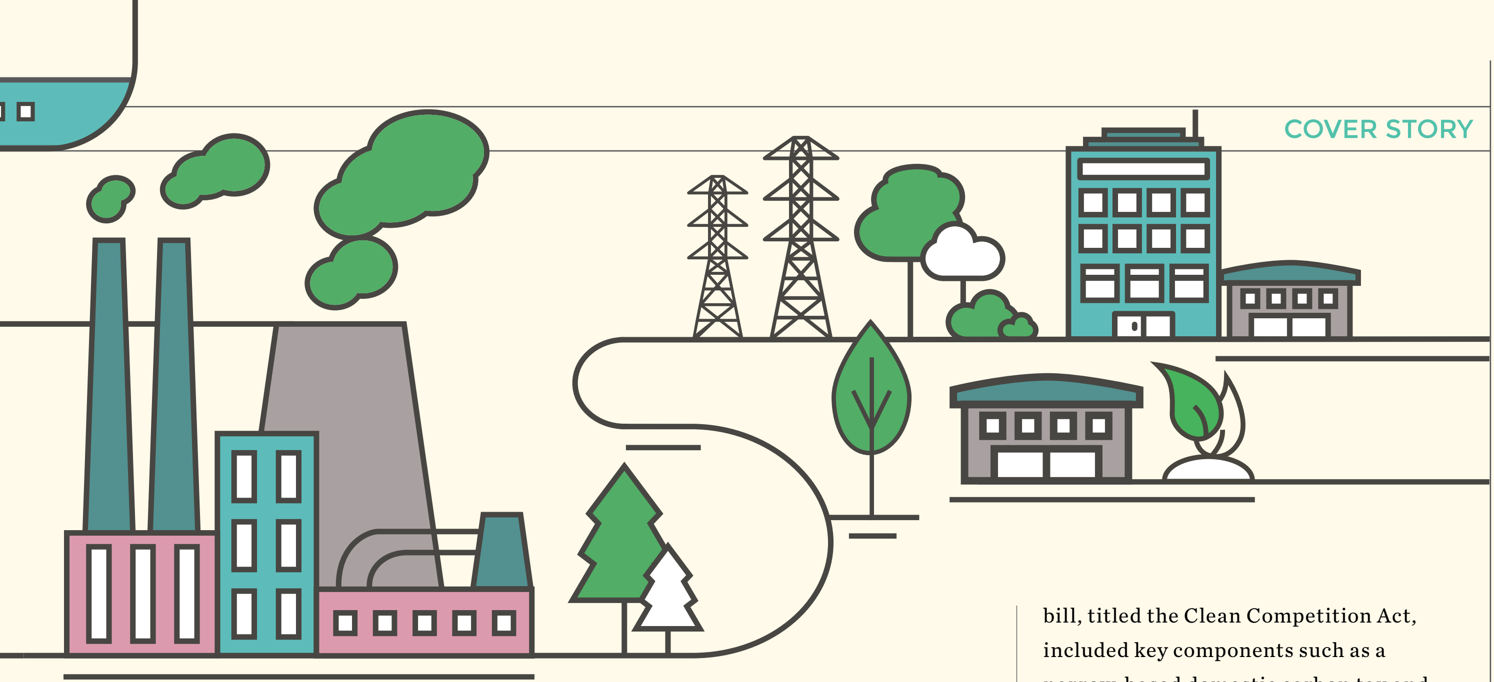
Johnny Browaeys, vice chair of the European Chamber's Carbon Working Group; **Rob Gierke**, CEO of Purenessity; **Soraya Kadra**, Renewable Energy Innovative Solutions at Seeder Clean Energy; **Gunther Walden**, CEO of Circular Tree; **Joerg Walden**, Board Member at INATBA

Supply Chain Decarbonisation

An opportunity as well as a cost

by **Kenneth Leung, Richard Lin** and **Nat Lin**

In today's global economy, decarbonisation has become one of the fundamental considerations in relation to supply chains. Increasing numbers of businesses are working to reach net zero greenhouse gas (GHG) emissions by making environmentally conscious purchasing decisions. Investors, stakeholders, customers and authorities are all taking greater interest in individual companies' decarbonisation performances. Therefore, decarbonising supply chains seems to be a 'game changer' for businesses. In this article, **Kenneth Leung**, **Richard Lin** and **Nat Lin** of **KPMG China** discuss how to transform carbon costs into supply chain opportunities.



GHG disclosure: on the radar for regulators

Over the past few years, demand for company disclosures on GHG emissions has been significantly increasing from all sides – regulatory, financial and consumer. In capital markets, key stakeholders—such as the International Sustainability Standards Board, the United States' (US') Securities and Exchange Commission and the Hong Kong Exchanges and Clearing—have proposed rules to enhance GHG and other climate-related disclosures.

One of the key proposals is to include scope 3 emissions (indirect emissions other than imported energy), which would mean an organisation would have to manage 'cradle-to-gate' or ideally 'cradle-to-grave' carbon information across the supply chain. In the procurement area, more vendor engagement programmes are now requiring upstream suppliers to provide carbon emission information for their products.

Carbon pricing: likely to be implemented across the globe?

In July 2021, the European Commission proposed expanding the scope of the European Emission Trading System (ETS), a cap-and-trade system that sets an annual cap on the amount of GHGs companies in the sectors covered by the ETS may emit. The Commission also introduced the Carbon Border Adjustment Mechanism (CBAM), which is designed to mirror and complement the ETS in relation to imported goods. The CBAM is intended to prevent 'carbon leakage', which would occur if consumers switched from buying European Union (EU)-produced goods to purchasing substitutes from non-EU countries where a lower (or no) carbon price is levied, or if firms shifted production activities from EU producers to such countries for the same reason.

In June 2022, the CBAM proposal was adopted by the European Parliament, which pushed for a broader emission scope, stipulating that the calculation of embedded emissions in products should also include "indirect emissions". Though the final legal text will be subject to negotiations with the EU Council, it is expected that the CBAM will come into effect from the start of 2023.

Interestingly, in early June 2022, a few senators in the US also tabled a bill for a CBAM on products made in the US and those from abroad. The bill, titled the Clean Competition Act, included key components such as a narrow-based domestic carbon tax and corresponding import taxes and export rebates. It would not be surprising to see carbon pricing or carbon taxes (such as the ETS and the CBAM), which aim to promote and incentivise decarbonisation, eventually being implemented across the globe.

Carbon pricing is a supply chain cost, direct and indirect

It stands to reason that carbon pricing will give rise to direct tax costs, and ultimately an increase of the landed costs of goods. The question is who is going to absorb such costs? Will consumers need to pay more, or do manufacturers have to adapt to slimmer margins?

Another question is how the carbon tax will be worked out. Fundamentally, the level of tax would depend on the GHG embedded in the goods, the data on which must be provided by the manufacturers. That said, with the CBAM in place, manufacturers will have to design systems and build teams to manage GHG emissions. Based on experiences in the EU and some other developed countries, monitoring, reporting and verification (MRV) is the preferred system, but of course, it will be costly for an enterprise to set up internal MRV processes for this purpose.

> **In western countries, survey-based studies indicate that more than half of consumers are willing to pay more for sustainable products. Point-of-sale studies of different products indicate that in some customer segments, sustainable products sell well even with premiums of around 40 per cent – far beyond what would be required to achieve zero-emission supply chains. In any case, there is great potential for businesses to embrace decarbonisation. "**
>
> *World Economic Forum Insight Report 2021*

Transforming carbon costs into a supply chain opportunity

There is also an upside in supply chain decarbonisation for businesses. There are several theories already on how decarbonisation can be a source of business opportunities:

- In a world of carbon pricing, decarbonisation would give a price advantage and/or higher margins in the market.
- With the development of carbon peaking and net-zero policies, decarbonisation would mitigate business uncertainty.
- As governments and financial institutions would like to 'green' their portfolios, decarbonisation would give rise to opportunities for green incentives and green loans (with much lower financial costs).
- Like the nutrition information on packaged food, a tag with details on the carbon footprint of a product may also become a standard element on packaging in the future.

For businesses wondering how to plan their next steps, one of the first actions should be to quantify their GHG emissions baseline and set up MRV. This means understanding the GHG status of the organisation and mapping out how its internal GHG management will work. With this foundational infrastructure in place, the following opportunities may then be explored:

1. Identify potential emissions reduction opportunities, assess the feasibility of emissions reduction technologies/projects from a quantitative perspective and then implement emissions reduction initiatives.
2. Apply for government incentives and/or low-interest green loans from financial institutions based on the aforementioned emissions reduction technologies/projects, with special attention to anti-greenwashing compliance.
3. Design a sourcing strategy for emission reduction purposes, integrate emissions metrics into procurement standards and track performance, and work with suppliers to address their emissions.
4. Quantify and certify product-level carbon footprints for branding purposes.

Some recent examples:

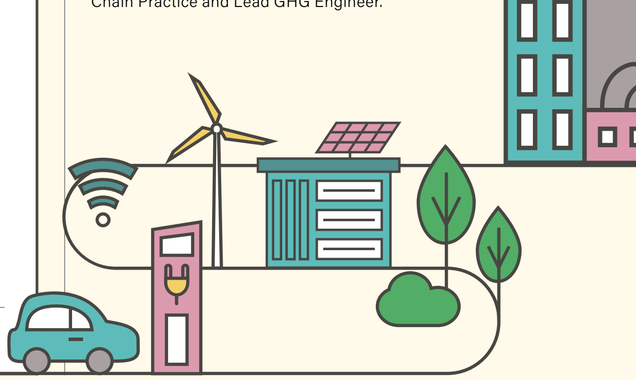
- UPS ordered 10,000 electric vehicles in 2020, to reduce emissions from fossil fuel combustion engines.
- Ferrero is aiming to source 100 per cent green electricity for its plants to realise its goal of cutting emissions by 50 per cent by 2030.
- Lloyds Banking Group has set up a Green Salary Sacrifice scheme, which enables employees to take advantage of significant tax benefits when leasing an electric vehicle. The Group is also installing electric vehicle charging points in company car parks.

* Data sourced from companies own websites.

From green to gold

In a world of carbon pricing, it is easy to envisage that carbon will become both an asset and a liability for businesses. Efforts made today on GHG management and decarbonisation may lead to a fortune in the future.

KPMG China has developed a leading practice in the field of GHG Emissions and Reduction. Most importantly, we do not see ourselves as mere consultants. KPMG professionals want to work collaboratively with clients on the journey to a low carbon future. **Kenneth Leung** is partner and head of KPMG China's Supply Chain practice. **Richard Lin** is partner of KPMG China's Supply Chain Practice (responsible for GHG emissions and reduction related services) and Head of Compliance Carbon Market. **Nat Lin** is associate director of KPMG China's Supply Chain Practice and Lead GHG Engineer.



MADE IN CHINA

Considerations for manufacturers when building supply chains

by **Fabian Blake**

A large swathe of European companies that invested into China at the end of the 20th century, or even well into the 2000s, came with the purpose of establishing a production base in order to eventually start conquering the emerging domestic market. The two key ingredients in successfully getting their operation off the ground were human resources and the establishment of a local supply chain. **Fabian Blake**, **vice chair** of the **European Chamber South China Chapter**, outlines how circumstances have changed in recent years.

Just as the available workforce in a particular location or industry can be developed into a very effective talent pool through engagement with the authorities and educational institutions, a company's supply chain can also be shaped to its best advantage through a similar development process. Whether you are an automotive company, an aircraft manufacturer, a consumer electronic provider, a fast-moving consumer goods producer or even a trading company, your supply chain is at the core of the operations of your business. Needless to say, this reliance on the supply chain is further exacerbated by the locally available technologies and innovations, something both large corporates and small businesses became all too familiar with as they navigated through the 2010s in China.

A lot of (murky) water has flowed under the bridge in the last half decade. Following almost half a century of rampant economic growth, the intensifying competition between the top powers of this world triggered tensions that quickly got translated into tariffs and sanctions, which ultimately end up being detrimental to all global players. In addition, the emergence and spread of the pandemic presented another unprecedented challenge for supply chains in 2020. Disruptions to supply and demand at the end of the value chain kept amplifying, creating a 'bullwhip effect', with the well-known consequences of exorbitant shipping costs, and scarcity of components and commodities. And if this was not enough, the already 'fractured' supply chains are now enduring even bigger stress following the Russian invasion of Ukraine.

Building a supply chain

If we look at companies with manufacturing capabilities on the China market, one would see many different types of approaches to setting up a supply chain. A key factor in individual approaches will be the nature of the business model followed. For example, a company producing in China with a business model mainly focussing on export might find itself in a difficult position due to tariffs or sanctions arising from geopolitical tensions, or specific standards applicable to certain components or critical parts that make them a challenge to secure, all of which can hamper the company's ability to present a competitive offering in terms of lead time or costs. Their supply chain will be constructed to take these factors into account.

How a supply chain is constructed can also be strongly influenced by the end goal of tackling domestic market share. Most companies with the aim of conquering the Chinese domestic market usually have to undergo a rather deep re-design or re-engineering of their product to meet local demand in terms of features, prices or other 'go-to-market' requirements.

Beyond these plain strategic considerations, supply chains are hardly

'plug and play' items. A lot of involvement is required from each of the concerned parties, while the available and matching technologies will also have an impact. Moreover, many manufacturers that deal with offshore clients have to set industry standards with their suppliers (or tier-partners) before adequate or satisfactory products can be supplied.

The right technological level is bespoke to each and every manufacturing project that comes along. This is often not perceived from a 'front-end' perspective, but nevertheless is a major reason why the efforts required to re-shore are often under-estimated. In fact, re-shoring is a process that can easily span many years. One can easily understand that supply chains would differ in both capability and capacity in the United States, Europe, China or Southeast Asia, let alone an emerging economy in Asia or Africa. Large multinational companies typically secure certain skills or product applications in specific territories not just for intellectual property protection reasons but also for know-how, or sometimes quite simply because the required raw material or substrate that is the foundation of the project (often the main cost driver) is only available or produced there or in accordance with a specific standard.

A phenomenon that has been observed in the European Chamber's annual *Business Confidence Survey* for the past two years is the rather strong trend towards on-shoring among members since 2020. This is a natural consequence of the relative availability of well-suited technologies on the domestic market, and the growing intolerance for disruptions to operations arising from China's stringent COVID containment policy and tight border controls, amidst other challenges. As new variants of COVID continue to emerge, the milder but more transmissible Omicron variant (and most importantly, subduer of the deadlier Delta variant), came as a 'positive' surprise to a worn-out and long-struggling world. However, the Chinese authorities face a dilemma over whether to make a U-turn on zero-COVID policies that had worked rather well in the previous two years.

For the coming 12–18 months, foreign-invested businesses will have to look into their crystal ball and decipher how the complex situation they are in will unfold. There is quite a palpable tension arising from the recent lockdowns in major cities and the restrictions imposed on individuals and companies. While some are optimistic that the stringent COVID containment measures will be relaxed following the National Congress scheduled for the end of autumn 2022, perhaps the degradation of international relationships pre- and post-pandemic makes one thing certain: the general conditions for business in China won't return to what they were in the late 2010s. We can call for greater and ongoing reforms to facilitate the operations of foreign-invested businesses in China, but we should still not fool ourselves about the time it will take for these measures to take full effect.

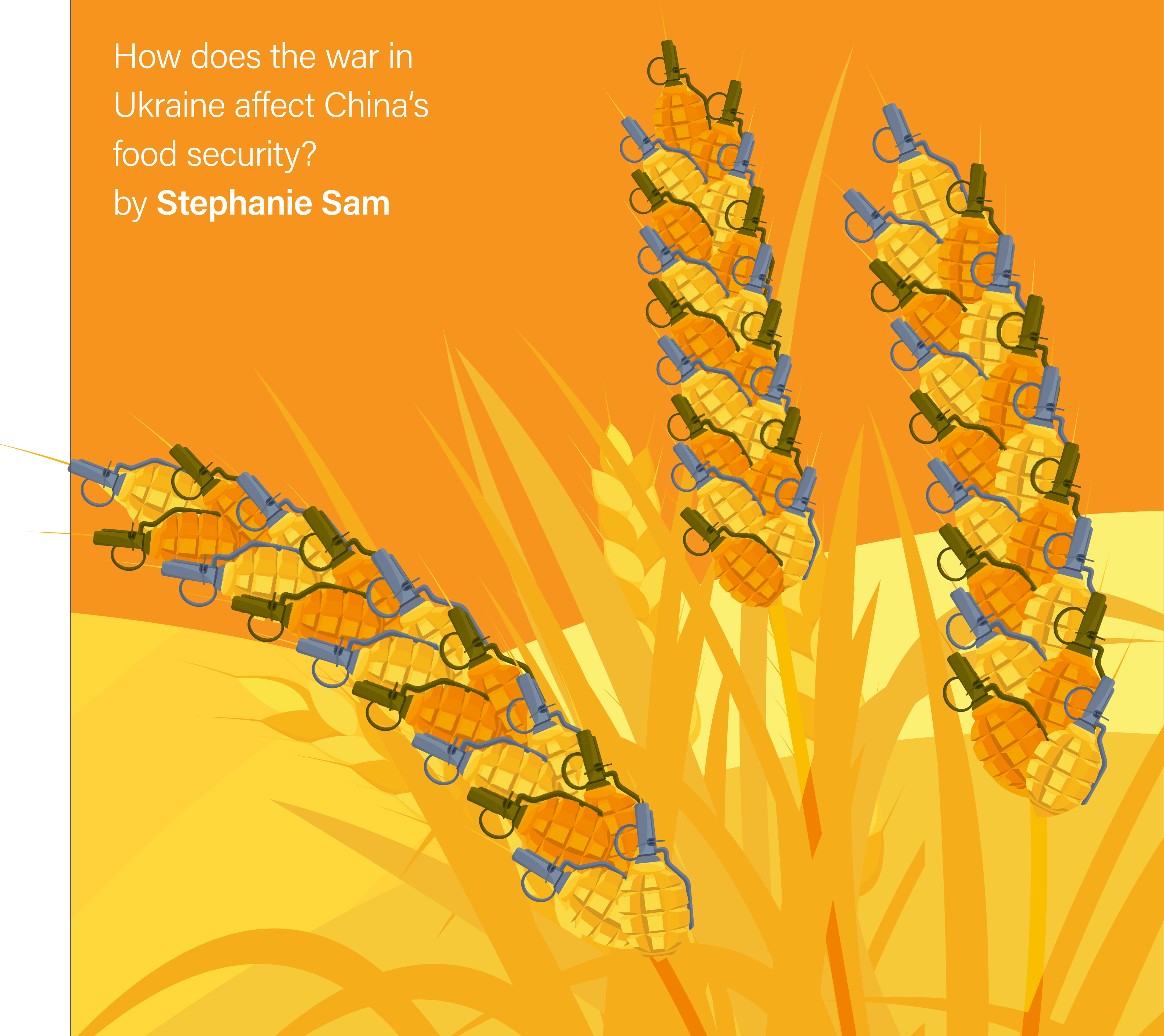
As the world progressively leaves the unipolar modus of the late 20th century behind, and more and more nations adhere to a multilateral configuration, each and every business will be required to adapt their supply chain strategy to the emerging conditions.

Fabian Blake has been vice chair of the Board of Directors of the South China Chapter of the European Chamber since 2021. He is a Belgian national who currently holds the position of managing director with AMS Assembly Foshan. Fabian has lived and work in China since 2008. In these 14 years spent exclusively in South China. he has contributed to the operational development of large corporations and managed much smaller Chinese business units active in engineering services, offering added value services to European customers.

The Ukraine Conundrum

How does the war in Ukraine affect China's food security?

by **Stephanie Sam**



While post-pandemic supply chain bottlenecks, rising energy prices and climate change have strained the food market for the past couple of years, Russia's invasion of Ukraine in February 2022 has compounded the problem, deepening global food insecurity. With many manufacturers having fled Ukraine, further exacerbating disruptions to supply chains and trade partnerships, what is the impact on China's food security and what are the implications for European businesses? **Stephanie Sam, communications and business manager** with the **European Chamber**, tells us more.

Where's the grain?

The impact of Russia's invasion of Ukraine has been felt in all corners of the globe; it has sent the prices of commodities and staple foods soaring, leading to fears of multiple famines.[2] Over a quarter of the world's wheat exports originates from Russia and Ukraine, with Russia alone accounting for over 18 per cent.[3] Ukraine is a key exporter of many other grains as well, accounting for 16 per cent of all corn exports, and almost 10 per cent of all barley exports.[4] Before Russian and Ukraine signed a deal on 22nd July allowing the resumption of vital Ukrainian grain exports from Black Sea ports, Russian forces had blocked up to 23 per cent of expected wheat exports, even after Ukrainian shipments were rerouted via Romania and Poland.[5] While the rest of the world awaits to see if Russia will uphold its commitments, the situation highlights the egregious impact this war has had on agriculture and the market barriers that have gone up as a result.

Farming the world

But how does this affect China? The country is an overall net-importer of food and increasingly finds itself "running a food trade deficit",[6] attributable to its rapid economic growth and urbanising population. In 2017, China imported United States dollars (USD) 105 billion in food in compared to exports of USD 59.6 billion.[7] As China shifts towards greater self-sufficiency, food security has been recognised as an "important foundation of national security" by President Xi.[8] For the first time ever, grain security was explicitly included in one of China's Five-year Plans (FYPs), when it featured in the draft 14FYP (2021-2025),[9] highlighting the government's ambitions to reach self-sufficiency in domestic food production.

China's current food security strategy includes maximising domestic production and keeping "large stocks of staples such as corn, rice and wheat".[10] To further strengthen its food security, China has also been aggressively purchasing overseas agricultural land for production, such as buying nearly one-tenth of Ukraine's arable farmland in 2013.[11] In 2021, nearly a third of China's corn imports and a quarter of its imported barley originated from Ukraine.[12]

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1 *How many Ukrainian refugees are there and where have they gone?*, BBC, 4th July 2022, viewed 26th July 2022, <https://www.bbc.com/news/world–60555472 >

2 *Secretary–General Warns of Unprecedented Global Hunger Crisis, with 276 Million Facing Food Insecurity, Calling for Export Recovery, Debt Relief*, United Nations, 24th June 2022, viewed 7th July 2022, <https://press.un.org/en/2022/sgsm21350.doc.htm>

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4 Åslund, Anders, *Russia's war on global food security*, Atlantic Council, 1st June, viewed 6th July 2022, <https://www.atlanticcouncil.org/in–depth–research–reports/issue–brief/russias–war–on–global–food–security/>

5 Borrell, Josep, *Food insecurity: the time to act is now*, European Union External Action, 7th April 2022, <https://www.eeas.europa.eu/eeas/food–insecurity–time–act–now_en>; *Ukraine works to resume grain exports despite Russian strike on Odesa, Reuters,* 24th July 2022, viewed 25th July 2022, <https://www.cnbc.com/2022/07/24/ukraine–works–to–resume–grain–exports–despite–russian–strike–on–odesa.html>

6 How *is China Feeding its Population of 1.4 Billion?*, China Power 2022, <https://chinapower.csis.org/china–food–security/>

7 Ibid

8 *Xi Focus Quotable Quotes: Xi Jinping on Food Security, Xinhua,* 23rd July 2020, viewed 11th July 2022, <http://xinhuanet.com/english/2020–07/23/c_139235598.htm>

9 Donnellon–May, Genevieve and Wang, Mark, C*hina's Evolving Food Security Strategy, The Diplomat*, 25th November 2021, https://thediplomat.com/2021/11/chinas–evolving–food–security–strategy/

10 *MacDonald, Scott, China, Food Security and Geopolitics, The Diplomat,* 30th September 2022, <https://thediplomat.com/2020/09/china–food–security–and–geopolitics/>

11 *Braw, Elisabeth, Why Does China Own So Much of Ukraine?, The Wall Street Journal*, 29th June 2022, viewed 7th July 2022, <https://www.wsj.com/articles/why–does–china–own–so–much–ukraine–farming–land–exports–food–crisis–grow–wheat–production–sell–grain–territory–11656534819?mod=trending_now_opn_2>

12 *When China worries about food, the world pays,* The Economist, 9th April 2022, <https://www.economist.com/china/2022/04/09/when–china–worries–about–food–the–world–pays>

Diminishing resources

Access to imported crops is only one piece of the puzzle though. Russia is also the biggest global exporter of commercial fertiliser, which is used to maximise agricultural yield output by 40–50 per cent. Due to the war, fertiliser supplies have decreased and prices risen by more than half, while energy prices have jumped by more than two thirds due to uncertainty over oil and gas supplies.[15] All of this increases costs for farmers and places further strain on the food production supply chain.

Pre-existing transnational factors such as climate change are also exacerbating food insecurity. While the war in Ukraine raises a question over expected exports, the loss of arable land due to climate change and environmental degradation also threatens China's domestic food production. By 2019, China's total arable land had fallen by six per cent compared to a decade earlier, and this decline is expected to accelerate.[14] Extreme weather, such as the heavy flooding in Henan Province in 2021 that affected 2.4 million acres of crops, is increasingly impacting China's food insecurities.[15] Meanwhile, environmental issues such as widespread soil contamination have further damaged the land available for domestic production, increasing China's dependence on imported food.

[13] *Secretary–General Warns of Unprecedented Global Hunger Crisis, with 276 Million Facing Food Insecurity, Calling for Export Recovery, Debt Relief,* United Nations, 24th June 2022, viewed 7th July 2022, <https://press.un.org/en/2022/sgsm21350.doc.htm>

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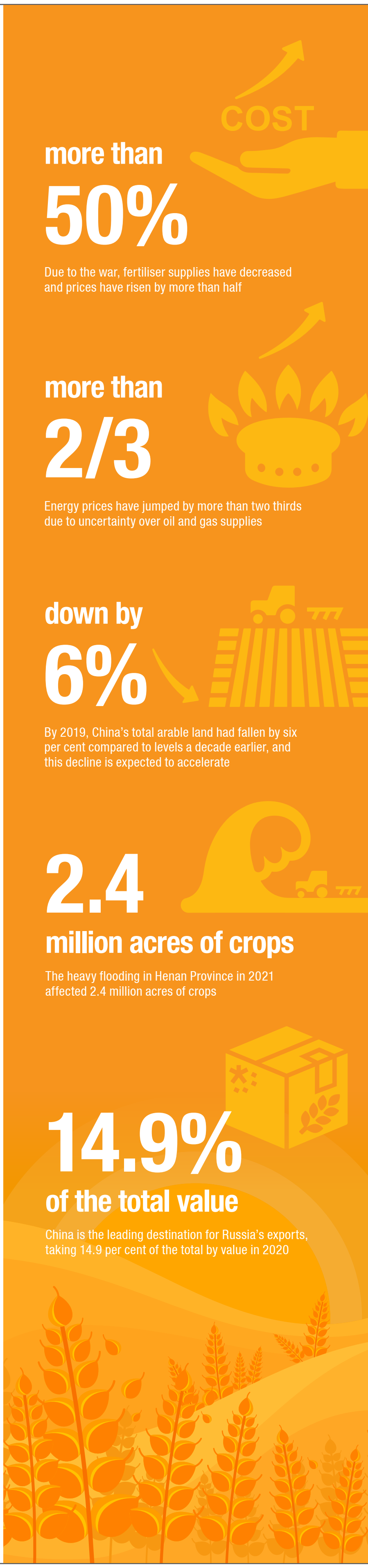
[19] Broom, Douglas, *What else does Russia export, beyond oil and gas?*, World Economic Forum, 18th March 2022, <https://www.weforum.org/agenda/2022/03/russia–gas–oil–exports–sanctions/>

[20] Reidy, Susan, *China OKs wheat imports from Russia*, Sosland Publishing Company, 24th February 2022, <https://www.world–grain.com/articles/16536–china–oks–wheat–imports–from–russia>

[21] Stein, Janice Gross, *The Ukraine Dilemma: Can the West Save Kyiv Without Starting a War With Russia?*, Foreign Affairs, 9th March 2022, viewed 10th July 2022, <https://www.foreignaffairs.com/articles/russia–fsu/2022–03–09/ukraine–dilemma>



The geopolitical dilemma

In June 2022, United Nations Secretary-General António Guterres stated that "there can be no effective solution to the global food crisis without reintegrating Ukraine's food production, as well as the food and fertiliser produced by Russia, into world markets."[16] In disrupting billions of dollars of trade, the war in Ukraine has led to a "strategic predicament for China".[17] While the European Union (EU) has staunchly advocated against Russian military aggression by implementing a series of financial and diplomatic sanctions, China has avoided any specific commitments to condemn or condone Moscow's actions. This divergence was one of the main reasons the recent EU-China summit was described as a "dialogue of the deaf".[18]

China is the leading destination for Russia's exports, taking 14.9 per cent of the total by value in 2020.[19] In the past, China only approved wheat imports from seven defined areas in Russia over contamination concerns,[20] but since February 2022, Chinese customs have approved imports from all regions, indicating Russia and China's increasing mutual dependence for exports amid EU sanctions. While Beijing sees very little to gain from "joining the international chorus condemning Moscow",[21] China's tolerance for Russia comes at a cost in terms of EU-China relations and may result in reduced EU dependence on Chinese supply lines in the future. In the quest to achieve food security, China will have to grapple with the geopolitical conundrum of the war in Ukraine.

Note

This article was written in early July, and reflects the circumstances at that time.

SUPPLY CHAIN SWINDLES

Simple steps to minimise risks of being scammed when purchasing from China

by the EU SME Centre

China is known as 'the world's factory' for good reason; it produces almost every type of product imaginable at lower costs due to its army of labourers and manufacturing hubs dedicated to particular goods, such as Christmas decorations, steel and iPhones. Sourcing material from China may reduce costs for European small and medium-sized enterprises (SMEs). However, as the **EU SME Centre** warns, there will be scammers that target SMEs based in Europe, who will not have the resources to track them and challenge them in China's complex legal system.

Despite the unprecedented challenges the pandemic has brought for global supply chains, many European Union (EU) SMEs continue to source goods from China. But finding the right partner is not an easy task; careful analysis and due diligence are required. Unfortunately, cases of scams from Chinese suppliers remain frequent and EU SMEs regularly encounter significant issues with purchases from China.

For instance, a Croatian company recently ordered lamps from a Guangdong-based manufacturer and made an advance payment of around euro (EUR) 20,000. After the goods were received, the company realised that all the lamps had serious defects, becoming non-functional after a few days of use by its own clients in Europe – which in turn resulted in complaints or returns of the defective lamps to the Croatian company.

In another very recent case, an Estonian company made an advance payment of around EUR 30,000 for a batch of alloy steel produced by a manufacturer in Wuxi, Jiangsu Province. After they received the advance payment, the Chinese manufacturer first delayed the shipment, citing COVID-19 restrictions, until it finally stopped responding to emails without shipping the goods at all.

In these cases, the European companies' requests for their respective Chinese suppliers to send a new batch of products or to issue a refund, were rejected or totally ignored. This caused enormous challenges for the EU SMEs, as it affected their ability to deliver on orders from their own clients in Europe. The SMEs not only lost the amount they paid to the scammers; they also incurred fines from their clients and, in some cases, termination of the business relationships. Even worse, after falling victim to a scam, there is very little that EU SMEs can do: legal action in China requires a significant amount of money and time; EU SMEs often do not know where to start, and consequently may opt to swallow the bitter pill instead of enforcing their rights. Scammers know this very well and indeed rely on this aspect to perpetrate their frauds.

The risk of scams and quality issues when purchasing from Chinese suppliers can be reduced, and often avoided, by taking simple steps to conduct background checks and preliminary due diligence. Below is a list of red flags and preventive measures to guide EU SMEs on how to do this.[1]

Common red flags for potential scams

Although each case is unique, scams may present one or more commonalities – i.e. 'red flags' that do not necessarily constitute a scam, but nevertheless should not be ignored (see the table below).

Finally, an increasing number of sellers point at COVID-19 containment measures as a *force majeure* reason for not executing the contract as agreed. While strict COVID-19 restrictions are indeed frequent and recurrent in all parts of China, certain companies may exaggerate the actual impact, as EU-based clients often have little means to verify this information.

Red flags	Detail
The seller does not have a website in Chinese	Any reputable Chinese company would have a specific company website in addition to a store on Alibaba, in Chinese as well as in foreign languages, disclosing key information such as their legal name and registered address.
Company chop used by the seller has no value	Chinese company chops have clearly identifiable standardised elements, including: circular/oval shape; red ink; red star in the middle; and company name in Chinese characters. Other shapes, sizes, colours or languages have no legal value.
T/T payment in advance to the seller	The key goal of a scammer is to have its victim pay for the goods in advance, even just a partial amount. Once an advance payment is made, if anything goes wrong, it is impossible to get the prepayment back without taking legal action.
Suspicious bank account provided by seller	EU SMEs should ensure that the account provided belongs to the same company as the invoicing company, thus excluding: personal bank accounts, accounts with clearly different company names, and accounts with bank branches located in other regions in China.
Seller's registered capital not paid up	If the shareholders have not contributed any of the company's registered capital, the company has virtually no financial assets that could be frozen or sold for compensation. Such information is very easy to check.

[1] These are all based on real cases the EU SME Centre came across, but are not intended to substitute legal advice – which should always be sought, when possible, for in–depth due diligence.

Preventive measures and steps

In addition to early identification of red flags, there are other indispensable actions EU SMEs must take before signing a purchase contract with a Chinese company:

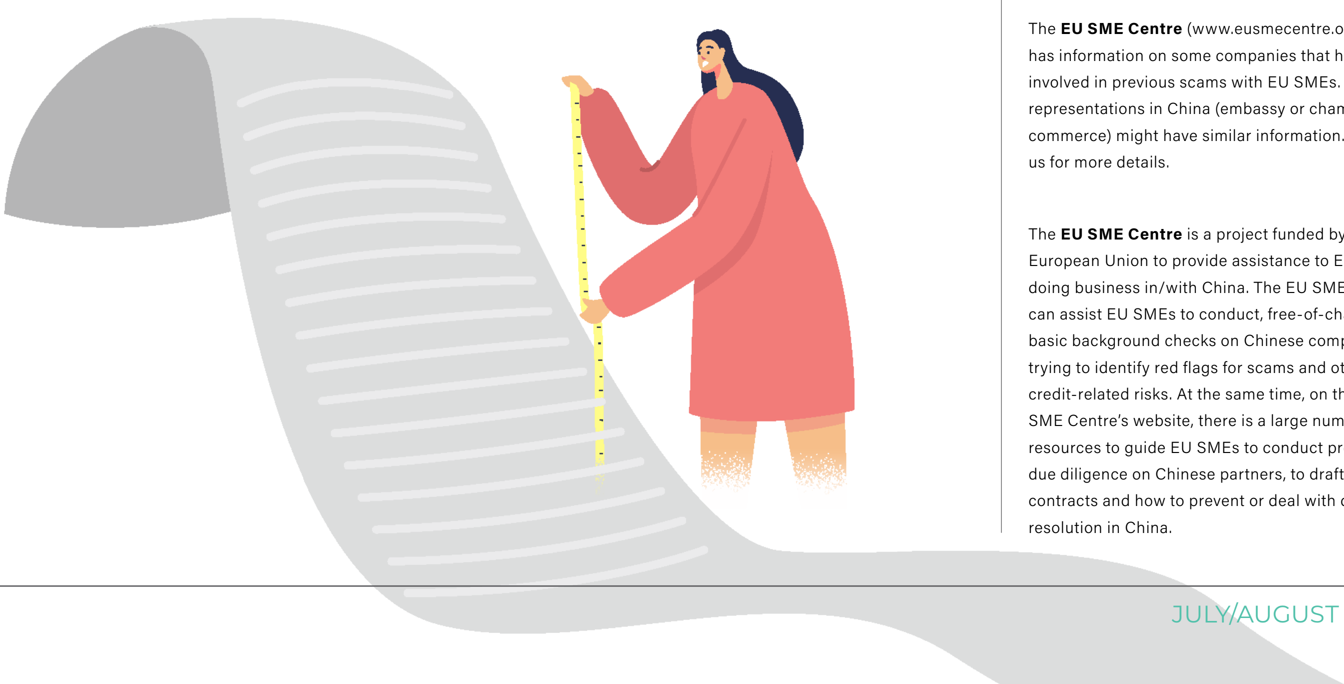
- **Ask for a copy of the seller's business licence:** This is a common business practice – if a company refuses to do so, then the advice is to terminate any negotiation.
- **Check the seller is on the relevant platforms:** The National Enterprise Credit Information Publicity System can verify that the information on the company's business licence is genuine; and other credit-related platforms are useful to check if it has been involved in legal disputes.
- **Hire an auditor to inspect the goods in China:** If the goods are delivered to Europe in a condition different to that agreed upon, there is very little EU SMEs can do to enforce their rights without legal action in China. Considering the current difficulties in travelling to/from China, hiring professionals to carry out inspections on the ground is a cost-effective solution.
- **Hire a Chinese lawyer for in-depth due diligence:** This should always be the ideal option, as Chinese lawyers have access to key company information filed with local market supervision authorities.

Too late: what to do?

EU SMEs should keep in mind that once they become victims of scams, there is very little they can do. Reporting scams to the authorities is of little or no use in most cases; trying to appeal to the business ethics of the Chinese sellers will be a waste of time. Scammers are very experienced, and are careful to cover their tracks. It is different, of course, if there is a genuine business dispute or sudden issue with a regular supplier, as such cases may not involve premeditation.

The first step is to collect all possible evidence of the contract violation or scam by the Chinese seller. EU SMEs should also try to engage a China-based law firm to prepare a demand letter: Chinese companies usually pay attention to these letters as they show the victim is determined to proceed with dispute resolution mechanisms in China, and losing corporate social credit may have significant implications for a Chinese company. After this, the only option left is to initiate legal action against the Chinese company. How this can be done depends on the clauses included in the contract in terms of the law and dispute resolution mechanisms applicable. In general, going through the Chinese judicial system by working with China-based law firms will lead to easier enforcement of a judgment or arbitration award.

Legal action is a long and costly process which often deters EU SMEs from initiating it. This is the leverage that Chinese scammers have, hence prevention is vital. By identifying red flags and adopting the measures indicated in this article, EU SMEs will be better equipped to recognise potential scammers in time and thus reduce the likelihood of resorting to legal action.



Note

This is an extract of a longer article published by the EU SME Centre in August 2022 on its website. The information provided here not intended to substitute legal advice – which should always be sought, when possible, for in-depth due diligence.

The **EU SME Centre** (www.eusmecentre.org.cn) has information on some companies that have been involved in previous scams with EU SMEs. National representations in China (embassy or chamber of commerce) might have similar information. Contact us for more details.

The **EU SME Centre** is a project funded by the European Union to provide assistance to EU SMEs doing business in/with China. The EU SME Centre can assist EU SMEs to conduct, free-of-charge, basic background checks on Chinese companies, trying to identify red flags for scams and other credit-related risks. At the same time, on the EU SME Centre's website, there is a large number of resources to guide EU SMEs to conduct preliminary due diligence on Chinese partners, to draft sales contracts and how to prevent or deal with dispute resolution in China.

25TH APR.
ONLINE

President discusses EU-China Summit with Head of Cabinet of Executive VP Dombrovskis

On 25th April, Jörg Wuttke, president of the European Chamber met with Michael Hager, head of Cabinet of European Commission Executive Vice President (VP) Valdis Dombrovskis, on the outcomes of the European Union (EU)-China Summit, as well as preparation work for the upcoming EU-China High-level Economic Dialogue. The discussion also covered other topics such as combatting climate change and resolving supply chain bottlenecks.

19TH MAY
BEIJING

President attends CCPIT 70th anniversary symposium with Premier Li Keqiang

President Wuttke, along with other representatives of foreign business in China, joined Chinese Premier Li Keqiang to mark the 70th anniversary of the founding of the China Council for the Promotion of International Trade (CCPIT).
Photo: European Chamber

On 19th May, President Wuttke, along with other representatives of foreign business in China, joined Chinese Premier Li Keqiang to mark the 70th anniversary of the founding of the China Council for the Promotion of International Trade (CCPIT). In his address, President Wuttke advocated for faster and deeper market reform. He also noted that the climate change challenge is an opportunity for long-term bilateral collaboration to help China frontload the technologies required to meet its 2060 carbon neutrality goal. President Wuttke highlighted for Premier Li some suggestions from the Chamber's report on carbon neutrality, as well as the recent flash survey on the impacts of zero-COVID and the war in Ukraine on European businesses in China. President Wuttke also presented Premier Li with the Chamber's recommendations on a possible exit strategy from challenges posed by China's stringent COVID-19 restrictions.

6TH JUN.
ONLINE

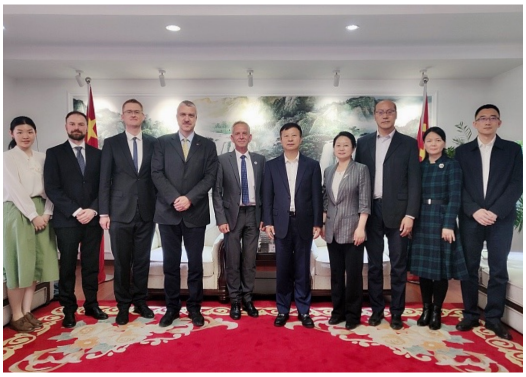
Shanghai Chapter discusses work resumption, low business confidence with vice mayor

European Chamber VP and Shanghai Chapter chair, Bettina Schoen–Behanzin, led an Advisory Council delegation in a virtual roundtable meeting with Mr Zong Ming, vice mayor of Shanghai.
Photo: European Chamber

On 6th June, Bettina Schoen-Behanzin, European Chamber VP and Shanghai Chapter chair, led an Advisory Council delegation in a virtual roundtable meeting with Mr Zong Ming, vice mayor of Shanghai. VP Schoen-Behanzin urged the local authorities to resolve work resumption issues to boost confidence among foreign companies. Vice Mayor Zong highlighted the strong economic/trade relations between Shanghai and Europe, and thanked the European Chamber for its support. He added that he expected members to take a more active role in the city's economic recovery. During the meeting, the Chamber was informed that Shanghai will no longer require PU letters for foreigners returning for work and their dependents, an initiative from central government to encourage the resumption of work and production in the city.

9TH JUN.
SHENYANG

Shenyang vice chair raises local concerns to Liaoning Provincial Commerce Department



The European Chamber, the German Consulate General in Shenyang and the German Chamber of Commerce paid a visit to the Liaoning Provincial Department of Commerce.
Photo: European Chamber

On 9th June, the European Chamber together with the German Consulate General in Shenyang and the German Chamber of Commerce paid a visit to the Liaoning Provincial Department of Commerce, and engaged in an in-depth exchange with Director Song Yanlin and Deputy Director Pan Shuang. Chapter Vice Chair Harald Kumpfert raised long-term concerns of member companies, such as access to green energy supply and energy reliability, but also challenges faced as a direct result of stringent COVID-19 restrictions, such as lengthy quarantine periods.

10TH JUN.
TIANJIN

Tianjin recieves Foreign Affairs Office delegation to discuss travel difficulties

Tianjin Chapter welcomed a delegation from the Tianjin FAO to the Chamber's local office.
Photo: European Chamber

On 10th June, Tianjin Chapter Chair Dr Christoph Schrempp welcomed a delegation from the Tianjin Foreign Affairs Office (FAO), to the Chamber's local office. The delegation was led by DG Luan Jianzhang and DDG Zhao Jianling. Several member companies also participated in the meeting. The discussion primarily focussed on difficulties foreign nationals face when travelling to China, and its impact on Tianjin. DG Luan said he appreciated the sharing on the impact of short-term business travel on operations and new investments, especially as it seemed the impact has been much bigger than anticipated.

23RD JUN.
CHONGQING

Southwest China Chapter presents local position paper to Chongqing FAO

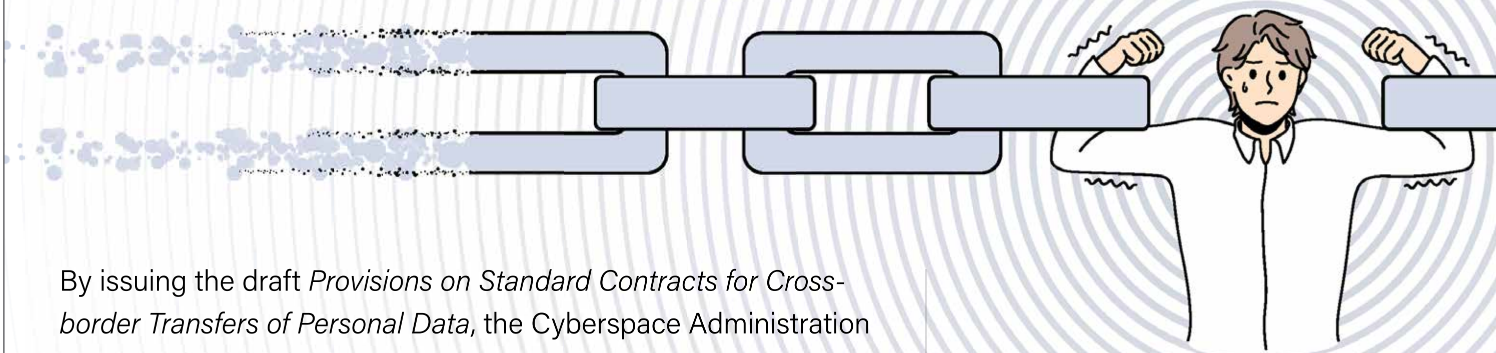
Chamber VP and Southwest China Chapter Chair Bagnasco led a delegation to visit the Chongqing FAO.
Photo: European Chamber

On 23rd June, European Chamber VP and Southwest China Chapter Chair Massimo Bagnasco led a delegation to visit the Chongqing FAO, where they met with Director General (DG) Wang Wen and Deputy Director General (DDG) Li Mingquan. VP Bagnasco presented the *Southwest China Position Paper 2021/2022* and introduced the key recommendations for Chongqing. DG Wang said the leaders of the Chongqing FAO appreciated the report. DDG Li presented socioeconomic information on Chongqing alongside future development targets, followed by a question-and-answer session for delegation members.

The Missing Piece

Closing the gap on cross-border transfer of personal data

by **Ling Jin, Sunny Su** and **Holly White**



By issuing the draft *Provisions on Standard Contracts for Cross-border Transfers of Personal Data*, the Cyberspace Administration of China (CAC) has given visibility over the missing piece of the Personal Information Protection Law regulatory framework. It provides certainty on the process for cross-border transfer of personal data in lower quantities, where the data processors' operations do not have a significant impact on the public interest. However, the full picture for many businesses is still complex, as they may be transferring larger quantities as well as other types of business data. When deciding on the approach to take, all relevant laws and regulations must be reviewed in parallel to chart a path across this complex landscape.

This article by **Ling Jin** and **Sunny Su** of **Lusheng Digital & Commercial** and **Holly White** of **Rouse Digital & Commercial Service** sets out the impact of the draft provisions and how businesses need to respond.

What is contained in the Draft?

The Personal Information Protection Law (PILP) provides three paths for transferring personal data outside of China: (1) passing a government security assessment undertaken by the CAC; (2) getting certified for personal data protection from a professional organisation; and (3) entering into a standard contract, developed by the CAC, with the outbound recipient.

The draft *Provisions on Standard Contracts for Cross-border Transfers of Personal Data (Draft)* specifies details for the third path: entering into a standard contract. This includes a template copy of the contract, with the standard contractual clauses (SCCs).

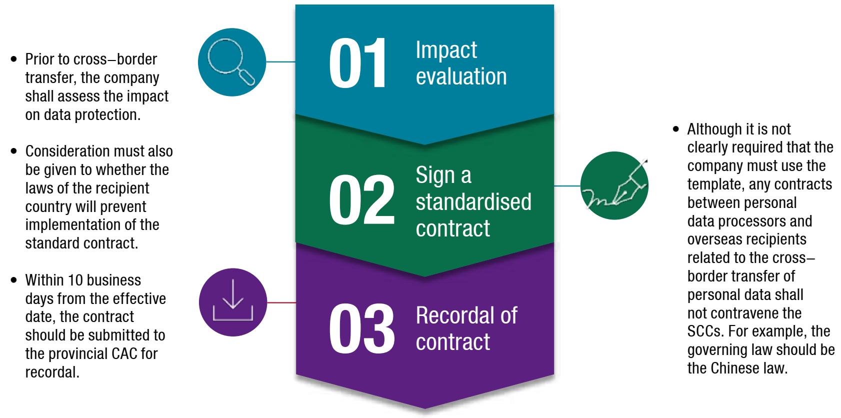
When can the standard contract route be used?

According to the *Draft*, any personal data processor meeting ALL of the following circumstances may provide personal data abroad by concluding a standard contract:

1. where it is not a critical information infrastructure operator (CIIO) whose operations have significant impact on the public's interests (for example, finance, transport or medical industries);
2. where it processes not more than one million persons' personal data;
3. where it has provided the personal data of not more than 100,000 persons accumulatively overseas since 1st January of the previous year; and
4. where it has provided sensitive personal data of not more than 10,000 persons accumulatively overseas since 1st January of the previous year.

If a data processor does not meet any of the above thresholds, the cross-border transfer of personal data is highly likely to be subject to the first route, a government security assessment. For the second path, the boundaries of its application are not clear. Further legislation and interpretation from the authorities is required.

If the threshold is met, what is the process to utilise the contract route?



How does the Draft apply to employee personal data?

The SCCs reaffirm that where relevant laws and regulations do not require the individual's separate consent, it is also not necessary to seek separate consent when signing the standard contract. That means, for employee personal data necessarily collected for the purpose of human resources management, the individual consent of employees to transfer these data overseas is not needed. To avoid potential dispute, the following actions should be taken: the employee privacy policy should detail the cross-border transfer; employees should be informed; and a standard contract implemented.

GET SMART

What is the impact on international business?

Many businesses have been waiting for this clarification relating to cross-border transfer of personal data. It is likely that the *Draft* will be implemented in its current, or close to current, format, which means businesses can start prepaaring now.

However, for larger, more complex businesses, the overseas transfer of data is likely to also include other types of business data. The handling of those data sets is subject to other data laws and regulations, some of which are still emerging. For example, on 7th July 2022, the CAC released the *Data Export Security Assessment Measure* under the Cybersecurity Law, Data Security Law and PIPL, which take effect from 1st September 2022.

Businesses must take into consideration the full spectrum of regulations when defining their overall cross-border data strategies. It is likely there will still be some grey areas that need assessing.

What actions should be taken now to prepare for the contract route?

For Chinese employee data, businesses need to:

- Update their employee privacy policy with details of who is hosting the data, where it is stored and why it needs to be transferred.
- Notify employees with details of the cross-border transfer. Although employees are informed via notices, no individual consent is required.

For the standardised contract:

- Start to negotiate the standardised contract with relevant parties, including the relevant entities in the case of intracompany transfer.
- Ensure parties signing the agreement understand the content and how to follow the requirements.
- Understand how to make it compatible with other international regulations such as the European Union's General Data Protection Regulation.

Conclusion

Although the release of these draft provisions is a welcome step forward, the regulatory picture for cross-border transfer of data overall is still complex. Businesses need to keep the three data laws (Cybersecurity Law, Data Security Law and the PIPL) and their regulatory frameworks in mind as they formulate their overall approach to data transfer outside of China. Although there may be some uncertainties, reviewing the landscape holistically will be critical to successful implementation.

About Rouse and Lusheng Law Firm

Rouse is a leading intellectual property services business, and, together with its strategic partner Lusheng Law Firm, offer a dedicated digital & commercial service. The service supports the world's IP-rich businesses to successfully exploit cutting-edge digital technologies, either their own or for the purposes of marketing and commerce. By bringing together IP value and commercial objectives, IP and regulatory risks are understood and mitigated, enabling businesses to reap the rewards without exposing their brand or creations.

EVER CHOPPIER WATERS

European Business in China Business Confidence Survey 2022

Throughout 2021, the story of European business in China was one of high risks and high rewards. Revenue and profitability were positive but doing business also became more difficult. As the rest of the world returns to a pre-pandemic level of normality, the role China played over the last two years in bolstering European companies' global revenues looks set to be challenged.

In the *Business Confidence Survey (BCS) 2021*,[1] the Chamber predicted that, after the trials of 2020, more challenges lay in wait for European companies in China. The findings of the BCS 2022 bore this out: China's COVID-19 containment strategy throughout 2021 manifested itself in sporadic and highly disruptive measures. The business environment continued to become further politicised, and traditional complaints—such as market access restrictions, an unlevel playing field and regulatory inefficiencies—were still present.

European companies, nonetheless, continued to identify new ways to contribute to China's growth story while advocating for deeper reforms.

European businesses found themselves in ever-choppier waters, however, after Russia's invasion of Ukraine on 24th February resulted in geopolitical fallout. Conditions rapidly deteriorated in March when mass lockdowns paralysed several parts of China as a result of an even more stringent approach to contain Omicron outbreaks.

A flash survey[2] the European Chamber and Roland Berger conducted from 21st – 27th April showed that both events have had a significant destabilising effect on European companies' China operations. Three quarters of respondents report that tightening COVID-19 restrictions have negatively impacted their operations, and 92 per cent of companies were affected by measures hindering supply chains.

Subsequently, 60 per cent of respondents to the flash survey decreased their revenue projections for the year.

Although European companies remain overall committed to the China market, the flash survey found that 23 per cent of respondents are now considering shifting current or planned investments out of China, citing stringent COVID-19 restrictions. This is more than double the number recorded in the BCS 2022 (11 per cent), and the highest proportion in a decade. Furthermore, 77 per cent report that the measures have decreased China's attractiveness as a future investment destination.

The war in Ukraine has also hit investor confidence, with 7 per cent considering moving current or planned investments out of China and a third finding the market a less attractive destination for future investment as a result.

On the other hand, the BCS 2022—conducted at the start of 2022—showed that two thirds of European companies reported revenue increases in 2021,

[1] *European Business in China Business Confidence Survey 2021*, European Union Chamber of Commerce in China, 8th June 2021, viewed 27th July 2022, <https://www.europeanchamber.com.cn/en/publications–archive/917/Business_Confidence_Survey_2021>

[2] *Flash Survey: COVID–19 and the War in Ukraine: The Impact on European Business in China*, European Union Chamber of Commerce in China, 5th May 2022, viewed 27th July 2022, <https://www.europeanchamber.com.cn/en/publications–archive/973/Flash_Survey_COVID_19_and_the_War_in_Ukraine_The_Impact_on_European_Business_in_China>

up 24 percentage points (pp) year-on-year (y-o-y), as long COVID-induced shutdowns were largely avoided. Earnings before interest and tax also showed improvement, with four out of five companies reporting positive results.

However, while 2021 was overall a good year for bottom lines, the challenges of doing business in China grew, with 60 per cent of respondents reporting it became more difficult than in 2020 – an increase of 13pp y-o-y.

While lockdowns were less of an issue in 2021, the ongoing impact of China's COVID-19 containment measures was highlighted as the top issue faced by businesses for the second year running. Business travel was brought to a halt, supply chains battered, and some firms prevented from fulfilling orders due to supply shortages and other disruptions.

Facing a wealth of ever-changing visa and work permit procedures, and extreme limitations on travel in and out of China, 58 per cent of companies (+9pp y-o-y) reported struggling to attract international and domestic talent, and 42 per cent (+9pp y-o-y) reported difficulties retaining the talent they have. An employee exodus is underway as the uncertainty of living and working in China weighs heavily on career choices.

Geopolitical tensions continued to increase, reflected by the 50 per cent of respondents (+9pp y-o-y) that reported the business environment became more politicised in 2021, with political pressure coming mainly from Chinese and international media, and the Chinese Government.

Although some incremental progress was seen, long-standing barriers largely remain:

- There was just a 1pp y-o-y improvement in the number of companies that saw increased market access, as firms across the board continue to report market access restrictions.
- 42 per cent of firms report regulatory barriers—such as ambiguous rules and regulations, unpredictable legislative environment and discretionary enforcement practices—leading to missed business opportunities.
- 36 per cent of respondents report experiencing unfavourable treatment compared to Chinese companies, only a 3pp improvement y-o-y, as in strategic sectors Chinese entities are prioritised.
- 14 per cent of respondents were compelled to transfer technology, more than two years after the implementation of the Foreign Investment Law, which should prohibit this practice.

The rewards of staying the course, however, are plain to see. In addition to its market of 1.4 billion consumers with a growing and increasingly demanding middle class, China offers some of the world`s best manufacturing clusters and a vibrant innovation ecosystem. European companies, therefore, view it as imperative to be part of China's growth story.

Prior to both the Omicron outbreak in China, and the geopolitical spillover from the war in Ukraine, eight times as many firms reported plans to onshore as those planning to offshore. Furthermore, 37 per cent of firms increased their shares in joint ventures, and—pending greater market access—more companies were considering increasing their current investments.

There remains scope for much more too: 40 per cent of respondents view China's research and development environment as more favourable than the global average, and trade in services also offers enormous untapped potential. European businesses are strong prospective contributors to China's carbon neutrality drive too, with more than half of those operating in China aiming to achieve carbon neutrality by 2030.

Realising these potentials, however, will require increased collaboration – a distant prospect as challenges hindering the free flow of data and people in and out of China proliferate. Many companies find themselves having to develop two separate sets of supply chains, information technology systems and data storage infrastructure – one for China and one for the rest of the world.

Scan the QR code to download the *Business Confidence Survey 2022*

CHINA OUTLOOK AND DIFFICULT CHOICES

An active investor's perspective

by **Gerard van Swieten**, **Nick Laursen** and **Max Bagger**

China has always been a difficult market to access and navigate, but with enough time and effort it was eventually possible to overcome the main challenges. However, over the last five years, and particularly in 2022, the situation has changed. For many, the risks now outweigh the opportunities. Many are leaving, and those remaining are also rethinking their future: do we stick it out, or is it time to go? **Gerard van Swieten**, **Nick Laursen** and **Max Bagger** of **Laursen van Swieten** look at this question from an investor's perspective.

How to value staying in China?

Investors generally calculate the value of an investment based on:

- Cost: This is the cost of investing or staying (such as living or operational costs).
- Projected return: These are expected future cash inflows or saving rates.
- Opportunity cost: What returns do investments / jobs with similar levels of risk offer?

China has seen a long period of (relatively) low costs and high growth. This made most investment valuations look good – perhaps too good. It is therefore essential to revisit investment valuations frequently and reassess the risk and projections.

Let's revisit the outlook for the next five years as of July 2022.

Risk factors of investing/staying

The current systemic risks faced when having a business or investment in China are:

1. **Increased uncertainty fuelled by geopolitical tensions.** Despite Beijing staying predominately neutral on the Russian invasion of Ukraine, China's relations with the European Union and United States (US) have worsened and are unlikely to improve soon. The situation has been aggravated by increasing concerns about Chinese military action regarding Taiwan. For business, the increasing frictions in relations between China and 'the West' mean more security measures, more protectionism towards key technologies and industries, more trade measures against China, more Chinese focus on self-reliance and an increasing decoupling of supply chains on both sides.

2. **More workforce challenges.** This is a complex matter. China

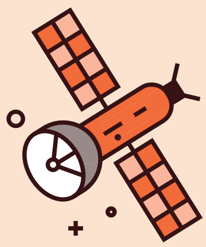
has a large population but a declining workforce. Wages are rising, but are growing faster than productivity. The birthrate is low, and people retire at an average age of 54.[1] There are shortages of skilled labour and simultaneously relatively high urban youth unemployment (18.2 per cent),[2] as college graduates want different jobs to what is on offer. These factors combined make it challenging for a business to get the human resources they need at an acceptable price.

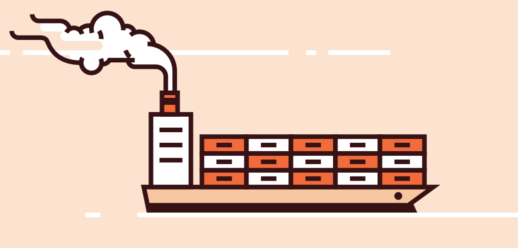
3. **More infrastructure, real estate, state-owned enterprises (SOEs) and government activity.** The real estate sector, in broad terms, makes up about 30 per cent of China's gross domestic product (GDP), of which infrastructure accounts for about seven per cent.[3] This level of infrastructure expenditure is high when compared with the US, which is roughly 2.4 per cent.[4] SOEs make up around 30 per cent of China's GDP, far exceeding the share in developed countries.[5] This trend continues as China takes extensive public measures to support its economy, showcased by its new US dollar (USD) 75 billion infrastructure fund.[6] The problem with so much money locked up in fixed assets and the state sector is that it inevitably leads to low-performing assets and takes funds away from other investments, such as the education system or supporting small and medium-sized enterprise growth.

4. **More default risk and credit tightening.** Many companies in China (Chinese and multinationals alike) must wait a long time for payments upon the sale of products and services. As a result, they often delay payments to suppliers/vendors, who, in turn, do the same thing. Few companies sue their customer unless as a last resort. In addition, access to bank financing for working capital is often difficult to obtain, unless with mortgage security or strong government support. This risk of longer delays and more defaults will likely continue as China is working to restructure, manage and reduce debt reliance of local governments, corporations and households.

Despite these efforts, domestic debt is projected to increase further in 2022.[7] The majority of this debt is state-owned, which many experts believe makes it manageable, but considering that, as of mid-2022, banking assets were measured to be 218 per cent of GDP, managing such amounts will be an arduous task.[8] The Chinese bond market has further seen high outflows of foreign capital earlier this year, which may take some time to return given the Evergrande default on foreign bondholders and current geopolitical tensions. This credit tightening is necessary, but it reduces economic growth.

5. **More government direction and control in the economy.** Government control and direction of the economy have always been significant in China, but seems to have expanded further over the last 10 years. The 'tech crackdown' of 2021 reminded everyone that every sector is





[1] *At 54, China's average retirement age is too low, The Economist,* 24th June 2021, viewed 19th July 2022, <https://www.economist.com/china/2021/06/22/chinas–average–retirement–age–is–ridiculously–low–54>

[2] Lemaître, Frédéric, *China is no longer attractive to foreign companies, Le Monde,* 21st May 2022, viewed 19th July 2022, <https://www.lemonde.fr/en/international/article/2022/05/21/china–is–no–longer–attractive–to–foreign–companies_5984212_4.html>

[3] Pinheiro de Matos, Luís,. *China's real estate sector: size does matter*, CaixaBank Research, 17th January 2022, viewed 19th July 2022, <https://www.caixabankresearch.com/en/sector–analysis/real–estate/chinas–real–estate–sector–size–does–matter>

[4] *How Does US Infrastructure Spending Compare Internationally?* BRINK, 27th June 2021, viewed 19th July 2021, <https://www.brinknews.com/quick–take/how–does–us–infrastructure–compare–internationally/>

[5] Chan, Bernard, *China's much–maligned SOEs should be seen more as social enterprises, South China Morning Post,* 30th July 2021, viewed 19th July 2022, <https://www.scmp.com/comment/opinion/article/3143004/chinas–much–maligned–soes–should–be–seen–more–social–enterprises>

[6] Hou, Xiangming, and Yao, Kevin, *Exclusive: China plans $75 billion infrastructure fund to revive economy, Reuters,* 5th July 2022, viewed 19th July 2022, <https://www.reuters.com/world/china/exclusive–china–set–up–infrastructure–fund–worth–75–bln–revive–economy–sources–2022–07–05/>

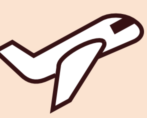
[7] *China's Debt to Climb to Record in 2022, Government Adviser Says, Bloomberg,* 6th July 2022, viewed 19th July 2022, <https://www.bloomberg.com/news/articles/2022–07–06/china–s–debt–to–climb–to–record–in–2022–government–adviser–says#xj4y7vzkg

[8] *China: Bank assets to GDP,* Global Economy, viewed 19th July 2022, <https://www.theglobaleconomy.com/China/bank_assets_GDP/>

[9] *China Opens Exchange Bond Markets to Overseas Investors, Bloomberg,* 27th May 2022, viewed 19th July 2022, <https://www.bloomberg.com/news/articles/2022–05–27/china–opens–exchange–bond–markets–to–overseas–investors>

under the control of the government. In 2022, the COVID lockdowns further showed the extent to which China will enforce national objectives. At the same time, there is more state-guided development and funding of high-technology research and development (R&D). This highly active role of the state in the economy means strong support for R&D in specific fields, but also carries the risk of over-reliance on government support, technological blank spaces, and a lack of technological exchange with other countries. The Chinese leadership has been pragmatic and able to adjust where needed, but there is a risk that this flexibility may be decreasing.

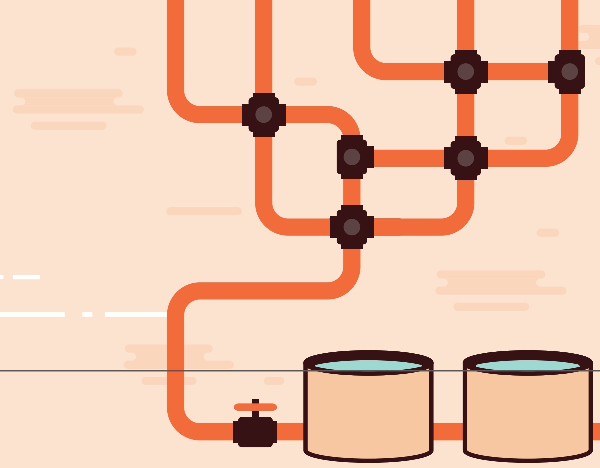
In summary, these risks paint a challenging picture, but great challenges often come with great opportunities. After all, the Chinese word ‘crisis’ (危机) is made up of the characters for ‘danger’ (危险) and ‘opportunity’ (机会).



Earnings potential of investing/staying

Aside from continuing a profitable operation in China (if that is the case), the benefits of staying include the following:

- China will maintain growth and development against all odds, even if the rest of the world slides into recession, as it did in 2008. The Chinese Government and people have a unique ability to keep moving forward despite significant challenges. As mentioned, many of the current problems are not new and have been successfully managed in earlier years. One way or another, COVID-19 will be dealt with as well.
- National, regional and municipal governments will offer unprecedented incentives to those companies, technologies and individuals wanted for local development plans. This support will continue and likely expand as more companies and people leave.
- Access to certain sectors will increase for the foreign companies still willing to invest and expand in China. This access will come with widespread government support, especially for large-scale projects.
- The government will instruct Chinese energy companies to keep energy prices within a manageable bandwidth (as they have been doing) to avoid inflation and stimulate production and exports.
- As other competitors leave or deprioritise China, more market access and share become available to those who stay and those who decide to enter the market.
- In time, employee wages, interests and expectations will adjust to the market.



Trust and confidence

The above factors are important, but not exhaustive or determining. Case-specific factors (such as company, management, industry, technology) generally play a greater role. The most critical factors are, however, trust and confidence. If this is missing, there is no basis for any investment. Concerning ‘staying in China’ investment, this is perhaps the most significant change in recent years. The lockdowns and geopolitical developments have deeply affected the personal connection that many foreign nationals/investors/entrepreneurs had with China. Trust can be restored, but it will require a clear positive outreach from China. Whether that happens remains to be seen. Eb

Laursen van Swieten (LvS) is an expansion-focussed active investor. LvS helps technology companies achieve and maintain global leadership through:

- Active support for cross-border expansion, growth, and turnaround;
- Investment coupled with active management and access; and
- Extensive experience and access in Asia and Europe.

Our team moves companies through challenges that require a thorough understanding of local circumstances and global markets. We back the next generation of global champions with hands-on support, target execution, domain expertise and investment.

A New Anti-trust Era

China's amendments to its Anti-monopoly Law

by **Shane Farrelly** and **Carlo D'Andrea**

On 24th June 2022, China's amended Anti-monopoly Law (AML) was adopted (after more than two years in the making), and took effect on 1st August 2022. This is a notable landmark for the legal sector, as it is the first amendment to the AML since the original law was introduced 14 years ago as China's first comprehensive competition law. Within this new anti-trust era, **Shane Farrelly** and **Carlo D'Andrea** of **D'Andrea & Partners Legal Counsel** examine how the amended law expands the legal framework for authorities to pursue anti-competitive behaviour by companies and administrative agencies, while also internationalising and modernising the approach to anti-trust law in China.

Modernisation of anti-competition in China's digital economy

With the digital economy certain to be a significant driving force in China's future development, the new AML pays particular attention to preventing anti-competitive practices by digital platforms. The original AML was in force for well over a decade, during which time certain gaps developed as digital platforms evolved and technology giants emerged within the Chinese marketplace.

In order to protect competition and consumers in relation to data, algorithms, technology and platforms, it has been necessary to create distinct rules to avoid and prevent abusive conduct by dominant companies. This has been highlighted in recent years by China's anti-monopoly authority investigations into the practices of several large domestic platforms, such as Alibaba, Tencent and Meituan.

Instead of completely overhauling the law in this area, the AML adds to the pre-existing standards for determining 'dominance' or an "abuse of a dominant market position", with provisions specifically targeting conduct undertaken by digital economy businesses. For example, the AML features general principles prohibiting companies—regardless of whether they are deemed 'dominant'—from using data, algorithms, technology, capital advantages or platform rules to engage in anti-competitive conduct.

The law also specifies that a 'dominant' firm can be found to have abused its strong market position if it uses data, algorithms, technology or platform rules in a way that harms competition. This is an elegant means of updating the AML to account for modern practices of all companies, but most notably those within the digital sphere.

Curbs on anti-competitive behaviour by administrative bodies

The AML contains provisions that are not only related to companies but government and administrative bodies as well. A 'fair competition review' system shall govern rule-making conduct by government agencies, such as ministries, departments and agencies at all levels of government, as well as organisations tasked with the administration of public affairs. Such bodies are now required to conduct a competition review before introducing rules, regulations, policies or other administrative measures to ensure they do not impose unwarranted restrictions on competition.

In practice, prior to promulgation, rules, regulations and policies are subject to antitrust scrutiny. First, the competitive effects of a proposal are assessed; subsequently, any justifications for restrictions are identified, and less restrictive alternatives that would achieve the intended public policy goal recommended, in order to avoid or reduce adverse impacts on competition. A similar scheme was established by the State Council in 2016 to facilitate establishing a competitive market system, with detailed implementation rules adopted in 2017, which are now formally codified in the AML.

Administrative bodies will also be subject to increased oversight from anti-monopoly enforcement agencies to prevent any potential abuse of power, such as hindering companies from entering a market or imposing unequal treatment, or otherwise limiting competition. This supervision of administrative practices is envisioned to tackle aspects of local protectionism, and ensure that companies from other regions can enter or expand without prejudice, potentially removing any favouritism afforded to local companies.

Adherence to international practice

Drawing on international practices (such as in the European Union), the AML introduces a 'stop-the-clock' mechanism that enables the State Administration for Market Regulation (SAMR) to suspend a review of a merger in certain specific situations, such as notifying parties failing to provide requested information or the emergence of new facts/ consequences which materially impact the merger review.

Although similar legislation already exists in other jurisdictions, companies should retain a level of caution on how this will be implemented by the SAMR when planning their transaction timelines. Under the amended AML, there is less need for companies with complex transactions to re-file if the review period extends beyond the time limit, but the 'stop-the-clock' mechanism may result in a degree of uncertainty for less complex cases.

Conclusion

The amended AML, among other notable fresh aspects for anti-competitive behaviour in China (including increased liabilities for violations of the law and expanding the purview of China's antitrust authorities), indicates that scrutiny of the activity of large digital platform companies is here to stay, with the prohibitions on the use of technology to engage in monopolistic behaviour a clear signal to big tech.

In addition, further modernisation of anti-trust best practices and an increased level of oversight over all stakeholders in the business environment acts as an additional positive development in the already extensive changes brought about by the new amendment.

It is, however, important to note that the AML functions as a foundation for a healthy competition regime, with other regulations recently released by the SAMR providing more detailed implementation provisions, which will greatly assist in the enforcement of China's anti-monopoly legislative framework in practice once all are in effect.

D'Andrea & Partners Legal Counsel (DP Group) was founded in 2013 by Carlo Diego D'Andrea and Matteo Hanbin Zhi, both of whom have extensive backgrounds in Chinese and EU law. Our firm's services encompass a full range of foreign/overseas direct investment-related matters, with a special focus on business relationships between Europe and Asia, inclusive of topics such as cross-border mergers and acquisitions; scouting, relocation and negotiation with local and government authorities; dispute resolution and corporate governance; IP protection, litigation and arbitration; and employment and labour law, among others. DP Group currently has four service entities: D'Andrea & Partners Legal Counsel; PHC Tax & Accounting Advisory; EASTANT Communication and Events; and Chance & Better Education Consulting. DP Group has branches around the world, including in several major developing economies.

#BECAUSE OFUS

Advocacy Success Following Challenges Arising From COVID-19

European Chamber
中国欧盟商会

As the independent voice of European business in China since 2000, the European Chamber actively participates in China's legislative process and our advocacy activities are widely recognised by the Chinese authorities.

We launched our #becauseofus campaign in 2019 to show our gratitude for the joint advocacy efforts of all stakeholders: governments, think tanks, member companies and our own working group and desk managers. In *EURObiz* in 2022, we will present four examples of our successful advocacy work.

In this edition, we look at **how difficulties in complying with new regulations were conveyed to the authorities and resolved.**

A sudden wave of Omicron outbreaks in March 2022 seriously affected cosmetics companies' progress in adapting to new regulations on registration and notification, making it impossible for many to complete the necessary paperwork by the official 1st May 2022 deadline. Considering the huge impact of the COVID-related lockdowns on normal business operations, the European Chamber Cosmetics Working Group actively communicated industry feedback and submitted proposals to the National Medical Products Administration (NMPA). As a result, on 27th April, the Department of General Affairs of the NMPA issued a response letter, allowing for 'vacancy management' to be adopted. Local MPAs, including Shanghai's and Beijing's, released announcements with more details on implementation. This advocacy success ensured that the cosmetics industry ccould implement the new regulations smoothly and avoid compliance risks.

Background

During March and April 2022, as cosmetics enterprises were trying to comply with new regulations on registration and notification that required supplementary documentation for previously registered and notified cosmetics, and the submission of product efficacy claim basis summaries, by 1st May 2022, a sudden wave of Omicron outbreaks seriously affected progress in several aspects:

- Due to strict COVID containment measures in Beijing and Shanghai, most member companies' employees were obliged to work from home, which led to great challenges in preparing the required stamped or authorised official documents as well as hindering team collaboration on the official registration and notification system.

- Submissions of essential materials for registration and notification were impeded or delayed due to logistical and product customs clearance disruptions. For example, the product samples required for the submission of additional information for special cosmetics often did not arrive—either on time or, in some cases, at all—which led to an inability to provide pictures of real product packaging and other related sample material.
- Product inspection and efficacy claims tests, as well as related notification and review, that needed to be submitted as a result of the new regulations were delayed because the responsible laboratory experts and officials were assigned to temporary COVID containment work.

Cosmetics Working Group's advocacy efforts

To help members address these challenges and implement the new requirements smoothly, the European Chamber's Cosmetics Working Group actively collected concerns from members in order to send industry feedback and submit proposals to the NMPA, and participated in a meeting to discuss these issues.

On 23rd March, the Cosmetics Working Group provided feedback on several urgent issues to the NMPA, including suggestions related to the raw material safety information submission, and issues encountered when completing the supplementary documentation for previously registered and notified cosmetics.

On 22nd April, the Cosmetics Working Group chairs attended a meeting with the Cosmetics Department of the NMPA, along with representatives of local MPAs and associations, to discuss issues the industry is facing, in particular those arising from the COVID situation.

On 25th April, the Cosmetics Working Group submitted an advocacy letter to the NMPA, suggesting the acceptance of electronic documents for product registration and postponing the deadline to submit additional information for products.

Results

In response to the industry concerns, on 27th April, the Department of General Affairs of the NMPA issued a *Response Letter to the Request about Issues regarding Cosmetic Registration and Notification Management during COVID Prevention and Control (Shanghai Municipal Medical Product Administration Cosmetics Division [2022] No.107)*, allowing "vacancy management" to be adopted. This means copies or electronic versions of relevant documentation can be submitted first, and the original materials submitted when circumstances allow. The measure also extended the deadline—by eight months—for submissions of supplementary information and efficacy claims summaries.

Accordingly, the Shanghai Municipal MPA issued an *Announcement on Cosmetics Registration/Notification and Production-related Matters during the City's Pandemic Prevention and Control*, which provided more details on implementation of this initiative.

This advocacy success ensures that the cosmetics industry can implement the new regulations smoothly and avoid compliance risks. The Cosmetics Working Group appreciates the quick response from the NMPA on the industry's concerns, showcasing the results of the NMPA's *Fangguanfu* Reform efforts (streamlining the government, delegating power and improving government services).

Media Watch

Southwest China Position Paper launch makes national news

On 20th April, the *Southwest China Position Paper 2021/2022* was launched in Chengdu, and on 19th May in Chongqing. The launch mainly attracted attention from domestic, and in particular local, media, including the *South China Morning Post*, *China Daily*, *China News*, *iChongqing* and *That's Chengdu*. Many articles either featured or quoted Massimo Bagnasco, vice president of the European Chamber and chair of the Southwest China Chapter, who highlighted the eagerness of European companies to get involved in the Chengdu-Chongqing Economic Circle, and contribute to the development of the region.


China's EU firms want a say in the policymaking behind Chengdu–Chongqing economic cluster

- EU Chamber of Commerce in China publishes third stand-alone paper focusing on economic development of region in and around Sichuan province
- Local municipal authorities are implored to establish a task force, address labour-supply problems and be more open and transparent

Article by the *South China Morning Post* on the launch of the *Southwest China Position Paper 2021/2022* in Chengdu.
Media: *South China Morning Post*
Date: 21st April 2022

Flash survey reveals impact of zero-COVID on European investor sentiment

On 5th May, the European Chamber released the findings of a flash survey on members' perceptions of China's COVID-19 containment measures and the Russian invasion of Ukraine. In the following week, a remarkable 57 original media mentions were generated, with 11 from top-tier media (*Bloomberg*, *Reuters*, *The New York Times* and *The Wall Street Journal*). Most articles highlighted the weakened investment appetite among foreign companies as a result of stringent COVID-19 restrictions having been imposed across Mainland China.


European businesses warn China over zero-Covid policy

EU Chamber of Commerce calls for new approach as country's services sector activity sinks to lowest level in two years

Article by *Financial Times* on the European Chamber's flash survey on European business sentiments on COVID lockdowns and the war in Ukraine
Media: *Financial Times*
Date: 5th May 2022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Article by *Caixin* on the Chamber's *Carbon Neutrality: The Role of European Business in China's Road to 2060* report
Media: *Caixin*
Date: 25th May 2022

Decarbonisation report emphasises need for urgent actions to realise China's 30/60 Goals

The Chamber launched its report, *Carbon Neutrality: The Role of European Business in China's Road to 2060*, on 25th May. The report attracted much attention, especially in Chinese domestic media, among which *Xinhua*, *China News Network*, *Caixin* and the *South Morning China Post* published articles on the day of the launch. Many articles reiterated the Chamber's message that China's lack of an action plan for reducing its dependency on fossil fuels risks delaying its green transition and ultimately hurting its competitiveness.

President Wuttke speaking live to *CCTV* at the CCPIT's 70th anniversary symposium.
Media: *CCTV*
Date: 18th May 2022

President Wuttke speaking live to *CNBC* on the launch of the Chamber's report, *China's Innovation Ecosystem: Right for many, but not for all.*
Media: *CNBC*
Date: 8th June 2022

Foreign business keen to invest in R&D in China, but not all get a warm welcome

The European Chamber, in partnership with the Mercator Institute for China Studies (MERICS), launched on 8th June a study on the research and development (R&D) environment in China, *China's Innovation Ecosystem: Right for many, but not for all*. Approximately 20 journalists from both international and domestic media joined the launch event, while an additional eight reporters joined an embargoed roundtable session on 31st May. There was a total of nine original mentions on the publication's launch date, including live interviews held between President Wuttke and *CNBC* and *DW*. A total of 18 original media mentions were generated about the report.

President Wuttke's call for Premier Li Keqiang to push vaccination echoed worldwide

On 18th to 19th May, President Wuttke attended the 70th anniversary event marking the founding of the China Council for Promotion of International Trade (CCPIT), where he participated in an exclusive business dialogue with Premier Li Keqiang. On 18th May, President Wuttke was interviewed live on *CCTV* at the event. While domestic media focussed on the commitment of European business sources to the China market, international media discussed the candid nature of Premier Li's address and President Wuttke's message to him that failing to vaccinate the elderly "can hold the economy hostage".

Role of China affiliates reduced as rest of world adjusts to COVID

The European Chamber launched the *European Business in China Business Confidence Survey 2022* on 20th June. A total of 23 journalists joined the official launch event, with an additional 15 reporters joining embargoed media roundtables on 15th and 16th June. An embargoed interview was held with *AFP*. On the launch date, Chamber Vice President Bettina Schoen-Behanzin took part in an exclusive live interview with *Bloomberg* and a live interview with *DW*; and several articles were published, most notably by the *Financial Times*, the *South China Morning Post*, *Forbes*, *dpa* and *Handelsblatt*.


Nearly One in Four European Firms Consider Shifting Out of China
- 23% figure is highest proportion in a decade: European chamber
- ASEAN, Europe among most considered alternatives, survey shows

VP Schoen–Behanzin being interviewed live on *Bloomberg* about the results of the *Business Confidence Survey 2022*.
Media: *Bloomberg*
Date: 20th June 2022

Events Gallery

BEIJING, 17TH JUNE 2022

EU-China Green Development Series: Corporate renewable energy procurement in China

- Generally, there are three decarbonisation solutions for companies: 1) power purchase agreements; 2) distributed solar assets; and 3) procurement of green energy certificates.
- Small companies seeking to decarbonise are recommended to turn to their customers or big companies on the same supply chain for advice/help.
- The Chinese renewable energy market has coordination, standardisation and implementation problems, but the central government is trying to boost supply and consumption.

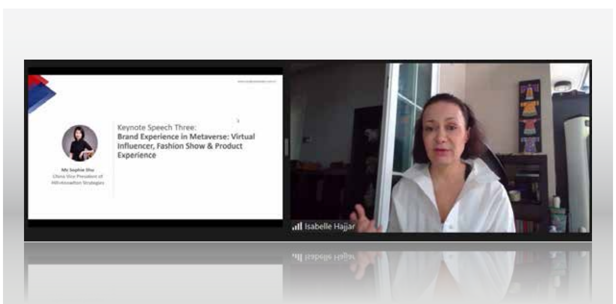
BEIJING, 29TH JUNE 2022

Farewell Talk with Ambassador Chapuis

- Geographical Indications is a key area for cooperation between the European Union and China in these difficult times.
- One unresolved issue for Ambassador Chapuis is the return of European students to China: "China has not understood it is losing an entire generation of Europeans".
- The major issue is the 'circuit breaker' regime – "China is the only country in the world that punishes airlines for something they are not responsible for".

SHANGHAI, 28TH JUNE 2022

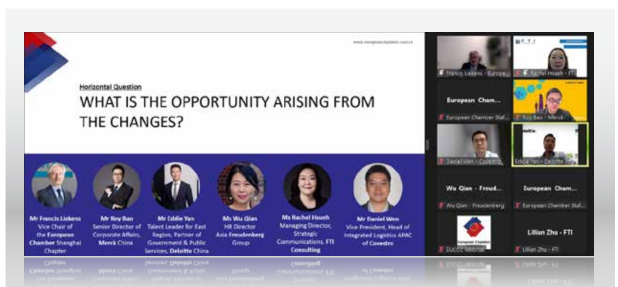
Metaverse Marketing: Hype or Real Game Changer?



- The metaverse is an evolution, not a revolution, and it is one that business leaders should not ignore.
- As digitisation accelerates, more digital assets will appear and the huge application areas of non-fungible tokens will become even more attractive in the digital economy.
- Compared to international platforms, Chinese platforms have fewer functions and a smaller number of active users, but an enormous potential user base.

SHANGHAI, 21ST JULY 2022

Navigate the 'New Normal' – Transformation and Opportunities



- Since COVID, companies are paying more attention to a people-orientated business model, unleashing the potential of employees, and eyeing their enthusiasm and talent, rather than job skills only.
- According to the latest *FTI Asia Resilience Barometer Report*, about 90 per cent of chief executives think they need to consider restructuring the business model.
- Local authorities and officials are crucial in policy execution as their actions influence how multinationals should operate in certain locations, so it is important to build a relation of trust with them.

TIANJIN, 18TH JUNE 2022

Tianjin Football Game and Spring Family Day

- The event had 12 teams competing to be crowned football champions, nearly 40 booths for the Spring Family Day and more than 600 visitors.
- **Winners:** Champion: Airtech; 2nd Place: Tianjin Plus; joint 3rd Place: Schlote and Volkswagen.
- **The football teams:** 01. Schlote; 02. Airtech; 03. Airbus; 04. Leybold; 05. NNIT; 06. Turck; 07. Flender; 08. Volkswagen; 09. Volkswagen; 10. Tianjin Plus; 11. GBS; 12. Wago.

CHENGDU, 13TH JUNE 2022

Visit to the Digital Currency Electronic Payment Laboratory Bank of China

- The Digital Currency Electronic Payment (DCEP) laboratory is jointly built by the People's Bank of China, China Telecom and China Unicom.
- e-CNY can be used for applications such as health and retirement services, intelligent transportation, and multiple payment channels (manual payment, self-service, online and offline), among others
- Chengdu was one of four cities to trial e-CNY, but the currency is now available to residents in 23 cities.

GUANGZHOU, 27TH JUNE 2022

Guangdong CCPIT Symposium with Representatives from Foreign Business Organisations

- More than 80 per cent of member companies of the American Chamber of Commerce are profitable while most of the rest expect to gain profit within two years.
- The European Chamber's *Business Confidence Survey 2022* shows that while 58 per cent of members view the development of the Greater Bay Area positively, doing business in South China is still challenging.
- The Guangdong authorities expect to give full play to the province's role as a bridge between the region and the rest of the world.

SHENZHEN, 23RD JUNE 2022

Shenzhen Commerce Bureau and EU Enterprise Dialogue on Industrial Policies

- EU businesses were recognised as important contributors to local economic and social development.
- The Bureau is strengthening its legal system, policies and services in order to implement the *Regulations on Foreign Investment in the Shenzhen Special Economic Zone.*
- The local authorities aim to create a world-class law-based business environment to help foreign investors come to Shenzhen and Chinese companies go global.

Advisory Council News

Bayer to present new data from the company's growing radiology portfolio

11th July 2022 – Bayer presented new data from the company's growing radiology portfolio at the 2022 European Congress of Radiology (ECR), which took place from 13th – 17th July in Vienna, Austria. The presentations reinforced Bayer's position as a leading company in key radiology areas and its commitment to accelerate innovation for the ultimate benefit of patients and their physicians, including leveraging the vast potential of artificial intelligence.

Photo: media.bayer.de

Over 50 per cent sustainable materials in tyres: Michelin has done it!

22nd June 2022 – The Michelin tyre containing 53 per cent sustainable materials, fitted to the H24 GreenGT hydrogen racing car, took to the track for the first time on the sidelines of the 24 Hours of Le Mans, within the framework of a Road To Le Mans (Michelin Le Mans Cup) trial session. Matthieu Bonardel, director of Michelin Motorsport, said "Driving on a tyre comprising over 50 per cent bio-sourced and recycled materials within the framework of an official competition is a world first. The hydrogen prototype covered several laps on these tyres under racing conditions, on the very demanding Le Mans large circuit. Like Team H24 Racing and its driver, Stéphane Richelmi, we are happy with their performance at the expected level."

Philips' Future Health Index 2022: Healthcare leaders rebooting priorities amid recovery

8th June 2022 – Royal Philips, a global leader in health technology, announced the publication of its Future Health Index (FHI) 2022 report: 'Healthcare hits reset: Priorities shift as healthcare leaders navigate a changed world'. Now in its seventh year, the FHI 2022 report, based on proprietary research from almost 3,000 respondents conducted across 15 countries, explores how healthcare leaders are harnessing the power of data and digital technology as they look to address their key challenges coming out of the pandemic.

Boehringer Ingelheim partners with CEIBS to launch INNOVATEChina2022

28th June 2022 – Boehringer Ingelheim China announced plans to partner with China Europe International

Photo: innovatechina.net

Business School (CEIBS) and launch INNOVATEChina2022, a flagship business innovation competition. This year, with the theme "Globalising Chinese healthcare innovations", INNOVATEChina2022 shines the spotlight on healthcare, one of the most relevant and dynamic industries in China and the world. Event registration officially opened on 1st August and the final competition is scheduled on 16th – 17th December 2022. The top three winning teams will be awarded with innovation funds worth United States dollars (USD) 10,000, USD 5,000, and USD 3,000 respectively.

Volkswagen's future mobility solutions materialise with closing of Europcar transaction

5th July 2022 – Volkswagen delivered another important milestone of its new auto strategy with the closing of the Europcar transaction. The group is aiming to secure a significant share of the global market for mobility services, which is expected to grow rapidly in the course of the decade. Together with its consortium partners, Attestor and Pon Holdings, Volkswagen will accelerate Europcar Mobility Group's transformation to become the leader in sustainable mobility through technology and data. The company will continue its existing partnerships while, at the same time, becoming a cornerstone of Volkswagen's future mobility platform.

Photo: volkswagenag.com

Using digital data capture to transform agriculture

Data is already transforming much of the modern world. In agricultural research, new forms of data are becoming available through Digital Data Capture (DDC). DDC promises to alter our ability to produce more nutritious food sustainably and in a way that reduces environmental harm and climate change by helping us understand the entire ecosystem like never before.

Photo: syngenta.com

That is why Syngenta is pioneering the transformation of agriculture with DDC. The technology starts with a drone equipped with high-resolution cameras and multispectral sensors. The drones scan crop fields to create ultra-high-definition images yielding incredible data insights. Digital Data also includes environmental sensors to get a deep understanding of the weather, soil, pests, and disease at our field trial sites, so we can leverage that data for grower's benefit. Our goal is to leave no data in the field and harvest every insight we can.

Tell Us Your Big News

European Chamber members are welcome to add news items on their own activities to our website, and share it with all our other 1,800 members.

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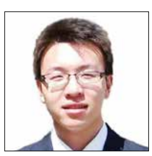

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合作专业慈善基金 助力云南乡村振兴

与企业合作开发公益慈善项目，践行环境、社会及公司治理（ESG）

云南连心社区公益基金会于2020年7月在云南省民政厅登记成立，是全省首家社区公益基金会。连心基金会是云南连心社区照顾服务中心的姐妹机构，在连心17年服务流动人口社区和培育县域社会服务组织的基础上建立起来的基金会，社会服务遍布云南各州市。我们秉承科学公益理念，以务实的精神和行动，助力云南公益慈善事业与社会工作发展。

[连心人的信念]

我们相信：
每个人都有价值、有尊严！
每个人都应该被平等公正的对待！
每个人都是可以改变的，并且自身有促进改变的能力！

云锦绽放˙乡村女性同行项目之“随我-云锦绽放公益项目”由华通证券捐助支持，针对边境傣族村寨在疫情中面对的困难，支持当地社工机构与傣族妇女开展社区和生计服务，提高妇女应对疫情的抗逆力。

傣族女童
传承学习傣陶

组织傣族妇女学习
直播带货

云南公益服务行业支持

“共渡艰辛，共创未来”—连心协同筹资机制创新项目，由博世中国慈善中心（Bosch China Charity Center）捐赠，支持连心基金会专业帮扶云南各县域组织进行筹款产品研发，提升一线服务机构的资源动员能力。之后申请到腾讯基金会资助的“百个计划”，提高对云南县域社会服务组织的行业支持。

云彩行动.困难儿童保护计划

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联系电话：152 8818 9932　联系邮箱：h2hf20@126.com　官方网站：www.hthf.net