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中国欧盟商会

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European Union Chamber of Commerce in China

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The *European Business in China Position Paper 2024/2025* represents the views of the European Union Chamber of Commerce in China. Our working groups, fora and more than 1,700 member companies have together compiled the latest assessments, concerns and recommendations of European businesses operating in China.

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



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



This icon
indicates that the Key Recommendation is related to achieving carbon neutrality

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Message from the President

In my foreword for the *European Business in China Position Paper 2023/2024*, I raised an important question – *what kind of relationship does China want to have with foreign enterprises?* After another year of mixed messages from the Chinese Government, it appears we are no closer to an answer.

There have been positive signals that China intends to address some of the challenges faced by foreign enterprises, most notably via the State Council's 13th August 2023 *Opinions on Further Optimising the Foreign Investment Environment and Increasing the Attraction of Foreign Investment*. However, as explored in this year's *Executive Position Paper*, while tangible improvements have been made in a few areas, limited or no progress has been made on implementing most of the key points contained in the document.

Meanwhile, security-related considerations and achieving a high degree of self-reliance in key segments of the economy continue to be a main focus of the Chinese Government, priorities that frequently conflict with the principles of open and competitive markets. At the same time, domestic demand remains lacklustre,¹ and overcapacity has emerged in several strategic sectors, leading to significant pushback from other economies.² All of this is at odds with the increasingly difficult task of restoring business confidence.

Some of the signals from the 2024 Third Plenum have also given cause for concern. While the subsequent *Decision* noted that the market should play “the decisive role in resource allocation”, it also called for “state capital and [state-owned enterprises] SOEs [to] get stronger, do better, and grow bigger, with their core functions and core competitiveness enhanced.”³ No indication has been given as to how this particular circle will be squared.

China's increasingly challenging business environment, coupled with a deteriorating profitability outlook and more than a decade of limited reform progress,^{4&5} means that simply waiting for answers is becoming harder to justify. For some European headquarters and shareholders, the risks of investing in China are already beginning to outweigh the returns, a trend that will only intensify if key business concerns are left unaddressed. Tangible action is therefore needed to turn the tide.

European firms' perceptions about the Chinese business environment might be changing, yet they still have a shared interest in China's continued success. I am therefore proud to present the *European Business in China Position Paper 2024/2025*. It is the culmination of six months' hard work by the European Chamber's working groups, all of which remain committed to the China market. This commitment is reflected in the 1,043 detailed and constructive recommendations contained in this paper.⁶ They are put forward in good faith as suggestions that we believe will both improve the conditions for foreign and domestic companies in China, and support China's development goals. By

1 Nulimaimaiti, M, *China's economic growth misses the mark amid weak demand, risks 'undershooting' annual target*, SCMP, 15th July 2024, viewed 14th August 2024, <<https://www.scmp.com/economy/economic-indicators/article/3270436/chinas-economy-grew-47-second-quarter-lower-expected-amid-pressures>>

2 Lawder, D, *Yellen pushes for joint G7 response to China's industrial overcapacity*, Reuters, 21st May 2024, viewed 14th August 2024, <<https://www.reuters.com/markets/yellen-says-us-europe-must-respond-jointly-chinas-industrial-overcapacity-2024-05-21/>>

3 *Resolution of CPC Central Committee on further deepening reform comprehensively to advance Chinese modernisation*, Xinhua, 21st July 2024, viewed 14th August 2024, <<https://english.news.cn/20240721/342df6c6e05c4e1a9ce4f6e3b933007b/c.html>>

4 *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 14th August 2024, <https://www.eurochamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>

5 Two key milestones in this regard were the publication of the 2013 Third Plenum Decision and announcements made by China at the 2017 Davos Summit. For a summary of the developments and the action taken since, or lack thereof, see: *European Business in China Position Paper 2015/2016*, European Union Chamber of Commerce in China, 8th September 2015, viewed 14th August 2024, <https://www.eurochamber.com.cn/en/publications-archive/360/Executive_Position_Paper_2015_2016>; *18 Months Since Davos: How China's Vision Became a Reform Imperative*, European Union Chamber of Commerce in China, 10th July 2018, viewed 14th August 2024, <https://www.eurochamber.com.cn/en/publications-archive/570/18_Month_Since_Davos>

6 This number includes 19 recommendations for the European Union and European businesses related to their engagements with China.



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positively responding to these recommendations, China would not only restore business confidence, but also put itself on a path towards sustainable economic growth. The European Chamber looks forward to engaging with Chinese stakeholders at all levels, to discuss this paper in more detail and find ways to collaborate to ensure that China realises its vast potential.

Jens Eskelund
President
European Union Chamber of Commerce in China

ABOUT THE EUROPEAN UNION CHAMBER OF COMMERCE IN CHINA

FOUNDED IN

2000

BY 51 MEMBER
COMPANIES

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

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WORKING
GROUPS AND
FORA

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

MORE THAN

1,700

MEMBER
COMPANIES

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

Mission Statement

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

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

Principles

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

OPERATING IN

9

CITIES



Executive Summary

More action needed, not more action plans

While doing business in China has always required a high degree of flexibility in order to adapt to the rapidly changing environment, companies previously viewed the complex challenges they encountered as the ‘growing pains’ of an emerging market. There was a common perception that the difficulties faced were worth bearing in exchange for access to China’s large and dynamic market, world-leading manufacturing clusters and comparatively cheap labour. However, with the risks of doing business mounting and the rewards seemingly decreasing,^{1&2} many investors are now confronted with the reality that the problems they are facing in the China market may be permanent features that require a substantial strategic rethink.

The central concern for European Chamber members is China’s economic slowdown.³ However, several other factors are dragging on business confidence, including perennial market access and regulatory barriers; a highly politicised business environment; lacklustre domestic consumption;⁴ overcapacity; the persistence of ambiguous rules and regulations; and the government’s continued focus on national security and developing a high degree of self-reliance.⁵ The foreign business community had been looking to the Third Plenum of the Central Committee of the Chinese Communist Party for signals that at least some of these concerns would be addressed, in particular policies aimed at boosting domestic demand, a renewed focus on reform and opening up, and greater weight being given to market forces.

Instead, the Third Plenum *Decision* continues to promote investment in manufacturing as a key driver of China’s economic development, albeit under the moniker ‘new quality productive forces’ – i.e., the aim is to increase production capacity in strategic, higher value-added goods and technologies. The intention to “step up efforts to develop a complete domestic demand system” is asserted, but the document contains nothing concrete as to how consumption will be stimulated.⁶

A scheme was announced by the National Development and Reform Commission on 24th July 2024, three days after the *Decision* was published, which sets aside Chinese yuan (CNY) 300 billion to subsidise the replacement of outdated commercial equipment and certain consumer goods.⁷ However, given that the total amount budgeted works out to approximately CNY 210 per capita, only a portion of which will reach household consumers, it is unlikely that this scheme alone will significantly increase domestic consumption.

1 In each of the past three iterations of the European Chamber’s *Business Confidence Survey (BCS)*, a record number of respondents reported that doing business in China had become more difficult year-on-year. In the BCS 2024, 68 per cent of respondents reported this to be the case. *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, p. 19, 10th May 2024, viewed 2nd July 2024, <<https://www.europeanchamber.com.cn/en/publications-business-confidence-survey>>

2 In the BCS 2024, record numbers of respondents reported being pessimistic about the outlook for both growth (26 per cent) and competitive pressure (61 per cent) for their sector over the next two years. *Ibid.*, p. 28.

3 55 per cent of respondents to the BCS 2024 ranked China’s economic slowdown one of the top-3 challenges that will have the greatest impact on their future business in China, a 19-percentage point increase year-on-year (y-o-y). *Ibid.*, p. 10.

4 Hancock, T, *China’s Deflation Shows Domestic Demand is Big 2024 Challenge*, *Bloomberg*, 13th January 2024, viewed 13th August 2024, <<https://www.bloomberg.com/news/articles/2024-01-12/china-s-deflation-shows-domestic-demand-is-big-2024-challenge>>

5 *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 2nd July 2024, <<https://www.europeanchamber.com.cn/en/publications-business-confidence-survey>>

6 Wang, Z, *Full Text: Resolution of the Central Committee of the Communist Part of China on Further Deepening Reform Comprehensively to Advance Chinese Modernization*, *Pekingology*, 21st July 2024, viewed 15th August 2024, <<https://www.pekingology.com/p/full-text-resolution-of-the-central>>; Blancheffe, J; Kennedy, S; Mazzocco, I; McElwee, L; Reade, C; Rosen, D.H. & Wright, L, *Third Plenum Hot Takes: Skepticism and Concern*, Center for Strategic and International Studies, 22nd July 2024, viewed 16th August 2024, <<https://www.csis.org/blogs/third-plenum-hot-takes-skepticism-and-concern.csis.org/blogs/third-plenum-hot-takes-skepticism-and-concern>>

7 Areas targeted include large-scale industrial equipment, marine transportation, lorries, agricultural equipment and public transport vehicles, with consumer-targeted subsidies for personal vehicles, home appliances and home renovation. *On stepping up support for large-scale equipment replacement and consumer goods trade-in*, National Development and Reform Commission, 24th July 2024, viewed 16th August 2024 <https://www.gov.cn/zhengce/zhengceku/202407/content_6964409.htm>

The *Decision* does state that the market should play “the decisive role in resource allocation”, but it also calls for state-owned enterprises (SOEs) and state capital to “get stronger, do better and grow bigger”, and notes that state capital “will be steered towards major industries and key fields that are vital to national security and serve as the lifeblood of the national economy, towards sectors such as public services, emergency response and public welfare [...] and toward forward looking and strategic emerging industries.”⁸ This dual mission of taking the lead in future-orientated industries and continuing to play a central role in maintaining the social fabric in China—while the dynamism of the private sector continues to decline—is one of the main arguments as to why China’s total factor productivity has stagnated.

The creation of a section in the *Decision* dedicated to national security tells its own story. It highlights that it is pivotal to the Chinese Government’s plan to ensure “steady and sustained progress in Chinese modernization.”⁹ While all state actors must do what is necessary to ensure economic security, to maintain a dynamic business environment this should be done in a way that is restrained and proportionate to the perceived risks. The concern among foreign-invested enterprises (FIEs) is that China’s prioritisation of security could lead to policies that go beyond legitimate concerns and create insurmountable business risks. European companies are already struggling to understand their compliance obligations under a slew of recent security-related legislation, including the Law on Guarding State Secrets, the recently amended Anti-espionage Law and the new Foreign Relations Law.

As a result of these issues, a sentiment is emerging at company headquarters (HQs) and among shareholders that the returns on China investments are no longer commensurate with the risks faced. Profit margins in China are equal to or below the global average for approximately two thirds of European Chamber members,¹⁰ and pessimism about future profitability is at an all-time high.¹¹ In the past, international companies operating in China, particularly large multinational corporations (MNCs), would have been able to leverage their global operations to spread the costs of their China operations. However, many Chamber members are now less able to do this after having been pushed to adopt ‘in China for China’ strategies, essentially becoming Chinese companies with foreign shareholders, at least in some aspects of their operations. At the same time, many foreign businesses face structural disadvantages compared to domestic Chinese competitors, including policies that restrict the ways in which they can finance their acquisitions, and the inability to establish legitimate China holding companies, among others.¹² With many other markets offering greater predictability and legal certainty along with the same return on investment, continuing to invest at previous levels in the China market is simply becoming harder to justify.

There are indications that FIEs have already begun adjusting their expectations for and approaches to the China market,¹³ with foreign direct investment (FDI) decreasing by 29.1 per cent year-on-year during

8 Wang, Z, *Full Text: Resolution of the Central Committee of the Communist Part of China on Further Deepening Reform Comprehensively to Advance Chinese Modernization*, Pekingology, 21st July 2024, viewed 15th August 2024, <<https://www.pekingology.com/p/full-text-resolution-of-the-central/>>

9 *Ibid.*

10 *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, p.15, 10th May 2024, viewed 2nd July 2024, <<https://www.eurochamber.com.cn/en/publications-business-confidence-survey>>

11 *Ibid.*, p.28.

12 Other structural disadvantages that they face are in relation to the application of national and local requirements, and taxation.

13 There are outliers to this trend – predominantly a small number of very large MNCs that are continuing to make large investments in China. These companies are concentrated in terms of both the sectors in which they operate and the nationality of ownership structure. Rhodium Group found that in 2021, 10 investors made up 71 per cent of all FDI into China (a trend that had peaked at 88 per cent in 2019), coming mainly from Germany, the Netherlands, the UK and France, and concentrated in just five sectors – automotive equipment and components, food processing and distribution, pharmaceuticals and biotechnologies, chemicals, and consumer products manufacturing. More than 30 per cent of this FDI was in the automotive equipment and components sector, and more than 40 per cent originated from Germany. Kratz, A; Barkin, N & Dudley, L, *The Chosen Few: A Fresh Look at European FDI in China*, Rhodium Group, 14th September 2022, viewed 16th August 2024, <<https://rhg.com/research/the-chosen-few/>>. This trend continued over the next two years, with it being reported that German FDI into China remained high in 2023 and increased over a comparable period in 2024, predominantly in the automotive industry, and that German investment overall had made up more than half of the EU’s total FDI into China over the past five years. Chazan, G, *German investment in China soars despite Berlin’s diversification drive*, *Financial Times*, 13th August 2024, viewed 16th August 2024, <<https://www.ft.com/content/339ac2c7-f570-4ec0-8753-54f431c6aa10>>



the first half of 2024.¹⁴ Furthermore, the volume of investments into China by European Union (EU) and American firms is now roughly half that of a decade ago,¹⁵ with smaller MNCs and small and medium-sized enterprises in particular opting to invest elsewhere.

In past years, this shortfall would have at least been partly offset by reinvestments – businesses using profits earned in China as opposed to capital injections from their HQs to fund projects. However, this metric is also trending downwards,¹⁶ as is the number of businesses that plan to expand their China operations.¹⁷

In tandem, the nature of the FDI that China is able to attract is changing, as focus shifts from cost and efficiency considerations, to building resilience and ensuring the continuity of company operations. New investments are increasingly defensive, geared towards creating China-specific value chains, separate IT and data storage systems for China due to regulatory requirements, localising business functions, and enhancing compliance capacity, rather than beefing up China research and development or capturing market share.^{18&19} These kinds of investments will neither create new jobs in China nor drive innovation. Similar defensive trends can be seen when it comes to diversification of supply chains. European Chamber members have begun both offshoring and onshoring,^{20&21} often at additional cost and loss of efficiency, as they seek to mitigate risks.

These changes are by no means a sign that European companies are running for the exit, but they do represent a strategic shift towards siloing China operations from the rest of the world. While this creation of autonomous, and sometimes divergent, systems may provide greater operational resilience, it will likely set the EU and China on course for a future of reduced engagement resulting in missed opportunities.

Meanwhile, a small minority have begun thinking about contingency plans should a serious escalation of regional tensions occur. This was precipitated by Russia's invasion of Ukraine, which pushed companies to conduct scenario planning to see what the impact may be on their China operations if a similar event were to happen closer to home.

14 *The country absorbed 498.91 billion yuan of foreign investment in January-June 2024*, Ministry of Commerce, 12th July 2024, viewed 12th August 2024, <https://www.mofcom.gov.cn/xwfb/rcxwfb/art/2024/art_40c540bd5d994587a7e3e364c43e594a.html>

15 Kratz, A & Boullenois, C, *Irrational Expectations: Long-Term Challenges of Diversification Away from China*, Rhodium Group, 13th September 2023, viewed 10th August 2024, <<https://rhg.com/research/irrational-expectations-long-term-challenges-of-diversification-away-from-china/>>

16 Decreases in FDI are often—at least partially—attributed to the fact that rather than relying on capital injections from their overseas HQs, many foreign-invested enterprises (FIEs) reinvest their profits in China to fund new projects or expand or strengthen existing operations. However, in the BCS 2024, 35 per cent of respondents reported they will reinvest less than their historical average. *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, p. 3, 10th May 2024, viewed 2nd July 2024, <<https://www.europeanchamber.com.cn/en/publications-business-confidence-survey>>

17 *Ibid*, p. 5.

18 In the BCS 2023, a notable 75 per cent of respondents reported having reviewed their supply chains primarily for defensive reasons, including the need to increase resilience due to geopolitical factors and to mitigate the impact of domestic policy developments, such as China's self-sufficiency drive. The primary reasons that respondents gave for either shifting or considering shifting existing investments were also defensive in nature – i.e., to mitigate the impact of decoupling between China and third countries, because China's business environment is too uncertain and to increase supply chain resilience. *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, p. 15, 21st June 2023, viewed 11th August 2024, <[https://europeanchamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Business_Confidence_Survey_2023\[1124\].pdf](https://europeanchamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Business_Confidence_Survey_2023[1124].pdf)>; There are some outliers to this trend, predominantly very large MNCs that continue to double down on their China investments, as noted in footnote 3.

19 This trend was also corroborated by multiple interviews with Chamber members for the Chamber's 2024 report on risk management. *Riskful Thinking: Navigating the Politics of Economic Security*, European Union Chamber of Commerce in China and China Macro Group, 20th March 2024, viewed 16th August 2024, <https://www.europeanchamber.com.cn/en/publications-archive/1175/Riskful_Thinking_Navigating_the_Politics_of_Economic_Security>

20 76 per cent of respondents to the European Chamber's BCS 2024 reported having reviewed their China supply chain strategy over the past two years, with 22 per cent shifting parts of their supply chains either into or out of China as a result. *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, p. 34, 10th May 2024, viewed 2nd July 2024, <<https://www.europeanchamber.com.cn/en/publications-business-confidence-survey>>

21 The BCS 2023 found that 63 per cent of respondents had 'moderately' or 'significantly' localised their junior staff; 67 per cent their mid-level staff; 63 per cent their senior management; and 41 per cent their company board positions. IT infrastructure and data storage were both reported as having been localised by 60 per cent of respondents, while 67 per cent reported having localised their supply chains. The same question was not asked in the BCS 2024. *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, p. 15, 21st June 2023, viewed 11th August 2024, <[https://europeanchamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Business_Confidence_Survey_2023\[1124\].pdf](https://europeanchamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Business_Confidence_Survey_2023[1124].pdf)>

Reform plans need to be backed by meaningful implementation

At the start of the new millennium, reform plans announced by the Chinese Government were seen by foreign companies as credible, following years of concrete improvements to the business environment in the periods immediately preceding and following China's World Trade Organization accession.²² Now, after more than a decade of largely unfulfilled pledges, doubts over China's commitment to reform are increasing. Furthermore, with national-security considerations increasingly being balanced against—and sometimes taking precedence over—economic growth,²³ it raises the question of whether Chinese officials have sufficient space to introduce pragmatic, pro-business policies.²⁴

It is against this backdrop that the State Council's 13th August 2023 *Opinions on Further Optimising the Foreign Investment Environment and Increasing the Attraction of Foreign Investment (Opinions)* was initially hailed as a potential turning point.²⁵ While not a silver bullet for the headwinds China's economy is facing, the European Chamber believed that full implementation of the *Opinions* would help prevent a further deterioration in business confidence, and provide a solid foundation to build on.

However, one year on from the document's publication, momentum has been lost.

To quantify this, the European Chamber asked the members of its 50 working groups, sub-working groups and fora, as well as its seven local chapters, to provide feedback on the progress they have seen on the measures so far. This 'reality check'—detailed in Section 2.3 of this year's *Executive Position Paper*—makes for sober reading.

While the *Opinions* do contain several big-ticket items that could really move the needle, limited implementation has taken place. With a few exceptions, the areas in which progress has been made have been those that will have little material impact on business, or which are too narrow in scope to meaningfully address the challenges faced by foreign companies.

Below is a summary of the key takeaways of the analysis, organised across six thematic areas:

- **Market access and procurement:** The *Opinions* contain several points of real substance here. This includes measures proposing the revision of the Government Procurement Law, the clarification of standards for goods that are 'made in China' and the creation of a level playing field for procurement processes. However, progress has so far largely been incremental and restricted to initiatives of limited sectoral and geographical scope, and foreign companies continue to face discrimination in China's procurement market.

22 China's accession to the World Trade Organization (WTO) in 2001 saw it abolish, revise or introduce more than 2,300 national laws and nearly 200,000 local regulations, which led to further market opening: *China and the World Trade Organization*, State Council Information Office of the People's Republic of China, June 2018, viewed 10th August 2024, <https://english.www.gov.cn/archive/white_paper/2018/06/28/content_281476201898696.htm>; and *China's Economic Rise: History, Trends, Challenges, and Implications for the United States*, Congressional Research Service, 25th June 2019, viewed 10th August 2024, <<chrome-extension://efaidnbmnnpicajpgcljlefindmkaj/https://sgp.fas.org/crs/row/RL33534.pdf>>

23 *Riskful Thinking: Navigating the Politics of Economic Security*, European Union Chamber of Commerce in China and China Macro Group, 20th March 2024, viewed 10th August 2024, <<https://www.europeanchamber.com.cn/en/riskful-thinking-report>>

24 "For China to implement necessary structural reforms through policies that are practical and implementable, it will be important for space to be given to policymakers to 'make mistakes', openly discuss ideas and ultimately change course, something that was previously a characteristic of policymaking in the country. However, with red lines becoming more blurred, and the scope of issues deemed as 'sensitive' constantly expanding, people's willingness to speak out is bound to diminish." *European Business in China Position Paper 2022/2023*, European Union Chamber of Commerce in China, 21st September 2022, viewed 16th August 2024, <[https://europeanchamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Position_Paper_2022_2023\[1068\].pdf](https://europeanchamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Position_Paper_2022_2023[1068].pdf)>

25 The document includes 24 proposed measures, which further divide into 59 sub-measures, that closely mirror some of the key concerns raised by the European Chamber in recent years. *Opinions of the State Council on Further Optimising the Environment for Foreign Investment and Increasing the Efforts to Attract Foreign Investment*, State Council of the People's Republic of China, 13th August 2023, viewed 10th August 2024, <https://www.gov.cn/zhengce/content/202308/content_6898048.htm>; *Ministry of Commerce: More than 60% of the "24 foreign investment" policy measures have been implemented or seen positive progress made*, *People's Daily Online*, 26th January 2024, viewed 10th August 2024, <<http://finance.people.com.cn/n1/2024/0126/c1004-40167385.html>>



- **Human resources (HR) and business travel:** There was an early welcome breakthrough with the extension of China's preferential individual income tax policy for foreign nationals,²⁶ and the waiving of visa requirements for citizens from several EU Member States.²⁷ However, only citizens from less than half of all EU Member States can currently benefit from the visa-free travel scheme, and the tax policies are not only temporary, but also merely a continuation of the status quo. This early progress therefore needs to be followed by further action, and additional measures need to be introduced that address the main HR-related concerns of European companies, which are related to the attraction and retention of both domestic and foreign talent.
- **Digital and cyber:** Some initial momentum has been built in this area, most notably with the revision of China's regulations for cross-border data transfer. At the same time, if China's cyber regulations are to ultimately facilitate rather than hinder business, further action is required. It will be necessary that upcoming rules, such as what constitutes 'important data' and 'sensitive personal information', are not defined in an expansive manner, as well as for industry-specific regulations to be better aligned with the revised *Provisions on Promoting and Regulating Cross-border Data Flows*.²⁸
- **Access to green energy:** Despite now being a key concern for most foreign companies, this issue featured only as a bit-part in the *Opinions*. Some incremental progress has been made, but more needs to be done if FIEs are to meet their global corporate decarbonisation goals, which for many is needed to legitimise their continued presence in the China market. Concrete improvements have been seen at the local level, most notably with the green electricity trading mechanism in Tianjin, which was introduced in July 2021. Chamber members in Tianjin hope that this pilot will be made permanent so that they will have guaranteed, long-term access to sustainable sources of green electricity.
- **Intellectual property rights (IPR):** Practical challenges continue to undermine the enforcement of IPR in China, while little progress has been made on sectoral-level challenges.
- **Investment promotion and facilitation:** Concerted efforts have been made to increase government-industry dialogues. However, in many instances, such dialogues have not produced results. Exchanges are often carefully choreographed, with companies' speaking points having to be submitted and vetted in advance. There are several points in the *Opinions* related to the provision of support and incentives for investment in China, but their impact has been largely underwhelming, which is in part due to the related text lacking both ambition and specificity.

The main cost of failing to take further action to address business concerns more comprehensively, is that the negative trends witnessed over the past few years can be expected to continue.

At the business-level, this would equate to a further loss of investment for China, the continued siloing of supply chains and company operations, and the current fissure between HQs and their China operations expanding to become a chasm.²⁹ Beijing would also be opening the door wider for other regions to court

26 Previously due to expire at the end of 2023, China's preferential individual income tax regime for foreign nationals was extended until the end of 2027 within a week of the *Opinions*' publication. *China Extends Preferential Tax Policies for Foreigners to 2028*, Bloomberg, 28th August 2023, viewed 10th August 2024, <<https://www.bloomberg.com/news/articles/2023-08-28/china-extends-preferential-tax-policies-for-foreigners-thru-2027>>

27 At the time of writing, the citizens of 11 EU member states are permitted to enter China visa-free and remain in the country for 15 days. These include Austria, Belgium, France, Germany, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland and Spain. Other countries' citizens that have been able to enjoy visa-free travel to China since the introduction of this policy include those of Australia, Malaysia, New Zealand, Singapore and Switzerland.

28 *Provisions on Promoting and Regulating Cross-border Data Flows*, Cyberspace Administration of China, 22nd March 2024, viewed 8th May 2024, <https://www.cac.gov.cn/2024-03/22/c_1712776611775634.htm>

29 41 per cent of respondents to the European Chamber's BCS 2024 reported some form of decoupling between their China operations and their HQs in the past two years. *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, p. 39, 10th May 2024, viewed 10th August 2024, <<https://www.eurochamber.com.cn/en/publications-business-confidence-survey>>

investment at its expense. Figure 1—which shows annual greenfield FDI flows into China, Indonesia, Malaysia, Vietnam, India and Mexico between 2003 and 2023—illustrates that this dynamic is already in play, and that it intensified from 2018 onwards.



Source: UNCTAD world investment report

At the intergovernmental level, failure to implement meaningful economic reforms will likely result in an increase in EU-China tensions. The EU has already begun taking a more assertive stance towards China on key areas of concern to European business in China. Moreover, it now has the legal muscle to exert real pressure, having introduced in recent years a set of tools aimed at protecting the integrity of its Single Market, and ensuring reciprocal market access and a level playing field for European companies operating in third markets.³⁰

Tensions could be dialled down if the Chinese authorities were to fully implement the measures detailed in the *Opinions*. While this would not be a panacea, responding positively to the following recommendations could turn the tide and begin the process of rebuilding investor confidence in the China market:

- Reprioritise economic growth.
 - Refocus on reform and opening-up.
 - Allow market forces to play the decisive role in the allocation of resources.
 - Introduce policies to boost domestic demand.
 - Ensure that security-related policies are proportionate to the risk faced.
- Create a level playing field for all enterprises, regardless of size and ownership structure.
- Expand the scope of visa-free travel policies to cover passport holders from all European Union Member States and introduce measures to ease the challenges faced when it comes to the attraction and retention of both domestic and foreign talent.
- Ensure digital and cyber regulations facilitate business operations.
 - Define ‘important data’ and ‘sensitive personal information’ in forthcoming rules and regulations in a

³⁰ During the second half of 2023 and the first half of 2024, the EU demonstrated its willingness to deploy its toolbox, following the launching of several anti-subsidy probes, as well as an investigation into the procurement of medical devices in China. Blenkinsop, M & Melander, I, EU investigates fair access to China’s medical device market, *Reuters*, 24th April 2024, viewed 11th August 2024, <<https://www.reuters.com/world/europe/eu-opens-investigation-into-chinese-medical-device-market-2024-04-24/>>; *Trade defence investigations*, European Commission, viewed 11th August 2024, <<https://tron.trade.ec.europa.eu/investigations/ongoing>>



narrow and precise manner.

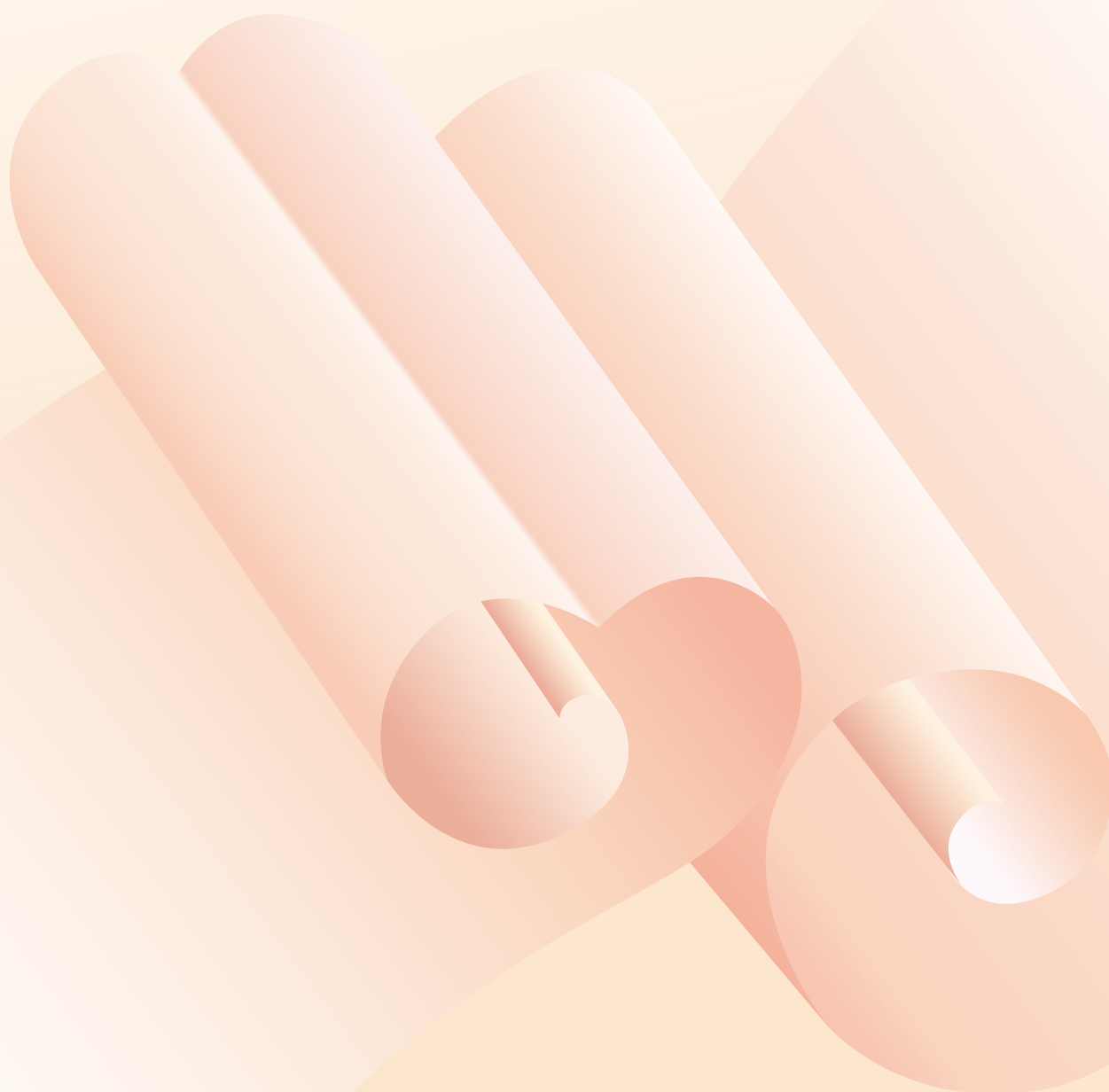
- Align industry-specific cyber regulations with the revised *Provisions on Promoting and Regulating Cross-border Data Flows*.
- Implement comprehensive policies and measures to increase corporate entities' access to sustainable sources of green energy.
- Improve the enforcement of IPR in China, including by addressing sectoral-level challenges.
- Increase both the level of ambition and specificity of policies and incentives aimed at attracting/facilitating investment in China, and ensure that such measures are inclusive of all companies regardless of size and ownership structure.

This would be just the beginning, however. If China is to re-establish itself as the preferred destination for foreign investment, significant additional steps are needed to improve the business environment. This requires deepening collaboration with industry players and chambers of commerce to address the 1,043 detailed and constructive recommendations put forward in this *Position Paper*.³¹

³¹ This number includes 19 recommendations for the European Union and European businesses related to their engagements with China.

Section One **1**

Executive Position Paper





Executive Position Paper

1.1 The status quo: China's slowing economy now the top concern for European companies

In the *Executive Position Paper 2023/2024*, the European Chamber noted that with China's post-COVID economic recovery faltering, more meaningful reforms would be needed to address the concerns of foreign business and restore confidence in the China market.¹ One year on, the situation has worsened. European business confidence is at a historic low on a number of measures, as the results of the Chamber's *Business Confidence Survey 2024* (BCS 2024) make clear, with China's economic slowdown now ranking—by a considerable margin—as the most significant business challenge faced by Chamber members.²

While European companies are committed to the China market, and still see a great deal of untapped potential, many are unsure of their long-term outlook following yet another year of mixed messages from a Chinese Government that is trying to balance national security concerns against economic development.³ There are also several persistent issues, including an uneven playing field, and the presence of direct and indirect market access barriers.⁴ Meanwhile, the predictability, reliability and efficiency that historically made the China market so attractive to foreign businesses continue to deteriorate, and the business environment is perceived as highly politicised.

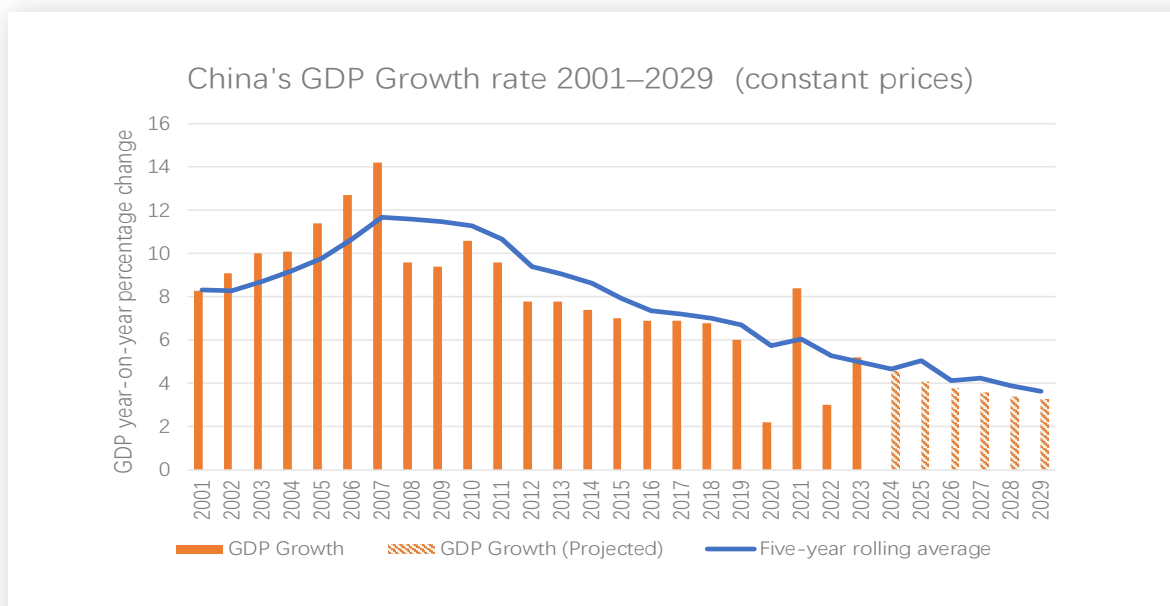
China's increasingly shaky economic fundamentals

China attracted large volumes of foreign direct investment (FDI) in the period immediately following its accession to the World Trade Organization (WTO) in 2001, with this underpinned by its increasingly open business environment and breakneck rates of growth.⁵ However, China's growth rate is now the lowest it has been since the country first embarked on its programme of reform and opening up in the late 1970s,⁶ and is forecast to slow further moving towards the end of the decade, as can be seen in Figure 2.

While a slowdown in a country's growth rate is normal as it transitions from a low-income, developing economy—as China is doing—a number of other concerns remain front of mind for business, and risk curtailing China's ability to achieve high-quality sustainable growth.

- 1 *European Business in China Position Paper 2023/2024*, European Union Chamber of Commerce in China, 20th September 2023, viewed 1st July 2024, <[https://european-chamber.com/oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_2023_2024_Position_Paper\[1167\].pdf](https://european-chamber.com/oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_2023_2024_Position_Paper[1167].pdf)>
- 2 55 per cent of respondents to the European Chamber's BCS 2024 ranked 'China's economic slowdown' one of the top-three challenges that will have the greatest impact on their future business in China, a 19-"percentage-point" increase year-on-year (y-o-y). *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 2nd July 2024, p.10, <https://www.european-chamber.com/en/publications-archive/1177/Business_Confidence_Survey_2024>
- 3 For more information on China's approach to risk management and economic security, see: *Riskful Thinking: Navigating the Politics of Economic Security*, European Union Chamber of Commerce in China and China Macro Group, 20th March 2024, viewed 1st July 2024, <<https://www.european-chamber.com/en/riskful-thinking-report>>
- 4 In the European Chamber's BCS 2024, 58 per cent of respondents reported missing business opportunities as a result of market access or regulatory barriers, with only 16 per cent expecting to see the number of regulatory obstacles reduce over the next five years; and, 31 per cent reported experiencing unfavourable treatment compared to domestic Chinese companies. *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 2nd July 2024, <https://www.european-chamber.com/en/publications-archive/1177/Business_Confidence_Survey_2024>
- 5 According to data from the International Monetary Fund (IMF), China's gross domestic product grew at an average annual rate of 10.54 per cent from 2001 to 2010. Based on IMF country-level data available at: *World Economic Outlook Database*, International Monetary Fund, April 2024, viewed 8th July 2024, <<https://www.imf.org/en/Publications/WEO/weo-database/2024/April>>
- 6 To quantify this, the authors calculated China's rolling five-year growth rate between 1978–2029 using country-level data available via the IMF World Economic Outlook Database for the years 1980–2029 and World Bank data for the period 1978–1979. *World Economic Outlook Database*, International Monetary Fund, April 2024, viewed 8th July 2024, <<https://www.imf.org/en/Publications/WEO/weo-database/2024/April>>; GDP growth (annual %), World Bank, viewed 8th July 2024, <<https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG>>

Figure 2: China's slowing growth rate



Source: International Monetary Fund

Local government debt is extremely high—an issue acknowledged at the 2024 Third Plenum⁷—raising questions over local governments’ ability to act in areas that could meaningfully improve the business environment, with some arguing they would “no longer have the wherewithal to compete regionally or experiment with new policies, which could be another drag on growth.”⁸

Total factor productivity also remains stagnant and businesses are increasingly cognisant of China’s fading demographic dividend, the full impact of which is not likely to be felt until the middle of this century.^{9&10} China’s property sector crisis also poses a significant challenge both to companies in construction and its many feeder industries. Meanwhile, lacklustre domestic consumption has become one of the most significant concerns for European companies, the consequences of which are now spilling out to the rest of the world.

Overcapacity 2.0

One of the more adverse effects of weak domestic demand in China has been the re-emergence of overcapacity, which has led to an increase in exports as a share of the economy.¹¹ The Chinese Government actively promoted growth in manufacturing capacity in a bid to boost its economic recovery following the COVID-induced slump, with total investment increasing 9.9 per cent year-on-year during

7 Wang, O, *China’s third plenum holds out hope for debt-hit local governments with funding reform*, SCMP, 22nd July 2024, viewed 26th July 2024, <<https://www.scmp.com/news/china/politics/article/3271324/chinas-third-plenum-holds-out-hope-debt-hit-local-governments-funding-reform>>

8 *Decoding China’s Economic Slowdown: Roundtable Summary Report*, Asia Society Policy Institute: Center for China Analysis and Stanford Center on China’s Economy and Institutions, 2024, viewed 25th July 2024, <https://asiasociety.org/sites/default/files/inline-files/ASPI_CCA_EconSlowdown_EcoRdtable_paper%20rev.pdf>

9 Wolf, M, *We shouldn’t call ‘peak China’ just yet*, Financial Times, 19th September 2023, viewed 7th July 2024, <<https://www.ft.com/content/8a7fb1d5-bb3a-48b7-aa72-1c522fd21063>>

10 Qi, L, and Li, M, *The One Child Policy Supercharged China’s Economic Miracule. Now It’s Paying the Price.*, Wall Street Journal, 11th July 2024, viewed 14th July 2024, <<https://www.wsj.com/world/china/china-population-slowing-economy-7ff938e5>>

11 The term ‘overcapacity’ refers to when an industry’s total production capacity exceeds demand, representing a misallocation of resources. When this happens, manufacturers in that industry have a choice of either: 1) continuing to operate under capacity, and potentially having to streamline operations to remain cost competitive; or 2) pursuing a strategy whereby production is equal to capacity, with the hope that domestic demand will increase or that they prevail against domestic competition and/or that excess production can be absorbed by exports, often at prices well below market value. The latter can result in distortions in third markets and significantly undermine the competitiveness of companies that operate under normal market rules.



the first quarter of 2024.¹² In specific sectors that Beijing favours as future growth drivers, such as those related to new energy technologies, investment in manufacturing capacity was even higher.¹³

China's domestic production now far exceeds demand in many industries,¹⁴ with overcapacity being reported by 36 per cent of respondents to the Chamber's BCS 2024.^{15&16} The surge in domestic production has amplified competitive pressure, leading to a deflationary effect on pricing and falling profitability, and is beginning to impact third markets.¹⁷

Politics and business now go hand-in-hand

Leaders in the European Union (EU) and other third-markets have been quick to highlight the distortive impact that Chinese overproduction could have on their own industrial competitiveness should China continue to try and export its way out of its current economic woes. While these concerns are not new, the picture is quite different compared to when overcapacity in China, and its consequences, became a prominent issue in 2008 and 2016.¹⁸

First, markets in other countries and regions are now fully aware of the distortive effects this can have on their economies, having learnt this lesson first-hand. For example, Europe's experience with Chinese photovoltaic (PV) cells—which flooded the European market—led to the near destruction of Europe's own PV industry. Unsurprisingly, there are major concerns in the EU over the solar industry specifically,¹⁹ but also potential de-industrialisation more broadly,²⁰ and calls for action are increasing.

Second, China's economy, and particularly the share of global manufacturing it accounts for, is now much larger, producing as much as the nine next largest producers combined in value terms.²¹ This means any exported overproduction from the country risks having a far more pronounced distorting effect on other markets.

12 From January to March 2024, the National Fixed Asset Investment Increased by 4.5%, National Bureau of Statistics, 16th April 2024, viewed 14th July 2024, <https://www.stats.gov.cn/sj/zxfb/202404/t20240416_1948569.html>

13 For example, China accounted for approximately 90 per cent of total global investment in clean-energy manufacturing in 2022, investing almost United States dollar (USD) 80 billion. Hua, S, and Dvorak, P, *China's Spending on Green Energy is Causing a Global Glut*, *Wall Street Journal*, 13th November 2023, viewed 14th July 2024, <https://www.wsj.com/business/chinas-spending-on-green-energy-is-causing-a-global-glut-d80eaea7?mod=article_inline>

14 At the macro-level industrial output grew by more than six per cent year-on-year during Q1 2024. See: Leahy, J, and Hale, T, *China warns west of 'survival of the fittest', as manufacturing boosts economy*, *Financial Times*, 17th April 2024, viewed 13th July 2024, <<https://www.ft.com/content/053c6bff-57d4-4661-9813-65714ac37b1c>>

15 A majority of respondents operating in the machinery, automotive, petrochemicals, civil engineering and construction industries reported they had observed overcapacity over the past year. In addition, a majority of respondents in the IT and telecommunications, and the transportation, logistics and distribution industries reported that they expect overcapacity to emerge in their respective industries in the near future. *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 2nd July 2024, <https://www.europeanchamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>

16 The expansion of manufacturing capacity in China is particularly pronounced when it comes to green technologies, which is in fact part of a longer-term trend. For example, "From 2017 to 2023, China's solar module production surged from 76 GW to 499 GW, equalling 70 per cent to 86 per cent of global output. In lithium-ion battery production, China's output rose from 74.8 GWh to 887.4 GWh, with its share ranging from 49 per cent to 74 per cent. China's electric vehicle production soared from 794 thousand units to 9,587 thousand units, with its proportion to global output ranging from 42 per cent to 67.7 per cent." Zhang, J, and Nedopil, C, *China Green Trade Report 2023*, Griffith Asia Institute, Griffith University, April 2024, viewed 18th July 2024, <https://www.griffith.edu.au/_data/assets/pdf_file/0032/1952249/Zhang_Nedopil_China-green-trade_2023-Report.pdf>

17 In the European Chamber's BCS 2024, more than 70 per cent of respondents that reported overcapacity in their industry noted they had also seen price decreases as a result, with 42 per cent saying that prices dropped significantly. At the same time, 44 per cent of total respondents to the BCS 2024 reported being pessimistic about their profitability in China over the next two years, the highest level on record. *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 2nd July 2024, <https://www.europeanchamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>

18 *Overcapacity in China: Causes, Impacts and Recommendations*, European Union Chamber of Commerce in China, 26th November 2011, viewed 18th July 2024, <https://www.europeanchamber.com.cn/en/publications-archive/27/Overcapacity_in_China_Causes_Impacts_and_Recommendations>; *Overcapacity in China: An Impediment to the Party's Reform Agenda*, European Union Chamber of Commerce in China, 22nd February 2016, viewed 18th July 2024, <https://www.europeanchamber.com.cn/en/publications-archive/405/Overcapacity_in_China_An_Impediment_to_the_Party_s_Reform_Agenda_>

19 Abnet, K, and Chestney, N, *With solar industry in crisis, Europe in a bind over Chinese imports*, *Reuters*, 6th February 2024, viewed 20th August 2024, <<https://www.reuters.com/business/energy/with-solar-industry-crisis-europe-bind-over-chinese-imports-2024-02-06/>>

20 Moeller-Nielsen, T, *The elusive question of what can save Europe from deindustrialisation*, *Euractiv*, 22nd March 2024, viewed 25th July 2024, <<https://www.euractiv.com/section/economy-jobs/news/the-elusive-question-of-what-can-save-europe-from-deindustrialisation/>>

21 China is now the world's sole manufacturing superpower. Its production exceeds that of the nine next largest manufacturers combined. Baldwin, R, *China is the world's sole manufacturing superpower: A line sketch of the rise*, Centre for Policy Research: VoxEU, 17th January 2024, viewed 12th July 2024, <<https://cepr.org/voxeu/columns/china-worlds-sole-manufacturing-superpower-line-sketch-rise>>

Speaking in November 2023, European Commission President Ursula von der Leyen said, “There is clear overcapacity in China, and this overcapacity will be exported [...] This will worsen as China’s economy slows down, and its domestic demand does not pick up. This distorts our market. And as we do not accept distortion from the inside, we should not accept it from the outside either.”²² This sentiment was echoed half a year later, when in May 2024, ahead of a meeting of the Group of Seven (G7), United States Secretary of the Treasury Janet Yellen warned that Chinese “overcapacity threatens the viability of firms around the world, including in emerging markets.”²³

During the Central Economic Work Conference in December 2023 and the Two Sessions in March 2024, China’s top leadership acknowledged during key speeches that the country’s economic recovery is being constrained by “overcapacity in some industries”.²⁴ However, with regard to green technologies specifically, China has rejected the validity of overcapacity allegations, with Premier Li Qiang claiming that what is being observed is a result of Chinese companies having become more competitive, and that exports “enrich global supply”.²⁵ With little progress made on this topic over the past year, it is set to remain a significant source of tension in the EU-China relationship.

Yet overcapacity is just one factor in an increasingly long list of factors that companies operating in or with China now have to monitor.²⁶ In recent years, the EU-China relationship has yielded a range of issues that have raised concerns and heightened political risks for businesses. Other key issues include:

- The EU’s substantial trade imbalance with China.
- China’s increased emphasis on promoting self-reliance in strategic sectors at the expense of foreign businesses operating in such areas.
- The potential fall-out of geopolitical events, such as an in relation to Russia’s invasion of Ukraine.²⁷
- The continued souring of European public opinion towards China, and vice versa, a situation that is contributing to a decreased appetite for cooperation.²⁸
- The transfer of dual-use technologies, i.e., those that have both civil and military applications.
- The challenge of managing conflicting consumer demands, including when it comes to ceasing/maintaining company operations in contentious regions of China (such as Xinjiang) and/or producing goods with no United States (US)/China-sourced components, depending on which market the finished product is destined for.²⁹

22 *Speech by President von der Leyen at the European China Conference 2023 organised by the European Council on Foreign Relations and the Mercator Institute for China Studies*, European Commission, 16th November 2023, viewed 15th July 2024, <https://ec.europa.eu/commission/presscorner/detail/en/speech_23_5851>

23 Dendrinou, V, *Yellen Calls for United Front on Chinese Industrial Overcapacity*, Bloomberg, 23rd May 2024, viewed 15th July 2024, <<https://www.bloomberg.com/news/articles/2024-05-23/yellen-calls-for-united-front-on-chinese-industrial-overcapacity>>

24 *Xi delivers important speech at central economic work conference*, Xinhua, 14th December 2023, viewed 18th July 2024, <https://english.www.gov.cn/news/202312/14/content_WS657aacdec6d0868f4e8e22a5.html>; Teufel Dreyer, J, *China’s Two Meetings and What They Mean for the United States*, Foreign Policy Research Institute, 18th March 2024, viewed 18th July 2024, <<https://www.fpri.org/article/2024/03/chinas-two-meetings-and-what-they-mean-for-us/>>

25 Zhang, E, and Cash, J, *China hits back at West’s over-capacity allegations in EVs, lithium batteries*, Reuters, 25th June 2024, 18th July 2024, <<https://www.reuters.com/business/autos-transportation/china-says-its-evs-lithium-batteries-meet-domestic-demand-enrich-global-supply-2024-06-25/>>

26 55 per cent of respondents to the European Chamber’s BCS 2024 said the business environment in China became more politicised over the past year. *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 2nd July 2024, p. 10, <https://www.eurochamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>

27 Megaw, N, Darbyshire, M, and Fontanella-Khan, J, *How the investment world is trying to navigate geopolitics*, Financial Times, 5th July 2024, viewed 16th July 2024, <https://www.ft.com/content/23ce295d-bf65-47fd-bebd-808b5a7bcab5?utm_source=Chinas+Global+Sharp+Power&utm_campaign=132ec759c2-EMAIL_CAMPAIGN_2019_09_05_04_36_COPY_01&utm_medium=email&utm_term=0_bd13b70517-132ec759c2-74616725>

28 For example, Pew Research Center polling in a number of countries shows that there has been a general trend of attitudes towards China deteriorating in recent years. See: *China Global Image*, Pew Research Center, viewed 24th July 2024, <<https://www.pewresearch.org/topic/international-affairs/global-image-of-countries/china-global-image/>>

29 For example, one study found that from 2008 to 2021, Chinese consumers conducted at least 90 boycotts of foreign companies, with the majority of these taking place after 2018. See: Bohman, V, and Parup, P, *Purchasing with the Party: Chinese consumer boycotts of foreign companies, 2008-2021*, Swedish National China Centre, 11th July 2022, viewed 16th July 2024, <<https://kinacentrum.se/en/publications/chinese-consumer-boycotts-of-foreign-companies/>>



Ambiguous legislation causes compliance headaches

In response to geopolitical developments China has expanded its toolkit aimed at protecting its national security and development interests, which has resulted in a more politicised business environment. This is being exacerbated by the prevalence of ambiguity in new or updated laws and regulations, with European companies struggling to understand their compliance obligations, a factor that significantly decreases business confidence in the country.³⁰

One recent example of such ambiguity can be found in China's Law on Guarding State Secrets, which was passed by the National People's Congress Standing Committee (NPCSC) in February 2024. It references the notion of 'work secrets' without clearly defining the scope of this term.³¹ In a similar vein, China's recently amended Anti-espionage Law and the new Foreign Relations Law both contain references to the broader concept of 'national security', without providing guidelines on what constitutes a national secret, raising the likelihood of both inconsistent implementation and compliance issues for businesses.^{32&33}

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

With the EU's Corporate Sustainability Reporting Directive (CSRD) having entered into force on 5th January 2023, European companies operating in China—particularly those in 'sensitive' regions—will increasingly find themselves torn between two legal regimes. The CSRD obliges all large and all listed companies operating in the EU to "disclose information on what they see as the risks and opportunities arising from social and environmental issues, and on the impact of their activities on people and the environment."³⁴

An additional challenge many goods manufacturers in China will soon face is the need to comply with the EU's Corporate Sustainability Due Diligence Directive (CSDDD), which was formally adopted by

30 According to the BCS 2024, ambiguous rules and regulations ranked as the top regulatory obstacle members face for the eighth year running. See: *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 24th August 2024, <https://www.eurochamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>

31 *China's Law on Guarding State Secrets*, State Council of the People's Republic of China, 27th February 2024, viewed 20th July 2024, <https://www.gov.cn/yaowen/liebiao/202402/content_6934648.htm>

32 The amended version of the Anti-espionage Law was approved by China's legislature on 26th April 2023 and came into effect on 1st July 2023, expanding the scope of activities that could be categorised as espionage. While the old version of the law, first adopted in 2014, specifically applied to obtaining or sharing state secrets or intelligence, the new version also adds to this list "other documents, data, materials or items related to national security or interests". *A battle against spies in China is spooking locals and foreigners*, *The Economist*, 4th May 2023, viewed 24th July 2024, <https://www.economist.com/china/2023/05/04/a-battle-against-spies-in-china-is-spooking-locals-and-foreigners?gclid=EAlaIqobChMig9LTqMTv_wlV9MZMAh30ewJbEAMYASAAEgLBfD_BwE&gclid=aw.ds>

33 The Foreign Relations Law, adopted by the Standing Committee of the 14th National People's Congress on 28th June 2023, puts an obligation on enterprises and citizens, among others, "to safeguard China's sovereignty, national security, dignity, honor and interests in the course of international exchanges and cooperation". Article 8 of the law also stipulates that "any organization or individual who commits acts that are detrimental to China's national interests in violation of this Law and other applicable laws in the course of engaging in international exchanges shall be held accountable by law." *The Law on Foreign Relations of the People's Republic of China*, *Xinhua*, 28th June 2023, viewed 24th August 2024, <<https://english.news.cn/20230628/28c7aedd386440ba9c370eb22476d430/c.html>>

34 From 2024, such companies will need to prepare sustainability reports—including information on their sustainability policies, environmental protection policies and actions, social responsibility and treatment of employees, and respect for human rights—for submission in 2025. *Corporate sustainability reporting*, European Commission, viewed 24th August 2024, <https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en>

the Council of the EU on 24th May 2024.³⁵ This comprehensive piece of legislation requires companies in scope³⁶ to establish due diligence processes that ensure their entire operations—including their subsidiaries, and up- and downstream suppliers—are in line with EU human rights and environmental standards.³⁷ While European companies are fully on board with the goals of the CSDDD, companies operating in China may be unable to meet its requirements due to conflicting legislation, the inability to conduct audits and/or political sensitivity. Furthermore, although small and medium-sized enterprises (SMEs) and large companies without direct business in the EU do not fall under the immediate scope of the CSDDD, they will still be impacted if they supply firms that must comply.

1.2 With slowing growth and a more challenging business environment, few see light at the end of the tunnel

In response to China's increasingly challenging business environment,³⁸ companies have already begun adjusting their expectations of and approaches to the China market. Investor confidence is trending downwards, as is the proportion of businesses looking to expand their China operations.³⁹ The flow of FDI into China reflects this, decreasing by 29.1 per cent year-on-year during the first half of 2024,⁴⁰ as does data on the reinvestment of profits earned in China, something a large percentage of companies are scaling down.⁴¹

Businesses are now shifting focus from economies of scale and maximising efficiency to operational resilience and mitigating risks. While the specific strategies companies are adopting differ,⁴² there is a growing tendency towards siloing China operations and supply chains—essentially isolating them from the rest of the world—in an attempt to ensure business continuity in the event of future global shocks.⁴³ The steps being taken to do this—including onshoring or offshoring parts of supply chains into / out of China, and the heavy localisation of company staffing, data and information technology (IT) systems, and in some instances research and development (R&D) activities—are leading to instances of miscommunication and misunderstanding between companies' China operations and headquarters (HQs). European companies report that this is resulting in a slowdown of existing operations; the reduced ability to capitalise on new projects or investment plans; the need to adapt product or service offerings; and even the need to downsize or close operations.⁴⁴

35 *Corporate sustainability due diligence: Council gives its final approval*, Council of the European Union, 24th May 2024, viewed 24th August 2024, <<https://www.consilium.europa.eu/en/press/press-releases/2024/05/24/corporate-sustainability-due-diligence-council-gives-its-final-approval/>>

36 The CSDDD will apply to all companies that have a significant presence in the EU, a net worldwide turnover of at least euro (EUR) 450 million and at least 1,000 employees.

37 *European Parliament legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD))*, European Parliament, 24th April 2023, viewed 24th August 2024, <[https://www.europarl.europa.eu/RegistreWeb/search/simpleSearchHome.htm?references=P9_TA\(2024\)0329&sortAndOrder=DATE_DOCU_DESC](https://www.europarl.europa.eu/RegistreWeb/search/simpleSearchHome.htm?references=P9_TA(2024)0329&sortAndOrder=DATE_DOCU_DESC)>

38 68 per cent of respondents to the European Chamber's BCS 2024 reported that doing business in China became more difficult over the past year, the highest total on record. *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 2nd July 2024, p. 19, <https://www.europeanchamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>

39 *Ibid*, p. 10

40 *The country absorbed 498.91 billion yuan of foreign investment in January-June 2024*, Ministry of Commerce of the People's Republic of China, 12th July 2024, viewed 12th August 2024, <https://www.mofcom.gov.cn/xwfb/rcxwfb/art/2024/art_40c540bd5d994587a7e3e364c43e594a.html>

41 Decreases in FDI are often—at least partially—attributed to the fact that rather than relying on capital injections from their overseas HQs, many foreign-invested enterprises reinvest their profits in China to fund new projects or expand or strengthen existing operations. It is therefore notable that 35 per cent of respondents to the Chamber's BCS 2024 reported that they are scaling down reinvestment of their China profits compared to their historical average. *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 24th July 2024, p.3, <https://www.europeanchamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>

42 *Riskful Thinking: Navigating the Politics of Economic Security*, European Union Chamber of Commerce in China and China Macro Group, 20th March 2024, viewed 1st July 2024, <<https://www.europeanchamber.com.cn/en/riskful-thinking-report>>

43 76 per cent of respondents to the European Chamber's BCS 2024 reported having reviewed their China supply chain strategy over the past two years. *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 20th August 2024, p. 34, <https://www.europeanchamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>

44 41 per cent of respondents to the European Chamber's BCS 2024 reported some form of decoupling between their China operations and their HQs in the past two years. *Ibid*, p.39.



In addition to being bad for business, this overall reduction in communication is not in China's interests. It could precipitate a further rise in tensions, given that European businesses' China subsidiaries have long been some of the strongest advocates for strengthening EU-China relations, both in their company boardrooms and at the political-level back in Europe.

2.1 The State Council 13th August 2023 Opinions: no silver bullet, but full implementation could begin to turn the tide

Hopes among the foreign business community for a course correction were raised on 13th August 2023, when the State Council published the *Opinions on Further Optimising the Foreign Investment Environment and Increasing the Attraction of Foreign Investment (Opinions)*.⁴⁵ The document includes 24 proposed measures, which further divide into 59 sub-measures,⁴⁶ that closely mirror some of the key concerns raised by the European Chamber in recent years.⁴⁷

While not a silver bullet to solve all the issues faced by FIEs, full implementation would lead to meaningful improvements.⁴⁸ This would help prevent a further deterioration in business confidence, demonstrate that China is serious about its commitment to improve the business environment and provide a solid foundation to be built upon.

2.2 Promise fatigue 3.0?

One of the main reasons that the foreign business community's sentiment towards the *Opinions* has been somewhat muted, is that two similar plans were announced in the recent past, only for limited action to be taken.

The 2013 Third Plenum: Expectations unfulfilled

Following the initial momentum that had been built up after its accession to the WTO, China's reform and opening-up agenda slowed considerably during the mid-2000s and early 2010s. The announcement of the 2013 Third Plenum *Decision* therefore gave rise to a resurgence of optimism among FIEs.⁴⁹ The document outlined China's reform vision until 2020, detailing 60 guiding principles aimed at steering the Chinese Government's economic policy. However, while an emphasis was placed on market forces, sparking hope that meaningful economic reforms would follow, they also elevated the role of the public sector,⁵⁰ leading many to question how the two principles could co-exist:

“The underlying issue is how to strike a balance between the role of the government and that of the market, and let the market play the decisive role in allocating resources and let the government play its functions better.” – 2013 Third Plenum Decision, Section I, Article 3

45 *Opinions of the State Council on Further Optimising the Environment for Foreign Investment and Increasing the Efforts to Attract Foreign Investment*, State Council of the People's Republic of China, 13th August 2023, viewed 14th July 2024, <https://www.gov.cn/zhengce/content/202308/content_6898048.htm>

46 This was confirmed by the Chinese Ministry of Commerce (MOFCOM) in a follow up notice issued on the progress made on the implementation of the measures listed within the *Opinions*. *Ministry of Commerce: More than 60% of the "24 foreign investment" policy measures have been implemented or seen positive progress made*, *People's Daily*, 26th January 2024, viewed 15th July 2024, <<http://finance.people.com.cn/n1/2024/0126/c1004-40167385.html>>

47 In a working-level meeting held just two days after the publication of the *Opinions*, MOFCOM officials confirmed this to European Chamber staff.

48 *Statement on State Council's Opinions on Attracting and Optimising Foreign Investment*, European Union Chamber of Commerce in China, 14th August 2023, viewed 14th July 2024, <https://www.europeanchamber.com.cn/en/press-releases/3549/statement_on_state_council_s_opinions_on_attracting_and_optimising_foreign_investment>

49 For analysis of the 2013 Third Plenum *Decision*, as well as how it was received by the European business community in China, see: *European Business in China Position Paper 2015/2016*, European Union Chamber of Commerce in China, 8th September 2015, viewed 14th July 2024, <https://www.europeanchamber.com.cn/en/publications-archive/360/Executive_Position_Paper_2015_2016>

50 *Decision of the Central Committee of the CCP on some major issues concerning comprehensively deepening reform*, *China.org.cn*, 16th January 2014, viewed 2nd August 2018, <http://www.china.org.cn/china/third_plenary_session/2014-01/16/content_31212602.htm>

“We must unswervingly consolidate and develop the public economy, persist in the dominant position of public ownership, give full play to the leading role of the state-owned sector, and continuously increase its vitality, controlling force and influence.” – 2013 Third Plenum Decision, Section II

A review of 111 sub-points contained in the 2013 *Decision* deemed most relevant to European businesses, conducted by the Chamber’s then 37 working and sub-working groups, found that two years on from the document’s publication, progress had been limited.⁵¹

- **Meaningful progress** had been made on just 12 of the points, with related targets as stipulated in the document basically met, or reasonably expected to be met by their stated deadline;
- **Limited progress** had been made on 76 of the points, with the Chamber’s working groups sceptical that the target would be met by its deadline; and
- **Little to no progress** had been made on 23 of the points, or worse, a regression had been observed.

Déjà vu?: Davos 2017, and Documents 5 and 39

The hopes of the foreign business community were raised for a second time four years later in 2017, when China made bold pledges during the Davos Summit that promised a more open business environment. Taking place against a backdrop of rising global protectionist tendencies, many wondered if the country would emerge as a bastion of globalisation, particularly given others—including Brexit Britain and Trump’s America—seemed to be increasingly turning inwards.^{52&53}

Initial action quickly followed. The day of the Davos address, the State Council released the *Notice of the State Council on Several Measures on Promoting Further Openness and Active Utilisation of Foreign Investment (Document No. 5)*.⁵⁴ Detailing ambitious plans to open up the country’s domestic market,⁵⁵ the early implementation of *Document No. 5* moved rapidly at the national, provincial and local levels.⁵⁶ Then, seven months later in December 2017, another key document was published, the *Notice of the State Council on Several Measures for Promoting Foreign Investment (Document No. 39)*.⁵⁷ Building on *Document No. 5*, it outlined further measures focussed on attracting investment, promoting key industries, upgrading China’s fiscal and taxation policies for international investors, and improving certain operational aspects of the business environment.⁵⁸

However, as 2017 moved into 2018, differences between expectations of the European business

51 *Ibid.*

52 As a result of the United Kingdom’s decision to leave the EU, some questioned whether it was turning its back on globalisation. Elliot, L, *Brexit is a rejection of globalisation*, *The Guardian*, 26th June 2016, viewed 14th July 2024, <<https://www.theguardian.com/business/2016/jun/26/brexit-is-the-rejection-of-globalisation>>

53 Shortly after being elected to office, the Trump Administration launched a series of trade wars against key US trading partners. For a summary of actions taken by the Trump Administration as part of its trade war with China see: Bown, C, *US-China Trade War Tariffs: An Up-to-date Chart*, Peterson Institute of International Economics, 6th April 2023, viewed 13th July 2024, <<https://www.piie.com/research/piie-charts/2019/us-china-trade-war-tariffs-date-chart>>

54 *Notice of the State Council on Several Measures on Promoting Further Openness and Active Utilisation of Foreign Investment*, State Council, 17th January 2017, viewed 25th June 2024, <https://www.gov.cn/zhengce/content/2017-01/17/content_5160624.htm>

55 *Document No. 5* outlined ambitious plans to open up China’s domestic market that included putting in place a pre-establishment national treatment model with a new negative list for foreign investors, among other things. It was reminiscent of the sort of grandiose plans that China became known for during the 1980s and 1990s.

56 A total of 22 follow-up documents were released by the central government, and 28 provincial and municipal governments had promulgated their own complementary plans by December 2017. For an analysis of the progress made on the implementation of *Document No. 5* in practice see: *18 Months Since Davos: How China’s Vision Became a Reform Imperative*, European Union Chamber of Commerce in China, 10th July 2018, viewed 13th July 2024, <https://www.eurochamber.com.cn/en/publications-archive/570/18_Month_Since_Davos>

57 *Notice of the State Council on Several Measures for Promoting Foreign Investment*, State Council, 16th August 2017, viewed 25th June 2024, <https://www.gov.cn/zhengce/content/2017-01/17/content_5160624.htm>

58 Notably, *Document No. 39* also called for implementation timetables and roadmaps in all related areas. The Chamber thus viewed both *Document No. 5* and *Document No. 39* as important components for delivering on China’s commitments laid out at the Davos Summit. *European Chamber Calls on China to Demonstrate its Commitment to Economic Globalisation and Openness*, European Union Chamber of Commerce in China, 19th September 2017, viewed 25th June 2024, <http://www.eurochamber.com.cn/en/press-releases/2579/eurochamber_calls_on_china_to_demonstrate_its_>



community and implementation became apparent. As noted by a European Chamber report focussed on the implementation of the two documents, 18 months on from their publication, it seemed that: “[O]n the Chinese side more attention was being paid to what was going to be done, rather than what was actually being done.”⁵⁹

Some tangible progress was made. This included in the areas of environmental protection; the local business environment, with provincial and municipal governments streamlining administrative procedures and reducing processing times; regulations related to consumer goods; and R&D. However, major shortcomings—including the resurgence of the state-owned sector; the persistence of intellectual property (IP)-related concerns; the continued lack of a level-playing field between foreign and domestic companies; and the introduction of unpredictable and *ad hoc* policies—overshadowed many of the improvements. This led to a feeling of ‘promise fatigue’ setting in among the foreign business community, as repeated reform commitments failed to materialise.

It was in this context that the State Council’s 13th August *Opinions* were received. Subsequent announcements have tended to focus on the positives, playing up the action that has been, or is in the process of being, taken; they have not accurately reflected on-the-ground realities experienced by European companies, which are focussed purely on the measures that could potentially have a meaningful impact on their ability to do business in China. For instance, at a January 2024 State Council press conference, the Chinese Minister of Commerce noted of the 59 sub-measures contained in the 13th August *Opinions* that:⁶⁰

- 10 had already been fully implemented (已完成);
- 28 had seen incremental progress made on them (取得阶段性进展); and
- 21 were in progress (正在持续推进).

By contrast, at a meeting attended by approximately 50 chairs and vice chairs of the European Chamber’s various working groups held the following month, it was noted that, with a few exceptions, there had so far only been progress on relatively low-hanging fruit of little relevance to business operations.⁶¹

2.3 Reality check: The *Opinions* scorecard

The following section provides further details on the sub-measures contained in the *Opinions*, outlining the progress that has been observed. This reality check is based on input gathered from the Chamber’s 50 working groups, sub-working groups and fora, as well as its seven local chapters.

Overall, the assessment makes for mostly pessimistic reading.

While the *Opinions* contain several big-ticket items that could really move the needle, for the most part not much has been done. When action has been taken, it has largely been too shallow to meaningfully improve China’s business environment, or has taken place in areas that do not have a direct impact on business. In addition, several sub-measures appear to reference policies that had been introduced prior to the publication of the *Opinions*, with little fresh progress having been made since.

59 18 Months Since Davos: How China’s Vision Became a Reform Imperative, European Union Chamber of Commerce in China, 10th July 2018, viewed 13th July 2024, p. 4, <https://www.europeanchamber.com.cn/en/publications-archive/570/18_Month_Since_Davos>

60 Ministry of Commerce: More than 60% of the “24 foreign investment” policy measures have been implemented or seen positive progress made, *People’s Daily*, 26th January 2024, viewed 15th July 2024, <<http://finance.people.com.cn/n1/2024/0126/c1004-40167385.html>>

61 Such as the introduction of visa-free policies for nationals from several EU member states, and the August 2023 extension of the preferential individual income tax regime for foreigners (For more information see the *Human Resources Position Paper 2024/2025*)

For convenience, this section is organised thematically into the following six categories according to the areas that are most pertinent to European Chamber members:

- Market access and procurement
- Human resources (HR) and business travel
- Digital and cyber
- Green energy access
- Intellectual property rights (IPR)
- Investment promotion and facilitation

Each section starts with a written overview of the progress made on the implementation of individual measures, as well as an evaluation of their meaningfulness for business. This is followed by a summary table, which contains feedback received from key working groups and/or local chapter offices. The tables also provide ratings for the following two metrics:

- **Implementation:** To what extent do members perceive the sub-measure, as originally stated in the *Opinions*, to have been implemented.
- **Impact:** To what extent would full implementation of the relevant sub-measure meaningfully improve the business environment. Note, this metric is assessed regardless of whether any implementation has taken place.

The scores denote the following:

Score	*	**	***
Implementation	Little or no progress has been made with implementation.	Some action has been taken but more needs to be done.	The sub-measure has been fully implemented or substantial progress made.
Impact	Full implementation would not improve the business environment and/or investor confidence because: <ul style="list-style-type: none"> • the measure was already in place prior to the <i>Opinions</i>' publication; • any action taken would effectively represent a continuation of the <i>status quo</i>; or • the scope of the measure is too limited. 	Full implementation would lead to some improvements to China's business environment and/or investor confidence.	Full implementation would meaningfully improve China's business environment and/or investor confidence.

It is notable that in almost all instances in which implementation progress has taken place, the sub-measure itself has a low impact score. In other words, some progress is being made on the implementation of the *Opinions*, just not in the areas that mean most to business.



I. Market access and procurement: Narrow progress, big-ticket items unaddressed

Market access restrictions have been a significant and long-standing problem for European businesses operating in China. Investment barriers are still widespread, with 35 per cent of respondents to the European Chamber's BCS 2024 reporting this to be the case.⁶² The fact that the *Opinions* contain a number of measures aimed at addressing both hard and soft market access barriers therefore made businesses sit up and take notice. One year on, progress in this area can be best described as incremental.

Market opening has been negligible

Headway has been made on sectoral initiatives of limited impact and/or geographical scope. In the information and communication technology (ICT) sector for example, market opening has taken place with the removal of ownership restrictions from six types of value-added telecommunications services (VATS).⁶³ While viewed positively by members, several VATS remain restricted,⁶⁴ and the initiative is restricted to four free trade zones.⁶⁵

Another example of market opening that is still in its nascent stages and restricted in scope is the cargo relay pilot in the shipping industry. First, it is notable that this pilot was launched nearly two years before the publication of the State Council's *Opinions*.⁶⁶ Second, in addition to the fact that the pilot has a limited geographical scope—as it can only be trialled by ships at Yangshan Port in Shanghai arriving from, or departing for, the three northern ports of Dalian, Qingdao and Tianjin—members report that more market players need to be included for the initiative to have a substantial impact.⁶⁷

Progress on 'big ticket' items lacking

One measure that would lead to meaningful improvements to the business environment proposes promoting the revision of China's Government Procurement Law. However, not only has no real progress taken place, but there have also been signals that a revision will not be forthcoming any time soon. Less than a month after the publication of the *Opinions*, the revision of China's Government Procurement Law was listed as a 'category II' project in the NPCSC's Five-year Legislative Plan,⁶⁸ indicating that it is not a top priority.

62 Unpublished data from the *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 2nd July 2024, <https://www.europeanchamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>

63 According to Chinese law, foreign investment in VATS cannot exceed a 50 per cent shareholding. With the lifting of the foreign shareholding restrictions in the pilot areas, foreign investors can now wholly own these services. *Notice of the Ministry of Industry and Information Technology on Carrying out the Pilot Work of Expanding the Opening-up of Value-added Telecommunications Services*, Ministry of Industry and Information Technology, 8th April 2024, viewed 26th July 2024, <https://www.gov.cn/zhengce/zhengceku/202404/content_6944441.htm>

64 Foreign ownership caps will be scrapped for businesses involved in several types of telecommunication services, including data centres, content distribution, internet access, online data and transaction processing, as well as information release, delivery and protection. However, online news publishing, online audiovisual services and internet cultural services are still off-limits to foreign investors seeking full ownership. Chen, F, *China scraps ownership caps on some telecoms services, courting foreign capital resurgence*, SCMP, 10th April 2024, viewed 26th July 2024, <<https://www.scmp.com/economy/china-economy/article/3258531/china-scraps-ownership-caps-some-telecoms-services-courting-foreign-capital-resurgence>>

65 These zones are located in Beijing, Hainan, Shanghai and Shenzhen.

66 *International Cargo Relay*, European Union Chamber of Commerce in China, 13th December 2022, viewed 18th July 2024, <https://www.europeanchamber.com.cn/en/advocacy-success/11282/international_cargo_relay>

67 For more information see Key Recommendation 1 of the *International Liner Shipping Position Paper*. With the trial set to end on 31st December 2024, the central government is reviewing the pros and cons of the trial and will subsequently decide whether the opening up will be permanent. In practice, members report that the import cargo relay leg of the initiative has been smooth, however the export cargo relay has not been carried out effectively.

68 The 14th NPCSC's plan categorises legislative projects into three groups, category I to III, in descending priority. Category II projects refer to "draft laws that should be worked on without delay and are to be submitted for deliberation when the conditions become ripe." In this regard, while important, the revision of the Government Procurement Law is not viewed as an urgent priority. For the full list of laws as categorised by the NPCSC, see: Wei, C, and Hu, T, *Translation: Five-Year Legislative Plan of China's National People's Congress for 2023–2028*, NPC Observer, 7th September 2023, viewed 14th August 2024, <<https://npcobserver.com/2023/09/china-14th-npc-five-year-legislative-plan/>>

Another example is the measure that proposes the clarification of specific standards for what constitute ‘made in China’ goods. This is potentially significant for some members operating in the healthcare equipment (HCE) industry who face soft discrimination in procurement procedures due to discretionary treatment by local officials. While this measure initially sparked optimism among the Chamber’s membership, it has faded due to a lack of steps being taken.

One year on from the *Opinions*’ publication, European companies continue to face discriminatory treatment in both market access and procurement procedures as the numerous working group position papers make clear. This is despite the fact that four months after the publication of the *Opinions*—which include several sub-measures aimed at addressing such treatment—the General Office of the Ministry of Commerce (MOFCOM) published a letter stating the intention to “clean up the provisions and measures containing unreasonable differential treatment between domestic and foreign investors.”⁶⁹

Some examples of discriminatory treatment faced by FIEs attempting to access China’s procurement market include the following:

- **Rail:** Members continue to be disadvantaged as a result of China’s tender evaluation methods and the ‘one-point scoring system’, whereby state-owned enterprises (SOEs) will be awarded one point, joint ventures (JVs) half a point and FIEs no points. In competitive bidding processes, one point can make the difference between a winning and losing bid.
- **HCE:** No progress has been made to reduce discrimination within volume-based procurement (VBP) processes since the release of the *Opinions*.
- **Quality and Safety Services (QSS):** Foreign-invested testing, inspection and certification (TIC) agencies are still not permitted to conduct inspection services on containers owned by Chinese enterprises. They also continue to be underrepresented on the list of agencies approved to carry out validation and verification services under the China Certified Emissions Reduction (CCER) scheme.

Further action is thus urgently needed in this area to address the concerns of FIEs and allow them to fully contribute to China’s economy.

At a glance: Market access and procurement

What the Opinions say	Reality check	Implementation and impact
<i>Align with high-standard, international trade and economic rules, and increase efforts on the comprehensive pilot demonstration for the opening up of the service sector. – Measure 2</i>	International Liner Shipping Working Group (WG): Shanghai’s cargo relay pilot is still in its initial stages, and is limited in geographical scope. More market players are also need to participate in the initiative if it is to be impactful.	Implementation: ** Impact: *

⁶⁹ *Clean-up of Unreasonable Differential Treatment between Domestic and Foreign Investors*, Ministry of Commerce of the People’s Republic of China, 8th November 2023, viewed 24th July 2024, <<http://m.mofcom.gov.cn/article/zcfb/zcwgzt/202311/20231103452139.shtml>>



What the Opinions say	Reality check	Implementation and impact
<p><i>Prudently expand the regions piloting the opening up of value-added telecommunications services (VATS), such as domestic internet virtual private network (VPN) business (with foreign equity not exceeding 50 per cent), information services (limited to app stores, excluding online publishing services), and internet access services (limited to providing internet access services to users).</i> – Measure 2</p>	<p>ICT WG: There has been some progress with the removal of ownership restrictions for six types of VATS. However, internet protocol VPNs—a key area of interest for members—are not included, and the geographical scope remains limited to just four pilot regions.⁷⁰</p>	<p>Implementation: ** Impact: **</p>
<p><i>Promptly introduce relevant policy measures to further clarify the specific standards for ‘made in China.’</i> – Measure 6</p>	<p>Cybersecurity WG: For the recent removal of VATS ownership restrictions to meaningfully move the needle for business, ambitious opening-up plans need to follow; the national roll-out of the opening-up measures needs to be expedited.</p>	<p>Implementation: ** Impact: **</p>
<p><i>Innovate cooperation procurement methods, and support foreign-invested enterprises (FIEs) in China to develop globally leading, innovative products through first-time purchases, etc.</i> – Measure 6</p>	<p>HCE WG: Policies introduced so far have been macroscopic and difficult to directly connect with bidding and procurement processes in the healthcare equipment industry specifically.</p>	<p>Implementation: * Impact: ***</p>
<p><i>Promote the revision of the Government Procurement Law.</i> – Measure 6</p>	<p>HCE WG: No meaningful regulations or policies have been introduced following the publication of the <i>Opinions</i>.</p>	<p>Implementation: * Impact: ***</p>
<p><i>Promote national-level service industry standardisation trials on expanding the opening up of the service sector in comprehensive pilot demonstration areas.</i> – Measure 7</p>	<p>Construction WG: Over the past year, some European construction service providers have successfully entered the Chinese market through JVs and partnerships with local firms. However, there has been little progress in this area. The limited scope of this initiative also means that even if it is fully implemented its potential impact on members—who are looking for broader market access that is not just restricted to pilot areas—will not be significant.</p>	<p>Implementation: ** Impact: *</p>

⁷⁰ These pilot regions are Beijing’s national comprehensive demonstration zone for expanding opening-up in the service sector; the Lin-gang Special Area of the China (Shanghai) Pilot Free Trade Zone and the pioneer area for socialist modernisation in Shanghai; the Hainan Free Trade Port; and the Shenzhen pilot demonstration area of socialism with Chinese characteristics.

What the Opinions say	Reality check	Implementation and impact
<p><i>Unless there are clear provisions in laws and regulations or legitimate national security concerns, policies issued by all regions to support industrial development and/or expand domestic demand shall not exclude or discriminate against FIEs and their products and services on the basis of them being foreign-invested brands, and shall not set additional conditions for FIEs and their products and services to benefit from such policies. – Measure 8</i></p>	<p>Legal and Competition WG: There are few remaining policies that explicitly discriminate against foreign brands. However, discrimination still happens through other channels. This measure fails to address informal discrimination.</p> <p>Examples of such discrimination in the rail, HCE and QSS industries can be found on page 23.</p> <p>At the same time, China's definition of national security keeps expanding,⁷¹ the impact of which can be seen with the following two examples:</p>	<p>Implementation: *</p> <p>Impact: *</p>
	<p>Investment WG: There needs to be more clarity on how companies are being assessed on national security-related issues. Without this, foreign companies cannot know where the red lines are and will continue to experience discrimination and compliance risks.</p>	<p>Implementation: *</p> <p>Impact: *</p>
	<p>ICT WG: Persistent restrictions in the form of security and controllability testing, domestic substitution quotas, and non-technology-neutral technical regulations are reducing the market space for foreign companies in China's ICT industry. There has been a regression in this area due to the expansive and vague scope of national security-related legislation.</p>	<p>Implementation: *</p> <p>Impact: *</p>

⁷¹ Riskful Thinking: Navigating the Politics of Economic Security, European Union Chamber of Commerce in China and China Macro Group, 20th March 2024, viewed 1st July 2024, <<https://www.europeanchamber.com.cn/en/riskful-thinking-report>>



What the Opinions say	Reality check	Implementation and impact
<p><i>Conduct special inspections to ensure that business entities can fairly participate in government procurement activities, investigate and handle illegal and irregular acts of differential treatment against FIEs in accordance with the law, and publicly report typical cases of violation at appropriate times. – Measure 6</i></p>	<p>Rail WG: Foreign enterprises continue to be subjected to the ‘one-point scoring system’, which formally favours domestic enterprises when it comes to public bidding tenders.⁷² The working group has been informed by the Chinese authorities that this process is under revision, however, at the time of writing, no revised guidelines had been published and in many instances the guideline continues to be adhered to.</p>	<p>Implementation: *</p> <p>Impact: ***</p>
<p><i>If FIEs believe that their rights and interests have been harmed during government procurement activities, they can raise questions and complaints in accordance with regulations, and financial departments at all levels shall accept and handle them fairly in accordance with the law. – Measure 6</i></p>	<p>QSS WG: No concrete progress has been witnessed since the publication of the <i>Opinions</i> despite the QSS WG’s position paper including a key recommendation related to this point for the past five years.⁷³</p>	<p>Implementation: *</p> <p>Impact: ***</p>
<p><i>If FIEs believe that their rights and interests have been harmed during government procurement activities, they can raise questions and complaints in accordance with regulations, and financial departments at all levels shall accept and handle them fairly in accordance with the law. – Measure 6</i></p>	<p>Legal and Competition WG: There is a lack of due process for challenging government procurement discrimination. In practice it is possible to raise questions or complaints, but a low level of transparency, as well as enforcement issues, often render these mechanisms ineffective.</p>	<p>Implementation: **</p> <p>Impact: *</p>

II. HR and business travel: Low-hanging fruit picked, comprehensive issues not touched

The *Opinions* set forth several HR-related measures aimed at improving foreign firms’ ability to attract, hire and retain both foreign nationals and local employees, as well as a measure on increasing vocational education. While action has been taken on a few related points, its overall impact has been limited.

Talent attraction and retention: Early action taken but restricted in scope

Within a week of the *Opinions*’ publication, the MOFCOM, together with the State Taxation Administration (STA), announced that China’s preferential individual income tax (IIT) regime for foreign nationals,

⁷² Under the ‘one point scoring-system’, fully domestic Chinese companies receive one point when participating in public bidding tenders; majority Chinese owned foreign-domestic joint ventures receive half a point; and FIEs receive zero points. See *Rail Working Group Position Paper* for more information.

⁷³ See *Quality and Safety Services Position Paper* for more information.

previously due to expire at the end of 2023, would be extended until the end of 2027.⁷⁴ Then, three weeks later, in September 2023, it was announced that China would be issuing a new upgraded Five Star Permanent Residence Identification (FSPRID) card for foreign nationals.⁷⁵

The extension of the preferential treatment for IIT is extremely important to FIEs, as it will allow companies to continue to offer better compensation packages to foreign nationals, which is important given the fierce competition for talent in the Asia Pacific region, particularly from Hong Kong and Singapore. However, it is a continuation of existing conditions, and therefore does not represent actual progress. With regard to the FSPRID, at the time of writing operational challenges remain,⁷⁶ and the scope of those set to benefit is extremely limited given that very few foreign nationals already have a permanent residence card.⁷⁷ The qualification criteria are also currently too vague. It is therefore recommended that the permanent residency application process be made more transparent and the scope of individuals that can apply expanded, as this would help China compete with peer economies for high-level talent.

Little has been done to improve conditions for attracting and retaining Chinese talent, another key area of concern for Chamber members. Although the *Opinions* do contain a point related to vocational training, members have not seen any developments of note in this area. This is a cause for concern for a large number of Chamber members who report that while Chinese graduates tend to be well educated, many lack the practical skills required in the workplace.⁷⁸

Business travel: Improvements welcomed, expansion of current visa-free policy recommended

One of the key challenges that European companies in China have faced over the past four years has been the breakdown of people-to-people exchanges. The lack of travel for staff between HQs and China operations has led to significant communication issues, as well as a breakdown in trust for some. This is resulting in members' China operations often being unable to secure investment for new projects and a general lack of efficiency, among other issues.⁷⁹

The European Chamber therefore welcomes the progress that has taken place with regard to facilitating business travel, albeit in a phased manner. Throughout the past 12 months, China has issued and subsequently extended a series of visa-free travel policies, which, at the time of writing, permit the citizens of 11 EU member states to enter the country visa-free and remain for 15 days.⁸⁰

This has coincided with an increase in traveller numbers in general,⁸¹ and made it easier for staff from company HQs to visit China. As noted by one executive interviewed for this report, "Previously it would

74 *China Extends Preferential Tax Policies for Foreigners to 2028*, Bloomberg, 28th August 2023, viewed 20th July 2024, <<https://www.bloomberg.com/news/articles/2023-08-28/china-extends-preferential-tax-policies-for-foreigners-thru-2027>>

75 *Press Conference on the New Version of Permanent Residence ID Cards for Foreigners*, National Immigration Administration of China, 15th September 2023, viewed 14th July 2024, <<https://www.nia.gov.cn/n741435/n1194535/n1599261/index.html>>

76 While the *Opinions* aim to address some of the gaps in the application of the permanent residence identification (PRID) card, holders at member companies continue to report usability issues. Specific examples include being unable to use the card to purchase housing, apply for driving licences, file income tax, enrol in social security and conduct financial transactions. For further details on this issue see: *Human Resources Position Paper 2024*.

77 Statistics on the number of foreigners that have been granted PRID cards are not widely available. From 2004 to 2013, 7,356 people were granted permanent residency status in China, just over 700 per year on average. For context, there were an estimated 848,500 foreign nationals in China during this period. Following the COVID pandemic, the number of European foreign nationals living in China dropped sharply. See: *Annual Report on Chinese International Migration (2015)*, Center for China and Globalization, Beijing, 19th March 2015.

78 See Key Recommendation 3 in the *Human Resources Position Paper 2023/2024*.

79 *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 2nd July 2024, p. 39, <https://www.eurochamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>

80 These include Austria, Belgium, France, Germany, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland and Spain. Other countries that have been able to enjoy visa-free travel to China since the introduction of this policy include Australia, Malaysia, New Zealand, Singapore and Switzerland.

81 In total, 14.64 million foreigners visited China during the first half of 2024, with visa-free entries accounting for 58 per cent (8.5 million trips) of this figure. Shen, Y, *China sees foreign visitor numbers more than double after lifting visa rules for many travellers*, SCMP, 5th July 2024, viewed 16th August 2024, <<https://www.scmp.com/news/china/diplomacy/article/3269354/china-sees-foreign-visitor-numbers-more-double-after-lifting-visa-rules-many-travellers>>



take approximately three months—due to the logistical practicalities of obtaining visas—to arrange for our board members to visit China, making it challenging to respond to urgent developments [...] it is now possible for executives from countries that have ‘visa-free status’ to visit the same week if need be.”

However, while many of the EU Member States that are the largest investors in China now have visa-free status, many companies’ senior staff hold passports from nations not currently included on the visa-waiver list, meaning they are unable to travel under this policy. The European Chamber therefore recommends that this policy be expanded to cover all EU member states as soon as possible, to help rebuild people-to-people ties and restore HQs’ confidence in the China market.⁸²

At a glance: Talent attraction, retention and development

What the Opinions say	Reality check	Implementation and impact
<p><i>Support FIEs in advanced manufacturing, modern services, the digital economy, and other fields to collaborate with various types of vocational schools (including technical training schools) and vocational training institutions to provide vocational education and training. – Measure 1</i></p>	<p>HR WG: Few specific policies have been enacted over the past year to establish a pipeline between vocational education institutions and large multinational companies.</p>	<p>Implementation: *</p> <p>Impact: ***</p>
	<p>Nanjing Chapter: One year on from the <i>Opinions</i>’ publication, the manufacturing industry still struggles to hire highly-skilled workers.</p>	<p>Implementation: *</p> <p>Impact: ***</p>
<p><i>Guide and assist foreign individuals to enjoy tax-exempt preferential policies for housing subsidies, language training fees, children’s education fees, etc, in accordance with relevant national regulations. – Measure 19</i></p>	<p>Finance and Taxation (F&T) WG: The extension of preferential IIT treatment for foreign nationals has helped to stem the deterioration of China’s attractiveness as a destination to live and work. At the same time, it does nothing to rebuild the attractiveness that has already been lost.</p>	<p>Implementation: ***</p> <p>Impact: *</p>
<p><i>Provide convenience for qualified FIEs to apply for permanent residency for their foreign senior management and technical personnel who have been employed and recommended by FIEs. – Measure 13</i></p>	<p>HR WG: The scope of applicants eligible for permanent residency remains limited and the criteria for eligibility are vague and lack transparency. Making the permanent residency application process more transparent and expanding the scope of individuals eligible to apply would help China compete with peer economies.</p>	<p>Implementation: **</p> <p>Impact: **</p>

82 The European Chamber also encourages the easing of requirements for Chinese travellers going to EU Member States

What the Opinions say	Reality check	Implementation and impact
<p><i>Increase the convenience for foreigners using permanent residence identity cards in public transportation, financial services, medical security, and internet payment scenarios. – Measure 13</i></p>	<p>HR WG: The difficulty of obtaining the Foreign Permanent Residence ID card is not currently compensated by the benefits of having one. Chamber members report they encounter useability issues, including being unable to use the card to purchase housing, apply for driving licences, file income tax, enrol in social security and conduct financial transactions.</p> <p>At the same time, the potential impact of this measure is limited, given how few foreigners hold permanent residence identity cards.</p>	<p>Implementation: ***</p> <p>Impact: *</p>

At a glance: Business travel

What the Opinions say	Reality check	Implementation and impact
<p><i>For significant and key foreign investment projects, multiple-entry business visas will be issued to relevant foreign personnel according to operational requirements. – Measure 22</i></p>	<p>HR WG: The WG is not aware of any multiple-entry business visas being issued specifically for foreign investment projects.</p> <p>The terms ‘significant’ and ‘key’ are also not defined.</p>	<p>Implementation: *</p> <p>Impact: **</p>
<p><i>Continuously optimise entry and exit policy measures, provide convenience for foreign executives, technical personnel, and the families of employees of FIEs for entry, exit and residence. – Measure 13</i></p>	<p>HR WG: Members are not aware of policies specifically related to foreign executives being introduced. At the same time, broader general positive developments have been seen when it comes to visas for foreign nationals, most notably the introduction and subsequent extension of visa-free travel for citizens of a select number of EU Member States. This is a positive development for executives visiting China, however we are yet to see the introduction of policies that meaningfully improve the situation for residents.</p> <p>Given the measure asks for ‘continuous optimisation’, it is also not clear what the ultimate goal of the measure is.</p>	<p>Implementation: **</p> <p>Impact: *</p>



What the Opinions say	Reality check	Implementation and impact
<p><i>Guide Chinese embassies or consulates in key investment countries or regions to continue to facilitate visa applications for executives of multinational corporations and publicise China's entry policies in a timely manner. – Measure 13</i></p>	<p>HR WG: Members are not aware of related policies being introduced, albeit this is an internal government measure. That said, no members have reported any previous instances of experienced executives having trouble applying for visas, rendering this measure somewhat insubstantial.</p> <p>The definition of what constitutes 'key investment countries or regions' is also yet to be specified.</p>	<p>Implementation: N/A</p> <p>Impact: *</p>

III. Digital and cyber: Progress is being made, but at a slow pace

Reforming China's overly stringent data regulations, particularly regarding cross-border data transfer (CBDT), has been a key advocacy issue of the European Chamber in the post-zero-COVID era. While some initial momentum has been built in this area, further steps will need to be taken if the final regulations and implementation guidelines are to facilitate business operations, not hinder them.

Some progress in revised CBDT regulations

At the national level, the most noteworthy development has been the Cyberspace Administration of China's (CAC's) issuance of a revised set of regulations on promoting and standardising cross-border flows of data.⁸³ In particular, the increase of triggering thresholds, from 10,000 to 100,000 people, for signing standard contracts or applying for certification—as well as some exemptions from related administrative requirements—were significant improvements from the previous draft. The revision also clarified declaration standards for the assessment of cross-border data security and the scenarios in which exemptions from security appraisals would apply. This easing of requirements for CBDT is a welcome development and is expected to ease the associated administrative burdens faced by many of the Chamber's member companies.⁸⁴

At the same time, further follow-up action is needed to completely solve the challenges currently faced by businesses. Two key issues are: 1) the scope of what constitutes 'important data' still needs to be clarified; and 2) there is still the potential that Chinese officials will broadly interpret the term 'personal sensitive information' in practice.

Sectoral-level barriers also continue to exist, preventing some members from effectively benefiting from the recent changes to China's data laws. One such example is the automotive industry, in which members are unable to benefit from these exemptions. This is because an industry-specific regulation defines 'important data' as any personal information that is being transferred, if the person whose data is being transferred is part of a data pool comprised of more than 100,000 people.⁸⁵

⁸³ *Facilitate and Regulate Regulations for Cross-Border Data Flows [Order of the Cyber Administration of China No. 16]*, Cyberspace Administration of China, 22nd March 2024, viewed 15th July 2024, <https://www.cac.gov.cn/2024-03/22/c_1712776611775634.htm>

⁸⁴ *Ibid.*

⁸⁵ Since automotive companies usually have more than 100,000 customers cumulatively, all their data is defined as 'important data'. If the definition of 'important data' for automotive companies were to be updated, they would be able to benefit from the CAC provisions.

The strict regulatory requirements on the processing of ‘important data’ in China’s data-related laws and regulations also create significant uncertainties and, in many cases, result in unfair disadvantages for foreign-invested insurance companies.⁸⁶ Each industry regulator is required to develop its own catalogue of important data that necessitates a high level of security protection. However, in many industries, such catalogues have yet to be published, and the absence of official clarification on the scope of ‘important data’ causes significant uncertainty for companies. It is notable that European Chamber members in the financial services industry report that data regulations constitute the most significant regulatory obstacle to doing business in China.

CBDT pilots: Lin-gang leads the way

Some initial momentum has also been built at the free-trade-zone level, most notably in Shanghai, where the Lin-gang Special Area has been designated as a pilot area for CBDT. While currently limited in scope, both in terms of the industries and geographical locations covered by the initiative,⁸⁷ this represents another step towards simplifying CBDT in China, in line with the *Opinions*.

With another batch of cross-border data ‘whitelists’ expected to be released later in 2024, there is a clear opportunity for the authorities to capitalise on the momentum already established, by expanding the scope of the pilot to cover more industries and scenarios as quickly as possible, before being rolled out nationwide.

At a glance: Digital and cyber

What the Opinions say	Reality check	Implementation and impact
<i>Implement requirements such as the Cybersecurity Law, the Data Security Law and the Personal Information Protection Law; establish a green channel for qualified FIEs to efficiently conduct outflow safety assessments for important data and personal information; and promote secure, orderly and free data flows. – Measure 14</i>	Cybersecurity WG: Some improvements have been made regarding the authorities’ ability to efficiently implement China’s existing cyber regulations. At the same time, the implementation of the regulations themselves is not the primary challenge for business, but rather the content of the regulations. Some progress has been seen here but key concerns remain, most notably the lack of clearly defined key terms, and the potential for Chinese officials to broadly interpret data-related laws in practice.	Implementation: ** Impact: **
	Automotive WG: Automotive companies are unable to benefit from the more convenient CBDT provisions announced by the CAC in early 2024 due to an existing, industry-specific regulation.	Implementation: * Impact: **

⁸⁶ For more information, please see the *Insurance Working Group Position Paper 2024/2025*.

⁸⁷ On 17th May, Shanghai’s Lin-gang Special Area issued three whitelists of general data for CBDT, enabling firms in three industries operating in the pilot free-trade zone to transfer data in the listed categories abroad without the need for regulatory approval for a 12-month period. The three selected industries are intelligent connected vehicle manufacturing, biopharmaceuticals and public fund management. Together, the three lists cover 64 data types and detail specific application scenarios. *Notice on the issuance of the “General Data List of Cross-border Scenario-based Data in the Field of Intelligent Connected Vehicles in the Lin-gang Special Area of the China (Shanghai) Pilot Free Trade Zone (for Trial Implementation)”*, China (Shanghai) Pilot Free Trade Zone Lin-Gang Special Area, 16th May 2024, viewed 26th July 2024, <<https://www.lingang.gov.cn/html/websites/lg/index/government/file/1791283594794135554.html>>



What the Opinions say	Reality check	Implementation and impact
<p><i>Support Beijing, Tianjin and Shanghai, and the Hong Kong-Macao Greater Bay Area, and other places in the implementation of data outflow safety assessments, personal information protection certification and standard contract filing for personal information outflows; explore the formation of a list of general data that can flow freely across borders; build a service platform during the implementation of the system; and provide compliant cross-border data flow services. – Measure 14</i></p>	<p>Shanghai Chapter: The authorities have made some progress on this measure, with efforts being undertaken on two levels. At the municipal level, the Shanghai Cyberspace Office has drafted a negative data list which is, at the time of writing, being reviewed internally and has yet to be published. At the free-trade-zone level, at the time of writing, the Lin-gang Special Area has published three whitelists for CBDT, with more expected to follow. At the same time, the scope of this initiative is limited, and operational complexities exist.</p>	<p>Implementation: **</p> <p>Impact: **</p>

IV. Green energy access: Key area for business, yet not emphasised in the Opinions

With most European companies needing to rapidly decarbonise their China operations to meet their global environmental, social and governance pledges, access to green energy is now an imperative for them, and a key consideration when evaluating investment decisions.⁸⁸ It is therefore concerning that this topic is not a priority of the *Opinions*, and is only mentioned in one sub-measure.

Policy action has been taken in this area, with the authorities introducing several related policy documents and calls for comments following the publication of the *Opinions*.⁸⁹ At the same time, numerous challenges remain, including but not limited to the following:

- A lack of guidance at both the local government and industry levels.
- Limited access to green energy.
- Sub-optimal green power trading mechanisms.
- Insufficient infrastructure for both storage and long-distance transmission of electricity.
- Poor coordination between China’s green power policies and other climate policies and mechanisms, such as its emissions-trading system, CCER and energy dual-control regulations.
- A lack of international recognition of Chinese green energy certificates.

Implementing comprehensive policies and measures that promote green power consumption would provide FIEs with an increased level of confidence that their corporate decarbonisation goals in China can

88 *Carbon Neutrality: The Role of European Business in China’s Race to 2060*, European Union Chamber of Commerce in China, 25th May 2022, viewed 16th July 2024, <https://www.eurochamber.com.cn/en/publications-archive/974/Carbon_Neutrality_The_Role_of_European_Business_in_China_s_Race_to_2060>

89 See for example: *Notice on Strengthening the Convergence of Green Electricity Certificates and Energy Conservation and Carbon Reduction Policies to Vigorously Promote Non-fossil Energy Consumption*, National Development and Reform Commission, 2nd February 2024, viewed 20th July 2024, <https://www.ndrc.gov.cn/xxgk/zc/fb/tz/202402/t20240202_1363856.html>; *The National Development and Reform Commission approved the pilot plan for green electricity trading in the electricity market of Inner Mongolia Autonomous Region*, Development and Reform Commission of the Inner Mongolia Autonomous Region, 23rd February 2024, viewed 20th July 2024, <https://www.als.gov.cn/art/2024/2/23/art_6_523068.html>; *Notice of the General Department of the National Energy Administration on publicly soliciting opinions on the ‘Basic Rules for Medium and Long-term Electricity Trading - Special Chapter on Green Power Trading’*, National Energy Administration, 19th April 2024, viewed 20th July 2024, <https://www.nea.gov.cn/2024-04/19/c_1310771805.htm>; *Notice of the General Department of the National Energy Administration on publicly soliciting opinions on the ‘Rules for the Issuance and Trading of Renewable Energy Green Electricity Certificates (Draft for Comments)’*, National Energy Administration, 26th April 2024, viewed 20th July 2024, <https://zfxgk.nea.gov.cn/2024-04/26/c_1212357073.htm>

be achieved. This is urgently needed given the emerging trend of European companies postponing the dates by which they aim to achieve carbon neutrality,⁹⁰ something that risks undermining China’s ability to achieve its own 30/60 Goals, as well as its credibility as a destination for investment.⁹¹

At a glance: Green energy access

What the Opinions say	Reality check	Implementation and impact	
<i>Introduce policies and measures and support FIEs’ increased participation in green power certificate trading and cross-provincial and cross-regional green power trading. – Measure 5</i>	Energy WG: Some related policies have been released, however access to renewable energy is still limited for most large European manufacturers in China.	Implementation: **	Impact: **
	Shenyang Chapter: Businesses lack clarity on future government plans, objectives and regulations related to green energy, making it difficult for them to align their investment plans with on-the-ground realities.	Implementation: *	Impact: **
	Nanjing Chapter: The Jiangsu Government has introduced several policies geared towards increasing the supply of green energy to businesses. However, the benefits of this are unevenly experienced, with large enterprises often given preferential access because they have more financial power and political clout compared to SMEs.	Implementation (MNCs): ** Impact: **	Implementation (SMEs): * Impact: **

V. IPR: Enforcement remains a challenge

In 2023, China launched initiatives to update and strengthen its IPR framework, highlighting the increasing importance of fostering innovation and economic growth through a fair and open market.⁹² However, while a majority of European Chamber members have found China’s written IPR laws and regulations to be

90 The BCS 2024 recorded a five percentage point (PP) year-on-year (y-o-y) drop in the proportion of respondents aiming to decarbonise their China operations by 2030, while the proportion of those targeting 2040 (30 per cent, +3pp y-o-y) or 2050 (19 per cent, +2pp y-o-y) increased. Most respondents (82 per cent) are primarily decarbonising their energy use as a means to achieve carbon neutrality, making access to green energy an imperative. However, two fifths ranked limited access to renewable energy as the key challenge they face in their decarbonisation efforts, highlighting it as an area where urgent improvement is needed. *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 2nd July 2024, pp. 41–43, <https://www.eurochamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>

91 China’s 30/60 Goals are to peak carbon emissions before 2030 and achieve carbon neutrality by 2060.

92 On 13th January 2023, the China National Intellectual Property Administration (CNIPA) released the most extensive draft amendments to the Trademark Law since its establishment in 1982. The amendments include provisions for submitting use declarations, prohibiting duplicate and malicious registrations and introducing new relief measures for infringement, which are aimed at strengthening the legal framework for trademarks. See the *Intellectual Property Working Group Position Paper 2024/2025*.



sufficient for a number of years, challenges remain when it comes to enforcement.⁹³ More will need to be done to give investors the confidence to bring their most cutting-edge technology to the China market and conduct R&D activities in the country that go beyond developing existing products for the local market.

Practical challenges continue to undermine enforcement

While the amendment of the implementing regulations of China's Patent Law in December 2023 has led to some improvements in China's IPR system,⁹⁴ including by making it easier for lawyers to file patent applications,⁹⁵ it notably failed to meaningfully address many of the key issues faced by companies when it comes to patent disputes.⁹⁶

Capacity challenges continue to weigh on enforcement. Members report that local intellectual property administration offices are sometimes unwilling to take on patent infringement cases because they do not have sufficient technical and/or legal capabilities to properly adjudicate them. At the same time, there is a general trend of it becoming more difficult to conduct investigations into IPR disputes in China, which compounds this issue.⁹⁷ In addition, thresholds for initiating legal proceedings or investigations can be relatively difficult to meet in practice.⁹⁸ The result is that despite the required framework being in place, companies are often unable to use it.

Little sectoral-level progress made

Although several relevant sub-measures are included in the *Opinions*, issues persist at the sectoral level, hindering the creation of a truly competitive IPR environment in China.

In the healthcare industry for example, foreign healthcare equipment manufacturers continue to face challenges to their IPR, which both negatively impacts their operations and deters some from making more substantial long-term investments in China.⁹⁹ One key issue is that China does not have a coordinating mechanism between its IPR regime and the government procurement system for medical devices, despite this having long been stated as a policy priority.^{100&101}

There has been some progress with VBP procedures for pharmaceutical products.¹⁰² However, IPR-related challenges remain, including an inadequate scope of protection for patent term extensions, unclear definitions in data protection regulations, insufficient stay periods for patent linkage and high patent

93 While a significant majority of respondents to the Chamber's BCS 2024 (84 per cent, +4pp y-o-y) find China's written laws and regulations to be adequate or excellent, nearly half (46 per cent, +1pp y-o-y) believe that they are not adequately enforced. The 16 per cent of members reporting IPR infringements represented an increase of 4pp y-o-y, and is the highest level recorded since 2017. At the same time, the proportion that had not had their IPR infringed (60 per cent) represented a drop of 6pp from 2023, the lowest level in six years. Of those reporting infringements, over a quarter (26 per cent) say they took place within the past year.

94 The revised regulation came into force in January 2024. *Implementing Regulations of the Patent Law of the People's Republic of China (amended up to December 11, 2023)*, WIPO, 11th December 2023, viewed 26th July 2024, <<https://www.wipo.int/wipolex/en/legislation/details/13395>>

95 For example, following the rule changes, it is now easier for those wanting to extend international patents to China to do so.

96 As the examination process for patent dispute cases takes several years on average, any tangible impacts resulting from changes to the law are yet to be seen.

97 Reasons for this include there being a decrease in the number of service providers offering this service and IPR infringers becoming more sophisticated.

98 For example, in practice it is often difficult to prove that a certain value of IP-infringing goods has been sold, a pre-requisite for action to be taken.

99 See Key Recommendation 2 of the *Healthcare Equipment Working Group Position Paper 2024/2025*.

100 In some VBP procedures for medical consumables organised by local health security bureaus, medical device manufacturers are simply required to submit an IPR self-declaration. This makes it very challenging for local governments to review every manufacturer's legality and qualifications, as it relies on manufacturers providing honest, complete and factually correct information that cannot be independently verified. For more information see Key Recommendation 2 of the *Healthcare Equipment Working Group Position Paper 2023/2024*.

101 The National Healthcare Security Administration (NHSA) and the China National Intellectual Property Administration (CNIPA) jointly issued the *Opinions on Strengthening Intellectual Property Protection in the Field of Centralised Medical Procurement* on 5th December 2022, which called for the establishment of a coordinating mechanism between China's intellectual property regime and the government procurement system for medical devices. *Opinions on Strengthening Intellectual Property Protection in the Field of Centralised Medical Procurement*, National Healthcare Security Administration and China National Intellectual Property Administration, 5th December 2022, viewed 27th April 2024, <https://www.gov.cn/zhengce/zhengceku/2023-01/02/content_5734611.htm>

102 Shanghai initiated a pilot in 2023 to explore ways to strengthen IP protection in the field of pharmaceutical procurement. Originator companies are encouraged by these measures and hope to maintain regular and effective exchanges with government authorities on these issues at all levels. *Implementation Opinions on Strengthening the Protection of Intellectual Property Rights in the Field of Pharmaceutical Procurement in the City*, Shanghai Municipal Intellectual Property Bureau and Municipal Health Security Bureau, 21st September 2023, viewed 13th July 2024, <<https://www.shanghai.gov.cn/nw12344/20231011/94e06c0305b746dcb6db3da057fed7.html>>

invalidation rates. Given this, it is unsurprising that approximately half of the Chamber’s membership in the pharmaceutical industry report China’s IP protection and enforcement system to be ineffective.^{103&104}

A similar picture is seen in the fashion and leather industry, with the lack of effective regulatory enforcement resulting in many fake goods still being sold on e-commerce platforms in China. This situation has been exacerbated by negligence on the part of platform operators. In tandem, a proliferation of bad-faith trademark registrations has severely affected the operations of many brands and risks further deterring foreign investment.¹⁰⁵

Transfer of IP in exchange for market access, a key concern for the rail industry

Limited progress has been seen in eliminating compelled technology transfers to maintain market access following the introduction of the *Opinions*, a significant issue for European companies in the rail industry and SMEs in particular. This is despite the working group’s position paper raising this as an issue for the past four years,¹⁰⁶ and a related sub-measure being included in the *Opinions*.

As a result, many are hesitant to bring their latest technology to China, which hinders business expansion and raises doubts over China’s ability to develop a world-class innovation ecosystem.¹⁰⁷

At a glance: IPR

What the Opinions say	Reality check	Implementation and impact
<i>Improve the administrative ruling system for patent infringement disputes and enhance the enforcement of administrative rulings. – Measure 10</i>	IPR WG: While the revision of the implementing regulations of China’s Patent Law has made it easier for lawyers to file patent applications, it did not address key issues faced by companies when it comes to patent disputes. It will take time to see how courts deal with disputes under these new rules.	Implementation: ** Impact: **
	Pharmaceutical WG: Members report that some local intellectual property administration offices are not willing to take on patent infringement cases because they do not have sufficient technical and/or legal capabilities.	Implementation: * Impact: **
<i>Support regions to establish intellectual property workstations at trade fairs; accept copyright, patent, trademark, and other intellectual property applications related to exhibited products, and provide effective measures for preventing infringement. – Measure 10</i>	IPR WG: A policy requiring this was in place prior to the <i>Opinions</i> ’ release, however members are not aware if there has been any implementation progress since. At the same time, some challenges undermine companies’ ability to utilise these measures in practice. Additional policy action has not been seen at the national level.	Implementation: * Impact: *

103 See the *Pharmaceutical Working Group Position Paper 2023/2024*.

104 Unpublished data from the European Chamber’s BCS 2024. 44 per cent of respondents in the pharmaceutical industry said that China’s IP protection and enforcement system is ‘inadequate’. *European Business in China Position Paper 2023/2024*, European Union Chamber of Commerce in China, 20th September 2023, viewed 14th July 2024, <https://european-chamber.com/en/publications-archive/1077/China_s_Innovation_Ecosystem_the_localisation_dilemma>

105 For more information see the *Fashion and Leather Working Group Position Paper 2023/2024*.

106 For more information see the *Rail Working Group Position Paper 2023/2024*.

107 For example, a European Chamber study on China’s innovation ecosystem, found that the country’s weak IPR protection system is the factor that has the most negative impact on the R&D activities of European companies in China. See: *China’s Innovation Ecosystem: The Localisation Dilemma*, European Chamber, 21st April 2023, viewed 14th July 2024, p. 8, <https://www.european-chamber.com/en/publications-archive/1077/China_s_Innovation_Ecosystem_the_localisation_dilemma>



What the Opinions say	Reality check	Implementation and impact
<p><i>Strengthen the protection of intellectual property rights in the procurement of pharmaceuticals and medical consumables and require enterprises participating in procurement activities to guarantee that there are no violations of patent law and other laws and regulations.</i> – Measure 10</p>	<p>HCE WG: The National Healthcare Security Administration and the China National Intellectual Property Administration (CNIPA) jointly issued the <i>Opinions on Strengthening Intellectual Property Protection in the Field of Centralised Medical Procurement</i> on 5th December 2022, which states that it is necessary to establish a coordinating mechanism between China’s intellectual property regime and the government procurement system for medical devices. However, this has not yet taken place.</p> <p>Pharmaceutical WG: In October 2023, the Shanghai authorities published the <i>Opinions on Strengthening the Protection of Intellectual Property in Municipal Medical Procurement</i>,¹⁰⁸ to support innovation in Shanghai’s biopharmaceutical industry. The new rules are a welcome development, however there has not yet been meaningful implementation.</p>	<p>Implementation: *</p> <p>Impact: ***</p>
<p><i>For products involved in intellectual property disputes, relevant departments should strengthen communication and consultation; conduct procurement activities in accordance with the law and regulations; and take timely measures, such as not purchasing, or cancelling the qualification of, products that have been determined as infringing patents through either administrative rulings of intellectual property departments or effective judgments of the people’s court.</i> – Measure 10</p>	<p>HCE WG: No meaningful progress has been observed.</p> <p>Pharmaceutical WG: Despite a 2021 policy decreeing that products involved in patent infringement litigation cases will not be included in volume-based procurement tenders, this still happens in practice.</p>	<p>Implementation: *</p> <p>Impact: **</p>
<p><i>Resolutely crack down on infringements of the intellectual property rights of FIEs and conduct special law enforcement actions against cross-regional, coordinated infringements and illegal acts.</i> – Measure 11</p>	<p>IPR WG: There has been a lack of progress in this area. Many companies continue to face challenges instigating infringement investigation proceedings.</p> <p>Fashion and Leather WG: Little progress has been made to crack down on online counterfeits. E-commerce platforms like Tmall and JD.com have relatively good IP protection schemes, but an increasing number of counterfeits are being sold directly on social media platforms.</p>	<p>Implementation: *</p> <p>Impact: ***</p>

¹⁰⁸ Implementation Opinions on Strengthening the Protection of Intellectual Property Rights for Pharmaceutical Procurement in Shanghai, Shanghai Intellectual Property Administration, 9th October 2023, viewed 20th August 2024, <<https://sipa.sh.gov.cn/xxgkml/20231020/04a65451543f46d5b1e2e84e937e29d7.html>>

What the Opinions say	Reality check	Implementation and impact
	Rail WG: SMEs continue to report being compelled to transfer technology to Chinese enterprises or business partners as a prerequisite for maintaining market access. Despite the working group's position paper raising this as an issue for the past four years, ¹⁰⁹ no meaningful progress has been made.	Implementation: * Impact: ***
<i>Improve the coordinated protection mechanism for intellectual property rights; expedite the progress of cases that are clear in fact and have conclusive evidence in accordance with the law; establish and improve an integrated online and offline law enforcement mechanism; and appropriately simplify procedural requirements. – Measure 11</i>	IPR WG: No major improvements have been seen following the publication of the <i>Opinions</i> .	Implementation: * Impact: **
	Fashion and Leather WG: Clear definitions are required for the terms 'clear in fact' and 'conclusive evidence'. There also remains a need for the relevant authorities to clarify related rules and procedures. In practice, members continue to report that digital platforms tend to side with sellers rather than brand owners when disputes arise.	Implementation: * Impact: *
	Rail WG: The working group has seen no meaningful progress in this area, despite raising a related key recommendation in its position paper for the past four years.	Implementation: * Impact: **

VI. Investment promotion and facilitation: progress made, more ambition and specificity needed

The *Opinions* contain measures aimed at directly facilitating foreign investment, including through proactive investment promotion; the provision of support for businesses that have already decided to invest; and incentives, mostly in the form of preferential tax policies. While a number of these have been formally implemented, a general lack of ambition, coupled with a lack of clarity over key clauses contained in the sub-measures themselves, means this has not meaningfully improved investor confidence. In fact, despite 2023 being dubbed the 'Year of Investing in China' by the Chinese authorities,¹¹⁰ as the year came to a close, investor confidence had fallen to the lowest levels on record according to several measures.¹¹¹

Government-industry dialogues increase, but lack substance

The *Opinions* include several sub-measures calling for increased government-industry dialogues at the national, regional and local levels. Visible efforts have been made on all three fronts, including via the establishment of roundtable discussions with business,¹¹² and the launching of an online system for the collection and handling of requests from FIEs. While these opportunities have been viewed positively by European Chamber members, resulting benefits have been harder to discern.

109 For more information see the *Rail Working Group Position Paper 2023/2024*.

110 *The Ministry of Commerce has held a series of events under the "Year of Investing in China", and said it will continue to hold these activities. So far, how have foreign-invested enterprises responded? What's the next step?*, Ministry of Commerce of the People's Republic of China, 21st September 2023, viewed 25th July 2024, <<http://english.mofcom.gov.cn/article/pressconferencehomepage/foreigninvestment/202401/20240103469758.shtml>>

111 The proportion of respondents to the BCS 2024 that rank China as a top destination for both present and future investments is the lowest on record (15 per cent and 12 per cent respectively). *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 25th July 2024, pp.4–6, <https://www.europeanchamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>

112 Between July 2023 and January 2024, China's Ministry of Commerce reportedly held 16 roundtables with FIEs, attended by more than 400 participants from companies and foreign business associations. At the local level, over the same period, *Xinhua* reported that 140 such meetings were held at the provincial level, and collectively attended by more than 2,200 FIEs and foreign business associations. *The Ministry of Commerce has held 16 roundtables for foreign-funded enterprises to solve more than 300 problems*, *Xinhua*, 20th February 2024, viewed 25th July 2024, <https://www.gov.cn/lianbo/bumen/202402/content_6932343.htm>



When it comes to industry-government meetings for example, members report that the content of such exchanges is typically quite insubstantial. Little time is allocated for discussion, with the focus more on officials providing policy interpretations, making such dialogues very one-sided. When time for discussion or questions is allowed, proceedings tend to be carefully choreographed: speakers are increasingly required to submit their talking points in advance and asked to focus on 'positive' aspects of the business environment, preventing participants from providing candid feedback; and there is a tendency to cherry-pick a limited number of questions and respond with pre-prepared answers. On the few occasions that members spontaneously raised issues, they were often not addressed directly.

While Chamber members very much appreciate the opportunity to meet with government officials at all levels, they need these dialogues to be productive.

Guidelines needed on support available to FIEs

Further clarity is needed on the kinds of support and incentives that are available to European companies. The *Opinions* only include a number of vague measures that broadly direct government actors at both the national and local levels to provide increased support for FIEs undertaking investment projects.

Measure 17, for example, calls for the authorities to, "Improve the use of foreign investment promotion funds by local governments at all levels, and enhance support for investments made in key industrial value chains." Yet, further implementation guidelines have not been released and businesses do not have clarity on what promotion funds are either available or are to be made available. Similar sub-measures stipulate that efforts are to be undertaken to support 'key' or 'major' investment projects, with no definition as to what constitutes a 'key' or 'major' project, making it impossible for FIEs to determine if they even qualify for such support.

At the same time, SMEs assume they are being deprioritised. Given the important role they play in China's economy, collectively accounting for approximately half of the country's tax revenue, 60 per cent of its gross domestic product (GDP), 70 per cent of its technological innovation and 80 per cent of its urban unemployment,¹¹³ providing policy support to SMEs should be prioritised in order to effectively address the economic headwinds that China is facing.

Little progress on specifics

In instances where the text of the *Opinions* is more specific, limited meaningful progress has been seen. The *Opinions* outline a handful of measures aimed at facilitating businesses to make investments in China, examples of which include points related to China's Qualified Foreign Limited Partnership (QFLP) programme,¹¹⁴ and the transfer of equity investment and venture capital. However, the scope of such developments remains constrained to pilot zones and other challenges exist.¹¹⁵

The picture is similar when it comes to tax incentives. The *Opinions* do contain several related provisions

113 *Financing SMEs and Entrepreneurs 2024: An OECD Scoreboard, 'People's Republic of China'*, OECD Publishing, Paris, 2024, viewed 13th July 2024, <https://read.oecd-ilibrary.org/industry-and-services/financing-smes-and-entrepreneurs-2024_7c08f656-en#page1>

114 "Beijing launched the QFLP scheme on a trial basis in 2011 with big-name asset managers such as Blackstone among the first batch of qualified investors in Shanghai. Seen as a bold step taken by China's financial regulators towards making the yuan fully convertible under capital accounts, the scheme continues to be run on a trial basis. Under the scheme, foreign investors are able to combine capital they raise abroad with cash in yuan committed by mainland investors, creating the scope for giant funds to explore the potential of China's high-growth companies. Moreover, while QFLP funds can invest in Chinese companies directly without regulatory approval, other foreign investors will have to obtain these approvals before investing in such firms." Ren, D, and Zhang, S, *QFLP scheme: IDG Capital, Brookfield among 7 firms granted access by Shanghai to unlisted firms*, SCMP, 8th June 2023, viewed 25th July 2024, <<https://www.scmp.com/business/china-business/article/3223439/qflp-scheme-idg-capital-brookfield-among-7-firms-granted-access-shanghai-unlisted-firms>>

115 For example, China's QFLP pilot rules differ significantly from region to region, and local requirements for participation in QFLP pilots often lack transparency, making it difficult for members to benefit from the initiative.

in this area, but they largely focus on the implementation of existing policy measures—two of which have even been in place since the 1990s—and have not been followed by new investment-related incentives of note. In this regard, while such policies may help companies with existing investments, they are unlikely to trigger significant new investment into China.

At a glance: Proactive investment promotion

What the Opinions say	Reality check	Implementation and impact
<p><i>Carry out a series of ‘Year of Investing in China’ activities, continuously build the ‘Invest in China’ brand; establish and improve work mechanisms; and guide and support local governments in conducting foreign investment promotion work. – Measure 21</i></p>	<p>Investment WG: Overseas investment promotion campaigns are in place, however their impact has been blunted by geopolitical tensions and weak domestic demand in China.</p>	<p>Implementation: *** Impact: *</p>
<p><i>Encourage regions to create the conditions for establishing investment promotion cooperation mechanisms with relevant countries or regions, and build investment promotion platforms in various forms. – Measure 21</i></p>	<p>Nanjing Chapter: The Nanjing Government has been cooperating with overseas organisations for a long time. However, while various visits and negotiations have taken place, it is hard to determine their impact on investment.</p>	<p>Implementation: *** Impact: *</p>
	<p>Shenyang Chapter: Several overseas regions had been in the process of establishing city-to-city relationships with Shenyang before the pandemic struck. Since then, limited progress has been made. If fully implemented, investment promotion cooperation mechanisms could provide a platform to enhance mutual understanding and people-to-people exchanges, but would likely be insufficient to move the needle when it comes to boosting investment.</p>	<p>Implementation: * Impact: **</p>



What the Opinions say	Reality check	Implementation and impact
<p><i>Support various regions to enhance communication with the Ministry of Commerce and the overseas economic and trade promotion agencies of the China Council for the Promotion of International Trade; leverage the role of investment promotion agencies (representative offices) established by local regions abroad; and strengthen connections and collaboration with foreign economic and trade promotion organisations. – Measure 23</i></p>	<p>Investment WG: While efforts to better coordinate and streamline overseas investment promotion activities would be welcomed, full implementation of this measure would do little to improve the business environment for companies already in China.</p>	<p>Implementation: ** Impact: *</p>
	<p>Government Affairs (GA) Forum: Members report action taken in this area. At the same time, it is hard to gauge the impact on investment flows.</p>	<p>Implementation: *** Impact: *</p>
<p><i>Support investment promotion teams from various regions to regularly conduct overseas investment attraction activities, such as investment solicitation and participation in exhibitions, and invite foreign businesses to China for investment negotiations. – Measure 22</i></p>	<p>Nanjing Chapter: There has been an increase in the number of regional delegations travelling overseas from China following the end of the zero-COVID policy, although it is not clear what their impact has been.</p>	<p>Implementation: ** Impact: *</p>
	<p>Shenyang Chapter: Shenyang’s mayor, governor and a range of other government officials have paid a number of visits to Europe, Asia and other regions throughout 2024. This seems to have been beneficial in terms of promoting the city’s image, but without fundamental changes to the municipality’s business environment, it will be challenging for many FIEs to develop sustainably.</p>	<p>Implementation: ** Impact: *</p>
	<p>GA Forum: Action has been taken in this area, predominantly focussed on building/strengthening ties between companies’ HQs and the Chinese Government. While positive, there is also a need for the authorities to work more closely with companies’ local China operations, given they are often responsible for developing and implementing companies’ China investment strategies.</p>	<p>Implementation: ** Impact: **</p>

At a glance: Incentives for investment

What the Opinions say	Reality check	Implementation and impact
<p><i>Thoroughly implement the Qualified Foreign Limited Partner (QFLP) domestic investment pilot, establish a sound QFLP foreign exchange management facilitation system, and provide support for relevant investment projects undertaken with renminbi raised abroad. – Measure 3</i></p>	<p>Investment WG: A pilot system was already in place at the time of the <i>Opinions</i>' publication. The fact that there is still a provincial-level QFLP quota system in place does not by itself indicate further opening.</p>	<p>Implementation: ** Impact: *</p>
	<p>Construction WG: No meaningful progress has been seen. This is a concern given that as things stand, local requirements for participation in the QFLP pilot lack transparency, making it difficult for companies to partake in the initiative.</p>	<p>Implementation: * Impact: **</p>
<p><i>Improve the use of foreign investment promotion funds by local governments at all levels, and enhance support for investments made in key industrial value chains. – Measure 17</i></p>	<p>Investment WG: There is a need for further clarity on what promotion funds and incentives are available to European companies, as well as what investments are considered 'key'.</p>	<p>Implementation: * Impact: *</p>
	<p>Shenyang Chapter: Some progress has been seen here. For example, a member company was able to successfully secure government subsidies, after trying for several years. At the same time, practical limitations remain, including the fact that local governments often lack funds.</p>	<p>Implementation: ** Impact: **</p>
	<p>Shanghai Chapter: In April 2023, prior to the publication of the <i>Opinions</i>, Shanghai published its own 24 measures aimed at attracting foreign investment,¹¹⁶ which include several related incentives. These policies are being implemented, but it is not yet clear how effective they will be in attracting new foreign investment.</p>	<p>Implementation: ** Impact: **</p>

¹¹⁶ Shanghai Releases 24 New Policies for Investment Promotion, Shanghai Industrial Policy Service Centre, 26th April 2023, viewed 14th July 2024, <<https://www.sh-hitech.com/qffc/7421.html>>



What the Opinions say	Reality check	Implementation and impact	
<p><i>Assist regions to provide support for investment projects of key multinational corporations within their statutory authority. – Measure 17</i></p>	<p>Investment WG: Guidelines on what constitute ‘key’ multinational corporations are yet to be issued.</p>	<p>Implementation: *</p> <p>Impact: *</p>	
	<p>SME WG: As significant contributors to employment, GDP and innovation in China, SMEs should also be included in these frameworks for supporting investment projects.¹¹⁷</p>	<p>Implementation: N/A</p> <p>Impact: *</p>	
<p><i>Gradually increase the number of regions for piloting the transfer of the share in equity investment and venture capital. – Measure 2</i></p>	<p>Investment WG: Currently, there are six pilot regions: three established before the <i>Opinions</i> (Beijing, Shanghai, Zhejiang), and three since (Guangdong, Jiangsu, Anhui). Additionally, Hubei has set up an online transfer platform, although it is not part of the pilot programme. By the end of 2023, the Shanghai platform had facilitated 68 transactions, with a total trade volume exceeding Chinese yuan 200 million.¹¹⁸</p>	<p>Implementation: **</p> <p>Impact: *</p>	
<p><i>For FIEs that carry out comprehensive gradient transfers within China, supervision shall be implemented based on the customs credit rating level obtained in the original region. – Measure 4</i></p>	<p>Investment WG: Members are yet to see the benefit of any related policies.</p>	<p>Implementation: *</p> <p>Impact: **</p>	
<p><i>Improve the mechanism for establishing task forces for major and key foreign-funded projects; strengthen support in terms of factors, policies and services; and promote early signing, early landing, early commencement, and early production of foreign-funded projects. – Measure 5</i></p>	<p>Investment WG: Mechanisms for this exist, but they lack transparency. It is not clear as to what constitutes a ‘key’ or ‘major’ project.</p>	<p>Implementation: **</p> <p>Impact: *</p>	
	<p>Manufacturing Forum: Major investors have benefited from this but more support is needed for SMEs.</p>	<p>Implementation (MNCs): ***</p> <p>Impact: **</p>	<p>Implementation (SMEs): *</p> <p>Impact: **</p>

¹¹⁷ The OECD reports that SMEs contribute approximately half of China’s tax revenue, 60 per cent of its GDP, 70 per cent of its technological innovation and 80 per cent of its urban unemployment. *Financing SMEs and Entrepreneurs 2024: An OECD Scoreboard*, OECD Publishing, Paris, 2024, viewed 13th July 2024, <https://read.oecd-ilibrary.org/industry-and-services/financing-smes-and-entrepreneurs-2024_7c08f656-en#page1>

¹¹⁸ Mu, Y, and Xuan, Z, *The transaction scale exceeded 20 billion yuan, and the Shanghai private equity and venture capital share transfer platform has been in operation for 2 years*, *Shangguan News*, 28th December 2023, viewed 14th July 2024, <<http://sh.people.com.cn/n2/2023/1228/c134768-40695127.html>>

What the Opinions say	Reality check	Implementation and impact
<p><i>Establish and improve the system of roundtable conferences with governments for FIEs. – Measure 9</i></p>	<p>Investment WG: Many such conferences and roundtables are already in place, but the content of exchanges is very limited.</p>	<p>Implementation: ** Impact: *</p>
	<p>GA Forum: The authorities have shown an increased willingness to meet with large companies, such as Fortune 500 enterprises, although this was never really an issue prior to the <i>Opinions</i> being published. By contrast, smaller companies often face more barriers to government-industry communication.</p>	<p>Implementation: ** Impact: **</p>
	<p>SMEs: There tends to be a disproportionate number of larger companies attending such roundtables. Feedback from SME representatives is essential to develop a sound and inclusive policy framework. Therefore, authorities should ensure that these sessions always include SMEs.</p>	<p>Implementation: * Impact: *</p>
<p><i>Establish and improve a coordinated mechanism for major and key foreign-funded project work groups at all levels; and coordinate and solve difficulties and problems encountered in project signing, construction, and production in a timely manner. – Measure 16</i></p>	<p>Logistics WG: The MOFCOM and the CCPIT have established active WGs to understand difficulties faced by foreign businesses. While they are useful mechanisms for raising issues, businesses would benefit more if actual progress on addressing issues was shared in a timelier manner.</p> <p>There is also no definition for ‘major and key foreign-funded project work groups’.</p>	<p>Implementation: ** Impact: **</p>



At a glance: Incentives for investment

What the Opinions say	Reality check	Implementation and impact
<p><i>Implement the policies of temporarily not levying pre-tax income tax on profits reinvested domestically by foreign investors, and intensify publicity and guidance efforts; instruct local commercial and tax authorities at all levels to specify the scope of the policy application, application materials, and processing procedures; and do a good job in specific implementation. – Measure 18</i></p>	<p>F&T WG: A related policy has been in place since 2018.¹¹⁹ In this regard, the measure was effectively already fully implemented by the time of the <i>Opinions</i>' publication. However, many members are currently unable to fully benefit from the policy, due to its stringent preconditions, which in many cases present an insurmountable obstacle.</p>	<p>Implementation: *** Impact: *</p>
<p><i>Support regions to implement supporting measures for FIEs within their statutory authority that meet the requirements of the Catalogue of Encouraged Industries for Foreign Investment. – Measure 17</i></p>	<p>Investment WG: This measure is being acted upon in regions that have established foreign investment.</p> <p>Shenyang Chapter: Progress has been made at the local level. The government has been forthcoming in terms of offering support for investors, including assisting member companies with relocation and site selection, as well as expediting the work visa application process for foreign nationals.</p>	<p>Implementation: ** Impact: **</p> <p>Implementation: *** Impact: ***</p>

¹¹⁹ Foreign investors can enjoy temporary non-taxation of dividend income if several pre-conditions—including that the foreign investor is a direct shareholder of the distributing company, that the re-investment is directly made and that the respective cash is transferred locally without leaving China—are satisfied.

What the Opinions say	Reality check	Implementation and impact
<p><i>Do a good job in implementing import duty-free work for encouraged foreign-invested projects and relevant supporting policy measures. – Measure 20</i></p>	<p>F&T WG: Duty-free import rules for encouraged foreign-invested projects are well established in China, with duty-free import having been possible since the 1990s. This measure was therefore already fully implemented by the time of the <i>Opinions</i>' publication and will do little to trigger significant new investment into China. Furthermore, given that the volume of self-used equipment imported by companies has reduced over the past decade,¹²⁰ the practical impact of this policy for many companies today is increasingly negligible.</p>	<p>Implementation: *** Impact: *</p>
<p><i>Guide and assist foreign-funded R&D centres to enjoy tax policies supporting the import of technological innovations and value-added tax refund policies for domestically purchased equipment in accordance with relevant national regulations. – Measure 19</i></p>	<p>F&T WG: Preferential import as well as domestic purchase of equipment has been possible for R&D centres since the 1990s.¹²¹ While better guidance in this area may help to facilitate existing investment plans, given that preferential import treatment is not new it is unlikely to trigger significant new investment into China.</p>	<p>Implementation: *** Impact: *</p>
<p><i>Encourage eligible foreign investors to establish investment companies and regional headquarters, and allow these enterprises invested by relevant investment companies to enjoy treatment as FIEs in accordance with relevant national regulations. – Measure 3</i></p>	<p>Investment WG: A number of incentive programmes are in place and working relatively well. For example, Shanghai provides financial support to encourage foreign enterprises to establish HQs in the city, covering five areas: establishment, rent, highly-skilled workers, operations and capital increase.¹²²</p> <p>However, there is a need for increased predictability, and any policy changes should be aligned at the central and local levels.</p>	<p>Implementation: ** Impact: **</p>

120 This is in no small part the result of it being increasingly possible to purchase required equipment domestically.

121 For example, goods imported by companies' R&D centres for the purposes of R&D can be exempted from import tariffs, import value-added tax and consumption tax.

122 *Circular of the Shanghai Municipal Commission of Commerce and the Shanghai Municipal Bureau of Finance on Printing and Distributing the Revised Measures for the Management of Development Funds for Regional Headquarters of Multinational Companies in Shanghai*, Shanghai Municipal Commission of Commerce, 5th February 2024, viewed 14th July 2024, <<https://sww.sh.gov.cn/zwgkxsgwj/20240205/07af281937144d9ba83d28339368b7b6.html>>



What the Opinions say	Reality check	Implementation and impact
	Legal and Competition WG: The sub-measure maintains the distinction between FIEs and domestic companies, an issue that has been a key concern for the Chamber since its inception.	Implementation: N/A Impact: *
<i>Establish and improve the complaint and coordination mechanism at provincial levels for FIEs, and promote the resolution of issues and problems involving multiple departments or policy and institutional matters.– Measure 9</i>	Legal and Competition WG: No permanent complaint and coordination mechanism exists. Companies rely on events like the Shanghai Government Dialogue, organised by the European Chamber, to resolve issues, but these channels are not available on demand.	Implementation: * Impact: **
	Nanjing Chapter: No permanent complaint and coordination mechanism exists. In the past, the CCPIT collected member complaints through the European Chamber as part of a campaign, but most of the concerns raised by members were not addressed meaningfully.	Implementation: * Impact: **

2.4 More action needed, not more action plans

In March 2024, the State Council published the *Action Plan for Solidly Promoting High-level Opening Up and Making Greater Efforts to Attract and Utilise Foreign Investment (Action Plan)*.¹²³ Detailing another set of 24 measures, the *Action Plan* contains a number of new points as well as sub-measures that closely overlap, and in some cases build upon, the measures contained in the *Opinions*. Then in July, the 2024 Third Plenum *Communique* acknowledged many of the headwinds facing the country's economy and signalled the authorities' intent to address issues hindering its economic rebound, while pledging to further deepen reform and foster a fairer and more dynamic market environment.

While such positive plans are always welcomed, the benefit of introducing new areas of focus or reinforcing previous priorities seems questionable. It instead raises questions over the integrity of earlier plans—including the *Opinions*, the 2013 Third Plenum *Decision* and China's 2017 Davos agenda—and tends to highlight the areas where little or no progress has been made.

Will public continue to trump private?

There is concern within the business community that a resurgence of the state sector, in line with China's more security-focussed objectives, may be prioritised over the private sector,¹²⁴ due to signals that came from the 2024 Third Plenum.

¹²³ Circular of the General Office of the State Council on Printing and Distributing the Action Plan for Solidly Promoting High-level Opening-up and Attracting and Utilising Foreign Investment with Greater Efforts, General Office of the State Council, 19th March 2024, viewed 14th July 2024, <https://www.gov.cn/zhengce/content/202403/content_6940154.htm>

¹²⁴ For a summary of how the twin goals of promoting development and security have converged over time in the eyes of China's leadership, see: *Riskful Thinking: Navigating the Politics of Economic Security*, European Union Chamber of Commerce in China and China Macro Group, 20th March 2024, viewed 1st July 2024, <<https://www.europeanchamber.com.cn/en/riskful-thinking-report>>

One of the main concerns upon the release of the 2013 Third Plenum *Decision*, was that while it set out the intention for the market to “play the decisive role in allocating resources”, it also stated that:

“[China] must unswervingly consolidate and develop the public economy, persist in the dominant position of public ownership, give full play to the leading role of the state-owned sector, and continuously increase its vitality, controlling force and influence.”

This contradiction has not been reconciled in the intervening 12 years, and SOEs have continued to enjoy preferential treatment in many areas of doing business—including access to financing, licences and public procurement, and the ability to influence policy—and have been largely protected from competition, to the detriment of the public sector and SMEs in particular.¹²⁵

The 2024 Third Plenum *Decision* similarly notes that the market should play “the decisive role in resource allocation and that the government better fulfils its role.” However, it also states:

“We will deepen reform of state capital and SOEs [to] help state capital and SOEs get stronger, do better, and grow bigger, with their core functions and core competitiveness enhanced [...] State capital will be steered toward major industries and key fields that are vital to national security and serve as the lifeblood of the national economy...”¹²⁶

This suggests the primary focus will remain on strengthening the position of SOEs and prioritising security concerns, while also ensuring “self-sufficiency in scientific and technological infrastructure”, an area that will continue to receive massive amounts of state capital. This raises questions over the extent to which private enterprises—both domestic and foreign—will be able to contribute to China’s development plans, at least in the medium term.

3.1 The costs of failing to act at the business level

If economic reforms that meaningfully improve the business environment are not forthcoming the negative trends outlined in section 1.2 can be expected to continue, namely:

- a loss of investment for China;
- the shifting of supply chains and siloing of China operations; and,
- an intensification of the decoupling already experienced between foreign company HQs and China operations.

Other markets already courting investment at China’s expense

While European companies are not running for the exit, many have already begun to shift investments originally planned for China to alternative markets that are perceived to be more predictable, reliable and transparent. A failure by Beijing to take action would only encourage this trend. Figure 3—which shows annual greenfield FDI flows into China, Indonesia, Malaysia, Vietnam, India and Mexico between 2003

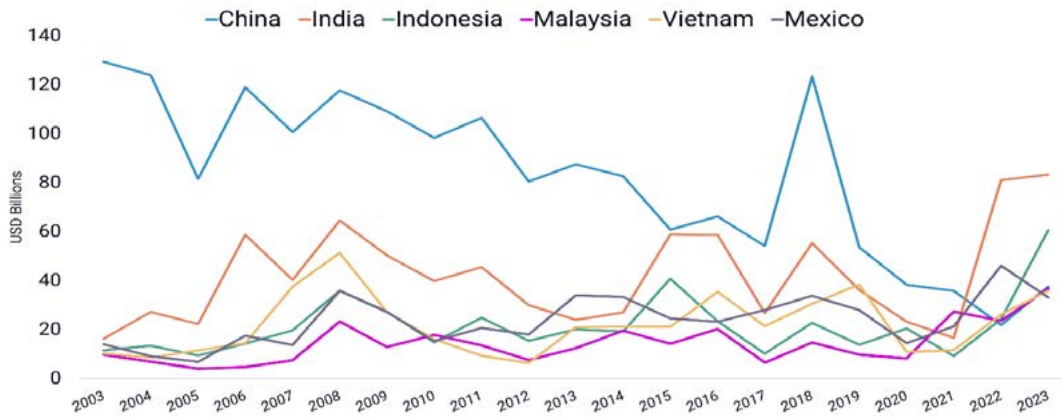
¹²⁵ *European Business in China Position Paper 2020/2021*, European Union Chamber of Commerce in China, September 2020, viewed 24th July 2022, <https://www.europeanchamber.com.cn/en/publications-archive/865/Executive_Position_Paper_2020_2021>

¹²⁶ *Resolution of CPC Central Committee on further deepening reform comprehensively to advance Chinese modernisation*, *Xinhua*, 21st July 2024, viewed 25th July 2024, <<https://english.news.cn/20240721/342df6c6e05c4e1a9ce4f6e3b933007b/c.html>>



and 2023—illustrates that this trend has intensified since 2018.^{127&128} Notably, foreign companies are not the only ones voting with their feet: large numbers of Chinese businesses are also moving their operations to other markets.¹²⁹

Figure 3: Value of announced greenfield FDI projects, 2003–2023



Source: UNCTAD world Investment Report

As investment decisions are made in cycles and are not taken lightly, these represent investments that once gone will likely not return any time soon. Moreover, the shifting of investments to other regions, as well as the relocating of business operations more broadly, could precipitate additional future outflows / loss of investment, as businesses begin to expand their footprints in new markets, establish and optimise supply chains and build connections.

3.2 The costs of failing to act at the intergovernmental level

For the EU’s part, the lack of reciprocal market access and the uneven playing field for European companies operating in China are longstanding concerns. As early as 2017, during his State of the Union Address, then European Commission President Jean-Claude Juncker warned:

“We have to get what we give [...] We are not naïve free traders. Europe must defend its strategic interests [...] It is a political responsibility to know what is going on in our own backyard so that we can protect our security if needed.”¹³⁰

In the time since his address, this sentiment has only strengthened in the EU.

While building consensus within the EU took time, the bloc’s experiences of economic coercion against EU member states—particularly China blocking the import of products, or products that contain

127 Kratz, A, and Boullenois, C, *Irrational Expectations: Long-Term Challenges of Diversification Away from China*, Rhodium Group, 13th September 2023, viewed 25th July 2024, <<https://rhg.com/research/irrational-expectations-long-term-challenges-of-diversification-away-from-china/>>

128 From 2018 to 2021 China’s share of global greenfield investment fell from 11 per cent to just below five per cent. *Ibid.*

129 45 per cent of respondents to the European Chamber’s BCS 2024 reported seeing Chinese customers or partners moving their operations to other markets, an increase of seven percentage points year-on-year. *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 25th July 2024, p.7, <https://www.europeanchamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>

130 *State of the Union 2017 – Trade Package: European Union proposes framework for screening of foreign direct investments*, European Commission, 14th September 2017, viewed 14th July 2024, <http://europa.eu/rapid/press-release_IP-17-3183_en.htm>

components, from Lithuania, following the opening of a Taiwan representative office in Vilnius in November 2021—convinced Brussels that more needs to be done to ensure economic relations with China are more balanced.¹³¹

A legal framework has been developed, and the EU now has, or is in the process of developing, tools aimed at protecting the integrity of its single market, and ensuring reciprocal market access and a level playing field for its companies. Examples of these tools are listed in the following table:

Table 1: Examples of new and forthcoming European trade tools

	Overview	Status
Inbound foreign direct investment screening mechanism	The regulation establishes a coordination and information sharing mechanism between member states and the Commission for investment screening cases. Currently all member states either have their own investment screening regimes or are looking to establish one. ¹³² A review of the current system was announced by the Commission in the context of the European Economic Security Strategy.	In force (review in progress)
Outbound foreign direct investment screening mechanism	Under this regulation outbound investments in designated sectors/technologies would be screened. Currently there is an internal exercise to assess the potential need for such an instrument.	Announced
Regulation on foreign subsidies distorting the internal market	This regulation scrutinises the activities of third-country actors benefitting from subsidies within the EU’s single market—from mergers and acquisitions to bids—with a view to prevent distortions and unfair competition.	In force
Anti-coercion instrument	This proposed regulation aims to establish a mechanism to deter coercive actions by third-countries and provide reporting channels for companies.	In force
International procurement instrument (IPI)	This instrument is aimed at ensuring reciprocity in terms of access of European companies to third-country procurement markets by enabling the EU to limit the access of non-EU players to its procurement market.	In force
Blocking statute	This regulation aims to counteract the extra-territorial application of sanctions imposed by third countries to EU operators.	In progress
Export control rules	The Commission’s Economic Security Strategy announced there would be an assessment of current export control rules, with a view to potentially modifying them.	Announced

¹³¹ *China halts Lithuania beef, dairy and beer imports amid Taiwan row*, BBC, 11th February 2022, viewed 14th July 2024, <<https://www.bbc.com/news/business-60343316>>

¹³² This latter point applies to Ireland, which has already signed an investment screening-related regulation into law, as well as Croatia, Cyprus, Greece and Bulgaria.



During the second half of 2023 and the first half of 2024, the EU has demonstrated its willingness to deploy its toolbox, something that comes as little surprise following many years of no progress having been made on any of the key areas of concern in the EU-China relationship.

Action has been taken in the form of several anti-subsidy probes and the launching of an investigation into the procurement of medical devices in China with the first use of the IPI in April 2024.¹³³ If China continues to leave key European concerns unaddressed, then further action can be expected, potentially restricting China's access to the largest single market for its exports.

This would come at a huge cost to China, particularly given that the countries' access to other key markets for exports is becoming increasingly restricted, which is most visible in relation to the US. Not only has the Biden Administration officially endorsed maintaining tariffs on more than United States dollar (USD) 300 billion worth of Chinese goods issued under the Trump administration,¹³⁴ but it has taken further action, including raising the rate of tariffs levied on USD 18 billion of goods in strategic sectors¹³⁵ and notably quadrupling the rate on electric vehicle imports.¹³⁶

Yet the US is not the only other major economy taking action. A number of other nations, including Turkey,¹³⁷ Indonesia,¹³⁸ India¹³⁹ and Canada,¹⁴⁰ have introduced measures to restrict China's access to their markets or are preparing to do so, raising questions over China's long-term access to other markets. This suggests that maintaining a healthy economic relationship with the EU should be a priority, particularly given the comparatively proportionate approach that the EU has taken when deploying its defensive toolbox.

3.3 No time to act like the present

It would be premature to rule out the possibility of the Chinese authorities taking action to turn the tide. With a large number of elections taking place throughout Europe in 2024, there may be a window of opportunity for this to happen, and the political space for a reset in the overall EU-China relationship.

133 Examples of the product categories being investigated range from needles and orthopaedic appliances to complex scanners. Blenkinsop, M, and Melander, I, *EU investigates fair access to China's medical device market*, Reuters, 24th April 2024, viewed 14th July 2024, <<https://www.reuters.com/world/europe/eu-opens-investigation-into-chinese-medical-device-market-2024-04-24/>>; *Trade defence investigations*, European Commission, viewed 25th July 2024, <<https://tron.trade.ec.europa.eu/investigations/ongoing>>

134 Rappeport, A, and Tankersley, J, *Biden Hits Chinese Electric Vehicles, Chips and Other Goods With Higher Tariffs*, New York Times, 14th May 2024, viewed 14th July 2024, <<https://www.nytimes.com/2024/05/14/us/politics/biden-china-tariffs.html>>

135 Approximately four per cent of China's exports to the United States, in value terms, are impacted by the tariffs, which cover goods including steel and aluminium, semiconductors, electric vehicles (EVs), batteries, critical minerals, solar cells, ship-to-shore cranes, and medical products. See: Goodman, M, *Weighing Biden's China Tariffs*, Council on Foreign Relations, 24th May 2024, viewed 14th July 2024, <https://www.cfr.org/article/weighing-bidens-china-tariffs?utm_source=realecon&utm_medium=email&utm_campaign=RealEcon2024May29&utm_term=GeoeconomicsMonthly>

136 Tausche, K, *Biden to increase tariffs on \$18 billion in Chinese imports in a new warning to Beijing*, CNN, 14th May 2024, viewed 7th July 2024, <https://edition.cnn.com/2024/05/14/politics/biden-tariffs-chinese-imports/index.html?utm_term=1717748904221f72347d60afc&utm_source=cnn_Meanwhile+in+China+%E2%80%93+06.07.2024&utm_medium=email&utm_ee=2m5bxvuaHhtDYK9f4Glsq8R%2F0hQN4kcRmZXt7ETB54bS8yUVQ%2BqC56ecvL%2FcS5oV&bt_ts=1717748904224>

137 In July 2024, Turkey announced it would be levying an additional 40 per cent tariff rate on vehicle imports from China, citing concerns over the potential negative impact of Chinese EVs being dumped in the country's market. Additional anti-dumping investigations have also been launched against products ranging from steel coils to food flavouring agents: Ozsevim, I, *Turkey announces 40% tariff on Chinese vehicle imports as EU imposes multi-band tariffs against Chinese OEMs*, Automotive Logistics, 12th June 2024, viewed 25th July 2024, <<https://www.automotive-logistics.com/media/trade-and-customs/turkey-announces-40-tariff-on-chinese-vehicle-imports/45746.article>>; Nulimaimaiti, M, *China's trade landscape a battleground, as data shows tariff duels to escalate with WTO hamstrung*, SCMP, 3rd July 2024, viewed 25th July 2024, <<https://www.scmp.com/economy/china-economy/article/3268983/chinas-trade-landscape-battleground-data-shows-tariff-duels-escalate-wto-hamstrung>>

138 In June 2024, Indonesia, South East Asia's largest economy, announced plans to impose tariffs of 100 to 200 per cent on imported shoes, garments and ceramic products, goods it mainly imports from China, along with Vietnam and Bangladesh. Wang, O, *China 'at risk' of wider decoupling after US, EU as ASEAN trade partners balk at imports flood*, SCMP, 2nd July 2024, viewed 14th July 2024, <<https://www.scmp.com/news/china/diplomacy/article/3268878/china-risk-wider-decoupling-after-us-eu-asean-trade-partners-balk-imports-flood?module=inline&pgtype=article>>

139 From September 2023 to December 2023 alone, India launched anti-dumping investigations against at least 32 types of Chinese products ranging from consumer goods to machinery and chemical products. Chen, F, and Sun, L, *China-India trade tensions may continue in 2024, Beijing doesn't want to rock the boat*, SCMP, 31st December 2023, viewed 14th July 2024, <<https://www.scmp.com/economy/global-economy/article/3246682/china-india-trade-tensions-may-continue-2024-beijing-doesnt-want-rock-boat>>

140 In June 2024 the Canadian Government announced it had launched a public consultation on how to respond to "unfair Chinese trade practices". Hertzberg, E, Kane, L, and Platt, B, *Canada's Freeland Hints at Broader Trade Action Against China*, Bloomberg, 13th July 2024, viewed 14th July 2024, <https://www.bloomberg.com/news/articles/2024-07-13/canada-s-freeland-hints-at-broader-trade-action-against-china?utm_source=google&utm_medium=bd&cmpld=google>

Moreover, early action taken by China could help to influence the EU's approach to the country, particularly given that the EU's own 'de-risking strategy'—which was announced just a year and a half ago at the time of writing—is still evolving, with its specifics still being debated at both the European Commission and member state levels.

Avoiding a trade war

While the EU's investigations into China and China's counter-investigations into EU dumping have become a new source of tension, the scale of the trade conflict so far remains limited.

Taking exports of Chinese-produced EVs to Europe as an example, although the EU applied provisional tariffs in July 2024,¹⁴¹ the overwhelming majority of EU-China trade remains unaffected. Despite this topic becoming a source of intense media attention, EVs accounted for just two per cent of China's overall exports to the EU in 2023.¹⁴² It is also notable that the rates of tariffs levied by the EU on Chinese EVs are far below the rate imposed by the US, leaving room for Chinese automotive producers to continue to reasonably increase their sales in the European market.¹⁴³

There also remains room for dialogue and a negotiated solution, something the European Commission has gone to great lengths to highlight to its Chinese counterparts. In this regard, it is positive that discussions have taken place at both the high and working levels following the EU levying provisional additional duties on imported electric vehicles from China.¹⁴⁴ At the same time, it will be important that this leads to meaningful progress on key European concerns, if a rekindling of EU-China ties is to be possible.

The blueprint for change is here

By taking bold action and fully implementing the pledges detailed in both the *Opinions* and its sister document the *Action Plan*, China would start to turn the tide and begin the process of repairing investor confidence in its important market.

This would just be the start, however. To this end, the 1,043 detailed and constructive recommendations put forward in this *Position Paper* form a comprehensive reform blueprint,¹⁴⁵ to fully restore business confidence, accelerate the country's economic recovery and put it firmly on the path of sustainable development. Whether they will be acted on will be largely contingent upon giving the country's policymakers room to undertake necessary reforms, discuss ideas and ultimately change course, something that was previously a characteristic of Chinese policymaking.

141 At the time of writing, definitive tariffs are due to be levied in November 2024, should a negotiated settlement not be achieved.

142 Sing, C, *China has an incentive to keep road to Europe open*, *Reuters*, 26th June 2024, viewed 14th July 2024, <<https://www.reuters.com/breakingviews/china-has-an-incentive-keep-road-europe-open-2024-06-26/>>

143 For an in-depth analysis of how tariffs would impact the competitiveness and profit margins of different models and brands of electric vehicles produced in China, see: Barkin, N, Kratz, A, and Sebastian, G, *Ain't No Duty High Enough*, *Rhodium Group*, 29th April 2024, viewed 14th July 2024, <<https://rhg.com/research/aint-no-duty-high-enough/>>

144 *Commission imposes provisional countervailing duties on imports of battery electric vehicles from China while discussions with China continue*, European Commission, 4th July 2024, viewed 25th July 2024, <https://ec.europa.eu/commission/presscorner/detail/en/IP_24_3630>

145 This number includes 19 recommendations for the European Union and European businesses related to their engagements with China.



Recommendations

Recommendations for China

- Ensure that policy packages aimed at attracting foreign investment are quickly followed by in-depth implementation guidelines and timetables, and that action is taken on the points that are most important to business.
- Enact legislation to establish a truly level playing field between foreign and Chinese enterprises.
- Improve the predictability and reliability of China's regulatory environment by ensuring legislation is specific and clearly defined, and drafted in consultation with industry.
- Refrain from erratic policy shifts and allow reasonable transition times before implementing new, or amending existing, policies or regulations.
- Provide the conditions that allow companies to undergo independent, third-party audits of their entire operations, so they can be certified as being fully compliant with global legislation.
- Permit access to legitimate sources of data and business intelligence that companies need to make well-informed investment decisions.
- Continue to optimise China's cyber and data security schemes so they serve as facilitators of, not impediments to, industry development, foreign investment and global exchanges.
- Address challenges related to companies' green energy transition.
- Refrain from punishing companies for the actions of their home governments.
- Provide the policy space for candid discussions on China's businesses environment and ensure that the concerns raised in such discussions are followed by tangible action.

Recommendations for the European Union

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

Recommendations for business

- Maintain strong communication between company HQs and China operations, to ensure that HQs receive accurate, on-the-ground information in order to make informed investment and operational decisions.
- Develop in-house capabilities to better anticipate changes to legislation and increased political risk, as well as to fully understand the costs associated with increased localisation into / disconnection from the China market.
- Monitor areas of potential political risk or public backlash, or sudden changes in market conditions, and develop proportionate mitigation strategies.
- Conduct detailed supply chain reviews and risk assessments to gauge the impact of potential legislative developments on your supply of critical inputs, and prepare accordingly.
- Prepare for emerging global regulations on supply chains by establishing transparency up- and downstream to the greatest extent possible, and determine levels of exposure to current and potential sanctions.
- Expand the scope of due diligence efforts to determine the level of exposure of suppliers and customers to potential shocks and what this could mean for business operations.
- Continue to integrate foreign staff into China operations—as well as Chinese staff into global operations—to maintain diverse teams and avoid talent silos.
- Engage with the EU and member state governments to help outline the key concerns, opportunities and challenges faced by European businesses when it comes to risk management.
- Invest and participate more in government advocacy efforts through chambers of commerce, industry associations and standard-setting bodies.



Appendix

Due to scope / structural constraints, the below sub-measures have not been analysed in the main body of the paper. Nevertheless, they do not contradict the paper’s high-level finding that more needs to be done if investor confidence is to be restored.

At a glance: Inspections

What the Opinions say	Reality check	Implementation and impact
<p><i>Support certain regions to coordinate safety production, environmental protection, product quality, and other inspections related to enterprises, and achieve the principle of ‘one entry, multiple inspections’ for enterprises. – Measure 15</i></p>	<p>Petrochemicals, Chemicals and Refining WG: The overall situation has shown signs of improvement, but enforcement and investigation practices still need to be standardised across different provinces.</p>	<p>Implementation: **</p> <p>Impact: ***</p>
	<p>Nanjing Chapter: One year on from the <i>Opinions’</i> publication, there has been an increase in the percentage of the Nanjing Chapter’s membership (55 per cent, +13 percentage points (pp) year-on-year (y-o-y)) that report a lack of coordination between different government departments when it comes to environment, health and safety (EHS) inspections, as well as in the number that report receiving inconsistent recommendations once inspections have concluded (48 per cent, +3 pp y-o-y).</p> <p>The high number of inspections also remains a key challenge for many (48 per cent), with a handful of companies even receiving upwards of 200 visits from EHS inspectors in 2023.¹⁴⁶</p>	<p>Implementation: *</p> <p>Impact: ***</p>

¹⁴⁶ Based on unpublished Chapter-specific data from the European Chamber’s BCS 2024 provided in response to the questions: *How many times a year is your company visited by environment, health and safety (EHS) inspectors from various departments?*; and, *What aspects of the EHS inspection system impact your business most?* See: *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 2nd July 2024, <https://www.europeanchamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>

At a glance: Transparency

What the Opinions say	Reality check	Implementation and impact
<p><i>In the formulation of various foreign economic and trade policies and measures, attention should be paid to enhancing transparency and predictability, and foreign investors' opinions should be heard in accordance with the law. New policy measures should be phased in with reasonable transitional periods. – Measure 12</i></p>	<p>Legal and Competition WG: There is still a significant lack of public consultation, and policies are often implemented too quickly without time for adjustment or feedback.</p>	<p>Implementation: *</p> <p>Impact: ***</p>
<p><i>Promote full-process information disclosure in the formulation and revision of standards, and ensure that FIEs participate in standardisation technical committees and standard formulation work on an equal footing with domestic enterprises in accordance with the law. – Measure 7</i></p>	<p>Standards and Conformity Assessment WG: While European companies have observed positive progress in terms of access to and participation in standardisation activities in recent years, there remain instances of both direct and indirect barriers in both government-led and social organisation standardisation frameworks. In particular, European companies would like to see more open, transparent, fair, and accessible standardisation practices concerning industry, local and social organisation standards. This would entail, for instance, making information on sponsors of technical committees publicly available.</p>	<p>Implementation: **</p> <p>Impact: **</p>

At a Glance: Dispute and complaint mechanisms

What the Opinions say	Reality check	Implementation and impact
<p><i>Improve the mechanism for responding to international investment disputes, strengthen the responsibility of relevant parties, enhance dispute prevention, and properly handle international investment disputes. – Measure 9</i></p>	<p>Legal and Competition WG: China still lacks an open and transparent legal system that can provide certainty for investors.</p>	<p>Implementation: *</p> <p>Impact: **</p>



What the Opinions say	Reality check	Implementation and impact
<p><i>Vigorously crack down on malicious operations that infringe upon the legitimate rights and interests of FIEs through the online publication and dissemination of false and unauthorised information, and investigate and deal with relevant responsible organisations and individuals severely in accordance with the law. – Measure 9</i></p>	<p>Marketing Forum: Over the past year, the Cyberspace Administration of China (CAC) has cracked down on extortion against enterprises, and infringement of corporate executives' privacy and reputation. The CAC has also required social media platforms to respond to complaints from enterprises more quickly.</p>	<p>Implementation: *** Impact: **</p>
	<p>Fashion and Leather WG: Enterprises' feedback is currently excluded from the national consumer complaints platform. This may mislead the public about how enterprises handle and resolve complaints.</p>	<p>Implementation: * Impact: **</p>

Abbreviations

BCS	Business Confidence Survey
CAC	Cyberspace Administration of China
CBDT	Cross-border Data Transfer
CNIPA	China National Intellectual Property Administration
CSDDD	Corporate Sustainability Due Diligence Directive
CSRD	Corporate Sustainability Reporting Directive
EU	European Union
F&T	Finance and Taxation
FDI	Foreign Direct Investment
FIE	Foreign-invested Enterprise
FSPRID	Five Star Permanent Residence Identification
G7	Group of Seven
GA	Government Affairs
GDP	Gross Domestic Product
HCE	Healthcare Equipment
HQ	Headquarter
HR	Human Resources
IIT	Individual Income Tax
IP	Intellectual Property
IPR	Intellectual Property Rights
IT	Information Technology
IPI	International Procurement Instrument
JV	Joint Venture
MNC	Multinational Corporation
MOFCOM	Ministry of Commerce
NPCSC	National People's Congress Standing Committee
PP	Percentage Point
PRID	Permanent Residence Identification
PV	Photovoltaic
QFLP	Qualified Foreign Limited Partnership
QSS	Quality and Safety Services
R&D	Research and Development
SME	Small and Medium-sized Enterprise
STA	State Taxation Administration
SOE	State-owned Enterprise
US	United States
USD	United States Dollar
VATS	Value-added Telecommunications Services
VBP	Volume-based Procurement
VPN	Virtual Private Network
WG	Working Group
WTO	World Trade Organization
Y-o-Y	Year-on-Year



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2

Section Two

Horizontal Issues

Horizontal Issues

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

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

European companies in China have been facing significant headwinds as the country's economy did not perform as well as expected following the lifting of zero-COVID restrictions. The Chamber's *Business Confidence Survey 2024* (BCS 2024) found that China's economic slowdown is now the most significant concern for business, with 55 per cent of respondents citing it as a top-three business challenge, a 19 percentage point increase year-on-year.¹ In response to this challenge, European companies are making strategic adjustments: a notable 52 per cent of respondents plan to cut costs in 2024, the highest level on record, with headcount reduction being the most common measure.

There is also a trend of European companies increasingly localising their staff. This, coupled with the fact that the number of foreign nationals working in China is far short of pre-COVID-19 levels, has resulted in a weakening of ties between China operations and headquarters.² This has primarily impacted operational efficiency and the ability to make investment plans, which is to the detriment of businesses and China's economy. The Human Resources Working Group and the R&D Working Group position papers both include recommendations aimed at improving China's overall conditions for liveability and mobility, in an attempt to make the country a more attractive destination for foreign talent to live and work.^{3&4}

On 22nd March 2024, the Cyberspace Administration of China (CAC) released the *Provisions on Promoting and Regulating Cross-border Data Flows (CBDT Provisions)*, aimed at streamlining cross-

1 *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 15th July 2024, <<https://www.europeanchamber.com.cn/en/publications-business-confidence-survey>>

2 Leahy, J, *China's Expat Gap Problem*, *Financial Times*, 4th June 2024, viewed 15th July 2024, <<https://www.ft.com/content/dfd5c399-976f-4f0b-8a1b-fbac495100b6>>

3 See: *Human Resources Working Group Position Paper 2024/2025*, p. 85

4 See: *Research and Development Working Group Position Paper 2024/2025*, p. 133



border data transfer (CBDT) and alleviating the associated compliance burdens.⁵ While the *CBDT Provisions* were welcomed by European Chamber members, some ambiguities and challenges remain. For example, the R&D Working Group is concerned that they will impact innovation, as enterprises in certain sectors are still required to conduct regular security audits and backups, which may deter them from carrying out R&D in certain areas due to fears of intellectual property leakage.⁶

A large number of European companies operating in China are set to be impacted by European Union (EU) legislation. On 24th May 2024, the European Council formally adopted the Corporate Sustainability Due Diligence Directive (CSDDD), reshaping corporate obligations related to human rights and environmental governance in the EU and beyond, including China.^{7&8} It is still unclear if or how companies will be able to reconcile their obligations under the CSDDD with China's legal regime, given that under current conditions it is not possible to conduct due diligence in certain 'sensitive' areas in China. As a result, some may come under increasing pressure to re-evaluate their China operations and investments.^{9&10}

European businesses have long struggled with ambiguous rules and regulations in China, and 46 per cent of respondents to the BCS 2024 identified this as the most significant regulatory obstacle they face for the eighth consecutive year. The Compliance and Business Ethics Working Group and the Legal and Competition Working Group both outline the increasing pressure on companies to improve corporate governance and meet their compliance obligations, and the challenge this poses due to China's increasing focus on national security concerns, with regulatory frameworks having expanded to cover data protection, espionage and state secrets. The revised Company Law, which entered into force on 1st July 2024, is an example of how numerous unclear provisions can lead to inconsistent application of the law, and it also maintains a distinction between foreign and domestic Chinese enterprises.¹¹ The Legal and Competition Working Group recommends reforming the foreign investment legislative and administrative regimes to ensure a level playing field for all companies.¹² Meanwhile, the Compliance and Business Ethics Working Group emphasises the importance of foreign companies' involvement in formulating laws, regulations and policies aimed at optimising the business environment to ensure that resulting legislation is practical and implementable.¹³

Carbon neutrality continues to be a key priority for European companies. The Environment Working Group provides recommendations on contributing to China's decarbonisation goals through the increased involvement of European companies in the country's green and carbon-neutral development and collaboration with the EU.¹⁴ It also highlights the obstacles encountered in practising green compliance, the challenges posed by the continuous evolution of environmental regulations and regional differences in implementation and enforcement.¹⁵ The R&D Working Group recommends

5 *Provisions on Regulating and Promoting Cross-border Data Flows*, CAC, 22nd March 2024, viewed 15th July 2024, <https://www.cac.gov.cn/2024-03/22/c_1712776611775634.htm>

6 See: *Research & Development Working Group Position Paper 2024/2025*, p. 133

7 *Corporate Sustainability Due Diligence*, European Commission, viewed 15th July 2024, <https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en>

8 *European Union Corporate Sustainability Due Diligence Directive (CSDDD) Position Paper*, European Chamber, 3rd June 2024, viewed 15th July 2024, <https://www.europeanchamber.com.cn/en/national-news/3628/ebo_worldwide_network_releases_csddd_position_paper>

9 See: *Compliance & Business Ethics Working Group Position Paper 2024/2025*, p.62

10 See: *Investment Working Group Position Paper 2024/2025*, p.111

11 *Company Law of the People's Republic of China*, *Xinhua*, 29th December 2023, viewed 15th July 2024, <<http://www.news.cn/politics/20231230/e6964c1620e04f3a94989df81581389f/c.html>>

12 See: *Legal & Competition Working Group Position Paper 2024/2025*, p.123

13 See: *Compliance and Business Ethics Working Group Position Paper 2024/2025*, p. 62

14 See: *Environment Working Group Position Paper 2024/2024*, p.68

15 *Ibid*, p.68

greater support for R&D in green and sustainable technology; while the Standards and Conformity Assessment Working Group advocates for a harmonisation and mutual recognition of carbon footprint standards.^{16&17}

Business challenges impact small and medium-sized enterprises (SMEs) disproportionately, as they do not have the same resources as larger companies to deal with them. However, given that SMEs are integral to China's economy, their recovery—which has been sluggish and unequal since the removal of zero-COVID management measures—should be promoted by the Chinese Government. The Inter-chamber SME Working Group calls for European SMEs to have better access to financing and provides recommendations for resolving key challenges that prevent them both from reaching their full potential and contributing fully to China's economic recovery.¹⁸

In 2023, the State Council announced the *Opinions of the State Council on Further Optimising the Foreign Investment Environment and Enhancing Efforts to Attract Foreign Investment (Opinions)*.¹⁹ The *Opinions* contain 24 measures aimed at optimising China's business environment for foreign investment, covering topics such as the equal treatment of foreign and domestic companies, CBDT, intellectual property rights protection and stronger fiscal support. While the *Opinions* are by no means a silver bullet to address all the issues faced by foreign businesses, the Chamber's working groups believe that if fully implemented in a timely, coordinated manner, they could go a long way to improving business confidence.²⁰

16 See: *Research & Development Working Group Position Paper 2024/2025*, p. 133

17 See: *Standards & Conformity Assessment Working Group Position Paper 2024/2025*, p. 141

18 See: *Inter-chamber Small and Medium-sized Enterprise Working Group Position Paper 2024/2025*, p.101

19 *China to further optimise environment for foreign investment*, The State Council, 13th August 2023, viewed 15th July 2024, <https://english.www.gov.cn/policies/latestreleases/202308/13/content_WS64d8b834c6d0868f4e8de84e.html>

20 INSERT Reference to 24 measures score card in PP.



Compliance and Business Ethics Working Group

Key Recommendations

1. Increase Industry Participation in the Formulation of Enterprise-related Legislation to Optimise the Business Environment for Foreign Investment

- Improve public consultation procedures before promulgating laws and regulations, and clarify when company input has been considered and/or adopted.
- Establish and optimise communication channels to address the compliance challenges and other difficulties faced by foreign-invested enterprises (FIEs) in China, and publish relevant updates and improvements in a timely manner.

2. Increase the Transparency and Predictability of the Business Environment by Promoting and Clarifying Legislation and Enforcement Procedures that are Relevant to FIEs

- Collect public stakeholders' comments, questions and recommendations regarding new or amended legislation, and deliver feedback promptly and publicly.
- Establish a scheme that systematically promotes new or amended legislation, and communicate official interpretations to the public.
- Work with industry associations, chambers of commerce and other non-governmental organisations (NGOs) when promoting and clarifying new or amended legislation to ensure that the information is disseminated as widely as possible.
- Review the questions and issues that were raised before the implementation of new or amended legislation, and take a proactive approach to provide both further clarification and guidance when needed, and prepare for any future amendments.

3. Establish a Mechanism for State-owned Enterprises (SOEs) and Multinational Corporations (MNCs) to Communicate and Cooperate on Compliance Issues

- Create a knowledge-transfer platform through which SOEs and MNCs can exchange compliance best practices.
- Develop a dynamic dialogue between SOEs and MNCs to discuss micro-level insights on compliance theory and practice.

Recent Developments

Compliance in China has evolved from the traditional areas of anti-corruption and anti-bribery to cover a much wider area, in line with the government's aim of establishing a 'rule of law' society and its increased focus on national security. Regulatory frameworks have been expanded, with legislation being introduced or reinforced in areas including data protection, espionage

and state secrets. This has increased the urgency for multinational corporations (MNCs) to improve corporate governance and strengthen compliance capabilities to mitigate related risks. One of the key challenges that companies face in this regard is that new and updated legislation often includes broad and vague clauses, and lacks both precise definitions of key terms and clear implementation guidance. This has been a long-standing feature of the Chinese legislative environment,



with ambiguous rules and regulations having been the number one regulatory challenge faced by European businesses operating in China for the last eight consecutive years.¹

Below is a summary of some of the key recent developments of compliance-related legislation that will impact European companies operating in China.

Cross-border data transfer (CBDT)

On 22nd March 2024, the Cyberspace Administration of China (CAC) released the *Provisions on Promoting and Regulating Cross-border Data Flows (CBDT Provisions)*,² with immediate effect. At the same time, the CAC released the *Version 2.0 Guidelines for Security Assessment* and the *Version 2.0 of Guidelines for SCC Filing*, which streamlined respective requirements.³

The *CBDT Provisions*—aimed at alleviating the compliance burden associated with CBDT, but still leaving a few ambiguities and challenges to clarify and address—will prevail over existing CBDT rules or guidelines governing the security assessment, Chinese Standard Contractual Clauses (SCCs) and certification, in case of any discrepancies.

Two key challenges for European companies are the discrepancy between national legislation and local enforcement, and the lack of a comprehensive understanding among some legislation drafters about MNCs' business operations in China, including human resources functions and information technology (IT) structures. To close the gap between national legislation and practical ways for MNCs to achieve compliance while maximising data utility, there needs to be a clearer understanding of the legislative purpose and how legislation will be implemented at the local level. The best way to achieve this would be to establish transparent dialogue channels between legislation drafters and MNCs to ensure that CBDT regulations are implementable and do not unreasonably constrain business operations.

Company Law

The latest amendment to the Company Law, ratified by the Standing Committee of the 14th National People's Congress on 29th December 2023, was a significant overhaul aimed at modernising China's corporate landscape and invigorating market dynamics.⁴ Effective from 1st July 2024, it comprises over 200 articles. Aspects such as capital contributions, corporate governance, shareholder rights protection and company establishment have been added or amended, and it also places emphasis on the fiduciary duties of directors, supervisors and senior management, including their corresponding personal liability.

The new provisions address various potential conflicts of interest and fraud scenarios. The fiduciary duties of directors, supervisors and senior management provided in the revised law are generally in line with the established practices of most, if not all, MNCs operating in China. The working group welcomes the revisions that highlight and increase the importance of compliance for all companies operating in China, particularly for senior management. At the same time, the working group would also like to see further clarification on the nature and scope of the fiduciary duties through implementing regulations or other guidance. Additionally, the rules pertaining to related information requests in connection with related public investigations should be clarified.

While the revised Company Law seems to be aimed at promoting more robust corporate governance standards overall, this is hindered by various unclear provisions and the application of one-size-fits-all regulation, such as the re-introduction of a five-year time limit on capital contributions,⁵ and the requirement to include an employee representative on the board of directors when a company has more than 300 employees. These situations create compliance challenges, and will have a disproportionate impact on small and medium-sized enterprises (SMEs). In addition, the revised law does

¹ *European Business in China Business Confidence Survey 2024*, p. 21, European Union Chamber of Commerce in China, 10th May 2024, viewed 27th June 2024, <https://www.eurochamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>

² *Provisions on Regulating and Promoting Cross-border Data Flows*, CAC, 22nd March 2024, viewed 8th May 2024, <https://www.cac.gov.cn/2024-03/22/c_1712776611775634.htm>

³ *Version 2.0 of Guidelines for Security Assessment and Version 2.0 of Guidelines for SCC Filing*, CAC, 22nd March 2024, viewed 8th May 2024, <https://www.cac.gov.cn/2024-03/22/c_1712783131692707.htm>

⁴ *Transformative updates to China's corporate governance: A comprehensive overview of the 2023 Amendment to PRC Company Law*, King & Wood Mallesons, 29th February 2024, viewed 24th April 2024, <<https://www.kwm.com/global/en/insights/latest-thinking/transformative-updates-to-chinas-corporate-governance-a-comprehensive-overview-of-the-2023-amendment-to-prc-company-law.html>>

⁵ The five-year time limit was likely intended to protect the interests of investors by combatting bad-faith actors who register unrealistically large sums of capital without the ability to fulfil the contributions. However, this limit applies to all LLCs and has a disproportionate impact on small- and medium enterprises (SMEs) that have limited resources to adapt to volatility. It is particularly unappealing to the China subsidiaries of European companies that rely on re-investment of retained earnings in China instead of new capital injections from abroad.





not address the longstanding issue of the unequal legal status of foreign and domestic companies, as is also the case with the Foreign Investment Law (FIL). Maintaining this distinction could further impact business confidence in China.

The working group hopes that China's legislative, judicial and law enforcement authorities will pay attention to the issues that have arisen following the implementation of the Company Law and provide clarity and adequate guidance in a timely manner.

Sanctions and Export Controls

MNCs headquartered in Europe, together with their affiliates operating in China, need to comply with sanctions and export control requirements implemented by both the United States (US) Government and the European Union (EU). At the same time, China has promulgated an increasing number of sanctions and export control laws and regulations of its own, which also cover MNCs' affiliates in China. These include the *Provisions on the List of Unreliable Entities*,⁶ the Export Control Law and the Law on Countering Foreign Sanctions.^{7&8} Given many of these laws and regulations conflict with US and EU sanctions and export controls, MNC affiliates in China are encountering compliance challenges, and struggling to manage global supply chains and make investment decisions, while suffering from a lack of operational efficiency in general.

New and forthcoming US export control policies on advanced computing and semiconductor manufacturing are anticipated to significantly impact a substantial proportion of EU companies operating in China. Nearly a quarter of respondents to the European Chamber's *Business Confidence Survey 2024* expect repercussions for their operations, while 30 per cent are uncertain about the potential impact of these policies.⁹ This underscores the considerable uncertainty surrounding enforcement of these policies.

6 *Provisions on the List of Unreliable Entities*, Ministry of Commerce (MOFCOM), 2020, viewed 12th July 2024, <<http://m.mofcom.gov.cn/article/b/fwz/202009/20200903002593.shtml>>
7 *Export Control Law*, MOFCOM, 2021, viewed 12th July 2024, <<http://exportcontrol.mofcom.gov.cn/article/zc/gnzc/gnzcfg/ffg/202111/226.html>>
8 *Law on Countering Foreign Sanctions*, State Council, 2021, viewed 12th July 2024, <https://www.gov.cn/xinwen/2021-06/11/content_5616935.htm>
9 *European Business in China Business Confidence Survey 2024*, p. 32, European Union Chamber of Commerce in China, 10th May 2024, viewed 12th July 2024, <https://www.europeanchamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>

EU Corporate Sustainability Due Diligence Directive

On the 24th May 2024, the Corporate Sustainability Due Diligence Directive (CSDDD) was formally adopted by the Council of the EU. It will apply to all companies that have a significant presence in the EU, a net worldwide turnover of at least euro (EUR) 450 million and at least 1,000 employees. This comprehensive piece of legislation requires companies in scope to establish due diligence processes that ensure their entire operations—including their subsidiaries, and both their up- and downstream suppliers—are in line with EU human rights and environmental standards.¹⁰ While European companies are fully on board with the goals of the CSDDD, it may be challenging for companies operating in China to meet its requirements due to conflicting legislation, the inability to conduct audits and/or political sensitivity. Furthermore, although SMEs and large companies without direct business with the EU do not fall directly under the scope of the CSDDD, these companies will still be impacted if they supply firms that must comply, increasing their administrative burden. The European Chamber, together with the European Business Association Worldwide Network (EBOWN), collected input from member companies and developed a consolidated industry position paper that provides recommendations to the EU on the implementation of this directive.¹¹

Key Recommendations

1. Increase Industry Participation in the Formulation of Enterprise-related Legislation to Optimise the Business Environment for Foreign Investment

Concern

The mechanism for involving foreign-invested enterprises (FIEs) in public consultation before the enactment of legislation is still inadequate.

Assessment

The Chinese Government has made several recent

10 *European Parliament legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD))*, European Parliament, 24th April 2023, viewed 11th May 2024, <https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329_EN.html#top>
11 *European Union Corporate Sustainability Due Diligence Directive (CSDDD) Position Paper*, European Chamber, 3rd June 2024, viewed 13th June 2024, <[https://static.europeanchamber.com.cn/upload/medianews/attachments/EBOWN_CSDDD_Position_Paper\[121\].pdf](https://static.europeanchamber.com.cn/upload/medianews/attachments/EBOWN_CSDDD_Position_Paper[121].pdf)>





commitments to improve the domestic business environment, which the working group appreciates. For example, on 1st March 2019, the General Office of the State Council issued the *Notice on Fully Soliciting Opinions from Enterprises, Industry Associations, and Chambers of Commerce in the Process of Formulating Administrative Regulations, Rules, and Administrative Normative Documents*. This notice states: “All regions and departments should carefully analyse and study the opinions put forward by enterprises, industry associations and chambers of commerce, fully consider their interests and demands, as well as the impact of such interests on other relevant enterprises and industries, and adopt reasonable opinions. The adoption status should be publicised through government or department portals, mobile apps, official WeChat accounts and newspapers, among others, or feedback should be provided to relevant stakeholders through various means such as telephone, SMS, email and letters. When several stakeholders make similar proposals that are not adopted, feedback and explanations should be provided through appropriate means.”¹²

Additionally, on 22nd October 2019, the State Council issued the *Regulations on Optimising the Business Environment*, which stipulate: “In formulating administrative regulations, rules and administrative normative documents closely related to the production and operational activities of market entities, opinions from market entities, industry associations and chambers of commerce should be fully solicited in accordance with the provisions of the State Council. With the exception of those that need to be kept confidential by law, when formulating administrative regulations, rules and administrative normative documents closely related to the production and operational activities of market entities, public opinions should be solicited through newspapers and the internet, among other channels, and a feedback mechanism for the adoption of opinions should be established and improved. The period for soliciting public opinions shall generally be no less than 30 days.”¹³

¹² *Notice on Fully Soliciting Opinions from Enterprises and Industry Associations and Chambers of Commerce in the Process of Formulating Administrative Regulations, Rules and Administrative Normative Documents*, State Council, 1st March 2019, viewed 8th April 2024, <https://www.gov.cn/gongbao/content/2019/content_5377106.htm>

¹³ *Regulations on Optimising the Business Environment*, State Council, 22nd October 2019, viewed 8th April 2024, <https://www.gov.cn/zhengce/content/2019-10/23/content_5443963.htm>

However, in practice, enterprises often receive little feedback after submitting input to legislative bodies and government departments, meaning they are often unable to determine whether their opinions or recommendations have been adopted or even considered. This lack of response discourages enterprises from participating in public consultation, which hinders China’s goal of creating a world-class business environment. For example, the *Provisions on Regulating and Promoting Cross-border Data Flows (Draft for Comments)* initially caused significant confusion and uncertainty for FIEs in China. It took the relevant legislative body a considerable amount of time to address concerns resulting in unnecessary administrative challenges and additional costs for companies. While updated regulations were subsequently issued that have improved the situation for FIEs, many challenges still remain.¹⁴

Recommendations

- Improve public consultation procedures before promulgating laws and regulations, and clarify when company input has been considered and/or adopted.
- Establish and optimise communication channels to address the compliance challenges and other difficulties faced by FIEs in China, and publish relevant updates and improvements in a timely manner.

2. Increase the Transparency and Predictability of the Business Environment by Promoting and Clarifying Legislation and Enforcement Procedures that are Relevant to FIEs

Concern

The lack of transparency in new regulations and laws makes China’s business environment less predictable, which has resulted in FIEs becoming increasingly risk averse, with many now unable to make informed investment decisions.

Assessment

China has recently amended and promulgated many laws and regulations related to national security, such as the *Counterespionage Law*,¹⁵ the *Law on Foreign*

¹⁴ For more information, please refer to the Information and Communication Technology Working Group’s 2024/2025 Position Paper.

¹⁵ *Counterespionage Law of the People’s Republic of China*, State Council, 2023, viewed 12th July 2024, <https://www.gov.cn/yaowen/2023-04/27/content_5753385.htm>





Relations,¹⁶ and the Guarding State Secrets Law,¹⁷ among others. However, many of these laws and regulations have introduced very broad and vague concepts without clear definitions. For instance, these laws refer to ‘national security’ but there is neither a clear definition of this term nor relevant guidelines. This lack of transparency makes China’s business environment less predictable, and has led to some companies looking at alternative investment destinations that they perceive to provide greater reliability and legal certainty.

The working group has several suggestions that can help to optimise relevant laws and regulations in order to both facilitate corporate compliance and create a business environment that is more welcoming to foreign investment. First, the working group recommends that certain legislative, enforcement and judicial authorities work together to collect public stakeholders’ comments, questions and recommendations regarding new or amended legislation, and deliver their feedback promptly and publicly. Second, the working group recommends establishing a scheme that systematically promotes new or amended legislation, with relevant authorities preparing and communicating official interpretations to the public. Third, the working group recommends that such promotion and clarification be rolled out in cooperation with industry associations, chambers of commerce and other non-governmental organisations (NGOs), to ensure that the information is disseminated as widely as possible. Finally, it is advisable for the legislative, enforcement and judicial authorities to periodically review the questions and issues that were raised before the implementation of new or amended legislation, and take a proactive approach to provide further clarification and guidance when needed, as well as to prepare for any future amendments.

Recommendations

- Collect public stakeholders’ comments, questions and recommendations regarding new or amended legislation, and deliver feedback promptly and publicly.
- Establish a scheme that systematically promotes new or amended legislation, and communicate official interpretations to the public.

- Work with industry associations, chambers of commerce and other NGOs when promoting and clarifying new or amended legislation to ensure that the information is disseminated as widely as possible.
- Review the questions and issues that were raised before the implementation of new or amended legislation, and take a proactive approach to provide both further clarification and guidance when needed, and prepare for any future amendments.

3. Establish a Mechanism for State-owned Enterprises (SOEs) and MNCs to Communicate and Cooperate on Compliance Issues

Concern

There are currently no channels for state-owned enterprises (SOEs) and MNCs to communicate and cooperate on compliance issues in China and elsewhere, which means that they may be responding to compliance challenges in an inconsistent manner.

Assessment

In practice, SOEs and MNCs differ in their interpretations of compliance, construction of compliance architecture, areas of focus, blind spots and pain points due to their different needs.

Compared to MNCs, the need for compliance among SOEs started relatively late and has been driven mainly by policies at the national level in China, external factors such as the enforcement of requirements by foreign regulatory agencies, and demands from SOE groups. By comparison, the history of compliance among MNCs is far longer, and is driven by published laws and regulations that are often broad in scope and reach, and carry serious consequences for non-compliance. These include, for example, the US Foreign Corrupt Practices Act,¹⁸ and the United Kingdom Bribery Act,¹⁹ which are considered to have set an international benchmark for compliance.²⁰ As such, MNCs have a longer history and more experience in compliance than their SOE counterparts.

¹⁶ *The Law on Foreign Relations of the People’s Republic of China*, State Council, 2023, viewed 12th July 2024 <https://www.gov.cn/yaowen/liebiao/202306/content_6888929.htm>

¹⁷ *Law of the People’s Republic of China on Guarding State Secrets*, State Council, 2024, viewed 12th July 2024, <https://www.gov.cn/yaowen/liebiao/202402/content_6934648.htm>

¹⁸ Foreign Corrupt Practices Act Of 1977, US Department of Justice, 1977, viewed 17th July 2024, <<https://www.justice.gov/jm/jm-9-47000-foreign-corrupt-practices-act-1977#:~:text=The%20Foreign%20Corrupt%20Practices%20Act%20>>

¹⁹ United Kingdom Bribery Act 2010, UK Legislation, 2010, viewed 17th July 2024, <<https://www.legislation.gov.uk/ukpga/2010/23/contents>>

²⁰ These two regulations pioneered compliance legislation with global implications, meaning companies in China needed to comply with regulations from other jurisdictions, as is increasingly the case with global compliance policies today, such as the EU’s CSDDD.



Developing more dynamic and balanced interactions between MNCs and SOEs would help to develop China's compliance environment as a whole, while assisting MNCs to successfully navigate, and hopefully achieve a balance between, compliance demands in China and those in other jurisdictions. However, interactions that have already taken place have produced scattered, albeit valuable, insights. The working group therefore recommends creating a structured mechanism for SOEs going global and MNCs that have China operations to communicate and exchange expertise regularly on compliance issues that they are experiencing both in China and other global markets. The working group also recommends establishing a dynamic dialogue between SOEs and MNCs to discuss micro-level insights on compliance theory and practice.

Recommendations

- Create a knowledge-transfer platform through which SOEs and MNCs can exchange compliance best practices.
- Develop a dynamic dialogue between SOEs and MNCs to discuss micro-level insights on compliance theory and practice.

Abbreviations

CAC	Cyberspace Administration of China
CBDT	Cross-border Data Transfer
CSDDD	Corporate Sustainability Due Diligence Directive
EBOWN	European Business Organisation Worldwide Network
EU	European Union
FIE	Foreign-invested Enterprise
IT	Information Technology
MNC	Multinational Corporation
NGO	Non-Governmental Organisation
SCC	Standard Contractual Clause
SME	Small and Medium-sized Enterprise
SOE	State-owned Enterprise
US	United States





Environment Working Group

Key Recommendations

1. Improve the Enforcement of Policies Related to Recycling Plastics to Promote Industry Development

1.1 Strengthen the Development of the Plastics Recycling Industry and Establish a Holistic Resource Management System to Address the Plastic Pollution Crisis 3

- Define an overall strategy for plastic pollution control based on the circular economy and holistic resource management concepts, with a mid- and long-term legislation framework, including clear quantitative targets and roadmaps.
- Set up a clear waste management hierarchy, and clearly define terms such as ‘circular economy’, ‘resource utilisation’ and ‘comprehensive utilisation’.
- Accelerate the packaging and packaging waste policymaking process, using the European Union’s (EU’s) Extended Producers’ Responsibility mechanism as a reference model.
- Set a clearly defined target and roadmap to consolidate and formalise informal scrap collection and recycling, which ensures post-consumption recyclable material can be recycled to the highest possible quality for closed-loop or high-end applications.
- Improve market conditions for recycled materials in China to attract more social investment in upgrading the sector.
 - Clarify policies for recycled plastic for food contact materials and further develop industrial standards on recycled materials and processes.
 - Allow food-quality recycled polythene terephthalate (rPET) materials in food contact applications and establish relevant petition and approval processes as soon as possible.

1.2 Develop a Clear and Binding Development Strategy for the Recycled Plastics Industry

- Develop a clear and binding development strategy for the recycled plastics industry.
- Accelerate the primary use of food-grade recycled plastics.
- Give rewards to encourage recycling, such as vouchers for individuals and communities or payments to end-users.
- Collaborate with chambers of commerce, other industry organisations and relevant taskforces to strengthen consumer awareness of a plastics circular economy.
- Accelerate the promotion of carbon footprint accounting and carbon label certification of plastic products.

2. Contribute to Decarbonisation by Pushing Green and Carbon Neutral Development 4

- Prioritise the implementation of a transition strategy to a circular economy with a mid- and long-term legislative framework, as well as pilot projects that include the joint involvement of Chinese and European companies.
- Increase industrial players’ involvement in, and promote frequent and in-depth exchanges and dialogues on, the joint Memorandum of Understanding on Circular Economy





Cooperation, whilst building an EU-China circular economy cooperation platform to enable regular dialogue between the two sides.

- Realise gains from reducing pollution and carbon emissions by encouraging industrial players to establish an end-to-end green supply chain that covers green product design, procurement, manufacturing, distribution and product disposal/recycling.

3. Reform the Funding System for the Disposal of Electrical and Electronic Products and Crack Down on Illegal Dismantling

- Strengthen communication with industry organisations and increase dialogue with companies that receive government subsidies for processing waste electrical and electronic products.
- Reform the subsidy and incentive system for the disposal of waste electrical and electronic products to fill the funding gap as soon as possible and encourage recycling.
- Crack down on unqualified dismantling enterprises and increase punitive measures.
- Enforce compliance with environmental laws and regulations to reduce the risk of environmental pollution.

4. Improve the Legal Framework to Support Recycling in the Textile Industry and Further Incentivise Post-consumer Textile Recycling

- Add post-consumer textiles to the main materials outlined by the *Guidelines for Expediting the Establishment of a Waste Recycling System*.¹
 - Add fibres to the main waste resources for sorting and recycling, together with the other nine main materials.²
- Release a roadmap with specific targets for material recycling to steer manufacturers towards using more recycled materials.
- Clarify which government department will be responsible for post-consumer textile recycling and tracking.
- Raise awareness of the EU's legislative requirements on recycled content to harmonise policy developments between the EU and China.

Recent Developments

Strengthening Green Compliance

The Ministry of Ecology and Environment (MEE) published the *Measures for the Administration of Ecological and Environmental Statistics* on 18th January 2023, aimed at strengthening and standardising the management of ecology and the environment, and ensuring the authenticity, accuracy and timeliness of

related statistics.³ On 8th May 2023, the MEE issued the *Measures for Ecological and Environmental Administrative Punishments*, which aim to regulate disciplinary procedures and ensure they are carried out consistently.⁴ These efforts indicate that, while challenges remain, China's strengthening of green compliance is part of a broader, national agenda to reconcile its environmental responsibilities with its economic ambitions. This agenda includes significant investments in green technology and a gradual tightening of environmental enforcement.

¹ *Guidelines for Expediting the Establishment of a Waste Recycling System*, National Development and Reform Committee (NDRC), 17th January 2022, viewed 5th August 2024, <https://www.gov.cn/zhengce/zhengceku/2022-01/22/content_5669857.htm>

² The nine main materials are scrap steel, scrap copper, scrap aluminium, scrap lead, scrap zinc, scrap paper, scrap plastic, scrap rubber and scrap glass.

³ *Measures for the Administration of Ecological and Environmental Statistics*, MEE, 18th January 2023, viewed 7th April 2024, <https://www.mee.gov.cn/gzkgz/202301/t20230119_1013882.shtml>

⁴ *Measures for Ecological and Environmental Administrative Punishments*, MEE, 8th May 2023, viewed 7th April 2024, <https://www.mee.gov.cn/gzkgz/202305/t20230516_1030105.shtml>





However, foreign-invested enterprises (FIEs) in China have encountered obstacles in practising green compliance. The continuous evolution of environmental regulations and regional differences in terms of implementation and enforcement are two key challenges in this regard. These, along with an uncertain legal environment, lead many businesses to err on the side of caution and adopt excessive environmental measures, thereby increasing costs.⁵

In May/June 2023, the Intergovernmental Negotiating Committee for Plastics, under the United Nations, met in Paris to resume discussions on the first international, legally binding treaty on global plastic pollution, with an agreement expected to be reached by the end of 2024.⁶ Given the short timeframe, finding a balance between global and national mandates will be challenging but crucial if overall environmental protection of the planet is to be improved.

Stepping up to Achieve the 30/60 Goals

The National Ecology and Environment Protection Conference was held on 17th and 18th July 2023. China's leaders reiterated their commitment to the 'dual carbon' goals (i.e., peaking carbon before 2030 and achieving carbon neutrality by 2060 – the 30/60 Goals).⁷ However, it is not an easy task, which requires careful institutional support. China is taking corresponding steps to accelerate its decarbonisation development.

While China still lacks sufficient legislation covering all three pillars of environmental, social and governance (ESG), the MEE established an ESG-focussed working body to actively support the reform of the legal disclosure system for environmental information in April 2024.⁸ This has effectively extended ESG practices into fields such as finance to better serve China's green and low-carbon transformation. On 20th October 2023, the National Development and Reform Commission (NDRC) rolled out the *National Plan for Carbon-peaking Pilot*

Projects to solve bottlenecks constraining the country's green and low-carbon development and explore different paths towards peaking carbon emissions.⁹ However, the Environment Working Group would like to see follow-up work from pilot projects, including setting clearer targets, identification of key areas and specific local implementation plans. There should also be better communication with relevant enterprises and experts when drafting and implementing these plans.

On 27th March 2024, the People's Bank of China (PBOC) and six other bureaus jointly released the *Guiding Opinions on Further Strengthening Financial Support for Green and Low-carbon Development*,¹⁰ with the aim of addressing the current difficulties in developing green finance in China. China is attempting to develop a multi-level and diversified green finance market, primarily centred around green loans and green bonds. According to the PBOC, as of the end of 2023, China's balance of domestic and foreign currency green loans exceeded Chinese yuan (CNY) 30 trillion, an increase of 36.5 per cent year-on-year, 26.4 percentage points higher than the growth rate of loans overall, and up nearly CNY 8.5 trillion since the beginning of 2023.¹¹ This demonstrates significant potential. The Environment Working Group advocates for strengthening communication with relevant parties and drawing on Europe's wealth of experience in setting green standards to realise China's vast potential in the green finance transition.

Pollution Prevention

On 29th December 2022, the MEE, the Ministry of Industry and Information Technology (MIIT) and four other government ministries issued the *List of Key Controlled New Pollutants (2023 Edition)* to expand the types of pollutants covered and increase the supervision of waste discharge from industrial production activities.¹² The list adheres to the rules of the Stockholm Convention on Persistent Organic Pollutants.

5 Cao, X, and Yize, Z, *Environmental regulation, foreign investment, and green innovation: a case study from China*, Environmental Science and Pollution Research, 29th August 2022, viewed 26th July 2024, <<https://link.springer.com/article/10.1007/s11356-022-22722-5>>

6 Adamson, T, and McDermott, J, *UN talks on a treaty to end global plastic pollution open in Paris*, AP, 29th May 2023, viewed 10th April 2024, <<https://apnews.com/article/plastic-pollution-treaty-negotiations-paris-3ef40f049b84c713b52b052e53f19ede>>

7 Xi Jinping: *To Accelerate the Modernisation of Harmonious Coexistence between Human and Nature*, Xinhua, 18th July 2023, viewed 20th April 2024, <https://www.gov.cn/yaowen/liebiao/202307/content_6892793.htm?type=9>

8 Director Zhang Yujun was invited to attend the 2023 Asia-Pacific Financial Forum, MEE, 23rd March 2023, viewed 21st April 2024, <http://www.fecomee.org.cn/dtxx/xwdt/202303/t20230323_1021615.html>

9 *National Plan for Carbon-peaking Pilot Projects*, NDRC, 20th October 2023, viewed 21st April 2024, <https://www.gov.cn/zhengce/zhengceku/202311/content_6913873.htm>

10 *Guiding Opinions on Further Strengthening Financial Support for Green and Low-carbon Development*, PBOC, 27th March 2024, viewed 21st April 2024, <https://www.gov.cn/zhengce/zhengceku/202404/content_6944452.htm>

11 Gou, M, *Incremental quality and expansion space of green finance*, *Economic Daily*, 18th April 2024, viewed 21st April 2024, <<http://ex.chinadaily.com.cn/exchange/partners/82/rss/channel/cn/columns/j3u3t6/stories/WS662077a8a3109f7860dd9da7.html>>

12 *List of Key Controlled New Pollutants (2023 Edition)*, MEE, 29th December 2023, viewed 21st April 2024, <https://www.gov.cn/zhengce/2022-12/30/content_5734728.htm?eqid=8fe6d415000bd70b00000005647dff78>



On 25th September 2023, Commissioner for Environment, Oceans and Fisheries Virginijus Sinkevičius co-chaired the 9th European Union (EU)-China Environment Policy Dialogue with his counterpart Minister Huang Runqiu of China's MEE. Both sides discussed ways to enhance the exchange of best practices on protecting and restoring biodiversity, and agreed to maintain political momentum in the implementation of the Global Biodiversity Framework.¹³ The Environment Working Group expects increased EU-China efforts in climate governance, technology cooperation, energy storage and pollution reduction, as well as an opportunity to actively contribute to the EU-China High-level Environment and Climate Dialogue.

In November 2023, China and the United States reaffirmed their commitment in the *Sunnylands Statement on Enhancing Cooperation to Address the Climate Crisis*, to collaborate with other countries to address the climate crisis. One part of the statement focusses on ending plastic pollution, including in the marine environment, by developing an international, legally binding instrument.¹⁴

Key Recommendations

1. Improve the Enforcement of Policies Related to Recycling Plastics to Promote Industry Development

1.1 Strengthen the Development of the Plastics Recycling Industry and Establish a Holistic Resource Management System to Address the Plastic Pollution Crisis

Concern

Price fluctuations, insufficient incentives, the lack of a holistic approach and outdated regulations deter companies from investing in plastic waste collection and recycling.

Assessment

Technological advancements have made the mass production of durable, lightweight plastics for commercial use relatively inexpensive. Yet its usage poses a severe threat to environmental protection and climate change

mitigation. As the world's largest producer of plastic, global efforts to combat the plastic pollution crisis require a meaningful contribution from China. While China has already adopted many policies to promote a circular economy, institutional arrangements remain weak and lack a holistic approach. The *14th Five-year Plan of Action for Plastic Pollution Control (Action Plan)*, outlines measures to cut the production and use of plastics, develop plastic alternatives and substantially reduce both the amount of plastic waste in landfills and environmental leakage during the 14th Five-year Plan period (2021–2025). However, while consolidation of plastic recycling capacities is mentioned, the policy does not set quantitative targets, and incineration is still encouraged over recycling as a means of energy recovery, which poses significant environmental risks, as well as threats to public health.

First, plastic production itself is a high carbon-intensive activity, as most plastics are produced from fossil-fuel resources. Second, China's plastic production is heavily dependent on imports, including crude oil for production and high-end polymers, which both elevate carbon footprints and create waste management challenges. Third, while plastics in general can technically be recycled, the tendency to incinerate plastic after just one-use results in a huge loss of valuable natural resources, missed decarbonisation opportunities and greater exposure to price volatility. Currently, only 30 per cent of China's plastic waste is recycled annually, while more than 63 per cent is incinerated or sent to landfill, representing a significant waste of resources.¹⁵ Additionally, plastic waste sent for incineration is often mixed in with other residual waste, another significant source of carbon emissions. Therefore, the working group recommends promoting material recovery from residual waste before incineration or landfill, with economic incentives and legislation to enforce mixed waste sorting.

Ultimately, due to the release of embedded carbon as carbon dioxide (CO₂) through plastic incineration, a significant contributor to climate change, China needs to tightly control—or find a way to avoid entirely—plastic incineration to meet its climate commitments under the Paris Agreement and achieve its 30/60 Goals. It is also worth pointing out that incineration can only recover a

¹³ Green Transition, EU Delegation to China, 21st December 2023, viewed 6th June 2024, <https://www.eeas.europa.eu/delegations/china/green-transition_en?s=166>

¹⁴ *The Sunnylands Statement on Enhancing Cooperation to Address the Climate Crisis*, MEE, 15th November 2023, viewed 21st April 2024, <https://www.mee.gov.cn/ywdt/hjywnews/202311/t20231115_1056452.shtml>

¹⁵ *Waste plastic recycling is difficult, what are the blockages of recycling?*, Xinhua, 15th April 2024, viewed 13th May 2024, <<http://www.news.cn/20240415/b1c4cedd062b4c5286a07d3b465da9f3/c.html>>



certain amount of energy and not the entire material value, meaning that it is excluded from the circular economy.

China actually has a well-functioning plastic bottle recycling industry, consisting of a long-existing informal scrap collection and transportation network and a relatively formalised down-stream processing sector. However, the industry is not well regulated, which often leads to secondary pollution and unnecessary downcycling. Recent government policies have sought to encourage the formalisation of plastic recycling, but gaps remain. For example, high-value, high-quality food-grade plastic beverage bottles get recycled to lower-value short fibres. China also still prohibits recycled polythene terephthalate (rPET) plastic from being used for food-contact purposes, despite other developed economies having done so for years. This practice has also been adopted by several developing countries in Asia, including Vietnam, Thailand and India. Recycling plastic beverage bottles significantly decreases their carbon footprint; for example, manufacturing a rPET bottle emits 70 per cent less CO₂ than manufacturing a virgin polythene terephthalate (PET) plastic bottle. Therefore, it would be a positive development if China could accelerate the adoption of plastic bottle recycling into formal policy and eventually allow ‘closed-loop’ recycling for plastic bottles, as explicitly mentioned in the *Action Plan*. Providing clear definitions for terms such as ‘resource utilisation’ and ‘comprehensive utilisation’ would also help standardise the waste management hierarchy.

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

Better product design is also key to the concept of ‘reduce, reuse and recycle’. The EU’s Extended Producer Responsibility policy introduced in 2015, under which producers pay financial contributions based on the end-of-life costs of their products, creates economic incentives for designing products that can be more easily recycled or reused. This could provide a model for China to follow. Currently, circular economy models for some ‘high value’ and ‘easy-to-recycle’ materials such as cardboard, metal and PET plastic are better established in China, due to the maturity of the collection and recycling value chain. However, policies should also encourage technological and business model innovation to turn high-volume and high-material value waste materials, such as polyolefins, glass and textiles, into valuable resources. While initial targets outlined in the *Implementation Plan of Household Waste Classification System* aimed to increase the recycling rate in 46 municipalities to 35 per cent by 2020,¹⁶ China now strives to reuse 60 per cent of urban household waste by 2025.¹⁷ Recycling rates are higher in many EU member states, such as Germany, where the recycling rate has already reached 68 per cent.¹⁸ This means that many European companies will have expertise they can share to support China’s waste reduction efforts.

Recommendations

- Define an overall strategy for plastic pollution control based on the circular economy and holistic resource management concepts, with a mid- and long-term legislation framework, including clear quantitative targets and roadmaps.
- Set up a clear waste management hierarchy, and clearly define terms such as ‘circular economy’, ‘resource utilisation’ and ‘comprehensive utilisation’.
- Accelerate the packaging and packaging waste policymaking process, using the EU’s Extended Producers’ Responsibility mechanism as a reference model.
- Set a clearly defined target and roadmap to consolidate and formalise informal scrap collection and recycling, which ensures post-consumption recyclable materials

¹⁶ *Notice on Implementation Plan of Household Waste Classification System*, State Council, 18th March 2017, viewed 13th May 2024, <https://www.gov.cn/gongbao/content/2017/content_5186978.htm>

¹⁷ *Notice on the 14th Five-year Plan for the Development of Urban Household Waste Classification and Treatment Facilities*, NDRC and Ministry of Housing and Urban-Rural Development (MOHURD), 6th May 2021, viewed 13th May 2024, <https://www.gov.cn/zhengce/zhengceku/2021-05/14/content_5606349.htm>

¹⁸ *Waste recycling in Europe*, European Environment Agency, 19th December 2023, viewed 13th May 2024, <<https://www.eea.europa.eu/en/analysis/indicators/waste-recycling-in-europe>>



can be recycled at the highest possible quality for closed-loop or high-end applications.

- Improve market conditions for recycled materials in China to attract more social investment in upgrading the sector.
 - Clarify policies for recycled plastic for food contact materials and further develop industrial standards on recycled materials and processes.
 - Allow food-quality recycled polythene terephthalate (rPET) materials in food contact applications and establish relevant petition and approval processes as soon as possible.

1.2 Develop a Clear and Binding Development Strategy for the Recycled Plastics Industry

Concern

China's plastic industry lacks clear goals for the use of recycled plastics and does not have corresponding incentive mechanisms on the consumer side, and there has been little progress on the high-value-added utilisation of plastic recycling.

Assessment

Plastic recycling is an important aspect of establishing a circular economy, which will be a crucial part of China achieving its 30/60 Goals and mitigating global climate change. Taking PET polyester as an example, every kilogramme (kg) produced of virgin PET polyester produces 2.15kg of CO₂ emissions. By comparison, the production of one kg of recycled polyester produces only 0.45kg of CO₂, which is approximately a 79 per cent reduction of emissions.¹⁹ According to statistics from the China Association of Circular Economy, China has recycled a cumulative total of more than 154 million tonnes of various types of waste plastics in the past 10 years, representing a reduction of 55.5 million tonnes of CO₂ emissions.²⁰

Many governments around the world, including those of the EU, Japan and Malaysia, have formulated plastic circular economy strategies, developing a series of policies and regulations that clarify the targets for the use of recycled plastics. For example, the EU's *Directive (EU) 2019/904 Single Use Plastic Directive*,

passed in 2019, requires manufacturers to use 25 per cent recyclable raw materials in PET beverage bottles by 2025, and 30 per cent recyclable raw materials in all beverage bottles by 2030.²¹ However, the following challenges are currently hindering the development of China's recycled plastics industry. First, the primary plastics industry lacks clear goals for the use of recycled plastics, resulting in an unstable scale of waste plastic recycling. Furthermore, in the absence of rigid indicators, the production of recycled plastics is easily affected by the external market environment, such as fluctuations in the price of virgin plastics. For example, when international crude oil prices fall, the price of virgin plastics drops accordingly, and downstream purchasers reduce their use of recycled plastics.

Second, incentive mechanisms to promote recycled plastics to consumers are lacking. While upstream plastic recycling companies can enjoy some preferential tax policies, downstream companies that could use recycled plastics as alternative raw materials cannot. Additionally, while large enterprises, especially multinational enterprises, often set corporate recycled plastic procurement targets out of consideration for their ESG responsibilities, domestic brands lack the motivation to do so. This has resulted in slow growth in waste plastic utilisation.

Third, while high-value-added recycling of waste plastics has become something of an international trend, with developed markets such as the United States and Europe having introduced mature regulations and standards, and some developing countries such as Indonesia and India having also formulated corresponding policies, progress in China has been slower than expected. Although the technical conditions to produce recycled plastics in China are relatively mature, and domestic companies can even export food-grade recycled plastics to markets such as the United States and Europe, domestic policy formulation on the utilisation of food-grade recycled plastics is lagging.

Recommendations

- Develop a clear and binding development strategy for the recycled plastics industry.
- Accelerate the primary use of food-grade recycled plastics.

¹⁹ *Is Recycled Polyester Green or Greenwashing?*, Common Objective, 10th March 2020, viewed 13th May 2024, <<https://www.commonobjective.co/article/is-recycled-polyester-green-or-greenwashing>>

²⁰ *Actions have been taken on Plastic Pollution Control and Plastic Reduction*, NDRC, 24th June 2022, viewed 13th May 2024, <https://www.ndrc.gov.cn/wsdwhfz/202206/t20220624_1328214.html>

²¹ *Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment*, EUR-Lex, 12th June 2019, viewed 13th May 2024, <<https://eur-lex.europa.eu/eli/dir/2019/904/oj>>



- Give rewards to encourage recycling, such as vouchers for individuals and communities or payments to end-users.
- Collaborate with chambers of commerce, other industry organisations and relevant taskforces to strengthen consumer awareness of a plastics circular economy.
- Accelerate the promotion of carbon footprint accounting and carbon label certification of plastic products.

2. Accelerate Decarbonisation by Pushing Green and Carbon Neutral Development



Concern

Lack of executable regulations and rules on the circular economy and product carbon footprint to help achieve China's 30/60 Goals.

Assessment

China has been making significant strides in contributing to decarbonisation through the promotion of green and carbon-neutral development. One of the key recent developments is the *Soliciting Public Opinions and Suggestions on the Revision of the 'Circular Economy Promotion Law'*, announced by the NDRC on 1st July 2021.²² This initiative aligns with China's goals of peaking carbon and achieving carbon neutrality outlined in the 14th Five-year Plan. The call for revision seeks public input on how to develop a legal framework to better define the circular economy, emphasising high-quality economic growth and the implementation of measures like extended producer responsibility, lifecycle management and green supply chain management. However, a critical issue remains: the Circular Economy Promotion Law is still in the drafting phase. Currently there is a lack of specific regulations and guidelines, which hampers comprehensive development across various sectors, including industrial, agricultural and service industries. Moving forward, it is essential to finalise and release the *Circular Economy Promotion Law* and subsequently, a detailed and enforceable legislative framework to support these goals effectively.

Another significant development is the release of the *Implementation Plan for Synergistic Pollution Reduction*

²² *Public Notice from the National Development and Reform Commission on Soliciting Public Opinions and Suggestions on the Revision of the Circular Economy Promotion Law of the People's Republic of China*, NDRC, 10th September 2021, viewed on 30th July 2024, <https://www.ndrc.gov.cn/hdjl/yjqz/202109/t20210910_1296453.html?code=&state=123>

and Carbon Reduction, by the MEE and six other departments on 13th June 2022.²³ The plan aims to create a cohesive strategy to simultaneously reduce pollution and carbon emissions. The primary objectives include forming a green development framework by 2025 and achieving notable advancements in pollution reduction and carbon neutrality by 2030. The plan underscores the importance of green manufacturing and encourages innovation in business practices. However, a key challenge is the lack of actionable policies and standards to galvanise industrial participation. Furthermore, there is a need to better integrate various stakeholders across the value chain, highlighting the necessity for clear, actionable guidelines and incentives to drive these initiatives forward.

On 19th January 2024, the MIIT released *Interim Measures for the Gradient Cultivation and Management of Green Factories*.²⁴ It represents another crucial step as the draft outlines the principles and standards for nurturing green factories and promoting green supply chain management. It emphasises the role of leading green manufacturers in promoting sustainable practices throughout the product lifecycle. Despite its promising direction, the measure remains interim, underlining the urgency to finalise comprehensive guidelines and standards that can guide an industry-wide green transformation. Timely implementation of these measures could help achieve benefits from the reduction of pollution and carbon emissions by encouraging industrial players to establish an end-to-end green supply chain throughout the product lifecycle.

Lastly, the *Implementation Plan for Establishing a Carbon Footprint Management System* published on 22nd May 2024 by several key ministries aims to set up a comprehensive carbon footprint management system by 2030.²⁵ This plan includes developing national standards for carbon footprint accounting, establishing a product carbon footprint database and ensuring alignment with international standards. It also

²³ *Notice on Issuing the 'Implementation Plan for Synergistic Pollution Reduction and Carbon Reduction'*, Ministry of Ecology and Environment, 13th June 2022, viewed on 30th July 2024, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk03/202206/t20220617_985879.html>

²⁴ *Notice on Issuing 'Interim Measures for the Gradient Cultivation and Management of Green Factories'*, Ministry of Industry and Information Technology, 19th January 2024, viewed on 21st August 2024, <https://wap.miit.gov.cn/gzcy/yjzj/art/2023/art_b54c344ce2bb4f1b86a2b6a7b35fe159.html>

²⁵ *Notice on Issuing the 'Implementation Plan for Establishing a Carbon Footprint Management System'*, Ministry of Ecology and Environment, 4th June 2024, viewed on 30th July 2024, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk03/202406/t20240604_1074986.html>





focusses on promoting carbon footprint labelling and certification. However, the plan calls for comprehensive policies to support the full implementation of carbon footprint management systems as well as international cooperation that not only involves Chinese and European companies, but also effective dialogue between the EU and China under the EU-China Memorandum of Understanding on Circular Economy Cooperation. The current difficulty lies in creating a robust system that is not only integrated internationally, but also manages and reduces product carbon footprints effectively across various industries.

Recommendations

- Prioritise the implementation of a transition strategy to a circular economy with a mid- and long-term legislative framework, as well as pilot projects that include the joint involvement of Chinese and European companies.
- Increase industrial players' involvement in, and promote frequent and in-depth exchanges and dialogues on, the joint Memorandum of Understanding on Circular Economy Cooperation, whilst building an EU-China circular economy cooperation platform to enable regular dialogue between two sides.
- Realise gains from reducing pollution and carbon emissions by encouraging industrial players to establish an end-to-end green supply chain that covers green product design, procurement, manufacturing, distribution and product disposal/recycling.

3. Reform the Funding System for the Disposal of Electrical and Electronic Products and Crack Down on Illegal Dismantling

Concern

China's Waste Electrical and Electronic Products Processing Fund provides insufficient financial incentives and has severely delayed subsidy payments to processors, while the prevalence of illegal dismantling has increased costs for legitimate businesses.

Assessment

Recycling of waste electrical appliances and electronics is an important means of achieving green, low-carbon and circular development. China has established a Waste Electrical and Electronic Products Processing Fund to subsidise the recycling and processing of

waste electrical and electronic products,²⁶ with nearly CNY 26.8 billion in subsidies issued from 2012 to 2022.²⁷ The fund effectively guides electronic waste from individual traders to formal processing companies. From 2012 to 2021, electronic waste processing companies' annual processing volume increased from 10.1 million electronic appliances to 87.9 million.²⁸ The impact has already been visible, with both the volume of standardised recycling and the output rate of copper, aluminium, iron, plastic and other resources having steadily increased.

However, while the MEE has approved a list of processors eligible for subsidies,²⁹ there are a larger number of illegal small processors in operation. Plus, the Waste Electrical and Electronic Products Processing Fund has long been hampered by a persistent deficit, which has led to severe delays in the payments of subsidies to eligible processors. When the fund was abruptly suspended at the end of 2023, more problems emerged.³⁰

First, companies were not told about the suspension of the fund, including those companies that received subsidies from the fund. The abrupt policy shift forced a large number of dismantling and recycling companies to reassess and suspend operations. Most will not restart operations until the policy has been clarified. It can take a month or more to reopen a processing line, which has a significant negative impact on business operations and potentially encourages illegal dismantlers to fill the vacuum left behind.

Second, even before it was suspended, fund revenue and expenditure were imbalanced. The fund collected revenue from producers of electric appliances at prices ranging from CNY 7 to 13 per appliance and subsidised processors at prices ranging from CNY 35 to 100 per appliance. For each subsidised category, the average

²⁶ *Administrative Measures for the Collection and Use of the Waste Electrical and Electronic Products Processing Fund*, State Council, 21st May 2012, viewed 13th May 2024, <https://www.gov.cn/gongbao/content/2012/content_2231689.htm>

²⁷ *Reform of the Waste Electrical and Electronic Product Processing Fund System*, China Government Procurement News, 5th March 2024, viewed 6th June 2024, <<http://www.cgpnnews.cn/articles/66684>>

²⁸ *Ibid.*

²⁹ *Guidelines for Qualification Review and Licensing of Waste Electrical and Electronic Product Processing Companies*, Ministry of Ecology and Environment, 9th December 2010, viewed 26th July 2024, <https://www.mee.gov.cn/gkml/hbb/bgg/201012/t20101222_198999.htm>

³⁰ *Announcement on Matters Relating to the Suspension of the Waste Electrical and Electronic Products Processing Fund*, Ministry of Finance (MOF), 20th December 2023, viewed 13th May 2024, <https://szs.mof.gov.cn/zt/mlqj_8464/zcg/202401/t20240118_3926323.htm>





gap between the collection price and subsidy price was about 15 per cent.³¹ In addition, the long review period for subsidies also delayed the release of funds, further cutting into recyclers' slim profit margins.

Third, the illegal dismantling of electrical and electronic waste by small and unsubsidised players has become increasingly prominent. These players do not abide by the standard dismantling processes, which directly affects the utilisation rate of renewable resources and the level of environmental pollution control. Illegal dismantlers have no management and environmental governance costs and do not pay taxes and fees. Hence, they are able to afford a higher purchase price than professional processors, disrupting the healthy functioning of the waste recycling market and initiatives such as the Waste Electrical and Electronic Products Processing Fund. Moreover, unmanaged dismantling of waste appliances produces hazardous pollution such as untreated waste oil and used lead-acid batteries. The illegal dismantling companies typically purchase the waste appliances at a higher price, dismantle them and remove the most valuable parts such as scrap copper, before selling the waste appliances back to professional processors with the least value.

Recommendations

- Strengthen communication with industry organisations and increase dialogue with companies that receive government subsidies for processing waste electrical and electronic products.
- Reform the subsidy and incentive system for the disposal of waste electrical and electronic products to fill the funding gap as soon as possible and encourage recycling.
- Crack down on unqualified dismantling enterprises and increase punitive measures.
- Enforce compliance with environmental laws and regulations to reduce the risk of environmental pollution.

³¹ Initial Draft Proposal for the Reform of the Waste Electrical and Electronic Products Processing Fund, China Environment Chamber of Commerce, 4th March 2024, viewed 17th June 2024, <https://mp.weixin.qq.com/s?__biz=MzA30TM1NTYwNg==&mid=2649367108&idx=3&sn=dfb609202d628cd90053722b2e2d3422&chksm=86f1f908a19399b685c674292bf2b09fb1a0e50e1956b1f1f42c6ad65567c331e75b4678e419&scene=27>

4. Improve the Legal Framework to Support Recycling in the Textile Industry and Further Incentivise Post-consumer Textile Recycling

Concern

The exclusion of waste textiles in China's *Guidance on Accelerating the Construction of a Waste Recycling System* poses obstacles for exporters to the EU, given the EU's strategy on setting minimum requirements for recycled content in textile imports.

Assessment

The recycling and reuse industry for materials such as metals, plastic, batteries, textiles and automotive components plays an important role in pollution control, carbon emissions reduction and promoting material efficiency. China's *Guidance on Accelerating the Construction of a Waste Recycling System* outlined nine materials to be recycled at sorting centres. However, waste textiles are not included. It is encouraging that the *Implementation Suggestion to Accelerate the Use of Recycled Textile Waste*, published by the NDRC in April 2022,³² establishes a goal for China to establish a preliminary recycling and reuse system for waste textiles by 2025, and to improve the system by 2030, as part of the overall effort to optimise resource utilisation. However, there are several challenges when it comes to achieving this target.

First, during the recycling and processing stage, collecting and sorting textile waste is difficult as it is often mixed with other municipal waste. This can be solved by building sorting centres, however plans to construct sorting sites must start from the land-use planning phase. While it is encouraging that 'sort, recycle and reuse' for waste textiles was adopted in the *Catalogue of Industries Encouraging Foreign Investment (2022)*, released on 26th October 2022, textile industry players are not involved in the State Council's *Overall Plan for Land Utilisation (2016-2030)*.³³ The working group recommends involving textile industry players in the overall plan to align on prioritising waste categories for recycling and the facilities necessary to do so.

Second, there is a conflict between the respective policies on recycling waste textiles and low energy

³² *Implementation Suggestion to Accelerate the Use of Recycled Textile Waste*, NDRC, 11th April 2022, viewed 6th May 2024, <https://www.ndrc.gov.cn/xxgk/zc/fb/tz/202204/t20220411_1321822.html>





consumption, requiring coordination at the local level. In this regard, recycling and reuse projects for waste textiles face many difficulties obtaining administrative approvals. For example, a company that uses PET polyester plastic recycled from waste beverage bottles to produce environmentally friendly textile fibres, would be considered and categorised as a ‘high-energy-consuming’ project by some provincial governments and would face suspension.

Recommendations

- Add post-consumer textiles to the main materials outlined by the Guidelines for Expediting the Establishment of a Waste Recycling System.
 - Add fibres to the main waste resources for sorting and recycling, together with the other nine main materials.
- Clarify which government department will be responsible for post-consumer textile recycling and tracking.
- Release a roadmap with specific targets for material recycling to steer manufacturers towards using more recycled materials.
- Raise awareness of the EU’s legislative requirements on recycled content to harmonise policy developments between the EU and China.

Abbreviations

CNY	Chinese Yuan
CO ₂	Carbon Dioxide
DRS	Deposit and Return System
ESG	Environmental, Social and Governance
EU	European Union
Kg	Kilogramme
MEE	Ministry of Ecology and Environment
MIIT	Ministry of Industry and Information Technology
NDRC	National Development and Reform Commission
PBOC	People’s Bank of China
PET	Polythene Terephthalate
rPET	Recycled Polythene Terephthalate





Finance and Taxation Working Group

Key Recommendations

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

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

2. Enhance Administrative and Organisational Efficiency for Multinational Companies Investing in China

- Allow consolidated corporate income tax (CIT) filing for Chinese holding companies (CHCs) with their wholly owned subsidiaries in China.
- Strengthen the full adoption of electronic invoices and further enable consolidated handling of VAT invoices for companies within a company group.
- Increase flexibility for intercompany financing within China and across borders.
- Facilitate corporate restructurings and relocations within China through further guidance to local authorities on preconditions, procedures and implications.
- Reduce the risk of double taxation through context-specific guidance in the areas of concern.
- Introduce an advanced tax ruling system at the national level to clarify unclear tax positions upfront.

3. Take Prudent Steps in Consumption Tax Reform

- Involve industry and tax experts in discussions on standards and measurements and, where necessary, review and re-determine the scope of taxation and the tax point in the supply chain to consider boosting domestic circulation in the unified national market.
- Review the applicable tax threshold, tax rates and taxation method to facilitate the macro-development strategies of specific industries in line with China's consumption reality and to better reflect international best practices.
- Publish in a timely manner the timetable and implementation rules for the various sectors enlisted in the Consumption Law reform pilot and provide a sufficient transition period.
- Improve the effectiveness of the nationwide tax system and synchronise tax administration and collection systems at central and local levels.
- With the closure of the Hainan Free Trade Port (FTP) approaching, it is imperative to accelerate the development of the sales tax regime for the Hainan FTP, integrate it with China's existing consumption tax regime, solicit public opinions and promote its smooth transition to contribute to the success of the FTP.



Recent Developments

The working group welcomes the four-year extension of non-taxable allowances for foreign national employees until 2027, jointly announced by the Ministry of Finance (MOF) and the State Taxation Administration (STA) on 18th August 2023.¹ Retaining the non-taxable allowances for foreign national employees demonstrates China's commitment to attracting foreign talent and improving the business environment.

On 26th March 2023, the MOF and the STA announced that actual research and development (R&D) activities could enjoy an additional 100 per cent deduction (formerly 75 per cent) provided that relevant preconditions were met.² On 21st June 2023, the MOF and STA further announced that enterprises could enjoy weighted pre-tax deductions on R&D expenses based on the second or third quarterly filing provided that relevant documentation could be provided.³ Following the *Guidelines for Implementing the Policies of Weighted Pre-Tax -Deduction of Research and Development Expenses* issued in July 2023, the STA and the Ministry of Science and Technology updated the comprehensive guidance on how to assess R&D expenses and enjoy the incentives. Preferential value-added tax (VAT) policies were provided on 3rd September 2023 for high and new technology enterprises with an extra deduction of five per cent of the applicable input VAT credit.⁴

With the recommendations in hand, the working group wants to support and encourage further steps to achieve a balanced tax environment in line with international standards and to increase simplicity and efficiency for tax compliance.

Key Recommendations

1. Optimise the Draft VAT Law and Prevailing Regulations

Concern

The prevailing VAT policies do not accommodate the current diversity of businesses, increasing their VAT costs.

Assessment

In 2019, the MOF and the STA released the VAT Law for public comment. After extensive feedback from various stakeholders, the draft VAT Law was submitted to the Standing Committee of the NPC for first-round review and second-round review in December 2022 and September 2023 respectively.^{5&6} While the draft VAT Law includes some welcome steps forward, the working group would like to recommend that the following areas also be considered.

Further Optimise the Chinese VAT Place-of-Supply Rules in the Draft VAT Law

VAT neutrality in cross-border trade follows the 'destination' principle in the Organisation for Economic Co-operation and Development's (OECD's) *International VAT/Goods and Services Taxes Guidelines*, which state that taxes should be collected in the country where the service is consumed.⁷ The working group is reassured to see that the draft law indicates that the MOF and the STA intend to take a significant step in adopting the OECD guidelines into the Chinese VAT system, in particular by the place of consumption approach in determining whether a transaction has a place of supply within China, and by allowing refunds of excess input VAT credits.

According to the draft VAT Law, supplies of services and intangible assets would be subject to VAT in China if the suppliers are domestic entities or individuals, or if the services and intangible assets are consumed in China. In this connection, exported services provided

1 *Announcement of the Ministry of Finance and the State Taxation Administration on the Continuation of the Policy on Individual Income Tax on Subsidies for Foreign Individuals*, MOF and STA, 31st August 2023, viewed 22nd April 2024, <<http://beijing.chinatax.gov.cn/bjswj/c104602/202308/abfce4f7092347d3a161d547e5e94777.shtml>>

2 *Announcement on Further Improving the Policy of Pre-tax Deduction for Research and Development Expenses*, MOF and STA, 26th March 2023, viewed 22nd April 2024, <https://www.gov.cn/zhengce/zhengceku/2023-03/28/content_5748747.htm>

3 *Announcement on Optimising Relevant Matters of Prepayment Declaration for Enjoying Additional Deduction Policy on Research and Development Expenses*, MOF and STA, 21st June 2023, viewed 22nd April 2024, <<https://fgk.chinatax.gov.cn/zcfgk/c100012/c5209840/content.html>>

4 *Announcement on Value-added Tax Additional Deduction Policy for Advanced Manufacturing Enterprises*, MOF and STA, 3rd September 2023, viewed 22nd April 2024, <<https://fgk.chinatax.gov.cn/zcfgk/c102416/c5212095/content.html>>

5 *The Draft VAT law submitted for the first-round review*, NPC, 28th December 2022, viewed 22nd April 2024, <<https://npcobserver.com/wp-content/uploads/2022/12/Value-Added-Tax-Law-Draft.pdf>>

6 *Value-added Tax Law of the People's Republic of China (Draft) (Second Review Draft)*, NPC, September 2023, viewed 22nd April 2024, <<https://npcobserver.com/wp-content/uploads/2023/09/Value-Added-Tax-Law-2nd-Draft-Revision.pdf>>

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



by Chinese suppliers are still subject to VAT unless they meet the criteria for zero-rated or VAT exemption treatments. The working group suggests to further optimise the VAT Law by making reference to general international practice. For example, the primary place of supply for standard business-to-business services be defined as the place where the customer is located. In addition, exceptions should be included for services deemed to be consumed in China, such as real estate-related, transportation and entertainment services. This would mean that the standard services provided by Chinese suppliers to overseas branches would generally not be subject to Chinese VAT. For business-to-customer services, the working group advises that the primary place of supply be defined as where the supplier is established. However, exceptions should be included for services deemed to be consumed in the country where the customer is located, such as telecommunication and electronically provided services, transportation and entertainment services.

Optimise the Prevailing Export VAT Refund System

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

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

and trading enterprises. Therefore, the working group recommends revising the current tax regulations to apply the exemption, credit and refund policy to both manufacturing and trading companies.

Indirect export is a convenient customs measure provided to enterprises that engage in processing trade relief (PTR) activities with the intention of selling the bonded finished goods to other PTR enterprises in China for further processing.⁸ From a customs perspective, indirect export is considered an export transaction, although the goods are not shipped out of China. However, for VAT purposes, indirect exports are not eligible for export VAT refunds. In addition, VAT treatment varies in different locations; for example, indirect exports are VAT exempted in South China, meaning the associated input VAT is not deductible and becomes a VAT cost.

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

Input tax is defined in the draft VAT Law as the amount of VAT paid or borne by a taxpayer on a purchase in connection with a taxable transaction. Although the draft stipulates "in connection with a taxable transaction", this may lead to more uncertainty over input VAT recovery related to out-of-scope supplies such as dividend income or deposit interest.⁹ Furthermore, based on international VAT standards, out-of-scope supplies should not, in principle, limit input VAT recovery as long as they are closely linked to a taxable activity of the taxpayer. Therefore, the working group suggests removing the phrase "in connection with a taxable transaction" in the input VAT definition to eliminate input VAT recovery limitation for out-of-scope supplies.

Expand the Scope of Zero-rating of Exported Services

The draft VAT Law states that onshore VAT taxpayers can apply VAT at a zero rate for exported services within the scope allowed by the State Council. However, the draft does not provide a detailed list of eligible exported services. Currently, the rules for zero-rating services and goods are applicable to certain supplies of services which could meet the relevant strict criteria. The working group recommends implementing a zero per cent VAT rate for all services provided to overseas

⁸ Also known as deep processing transit, or factory transfer.

⁹ Out-of-scope supplies refers to supplies that fall outside the scope of goods and services tax legislations like sales in third countries or free trade zones, and private transactions.



customers, except those consumed inside China.¹⁰

Enable Non-resident Taxpayers to Register for VAT in China

To align the VAT position of Chinese companies with overseas companies, the working group recommends allowing non-resident taxpayers to register for VAT in China. This would enable overseas entities to claim back Chinese input VAT and fair competition on pricing between Chinese and overseas companies from a VAT perspective. Several other jurisdictions—such as Singapore and Thailand¹¹—have started putting in place simplified VAT registration mechanisms designed explicitly for taxing electronically supplied services by overseas entities.¹¹ The working group therefore recommends exploring the feasibility of implementing a similar mechanism in China.

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

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

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

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

¹⁰ See the earlier recommendation for place-of-supply rules.

¹¹ *Thailand's application of VAT on digital services (e-services) provided by foreign operators will apply as of 1 September 2021*, EY Global, 6th August 2021, viewed 22nd April 2024, <https://www.ey.com/en_gl/tax-alerts/thailand-s-application-of-vat-on-digital-services-e-services-provided-by-foreign-operators-will-apply-as-of-1-september-2021>

Recommendations

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

2. Enhance Administrative and Organisational Efficiency for Multinational Companies Investing in China

Concern

Multinational companies face a range of administrative and organisational inefficiencies in China when it comes to tax compliance tasks, flexibility in legal reorganisation, pre-alignment with authorities, local enforcement and application of international tax principles.

Assessment

Efficient administration of taxes is an important advantage when it comes to investment decisions. Reducing the administrative and organisational burden on tax compliance can help to reduce costs for both multinational and domestic enterprises without necessarily reducing the tax revenue.

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



holding company (CHC) regime. Therefore, the working group recommends allowing consolidated CIT filing for CHCs with their wholly owned subsidiaries in China.

While China is a world leader in standardised VAT invoicing systems, official VAT invoices (*fapiao*s) can only be issued within the jurisdiction of the tax authority in charge. For groups of companies in China, this implies that each legal entity must maintain separate invoicing capability, which is inefficient and contradicts the government's aim of centralising administrative services. Considering the national character of VAT and the trend towards electronic invoicing—which emerged in China in 2015—strengthening the full adoption of electronic invoicing and allowing consolidated handling of VAT invoices nationwide is recommended.

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

Corporate relocations between different provinces or cities in China or even different districts within the same city can, in practice, create a significant need for negotiation with the tax authorities in charge. While a company relocation should not technically trigger the need for taxation and simply result in a change of tax authority, some companies are forced to set up a new legal entity in the new location, followed by a business transfer from the old to the new entity. The working group recommends further clarification and guidance be provided to local tax authorities in the context of similar situations.

Where investors maintain multiple legal entities, changes in the business environment may need to be reflected in the legal entity structure within the company group — for example, through mergers, splits, share transfers or similar activities. In cases of legal entity restructurings, even when assets remain within the same group of companies, tax implications can be severe and prohibitive, while preconditions for tax-deferred

treatment are demanding and ambiguous. Publishing further guidance on unclear preconditions and opening additional restructuring scenarios under tax-deferral treatment—such as upstream and side-stream transfers of shares within the group, both domestic and cross-border—would help to clarify matters.

For enterprises operating across borders, the application of different tax regimes can, despite any double taxation agreements, easily lead to unreasonable double taxation in which case tax jurisdictions on both sides take a mismatching position. For example, sometimes service fee payments in China to overseas entities are re-classified by domestic tax authorities as licence fee payments with a 10 per cent withholding tax. On the other hand, the recipient's country of residence might keep the classification as service fee qualification. In this case, the overseas entity might not be able to enjoy foreign tax credits for the withholding tax levied under the licence fee classification. Similarly, where foreign national employees residing in China are temporarily assigned to other group companies in neighbouring countries, Chinese tax authorities might not be willing to either exempt the income already taxed in other jurisdictions or provide a foreign tax credit. Finally, for unclear tax positions, many jurisdictions offer a national scheme of advance rulings. Under such a scheme, taxpayers can bring up their situation and comprehensive plan for review by the national tax administration and receive a formal response based on a review of the evidence provided. This mechanism would add to the predictability of transactions which would enhance transparency for multinational enterprises and also provide a basis for further development of the regulatory framework for taxes in China.

Recommendations

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



specific guidance for areas of concern.

- Introduce an advance tax ruling system at national level for clarification of unclear tax positions upfront.

3. Take Prudent Steps in Consumption Tax Reform

Concern

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

Assessment

China first imposed a consumption tax in 1994 on a selection of products, many of which were aligned with how excise duty was imposed in other countries.¹² Over the last three decades, the consumption tax has been reformed several times to reflect China's economic development and to guide consumer behaviour. For example, in December 2019, the draft Consumption Tax Law was released for public consultation.¹³ In March 2021, the 14th Five-year Plan proposed to "adjust and optimise the scope and tax rate of consumption tax, move the taxation point to a later phase and gradually transfer to local authorities".¹⁴ In November 2022, China introduced a consumption tax on e-cigarettes to curb their use, as these products may affect the health of teenagers.¹⁵ In September 2023, the 14th National People's Congress Standing Committee legislative plan stated that the Consumption Tax Law would be included as a first-category item, meaning it was a law proposal submitted for deliberation within a relatively mature condition during its term.¹⁶

While the working group welcomes these developments, further reforms should be implemented to adequately

reflect China's economic development. Such reforms should prioritise increasing efficiency and equality, in particular in support of China's goal of common prosperity.

One significant update is the indication from the State Council that a pilot reform for a consumption tax is to be implemented. The pilot reform programme is introduced in detail in the document *State Council Notice on the Issuance of Adjustment of Revenue Division Reform between the Central and Local Governments after the Implementation of Larger Tax Cuts and Fee Reductions, Guo Fa [2019] No. 21*,¹⁷ which stipulates that it is to be applied to selected sectors to adjust the tax scope, rates and taxation points. The main purpose is for the consumption taxation point for some items, currently implemented at the production (import) stage, to be gradually moved down to the wholesale or retail stages, on the premise of controllable collection and management. The aim is to elevate local revenue sources and improve local consumption. However, to date, no clear timetable for this pilot programme has been issued, nor a list of items that will be included, although high-end watches and jewellery are mentioned as examples in *Guo Fa [2019] No. 21*.¹⁸

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

12 *The Interim Regulations on Consumption Tax of the PRC (Revised)*, State Council, 10th November 2008, viewed 22nd April 2024, <<https://www.chinatax.gov.cn/n810341/n810765/n812171/n812680/c1190924/content.html>>

13 *Call for Comments on the Consumption Tax Law of the PRC (Draft for Comments)*, Ministry of Finance, 3rd December 2019, viewed 22nd April 2024, <<http://www.chinatax.gov.cn/chinatax/n810356/n810961/c5140457/content.html>>

14 *Outline of the 14th Five-year Plan for National Economic and Social Development of the People's Republic of China and Long-Range Goals for 2035*, State Council, 13th March 2021, viewed 22nd April 2024, <http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm>

15 *Announcement of the State Administration of Taxation on Matters Related to the Collection and Administration of E-cigarette Consumption Tax*, Beijing Municipal Tax Service of STA, 2nd October 2022, viewed 1st July 2024, <<http://www.chinatax.gov.cn/chinatax/n360/c5182408/content.html>>

16 *The 14th National People's Congress Standing Committee legislative plan*, 8th September 2023, viewed 22nd April 2024, <http://www.npc.gov.cn/npc/c2/c30834/202309/t20230908_431613.html>

17 *State Council Notice on the Issuance of Adjustment of Revenue Division Reform between the Central and Local Governments after the Implementation of Larger Tax Cuts and Fee Reductions*, State Council, 9th October 2019, viewed 22nd April 2024, <http://www.gov.cn/zhengce/content/2019-10/09/content_5437544.htm>

18 *Ibid.*



retail price, thereby transferring the additional cost to consumers, damaging sales revenues and ultimately making the Chinese market less competitive and attractive for foreign investment.

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

The working group also recommends that the tax threshold on certain goods be re-assessed and re-adjusted to ensure it aligns with the country's economic development. In addition, the design of Hainan Free Trade Port's (FTP's) sales tax regime is still under development, and the tax regime transition with the mainland consumption tax regime, the tax regime for new business types, preferential policies, and the scope of taxpayers remain unclear. Therefore, finalising the relevant policies as soon as possible is recommended. Finally, regarding low-carbon and circular economy policies, the working group urges efforts to speed up the implementation of green transformation principles (for example, the reuse of plastic waste as a raw material) through tax incentives.¹⁹ This could include a consumption tax exemption on refined oil products (ROPs) made from recycled waste plastic, and 100 per cent VAT refunds on ROPs or chemical products made from waste plastics.

Recommendations

- Involve industry and tax experts in discussions on standards and measurements and, where necessary, review and re-determine the scope of taxation and the taxing point in the supply chain, taking into consideration boosting domestic circulation in the common national market.
- Review the applicable tax threshold, tax rates and taxation method to facilitate the macro-development

strategies of specific industries in line with China's consumption reality and to better reflect international best practices.

- Publish in a timely manner the timetable and implementation rules for the various sectors enlisted in the Consumption Law reform pilot and provide a sufficient transition period.
- Improve the effectiveness of the nationwide tax system and synchronise tax administration and collection systems at central and local levels.
- With the closure of the Hainan FTP approaching, it is imperative to accelerate the development of the port's sales tax regime, integrate it with China's existing consumption tax regime, solicit public opinions, and promote its smooth transition to contribute to the success of the FTP.

Abbreviations

CHC	Chinese Holding Company
CIT	Corporate Income Tax
FTP	Free Trade Port
MOF	Ministry of Finance
NPC	National People's Congress
OECD	Organisation for Economic Co-operation and Development
PTR	Processing Trade Relief
R&D	Research and Development
ROP	Refined Oil Product
STA	State Taxation Administration
VAT	Value-added Tax

¹⁹ In the European Chamber's *Carbon Neutrality* report, 22 per cent of European companies said they hoped to receive tax incentives for decarbonisation initiatives: *Carbon Neutrality: The Role of European Business in China's Race to 2060*, European Union Chamber of Commerce in China, 25th May 2022, viewed 22nd April 2024, p.8, <https://www.europeanchamber.com.cn/en/publications-archive/974/Carbon_Neutrality_The_Role_of_European_Business_in_China's_Race_to_2060>



Human Resources Working Group

Key Recommendations

1. Optimise Workforce Flexibility and Modernise Chinese Labour Laws

- Revise existing labour laws and related regulations to accommodate flexible work arrangements.
- Develop practical solutions for employers to provide social security for employees working in locations that are different to where the company is registered.
- Apply the same statutory standards to all employees and ensure consistent interpretation of labour laws and regulations nationwide.

2. Improve Overall Conditions for Foreign Nationals to make China a more Attractive Destination for Employees on both Long- and Short-term Work Assignments

- Optimise the Permanent Residence Identification card's (PR Card's) functions by consulting PR Card holders to address existing limitations.
- Streamline the employment transfer process in China to expedite employee acquisition, mitigate immigration and employment risks, and bridge administrative gaps to enable seamless employment transitions.
- Develop further resources that provide guidance to foreign nationals working in or visiting China on daily living activities and necessary administrative tasks.
- Apply the best practices of International Services Shanghai to more Chinese cities to enhance the quality of life for foreign nationals living in China.
- Issue bilateral agreements with more European Union (EU) member states and simplify relevant application procedures to increase talent exchange and internship programmes between the EU and China.

3. Invest more in the Development of Practical Knowledge and Soft Skills in Vocational Schools, and Increase Access to Vocational Training Institutions and Trainee Programmes

- Increase access to vocational training schools.
- Update both the curricula taught at vocational schools and the training provided at technical schools, colleges and universities to include courses on digitalisation, intelligent manufacturing and advanced operations.
- Update both the curricula taught at vocational schools and the training provided at technical schools, colleges and universities to include courses on green technologies and management practices.



Recent developments

Visa-free Policy and Increasing Convenience for Foreign Nationals Living in or Visiting China

On 7th March 2024, the Ministry of Foreign Affairs implemented a trial visa-free policy for Austria, Belgium, Hungary, Ireland, Luxembourg and Switzerland.¹ As of 14th March, citizens holding ordinary passports from these countries are permitted to enter China without a visa for up to 15 days for purposes such as business, tourism, visiting family and transit. On 7th May 2024, China extended the short-stay, visa-exemption policy to citizens from Austria, Belgium, France, Germany, Hungary, Ireland, Italy, Luxembourg, Malaysia, the Netherlands, Spain and Switzerland until 31st December 2025.² China's authorities also recently emphasised that hotels must not refuse to accommodate foreign nationals on the grounds that they lack the capacity to process related paperwork.³

The Ministry of Commerce (MOFCOM) released *A Guide to Working and Living in China as Business Expatriates (2024 Edition)*.⁴ It includes four parts: Notes, Daily Life Services, Services for Stay and Residence in China, and Relevant Services for Work in China. The guide covers matters such as residence registration, social insurance, mobile payments, transportation, payment of individual income tax, and obtaining SIM cards, bank cards, residence permits and work permits. The aim is to update the guide annually, to reflect changes in relevant policies and procedures. Beijing also rolled out a 'ten-measure initiative' aimed at attracting more overseas talent to study and work in China. One of the measures included is the rescindment of the two-year work experience requirement for obtaining work permits.⁵

Overseas Transfer of Personal Information for Human Resources (HR) Management

On 22nd March 2024, the Cyber security Administration of China (CAC) released the *Provisions on Regulating and Promoting Cross-border Data Flows (CBDT Provisions)*.⁶ It eases some of the requirements for personal information transfer under certain circumstances. According to the *CBDT Provisions*, the overseas transfer of personal information for the purposes of HR management, including sensitive personal information, is permitted provided that the data transferer does so in accordance with labour rules and regulations, and that any collective contracts are also signed in accordance with the law.

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

In 2016, the Chinese Government temporarily reduced the contribution rates of unemployment insurance and work-related injury insurance to reduce business costs.⁷ According to the policy, the total contribution rates of unemployment insurance for both the employer and employee should be one per cent and the rate applicable to the employee should be no higher than that applicable to the employer. The contribution rate of the work-related injury insurance was reduced by 20 per cent to 50 per cent, subject to the financial status of the local work-related injury insurance fund. On 29th March 2023, the Ministry of Human Resources and Social Security (MOHRSS), the Ministry of Finance, and the State Taxation Administration jointly issued the *Notice Regarding Issues in Relation to Temporary Reduction of Contribution Rates of Unemployment and Work-related Injury Insurance*,⁸ which extends the reduced contribution rates of unemployment and work-related injury insurance until the end of 2024.

1 Jin, Z, *China announces visa-free policy for six countries*, *China Daily*, 7th March 2024, viewed 29th April 2024, <<https://www.chinadaily.com.cn/a/202403/07/WS65e954b3a31082fc043bb377.html>>

2 *China extends visa-free policy for 12 countries*, *China Daily*, 14th May 2024, viewed 29th May 2024, <<https://govt.chinadaily.com.cn/s/202405/14/WS6642c5a7498ed2d7b7ead990/china-extends-visa-free-policy-for-12-countries.html>>

3 Yang, Z, and Si, C, *Hotels told not to turn away foreign guests*, *China Daily*, 28th May 2024, viewed 29th May 2024, <<https://www.chinadaily.com.cn/a/202405/28/WS6655f606a31082fc043c9a3e.html>>

4 *A Guide to Working and Living in China as Business Expatriates (2024 Edition)*, MOFCOM, 5th March 2024, viewed 29th April 2024, <<http://www.mofcom.gov.cn/article/zwgk/gkbnjg/202401/20240103468871.shtml>>

5 Wang, X, *China's Capital Loosens Work Permit Requirements to Attract Overseas Talent*, *Caixin Global*, 17th May 2024, viewed 29th May 2024, <<https://www.caixinglobal.com/2024-05-17/chinas-capital-loosens-work-permit-requirements-to-attract-overseas-talent-102197464.html>>

6 *Provisions on Facilitating and Regulating Cross-border Data Flows (Provisions)*, CAC, 22nd March 2024, viewed 4th May 2024, <https://www.cac.gov.cn/2024-03/22/c_1712776611775634.htm>

7 *Notice on Periodic Reduction of Social Insurance Premiums*, MOHRSS, 20th April 2016, viewed 1st July 2024, <https://www.gov.cn/xinwen/2016-04/20/content_5066089.htm>

8 *Notice Regarding Issues in Relation to Temporary Reduction of Contribution Rates of Unemployment and Work-related Injury Insurance*, MOHRSS, 29th March 2023, viewed 1st July 2024, <https://www.mohrss.gov.cn/SYrlzyhshbzb/shehuibaozhang/zcwj/202303/t20230330_497764.html>



Key Recommendations

1. Optimise Workforce Flexibility and Modernise Chinese Labour Laws



Concern

Current labour laws and regulations are no longer fit for purpose, resulting in both HR management challenges and employees missing out on employment benefits, while hindering business expansion through remote engagement.

Assessment

The evolution of technology and shifting workforce dynamics has resulted in employers needing to implement more flexible work arrangements. Based on business requirements or customer demands, there is an increasing need to engage dispatched labour or part-time employees for specific projects, arrange for employees to work either onsite or remotely from different locations, and adjust working hours. However, while the government theoretically permits flexible work arrangements, China's existing labour laws and regulations do not adequately address the practical implications. For example, the lack of a clear legal framework for remote or hybrid work leaves both employers and employees uncertain about their specific rights and obligations, and adjusting standard working hours can lead to overtime payment liabilities.

China's social security system also does not facilitate remote working conditions. The Social Insurance Law and relevant regulations require employers to provide social security for employees at the locations where the enterprise's business units are registered, regardless of employees' actual work locations.⁹ Consequently, remote workers miss out on social insurance benefits and welfare in their place of residence and work. This not only impacts employee entitlements, but also hinders business expansion through remote engagement.

On top of this, interpretations of labour laws and regulations can vary across different jurisdictions in China, and may even conflict with each other. This adds further complexity to the management of remote

employees. For example, while the law requires employers to provide social insurance based on the location where the employer is registered, employees' leave entitlement follows the local policies where she/he actually works. As a result, remote workers may not receive full maternity leave allowance, for example, if the policy where their employer is registered provides a shorter leave entitlement than where the employee works.

Employees paying into a pension fund at the employer's registered location may also encounter difficulties claiming their pension benefits once they reach statutory retirement age, and differing court decisions also add to management complexities.¹⁰

Recommendations

- Revise existing labour laws and related regulations to accommodate flexible work arrangements.
- Develop practical solutions for employers to provide social security for employees working in locations that are different to where the company is registered.
- Apply the same statutory standards to all employees and ensure consistent interpretation of labour laws and regulations nationwide.

2. Improve Overall Conditions for Foreign Nationals to make China a more Attractive Destination for Employees on both Long- and Short-term Work Assignments

Concern

The lack of convenient work and living conditions for foreign nationals makes China less attractive as a destination for both long- and short-term work assignments.

Assessment

After China re-opened its borders in early 2023, the number of people travelling between China and overseas countries steadily increased. According to statistics released by the National Immigration Administration (NIA) on 18th April 2024, in the first

⁹ Social Insurance Law of the People's Republic of China, MOHRSS, 29th December 2018, viewed 1st July 2024, <https://www.mohrss.gov.cn/xxgk2020/fdzdgknr/zcfg/fl/202011/20201102_394629.html>

¹⁰ For example, while the Shanghai Higher People's Court permits termination without specifying a reason after the second fixed-term contract has expired, Beijing Higher People's Court denies this right. *What Should Employers Pay Attention to When an Employee's Labor Contract is About to Expire*, China Briefing, 7th April 2022, viewed 12th June 2024, <<https://www.china-briefing.com/news/china-end-fixed-term-labor-contract-employment-management-best-practices-compliance-guidelines/>>





quarter (Q1) of 2024, a total of 141 million travellers entered or exited the Chinese mainland—including just over 13 million foreign nationals—which was a year-on-year increase of just over 305 per cent.¹¹ The number of foreign nationals in 2024 Q1 was boosted by new policies and measures introduced by the NIA regarding exit-entry services, including visa exemptions for entry and transit for certain nationalities, and visas on arrival ('port visas'). According to NIA statistics, a total of 466,000 visas were issued to foreign nationals, and nearly two million foreign nationals entered China via the visa exemption programme.¹²

Despite the positive impact that these new entry/exit policies have had—particularly on short-term travellers from the currently visa-exempt countries—in order to attract and retain foreign nationals, especially talent that China needs, there is a need to further refine the current immigration system while introducing new policies that can create more comfortable and convenient working and living environments. The working group recommends introducing policies and support in the following areas, in order to increase China's attractiveness as a destination for both long- and short-term work assignments:

1) Benefits for China Foreign PR Card holders

Although China's PR Card is regarded as one of the most difficult permanent resident cards to obtain, the associated benefits have not been developed sufficiently to reflect their perceived value.

For example, some banks do not allow foreign nationals to purchase foreign currency or transfer remittances via mobile phone or PC-based online portals using their PR Card identity. There are also challenges binding foreign credit cards to WeChat or AliPay for banks using PR Card information. Some PR Card holders also face difficulties using the card to buy property, obtain financial services, apply for driving licences and file individual income tax (IIT) to enrol in social security. These functions are administrated by different government bodies and organisations in a decentralised manner, which makes related procedures extremely burdensome.

11 *Over 141 Million Exit-Entry Travelers Recorded in China in Q1 2024*, NIA, 18th April 2024, viewed 12th June 2024, <<https://en.nia.gov.cn/n162/n237/c121201/content.html>>

12 *Ibid.*

2) Employer transfer processes for foreign nationals

Foreign nationals working in China face challenges when changing employers. According to the current procedure, the existing work permit needs to be cancelled before a new work permit can be applied for. However, because all the work permit-related applications are filed with one nationwide online platform, the administrative process is inefficient and time-consuming. Foreign nationals can only legally work with complete documentation—containing both a work permit and a residence permit—which leads to an unnecessary gap from both an employment and immigration perspective.

The authorities, particularly the local exit and entry administrations of Public Security Bureaus, do not have clear guidelines on how to deal with the interim period, during which the employer transfer process is underway but before the issuance of both a new work permit and residence permit (typically one to two months, depending on case specifics). This creates a significant burden for companies when arranging foreign nationals' onboarding and work activities during the transitional phase, even after the employment contract has taken effect.

3) Living convenience for short-term travellers

Short-term travellers to China often arrange accommodation independently or with assistance from colleagues or friends. However, they face challenges due to fragmented and/or inaccessible information and limited support. The NIA launched *A Guide to Working and Living in China as Business Expatriates* on 11th March 2024,¹³ and The People's Bank of China (PBOC) launched the *Guide to Payment Services in China* on 15th March 2024.¹⁴ The International Services Shanghai website also contains comprehensive information for foreign nationals who want to do business, work, travel, study, or shop in Shanghai. However, while these are helpful guides they are not very well known to either the foreign community in China or overseas. The working group therefore recommends increasing promotion of these resources across multiple channels to ensure they reach a wider audience. The working group further recommends that other Chinese cities—particularly

13 *A Guide to Working and Living in China as Business Expatriates (2024 Edition)*, NIA, 11th March 2024, viewed 4th May 2024, <<https://www.nia.gov.cn/n741440/n741542/c1637910/content.html>>

14 *Guide to Payment Services in China*, PBOC, 15th March 2024, viewed 4th May 2024, <https://english.www.gov.cn/news/202403/15/content_WS65f3bcb1c6d0868f4e8e51b5.html>





those that are popular work and travel destinations—also develop similar resources to Shanghai’s to help guide foreign nationals.

4) Talent exchanges and internship programmes for young professionals

After experiencing a significant loss of foreign nationals due to COVID-19 restrictions, companies operating in China are in dire need of a new generation of foreign talent that can bring fresh ideas, boost innovation and become future leaders. Programmes that promote talent exchanges and internships are one of the best ways for foreign students and graduates to obtain first-hand experience of the Chinese market, and to encourage them to seek long-term employment in China. These young people can become future ‘ambassadors’ that can help bridge some of the perception gaps that have developed between the EU and China.

However, there is currently a lack of policy support in this regard. At present, China only has bilateral agreements with two EU member states, Germany and France, to facilitate mutual visits and internships for students and other young people.^{15&16} The working group notes that while the existing Sino-French and Sino-German programmes are positive in theory, applicants are subject to complex requirements and visa procedures. It would therefore be beneficial to streamline the related administrative requirements to make applying for these programmes more convenient, while expanding such agreements to more EU member states.

Recommendations

- Optimise the PR Card’s functions by consulting PR Card holders to address existing limitations.
- Streamline the employment transfer process in China to expedite employee acquisition, mitigate immigration and employment risks, and bridge administrative gaps to enable seamless employment transitions.
- Develop further resources that provide guidance to foreign nationals working in or visiting China on daily living activities and necessary administrative tasks.

¹⁵ *Chinese and German Governments Sign Joint Statement of Intent on Youth Internship Exchange Programme*, MOHRSS, 10th July 2018, viewed 1st July 2024, <https://www.gov.cn/xinwen/2018-07/10/content_5305279.htm>

¹⁶ *Circular of the General Office of the Ministry of Human Resources and Social Security on Matters Relating to the Implementation of the Sino-French Thousand Internship Programme*, MOHRSS, 29th March 2016, viewed 1st July 2024, <<http://intern.newjobs.com.cn/html/web/fuwuzhinan/zhengcewenjian/7287.html>>

- Apply the best practices of International Services Shanghai to more Chinese cities to enhance the quality of life for foreign nationals living in China.
- Issue bilateral agreements with more EU member states and simplify relevant application procedures to increase talent exchanges and internship programmes between the EU and China.

3. Invest more in the Development of Practical Knowledge and Soft Skills in Vocational Schools, and Increase Access to Vocational Training Institutions and Trainee Programmes



Concern

The current labour market cannot meet the growing need for highly skilled workers as a result of the rapid rate of modernisation in the manufacturing industry.

Assessment

Vocational schools in China offer courses covering supply chain management, lean manufacturing, cost basics, total productive maintenance, production material control, purchasing management, information technology application in manufacturing and leadership, among others. However, while companies are looking for graduates with a mixture of practical and soft skills that can be applied in the workplace, the main focus of these courses is on general, theoretical training instead. In light of this, the Human Resources Working Group recommends that the standards of vocational education and teaching, as well as guidance on the design of teaching materials, be updated in accordance with the Vocational Education Law.¹⁷ The aim of this is to ensure that vocational training courses ultimately become more aligned with industry needs.

Recent graduates in China who wish to pursue a career in technical fields generally start from entry-level positions as basic operators. Working group members report that this is necessary because—despite the fact that graduates are often unwilling to take such positions—upon graduation technicians are often ill-equipped to carry out their first job with efficiency and quality. Companies report that they

¹⁷ *Vocational Education Law of the People’s Republic of China*, NPC, 20th April 2022, viewed 4th May 2024, <http://en.npc.gov.cn.cdurl.cn/2022-04/20/c_909970.htm>





generally need to provide graduates with a minimum of one year additional training, focusing on areas such as machinery, electronics, automation, and environment, health, and safety, for them to meet the required standard.

Article 5 of the Made in China 2025 initiative, released on 8th May 2015, highlights the need to establish a comprehensive multi-level talent development system.¹⁸ It emphasises the strengthening of vocational education and skills training and encourages the establishment of international training bases. However, the current gap between the abilities of vocational students trained in China and the needs of enterprises indicates that policies are not being implemented effectively.

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

Finally, with the EU and China both seeing the development and implementation of green technologies and management practices as imperative, vocational schools also need to ensure that these fields become a central part of their updated curricula.

Recommendations

- Increase access to vocational training schools.
- Update both the curricula taught at vocational schools and the training provided at technical schools, colleges and universities to include courses on digitalisation, intelligent manufacturing and advanced operations.
- Update both the curricula taught at vocational schools and the training provided at technical

schools, colleges and universities to include courses on green technologies and management practices.

Abbreviations

CAC	Cyber security Administration of China
EU	European Union
HR	Human Resources
IIT	Individual Income Tax
MOFCOM	Ministry of Commerce
NIA	National Immigration Administration
PBOC	People's Bank of China
PR Card	Foreign Permanent Residence Identification Card

¹⁸ Circular of the State Council on Printing and Distributing Made in China 2025, State Council, 19th May 2015, viewed 4th May 2024, <https://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm>





Intellectual Property Rights Working Group

Key Recommendations

1. Patents

1.1 Apply a Proportionate Standard for ‘Obviousness’ in Patent Examination and Invalidation Proceedings 2

- Apply a more proportionate standard of ‘obviousness’ in patent examination and invalidation proceedings, based on the uniqueness of each industry, to ensure consistency between foreign and Chinese patent applications.

1.2 Establish a National Intellectual Property (IP) Court Based on the IP Tribunal of the Supreme People’s Court (SPC)

- Establish a national IP court to handle appeals concerning professional and technical IP disputes, as well as cases related to monopolies, ensuring both consistency of trial standards and efficiency of trial processes.

2. Trademarks

2.1 Replace the Periodic Verification of Trademark Use Proposed in the Draft Revision of the Trademark Law with Provisions Stating That Trademarks Shall Only Be Protected If They Are Used 2

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

2.2 Avoid Citing Article 10.1.7 of the Trademark Law as an Alternative to Article 11 When Refusing the Registration of a Trademark 2

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

2.3 Facilitate the Registration of New Trademarks Refused on Relative Grounds by Allowing a Joint Adjudication of All Conflicts Between the Applied and Cited Trademarks, or Accepting Coexistence Agreements 2

- Revise the Trademark Law to reflect that when a trademark application is refused on the grounds of pre-existing trademarks that have been registered for a period exceeding three years, the trademark applicant may file a review against this refusal by requesting the registrants of the pre-existing trademarks to submit proof of their trademarks’ use.
- Revise the Trademark Law to include that any disputes raised by the applicant of a new trademark against the holders of pre-existing trademarks—in the context of a refusal of the new application—shall be settled concurrently with the review of the appeal against the trademark application’s refusal.
- Provide that when a trademark is invalidated on the grounds of bad faith, the court shall have the power to order the owner of the invalidated trademark to pay the legal costs incurred by the applicant of the invalidation.
- Accept letters of consent.



3. Access to Law

3.1 Implement an Official System of Appeal Against, or Review of, Unfavourable Patent Evaluation Reports for Utility Model Patents or Design Patents 2

- Establish a review or appeal system that allows patentees to contest initial unfavourable patent evaluation reports issued by the China National Intellectual Property Administration (CNIPA).

3.2 Specify That When the Circumstances for Punitive Damages in Litigation are Met, the Amount Shall be Decided Without Regard for the Amount of Damage Claimed by the Plaintiff, and Amend Article 211 of the Civil Procedure Code Accordingly 2

- Grant courts full discretion to award punitive damages within legal limits, regardless of the damages claimed by the plaintiff, and amend Article 211 of the *Civil Procedure Code* accordingly.

3.3 Make All Court Decisions on Patent-related Cases Publicly Available 2

- Improve the openness and transparency of China's patent system by ensuring all court decisions in patent cases are publicly available.

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

- Allow People's Courts to accept a claim against a registered trademark and to suspend the case pending the completion of the invalidation procedure for the trademark in question.

4. Online IP Protection

4.1 Enhance Regulation to Optimise the Baseline Responsibilities of Internet Platform Enterprises with Regard to Addressing IP Infringement Concerns

- Issue regulations, guidelines and standards to develop baseline requirements and standardised best practices for platform operators to follow in combating online IP infringement.
- Require each platform operator to self-assess the scale and severity of IP infringement on its platform, evaluate the sufficiency of its intellectual property rights (IPR) protection measures and report these assessments to the competent regulator on an annual basis.
- Provide better and more rapid escalation and remedial measures if platform operators fail to combat IPR infringement.
- Enhance penalties for platform operators that fail to meet the baseline requirements for effectively managing IPR infringement.

4.2 Strengthen the Supervision of Counterfeit Posting, IP Infringement and Novel Forms of Online Infringement

- Establish a dedicated regulatory body, task force or coordination committee under the supervision of the Cyberspace Administration of China (CAC), the CNIPA and the State Administration for Market Regulation (SAMR) to oversee and safeguard online IP protection.
- Release annual reports detailing the IPR initiatives undertaken by online platforms and their effectiveness, based on the data provided in the annual submissions of these platform operators.
- Launch campaigns to combat online IPR infringement and to raise public awareness about the significance of IPR protection.

5. Trade Secrets

5.1 Level the Playing Field for Foreign Companies that Rely on Administrative or Criminal Enforcement of Trade Secrets 2

- Provide guidance to clarify the detailed standards required for administrative and criminal cases related to the enforcement of trade secrets.
- Accept administrative and criminal cases regardless of the nationality of the trade secret owner.





5.2 Adjust Both the Formality Requirements and the 'Prima Facie Evidence' Standard for Proving Trade Secret Infringements 2

- Provide guidance on the formality requirements for evidence, drawing from best practices and considering input from foreign companies.
- Clarify the criteria for establishing 'prima facie evidence'.

5.3 Develop Criteria to Determine if a Technical Feature Is the Owner's Trade Secret or Public Information 2

- Provide guidance or judicial interpretation to clarify the standards for determining whether a defendant's claimed information constitutes an infringement of the plaintiff's trade secret.

6. Geographical Indications (GI)

6.1 Enact a Law that Provides Effective Protection for Registered GI Products

- Enact specific legislation concerning the registration and protection of GIs.
- Direct the SAMR to issue regulations delineating the powers of administrative enforcement authorities, which should include enforcing GI rights through the ability to confiscate and destroy infringing products and imposing sanctions.

Recent Developments

In 2023, China launched initiatives to update and strengthen its intellectual property rights (IPR) framework, highlighting the increasing importance of IPR in fostering innovation and economic growth through a fair and open market.

On 13th January 2023, the China National Intellectual Property Administration (CNIPA) released the most extensive draft amendments to the Trademark Law since its establishment in 1982.¹ The amendments include provisions for submitting use declarations, prohibiting duplicate and malicious registrations and introducing new relief measures for infringement, which are aimed at strengthening the legal framework for trademarks.

To maintain the integrity of the trademark system, the CNIPA also issued the *Guidelines on the Application for Registration and Use of Trademarks Containing Geographical Names*, which further clarify the prohibition of certain signs as trademarks.² In recognition of the need for enhanced credibility in trademark services,

the CNIPA introduced the *Administrative Measures for the Credit Evaluation of Trademark Agencies (Trial)* in December 2023.³ This initiative seeks to enhance credit management among trademark agencies and practitioners by promoting a culture of legal compliance and ethical practices. Additionally, the *Guidelines on the Proper Understanding of the Classification of Goods and Services for Trademark Registration* were released in December 2023 to reinforce the supervision of the quality of IPR applications and registrations.⁴

In the domain of patents, the CNIPA and the Ministry of Justice (MOJ) issued the *Opinions on Strengthening the Work of Administrative Adjudication of Patent Infringement Disputes in the New Era* in September 2023. This document is aimed at enhancing the institutional mechanism for administrative adjudication, such as strengthening the enforcement of patent infringement disputes.⁵ In December 2023, the *Implementing Rules of the Patent Law* saw its third

1 *Notice on Trademark Law Amendment Draft*, CNIPA, 13th January 2023, viewed 12th April 2024, <https://www.cnipa.gov.cn/art/2023/1/13/art_75_181410.html>

2 *Guidelines on the Application for Registration and Use of Trademarks Containing Geographical Names*, CNIPA, 19th January 2023, viewed 12th April 2024, <https://www.cnipa.gov.cn/art/2023/1/19/art_66_181566.html>

3 *Administrative Measures for Credit Evaluation of Trademark Agency (Trial)*, CNIPA, 27th December 2023, viewed 12th April 2024, <https://www.cnipa.gov.cn/art/2023/12/27/art_551_189249.html>

4 *Guidelines on the Correct Understanding of the Classification of Goods and Services for the Purposes of Trademark Registration*, CNIPA, 29th December 2023, viewed 12th April 2024, <https://www.gov.cn/lianbo/bumen/202312/content_6923221.htm>

5 *Opinions on Strengthening the Work of Administrative Adjudication of Patent Infringement Disputes in the New Era*, CNIPA, 11th September 2023, viewed 12th April 2024, <https://www.gov.cn/zhengce/zhengceku/202309/content_6904162.htm>



revision.⁶ The revised rules address patent creation, examination, application and protection.

In the area of geographical indications (GI), the CNIPA issued the *Measures for the Protection of Geographical Indication Products*, an amendment to the 2005 provisions which refines the review process, enhances management and clarifies the scope of infringement actions.⁷ These updated measures will better serve the interests of companies involved in the production and marketing of GI-marked goods.

1. Patents

1.1 Apply a Proportionate Standard for ‘Obviousness’ in Patent Examination and Invalidation Proceedings



Concern

The basis for determining ‘obviousness’ in patent applications goes beyond what is reasonable.

Assessment

Many patent applicants and registrants have reported a noticeable increase in the number of patent applications rejected and existing patents invalidated by the CNIPA on the grounds of ‘obviousness’.⁸ The bar for ‘skills’ and ‘knowledge’ attributed to ‘a person skilled in the art’ seems to be set high, potentially encompassing a vast array of prior art. This has the effect of making the standard for inventive step more stringent for patent applicants and patent holders alike, across both invention patents and utility model patents. Consequently, applicants find securing and maintaining patent rights in China increasingly challenging.

Recommendation

- Apply a more proportionate standard of ‘obviousness’ in patent examination and invalidation proceedings, based on the uniqueness of each industry, to ensure consistency between foreign and Chinese patent applications.

6 *Implementing Rules of the Patent Law*, CNIPA, 21st December 2023, viewed 17th June 2024, <https://www.cnipa.gov.cn/art/2023/12/21/art_98_189197.html>

7 *Measures for the Protection of Geographical Indications Products*, CNIPA, 29th December 2023, viewed 12th April 2024, <https://www.cnipa.gov.cn/art/2024/1/2/art_526_189473.html>

8 “Patent obviousness is the idea that if an invention is obvious to either experts or the general public, it cannot be patented. Obviousness is one of the defining factors on how to patent an idea and whether or not an idea or invention is patentable. It is one of the hardest concepts to understand since it is often subjective and even arbitrary.” *Patent Obviousness: Everything You Need To Know*, Upcounsel, 1st January 2024, viewed 19th April 2024, <<https://www.upcounsel.com/patent-obviousness>>

1.2 Establish a National IP Court Based on the IP Tribunal of the SPC

Concern

The IP Court of the SPC has been unable to meet the current demand for processing the growing number of IP cases, especially those that are technologically complex.

Assessment

As of 31st December 2023, the IP Court of the SPC of China had cumulatively accepted 18,924 cases over the five years since its establishment, with 7,776 cases being accepted in 2023 alone.⁹ This has resulted in the IP Court being confronted with a substantial workload, which risks leading to a backlog in the court's proceedings. As a consequence, the SPC may struggle to fulfil its other critical functions, such as developing judicial policies, enhancing trial supervision and guidance, and standardising trial practices.

Recommendation

- Establish a national IP court to handle appeals concerning professional and technical IP disputes, as well as cases related to monopolies, ensuring both consistency of trial standards and efficiency of trial processes.

2. Trademarks

2.1 Replace the Periodic Verification of Trademark Use Proposed in the Draft Revision of the Trademark Law with Provisions Stating That Trademarks Shall Only Be Protected If They Are Used

Concern

The proposal for dealing with large numbers of unused trademarks creates the obligation to provide evidence of use of all trademarks every five years, which places a burden on all trademark owners.

Assessment

The draft revision of the Trademark Law, which places obligations on all trademark owners, does not adequately address the practice of trademark

9 Supreme Court Intellectual Property Court Concludes 15,710 Cases in Five Years of Establishment, CCTV, 22nd February 2024, viewed 19th April 2024, <<https://news.cctv.com/2024/02/22/ARTIn815KxQmZ1qv2GauZ67V240222.shtml>>



hoarding.¹⁰ The law should ensure that trademarks are protected only if they are in use, except for the initial three years after registration. This way, trademark hoarders will no longer have the power to stop others from using them, causing the trademark's value to drop. Consequently, trademark hoarding would cease to be a profitable business and could progressively disappear.

Recommendation

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

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



Concern

The increase in instances of the CNIPA refusing trademark applications based on absolute grounds is causing significant issues for legitimate trademark applicants.

Assessment

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

goods, the trademark application could be refused by the CNIPA based on either Article 10.1.7 or Article 11 of the Trademark Law, or both.

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

Recommendation

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

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

Concern

Procedures resulting from trademark refusals based on relative grounds are time-consuming and costly for trademark applicants while carrying no penalties for bad-faith trademark registrants.

Assessment

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

¹⁰ "Trademark hoarding is when a person or entity files a large number of trademark registrations to prevent other businesses from being able to use those marks. Trademark hoarding is a bad-faith practice when the business or individual has no intention of using the registered trademark in the future." *Trademark Hoarding: What Is It and How To Challenge It*, Rocket Lawyer, 18th January 2023, viewed 13th June 2023, <<https://www.rocketlawyer.com/business-and-contracts/intellectual-property/trademarks>>

¹¹ *Guidelines for Trademark Examination and Trial*, CNIPA, 16th November 2021, viewed 20th April 2024, <cnipa.gov.cn/attach/0/123456011.pdf>



been completed and the prior ‘obstacle’ trademarks eliminated that the new trademark application can proceed to registration.

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

If a trademark owner agrees that its trademark can coexist with another trademark without risk of confusion, it means that their interests are not threatened by such coexistence, nor are the interests of the public. Therefore, there should be no grounds to refuse the registration of a trademark that has been consented to, in a ‘letter of consent’, by a prior trademark owner.

Recommendations

- Revise the Trademark Law to reflect that when a trademark application is refused on the grounds of pre-existing trademarks that have been registered for a period exceeding three years, the trademark applicant may file a review against this refusal by requesting the registrants of the pre-existing trademarks to submit proof of their trademarks’ use.
- Revise the Trademark Law to include that any disputes raised by the applicant of a new trademark against the holders of pre-existing trademarks—in the context of a refusal of the new application—shall be settled concurrently with the review of the appeal against the trademark application’s refusal.
- Provide that when a trademark is invalidated on the grounds of bad faith, the court shall have the power to order the owner of the invalidated trademark to pay the legal costs incurred by the applicant of the invalidation.
- Accept letters of consent.

3. Access to Law

3.1 Implement an Official System of Appeal Against, or Review of, Unfavourable Patent Evaluation Reports for Utility Model Patents or Design Patents 2

Concern

While patent evaluation reports issued by the CNIPA

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

Assessment

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

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

During the process of examining applications for invention patents, unfavourable decisions made by the CNIPA as to the validity of the patent can be appealed against by the applicant. In Part V, Chapter 10 of the *Patent Examination Guidelines*, Section 6 ‘Correction of Patent Examination Report’ focusses mainly on formalities. However, there is no recourse for the patentee of a utility model patent or design patent to appeal against unfavourable findings of the CNIPA on the validity of the patent as set out in the patent evaluation reports. The lack of such an official appeal or review system could substantially undermine the patentee’s ability to enforce the patent.

Recommendation

- Establish a review or appeal system that allows patentees to contest initial unfavourable patent evaluation reports issued by the CNIPA.

3.2 Specify That When the Circumstances for Punitive Damages in Litigation are Met, the Amount Shall be Decided Without Regard for the Amount of Damage Claimed by the Plaintiff, and Amend Article 211 of the Civil Procedure Code Accordingly 2

Concern

The essence of punitive damages, which is the





equivalent of a penalty, is often misconstrued as being part of the compensation claim.

Assessment

Punitive damages are a Common Law concept, whereby the court, or a jury, may award damages for an amount in excess of the actual prejudice justified and claimed by the plaintiff. Even though they are paid to the plaintiff, the punitive damages are a penalty sanctioning bad behaviour, not the compensation of a prejudice. However, in civil law jurisdictions like China, judges are typically constrained from awarding damages that exceed the plaintiff's claim. Article 211 of the *Civil Procedure Code* stipulates that the People's Court should conduct a re-trial if the original judgment or ruling has omitted or exceeded a claim, leading courts to view punitive damages as additional and thus cap them at the amount claimed. This limitation often prevents courts from imposing the full penalty they deem appropriate, as they are constrained by the plaintiff's stated claim amount.

Recommendation

- Grant courts full discretion to award punitive damages within legal limits, regardless of the damages claimed by the plaintiff and amend Article 211 of the *Civil Procedure Code* accordingly.

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

Concern

The number of published court decisions has been decreasing for years, which is not in line with China's overall goal of creating a more transparent legal environment.

Assessment

The number of published court decisions on IP-related cases has been declining over the past few years, particularly for patent-related cases. According to the annual white paper *Intellectual Property Protection by Chinese Courts*, published by the SPC, the number of patent-related cases accepted by the courts at all levels below the SPC steadily increased from 23,235 cases in 2018 to 40,846 cases in 2022, an increase of approximately 75 per cent. Similarly, the total number of IP-related cases decided by the courts also increased by around 70 per cent, from 319,651 cases in 2018

to 543,379 cases in 2022.¹² However, the number of published court decisions for patent-related cases available on official or commercial databases has dropped significantly. For instance, China Judgements Online, a SPC-operated platform, went from 20,672 cases in 2017 to 11,098 cases in 2022.¹³ Likewise, PKULAW.COM, a major commercial database, has reported a decline from 20,181 cases in 2018 to 12,428 cases in 2022.^{14&15} The reduction in the publication of court decisions may impede transparency in the legal system, which is of critical importance for guiding future IP litigation and reinforcing legal certainty within the business community.

Recommendation

- Improve the openness and transparency of China's patent system by ensuring all court decisions in patent cases are publicly available.

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

Concern

The 2008 ruling by the SPC, which prevents legal action against registered trademarks, constitutes a significant barrier to fighting against bad faith trademark applications.¹⁶

Assessment

Because of this prohibition, the plaintiff must first request invalidation of the litigious trademark, while the registrant of the said trademark is still allowed to claim that it has the 'right to use' for the duration of the invalidation procedure. Trademark registration does not confer a right to use the trademark, but only the right to prevent others from using it. The draft revision of the law even specifies that the acts of infringement committed before the invalidation shall only be taken

¹² *Intellectual Property Protection by Chinese Courts (2018)*, The People's Court Press, 29th June 2023, viewed 19th April 2024, <<https://www.beijingeastip.com/type-publications/intellectual-property-protection-chinese-courts-2018/>>

¹³ *Ibid.*

¹⁴ Court Decisions from Beijing Peking University Yinghua Technology Co Ltd, PKULAW, viewed 19th April 2024, <<https://home.pkulaw.com/about?name=%E5%85%AC%E5%8F%B8%E4%BB%8B%E7%BB%8D>>

¹⁵ For more details, please refer to the *Legal and Competition Working Group Position Paper*.

¹⁶ *Provisions on the Trial of Cases Civil Disputes over Trademark Conflicts with Prior Rights*, The People's Court Press, 18th February 2008, viewed 19th April 2024, <<http://gongbao.court.gov.cn/Details/5394144fe9f15cc7b5f6e50b3d6317.html>>



into consideration when calculating damages if bad faith is proved. Therefore, the result of the prohibition to sue a registered trademark for infringement is that registration is equivalent to an authorisation to infringe.

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

Recommendation

- Allow People's Courts to accept a claim against a registered trademark and to suspend the case pending the completion of the invalidation procedure for the trademark in question.

4. Online IP Protection

4.1 Enhance Regulation to Optimise the Baseline Responsibilities of Internet Platform Enterprises with Regard to Addressing IP Infringement Concerns

Concern

Although online IP infringement is still prevalent, some platforms are doing very little to tackle it and are not being held accountable.

Assessment

The current legal framework requires that e-commerce platforms collaborate with IP rights owners, yet it lacks specific guidance on how to implement this collaboration effectively. Some platforms are proactive, implementing measures to filter out infringing links and targeting malicious infringers. By contrast, others are less proactive, resulting in a prevalence of IPR infringement on their e-commerce platforms.

Large platforms, equipped with advanced technology and substantial resources, are well-positioned to take decisive action to protect IP and foster a better online environment. However, certain platforms exploit counterfeit products to bolster their business, utilising their algorithm to facilitate the sale of such items to domestic customers. These same platforms do not offer the same number of counterfeit products on their overseas subsidiaries' platforms, suggesting that a higher level of compliance is achievable. The current legal framework does not offer sufficient oversight to prevent this type of behaviour by platforms.

Recommendations

- Issue regulations, guidelines and standards to develop baseline requirements and standardised best practices for platform operators to follow in combating online IP infringement.
- Require each platform operator to self-assess the scale and severity of IP infringement on its platform, evaluate the sufficiency of its IPR protection measures and report these assessments to the competent regulator on an annual basis.
- Provide better and more rapid escalation and remedial measures if platform operators fail to combat IPR infringement.
- Enhance penalties for platform operators that fail to meet the baseline requirements for effectively managing IPR infringement.

4.2 Strengthen the Supervision of Counterfeit Posting, IP Infringement and Novel Forms of Online Infringement

Concern

There is insufficient monitoring and prevention of IP infringement under the current regulations, which renders complaints by rights holders ineffective.

Assessment

When IP rights owners encounter difficulties in combating online infringement, there are limited channels available for escalating or reporting the issue to competent authorities. IP rights owners often must take legal action against specific links or sellers, whereas large platforms are seldom held liable.

Administrative authorities should play a more significant role in overseeing and regulating the operations of major platforms. They could assess and address new forms of infringement, evaluate the performance and effectiveness of platforms' efforts and encourage them to enhance their initiatives. This proactive approach could drive the creation of a cleaner online market.

Recommendations

- Establish a dedicated regulatory body, task force or coordination committee under the supervision of the CAC, the CNIPA and the SAMR to oversee and safeguard online IP protection.
- Release annual reports detailing the IPR initiatives undertaken by online platforms and their effectiveness,





based on the data provided in the annual submissions of these platform operators.

- Launch campaigns to combat online IPR infringement and to raise public awareness about the significance of IPR protection.

5. Trade Secrets

5.1 Level the Playing Field for Foreign Companies that Rely on Administrative or Criminal Enforcement of Trade Secrets 2

Concern

The required standard for proving a protectable trade secret in both administrative and criminal enforcement makes it challenging for foreign companies to be successful in trade secret infringement cases.

Assessment

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

On 27th November 2022, the SAMR published a call for comments on the draft revision of the Anti-unfair Competition Law.¹⁷ The revision of Article 10 noted that “the state promotes the establishment and improvement of a trade secret protection system that integrates self-protection, administrative protection and judicial protection of trade secrets.” On 18th January 2023, the SPC and the Supreme People's Procuratorate published a call for comments on the *Interpretation of Several Issues Concerning the Application of Law in Handling Criminal Cases of Intellectual Property Infringement*.¹⁸ However, neither of these documents provides detailed regulations related to the enforcement of trade secrets.

Recommendations

- Provide guidance to clarify the detailed standards required for administrative and criminal cases related

to the enforcement of trade secrets.

- Accept administrative and criminal cases regardless of the nationality of the trade secret owner.

5.2 Adjust Both the Formality Requirements and the ‘Prima Facie Evidence’ Standard for Proving Trade Secret Infringements 2

Concern

The present formality requirements for proving evidence in trade secret cases can make it difficult to substantiate trade secret infringement through all enforcement avenues, and the vagueness of ‘prima facie evidence’ increases the burden of producing evidence for trade secret owners.

Assessment

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

Recommendations

- Provide guidance on the formality requirements for evidence, drawing from best practices and considering input from foreign companies.
- Clarify the criteria for establishing ‘prima facie evidence’.

5.3 Develop Criteria to Determine if a Technical Feature Is the Owner's Trade Secret or Public Information 2

Concern

The standard of comparing trade secrets' technical features with public information by judicial appraisal entities is inappropriate and weakens the protection of trade secrets.

Assessment

In Article 13 of the *Regulations of the SPC on Certain Issues Concerning the Application of Law in the Trial of Civil Cases Involving Infringement of Trade Secrets*

17 *Call for Comments for the New Revision of the Anti-unfair Competition Law*, State Council, 27th November 2022, viewed 19th April 2024, <https://www.gov.cn/hudong/2022-11/27/content_5729081.htm>

18 *Call for Comments for the ‘Interpretation of several issues concerning the application of law in handling criminal cases of intellectual property infringement’*, SPC, 18th January 2023, viewed 19th April 2024, <https://www.spp.gov.cn/spp/tzgg1/202301/t20230118_598824.shtml>



(*Regulations*),¹⁹ the SPC clarifies the standard of ‘substantial difference’ when considering if information provided in an infringement claim is substantially the same as a trade secret and lists several factors to be taken into consideration.

In trade secret civil litigation cases, whether claimed proprietary information is publicly known and hence does not constitute a trade secret, is usually disputed between the parties. Often, a judicial appraisal entity will be engaged to deliver an opinion from a technological perspective on which many local courts heavily rely. It is not clear in the *Regulations* how much difference there should be between proprietary information and public information and sometimes the appraisal entity raises the bar to or even beyond the standard of inventiveness in the Patent Law, which results in inadequate trade secret protection.

Recommendation

- Provide guidance or a judicial interpretation to clarify the standards for determining whether a defendant’s claimed information constitutes an infringement of the plaintiff’s trade secret.

6. Geographical Indications (GI)

6.1 Enact a Law that Provides Effective Protection for Registered GI Products

Concern

The recent updates to the *Measures for the Protection of Geographical Indications (Measures)*, promulgated on 29th December 2023, still lack a provision for rights enforcement and make it difficult for GI product owners to protect their rights through administrative actions.

Assessment

The 2020 Civil Code of China, which absorbed the 2017 *General Provisions of the Civil Law of China*, includes GIs among IP rights for the first time.²⁰ The effective enforcement of such rights can only be achieved through the enactment of specific legislation, upon which the CNIPA and the People’s Courts can base their decisions. However, unlike other IP rights—such as trademarks, patents and trade secrets, which

are governed by specific laws—there is currently no specific law dedicated to GIs. A GI law could potentially mirror provisions from the Trademark Law regarding the enforcement of trademarks, including the powers of the local offices of the SAMR to confiscate and destroy infringing products, impose sanctions and classify serious infringements as criminal offences. A draft regulation issued in 2020 proposed some of these measures, but unfortunately, these provisions were omitted in the latest *Measures* promulgated by the CNIPA on 29th December 2023.

Recommendations

- Enact specific legislation concerning the registration and protection of GIs.
- Direct the SAMR to issue regulations delineating the powers of administrative enforcement authorities, which should include enforcing GI rights through the ability to confiscate and destroy infringing products and imposing sanctions.

Abbreviations

CAC	Cyberspace Administration of China
CNIPA	China National Intellectual Property Administration
GI	Geographical Indication
IP	Intellectual Property
IPR	Intellectual Property Rights
MOJ	Ministry of Justice
SAMR	State Administration for Market Regulation
SPC	Supreme People’s Court

¹⁹ *Regulations of the Supreme People’s Court on Certain Issues Concerning the Application of Law in the Trial of Civil Cases Involving Infringement of Trade Secrets*, SPC, 11th September 2020, viewed 30th May 2023, <<https://www.chinacourt.org/article/detail/2020/09/id/5453570.shtml>>

²⁰ *Civil Code of the People’s Republic of China*, 1st June 2020, viewed 17th June 2024, <<https://www.court.gov.cn/zixun/xiangqing/233181.html>>





Inter-chamber Small and Medium-sized Enterprise Working Group

Key Recommendations

1. Provide European Small and Medium-sized Enterprises (SMEs) in China with Better Access to Financing

- Enhance the implementation of lending strategies to assist all SMEs—both European and Chinese—operating in China, particularly those that face challenges due to lack of collateral.
- Enhance transparency and availability of information on standards and criteria to obtain loans from domestic Chinese banks.
- Publish specialised credit risk assessment procedures or systems for providing both local and international SMEs with loans, while strengthening the financing guarantee system.
- Encourage financial institutions to leverage data exchange platforms to make lending decisions, provide financing solutions to SMEs based on accounts receivable, and establish new mechanisms to provide capital and collect returns.
- Develop a regulatory framework that encourages alternative financing channels for SMEs, such as financial technology (fintech) and non-banking financial institutions (NBFIs), while limiting potential financial risks.
- Relax foreign exchange debt quota requirements to remove regulatory obstacles that limit SMEs', especially foreign-invested enterprises' (FIEs'), access to credit financing.
- Increase foreign SMEs' access to government incentives and funding instruments from local administrations.

2. Promote Coordination Between Different Administrative Departments and Improve the Transparency, Clarity and Integrity of All Relevant Regulations for SMEs

- Implement 'one-stop' service desks in provincial/regional administrative departments to support all SMEs, both foreign and Chinese, in fulfilling their multiple registration and regulatory obligations, as well as matters related to their daily operations.
- Continue efforts to alleviate administrative burdens for SMEs by reducing the number of government approvals required, simplifying the remaining approval and filing procedures and carrying out more administrative processes online.
- Develop mechanisms that allow FIEs in general, and SMEs in particular, to raise their issues and concerns to the relevant local government authorities.
- Facilitate work permit and residence permit applications to support foreign companies in attracting and retaining recent graduates and foreign employees.
- Update the qualification criteria for assessing senior talent in order to better match the expertise of foreign professionals, while taking practical actions, such as allocating preferential housing quotas to foreign national employees with families.





3. Reduce the Financial Burden of SMEs to the Greatest Extent Possible, Including Through Measures Like Ensuring Reasonable Payment Terms, Enforcing Timely Payments and Reducing Living Expenses for Foreign National Employees

- Implement effective industry supervision measures to ensure that state-owned enterprises (SOEs), their subsidiaries and private sector players respect contractual payment terms when dealing with SMEs.
- Set a maximum payment term that is lawfully allowed to be included in contracts.
- Ensure that SOEs sign contracts with SMEs that have reasonable payment terms.
- Improve legal debt collection procedures.
- Provide debt collection support or funds for SMEs to collect their debts through legal action.
- Accelerate the processing of SMEs' applications for tax incentives.
- Reduce the cost of living for foreign nationals, especially education and healthcare expenses.

4. Promote the Value of Intellectual Property Rights (IPR) Protection and Enforcement Mechanisms at the Consumer, Business, Local Government and China National Intellectual Property Administration (CNIPA) Levels

- Strengthen enforcement and consistency with regard to notice-and-take-down procedures on e-commerce platforms.
- Update the E-commerce Law to better protect intellectual property rights (IPR) holders and regulate infringements.
- Engage local enforcement agencies, customs authorities and courts to take effective action against counterfeiting.
- Increase the accessibility of the China National Intellectual Property Administration's (CNIPA's) online patent management system.
- Increase the State Administration for Market Regulation's (SAMR's) power to enforce the European Union (EU)-China Geographical Indication (GI) Agreement.
- Issue specific regulations for the protection of foreign GIs.

EU SME Projects in China Implemented by the European Chamber

The EU SME Centre (Phase Four) started in July 2022 and will run until 2025. Its main objectives are: assisting European SMEs to establish and develop a commercial presence in the Chinese market by providing EU added-value support services; improving corporate synergies and increasing best practice-sharing at the national and regional EU business association levels; and strengthening advocacy efforts on behalf of the European business community to help create a better business environment in China.¹ Another notable EU SME project in China is the China IP SME Helpdesk, which supports

European SMEs in both protecting and enforcing their IPR in or with relation to the Chinese mainland, Hong Kong, Macao and Taiwan, through the provision of free information and services.²

Recent Developments

Unequal Recovery Following the Removal of Zero-COVID Management Measures

Although small, private companies remain integral to China's economy, their recovery since the reopening of the country's borders has been sluggish. China's SME Development Index, based on a survey of 3,000 SMEs and conducted by the China Association of

¹ *About EU SME Centre*, EU SME Centre, viewed 25th June 2024, <<https://www.eusmecentre.org.cn/the-centre>>

² *About Us*, China IP SME Helpdesk, viewed 21st April 2024, <https://intellectual-property-helpdesk.ec.europa.eu/regional-helpdesks/china-ip-sme-helpdesk_en>





SMEs, averaged 89.2 in 2023, up from 88.4 in 2022. While this indicates some improvement, it is still below the 100-point threshold that divides stagnation and low vitality from positive business performance. Experts suggest that China still suffers from the “scarring effects” of the COVID pandemic, and have called for further support for hard-hit SMEs to provide a more balanced recovery.³

SOEs have contributed to an increase in industrial output in 2023, which highlights the unevenness of the recovery between the public and private sectors. In November, the added value of SOEs grew by 7.3 per cent year-on-year, outpacing that of foreign, Hong Kong, Macao, and Taiwan-invested businesses (4.4 per cent) and private businesses (5.2 per cent), most of which are SMEs.⁴

The persistent low level of foreign direct investment in 2023 further highlights the difficulties encountered by foreign companies in China. Data from the Ministry of Commerce shows that the actual use of foreign capital in 2023 declined by eight per cent year-on-year. Nonetheless, the number of newly registered FIEs increased by 39.7 per cent year-on-year,⁵ which indicates that some companies believe that opportunities remain.

Data from the European Chamber’s Business Confidence Survey 2024 shows that the proportion of respondents that now rank China as a top destination for both present and future investments is currently the lowest on record. More than a third of respondents face challenges attracting or retaining international talent in China due to potential candidates’ lack of willingness to relocate and the increasing living costs in China, especially for senior foreign national employees with family.⁶

Measures to Boost the Private Sector and Attract Foreign Investment

The Chinese Government introduced a series of policies in 2023 to support private businesses and encourage foreign investment. On 28th July 2023, the National

Development and Reform Commission (NDRC) issued the *Implementing Measures to Promote the Development of the Private Economy*.⁷ These measures are aimed at boosting private investment by identifying and promoting major projects, providing financial and resource support, and creating a transparent environment for private investors. One month later, the State Council released a set of opinions on how to attract foreign investment,⁸ covering issues ranging from facilitating cross-border data transfer to access to government procurement.

The 2024 *Government Work Report* expanded upon these initiatives, and called for reducing the number of industries on the negative list for foreign investment and for the *Catalogue of Encouraged Industries for Foreign Investment* to be updated. It also referred to the need to improve financial supporting measures for SMEs, such as credit enhancement, risk sharing, information sharing, promoting the development of SMEs that use specialised and sophisticated technologies to produce novel and unique products, and launching SME digital empowerment initiatives.⁹

Key Recommendations

1. Provide European SMEs in China with Better Access to Financing

Concern

European SMEs operating in China still struggle to access financing, an obstacle that prevents them from reaching their full potential and limits their ability to further contribute to China’s economy.

Assessment

Although sufficient access to financing is crucial for enterprises’ development, SMEs in China—especially foreign ones—face more challenges in this regard compared to larger companies, despite the Chinese Government’s attempts to create more favourable conditions.

3 Ouyang, Shijia, *SME performance improves in 2023*, *China Daily*, 11th January 2024, viewed 22nd April 2024, <<https://www.chinadaily.com.cn/a/202401/11/WS659f2ae3a3105f21a507bacb.html>>

4 Huld, A, *China’s Economy in 2023 – A Year of Growth and Recovery*, China Briefing from Dezan Shira and Associates, 18th December 2023, viewed 21st April 2024, <<https://www.china-briefing.com/news/chinas-economy-in-2023-growth-recovery/>>

5 *China attracted RMB 1.1 trillion foreign investment in 2023*, Ministry of Commerce, 19th January 2024, viewed 21st April 2024, <<http://www.mofcom.gov.cn/article/xwfb/xwrcxw/202401/20240103467642.shtml>>

6 *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 27th May 2024, <<https://www.europeanchamber.com.cn/en/publications-business-confidence-survey>>

7 *Implementing Measures to Promote the Development of the Private Economy*, NDRC, 1st August 2023, viewed 21st April 2024, <https://www.ndrc.gov.cn/xwdt/tzgg/202308/t20230801_1359008.html>

8 *Opinions of the State Council on Further Optimizing the Foreign Investment Environment and Making More Efforts to Attract Foreign Investment*, State Council, 13th August 2023, viewed 21st April 2024, <https://www.gov.cn/zhengce/content/202308/content_6898048.htm>

9 *Full Text: Report on the Work of the Government*, State Council, 13th March 2024, viewed 24th April 2024, <https://english.www.gov.cn/news/202403/13/content_WS65f0dfccc6d0868f4e8e5079.html>





Public Financing

Public funding programmes and subsidies are open to qualifying FIEs in China. However, European companies' access to these opportunities remains limited, particularly for SMEs. For instance, European small businesses in Southwest China are aware they can apply for funding, cash-back and tax refunds, but note that many benefits only apply to medium-sized businesses. They also face challenges in acquiring high and new technology enterprise (HNTe) status and obtaining access to public funding and grants for research and development (R&D).¹⁰ Companies in South China state that local R&D funds have high thresholds and are complicated to apply for. Instead, they can sometimes obtain subsidies for good performance, or acquire HNTe status from the local government.

Private Financing

SMEs are generally considered high-risk/low-return clients. European SMEs operating in Southwest China indicate that obtaining loans from domestic Chinese banks, though possible in theory, remains extremely difficult as larger companies are seen as lower-risk investments.¹¹ SMEs in Shanghai highlight their struggle to obtain even small loans from Chinese banks due to their lack of collateral.¹² SMEs in South China report that banks do not accept movable assets as collateral for a bank loan. They also face a lack of transparency regarding requirements, standards and criteria for getting bank loans. The same applies to Chinese SMEs. According to a survey of 460 SMEs operating in the Greater Bay Area (GBA), SMEs are underbanked because they lack collateral or because the documentation requirements are too high.¹³

In China, available financing options are simply more limited compared to those in Europe, something that is

reflected in studies like the European Central Bank's *Survey on the Access to Finance of Enterprises in the Euro Area* and *Financing SMEs and Entrepreneurs 2024: An OECD Scoreboard*.^{14&15} Currently, China has only three policy tools (out of seven) to facilitate SME financing: direct lending to SMEs, subsidised interest rates, and special guarantees and loans for start-ups. For foreign SMEs, options are considerably fewer despite the theoretical availability of funds back in their home countries. For example, bank loans for FIEs are generally obtained against guarantees from banks outside of China, which typically require further risk assessment by European headquarters. In addition, foreign exchange loans, which should be easier for FIEs to access, are limited by the so-called 'borrowing gap' – the difference between the total amount invested and the minimum amount of required capital that corresponds to the investment.¹⁶

Alternative Financing

One area where China excels globally, and which could potentially ease the financing difficulties of SMEs operating in the country, is alternative online financing. A recent study shows that fintech can significantly improve SMEs' performance by expanding the financing scale and reducing financing costs. Under China's bank-dominated financial system, traditional financial institutions should proactively adopt fintech.¹⁷ Another move that could greatly ease foreign SMEs' financing issues would be improving the operating conditions for NBFIs, as they are important alternative financing channels for small businesses.¹⁸ Non-banking sources accounted for a large share of total SME financing in 2023, a continuation of a trend from 53.1 per cent in the first quarter to 59.5 per cent in the fourth quarter of the year.¹⁹

¹⁰ There is a widespread sentiment among European companies in Chongqing that the local government generally takes a risk-averse approach to providing support and financing for enterprises, while remaining focussed on infrastructure and traditional manufacturing rather than on innovation. *Southwest China Position Paper 2021/2022*, European Union Chamber of Commerce in China, 20th April 2022, viewed 25th April 2024, <https://www.europeanchamber.com.cn/en/publications-archive/971/Southwest_China_Position_Paper_2021_2022>

¹¹ *Ibid.*

¹² *Shanghai Position Paper 2023/2024*, European Union Chamber of Commerce in China, 14th February 2023, viewed 25th April 2024, <https://www.europeanchamber.com.cn/en/publications-archive/1073/Shanghai_Position_Paper_2023_2024>

¹³ Traditional credit assessments require SMEs to provide financial statements or management accounts or to put up significant collateral, like real estate. Such assets and documents are not readily available to most SMEs and would take significant effort to prepare. Leung, F; Lee, H; and Zhao, W, *Greater Bay Area SME Report: A Story of Resilience and Opportunity*, Bain & Company, 9th January 2023, 26th April 2024, <<https://www.bain.com/insights/greater-bay-area-sme-report-a-story-of-resilience-and-opportunity>>

¹⁴ *Survey on the Access to Finance of Enterprises: tighter financing conditions and an expected deterioration in the economic environment*, European Central Bank, 6th December 2022, viewed 25th April 2024, <<https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr221206~ea55ea7ad9.en.html>>

¹⁵ *Financing SMEs and Entrepreneurs 2024: An OECD Scoreboard*, OECD, 13th March 2024, viewed 29th April 2024, <<https://www.oecd.org/cfe/financing-smes-and-entrepreneurs-23065265.htm>>

¹⁶ For more information on funding limitations for foreign banks, please refer to the *Banking and Securities Working Group Position Paper 2024/2025*.

¹⁷ Li, X, Ye, Y, Liu, Z, Tao, Y, and Jiang, J, *FinTech and SME' performance: Evidence from China*, Economic Analysis and Policy, March 2024, viewed 24th April 2024, <<https://www.sciencedirect.com/science/article/pii/S0313592623003454>>

¹⁸ For more information on steps the government could take to support NBFIs, please refer to the *Non-banking Financial Institutions Working Group Position Paper 2024/2025*.

¹⁹ *Research Report on Business Conditions and Digital Transformation of Micro, Small and Medium Enterprises in 2023*, Tencent Research Institute, 3rd April 2024, 25th April 2024, <<https://www.tisi.org/27738>>





Financial institutions in the GBA are leveraging data exchange platforms to access up-to-date commercial data when making lending decisions. They are also creating new mechanisms to provide capital and collect returns, such as loan products that are automatically repaid. This collection method provides additional channels for SMEs that struggle to secure financing from banks.²⁰

Recommendations

- Enhance the implementation of lending strategies to assist all SMEs—both European and Chinese—operating in China, particularly those that face challenges due to lack of collateral.
- Enhance transparency and availability of information on standards and criteria to obtain loans from domestic Chinese banks.
- Publish specialised credit risk assessment procedures or systems for providing both local and international SMEs with loans, while strengthening the financing guarantee system.
- Encourage financial institutions to leverage data exchange platforms to make lending decisions, provide financing solutions to SMEs based on accounts receivable, and establish new mechanisms to provide capital and collect returns.
- Develop a regulatory framework that encourages alternative financing channels for SMEs, such as fintech and NBFIs, while limiting potential financial risks.
- Relax foreign exchange debt quota requirements to remove regulatory obstacles that limit SMEs', especially FIEs', access to credit financing.
- Increase foreign SMEs' access to government incentives and funding instruments from local administrations.

2. Promote Coordination Between Different Administrative Departments and Improve the Transparency, Clarity and Integrity of All Relevant Regulations for SMEs

Concern

Despite recent policy developments, China's regulatory and licence approval system—particularly at the implementation level—is still extremely burdensome

for international SMEs in China, which limits their development.

Assessment

Thanks to a number of measures aimed at improving the business environment rolled out over the past few years, foreign SMEs have reported advances in areas such as a reduction in the time required for registering or closing down operations. On 17th April 2023, the NDRC announced plans to shorten the *Special Administrative Measures on Foreign Investment Access (Negative List)* in order to channel more foreign investment to advanced manufacturing, high-end technologies and modern services.²¹ In response to this, various local government bodies promoted services such as a 'one-stop' administration system and released various support schemes.^{22&23}

The working group also welcomes the new measures launched by China's Ministry of Public Security in August 2023, which enable people travelling to China for business activities to apply for a business visa on arrival while simplifying the application for multi-entry business visas.²⁴ This significantly reduces the administrative burden on foreign companies and facilitates business travel to and from China.

At the same time, there is still room for improvement in a variety of areas, in particular the transparency, predictability and streamlining of administrative procedures both at the national and local levels. Although business registration processes established at the national level have generally improved, the time required to set up a business is still relatively long. This process is especially difficult for smaller enterprises and can create additional costs, such as having to pay for office rental while licence applications are still pending.

At the local level, SMEs in regions such as South China report that the time required to set up a business is

20 Leung, F; Lee, H; and Zhao, W, *Greater Bay Area SME Report: A Story of Resilience and Opportunity*, Bain & Company, 9th January 2023, 26th April 2024, <<https://www.bain.com/insights/greater-bay-area-sme-report-a-story-of-resilience-and-opportunity>>

21 *All-out effort to make a new breakthrough in building a new development pattern*, NDRC, 17th April 2023, viewed 26th April 2024, <https://www.ndrc.gov.cn/fzggw/wldc/lddt/202304/t20230417_1353658.html>

22 *Shanghai Municipal People's Government published the Notice on Issuing the Measures of Shanghai Municipal on Increasing the Attraction and Utilisation of Foreign Investment*, Shanghai Municipal Government, 4th April 2023, viewed 26th April 2024, <<https://www.shanghai.gov.cn/nw12344/20230404/6ebb74adcc9241ef87e3fe8eaff578aa.html>>

23 *Tianjin International Trade Single Window*, Tianjin Municipal Government, viewed 26th April 2024, <<https://www.singlewindow.tj.cn/>>

24 *Several Measures for Public Security Organs to Serve and Guarantee High-Quality Development*, Ministry of Public Security, 3rd August 2023, viewed 26th April 2024, <<https://www.mps.gov.cn/n2253534/n2253535/c9139477/content.html>>





now shorter (two weeks or less), compared to closing it down (more than six months), yet the regulatory and licence approval system is still arduous, especially when applying for a renovation/construction licence.²⁵ Implementation of 'one-stop' service desks (such as those set up by the Chengdu Municipal Government and promoted by the Tianjin Municipal Government) and digitalising administrative procedures could help in this regard.²⁶

For European companies in Nanjing, the process of obtaining work permits and residence permits is often perceived as burdensome, due to a lack of communication on specific requirements and application procedures. This creates challenges for European SMEs in particular, which often hire foreign employees but lack resources and struggle to access professional assistance.²⁷ SMEs in Southwest China report inadequate regulations/incentives to attract foreign talent, especially at the senior level, as the current qualification criteria for assessing senior talent are based on requirements that do not apply to foreigners, especially those planning to live in China for a certain number of years but not for the long term. Meanwhile, other specific and important qualifications issued by authorities in the foreign national employee's country of origin are not taken into account. In this way, even highly qualified foreign professionals can only reach very low scores locally and basically enjoy no preferential treatment.²⁸

Recommendations

- Implement 'one-stop' service desks in provincial/regional administrative departments to support all SMEs, both foreign and Chinese, in fulfilling their multiple registration and regulatory obligations, as well as matters related to their daily operations.
- Continue efforts to alleviate administrative burdens for SMEs by reducing the number of government approvals required, simplifying the remaining approval and filing procedures and carrying out more administrative processes online.

²⁵ In many cases, the bidding rules for medical equipment manufacturers include the requirement to have a renovation/construction licence, as projects within hospitals often require renovation.

²⁶ *Southwest China Position Paper 2021/2022*, European Union Chamber of Commerce in China, 20th April 2022, viewed 25th April 2024, <https://www.europeanchamber.com.cn/en/publications-archive/971/Southwest_China_Position_Paper_2021_2022>

²⁷ *Nanjing Position Paper 2023/2024*, European Union Chamber of Commerce in China, 27th April 2023, viewed 26th April 2024, <https://www.europeanchamber.com.cn/en/publications-archive/1079/Nanjing_Position_Paper_2023_2024>

²⁸ For example, in Chengdu, qualified skilled workers receive preferential treatment when renting/buying houses. See Chengdu Talent Settlement Service Network, viewed 27th June 2024, <<https://cdzj.chengdu.gov.cn/cdzj/rcaj/RCAJ.shtml>>

- Develop mechanisms that allow FIEs in general, and SMEs in particular, to raise their issues and concerns with the relevant local government authorities.
- Facilitate work permit and residence permit applications to support foreign companies in attracting and retaining recent graduates and foreign employees.
- Update the qualification criteria for assessing senior talent in order to better match the expertise of foreign professionals, while taking practical actions, such as allocating preferential housing quotas to foreign national employees with families.

3. Reduce the Financial Burden of SMEs to the Greatest Extent Possible, Including Through Measures Like Ensuring Reasonable Payment Terms, Enforcing Timely Payments and Reducing Living Expenses for Foreign National Employees



Concern

It is increasingly challenging for European SMEs to shoulder the financial burdens associated with doing business in China, with difficulties often exacerbated by non-fulfilment of maximum contractual payment terms, non-negotiable payment terms and late/non-payments from clients.

Assessment

Late Payments and Unreasonable Payment Terms

Since access to financing is limited for SMEs in general in China, and international SMEs in particular, substantial reserve assets are a prerequisite for their business operations in the country. Usually, SMEs have limited bargaining power during negotiations with clients for payments, often resulting in customers imposing onerous contractual payment terms. In addition, many customers simply do not comply with these terms and pay late.

In China, most industries lack guidelines to ensure that market players respect contractual payment terms, and so enterprises set a maximum payment term to be included in contracts. Unlike in the EU, Chinese law in the past had limited provisions on late payments (existing ones are mostly referred to the Supreme Court's *Interpretation on the Adjudication of Contract Disputes*





and the Civil Procedure Law).^{29&30} Debt collection services are available but are often not practical given the time and, most importantly, the high costs involved.

This issue harms foreign SMEs across industries and regions. One European Chamber member, an SME producing medical equipment accessories, describes late payments from clients as a common practice. It also deals with unreasonable payment terms when signing contracts with SOEs (such as zero down payment; or payment only being made after completion of the project), and unreasonable deposit demands when tendering.

On 1st July 2020, the State Council issued the *Regulations on Ensuring Payments to Small and Medium-sized Enterprises (Regulations)*.³¹ This is a positive development in terms of developing a regulatory framework to address late payments, but effective implementation, and clear and well-developed regulations, will be key to its success. The working group is pleased to see that average payment delays decreased significantly in 2023 (from 83 days to 64 days), although the frequency of payment delays increased.³² The working group also welcomes the recent draft amendment by the Ministry of Industry and Information Technology (MIIT) to the *Regulations*, which requires large and listed enterprises to include information relating to overdue payments to SMEs in their annual reports and other information disclosure documents.³³

Preferential Tax Policies and Educational/Healthcare Services

European SMEs report that actions taken by the Chinese Government to reduce the financial burden on small

businesses have generally yielded positive results. The working group welcomes the extension of multiple preferential tax policies for small businesses to the end of 2027, including corporate income tax, value-added tax, 'six taxes and two fees' and individual income tax.³⁴ Before the extension, all these tax incentives for small businesses were supposed to expire by the end of 2023 or 2024. However, while the extension of these measures can contribute to a significant reduction of the financial burden, SMEs report that sometimes there is a delay in the processing of their applications.

European businesses are pleased to see the four-year extension of the individual income tax benefits for foreign nationals. Yet, lack of quality education for children at an affordable price and lack of quality healthcare facilities are still an issue,³⁵ especially for senior-level foreign-national employees, who are more likely to bring their children.³⁶

Recommendations

- Implement effective industry supervision measures to ensure that SOEs, their subsidiaries and private sector players respect contractual payment terms when dealing with SMEs.
- Set a maximum payment term that is lawfully allowed to be included in contracts.
- Ensure that SOEs sign contracts with SMEs that have reasonable payment terms.
- Improve legal debt collection procedures.
- Provide debt collection support or funds for SMEs to collect their debts through legal action.
- Accelerate the processing of SMEs' applications for tax incentives.
- Reduce the cost of living for foreign nationals, especially education and healthcare expenses.

29 *Supreme Court's Interpretation on the Adjudication of Contract Disputes*, Hualv.com, 8th January 2019, viewed 26th April 2024, <<https://www.66law.cn/laws/131741.aspx>>

30 The major flaw is that while the debtor may not dispute the debt, they may refuse to pay and then bring a claim that does not have to be substantiated in order for the court to dismiss the case, which leaves the creditor to pursue their claim through regular court proceedings. *Civil Procedure Law of the People's Republic of China (2021 amendment)*, Peking University, viewed 26th April 2024, <<http://en.pkulaw.cn/display.aspx?cgid=3ce82cb92ee006b6bdfb&lib=law>>

31 *Regulations on Protecting Payments to Small and Medium-sized Enterprises*, State Council, 14th July 2020, viewed 26th April 2024, <http://www.gov.cn/zhengce/content/2020-07/14/content_5526768.htm>

32 *Payment delays in China continued to shorten, but corporates increasingly cautious*, Coface, 19th March 2024, viewed 26th April 2024, <<https://www.coface.com/news-economy-and-insights/payment-delays-in-china-continued-to-shorten-but-corporates-increasingly-cautious>>

33 *Public Solicitation of Opinions on the Regulation on Ensuring Payments to Small and Medium-sized Enterprises (Draft Amendment for Comments)*, MIIT, 18th April 2024, viewed 26th April 2024, <https://www.miit.gov.cn/gzcy/yjzj/art/2024/art_2ad343c9dd6349aa8717cc881882ab0.html>

34 The "six taxes and two fees" include resources tax, urban maintenance and construction tax, property tax, urban land use tax, stamp tax (excluding stamp tax for securities trading), arable land occupation tax, along with surcharges for education and local education. Zhou, Q, *China Extends Multiple Tax Incentives for Small Businesses to the End of 2027*, China Briefing from Dezan Shira and Associates, 2nd August 2023, viewed 26th April 2024, <<https://www.china-briefing.com/news/china-extends-multiple-tax-incentives-for-small-businesses-to-the-end-of-2027/>>

35 *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 27th May 2024, <<https://www.europeanchamber.com.cn/en/publications-business-confidence-survey>>

36 For senior foreign national employees with children, it is important to ensure the continuity of their children's study paths.





4. Promote the Value of IPR Protection and Enforcement Mechanisms at the Consumer, Business, Local Government and CNIPA Levels

Concern

Ineffective IPR enforcement continues to limit the impact of recent positive changes to China's IPR legislative environment.³⁷

Assessment

Despite improvements in legislation and enforcement, difficulties related to navigating the Chinese IP protection system still pose a challenge for European companies.

China's IP landscape has significantly improved over the past six years as the country reviewed and updated its major IP laws, to bring the IP system in China more in line with international norms. Trademark protection has been strengthened by the Trademark Law, which came into force on 1st November 2019.³⁸ Since its application, the CNIPA has shown determination in tackling bad-faith applications and trademark squatting.³⁹ However, as legislation evolves, infringers have become more sophisticated, highlighting the need for more effective enforcement at both the state and local government levels. To this end, the Chinese authorities have decided to further revise the Trademark Law. The proposed draft amendments to the law (January 2023) would further strengthen the law on bad-faith trademark applications by broadening the definition of malicious trademark applications, thus providing the rights owners with additional means to challenge bad-faith trademark applications.⁴⁰ In addition, the rules forbidding trademark agencies from engaging in trademark squatting have been further strengthened by the *Provisions on Supervision and Administration of Trademark Agency*.⁴¹ Full implementation of the law will be key to ensuring the additional amendments are successful at tackling bad-faith trademark applications. In addition, the CNIPA

further reduced administrative and litigation burdens on rights holders, by allowing the suspension of certain trademark cases upon request.⁴²

Copyright and patent protection have also been strengthened by amendments to the Copyright Law and Patent Law,^{43&44} both of which became effective in June 2021. These amendments significantly adjust the amount of damages infringers must pay, modifications similar to those implemented in the Trademark Law and the Civil Code. Regardless, there is still room for improvement, as in large-scale infringements the damages granted by the courts generally do not cover the actual losses suffered by enterprises. The calculation of statutory damages often seems arbitrary to many European companies, which they report makes it difficult for them to accurately carry out risk assessment and management.⁴⁵

While the *Implementing Regulations of the Copyright Law* have not yet been issued, the *Amended Implementing Regulations of the Patent Law and Patent Examination Guidelines (2023)* came into effect on 20th January 2024.^{46&47} The *Amended Implementing Regulations of the Patent Law* raised the standard amount of inventor remuneration in the absence of an agreement, highlighting the importance of proactive negotiations with employee inventors and including inventor remuneration in the employee agreement. The *Patent Examination Guidelines (2023)* introduced a preliminary inventiveness examination of utility models, which has been in practice since 2023, leading to a 25 per cent decline of utility model grants in 2023.

37 For more information on IP issues affecting European businesses, please refer to the *Intellectual Property Rights Working Group Position Paper 2024/2025*.

38 *Trademark Law*, National People's Congress (NPC), 7th May 2019, viewed 15th April 2024, <http://www.npc.gov.cn/npc/c2/c30834/201906/t20190608_298036.html>

39 *Report on the Implementation of China's Amended Trademark Law*, International Trade Mark Association, November 2021, viewed 15th April 2024, <https://www.inta.org/wp-content/uploads/public-files/advocacy/committee-reports/CHINA-TRADEMARK-LAW-REPORT_120121.pdf>

40 *Draft Amendments to the Trademark Law*, CNIPA, 13th January 2023, viewed 15th April 2024, <https://www.cnipa.gov.cn/art/2023/1/13/art_75_181410.html>

41 *Provisions on Supervision and Administration of Trademark Agency*, CNIPA, 1st November 2023, viewed 15th April 2024, <https://sbj.cnipa.gov.cn/sbj/zcwj/202211/120221110_23355.html>

42 *Explanation to the Guidelines for Suspension of Cases Examined by the Trademark Review and Adjudication Board*, CNIPA, 13th June 2023, viewed 15th April 2024, <https://sbj.cnipa.gov.cn/sbj/ssbj_gzdt/202306/t20230613_27700.html>

43 *Copyright Law*, NPC, 19th November 2020, viewed 15th April 2024, <http://www.npc.gov.cn/npc/c2/c30834/202011/t20201119_308796.html>

44 *Decision of the Standing Committee of the National People's Congress on Amending the Patent Law of the People's Republic of China*, NPC, 18th October 2020, viewed 15th April 2024, <http://www.gov.cn/xinwen/2020-10/18/content_5552102.htm>

45 "It is difficult for the right holder to prove his rights by means of litigation, which leads to the absolute dominant position in the application of statutory compensation rules. However, the scope of the amount of compensation awarded in the statutory compensation rules is determined by judicial discretion, which is uncertain for the protection of the rights and interests of the right holder. Although the loss rules and the benefits rules are feasible in theory, few cases apply to them because the right holder cannot obtain the relevant evidence. The loss rules, which require the right holder to collect evidence, are expensive for small and medium enterprises.": Zhang, J, *China's Patent Law has Changed: How to understand and apply infringement damages under the new rules*, Swiss Chinese Law Review Journal, 19th April 2021, viewed 15th April 2024, <<https://www.sclalawreview.org/understanding-and-applying-the-infringement-damages-article-of-chinas-2020-patent-law/>>

46 *The Amended Implementing Regulations of the Patent Law*, CNIPA, 21st December 2023, viewed 15th April 2024, <https://www.cnipa.gov.cn/art/2023/12/21/art_98_189197.html>

47 *Patent Examination Guidelines*, CNIPA, 21st December 2023, viewed 15th April 2024, <https://www.cnipa.gov.cn/art/2023/12/21/art_99_189202.html>





China's E-commerce Law, which came into effect on 1st January 2019, strengthens IPR enforcement on e-commerce platforms.⁴⁸ However, the role of voluntary copyright registration certificates in the notice-and-take-down procedures remains inconsistent, as some e-commerce platforms do not consider the certificate as a basis to commence procedures, while in some cases bad-faith copyright registration certificates do facilitate trademark infringements. Furthermore, the notice-and-take-down procedures allow bad-faith online sellers to provide a statement of not having committed an offence. While not negative *per se*, such statements mandate the platforms to end the measures taken against the seller unless the claimant starts administrative or legal actions within 15 days—extended to 20 under the latest draft amendments to the E-commerce Law in 2021—which imposes significant costs on rights holders. This is further exacerbated by the increase in online infringements. Moreover, the draft amendments include a provision allowing sellers to provide a guarantee to the platforms for the amount of the estimated sales, to temporarily avoid restrictions imposed by the platforms while the notice-and-take-down procedure is pending.⁴⁹ In practice, this significantly reduces the efficiency of the procedure during special sale promotions, when sales numbers are impossible to estimate, but are likely to be extraordinarily high.

With e-commerce expanding rapidly in China, e-commerce platforms have become one of the most popular targets for IP infringers, raising the necessity for related legislation that can better protect rights holders. This should include up-to-date amendments to the E-commerce Law, which has not been updated since 2021.

Despite improvements to China's IP system, counterfeiting in general remains a major issue in China. According to the European Commission's Directorate-General for Taxation and Customs Union (DG TAXUD) and the EU Intellectual Property Office (EUIPO), China remained the originator of the majority of fake goods entering the EU in 2022, with more than 74 per cent of the items detained

at the bloc's borders coming from the country.⁵⁰

The CNIPA provides an online system for patent management,⁵¹ which allows right holders to manage their patents without a patent attorney. However, this system is only available for users that have certain identification documents (including a Chinese identity card and permanent residence identity card) as well as a Chinese phone number. Therefore, for foreign nationals who do not have a Chinese phone number or a permanent residence identity card (the latter of which is usually the case for those working for EU SMEs), it is impossible to register a user account with the online system. EU SMEs thus have to rely on their patent agents, even for simple tasks such as paying annuity fees or following up on the registration procedures. The CNIPA should consider increasing the accessibility of its online patent management system in order to ease the burden on SMEs.

On the political front, there have been several high-level statements regarding the protection of IP in China,⁵² and, more concretely, the condemnation of unfair technology transfers. Yet, in practice, policy guidance, legal instruments and practices (including joint venture requirements and equity caps), authorisation or licensing procedures in different sectors requiring extensive documentation, and insufficient protection of IPR or trade secrets, continue to compel technology transfers.⁵³ In the European Chamber's *Business Confidence Survey 2023*, 17 per cent of respondents reported they were still compelled to transfer technology.⁵⁴

The EU-China Agreement on GIs, which came into force in March 2021, was an important step for the protection of GIs within the China market. However, some EU GIs

48 *E-Commerce Law*, NPC, 31st August 2018, viewed 15th April 2024, <http://www.npc.gov.cn/zgrdw/npc/lfzt/rlyw/2018-08/31/content_2060827.htm>

49 *Public Consultation on the Decision on Amending the E-commerce Law of the People's Republic of China (Draft)*, State Council, 5th September 2021, viewed 15th April 2024, <https://www.gov.cn/xinwen/2021-09/05/content_5635537.htm>

50 *Report on the EU enforcement of intellectual property rights in 2022*, DG TAXUD and EUIPO, November 2023, viewed 15th April 2024, <https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2023_EU_enforcement_of_IPRs_2022/2023_EU_enforcement_of_IPRs_results_at_EU_border_and_in_EU_internal_market_2022_FullIR_en.pdf>

51 Patent Management System, CNIPA, viewed 20th April 2024, <<https://cponline.cnipa.gov.cn/>>

52 *14th Five-Year Plan for the National Economic and Social Development and the Long-Range Objectives Through the Year 2035*, National Development and Reform Commission, 23rd March 2021, viewed 15th April 2024, <<https://www.ndrc.gov.cn/xxgk/zcfb/ghwb/202103/P020210313315693279320.pdf>>

53 *Commission releases its Report on Intellectual Property Rights in Third Countries*, European Commission, May 2023, 15th April 2024, <https://policy.trade.ec.europa.eu/news/commission-releases-its-report-intellectual-property-rights-third-countries-2023-05-17_en>

54 *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, 21st June 2023, viewed 25th June 2024, <https://www.eurochamber.com.cn/en/publications-archive/1124/Business_Confidence_Survey_2023>





may be excluded from acquiring protection because of their generic names (for example, claims outside of the EU that 'feta' has become the generic name for a white cheese aged in brine) or prior trademarks.⁵⁵ These two exceptions can potentially endanger the success of future EU GI registrations. Furthermore, the proposed amendments to the Trademark Law allowing exceptions against claims of trademark infringement based on the use of names of geographical locations and generic names further exacerbate the fears of EU rights holders. Therefore, strengthening the SAMR's powers to enforce the EU-China GI Agreement will be crucial to the success of the initiative.⁵⁶

On 1st February 2024, the *Regulations on the Protection of Geographical Indication Products* came into force.⁵⁷ However, these do not include overseas GIs, meaning the CNIPA will need to issue an additional provision or regulation.

Recommendations

- Strengthen enforcement and consistency with regard to notice-and-take-down procedures on e-commerce platforms.
- Update the E-commerce Law to better protect IPR holders and regulate infringements.
- Engage local enforcement agencies, customs authorities and courts to take effective action against counterfeiting.
- Increase the accessibility of the CNIPA's online patent management system.
- Increase the SAMR's power to enforce the EU-China GI Agreement.
- Issue specific regulations for the protection of foreign GIs.

Abbreviations

CNIPA	China National Intellectual Property Administration
DG TAXUD	Directorate-General for Taxation and Customs Union
EU	European Union
EUIPO	EU Intellectual Property Office
FIE	Foreign-invested Enterprise
Fintech	Financial Technology
GBA	Greater Bay Area
GI	Geographical Indication
HNTE	High and New Technology Enterprise
IPR	Intellectual Property Rights
MIIT	Ministry of Industry and Information Technology
NDRC	National Development and Reform Commission
NBFI	Non-banking Financial Institutions
R&D	Research and Development
RMB	Renminbi
SAMR	State Administration of Market Regulation
SME	Small and Medium-sized Enterprise
SOE	State-owned Enterprise

⁵⁵ GIs identified as potentially problematic include: Perigord, Szegedi teliszalami/Szegedi szalami, Prosciutto Toscano, Fontina, Munster, Nummerger Bratwurst, Jambon de Bayonne and Beaufort; Hu, W, *Dinner for three: EU, China and the US Around the geographical indications table*, Centre for European Policy Research, April 2020, viewed 15th April 2024, <https://www.ceps.eu/wp-content/uploads/2020/04/PI2020-07_EU-China-and-the-US-around-the-geographical-indications-table.pdf>

⁵⁶ For more information on GI rights enforcement, please refer to the *Intellectual Property Rights Working Group Position Paper 2024/2025*.

⁵⁷ *Regulations on the Protection of Geographical Indication Products*, CNIPA, 2nd January 2024, viewed 15th April 2024, <https://www.cnipa.gov.cn/art/2024/1/2/art_3324_189481.html>





Investment Working Group

Key Recommendations

1. Ensure Consistent Implementation of the Foreign Investment Regime and Adhere to the Principle of National Treatment

- Continue to reduce the number of industry sectors on the negative lists in which foreign investment is either restricted or prohibited.
- Introduce reporting, mediation and dispute resolution mechanisms and avenues of recourse for foreign companies compelled to transfer technology.
- Implement and adhere to the principle of national treatment across government levels and nationwide (in particular in the area of government procurement).
- Abolish specific laws and regulations imposing investment restrictions only on foreign investors, including onshoring requirements and discriminatory requirements on licensing.
- Introduce legislation that allows for a national unified market aligned with international rules and best practices, and the unification of standards and policies in different regions and industries.

2. Enhance Market Competitiveness and Create a Level Playing Field with State-owned Enterprises (SOEs)

- Afford national treatment to all enterprises established in China, regardless of ownership and company type.
- Reduce complexities around business licences and permits, and improve transparency in the application of risk and return guidelines for SOE financing.

3. Streamline the Cross-border Mergers and Acquisitions (M&A) Process

- Formulate national-level guidance aimed at providing automatic, fast-track licensing for asset deals that adequately reflect business transfers.
- Allow foreign-invested enterprises (FIEs) access to China's capital market on an equal basis with local players.
- Adhere to a strict application of bankruptcy laws and eliminate arbitrary considerations in decisions involving informal reorganisation arrangements.
- Continue to harmonise the treatment of FIEs and domestic companies as per the Foreign Investment Law (FIL) and eliminate remaining barriers to foreign investment by creating a level playing field.

4. Further Open Up China's Capital Market to FIEs

- Expand FIEs' access to China's capital market.
- Improve market regulation by the China Securities Regulatory Commission (CSRC) and its sister financial regulators.
- Create a fair and level playing field for FIEs seeking to issue debt securities, including bonds and asset-backed securities.



- Grant FIEs national treatment and allow them to list their shares on a Chinese stock exchange.
- Establish an 'international board' on the Shanghai Stock Exchange (SSE) to allow international enterprises to achieve a secondary listing of their equity securities in China's A-share market.
- Simplify the rules for foreign investors selling shares of listed joint ventures as per the principle of national treatment highlighted by the FIL.
- Remove the additional disclosure requirements on investments by foreign investors in listed companies so as to correspond to the principle of national treatment.

Introduction to the Working Group

The Investment Working Group advocates for improvements in China's investment environment in terms of market access and regulatory environment. The working group's membership is comprised of service providers, including investment consultants, law firms, private equity and venture capital firms, and banks, as well as a range of large European manufacturers. The working group seeks to achieve a level playing field for foreign investors based on reciprocity. It further provides a platform for knowledge exchange and expertise sharing among professional investment advisors in China.

Recent Developments

In 2023, foreign direct investment (FDI) into China fell to Chinese yuan (CNY) 1.13 trillion (United States dollar (USD) 163.25 billion), an eight per cent fall from 2022.¹

According to Chinese statistics,² European Union (EU) investment in China in 2023 was USD 10.6 billion, up by 5.5 per cent. The top five sectors for EU investment were manufacturing; scientific research and technology services; leasing and business services; wholesale and retailing; and information transmission, software and information technology services.³

In 2023, China's investment in the EU was USD 8.2 billion, up by 17.4 per cent.⁴

In 2023, the number of merger and acquisition (M&A) deals in China dropped to 2,574, a decrease of 0.9 per cent. This was the lowest total since 2019, when 2,513 deals were closed, and a low for the decade. The aggregate transaction value of all M&A deals similarly declined, falling to CNY 1.28 trillion in 2023, the lowest since 2018.⁵

EU Investment Toolbox

On 20th June 2023, the European Commission and the High Representative published a joint communication on a European Economic Security Strategy (EESS).⁶ Under the EESS, in October 2023, the EU released a recommendation to carry out risk assessments on four critical areas (semiconductors, artificial intelligence, quantum technologies and biotechnologies) and in January 2024, announced a package with five concrete initiatives: inbound FDI screening, outbound investment screening, export controls, research and development (R&D) support for dual-use technologies, and research security. Both existing instruments and the various proposals under the strategy are likely to have an impact on China's operations and investment considerations of European businesses in the sectors affected by these regulations. It is expected that further

1 *Statistical Communiqué of the People's Republic of China on the 2023 National Economic and Social Development*, National Bureau of Statistics, 29th February 2024, viewed 4th July 2024, <https://www.stats.gov.cn/sj/zxfb/202402/t20240228_1947915.html>

2 *The Essence of China-EU Trade and Economic Relations is Mutual Benefit and Win-Win*, Mission of the People's Republic of China to the EU, 8th April 2024, viewed 4th June 2024, <http://eu.china-mission.gov.cn/eng/mh/202404/t20240408_11278074.htm>

3 *Statistical Bulletin of FDI In China 2023*, Ministry of Commerce of China, 26th September 2023, viewed 16th April 2024, pp. 10–11, <<http://images.mofcom.gov.cn/wzs/202310/20231010105622259.pdf>>

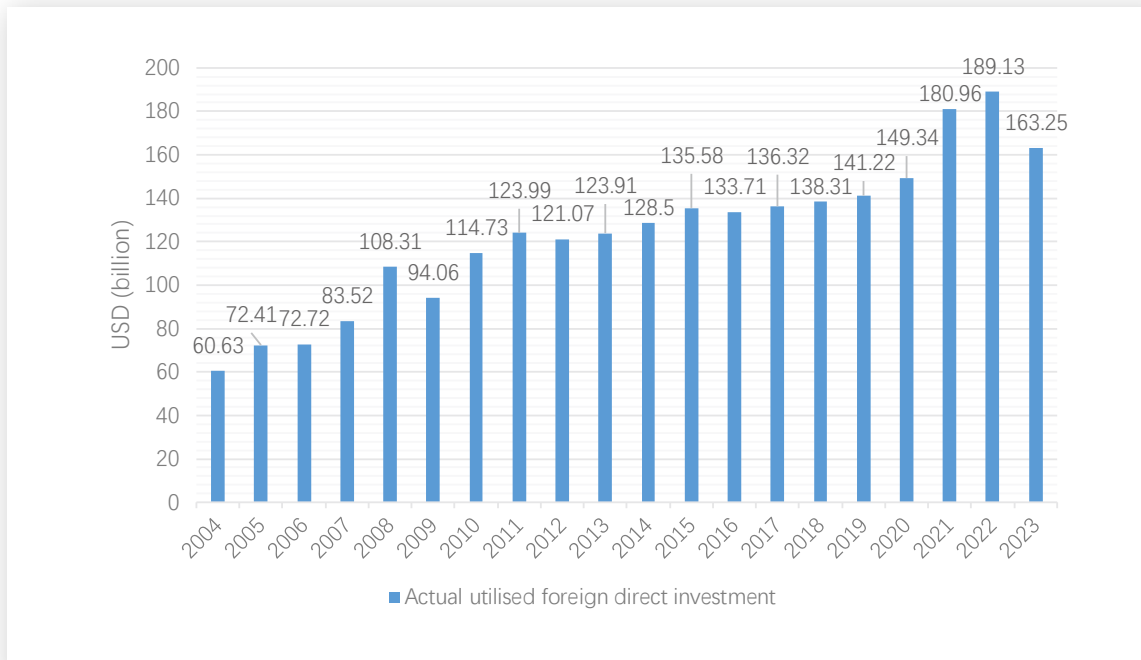
4 *Ibid.*

5 Wu, J, and Asim, U, *China M&A set for 2024 pickup on steady economy, friendly policy environment*, S&P Global, 5th March 2024, viewed 7th May 2024, <<https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/china-m-a-set-for-2024-pickup-on-steady-economy-friendly-policy-environment-80254742>>

6 *Joint Communication to the European Parliament, the European Council and the Council on "European Economic Security Strategy"*, European Commission, 20th June 2023, viewed 8th May 2024, <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023JC0020>>

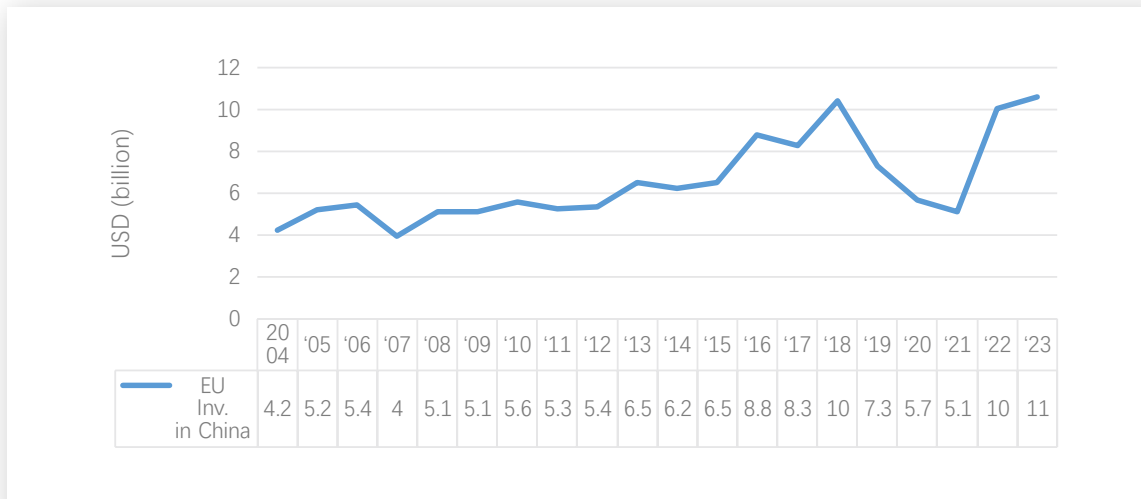


Figure 1: New Investment Into China Drops



Source: National Bureau of Statistics, 2024

Figure 2 EU Investment in China (2004-2023)⁷



Source: Ministry of Commerce, 2024

investigations will be launched throughout 2024.⁸

On 6th June 2023, the European Parliament and the

⁷ Statistical Bulletin of FDI In China 2023, Ministry of Commerce of China, 26th September 2023, viewed 16th April 2024, pp. 10–11, <<http://images.mofcom.gov.cn/wzs/202310/20231010105622259.pdf>>

⁸ Cañada Amela, E, *The European Economic Security Strategy*, European Chamber of Commerce in China, 12th April 2024, viewed 7th May 2024, <<https://www.eurobiz.com.cn/the-european-economic-security-strategy/>>

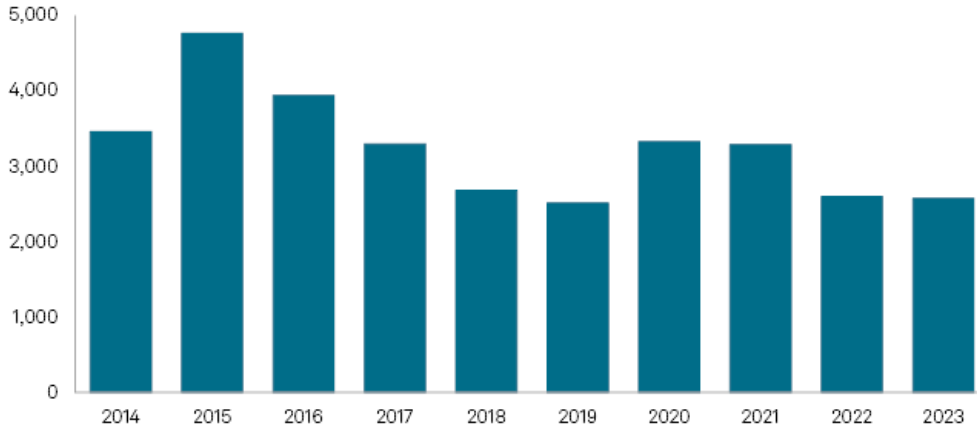
European Council released the Anti-coercion Instrument, which entered into force on 27th December 2023.⁹ It enables the EU to respond to economic coercion through a wide range of possible countermeasures against a coercing country, including the imposition of

⁹ *New tool to enable EU to withstand economic coercion enters into force*, European Commission, 27th December 2023, viewed 7th May 2024, <https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6804>

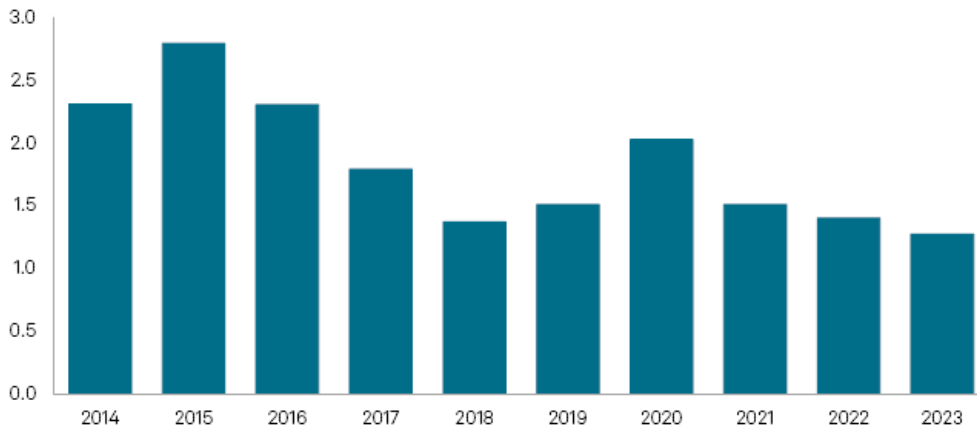


M&A Activity in China (2014–2023)

Number of deals



Aggregate transaction value of deals (trillion yuan)



Data compiled Feb. 2, 2024.

Data represents the number of announced M&A deals where the target entity was headquartered in China. Terminated/withdrawn transactions are excluded.

Data is compiled on a best-efforts basis.

Source: S&P Global Market Intelligence.

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tariffs, restrictions on trade in services, and restrictions on access to FDI or public procurement.

On 24th April 2024, the European Commission launched its first investigation under the International Procurement Instrument, a tool aiming at ensuring reciprocal access to third-country procurement markets for EU economic operators. The investigation, launched by the Commission, is based on a number of alleged measures and practices in China that favour domestic operators in procurement and restrict the procurement

of imported goods.¹⁰ The investigation will last nine months and could be extended to 14. Upon conclusion, the Commission will publish a document detailing the findings and proposing a course of action.

On 24th May 2024, the EU Corporate Sustainability Due Diligence Directive (CSDDD) was formally adopted by the Council of the EU. The CSDDD will reshape corporate obligations for human rights and

¹⁰ Commission launches first investigation under EU International Procurement Instrument, European Commission, 24th April 2024, viewed 8th May 2024, <https://ec.europa.eu/commission/presscorner/detail/en/ip_24_2044>





environmental due diligence in the EU and beyond, including China. Member states will then have two years to establish corresponding national laws for corporate due diligence. Although the directive only directly applies to companies with a net worldwide turnover of over euro (EUR) 450 million and more than 1,000 employees, the reporting requirements cover its entire chain of activities, thereby impacting all those in its supply chain, including, for example, SMEs and Chinese companies alike. The European Chamber, together with the European Business Association Worldwide Network, collected input from member companies and developed a consolidated industry position paper that provides recommendations to the EU on the implementation of the CSDDD.¹¹

China's Negative Lists

On 27th December 2021, the National Development and Reform Commission issued the *Negative List for Foreign Investment (2021 version)*,¹² and the Ministry of Commerce (MOFCOM) issued the *Negative List for Foreign Investment for Pilot Free Trade Zones (2021 version)*.¹³

In the 2021 versions, the negative lists for foreign investment in China and pilot free trade zones are further reduced by two items to 31 and three items to 27 items respectively. In the automobile manufacturing sector, restrictions on foreign ownership in passenger car manufacturing and restrictions on the establishment of joint ventures in China for production of the same vehicle products are abolished. The European Chamber welcomed the updates contained in the two negative lists, which came into effect on 1st January 2022. Regarding market access in the pilot free trade zones, in the radio and television equipment manufacturing sector, restrictions on the production of ground receiving facilities and key components for satellite television and radio broadcasting were abolished. The working group views the updated negative lists as another small step forward in China's reform and opening up agenda.

On 19th April 2024, the Information Office of the State Council of China revised the *Catalogue of Encouraged Industries for Foreign Investment* by adding new industries, aiming to provide broader space for foreign investment in China.¹⁴ The MOFCOM said it would focus on lifting all restrictions for the manufacturing sector and ease access for service sectors such as health and telecommunications.¹⁵

The '24 Measures' and Subsequent Action Plan

On 13th August 2023, the *Opinions of the State Council on Further Optimising the Foreign Investment Environment and Enhancing Attraction of Foreign Investment (Opinions)* was released. The *Opinions*, which contain 24 measures, aim to attract more global capital and further optimise China's business environment for multinational corporations (MNCs). They cover topics such as encouraging foreign investors to undertake major scientific research projects, ensuring equal treatment of foreign and domestic companies and exploring a convenient and secure management mechanism for cross-border data flows. Other topics include increasing the protection of the rights and interests of foreign companies and providing them with stronger fiscal support and tax incentives.¹⁶

On 19th March 2024, the State Council issued the *Action Plan to Solidly Promote High-level Opening Up and Make Greater Efforts to Attract and Utilise Foreign Investment (Action Plan)*, which again outlines 24 measures, including refining the negative list for foreign investment, carrying out pilot programmes to ease access for foreign investors in scientific and technological innovation, and allowing more involvement by foreign financial institutions in banking and insurance.¹⁷

The *Action Plan* is also designed to enhance policy support in taxation, finance, and energy consumption, support foreign industry transfers from eastern

11 *European Union Corporate Sustainability Due Diligence Directive (CSDDD) Position Paper*, European Union Chamber of Commerce, 3rd June 2024, viewed 13th June 2024, <[https://static.europeanchamber.com.cn/upload/medianews/attachments/EBOWN_CSDDD_Position_Paper\[121\].pdf](https://static.europeanchamber.com.cn/upload/medianews/attachments/EBOWN_CSDDD_Position_Paper[121].pdf)>

12 *Special Administrative Measures on Foreign Investment Access (Negative List) (2021 version)*, State Council, 27th December 2021, viewed 18th April 2023, <http://www.gov.cn/zhengce/zhengceku/2021-12/28/content_5664886.htm>

13 *Special Administrative Measures on Foreign Investment Access (Negative List) (2021 version) for Pilot Free Trade Zones*, State Council, 27th December 2021, viewed 18th April 2023, <https://www.gov.cn/zhengce/zhengceku/2021-12/28/content_5664887.htm>

14 *The actual use of foreign capital in the first quarter reached RMB301.67 billion yuan - business operation is generally stable and structurally optimised*, *People's Daily*, 20th April 2024, viewed 8th May 2024, <https://www.gov.cn/lianbo/bumen/202404/content_6946394.htm>

15 *Q1 absorbed 301.67 billion yuan of foreign capital*, *Xinhua Daily Telegraph*, 20th April 2024, viewed 8th May 2024, <http://www.news.cn/mrdx/2024-04/20/c_1310771963.htm>

16 *Guidelines unveiled to draw more foreign investment*, State Council, 14th August 2024, viewed on 4th June 2024, <https://english.www.gov.cn/policies/policywatch/202308/14/content_WS64d9680bc6d0868f4e8de85f.html>

17 *Action plan to promote high-level opening-up, attract foreign investment*, State Council, 19th March 2024, viewed 8th May 2024, <https://www.gov.cn/zhengce/content/202403/content_6940154.htm>





regions to central, western, and northeastern regions, promote fair competition and optimise the bidding system. China also pledged to step up protection of intellectual property rights (IPR), improve rules for cross-border data flows, push forward negotiation and implementation of high-level economic and trade agreements, and intensify pilot programmes to align with high-level international trade rules.

The 2023 *Opinions* and 2024 *Action Plan* are policies aimed at attracting foreign investment and promoting economic liberalisation. Their key differences lie in 1) timing: the *Opinions* were released at the start of a new policy cycle, while the *Action Plan* is a further refinement and implementation of the *Opinions*; 2) depth of content: the *Action Plan* provided more detailed measures to implement the 24 measures contained in the *Opinions*, such as expanding market access, opening up the financial sector and liberalising the investment environment; 3) attention: the 2023 *Opinions* received more attention because of their relative novelty and the amount of promotion they received.

The New 'Nine-point' Guidelines

On 12th April 2024, the State Council released new guidelines on strengthening regulation, forestalling risks and promoting the high-quality development of the capital market.¹⁸ They represent the first set of guidelines on the capital market from the State Council since 2014.¹⁹ This includes raising standards for stock listings and strengthening oversight. The guidelines emphasise upholding the leadership of the Communist Party, ensuring the financial sector serves the public and strengthening regulation to prevent risks.

Key Recommendations

1. Ensure Consistent Implementation of the Foreign Investment Regime and Adhere to the Principle of National Treatment



Concern

The inconsistent enforcement of the Foreign Investment Law (FIL) and restrictions imposed on foreign-invested

enterprises (FIEs) continue to result in unequal treatment toward foreign companies.

Assessment

Despite the promulgation of the FIL over three years ago, China continues to differentiate between foreign and Chinese companies in the field of investment. The FIL does not fundamentally abolish the distinction between foreign and domestic investment.

The Investment Working Group maintains that no compelling reasons exist to regulate companies differently based on ownership structure or investor nationality. However, China's negative list system continues to either prohibit or restrict foreign investment in certain sectors. Yet certain aspects of China's market access have improved marginally, including the lifting of ownership restrictions for manufacturers of passenger vehicles. In the future, the MOFCOM aims to lift all restrictions for the manufacturing sector and ease access to service sectors such as health and telecommunications.²⁰

However, despite the aforementioned easing of market access in China, foreign investors have lingering concerns. Over half of respondents (58 per cent) to the European Chamber's *Business Confidence Report 2024* (BCS) reported having lost business opportunities due to market access barriers in 2023. Although this is a slight improvement from 2022, which can be largely explained by the lifting of COVID-related restrictions, the proportion of those reporting lost business is still the second highest on record. The survey revealed a significant impact on business opportunities caused by market access and regulatory barriers. Among those who reported lost business, approximately 20 per cent indicated that these lost opportunities represented over 25 per cent of their yearly earnings, with an unprecedented number stating that their foregone opportunities equated to more than half.²¹

FIL and Technology Transfer

Despite China releasing the *Guidelines for Building a Powerful Intellectual Property Nation (2021–2035)*

¹⁸ *State Council's Opinions on Strengthening Regulation, Guarding Against Risks, and Promoting High-Quality Development of the Capital Market*, State Council, 12th April 2024, viewed 8th May 2024, <https://www.gov.cn/zhengce/content/202404/content_6944877.htm>

¹⁹ *China to strengthen capital market regulation, risk prevention*, *Xinhua News*, 13th April 2024, viewed 8th May 2024, <https://english.www.gov.cn/policies/policywatch/202404/13/content_WS6619d421c6d0868f4e8e6004.html>

²⁰ For more information, please refer to the Recent Developments section of this position paper.

²¹ *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 4th June 2024, p. 25, <<https://www.eurochamber.com.cn/en/publications-business-confidence-survey>>





in September 2021,²² clauses 10 and 11 of the 2023 *Opinions* and clause 21 of the 2024 *Action Plan*²³ target enhancing intellectual property (IP) protection with various instruments. IP protection remains a significant concern for European companies as many are still being compelled to transfer technology to maintain market access.²⁴

Article 22 of the FIL states that “No administrative department or its staff member shall force any transfer of technology by administrative means.”²⁵ In addition to which, under the *Implementation Regulations of the Foreign Investment Law of the People's Republic of China (PRC)*, Article 24 states that “No administrative authority (including organisations with the function of managing public affairs as authorised by laws and regulations) or their working personnel may force directly or in a disguised way any foreign investor or FIE to transfer its technology by virtue of implementing administrative licensing, administrative inspection, administrative punishment, administrative enforcement or other administrative means.”²⁶

However, this does not address the core problem. According to the BCS 2024, 17 per cent of respondents were compelled to transfer technology and/or trade secrets in exchange for market access, which remains the same as the level in 2023. Technology transfer requirements remain one of the top 10 regulatory issues faced by many sectors, specifically, education, utilities, maritime manufacturing, medical devices, and civil engineering and construction.

If foreign companies are subjected to unfair technology transfers, an increased level of clarity on the avenues of recourse is required as, in practice, FIEs still encounter unequal treatment compared to their domestic competitors. This leaves the FIL provisions somewhat dulled and ineffectual considering general business practices.

Public Procurement

Article 16 of the FIL states that, “The State shall guarantee that foreign-funded enterprises can participate in government procurement activities through fair competition. Products produced and services provided by foreign-funded enterprises within the territory of China shall be treated equally in a government procurement.” However, the BCS 2024 findings indicate that discrimination against FIEs in public procurement is a key challenge for members (40 per cent of respondents reported, three per cent lower than 2023)²⁷ operating in the IT and telecommunications, medical devices, civil engineering and construction, utilities, and maritime manufacturing sectors.

National Unified Market

On 10th April 2022, the Central Committee of the Communist Party of China and the State Council jointly released the *Opinions on Accelerating the Construction of the National Unified Market (Unified Market Opinions)*.²⁸ The document outlines plans to create a “national unified market” to improve standardisation and consistency in the implementation of regulations across a wide range of industries in China.

The construction of a national unified market was first proposed in early 2021 in the 14th Five-year Plan (14FYP), which sets out the goal of “optimising the market environment by benchmarking against advanced international rules and best practices, promoting the coordination and unification of standards, rules, and policies in different regions and industries, and effectively eliminating local protectionism, industry monopoly, and market segmentation.”²⁹ The national unified market will target a range of industries through a variety of regulations, such as IPR protection, market access and anti-monopoly regulations, as well as via various industry-specific standards.

While the *Unified Market Opinions* are a welcome development, their desired effect of consistency for

22 *Guidelines for Building a Powerful Intellectual Property Nation (2021–2035)*, State Council, 22nd September 2021, viewed 18th April 2023, <https://www.gov.cn/zhengce/2021-09/22/content_5638714.htm>

23 For more information, please refer to the Recent Developments section of this position paper.

24 For more information, please refer to the *Intellectual Property Rights Working Group Position Paper 2024/2025*.

25 *Foreign Investment Law of the PRC*, *Xinhua*, 20th March 2019, viewed 18th April 2023, <https://en.ndrc.gov.cn/policies/202105/t20210527_1281403.html>

26 *Implementation Regulations of the Foreign Investment Law*, State Council, 26th December 2019, viewed 18th April 2023, <https://www.gov.cn/zhengce/content/2019-12/31/content_5465449.htm>

27 *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 4th June 2024, p. 21, <<https://www.eurochamber.com.cn/en/publications-business-confidence-survey>>

28 *Opinions on Accelerating the Construction of the National Unified Market*, State Council, 10th April 2022, viewed 18th April 2023, <http://www.gov.cn/zhengce/2022-04/10/content_5684385.htm>

29 *Outline of the 14th Five-Year Plan for National Economic and Social Development of the People's Republic of China and the Long-term Goals for 2035*, State Council, 13th March 2021, viewed 18th April 2023, <http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm>





all enterprises is somewhat muted, as they do not constitute legislation, merely the means to spur further regulation and guidelines. In addition, the *Opinions* envision amending segmented inefficiencies across different local governments as opposed to more broad national-based issues concerning providing a level playing field to foreign investors.

Recommendations

- Continue to reduce the number of industry sectors on the negative lists in which foreign investment is either restricted or prohibited.
- Introduce reporting, mediation and dispute resolution mechanisms and avenues of recourse for foreign companies compelled to transfer technologies.
- Implement and adhere to the principle of national treatment across government levels and nationwide (in particular in the area of government procurement).
- Abolish specific laws and regulations imposing investment restrictions only on foreign investors, including onshoring requirements and discriminatory requirements on licensing.
- Introduce legislation that allows for a national unified market aligned with international rules and best practices, and the unification of standards and policies in different regions and industries.

2. Enhance Market Competitiveness and Create a Level Playing Field with SOEs



Concern

China's SOEs continue to enjoy preferential treatment, to the detriment of privately-owned competitors and Chinese consumers.

Assessment

Although SOEs constitute one strategic pillar of the Chinese economy, achieving long-term, sustainable development entails the creation of an efficient domestic market in which participation by all players is enabled and fair competition for the benefit of consumers is ensured.

SOE Reform

On 31st December 2020, the State-owned Assets Supervision and Administration Commission and the Ministry of Finance (MOF) jointly issued the *Management Measures for the Formulation of Articles*

of Association of State-owned Enterprises,³⁰ which still play a key role in the reform and development of China's SOEs. Central SOEs are heavyweights in strategic industries, making government-led attempts to reform their structure especially challenging. Over the past few decades, most reform efforts have been directed toward these SOEs.

In addition, working group members have noted that large domestic SOEs have been pressuring external suppliers to adopt their internal standards in recent years. Due to the lack of involvement of stakeholders along the industry chain in the formulation of these internal standards, they often lack sophistication and have low applicability and universality. This has affected the application of advanced technologies in China to the extent that it has become a significant hidden barrier to FIEs trying to enter the Chinese market. The working group expects more focus on continuing SOE reform in a deeper, systematic fashion that could lead to tangible improvements in the local business environment. The 24 measures outlined in the *Opinions* also mean that the working group expects a more level playing field.

New Industries

The 14FYP set environmental protection and technological advancement as top national priorities for the period 2021–2025. European companies are eager to support China in this pursuit, yet face barriers that risk impairing their ability to contribute to the investment goals in new industries. In the absence of fair competition, access to markets like green energy generation is limited for foreign companies, if not outright restricted in areas such as carbon capture and storage, and power generation and distribution.³¹

This situation is worsened by restrictive regulations that widen the gap between FIEs and local players. For example, data localisation requirements, although applicable to both local and foreign companies alike, affect foreign players the most and result in a duplication of data storage and management assets and processes.

A similar situation affects data-driven technology industries, including cloud computing and information

³⁰ *Management Measures for the Formulation of Articles of Association of State-owned Enterprises*, State Council, 31st December 2020, viewed 29th June 2023, <https://www.gov.cn/zhengce/zhengceku/2021-02/28/content_5589299.htm>

³¹ See the *Environment Working Group Position Paper 2023/2024* for more information.





and communications technology.³² Here, the impact of regulatory-induced market segmentation for foreign players is even more concerning, given that project success is closely tied to the ability to offer service bundling and data monetisation across service lines. Current limitations in digital industries not only add complexity to any M&A investment but also prevent FIEs from deploying synergetic strategies that generate wealth and growth for domestic subsidiaries.

Recommendations

- Afford national treatment to all enterprises established in China, regardless of ownership and company type.
- Reduce complexities around business licences and permits, and improve transparency in the application of risk and return guidelines for SOE financing.

3. Streamline the Cross-border M&A Process



Concern

M&A activity continues to be hindered by regulatory and bureaucratic requirements that make investment into China comparatively more expensive than in competing regions.

Assessment

Regulatory Burdens Affecting Inbound Investment

The legal regime governing acquisitions in China remains complicated and restrictive, and its application mostly unpredictable. Foreign investors have to overcome a number of restrictions under the *Provisions on Merger and Acquisition of Domestic Enterprises by Foreign Investors*³³ along with additional challenges, such as merger control filing and national security review. A typical inbound M&A investment, for example, can take anything between 10 weeks, in the absence of special approvals, and several years for transactions that require reapplication for certain permits. Moreover, foreign M&As are also regulated by additional rules issued by the MOFCOM as well as regulations applicable to general FDI in China, such as the negative lists and the FIL.

With regard to the regulatory burden for foreign

investment into China, structural elements exist that make inbound M&As more resource-intensive and uncertain than in other legal systems. Among the problematic structural elements most cited by European investors are unclear guidelines and uncertainty surrounding the implementation of regulations on bankruptcy, court disputes, and permit granting and renewal, which often vary from region to region and city to city. In consequence, many European companies estimate a higher risk premium for investments into China.

European investors also worry that this comparative disadvantage will intensify in the near future, especially in light of the growing geopolitical tensions, as investment progressively shifts towards a greater focus on technology-intensive assets, in particular those related to decarbonisation and overall environmental sustainability. In the green economy, an area where European companies have much to offer to China, complexities in the context of permit granting, coupled with uncertainties surrounding standard setting, remain significant and risk hampering inbound investment — vehicle battery manufacturing is one compelling example of how standards keep changing almost on an annual basis, adding layers of difficulty for foreign investors.

China has gradually been making progress in opening its markets to foreign investment. The number of subsectors in which foreign investment is restricted or banned fell from 93 in 2015 to 31 in 2021. Notably, in 2020, China removed limitations on foreign ownership for securities and fund management firms, allowing them to set up wholly-owned entities in the country. This policy was further extended to passenger-vehicle manufacturers in 2022. Additionally, approved institutional investors from other countries are now allowed to invest unrestricted amounts in the Chinese stock and bond markets. These ongoing reforms and similar ones could help improve the business environment and expand MNCs' ability to attract investment.

However, it is important to note that sector-specific regulations still exist. For instance, the medical technology industry has faced challenges over the years due to the definition of 'locally made' which determines whether products can be sold to certain public hospitals. More recently, the industry has been

³² See the *Information and Communication Technology Working Group Position Paper 2023/2024* for more information.

³³ *Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign Investo*, MOFCOM, 24th July 2009, viewed 18th April 2023, <http://www.gov.cn/fifg/2009-07/24/content_1373405.htm>





affected by a volume-based procurement system, where manufacturers of drugs and medical devices offering the lowest prices are given significant sales opportunities.³⁴ These regulations present additional considerations and complexities for businesses operating in this sector.

Access to Capital Markets and Financing

Foreign entities in China often complain of a less-than-level playing field when it comes to access to capital markets and financing of M&A transactions. For example, current China Securities Regulatory Commission (CSRC) rules prevent the controlling shareholder of a publicly listed company from owning 'competing' business outside of China, effectively requiring that entire global operations be listed in the country, not just the Chinese subsidiaries.³⁵ The unclear legal status of board members and top management in listed companies is also a concern for MNCs that would otherwise list domestic operations in Chinese stock markets. Furthermore, capital endowment requirements and exchange controls limit the ability of European companies investing into China to fund operations and capital investments through debt.

Foreign inbound M&A are also still unlikely to obtain funding domestically in China. Most MNCs use offshore funds in their acquisitions; risk management by domestic Chinese banks generally hinges on the value of hard assets on the balance sheet, such as land and machinery. In fact, M&A funding by Chinese financial institutions is subject to hard assets pledges. This practice inevitably penalises MNCs that are looking to enter China, as they have less tangible assets onshore than their domestic counterparts. In the rare instances where leveraged buy-out funding is provided in China, it is extended on the basis of parent companies' guarantees. This constraint has become ever more critical with the emergence of new drivers of growth and further rebalancing of the Chinese economy: contrary to a decade ago, inbound European investment is now mostly aimed at China's value chains. New investment opportunities are also opening up in capital-intensive growth areas, such as decarbonisation and the green economy. Investors that intend to focus on these new

areas can expect, to a large extent, to compete with SOEs, which already have advantages in the capital allocation of domestic funds. In relation to these developments, the working group urges regulators to expand foreign investors' access to financing on market-consistent terms.

Recommendations

- Formulate national-level guidance aimed at providing automatic, fast-track licensing for asset deals that adequately reflect business transfers.
- Allow FIEs access to China's capital market on an equal basis with local players.
- Adhere to a strict application of bankruptcy laws and eliminate arbitrary considerations in decisions involving informal reorganisation arrangements.
- Continue to harmonise the treatment of FIEs and domestic companies as per the FIL and eliminate remaining barriers to foreign investment by creating a level playing field.

4. Further Open Up China's Capital Market to FIEs 11

Concern

Restrictions are hampering FIEs' access to China's capital markets in their entirety, including equity, debt and structured products, which is detrimental to the Chinese economy.

Assessment

FIEs still face many access restrictions to China's capital markets — a situation that is detrimental to both them and the Chinese economy, as it contributes to the continued underdevelopment of the domestic capital market. This lack of access prevents many FIEs from further embedding themselves into the Chinese economy and society.

A-share Markets

It is possible for an FIE to be listed on China's established stock markets by incorporating itself as, or converting itself into, a foreign-invested company limited by shares (FICLS), and then applying for a listing on the exchange of its choice in accordance with the relevant regulations. However, the requirements that FICLS and their investors must satisfy are more stringent than those that apply to domestic companies. Some examples, according to China's Company Law, include requiring at least half of the shareholders to be domiciled in China

³⁴ *Special administrative measures (negative list) for foreign investment access (2021 edition)*, National Development and Reform Commission, 18th September 2021, viewed on 6th May 2024, <https://www.gov.cn/zhengce/2022-11/28/content_5713317.htm>

³⁵ *Measures for the Administration of Acquisition of Listed Companies*, CSRC, 31st July 2006, viewed 18th April 2023, <https://www.gov.cn/zhengce/2021-12/16/content_5724568.htm>





and maintaining a foreign shareholding of at least 10 per cent post-listing. Therefore, it is not possible to list a wholly foreign-owned enterprise (WFOE) on the A-share market.³⁶

Even if it were possible to list WFOEs, CSRC regulations would require the listed entity to own its own IP and be free to compete on a global basis. This essentially precludes an international company from listing a local subsidiary, which differs from common practices in other financial markets, where a foreign investor can raise capital as well as control and operate a locally-listed company without its global business being required to become a domestic public entity. In the reform of China's capital markets, the working group recommends that access be made available to all economic actors, including foreign investors operating successful local subsidiaries in the Chinese mainland.

Additional requirements applying to FICLS and their investors should also be removed, and international businesses should be free to list on the A-share market in the same way as domestic companies. This would reflect the nationwide trend of harmonising regulatory requirements that are applicable to both domestic and international entities, and the removal of many filing requirements in the field of FDI. It would also encourage foreign private equity investment in domestic companies, by facilitating foreign investors' ability to subsequently exit their investments through a Chinese initial public offering.

To this end, domestic stock exchange listing rules should be amended to make it easier for foreign companies to list on Chinese stock exchanges, thereby increasing the attractiveness of China's capital markets while leading to greater diversification from new, high-quality issuers. This would also be conducive to establishing the much-anticipated international board on the SSE, which would enable international enterprises to achieve a secondary listing of their equity securities in China's A-share market. Removing specific listing requirements in China, limited to companies that already have listed in their home markets, could be a practical solution to overcome technicalities such as

horizontal competition,³⁷ trademark or brand ownership, and 'arm's length' trade and services³⁸ arrangements.

On 25th March 2022, the CSRC approved the *Interim Measures for the Listing and Trading of Depository Receipts under the Stock Connect Scheme between Shanghai Stock Exchange and Overseas Stock Exchanges*,³⁹ thereby expanding the link between the stock exchanges of Shanghai and London to include bourses in Germany, Switzerland and Shenzhen. The regulator also enabled European companies to sell new shares and raise funds from investors in the Chinese mainland, and simplified their financial-reporting and disclosure requirements.

On 3rd March 2023, the SSE released the *Implementation Measures of the Shanghai Stock Exchange for Shanghai-Hong Kong Stock Connect Business (2023 Revision)*.⁴⁰ This marks the first time for stocks of foreign companies primarily listed on the Hong Kong Exchange to also be listed on the Shanghai-Hong Kong Stock Connect, thereby making them available to Chinese mainland investors. Foreign companies listed in Hong Kong can now take advantage of the abundant liquidity in the Mainland market, while also increasing their Mainland investor base as well as their popularity and valuation in the Chinese market. For foreign stocks to be eligible for inclusion on the Shanghai-Hong Kong Stock Connect, they must not have any special taxation or corporate arrangements, such as being required to pay financial transaction taxes to a foreign government or to pay dividends with different tax rates to different investors. As of June 2023, such special arrangements cannot be supported by the Shanghai-Hong Kong Stock Connect technical systems.⁴¹

Debt Market

Since 2018, it has become easier for FIEs to routinely issue *renminbi* (RMB)-denominated debt securities,

36 Shi, E, *Establishing a Business in China: Overview*, Thomson Reuters, viewed 18th April 2023, <[https://uk.practicallaw.thomsonreuters.com/1-623-4945?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/1-623-4945?transitionType=Default&contextData=(sc.Default))>

37 Horizontal competition refers to the rivalry to gain customer preference among entities at the same level, such as competition among competing wholesalers or competing retailers.

38 'Arm's length' trade and services refers to a business deal in which buyers and sellers act independently without one party influencing the other.

39 *Shanghai Stock Exchange Issues the Interim Measures for the Listing and Trading of Depository Receipts under the Stock Connect Scheme between Shanghai Stock Exchange and Overseas Stock Exchanges and Relevant Guidelines*, SSE, 25th March 2022, viewed 18th April 2023, <<http://english.sse.com.cn/news/newsrelease/c/5700281.shtml>>

40 *SSE Meets the Press on Revision of Implementation Measures of the Shanghai Stock Exchange for Shanghai-Hong Kong Stock Connect Business*, SSE, 3rd March 2023, viewed 18th April 2023, <<http://english.sse.com.cn/news/newsrelease/c/5717637.shtml>>

41 Ibid.





so-called ‘panda bonds’. The People’s Bank of China (PBOC) and the MOF jointly published interim administrative rules for bond issuance by foreign entities,⁴² which, as well as clarifying and simplifying a number of issues, delegated registration of non-financial enterprises to the National Association of Financial Markets Institutional Investors. The rules also formally introduced the concept of ‘equivalent accounting standards’,⁴³ allowing enterprises reporting under non-Chinese accounting standards—such as the International Financial Reporting Standards—to access the panda bond market without converting their financial statements to Chinese Generally Accepted Accounting Principles.

In 2019, the PBOC took additional steps to open China’s financial sector and improve the rating quality of the bond industry by allowing foreign rating companies to conduct bond rating in the interbank bond market.⁴⁴ In 2022, the PBOC and the State Administration of Foreign Exchange announced the *Circular of Management of Funds Involved in the Domestic Issuance of Bonds by Overseas Institutions (Circular)*. The *Circular* proposes that “funds raised by domestic bonds issued by overseas institutions can be remitted abroad or retained for domestic use. Those retained for domestic use shall be used in compliance with provisions such as those for FDI or foreign debt. Funds raised through domestic issuance of bonds by an overseas institution are encouraged to be used for cross-border receipts and payments or otherwise used in RMB currency.”⁴⁵

Recommendations

- Expand FIEs access to China’s capital market.
- Improve market regulation by the CSRC and its sister financial regulators.
- Create a fair and level playing field for FIEs seeking to issue debt securities, including bonds and asset backed securities.
- Grant FIEs national treatment and allow them to list

their shares on a Chinese stock exchange.

- Establish an ‘international board’ on the SSE to allow international enterprises to achieve a secondary listing of their equity securities in China’s A-share market.
- Simplify the rules for foreign investors selling shares of listed joint ventures as per the principle of national treatment highlighted by the FIL.
- Remove the additional disclosure requirements on investments by foreign investors in listed companies so as to correspond to the principle of national treatment.

Abbreviations

14FYP	14 th Five-year Plan
BCS	Business Confidence Survey
CNY	Chinese Yuan
CSRC	China Securities Regulatory Commission
CSDDD	Corporate Sustainability Due Diligence Directive
EESS	European Economic Security Strategy
EU	European Union
FDI	Foreign Direct Investment
FICLS	Foreign-invested Company Limited by Shares
FIE	Foreign-invested Enterprise
FIL	Foreign Investment Law
IP	Intellectual Property
IPR	Intellectual Property Rights
M&A	Mergers and Acquisitions
MNC	Multinational Corporation
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
PBOC	People’s Bank of China
R&D	Research and Development
RMB	Renminbi
SOE	State-owned Enterprise
SSE	Shanghai Stock Exchange
USD	United States Dollar
WFOE	Wholly Foreign-owned Enterprise

42 *Announcement [2018] No.16 of the PBOC and the MOF on Interim Administrative Measures for Bond Issuance by Overseas Institutions in the China Interbank Bond Market*, PBOC, 8th September 2018, viewed 18th April 2023, <http://www.gov.cn/gongbao/content/2019/content_5362059.htm>

43 *Ibid.*

44 Anstey, C, and Tu, L, *China Opens to Foreign Credit Raters to Boost Bond Credibility, Bloomberg*, 27th February 2019, viewed 18th April 2023, <<https://www.bloomberg.com/news/articles/2019-02-27/china-opens-to-foreign-credit-raters-to-boost-bond-credibility>>

45 *Circular [2022] No.272 of the Management of Funds Involved in the Domestic Issuance of Bonds by Overseas Institutions*, PBOC and State Administration of Foreign Exchange, 23rd November 2022, viewed on 5th May, <https://www.gov.cn/zhengce/zhengceku/2022-12/02/content_5730026.htm>





Legal and Competition Working Group

Key Recommendations

1. Continue to Strengthen the Rule of Law to Foster a Predictable Legal System for Foreign Investors

- Continue to advance the rule of law and implement a fair competition review system to support investor confidence.
- Continue to standardise the judicial decision-making process to eradicate the application of discretion and ensure equitable, transparent, predictable and impartial implementation and enforcement of laws and regulations nationwide.
- Enhance legislative quality by removing inconsistencies within laws and regulations to provide a stable and predictable legal environment for businesses.
- Ensure prompt, comprehensive and correct enforcement of judicial decisions and arbitral awards by disclosing the trial process, judgment documents and enforcement proceedings, and setting up effective communication channels among interested parties.
- Enhance compliance with terms and deadlines in court and administrative procedures.
- Standardise the public consultation process.
- Continue to publish all judicial decisions to enhance the transparency and predictability of the legal system.

2. Reform the Foreign Investment Legislative and Administrative Regime to Ensure a Level Playing Field for All Companies

- Consider fundamentally changing the existing foreign investment management regime to eliminate differentiation between Chinese and foreign investment and ensure both a level playing field and a non-discriminatory market access regime.
- Announce relevant implementing regulations well in advance of revised laws taking effect.
- Adjust and consolidate all pertinent laws and regulations to maintain alignment of the whole legal framework in the field of foreign investment, including greenfield investment and mergers and acquisitions (M&A) activities.
- Ensure transparency in the rule-making process by publishing a clear enactment and public consultation timeframe—including information on the respective stakeholders in charge of rulemaking—and allow sufficient time throughout the process for public comments to reflect business concerns.

3. Eliminate Restrictions on the Legal Services that Foreign Law Firms Can Provide

- Allow foreign law firms to fully practice Chinese law in non-contentious areas through the employment of individuals who are qualified and licensed to do so.
- Allow lawyers in foreign law firms to fully represent their clients before Chinese government authorities if they have the proper powers of attorney.



- Relax the requirement for foreign law firms in joint operations to have established a representative office in China for at least three years, and allow qualified foreign lawyers to become partners in Chinese law firms at the local level, such as in Shanghai, Hainan and other pilot locations.
- Ensure consistent and transparent implementation and enforcement of laws and regulations pertaining to foreign investment.
- Streamline the registration procedures, timing and requirements for foreign lawyers.

4. Release Implementing Regulations for Article 55 of the Anti-monopoly Law (AML)

- Issue detailed rules for the implementation of Article 55 of the AML.
- Limit the use of the AML's Article 55 to cases when parties under investigation have requested it.

5. Ensure that Shareholders of Limited Liability Companies (LLCs) are not Coerced into Exceeding their Legal Obligations Through Exit Bans on Legal Representatives or Principals

- Ensure that restrictions on personal freedom are never used in civil cases, in order to protect the integrity of the limited liability system.

Recent Developments

Despite hopes that China's reopening following the lifting of COVID-19 restrictions would boost the economy, 2023 failed to deliver an uptick in new foreign investment and cross-border deals. Furthermore, a decrease in court cases made public on the China Judgments Online platform led to significant concern within the legal community.¹ This reduction of transparency has made it more difficult for foreign investors to understand the Chinese legal environment, something essential for complying with complex regulations across multiple jurisdictions.

European investors' need for legal certainty will only increase given that the European Union's (EU's) Corporate Sustainability Due Diligence Directive (CSDDD), which was approved by the European Parliament in April 2024,² is likely to result in far more complex compliance burdens for many EU companies operating in China. Meanwhile, the lack of legal

certainty in China's legal system—as well as the extent to which companies will be able to carry out reasonable due diligence—has left businesses uncertain about how they will be able to remain compliant in both the EU and China.

Reassuring foreign investors

On 13th August 2023, the release of the *Opinions on Further Optimising the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment (Measures)* highlighted 24 broad areas where improvement is needed to attract and maintain foreign investment in China.³ While the *Measures* signified China's willingness to address some of the issues faced by foreign investors, they were also a clear acknowledgment that these issues exist and must be addressed. Then, in early 2024, the State Council General Office released the *Action Plan to Solidly Promote High-level Opening-up and Vigorously Attract and Utilise Foreign Investment*, which highlighted many of the same issues as the *Measures*.⁴ Neither of these

¹ *The person in charge of the relevant departments of the Supreme People's Court answered reporters' questions on issues related to the collection of reference cases for the People's Court's case database*, Supreme People's Court, 22nd December 2023, viewed 19th April 2024, <<http://www.court.gov.cn/zixun/xiangqing/421342.html>>

² *Due diligence: MEPs adopt rules for firms on human rights and environment*, European Parliament, 24th April 2024, viewed 26th April 2024, <<https://www.europarl.europa.eu/news/en/press-room/20240419IPR20585/due-diligence-meeps-adopt-rules-for-firms-on-human-rights-and-environment>>

³ *Opinions on Further Optimising the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment*, State Council, 13th August 2023, viewed 18th April 2024, <https://www.gov.cn/zhengce/content/202308/content_6898048.htm>

⁴ *Action Plan to Solidly Promote High-level Opening-up and Vigorously Attract and Utilise Foreign Investment*, General Office of the State Council, 22nd March 2024, viewed 18th April 2024, <<https://english.shanghai.gov.cn/en-Policies/20240322/544bffc5c7d94643b8c645fb0762ba3c.html>>





documents contain laws or regulations, but rather guidelines for policymakers that must be meaningfully acted upon if they are to have any impact. The Legal and Competition Working Group looks forward to concrete action that can create a more predictable, transparent and fair business environment.

Revised Company Law

The National People's Congress Standing Committee (NPCSC) passed a significantly revised version of the Company Law on 29th December 2023, which entered into force on 1st July 2024.⁵ This coincides with the expiration of a five-year grace period for foreign-invested enterprises (FIEs) to adjust to China's Company Law by the beginning of 2025, a period that began when the Foreign Investment Law (FIL) came into force on 1st January 2020.⁶

The revised Company Law presents several new requirements for businesses, including updates to capital contribution rules for Limited Liability Companies (LLCs); new due diligence requirements; and the requirement to have an employee representative on the board of directors of companies with more than 300 employees, unless the company already has a board of supervisors with an employee representative. It also includes new allowances for certain companies to have no supervisor; the option for an audit committee in lieu of a supervisory board or individual supervisors for LLCs; and greater freedom to choose which personnel can serve as legal representative.

Key Recommendations

1. Continue to Strengthen the Rule of Law to Foster a Predictable Legal System for Foreign Investors

Concern

European companies considering new investments or already operating in China face operational and risk management challenges due to a lack of transparency and predictability in the legal system.

Assessment

China has made significant progress in improving its

legal system since joining the World Trade Organization in December 2001. Efforts have been made to converge with international standards and create a legal framework that promotes a fair and equitable economic environment. However, there are still challenges in relation to the predictability, transparency and impartiality of the system in certain areas of trade and investment. Such features are fundamental for further developing the economy and supporting investor confidence, both domestic and foreign.

1) On fairness, equality and non-discrimination

A level playing field for FIEs

China's ambition to create a fair and united market was outlined in the *Opinions on Accelerating the Establishment of a Unified Domestic Market (Opinions)*, and the various measures to promote the confidence of foreign investors issued in both 2023 and 2024.^{7&8&9} These documents are an acknowledgment that improvements are needed in specific areas and sectors. Fully implementing them would help ensure a level playing field and non-discriminatory market access for FIEs, but would require the elimination of policies hindering fair competition in public procurement, standards formulation and participation in industry dialogues.

Standardise the enforcement of laws and regulations

Despite significant improvements, European companies still encounter inconsistencies in the application and enforcement of laws and regulations. This is often due to discretionary implementation, which can vary depending on the parties involved, the location where enforcement is taking place or the sector involved. The Legal and Competition Working Group expects the government to continue standardising all judicial and administrative proceedings to create a more predictable, transparent and impartial legal system. To achieve this, the authorities will need to reduce the adoption and application of open clauses in legislation, publish details on enforcement and related decision-making processes, and enhance and expand existing

⁵ *Company Law of the People's Republic of China*, Xinhua, 29th December 2023, viewed 19th April 2024, <<http://www.news.cn/politics/20231230/e6964c1620e04f3a94989df81581389f/c.html>>

⁶ *Foreign Investment Law of the People's Republic of China*, State Council, 31st December 2019, viewed 19th April 2024, <https://www.gov.cn/zhengce/zhengceku/2019-12/31/content_5465449.htm>

⁷ *Opinions on Accelerating the Establishment of a Unified Domestic Market*, Communist Party of China Central Committee & State Council, 10th April 2022, viewed 23rd April 2024, <http://www.gov.cn/xinwen/2022-04/10/content_5684388.htm>

⁸ *Opinions of the State Council on Further Optimising the Foreign Investment Environment*, State Council, 13th August 2023, viewed 18th April 2024, <https://www.gov.cn/zhengce/content/202308/content_6898048.htm>

⁹ *Action Plan to Solidly Promote High-level Opening-up and Vigorously Attract and Utilise Foreign Investment*, General Office of the State Council, 19th March 2024, viewed 18th April 2024, <https://www.gov.cn/zhengce/content/202403/content_6940154.htm>



law enforcement monitoring and reporting systems.

Access to court hearings

China's constitution prescribes that all court cases will be heard in public except in special circumstances.¹⁰ To attend trials that are available to the public, foreign nationals must go through a lengthy approval process that often prevents them from attending in practice. The working group suggests that—as is common practice in European jurisdictions—foreign nationals be given full public access to commercial and civil hearings in the People's Courts without the need to pre-register or receive special authorisation.

Implementation of international treaties

International treaties should be implemented by central and local government agencies without delay and with appropriate training for responsible officials. China's implementation of the Apostille Convention of the Hague Conference on Private International Law is a positive development, but officials at the local level still require more guidance from national-level authorities on implementation practices. In some cases, members have found that local officials are reluctant to accept apostilled documents without first attempting verification through unofficial channels.

2) On predictability

Inconsistencies within laws and regulations

Consistency within the legal framework is fundamental for planning business operations and exercising legal rights. However, stipulations in Chinese legislation are often inconsistent with or even contradictory to their upper-level laws or regulations. Stricter and timelier enforcement of the Legislation Law and the associated legislative review would reduce contradictions and inconsistencies within laws and regulations.¹¹ This is essential for creating a stable and coherent legal environment for companies.

Enforcement of judgments and awards

Problems related to the enforcement of judgments and

arbitral awards in China are still quite common, as the People's Courts and the winning parties in proceedings are often not provided with adequate means to follow up on enforcement proceedings. Disclosing the trial process, judgment documents and enforcement proceedings, in addition to setting up effective communication channels among the interested parties, would help to further enhance the depth and level of judicial openness.

Procedural justice

Stipulated terms and deadlines in court and administrative procedures are crucial for companies to know when they can seek legal recourse and damages during complex disputes. The current uncertainty of judicial and administrative proceedings may cause companies to doubt their ability to obtain procedural justice, while seeing their related costs increase. Thus, the working group hopes that measures will be taken by the relevant authorities to strengthen adherence to terms and deadlines and make recourse or appeal mechanisms available to resolve non-compliance issues.

3) Transparency

Public consultation process

Public consultation is a crucial element in the lawmaking process, as it facilitates the resolution of potential problems in the practical implementation of laws before their official promulgation, and therefore ensures better legislation. Efforts have been made to improve transparency through the Ministry of Justice's (MOJ's), and many other ministries' and commissions', work to maintain their public consultation website. However, there have still been many occasions—especially at the municipal level and below—when a period of at least 30 days for public consultation on draft regulations has not been strictly implemented as required by the Legislation Law.¹² Legislators should also improve transparency by publishing major contributions received from stakeholders, together with feedback from regulators on the stakeholders' comments, in a manner similar to that on the European Commission website.¹³

¹⁰ *Constitution of the People's Republic of China*, State Council, 20th November 2019, viewed 18th April 2024, <https://english.www.gov.cn/archive/lawsregulations/201911/20/content_WS5ed8856ec6d0b3f0e9499913.html>

¹¹ The Legislation Law (amended in March 2015) requires amendment or repeal of lower-level laws/regulations that contradict with upper-level ones (Art. 96) and provides a legislative review process for consistency checking (articles 68, 72 and Chapter 5): *The Legislation Law of the People's Republic of China*, *Xinhua*, 14th March 2023, viewed 18th April 2024, <https://www.gov.cn/xinwen/2023-03/14/content_5746569.htm>

¹² *The Legislation Law of the People's Republic of China*, *Xinhua*, 14th March 2023, viewed 18th April 2024, <https://www.gov.cn/xinwen/2023-03/14/content_5746569.htm>

¹³ For example, the Public Consultation Section of the European Commission website, viewed 23rd April 2024, <https://have-your-say.ec.europa.eu/index_en>





Access to judicial decisions

European businesses welcome the publication of court judgments, as well as improvements to the websites of the Supreme People's Court (SPC) and local courts.^{14&15}

However, the working group is not clear about the recent changes to the publication system for court judgements, which seems to limit the publication of judgements to decisions that are 'approved for publication', meaning that not all decisions are available. Judicial decisions and precedents are very important in both common law and civil law systems, for the academic study of the law, and for establishing a reliable and transparent reference, as well as a predictable system, for all investors.

The working group fully supports the SPC's intention to ensure that business secrets and other potentially confidential information are removed before the publication of judgments. However, the removal process should be driven by the requests of the parties involved and should be reasonably quick. The working group recommends that, in principle, all judgments across China be published in a single, publicly accessible database and for this to take place within a short timeframe after judgments have been made. This is key to ensuring legal certainty and, therefore, a safe environment for businesses to invest and operate.

One area where this is evident is in the enforcement of China's Anti-monopoly Law (AML). The enforcement of the AML—as is the case with the enforcement of antitrust laws globally—usually requires a detailed, factual and, sometimes, economic analysis on a case-by-case basis. Since Chinese courts have contributed to the development of the AML's enforcement, and will continue to do so, it is crucial that all judgments related to its application are published on a timely basis. This is needed to enable companies to inform themselves of their rights and obligations.

4) Promote the role of domestic and foreign lawyers, and enhance personnel mobility and exchange

Legal professionals—including private practice lawyers and in-house counsels, domestic and foreign lawyers—play a pivotal role in enhancing and strengthening the rule of law, both domestically and internationally.

¹⁴ For example, the website of the SPC recently launched a new platform for publishing court decisions, viewed 23rd April 2024, <<https://rmfyalk.court.gov.cn/>>

¹⁵ For example, Beijing local court's website, viewed 23rd April 2024, <<https://bjgy.bjcourt.gov.cn/index.shtml>>

Therefore, the working group expects recognition and support for all legal professionals, local and foreign, in view of their importance to business.

Recommendations

- Continue to advance the rule of law and implement a fair competition review system to support investor confidence.
- Continue to standardise the judicial decision-making process to eradicate the application of discretion and ensure equitable, transparent, predictable and impartial implementation and enforcement of laws and regulations nationwide.
- Enhance legislative quality by removing inconsistencies within laws and regulations to provide a stable and predictable legal environment for businesses.
- Ensure prompt, comprehensive and correct enforcement of judicial decisions and arbitral awards by disclosing the trial process, judgment documents and enforcement proceedings, and setting up effective communication channels among interested parties.
- Enhance compliance with terms and deadlines in court and administrative procedures.
- Standardise the public consultation process.
- Continue to publish all judicial decisions to enhance the transparency and predictability of the system.

2. Reform the Foreign Investment Legislative and Administrative Regime to Ensure a Level Playing Field for All Companies

Concern

The continued distinction between foreign and domestic investment is preventing the creation of a level playing field.

Assessment

The FIL addresses many key concerns of foreign investors, such as intellectual property protection, equal support policies, participation in government procurement, pre-establishment national treatment and negative-list management.¹⁶ Although the FIL reiterates the concept of national treatment for foreign companies, it still does not fundamentally abolish the distinction between foreign and domestic investment, which means that a level playing field cannot be achieved in practice. There are no compelling reasons to regulate companies differently due to their ownership structure

¹⁶ *Foreign Investment Law of the People's Republic of China*, National People's Congress, 15th March 2023, viewed 23rd April 2024, <http://www.npc.gov.cn/npc//c2/c30834/201905/t20190521_297827.html>



or the nationality of their investors. In fact, doing so creates unnecessary complexities in practice as there are always cases in which differentiating foreign investment from domestic investment is very difficult (such as ‘variable interest entity structure’ cases). By comparison, the EU and its member states do not have special laws specifically treating foreign capital differently.

Considering that China is the world's second-largest economy and is increasingly sharing responsibilities and leading internationally, real consideration should be given to fundamentally changing the existing foreign investment management regime in favour of a fairer, more reliable and more open business environment. In particular, this should entail ceasing to differentiate between Chinese and foreign investment.

The *Notice on Implementing the Policies on Equal Treatment of Domestic and Foreign-invested Companies in Government Procurement Activities*, announced by the Ministry of Finance (MOF) on 20th October 2021,¹⁷ states that “government procurement shall give equal treatment to products produced in China (including the services provided) by local and foreign enterprises.” This regulation marks the first time that the requirement for equal treatment of domestic and foreign companies’ products in government procurement has been made explicit in writing. In addition, the *Regulations on Optimising the Business Environment* explicitly oblige governmental agencies at all levels to treat all market entities in a non-discriminatory way, regardless of whether they are domestic or foreign.¹⁸ The working group expects further such efforts from relevant stakeholders.

However, restrictions in other foreign investment regulations, rules and policies remain, impeding market access and creating direct and indirect barriers for foreign investors. According to the European Chamber’s *Business Confidence Survey 2024* (BCS), 58 per cent of respondents reported having missed out on business opportunities in 2023 due to market access restrictions

or regulatory barriers.¹⁹ Some of the regulations imposing direct and indirect barriers focus on areas such as re-investment by FIEs based in China; foreign-invested holding and investment companies; the administration of total investment; registered capital and foreign debts of FIEs; and mergers and acquisitions (M&A) by foreign investors of domestic enterprises. Such restrictions should not only be removed to create a level playing field for all market participants, but also to maintain transparency in future legislation impacting business by publishing clear enactment timeframes and by allowing sufficient time for public comments to reflect business concerns.

Regarding implementation of the FIL, clearer rules and further guidance are needed to facilitate the phasing out of joint venture (JV) companies incorporated under the old laws. Since many of these JVs resulted from complex negotiations, statutory deadlines to restructure their corporate governance according to the FIL create unnecessary pressures for the parties to re-open a concluded deal for negotiation. The provision of judicial interpretation or similar guidelines could help to better direct the parties through the process and minimise the impact on the business operations of these JVs.

The national security review (NSR) mechanism within the FIL framework is also a concern, as it could be influenced by global political tensions. According to the law, any investment that has the “possibility to affect national security” is subject to review,²⁰ opening the door to vague interpretations that may change overtime. On 20th December 2020, the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) jointly issued the *Foreign Investment Security Review Measures (Review Measures)*.²¹ Although the *Review Measures* provide more detail on the NSR mechanism, the list of sensitive areas that could potentially trigger an NSR remains vague and general. While the NDRC has made efforts to assist businesses—for example, in April 2019, it published details on a contact point for NSR-related

17 *Notice on Equal Treatment of Domestic and Foreign-invested Companies in Government Procurement Activities*, Ministry of Finance, 13th Oct 2021, viewed 23rd April 2024, <https://www.gov.cn/zhengce/zhengceku/2021-10/26/content_5644953.htm>

18 *Regulations on Optimising the Business Environment*, State Council, 1st October 2020, viewed 23rd April 2024, <http://www.gov.cn/zhengce/content/2019-10/23/content_5443963.htm>

19 *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 16th May 2024, <<https://www.europeanchamber.com.cn/en/publications-business-confidence-survey>>

20 *Foreign Investment Law of the People’s Republic of China*, NDRC, 24th February 2021, viewed 28th April 2024, <https://en.ndrc.gov.cn/policies/202105/t20210527_1281403.html>

21 *Foreign Investment Security Review Measures*, MOFCOM & NDRC, 20th December 2020, viewed 6th April 2023, <<http://www.mofcom.gov.cn/article/ij/yj/lj/202012/20201203024706.shtml>>





consultancy—the uncertainty surrounding the NSR still makes China a less attractive investment destination. Ambiguity in rules and regulations has been cited by European Chamber member companies for eight consecutive years as the most significant regulatory obstacle to doing business in China, according to the BCS 2024,²² highlighting the need for regulatory reform and improved communication between government and industry.

The revised Company Law, which took effect on 1st July 2024,²³ has significant implications for FIEs and domestically invested companies alike. The revision contains several overarching themes, such as the shift to increased creditor protection over entrepreneurial freedom. First, this can be seen in the reintroduced timeline for capital contributions as well as the increased number of disclosure obligations through China's national enterprise credit information publicity system. Second, there is an increase in obligations and responsibilities for directors, supervisors and senior executives, including stricter requirements for due diligence and loyalty to their companies.²⁴ While similar concepts can be found internationally, in the Chinese context, these specified duties, along with the overall increase of responsibilities and obligations, have further contributed to the difficulties of FIEs in finding foreign personnel to fill local management positions. The description of the legal representative in the revised Company Law also creates ambiguity regarding whether legal representatives will be expected to be based in China in the future. Third, the influence of employees in the company's management has increased, for example, by providing that employees shall be represented on the board of directors of large-sized companies (more than 300 employees), or by suggesting that employees shall be consulted before carrying out mergers. This creates an overly complex compliance burden for small and medium-sized enterprises which may not have had the required governance structures in place.

²² *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 16th May 2024, <<https://www.europeanchamber.com.cn/en/publications-business-confidence-survey>>

²³ *Company Law of the People's Republic of China*, *Xinhua Wang*, 29th December 2023, viewed 19th April 2024, <<http://www.news.cn/politics/20231230/e6964c1620e04f3a94989df81581389f/c.html>>

²⁴ Article 180 of the Company Law states that "directors, supervisors, and officers have a duty of loyalty to the company that they shall take measures to avoid conflicts between their own interests and the interests of the company, and shall not use their powers and functions to seek improper interests."

The revised Company Law also contains numerous unclear provisions that fail to prevent inconsistent application of the law by local authorities. Judicial interpretations and implementing regulations are essential in this regard, because they provide a level of specificity not provided by the law itself. However, the lack of advance information regarding the implementation of the revised Company Law has damaged confidence among Chamber members. This could have been avoided by releasing clearer implementation information well in advance of the law coming into effect.

Recommendations

- Consider fundamentally changing the existing foreign investment management regime to eliminate differentiation between Chinese and foreign investment and ensure both a level playing field and a non-discriminatory market access regime.
- Announce relevant implementing regulations well in advance of revised laws taking effect.
- Adjust and consolidate all pertinent laws and regulations to maintain alignment of the whole legal framework in the field of foreign investment, including greenfield investment and M&A activities.
- Ensure transparency in the rule-making process by publishing a clear enactment and public consultation timeframe—including information on the respective stakeholders in charge of rulemaking—and allow sufficient time throughout the process for public comments to reflect business concerns.

3. Eliminate Restrictions on the Legal Services that Foreign Law Firms Can Provide

Concern

Restrictions placed on foreign lawyers and foreign law firms operating in China significantly limit access for both Chinese and foreign companies to the high-level legal advice they need.

Assessment

While the registration and management of foreign law firms and lawyers by the MOJ is a step in the right direction, concerns remain about the restrictions that still exist on the provision of certain legal services. These include the areas of foreign investment, contractual and commercial matters, employment matters, M&A, competition law, banking and finance law, and capital



markets law (i.e., non-contentious areas). The failure to eliminate these restrictions is becoming a significant issue in fostering economic progress and working relationships between the EU, its member states and China. Further opening up the legal services sector, particularly in noncontentious areas, will help to promote cooperation between foreign and Chinese law firms. This would provide Chinese clients and companies with better access to international laws and practices while also supporting global clients in their investments in China through the provision of integrated Chinese and international legal advice.

1) Employment of Chinese-licensed lawyers by European law firms and foreign partners of Chinese firms

When European law firms in the Chinese mainland hire licensed People's Republic of China (PRC) lawyers, those individuals' qualifications and licences to practice PRC law in non-contentious areas are suspended. At the same time, foreign lawyers are not allowed to become partners of Chinese law firms. Removing these restrictions would provide faster, more cost-effective and more efficient access to legal advice for both Chinese and foreign clients, both locally and internationally. It would also broaden the career prospects of both PRC and EU lawyers, allowing them to grow and gain expertise in local and international environments, which will benefit cross-border investors from both China and the EU.

2) Participation of lawyers from foreign law firms in Chinese Government meetings

Lawyers from foreign law firms, including PRC-licensed lawyers, have occasionally been permitted to appear, participate, and represent their clients before Chinese government authorities and other public, non-judicial authorities on a case-by-case basis. However, the lack of transparent and consistently enforced access and representation rights for lawyers working in foreign law firms reduces the quality of information exchanged with Chinese authorities and limits the sharing of experience by foreign law firms with European investors.

This does not promote trust among foreign investors towards Chinese authorities and can result in misunderstandings that lead to European investors having difficulties in finalising, or even postponing, business decisions for the Chinese market.

3) Developing relationships and dialogues with supervising authorities

In almost all jurisdictions, lawyers and firms are registered as 'special professionals', with stricter codes of conduct and special requirements for practice. For registered lawyers and representatives of firms registered in the EU, it is essential to have guidance from and dialogue with EU supervisory authorities at the central level.

In a similar spirit, registered lawyers and representatives of EU firms operating in China would like to have exchanges with the MOJ and other competent departments at the central level in China. They would also benefit from the creation of open channels that enable exchanges among professionals that are practising law in different areas, including private practitioners, in-house counsels, and public administration and legislative bodies, either foreign or Chinese.

4) Access to JV firms

China's accession to the World Trade Organization has further opened up its legal services industry, including lifting restrictions on the number of foreign law firms that can be established in China, removing the restrictions on the geographical location of foreign law firms, and lifting the restriction that a foreign law firm can only establish one office in China. However, foreign law firms still face many obstacles operating in China. While a few pilot joint operations have been established since 2015, rules have not yet been rolled out nationally. Furthermore, the pilot regulations only allow for a 'one office, two teams' model, and not a 'fully integrated JV model' that would combine the strengths of the Chinese and foreign firms' partners. Under Shanghai's implementation of the pilot regulations, the thresholds for forming a joint operation are much higher than for domestic law firms, which prevents small and medium-sized China operations of foreign law firms from benefitting from this scheme. Regulations relating to joint operations, such as the requirement for foreign law firms to have established a representative office in China for at least three years before they can be eligible, should be further relaxed. In addition, according to the provisions of the Lawyers Law, foreign lawyers are still unable to officially register as partners in Chinese law firms as they cannot sit China's legal





professionals exam.^{25&26} Consideration should be given to allowing qualified foreign lawyers to become partners in Chinese law firms at the local level, such as in Shanghai, Hainan and other pilot locations.

5) Registration procedures and requirements

The registration process for a new foreign lawyer in China can take several months, as it involves local and central registration. In addition, the requirements for a chief representative to have at least three years of foreign bar registration and six months of domicile in the PRC, as well as the requirement of at least two foreign representatives for each foreign-owned law firm, are more stringent than the immigration requirements for foreign representatives working in other sectors.

Recommendations

- Allow foreign law firms to fully practise Chinese law in non-contentious areas through the employment of individuals who are qualified and licensed to do so.
- Allow lawyers in foreign law firms to fully represent their clients before Chinese government authorities if they have the proper powers of attorney.
- Relax the requirement for foreign law firms in joint operations to have established a representative office in China for at least three years, and allow qualified foreign lawyers to become partners in Chinese law firms at the local level, such as in Shanghai, Hainan and other pilot locations.
- Ensure consistent and transparent implementation and enforcement of laws and regulations pertaining to foreign investment.
- Streamline the registration procedures, timing and requirements for foreign lawyers.

4. Release Implementing Regulations for Article 55 of the AML

Concern

Article 55 of the AML allows the State Administration for Market Regulation (SAMR) to invite a party suspected of breaching the law to discuss rectification measures, however the absence of specific guidelines for the use of this mechanism leads to its overuse in practice.

²⁵ *Lawyers Law of the People's Republic of China*, National People's Congress Standing Committee, 1st September 2017, viewed 13th May 2024, <<https://flk.npc.gov.cn/detail2.html?MmM5MDImZGQ2NzhzJzE3OTAxNjc4YmY4NjdlODBhNTU%3D>>

²⁶ *Implementing Measures for the National Unified Legal Profession Qualification Examination*, Ministry of Justice, 29th April 2018, viewed 13th May 2024, <https://www.moj.gov.cn/jgsz/jgszsdw/zsdwgfjskszx/gjsfkszcfcg/202106/t20210622_428245.html>

Assessment

According to Article 55 of the AML, when it suspects a breach of the AML has been committed, the SAMR can invite the legal representative or responsible person (such as a manager) to have a discussion with the SAMR about rectification measures.²⁷ In certain circumstances, this provision may be a quick way for the SAMR to address a competition concern and may allow the company in question to avoid a lengthy investigation procedure and possible sanctions or remedies at the end of the procedure.

However, there are risks that this provision could lead to a lower threshold for the SAMR's intervention in general, as the SAMR does not need to prove an actual breach of law, but only a suspicion of breach. In addition, the format of the discussion with one or a limited number of persons representing the company on one hand, and the SAMR as an authority on the other, can give an unbalanced impression. The working group recommends that efficiency in government enforcement should not come at the expense of restricting legitimate procedural rights conferred to parties being investigated under Chinese laws, including other provisions of the AML, the Administrative Penalties Law, and other relevant laws and regulations.

Therefore, the Legal and Competition Working Group recommends that the SAMR rely on Article 55 only in specific, exceptional circumstances. The working group further recommends that the SAMR issue detailed implementing rules for Article 55 of the AML before using the provision in actual enforcement cases. One possibility would be that the procedure under Article 55 only be initiated upon written request by the party under investigation, not upon the SAMR's own initiative. This would ensure that only parties who find the provision beneficial are subject to it and that it would not be overused.

Recommendations

- Issue detailed rules for the implementation of Article 55 of the AML.
- Limit the use of the AML's Article 55 to cases when parties under investigation have requested it.

²⁷ *The Anti-monopoly Law of the People's Republic of China*, State Administration for Market Regulation, 24th June 2022, viewed 19th April 2024, <https://www.samr.gov.cn/zw/zfxxgk/fdzdggknr/fgs/art/2023/art_f0fae9eb3a684fc39e84d89eabfc2caa.html>



5. Ensure that Shareholders of LLCs are not Coerced into Exceeding their Legal Obligations Through Exit Bans on Legal Representatives or Principals

Concern

Legal representatives and principals can be prevented from leaving China due to unpaid company debts, which can coerce shareholders into making payments in excess of their registered capital obligations under the Company Law to have the exit ban lifted.

Assessment

Several provisions of Chinese regulations regarding the entry and exit of Chinese and foreign nationals allow courts to restrict individuals with unsettled civil cases from leaving China; this power was further confirmed by the Supreme People's Court in 2020.^{28&29&30} While exit bans are a serious consequence for both Chinese and foreign nationals, they tend to impact foreign nationals disproportionately. Under an exit ban, foreign nationals are more likely to be deprived of seeing family or be otherwise negatively impacted by being unable to return to the country of their nationality. Exit bans are even used on individuals who are not directly involved in a civil case, but rather are just the legal representative of a company involved in a civil case. When the personal freedom of one of their employees is restricted due to an unresolved case, investors are rushed to settle the case and coerced into assuming payment or other obligations that might exceed their liability under the limited liability system. Such action degrades the limited liability system, which is the basis for all economic activity.

Recommendation

- Ensure that restrictions on personal freedom are never used in civil cases in order to protect the integrity of the limited liability system.

Abbreviations

AML	Anti-monopoly Law
BCS	Business Confidence Survey
CSDDD	Corporate Sustainability Due Diligence Directive
EU	European Union
FIE	Foreign-invested Enterprise
FIL	Foreign Investment Law
JV	Joint Venture
LLC	Limited Liability Company
M&A	Mergers and Acquisitions
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
MOJ	Ministry of Justice
NDRC	National Development and Reform Commission
NPCSC	National People's Congress Standing Committee
NSR	National Security Review
PRC	People's Republic of China
SAMR	State Administration of Market Regulation
SPC	Supreme People's Court

28 *Law of the People's Republic of China on the Control of the Entry and Exit of Aliens*, National People's Congress, 23rd December 2011 (entered into force 1st February 1986), viewed 19th April 2024, <http://www.npc.gov.cn/zgrdw/huiyi/fzt/crjglfzt/2011-12/23/content_1682686.htm>

29 *Several Provisions on Lawfully Restricting the Entry and Exit of Aliens and Chinese Citizens*, The Supreme People's Court, 10th March 1987, viewed 19th April 2024, <<https://www.pkulaw.com/chl/ade2bf2e1b59757bbdfb.html>>

30 *Interpretation of Supreme People's Court on certain issues concerning the application of enforcement procedures under the Civil Procedure Law of the People's Republic of China*, Supreme People's Court, 29th December 2020, viewed 19th April 2024, <<https://flk.npc.gov.cn/detail2.html?ZmY4MDgxODE3OWY1ZDI0ODAxNzlmYTRjMGNjYjA0OTI%3D>>





Research and Development Working Group

Key Recommendations

1. Support Green and Sustainable Technology Research and Development (R&D) to Accelerate Progress Towards Realising Carbon Neutrality and China's other Environmental Goals

- Increase dialogues and strategic partnerships between government, academia and business, and promote social and technological innovation on low-carbon and circular technologies, especially at universities in collaboration with industry, start-ups, and social and public organisations.
- Create a supportive regulatory environment for new technologies and overall technology openness.
- Guarantee freedom of research by facilitating the creation of regulatory sandboxes for pilots in low-carbon, circular and sustainable technologies and their scale-up and commercialisation.
- Provide an attractive catalogue of measures to support the long-term development of green, low-carbon and circular technologies.
- Provide more transparency for China's carbon technology roadmap and R&D programmes.

2. Create an Ecosystem that Supports Multinational Corporations' (MNCs') Digital Innovation in China

- Simplify data transfer regulations and increase access to open data resources.
- Publish a list of open databases that foreign enterprises can access, and clarify whether foreign-invested enterprises (FIEs) can establish and manage their public databases independently.

3. Strengthen the Protection of R&D—including Intellectual Property (IP)-related Aspects—to Develop a World-class Innovation Environment

- Consult with universities, foreign and national research institutions, and Chinese and international companies' R&D departments, when drafting innovation and IPR protection policies.
- Increase technical expertise and standardise judgements in IP cases related to innovation and R&D by centralising jurisdiction in top-tier locations with access to highly competent relevant legal and scientific authorities.
- Enhance the enforcement of IPR legislation to prevent compelled technology transfers or technology transfer difficulties.
- Allow the existence of co-ownership of IP between the parent company and local affiliates (or ownership of the parent company) in R&D projects funded by the Chinese Government.

4. Create an Ecosystem that Supports the Mobility of International Talent to and from China

- Increase foreign enterprises' autonomy in issuing invitations to international professionals and



establish a preferential visa policy targeting R&D personnel for important projects.

- Clarify existing policy requirements for recruiting foreign nationals as interns.
- Encourage special visa facilitation for young researchers.

5. Encourage FIEs to Contribute to R&D in China by Optimising the Financial Incentives Framework and Improving International R&D Cooperation 6

- Establish a common, reciprocal, transparent and efficient mechanism to facilitate EU-China R&D cooperation with the participation of European companies based in China.
- Give fair notice about R&D funds and grant applications, allowing an appropriate response period for all stakeholders.
- Remove restrictions that hinder FIEs from applying for High and New Technology Enterprise (HNTE) status.
- Develop comprehensive regulations based on local governments' best practices that encourage the development of foreign-funded R&D centres.
- Explore further the role of FIEs in maintaining economic stability, enhancing global competitiveness and contributing to low-carbon sustainable development in China.

Recent Developments

The Chinese Government introduced a series of policies and guidelines over the past year, aimed at boosting investment in research and development (R&D) and attracting R&D activities to China. These include tax reductions, incentives for researchers, and subsidies from both central and local governments.

On 7th July 2023, the State Taxation Administration (STA) and the Ministry of Science and Technology (MOST) launched the *Implementation Guidance on Additional Deduction of R&D Expense Policy (Ver. 2.0)*. Through this implementation guideline, STA and MOST are aiming to streamline, refine and consolidate current policies related to the super deduction of R&D expenses.^{1&2}

On 13th August 2023, the State Council released the *Opinions on Further Optimising the Foreign Investment Environment and Increasing the Attractiveness of Foreign Investment (Opinions)*, also referred to as the 24 Measures. The *Opinions* promote support for foreign-

invested R&D activities in terms of intellectual property (IP) protection, benefits for foreign researchers and tax incentives for imports of technological innovations.³ The working group welcomes this support for foreign-funded R&D activities and looks forward to detailed implementing guidelines.

On 17th October 2023, the State Council released the *Special Action Plan for Patent Conversion and Utilisation (2023–2025)*.⁴ It is aimed at promoting the industrialisation of patents, boosting the real economy and optimising the domestic innovation ecosystem by taking advantage of the new National Patent-intensive Product Registration and Recognition Platform and tapping into the advantages of China's market size.

On 7th December 2023, the State Council released the *Notice of the State Council on the Issuance of the Overall Plan for Advancing China (Shanghai) Pilot Free Trade Zone's High-level Systematic Opening, Fully Aligning with International High-standard Economic and*

1 Super deduction is a tax scheme that permits businesses to deduct more than 100 per cent of their eligible expenses from their taxable income. As such, the super-deduction is effectively a subsidy for certain costs.

2 *Execution Guidance on Additional Deduction of R&D Expense Policy (Ver. 2.0)*, MOST, 7th July 2023, viewed 25th April 2024, <https://www.most.gov.cn/xxgk/xinxifenlei/fdzdgnr/fgzczcjd/202307/20230707_186911.html>

3 *Opinions on Further Optimising the Foreign Investment Environment and Increasing the Attractiveness of Foreign Investment*, State Council, 13th August 2023, viewed 25th April 2024, <https://www.gov.cn/zhengce/content/202308/content_6898048.htm>

4 *Special Action Plan for Patent Conversion and Utilisation (2023–2025)*, State Council, 19th October 2023, viewed 25th April 2024, <https://www.gov.cn/zhengce/content/202310/content_6910281.html>





*Trade Rules.*⁵ It is aimed at increasing foreign-funded enterprises participation in (artificial intelligence) AI innovation cooperation in areas such as innovative drug R&D.

On 21st December 2023, the National People's Congress revised the *Implementing Rules for the Patent Law of the People's Republic of China*. This revision adds a patent term compensation system to the fourth amendment of the Patent Law; a special chapter has also been included on specific provisions. The revised law is aimed at providing the legal framework to address the needs of innovative entities and solve practical problems.⁶

On 5th January 2024, the State Data Bureau and 16 other departments released the *Three Year Action Plan on 'Data X' (2024–2026)* with the aim of accelerating the utilisation of data resources in 12 key areas. The plan contains details on supporting technological innovation with scientific data, focussing on biological breeding, new material creation, drug R&D and other fields, and accelerating technological innovation and industrial upgrading through the integration of digital intelligence.⁷

Key Recommendations

1. Support Green and Sustainable Technology R&D to Accelerate Progress Towards Realising Carbon Neutrality and China's other Environmental Goals

Concern

The Chinese Government does not provide sufficient support for R&D in green and sustainable technologies and their commercial application, hindering China's overall green development and slowing its progress towards carbon neutrality.

Assessment

China is committed to carbon peaking before 2030

and achieving carbon neutrality by 2060,⁸ which will require increased investments in R&D. In 2021, the State Council released the *Action Plan for Carbon Dioxide Peaking Before 2030*, which lists technology innovation as one of the 10 key actions.⁹ In 2022, the MOST released the *Action Plan (2022–2030) to Support Carbon Peaking and Neutrality with Science and Technology*.¹⁰ Since then, many provinces have released their own action plans.¹¹

The working group looks forward to further implementation guidelines, and is seeking to strengthen communication with relevant government departments to enable foreign-invested enterprises (FIEs) to play a more active role in science and technology (S&T) innovation for decarbonisation in China, and contribute fully towards the country's 30/60 Goals.

The working group welcomes the establishment of various national and local incentives and funding programmes for the R&D of low-carbon technologies. Given that significant investment is required in these areas, additional public funding and tax incentives can encourage companies to increase R&D and accelerate the application of breakthrough low-carbon, circular and clean technologies. It is recommended that China provide more transparency and open access for EU companies to such R&D funding programmes.

The ongoing EU-China cooperation on climate change, the EU-China flagship initiative on climate change and biodiversity, and various bilateral cooperation mechanisms between EU countries and China on the R&D of decarbonisation technology are also welcomed. The working group recommends that the EU and China further enhance intergovernmental collaboration and establish a better platform for commercial cooperation in these areas.

Recommendations

- Increase dialogues and strategic partnerships between government, academia and business, and

⁵ *Notice of the State Council on the Issuance of the Overall Plan for Overall Plan for Advancing China (Shanghai) Pilot Free Trade Zone's High-Level Systematic Opening, Fully Aligning with International High-Standard Economic and Trade Rules*, State Council, 7th December 2023, viewed 25th April 2024, <https://www.gov.cn/zhengce/content/202312/content_6918913.htm>

⁶ *Implementing Rules for the Patent Law of the People's Republic of China (Revised 2023)*, China National Intellectual Property Administration, 21st December 2023, viewed 25th April 2024, <https://www.cnipa.gov.cn/art/2023/12/21/art_98_189197.html>

⁷ *Three Year Action Plan on "Data x" (2024-2026)*, Cyberspace Administration of China, 5th January 2024, viewed 24th April 2024, <https://www.cac.gov.cn/2024-01/05/c_1706119078060945.htm>

⁸ China's '30/60 Goals'.

⁹ *The Action Plan for Carbon Dioxide Peaking Before 2030*, State Council, 24th October 2021, viewed 24th April 2024, <https://www.gov.cn/gongbao/content/2021/content_5649731.htm>

¹⁰ *The Action Plan (2022–2030) to Support Carbon Peaking and Neutrality with Science and Technology*, 18th August 2022, viewed 24th April 2024, <https://www.most.gov.cn/xxgk/xinxifenlei/fdzdtknr/qtwtj/qtwtj2022/202208/t20220817_181986.html>

¹¹ *Beijing Carbon Peak Carbon Neutral Science and Technology Innovation Action Plan*, 3rd November 2023, viewed 24th April 2024, <https://www.most.gov.cn/dfkj/bjzxd/202311/t20231103_188699.html>





promote social and technological innovation on low-carbon and circular technologies, especially at universities in collaboration with industry, start-ups, and social and public organisations.

- Create a supportive regulatory environment for new technologies and overall technology openness.
- Guarantee freedom of research by facilitating the creation of regulatory sandboxes for pilots in low-carbon, circular and sustainable technologies and their scale-up and commercialisation.
- Provide an attractive catalogue of measures to support the long-term development of green, low-carbon and circular technologies.
- Provide more transparency for China's carbon technology roadmap and R&D programmes.

2. Create an Ecosystem that Supports MNCs' Digital Innovation in China

Concern

The lack of access to open data sources, the requirements for international companies to establish databases in China, and the lack of harmonisation between Chinese and international information technology standards discourage international companies from both carrying out information technology (IT) R&D locally and transferring technologies to China.

Assessment

Over the past decade, China has promoted several notable policies to encourage domestic innovation.¹² While these policies have accelerated the development of AI and digitalisation in China, foreign companies' participation in these kinds of projects is limited. This is detrimental to the market, as increased participation of FIEs can boost competition and result in better products and services.

Creating an ecosystem that fosters FIEs' digital innovation requires access to open data sources and the freedom to create and manage databases. However, FIEs face many hurdles in accessing such resources in China.

In January 2024, the State Data Bureau and 16 other departments released the *Three Year Action Plan on 'Data X' (2024–2026)* with the aim of accelerating the

utilisation of data resources in 12 key areas. The plan includes measures to promote the “sharing of science data” and “provide high-quality data resources” for R&D to companies in a number of industries including pharmaceuticals and advanced materials.¹³ However, no clear guidelines exist on how FIEs can access and use such data resources.

It is positive that the newly released *Rules to Facilitate and Regulate Cross-border Data Transfer* have relaxed regulatory restrictions on non-sensitive data by non-sensitive data processors with scenario-based and volume-based exemptions.¹⁴ However, the remaining measures still require enterprises in the medical, information and communications technology, and other key industries to conduct regular security audits and backups. While the Chinese Government's purpose of maintaining national data security is understandable, companies still have legitimate concerns that the implementation of these measures will both negatively impact cross-border R&D-related data flows and increase compliance costs.¹⁵

According to the European Chamber's report on R&D, *China's Innovation Ecosystem: The Localisation Dilemma*, China's cyber and data security legislation, its supporting regulations and broader self-reliance trends (for example, the push for the adoption of 'autonomous and controllable' technology) have created a complex ecosystem that places varying degrees of pressure on a number of European companies to localise their cyber and data systems, either due to explicit sectoral localisation requirements or due to the increased operational burdens and uncertainties created by existing compliance obligations. A minority of firms most affected by these often overlapping rules have

¹³ *The Three Year Action Plan on 'Data X' (2024–2026)*, Cyberspace Administration of China, 5th January 2024, viewed 24th April 2024, <https://www.cac.gov.cn/2024-01/05/c_1706119078060945.htm>

¹⁴ These scenarios include: 1) for the purposes of concluding and fulfilling contracts when an individual is a party to transactions such as cross-border shopping, cross-border delivery, cross-border remittance, cross-border payment, cross-border account opening, flight and hotel bookings, visa processing, and examination services, when it is necessary to provide personal information abroad; 2) for the purpose of implementing cross-border human resource management in accordance with legally established labour regulations and legally signed collective agreements, when it is necessary to provide employees' personal information abroad; 3) in emergency situations, to protect the life, health and property safety of natural persons, when it is necessary to provide personal information abroad; and 4) for data processors other than operators of critical information infrastructure, that cumulatively provide the personal information of less than 100,000 individuals (excluding sensitive personal information) abroad from 1st January of the current year.

¹⁵ For more information, please see the *Cybersecurity Sub-working Group Position Paper 2024/2025*.

¹² *Platform for Action to Promote Big Data Development*, People.cn, 5th September 2015, viewed 23rd April 2024, <<http://politics.people.com.cn/n1/2015/0905/c1001-27545655.html>>





experienced knock-on effects on their R&D operations.¹⁶

Therefore, the Research and Development Working Group recommends that China publish a list of open databases that foreign enterprises can access, clarify whether FIEs can establish and manage their public databases independently, and introduce a more holistic exemption of cross-border data transfer requirements to facilitate cross-border R&D-related data flows. Simplifying these regulations and increasing access to open data resources can help foster a better ecosystem for MNCs' digital innovation in China.

Recommendations

- Simplify data transfer regulations and increase access to open data resources.
- Publish a list of open databases that foreign enterprises can access, and clarify whether FIEs can establish and manage their public databases independently.

3. Strengthen the Protection of R&D—Including IP-related Aspects—to Develop a World-class Innovation Environment



Concern

European companies are still struggling to protect their intellectual property rights (IPR) related to R&D in China, which discourages them from investing in cutting-edge technological innovation.

Assessment

To further encourage European companies to invest in cutting-edge technology in China, it is important to understand the differences between IPR strategies in European countries and China. The core question is how to protect IPR related to R&D while maintaining a positive environment for innovation without overregulation.

To address this issue, China introduced a new Patent Law, which went into force on 1st June 2021,¹⁷ and a revised Science and Technology Progress Law,

officially promulgated on 24th December 2021.¹⁸ This was followed by the revised *Implementing Rules for the Patent Law* on 21st December 2023.¹⁹ This legislation is aimed at establishing and improving China's IP system, boosting social awareness of and protecting IPR, and encouraging independent innovation. Tasked with optimising their respective business environments, many local governments are carrying out their own actions to strengthen IP enforcement.

To further China's goal of creating a better innovation environment, the function, value and impact of the patent system needs to be adjusted to balance the needs of existing IP holders with those of new market entrants. Fostering R&D in new technologies, such as biotechnology and AI, requires that the related IP legal framework and patent system can swiftly and strategically respond to the challenges that arise. Consulting with experts from the private sector, academics and scientific communities can help realise these changes effectively. For instance, the interpretation of the revised Patent Law should be strengthened before being actively communicated to local governments and enforcement authorities, with widely accepted practical case studies and rulings supporting the revisions. This will help ensure the quality of judgements in IPR-related cases across jurisdictions.

More complex cases require a higher level of judicial and technical competence to provide the best outcome. Although China has established several specialised IP courts, courts outside Tier 1 cities without this high degree of expertise may require a different approach, like holding court cases or hearings remotely via video link. A more centralised system for adjudication could expand the range of IPR cases that can be heard, alleviate pressure in technologically complex cases and standardise IPR rulings at the national level. In addition, establishing a complete expert hearing system would also improve the court system's ability to hear IP-related cases, while promoting the progress of IP-related cases nationwide.

16 *China's Innovation Ecosystem: The Localisation Dilemma*, European Union Chamber of Commerce in China, 21st April 2023, viewed 21st April 2024, <https://www.europeanchamber.com.cn/en/publications-archive/1077/China_s_Innovation_Ecosystem_the_localisation_dilemma>

17 *Patent Law of the People's Republic of China (2021 Revision)*, National People's Congress, 19th November 2020, viewed 16th April 2024, <http://www.npc.gov.cn/npc/c2/c30834/202011/t20201119_308800.html>

18 *Science and Technology Progress Law of the People's Republic of China*, MOST, 24th December 2021, viewed 16th April 2024, <http://www.most.gov.cn/xxgk/xinxifenlei/fdzdgnr/fgzcfifg/202201/t20220118_179043.html>

19 *Implementing Rules for the Patent Law of the People's Republic of China (Revised in 2023)*, China National Intellectual Property Administration, 21st December 2023, viewed 25th April 2024, <https://www.cnipa.gov.cn/art/2023/12/21/art_98_189197.html>





For FIEs, IPR protection is expensive, time-consuming and offers only low compensation to victims. Due to courts excessively applying the ‘statutory compensation’ standard to determine the amount of compensation, rights holders often lose more than they gain both because of the cost of providing proof and the length of the trial period. At the same time, the concept of punitive damages is still unclear.²⁰ Another issue is a defendant’s ability to suspend litigation by initiating the invalidity confirmation procedure.

Technology transfers from FIEs to ‘indigenous’ Chinese companies and vice versa also continue to be an issue. On 2nd March 2019, the State Council repealed three controversial articles within the Technology Import and Export Administrative Regulation,²¹ a positive development in controlling compelled technology transfer from a legal perspective. However, repealing these articles does not automatically mean that compelled technology transfers are not still taking place. It remains of significant concern to the working group that European companies are still being compelled to transfer technology to maintain market access — as reported by 17 per cent of respondents to the European Chamber’s *Business Confidence Survey 2024*. Additional measures may be deemed necessary to address the core problem, as modern transfers are compelled by means of market access rather than unnecessary administrative requirements.²² There is therefore still a clear need to further optimise IPR-related legislation. Integrating international companies’ feedback can help in this respect,²³ while also encouraging investment in R&D, which will boost China’s innovation capacity.

The process for transferring IP from Chinese firms to foreign parties has become progressively tighter, with transfers being strictly reviewed if they are deemed to affect national security or core technology in strategic fields.²⁴ New IP produced by projects that receive Chinese state funding requires: 1) approval from the

relevant government authorities if IP is to be transferred or exclusively licensed to non-Chinese entities, including international project partners that contribute background IP; and 2) that the first licence of the newly produced IP is in China. A certain degree of relaxation of such restrictions can incentivise FIEs to participate in China’s innovation projects, as IP owned by FIEs could prove essential background IP in some projects. For example, enterprises are not eligible for China’s high and new technology enterprise (HNTE) benefits without self-owned IP rights, due to the patent requirement.²⁵

Recommendations

- Consult with universities, foreign and national research institutions, and Chinese and international companies’ R&D departments, when drafting innovation and IPR protection policies.
- Increase technical expertise and standardise judgements in IP cases related to innovation and R&D by centralising jurisdiction in top-tier locations with access to highly competent relevant legal and scientific authorities.
- Enhance the enforcement of IPR legislation to prevent compelled technology transfers or technology transfer difficulties.
- Allow the existence of co-ownership of IP between the parent company and local affiliates (or ownership of the parent company) in R&D projects funded by the Chinese Government.

4. Create an Ecosystem that Supports the Mobility of International Talent to and from China

Concern

International enterprises engaged in R&D are struggling to recruit and retain international talent, especially young researchers.

Assessment

The Chinese Government has made efforts to facilitate the development of R&D through measures related to hiring foreign nationals. However, the complexity of the policies that have been released, coupled with the fact that multiple government agencies—including the Human Resources and Social Security Bureau, the local S&T Commission Talent Service Office and the

²⁰ For more information, please see the *Intellectual Property Rights Working Group Position Paper 2024/2025*.

²¹ *Administrative Decree No. 709*, State Council, 18th March 2019, viewed 23rd April 2024, <http://www.gov.cn/zhengce/content/2019-03/18/content_5374723.htm>

²² *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 21st May 2024, <<https://www.eurochamber.com.cn/en/publications-business-confidence-survey>>

²³ For more information, please see the *Intellectual Property Rights Working Group Paper 2024/2025*.

²⁴ *External Transfer of Intellectual Property Rights Measures (Trial Implementation)*, State Council, 29th March 2018, viewed 23rd April 2024, <https://www.gov.cn/zhengce/content/2018-03/29/content_5278276.htm>

²⁵ *Measures for the Administration of Recognition of High-tech Enterprises*, MOST, 28th April 2008, viewed 6th July 2024, <http://www.most.gov.cn/xxgk/xinxifenlei/fdzdkgnr/fgzcf/gfxwj/gfxwj2010before/200811/20081129_65744.html>





Foreign Expert Office—release information through their channels, makes it challenging for FIEs to follow and clearly understand them.

Existing policies also need to be clarified. For example, currently, only “well-known domestic enterprises” are allowed to hire foreign interns, but the definition of a “well-known domestic enterprise” is unclear.²⁶ Furthermore, rules such as “only Fortune 500 companies can hire qualified foreign interns”²⁷ should be rescinded. All companies should be at liberty to hire whichever interns they identify as potential future talent, to create a more favourable and stimulating R&D and innovation environment in China. Chinese visa policies are currently strongly biased in favour of fresh graduates, interns from top global universities and senior foreign talent who have achieved specific accolades during their careers. However, the number of people to whom this applies is limited. Many talented young professionals have adequate education and are capable, qualified and, importantly, willing to come to China to contribute and gain experience. According to a 2019 EURAXESS survey, over 95 per cent of European researchers working in China at that point (some currently in senior positions) moved to China early in their careers and stayed for approximately seven to 10 years.²⁸ This suggests that early exposure to the Chinese market and the innovation ecosystem encourages long-term commitment. Therefore, the working group encourages adopting a more friendly visa policy to welcome all young talent.

Recommendations

- Increase foreign enterprises’ autonomy in issuing invitations to international professionals and establish a preferential visa policy targeting R&D personnel for important projects.
- Clarify existing policy requirements for recruiting foreign nationals as interns.
- Encourage special visa facilitation for young researchers.

²⁶ *The National Immigration Administration Promotes the Replication of 12 Policies on Immigration and Immigration Facilitation in the FTZs Nationwide*, Ministry of Public Security, 17th July 2019, viewed 23rd April 2024, <<https://www.mps.gov.cn/n6557558/c6613913/content.html>>

²⁷ *Ibid.*

²⁸ *Results of a survey on the internationalisation of Chinese universities*, EURAXESS, 16th April 2021, viewed 23rd April 2024, <<https://euraxess.ec.europa.eu/worldwide/china/results-survey-internationalisation-chinese-universities>>

5. Encourage FIEs to Contribute to R&D in China by Optimising the Financial Incentives Framework and Improving International R&D Cooperation

Concern

FIEs face significant challenges in acquiring HNTE status and accessing public funding and grants for R&D.

Assessment

China has well-developed incentives to stimulate innovation, including ‘strategic support’ (long-term structural incentives like HNTE status and a super deduction scheme for reducing costs) and ‘tactical support’ (focussed grants for projects with a definite scope and target). HNTE status—one of the most important criteria—was revised in 2016 by the MOST, the Ministry of Finance and the STA.²⁹ Although specific requirements were relaxed, such as the minimum R&D expense ratio and the level of academic qualifications of technical personnel, those relating to IP ownership were tightened, with the applicant needing to own the core IP of their product or service within China. Although FIEs run some of China’s largest R&D operations, in many cases, their core technologies were initially developed outside of China thus they lack IP ownership within China. This situation leads to significant difficulties for FIEs in meeting the requirements to acquire and maintain HNTE status. Moreover, even if FIEs are willing to reregister patents in China, patent priority will only be granted if applicants submit the relevant applications within 12 months of the date when the patent was first filed, and only if the country in which it was first filed has an agreement signed or an international treaty with China. Applicants must also submit examination information from the country of origin within a prescribed time limit, or the application will be deemed withdrawn. This results in increased operating costs for FIEs and raises the risk of infringement. Given these challenges, the working group recommends that the authorities agree to accept globally registered patents as part of the HNTE application process.

Frameworks allowing international R&D cooperation between China and other countries exist in abundance, for example, the EU-China Research and Innovation

²⁹ *Criteria for High and New Technology Enterprises*, MOST, 8th June 2020, viewed 21st April 2024, <https://www.gov.cn/fuwu/2020-06/08/content_5518015.htm>





Co-Funding Mechanism,³⁰ through which academic and industry members from Europe and China have jointly developed innovative technologies of common interest. However, there has been a lack of coordination between the Chinese Government and the EU regarding funding, project timelines and approval processes. FIEs often face opaque or unclear application information and procedures for relevant programmes. R&D cooperation between the EU and China has great potential; for example, in the fields of agriculture, food and biotechnology, climate change, circular economy and biodiversity, the two sides share the same goals. Strengthening scientific research cooperation between the EU and China would help to integrate existing resources and encourage researchers on both sides. China and the EU are also important trading partners. Strengthening relevant scientific research cooperation would facilitate quicker commercialisation of research results. To further promote international R&D cooperation, China and the EU should also hold open discussions on establishing a common, reciprocal, transparent and efficient mechanism.

The State Council's *Several Measures on Further Encouraging Foreign Investment to Establish R&D Centres (Measures)*,³¹ released on 11th January 2023, and the *Opinions on Further Optimising the Foreign Investment Environment and Increasing the Attractiveness of Foreign Investment (Opinions)*, released on 13th August 2023, are positive developments for R&D centres in China.³² The measures directly address some of the concerns the working group has had for many years, and, since their release, member companies have already reported some improvements when applying for related projects. Local R&D support mechanisms have also been greatly simplified, such as the *Programme of Collaborative Innovation with Foreign-funded R&D Institutions* under the *2023 Shanghai Action Plan for*

Science, Technology and Innovation.³³ While there is still room for improvement compared to the treatment given to 'domestic champions', it is encouraging to see such support mechanisms for FIEs. The working group hopes to see similar initiatives expanded throughout China in the long-term.

Recommendations

- Establish a common, reciprocal, transparent and efficient mechanism to facilitate EU-China R&D cooperation with the participation of European companies based in China.
- Give fair notice about R&D funds and grant applications, allowing an appropriate response period for all stakeholders.
- Remove restrictions that hinder FIEs from applying for HNTTE status.
- Develop comprehensive regulations based on local governments' best practices that encourage the development of foreign-funded R&D centres.
- Explore further the role of FIEs in maintaining economic stability, enhancing global competitiveness and contributing to low-carbon sustainable development in China.

Abbreviations

AI	Artificial Intelligence
EU	European Union
FIE	Foreign-invested Enterprise
FTZ	Free Trade Zone
HNTTE	High and New Technology Enterprise
IP	Intellectual Property
IPR	Intellectual Property Rights
IT	Information Technology
MNC	Multinational Corporation
MOST	Ministry of Science and Technology
R&D	Research and Development
S&T	Science and Technology
STA	Standardisation Taxation Administration

30 *China and EU Sign New Round of Joint Research Funding Agreement*, MOST, 26th April 2022, viewed 28th April 2024, <http://www.most.gov.cn/kjbgz/202204/t20220426_180342.html>

31 *Several Measures on Further Encouraging Foreign Investment to Establish R&D Centres*, MOFCOM & MOST, 19th January 2023, viewed 17th April 2024, <https://www.most.gov.cn/xxgk/xinxifenlei/fdzdgknr/fgzcz/zcjd/202301/t20230119_184334.html>

32 *Opinions on Further Optimising the Foreign Investment Environment and Increasing the Attractiveness of Foreign Investment*, State Council, 13th August 2023, viewed 25th April 2024, <https://www.gov.cn/zhengce/content/202308/content_6898048.htm>

33 *Programme of Collaborative Innovation with Foreign-Funded R&D Institutions under the 2023 Shanghai Action Plan for Science, Technology and Innovation*, S&T Commission of Shanghai Municipality, 21st March 2023, viewed 17th April 2024, <<https://www.shanghai.gov.cn/gwk/search/content/20f388085f014ce68365d2115b078920>>





Standards and Conformity Assessment Working Group

Key Recommendations

1. Enhance Transparency in China's Standardisation System by Properly Notifying Mandatory and de Facto Mandatory Standards to World Trade Organization Technical Barriers to Trade (WTO/TBT) and by Providing More Information to Industry Players

- Ensure proper notification of all mandatory standards that may impact market access, including by clearly indicating implementation dates, and enlarge the scope to cover all mandatory market access requirements.
- Follow the same notification procedure for mandatory standards when recommended national standards, industry standards or social organisation standards must be implemented as mandatory.
- Ensure transparency with regard to the allocation of standardisation projects to technical committees (TC), disclosure of financial information, participation or sponsorship fees, membership requirements and set-up processes for expert groups.
- Increase communication with relevant industries when mandatory standards are proposed, to understand both the challenges and if they are feasible.

2. Ensure that All Relevant Stakeholders Have Equal Access and Participation Rights in Standardisation Work (24 Measures)

- Grant fair access for interested stakeholders to all standardisation development organisations, including social organisations.
- Ensure equal, open and extensive industry involvement in all types of standardisation work, including the development of standardisation strategies, the development of standards, leading the drafting of standards projects and participation in international standardisation activities.
- Allow commercial organisations that meet accreditation requirements to participate in market surveillance.

3. Continue to Optimise China's Standardisation System by Ensuring a Predictable Policy and Regulatory Framework with Clear, Well-defined and Reasonable Processes, Backed by Effective Enforcement

Mandatory standards and certification schemes

- Continue to limit the scope of technical regulations and mandatory standards to issues related to protection of the environment, health and safety, in accordance with the WTO's TBT Agreement.
- Optimise the synchronisation of mandatory standards, compulsory certification schemes and administrative licensing schemes, and ensure all mandatory type-approval schemes for market access are based only on national mandatory standards.
- Introduce reasonable transition periods for mandatory standards in a transparent manner and



adopt European best practices on transition periods in more industries.

- Avoid different implementation dates for national mandatory standards at both the local and national levels.
- Avoid referring to recommended standards in mandatory standards.
- Avoid implementing recommended standards as mandatory standards, and provide sufficient transition periods for cases when recommended standards must be implemented as mandatory.

Social organisation standards

- Develop and implement proper procedures to facilitate the transformation of social organisation standards into national and industry standards.
- Develop a pilot evaluation of the development capacity of social organisations and improve the evaluation mechanism for social organisations that are developing relevant standards.

Market surveillance

- Avoid referring to recommended standards in law enforcement and market surveillance, and limit market surveillance to mandatory requirements.
- Increase the number of product categories to be checked in the market, especially for products not covered by mandatory certification or energy labelling requirements.
- Ascertain the veracity of health-related and other product claims by companies in order to prevent consumer fraud and mitigate safety issues.
- Conduct checks on products used in engineering projects to ensure that they meet mandatory requirements.
- Intensify follow-up market checks, and develop processes and penalties that serve as effective deterrents.
- Guarantee the right to appeal and due process for all companies in cases of disputes.
- Ensure proportionality in the adjudication of penalties and consistency across geographical areas.
- Provide diverse channels for reporting non-compliance.

4. Strengthen International Standardisation Work and Increase Harmonisation of Domestic and International Standards and Conformity Assessment Schemes, Particularly in Areas Linked to the Green and Digital Transitions

- Continue participating in international standard-setting activities and increase the adoption rate of identical international standards.
- Support the recognition of test reports at both the national and international levels.
- Ensure China's unified green development standards and conformity assessment schemes are harmonised with international practices to minimise companies' financial risks under various carbon tariff plans.
- Support the mutual recognition of green certificates.
- Cooperate with international stakeholders to develop international standards and boost harmonisation in the fields of digital transformation of quality infrastructure, digital product labelling, the internet of things and data-driven industrial transformation.





Quality and Safety Services Sub-working Group

1. Ensure Equal and Fair Treatment in Government Procurement Activities for Foreign-invested Testing, Inspection and Certification (TIC) Agencies



- Promote market-orientated reforms of government-affiliated TIC agencies and provide equal access to government procurement activities for foreign-invested TIC agencies to encourage fair competition.
- Remove all conditions unrelated to the capabilities required to perform a bid in the qualification process.
- Further regulate government procurement by establishing a fair, transparent, impartial and efficient management system.

2. Allow Foreign-invested TIC Agencies to Provide Container Inspection Services



- Encourage fair market competition by allowing foreign-invested TIC agencies to provide statutory inspection services for domestic and foreign containers.

3. Create the Conditions to Allow Foreign-invested TIC Agencies to Fully Contribute to China's 30/60 Goals



- Provide more policy guidance to facilitate foreign-invested agencies' contribution to China's 30/60 Goals, and ensure equal market access for foreign-invested TIC agencies.
- Create a platform for foreign-invested TIC agencies and Chinese stakeholders to jointly contribute to China's 30/60 Goals.

Recent Developments

According to the Standardisation Administration of China's SAC's *Annual Report on Standardisation Development of China (2023)*, China's standardisation system continued to evolve at the policy and regulatory level throughout 2023. Some of the key regulations released during the year include the *Interim Provisions on the Transformation of Social Organisation Standards into Recommended National Standards*, the *Administrative Measures for the Cultivation of Standard Innovative Enterprises (for Trial Implementation)*, the *Measures for the Promotion of Enterprise Standards* and a revision of the *Management Measures for Industry Standards*. Work also continued on optimising the mandatory national standards framework with the publication of the *Guidelines for Statistical Analysis of the Implementation of Mandatory National Standards*.¹

The same report provides an overview of development of China's standardisation activities in 2023, with the release of 2,902 national standards (of which 75 were mandatory), 4,141 industry standards, 10,751 local standards, 23,162 social organisation standards and 546,160 enterprise standards.

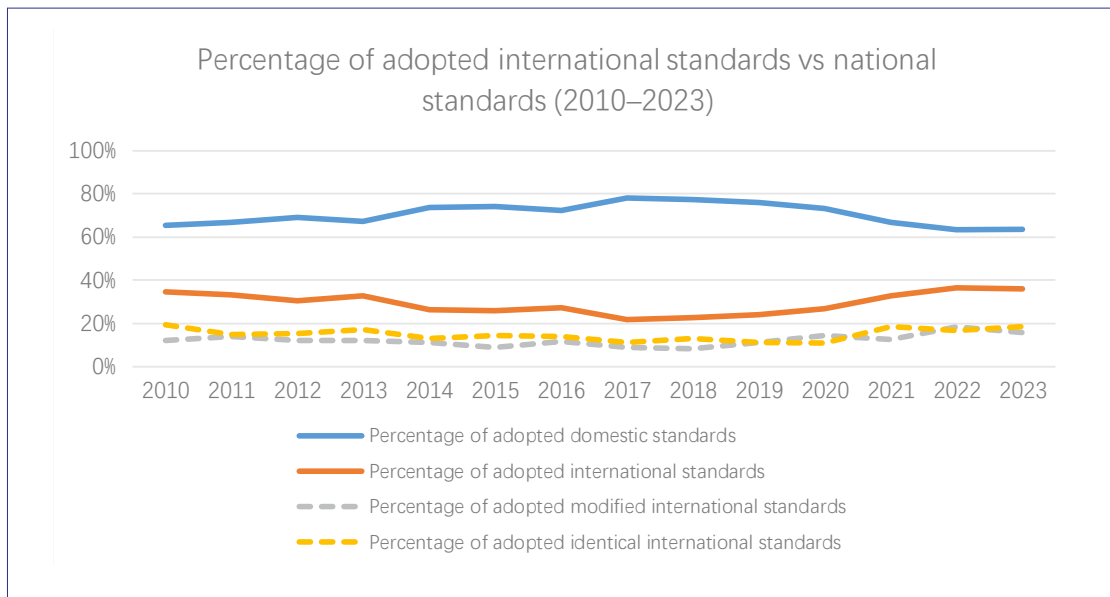
A number of measures guiding the scope and direction of standardisation work in 2024 have already been published, including the State Administration for Market Regulation's (SAMR) and other ministries' *Action Plan for Implementing the National Standardisation Development Outline (2024–2025)* and the SAC's *Key Points of National Standardisation Work 2024*.^{2,3} Within the scope of the SAMR's *Key Legislative Tasks for 2024*, upcoming legislative work relevant to the working

1 *Annual Report on Standardisation Development of China (2023)*, SAC, 28th March 2024, viewed 19th April 2024, <https://www.samr.gov.cn/bzcx/sjdt/gzdt/art/2024/art_b87e5a883faa4d88a4b025a363accd98.html>

2 *Action Plan for Implementing the National Standardisation Development Outline (2024–2025)*, SAC, 26th March 2024, viewed 20th April 2024, <https://www.sac.gov.cn/xw/tzgg/art/2024/art_08590194567c40748ff1e88a544e5753.html>

3 *Key Points of National Standardisation Work 2024*, SAC, 19th February 2024, viewed 20th April 2024, <https://www.sac.gov.cn/xw/tzgg/art/2024/art_920f0be77ff04f96bd0faad2117c7387.html>





Source: SAC and European Chamber⁴

group includes the Product Quality Law, the *Regulations for Certification and Accreditation*, the *Management Measures for the Adoption of International Standards* and the *Management Measures for Inspection and Testing Institutions*.⁵

Key Recommendations

1. Enhance Transparency in China’s Standardisation System by Properly Notifying Mandatory and de Facto Mandatory Standards to World Trade Organization Technical Barriers to Trade (WTO/TBT) and by Providing More Information to Industry Players

Concern

Enhanced transparency in China’s standardisation system at all levels is key to reduce unnecessary obstacles to trade, and increase openness and inclusiveness.

Assessment

Transparency and availability of information are essential components of a well-functioning standardisation system, to ensure efficiency and optimal stakeholder

engagement. However, European businesses in China continue to face obstacles to their participation in standardisation activities, including opaque criteria for involvement and associated fees, membership requirements and the functioning of technical committees (TCs), among others.⁶ Availability of information is also essential for companies to be able to adopt important (particularly mandatory) standards. In this respect, more outreach efforts by relevant authorities would be welcome in order to help companies understand the key contents of these standards before implementing them.

The need to improve transparency also applies to China’s engagement with international bodies like the WTO. According to the WTO/TBT Agreement, government bodies of signatory countries and regions are obliged to notify other WTO members about proposed technical regulations and conformity assessment procedures at an early stage. The goal is to ensure that these regulations and procedures do not create unnecessary obstacles to trade, or foster protectionism. While the working group recognises the positive progress made by China in this regard, there are still many cases in which either no notification was given or the information was incomplete.

⁴ This graph was developed by collecting the data on national standards published at the SAC’s National Public Service Platform for Standards Information. National Public Service Platform for Standards Information, SAC, viewed 23rd April 2024, <<https://std.samr.gov.cn/>>

⁵ *Key Legislative Tasks for 2024*, SAMR, 9th April 2024, viewed 24th April 2024, <https://www.samr.gov.cn/xw/zj/art/2024/art_3d1f417b56774f8da59f0afdda4939bc.html>

⁶ Rühlig, T, *The Shape of Things to Come: The Race to Control Technical Standardisation*, European Union Chamber of Commerce in China and the Swedish Institute of International Affairs, 2nd December 2021, viewed 19th April 2024, <<https://www.eurochamber.com.cn/en/publications-standardisation-report>>

Currently, many mandatory market access schemes in China have still not been notified to the WTO despite the fact that they affect market access for the products they cover. This issue is compounded by the fact that there are still instances of voluntary standards acting as *de facto* mandatory market access barriers that are not being notified to the WTO. The working group has also noted that in cases when such notice has been given to the WTO, the implementation date is not always indicated. It is the view of the working group that the Chinese authorities need to further improve their notification framework and ensure that the WTO/TBT public notices contain all required information, including the implementation date of the standard.

Recommendations

- Ensure proper notification of all mandatory standards that may impact market access, including by clearly indicating implementation dates, and enlarge the scope to cover all mandatory market access requirements.
- Follow the same notification procedure for mandatory standards when recommended national standards, industry standards or social organisation standards must be implemented as mandatory.
- Ensure transparency with regard to information sharing on important standards, the allocation of standardisation projects to TCs, disclosure of financial information, participation or sponsorship fees, membership requirements and set-up processes for expert groups.
- Increase communication with relevant industries when mandatory standards are proposed, to understand both the challenges and if they are feasible.

2. Ensure that All Relevant Stakeholders Have Equal Access and Participation Rights in Standardisation Work

Concern

Even though it has been stipulated in numerous pieces of Chinese legislation—including the Foreign Investment Law—that all relevant stakeholders shall be granted equal access to and participation rights in standardisation work, there is still a substantial gap in implementation.

Assessment

Although both the Foreign Investment Law and the *National Standardisation Development Outline*

commit to ensuring open, inclusive and transparent standardisation processes for all stakeholders, equal participation in standardisation work in China remains a concern for foreign-invested enterprises (FIEs).^{7&8} A 2021 survey of European Chamber members shows that while direct barriers to participation—such as instances of companies being expressly denied participation in TCs—now only occur in a limited number of sectors such as cryptography, respondents continue to experience a variety of indirect barriers.

While it is still actively reforming its standardisation system, the Chinese Government should step up its efforts to encourage FIEs' equal participation in domestic standardisation activities. This includes encouraging any interested stakeholders (regardless of nationality and size) to be involved in pilot and demonstration projects involving social organisation standards, providing feedback on major standardisation strategies, allowing FIEs to hold the secretariat of a TC, lead the drafting of Chinese standards, participate in or lead China's international standardisation activities in certain technical fields, and access incentive policies from government at all levels. In addition, the behaviour of groups developing social organisation standards—such as associations, industry alliances and federations—should be supervised to ensure fair and equal access, and participation rights, for all stakeholders.⁹

The working group believes that, provided they meet the accreditation requirements, FIEs should also be given the same opportunities as domestic organisations to participate in market surveillance, including conducting product sampling and other activities.

Recommendations

- Grant fair access for interested stakeholders to all standardisation development organisations, including social organisations.
- Ensure equal, open and extensive industry involvement in all types of standardisation work, including the development of standardisation strategies, the

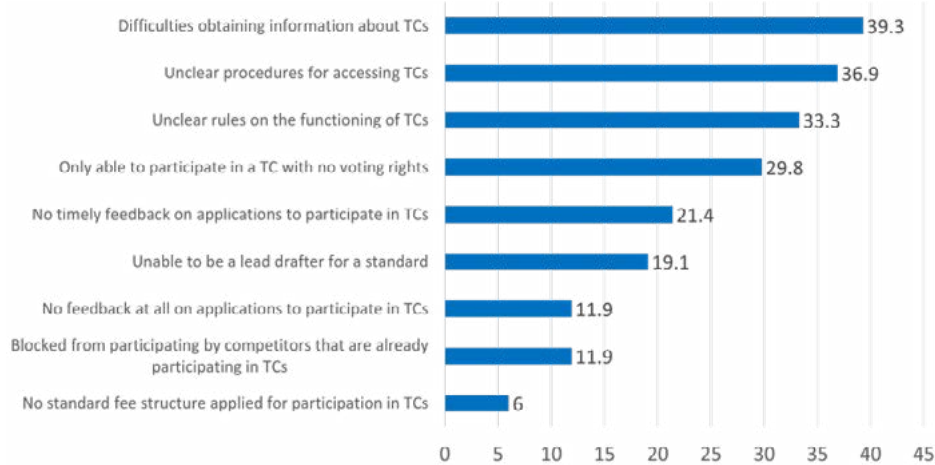
7 *Foreign Investment Law of the People's Republic of China*, NDRC, 24th February 2021, viewed 22nd April 2024, <https://en.ndrc.gov.cn/policies/202105/t20210527_1281403.html>

8 *National Standardisation Development Outline*, State Council of the People's Republic of China, 10th October 2021, viewed 22nd April 2024, <https://www.gov.cn/zhengce/2021-10/10/content_5641727.htm>

9 For more sector-specific information on European businesses' access to and participation in standardisation activities in China, please refer to Key Recommendation 1 of the *Rail Working Group Position Paper 2024/2025*.



Figure 1: Which of the following obstacles has your company faced when trying to gain access to, or obtain equal treatment within, standardisation activities in China (in %)?



Source: *The Shape of Things to Come: The Race to Control Technical Standardisation*¹⁰

development of standards, leading the drafting of standards projects and participation in international standardisation activities.

- Allow commercial organisations that meet accreditation requirements to participate in market surveillance.

3. Continue to Optimise China’s Standardisation System by Ensuring a Predictable Policy and Regulatory Framework with Clear, Well-defined and Reasonable Processes, Backed by Effective Enforcement

Concern

More work needs to be carried out by regulators to ensure a well-defined, predictable and streamlined standardisation system, in terms of both policy design and implementation.

Assessment

Mandatory standards and certification schemes

The first key consideration about mandatory standards and certification schemes is linked to scope. The WTO/TBT Agreement allows countries to take necessary

measures to fulfil legitimate objectives, such as ensuring national security, preventing deceptive practices, and protecting the environment, health and safety (EHS). The working group is pleased to note that China intends to limit the scope of mandatory standards to these objectives and recommends that China continue to fulfil its commitments in this regard, by either rescinding mandatory industry standards or converting them to either recommended or mandatory national standards, such as with the updates to the Network Critical Equipment and Security-specific Product Catalogue.¹¹

The second key consideration pertains to coordination. According to the Standardisation Law, many products must comply with mandatory standards.¹² In addition, other regulations require certain products to comply with specific mandatory certification schemes and individual administrative licensing schemes. However, the lack of coordination between these regulations results in overlapping testing requirements, which leads to additional costs for manufacturers and can even delay product launches. Part of the reason for this lack of cohesion is that these regulations have been formulated

¹⁰ Rühlig, T, *The Shape of Things to Come: The Race to Control Technical Standardisation*, European Union Chamber of Commerce in China and the Swedish Institute of International Affairs, 2nd December 2021, viewed 19th April 2024, <<https://www.eurochamber.com.cn/en/publications-standardisation-report>>

¹¹ *Network Critical Equipment and Security-specific Product Catalogue*, Ministry of Industry and Information Technology, 4th July 2023, viewed 17th April 2024, <https://www.miit.gov.cn/jgsj/waj/wjfb/art/2023/art_9080a8689c58416eaf56f88649c242d3.html>

¹² *Standardisation Law of the People’s Republic of China (PRC)*, National People’s Congress, 4th November 2017, viewed 22nd April 2024, <http://www.npc.gov.cn/zqrdw/npc/xinwen/2017-11/04/content_2031446.htm>





by different ministries and government authorities that work independently from one another. Improved coordination among relevant authorities would therefore help to eliminate any overlap or conflict between the various mandatory standards, compulsory certification schemes and administrative licensing systems, and could ensure these schemes are only based on mandatory standards. It would also reduce waiting times for companies to access the latest technologies and increase manufacturing efficiency, which in turn would help with the revitalisation of the Chinese economy.

The third consideration concerns transition periods. A reasonable transition period is essential for companies to be able to properly dispose of products manufactured with the old standard and to be fully prepared for the implementation of the new standard. European best practices can set an example with regard to transition periods, to ensure that products manufactured according to the old standard can continue to be sold in the Chinese market after the implementation date of the new standard. This would involve either taking the implementation date of the new mandatory standard as the time at which production is switched, rather than the time to switch products being sold, or combining the grace period with an additional transition period for sales.

Also linked to transition periods, the working group observes that, in some cases, the officially released standard specifies a shorter transition period than the previous draft. This can result in a variety of problems, including insufficient lead time for companies to be compliant with mandatory requirements and subsequent delays in the import of affected products. To avoid these issues, greater consistency and predictability in standard setting is required.

The fourth consideration relates to consistency in the implementation dates of standards. Working group members have reported that the implementation dates of certain regulations differ at the local and national levels.¹³ This creates uncertainty for companies when they try to make product adaptation plans. The working group therefore recommends enforcing consistent implementation dates throughout China, in order to

foster a more predictable business environment.

The final consideration concerns consistency issues when it comes to how standards are classified and how they behave in practice. In the past few years, some recommended standards have been directly adopted as *de facto* mandatory requirements without relevant stakeholders being clearly notified or given a sufficient transition period. The authorities should avoid implementing recommended standards as market access requirements. If recommended standards are utilised, then sufficient industry research and the same notification procedure of mandatory standards should be carried out before implementation. Furthermore, a reasonable transition period should be provided.

a) Social organisation standards (also known as association/group standards)

The working group believes that in several fields related to emerging technologies, such as intelligent connected vehicles, standards can be first developed as social organisation standards and then tested through pilot and demonstration projects before being adopted as national standards. This approach, when properly implemented in terms of inclusiveness regarding the participation of interested stakeholders and coverage of types of companies and products in the testing stage, can ensure there is sound validation of the corresponding technical specifications. Furthermore, through such pilot and demonstration projects, the authorities can identify potential problems linked to the standard in advance. It would also provide a sufficient preparation period that would allow companies to make relevant plans and adjustments. The working group therefore supports the SAC's recommendation to "carry out a pilot evaluation of the development capacity of group standards organisations, and improve the evaluation mechanism of group standards organisations", in order to establish a quality evaluation system for group standards, promote the application and quality of group standards, guide the innovative development of relevant industries (such as smart vehicles) and enhance the implementation of standard applications.¹⁴

The working group also recommends that authorities ensure that processes related to the transformation

¹³ An example is the implementation date of Emission Regulation (CN6) in Beijing (1st January 2020) and at the national level (1st July 2023): *Beijing implements National VI motor vehicle emission standards ahead of schedule*, Beijing Municipal Government, 28th June 2019, viewed 22nd April 2024, <https://www.beijing.gov.cn/zhengce/zcjd/201907/120190701_99924.html>

¹⁴ *Key Points of 2023 National Standardisation Work*, SAC, 24th March 2023, viewed 25th April 2023, <https://www.sac.gov.cn/xw/tzgg/art/2023/art_80c53d6e4b064ec0b64b3a1e2980fe3e.html>



of social organisation standards into mandatory or recommended national standards, or industry standards are conducted in a fair, open and transparent way, and that sufficient feedback and transition periods are provided.

b) Market surveillance

While the working group recognises that product quality surveillance and inspection in China is becoming more standardised and systematic, in practice, market surveillance activities do not strictly follow the principle that only mandatory market access requirements need to be checked. In fact, voluntary requirements defined in various recommended national or industry standards—which are more similar to performance standards—are often checked. This happens more in provincial, city or county-level surveillance.

In addition to such instances of overreach in market surveillance, cases of insufficient surveillance are also common, which can have negative spillover effects in terms of product quality and safety. For instance, labelling schemes such as the China Compulsory Certificate (CCC) and energy labels, as well as mandatory certification, are used on sales channels such as e-commerce platforms and are well recognised by consumers. As a result, most products on the market meet the mandatory requirements covered by these schemes. However, requirements not covered by mandatory certification are often overlooked, and it is difficult to check for non-compliance without professional testing tools. Under such circumstances, government surveillance plays a key role; however, in China, the working group has noticed that such surveillance checks are insufficient. For example, although the mandatory standard *GB 24906-2010* establishes safety requirements for light bulbs, these are overlooked by the market surveillance authority because light bulbs are not under the scope of the CCC scheme.¹⁵ Furthermore, in the lighting industry, only three product categories out of 50 are checked every year, leading to safety risks for such products.

In addition, while the Product Quality Law requires all companies to state which standards their products are compliant with, checking that manufacturers are in fact compliant is often overlooked. The relevant authorities

should therefore implement proper checks to ascertain if these claims are accurate. Similarly, claims related to consumer health (e.g., companies using labels advertising the health benefits of their products without linking these claims to proven scientific findings or relevant standards) should be checked to ensure that consumers are not being misled.

There is also room for improvement when it comes to spot checks, which are mostly targeted at consumer products. For consumer products, the industry recommends that spot checks focus on the origin of the supply chain (e.g. raw materials safety) since many issues cannot be identified on a final product. Moving away from consumer products, however, there are also many quality issues with products used in engineering projects, which is a significant issue given that the quality of the entire project is potentially dependent on such products being compliant with relevant mandatory standards and requirements.

In order to avoid instances of the performance/safety features of products sold in the market differing from the samples sent for testing, the authorities should intensify their follow-up market checks, and develop processes and penalties that serve as effective deterrents for the sale of non-compliant products.

In cases of disputes, companies should have the right to appeal. Authorities should ensure such processes are open and transparent, as well as extend the appeal period for cases that may require thorough research and investigations. The working group further recommends that the appeal process is not linked to penalties.

In addition, more proportionality is needed when it comes to penalty adjudication for different types of non-compliance, as well as consistency when it comes to penalty adjudication in different jurisdictions. Currently, companies can receive the same penalties for products not conforming to voluntary requirements as for products violating mandatory standards, and the severity of the penalty for the same issue is not consistent, varying at the provincial, city and county levels.

Some of the above issues highlight the need to allocate more resources for compliance checks. One way of addressing this could be, as mentioned

¹⁵ Standard number: *GB 24906-2010, National Standardisation Full Text Disclosure*, SAC, 30th June 2010, viewed 23rd April 2024, <<https://openstd.samr.gov.cn/bzgk/gb/newGbInfo?hcno=CE96FF0C3C824C9ACAE3F331B3CF82FB>>





in Key Recommendation 2, allowing FIEs and other commercial organisations meeting relevant accreditation requirements to conduct activities linked to market surveillance. Meanwhile, the authorities could also consider developing diverse channels to identify more non-compliant products on the market. One avenue could be to develop a smartphone application, WeChat mini-programme or official website that allows consumers and other relevant stakeholders to report non-compliant products on the market. This practice has provided positive results in international markets like India.

Recommendations

Mandatory standards and certification schemes

- Continue to limit the scope of technical regulations and mandatory standards to issues related to protection of the environment, health and safety, in accordance with the WTO/ TBT Agreement.
- Optimise the synchronisation of mandatory standards, compulsory certification schemes and administrative licensing schemes, and ensure all mandatory type-approval schemes for market access are based only on national mandatory standards.
- Introduce reasonable transition periods for mandatory standards in a transparent manner and adopt European best practices on transition periods in more industries.
- Avoid different implementation dates for national mandatory standards at both the local and national levels.
- Avoid referring to recommended standards in mandatory standards.
- Avoid implementing recommended standards as mandatory standards, and provide sufficient transition periods for cases when recommended standards must be implemented as mandatory.

Social organisation standards

- Develop and implement proper procedures to facilitate the transformation of social organisation standards into national and industry standards.
- Develop a pilot evaluation of the development capacity of social organisations and improve the evaluation mechanism for social organisations that are developing relevant standards.

Market surveillance

- Avoid referring to recommended standards in law enforcement and market surveillance, and limit market surveillance to mandatory requirements.
- Increase the number of product categories to be

checked in the market, especially for products not covered by mandatory certification or energy labelling requirements.

- Ascertain the veracity of health-related and other product claims by companies in order to prevent consumer fraud and mitigate safety issues.
- Conduct checks on products used in engineering projects to ensure that they meet mandatory requirements.
- Intensify follow-up market checks, and develop processes and penalties that serve as effective deterrents.
- Guarantee the right to appeal and due process for all companies in cases of disputes.
- Ensure proportionality in the adjudication of penalties and consistency across jurisdictions.
- Provide diverse channels for reporting non-compliance.

4. Strengthen International Standardisation Work and Increase Harmonisation of Domestic and International Standards and Conformity Assessment Schemes, Particularly in Areas Linked to the Green and Digital Transitions

Concern

International harmonisation of standards and conformity assessment schemes is key not only to facilitating international trade but also to advancing the green and digital transitions.

Assessment

a) International standards

Key policy documents like the *Standardisation Law and the National Standardisation Development Outline* have consistently pointed towards the Chinese Government's willingness to increase its participation in international standardisation activities and to continue to adopt international standards. The working group recommends that the authorities continue to increase the issuance and the identical adoption rate of international standards. The authorities should also clarify the methodology of the calculations used to establish the adoption rate of international standards in order to enhance transparency and accountability.

China has a different perspective from mainstream



international standards when formulating standards for new industries, such as automotive semiconductor chips and smart homes. The working group therefore recommends that the authorities promote an international mutual recognition mechanism for standardisation work, actively adopt internationally influential standards and ensure compatibility between national and international standards. Such actions can help build a predictable regulatory environment that will attract foreign investment to China by reducing entry costs, as well as boost China's exports.

b) Conformity assessment schemes

Currently, there are various unified testing and certification schemes for different products in China, such as the CCC and the urban transit equipment certification. In addition, some domestic certification systems adopt the same technical standards as international certification systems, for example, the CCC for explosion-proof products and equipment for potentially explosive atmospheres (ATEX). However, European companies still find that some test reports issued by testing laboratories are not accepted by other testing laboratories for identical tests of the same product. This means manufacturers have to re-test their products, which wastes company resources and ultimately results in delayed product launches, increased costs and reduced efficiency.

Ensuring nationwide recognition of test reports for the same technical qualifications would avoid product test repetition and facilitate business at both national and international levels. This will require certain testing requirements to be clearly defined, to ensure testing equivalence across China. The procedures already established for existing international certification bodies could act as models for China to follow in this regard.

c) Green and low-carbon transition

Globally, companies are utilising different methods to calculate their organisational and product carbon footprints. Different policy and standardisation frameworks are also being developed in different jurisdictions, which can lead to inconsistencies and inefficiencies. Internationally, at the organisational level, according to *ISO 14064-1 Specification with guidance at the organisation level for quantification and reporting of greenhouse gas emissions and removals*, an organisation's carbon footprint is measured by its own carbon footprint (Scope One and Scope Two carbon

emissions) and its supply chain carbon footprint (Scope Three emissions).¹⁶ While calculating Scope One and Two is relatively clear, defining Scope Three is complex and obtaining data from supply chains can be difficult. At the product level, standards such as *ISO 14067 Greenhouse gases - Carbon footprint of products - Requirements and guidelines for quantification* are more widely adopted internationally.¹⁷ Currently, China is in the process of transposing this international standard into a national standard, with some modifications.

On 2nd February 2021, the State Council announced the *Guiding Opinions on Accelerating the Establishment and Improvement of a Green and Low Carbon Circular Economic Development System*, calling for improved green standards, the accelerated construction of a green certification system, and a strengthened statistical monitoring system.¹⁸ On 13th November 2023, the National Development and Reform Commission (NDRC) and other departments jointly issued the *Opinions on Accelerating the Establishment of a Product Carbon Footprint Management System*, which clarify the rules and standards for carbon footprint accounting methods for key products, establish a product carbon footprint background database, and promote the construction of a product carbon labelling certification system. At the same time, it also emphasises the importance of actively participating in the formulation and revision of international carbon footprint-related standards and rules and promoting mutual recognition with major trading partners in carbon footprint accounting rules and certification results.¹⁹ As of April 2024, the national public service platform for standards information shows that three national standards for product carbon footprints have been issued and 11 are being formulated.²⁰ According to the statistics of the national information platform for social organisation standards, more than 180 such standards

¹⁶ *Specification with Guidance at the Organization Level for Quantification and Reporting of Greenhouse Gas Emissions and Removals*, International Organization for Standardization (ISO), 2018, viewed 17th April 2024, <<https://www.iso.org/standard/66453.html>>

¹⁷ *ISO 14067:2018 Greenhouse gases — Carbon footprint of products — Requirements and guidelines for quantification*, International Organization for Standardization, 2018, viewed 8th May 2024 <<https://www.iso.org/standard/71206.html>>

¹⁸ *Guiding Opinions on Accelerating the Establishment and Improvement of a Green and Low Carbon Cycle Economic Development System*, State Council, 2nd February 2021, viewed 27th April 2024, <http://www.gov.cn/zhengce/content/2021-02/22/content_5588274.htm>

¹⁹ *Opinions on Accelerating the Establishment of a Product Carbon Footprint Management System*, NDRC, 13th November 2023, viewed 22nd April 2024, <https://www.ndrc.gov.cn/xxgk/zcfb/tz/202311/t20231124_1362231.html>

²⁰ National Standards Advanced Query, SAC, viewed 23rd April 2024, <<https://std.samr.gov.cn/gb/search/gbAdvancedSearch?type=std>>





for product carbon footprints have been released.²¹

Meanwhile in the European Union (EU), in April 2023, the European Parliament passed the agreement on a Carbon Border Adjustment Mechanism (CBAM),²² which requires non-EU companies to pay a carbon tariff for certain emission-intensive products when they enter the EU to compensate for the difference between carbon prices in their country of origin and the EU's Emissions Trading System. This could be the most important external factor leading to the optimisation of China's national carbon calculation and trading system. In addition, a series of regulations, such as the newly released Batteries Regulation and the Ecodesign for Sustainable Products Regulation, put forward clear requirements for the carbon footprint and recycled raw materials of an increasingly wide range of products.^{23&24}

The working group calls on China and the EU to actively promote the harmonisation and mutual recognition of product carbon footprint accounting standards, carbon footprint databases, rules and certification systems, so as to facilitate international trade and minimise the businesses' financial risks.²⁵

d) Green certificates

The Green Electricity Certificate (GEC) is the basic certificate for renewable electricity consumption. On 27th January 2024, the NDRC and other departments jointly issued the *Notice on Strengthening the Convergence of Green Power Certificates and Energy Conservation and Carbon Reduction Policies to Vigorously Promote Non-Fossil Energy Consumption*. It is aimed at strengthening the connection between GECs on one hand and both total energy consumption and intensity control policies on the other, promoting non-fossil energy consumption, and accelerating the comprehensive green

transformation of economic and social development.²⁶ The working group supports the convergence of green certificates with carbon emission accounting methods, carbon footprint management and carbon market management, and recommends research and formulation of international standards for the issuance, measurement and trading of green certificates, as well as accelerating the process of mutually recognising green certificates internationally.²⁷

e) Digital transition

As the digital transformation accelerates globally, deeper integration of digital technology and the real economy will increasingly become an important economic growth point. At present, a wide variety of stakeholders from industry, civil society and academia are actively promoting the development of a data space to promote the flow of information between participants across the entire supply chain, in order to unleash the potential of data, stimulate new business forms and models and strengthen economic development.²⁸ In order to achieve international interoperability of the data space, the working group recommends that China, as an important player in the global industrial and supply chain, actively participate in the formulation of international data space standards and rules, promote the harmonisation of standards, and ensure there is a balance between data governance and data development and utilisation.

The digitalisation of quality infrastructure is currently being actively explored, including in the realm of the digitalisation of standards, conformity assessment, metrology and product identification. If properly harnessed, this can contribute positively to cost reduction and efficiency increases, as well as the green and low-carbon development of society overall. However, to ensure that international trade can continue without disruption, efficient, safe, and smooth interoperability between different countries' and regions' digital quality infrastructure is essential. The working group therefore recommends that the EU and China

21 National Social Organisation Standards Information Platform, viewed 22nd April 2024, <<https://www.ttbz.org.cn/>>

22 *Fit for 55: Parliament Adopts Key Laws to Reach 2030 Climate Target*, European Parliament, 18th April 2023, viewed 12th April 2024, <<https://www.europarl.europa.eu/news/en/press-room/20230414IPR80120/fit-for-55-parliament-adopts-key-laws-to-reach-2030-climate-target>>

23 Batteries, European Commission, viewed 22nd April 2024 <https://environment.ec.europa.eu/topics/waste-and-recycling/batteries_en>

24 *Ecodesign for Sustainable Products Regulation*, European Commission, viewed 22nd April 2024, <https://commission.europa.eu/energy-climate-change-environment/standards-tools-and-labels/products-labelling-rules-and-requirements/sustainable-products/ecodesign-sustainable-products-regulation_en>

25 For more information on international harmonisation and mutual recognition of standards and carbon footprint of products (CFP) certification for hydrogen, please refer to Key Recommendation 2.2. of the *2024/2025 Energy Working Group Position Paper*.

26 *Notice on Strengthening the Convergence of Green Power Certificates and Energy Conservation and Carbon Reduction Policies to Vigorously Promote Non-Fossil Energy Consumption*, NDRC, 27th January 2024, viewed on 22nd April 2024, <https://www.gov.cn/zhengce/zhengceku/202402/content_6929877.htm>

27 For more information on international harmonisation and mutual recognition of standards linked to green certificates please refer to Key Recommendations 1.1. of the *2024/2025 Energy Working Group Position Paper*.

28 For more information on the international harmonisation of standards linked to digital and emerging technologies and data, please refer to Key Recommendations 2 and 5 of the *2024/2025 Information and Communication Technology Working Group Position Paper*.



establish a long-term communication and cooperation mechanism on this topic, at both the government and expert level, and jointly promote the formulation and coordination of international standards and rules.

Recommendations

- Continue participating in international standard-setting activities and increase the adoption rate of identical international standards.
- Support the recognition of test reports at both the national and international levels.
- Ensure China's unified green development standards and conformity assessment schemes are harmonised with international practices to minimise companies' financial risks under various carbon tariff plans.
- Support the mutual recognition of green certificates.
- Cooperate with international stakeholders to develop international standards and boost harmonisation in the fields of digital transformation of quality infrastructure, digital product labelling, the internet of things and data-driven industrial transformation.

Abbreviations

ATEX	Equipment for Potentially Explosive Atmospheres
CBAM	Carbon Border Adjustment Mechanism
CCC	China Compulsory Certification
EHS	Environment, Health and Safety
EU	European Union
FIE	Foreign-invested Enterprise
NDRC	National Development and Reform Commission
SAC	Standardisation Administration of China
SAMR	State Administration for Market Regulation
TBT	Technical Barriers to Trade
TC	Technical Committee
WTO	World Trade Organization





Quality and Safety Services Sub-working Group

Recent Developments

Regulatory Developments

On 1st June 2023, the State Administration for Market Regulation (SAMR) issued a revised draft of the *Evaluation Criteria for Qualification Accreditation of Inspection and Testing Institutions (Evaluation Criteria)*.¹ The *Evaluation Criteria* were refined in accordance with the newly revised *Administrative Measures for Qualification Accreditation of Inspection and Testing Institutions* to provide more detailed guidance for technical review activities.² The overall aim is to improve consistency in the regulation of evaluation work and remove unnecessary evaluations to alleviate the burden on testing, inspection and certification (TIC) agencies.

On 20th July 2023, the State Council published the third revision of the *Regulations of the People's Republic of China on Certification and Accreditation*. The regulations clarify the legal responsibilities related to the certification of different products and services.³

Testing, Inspection and Certification (TIC) Policies on Carbon Peaking and Carbon Neutrality

On 17th October 2023, the SAMR released the *Implementation Opinions on Coordinating Quality Certification Services in the Work of Achieving Carbon Peaking and Carbon Neutrality (Opinions)*.⁴ The *Opinions* are aimed at improving China's policy framework for the certification of activities related to carbon neutrality in order to advance China's 30/60 Goals. They introduce supplementary policies and regulations and look to further standardise carbon-

related certification work.⁵ The *Opinions* also emphasise the harmonisation of national and international policies and standards for carbon peaking and carbon neutrality, and the mutual recognition of relevant certificates. The sub-working group welcomes these measures.

On 20th October 2023, the Ministry of Ecology and Environment (MEE) and the SAMR issued the *Administrative Measures of China Certified Emission Reduction (CCER) Trading (For Trial Implementation)*.⁶ On 27th December 2023, the SAMR issued the *Implementation Rules for the Validation of China Certified Emission Reduction Projects and the Verification of Emissions Reduction Quantity*.⁷ Both documents facilitate their participation in achieving China's 30/60 Goals by specifying their role as key third-party inspectors in the validation of CCER projects and verification of emissions volume and detailing their work procedures. In January 2024, the Certification and Accreditation Administration (CNCA) issued the *Announcement on Carrying out the First Batch of Qualification Approval for China Certified Emissions Reduction Validation and Verification Agencies*.⁸ In February, the CNCA established an expert review committee to carry out such qualification approvals.⁹ The sub-working group welcomes improvements to policies related to the validation and verification of

1 *Announcement of the State Administration for Market Regulation on Issuing the Evaluation Criteria for Qualification Accreditation of Inspection and Testing Institutions*, SAMR, 1st June 2023, viewed 9th April 2024, <https://www.samr.gov.cn/zw/zfxxgk/fdzdgnr/rjcs/art/2023/art_b97b0b1addbf4e8aaca43cb26f13883b.html>

2 *Administrative Measures of Qualification Accreditation of Inspection and Testing Institutions (2021 Revised Version)*, SAMR, 1st April 2021, viewed 24th May 2024, <https://scjgj.beijing.gov.cn/cxwf/flfgcxfw/rzrkl/202006/t20200619_1928541.html>

3 *Regulations of the People's Republic of China on Certification and Accreditation*, State Council, 20th July 2023, viewed 9th April 2024, <<https://flk.npc.gov.cn/detail2.html?ZmY4MDgxODE4YTlyMTMyZjAxOGE2ZTM3YTdiNjIzMWQ%3D>>

4 *Implementation Opinions of the State Administration for Market Regulation on Coordinating Quality Certification Services in the Work of Achieving Carbon Peaking and Carbon Neutrality*, SAMR, 17th October 2023, viewed 9th April 2024, <https://www.samr.gov.cn/zw/zfxxgk/fdzdgnr/rzjgs/art/2023/art_260270148cbd4d31aaf2d61cc7e9818a.html>

5 China's 30/60 Goals refer to the country's aim of peaking carbon emissions before 2030 and achieving carbon neutrality by 2060. The goals were announced by President Xi Jinping in his speech during the general debate of the 75th United Nations General Assembly: *Highlights of Xi's statement at general debate of UN General Assembly*, China Daily, 23rd September 2023, viewed 10th May 2024, <<https://www.chinadaily.com.cn/a/202009/23/WS5f6a578ba31024ad0ba7b1db.html>>

6 *Administrative Measures of Voluntary Trading of China Certified Emission Reduction (CCER) (For Trial Implementation)*, MEE and SAMR, 20th October 2023, viewed 9th April 2024, <https://www.samr.gov.cn/zw/zfxxgk/fdzdgnr/rzjgs/art/2023/art_32bbdd3053164b3d81eb13c227ac56b6.html>

7 *Announcement of the State Administration for Market Regulation on Issuing Implementation Rules for the Validation of CCER Projects and the Verification of Emissions Reduction Quantity*, SAMR, 27th December 2023, viewed 9th April 2024, <https://www.samr.gov.cn/zw/zfxxgk/fdzdgnr/rzjgs/art/2023/art_bb5b6265d5564d7396a733353a957770.html>

8 *Announcement of the Certification and Accreditation Administration on Carrying out the First Batch of Qualification Approval for CCER Validation and Verification Agencies*, CNCA, 19th January 2024, viewed 9th April 2024, <https://www.cnca.gov.cn/zwxj/gg/2024/art/2024/art_8474908515c5450382549ddd43f233ad.html>

9 *Notice of the Secretariat of the Certification and Accreditation Administration on the Recruitment of Experts for the Technical Committee for Qualification Approval for CCER Validation and Verification Agencies*, CNCA, 19th February 2024, viewed 9th April 2024, <https://www.cnca.gov.cn/zwxj/tz/2024/art/2024/art_929567848cbb4af49f0a4570fcb51afa.html>





CCER projects and will continue to monitor subsequent developments.

On 7th April 2024, the CNCA issued the *Notice on Clarifying the Filing Requirements for Direct Carbon-related Certification Rules (Notice)*.¹⁰ The *Notice* clarifies the rules and filing requirements for different types of direct carbon-related certification, including carbon emissions reduction/removal, carbon disclosure and carbon neutrality. It also promotes TIC agency participation in direct carbon-related certification work.

Key Recommendations

1. Ensure Equal and Fair Treatment in Government Procurement Activities for Foreign-invested TIC Agencies

Concern

Certain unreasonable conditions set in government procurement activities and insufficient marketisation of government-affiliated TIC agencies constitute invisible barriers that exclude foreign-invested TIC agencies from obtaining equal and fair treatment during the procurement process.

Assessment

China has stated its commitment to and has achieved notable results in establishing a government procurement system that provides equal and fair treatment for domestic enterprises and foreign-invested enterprises (FIEs).¹¹ In line with both the *Plan for Deepening the Reform of the Government Procurement Mechanism* and the *Notice by the General Office of the State Council on Focussing on Enterprises' Concerns and Further Promoting the Implementation of Policies to Optimise the Business Environment*,^{12&13} the Ministry of Finance (MOF) issued the *Notice on Promoting Fair Competition in Government Procurement and*

Optimising the Business Environment in July 2019.¹⁴ The notice requires relevant government authorities to eliminate any practices and regulations that restrict fair competition in the field of government procurement and refrain from publishing government procurement tenders that have not undergone a fair competition review process.

On 26th October 2021, the MOF released the *Notice on the Implementation of Policies Relating to the Equal Treatment of Domestic and Foreign Enterprises in Government Procurement Activities*,¹⁵ which requires equal access and opportunities in government procurement for both domestic and foreign enterprises, including ensuring equal access to bidding information and setting reasonable requirements and evaluation criteria for suppliers. As a result, more third-party TIC agencies have had the opportunity to participate in government quality sampling and inspection activities.

The Chinese authorities introduced a series of policies and regulations in the past year aimed at further addressing unfair market competition in government procurement activities. In both the *Opinions on Further Optimising the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment* issued in August 2023, and the *Action Plan for Solidly Promoting High-level Opening to the Outside World and Making Greater Efforts to Attract and Utilise Foreign Investment* issued in March 2024,^{16&17} FIEs' equal access to the bidding and tendering process of government procurement activities has been emphasised. One of the ways this is supposed to happen is through regular investigations into cases of prominent discriminatory practices in government bidding and tendering processes. In addition, in March 2024, the National Development and Reform Commission (NDRC) issued guidelines that prohibit

10 *Notice on Clarifying the Filing Requirements for Direct Carbon-related Certification Rules*, CNCA, 7th April 2024, viewed 9th April 2024, <https://www.cnca.gov.cn/zwx/tz/2024/art/2024/art_57996c8538e1433aa60ed127ebcd22ab.html>

11 *State Council Policy Briefing*, State Council Information Office, 29th October 2019, viewed 19th April 2024, <<http://www.gov.cn/xinwen/2019zccfh/69/index.htm>>

12 *Central Committee for Deepening Overall Reform Adopted the Plan for Deepening the Reform of the Government Procurement Mechanism*, China Government Procurement Network, 15th November 2018, viewed 19th April 2024, <<http://www.cgnews.cn/articles/46544>>

13 *Notice of the State Council General Office on Focussing on Enterprises' Concerns and Further Promoting the Implementation of Policies to Optimise the Business Environment*, State Council, 8th November 2018, viewed 19th April 2024, <http://www.gov.cn/zhengce/content/2018-11/08/content_5338451.htm>

14 *Notice of the Ministry of Finance on Promoting Fair Competition in Government Procurement and Optimising the Business Environment*, MOF, 30th December 2019, viewed 19th April 2024, <http://www.mof.gov.cn/gkml/caizhengwengao/wg201901/wg201908/201912/t20191230_3452065.htm>

15 *Notice on the Implementation of Policies Relating to the Equal Treatment of Domestic and Foreign Enterprises in Government Procurement Activities*, State Council, 13th October 2021, viewed 19th April 2024, <http://www.gov.cn/zhengce/zhengceku/2021-10/26/content_5644953.htm>

16 *Opinions of the State Council on Further Optimising the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment*, State Council, 13th August 2023, viewed 10th April 2024, <https://www.gov.cn/zhengce/zhengceku/202308/content_6898049.htm>

17 *Action Plan for Solidly Promoting High-level Opening to the Outside World and Making Greater Efforts to Attract and Utilise Foreign Investment*, State Council, 19th March 2024, viewed 17th April 2024, <https://www.gov.cn/yaowen/liebiao/202403/content_6940174.htm>





discrimination based on ownership in government procurement activities.¹⁸

The sub-working group expects tangible progress to be made under the guidance of the above regulatory developments in the near future. However, in practice, some local governments still adopt terms or conditions that could exclude suppliers or restrict competition in bidding processes. Public bidding and competitive negotiation are the two statutory methods of government procurement most commonly adopted by the Chinese authorities. Comparatively speaking, the process of competitive negotiation is less contentious, as it relies solely on prices to determine winning bids, with the tender price eventually being publicly announced. However, the public bidding process involves a comprehensive scoring method in which price accounts for only a portion of the score. Other factors taken into consideration under the bidding system include 1) enterprises' experiences in sampling and inspection services carried out by administrations for market regulation at the national and provincial level; 2) experience in developing national or industry standards; 3) recommendations or awards received; and 4) year-end performance reviews. Foreign-invested TIC agencies face a disadvantage across all these dimensions. Government outsourcing of sampling and inspection services was only recently opened nationwide to the private sector, meaning that foreign-invested TIC agencies have not had enough time to accrue relevant sampling and inspection service experience in China.¹⁹ Foreign-invested TIC agencies have also not had sufficient opportunities to participate in the development of national or industry standards. Moreover, awards, commendations and performance assessments are only available for government-affiliated agencies and do not directly relate to the capabilities of bid participants.

In addition, the incomplete marketisation of government-

¹⁸ Review Rules for Fair Competition in Tendering and Bidding, NDRC, 25th March 2024, viewed 17th April 2024, <<https://zfxgk.ndrc.gov.cn/web/iteminfo.jsp?id=20360>>

¹⁹ Despite several local governments outsourcing third-party inspection services since 2013, it was not until the introduction of the *Administrative Measures on Food Safety Sampling Inspection (Measures)*, approved by the SAMR during the 2019 11th Bureau Affair Conference on 30th July 2019, which came into effect on 1st October 2019, that sampling and inspection services were officially opened to private inspection agencies. Article 11, Chapter 3 of the *Measures* clearly states that market regulatory and administrative entities may independently perform sample tests or authorise a service provider to do so: *Order of the State Administration for Market Regulation (No. 15)*, SAMR, 8th August 2019, viewed 19th April 2024, <https://www.gov.cn/gongbao/content/2019/content_5453439.htm>

affiliated TIC agencies presents a significant barrier to foreign-invested TIC agencies. Due to the presence of vested interests in certain government departments, their affiliated TIC agencies hold an inherent advantage in government procurement activities. This manifests itself in preferential treatment, intentional or unintentional, from relevant government agencies during the selection of service providers. In numerous provinces, including those that are economically prosperous and are home to third-party TIC agencies, government procurement activities such as product quality sampling remain closed to third-party TIC agencies without government affiliation via public bidding. This illustrates a lack of transparency throughout the entire procurement process that continues to disadvantage foreign-invested TIC agencies.

Recommendations

- Promote market-orientated reforms of government-affiliated TIC agencies and provide equal access to government procurement activities for foreign-invested TIC agencies to encourage fair competition.
- Remove all conditions unrelated to the capabilities required to perform a bid in the qualification process.
- Further regulate government procurement by establishing a fair, transparent, impartial and efficient management system.

2. Allow Foreign-invested TIC Agencies to Provide Container Inspection Services



Concern

Foreign-invested TIC agencies are unable to provide statutory inspection services for domestic containers due to market access restrictions.

Assessment

In China, containers are currently subject to statutory surveys managed by the Ministry of Transport (MOT) and the China Maritime Safety Administration. The latter delegates the qualification of statutory surveys of containers solely to the China Classification Society (CCS)—a secondary public interest institution—which then subcontracts the work to its subsidiary, the CCS Certification Company. Pursuant to the *Regulations of the People's Republic of China Governing the Survey of Ships and Offshore Installations* and the *Vessel*



Inspection Administration Regulations,^{20&21} foreign-invested ship inspection agencies registered in China are only permitted to inspect containers owned by foreign businesses (i.e., foreign export containers). In other words, foreign-invested TIC agencies registered in China are not permitted to conduct legal inspections on containers owned by Chinese organisations.

The sub-working group recommends that China open up the container inspection market to ship inspection agencies from all signatories to the International Convention for Safe Containers (Convention),²² and grant foreign-invested TIC agencies authorisation to provide inspection services for containers owned by Chinese businesses, for the following reasons:

1) To meet the principle of reciprocity

The relevant authorities of European Union (EU) member states neither restrict Chinese TIC agencies registered in EU member states to only inspecting containers owned by non-EU companies, nor do they prohibit them from inspecting containers owned by member state companies. The sub-working group recommends that China lift restrictions on the business scope of European TIC agencies in China based on the nationality of the container owners, in line with the principle of reciprocity.

2) To meet the principle of mutual recognition of the Convention

According to the Convention, once an inspection agency obtains the necessary qualification to survey containers from one contracting state, then all contracting states must accept the qualification of the agency in question, as well as the inspection process and results it provides. However, such mutual recognition is not observed in the Chinese market, with European TIC agencies restricted to inspecting only containers owned by foreign businesses. This violates the principle of mutual recognition under the Convention.

20 *Regulations of the People's Republic of China Governing Survey of Ships and Offshore Installations*, State Council, 2nd March 2019, viewed 19th April 2024, <http://www.gov.cn/gongbao/content/2019/content_5468917.htm>

21 *Order of the Ministry of Transport (2016 No. 2)*, MOT, 22nd January 2016, viewed 19th April 2024, <http://www.gov.cn/gongbao/content/2016/content_5070757.htm>

22 *International Convention for Safe Containers*, International Maritime Organisation, 6th September 1977, viewed 19th April 2024, <[https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-Safe-Containers-\(CSC\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-Safe-Containers-(CSC).aspx)>

3) To conform to the 'pre-establishment national treatment plus negative list' administrative system

Article Four of China's Foreign Investment Law stipulates that the 'pre-establishment national treatment plus negative list' administrative system be applied to foreign investments.²³ The article requires equal treatment for foreign and domestic investors at the initial stage of market access for industries not included on the *Negative List for Foreign Investment (Negative List)*.²⁴ In addition, Article Six of the *Regulation on the Implementation of the Foreign Investment Law* stipulates that domestic enterprises and FIEs shall be treated equally by the authorities with respect to government funding arrangements, land supply, tax reductions, certification, standard setting, project applications and human resource policies.²⁵ The 'pre-establishment national treatment plus negative list' system for foreign-invested agencies must be strictly adhered to, and its implementation closely monitored to ensure a fair and equitable business environment for FIEs operating in China.

4) To adopt international practices to avoid monopolistic behaviours

The statutory inspection of containers is a charged service provided by third parties. The service fees are adjusted in accordance with market prices based on supply and demand. In most jurisdictions worldwide, enterprises are at liberty to choose inspection services from international classification societies that have the qualifications required by the Convention for statutory inspection services. When administrative measures specify that only a single organisation can provide such services, there is a risk of a monopoly given the lack of competition and the price adjustment mechanism for inspection fees. This not only limits the freedom of choice of Chinese container owners, but also disincentivises government-affiliated TIC agencies in China from improving their services or technical capabilities.

5) To mitigate financial burdens on Chinese container owners

According to the *Agreement Concerning the International*

23 *Foreign Investment Law*, National People's Congress, 15th March 2019, viewed 9th July 2024, <https://www.gov.cn/xinwen/2019-03/20/content_5375360.htm>

24 *Special Administrative Measures (Negative List) for the Access of Foreign Investment (2021)*, NDRC and MOFCOM, 27th December 2021, viewed 19th April 2024, <<https://zfxgk.ndrc.gov.cn/web/iteminfo.jsp?id=18589>>

25 *State Council Order No. 723*, State Council, 31st December 2019, viewed 19th April 2024, <http://www.gov.cn/zhengce/content/2019-12/31/content_5465449.htm>





Carriage of Dangerous Goods by Road (the Agreement), when a Chinese enterprise seeks to export containers of hazardous cargo to the EU, it is required to seek certification from an EU agency operating in China.²⁶ In this scenario, EU ship inspection agencies are authorised to provide inspection services to Chinese containers. However, a separate certificate issued by the CCS, the sole officially recognised agency for conducting such services in China, is also mandatory for the export of these containers from China to the EU, as stipulated by the *Vessel Inspection Administration Regulations*.²⁷ The requirement for dual certification arises from China's non-signatory status to the Agreement, which directs EU-domiciled agencies to conduct inspections of containers transporting hazardous materials. Restricting EU-domiciled ship inspection agencies in China from inspecting Chinese-owned containers doubles the operational costs for Chinese businesses, as two inspection agencies must carry out a procedure that could otherwise have been completed by one. It also adversely affects China's international shipping business and impedes the advancement of projects such as the Belt and Road Initiative.

Recommendation

- Encourage fair market competition by allowing foreign-invested TIC agencies to provide statutory inspection services for domestic and foreign containers.

3. Create the Conditions to Allow Foreign-invested TIC Agencies to Fully Contribute to China's 30/60 Goals

Concern

While foreign-invested TIC agencies can make important contributions to China achieving its 30/60 Goals, their current involvement in related work is significantly below potential, especially in terms of collaboration with state-owned enterprises.

Assessment

Foreign-invested TIC agencies' contributions towards China's carbon peaking and carbon neutrality goals

are well below potential.²⁸ The primary cause of this situation stems from the absence of specific policies and regulations governing the participation of foreign-invested TIC agencies in such efforts. On top of this, foreign-invested TIC agencies operating in China encounter many de facto market access barriers and unfair competition,²⁹ despite the fact that they have the potential to play a pivotal role in realising China's 30/60 Goals.

First, these agencies possess advanced testing and inspection technologies and extensive certification expertise in the field of carbon peaking and carbon neutrality having accrued years of related experience in their home markets, which are comparatively more advanced in decarbonisation. Such technologies and experience enable them to provide more precise and efficient solutions and could be instrumental in aiding companies in the Chinese market to accurately identify and manage carbon emissions, thereby fostering green, low-carbon development.

Second, foreign-invested agencies play a crucial role in advocating for alignment with international standards. As the challenge of global climate change increases, the requirements and standards for carbon emissions are being increasingly tightened worldwide. Foreign-invested TIC agencies are more attuned to international standards, and thus extremely well placed to facilitate Chinese companies to comprehend and conform with international regulations and standards for carbon peaking and carbon neutrality, which in turn would augment their competitiveness in the global marketplace.

Finally, the engagement of foreign-invested agencies will catalyse the internationalisation of China's carbon peaking and carbon neutrality endeavours. Collaboration with foreign-invested agencies enables China to gain global insights, bolster international cooperation and exchanges, and thus collectively address the challenges posed by global climate change together with the international community. Given that many foreign-invested agencies registered in China boast a long-standing history and extensive credibility

²⁶ *Agreement Concerning the International Carriage of Dangerous Goods by Road*, United Nations Economic Commission for Europe, 30th September 1957, viewed 10th May 2024, <<https://unece.org/about-adr>>

²⁷ *Order of the Ministry of Transport (2016 No. 2)*, MOT, 22nd January 2016, viewed 19th April 2024, <http://www.gov.cn/gongbao/content/2016/content_5070757.htm>

²⁸ More information on foreign-invested TIC agencies' contribution to China's 30/60 Goals can be found in Key Recommendation 1 of the *Carbon Market Working Group Position Paper 2024/2025*.

²⁹ More information on market access restrictions and unfair market competition encountered by foreign-invested TIC agencies, please refer to Key Recommendation 1 of this position paper.





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worldwide, the reports and certificates they issue are readily acknowledged by stakeholders globally. This would help to establish a global consensus on Chinese market players' achievements in carbon neutrality thereby expediting their internationalisation process.

Recommendations

- Provide more policy guidance to facilitate foreign-invested agencies' contribution to China's 30/60 Goals, and ensure equal market access for foreign-invested TIC agencies.
- Create a platform for foreign-invested TIC agencies and Chinese stakeholders to jointly contribute to China's 30/60 Goals.

Abbreviations

CCER	China Certified Emission Reduction
CCS	China Classification Society
CNCA	Certification and Accreditation Administration of China
EU	European Union
FIE	Foreign-invested Enterprise
MEE	Ministry of Ecology and Environment
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
MOT	Ministry of Transport
NDRC	National Development and Reform Commission
SAMR	State Administration for Market Regulation
TIC	Testing, Inspection and Certification

Section Three

3

Goods





Goods

The Goods section encompasses 11 European Chamber working groups and four sub-working groups:

- Agriculture, Food and Beverage
 - Paediatric Nutrition, and Foods for Special Medical Purposes (two sub-working groups)
 - Dairy Industry
- Automotive
- Automotive Components
- Cosmetics
- Energy
 - Carbon Market
- Fashion and Leather
- Healthcare Equipment
- Maritime Manufacturing and Industrial Services
- Petrochemicals, Chemicals and Refining
- Pharmaceutical
- Rail

In 2023, the European Union (EU) was China's number one export destination for goods, while China was the EU's third largest. Although the EU-China trade deficit dropped by euro (EUR) 106 billion (-27 per cent year-on-year) to EUR 291 billion, certain data indicate there has been an increase in the volume of exports from China to the EU. According to Container Trade Statistics, the ratio of container trade between Europe and China rose from 1:3.2 in 2022, to 1:3.76 in 2023.¹ This anomaly can be explained by deflation and a depreciating currency in China, in tandem with extensive policy/supply-side support. The trade imbalance is one of the key dynamics that has contributed to the EU's increasingly assertive stance towards China over the past half decade.

According to the European Chamber's *Business Confidence Survey (BCS) 2024*, business became more difficult in 2023 for a record-high 68 per cent of overall respondents. This general deterioration in business confidence is even more pronounced for manufacturers and importers of certain goods. For example, business became more difficult for 73 per cent, 76 per cent and 80 per cent of respondents from the petrochemicals, automotive and medical devices industries respectively.²

For pharmaceutical companies, China's allure as an investment destination has diminished significantly. While 14 per cent of respondents to the BCS 2023 said China was a top destination for investment, none reported this to be the case just a year later. Much of the China market's lustre has faded due to investment restrictions and the lack of effective intellectual property protection.^{3&4} A staggering 93 per cent of members from the pharmaceutical industry also missed business

1 Container Trade Statistics is an organisation that provides aggregated trade volumes in twenty-foot equivalent units (TEUs) between various regions as a paid-for service. The ratios referenced here are for trade in TEUs between Greater China—including Taiwan and Hong Kong—and continental Europe, including the United Kingdom. <<https://www.containerstatistics.com/>>

2 *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 17th June 2024, <https://www.eurochamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>

3 China's *Negative List for Foreign Investment* restricts investment in the fields of human stem cell research and gene therapy, areas that are of great interest to European pharmaceutical companies: *Special Administrative Measures (Negative List) for Foreign Investment Access (2021 Edition)*, National Development and Reform Commission, 27th December 2021, viewed 13th June 2024, <<https://zfxgk.ndrc.gov.cn/web/iteminfo.jsp?id=18589>>

4 European pharmaceutical companies are particularly concerned about the lack of effective patent term extensions and data protection for drugs that are new to the Chinese market.

opportunities in 2023 due to market access barriers or regulatory restrictions, 35 percentage points above the overall average and the highest proportion recorded among all industries. Members attributed this finding to three key factors. First, multinational corporations face challenges getting their products included in the National Reimbursement Drug List (NRDL),⁵ leading some foreign manufacturers to completely remove certain products from the market. Second, even when members' products are successfully included in the NRDL, they are often not included in hospital listings in a timely manner.⁶ This is a significant issue, as drug sales to hospitals make up a large proportion of the pharmaceutical market in China.⁷ Finally, members' access to the country's vaccines market is also limited.⁸

The emergence of overcapacity has been one of the main contributing factors to business becoming more difficult in the automotive industry. It has precipitated price deflation due to increased competition from local manufacturers combined with weak domestic demand. Overcapacity, specifically in the battery electric vehicle (BEV) sector, resulted in the European Commission launching a probe in early October 2023. The Commission is investigating the root causes behind the sharp increase of cheap BEVs entering the European market from China to “determine whether BEV value chains in China benefit[ed] from illegal subsidisation and whether this subsidisation cause[d] or threaten[d] to cause economic injury to EU BEV producers.”⁹ Although the investigation is set to conclude in early November, the Commission announced on 12th June 2024 that it will impose provisional duties in the range of 17.1 per cent to 38.1 per cent—on Chinese, European and other foreign companies that manufacture in China—on top of the existing 10 per cent vehicle tariff.¹⁰ This could make manufacturing of BEVs in China for export to the EU untenable for some automotive companies. The announcement of BEV tariffs drew retaliation from Beijing just five days later, with the announcement of an anti-dumping investigation into EU pork products.¹¹ These actions are likely to result in a further deterioration of the EU-China trade relationship, and unless both sides can address the root causes through dialogue, there will be an increase in pressure on both manufacturers and exporters of goods.

One of the reasons that business became more difficult in the medical device industry is the lengthy product registration process, which can make some product launches unfeasible in China.¹² Another is the frequency of volume-based procurement tenders, which pressurises bidders to cut costs while maintaining the quality of their products and services. The lack of market access for imported medical equipment is also an issue, with government procurement rules guiding hospitals to buy domestically

5 *European Business in China Position Paper 2023/2024*, European Union Chamber of Commerce in China, 20th September 2023, viewed 27th March 2024, p. 277, <https://www.europeanchamber.com.cn/en/publications-archive/1167/European_Business_in_China_Position_Paper_2023_2024>

6 *Ibid*; *Guidance on Establishing and Improving the 'Dual Channel' Management Mechanism of NRDL Negotiation Drugs*, NHTA and NHC, 10th May 2021, viewed 27th March 2024, <http://www.nhsa.gov.cn/art/2021/5/10/art_37_5023.html>

7 Wang, G, *Retail Pharmacy Sales in China Experience Rapid Growth in H1 2023*, BaiPharm, 10th January 2024, viewed 28th March 2024, <<https://baipharm.chemlinked.com/news/retail-pharmacy-sales-in-china-experience-rapid-growth-in-h1-2023>>

8 *European Business in China Position Paper 2023/2024*, European Union Chamber of Commerce in China, 20th September 2023, viewed 27th March 2024, p.279, <https://www.europeanchamber.com.cn/en/publications-archive/1167/European_Business_in_China_Position_Paper_2023_2024>

9 *Commission launches investigation on subsidised electric cars from China*, European Commission, 4th October 2023, viewed 17th June 2024, <https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4752>

10 Blekinsop, P, *EU hits Chinese EVs with tariffs, drawing rebuke from Beijing*, Reuters, 13th June 2024, viewed 17th June 2024, <<https://www.reuters.com/business/autos-transportation/eu-impose-multi-billion-euro-tariffs-chinese-evs-ft-reports-2024-06-12/>>

11 Leahy, J, Ding, W, Bounds, A, and Hancock, A, *China launches anti-dumping probe into EU pork products*, Financial Times, 17th June 2024, viewed 18th June 2024, <<https://www.ft.com/content/97cc2b4a-e953-453e-8407-82bd082087c6>>

12 *European Business in China Position Paper 2023/2024*, European Union Chamber of Commerce in China, 20th September 2023, viewed 25th March 2024, pp. 241–242, <https://www.europeanchamber.com.cn/en/publications-archive/1167/European_Business_in_China_Position_Paper_2023_2024>



manufactured equipment.¹³ Overall, 91 per cent of BCS 2024 respondents in the medical devices industry reported missing business opportunities due to market access restrictions or regulatory barriers.

The public procurement barriers faced by European medical device manufacturers in China resulted in the EU launching an investigation through the first use of its International Procurement Instrument (IPI).¹⁴ If China's procurement processes are found to harm the interests of European companies, the EU could respond by restricting or excluding Chinese companies, goods and services from EU public procurement,¹⁵ which would risk causing further damage to the EU-China relationship, despite the fact that the EU's overall aim is merely to achieve reciprocal access to China's procurement market.

An additional challenge many goods manufacturers in China will soon face is the need to comply with the EU's Corporate Sustainability Due Diligence Directive (CSDDD),¹⁶ which will apply to all companies that have a significant presence in the EU, a net worldwide turnover of at least EUR 450 million and at least 1,000 employees. This comprehensive piece of legislation requires companies in scope to establish due diligence processes that ensure their entire operations—including their subsidiaries, and upstream and downstream suppliers—are in line with EU human rights and environmental standards.¹⁷ While European companies are fully on board with the goals of the CSDDD, companies operating in China may be unable to meet its requirements due to conflicting legislation, the inability to conduct audits and/or political sensitivity. Furthermore, although small and medium-sized enterprises and large companies without direct business with the EU do not directly fall under the scope of the CSDDD, they will still be impacted if they supply firms that must comply.

As a result of the broad spectrum of challenges facing European companies in China, just over three quarters (76 per cent) of BCS 2024 respondents have reviewed their supply chains in the past two years, with many having opted to diversify to ensure greater resilience. Of those that are taking, or are set to take, action, 18 per cent are further onshoring into China and three per cent fully onshoring, to hedge against potential future disruptions to their China operations. Another 12 per cent are setting up alternative sourcing outside China, while maintaining existing supply chains in the country. So far, just one per cent are fully shifting their supply chains out of China. While the proportion of Chamber members diversifying is currently not that high, it is a trend that is likely to endure should EU-China tensions continue to worsen, as the need to insulate operations from any potential consequences will increase. This would not only be a more costly and less efficient solution, but would also open up alternative markets to European investment that would have otherwise been bound for China.

13 The Ministry of Finance (MOF) has stated that public hospitals carrying out procurement within their regular budget—whatever the source of the budget—must apply government procurement rules, implying that public hospitals must preferably buy medical devices manufactured in China. *Reply of the MOF to Petition No. 8584 on the Fourth Session of the 13th National People's Congress*, MOF, 10th August 2021, viewed 25th March 2024, <http://gks.mof.gov.cn/jytafwgk_8304/2021jytafwgk_1/rddbajfwgk/202108/t20210810_3744263.htm>

14 *Commission launches first investigation under EU International Procurement Instrument*, European Commission, 24th April 2024, viewed 18th June 2024, <https://ec.europa.eu/commission/presscorner/detail/en/IP_24_2044>

15 Such measures under the IPI would apply to all public procurement procedures in the EU above a threshold of euro (EUR) 15,000,000 (excluding value-added tax) for works and concessions, or EUR 5,000,000 (excluding value-added tax) for goods and services, including dynamic purchasing systems and framework agreements.

16 *Corporate sustainability due diligence: Council gives its final approval*, Council of the European Union, 24th May 2024, viewed 27th May 2024, <<https://www.consilium.europa.eu/en/press/press-releases/2024/05/24/corporate-sustainability-due-diligence-council-gives-its-final-approval/>>

17 *European Parliament legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD))*, European Parliament, 24th April 2024, viewed 11th May 2024, <https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329_EN.html#top>



Agriculture, Food and Beverage Working Group

Key Recommendations

1. Clarify the Requirements for Implementing New National Food Safety Standards for Imported Foods

- Clarify when the new national standards based on the date of production will be applied to customs inspection and market supervision.
- Allow products produced and imported before the implementation date of the new national standards to continue to be imported and sold within their shelf life, provided they comply with the original national standards.

2. Allow Recycled Materials in Food Contact Applications and Establish Approval Processes and Standards as Soon as Possible to Encourage the Recycling of Recycled Polythene Terephthalate (rPET) Materials



- Establish an assessment system and corresponding regulatory standards for the use of rPET as a food-contact material.
- Encourage the implementation of primary recycling of food-grade rPET bottles to reduce the use of raw plastics.
- Strengthen public education on the safety of rPET materials.

3. Remove Restrictions in the Foreign Investment Negative List Relating to the Seed Industry to Level the Playing Field

- Remove the restrictions on foreign investment in genetic modification technologies and genetically modified (GM) seed (seedling) production.
- Relax restrictions on foreign investment in the breeding and production of new wheat and corn varieties.

4. Guarantee a Transparent, Scientific and Efficient Review and Approval Procedure for Bio-technology Products and Accelerate the Approval Procedure for Genetically Modified Microorganism (GMM) Food, GMM Feed Additives and Genetically Modified (GM) Agricultural Products

4.1 Optimise Bio-safety Evaluation Procedures for GMM Food Additives (including Nutrient Fortifiers) and Food Ingredients, Establish and Publish Technical Guidance on Key Information Required in Submissions and Reviews

- Establish and publish the submission requirements and technical guidelines for reviews of GMM food additives and food ingredients.
- Refrain from repetitive reviews.
- Optimise the approval procedure by accelerating the review process for food additives and food ingredients, and by refining and homogenising technical requirements.





4.2 Accelerate the Approval Procedure for GMM Feed Additives and GM Agricultural Products

- Establish new approval procedures based on the product safety risk level, and facilitate market access for imported GMM agricultural products.
- Simplify the approval requirements and accelerate the approval process for GMM feed additives and accept plasmid or recombinant deoxyribonucleic acid (DNA) samples for safety assessments.
- Adopt the European Union's (EU's) practice of acknowledging third-party test reports or delegating safety assessments to independent culture collection organisations.

5. Strengthen Communication with the Organisation for Economic Co-operation and Development (OECD) to Support China's Accession to the OECD's Framework Agreement on Pesticides 5

- Strengthen communication with the OECD and its members to support China's accession to the OECD framework agreement on pesticides.

6. Optimise Implementation of the 14th Five-year National Health Plan in Conjunction with the United Nations Sustainable Development Goals to Educate Consumers on Making Healthier Choices 3

6.1 Continue to Encourage the 'Three Reductions and Three Health' Initiative Based on Scientific Assessment

- Conduct comprehensive market and consumer research to establish a front-of-package (FOP) labelling system that fits Chinese dietary characteristics and nutritional needs and takes other countries' requirements into consideration.
- Coordinate among different stakeholders to adopt a unified FOP labelling framework.
- Enhance consumer education and improve public awareness of the FOP labelling system to help people make healthy and informed choices.

6.2 Increase Public Awareness of Responsible Drinking

- Continue to promote responsible alcohol consumption, and the healthy and sustainable development of the alcoholic beverage industry by hosting nationwide awareness campaigns.
- Collaborate with relevant stakeholders, including those within the industry, when drafting any guidance or policy on alcohol controls.

6.3 Optimise the Regulation of Plant-based Foods

- Develop comprehensive food safety standards for, and a specific definition of, plant-based foods, and encourage industry innovation and technological advancement.
- Establish a regulatory framework for plant-based foods to oversee business activities and protect consumer rights.

Dairy Industry Sub-working Group

1. Improve Dairy-related National Food Safety Standards 4

- Align the development and revision of dairy-related standards more effectively with international standards and practices, as well as the reality of domestic and international dairy markets and supply chains.
- Optimise the formulation and revision of national food safety standards by providing a more





transparent and open channel for both domestic and international industry players.

2. Optimise the Regulation of Cultures Applied in Dairy Production

- Simplify the safety review procedures for cultures that have a long history of safe usage as attested to by international organisations and their authoritative lists.

Foods for Special Medical Purposes Sub-working Group and Paediatric Nutrition Sub-working Group

1. Optimise the Registration System for Special Food

1.1 Accelerate Overseas Onsite Inspections for Manufacturers that have Passed the Documentation Review Process to Guarantee Inspection Timelines are the Same for Overseas and Domestic Manufacturers

- Clarify the principles of exemption from onsite inspections, and formulate and publish an annual overseas onsite inspection schedule based on the needs of overseas enterprises.
- Create an implementation plan for overseas onsite inspections based on the progress of registration reviews to ensure seamless inspection and registration of products that are nearing completion of their evaluation and/or have no substantial safety risks.
- Extend Memoranda of Understanding (MoU) as a cooperative mechanism underpinning overseas, onsite inspections of both infant formula and foods for special medical purposes (FSMP) production facilities, and apply them to more countries and regions in the event of force majeure.

1.2 Optimise the Requirements for Stability Testing

- Exempt enterprises from stability testing when they submit modification and deregistration information with new applications for formulas that use techniques and packing materials that are identical to formulas that have already been approved under new standards.

2. Continue to Improve All Safety Standards Relevant to Special Foods, as well as the Supporting Documentation Required for their Registration

- Introduce new or updated standards for infant foods for special medical purposes (iFSMP) and FSMP to the industry before they are published, allowing enterprises sufficient transition time before they come into force.
- Set a transition period of at least three years for iFSMP standards to ensure both a smooth registration process and stable market supply.
- Allow enterprises to decide the number of commercial trials for new formulas independently from those with both approved formulas and whose stability and uniformity have been verified, when the production techniques of the formulas remain the same.
- Simplify the research and development (R&D) demonstration materials required for formula adjustments so that only the changes to the new formula need to be introduced without a one-to-one comparison with the original formula.
- Optimise the technical guidance for clinical trials of specific nutrient-complete FSMPs as soon as possible by offering differentiated management when such trials are deemed unnecessary.
- Give enterprises more flexibility in the design of clinical trials, by allowing them to use





products in foreign markets as control groups, and share clinical trial data for similar formulas.

- Revert to the previous practice for the degree of hydrolysis and osmotic pressure that needs to be indicated during registration.
- Coordinate the simultaneous release of relevant horizontal standards to allow enterprises to comply with them more easily and avoid unnecessary waste of resources.

3. Increase Market Access for and Improve Public Awareness of FSMP

- Optimise the Hospital Information System by listing FSMP products with charge codes to give medical institutions easier access to FSMP products.
- Formulate clinical application and management guidelines for FSMP to guide standardised procedures in medical institutions, improve the development of clinical nutrition departments and clinical nutrition teams, and raise professional and public awareness.
- Revise the *Measures for the Investigation and Punishment of Illegal Acts Related to Food Safety in the Digital Market* to allow the online sale of specific nutrient-complete formulas under the guidance of physicians or clinical nutritionists.

4. Establish a Legal Framework to Regulate the Retail Marketing of 0–12-Months Infant Formula and Provide a Detailed Plan to Effectively Encourage Breastfeeding

- Revise and issue the *Administrative Measures on the Sale of Breast Milk Substitutes* through the National Health Commission and relevant ministries to regulate the marketing of 0–6-months infant formula in retail channels.
- Confirm the State Administration for Market Regulation (SAMR) as the regulatory authority to oversee the promotion of 0–6-months infant formula in supermarkets, maternity stores and other retail outlets to strengthen supervision of the Breastfeeding Promotion Action Plan (2021–2025).
- Establish a legal framework to regulate and supervise the marketing of 0–12-months infant formula in retail channels to eliminate the negative impact of inappropriate marketing activities on breastfeeding in the long term.

Recent Developments

In 2023, European Union (EU) food exports to China declined from euro (EUR) 15.8 billion to EUR 14.6 billion, an eight per cent year-on-year decrease. This drop can be primarily attributed to reduced imports of both pork products, due to African swine fever, and grain products, as a result of rising global prices.¹

On 6th September 2023, the State Administration

for Market Regulation (SAMR) and the Ministry of Agriculture and Rural Affairs (MARA) issued the *Implementation Opinions on Carrying out Crop Seed Certification*.² Subsequently, on 8th December 2023, the SAMR and the MARA issued the *Crop Seed Certification Catalogue (Batch 1)* and the *Implementation Rules for Crop Seed Certification*

¹ *Monitoring EU Agri-food Trade: Developments in 2023*, Directorate-General for Agriculture and Rural Development, March 2024, viewed 21st April 2024, p.4, <https://agriculture.ec.europa.eu/document/download/b2e5ee02-4a25-4a6b-9663-92dbee9eb211_en?filename=monitoring-agri-food-trade_dec2023_en.pdf>

² *Implementation Opinions on Carrying out Crop Seed Certification*, SAMR, 6th September 2023, viewed 21st April 2024, <https://www.samr.gov.cn/zwlzfxgk/fdzdgnr/rzjgs/art/2023/art_992f063b0ef943e0926d81fb9c2577c2.html>





(Pilot).³ On 23rd January 2024, the MARA issued the *Technical Specifications for Crop Seed Certification (Pilot)*.⁴ These policies and regulations are aimed at protecting germplasm resources; ensuring food security and sustainable agricultural development; and promoting both the research and development of new varieties, and the transformation and upgrading of the seed industry overall. The working group welcomes the promulgation of these policies. At the same time, it recommends that China remove restrictions on foreign investment in the breeding of genetically modified (GM) varieties and the production of GM seeds (seedlings), and relax foreign investment restrictions on the breeding and production of new wheat and corn varieties.

On 21st March 2024, the SAMR issued the *Announcement on Encouraging Food Enterprises to Optimise the Production Date and Shelf-life Labelling of Prepackaged Foods*.⁵ This announcement encourages food enterprises to put prominent labels showing the production date and shelf-life of pre-packaged food on the main display areas of the minimum-sales packaging; if the minimum sales packaging has multiple layers, the label should be placed on the outermost packaging; if the production date and shelf life are labelled in the form of 'see a certain location on the packaging', the location should be clear and obvious, accurately described and easy to find.

At present, horizontal standards and administrative measures, including the *National Food Safety Standard General Rules for Labelling of Pre-packaged Foods (GB 7718)*, the *National Food Safety Standard General Rules for Nutritional Labelling of Pre-packaged Foods (GB 28050)*, the *National Food Safety Standard Labelling of Pre-packaged Special Dietary Foods (GB 13432)* and the *Measures for the Supervision and Administration of Food Labels*, are under revision. These revisions will have a significant impact on the food and beverage industry. Hence, it is essential that their content and issuance, and the transition period, be well coordinated, to allow a smooth shift from old to new standards.

3 Crop Seed Certification Catalogue (Batch 1) and the Implementation Rules for Crop Seed Certification (Pilot), SAMR, 23rd December 2023, viewed 21st April 2024, <https://www.cnca.gov.cn/zwx/gg/lhfb/art/2023/art_5998fb3800354ba88cd555f38dcb0e6d.html>

4 *Announcement No. 755 of the MARA of the People's Republic of China*, SAMR, 23rd January 2024, viewed 21st April 2024, <http://www.moa.gov.cn/govpublic/nybzzj/202402/20240206_6448415.htm>

5 *Announcement on Encouraging Food Enterprises to Optimise the Production Date and Shelf-life Labelling of Prepackaged Foods*, SAMR, 21st March 2024, viewed 6th April 2024, <https://www.gov.cn/zhengce/zhengceku/202403/content_6941656.htm>

Key Recommendations

1. Clarify the Requirements for Implementing New National Food Safety Standards for Imported Foods

Concern

The unclear requirements and the inconsistent implementation of new national standards for imported foods results in overseas manufacturers facing shorter transition periods and increased compliance risks compared to domestic manufacturers, which is not conducive to fair competition and market stability.

Assessment

In order to provide enterprises with sufficient time to transition between the old and new national food safety standards (national standards), it is essential to establish a specific and reasonable transition period before their official implementation. For domestically produced products, the authorities enforce customs inspection and market supervision based on the new national standards and the production date. However, when implementing the new national standards for imported food and testing methods, different departments take a discretionary approach to implementing standards. This discrepancy creates uncertainty for foreign enterprises. Because the transportation and customs clearance time required for imported food is typically two to three months, if the new national standards cannot be applied based on the production date, it necessitates producing imported food in accordance with the new national standards two to three months prior to the implementation date, to ensure compliance with the new standards upon entry into the Chinese market. Imported food produced in line with the original national standards before the implementation date of the new national standards will be unable to enter the Chinese market or risk being removed from shelves. Consequently, this increases operational pressure and costs for foreign food manufacturers and impacts international trade.

On 8th November 2017, the SAMR released the *Standardisation Law*, Article 25 of which stipulates that "products and services that do not meet the mandatory standards shall not be produced, sold, imported or provided."⁶ At present, there is ambiguity in the

6 *Standardisation Law of the People's Republic of China*, SAMR, 8th November 2017, viewed 18th April 2024, <https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/bzcx/art/2023/art_31bb6057c05a40338876f385c1f47f1f.html>





interpretation of this provision. As mentioned above, if the term ‘mandatory standards’ in this clause refers to the new national standards, imported food produced in accordance with the original national standards before the implementation date of the new national standards will not be able to be imported and sold normally.

On 1st December 2022, the working group sent an advocacy letter to the General Administration of Customs of China (GACC), recommending that the production date of imported food be taken as the implementation date for new national standards in order to mitigate market access barriers. On 30th December 2022, the GACC issued Notice No. 136, clarifying the relevant requirements for the implementation of standards for five products, including infant formula and processed cheese. The notice states that “products produced and imported before the implementation date of the new national standards that comply with the provisions of the original national standards can continue to be imported and sold within their shelf life in accordance with the regulations on the implementation of domestic standards and the rules of the World Trade Organization.”⁷ The working group welcomes this clarification and looks forward to further clarification of the implementation requirements for additional imported food-related standards.

Recommendations

- Clarify when the new national standards based on the date of production will be applied to customs inspection and market supervision.
- Allow products produced and imported before the implementation date of the new national standards to continue to be imported and sold within their shelf life, provided they comply with the original national standards.

2. Allow Recycled Materials to be Used in Food Contact Applications, and Establish Approval Processes and Standards as Soon as Possible to Encourage the Recycling of Food-grade rPET Materials

Concern

The lack of a properly developed regulatory regime

⁷ Notice No. 136 on Inspection Requirements for the Implementation of National Food Safety Standards for Infant Formula, Processed Cheese and Other Imported Foods, GACC, 30th December 2022, viewed 18th April 2024, <<http://gdfs.customs.gov.cn/customs/302249/302266/302267/4767851/index.html>>

and approval processes for the use of recycled food contact materials is resulting in a huge waste of natural resources.

Assessment

The National Development and Reform Commission and the Ministry of Ecology and Environment jointly issued the 14th Five-year Action Plan for Plastic Pollution Control in 2021, which prioritises increasing the recycling and reuse of plastic waste, improving related standards and encouraging the homogenisation and high value-added utilisation of plastic waste.⁸ However, the lack of clear standards is hindering enterprises from taking relevant action, despite the availability of technology for the primary recycling of food-grade recycled polythene terephthalate (rPET) bottles.

The overall recycling rate of food-grade PET bottles in China is as high as 94 per cent, but the bottles are not currently recycled for use as food-grade rPET bottles. If they were to be, it could conserve tens of millions of tonnes of raw materials refined from petroleum per year, reducing greenhouse gas emissions by 63 per cent (including more than 50 million tonnes of carbon emissions) and cutting energy consumption by 79 per cent.⁹ In Europe, regulatory frameworks and approval processes for rPET recycling have already been established and food-grade rPET materials are widely used. However, China is still in the process of conducting risk assessments of such materials. Issuing relevant policies, regulations and standards as soon as possible to encourage the use of rPET materials would help to establish their use as a significant driver of carbon neutrality in the food and beverage industry and facilitate sustainable development, promoting a circular economy. In addition, the working group recommends further strengthening public education on rPET, to make clear that it poses a relatively low risk. The EU, the United States, Thailand and other countries have already allowed rPET to be used as a food contact material and have received positive market feedback.

⁸ 14th Five-year Plan Action for Plastic Pollution Control, NDRC, 8th September 2021, viewed 25th April 2024, <https://www.ndrc.gov.cn/xxgk/zcfb/tz/202109/t20210915_1296580.html?state=123&code=&state=123>

⁹ Dong, Y. and Socci, E., *Study of Food-grade Recycled Polyester Bottles for Achieving China's 'Carbon Neutrality' Goal*, China Packaging, 15th July 2021, viewed 20th April 2024, <https://kns.cnki.net/kcms/detail/detail.aspx?dbcode=CJFD&dbname=CJFDLAST2021&filename=ZBZZ202107007&uniplatform=NZKPT&v=SwXA68vkDzj0YUaDoPP2Ee2swE6jvQG8FpC51inJrzh7gVGS-FU4tlaJQia41x_>





Recommendations

- Establish an assessment system and corresponding regulatory standards for the use of rPET as a food-contact material.
- Encourage the implementation of primary recycling of food-grade rPET bottles to reduce the use of raw plastics.
- Strengthen public education on the safety of rPET materials.

3. Remove Restrictions in the Foreign Investment Negative List Related to the Seed Industry to Level the Playing Field

Concern

The *Special Administrative Measures for Foreign Investment (2021 Negative List)* removed some restrictions in the seed industry, but still prohibits or restricts foreign investment in seed selection, breeding and production, including the breeding of transgenic varieties and the production of transgenic seeds (seedlings).

Assessment

China's GM seed management policy has undergone significant changes in recent years, with 37 GM corn varieties approved at the fourth meeting of the Fifth National Crop Variety Approval Committee. However, foreign-funded enterprises are currently unable to participate.¹⁰ The *2021 Negative List* still restricts foreign investment in the selection and production of GM crop varieties, and still requires that the controlling entity for the breeding and production of corn varieties be a Chinese entity. This not only increases unfair competition in the market between domestic and foreign-invested enterprises in this field, but also hinders China's goals for innovation in and modernisation of the agricultural sector.

Recommendations

- Remove the restrictions on foreign investment in genetic modification technologies and GM seed (seedling) production.
- Relax restrictions on foreign investment in the breeding and production of new wheat and corn varieties.

¹⁰ Announcement No. 732 of the Ministry of Agriculture and Rural Affairs of the People's Republic of China, MARA, 7th December 2023, viewed 25th April 2024, <https://www.moa.gov.cn/govpublic/nybzjz/1/202312/120231207_6442285.htm>

4. Establish a Transparent, Scientific and Efficient Review and Approval Procedure for Bio-technology Products and Accelerate the Approval Procedure for GMM Food, GMM Feed Additives and GM Agricultural Products

4.1 Optimise Bio-safety Evaluation Procedures for GMM Food Additives (including Nutrient Fortifiers) and Food Ingredients, and Publish Technical Guidance on Key Information Required for Submissions and Reviews

Concern

The submission requirements and technical guidance for genetically modified microorganism (GMM) food additives and food ingredients have not been published, and the review procedure is not transparent.

Assessment

According to the Food Safety Law, when using new food ingredients to produce food, producing new varieties of food additives or new varieties of food-related products, relevant safety assessment materials for the products must be submitted to the National Health Commission (NHC).¹¹ However, the safety assessment is more complex if the production process involves GM technology. At present, the NHC has established application platforms for GMM food additives (including nutrient fortifiers) and approved new varieties represented by enzyme preparations and human milk oligosaccharides, which has promoted industry innovation and development. However, new GMM food ingredients still cannot be registered.

Currently, the submission of GM food additives must be evaluated or approved by two regulatory departments. The MARA is responsible for the bio-safety assessment of GMMs, while the NHC is responsible for the review and approval of the final products produced from GMMs, namely food additives. However, the regulatory authorities have not yet established and published application requirements and technical guidelines for reviewing GMMs, and the MARA meetings for reviewing GMMs are only held once every six months, leading to several problems. First, the review criteria are ambiguous, meaning that enterprises have no clear indication of what the review results may be. Second,

¹¹ People's Republic of China Food Safety Law, National People's Congress, 29th April 2021, viewed 25th April 2024, <<https://flk.npc.gov.cn/detail2.html?ZmY4MDgXODE3YWlyMmUwYzAxN2FhZDhkODVhMjA1ZjE>>





in cases when GMMs are rejected, enterprises have no opportunity to appeal or have their product re-assessed. Third, the limitation on the number of review meetings each year, in combination with unpredictable meeting times, affects business planning.

At the same time, the technical requirements for the food additive safety review, for which the NHC is responsible, are not clear. The industry understands and supports the random selection of experts to ensure fairness, but the consistency of technical review requirements also needs to be ensured. Because experts have different professional backgrounds, frequent replacement of experts will likely result in inconsistent or unreasonable technical requirements for the same materials. In addition, because enterprises have no clarity over the process, they are unable to accurately assess the likely outcome of the review, meaning they have limited time to formulate and deploy alternative solutions.

Recommendations

- Establish and publish the submission requirements and technical guidelines for reviews of GMM food additives and food ingredients.
- Refrain from repetitive reviews.
- Optimise the approval procedure by accelerating the review process for food additives and food ingredients, and by refining and homogenising technical requirements.

4.2 Accelerate the Approval Procedure for GMM Feed Additives and GM Agricultural Products

Concern

The approval procedures for GMM feed additives and GM agricultural products are currently inefficient, which acts as a market access barrier and impedes industry development.

Assessment

According to the *Guidance for the Safety Assessment of GMM for Animal Use*, products derived from the gene expression of GMM (such as phytase and antimicrobial peptides) or metabolites, as well as from inactivated GMM, should pass an intermediate test, environmental release and safety evaluation to obtain

safety certificates.¹² However, feed products produced with GMM but without living GMMs and recombinant deoxyribonucleic acid (DNA)—which are excluded from the scope of the GM food and feed regulation in the EU—are still included in this category in China. They thus need to go through the safety evaluation procedure, which is unnecessarily complex and time-consuming. The long approval procedures and resulting uncertainty also slow the development of new GMM feed additives. Requiring the intermediate test for the issuance of safety certificates only for products that contain living GMMs would therefore shorten the time from import to market for all types.

Furthermore, to apply for the safety certificate, agricultural GM biological samples and control samples, as well as testing materials and testing methods, must be sent to the MARA for safety assessment, according to the *Administrative Measures for Safety Assessment of Agricultural Genetically Modified Organisms*.¹³ The MARA then transfers the materials to the designated institution for verification. This may lead to inefficiencies in the evaluation process, which will further slow industrial development and innovation. Adopting the current standard practice in the EU, whereby third-party test reports or evaluation by independent culture collection organisations are acknowledged, would boost efficiency across the entire process. For products that do not contain GMM production strain and recombinant DNA, plasmid or recombinant DNA samples could be submitted instead of a viable strain sample to simplify the safety assessment and regulatory requirement.

Recommendations

- Establish new approval procedures based on the product safety risk level, and facilitate market access for imported GMM agricultural products.
- Simplify the approval requirements and accelerate the approval process for GMM feed additives and accept plasmid or recombinant DNA samples for safety assessments.
- Adopt the EU's practice of acknowledging third-party test reports or delegating safety assessments to independent culture collection organisations.

¹² *Guidance for the Safety Assessment of GMM for Animal Use*, MARA, 23rd January 2017, viewed 1st June 2024, <<http://law.foodmate.net/show-189904.html>>

¹³ *Administrative Measures for Safety Assessment of Agricultural Genetically Modified Organisms*, MARA, 7th October 2017, viewed 25th April 2024, <http://www.kjs.moa.gov.cn/zcjd/201904/t20190418_6184797.htm>





5. Strengthen Communication with the OECD to Support China's Accession to the OECD's Framework Agreement on Pesticides

Concern

The incomplete implementation of Article 16 of the MARA's *Administrative Measures for Pesticide Registration (Measures)* compels foreign companies seeking pesticide registration in China to repeat all registration tests, resulting in increased costs and impacting their commitments to sustainable investment and development.

Assessment

On 1st June 2017, China's newly revised *Pesticide Management Regulations* went into effect, with the *Measures* released shortly afterwards.^{14&15} However, the provisions relating to the approval of overseas test data in Article 16 of the *Measures* are difficult to implement in practice, and no new compounds have been registered by foreign enterprises in China since they took effect.

Since 2003, 24 pesticide laboratories in China have obtained Good Laboratory Practice (GLP) certification from four OECD member countries (Germany, Belgium, the Netherlands and Poland). Registration test reports issued by the 24 Chinese laboratories are recognised not only by these countries for local registration, but also by other countries under the OECD mutual acceptance system (including 35 member countries and six non-member countries).¹⁶ However, China has not yet joined the OECD Mutual Acceptance of Data and Agricultural Pesticides Programme, thereby hindering the full implementation of Article 16 of the *Measures*.¹⁷ Multinational enterprises with registration test reports from foreign OECD GLP-certified laboratories are compelled to re-test in Chinese laboratories, incurring costs of around Chinese yuan (CNY) 20–30 million for a single product and an additional registration procedure lasting three to four years. This not only significantly

increases costs for businesses but also impacts their investment confidence.

Currently, the Ministry of Commerce is taking the lead in proactively contacting related ministries and commissions to prepare to apply to join the OECD GLP system and steadily achieve mutual recognition of data. However, the process of joining the OECD GLP system takes time. During this period, it is desirable to promote GLP capacity building cooperation projects in China and the EU to enhance the MARA's understanding of the alignment between registration data generated by OECD-accredited GLP laboratories and Chinese registration data. This would enable the acceptance of overseas GLP test reports in accordance with international practices and the market access registration rules applied to other industries in China.

Recommendation

- Strengthen communication with the OECD and its members to support China's accession to the OECD framework agreement on pesticides.

6. Optimise Implementation of the 14th Five-year National Health Plan in Conjunction with the United Nations Sustainable Development Goals to Educate Consumers on Making Healthier Choices

6.2 Continue to Encourage the 'Three Reductions and Three Health' Initiative Based on Scientific Assessment

Concern

Current health and wellness policies lack incentives for companies to create healthier products, invest in public education or actively engage in responsible marketing.

Assessment

In April 2022, the 14th *Five-year National Health Plan* contained a proposal for the national promotion of a healthy lifestyle through the so-called 'three reductions and three health' initiative (reduction of salt, oil and sugar; oral health, weight health and bone health) and other special actions.¹⁸ The food and beverage industry has been incorporating the health plan into their long-term strategies accordingly. On 15th July 2019, the NHC issued the *Healthy China Action Plan*

14 *Pesticide Management Regulations*, State Council, 1st April 2017, viewed 25th April 2024, <http://www.gov.cn/zhengce/content/2017-04/01/content_5182681.htm>

15 *Administrative Measures for Pesticide Registration*, MARA, 7th January 2022, viewed 25th April 2024, <http://www.gov.cn/zhengce/2022-01/07/content_5721293.htm>

16 *Mutual Acceptance of Data (MAD)*, 2020, OECD, viewed 25th April 2024, <<https://www.oecd.org/env/ehs/mutualacceptanceofdatamad.htm>>

17 *Administrative Measures for Pesticide Registration*, MARA, 7th January 2022, viewed 1st June 2024, <http://www.gov.cn/zhengce/2022-01/07/content_5721293.htm>

18 14th *Five-year National Health Plan*, State Council, 20th May 2022, viewed 25th April 2024, <http://www.gov.cn/zhengce/zhengceku/2022-05/20/content_5691424.htm>





(2019–2030), which recommends expediting the revision of the *General Rules for Nutritional Labelling of Pre-packaged Foods* and adding mandatory labelling of sugars to encourage consumption of low sugar or sugar-free products. The industry is encouraged to use front-of-package (FOP) labelling to help consumers select healthy food and improve the supervision and administration of pre-packaged food nutrition labels.¹⁹

The working group supports the improvement of food nutrition labelling regulations and the FOP labelling system, while fully considering Chinese dietary patterns, exploring consumer preferences and guiding the revision process scientifically. However, the China National Food Industry Association and the Chinese Nutrition Society each have their own FOP labelling system to indicate certain ingredients and their recommended daily intake to consumers. These overlapping systems could confuse consumers and create difficulties for regulatory authorities. It would therefore make sense to develop a national unified FOP labelling system that suits China's national conditions while taking into account other countries' requirements to avoid possible trade barriers. The industry has conducted many useful studies and developed practices in product diversification, as well as in enhancing the nutritional and health benefits of products. It has also contributed to the 'three reductions and three health' initiative through product innovation and diversification in order to raise nutritional and health awareness among consumers and advocate for healthy lifestyles. By providing additional guidance in relation to FOP labelling, the government can provide companies with further motivation to produce healthier food and beverage products.

Recommendations

- Conduct comprehensive market and consumer research to establish a FOP labelling system that fits Chinese dietary characteristics and nutritional needs and takes other countries' requirements into consideration.
- Coordinate among different stakeholders to adopt a unified FOP labelling framework.
- Enhance consumer education and improve public awareness of the FOP labelling system to help people make healthy and informed choices.

6.2 Increase Public Awareness of Responsible Drinking

Concern

Although the *14th Five-year National Health Plan* encourages eliminating the harmful use of alcohol, its implementation guidelines are not clear.

Assessment

Responsible drinking can positively impact society, culture and the economy and contribute to a balanced lifestyle. However, harmful use of alcohol is an important public health issue, and the industry has consistently recognised its significant social responsibility in promoting responsible drinking. With this in mind, the government, industry associations and businesses jointly developed the annual National Responsible Drinking Awareness Week, as well as an annual publication to promote responsible drinking. In 2023, the blue paper *Drink Moderately and Live a Happy Life* was published during the National Responsible Drinking Awareness Week.²⁰

Promoting responsible drinking is something that is also echoed at the policy level, with the *14th Five-year National Health Plan* clearly stating that health education on alcohol control should be strengthened to reduce its overuse. However, so far, there have been no clear regulations or implementing guidelines on how this goal should be achieved. The working group looks forward to working with the regulatory authorities, consumers and other stakeholders to explore more ways of promoting responsible alcohol consumption.

Recommendations

- Continue to promote responsible alcohol consumption, the reduction of harmful use of alcohol and the healthy and sustainable development of the alcoholic beverage industry by hosting nationwide awareness campaigns.
- Collaborate with relevant stakeholders, including those within the industry, when drafting any guidance or policy on alcohol control.

¹⁹ *Healthy China Action Plan (2019–2030)*, NHC, 15th July 2019, viewed 25th April 2024, <http://www.gov.cn/xinwen/2019-07/15/content_5409694.htm>

²⁰ *2023 National Responsible Drinking Awareness Week/Interpretation of China's Drinking Culture*, Sina Finance, 25th November 2023, viewed 27th May 2024, <<https://finance.sina.com.cn/cj/2023-11-25/doc-imzvuzsw3689286.shtml>>





6.3 Optimise the Regulation of Plant-based Foods

Concern

The lack of a well-developed regulatory regime, product and labelling standards, and effective consumer awareness programmes for plant-based foods in China hinders industry development.

Assessment

The 2022 Central Rural Work Conference highlighted the need to “develop a comprehensive food concept, establish a diversified food supply system and explore multiple food supply sources through various channels”.²¹ The promotion of plant-based foods is very much in line with this proposition and would facilitate the high-quality development of the food industry. On 24th August 2021, the Chinese Institute of Food Science and Technology (CIFST) issued the *General Guidelines for Plant-based Food Standards (T/CIFST 002-2021)*, which provide classification, basic requirements and labelling requirements for plant-based foods to bridge current gaps in the regulatory system.²² In November 2022, the CIFST issued the *Scientific Consensus on Plant-based Food (2022)* to further direct plant-based food development and provide insights on industry needs.²³ However, plant-based food in China is still in its early stages and has not yet been categorised in the mandatory national food safety standards system. As a result, there are increasing challenges regarding product categorisation, naming and labelling and the use of new food raw materials.

Recommendations

- Develop comprehensive food safety standards for, and a specific definition of, plant-based foods, and encourage industry innovation and technological advancement.
- Establish a regulatory framework for plant-based foods to oversee business activities and protect consumer rights.

Abbreviations

CIFST	Chinese Institute of Food Science and Technology
CNY	Chinese Yuan
DNA	Deoxyribonucleic Acid
EU	European Union
EUR	Euro
FOP	Front-of-Package
GACC	General Administration of Customs of China
GB	Guobiao (China national standard)
GLP	Good Laboratory Practice
GM	Genetically Modified
GMM	Genetically Modified Microorganism
MARA	Ministry of Agriculture and Rural Affairs
NHC	National Health Commission
OECD	Organisation for Economic Co-operation and Development
rPET	Recycled Polythene Terephthalate
SAMR	State Administration for Market Regulation

21 Xi Attended and Delivered an Important Speech at the Central Rural Work Conference, *Xinhua*, 24th December 2022, viewed 25th April 2024, <http://www.gov.cn/xinwen/2022-12/24/content_5733398.htm>

22 Notice on the Release of General Guidelines for Plant-based Food Standards and Other Three Group Standards, CIFST, 24th August 2021, viewed 25th April 2023, <<https://www.cifst.org.cn/al/dynamic/tongzhi/20210824/2252.html>>

23 Scientific Consensus on Plant-Based Food (2022), *China Food News*, 30th November 2022, viewed 25th April 2024, <<http://www.cnfood.cn/article?id=1597775645127053314>>





Dairy Industry Sub-working Group

Recent Developments

In 2023, China's dairy market continued to face the challenge of oversupply.¹ Total dairy output increased 3.1 per cent year-on-year (y-o-y), while dairy consumption decreased one per cent y-o-y.² China's total dairy product imports amounted to 2.88 million tonnes, a drop of 12 per cent y-o-y,³ with 28 per cent of these coming from the European Union (EU), representing a decline of eight per cent y-o-y.⁴

Meanwhile, Russia's war on Ukraine and the Red Sea crisis have resulted in increased production and transport costs for EU dairy companies, which have lost competitive advantage on price, especially compared to dairy companies in regions where free trade agreements have been reached with China.

In 2023, China's average per capita daily intake of dairy products was around 45 grams per day, which is far below the 300 to 500 grams recommended in the *Dietary Guidelines for Chinese Residents (2022)*.⁵ On 1st January 2024, the Central Committee of the Communist Party of China and the State Council released the measures *Effectively Promoting the Comprehensive Revitalisation of Rural Areas*, which emphasise the importance of optimising milk standards and the consumption of milk products.⁶ The sub-working group believes that these policies can incentivise dairy consumption and lead to the high-quality development of the industry through the introduction of a larger range of dairy products to the Chinese market.

On 21st September 2023, the second meeting of the

China-EU Joint Committee on Geographical Indications (GI) was held in Beijing to promote the technical review for the second list of GI products,⁷ which contains 19 cheese products.⁸ The sub-working group looks forward to the next stage of work in this area and a deepening of cooperation between the EU and China, to ensure more cheeses are added to the list of protected GIs.

On 25th September 2023, the National Health Commission (NHC) and the State Administration for Market Regulation (SAMR) published the *National Food Safety Standard Good Manufacturing Practice for Dairy Products (GB 12693-2023)*.⁹ On 12th March 2024, the NHC published the modified *National Food Safety Standard Milk Powder and Modified Milk Powder (GB 19644-2024)*.¹⁰ Other than the published national standards, the NHC has made progress on the following national food safety standards related to dairy products in the past year:

- *National Food Safety Standard Raw Milk (GB 19301-2010)*¹¹
- *National Food Safety Standard Modified Milk (GB 25191-2010)*¹²
- *National Food Safety Standard Pasteurised Milk (GB 19645-2010)*¹³

7 *The Second Meeting of China-EU Joint Committee on Geographical Indications Held in Beijing*, Ministry of Commerce (MOFCOM), 22nd September 2023, viewed 1st April 2024, <<http://tfs.mofcom.gov.cn/article/bc/202309/20230903442578.shtml>>

8 *Agreement between the Government of the People's Republic of China and the European Union on Cooperation on, and Protection of Geographical Indications*, MOFCOM, 18th September 2020, viewed 3rd April 2024, <<http://tfs.mofcom.gov.cn/article/zscq/202009/20200903002354.shtml>>

9 *Announcement on the Publication of 85 National Food Safety Standards and 3 Revisions, including the National Food Safety Standard Tea (GB 31608-2023) (No. 6 of 2023)*, NHC and SAMR, 25th September 2023, viewed 1st April 2024, <<http://www.nhc.gov.cn/sps/s7891/202309/799bde70c78d41e79de3567542b9db84.shtml>>

10 *National Food Safety Standard Milk Powder and Modified Milk Powder (GB 19644-2024)*, NHC, 12th March 2024, viewed 1st April 2024, <<https://sppt.cfsa.net.cn:8086/db?type=2&guid=1701696B-1EA6-43D7-BCDF-D3A621C5AE40>>

11 *Letter from the Secretariat of the National Food Safety Standards Review Committee on the Solicitation of Comments on 11 National Food Safety Standards (Call for Comments), including the National Food Safety Standard Complete Nutrition Formula Foods for Tumour Patients (Draft for Comments)*, NHC, 18th October 2023, viewed 1st April 2024, <<http://www.nhc.gov.cn/sps/s3594/202310/6e5dadfcd4af4fb2aa098877cb4ae4e.shtml>>

12 *Ibid.*

13 *Letter from the Secretariat of the National Food Safety Standards Review Committee on the Solicitation of Comments on 21 National Food Safety Standards (Call for Comments), including the National Food Safety Standard for Food Additives Xanthan Gum*, NHC, 11th December 2023, viewed 1st April 2024, <<http://www.nhc.gov.cn/sps/s3594/202312/821bdcd4568b4e07834b59b3f91239fe.shtml>>

1 Li, X, *How Can Dairy Industry Overcome the Challenge of Oversupply and Weak Demand*, *Economic Information Daily*, 7th December 2023, viewed 15th April 2024, <http://food.china.com.cn/2023-12/07/content_116863577.htm>

2 Yang, Z, *Unleashing the Potential of Dairy Consumption*, *China Economic*, 19th March 2024, viewed 15th April 2024, <http://paper.ce.cn/pd/content/202403/19/content_291488.html>

3 *China Dairy Trade Monthly Report of January 2024*, National Dairy Industry Technology and Economy Research Office, 29th January 2024, viewed 15th April 2024, <<https://www.dairy123.com/cms/show-18625.html>>

4 Dairy trade dashboard, Directorate-General for Agriculture and Rural Development, 14th March 2024, viewed 15th April 2024, <<https://agridata.ec.europa.eu/extensions/DashboardDairy/DairyTrade.html>>

5 *Chinese Dietary Guidelines (2022)*, Chinese Nutrition Society, 28th April 2022, viewed 15th April 2024, <<http://dg.cnsoc.org/article/04/RMAbPdijQ6CGWTwm062hQg.html>>

6 *Effectively Promoting the Comprehensive Revitalisation of Rural Areas by the Central Committee of the Communist Party of China and the State Council*, *Xinhua*, 3rd February 2024, viewed 15th April 2024, <https://www.gov.cn/zhengce/202402/content_6929934.htm>





- *National Food Safety Standard Sterilised/UHT Milk (GB 25190-2010)*¹⁴
- *National Food Safety Standard Extended Shelf Life Milk*¹⁵
- *National Food Safety Standard Cream, Butter and Anhydrous Cream (GB 19646-2010)*¹⁶
- *National Food Safety Standard Whey Powder and Whey Protein Powder (GB 11674-2010)*¹⁷
- *National Food Safety Standard Milk Protein*

The sub-working group looks forward to further revisions to these safety standards and will continue to advocate for removing barriers hindering the import of European dairy products and the development of China's domestic dairy industry, which is in line with China's position on further optimising the environment for foreign investment and stimulating domestic consumption.

Key Recommendations

1. Improve Dairy-related National Food Safety Standards

Concern

Some revisions to China's dairy-related standards do not take into account the level of development of both international and domestic dairy markets, which could hinder international trade and innovation in the dairy sector.

Assessment

Most of the current national food safety standards related to dairy products were formulated and released in 2010, but innovation in technology for dairy production has increased, and product categories have become more varied over the past 14 years. Furthermore, revisions of some dairy-related standards have only provided limited channels for public consultation, while not taking globally-adopted technologies and practices into consideration. This has resulted in discrepancies between standards for dairy products and the level of development of both international and domestic dairy

markets, a problem that can only be resolved through the revision of relevant standards.

For example, the definition of 'cream' in the *National Food Safety Standard Cream, Butter and Anhydrous Cream (GB 19646-2010)* is one of the industry's main concerns. The standard defines 'cream' as a product that is derived from raw milk as its only main ingredient, which is not the case in most of Europe. There, cream production usually starts with producing raw cream through separating fat with raw milk; this raw cream will then be used as the main ingredient to further produce cream products of different fat contents by standardisation and other processes. These two steps are conducted in either one factory or different factories. If such a widely-used process is not considered when drafting the new standard, many high-quality cream products from Europe would be categorised mistakenly as 'modified cream', leading to related companies suffering substantial losses in the China market.

The draft *National Food Safety Standard Whey Powder, Whey Protein Powder (GB 11674)* presents another example. According to the latest discussions, the drafting committee is considering increasing the minimum requirement for protein content of whey protein powder products from 25 to 50 per cent. However, a higher protein content in whey protein powder is unnecessary for food production. As one of the main ingredients in many dairy products—such as infant formula, yoghurt and sports nutrition foods—whey protein powder products containing different levels of protein serve different purposes. Therefore, if the protein content requirement was increased to 50 per cent, manufacturers would have to cease certain product lines and dilute the whey protein powder content for others. This would negatively impact suppliers of whey protein powder with less than 50 per cent protein content and result in additional production processes and costs for manufacturers of dairy products.

Horizontal food safety standards can also pose challenges to importers of dairy products. For example, the current standard *National Food Safety Standard General Rules for the Labelling of Prepackaged Foods (GB7718)* which came into effect in 2011, allows manufacturers to keep their favoured date sequence as long as it is clearly indicated in words. However, this standard is now under revision, with one of the proposals being that "the production date and expiration date shall be

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *National Food Safety Standard Cream, Butter and Anhydrous Cream (GB 19646-2010)*, former MOH, 26th March 2010, viewed 16th April 2024, <<https://sppt.cfsa.net.cn:8086/db?type=2&guid=6818B3FF-4E2C-400B-AF62-D7BE3CF7FE3A>>

¹⁷ *National Food Safety Standard Whey Powder and Whey Protein Powder (GB 11674-2010)*, former MOH, 26th March 2010, viewed 16th April 2024, <<https://sppt.cfsa.net.cn:8086/db?type=2&guid=806A934C-35AA-44F6-8BE5-110A11B2B4D7>>



marked clearly in the order of year, month and day”. If this were to be adopted, it would significantly impact all importers of foods who use date codes different to those used in China. This would particularly be the case for dairy product manufacturers that only have one universal date code and a low export volume to China. To be compliant, a manufacturer would have to abandon its current packaging design and production line, and invest in new materials and facilities to customise packages only for the Chinese market. This would place an unnecessary burden on businesses and discourage trade in new dairy products that are usually trialled in small volumes in order to test the market.

To provide high-quality dairy products for domestic consumption and to guarantee the stability of international trade, the sub-working group recommends that recent advances in both the domestic and international dairy industries—as well as the conditions along Chinese and global supply chains—be fully taken into account when formulating policies and standards.

Recommendations

- Align the development and revision of dairy-related standards more effectively with international standards and practices, as well as the reality of domestic and international dairy markets and supply chains.
- Optimise the formulation and revision of national food safety standards by providing a more transparent and open channel for both domestic and international industry players.

2. Optimise the Regulation of Cultures Applied in Dairy Production

Concern

Many cultures that are safely used in European dairy production processes are not included in the positive list that China uses to regulate the application of cultures in food production, which prevents products containing these cultures from entering the Chinese market.

Assessment

China’s regulation of food cultures allows only a very limited number of microbial cultures to be used. In 2010, the then Ministry of Health (MOH) issued the

List of Cultures Applied in Food (List).¹⁸ It included a ‘positive list’ that recognised only a few microorganism types, mainly used for producing yoghurt, with regulated cultures applied in food for infants and young children featuring in another list. While cultures that are exempted from the regulation are not specified as those used in traditional Chinese food, the official interpretation and actual implementation in fact applies only to cultures used in such products, including vinegar, soy sauce and Chinese liquor.

Around 40 cultures now feature in the list, expanded from the original 21 over 14 years ago, with most cultures that are traditionally used for cheese production still not included.¹⁹ Cultures other than those appearing in the list and those used in traditional Chinese foods are not permitted for use in food production until they are approved in a safety review conducted by the NHC. This review process is almost impossible for culture producers to follow as it requires information that is very difficult to obtain—such as the toxicological assessment of certain cultures, which is very time- and resource-consuming—thereby hindering the development of the Chinese dairy industry, in particular the cheese sector. In addition, the review process itself is labour-intensive, which is an unnecessary cost, as these cultures have a long history of safe usage in a wide variety of European dairy products.

Authoritative lists of microorganisms used by international organisations, or in countries other than China, include cultures that are generally recognised for their history of safe usage. Such lists include those published by a joint project between the International Dairy Federation (IDF) and the European Food and Feed Cultures Association in 2002, and a Danish Veterinary and Food Administration (DVFA) list of notified microbial cultures that are used in food production. After being reviewed and updated in 2012, 2018 and 2022, the IDF inventory now lists 325 microbial cultures covering a wide range of food matrices.²⁰ The Chinese Government and several research institutes are cooperating with the IDF

¹⁸ *Notice of Ministry of Health Office on Issuing the List of Cultures Applied in Food*, former MOH, 28th April 2010, viewed 16th April 2024, <http://www.gov.cn/gzdt/2010-04/28/content_1594897.htm>

¹⁹ *Notice on Updated List of Cultures Applied in Food and the List of Cultures Applied in Infant and Young Children Food*, NHC, 25th August 2022, viewed 16th April 2024, <<http://www.nhc.gov.cn/sps/s7892/202208/1d6c229d6f744b35827e98161c146afb.shtml>>

²⁰ *IDF Publishes 4th Update on Inventory of Microbial Food Cultures*, IDF, 15th March 2022, viewed 16th April 2024, <https://fil-idf.org/news_insights/idf-publishes-4th-update-on-inventory-of-microbial-food-cultures/>



to have the cultures used in manufacturing traditional Chinese food included in the inventory.

The DVFA list of notified microbial cultures is a record of all microbial cultures the organisation has been notified of, and can be expanded if culture manufacturers provide more information. Safety documentation is not precluded in the notification process: the DVFA does not approve microbial cultures before they are used, but safe-use history and safety risks are evaluated before a culture is included on the list. In European countries, cultures are considered ingredients and must meet legal safety requirements, with the responsibility for their safety lying with manufacturers. Related regulations state that manufacturers shall only use cultures that have a history of safe use.

The contributions certain microbes have made to cheese have been widely recognised, and pure microbial cultures are commonly used by dairy product manufacturers. In addition to lactic acid bacterial starter cultures, various species of bacteria and fungi are often added to dairy products for specific characteristics. For instance, blue-mould cheeses have always been fermented with *Penicillium roqueforti*; spores of the filamentous fungus *Penicillium camemberti* are inoculated into milk during the production of bloomy, rind cheeses such as Brie and Camembert; and the actinomycete bacterium *Brevibacterium linens* (*B. linens*) contributes to the reddish-orange colour found in the traditional cheese Époisses. Dairy product manufacturers have learned over centuries how to consistently cultivate specific microbial colonies by controlling the conditions a dairy product is subjected to during the ageing process. Recognising the historical safe use of cultures applied in cheese will help promote the dairy industry in China, allowing Chinese customers to enjoy a wider variety of dairy products and thereby boosting consumption.

Recommendation

- Simplify the safety review procedures for cultures that have a long history of safe usage as attested to by international organisations and their authoritative lists.

Abbreviations

DVFA	Danish Veterinary and Food Administration
EU	European Union
GB	Guobiao (China national standard)
GI	Geographical Indication
IDF	International Dairy Federation
MOH	Ministry of Health
NHC	National Health Commission
SAMR	State Administration for Market Regulation
Y-o-Y	Year-on-Year



Foods for Special Medical Purposes Sub-working Group and Paediatric Nutrition Sub-working Group

Recent Developments

In 2023, the infant formula industry saw both developments and challenges. With new food safety standards being introduced that are applicable to infant formula (*New Standards*) officially coming into force,¹ the cooperative mechanism for overseas onsite inspections became smoother, and a number of outstanding formula registrations and approvals were finally completed. As of 22nd February 2024, a total of 1,127 formulas had been registered under the *New Standards*.² However, with the cooperation mechanism for overseas onsite inspections having been cancelled following the end of the COVID-19 pandemic, foreign enterprises once again faced uncertainty over related arrangements.

The decline in China's birth rate over the last seven consecutive years has also had an adverse impact on the infant formula market.³ In 2023, China's imports of infant formula dropped by 16 per cent year-on-year to 223,000 metric tonnes, 70 per cent of which came from the European Union (EU),⁴ a proportion that also decreased compared with 2022.⁵

The foods for special medical purposes (FSMP) market continues to grow, driven by factors such as China's rapidly ageing population.⁶ From 2017 to 31st December 2023, a total of 164 FSMPs were approved in China, with 70 products approved in 2023 alone. This can be attributed to the registration and approval process

having been accelerated from previous years.⁷ On 1st January 2024, the newly revised *Administrative Measures for the Registration of Foods for Special Medical Purposes (Administrative Measures for FSMP)* took effect,⁸ which encourage enterprises to innovate and meet clinical needs, and gives priority to the review of FSMPs for rare diseases and new categories not yet approved for urgent clinical needs.⁹ In line with many other industries, the *Administrative Measures for FSMP* promote the high-quality development of the FSMP industry through optimised policies and regulations.

The following recently released regulations and standard revisions have had a significant impact on the infant formula and FSMP industries:

- On 22nd February 2023, the *National Food Safety Standard Infant Formula (GB 10765-2021)*, the *National Food Safety Standard Older Infant Formula (GB 10766-2021)* and the *National Food Safety Standard Young Children Formula (GB 10767-2021)*, published by the National Health Commission (NHC) and the State Administration for Market Regulation (SAMR), came into effect.¹⁰
- On 10th July 2023, the SAMR published the *Administrative Measures for the Registration of Infant and Young Children Milk Powder Formula (Administrative Measures for Infant Formula)*, which subsequently came into effect on 1st October 2023.¹¹
- On 28th November 2023, the SAMR published the *Administrative Measures for FSMP*. The regulation

1 *Notice on the Release of National Food Safety Standard Cheese (GB 5420-2021) and 50 other National Food Safety Standards and four Revision Orders*, National Health Commission (NHC), published 18th March 2021, viewed 7th April 2024, <<http://www.nhc.gov.cn/sps/s7891/202103/0bdb6c4318724644b40e3f3f894aa88f.shtml>>

2 Dong, L, *Taking Stock of the Food Registration Status of Infant Formulas in 2023*, Foodmate, 26th January 2024, viewed 8th April 2024, <<http://news.foodmate.net/2024/01/680087.html>>

3 National data, National Bureau of Statistics, annually updated, <<https://data.stats.gov.cn/easyquery.htm?cn=C01>>

4 *China Dairy Trade Monthly January 2024*, National Dairy Industry and Technology System Dairy Economy Research Office, 29th January 2024, viewed 11th April 2024, <<https://www.dairy123.com/cms/show-18625.html>>

5 *China Dairy Trade Monthly January 2023*, National Dairy Industry and Technology System Dairy Economy Research Office, 2nd February 2023, viewed 7th April 2024, <<https://mp.weixin.qq.com/s/LLmwTX7zsyGgevTh3G1CuSQ>>

6 *Chinese FSMP Enterprises Dive into the Blue Ocean of a Global \$100 Billion Industry*, *Economic Information Daily*, 12th July 2023, viewed 7th April 2024, <<http://www.xinhuanet.com/food/20230712/6d60eeb0e2264eec8753d00518ea7fc4/c.html>>

7 Yang, Y, *Taking Stock of the Registration and Approval Status of FSMP in 2023*, Foodmate, 17th January 2024, viewed 8th April 2024, <<http://news.foodmate.net/2024/01/679393.html>>

8 *Administrative Measures for the Registration of Foods for Special Medical Purposes*, SAMR, 28th November 2023, viewed 7th April 2024, <https://www.samr.gov.cn/zwfzxxgk/fdzdgnr/fgs/art/2023/art_9b1a9daffc084d819bb4d7a31d909452.html>

9 *Xinhua Releases Review of Hot Spots in the Chinese FSMP Industry in 2023*, SAMR, 5th January 2024, viewed 7th April 2024, <https://www.samr.gov.cn/tssps/sjdt/gzdt/art/2024/art_7eb41fe4351047cba729ce852a0920ea.html>

10 *Notice on the Release of National Food Safety Standard Cheese (GB 5420-2021) and 50 other National Food Safety Standards and four Amendments*, NHC, 18th March 2021, viewed 8th April 2024, <<http://www.nhc.gov.cn/sps/s7891/202103/0bdb6c4318724644b40e3f3f894aa88f.shtml>>

11 *Administrative Measures for the Registration of Infant and Young Children Milk Powder Formula*, SAMR, 26th June 2023, viewed 8th April 2024, <https://www.samr.gov.cn/zwfzxxgk/fdzdgnr/fgs/art/2023/art_3a5f8aa921ac4d9e85c2dffe93b05955.html>





came into effect on 1st January 2024.¹²

- On 8th February 2024, the NHC and the SAMR issued the *National Food Safety Standard Milk Powder and Modified Milk Powder (GB 19644-2024)*. The regulation will come into effect on 8th February 2025.¹³

In the past year, the Foods for Special Medical Purpose and Paediatric Nutrition sub-working groups have actively participated in the formulation and revision of regulations and standards for special food, clarified and optimised related provisions of the special food registration system, and enhanced the strategic position of infant formula registration in the EU-China High-Level Economic and Trade Dialogue. Both sub-working groups will continue promoting the development of regulations and standards with the aim of accelerating the high-quality development of the special food industry in China.

Key Recommendations

1. Optimise the Registration System for Special Food

1.1 Accelerate Overseas Onsite Inspections for Manufacturers that have Passed the Documentation Review Process to Guarantee Inspection Timelines are the Same for Overseas and Domestic Manufacturers

Concern

The lack of a timeline for overseas onsite inspections creates challenges for overseas applicants trying to register infant and young children milk powder formula and FSMP, increasing the risk of supply disruptions.

Assessment

Onsite inspections, an important part of the registration process that helps overseas enterprises to organise their planning, production and overall operations, came to a stop at the beginning of the COVID-19 pandemic. To facilitate the restart of overseas onsite inspections for infant formula and FSMP manufacturers during the COVID-19 pandemic, the SAMR signed

memoranda of understanding (MoU) with a number of countries, authorising foreign authorities to conduct these inspections. However, once the World Health Organization declared an end to the pandemic, responsibility for inspections fell to the Centre for Food Evaluation (CFE) of the SAMR, as per the provisions of the *Administrative Measures for Infant Formula* and the *Administrative Measures for FSMP*. Although officially the CFE is supposed to complete the onsite inspection within 20 working days from the confirmed inspection date, this is challenging for overseas onsite inspections. This is because, compared to onsite inspections for domestic enterprises, onsite inspections of overseas enterprises require additional administrative procedures, such as visa applications and travel arrangements for personnel undertaking the inspections, which extends the overall timeframe. There is therefore a need, in cases of overseas manufacturers whose products are nearing the end of the registration review and/or have no substantial safety risks, to formulate an implementation plan for their onsite inspections. This should include establishing the inspection delegation and coordinating the overall inspection itinerary in advance, in order to prevent serious delays to the process.

At present, numerous standards related to FSMP are being revised, necessitating that FSMP products undergo a new round of registration. Clarifying the criteria for exempting manufacturers from onsite inspections and improving the efficiency of overseas onsite inspections would help enterprises formulate procurement and production plans in advance. This would help them to avoid material waste and to guarantee the crucial supply of products to special populations, such as patients with rare diseases, infants with food protein allergies and premature/low birth weight infants. Also, in case of force majeure, the industry recommends that MoU be signed to enable onsite inspections to be carried out as scheduled.

Recommendations

- Clarify the principles of exemption from onsite inspections, and formulate and publish an annual overseas onsite inspection schedule based on the needs of overseas enterprises.
- Create an implementation plan for overseas onsite inspections based on the progress of registration reviews to ensure seamless inspection and registration of products that are nearing completion

¹² *Administrative Measures for the Registration of Foods for Special Medical Purposes*, SAMR, 28th November 2023, viewed 7th April 2024, <https://www.samr.gov.cn/zwx/xgk/fdzdgknr/fgs/art/2023/art_9b1a9daffc084d819bb4d7a31d909452.html>

¹³ *Announcement on the Release of 47 National Food Safety Standards and 6 Amendments (2024 No. 1) Including the National Food Safety Standard Food Additive Usage Standard (GB 2760-2024)*, NHC, SAMR, 8th February 2024, viewed 8th April 2024, <<https://sppt.cfsa.net.cn:8086/db>>





of their evaluation and/or have no substantial safety risks.

- Extend the MoU as a cooperative mechanism underpinning overseas, onsite inspections of both infant formula and FSMP production facilities, and apply them to more countries and regions in the event of force majeure.

1.2 Optimise the Requirements for Stability Testing

Concern

In instances when a manufacturer's existing recipes have already been registered and verified for stability, the requirement for submitting stability testing reports for new recipes delays registration and wastes resources unnecessarily.

Assessment

Formulas currently registered under the *New Standards* have already undergone strict stability testing and statistical data analysis. Given that the change in composition of the nutrient content processed with similar techniques is almost the same, requiring each formula to provide repetitive stability reports for registration will unnecessarily cost significant time. Stability testing usually takes at least six months or longer, and there is also an additional delivery time for overseas enterprises to send samples to laboratories in China. At the same time, stability testing soaks up a great deal of the CFE's inspection department's administrative resources.

Stability testing is part of an enterprise's internal product quality management system. As the main party responsible for food quality and safety, the manufacturer has accumulated sufficient data and research on stability and is fully able to ensure the quality and safety of a product during its two-year shelf life. Given that the first batch of formulas under the *New Standards* was approved on 28th February 2022,¹⁴ and have been on the market throughout this period, the high pass rate of sampling inspections conducted by the SAMR throughout this two-year period proves their stability. The necessity for stability testing of new formulas should therefore be re-evaluated when there are registered formulas that share similar processing

¹⁴ Approval results of Infant Formula Registration on 28th February 2022, CFE, 2nd March 2022, viewed 26th April 2024, <https://www.cfe-samr.org.cn/sldt/sdxx/yyepfrfcppf_180/pjfb_181/202203/20220302_4201.html>

techniques, and the conditions under which companies can be exempted should be clearly specified to avoid waste and improve approval efficiency.

Recommendation

- Exempt enterprises from stability testing when they submit modification and deregistration information with new applications for formulas that use techniques and packing materials that are identical to formulas that have already been approved under new standards.

2. Continue to Improve All Safety Standards Relevant to Special Foods, as well as the Supporting Documentation Required for their Registration

Concern

The current timelines for revising national food safety standards for special foods, as well as the supporting documentation for special food registration and related horizontal standards, are unclear, which has a negative impact on both registration renewals and the re-registration of products.

Assessment

1) Revision of standards

At present, the *National Food Safety Standard General Rules for Infant Formulas for Special Medical Purposes (GB 25596-2010)*, the *National Food Safety Standard General Rules for Foods for Special Medical Purposes (GB 29922-2013)* and the *National Food Safety Standard Nutrient-complete Foods for Cancer Patients* are all being revised. Considering their significance to special populations and the requirement for registration of both infant foods for special medical purposes (iFSMP) and FSMP, the sub-working groups believe that establishing sufficient transition periods will help ensure the smooth implementation of these standards and the registration process.

Based on past research and development (R&D), testing, registration and production experience, industry players estimate that a minimum 44- to 54-month transition period is required to guarantee seamless production, trade and distribution for iFSMP and FSMP products. For comparison, according to relevant regulations issued by the EU, the transition period for infant formula is four years and five months; for iFSMP





with hydrolysed protein, the transition period is five years and five months.¹⁵

iFSMP and FSMP are designed to meet the special nutrient requirements of patients with limited capacity to take, digest, absorb or metabolise, or those with specific diseases. Particularly for populations with rare diseases, iFSMP and FSMP are important and irreplaceable products for life support. Therefore, if the supply of these products is disrupted due to insufficient transition periods, there will be a negative health impact on these special populations, potentially leading to social risks.

2) Revision of supporting documentation under the administrative measures

On 25th May 2017, the SAMR issued the *Interpretation of Items and Requirements of Application Documents for the Registration of Infant and Young Children Milk Powder Formula (Trial) (2017 Revised Version) (Items and Requirements)*, requiring enterprises to submit reports of three commercial trials.¹⁶ However, for enterprises with approved formulas and verified stability and uniformity of products, there is no need for three commercial trials, which would only result in additional production costs and wasted resources.

On 26th March 2021, the SAMR issued the *Announcement on Matters Concerning the Registration of Infant Formula and Young Children Milk Powder Formula and a related question and answer list*,¹⁷ guiding applicants to carry out R&D and trial production, and standardising application materials for registration. However, the materials required for application exceed the scope stipulated in the *Items and Requirements*. Applicants must submit R&D demonstration materials for formula adjustments, listing and comparing all adjustments of nutrients to the original formula and explaining the reasons for the adjustments one by one.

15 Consolidated text: Commission Delegated Regulation (EU) 2016/127 of 25 September 2015 supplementing Regulation (EU) No 609/2013 of the European Parliament and of the Council as regards the specific compositional and information requirements for infant formula and follow-on formula and as regards requirements on information relating to infant and young child feeding, EUR-Lex, 17th March 2023, viewed 6th May 2024, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2016.025.01.0001.01.ENG>

16 Interpretation of the Items and Requirements of Application Documents for the Registration of Infant and Young Children Milk Powder Formula (Trial) (2017 Revised Version), SAMR, 25th May 2017, viewed 10th April 2024, <https://www.samr.gov.cn/tssps/zcwj/art/2023/art_05b7d5e6e7634c789b74c58f826e8ce5.html>

17 Announcement on Matters Concerning the Registration of Infant and Young Children Milk Powder Formula, SAMR, 26th March 2021, viewed 10th April 2024, <https://www.samr.gov.cn/tssps/zcwj/art/2023/art_8c35b50883724cbb59f519d29166e9d.html>

However, different formulas often follow different R&D methodologies, making it difficult to both individually compare the label declaration and recipe dosage and those of the adjusted formula and provide an explanation.

On 1st January 2024, the *Administrative Measures for FSMP* came into effect. Article 8 of these measures points out that clinical trial reports must usually be submitted during the registration of specific nutrient-complete FSMPs. Given the fact that FSMPs are products for nutritional support only, the necessity of their clinical trials should be demonstrated. Enterprises need clearer guidance on the requirements for clinical trials due to the large amount of time and investment required. Without this, enterprises will not be motivated to carry out R&D of specific nutrient-complete FSMPs. Conversely, providing more flexibility in the design of clinical trials, such as by taking products in foreign markets as control groups and sharing clinical trial data for similar formulas, enterprises will be incentivised to engage in R&D activities.

In addition, the *Administrative Measures for FSMP* require technical requirements to be stated on the registration licence and its attachment. However, there is no supporting documentation that provides an interpretation of the testing methods for such technical requirements, causing uncertainty over the registration of new products. Taking the degree of hydrolysis as an example, enterprises follow different testing methods to verify the degree of hydrolysis due to the lack of a relevant national standard. Even if there was such a standard, given that the testing result and reproducibility of peptide molecular weight distribution are greatly affected by pre-treatment and separating columns, there could be testing deviations between different methods for the same product, or for the same method carried out by different laboratories. Taking osmotic pressure as another example, there is no national standard outlining either the accepted testing method or the tolerance threshold. Each enterprise generally sets its own testing frequency based on the stability of historical testing results of the osmotic pressure and the risk level. This underlines the need for clarification of standardised registration and other regulatory requirements.

3) The formulation and revision of horizontal standards

Whenever changes are made to label-related regulations, manufacturers must update their product





labelling accordingly, which is a time-consuming and costly process. This happened, for example, with the SAMR's 28th May 2019 issuance of the *Announcement on the Changes in the Product Names of Foods for Special Medical Purposes*, asking enterprises to adjust FSMP product names on packaging in accordance with the requirements;¹⁸ with the General Administration of Customs in China's (GACC's) 12th April 2021 release of the Regulations on the *Registration and Administration of Overseas Producers of Imported Food*,¹⁹ which required overseas manufacturers to register and print the product registration number on packaging; and again on 20th December 2022, when the SAMR published the *Guidelines for the Labelling of Foods for Special Medical Purposes*,²⁰ leading to yet another round of label replacement for most enterprises.

At present, horizontal standards including the *National Food Safety Standard General Rules for Labelling of Prepackaged Foods (GB 7718)*, the *National Food Safety Standard General Rules for Nutrition Labelling of Prepackaged Foods (GB 28050)*, the *National Food Safety Standard Labelling of Prepackaged Special Dietary Foods (GB 13432)*, the *Measures for the Supervision and Administration of Food Labels*, and the *National Food Safety Standard Standards for the Use of Food Nutrition Fortifier (GB 14880)* are all under formulation and revision. This means that, once finalised, industry players will again need to prepare for registration based on the changes to these horizontal standards and revise labels and packaging. If these standards are not released at the same time, enterprises will have to modify product labels and packaging multiple times, resulting in considerable waste of packaging materials and resources, as well as disruptions to production and operations in general.

Recommendations

- Introduce new or updated standards for iFSMP and FSMP to the industry before they are published, allowing enterprises sufficient transition time before they come into force.

18 *Announcement on the Changes in the Product Names of Foods for Special Medical Purposes*, SAMR, 30th May 2019, viewed 10th April 2024, <https://www.samr.gov.cn/zw/zfbxxgk/fdzdgknr/tssps/art/2023/art_72de8751563a42dda3c8bea643e89806.html>

19 *Regulations on the Registration and Administration of Overseas Producers of Imported Food*, GACC, 12th April 2021, viewed 10th April 2024, <https://www.gov.cn/gongbao/content/2021/content_5616161.htm>

20 *Announcement of the SAMR on Issuing the Guidelines for the Labelling of Foods for Special Medical Purposes*, SAMR, 20th December 2022, viewed 10th April 2024, <https://www.gov.cn/zhengce/zhengceku/2022-12/28/content_5733967.htm>

- Set a transition period of at least three years for iFSMP standards to ensure both a smooth registration process and stable market supply.
- Allow enterprises to decide the number of commercial trials for new formulas independently from those with both approved formulas and whose stability and uniformity have been verified, when the production techniques of the formulas remain the same.
- Simplify the R&D demonstration materials required for formula adjustments so that only the changes to the new formula need to be introduced without a one-to-one comparison with the original formula.
- Optimise the technical guidance for clinical trials of specific nutrient-complete FSMPs as soon as possible by offering differentiated management when such trials are deemed unnecessary.
- Give enterprises more flexibility in the design of clinical trials, by allowing them to use products in foreign markets as control groups, and share clinical trial data for similar formulas.
- Revert to the previous practice for the degree of hydrolysis and osmotic pressure that needs to be indicated during registration.
- Coordinate the simultaneous release of relevant horizontal standards to allow enterprises to comply with them more easily and avoid unnecessary waste of resources.

3. Increase Market Access for and Improve Public Awareness of FSMP

Concern

In China, the lack of market access for FSMP has resulted in a limited scope of clinical application of FSMP, as well as low professional and public awareness and access to such products.

Assessment

Although the Food Safety Law states that FSMP should be regulated under the same category as other foods, due to its use in medical and pharmaceutical institutions, FSMP is regarded as a new category derived from enteral nutrition drugs. As a result, FSMP is regulated differently from food in terms of registration, hospital access, clinical application, charging and reimbursement. The approval procedure for FSMP to gain access to hospitals involves the collaboration of multiple departments, including clinical nutrition, medical





services, medical insurance, finance, information and clinical. Although 13 provincial and six municipal authorities have issued administrative documents to provide guidelines on how FSMP manufacturers can provide their products to healthcare providers,²¹ only a small number of hospitals have fully established a corresponding management system. In addition, as FSMP is currently not included in China's unified Hospital Information System with corresponding charge codes, physicians or clinical nutritionists are unable to prescribe them, to the detriment of patient care.

There is also a lack of access to FSMP outside of hospitals, meaning most products are completely unavailable to the people that need them most. In addition, specific nutrient-complete FSMP are not permitted to be sold online according to the *Measures for the Investigation and Punishment of Illegal Acts Related to Food Safety in the Digital Market*,²² which further hinders access to such products. Taking specific nutrient-complete FSMP for cancer patients as an example, patients and their families find the absence of an online market extremely inconvenient, especially for those that are advised not to go outdoors or that live in remote areas, particularly as such products are frequently used and tend to be very heavy. Restrictions on the online market also adversely impact FSMP sales overall, which further disincentivises companies from engaging in R&D, particularly given the substantial investment required for early-stage clinical trials.

Recommendations

- Optimise the Hospital Information System by listing FSMP products with charge codes to give medical institutions easier access to FSMP products.
- Formulate clinical application and management guidelines for FSMP to guide standardised procedures in medical institutions, improve the development of clinical nutrition departments and clinical nutrition teams, and raise professional and public awareness.
- Revise the *Measures for the Investigation and Punishment of Illegal Acts Related to Food Safety in the Digital Market* to allow the online sale of specific

nutrient-complete formulas under the guidance of physicians or clinical nutritionists.

4. Establish a Legal Framework to Regulate the Retail Marketing of 0–12-Months Infant Formula and Provide a Detailed Plan to Effectively Encourage Breastfeeding

Concern

The lack of a legal framework to regulate the marketing of formulas for infants aged 0–12 months in retail channels may have an adverse influence on the protection and promotion of breastfeeding.

Assessment

Since the abolishment of the *Administrative Measures on the Sale of Breast Milk Substitutes* in December 2017, there has been no legal framework in China to regulate the marketing of infant formula for infants aged 0–12 months. Given the legal vacuum for the regulation of the marketing of infant formula, some merchants directly or indirectly distribute free samples of 0–6-months infant formula to pregnant people and carry out various promotional activities such as offering gifts, price reductions and bundled sales (exclusive gift packages for new customers) to the parents of infants.

On 15th November 2021, the NHC and 15 other agencies issued the *Breastfeeding Promotion Action Plan (2021–2025)*, which is aimed at achieving “a national exclusive breastfeeding rate of over 50 per cent for infants aged 0–6 months”.²³ On 2nd April 2022, the NHC issued the *Notice on the Implementation Programme for the Outline for Women and Children's Development in China (2021–2030)*,²⁴ again mentioning “reaching a breastfeeding rate of over 50 per cent for infants aged 0–6 months by 2030” as one of the main health goals. However, these policies are not embedded in formal legislation and no clear regulatory responsibilities and implementation actions have been assigned. The industry therefore thinks that to achieve the goal of increasing China's breastfeeding rate to improve the overall health of infants and young children, it is essential to encourage collaboration between

21 *Xinhua Releases Review of Hot Spots in the Chinese FSMP Industry in 2023*, SAMR, 5th January 2024, viewed 7th April 2024, <https://www.samr.gov.cn/tssps/sjdt/gzdt/art/2024/art_7eb41fe4351047cba729ce852a0920ea.html>

22 *Measures for the Investigation and Punishment of Illegal Acts Related to Food Safety in Digital Market*, former China Food and Drug Administration, 13th July 2016, 11th April 2024, <https://www.gov.cn/gongbao/content/2017/content_5174527.htm>

23 *Notice on the Issuance of the Breastfeeding Promotion Action Plan (2021–2025)*, NHC, 15th November 2021, viewed 2nd April 2024, <http://www.gov.cn/zhengce/zhengceku/2021-11/24/content_5653169.htm>

24 *Notice on the Implementation Programme for the Outline for Women and Children's Development in China (2021–2030)*, NHC, 2nd April 2022, viewed 2nd April 2024, <https://www.gov.cn/zhengce/zhengceku/2022-04/09/content_5684258.htm>





governments and civil society, and establish a legal framework for developing marketing regulations for infant formula.

Recommendations

- Revise and issue the *Administrative Measures on the Sale of Breast Milk Substitutes* through the National Health Commission and relevant ministries to regulate the marketing of 0–6-months infant formula in retail channels.
- Confirm the SAMR as the regulatory authority to oversee the promotion of 0–6-months infant formula in supermarkets, maternity stores and other retail outlets to strengthen supervision of the Breastfeeding Promotion Action Plan (2021–2025).
- Establish a legal framework to regulate and supervise the marketing of 0–12-months infant formula in retail channels to eliminate the negative impact of inappropriate marketing activities on breastfeeding in the long term.

Abbreviations

CFE	Centre for Food Evaluation
EU	European Union
FSMP	Foods for Special Medical Purposes
GACC	General Administration of Customs of China
GB	Guobiao (domestic national standard)
iFSMP	Infant Foods for Special Medical Purposes
MoU	Memorandum/Memoranda of Understanding
NHC	National Health Commission
R&D	Research and Development
SAMR	State Administration for Market Regulation





Automotive Working Group

Key Recommendations

1. Provide Clear Market Access Requirements and Approval Processes for Vehicle Manufacturing Investments in order to Fully Open Up the Automotive Industry



- Release clear access requirements and approval processes for foreign investment in vehicle manufacturing.
- Provide coherent policy interpretation and guidelines to foreign-invested automotive manufacturers on their prospective investments in China.
- Consult foreign-invested automotive manufacturers during the drafting and revision process of major policies related to foreign investment approvals.

2. Establish a Practical Cross-border Data Transfer (CBDT) Regulatory Framework for Automotive Companies



- Revise the definition of 'important data' in the *Several Provisions on the Management of Automobile Data Security (Trial)* to allow automotive companies to appropriately collect, process and transfer data from inside and outside the vehicle cockpit, provided they ensure privacy, data security and cybersecurity.
- Establish an automotive data export 'whitelist' to allow the free export of both operational and business development data.
- Develop data classification standards that are coordinated among government agencies to address the diversified nature of data involved in the automotive industry.
- Consult with international automotive companies when developing policies related to automotive data and information security.

3. Create a Predictable, Non-discriminatory and Balanced Legislative Environment that is Conducive to the Sustainable Development of New Energy Vehicles (NEVs)



Policy transparency and predictability

- Ensure international automotive manufacturers can participate in the drafting and revision of new policies and regulations.
- Provide lead time of at least three years for automotive manufacturers to prepare sufficiently when policies and planning documents are published.

Decarbonisation

- Align whole vehicle and battery electric vehicle (BEV) battery carbon footprint calculation regulations between the European Union (EU) and China.
- Establish a dialogue on carbon footprint calculation between the EU and China.

NEV credits

- Simplify the dual-credit policy management mechanism.





- Ensure advance notice if the emissions trading system (ETS) is connected with the dual-credit policy to avoid conflicting regulation.

Vehicle energy consumption standards

- Continue using fleet targets for regulating the use of energy for BEVs in order to provide consumers with a more diverse range of vehicles to choose from.

4. Ensure that Intelligent Connected Vehicle (ICV) Driving Policy Developments are Transparent for Foreign Companies, and allow Imported Vehicles to Participate in the ICV Market Access Pilot 5

- Consult international automotive manufacturers when drafting and revising ICV policies.
- Legalise autonomous vehicles that meet or exceed the L3 standard on more roads to encourage the development and commercialisation of ICVs.
- Ensure the consistency, non-discrimination and appropriateness of market access laws, regulatory systems and technical requirements related to ICVs.
- Allow imported cars to participate in the ICV market access pilot programme.

5. Commercial Vehicles (CVs)

5.1 Create a Level Playing Field Through Stricter Enforcement of Existing Road Safety Rules

- Strengthen real-time supervision and law enforcement efforts.
- Standardise enforcement of standards and laws to ensure industry-wide compliance.
- Launch a unified, national transport supervision mechanism.

5.2 Recognise Optimised Vehicle Specifications in the Regulation of CVs 5

- Distinguish between CVs and passenger cars in regulations and standards.
- Implement a uniform standard covering CVs nationally.
- Publish recommended standards (GB/T) and industry standards under the World Trade Organization (WTO) publication system as mandatory standards if they are quoted in technical regulations.
- Involve international automotive companies early in the process of drafting and updating regulations for CVs.
- Grant sufficient lead time for manufacturers to adapt to new standards.
- Unify market access requirements and implementation procedures.

5.3 Allow Longer Vehicle Combinations to Minimise the Carbon Footprint of CVs and Increase Transport Efficiency 5

- Introduce a proper road classification and allow for different lengths and gross combination weights, depending on road and bridge conditions.
- Amend standard *GB 1589-2016* to allow for more than six axles and long vehicle combinations as soon as possible.
- Calculate the carbon footprint of vehicles as carbon dioxide (CO₂) emissions (energy consumption) per tonne per kilometre.
- Include the use of biofuel by CVs in government plans and roadmaps to reduce CO₂ emissions.





6. Motorcycles

6.1 Rescind the 13-year ‘Shelf Life’ Limitation for Motorcycles in China 3

- Rescind the mandatory 13-year ‘shelf-life’ of motorcycles, and adopt annual inspections of motorcycles that have been used for 13 years, to extend their service life.

6.2 Open All Roads that Permit Four-wheeled Vehicles to Motorcycles, Including Highways 3

- Differentiate between motorcycle types when placing restrictions on their use and open highways to motorcycles over 250cc.
- Rely on effective enforcement of road rules as well as increased training for motorcyclists to ensure safety, rather than complete bans.
- Issue green NEV licence plates and other preferential benefits for electric motorcycles to encourage their use in urban areas.

7. Expedite the Development of the Classic Car Industry by Formulating and Implementing the Relevant Verification Standards and Management Systems called for in the *Guiding Opinions on Promoting the High-quality Development of the Automotive Aftermarket* 2

- Establish a graded classic car verification administration system that makes use of committees instead of one-size-fits-all regulation.
- Accelerate the formulation and implementation of national standards for classic cars and launch pilot programmes in areas that have a relatively more mature automotive industry, such as Jiading District in Shanghai.
- Grant temporary licence plates and limited road access for road-worthy classic cars.
- Designate customs commodity codes and set duties specifically for classic cars.

Recent Developments

The ongoing electric vehicle (EV) price war,¹ shrinking market share and a number of market access barriers have made China’s automobile market increasingly difficult to operate in for European automotive manufacturers.² According to the European Chamber’s Business Confidence Survey 2024, overcapacity is also a significant problem, with 62 per cent of respondents from the automotive industry reporting this to be the case, the second highest rate in any sector.³ In October

2023, the European Commission launched an anti-subsidy investigation on imports of EVs from China, as a direct result of overcapacity concerns,⁴ which led to a provisional increase in tariffs on EV exports from China to the European market. Yet, despite these challenges, China’s automotive manufacturing sector has continued to grow at a heightened pace.

In 2023, vehicle production in China and exports to other markets hit an all-time high.⁵ Growth in the automotive manufacturing industry continued in the first quarter of 2024, with a significant increase in

1 An, L and Han, W, *Raging Price War Poses Survival Threat for Automakers*, *Caixin Global*, 31st March 2023, viewed 16th May 2024, <<https://www.caixinglobal.com/2023-03-31/raging-price-war-poses-survival-threat-for-automakers-102014074.html>>

2 For more detail on market access barriers, see key recommendations (KRs) 1 and 4.

3 *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 16th May 2024, p. 11, <<https://www.eurochamber.com.cn/en/publications-business-confidence-survey>>

4 *Commission launches investigation on subsidised electric cars from China*, European Commission, 4th October 2023, viewed 16th May 2024, <https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4752>

5 Ren, D, *China’s car industry on a roll as production and sales hit all-time high in 2023*, *SCMP*, 11th January 2024, viewed 14th May 2024, <<https://www.scmp.com/business/china-business/article/3248121/chinas-car-industry-roll-production-and-sales-hit-all-time-high-2023>>





vehicle exports.⁶ Of the cars sold, 4.58 million were sold domestically and 1.11 million were exported, a year-on-year (y-o-y) increase of 6.2 per cent and 34.3 per cent respectively.⁷ During this period, the market share of domestic passenger car manufacturers grew to 59.6 per cent, an increase of 7.4 percentage points.⁸

The manufacture and export of commercial vehicles also increased in the first quarter of 2024. Production reached 997,000 units, a y-o-y increase of 5.1 per cent.⁹ Of the vehicles sold, 819,000 were sold domestically, a 6.3 per cent increase y-o-y, and 214,000 were exported to other markets, a y-o-y increase of 27.5 per cent.¹⁰

The new-energy vehicle (NEV) market for domestic purchase is growing faster than that for export. During the first quarter of 2024, 1.78 million NEVs were sold domestically, a 33.3 per cent y-o-y increase, while only 307,000 were exported to other markets, a 23.8 per cent increase y-o-y. As of March 2024, NEVs held a 31.1 per cent share in China's automotive market.¹¹

Regulatory Developments

In September 2023, the Ministry of Industry and Information Technology (MIIT) released its *Work Plan for Stable Growth in the Automotive Industry (2023–2024)*.¹² The plan is aimed at expanding the consumption of NEVs, stabilising consumption levels for internal combustion (IC) vehicles, promoting exports and encouraging the scrapping of old vehicles. However, no further details have been released on the implementation of these goals. In December 2023, the MIIT also issued the *Green and Low-Carbon Development Roadmap for the Automotive Industry 1.0*.¹³ The roadmap integrates the focus on NEV technology development with the country's 30/60 Goals.¹⁴ Similarly, there is still no specific guidance on how to realise the targets proposed by the document.

6 March 2024 China Association of Automobile Manufacturers Information Conference, China Association of Automotive Manufacturers (CAAM), 13th April 2024, viewed 16th May 2024, <http://www.caam.org.cn/chn/4/cate_154/con_5236377.html>

7 *Ibid.*

8 *Ibid.*

9 *Ibid.*

10 *Ibid.*

11 *Ibid.*

12 *Work Plan for Stable Growth in the Automotive Industry (2023-2024)*, MIIT, 2nd September 2023, viewed 16th May 2024, <https://www.gov.cn/zhengce/jijiedu/tujie/202309/content_6901715.htm>

13 *Green and Low-carbon Development Roadmap for the Automotive Industry 1.0*, MIIT, 7th December 2023, viewed 16th May 2024, <<https://www.catarec.net.cn/cms/picture/751987492168912896.pdf>>

14 The 30/60 Goals are China's dual targets of peaking CO₂ emissions before 2030 and achieving carbon neutrality by 2060.

There was not a significant opening up of autonomous driving regulations in 2023, but there was a notable increase in the prevalence of autonomous vehicle pilot programmes across China.^{15&16} Another noteworthy development was the release of draft regulations on battery capacity, one of the first steps China has taken to address overcapacity in the automotive industry.¹⁷ While the draft claims to restrict projects aimed only at expanding production capacity and encourages battery producers to improve battery quality, it will likely have little impact in practice. Under the new regulations, companies will be encouraged to allot a minimum of three per cent of their revenue to research and development (R&D) and technological upgrades,¹⁸ but this is far lower than the existing R&D expenditure of most manufacturers. Furthermore, the EV battery quality standards proposed by the draft are still significantly lower than those already met by most EV batteries on the market.

Further underscoring the increasing importance of EV batteries, the European Union (EU) became the first major market to introduce a mandatory battery carbon footprint calculation methodology,¹⁹ with other markets, including China, expected to release their own requirements soon.

1. Provide Clear Market Access Requirements and Approval Processes for Vehicle Manufacturing Investments in order to Fully Open Up the Automotive Industry

Concern

The lack of both clear access requirements and coherent guidance on the application process for vehicle manufacturing projects brings uncertainty to foreign-invested automobile manufacturers when making investment decisions in China.

15 Luo, W, *Pilot programs put more driverless vehicles on the road*, *China Daily*, 26th November 2023, viewed 14th May 2024, <<https://www.chinadaily.com.cn/a/202310/26/WS653a745fa31090682a5eaf61.html>>

16 See KR 4 for more details on autonomous driving.

17 *Announcement on the Management Measures for Lithium Battery Industry Standards (2024 Edition) (Draft for Comments)*, MIIT, 8th May 2024, viewed 16th May 2024, <https://www.miit.gov.cn/gzcy/yjzj/art/2024/art_689082865a5d4a23b831be368c8034ba.html>

18 *Ibid.*

19 *EU BATTERY REGULATION – MANDATORY CARBON FOOTPRINT CALCULATION*, Bureau Veritas, 25th September 2023, viewed 17th May 2024, <<https://www.cps.bureauveritas.com/newsroom/eu-battery-regulation-mandatory-carbon-footprint-calculation>>





Assessment

In the past, China only allowed foreign-invested enterprises (FIEs) to take part in vehicle manufacturing through joint ventures (JVs) with Chinese companies. These restrictions were lifted from 1st January 2022,^{20&21} providing a fully open market in theory. However, in practice, foreign-invested vehicle manufacturers still face regulatory barriers that prevent them from optimising their investments in China, including through the restructuring of existing operations, adjusting the foreign equity ratio of existing JVs and building new vehicle production plants.

In addition to the *Provisions on the Administration of Investments in the Automotive Industry*,²² internal documents and procedures that are not publicly available regulate the approval of vehicle manufacturing related investments. This creates an opaque regulatory environment in which FIEs are unable to fully understand the rules that govern them; the uncertainty that this results in prevents them from being able to make long-term investment decisions. To rebuild confidence in the industry, it is recommended that the authorities ensure that these barriers are either completely removed or officially clarified in order to create a transparent and predictable regulatory framework.

Recommendations

- Release clear access requirements and approval processes for foreign investment in vehicle manufacturing.
- Provide coherent policy interpretation and guidelines to foreign-invested automotive manufacturers on their prospective investments in China.
- Consult foreign-invested automotive manufacturers during the drafting and revision process of major policies related to foreign investment approvals.

20 *Special Administrative Measures for Foreign Investment Access (Negative List) (2021 Edition)*, National Development and Reform Commission (NDRC) and Ministry of Commerce (MOFCOM), 27th December 2021, viewed 13th May 2024, <https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202112/20211227_1310020.html?code=&state=123>

21 *Special Administrative Measures for Foreign Investment Access in Pilot Free Trade Zones (Negative List) (2021 Edition)*, NDRC and MOFCOM, 27th December 2021, viewed 13th May 2024, <https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202112/20211227_1310019.html?code=&state=123>

22 *Administrative Provisions on Automotive Industry Investment*, NDRC, 10th December 2018, viewed 1st July 2024, <http://www.gov.cn/gongbao/content/2019/content_5377111.htm>

2. Establish a Practical CBDT Regulatory Framework for Automotive Companies 3

Concern

Current policies hinder the collection and cross-border transfer of data by automotive companies for both research and customer service purposes.

Assessment

The three highest-level data laws pertaining to data security in China, the Cybersecurity Law, the Data Security Law and the Personal Information Protection Law, have already come into force.^{23&24&25} In March 2024, the Cyberspace Administration of China (CAC) announced the *Provisions on Promoting and Regulating Cross-border Flow of Data (Provisions on Cross-border Data)*,²⁶ aimed at optimising data export systems such as the data export security assessment, the standard contract for the export of personal information and personal information protection certification. However, despite this increasingly mature cross-border data transfer regulatory framework and the direction given by the *Opinions on Further Optimising the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment* Opinions to make CBDT more convenient,²⁷ the automotive industry is still unable to conduct industry-standard cross-border data transfer (CBDT) in an efficient manner.

In the *Several Provisions on the Management of Automobile Data Security (Trial) (Provisions on Automobile Data)*,²⁸ the CAC stipulated that personal information (even of just one person) which is part of a body of more than 100,000 people's personal information is considered important data. Because most automotive companies have more than 100,000 customers in China, this provision designates all their customer data as important data, which prevents

23 *Cybersecurity Law*, Standing Committee of the National People's Congress (NPCSC), 7th November 2016, viewed 13th May 2024, <http://www.gov.cn/xinwen/2016-11/07/content_5129723.htm>

24 *Data Security Law*, NPCSC, 10th June 2021, viewed 13th May 2024, <http://www.gov.cn/xinwen/2021-06/11/content_5616919.htm>

25 *Personal Information Protection Law*, NPCSC, 20th August 2021, viewed 13th May 2024, <http://www.gov.cn/xinwen/2021-08/20/content_5632486.htm>

26 *Provisions to facilitate and regulate the cross-border flow of data*, CAC, 22nd March 2024, viewed 15th April 2024, <https://www.cac.gov.cn/2024-03/22/c_1712776611775634.htm>

27 *Opinions on Further Optimising the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment*, State Council, 13th August 2023, viewed 18th April 2024, <https://www.gov.cn/zhengce/content/202308/content_6898048.htm>

28 *Several Provisions on the Management of Automobile Data Security (Trial)*, NDRC, 16th August 2021, viewed 13th May 2024, <https://www.gov.cn/zhengce/zhengceku/2021-09/12/content_5640023.htm>





them from adopting the more convenient measures for transferring personal information announced in the *Provisions on Cross-border Data*.

Personal information and vehicle data are needed for both business development and research and development (R&D). They also play an essential role in allowing companies to provide the best possible customer service experience for drivers, especially for imported vehicles. Immediate remote assistance from engineers outside the country is often required to analyse and solve problems under emergency circumstances, such as car accidents. Even if accident data was not classified as important personal data by the *Provisions on Automobile Data*, automotive manufacturers would still be unable to transfer the data in most cases due to it being the subject of an investigation. These multiple layers of restrictions further underscore why the automotive industry needs a more practical approach to regulating data, which is already subject to a variety of protections, such as data masking and other security protocols. The current CBDT restrictions serve only as a bureaucratic barrier to customers receiving timely information about their cars, while doing nothing to increase privacy in practice. A whitelist that would allow key types of data, such as accident data, to be exported immediately for customer service purposes would go a long way towards improving this situation.²⁹ Furthermore, the whitelist should include both business development and R&D data so that China can continue to be a global centre of automobile innovation. It is important that even if improvements are made, regulators continue to evaluate the reasons for data transfer and usage and ensure that regulation reflects an understanding of this.

The best way for Chinese authorities to achieve this is to actively communicate and coordinate with industry players, including international automotive companies, when formulating and implementing related policies. CBDT and other data policies need to be well formulated, scientific, practically implementable and specific in order to allow Chinese consumers to receive the best possible service experience and for China to continue to attract investment from international automotive manufacturers.

²⁹ The proposed whitelist would apply nationally and would include data categories that could be freely transferred by automotive companies, including personal information from groups of more than 100,000 people, so long as they met the qualifications set out by the whitelist.

Recommendations

- Revise the definition of 'important data' in the *Several Provisions on the Management of Automobile Data Security (Trial)* to allow automotive companies to appropriately collect, process and transfer data from inside and outside the vehicle cockpit, provided they ensure privacy, data security and cybersecurity.
- Establish an automotive data export 'whitelist' to allow the free export of both operational and business development data.
- Develop data classification standards that are coordinated among government agencies to address the diversified nature of data involved in the automotive industry.
- Consult with international automotive companies when developing policies related to automotive data and information security.

3. Create a Predictable, Non-discriminatory and Balanced Legislative Environment that is Conducive to the Sustainable Development of NEVs

Concern

The lack of both transparency and equal treatment in policy implementation, combined with stricter requirements on the supply side and a lack of clarity on the demand side, creates uncertainty for NEV developers.

Assessment

Policy transparency and predictability

As product decisions need to be made several years ahead of the launch of new NEV models, it is important that the government ensures transparency and early industry involvement before introducing new policies. This is required so that original equipment manufacturers (OEMs) can determine whether a NEV product will be able to fulfil new regulatory requirements, to give them the confidence to invest in and develop new models.

Decarbonisation

The push to decarbonise could be boosted by aligning international regulations between China and the EU on whole vehicle and BEV battery carbon footprint calculations. Both the EU and China are formulating battery carbon footprint calculation methodologies, providing an opportunity for collaboration and alignment.





NEV credits

Rules for dual credits after 2025 have not yet been released,³⁰ which may impact sustainable development of the automotive industry, as manufacturers require a stable and predictable regulatory environment to plan production schedules. Before setting rules, full consultation with the industry is necessary to avoid setting either overly aggressive goals or impractical transition periods. While the *NEV Development Plan 2021–2035* outlines a proposal to connect China's dual credit policy with its emissions trading system (ETS),³¹ details on how they will be integrated are not yet in place. Clarifying the details as early as possible is necessary to give manufacturers the time they need to achieve compliance.

Vehicle energy consumption standards

Existing standards regulate average energy usage across the entire fleet of automotive manufacturers' BEVs, rather than model by model.^{32&33} This method takes into account that some high-performance cars that use a higher amount of energy are sold in very low quantities, meaning that automotive manufacturers can sell these vehicles, provided they sell a sufficient quantity of vehicles with a lower level of energy use to bring down their average. While high-performance vehicles make up a small number of vehicles on the road, they are a key part of the transition from IC vehicles to BEVs. The development of high-performance BEVs provides consumers with more choices and demonstrates that EV technology can compete with IC technology in high-performance settings. Introducing single vehicle targets for BEVs would discourage the development of high-performance BEVs, giving an upper hand to existing IC vehicles, and do little to reduce on-road energy consumption overall.

Recommendations

Policy transparency and predictability

- Ensure international automotive manufacturers can

participate in the drafting and revision of new policies and regulations.

- Provide lead time of at least three years for automotive manufacturers to prepare sufficiently when policies and planning documents are published.

Decarbonisation

- Align whole vehicle and BEV battery carbon footprint calculation regulations between the EU and China.
- Establish a dialogue on carbon footprint calculation between the EU and China.

NEV credits

- Simplify the dual-credit policy management mechanism.
- Ensure advance notice if the ETS is connected with the dual-credit policy to avoid conflicting regulation.

Vehicle energy consumption standards

- Continue using fleet targets for regulating the use of energy for BEVs in order to provide consumers with a more diverse range of vehicles to choose from.

4. Ensure that ICV Driving Policy Developments are Transparent for Foreign Companies, and allow Imported Vehicles to Participate in the ICV Market Access Pilot 🇨🇳 5

Concern

China's policy outlook for ICVs lacks transparency and prohibits imported vehicles from joining the ICV market access pilot.

Assessment

China has promising ICV technologies built on years of growth.³⁴ However, autonomous driving is not legal on public roads,³⁵ which seriously impacts companies' R&D investment and general planning, as well as the development and application of ICV technologies. The only way manufacturers can get their autonomous vehicles on China's roads is

³⁰ *Decision on Amending the Parallel Management Measures for Corporate Average Fuel Consumption of Passenger Vehicle and NEV Credits*, MIIT, MOFCOM, Ministry of Finance and General Administration of Customs and State Administration for Market Regulation, 29th June 2023, viewed 14th May 2024, <https://www.miit.gov.cn/zcfg/jdcxjl/art/2023/art_6facac0a0f534cfbbc65f9cf213ce33c.html>

³¹ *NEV Development Plan 2021–2035*, State Council, 20th October 2020, viewed 15th May 2024, <https://www.gov.cn/zhengce/content/2020-11/02/content_5556716.htm>

³² *Fuel consumption evaluation methods and targets for passenger cars*, General Administration of Quality Supervision, Inspection and Quarantine, 17th January 2014, viewed 15th May 2024, <<https://www.miit.gov.cn/n1146295/n7281310/c7302075/part/7302078.pdf>>

³³ "Fleet" refers to the entire lineup of vehicles sold by an automotive manufacturer and takes into account the volume of each vehicle sold.

³⁴ The term ICV sometimes refers to vehicles with connectivity features that may or may not include autonomous driving, but China requires vehicles to have autonomous driving capabilities to be classified as ICVs. *Notice on the Pilot Work on Access and On-road Passage of Intelligent Connected Vehicles*, MIIT, 17th November 2023, viewed 14th May 2024, <https://www.gov.cn/zhengce/zhengceku/202311/content_6915788.htm>

³⁵ *Road Traffic Safety Law of the People's Republic of China*, Standing Committee of the National People's Congress, 29th April 2021, viewed 14th May 2024, <<https://flk.npc.gov.cn/detail2.html?ZmY4MDgxODE3YWlyMzFhYjAxN2FhZDYxN2VmNzA1MTk%3D>>





through pilot schemes,^{36&37} which are currently limited in scope and do not present an equal opportunity to foreign automotive manufacturers.

While autonomous driving is likely to be allowed on more roads in the future, European automotive manufacturers will not be able to benefit from this change without a fairer and more transparent policy-making process in which timeframes and requirements are communicated in advance.

This is evidenced by China's L3 ICV market access pilot,³⁸ in which complex, unclear application requirements and an exclusion of vehicles produced outside of China have made it difficult for European automotive manufacturers to take part.^{39&40} The first batch of companies selected for the pilot, which did not include any foreign automotive companies, have already gained a competitive advantage in ICV commercialisation.⁴¹ For China to create an open and fair automotive market, both imported and domestically produced vehicles should be accepted in these pilot schemes. Detailed application requirements should also be clear and publicly available. This is very much in China's interests, as its ICV industry would benefit from increased competitiveness if European automotive manufacturers were to be allowed to participate in an equal way.

Recommendations

- Consult international automotive manufacturers when drafting and revising ICV policies.
- Legalise autonomous vehicles that meet or exceed the L3 standard on more roads to encourage the development and commercialisation of ICVs.
- Ensure the consistency, non-discrimination and

appropriateness of market access laws, regulatory systems and technical requirements related to ICVs.

- Allow imported cars to participate in the ICV market access pilot programme.

5. Commercial Vehicles (CVs)

5.1 Create a Level Playing Field Through Stricter Enforcement of Existing Road Safety Rules

Concern

The underenforcement of regulations on lorry trailers and containers creates an unfair transport market and is dangerous to all road users.

Assessment

Lorries with overweight, overlength, overwidth and overheight trailers and containers are still common on China's roads. This damages road surfaces⁴² and sometimes even causes road infrastructure to collapse.^{43&44} Overloaded lorries are also dangerous to other road users as they increase the risk of casualties, particularly when the driver speeds,⁴⁵ sometimes resulting in deadly accidents.⁴⁶ In addition to making roads more dangerous, the operators of these vehicles gain an unfair advantage over those who follow the rules regardless of whether they are being strictly enforced. This only encourages non-compliance, leading to more road deaths.

Currently, enforcement of transport rules is decentralised, with a variety of authorities involved at various levels of government. These authorities each enforce their own rules, often without working together. There is also a tendency to crack down after an incident,⁴⁷ rather than working to ensure compliance on an ongoing basis. A national-level platform to standardise and coordinate

36 Notice on the Pilot Work on Access and On-road Passage of Intelligent Connected Vehicles, MIIT, 17th November 2023, viewed 14th May 2024, <https://www.gov.cn/zhengce/zhengceku/202311/content_6915788.htm>

37 Notice on Launching the Pilot Project for the 'Vehicle-Road-Cloud Integration' of ICVs, MIIT, 15th January 2024, viewed 14th May 2024, <https://www.gov.cn/zhengce/zhengceku/202401/content_6926711.htm>

38 L3 autonomous vehicles are those with "conditionally automated driving" capabilities, which may still require human override in abnormal conditions. Standard number: GB/T 40429-2021 *Taxonomy of driving automation for vehicles*, National Standards (GB) Full Text Publication System, 20th August 2021, viewed 7th June 2024, <<https://openstd.samr.gov.cn/bzgk/gb/newGbInfo?hcno=4754CB1B7AD798F288C52D916BFECA34>>

39 The ICV market access pilot scheme requires vehicles to meet the requirements of the *Measures for the Administration of Access to Road Motor Vehicle Manufacturing Enterprises and Products*. In practice, this qualification is only available to domestically produced vehicles.

40 *Pilot Implementation Guidelines for Admission and Roadworthiness of ICVs (Trial)*, MIIT, 17th November 2023, viewed 24th April 2024, <<https://www.gov.cn/zhengce/zhengceku/202311/P020231117465865734883.pdf>>

41 Cao, Y, *Testing on public roads a leap forward for L3 autonomous vehicles in China*, *China Daily*, 17th June 2024, viewed 18th June 2024, <<https://global.chinadaily.com.cn/a/202406/17/WS666f8a64a31095c51c5092fb.html>>

42 Breemersch, T, Fontul, S, Gomes, S, and Knight, I, *The effect of overweight vehicles on road pavements and safety*, Transportation Research Procedia, 2023, viewed 14th May 2024, <<https://www.sciencedirect.com/science/article/pii/S2352146523006750>>

43 *Crackdown on overloaded trucks after deadly collapse*, *People's Daily*, 14th October 2019, viewed 14th May 2024, <<https://peoplesdaily.pdnews.cn/china/er/30001391830>>

44 Zhang, C, *4 dead, 8 injured in ramp bridge tilt in China's Hubei, allegedly due to serious overloading*, *Global Times*, 19th December 2021, viewed 14th May 2024, <<https://www.globaltimes.cn/page/202112/1242838.shtml>>

45 King, M, Li, Y, Zhang, G, and Zhong, Q, *Overloading among crash-involved vehicles in China: identification of factors associated with overloading and crash severity*, National Library of Medicine, 21st March 2018, viewed 14th May 2024, <<https://pubmed.ncbi.nlm.nih.gov/29563142/>>

46 Tan, Y, *Speeding, overloaded truck caused fatal Nanchang accident, probe finds*, *China Daily*, 9th December 2023, viewed 14th May 2024, <<https://global.chinadaily.com.cn/a/202312/09/WS6573ff13a31040ac301a6ff7.html>>

47 *Crackdown on overloaded trucks after deadly collapse*, *People's Daily*, 14th October 2019, viewed 14th May 2024, <<https://peoplesdaily.pdnews.cn/china/er/30001391830>>





enforcement of transport rules is one step that could be taken to rectify this situation. All road users would benefit from a safer, fairer transport market in which rule breaking does not lead to a competitive advantage.

Recommendations

- Strengthen real-time supervision and law enforcement efforts.
- Standardise enforcement of standards and laws to ensure industry-wide compliance.
- Launch a unified, national transport supervision mechanism.

5.2 Recognise Optimised Vehicle Specifications in the Regulation of CVs

Concern

Regulators do not recognise the unique nature of CVs when designing standards, which hampers industry development.

Assessment

CVs are essential for the efficient transportation of goods and people, and the provision of other vital services. Although they have wheels and an engine, CVs are not the same as passenger vehicles, and the way they are regulated has significant implications for society and the environment.

Many CVs are specialised and tailor-made to provide optimal services that maximise revenue and efficiency. Vehicle types include refuse collectors, fire engines, tankers and concrete pumps. Because of this variety, CVs include far more variants per vehicle type than passenger cars, which are typically produced in large volume with limited variability. Despite this, China's vehicle homologation and registration system makes no distinction between CVs and passenger cars, burdening CV manufacturers with impractical compliance obligations. When applied to CVs, the homologation and certification system is overly complicated, slow and costly. This limits the possibility of introducing CVs that are fully optimised to meet customer needs.

Furthermore, regulations on vehicles sometimes include mandatory standards that have not been reviewed under the World Trade Organization (WTO) process

for mandatory standards.⁴⁸ In addition, new standards have been introduced at a rapid pace, disrupting the stock management of CVs. For example, the grace period for implementing new standards—such as China V, China VI-a and China VI-b—was too short, resulting in immense costs and complications for CV manufacturers.^{49&50}

It is therefore recommended that regulators work with CV manufacturers to better understand their needs and ensure that businesses in China have access to the most competitive vehicles available. Unlike passenger cars, in which consumer preference is often the deciding factor in purchases, most CVs are used to complete specific professional tasks. CV companies should therefore be able to tailor their vehicles to meet customer needs in a way that is compatible with regulatory requirements. This can only be achieved with a regulatory regime that clearly distinguishes between CVs and passenger cars.

Recommendations

- Distinguish between CVs and passenger cars in regulations and standards.
- Implement a uniform standard covering CVs nationally.
- Publish recommended standards (GB/T) and industry standards under the WTO publication system as mandatory standards if they are quoted in technical regulations.
- Involve international automotive companies early in the process of drafting and updating regulations for CVs.
- Grant sufficient lead time for manufacturers to adapt to new standards.
- Unify market access requirements and implementation procedures.

5.3 Allow Longer Vehicle Combinations to Minimise the Carbon Footprint of CVs and Increase Transport Efficiency

Concern

Current standards and regulations limit the types of

48 In some cases, China's national recommended standards (GB/T) and industrial standards are quoted in homologation or technical regulations for CVs. The GB/T, in practice, plays the role of a national mandatory standard in this case, not just a recommendation.

49 *China Light Duty Emissions*, *TransportPolicy.net*, 20th April 2020, viewed 17th May 2024, <<https://www.transportpolicy.net/standard/china-light-duty-emissions/>>

50 *China V transition period extended, parallel import car price increases*, *Sina Automotive*, 17th May 2020, viewed 17th May 2024, <<https://auto.sina.com.cn/z/jm/2020-05-17/detail-iircuyvi3510056.shtml>>





vehicle and trailer combinations that can be used, which has resulted in the overuse of inefficient vehicles and a missed opportunity to reduce emissions from CVs.

Assessment

The simplest way to reduce carbon dioxide (CO₂) emissions per tonne per kilometre would be to use larger transport units, or longer vehicle combinations, which would allow for fewer engines transporting more goods. In some countries, vehicle combinations with up to 12 axles with heavier loads are allowed, which further reduces the CO₂ emissions of transportation. However, the use of long vehicle and trailer combinations is currently limited in China through standards *GB 1589-2016* and *GB 7258-2017*. Furthermore, the emissions calculation regime currently in place is fragmented, and usually does not account for the emissions intensity of lorry loads.⁵¹

Allowing for longer vehicle combinations would also discourage the overloading of smaller vehicles by providing a legal, regulated means for carriers to load more cargo. Vehicle combinations with additional axles are designed with adequate engine and braking capacity to support larger loads and can distribute their weight more evenly across road surfaces. Drivers can also be trained to operate these vehicles safely, which is impossible with illegal overloading.

To further reduce CO₂ emissions from CVs, the use of biogas and other forms of biofuels from sludge or food waste should also be adopted. The most efficient way to bring about such changes and reduce the negative environmental impact of transportation would be for regulators, OEMs and operators to work together.

Recommendations

- Introduce a proper road classification and allow for different lengths and gross combination weights, depending on road and bridge conditions.
- Amend standard *GB 1589-2016* to allow for more than six axles and long vehicle combinations as soon as possible.
- Calculate the carbon footprint of vehicles as CO₂ emissions (energy consumption) per tonne per kilometre.

⁵¹ Emissions intensity is calculated by dividing emissions produced by the number of goods moved and the distance that they travel. A lower intensity means that the goods were moved more efficiently. Sporrer, A, *Does emissions intensity matter?*, Freight Waves, 29th December 2021, viewed 20th May 2024, <<https://www.freightwaves.com/news/does-emissions-intensity-matter>>

- Include the use of biofuel by CVs in government plans and roadmaps to reduce CO₂ emissions.

6. Motorcycles

6.1 Rescind the 13-year 'Shelf Life' Limitation for Motorcycles in China 3

Concern

The mandatory imposition of a 13-year 'shelf life' on motorcycles does not reflect the potential lifetime of vehicles manufactured to a high standard, discouraging foreign companies from further investment.

Assessment

In most of China's provinces, the service life of newly purchased motorcycles is limited to 13 years from the day of registration. Both imported and locally produced motorcycles must abide by this regulation without any distinction between engine cylinder categories.

At present, China's product type certification tests include emissions durability projects that follow the world's most stringent standards of pollutant control; as well as electronic fuel injection technology and the application of emissions after-treatment equipment in all imported and domestic motorcycles, which is the same as that used in cars. This is a technological leap of several generations compared to when the mandatory 13-year 'shelf-life' rule was first introduced in 2013.⁵²

Given that motorcycles have become a lifestyle more than a transportation solution for many consumers, lifting the 13-year mandatory 'shelf-life' will benefit both domestic manufacturers and consumers, while boosting consumption.

Recommendation

- Rescind the mandatory 13-year 'shelf-life' of motorcycles, and adopt annual inspections of motorcycles that have been used for 13 years, to extend their service life.

⁵² *Regulations for Motor Vehicle Mandatory Scrapping Standard*, MOFCOM, NDRC, Ministry of Public Security and Ministry of Environmental Protection, 27th December 2012, viewed 14th May 2024, <https://www.gov.cn/zhengce/2012-12/27/content_5712387.htm>





6.2 Open All Roads that Permit Four-wheeled Vehicles to Motorcycles, Including Highways



Concern

Banning motorcycles from highways or other areas designated by local governments hinders both their viability as a means of transport and the development of the motorcycle industry.

Assessment

Even though motorcycles are permitted on highways under national law, some provinces have implemented local restrictions due to safety concerns, despite the construction quality and maintenance of both highways and general roads being at a good level. Signage, protection measures, surveillance cameras and rapid police responses are also already in place. Any additional concerns about safety could be addressed by means other than bans, such as increased training for motorcyclists or stricter enforcement of road rules.

Not all motorcycles are the same, and high-quality motorcycles can perform in a similar manner to passenger cars during adverse road conditions. For example, large-displacement models (of 250cc and above) are now often equipped with antilock brakes. Restrictions on road use should therefore be tailored to correspond with different displacement ranges.

Another reason to review and abolish restrictions on motorcycle use is the shift in consumption patterns, from commuting to lifestyle purposes, such as sport and travel. Removing restrictions will boost consumption of motorcycles and associated equipment, and help growth in other service industries.

While motorcycles are popular with enthusiasts, the introduction of more electric motorcycles presents a green transportation solution in urban areas. The advantages of electric motorcycles include using less space to park than cars, easing urban congestion and using less energy than a car when only one person needs to be transported. Given that most areas with motorcycle restrictions are in central urban zones, it is recommended that green licence plates for motorcycles be implemented, such as those already adopted for NEVs. This would facilitate both the regulation of motorcycles and the travel of residents.

Recommendations

- Differentiate between motorcycle types when placing restrictions on their use and open highways to motorcycles over 250cc.
- Rely on effective enforcement of road rules as well as increased training for motorcyclists to ensure safety, rather than complete bans.
- Issue green NEV licence plates and other preferential benefits for electric motorcycles to encourage their use in urban areas.

7. Expedite the Development of the Classic Car Industry by Formulating and Implementing the Relevant Verification Standards and Management Systems Called for in the *Guiding Opinions on Promoting the High-quality Development of the Automotive Aftermarket*

Concern

While public awareness of the classic car industry is increasing, the lack of verification standards and relevant policies is a key factor preventing the industry from reaching its potential.

Assessment

The classic car industry is essential for China to become a globally competitive automotive centre, but regulatory standards must be in place for this to be possible. Classic cars are different than typical passenger cars as they have significant historical, cultural and technical value.⁵³ While they are still driven by mechanical power and some are roadworthy, they are not usually used as a daily mode of transportation.⁵⁴ This distinction is recognised by both regulatory bodies and enthusiasts in many countries,^{55&56} leading to the development of successful classic car industries. These jurisdictions have mature verification and administration systems for classic cars in place, which provide the framework for classic car registration and inspections, and also regulate on-road traffic limits, daily maintenance, trade auctions, exhibitions, displays, rally competitions and

53 *Protecting Motoring Heritage*, International Federation of Historic Vehicles (FIVA), viewed 14th May 2024, <<https://fiva.org/en/fiva-home/>>

54 *Ibid.*

55 *FIVA Legislation Survey 2009*, FIVA, 25th April 2009, viewed 14th May 2024, <<https://www.fiva.org/storage/Documents/Other%20Downloads/FIVA-legislation-survey-2009.pdf?v20240612152229>>

56 *Article 3 of Directive 2014/45/EU of the European Parliament and of the Council*, European Parliament, 3rd April 2014, viewed 14th May 2024, <<https://www.legislation.gov.uk/eudr/2014/45/article/3>>





sales of peripheral products.⁵⁷ This has given rise to new industries while creating new employment opportunities and sources of taxation, generating significant economic and social value.⁵⁸

While China's classic car industry is still underdeveloped, the first steps have been taken to create a policy framework to regulate classic cars. A 2022 notice calling for "verification criteria for traditional classic cars" and "to promote development of traditional classic car-related industries such as exhibitions, collection, trading, racing, as well as automobile culture" is a positive development.⁵⁹ Additional measures have been released since then,^{60&61} indicating a clear commitment to the industry by regulatory bodies, but progress on standards is still slow. The "verification criteria" called for in 2022 have still not been released, leaving the classic car industry without a key regulatory framework and various enforcement agencies without a practical tool to manage classic cars. In the absence of national standards, pilot programmes could be considered in areas like Shanghai's Jiading District, which aims to be the "future world centre of the automotive industry."⁶²

Classic cars and normal passenger vehicles need separate standards due to both the diversity of vehicles

57 9 Drafting Instruments of the Specification of Classic Car Evaluation (Draft for comments), Standards Drafting Team, 27th January 2022, viewed 5th July 2024, <<http://www.ttbz.org.cn/upload/file/20220127/6377887966643469805923450.pdf>>

58 Classic car events such as the Mille Miglia 1,000-mile race in Italy, the Goodwood Festival of Speed in the United Kingdom, the Bodensee Classic Rally in Germany and the Pebble Beach Concours d'Elegance in California have attracted enthusiasts from all over the world, generating significant consumption and promoting a range of supporting industries.

59 The Notice on Several Measures to Revitalise Auto Circulation and Expand Auto Consumption, MOFCOM & 16 other ministries, 5th July 2022, viewed 16th May 2024, <http://www.gov.cn/zhengce/zhengceku/2022-07/07/content_5699701.htm>

60 In September 2023, nine departments including the Ministry of Commerce jointly issued the Guiding Opinions on Promoting the High-quality Development of the Automotive Aftermarket. The guidelines proposed to accelerate the development of the traditional classic car industry, formulate and implement standards for identifying traditional classic cars, actively explore and study domestic management and import policies for traditional classic cars, support local exploration of traditional classic car bonded exhibition and custody services, hold traditional classic car camping rallies and promote the development of traditional classic car tours, racing and tourism. Guiding Opinions on Promoting the High-quality Development of the Automotive Aftermarket, MOFCOM, 12th October 2023, viewed 16th May 2024, <<http://file.mofcom.gov.cn/article/syxwfb/202310/20231003445580.shtml>>

61 Under the proposal of the leading office for the construction of a world-class automotive industry centre in Jiading District in Shanghai, the group standard T/CAAMTB 79-2022 Evaluation Standards for Classic Cars 42 was released in August 2022. CAAM Publish Second Batch of Group Standards, China Association of Automobile Manufacturers (CAAM), 17th August 2022, viewed 16th May 2024, <<http://www.ttbz.org.cn/Home/Show/42700>>

62 Jiading strives to become future world centre of the automobile industry, Official English Website of Jiading District, Shanghai, 5th May 2019, viewed 16th May 2024, <https://www.chinadaily.com.cn/m/shanghai/jiading/2019-05/05/content_37465536.htm>

on the market and the varying condition of each vehicle. Classic car verification standards must differentiate between 'roadworthy' and 'stationary display' vehicles, and should be adaptable to vehicles from different eras of vehicle technology. For 'roadworthy' classic cars, special policies need to be developed that cover safety and emission inspections, and road access, as well as other aspects such as dealing with requests for temporary licence plates. One way to achieve this is through the establishment of a verification committee, rather than using one-size-fits-all standards. Both 'roadworthy' and 'stationary display' vehicles also require relevant customs commodity codes and tariffs to ease import and export.

Recommendations

- Establish a graded classic car verification administration system that makes use of committees instead of one-size-fits-all regulation.
- Accelerate the formulation and implementation of national standards for classic cars and launch pilot programmes in areas that have a relatively more mature automotive industry, such as Jiading District in Shanghai.
- Grant temporary licence plates and limited road access for road-worthy classic cars.
- Designate customs commodity codes and set duties specifically for classic cars.

Abbreviations

BEV	Battery Electric Vehicle
CAC	Cyberspace Administration of China
CAAM	China Association of Automotive Manufacturers
CBDT	Cross-border Data Transfer
CO ₂	Carbon Dioxide
CV	Commercial Vehicle
EU	European Union
ETS	Emissions Trading System
EV	Electric Vehicle
FIE	Foreign-invested Enterprise
FIVA	International Federation of Historic Vehicles
GB	Guobiao (China national standard)
IC	Internal Combustion
ICV	Intelligent Connected Vehicle
JV	Joint Venture
MIIT	Ministry of Industry and Information Technology





MOFCOM	Ministry of Commerce
NDRC	National Development and Reform Commission
NEV	New Energy Vehicle
NPCSC	Standing Committee of the National People's Congress
OEM	Original Equipment Manufacturer
R&D	Research and Development
SAMR	State Administration for Market Regulation
WTO	World Trade Organization
Y-o-Y	Year-on-Year





Auto Components Working Group

Key Recommendations

1. Optimise Policies and Regulations and Strengthen Enforcement in the Independent Automotive Aftermarket (IAM) to Protect the Interests of both Consumers and Automotive Component Suppliers

- Optimise the channels for the circulation of automotive components to ensure that dual-branded parts can circulate freely in the IAM.
- Reduce domestic automobile maintenance costs to internationally comparable levels and further promote domestic automotive consumption.
- Simplify the customs clearance procedures for dual-branded parts to reduce corporate compliance costs.

2. Mandate Snow Tyre Usage During the Cold Season in Low-temperature Areas to Improve Road Safety and Reduce Societal Costs 4

- Promulgate in a timely manner China's national standards for snow tyres to regulate snow tyre products and their use in the Chinese market.
- Formulate legislation to mandate the use of snow tyres in China's low-temperature areas to improve road safety and reduce the negative impact on society.

3. Accelerate the Introduction and Implementation of Relevant Data Standards and Promote Collaborative Data Sharing Across the Industry to Develop the Intelligent Connected Vehicle (ICV) Industry 3

- Standardise and harmonise vehicle data formats nationwide and coordinate with all industry stakeholders to actively develop and unify vehicle data standards.
- Conduct pilot projects for data exchange giving full play to the role of the market.
- Establish a sound, independent third-party authorisation system for data service providers.

4. Adopt a Unified Standard Reference Test Tyre (SRTT) that is Consistent with Global Automobile and Tyre Industry Standards 2

- Adopt International Organization for Standardization (ISO) testing methods for wet and icy roads in Chinese tyre testing standards and regulations, and maintain the use of the American Society for Testing and Materials (ASTM) Standard Reference Test Tyre (SRTT).

5. Accelerate the Revision of Technical Specifications for the Safety of Power-driven Vehicles Operating on Roads (GB7258-2017) and Optimise Road Safety Technical Requirements for Heavy Trucks, Coaches and Buses

- Accelerate the revision process of GB 7258-2017.
- Require installation of electronic braking systems (EBSs) in tractors and trucks over 12 tonnes.
- Require mandatory installation of disc brakes in the wheels of trucks and tractors over 12 tonnes and their trailers.
- Require mandatory installation of EBSs and disc brakes on all coaches and buses.





Recent Developments

In May 2023, the European Commission extended the European Union (EU) Motor Vehicle Block Exemption (originally scheduled to expire on 31st May 2023) for an additional five years until 31st May 2028.¹ This extension will continue to help companies in the automotive industry assess the compatibility of their vertical agreements with EU competition law, ensuring that aftermarket operators maintain access to vehicle-generated data and related components needed for repair and maintenance. This regulation holds great significance to the automotive aftermarket industry because it promotes resource sharing and healthy competition, while protecting consumers' rights and interests. The Automotive Components Working Group recommends that the Chinese Government adopts similar policies or measures in China.

In October 2023, nine government agencies, including the Ministry of Commerce, jointly issued the *Guiding Opinions on Promoting the High-quality Development of the Automotive Aftermarket (Guiding Opinions)*.² The *Guiding Opinions* aim to optimise distribution channels for automotive components through the establishment of innovative business models. They also focus on developing technical standards, training and digital capabilities for new energy vehicle maintenance to support industry growth and consumer rights. The working group anticipates further implementation of these policies and will actively support this process.

In December 2023, the Ministry of Industry and Information Technology issued the *Standard Conditions for the Mechanical and Electrical Product Remanufacturing Industry (Conditions)*, officially implemented in January 2024.³ The working group welcomes the *Conditions* as they clarify the basic requirements that enterprises in the mechanical and electrical product remanufacturing industry must meet, covering remanufacturing capabilities, management systems, safe production, environmental protection and social responsibility, after-sales service and vocational education, among others.

¹ *Motor vehicles – block exemption from European Union competition law*, European Commission, 2nd June 2023, viewed 9th April 2024, <<https://eur-lex.europa.eu/EN/legal-content/summary/motor-vehicles-block-exemption-from-european-union-competition-law.html>>

² *Guiding Opinions on Promoting the High-quality Development of the Automotive Aftermarket*, Ministry of Commerce, 13th October 2023, viewed 9th April 2024, <<http://file.mofcom.gov.cn/article/xwfb/xwrcxw/202310/20231003445580.shtml>>

³ *Standard Conditions for the Mechanical and Electrical Product Remanufacturing Industry*, Ministry of Industry and Information Technology, 27th December 2023, viewed 9th April 2024, <https://www.miit.gov.cn/zwgk/zcjd/art/2023/art_3c20e8e7120746c8a269d970240a57e8.html>

In March 2024, the State Council issued the *Action Plan for Promoting Large-scale Equipment Updating and Trade-in of Consumer Goods (Action Plan)*⁴ aimed at encouraging the remanufacturing of qualified waste production equipment, and ensuring that remanufactured products meet or exceed the original product's quality, safety and environmental protection standards. The *Action Plan* promotes the application of non-destructive testing, additive manufacturing, flexible processing and other technical processes. Additionally, it aims to facilitate the remanufacturing of conventional equipment, such as automotive components, engineering machinery and machine tools. The working group welcomes the release of these plans and looks forward to the further implementation of relevant policies.

Key Recommendations

1. Optimise Policies and Regulations and Strengthen Enforcement in the IAM to Protect the Interests of both Consumers and Automotive Component Suppliers

Concern

Automotive manufacturers in China are preventing original component suppliers from selling the same authorised auto components in the independent automotive aftermarket (IAM), which damages the interests of both suppliers and consumers.

Assessment

In practice, automotive manufacturers impose restrictions on original component suppliers, preventing them from using their own moulds and intellectual property rights (IPR) to produce and sell the same automotive components that are installed on factory vehicles (i.e., dual-branded parts).⁵ These restrictions are often enforced through the practice of claiming that supply agreements fall under original equipment manufacturer (OEM) agreements with original equipment suppliers (OES). However, the determination of whether an agreement qualifies as a true OEM agreement depends on a case-by-case evaluation of the substantive content, rather than relying solely on the form of the agreement. As stated in Article 11 of the *Anti-monopoly Guidelines for the Automotive Industry*, it is unnecessary

⁴ *Action Plan for Promoting Large-scale Equipment Updating and Trade-in of Consumer Goods*, State Council, 7th March 2024, viewed 9th April 2024, <https://www.gov.cn/gongbao/2024/issue_11246/202403/content_6941843.html>

⁵ 'Dual-branded parts' are original equipment parts and aftermarket accessories that are marked with both the vehicle manufacturer's and accessory manufacturer's trademarks, logos and part codes.





for an auto component manufacturer to rely on an automotive manufacturer's technology and equipment if the auto component manufacturer already possesses or can obtain such tools, IPR, or proprietary technology on reasonable terms. In such a case, the agreement should not be regarded as an OEM agreement. More specifically, if an automotive manufacturer only provides general descriptive information about the contract product but restricts the original component supplier from supplying components to the after-sales market under its own brand, it effectively hinders the original component supplier from expanding their business in related areas, limits competition in relevant markets, inflates product prices, and undermines the legitimate rights and interests of consumers.⁶

China's automotive maintenance costs already exceed international levels. According to the *17th Automotive Parts-to-Whole Ratio System Index Study* by the Auto Technology Institute of China Insurance Research Institute, the parts-to-whole ratio of the investigated models was 368.01 per cent, surpassing the normal international level (300 per cent).⁷ Additionally, a study by the German Insurance Association indicates that maintenance costs of electric vehicles are 30 to 35 per cent higher than those of similar fuel-powered vehicles.⁸ Considering the growing penetration rate and development trends of electric vehicles, this will inevitably result in a continuous increase in costs for consumers. It is also not conducive to the country's goal of encouraging and expanding automobile consumption and promoting the sustainable and healthy development of new energy vehicles.

These restrictions imposed by automotive manufacturers on original components suppliers have undermined free competition in the industry and limited consumers' choices for repairing and replacing auto components. The working group believes that to encourage the healthy development of the industry and protect the legitimate rights and interests of consumers, the circulation channels of auto components should be optimised to ensure that dual-branded parts can

6 *Anti-monopoly Guidelines of the Anti-Monopoly Commission of the State Council on the Automobile Industry*, State Administration for Market Regulation, 18th September 2020, viewed 9th April 2024, <https://www.samr.gov.cn/zw/zfxzqk/fdzdgnr/fldj/art/2023/art_c349cba8055045c197efcef5d84e8182.html>

7 *Introduction to the Automobile Parts-to-whole Price Ratio Project*, CIRI Auto Technology Institute, 22nd March 2024, viewed 9th April 2024, <<http://www.ciri.ac.cn/lingzhengbi>>

8 *Study: E-cars are a third more expensive to repair than comparable combustion cars*, German Insurance Association, 26th October 2023, viewed 9th April 2024, <<https://www.gdv.de/gdv-en/media/study-e-cars-are-a-third-more-expensive-to-repair-than-comparable-combustion-cars-157520>>

circulate freely in the IAM.

An additional challenge is that, for imported dual-branded parts, customs clearance procedures are complicated due to the presence of both the automotive manufacturers' and the original components suppliers' trademarks on the outer packaging. Importers are required by customs to provide authorisation letters or statements indicating that both parties' logos and brands can be used on the parts. This requirement prolongs the import delivery time for the parts and increases compliance costs for businesses.

Recommendations

- Optimise the channels for the circulation of automotive components to ensure that dual-branded parts can circulate freely in the IAM.
- Reduce domestic automobile maintenance costs to internationally comparable levels and further promote domestic automotive consumption.
- Simplify the customs clearance procedures for dual-branded parts to reduce corporate compliance costs.

2. Mandate Snow Tyre Usage During the Cold Season in Low-temperature Areas to Improve Road Safety and Reduce Societal Costs

Concern

There are no regulations to mandate the usage of winter tyres in complex road conditions of snow and slush in China's low-temperature regions, which significantly increases tyre-related crashes and fatalities.

Assessment

Snowy and icy road conditions are common in the low-temperature regions of China.⁹ In such conditions, the tread compound of normal tyres tend to stiffen and lose traction and grip, which makes accelerating,¹⁰ cornering and braking less reliable and riskier.¹¹

9 China's low-temperature areas refer to Heilongjiang, Jilin and Liaoning provinces, and the northern part of Xinjiang and Inner Mongolia autonomous regions, among others.

10 The tread compound is the outermost layer of the tyre that is in contact with the road surface and has a pattern printed on the surface.

11 The term 'winter tyres' is commonly used in the commercial market and generally includes three types of tyre, each with different performance standards. The following is a general description of the three types, as no regulation currently provides technical definitions: Slush tyres: No additional performance definitions or requirements, only markings such as 'M+S, M/S' on the tyre sidewall; Winter tyres: Added performance definitions and requirements. In addition to the 'M+S, M/S' markings on the tyre sidewall, they must also be marked with the snowflake symbol '❄'; Ice tyres: Additional performance definitions and requirements. In addition to the 'M+S, M/S' marking and the snowflake symbol '❄', the tyre sidewall must also be marked with the icy road symbol '△'.



Snow tyres are specially developed for winter use, with a soft rubber compound and tread pattern designed to deliver optimised grip and driving performance in complex road conditions, such as snow and ice, with significantly improved braking distance. Their use is crucial to avoid sideslips and ensure driving safety. According to data from the *China In-depth Accident Study* conducted by the China Automotive Technology and Research Centre, the use of snow tyres reduced the number of traffic accidents caused by tyres by half and the number of fatal accidents by more than double in the areas surveyed between 2019 and 2022.¹² Promoting the use of snow tyres and formulating legislation and standards to mandate their use are therefore essential to increasing driving safety in snowy and icy road conditions.

Recommendations

- Promulgate in a timely manner China's national standards for snow tyres to regulate snow tyre products and their use in the Chinese market.
- Formulate legislation to mandate the use of snow tyres in China's low-temperature areas to improve road safety and reduce the negative impact on society.

3. Accelerate the Introduction and Implementation of Relevant Data Standards and Promote Collaborative Data Sharing Across the Industry to Develop the ICV Industry 3

Concern

Current data-related policies and standards in China's ICV industry lack clarity, making it difficult for automotive components and after-sales maintenance companies to obtain vehicle operation data effectively.

Assessment

Vehicle driving data is an important resource for the development of ICVs, and its main collectors and processors are OEMs. Its collection can create barriers to competition and lead to data monopolies. Without clear regulations, relevant data will only be under the control of OEMs, resulting in automotive components manufacturers and after-sales service providers being unable to obtain the relevant data that will allow them to improve their products and services, thereby affecting

the healthy development of the industry and fair competition.

While China has enacted several data protection-related laws, there is limited progress in data flow, sharing, utilisation and standardisation, especially in the automotive sector.

Recommendations

- Standardise and harmonise vehicle data formats nationwide and coordinate with all industry stakeholders to actively develop and unify vehicle data standards.
- Conduct pilot projects for data exchange giving full play to the role of the market.
- Establish a sound, independent third-party authorisation system for data service providers.

4. Adopt a Unified SRTT that is Consistent with Global Automobile and Tyre Industry Standards 2

Concern

China's plan to use an independently produced SRTT instead of the existing global standard will lead to market access barriers and unnecessary additional costs for automotive component manufacturers.

Assessment

The SRTT was designed in the 1980s by the American Society for Testing and Materials (ASTM) to compare the performance of tyres used in different types of vehicles. The SRTT is now used in various International Organization for Standardization (ISO) standards and regulatory tests worldwide. However, China is also developing its own SRTT group standard—the China Meteorological Association (CMA)-SRTT—which will be used for future tyre regulations in China.

SRTTs are specialised test tyres that can be used to evaluate tyre braking and traction on wet and icy roads, grip performance, and the roughness and sound absorption coefficient of test sites. Having two different SRTTs—one for China and one for the rest of the world—will lead to different test results for the same tyre and make it necessary to conduct the same test twice.¹³ As all tyre companies (including Chinese brands

¹² This data from the China In-depth Accident Study database was supplied by a working group member company.

¹³ According to member companies' limited experiments, a seven per cent discrepancy was found in wet traction between ASTM-SRTT and CMA-SRTT tyres for passenger cars at 15°C. This performance difference varies with temperature, ranging from two to 12 per cent. The limited available data also shows a difference of between three and 15 per cent for SRTT tyres on trucks.



sold domestically and exported) face challenges when expanding globally, differing SRTT tests will also greatly increase tyre-makers' research and development costs. The working group therefore recommends that China maintains the use of the ASTM-SRTT in domestic tyre testing standards and regulations to unify performance standards as much as possible while maintaining stability. This will reduce the testing burden on tyre manufacturers, optimise the business environment, eliminate trade barriers and ensure consistency with global standards, ultimately benefitting all automotive businesses operating in China.

Recommendation

- Adopt ISO testing methods for wet and icy roads in Chinese tyre testing standards and regulations, and maintain the use of the ASTM-SRTT.

5. Accelerate the Revision of GB7258-2017 and Optimise Road Safety Technical Requirements for Heavy Trucks, Coaches and Buses

Concern

While the combination of electronic braking systems (EBSs) and disc brakes can effectively enhance the safety of commercial vehicles, the scope of application of China's mandatory standards for such products is still relatively limited.

Assessment

The national standard *Technical Specifications for the Safety of Power-driven Vehicles Operating on Roads (GB7258-2017)*¹⁴ has played an important role in enhancing motor vehicle operation safety since its release. However, the rapid development of China's logistics and transportation industry has resulted in more frequent traffic accidents involving heavy trucks and coaches, indicating an urgent need to update and optimise this standard to meet new technological and management demands.¹⁵

First, expanding the installation scope of EBSs and disc brakes can effectively improve the active safety

of heavy trucks and passenger buses. In Europe, the installation rate of EBSs on commercial vehicles exceeds 90 per cent.¹⁶ By contrast, the penetration rate in China is only about 10 per cent. EBSs can improve braking response speed, enhance anti-lock braking protection and electronic stability control performance, distribute braking force based on vehicle load and support braking assist technology. EBSs are also much more compatible with advanced emergency braking systems (AEBs) and achieve optimal matching of braking force between the tractor and trailer through coupling force control, significantly improving driving safety.

Compared with drum brakes, disc brakes exhibit higher braking torque and stability. Test results show that fully equipped disc-braked vehicles can reduce braking distances by 30 per cent at speeds above 90 km/h compared to fully drum-braked setups. In mountainous and long downhill conditions, they can effectively prevent brake fade caused by overheated friction materials, thereby preventing major traffic accidents. Additionally, the quick response of disc brakes can effectively execute EBS commands, enhancing vehicle safety and driving comfort.¹⁷

Second, AEBs are expected to be promoted widely in China's commercial vehicle market in the future. Synergies between AEBs, EBSs and disc brakes can provide optimal braking performance in emergency situations, further enhancing vehicle safety. Moreover, EBSs and disc brakes already have a mature technological base in the Chinese market, with many local companies capable of providing relevant products. Comprehensive adoption of EBSs and disc brakes can facilitate a smooth transition to higher safety standards and promote continued product iteration and quality improvements.

As China's commercial vehicle industry is undergoing a rapid upgrading process, and safety standards are becoming more stringent and aligned with international practices, the working group recommends promoting safety products like EBSs and disc brakes in heavy

¹⁴ *Technical Specifications for Safety of Power-driven Vehicles Operating on Roads*, Standardization Administration of China, 29th September 2017, viewed 11th April 2024, <<https://openstd.samr.gov.cn/bzgk/gb/newGbInfo?hcno=06A0C376A0CA7B14E93106194C99730F>>

¹⁵ In 2023, the National Technical Committee of Auto Standardization launched a consultation on the implementation effects and revision suggestions for *GB 7258-2017*. Many members of the European Chamber were invited to participate in making suggestions.

¹⁶ *Regulation (EU) 2019/2144*, EUR-Lex, 9th May 2022, viewed 19th April 2024, <<https://eur-lex.europa.eu/eli/reg/2019/2144/oj>>

¹⁷ Europe initially adopted a front disc and rear drum brake similar to the Chinese market. Due to the huge difference between the disc brake structure and the drum brake, a large number of user complaints were caused. To solve this problem, European heavy trucks began to equip all wheels with disc brakes in 1996 (currently about 90% of trailers are equipped with disc brakes).





trucks, coaches and buses. This will promote a closed-loop of product and iteration, enhance overall vehicle safety configuration, reduce major accidents and advance technological progress.

Recommendations

- Accelerate the revision process of *GB 7258-2017*.
- Require installation of EBSs in tractors and trucks over 12 tonnes.
- Require mandatory installation of disc brakes in the wheels of trucks and tractors over 12 tonnes and their trailers.
- Require mandatory installation of EBSs and disc brakes on all coaches and buses.

Abbreviations

AEBS	Advanced Emergency Braking System
ASTM	American Society for Testing and Material
CMA	China Metrology Association
EBS	Electronic Braking System
EU	European Union
ICV	Intelligent Connected Vehicle
ISO	International Organization for Standardization
OEM	Original Equipment Manufacturer
OES	Original Equipment Supplier
SRTT	Standard Reference Testing Tyre





Cosmetics Working Group

Key Recommendations

1. Gradually Implement the Cosmetics Safety Assessment in Stages, Learn from International Progress in this Area and Further Rescind Animal Testing Requirements 🎯2

- Issue practical technical guidelines based on European Union (EU) and international safety assessment approaches.
- Provide safety assessment training by the National Medical Products Administration (NMPA) to both registration reviewers and safety assessors of cosmetics companies.
- Abolish mandatory animal testing for finished special cosmetics.

2. Boost Innovation through Feasible Regulatory Oversight Models and Pathways

2.1 Personalised Cosmetics 🎯5

- Resume and expand the one-year pilot programmes on personalised cosmetics to allow for more projects to take place in more provinces/cities.
- Establish dedicated cosmetics regulations fit for personalised cosmetics, detailing processes for product registration, safety assessments, efficacy substantiation and good manufacturing practice (GMP) requirements.
- Extend the permitted product categories of personalised cosmetics to all cosmetics products, including special cosmetics.

2.2 New Ingredients 🎯5

- Adopt the most advanced cosmetics safety assessment approaches, in line with Organisation for Economic Co-operation and Development and EU-validated testing methods that are viable alternatives to animal testing.
- Establish another regulatory pathway to allow the use in China of new ingredients that have already been approved by EU regulators.

2.3 Sustainable Development and the Circular Economy 🌱

- Foster collaboration between government and businesses to develop a white paper on the green development of China's cosmetics industry, disseminate knowledge about green cosmetics, and cultivate environmental responsibility and green consumption habits.
- Promote China's participation and recognition of international standards and certifications related to green cosmetics ingredients, packaging materials, and product life cycle-based product environmental assessment systems.

2.4 Standardisation

- Encourage Chinese regulatory authorities to actively engage in the technical discussions on and development of national cosmetics standards.
- Expedite the recognition or adaptation of international cosmetics standards to minimise trade and compliance hurdles.
- Promptly address registration and notification compliance issues stemming from the implementation of international cosmetics standards.





2.5 Assistance in Constructing Hainan's International Free Trade Port and Implementation of Differentiated Management for Hainan's Duty-free Channels

- Introduce electronic labelling for Hainan offshore, duty-free products so that the required regulatory information can be displayed digitally, reducing the need for physical labels.
- Allow manufacturers to retain samples in their country of origin, streamlining the process for Hainan offshore duty-free products.
- Grant Hainan's regulatory authorities the power to register special cosmetics and establish simplified registration procedures for those sold exclusively duty-free on Hainan's outlying islands.

3. Enhance Product Application and Technical Evaluation Effectiveness

3.1 Raw Material Information Submission 3

- Utilise the raw material safety information application platform solely as a reference for data collection, not as a determinant for evaluating cosmetics formulas.
- Empower cosmetics registrants/filers to independently provide and declare raw material safety information, contingent upon both a robust scientific basis and research data.

3.2 Labelling of Allergens

- Permit companies importing cosmetics to submit only the original packaging with updated allergen labelling, eliminating the need for application changes or re-registration or notification.
- Enable companies with imported cosmetics not yet on the market to include new allergens on the original packaging within the 'ingredient list' or 'warning statement' sections of the Chinese labels, with explanations in the formula table's 'remarks column', removing the necessity for new cosmetics ingredient notifications or registrations for fragrance allergens.

3.3 Low-microbial Risk Cosmetics Products

- Accept the criteria stipulated in the International Organization for Standardization (ISO) standard for low-microbial risk products, and accept quality assurance (QA) control measures designed by cosmetics companies instead of mandating batch-by-batch testing.

3.4 Children's Cosmetics

- Enhance the principles and guidelines governing the safe use of ingredients in children's cosmetics.
- Optimise China's cosmetics ingredient database by focussing on improving the safety database specifically for children's cosmetics.
- Facilitate international exchanges and jointly develop a practical formula safety assessment and risk communication mechanism for children's cosmetics.

3.5 Technical Evaluations of Cosmetics with Anti-hair Loss or Whitening Functions

- Accelerate the release of technical guidance documents that are suitable for the R&D of cosmetics with spot removal and whitening functions in the industry, while conducting training and exchanges.
- Consider the unique mechanism of anti-hair loss products before scientifically formulating suitable technical guidance documents for their review, and promote relevant exchanges between regulators and industry players, including training where necessary.

3.6 Review Criteria 4

- Enhance the training and guidance of review agencies nationwide to establish consistent review criteria.
- Create a direct dialogue mechanism between the industry and review agencies to gather feedback on review processes and cases, and to promptly update a list of frequently asked questions.
- Promote government-industry cooperation, and develop clear, detailed and unified cosmetics review standards.



4. Standardise Specific Ingredient Claims on Cosmetics Labels, Promote the Application of Equivalent Evaluations and Permit the Use of Electronic Labels

4.1 Specific Ingredients Claims

- Develop clear, detailed and standardised criteria for reviewing cosmetics labelling claims for raw materials or classifying requirements for review so that raw material claims are substantiated with appropriate evidence based on different scenarios.
- Establish a regular communication channel for specific ingredient claims to provide explanations for disputed claims and seek agreement, while also continuously releasing interpretive documents, researching specific industry situations and offering reasonable review directives.
- Clarify that efficacy claims of ingredients that can be identified through sensory perception can be exempt from the requirement to submit relevant efficacy summaries.

4.2 Equivalent Evaluations 4

- Extend the application scope of the guiding principle of equivalent evaluations to all product efficacies, not only multi-colour cosmetics products.
- Accept an applicant's rationale as to why minor differences in formulas do not affect efficacy, and allow for slight adjustments of essences and antiseptics besides pigments.
- Research the impact of various cosmetics ingredients on different efficacies and progressively broaden the range of ingredients permitted for minor adjustments under the equivalent evaluation guideline.

4.3 Electronic Label 4

- Investigate the use of QR codes and similar technologies to provide consumers with electronic labels and information, reducing reliance on traditional paper labels and leaflets.

5. Align Overseas Inspections with Foreign Standards, Promote Compliance in Advertising and E-commerce, and Ensure Regulatory Consensus for Seamless Pre-assessment and Post-supervision of Cosmetics

5.1 Overseas Inspections

- Conduct training for cosmetics enterprises on overseas inspection procedures as soon as possible.
- Consider the cosmetics regulations of an overseas company's location during inspections, recognising their production and quality management systems.

5.2 Advertising and Online Operation Management

- Solicit industry feedback to avoid setting overly rigid mandatory requirements during the creation and enforcement of laws and regulations.
- Provide ample opportunity for companies to demonstrate compliance in post-market surveillance, thereby empowering companies with greater responsibility.
- Develop and implement protocols to handle ongoing and unjustified complaints from professional complainants, decrease complaints that are not related to typical product usage, and eventually prevent activities that disrupt normal market functioning.
- Release clear and timely interpretations on industry trends and regulatory details to provide companies with ongoing guidance.

5.3 Connection between Post-market Surveillance and Pre-market Evaluation

- Establish a scientific supervision mechanism to ensure consensus among local authorities at all levels about interpretations of the implementation of new regulatory requirements under the CSAR.
- Introduce a consultation procedure to facilitate communication between companies and regulatory authorities, ensuring all regulatory decisions are based on good professional knowledge and regulatory understanding.





Recent Developments

China's cosmetics industry grew 5.1 per cent in 2023,¹ almost matching the official figure for gross domestic product growth of 5.2 per cent, with retail sales of cosmetics reaching Chinese yuan (CNY) 414.2 billion.² However, China's imports of cosmetics and toiletries have been declining. According to the General Administration of Customs of China (GACC), imports in the first quarter of 2024 decreased 17.1 per cent year-on-year.³ One of the primary reasons attributed to this decline is the implementation of stricter industry regulations, which necessitate compliance from importers looking to access the Chinese market.

Following the official implementation of the *Cosmetics Supervision and Administration Regulation (CSAR)* on 1st January 2021,⁴ the National Medical Products Administration (NMPA) released secondary regulations and related guidance documents over the past year. After many months of continuous advocacy by the Cosmetics Working Group, the most prominent recent regulatory development was the postponement of the implementation of the full cosmetics safety assessment by the NMPA to 1st May 2025. This has provided the industry with an additional one-year grace period to adjust to the new rules. The *Measures for Optimising Cosmetics Safety Assessment Management*,⁵ along with seven guidelines, were released in April 2024, providing technical support for implementation of the cosmetics safety assessment.

Key Recommendations

1. Gradually Implement the Cosmetics Safety Assessment in Stages, Learn from International Progress in this Area and Further Rescind Animal Testing Requirements

Concern

The gap between China's implementation of the full safety assessment requirements and industry practices in Europe will lead to challenges in product registration and notification.

Assessment

The NMPA released a series of technical guidelines on the detailed requirements for the full cosmetics safety assessment report that must be carried out by any company wishing to import, distribute and sell cosmetics in the Chinese market from 1st May 2025 onwards.

Currently, China's regulatory requirements for safety assessment reports are not fully in line with European Union (EU) and international approaches. As a result, European industry players may be unable to meet the toxicity data requirements for the full safety assessment reports, as the requirements may imply that animal testing is required, which is not permitted in the EU.

The working group recommends that mandatory animal testing of finished special cosmetics should be abolished, as full safety assessment reports of all raw materials used in cosmetics products already ensure their safe use.

Recommendations

- Issue practical technical guidelines based on EU and international safety assessment approaches.
- Provide safety assessment training by the NMPA to both registration reviewers and safety assessors of cosmetics companies.
- Abolish mandatory animal testing for finished special cosmetics.

1 *National economy rebounds in 2023 high-quality development advances solidly*, NBS, 17th January 2024, viewed 30th April 2024, <https://www.stats.gov.cn/sj/zxfb/202401/t20240117_1946624.html>

2 *Total retail sales of consumer goods in December*, NBS, 18th January 2024, viewed 13th April 2024, <https://www.stats.gov.cn/english/PressRelease/202402/t20240201_1947119.html>

3 *China's Total Export and Import Values in March 2024*, GACC, 12th April 2024, viewed 13th April 2024, <<http://www.customs.gov.cn/customs/302249/zfxxgk/2799825/302274/302275/5810566/index.html>>

4 *Cosmetics Supervision and Administration Regulation*, NMPA, 29th June 2020, viewed 13th April 2024, <<https://www.nmpa.gov.cn/xxgk/fgwj/flxzhfg/20200629190501801.html>>

5 *Measures to Optimise the Safety Assessment Management of Cosmetics (2024 No. 50)*, NMPA, 22nd April 2020, viewed 13th April 2024, <<https://www.nmpa.gov.cn/xxgk/ggtg/hzhpggtg/jmhzhptg/20240422172542190.html>>





2. Boost Innovation through Feasible Regulatory Oversight Models and Pathways

2.1 Personalised Cosmetics

Concern

The lack of policy support for innovative personalised cosmetics hinders innovation in the cosmetics industry.

Assessment

Following the completion of the one-year national pilot projects for personalised cosmetics services,⁶ which were limited to only five provinces/cities undertaking a maximum of three projects each, no new regulations on innovation of personalised cosmetics have been forthcoming. However, there is still a strong appetite among industry players to launch more personalised cosmetics projects nationwide.

At the same time, the current product registration and good manufacturing practice (GMP) requirements, which can be implemented in factories, are not suitable for the innovation of personalised cosmetics. Personalised product services are presently subject to case-by-case pre-market approval. The evaluation is based on safety and efficacy, as well as the management of notification dossiers comprising fixed formula content. Because this method is constrained to a limited range of product formulas it cannot be applied to personalised product services that have dynamically changing formulas.

Recommendations

- Resume and expand the one-year pilot programmes on personalised cosmetics to allow for more projects to take place in more provinces/cities.
- Establish dedicated cosmetics regulations fit for personalised cosmetics, detailing processes for product registration, safety assessments, efficacy substantiation and GMP requirements.
- Extend the permitted product categories of personalised cosmetics to all cosmetics products, including special cosmetics.

⁶ Announcement on Conducting One-year Pilot Projects for Personalised Cosmetic Services, NMPA, 7th November 2022, viewed 13th April 2024, <https://www.gov.cn/zhengce/zhengceku/2022-11/11/content_5726121.htm>

2.2 New Ingredients

Concern

Animal testing data are still required for most new ingredients, which constitutes a market access barrier for overseas companies looking to introduce new ingredients in China.

Assessment

In terms of raw materials, substances that are not listed in the NMPA's *Catalogue of Used Cosmetics Raw Materials*⁷ can only be adopted through new ingredient registration, which requires that they undergo animal testing. However, due to the fact that animal testing is banned in the EU, EU companies are unable to meet this registration requirement for some innovative products. This means that some new ingredients, such as ultraviolet (UV) filters, preservatives, hair dyes and colorants, which have already been approved for safety by EU cosmetics regulators, are blocked from entering the Chinese market.

Recommendations

- Adopt the most advanced cosmetics safety assessment approaches, in line with Organisation for Economic Co-operation and Development and EU-validated testing methods that are viable alternatives to animal testing.
- Establish another regulatory pathway to allow the use in China of new ingredients that have already been approved by EU regulators.

2.3 Sustainable Development and the Circular Economy

Concern

More can be done at both the consumer and industry level to promote green cosmetics.

Assessment

The foreign cosmetics industry pioneered the concept of 'green' cosmetics, emphasising the importance of safe, effective, and environmentally friendly packaging and raw materials. Most EU companies have already adopted clear sustainable development goals, including reducing carbon emissions, plastic use and reliance on

⁷ Announcement of the National Medical Products Administration on the Issuance of Catalogue of Used Cosmetic Raw Materials (2021) (No. 62 of 2021), NMPA, 30th April 2021, viewed 13th April 2024, <<https://www.nmpa.gov.cn/xxgk/ggtg/hzhpqgtg/jmhzhptg/20210430162707173.html>>





virgin, fossil-based plastics.

In January 2023, China's State Council issued the *White Paper on Green Development in the New Era*,⁸ advocating for a green development path and overall protection of the natural ecosystem through regional green initiatives, industrial transformation and promoting green product consumption. However, while enhancing both industry and consumer awareness is crucial for advancing the development of green cosmetics, China has yet to establish a universally accepted definition of green cosmetics. This has resulted in different understanding among both consumers and some industry players, due to the absence of clear standards.

Recommendations

- Foster collaboration between government and businesses to develop a white paper on the green development of China's cosmetics industry, disseminate knowledge about green cosmetics, and cultivate environmental responsibility and green consumption habits.
- Promote China's participation and recognition of international standards and certifications related to green cosmetics ingredients, packaging materials, and product life cycle-based product environmental assessment systems.

2.4 Standardisation

Concern

Chinese regulators do not recognise most International Organization for Standardization (ISO) cosmetic standards, leading to challenges in product import registrations, GMP audits and compliance with product labelling requirements.

Assessment

China's non-acceptance of international cosmetics standards can make it difficult for importers to meet local compliance standards. For instance, products with low microbiological risks that are exempt from inspections under international standards may not fulfil China's registration and notification criteria.⁹ Also, products that can be marketed as 'organic' or 'natural'

internationally, cannot be marketed as such in China. And overseas manufacturers adhering to international GMP for cosmetics might encounter issues with overseas inspections and inquiries.

Recommendations

- Encourage Chinese regulatory authorities to actively engage in the technical discussions on and development of national cosmetics standards.
- Expedite the recognition or adaptation of international cosmetics standards to minimise trade and compliance hurdles.
- Promptly address registration and notification compliance issues stemming from the implementation of international cosmetics standards.

2.5 Assistance in Constructing Hainan's International Free Trade Port and Implementation of Differentiated Management for Hainan's Duty-free Channels

Concern

Hainan's offshore duty-free products must adhere to the CSAR, however the unique trade model presents compliance challenges.

Assessment

Hainan's offshore duty-free cosmetics operations are more complex and costly compared to traditional trade, necessitating Chinese labelling on both the inner and outer packaging. Additionally, logistical and operational discrepancies arise in sample retention for imported batches due to the dispersed locations of responsible persons in China, and the unique operational traits of licensed importers.¹⁰ The lengthy registration period for special cosmetics is also at odds with the fast-paced consumer demands of Hainan's duty-free market.

Recommendations

- Introduce electronic labelling for Hainan offshore, duty-free products so that the required regulatory information can be displayed digitally, reducing the need for physical labels.
- Allow manufacturers to retain samples in their country of origin, streamlining the process for Hainan offshore duty-free products.

⁸ *White Paper on China's Green Development in the New Era*, State Council, 19th January 2023, viewed 13th April 2024, <https://www.gov.cn/xinwen/2023-01/19/content_5737923.htm?eqid=f80ca20500135119000000046469d4ba>

⁹ *Cosmetics - Microbiology - Guidelines for the risk assessment and identification of microbiologically low-risk products*, ISO, March 2017, viewed 13th April 2024, <<https://www.iso.org/standard/68310.html>>

¹⁰ The regulation mandates that the responsible person must maintain retention samples for imported batches of Hainan offshore duty-free products. However, the responsible person is not situated in Hainan Province, and the imported batches are directly managed by Hainan offshore duty-free distributors, not by the responsible person.





- Grant Hainan's regulatory authorities the power to register special cosmetics and establish simplified registration procedures for those sold exclusively duty-free on Hainan's outlying islands.

3. Enhance Product Application and Technical Evaluation Effectiveness

3.1 Raw Material Information Submission

Concern

When a raw material submission code does not match the relevant data stored on the safety information platform, the application dossiers may be rejected or face challenges during the product filing/registration process.

Assessment

Divergent interpretations of raw material composition and impurities between cosmetic registrant/filers and raw material manufacturers, coupled with incomplete sharing of information by manufacturers, can result in discrepancies between submitted raw material compositions and manufacturer-provided information in safety applications. These discrepancies pose challenges during the registration process, impeding the smooth market entry and operation of the cosmetics industry in China, thereby hindering the industry's growth.

Recommendations

- Utilise the raw material safety information application platform solely as a reference for data collection, not as a determinant for evaluating cosmetics formulas.
- Empower cosmetics registrants/filers to independently provide and declare raw material safety information, contingent upon both a robust scientific basis and research data.

3.2 Labelling of Allergens

Concern

A recent EU regulation update poses significant challenges for imported cosmetics, mandating substantial packaging alterations and potentially necessitating ingredient management updates, re-registration and re-filing, which could adversely affect businesses.

Assessment

The European Commission's *Regulation (EU) No. 2023/1545* has amended Annex III of *EU Cosmetics Regulation (EC) No. 1223/2009*,^{11&12} expanding the list of fragrance allergens that must be labelled on cosmetics from 24 to 81. Effective from 16th August 2023, this regulation impacts all EU member states. The revision builds upon existing labelling requirements for fragrance allergens that have long been present in cosmetics essences. Some members of the Cosmetics Working Group have already initiated changes to product packaging, anticipating that numerous EU cosmetics will undergo packaging and allergen labelling updates within the next one to three years.

Under China's current Cosmetics Labelling Administrative Measures and the *Provisions on the Management of Cosmetics Registration and Notification Dossiers*,^{13&14} safety and efficacy claims on the labels of imported cosmetics must align with the original labels, and must include an accurate reflection and explanation of listed fragrance allergens. If Chinese regulatory authorities interpret these labelling changes as formula alterations or new allergens as new ingredients, it would compel a re-registration or notification process for many EU cosmetics in China, delaying market entry for new products and incurring administrative burdens and substantial material costs.

Recommendations

- Permit companies importing cosmetics to submit only the original packaging with updated allergen labelling, eliminating the need for application changes or re-registration or notification.
- Enable companies with imported cosmetics not yet on the market to include new allergens on the original packaging within the 'ingredient list' or 'warning statement' sections of the Chinese labels, with explanations in the formula table's 'remarks column', removing the necessity for new cosmetics

¹¹ *Amending Regulation (EC) No 1223/2009 of the European Parliament and of the Council as regards Labelling of Fragrance Allergens in Cosmetic Product*, European Commission, 26th July 2023, viewed 13th April 2024, <<https://eur-lex.europa.eu/eli/reg/2023/1545/oj>>

¹² *Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products*, European Commission, 30th November 2009, viewed 13th April 2024, <<https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32009R1223>>

¹³ *Cosmetics Labelling Administrative Measures (No. 77 of 2021)*, NMPA, 3rd June 2021, viewed 13th April 2024, <<https://www.nmpa.gov.cn/xxgk/fgwj/xzhgfxwj/20210603171933181.html>>

¹⁴ *Provisions for the Management of Cosmetics Registration and Notification Dossiers (No. 32 of 2021)*, NMPA, 26th February 2021, viewed 13th April 2024, <https://www.gov.cn/zhengce/zhengceku/2021-03/04/content_5590288.htm>





ingredient notifications or registrations for fragrance allergens.

3.3 Low-microbial Risk Cosmetics Products

Concern

The microbial quality control requirement for low-microbial risk products is not aligned with international standards, which results in unnecessary costs for European cosmetics manufacturers.

Assessment

Member companies that have already provided extensive feedback on their low-microbial risk products are now requested to carry out batch-by-batch microbial testing in their factories, as part of the microbial quality control management measures during the stage that evaluates the registration and notification dossiers for imports. However, according to Article 30 (5) of the *Provisions on the Management of Cosmetics Registration and Notification Dossiers*, it is the cosmetics company's right and responsibility to apply quality assurance (QA) control measures, with no mandatory requirement for batch-by-batch microbial testing. Cosmetics companies should therefore be free to decide how to conduct microbiological controls provided science-based risk assessments are used.

Recommendation

- Accept the criteria stipulated in the ISO standard for low-microbial risk products, and accept QA control measures designed by cosmetics companies instead of mandating batch-by-batch testing.

3.4 Children's Cosmetics

Concern

The absence of a history of safe use for children's cosmetics ingredients in the ingredient database hinders the preparation of safety assessment reports for this type of product.

Assessment

The children's cosmetics market in China is experiencing rapid growth, fuelled by factors such as the recent implementation of the three-child policy, rising consumer demands, and the increasing segmentation of children's cosmetics based on age and gender. However, the absence of an official and authoritative ingredient or safety database for

children's cosmetics during the formulation stage has led to considerable delays in the overall development process. Consequently, companies face challenges in both meeting market demand and ensuring safety.

Recommendations

- Enhance the principles and guidelines governing the safe use of ingredients in children's cosmetics.
- Optimise China's cosmetics ingredient database by focussing on improving the safety database specifically for children's cosmetics.
- Facilitate international exchanges and jointly develop a practical formula safety assessment and risk communication mechanism for children's cosmetics.

3.5 Technical Evaluations of Cosmetics with Anti-hair Loss or Whitening Functions

Concern

The absence of clear technical guidelines for registering and evaluating cosmetics with whitening or anti-hair-loss functions has caused significant difficulties for the industry, leading to product launch delays or cancellations.

Assessment

During technical reviews of cosmetics with anti-hair loss or whitening functions, enterprises have received queries about the efficacy of the active ingredients of their products. They have even received feedback that the clinical study methods applied to active ingredients should be verified against the official efficacy study methods on finished products. While the Cosmetics Evaluation Centre of the NMPA has issued the *Technical Guidelines for Research on Freckle-removing and Whitening Cosmetics (Draft for Comments)*¹⁵ and the *Technical Guidelines for Research on Functional Ingredients of Freckle-removing and Whitening Cosmetics (Draft for Comments)*,¹⁶ and technical guidelines for hair loss research have been discussed, no official text has yet been issued. This has led to enterprises encountering significant difficulties getting registration approval for these two types of special cosmetics.

¹⁵ *Technical Guidelines for Research on Freckle-removing and Whitening Cosmetics (Draft for Comments)*, NIFDC, 17th March 2023, viewed 13th April 2024, <<https://www.nifdc.org.cn/nifdc/xxgk/ggtzh/tongzhi/20230317135053512185.html>>

¹⁶ *Ibid.*





Recommendations

- Accelerate the release of technical guidance documents that are suitable for the research and development (R&D) of cosmetics with spot removal and whitening functions in the industry, while conducting training and exchanges.
- Consider the unique mechanism of anti-hair loss products before scientifically formulating suitable technical guidance documents for their review, and promote relevant exchanges between regulators and industry players, including training where necessary.

3.6 Review Criteria 4

Concern

The absence of clear review guidelines has led to unpredictable and inconsistent evaluations in the product registration and notification process, causing both operational challenges and delays to product launches

Assessment

Since the introduction of regulations like the CSAR, the *Provisions for the Management of Cosmetics Registration and Notification Dossiers* and the *Technical Guidelines for Filling in and Submitting Cosmetic Formula*,¹⁷ there has been a lack of detailed and clear guidance on product implementation standards, sample labelling, formula submission principles and documentation for ingredients with special functions.

The NMPA has made efforts to improve regulatory consistency through cross-provincial inspections, regional collaboration initiatives and internal communication. However, there is still a need for more in-depth communication between the authorities and industry, which would help both parties better understand and implement the new regulations.

Recommendations

- Enhance the training and guidance of review agencies nationwide to establish consistent review criteria.
- Create a direct dialogue mechanism between the industry and review agencies to gather feedback on review processes and cases, and to promptly update a list of frequently asked questions.
- Promote government-industry cooperation, and

¹⁷ *Technical Guidelines for Filling in and Submitting Cosmetic Formula* (No. 2 of 2023), NIFDC, 4th September 2023, viewed 13th April 2024, <<https://www.nifdc.org.cn/nifdc/bshff/hzhpjssp/hzpsptzgg/20230904150332740133.html>>

develop clear, detailed and unified cosmetics review standards.

4. Standardise Specific Ingredient Claims on Cosmetics Labels, Promote the Application of Equivalent Evaluations and Permit the Use of Electronic Labels

4.1 Specific Ingredients Claims

Concern

The evaluation criteria for specific ingredient claims differ between ordinary cosmetics and special cosmetics, which places limitations on ingredient diversity thereby hindering overall innovation in the industry.

Assessment

The claims of cosmetics ingredients play a crucial role in marketing and promotion, as they are a key consideration for consumers when making purchasing decisions. In most countries and regions globally, cosmetics claims must be truthful, based on objective evidence, maintain fairness in the market and not mislead consumers. Claims on product labels, such as 'containing xx ingredient', can be supported by factors including product efficacy, ingredient functions and characteristics, safety guarantees or consumer preferences. Regulatory requirements for cosmetics claims in China are outlined in the *Cosmetics Labelling Administrative Measures* and the *Guidelines for Cosmetics Efficacy Claim Evaluation*.¹⁸

With regard to cosmetics labelling, the absence of specific regulations governing ingredient claims, beyond the requirement of a complete ingredients list, poses a challenge to ingredient innovation, while also contravening compliance principles of international cosmetics label standards. To address this issue effectively, it is imperative for regulatory bodies to promptly establish comprehensive and transparent review protocols. These protocols should facilitate the establishment of consistent national standards for the evaluation of ingredient claims on cosmetics labels, ensuring clarity and adherence to regulatory requirements.

Recommendations

- Develop clear, detailed and standardised criteria

¹⁸ *Guidelines for Cosmetics Efficacy Claim Evaluation* (No. 50 of 2021), NMPA, 9th April 2021, viewed on 13th April 2024, <<https://www.nmpa.gov.cn/xxgk/fgwj/xzhgfxwj/20210409160321110.html>>





- for reviewing cosmetics labelling claims for raw materials or classifying requirements for review so that raw material claims are substantiated with appropriate evidence based on different scenarios.
- Establish a regular communication channel for specific ingredient claims to provide explanations for disputed claims and seek agreement, while also continuously releasing interpretive documents, researching specific industry situations and offering reasonable review directives.
 - Clarify that efficacy claims of ingredients that can be identified through sensory perception can be exempt from the requirement to submit relevant efficacy summaries.

4.2 Equivalent Evaluations

Concern

Current regulations mandate that cosmetics formula declarations must disclose any modifications, leading to the need for numerous efficacy reports at the final product stage, which results in prolonged R&D cycles for new cosmetics products and wastes resources.

Assessment

The management guidelines for efficacy claims included in the CSAR mandate that cosmetics registrants and notifiers must disclose summaries of the basis for such claims on specified websites. There are no clear guidelines for accepting equivalent evaluations in China. Small changes in formulas often occur in the cosmetic industry during development, making it widely used to evaluate similar formulas to support product safety and efficacy. This approach allows for comparisons between tested formulas in the R&D phase and marketed formulas, increasing efficiency and saving time.

Minor adjustments to essences, pigments and preservatives in formulas typically do not impact product efficacy, eliminating the need for individual testing of each formula. Furthermore, restricting the use of more efficient equivalent evaluation methods for assessing efficacy between products with similar formulas would increase R&D costs, strain testing resources, and diverge from industry practices, consequently disrupting product launch schedules and operations.

Recommendations

- Extend the application scope of the guiding principle of equivalent evaluations to all product efficacies, not

only multi-colour cosmetics products.

- Accept an applicant's rationale as to why minor differences in formulas do not affect efficacy, and allow for slight adjustments of essences and antiseptics besides pigments.
- Research the impact of various cosmetics ingredients on different efficacies and progressively broaden the range of ingredients permitted for minor adjustments under the equivalent evaluation guideline.

4.3 Electronic Label

Concern

Traditional labels and instructions are insufficient for conveying the extensive information consumers now seek, and also do not align with sustainable development principles.

Assessment

Following the 2021 implementation of the *Cosmetics Labelling Administrative Measures*, cosmetics labels and leaflets have become more detailed, which enhanced both product safety and consumer health rights. However, the growing volume of information is outstripping the capacity of traditional paper labels, especially for smaller packages. Companies have adopted measures such as reducing font size, folding labels, and attaching leaflets, which complicates readability and contradicts the trend towards mobile browsing and eco-friendly practices. Additionally, China's ageing population necessitates the creation of labels and leaflets that cater to the specific needs of the elderly.

The working group has observed pilot projects for electronic labels and leaflets in the food and pharmaceutical sectors¹⁹ and suggests that authorities consider adopting similar technologies in cosmetics to offer consumers a more accessible and clear reading experience.

Recommendation

- Investigate the use of QR codes and similar technologies to provide consumers with electronic labels and information, reducing reliance on traditional paper labels and leaflets.

¹⁹ Notice on Publicly Soliciting Comments on the National Standard for Food Safety General Principles for the Labelling of Prepackaged Foods and Other 3 Standards (Draft for Comments), National Health Commission, 19th January 2024, viewed on 13th April 2024, <<http://www.nhc.gov.cn/sps/s7891/202401/4c76bcd234534eb89eb0111acde1c764.shtml>>





5. Align Overseas Inspections with Foreign Standards, Promote Compliance in Advertising and E-commerce, and Ensure Regulatory Consensus for Seamless Pre-assessment and Post-supervision of Cosmetics

5.1 Overseas Inspections

Concern

The inspection points of the GMP for cosmetics do not align with the specific requirements of overseas ISO standards, meaning that the principle of ensuring product quality and safety is not fully adhered to.

Assessment

The NMPA publicly solicited comments on the *Interim Provisions on the Administration of Cosmetics Overseas Inspection (Draft for Comments)*²⁰ to ensure authenticity, reliability, and compliance in overseas cosmetics development and production processes. The draft clarifies the requirements for overseas inspections, but official regulations have not yet been released.

Most international cosmetics regulations and inspection systems prioritise risk-based approaches, industry self-regulation and social co-governance. While imported cosmetics may meet EU regulations, discrepancies exist in production quality management and standards compared to China's regulations.²¹ Without formal overseas inspection procedures, overseas companies face potential non-compliance risks during inspections.

Recommendations

- Conduct training for cosmetics enterprises on overseas inspection procedures as soon as possible.
- Consider the cosmetics regulations of an overseas company's location during inspections, recognising their production and quality management systems.

5.2 Advertising and Online Operation Management

Concern

Different understandings of claims/advertisement compliance among enterprises, regulators and

consumers result in product registration issues and/or post market complaints.

Assessment

With new sales models continuing to evolve in the cosmetics industry, such as online sales and live streaming, China has been developing and refining its legal and regulatory frameworks to effectively manage them. However, achieving a shared understanding of these new innovations among companies, regulatory bodies and consumers is a gradual process. Regulatory practices must also exhibit flexibility to ensure that businesses can adhere to regulations while adapting to dynamic market conditions, which is essential for fostering economic growth and market stability. Moreover, the continued presence of professional complainants who make bogus complaints leads to the unnecessary waste of regulatory and corporate resources.

Recommendations

- Solicit industry feedback to avoid setting overly rigid mandatory requirements during the creation and enforcement of laws and regulations.
- Provide ample opportunity for companies to demonstrate compliance in post-market surveillance, thereby empowering companies with greater responsibility.
- Develop and implement protocols to handle ongoing and unjustified complaints from professional complainants, decrease complaints that are not related to typical product usage, and eventually prevent activities that disrupt normal market functioning.
- Release clear and timely interpretations on industry trends and regulatory details to provide companies with ongoing guidance.

5.3 Connection between Post-market Surveillance and Pre-market Evaluation

Concern

Many of the new requirements for pre-market approval under the CSAR are misinterpreted in post-market supervision.

Assessment

The CSAR emphasises end-to-end supervision and states that an ordinary cosmetics notification can be made once an application has been submitted. While this greatly accelerates the speed of product launches,

²⁰ *Interim Provisions on the Administration of Cosmetics Overseas Inspection (Draft for Comments)*, NMPA, 22nd November 2019, viewed 13th April 2024, <<https://www.nmpa.gov.cn/xxgk/zhqyj/zhqyjzhhp/20191122150401393.html>>

²¹ *Inspection Points and Judgment Principles of Cosmetic Good Manufacturing Practice (No. 90 of 2022)*, NMPA, 25th October 2022, viewed 13th April 2024, <<https://www.nmpa.gov.cn/xxgk/ggtg/hzhpggtg/jmhzhtptg/20221025104946190.html>>





companies may be required to stop importing or selling a product during the post-notification technical reviews conducted by provincial registration review centres. This may be triggered by either inconsistent interpretation of regulations between national reviewers and provincial reviewers, or even between different reviewers in the same review centre. Furthermore, there is no opportunity for a company to submit an explanation or supporting documentation before a decision is made by a provincial authority to stop the import or sale of a product as part of the review process.

Recommendations

- Establish a scientific supervision mechanism to ensure consensus among local authorities at all levels about interpretations of the implementation of new regulatory requirements under the CSAR.
- Introduce a consultation procedure to facilitate communication between companies and regulatory authorities, ensuring all regulatory decisions are based on good professional knowledge and regulatory understanding.

Abbreviations

CSAR	Cosmetics Supervision and Administration Regulation
EU	European Union
GACC	General Administration of Customs of China
GMP	Good Manufacturing Practice
ISO	International Organization for Standardization
NBS	National Bureau of Statistics
NIFDC	National Institute for Food and Drug Control
NMPA	National Medical Products Administration
QA	Quality Assurance
R&D	Research and Development





Energy Working Group

Key Recommendations

1. Facilitate Access to Renewable Energy in Order to Accelerate both the Energy Transition and Industrial Decarbonisation

1.1 Facilitate Corporate Green Energy Procurement and Ensure Clear Policies for the Development of Green Electricity Certificates (GECs)

- Advance the transition of green power markets from pilot runs to full operations on a national scope with unified rules, expand operational coverage (e.g., to distributed renewable energy, biomass energy etc.), improve the imbalance between the supply and demand of renewable energy, facilitate inter-provincial transactions, build more ultra-high-voltage transmission lines for renewable energy from northwest/southwest China to the east China region, and encourage the procurement of long-term power purchase agreements (PPAs).
- Optimise dispatching planning of existing ultra-high-voltage lines to set aside long-term reserved capacity for inter-provincial green power trading.
- Refine transaction rules to increase access to and policy transparency for renewable energy procurement, especially for foreign-invested enterprises (FIEs).
- Facilitate cross-provincial green electricity purchases and allow for proper market pricing and risk hedging by establishing tools such as a long-term electricity market, long-term bilateral PPAs, virtual PPAs and an electricity futures market.
- Regularly publish emissions and electricity market information in every province to enhance pricing mechanisms for PPAs and energy sourcing.
- Incentivise and reward companies purchasing green electricity by giving them priority during peak season and reducing the energy quota needed when consuming renewable energy.
- Improve synergies, enhance transparency and policy continuity among existing policy and market mechanisms such as PPAs, GECs, provincial renewable portfolio standards and the carbon market.
- Clarify the policies about the possible deduction of renewable energy/GECs from the provincial energy quotas.
- Clarify the application rules of China Certificated Emission Reduction (CCER) and GECs in local and national emission trading systems (ETSs), to establish the linkage while avoiding the risk of double-counting.
- Provide clarity on the future outlook of renewable portfolio standards for both provinces and companies.
- Raise international awareness and understanding of China's renewable energy certificates to facilitate global recognition of multinational corporations' (MNCs') low-carbon supply chain measures.

1.2 Accelerate the Construction of a High-quality New Energy System and Ensure European Companies Have Equal Access to Renewable Energy Investment Opportunities

- Ensure a level playing field for FIEs and Sino-foreign joint ventures so that they have an equal





opportunity to access renewable energy projects.

- Define FIEs as entities originally headquartered overseas, rather than foreign subsidiaries of domestic companies, to increase market competition and ensure transparency and fairness.
- Allow more flexibility on the change of shareholding of renewable energy assets before the commercial operation date and refine relevant regulations to differentiate between speculation and legitimate market activities.
- Enhance the transparency of renewable energy asset allocation schemes and accelerate the integration of renewable energy into the grid.
- Streamline policies and processes for offshore projects and clarify the approvals process to expedite the development of deep-sea and far-sea projects.
- Establish Sino-European pilot demonstration projects, especially in offshore hydrogen, methanol, ammonia and recycling technologies, in order to foster technological innovation and knowledge exchange.
- Optimise the alignment and integration of renewable energy and new energy technologies with international technical standards.

2. Promote Lower Carbon Energy Vectors with a Focus on both the Energy Transition and Energy Security

2.1 Promote Natural Gas and Biogas Development and Accelerate Decarbonisation of Coal-based Industries

- Accelerate reform of gas infrastructure regulations: Improve downstream competition by giving smaller companies fair and open access to supply and allowing city gas companies and industrial companies to source directly from gas producers.
- Develop underground gas storage in a market system with an independent commercial performance index.
- Encourage liquefied natural gas (LNG) bunkering by setting up national standards in line with international standards.
- Foster market transparency through the early release of regulations on information sharing and monitoring mechanisms.
- Increase the share of gas and chemicals produced through biomethane and biogas production via an incentive mechanism for industrial users.
- Introduce a biomethane quota for the natural gas sector (producer/trader/network operator/city gas company etc.).
- Promote the development of biogas and biomethane from city and agricultural waste, and implement the polluter-pays principle to support waste collection, treatment and consumption.
- Support the injection of biomethane in natural gas pipe infrastructure.
- Set up a national certificate scheme for biomethane based on the model of GECs and support its recognition by international certification bodies.
- Propose a clear bookkeeping system for biomethane certificates to ensure both their industrial use and their compatibility with international standards, such as International Sustainability and Carbon Certification (ISCC).
- Promote the development of carbon capture utilisation and storage (CCUS) for coal-based power generation, coal-based industries and other hard-to-abate sectors.



- Adapt the regulatory framework to support reduction of emissions using CCUS, favouring the capture and allowing the long-term underground/undersea storage of carbon dioxide (CO₂).
- Develop joint technological and innovation programmes with the European Union (EU) to support the accelerated integration of biogas and CCUS in China.

2.2 Optimise the Hydrogen Supply Chain and Increase the Use of Low-carbon Hydrogen Solutions 4

- Release long-term supporting policies for optimising the whole hydrogen value chain.
- Incentivise the production of low-carbon hydrogen.
- Support the production of low-carbon hydrogen outside of chemical parks.
- Bring domestic carbon footprint of products (CFP) certification by China Hydrogen Alliance into line with international standards.
- Reinforce mechanisms to incentivise the use of hydrogen electrolyzers powered by curtailed electricity produced from low-carbon or renewable sources of energy.
- Define clear safety regulations to be harmonised at the national level for hydrogen production, distribution, storage and usage, and implement them initially in dedicated parks to minimise potential consequences.
- Promote medium- and long-distance hydrogen transportation using different methods, including pipelines, rail and/or shipping.
- Provide tangible updates for onboard liquid storage mechanisms following the regulations for producing and transporting hydrogen in liquid form.
- Promote hydrogen usage for power generation, heating and decarbonising high-emission industries, including by supporting carbon capture and utilisation (CCU) projects.

2.3 Enhance the Transition of the Transportation Sector with the Development of Alternative Fuels 5

- Close the price gap between fossil fuels and decarbonised alternatives by implementing the Green Balance Mechanism (GBM) based on International Maritime Organization (IMO) recommendations.
- Support the development of new refuelling infrastructure for green methanol and biomethane around major ports.
- Encourage maritime players to synergise their efforts to lower the costs of the energy transition of the transportation sector.
- Introduce a review mechanism to support the entire value chain for green methanol, from renewable and biogenic CO₂ production, hydrogen and methanol conversion, to its transportation to major ports.
- Consider becoming a key exporter of low carbon methanol fuel and align with international standards.
- Work with other countries in the region to implement green corridors.
- Coordinate regional developments with provinces that have sufficient access to renewable power and biomass, or provinces capable of supporting bunkering and exporting.





3. Transform Power Systems and Boost Innovation in Energy Efficiency Technologies

3.1 Develop High-quality Power Infrastructure and Leverage Smart Digital Solutions 4

- Set up new power infrastructure that can integrate with traditional facilities to make the large-scale utilisation of renewables feasible.
- Accelerate the application of digital technology and smart power installations from both the distribution- and demand-side.
- Develop policies that incentivise wide deployment of decentralised power generation, and facilitate both microgrid penetration and the use of energy storage.
- Promote green power grid products such as sulphur hexafluoride (SF6)-free switchgears.
- Develop smart energy management platforms and software to stabilise and balance the load, and lower energy costs and consumption.
- Encourage the development and integration of source-grid-load-storage, to increase local consumption of renewable energy.

3.2 Boost Innovation in Energy Efficiency Technologies 3

- Leverage digitalisation in the industrial sector to implement data-driven solutions for improving energy efficiency.
- Expand the scope of the national real-time energy consumption monitoring platform to include more key energy-intensive enterprises and industries.
- Accelerate the establishment of a carbon emissions statistical accounting system, as well as carbon management systems, to ensure the effective operation of the dual control mechanism.
- Further expand the national ETS to include more energy-intensive industries.
- Encourage more practical international collaboration on energy efficiency innovation between governments and companies.
- Promote the replacement of inefficient technologies with thermal power technology and install CCUS facilities.
- Implement green energy policies locally in a simple and effective manner.
- Continue to raise minimum energy performance standards (MEPSs) to encourage higher energy efficiency and strengthen global collaboration.
- Strengthen green finance support for energy efficiency projects.
- Promote the development and implementation of district energy systems.

Recent Developments

The *Guiding Opinions on Energy Work (Opinions)*, published by the National Energy Administration (NEA),¹ outline some of the key results from China's focus on ensuring energy security throughout 2023. According to the *Opinions*, total energy production increased steadily, and no major power outages occurred despite droughts, heat waves and other extreme weather conditions.

¹ *Guiding Opinions on Energy Work*, NEA, 18th March 2024, viewed 6th May 2024, <https://zfxgk.nea.gov.cn/2024-03/18/c_1310768578.htm>

Natural gas production increased: China's total installed power generation capacity reached approximately 2.92 terawatts (TW),² and total power generation capacity reached about 9,220 terawatt-hours (TWh).³ Plans for the overall decarbonisation of China's electricity system

² *2023 Statistical Data of the National Power Industry Released*, NEA, 26th January 2024, viewed 7th May 2024, <https://www.nea.gov.cn/2024-01/26/c_1310762246.htm>

³ *Domestic Electricity Consumption Growth Increased in 2023, and Electricity Consumption in Emerging Industries Maintained Growth Momentum*, State Council, 27th March 2024, viewed 7th May 2024, <https://www.gov.cn/yaowen/liebiao/202403/content_6941779.htm>





continued, with the proportion of the installed capacity of non-fossil energy power generation increasing to about 55 per cent. In terms of actual utilisation of renewable energy, wind and solar power accounted for more than 17 per cent of the country's power generation, with record-high solar and wind installations of an additional 240 gigawatts (GW) and 70GW, respectively.

The working group hopes that new policies for emissions control—including the removal of non-fossil energy power from the energy quota, and the relaunch of the China Certified Emission Reduction (CCER) programme—which were published in 2023 and early 2024, will play a significant role in achieving emissions reductions.

However, while the deployment of renewable energy and natural gas is progressing in China, barriers to the broader implementation of the energy sector's decarbonisation strategies remain. These include limited access to green power and Green Electricity Certificates (GECs), especially in large power-consuming provinces/areas; unclear policies and regulatory hurdles (including a lack of common standards) to enable further deployment of natural gas, biomethane, carbon capture utilisation and storage (CCUS) technologies, hydrogen and new green fuels; and ineffective implementation of new technologies, including energy efficiency technologies.

Key Recommendations

1. Facilitate Access to Renewable Energy in Order to Accelerate both the Energy Transition and Industrial Decarbonisation

1.1 Facilitate Corporate Green Energy Procurement and Ensure Clear Policies for the Development of GECs

Concern

Market access for green electricity, bundled with GECs, is limited despite the rapid development of renewable resources in China.

Assessment

Procuring green electricity bundled with GECs is limited in scale especially for most large European manufacturers in China that need to directly purchase green energy to achieve their decarbonisation goals. Some provinces

even prevent manufacturers from purchasing any renewable energy or restrict access to certain sources, with most reserved for residential and agricultural use. An effective way to address this would be through the further promotion of inter-provincial transactions.

It is in this context that the *Guiding Opinions on Accelerating the Construction of a National Unified Electricity Market System (Guiding Opinions)* was released by the National Development and Reform Commission (NDRC) and the NEA in 2022,⁴ with the aim of unifying China's power system into sub-regional and national markets. The *Guiding Opinions* contain a call for increased access to green power in major power-consuming areas, such as east and northeast China, which can benefit from the development of renewable energy 'mega basins', such as Xinjiang, Gansu and Inner Mongolia. Then, in 2023, the NDRC and NEA released a notice calling for the further acceleration of the establishment of a regional spot power market:⁵ provincial spot power markets that have operated for a trial period for a long time are encouraged to proceed to full operations accordingly, with other provincial markets expected to enhance their spot market designs and prepare for longer trials. While these are encouraging developments, two issues need to be addressed: China's west-east electricity transfer project is currently limited by transmission line capacity, and western provinces need to first satisfy their own renewable portfolio standards before delivering to eastern cities.

In order to provide guaranteed revenue streams for investors in such projects, the working group recommends implementing long-term power purchase agreements (PPAs), while also linking existing mechanisms—such as direct PPAs, GECs, renewable portfolio standards and the emissions trading scheme (ETS)—to avoid double counting. Establishing tools such as long-term bilateral PPAs and an electricity futures market would also allow for proper market pricing and risk hedging. Meanwhile, improving market access and policy transparency would give international companies confidence that they can achieve their renewable consumption pledges. To facilitate this, transaction

⁴ *Guiding Opinions on Accelerating the Construction of a National Unified Electricity Market System*, NDRC and NEA, 18th January 2022, viewed 6th May 2024, <<https://zfxgk.ndrc.gov.cn/web/iteminfo.jsp?id=18646>>

⁵ *Notice on Further Accelerating the Construction of an Electricity Spot Power Market*, NDRC and NEA, 12th October 2023, viewed 6th May 2024, <https://www.gov.cn/zhengce/zhengceku/202311/content_6913560.htm>





rules should be refined with regular updates, such as disclosures of trading volumes and industry sectors that are eligible for bulk trades. Trading activities could also be facilitated by releasing market prices, average transaction volumes and emissions data more promptly.

As a final point, clarification is needed on the link between GECs, the dual energy and emissions control mechanisms,⁶ the ETS and the CCER programme, while maintaining the quality of the certificates.

Recommendations

- Advance the transition of green power markets from pilot runs to full operations on a national scope with unified rules, expand operational coverage (e.g., to distributed renewable energy, biomass energy etc.), improve the imbalance between the supply and demand of renewable energy, facilitate inter-provincial transactions, build more ultra-high-voltage transmission lines for renewable energy from northwest/southwest China to the east China region, and encourage the procurement of long-term PPAs.
- Optimise dispatch planning of existing ultra-high-voltage lines to set aside long-term reserved capacity for inter-provincial green power trading.
- Refine transaction rules to increase access to and policy transparency for renewable energy procurement, especially for FIEs.
- Facilitate cross-provincial green electricity purchases and allow for proper market pricing and risk hedging by establishing tools such as a long-term electricity market, long-term bilateral PPAs, virtual PPAs and an electricity futures market.
- Regularly publish emissions and electricity market information in every province to enhance pricing mechanisms for PPAs and energy sourcing.
- Incentivise and reward companies purchasing green electricity by giving them priority during peak season and reducing the energy quota needed when consuming renewable energy.
- Improve synergies, enhance transparency and policy continuity among existing policy and market mechanisms such as PPAs, GECs, provincial renewable portfolio standards and the carbon market.

⁶ The “dual control of energy consumption” mechanism refers to the policy of controlling total energy consumption and energy intensity of regions, industries, and companies, while the “dual control of carbon emissions” mechanism focusses on controlling total carbon emissions and carbon emissions intensity. Huld, A, *China's Pivot from Energy Consumption to Carbon Emissions Controls: Impact on Companies*, China Briefing, 5th October 2023, viewed 11th June 2024, <<https://www.china-briefing.com/news/china-carbon-emissions-reduction-dual-control-explained/>>

- Clarify the policies about the possible deduction of renewable energy/GECs from the provincial energy quotas.
- Clarify the application rules of CCER and GECs in local and national ETSSs, to establish the linkage while avoiding the risk of double-counting.
- Provide clarity on the future outlook of renewable portfolio standards for both provinces and companies.
- Raise international awareness and understanding of China's renewable energy certificates to facilitate global recognition of MNCs' low-carbon supply chain measures.

1.2 Accelerate the Construction of a High-quality New Energy System and Ensure European Companies Have Equal Access to Renewable Energy Investment Opportunities



Concern

European companies are treated unfairly compared to Chinese companies in the renewable energy sector.

Assessment

Despite China being a global leader in hydroelectric, wind, solar and biomass capacities,^{7&8} and its increasingly welcoming policies to attract foreign direct investment,⁹ China's renewable energy policies are quite rigid, which discourages foreign investors.

The renewable energy landscape in China is currently dominated by a limited number of state-owned enterprises (SOEs), with European companies facing significant constraints on both ownership and operation of renewable energy assets, to the detriment of the market's overall development. If China were to instead create a competitive market with participation from more diverse players, it would allow for more rapid development and deployment of renewable energy assets and technology breakthroughs, which is particularly important given that multi-trillion-dollar investments into the renewable energy sector are

⁷ *Led by China, global bioenergy capacity continues upward trend*, Global Energy Monitor, 14th November 2023, viewed 17th April 2024, <<https://globalenergymonitor.org/press-release/led-by-china-global-bioenergy-capacity-continues-upward-trend/>>

⁸ *Renewables 2023: Executive Summary*, International Energy Agency, 2023, viewed 17th April 2024, <<https://www.iea.org/reports/renewables-2023/executive-summary#>>

⁹ *Completely Eliminate Barriers to Foreign Investment Access in Manufacturing Sector*, ChinaNews, 5th March 2024, viewed 6th May 2024, <<https://www.chinanews.com.cn/gn/2024/03-05/10174322.shtml>>





anticipated in the coming decade.¹⁰ The working group recommends that Chinese authorities at all levels establish incentives for SOEs to engage in long-term PPAs with foreign companies. This would be in line with China's sustainable development ambitions and the intention to create a transparent and sound business environment.

Regarding the new energy industry, the pricing strategies of Chinese companies are putting great pressure on European players. However, for projects that are more complex and expensive, for instance deep sea drilling, greater emphasis should be placed on environmental sustainability, the overall project life cycle and reasonable value chain growth. If a price war were to emerge for such projects, it could squeeze out high-quality industry players, resulting in a monopoly, which in turn could have a serious impact on the deep sea ecosystem. It is therefore necessary to accelerate the development of project specifications that comply with international standards, promote fair competition and accelerate technological breakthroughs,^{11&12} rather than continue to focus predominantly on project costs.

With both the European Union (EU) and China having underscored the importance of energy efficiency technologies,¹³ the impending mass decommissioning of wind turbines and photovoltaic installations means there is an increasing need for innovative recycling technologies, such as material separation and recovery. The EU's objective of reducing landfill disposal of turbine blades by 90 per cent by 2030,¹⁴ highlights innovative recycling initiatives such as those by Blade2Build. By increasing technological cooperation and industrial research in these areas, EU and Chinese enterprises can more quickly achieve their broader, mutual environmental and economic aims.

¹⁰ *Fostering Effective Energy Transition 2023*, Weforum, 28th June 2023, viewed 17th April 2024, <<https://www.weforum.org/publications/fostering-effective-energy-transition-2023/in-full/china/>>

¹¹ Liu, Y, *China's solar sector readying for new challenges*, *China Daily*, 3rd Jan 2024, viewed 16th April 2024, <<https://www.chinadailyhk.com/hk/article/369568>>

¹² Foxwell, D, *Turbine OEM, supply chain unfazed by Chinese offshore wind threat*, *Riviera*, 9th Feb 2024, viewed 16th April 2024, <<https://www.rivieramm.com/news-content-hub/news-content-hub/turbine-oem-supply-chain-unfazed-by-chinese-offshore-wind-threat-79566>>

¹³ *Notification on Further Upgrading Energy Efficiency Standards and Implementation 2023*, NDRC, 8th March, 2023, <https://www.gov.cn/zhengce/zhengceku/2023-03/20/content_5747524.htm>

¹⁴ *Recycling materials from green energy technologies (Signal)*, EEA, 24th May 2024, viewed 13th June 2024, <<https://www.eea.europa.eu/en/european-zero-pollution-dashboards/indicators/recycling-from-green-technology>>

Recommendations

- Ensure a level playing field for FIEs and Sino-foreign joint ventures so that they have an equal opportunity to access renewable energy projects.
- Define FIEs as entities originally headquartered overseas, rather than foreign subsidiaries of domestic companies, to increase market competition and ensure transparency and fairness.
- Allow more flexibility on the change of shareholding of renewable energy assets before the commercial operation date and refine relevant regulations to differentiate between speculation and legitimate market activities.
- Enhance the transparency of renewable energy asset allocation schemes and accelerate the integration of renewable energy into the grid.
- Streamline policies and processes for offshore projects and clarify the approvals process to expedite the development of deep-sea and far-sea projects.
- Establish Sino-European pilot demonstration projects, especially in offshore hydrogen, methanol, ammonia and recycling technologies, in order to foster technological innovation and knowledge exchange.
- Optimise the alignment and integration of renewable energy and new energy technologies with international technical standards.

2. Promote Lower Carbon Energy Vectors with a Focus on both the Energy Transition and Energy Security

2.1 Promote Natural Gas and Biogas Development and Accelerate Decarbonisation of Coal-based Industries

Concern

The role of natural gas and biogas as transitional fuels needs to be reinforced, with CCUS being deployed to help decarbonise hard-to-abate industries.

Assessment

While natural gas is well recognised as a source of clean energy for road vehicles and maritime vessels in the NEA's *Guiding Opinions on Energy Work*,¹⁵ coal's importance in ensuring China's energy security is also emphasised, which is concerning in terms of China's carbon neutrality target.

¹⁵ *Guiding Opinions on Energy Work in 2024*, NEA, 18th March 2024, viewed 6th May 2024, <https://zfxxgk.nea.gov.cn/2024-03/18/c_1310768578.htm>





Although FIEs already have access to the upstream exploration and wholesale markets of the natural gas industry, they could play a bigger role and accelerate its use through the introduction of more best practices if given midstream access to, for instance, the infrastructure (pipeline) projects at both the national and provincial levels or jointly with an SOE (PipeChina, for instance).

In addition to the switch to natural gas, the use of CCUS is a very effective way to decarbonise industries that are coal-based and considered hard to abate. Deploying such technologies, which are technically mature and widely supported in the EU and the United States, can effectively reduce carbon emissions while creating a circular economy for chemicals. Advances in the regulatory framework should also be pursued to link carbon capture to emission reductions and open the path to underground and undersea carbon storage.

Moreover, the current lack of clear incentives and an unstable feedstock supply has led to lagging development of decarbonised gases and the commercial use of biogas, despite the potential large reservoir of biomethane that could be leveraged by national authorities as part of the plans to both decarbonise the energy sector and ensure overall energy security. To make progress in this area, a national biomethane certification/transaction scheme should be developed based on the model of the GECs, and its international recognition pushed forward and aligned with the International Sustainability and Carbon Certification (ISCC) standards. It would also be prudent to establish a clear bookkeeping system to support the certification process.

Recommendations

- Accelerate reform of gas infrastructure regulations: Improve downstream competition by giving smaller companies fair and open access to supply and allowing city gas companies and industrial companies to source directly from gas producers.
- Develop underground gas storage in a market system with an independent commercial performance index.
- Encourage LNG bunkering by setting up national standards in line with international standards.
- Foster market transparency through the early release of regulations on information sharing and monitoring mechanisms.

- Increase the share of gas and chemicals produced through biomethane and biogas production via an incentive mechanism for industrial users.
- Introduce a biomethane quota for the natural gas sector (producer/trader/network operator/city gas company etc.).
- Promote the development of biogas and biomethane from city and agricultural waste, and implement the polluter-pays principle to support waste collection, treatment and consumption.
- Support the injection of biomethane in natural gas pipe infrastructure.
- Set up a national certificate scheme for biomethane based on the model of GECs and support its recognition by international certification bodies.
- Propose a clear bookkeeping system for biomethane certificates to ensure both their industrial use and their compatibility with international standards such as ISCC.
- Promote the development of CCUS for coal-based power generation, coal-based industries and other hard-to-abate sectors.
- Adapt the regulatory framework to support reduction of emissions using CCUS, favouring the capture and allowing the long-term underground/undersea storage of CO₂.
- Develop joint technological and innovation programmes with the EU to support the accelerated integration of biogas and CCUS in China.

2.2 Optimise the Hydrogen Supply Chain and Increase the Use of Low-carbon Hydrogen Solutions 4

Concern

While China acknowledges hydrogen's critical role in the decarbonisation process, onerous or missing regulations and inefficient supply chains are hindering the scaling-up of low-carbon hydrogen solutions.

Assessment

Regulations regarding medium- and long-distance transportation of liquid hydrogen using pipelines, rail and/or shipping need to be implemented to foster an efficient and scalable supply chain while decreasing the total cost of ownership.¹⁶ China also needs to optimise infrastructure for hydrogen production, transportation and distribution, and increase the hydrogen storage

¹⁶ Total cost of ownership is an estimate of all the direct and indirect costs involved in acquiring and operating a product or system over its lifetime.





density by upgrading on-board storage to Type IV vessels, thereby improving the competitiveness of fuel cell electric vehicles.¹⁷ China's numerous codes and standards on hydrogen value chains need a clear structure that is harmonised at the national level and aligned with those already issued by internationally recognised bodies, such as the International Organization for Standardization (ISO),¹⁸ to create a more sustainable and globally competitive market.

China already has a national plan for producing decarbonised hydrogen in the long term. Options include promoting the use of renewable energy for water electrolysis, biomethane reforming and capturing existing low-carbon off-gases. This could be enhanced by harmonising the domestic product carbon footprint certification developed by China Hydrogen Alliance with international standards for global trade, such as CertifHy, the EU's Guarantee of Origin scheme for certifying low-carbon and renewable hydrogen production.

Hydrogen also has great potential to help decarbonise heavy-emitting industries. For instance, a hydrogen-based power system can act as a systemic 'buffer' for harmonising continuous production from fossil fuels, nuclear plants and intermittent production from renewables to optimise electricity supply and demand patterns. Therefore, re-electrification from green or low-carbon hydrogen should be promoted, starting with pilot schemes. In addition, hydrogen usage to support the development of carbon capture and utilisation (CCU)-based chemicals could present a tremendous opportunity for China to reduce its emissions while increasing its energy security. Likewise, more support is needed to develop hydrogen as a feedstock for heavily polluting industries such as steel, cement and glass.

Recommendations

- Release long-term supporting policies for optimising the whole hydrogen value chain.
- Incentivise the production of low-carbon hydrogen.
- Support the production of low-carbon hydrogen outside of chemical parks.
- Bring domestic CFP certification by China Hydrogen

¹⁷ Onboard hydrogen storage continues to be a key technical barrier for widespread adoption of hydrogen fuel cell vehicles. Type IV vessels are composite tanks made of carbon fibre with a polymer liner (thermoplastic). They are the lightest of all pressure vessels, making them most suitable for vehicle applications.

¹⁸ ISO/TC 197 Hydrogen Technologies, ISO, viewed 12th May 2023, <<https://www.iso.org/committee/54560.html>>

Alliance into line with international standards.

- Reinforce mechanisms to incentivise the use of hydrogen electrolyzers powered by curtailed electricity produced from low-carbon or renewable sources of energy.
- Define clear safety regulations to be harmonised at the national level for hydrogen production, distribution, storage and usage, and implement them initially in dedicated parks to minimise potential consequences.
- Promote medium- and long-distance hydrogen transportation using different methods, including pipelines, rail and/or shipping.
- Provide tangible updates for onboard liquid storage mechanisms following the regulations for producing and transporting hydrogen in liquid form.
- Promote hydrogen usage for power generation, heating and decarbonising high-emission industries, including by supporting CCU projects.

2.3 Enhance the Transition of the Transportation Sector with the Development of Alternative Fuels

Concern

The lack of both policy support and concrete action is hindering the promotion and implementation of alternative green fuels at the regional level.

Assessment

Some shipping industry players are taking bold action to affect the green transition, including placing orders for dual-fuel vessels, entering into long-term offtake agreements for zero-emission fuels and signing agreements to move cargo on zero-emission vessels. However, green marine fuels worldwide are still scarce and expensive — in fact, the high-cost differential between fossil fuels and green fuels prevents carriers from using cleaner fuels as they cannot absorb the cost while remaining commercially competitive with operators that are burning fossil fuels. This in turn results in a lack of market demand for green fuels, which discourages suppliers from investing further in production capability for green fuels.

The International Maritime Organization (IMO) member states announced last summer the establishment of a Green Balance Mechanism (GBM) by 2025 that will enter into force by 2027. The GBM will be an effective public policy measure to address the cost imbalance





between green and fossil fuels by requiring ships that use fossil fuels to contribute financially to offset the additional cost for ships using new, cleaner fuels. The minimum fee necessary to offset the price differential in a given year will be collected and allocated to ships that meet a specific greenhouse gas threshold. This ensures that green fuels can be produced and used at the lowest possible cost to transportation operators. The working group suggests additional fees be added on top of the 'recycle' fee, to be used for: 1) fund-raising for climate mitigation initiatives; 2) research, development and demonstration projects; and 3) providing a just and equitable transition in developing countries.

While decarbonisation of the maritime industry is now relatively well advanced, other forms of transportation should not be forgotten. Decarbonisation of airports and air transportation also requires massive investment and still presents significant technological challenges. As of today, two main solutions have emerged: 1) the development of sustainable aviation fuel, which, similar to green methanol still has the challenge of producers being able to secure biogenic CO₂; and the use of hydrogen, which will present some technological challenges. For either of these solutions, Chinese players need to be involved as early as possible.

Recommendations

- Close the price gap between fossil fuels and decarbonised alternatives by implementing the GBM based on IMO recommendations.
- Support the development of new refuelling infrastructure for green methanol and biomethane around major ports.
- Encourage maritime players to synergise their efforts to lower the costs of the energy transition of the transportation sector.
- Introduce a review mechanism to support the entire value chain for green methanol, from renewable and biogenic CO₂ production, hydrogen and methanol conversion, to its transportation to major ports.
- Consider becoming a key exporter of low-carbon methanol fuel and align with international standards.
- Work with other countries in the region to implement green corridors.
- Coordinate regional developments with provinces that have sufficient access to renewable power and biomass, or provinces capable of supporting bunkering and exporting.

3. Transform Power Systems and Boost Innovation in Energy Efficiency Technologies

3.1 Develop High-quality Power Infrastructure and Leverage Smart Digital Solutions 4

Concern

Digitalisation in the power sector has been taking place without coordination along the whole supply chain, which may result in technical problems and an overall waste of resources.

Assessment

While China's 'new infrastructure' proposal has led to increased digitalisation in the power sector,¹⁹ it has taken place without a clear roadmap or coordination among the various players. If this continues unchecked, it will quickly lead to problems such as overcapacity, poor integration with traditional infrastructure and an overall waste of resources.

Alongside the digital upgrading of the main power grid, the digitalisation of power distribution and demand-side response is equally important. A smarter energy-production system that can make large-scale utilisation of renewable energy feasible should be established, and greener power equipment and technologies deployed. For example, 95 per cent of China's power grids currently use traditional switchgear technology, which contains the world's most potent greenhouse gas, sulphur hexafluoride (SF₆).²⁰

At the same time, energy efficiency continues to be overlooked as a key priority in the dialogue around both the energy crisis and green transition. Meanwhile, the traditional power structure has shifted from 'generation-grid-load' to a dynamic interaction of 'generation-grid-load-storage', highlighting the role of energy storage as the fourth critical element to creating high-quality power infrastructure.²¹

It is therefore essential to further develop digitally enabled smart energy management platforms and software that monitor energy consumption data in real time,

19 Wong, D, *How Can Foreign Technology Investors Benefit from China's New Infrastructure Plan?*, China Briefing, 7th August 2020, viewed 7th May 2024, <<https://www.china-briefing.com/news/how-foreign-technology-investors-benefit-from-chinas-new-infrastructure-plan/>>

20 SF₆ is an extremely potent and persistent greenhouse gas that is primarily utilised as an electrical insulator and arc suppressant.

21 *Blue Book on New Power System Development (Draft for Comments)*, NEA, 6th January 2023, viewed 7th May 2024, <http://www.nea.gov.cn/2023-01/06/c_1310688702.htm>





to aid grid operators in stabilising and balancing the load, and ultimately lowering costs and overall energy consumption.

Recommendations

- Set up new power infrastructure that can integrate with traditional facilities to make the large-scale utilisation of renewables feasible.
- Accelerate the application of digital technology and smart power installations from both the distribution- and demand-side.
- Develop policies that incentivise wide deployment of decentralised power generation, and facilitate both microgrid penetration and the use of energy storage.
- Promote green power grid products such as SF6-free switchgears.
- Develop smart energy management platforms and software to stabilise and balance the load, and lower energy costs and consumption.
- Encourage the development and integration of source-grid-load-storage, to increase local consumption of renewable energy.

3.2 Boost Innovation in Energy Efficiency Technologies

Concern

As China plans to shift from controlling energy intensity to carbon intensity, there is a risk that the importance of energy efficiency may be diluted.

Assessment

While China's switch from focussing on energy consumption to carbon emissions in its 'dual control mechanism'²² may anchor its green strategy more directly to its 30/60 Goals, it may also lead to some unfavourable outcomes in terms of improving energy efficiency.

Mitigating the impact of energy-intensive industries through the energy consumption control mechanism makes sense in terms of reducing overall energy consumption. However, if energy-intensive companies are subject to the carbon emissions dual control mechanism, their total energy consumption will go unchecked provided they rely less on fossil fuels and

improve their energy conservation. This would likely result in a dilution of the importance of energy efficiency in the long run.

Therefore, while implementing the transition to the dual control mechanism, it is imperative to reiterate the importance of energy efficiency and continue to improve policy measures that can help to boost innovation in energy efficiency technologies. While it is encouraging that new policies were published in April and May 2024 to promote investment in energy efficiency,^{23&24} they are yet to be fully enforced in each province.

Recommendations

- Leverage digitalisation in the industrial sector to implement data-driven solutions for improving energy efficiency.
- Expand the scope of the national, real-time energy consumption monitoring platform to include more key energy-intensive enterprises and industries.
- Accelerate the establishment of a carbon emissions statistical accounting system, as well as carbon management systems, to ensure the effective operation of the dual control mechanism.
- Further expand the national ETS to include more energy-intensive industries.
- Encourage more practical international collaboration on energy efficiency innovation between governments and companies.
- Promote the replacement of inefficient technologies with thermal power technology and install CCUS facilities.
- Implement green energy policies locally in a simple and effective manner.
- Continue to raise MEPSs to encourage higher energy efficiency and strengthen global collaboration.
- Strengthen green finance support for energy efficiency projects.
- Promote the development and implementation of district energy systems.

²² *Opinions on Promoting Dual Control of Energy Consumption and Gradually Shifting to Dual Control of Carbon Emissions*, CCCDR, 13th July 2023, viewed 6th May 2024, <<http://www.china-cer.com.cn/shuangtan/2023071325220.html>>

²³ *Special Management Measures for Central Budgetary Investment in Energy Saving and Carbon Reduction*, NDRC, 8th April 2024, viewed 14th May 2024, <https://www.ndrc.gov.cn/xxgk/zcfb/ghxwj/202404/t20240408_1365534.html>

²⁴ *Implementation Plan for Promoting Equipment Updating in the Industrial Field*, MIIT, 27th March 2024, viewed 14th May 2024, <https://www.gov.cn/zhengce/zhengceku/202404/content_6944252.htm>





Abbreviations

CCU	Carbon Capture and Utilisation
CCUS	Carbon Capture, Use, and Storage
CCER	China Certified Emission Reduction
CFP	Carbon Footprint of Products
CO ₂	Carbon Dioxide
ETS	Emissions Trading Scheme
EU	European Union
FIE	Foreign-invested Enterprise
GBM	Green Balance Mechanism
GEC	Green Electricity Certificate
GW	Gigawatt
IMO	International Maritime Organization
ISCC	International Sustainability and Carbon Certification
ISO	International Organization for Standardization
LNG	Liquefied Natural Gas
MEPS	Minimum Energy Performance Standard
MNC	Multinational Corporation
NDRC	National Development and Reform Commission
NEA	National Energy Administration
PPA	Power Purchase Agreement
SF ₆	Sulphur Hexafluoride
SOE	State-owned Enterprise
TW	Terawatts
TWh	Terawatt-hours



Carbon Market Working Group

Key Recommendations

1. Increase the Accuracy and Transparency of Carbon Emissions Monitoring, Reporting and Verification (MRV) in China's Voluntary and Mandatory Environmental Information Disclosures

- Develop a unified and scientific accounting methodology for product carbon footprints that is aligned with international standards.
- Enhance the involvement of accredited, international, third-party verifiers in product carbon footprint assessments and incorporate environmental information disclosure, either voluntary or mandatory.
- Upgrade the verification management regulations and relevant technical guidelines.
- Establish accreditation authorities that have open, detailed and clear rules for organisations applying for accreditation, regularly conduct in-depth audits of these organisations, and disclose a list of qualified verifiers on an annual basis.
- Release regional power grids' emission factors on an official website on a regular basis, and improve official data transparency and accuracy.
- Issue detailed MRV rules for Scope 3 emissions.

2. Accelerate the Coordination of the National Carbon Market with Other Climate Policies and Mechanisms, Formulate Allowance Allocation Plans in Line with Industrial Decarbonisation Strategies and Gradually Introduce Auctioning

- Coordinate the emissions trading system (ETS) and the China Certified Emission Reduction (CCER) scheme with other climate policies and mechanisms, such as the electricity, green electricity and Green Electricity Certificate (GEC) markets.
- Establish as soon as possible a mechanism for the transmission of carbon costs to electricity prices and promote the fair sharing of negative externalities of carbon emissions from the whole of society, to alleviate the excessive pressure on the power sector and achieve an orderly low-carbon transition.
- Strengthen synergies between carbon and electricity markets in terms of construction tasks, schedule, market scope and different roles in guiding the behavioural changes of market entities/players.
- Revise the relevant emission factors in the carbon accounting guidelines for different sectors so that emissions from purchased green electricity are considered to be zero.
- Clarify the application rules of CCERs and GECs in the local and national ETSs, while avoiding double counting.
- Formulate allowance allocation plans in line with industrial decarbonisation strategies, and set a timeline to gradually introduce auctions.





3. Facilitate Bilateral Government, Civil Society and Business Exchanges on the Latest Decarbonisation Policies and Actions to Reinforce Cooperation in Line with China's 30/60 Goals and the EU Green Deal 6

- Maintain regular policy dialogues with the European Union (EU) regarding ETSs, the Carbon Border Adjustment Mechanism (CBAM) and other policies, in line with China's 30/60 Goals and the EU Green Deal.
- Develop an analytical framework to examine carbon pricing mechanisms and factors affecting carbon markets, assess the range of reasonable and affordable carbon prices for countries at different stages of development, and explore a cooperative rule-setting process between developed and developing countries.
- Provide technical and coordination support for the harmonisation of standards and requirements between the EU and China, such as MRV, product carbon footprints and green/renewable energy certificates.
- Engage both European and Chinese businesses on policy formulation, development and implementation.
- Support local governments and domestic enterprises to strengthen exchanges with their EU counterparts through capacity building and best-practice sharing.

Recent Developments

• In China

Compliance Carbon Market

There were significant improvements in price and liquidity in China's domestic carbon markets in 2023. The annual average trading price for Chinese Emission Allowances (CEAs) reached Chinese yuan (CNY) 68.15, up 23.24 per cent year-on-year (y-o-y), with a trading volume of 212 million tonnes, a 316 per cent y-o-y jump.¹ While there remains a price gap compared to the European Union (EU), the growth in both CEA price and volume provides a solid foundation for market evolution in 2024.

In February 2024, the State Council published the *Interim Regulations for the Management of Carbon Emissions Trading (Interim Regulations)*, a long-awaited, high-level legal framework for China's national emissions trading system (ETS), which took effect in May 2024. The new legislation elevates the governance of the national ETS from its previous ministry-level

to state-level. Key changes include the sharing of institutional responsibilities between the Ministry of Ecology and Environment (MEE) and other relevant departments, as well as stricter enforcement measures and penalties for non-compliance, data fraud and market manipulation behaviours involving covered entities, technical services and market participants.² Amid broader signals of tighter emissions regulations from the government, the CEA price hit a record high.³

According to industry experts, the national compliance market is likely to expand to cement, aluminium and steel sectors within 2024.⁴ From March to April, the MEE began public consultations on emissions accounting and verification guidelines for the aluminium and cement sectors. Notably, these sectors are covered

1 *Commodities 2024: China's domestic carbon market set for revamp; Article 6 in limbo*, S&P Global Commodity Insights, 17th January 2024, viewed 28th April 2024, <<https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/energy-transition/011724-chinas-domestic-carbon-market-set-for-revamp-in-2024-article-6-in-limbo>>

2 *China strengthens legal foundation for national ETS*, International Carbon Action Partnership, 23rd February 2024, viewed 28th February 2024, <<https://icapcarbonaction.com/en/news/china-strengthens-legal-foundation-national-ets>>

3 *China's compliance carbon market price hits record high of \$11.74/mtCO₂e*, S&P Global Commodity Insights, 11th March 2024, viewed 28th April 2024, <<https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/energy-transition/031124-chinas-compliance-carbon-market-price-hits-record-high-of-1174mtco2e>>

4 *China kicks off consultation on expanding compliance carbon market to cement sector*, S&P Global Commodity Insights, 4th April 2024, viewed 28th April 2024, <<https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/energy-transition/040424-china-kicks-off-consultation-on-expanding-compliance-carbon-market-to-cement-sector>>





by the EU's Carbon Border Adjustment Mechanism (CBAM). Incorporating new sectors into China's national ETS is crucial, as it will help incentivise trading activities, while keeping the impact of the EU's CBAM on Chinese exports to a minimum.

Voluntary Carbon Market

China's national voluntary carbon market, namely China Certified Emission Reduction (CCER) scheme, kicked off trading in Beijing in January 2024, after six years of suspension.⁵ The CCER scheme, together with the compliance market (launched in 2021), marked the completion of the regulatory landscape for China's domestic carbon markets.

Between October and November 2023, the Chinese Government released refined rules for CCER scheme registration as well as guidelines for project design and implementation, with four methodologies for CCER issuance (forestation, mangrove cultivation, solar thermal power and grid-connected offshore wind power projects), paving the way for the market's reboot.

Market participants expect more methodologies, including those for carbon capture, utilisation and storage (CCUS), hydrogen, and methane mitigation projects, to be released in 2024. Better coordination with other environmental policies and mechanisms—especially the domestic Green Electricity Certificate (GEC)—is another key task this year.⁶

Regional Pilots

Chinese regional pilots continue to operate in parallel with the national ETS, covering sectors and entities not included in the national system. In addition to their routine activities, the Hubei pilot is planning to lower the inclusion threshold; the Shanghai pilot expanded coverage to data centres and introduced a local crediting system; and the Guangdong pilot extended coverage to ceramics, ports and data centres.⁷

No new regional carbon markets will be further established in the future, according to the *Interim Regulations*.

• In the EU

From October 2023, the EU's CBAM entered into effect, starting with a transitional phase that runs until the end of 2025. During this period, EU importers of CBAM goods (electricity, aluminium, iron and steel, cement, fertilisers, and hydrogen) from non-EU countries are obligated to report the embedded emissions of their imports, without incurring any financial liabilities. From 2026, imports of CBAM goods into the EU will be charged a carbon levy.

The EU also adopted two final pillars of its 'Fit for 55' legislative package (the revised Renewable Energy Directive and ReFuelEU Aviation Regulation) in October 2023, thereby forming legally binding climate targets covering all key sectors of its economy.⁸

In January 2024, the EU extended the coverage of its ETS to the maritime sector, as part of its broader EU ETS reform that came into force in June 2023. Following this expansion, the EU ETS now includes emissions from large ships departing from and arriving in EU ports, regardless of their flag.⁹

Despite positive policy developments, the EU's carbon market has experienced a significant downturn, with carbon prices hitting a 28-month low in February 2024 (euro (EUR) 56.5), marking a sharp decline from the record high of over EUR 100 seen around the same time in 2023.¹⁰ Analysts attribute this downward trend since the fourth quarter of 2023 to various factors, including macroeconomic uncertainties and reduced volatility in global gas and power markets.

In the middle of market turmoil, the European Commission proposed a bold new climate target: achieving a 90 per cent greenhouse gas (GHG)

5 *China launches domestic offset market to align with national ETS goals*, International Carbon Action Partnership, 9th February 2024, viewed 28th April 2024, <<https://icapcarbonaction.com/en/news/china-launches-domestic-offset-market-align-national-ets-goals>>

6 *Commodities 2024: China's domestic carbon market set for revamp; Article 6 in limbo*, S&P Global Commodity Insights, 17th January 2024, viewed 28th April 2024, <<https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/energy-transition/011724-chinas-domestic-carbon-market-set-for-revamp-in-2024-article-6-in-limbo>>

7 *Emissions Trading Worldwide: 2024 ICAP Status Report*, International Carbon Action Partnership, 10th April 2024, viewed 28th April 2024, <<https://icapcarbonaction.com/en/publications/emissions-trading-worldwide-2024-icap-status-report>>

8 *Commission welcomes completion of key 'Fit for 55' legislation, putting EU on track to exceed 2030 targets*, European Commission, 9th October 2023, viewed 28th April 2024, <https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4754>

9 *EU extends its ETS to the maritime sector*, International Carbon Action Partnership, 1st January 2024, viewed 29th April 2024, <<https://icapcarbonaction.com/en/news/eu-extends-its-ets-maritime-sector>>

10 *EU Carbon Prices at 28-Month Low amid New 2040 Climate Goal*, Carbon Credits, 16th February 2024, viewed 28th April 2024, <<https://carboncredits.com/eu-carbon-prices-plunge-at-28-month-low-amid-ambitious-2040-climate-goal/>>





emissions reduction by 2040.¹¹ This serves as a crucial bridge between the EU's current objectives: reducing net emissions by 55 per cent by 2030, and achieving net zero by 2050. A legislative proposal will be made by the next Commission, after the European elections, and agreed with the European Parliament and member states.

Key Recommendations

1. Increase the Accuracy and Transparency of Carbon Emissions Monitoring, Reporting and Verification (MRV) in China's Voluntary and Mandatory Environmental Information Disclosures



Concern

The lack of qualified third-party verification, outdated emission factors and the absence of MRV rules for Scope 3 emissions¹² all undermine the credibility of corporate environmental information disclosure.

Assessment

Since 2020, China has introduced voluntary and mandatory measures to promote the disclosure of climate-related information at the enterprise level. Companies are encouraged to disclose emissions from their operational activities, energy consumption and entire value chain (Scopes 1, 2 and 3).¹³

Lack of Qualified Third-Party Verification

While the Chinese Government has developed national and local guidelines on product category rules for product carbon footprint calculations,^{14&15} product-level carbon accounting still lacks qualified third-party verification. Each company selects an accounting or auditing agency based on its own preference resulting in

inconsistent quality of assessments, which may expose export manufacturers to criticism of 'greenwashing'¹⁶ in global markets.

A strong accreditation system for verification agencies needs to be established to ensure consistent and high-quality verification across provinces, as the professionalism, compliance and technical capability of verifiers will affect to a large extent the credibility of the MRV results. In Europe, lists of eligible verifiers are published by national and regional accreditation bodies on a regular basis. Foreign testing, inspection and certification (TIC) agencies have advanced inspection and testing technologies and rich experience in certification, putting them in a strong position to assist Chinese entities in accurately measuring, reporting and verifying their emissions/emissions reductions, and to help them adapt to international rules and standards. However, the current level of participation of foreign TIC agencies in China's decarbonisation work is limited.¹⁷

Outdated Emission Factors for Regional Power Grids

Emission factor is the basic parameter for entities to calculate and verify emissions of their electricity consumption. The working group is pleased to see that China has moved one step forward in carbon data disclosure, by publishing the official electricity emission factor (based on 2021 actual data) in April 2024.¹⁸ However, emission factors of regional power grids are outdated. The delay in the release of reliable, transparent, and up-to-date data sources creates inconsistencies, reduced data credibility and uncertainty in carbon accountings on the low-voltage consumption side.

Absence of MRV Rules for Scope 3 Emissions

Scope 3 emissions, also known as value chain emissions, are largely absent from corporate disclosures in China. The complexity of measuring indirect emissions from suppliers, in addition to the lack of detailed MRV rules, makes the accounting for Scope 3 emissions a real challenge. In 2022, only 14 per cent of China's 100 largest listed companies reported

11 *Commission presents recommendation for 2040 emissions reduction target to set the path to climate neutrality in 2050*, European Commission, 6th February 2024, viewed 28th April 2024, <https://ec.europa.eu/commission/presscorner/detail/en/ip_24_588>

12 Scope 1 covers direct emissions from owned or controlled sources. Scope 2 covers indirect emissions from the purchase and use of energy (electricity, steam, heating and cooling). Scope 3 includes all other indirect emissions that occur in the upstream and downstream activities of an organisation.

13 *The carbon market trends moving China to a sustainable future*, King & Wood Mallesons, 1st August 2023, viewed 5th May 2024, <<https://www.kwm.com/global/en/insights/latest-thinking/the-carbon-market-trends-moving-china-to-a-sustainable-future.html>>

14 Product category rules provide category-specific guidance for estimating and reporting product life cycle environmental impacts, typically in the form of environmental product declarations and product carbon footprints.

15 Product carbon footprint refers to the total amount of GHG emissions generated from the production, transportation and use of a product throughout its life cycle.

16 Greenwashing is the process of conveying a false impression or misleading information about how a company's products are environmentally sound.

17 For more information on the role that foreign TIC agencies can play in China's decarbonisation work, please refer to the *Quality and Safety Services Sub-Working Group Position Paper 2024/2025*.

18 *Announcement by the Ministry of Ecology and Environment and the National Bureau of Statistics on the release of carbon dioxide emission factors for electricity in 2021*, Ministry of Ecology and Environment, 12th April 2024, viewed 6th May 2024, <https://www.mee.gov.cn/xxgk/xxgk01/202404/t20240412_1070565.html>





Scope 3 emissions. Given the Chinese economy's heavy reliance on industrial production and its position as a key node in global supply chains, pressures on Chinese companies to expand their emission reporting obligations (especially to upstream value chains) will increase, both within China and abroad.¹⁹

Recommendations

- Develop a unified and scientific accounting methodology for product carbon footprints that is aligned with international standards.
- Enhance the involvement of accredited, international, third-party verifiers in product carbon footprint assessments; incorporate voluntary or mandatory environmental disclosure.
- Upgrade the verification management regulations and relevant technical guidelines.
- Establish accreditation authorities that have open, detailed and clear rules for organisations applying for accreditation, regularly conduct in-depth audits of these organisations, and disclose a list of qualified verifiers on an annual basis.
- Release regional power grids' emission factors on an official website on a regular basis, and improve official data transparency and accuracy.
- Issue detailed MRV rules for Scope 3 emissions.

2. Accelerate the Coordination of the National Carbon Market with Other Climate Policies and Mechanisms, Formulate Allowance Allocation Plans in Line with Industrial Decarbonisation Strategies and Gradually Introduce Auctioning

Concern

There is a lack of coordination between the national carbon market and other climate policies and mechanisms, as well as insufficient market liquidity and weak price discovery.

Assessment

Lack of Coordination Between Carbon Market and Other Climate Policies/Mechanisms

China's current carbon pricing mechanism is not properly integrated with other climate policies and market-based mechanisms, such as the electricity,

green electricity, and Green Electricity Certificate (GEC) markets.²⁰ This highlights the need for better cross-functional coordination among the different responsible bodies within the central government.²¹

The national ETS began its coverage with the power sector, one of the largest sources of GHG emissions in China.²² Under the current power system, changes in carbon prices, especially recent increases, have not filtered through to electricity prices. As a result, power plants bear the cost of carbon emissions alone, rather than passing it on to the consumer. Such market distortions are detrimental to both the healthy development of the power industry and overall energy security, as well as to the sustainable operation and effectiveness of the carbon market.

Linkages between carbon, green electricity and GEC markets should also be strengthened. Apart from Beijing, Tianjin and Shanghai, other pilot carbon markets and the national carbon market have not yet differentiated between the emission factors for green power and those for conventional power consumption. In addition, due to double-counting concerns, currently the national ETS does not allow enterprises to use GECs to deduct emissions obligations in the same way as CCERs. This prevents market forces from determining the most effective places to reduce emissions.²³

Allocation of Allowances in Line with Industrial Decarbonisation Strategies and Introduction of Auctioning

As China's national ETS is going to gradually expand to other key emitting sectors, such as iron and steel, cement and aluminium, formulating allowance allocation plans in line with industrial decarbonisation strategies

²⁰ For more information on the linkage among existing climate and energy policies/mechanisms, please refer to the *Energy Working Group Position Paper 2024/2025*.

²¹ *China expands eligible project types for domestic renewable energy certificates*, S&P Global Commodity Insights, 4th August 2023, viewed 8th May 2024, <<https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/energy-transition/080423-china-expands-eligible-project-types-for-domestic-renewable-energy-certificates>>

²² The leading sources of China's emissions are the power sector (48%), industry (36%), transport (8%) and buildings (5%). *An energy sector roadmap to carbon neutrality in China*, International Energy Agency, September 2021, viewed 6th May 2024, <<https://www.iea.org/reports/an-energy-sector-roadmap-to-carbon-neutrality-in-china/executive-summary>>

²³ *China's policy pendulum shifts back toward environmental protection, but will bureaucracy get in the way?*, The Oxford Institute for Energy Studies, February 2024, viewed 7th May 2024, <<https://www.oxfordenergy.org/publications/chinas-policy-pendulum-shifts-back-toward-environmental-protection-but-will-bureaucracy-get-in-the-way/>>

¹⁹ *Climate Disclosure: Are Chinese Companies Rising to the Net Zero Challenge?* The Conference Board, 6th March 2024, viewed 5th May 2024, <<https://www.conference-board.org/publications/AP-TCB-China-Center-Sustainability-Practices-Climate-Disclosure>>





would be particularly important in providing visibility and certainty for market participants, guiding plant management and investment decisions (including for technology innovation), and accelerating alignment with China's 30/60 goals.^{24&25}

Allowances in China's national ETS are currently allocated for free. The gradual introduction of auctioning in coordination with power market reforms would strengthen the environmental effectiveness of China's national ETS, bring much-needed liquidity and price discovery to the market, while creating new revenues to finance climate action.²⁶ The EU ETS can serve as a good example. The auctioning of allowances by the power sector under the EU ETS led to a significant decline in carbon emissions of 22 per cent from 2012 to 2018. By contrast, the other industries that mainly received free allowances saw a much smaller emissions reduction over the same period of just one per cent. Another positive aspect of the EU ETS that can be of benefit to China's, is that it also created significant revenue streams through the auctioning.²⁷

Recommendations

- Coordinate the ETS and the CCER scheme with other climate policies and mechanisms, such as the electricity, green electricity and GEC markets.
- Establish as soon as possible a mechanism for the transmission of carbon costs to electricity prices and promote the fair sharing of negative externalities of carbon emissions from the whole of society, to alleviate the excessive pressure on the power sector and achieve an orderly low-carbon transition.
- Strengthen synergies between carbon and electricity markets in terms of construction tasks, schedule, market scope and different roles in guiding the behavioural changes of market entities/players.

24 China's '30/60 Goals' are to peak carbon emissions before 2030 and achieve carbon neutrality by 2060: *Full text of Xi's statement at the General Debate of the 75th Session of the United Nations General Assembly, Xinhua*, 23rd September 2020, viewed 20th May 2023, <http://www.xinhuanet.com/english/2020-09/23/c_139388686.htm>

25 *Enhancing China's ETS for Carbon Neutrality: Focus on Power Sector*, International Energy Agency and Tsinghua University, May 2022, viewed 1st July 2024, <<https://www.iea.org/reports/enhancing-chinas-ets-for-carbon-neutrality-focus-on-power-sector>>

26 *Enhancing China's ETS for Carbon Neutrality: Introducing Auctioning*, International Energy Agency, May 2024, viewed 1st July 2024, <<https://www.iea.org/reports/enhancing-chinas-ets-for-carbon-neutrality-introducing-auctioning>>

27 *The EU Emission Trading System – carbon pricing as an important tool to achieve the objectives of the Green Deal*, Carbon Market Watch, 23rd June 2020, viewed 7th May 2024, <<https://carbonmarketwatch.org/2020/06/23/the-eu-emission-trading-system-carbon-pricing-as-an-important-tool-to-achieve-the-objectives-of-the-green-deal/>>

- Revise the relevant emission factors in the carbon accounting guidelines for different sectors so that emissions from purchased green electricity are considered to be zero.
- Clarify the application rules of CCERs and GECs in the local and national ETSS, while avoiding double counting.
- Formulate allowance allocation plans in line with industrial decarbonisation strategies, and set a timeline to gradually introduce auctions.

3. Facilitate Bilateral Government, Civil Society and Business Exchanges on the Latest Decarbonisation Policies and Actions to Reinforce Cooperation in Line with China's 30/60 Goals and the EU Green Deal 6

Concern

In order to achieve their ambitious climate targets, both the EU and China need to incentivise wide-ranging, exclusive exchanges on the latest policies and actions among multiple stakeholders to achieve political reciprocity and boost bilateral commercial cooperation and trade relations.

Assessment

The EU Green Deal and China's 30/60 Goals demonstrate that both parties share many common objectives related to achieving both a low-carbon economy and the United Nation's (UN's) Sustainable Development Goals (SDGs). Of particular relevance are SDG7 and SDG13.^{28&29} They pave the way for businesses in the EU and China to engage and cooperate to create mutually beneficial commercial opportunities.

At the 28th UN Climate Change Conference (COP28), resolutions were reached among stakeholders, including increasing nationally determined contributions (NDCs),³⁰ transitioning away from fossil fuels, tripling installed renewable energy capacity and doubling energy efficiency by 2030, and striving to limit global warming to 1.5°C.³¹ While around 120 countries signed

28 "Ensure access to affordable, reliable, sustainable and modern energy for all."

29 "Take urgent action to combat climate change and its impacts."

30 The Paris Agreement requests each country to outline and communicate their post-2020 climate actions, known as their NDCs.

31 *COP28 Agreement Signals "Beginning of the End" of the Fossil Fuel Era*, United Nations Climate Change, 13th December 2023, viewed 7th May 2024, <<https://unfccc.int/news/cop28-agreement-signals-beginning-of-the-end-of-the-fossil-fuel-era>>





the pledge, China abstained.³²

Emissions Trading Systems

Both China and the EU have recognised that market-based instruments are one of the most cost-effective policy tools for addressing climate change. As such, they have been cooperating on ETSs since 2014, with joint projects to support the roll-out of seven regional pilots in China, which facilitated the creation of China's national ETS.³³ In view of these successful past exchanges, a Memorandum of Understanding (MoU) to Enhance Cooperation on Emissions Trading was signed in 2018,³⁴ which saw the establishment of an EU-China policy dialogue on ETSs.³⁵ At the fourth EU-China High-level Environment and Climate Dialogue in July 2023, both sides agreed to deepen cooperation on ETSs based on the 2018 MoU.³⁶ During the fifth EU-China High-level Environment and Climate Dialogue in June 2024, Commissioner Wopke Hoekstra and Minister Huang Runqiu signed an updated MoU to Enhance Cooperation on Emissions Trading, sending an important signal to the wider international community.³⁷

In addition to regular policy dialogues, capacity building and information sharing are also very important, especially since there are similarities between the EU's and China's ETSs. First, the coverage of the EU ETS was also quite limited at the beginning and was gradually extended to a wider range of sectors. The EU's experience can serve as a reference in expanding the sectoral coverage of China's ETS, especially with regard to the varied allowance allocation methods for different sectors. Second, the EU ETS also required policymakers to adopt a progressive approach to

managing socio-economic issues, providing a good example of how an ETS can be rolled out while balancing the interests of different stakeholders.³⁸

CBAM

From October 2023, the EU's CBAM entered into force, starting with a transitional phase that runs until the end of 2025. From 2026, imports of goods into the EU that fall within scope of the CBAM will be charged a carbon levy. While the impact on China may seem limited in the short term, given the large difference in carbon prices between China and the EU, this mechanism will significantly affect Chinese exports to Europe and increase overall costs in the long run, especially if it is fully implemented and its scope is expanded to more industrial sectors.

At this stage, carbon pricing mechanisms are based more on the baseline value of each country's emissions. However, multi-dimensional factors should be considered, such as gross domestic product, green policies and subsidies, penalties for high-emitting entities, and restrictions on high-polluting, high-emitting economic activities. If they are not, there is a risk of overestimating the extent of 'carbon leakage',³⁹ with significant implications for developing countries and their businesses. Therefore, China needs to develop an analytical framework to examine carbon pricing mechanisms and factors affecting carbon markets, and to assess the range of reasonable and affordable carbon prices for countries at different stages of development. This will reduce overall carbon costs for Chinese companies in the long run, and at the same time open up new possibilities for effective climate policy negotiations between developed and developing countries.

Renewable Energy

The Chinese Government pledged to increase the share of non-fossil energy (including nuclear) in its

³² *China didn't sign the global pledge to triple Renewables and double Efficiency. Why?*, Energy Post, 16th January 2024, viewed 8th May 2024, <<https://energypost.eu/china-didnt-sign-the-global-pledge-to-triple-renewables-and-double-efficiency-why/>>

³³ Norris, J, *Can the EU and China align their carbon markets?*, Dialogue Earth, 6th May 2022, viewed 7th May 2024, <<https://dialogue.earth/en/energy/can-the-eu-and-china-align-their-carbon-markets/>>

³⁴ *EU and China step up cooperation on climate change and clean energy*, EU Commission, 16th July 2018, viewed 7th May 2024, <https://ec.europa.eu/info/news/eu-and-china-step-cooperation-climate-change-and-clean-energy-2018-jul-16_en>; <https://ec.europa.eu/clima/system/files/2018-07/20180713_mou_en.pdf>

³⁵ This dialogue now takes place regularly at director general or vice minister level.

³⁶ *Readout of the Fourth EU-China High-Level Environment and Climate Dialogue*, EU Commission, 4th July 2023, viewed 7th May 2024, <https://climate.ec.europa.eu/news-your-voice/news/readout-fourth-eu-china-high-level-environment-and-climate-dialogue-2023-07-04_en>

³⁷ *Press readout on the Fifth EU-China High Level Environment and Climate Dialogue*, EU Commission, 19th June 2024, viewed 1st July 2024, <https://climate.ec.europa.eu/news-your-voice/news/press-readout-fifth-eu-china-high-level-environment-and-climate-dialogue-2024-06-19_en>

³⁸ For more information on the best practices from the EU's ETS and how European firms can contribute to China's carbon neutrality drive, see *Carbon Neutrality: The Role of European Companies in China's Race to 2060*, European Chamber, 25th May 2022, viewed 7th May 2024, <<https://www.european-chamber.com.cn/en/publications-carbon-neutrality-report>>

³⁹ Carbon leakage refers to the situation that may occur if, for reasons of costs related to climate policies, businesses were to transfer production to other countries with laxer emission constraints. This could lead to an increase in their total emissions.





primary energy consumption to 25 per cent by 2030.⁴⁰ It also announced in 2023 that GECs will be the only proof for the generation and consumption of renewable energy in the country.⁴¹

Similarly, EU directive 2018/2001 had set a binding target for the overall share of energy from renewable sources in the EU's gross final consumption of energy in 2030 (at least 32 per cent).⁴² Under this directive, the European Energy Certificate System (EECS) was developed to serve as the standardisation system for the European Guarantee of Origin (GO).⁴³ The EECS regulates trade, cancellation and use of GOs across EU countries, making all forms of double-counting, attributing and claiming impossible.⁴⁴ This has implications for the development of GECs in China.

Recommendations

- Maintain regular policy dialogues with the EU regarding the ETS, the CBAM and other policies, in line with China's 30/60 Goals and the EU Green Deal.
- Develop an analytical framework to examine carbon pricing mechanisms and factors affecting carbon markets, assess the range of reasonable and affordable carbon prices for countries at different stages of development, and explore a cooperative rule-setting process between developed and developing countries.
- Provide technical and coordination support for the harmonisation of standards and requirements between the EU and China, such as MRV, product carbon footprints and green/renewable energy certificates.
- Engage both European and Chinese businesses on policy formulation, development and implementation.
- Support local governments and domestic enterprises

to strengthen exchanges with their EU counterparts through capacity building and best-practice sharing.

Abbreviations

CBAM	Carbon Border Adjustment Mechanism
CCER	Chinese Certified Emission Reduction
CEA	Chinese Emission Allowance
CNY	Chinese Yuan
CO ₂	Carbon Dioxide
COP	Conference of the Parties
EECS	European Energy Certificate System
ETS	Emissions Trading System
EU	European Union
EUR	Euro
GEC	Green Electricity Certificate
GHG	Greenhouse Gas
GO	Guarantee of Origin
MEE	Ministry of Ecology and Environment
MOU	Memorandum of Understanding
MRV	Monitoring, Reporting and Verification
MWh	Megawatt-hour
SDG	Sustainable Development Goal

40 *Analysis: China's new 2030 targets promise more low-carbon power than meets the eye*, Carbon Brief, 15th December 2020, viewed 8th May 2024, <<https://www.carbonbrief.org/analysis-chinas-new-2030-targets-promise-more-low-carbon-power-than-meets-the-eye/>>

41 *Notice on Full Coverage of Renewable Energy Green Power Certificates to Promote Renewable Energy Electricity Consumption*, National Development and Reform Commission, 3rd August 2023, viewed 8th May 2024, <https://www.ndrc.gov.cn/xxgk/zcfb/tz/202308/t20230803_1359092.html>

42 It also lays down rules on financial support for electricity from renewable sources, on self-consumption of such electricity, on the use of energy from renewable sources in the heating and cooling sector and in the transport sector. *Directive (EU) 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources*, Official Journal of the European Union, 21st December 2018, viewed 8th May 2024, <<https://eur-lex.europa.eu/eli/dir/2018/2001/oj>>

43 A green label/tracker that guarantees that one megawatt-hour (MWh) of energy has been produced from renewable energy sources.

44 Double-counting of renewable electricity refers to the same MWh of renewable electricity being tracked in more than one way.





Fashion and Leather Working Group

1. Continue to Revise the Product Quality Law and Clarify the Application of Laws in Relation to the Issue of Mislabelling

- Conduct research on the application of laws in terms of mislabelling and clarify through revisions to the Product Quality Law that such cases are exempt from penalties related to the violation of general quality obligations.

2. Revise the Mandatory National Standard *GB 18401 National General Safety Technical Code for Textile Products*

- Revise *GB 18401-2010* to incorporate testing for substances related to colour fastness that pose health hazards, like sensitising dyes, and adjust colour fastness testing accordingly.
- Revise the implementing rules for product quality inspection so that colour fastness is adjusted from being a key quality test item to a normal item, and to make half-level difference results acceptable in conformity assessments.

3. Take Action to Curb the Sale of Fake Goods Online and Promote Industrial Self-governance

- Promote the development of sustainable and effective intellectual property rights (IPR) protection models agreed between rights holders, platforms and enforcement departments, including the provision of assistance in big data analysis for investigation and evidence collection.
- Encourage the development and improvement of standards related to the protection of IPR in e-commerce and promote their adoption in relevant legislation.
- Supervise and encourage courts at all levels throughout China to actively strengthen IPR protection online by sharing case studies of ground-breaking judgments.
- Classify platforms (for example, traditional e-commerce and social media platforms) according to modes of query, channels of information display, methods of user access, payment and settlement, and other technical features, and establish proper administrative measures.

4. Allow Enterprises to Process and Transfer Out of China Personal Sensitive Information Related to Human Resources (HR) Management Upon Obtaining General Consent from Staff

- Allow companies to process and transfer employees' sensitive personal information in order to fulfil basic HR management obligations upon obtaining general consent instead of specific consent, when the principle of legal and minimum necessity is also followed.

5. Adopt any Necessary Administrative or Judicial Measures to Curb Bad-faith Trademark Registration

- Consider the malicious trademark use by the pre-emptive registrant and reduce the evidentiary requirements for prior rights holders in trademark invalidation trials.
- Take timely measures to stop the infringement or unfair competition caused by the malicious use of squatted trademarks through administrative law enforcement and judicial hearings.





- Provide feasible guidance for handling cases of obvious infringement when a registered trademark has been used beyond its approved scope.
- Use injunctions when handling infringement in civil litigation to prevent the malicious use of squatted trademarks from resulting in increased losses to prior rights holders.

6. Strengthen and Optimise the System for Disclosing Consumer Complaints



- Establish clear guidelines for identifying and excluding fake and malicious complaints from the publishing system.
- Include a feature on online complaint platforms for merchants to provide feedback on addressing the complaints.
- Develop administrative regulations and standards for consumer associations and media outlets regarding their disclosure of consumer complaints.

Recent Developments

In 2023, China's luxury market grew 12 per cent, coming off a relatively low base in 2022 due to the COVID-19 pandemic. It is estimated that China accounted for approximately 22 to 24 per cent of the total amount of luxury goods consumed globally in 2023.¹

The following recent Chinese policy updates have had a significant impact on European Chamber member companies operating in the industry:

On 22nd March 2024, the Cyberspace Administration of China released the *Provisions on Promoting and Regulating Cross-border Data Flow (Provisions)*.² The *Provisions* offer greater flexibility in ensuring companies' compliance with cross-border data transfer rules, a change welcomed by luxury brands that have a limited amount of data to transfer to their European headquarters. However, it does not address companies' need to transfer employees' personal sensitive information to handle human resources tasks. For more information, please see Key Recommendation (KR) 4 of this position paper and KR 2 of the *Cybersecurity Sub-working Group Position Paper 2024/2025*.

On 15th March 2024, the State Council released the *Regulation on the Implementation of the Law of the People's Republic of China on the Protection of Consumer Rights and Interests (Regulation)*, which became effective on 1st July 2024.³ The *Regulation* stipulates that consumer complaints must not, in line with laws, regulations and relevant provisions, be used to pursue undue benefits, violate the legitimate rights and interests of businesses, or disrupt the market order. In other words, it reiterates the government's commitment to ridding the market of professional claimants.⁴

On 18th October 2023, the State Administration for Market Regulation (SAMR) released the Product Quality Law (Draft for Public Comments),⁵ introducing notable revisions compared to the existing law.⁶ Some of the proposed improvements include the removal of the vague term 'unqualified product', and the introduction of a clearer specification of manufacturers'

1 Lannes, B, and Weiwei, X, *2023 China Luxury Goods Market: A Year of Recovery and Transition*, Bain & Company, 25th January 2024, viewed 16th May 2024, <<https://www.bain.cn/pdfs/202401240428299453.pdf>>

2 *The Provision on Promoting and Regulating Cross-border Data Flow*, Cyberspace Administration of China, 20th August 2021, viewed 30th April 2024, <https://www.gov.cn/xinwen/2021-08/20/content_5632486.htm>

3 *The Regulation on the Implementation of the Law of the People's Republic of China on the Protection of Consumer Rights and Interests*, State Council, 15th March 2024, viewed 15th April 2024, <https://www.gov.cn/zhengce/content/202403/content_6940158.htm>

4 For more background on professional claimants, please refer to Key Recommendation 2 of the *Fashion and Leather Working Group Position Paper 2018/2019*, European Chamber, 18th September 2019, viewed 15th April 2024, <https://www.europeanchamber.com.cn/en/publications-archive/627/Fashion_and_Leather_Working_Group_Position_Paper_2018_2019>

5 *Product Quality Law of the People's Republic of China (Draft for Public Comments)*, SAMR, 18th October 2023, viewed 30th April 2024, <https://www.samr.gov.cn/hd/zjdc/art/2023/art_60a10db954cf45db88275cd3eebd62d3.html>

6 *Product Quality Law of the People's Republic of China*, the National People's Congress, 29th December 2018, viewed 30th April 2024, <https://www.samr.gov.cn/zfjcz/tzgg/art/2023/art_579118cd202a45fba28b7edfd9f6fd72.html>





and sellers' product quality liabilities, ranging from those that are safety-related to more general requirements, as well as labelling responsibilities. This aligns with a recommendation that the Fashion and Leather Working Group has included in its position paper for the past six years. For more information, please see KR 1 in the *Fashion and Leather Desk Position Paper 2023/2024*.⁷

On 26th September, the SAMR issued the *Interim Rules for Managing the Publicity of Complaint Information by/ in Market Regulation*, which became effective upon publication.⁸ Having built on years-long pilots conducted in various localities, the current online complaint platform has undergone significant improvements, however, there is still some room for improvement, as highlighted in KR 6 of this position paper.

On 13th August 2023, the *Opinions of the State Council on Further Optimising the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment* was released,⁹ which comprises 24 measures aimed at improving the business environment and attracting foreign investment Opinions. Among these are two points related to the strengthening of intellectual property (IP) protection. However, IP protection issues, such as counterfeiting and bad-faith trademark registration, remain significant challenges for foreign-invested enterprises. See KR 3 and KR 5 for more details.

On 18th January 2023, the Supreme People's Court (SPC) and the Supreme People's Procuratorate released the *Interpretation on the Issues Regarding the Application of Laws in Handling Criminal Cases of Intellectual Property Rights Infringement (Draft for Comments)*.¹⁰ This document offers judicial interpretations regarding the evaluation of the severity

of, and determining penalties for, crimes related to intellectual property rights (IPR), and includes definitions for terms such as 'severe situation', 'counterfeiting' and 'consciously knowing'. This should significantly aid judicial proceedings, and could help deliver on the IP-related points contained in the *Opinions* if fully implemented.

Key Recommendations

1. Continue to Revise the Product Quality Law and Clarify the Application of Laws in Relation to the Issue of Mislabelling



Concern

The Product Quality Law (Draft for Public Comment) has not clarified the application of laws in relation to mislabelling, which may lead to unnecessary and costly disputes in subsequent law enforcement.

Assessment

Product quality refers to the extent to which the inherent characteristics of a product meet its specified or potential needs. These typically include performance, safety, reliability, durability and cost-effectiveness.

Mislabelling, however, refers to situations in which the information on product packaging or related documents, such as labels, instructions and safety warnings does not match the actual product properties, ingredients, performance, usage methods, expiration dates or producer information. This type of error does not normally have any relation to the manufacturing process, raw materials used, or the functionality or safety of the product itself, but instead represents mistakes in the information displayed on the product and its packaging. This may lead to consumers receiving incorrect information, affecting their purchasing decisions or proper use of the product, which all fall under the right to information as protected under consumer rights legislation. Such errors can be rectified by correcting the information and replacing the labels, while also publicly announcing the corrections that are made.

Based on these fundamental distinctions between product quality and mislabelling, labelling errors should not be regarded as an indicator of substandard product quality. Furthermore, imposing severe

⁷ *Fashion and Leather Desk Position Paper 2023/2024*, European Union Chamber of Commerce in China, 20th September 2023, viewed 30th April 2024, <<https://www.europeanchamber.com.cn/documents/download/start/en/pdf/1151>>

⁸ *Notice by the State Administration for Market Regulation of Issuing the Interim Rules for the Publicity of Complaint Information on Market Supervision and Administration*, SAMR, 26th September 2023, viewed 30th April 2024, <https://www.samr.gov.cn/zwlzfxgkj/fdzdgnr/zfjcs/art/2023/art_a56f2982d6df4d759b1b548d07e3a839.html>

⁹ *The Opinions of the State Council on Further Optimising the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment*, State Council, 13th August 2023, viewed 23rd May 2024, <https://www.gov.cn/zhengce/content/202308/content_6898048.htm>

¹⁰ *The Interpretation on the Issues Regarding the Application of Laws in Handling Criminal Cases of Intellectual Property Rights Infringement (Draft for Comments)*, Supreme People's Procuratorate, 18th January 2023, viewed 30th April 2024, <https://www.spp.gov.cn/spp/tzgg1/202301/t20230118_598824.shtml>





administrative penalties and legal consequences in cases of mislabelling does not align with the principle of proportionality between fault and liability, and places an excessive burden on businesses, especially small and medium-sized enterprises. It is recommended instead that lawmakers clarify through a relevant revision to the Product Quality Law that, while manufacturers have an obligation to ensure that labels on their products or packaging are true, clear and free of errors, cases of mislabelling are exempt from penalties related to the violation of general quality obligations.

Recommendation

- Conduct research on the application of laws in terms of mislabelling and clarify through revisions to the Product Quality Law that such cases are exempt from penalties related to the violation of general quality obligations.

2. Revise the Mandatory National Standard *GB 18401 National General Safety Technical Code for Textile Products*

Concern

Colour fastness¹¹ testing, as per *GB 18401-2010*,¹² is often subject to discretionary interpretation by different testing institutions, thereby leading to inconsistent results and increased costs for companies in their efforts to ensure compliance.

Assessment

Colour fastness testing is part of regular product inspections carried out by China's market regulation authorities. However, companies often find that the test results presented by these authorities are not the same as those arrived at by either the companies themselves or by third-party testing institutes because of differing interpretations by the testers of the colour fastness testing standard in *GB 18401-2010*.

After a colour fastness test, the arrangement of fibres on the surface of the tested fabric may have changed, along with the structure, the glaze, and even the colour due to stains from the fabric finishing agent. In such a case, different testers may have a different

understanding of the phenomena, resulting in different judgements. On top of this, colour fastness testing is based on the physical observation of testers, meaning that it is common for testers to arrive at a result that they perceive to be a half-level different from those arrived at by testers from other laboratories and for this slight difference, the product will fail the test due to a lack of conformity with the colour fastness standard. To mitigate this potential risk, garment manufacturers often raise by half a level the colour fastness in their internal quality control indexes than what is actually required by the standard, which has resulted in increased quality control costs.¹³

The *Interpretation of GB 18401-2010 National General Safety Technical Code for Textile Products (Interpretation)*,¹⁴ notes that: "because the standard only has restrictions on hazardous substances such as carcinogenic aromatic amines, without addressing other substances such as sensitising dyes, the inclusion of colour fastness requirements is helpful as it controls the transfer of dyes from textiles to the human body, leading to a decrease in risks to human health and the environment." In this context, it is clear that while colour fastness can help reduce risks by managing the transfer of colour from the fabric, it does not constitute a health risk in and of itself in the way that the presence of a hazardous substance used in the dye would. The *Interpretation* also quotes European Union Regulation 2002/371/EC,¹⁵ stating that "sensitising dyes shall only be used if the requirement of fastness to perspiration is at least four". In other words, in most cases where the colour fastness is lower than level four,¹⁶ sensitising dyes are prohibited. It is therefore recommended that China's market regulation authorities adopt the relevant best practices of EU regulators who prioritise controlling hazardous substances over colour resistance when addressing dyeing safety.

Recommendations

- Revise *GB 18401-2010* to incorporate testing for

¹³ Read Key Recommendation 2 in the *Fashion and Leather Working Group Position Paper 2023/2024* for more analysis.

¹⁴ *Interpretation of GB 18401-2010 National General Safety Technical Code for Textile Products*, Ministry of Commerce, 2nd August 2012, viewed 30th April 2024, <<http://chinawto.mofcom.gov.cn/article/jsbl/zszc/201411/20141100792845.shtml>>

¹⁵ 2002/371/EC: Commission Decision of 15 May 2002 establishing the ecological criteria for the award of the Community eco-label to textile products and amending Decision 1999/178/EC (Text with EEA relevance) (notified under document number C (2002) 1844), European Commission, 15th May 2002, viewed 30th April 2024, <<https://eur-lex.europa.eu/eli/dec/2002/371/oj>>

¹⁶ Colour fastness typically ranges from one to five, with level one indicating low colour stability and level five representing high colour stability.

¹¹ Colour fastness refers to the resistance of a material's colour to fading or running.

¹² *GB 18401-2010 National General Safety Technical Code for Textile Products*, Standardisation Administration of China, 14th January 2011, viewed 30th April 2024, <<https://openstd.samr.gov.cn/bz/gk/gb/newGbInfo?hcno=52C1F4CBDE863F5095D7C9D17F8E3F71>>





substances related to colour fastness that pose health hazards, like sensitising dyes, and adjust colour fastness testing accordingly.

- Revise the implementing rules for product quality inspection so that colour fastness is adjusted from being a key quality test item to a normal item, and to make half-level difference results acceptable in conformity assessments.

3. Take Action to Curb the Sale of Fake Goods Online and Promote Industrial Self-governance

Concern

The lack of effective enforcement regulations means that fake goods are still being sold on e-commerce platforms in China, a situation that has worsened due to negligence on the part of platform operators, which is harming the legitimate rights of a growing number of rights holders.

Assessment

China's e-commerce industry has developed significantly in terms of the number of companies doing business and the format/structure of platforms used. At the same time, various innovative promotion methods have emerged, placing increasingly high demands on companies to conduct daily supervision and administration of their business.

The rise of cross-border e-commerce in China has resulted in a proliferation of fake goods sellers. These merchants often disguise their 'high-quality replicas' as parallel imports,¹⁷ even attaching a full set of international logistics documentation to deceive consumers. To avoid detection, they often operate multiple online shops within a single platform, making it difficult for the police to track all their illegal earnings. They also often exploit the characteristics of livestream marketing — a method that is instant, often conducted at night and which makes it challenging to connect the counterfeit products sold with the showcased items, further exacerbating the difficulties enforcement officials encounter when trying to gather evidence.

17 The term 'parallel import' refers to non-counterfeit goods that are imported for sale by unlicensed vendors without the permission of the intellectual property holder. Parallel imports are in a legally grey area in China, as is the case in most of the world. *Gray Market: The Rise of Luxury Goods*, WiserMarket, viewed 16th May 2024, <<https://wisemarket.com/gray-market-the-rise-of-luxury-goods/>>; *Is Gray Marketing Legal? A Look at the Law*, WiserMarket, viewed 16th May 2024, <<https://wisemarket.com/is-gray-marketing-legal-a-look-at-the-law/>>

The SPC and the SAMR have clarified and streamlined the obligations of e-commerce platforms in terms of IPR protection.^{18&19} However, not all e-commerce platforms have strictly fulfilled their legal and social responsibilities stipulated by the relevant regulations and judicial opinions. For example, some platform operators have neglected to enforce the requirement for stores to display their business registration information, which has resulted in numerous operators that have repeatedly been found selling counterfeit goods remaining in operation. Many stores have also falsified transaction records without facing consequences, resulting in a continued presence of, and even an increase in, counterfeit products on certain platforms.²⁰

The national recommended standard *GB/T 39550-2020 Management of IP Protection on E-Commerce Platforms* puts forward detailed, constructive opinions on the protection and management of IPR on e-commerce platforms.²¹ These include daily management responsibilities and effective measures to combat IP infringement, as well as some functional requirements, like the need to share data with relevant supervisory departments or having to establish a dedicated in-house IP department. The working group recommends that these kinds of standards be continually improved, to establish good references for further revisions to the E-commerce Law, and potentially for judicial decisions and law enforcement practices as well.

Recommendations

- Promote the development of sustainable and effective IPR protection models agreed between rights holders, platforms and enforcement departments, including the provision of assistance in big data analysis for investigation and evidence collection.
- Encourage the development and improvement of standards related to the protection of IPR in e-commerce and promote their adoption in relevant legislation.
- Supervise and encourage courts at all levels

18 *Guiding Opinions on the Trial of Intellectual Property Civil Cases Involving E-commerce Platforms*, SPC, 13th September 2020, viewed 30th April 2024, <<https://www.chinacourt.org/article/detail/2020/09/id/5453936.shtml>>

19 *Measures for the Supervision and Administration of Online Transactions*, SAMR, 15th March 2021, viewed 30th April 2024, <https://www.samr.gov.cn/cms_files/filemanager/samr/www/samrnew/samrgkml/nsjg/fgs/202103/W020211127408192099852.pdf>

20 For more on counterfeiting, please refer to Key Recommendation 4 in the *Intellectual Property Rights Working Group Position Paper 2024/2025*.

21 *Intellectual property protection and management for e-commerce platforms*, SAMR, 9th November 2020, viewed 30th April 2024, <<https://openstd.samr.gov.cn/bzqk/gb/newGbInfo?hcno=E315E3B122771E0D38B843BC19E6E5F4>>





throughout China to actively strengthen IPR protection online by sharing case studies of ground-breaking judgments.

- Classify platforms (for example, traditional e-commerce and social media platforms) according to modes of query, channels of information display, methods of user access, payment and settlement, and other technical features, and establish proper administrative measures.

4. Allow Enterprises to Process and Transfer Out of China Personal Sensitive Information Related to HR Management Upon Obtaining General Consent from Staff

Concern

Companies are facing obstacles to transferring certain HR-related data that contains personal sensitive information due to lacking enforceable laws or policies.

Assessment

The Labour Contract Law and the Personal Information Protection Law (PIPL) are two important laws that are applied in daily HR management.^{22&23} However, a gap of nearly 10 years between the two pieces of legislation means there are inevitable gaps between them making it challenging for companies to comply with both laws when addressing the protection of employees' personal information. For example, according to the PIPL, certain HR information such as bank account details, remuneration, position and credit records are categorised as sensitive personal information that can only be processed and transferred upon obtaining the employee's specific consent. In practice, staff may be reluctant to give consent which would compel companies to deviate from their standard global practices for managing HR information, which requires the transfer of such data to European headquarters.

Recommendations

- Allow companies to process and transfer employees' sensitive personal information in order to fulfil basic HR management obligations upon obtaining

general consent instead of specific consent, when the principle of legal and minimum necessity is also followed.

5. Adopt any Necessary Administrative or Judicial Measures to Curb Bad-faith Trademark Registration

Concern

A proliferation of bad-faith trademark registration has severely affected the operations of many brands, which harms China's business environment and deters foreign investment.

Assessment

In recent years, malicious trademark squatting, trademark hoarding, and the malicious use of squatted trademarks have become increasingly common and severe problems in China. To avoid being identified as malicious trademark registrants, some individuals preemptively establish shell companies in Hong Kong or overseas, transfer trademarks to these shell companies, and then authorise themselves to use these trademarks improperly in China.

There are various forms of improper use of squatted trademarks, with the main purpose of blackmailing well-known brands and seeking undue benefits. These include, for example: 1) using trademarks beyond their approved scope of registration, especially when using trademarks on products or services similar to or related to well-known brands; 2) distorting logos of squatted trademarks by highlighting the parts of well-known brands, or imitating a well-known brand to the greatest extent possible in terms of font, colour and design; 3) selling squatted trademarks to prior rights holders, and coercing rights holders to purchase trademarks from them at high prices through the initiation of complaints or lawsuits; and 4) using registered trademarks to attract investment and mislead others into using squatted trademarks, leading partners to mistakenly believe that they are cooperating with well-known brands. These examples go beyond the scope of the normal use of registered trademarks and directly infringe upon the legitimate rights and interests of others, which greatly disrupts fair competition. Such misuse also forces brand owners to spend significant resources on protecting their rights and mitigating the negative impacts of these malicious actions on their brand value.

22 *Labour Contract Law of the People's Republic of China (2012 Amendment)*, Ministry of Human Resources and Social Security, 28th December 2012, viewed 23rd May 2024, <http://www.mohrss.gov.cn/xxgk2020/fdzdgknr/zcfg/fl/202011/t20201102_394622.html>

23 *Personal Information Protection Law of the People's Republic of China*, Standing Committee of the National People's Congress, 20th August 2021, viewed 30th April 2024, <https://www.gov.cn/xinwen/2021-08/20/content_5632486.htm>





When enterprises encounter trademark squatters, they usually file a request to invalidate the squatted trademarks. This often requires the prior rights holders to provide extensive evidence to prove the registration involved was malicious, and that the brand of the prior right holder had gained a certain influence prior to the squatted registration. For trademarks that have been registered for a long time or have been transferred several times, it is usually difficult to collect and provide evidence of subjective malice of the registrant. Therefore, in many cases, judges do not support the invalidation of the trademark on these grounds.

In addition, because trademark squatting may also constitute unfair competition, enterprises can file a complaint with administrations for market regulation. In practice, if the respondent argues that the trademark involved has already been registered, law enforcement agencies usually do not recognise infringement or prefer to take action after the trademark right has been determined. However, in cases in which the use of a squatted trademark significantly exceeds its registered scope and the infringement is clear, it would be fairer and more efficient for law enforcement officials to scrutinise the case, launch a separate investigation, and prioritise and stop the infringement in a timely manner. Similarly, in tort civil litigation, the court should have the professional ability to identify and judge infringing acts. For obvious infringements, timely measures such as injunctions should be taken to prevent any expansion of the violation.

Trademark invalidation procedures and administrative litigation proceedings may last for two to three years, or even longer. If the administrative law enforcement and judicial departments cannot take timely and enforceable measures to stop an ongoing infringement, and the trademark continues to be abused over a long period of time, the infringement will have an irreparable impact on the prior rights holder.²⁴

Recommendations

- Consider the malicious trademark use by the pre-emptive registrant and reduce the evidentiary requirements for prior rights holders in trademark invalidation trials.
- Take timely measures to stop the infringement or unfair competition caused by the malicious use of

squatted trademarks through administrative law enforcement and judicial hearings.

- Provide feasible guidance for handling cases of obvious infringement when a registered trademark has been used beyond its approved scope.
- Use injunctions when handling infringements in civil litigation to prevent the malicious use of squatted trademarks from resulting in increased losses to prior rights holders.

6. Strengthen and Optimise the System for Disclosing Consumer Complaints



Concern

The current consumer complaint disclosure system has some shortcomings, and lacks consistent standards and a unified national administration.

Assessment

Fake, false or malicious complaints make up a large proportion of daily consumer disputes. These include consumers filing complaints against brands on issues of product quality in cases in which the products being complained about are counterfeits purchased from unofficial sources; requesting the return of products that still have tailor's chalk marks on them (some counterfeiters buy clothing in order to deconstruct it and then replicate the design); or, in extreme cases, requesting the return of a collection of clothing after it has been used for a fashion show. There are also cases in which consumers request the return or replacement of goods bought online beyond the legal deadline of seven-day, no-reason return policies;²⁵ maliciously complain about product quality when issues have arisen from either misuse or deliberate damage caused by the consumer themselves; or accuse merchants of price fraud when price cuts have been applied during special sales periods.

Although the *Interim Rules for Managing the Publicity of Complaint Information by/in Market Regulation* exclude "fake and malicious complaints", clear definitions for what constitutes a fake or malicious complaint, as well as the criteria for assessment, are not provided. Due to this lack of clear and consistent criteria, some false

²⁴ For more information on trademark protection, please refer to Key Recommendation 2 in the *Intellectual Property Rights Working Group Position Paper 2024/2025*.

²⁵ *Provisional Measures for Free Return and Replacement of Online Purchased Products Within Seven Days (2020 Revision)*, SAMR, 23rd October 2020, viewed 30th April 2024, <http://www.gov.cn/zhengce/zhengceku/2020-11/03/content_5557118.htm>



and malicious complaints may be mistakenly included in the complaints disclosure system and made public. Because merchants cannot accept the grounds for such complaints, on the basis of either laws, regulations or the company's own internal after-sales policies, many of these complaints remain unmediated. Consequently, such unmediated issues impact a company's success rate in dealing with complaints overall — something that is also published on the disclosure platform and has a reputational impact.

A comprehensive presentation of all aspects of a consumer complaint is essential for better protecting consumers' rights to information and choice, as well as for objectively safeguarding the legal rights of merchants. However, according to China's national 12315 consumer complaint platform,²⁶ the 'complaint issue' mainly consists of the complainant's narrative (after edits); while the 'results' only offer a few simple options, such as 'conciliation agreed', 'no conciliation agreed', 'mediation agreed', or 'no mediation agreed', with no information about any feedback provided by merchants in their efforts to address the complaint.

In addition to the national 12315 consumer complaint platform, the Consumer Association also publishes information on consumer complaints through its own channels. A single complaint might be duplicated on the respective systems as consumers often file complaints with both. Moreover, complaints made through the Consumer Associations' platforms at the local level often reflect the exact wording of the complainant without any due revision, which means, in cases of false or malicious complaints, disclosure of such information can have a detrimental impact on merchants and mislead consumers. This emphasises the need for unified administration of such platforms and consistent standards to be applied to the information disclosed by local consumer associations, as well as media outlets that publish details on consumer complaints, in order to avoid misleading the public.

Despite these shortcomings, the working group recognises the good intentions behind the complaints system and its role in safeguarding consumer rights and interests. The working group recommends that the relevant authorities carefully manage the process of publishing complaints, and further enhance the

system by taking into account the rights and interests of both consumers and merchants. In short, consumer confidence in China can be improved through greater cooperation between consumers, merchants and regulators.

Recommendations

- Establish clear guidelines for identifying and excluding fake and malicious complaints from the publishing system.
- Include a feature on online complaint platforms for merchants to provide feedback on addressing complaints.
- Develop administrative regulations and standards for consumer associations and media outlets regarding their disclosure of consumer complaints.

Abbreviations

HR	Human Resources
IP	Intellectual Property
IPR	Intellectual Property Rights
KR	Key Recommendation
PIPL	Personal Information Protection Law
SAMR	State Administration for Market Regulation
SPC	Supreme People's Court

²⁶ National 12315 Consumer Complaints Disclosure Platform, www.12315.cn, viewed 30th April 2024, <<https://tsgs.12315.cn/#/viewport>>



Healthcare Equipment Working Group

Key Recommendations

1. Harmonise Naming Requirements for Medical Devices

- Establish a mechanism between the National Medical Products Association (NMPA), the National Healthcare Security Administration (NHSA) and the National Health Commission (NHC) to ensure unified naming requirements for medical device products.
- Grant manufacturers the autonomy to name their registered products, provided they meet the requirements of both the medical products administration authority and the market access process.
- Consider the NMPA's classification and naming guidelines for medical devices when formulating market access-related regulations, including medical service price catalogues, medical service items and medical insurance rules for naming generic items.
- Establish a link between the names of approved medical products and their corresponding designations in medical service items to streamline the product's market access process.
- Standardise hospital service items and medical service price catalogues nationwide.

2. Eliminate Unfair Competition, Specifically the Tendency of Public Hospitals to Favour Domestic Products in Procurement Procedures and the Challenge to Intellectual Property Rights (IPR)

- Promote a high level of openness, treat domestic and multinational enterprises equally, and ensure that medical institutions can smoothly bring to market innovative medical technology and products that meet the growing demands of scientific research and clinical requirements.
- Revise the *Auditing Guidelines for Government Procurement of Imported Products (2021 Edition)* at the earliest opportunity and take industry opinions fully into account.
- Seek broad suggestions from clinical and related industry associations, including foreign-invested enterprises, when defining 'domestically produced products' and 'domestic products'.
- Establish a patent linkage system for medical consumables, similar to a drug patent linkage system.
- Establish a volume-based procurement (VBP) pre-investigation period for medical consumables during the opposition and waiting periods of a lawsuit, while creating a communication channel for medical consumable manufacturers to raise legitimate complaints related to any IPR-issues encountered during VBP.

3. Refine Market Access Procedures to Encourage Innovative Treatment Approaches, Enhance the Approval Mechanism for Including Innovative Technologies in Medical Service Catalogues and Medical Insurance Catalogues, and Provide a Clear Definition of 'Innovative Medical Technologies/Devices' Accepted by the Relevant Authorities

- Develop a system for clearly defining innovative technologies/products along with relevant





guidelines to clarify the overall review process, review frequency, timeline and participating parties.

- Accelerate the establishment of a dynamic mechanism for adjusting the classification, code and generic name of medical consumables—particularly innovative products—within the health insurance system to optimise the process for including innovative medical consumables in medical services catalogues.
- Establish an expert evaluation mechanism in VBP to clearly distinguish between standard medical devices and those that are considered technologically advanced, and develop rules that encourage innovation and long-term industry growth.
- Accelerate the approval of new innovative medical service pricing items with the creation of a transparent communication mechanism.
- Establish a green channel system for medical service pricing items that have been approved by the NHSA, to accelerate the process when other provinces apply for the same medical services items.

4. Continue to Advance the Development of Regulatory Science and Regulatory Innovation

4.1 Optimise the Requirement for Registration Modification 4

- Implement a regulation that adequately resolves issues related to the splitting of registration certificates, defining significant changes and simplifying the process of updating multiple certificates with the same information.
- Establish a special notification channel for modifications due to product recalls to increase product safety.
- Grant a transitional period for implementing product changes following NMPA approval of registration modifications.

4.2 Accelerate the Promulgation of the Medical Device Administration Law and Remove the Requirement for Country of Origin (CoO) Certification in Pre-Market Approvals 2

- Remove the requirement for CoO certification as a precondition for the registration and filing of imported medical devices.

4.3 Permit End Users to Extend the Use of Active Device Products That Have Been Utilised Beyond Their 'Expected Service Life' Based on Regular Evaluations of the Device's Status, Performance and Maintenance Records

- Expand the definition of 'expected service life' (ESL) for active medical devices in all relevant regulations, and ensure this is understood by the regulatory authorities at all levels.
- Clarify that utilising an active device beyond its ESL does not equate to using an expired product.
- Increase the end user's capacity to reasonably evaluate and dynamically extend the actual service life of in-use devices.

5. Promote Market Access for High-precision and Innovative In-vitro Diagnostics (IVDs)

5.1 Reflect IVD's Technical Features in both VBP and Medical Treatment Pricing Catalogues 4

- Include different diagnosis methods and technologies in procurement catalogues, and



purchase according to the clinical demand for different technical features of IVD products and different diagnosis methods.

- Ensure that only validated reagents are used with IVD devices.¹
- Advance the separation of prices for medical consumables from medical services in IVD, based on the quality of clinical diagnosis and treatment, and scientifically gauge the cost of medical items.
- Evaluate in a comprehensive fashion the unique characteristics of IVD products to find a suitable price management method for the implementation of VBP.

5.2 Shape a Rational IVD Reagent Regulatory Environment 2

- Formulate criteria for acceptance of clinical evidence of IVD reagents in the registration process.
- Decrease the scope of issues that must be specified during the registration of IVD reagents.
- Provide suitable transition periods for the implementation of guiding principles that have significant changes or implications, such as those related to stability studies.

5.3 Phase out the ‘Two-invoice System’

- Refrain from designating the supply of reagents from manufacturers to IVD equipment manufacturers as the ‘first invoice’.
- Refrain from designating transactions between trading companies and manufacturers within the same group in China, or between foreign-invested trading companies in China and domestic manufacturers with which they have invested and cooperated, as one invoice under the ‘two invoice system’.
- Avoid mandating a shift from experienced distributors to local firms, and allow IVD manufacturers to select the vendor that provides the most appropriate level of service.

Recent Developments

The State Council emphasised the importance of the medical device and pharmaceutical industries with the August 2023 approval of action plans for high-quality development in these sectors from 2023 to 2025.² This was reinforced during the second session of the 14th National People’s Congress, when Premier Li Qiang stressed the necessity of enhancing medical and health service capabilities during his presentation of the *Government Work Report*.³ This would include

coordinating the development and management of medical insurance, treatment and medicine, along with the reinforcement of oversight over medical insurance fund usage. On 13th March 2024, the State Council issued the *Action Plan to Promote Large-scale Equipment Renewals and Trade-ins of Consumer Goods*, which mandates a 25 per cent increase in equipment investment, including in the field of medical devices, by 2027.⁴ However, it does not provide specific details on who should carry out this mandate or how it should be accomplished.

Despite China’s efforts to enhance the business environment and attract foreign investment, such as through the State Council’s *Opinions on Further Optimising the Foreign Investment Environment and Strengthening the Attraction of Foreign Investment* and its *Action Plan to Promote High-level Opening-*

1 Reagents are substances or compounds utilised to instigate a chemical reaction or to verify if a reaction has occurred. Reagents are typically designed to react to specific biomarkers or substances in a patient’s sample, yielding a quantifiable result. The testing procedures can vary based on the device and the type of test. However, they generally involve exposing the sample to the reagent and observing the ensuing reaction, which the device then analyses. These reactions represent certain biological interactions or processes, enabling the device to provide crucial diagnostic data.

2 *State Council Approves Action Plan for High-Quality Development of the Pharmaceuticals Industry (2023-2025) Among Other Proposals*, *Xinhua*, 25th August 2023, viewed 23rd April 2024, <https://wap.miit.gov.cn/xwdt/szywl/art/2023/art_8ec3bf30ffb7467ca114e67406a9f925.html>

3 *Government Work Report*, *Xinhua*, 12th March 2024, viewed 23rd April 2024, <https://www.gov.cn/yaowen/liebiao/202403/content_6939153.htm>

4 *Action Plan to Promote Large-scale Equipment Renewals and Trade-ins of Consumer Goods*, State Council, 13th March 2024, viewed 23rd April 2024, <https://www.gov.cn/zhengce/content/202403/content_6939232.htm>





up and Attract Foreign Investment,^{5&6} market access restrictions on imported medical device products remain a significant issue. According to the European Chamber's *Business Confidence Survey 2024*, 91 per cent of surveyed medical device companies reported lost business opportunities in China due to these constraints.⁷

The National Healthcare Security Administration (NHSA) continued to promote centralised volume-based procurement (VBP) to reduce medical costs in 2023.⁸ This approach has led to an average price reduction of 70 per cent for various medical items. The NHSA also standardised 116 cases in which prices differed for the same products across different provinces, for both drugs and medical consumables. In 2024, the NHSA plans to expand and improve centralised procurement, aiming for a total of at least 500 national and provincial VBPs of drugs and medical consumables.

In response to the potential impact of VBP policies—including diminished profits and loss of market share—on medical device companies' research and development (R&D), China put in place policies aimed at encouraging innovation in the sector.⁹ These include the *Implementation Plan for the Comprehensive Reform Pilot in Pudong New Area (2023–2027)*,¹⁰ and the *Several Measures to Support High-quality Development of Innovative Medicine (2024) (Draft for Consultation)*.¹¹ However, the real benefits for businesses hinge on how these policies will be put into practice. This necessitates

ongoing monitoring.

The legislative process for China's Medical Device Administration Law is progressing swiftly, and it is hoped that the final version will help to optimise regulation of the medical device industry. The law was prioritised in the legislative plans of the National People's Congress Standing Committee and the State Administration for Market Regulation.^{12&13}

Key Recommendations

1. Harmonise Naming Requirements for Medical Devices

Concern

Discrepancies between registration-approved names and those specified in market access requirements by national and provincial healthcare security administrations can negatively impact both market access and insurance reimbursement.

Assessment

There are sometimes discrepancies between product names on NMPA-approved registration certificates and those in the Healthcare Service Pricing Catalogue. Accurate and consistent naming of medical devices is crucial for medical insurance billing and reimbursement, necessitating alignment with each province's Healthcare Service Pricing Catalogue. The present system poses numerous challenges for post-market access, largely due to varying regulations and administrative approaches both among different authorities and across different geographies. This causes difficulties for hospitals when charging fees and applying for medical insurance reimbursement, as they must match the medical service they provide with the items listed in the catalogue. This includes matching the names of in-vitro diagnostic (IVD) reagents and medical consumables with their corresponding names as included in the catalogue, including those of chargeable

5 *Opinions on Further Optimising the Foreign Investment Environment and Strengthening the Attraction of Foreign Investment*, State Council, 13th August 2023, viewed 23rd April 2024, <https://www.gov.cn/zhengce/content/202308/content_6898048.htm>

6 *Action Plan to Promote High-level Opening-up and Attract Foreign Investment*, State Council, 19th March 2024, viewed 23rd April 2024, <https://www.gov.cn/zhengce/content/202403/content_6940154.htm>

7 *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 10th May 2024, <<https://www.eurochamber.com.cn/en/publications-business-confidence-survey>>

8 *The National Healthcare Security Work Conference was held in Beijing*, National Healthcare Security Administration, 9th January 2024, viewed 23rd April 2024, <http://www.nhsa.gov.cn/art/2024/1/9/art_14_11932.html>

9 *Review and Prospects of China's Medical Device Market in 2023*, Boston Consulting Group, 6th March 2024, viewed 23rd April 2024, <<https://mp.weixin.qq.com/s/PJxOJKdWJdtuExPSsKWg>>

10 *The General Offices of the CPC Central Committee and the State Council Issued the Implementation Plan for the Comprehensive Reform Pilot in Pudong New Area (2023–2027)*, *Xinhua*, 22nd January 2024, viewed 23rd April 2024, <https://www.gov.cn/zhengce/202401/content_6927503.htm>

11 *Announcement on Requesting Public Opinions on the Consultation Draft of the Several Measures to Support High-quality Development of Innovative Medicine (2024) (Draft for Consultation) Issued by Beijing Medical Insurance Bureau and Nine Other Departments*, Beijing Municipal Medical Insurance Bureau, 7th April 2024, viewed 23rd April 2024, <https://www.beijing.gov.cn/hudong/gfxwj/zjzjxx/202404/t20240407_3610906.html>

12 *Legislative Plan of the Standing Committee of the 14th National People's Congress*, *Xinhua*, 7th September 2023, viewed 23rd April 2024, <http://www.news.cn/politics/2023-09/07/c_1129851114.htm>

13 *The State Administration for Market Regulation Lays Out Key Legislative Tasks for 2024*, State Administration for Market Regulation, 9th April 2024, viewed 23rd April 2024, <https://www.samr.gov.cn/xw/zj/art/2024/art_3d1f417b56774f8da59f0afdda4939bc.html>



consumables,¹⁴ which is not always possible.

Misalignments between the registered names of consumables, IVD reagents and medical service items can also lead to penalties during medical insurance inspections and audits. Such discrepancies can imply a difference between the services provided and those billed for, potentially impacting medical insurance reimbursement. This can make medical professionals hesitant to prescribe certain medical services due to fear of potential reprisals.

There is also a substantial variation in pricing policy among provinces and cities, leading to a disjointed medical insurance catalogue for consumables. There is neither a standardised pricing system nor standardised naming system for similar products. This lack of uniformity implies that identical products can be referred to by different names in different regions, complicating the hospital tendering process further. This fragmentation constitutes a market access barrier for medical device companies, with each province having its own access requirements. This may pose significant challenges to payment processes and associated procedures.

In addition, when assigning medical insurance codes to consumables and IVD reagents, confusion often arises due to imperfect alignment between the registered product name and the medical insurance classification, which raises doubts over which medical insurance classification should be selected. This is because the National Medical Products Administration (NMPA) enforces specific naming requirements for medical devices and IVD reagents, strictly adhering to regulations and guiding principles during product registration, renewal or modification,¹⁵ while the NHSA is developing naming rules for generic items used in relation to medical insurance. Despite both systems considering similar factors, they are not harmonised, with differences in granularity and interoperability requirements sometimes preventing consistency.

14 *Regulations on the Supervision and Control of the Use of Medical Security Fund (Decree No. 735 of the State Council of the People's Republic of China, 2021)*, State Council, 19th January 2021, viewed 24th April 2024, <https://www.gov.cn/zhengce/content/2021-02/19/content_5587668.htm?eqid=ee8973e500006d3d00000004646dd3f4>

15 *Naming Rules for Generic Names of Medical Devices (Order No. 19 of the China Food and Drug Administration, 2015)*, National Medical Products Administration, 21st December 2015, viewed 24th April 2024, <https://www.gov.cn/gongbao/content/2016/content_5059099.htm>

Further complicating this issue, the National Health Commission (NHC) released the *National Technical Specification for Medical Service Items (2023 Edition) (Specification)* in September 2023,¹⁶ mandating that doctors ensure uniformity in the listing of medical items and associated product names in their orders. The *Specification* delegates responsibility to hospitals and local health commissions to guarantee alignment. If the NMPA, the NHSA, and the NHC were to each maintain a distinct set of product naming regulations that lack full compatibility with one another, it would further exacerbate the issues previously outlined.

The disconnect between pre-market approval and subsequent product classification for market access can also occasionally result in products with similar characteristics and clinical values being allocated different registered names. This presents a significant issue during VBP, as product grouping can at times hinge on the registered names. Consequently, products with identical characteristics and clinical value may end up in different groups due to a naming error, which is to the disadvantage of those products that have been misclassified.

Recommendations

- Establish a mechanism between the NMPA, the NHSA and the NHC to ensure unified naming requirements for medical device products.
- Grant manufacturers the autonomy to name their registered products, provided they meet the requirements of both the medical products administration authority and the market access process.
- Consider the NMPA's classification and naming guidelines for medical devices when formulating market access-related regulations, including medical service price catalogues, medical service items and medical insurance rules for naming generic items.
- Establish a link between the names of approved medical products and their corresponding designations in medical service items to streamline the product's market access process.
- Standardise hospital service items and medical service price catalogues nationwide.

16 *National Technical Specification for Medical Service Items (2023 Edition)*, National Health Commission, National Administration of Traditional Chinese Medicine and the National Administration of Disease Control and Prevention, 28th September 2023, viewed 24th April 2024, <<http://www.nhc.gov.cn/caiwusi/s7785t/202309/914aec9618944ee2b36621d33517e576.shtml?R0NMKk6uozOC=1697880837734>>





2. Eliminate Unfair Competition, Specifically the Tendency of Public Hospitals to Favour Domestic Products in Procurement Procedures and the Challenge to IPR

Concern

Foreign medical equipment manufacturers encounter unfair treatment during the procurement processes of public hospitals, while also facing challenges to their intellectual property rights (IPR), which negatively impacts their operations and potentially deters long-term investment in China.

Assessment

It was reported that China's Ministry of Finance and Ministry of Industry and Information Technology released guidelines in 2021 limiting the procurement of 137 categories of medical products to domestic sources.^{17&18} The guidelines have impacted the utilisation of leading imported medical devices in domestic medical institutions, despite the government's emphasis on enhancing medical technology.

The Chinese Government has also repeatedly stressed the need to create a stable, fair, transparent, and predictable business environment and promote high-level opening in government procurement. However, during the formulation and implementation of the *Auditing Guidelines for Government Procurement of Imported Products (2021 Edition)*, no opinions from any of the affected industries were sought, resulting in many unreasonable equipment parameters and procurement ratios.¹⁹

Although many medical institutions still have an essential need for imported products, as of three years ago, imported products have often been excluded during the procurement document preparation stage, or have been unable to enter the import certification process. In many cases, this has resulted in medical institutions having to abandon the procurement of

imported products that better meet their actual needs. This has put foreign suppliers attempting to access China's government procurement market at a significant disadvantage to local manufacturers. If this situation continues it will likely lead to a monopoly market, hindering innovation in the local medical device industry and depriving patients in China of the most advanced treatment.

This has a knock-on impact on the consumables that are utilised alongside medical equipment in certain VBP projects. This is because, if government procurement does not permit the purchase of imported medical mainframe equipment, it is not possible to utilise the corresponding consumables, which will potentially prevent the fulfilment of VBP contracts.²⁰

The Chinese authorities have pledged to clearly define 'domestically produced products' and 'domestic products'.²¹ Overall, this approach of clarifying rules to ensure that domestically produced products of foreign-funded enterprises are not discriminated against in government procurement is commendable. However, considering the significant differences in the levels of localisation among foreign industry players, as well as the complexity of international supply chains, if these definitions do not reflect the current reality or are overly stringent, it will result in unfair competition in government procurement between products that are produced domestically by foreign-funded enterprises and those produced by domestic manufacturers. This would further reduce the appetite among foreign medical device companies to make long-term investments in China.

Additionally, government procurement processes in China can put companies' IPR at risk. In some VBPs of medical consumables organised by local health security bureaus, medical manufacturers are simply required to submit an IPR self-declaration. This makes it very challenging for local governments to review every manufacturer's legality and qualification, as it relies on manufacturers providing honest, complete and factually

17 Shalal, A, *China quietly sets new 'buy Chinese' targets for state companies - U.S. sources*, Reuters, 3rd August 2021, viewed 26th April 2024, <https://www.gov.cn/gongbao/content/2016/content_5059099.htm>

18 *Report on G20 Trade Measures Mid-May to mid-October 2021*, World Trade Organization, 28th October 2021, viewed 30th May 2024, <<https://www.wto-ilibrary.org/content/books/9789287054203/read>>

19 The document stipulates that specific specialised equipment be procured locally 100 per cent of the time. However, at that time, these markets were saturated with imported products. This requirement effectively excludes all major products in these markets. Furthermore, the product specifications and criteria appear to disproportionately favour certain companies, giving them an undue advantage in local tenders.

20 A lack of coordination between two policies can cause difficulties for hospitals. If certain medical devices and their respective consumables are used together, not being able to purchase the device can hinder the acquisition of enough consumables to meet the contract volume outlined in the purchasing agreement.

21 *Optimize the Criteria and Audit Procedures for Determining Domestic Goods, and Coordinate Domestic Goods Standards with GPA Content*, China Government Procurement, 28th November 2023, viewed 27th April 2024, <https://www.ccg.gov.cn/lsw/202311/t20231128_21158658.htm>





correct information that cannot be independently verified. In an attempt to counter this, the NHSA and the China National Intellectual Property Administration jointly issued the *Opinions on Strengthening Intellectual Property Protection in the Field of Centralised Medical Procurement* in 2022,²² which state that it is necessary to establish a coordinating mechanism between China's intellectual property regime and the government procurement system for medical devices. However, this has not yet taken place. The IPR of medical consumables are far more complex due to the diversity of categories involved (which includes component parameters, design, packaging and function, among others). Because opposition and waiting periods in lawsuits are very long, in practice, a VBP contract may be implemented for one or two years before a court makes a determination. This means that during that period, public hospitals may be purchasing and utilising potentially illegal products. It is risky to ensure the sustainability of supplying products to hospitals. This situation is unfair on innovative medical device manufacturers and presents a significant challenge to governments and public hospitals in the procurement of medical devices.

Recommendations

- Promote a high level of openness, treat domestic and multinational enterprises equally, and ensure that medical institutions can smoothly bring to market innovative medical technology and products that meet the growing demands of scientific research and clinical requirements.
- Revise the *Auditing Guidelines for Government Procurement of Imported Products (2021 Edition)* at the earliest opportunity and take industry opinions fully into account.
- Seek broad suggestions from clinical and related industry associations, including foreign-invested enterprises, when defining 'domestically produced products' and 'domestic products'.
- Establish a patent linkage system for medical consumables, similar to a drug patent linkage system.
- Establish a VBP pre-investigation period for medical consumables during the opposition and waiting periods of a lawsuit, while creating a communication channel for medical consumable manufacturers to

22 *Opinions on Strengthening Intellectual Property Protection in the Field of Centralised Medical Procurement*, National Healthcare Security Administration and China National Intellectual Property Administration, 5th December 2022, viewed 27th April 2024, <https://www.gov.cn/zhengce/zhengceku/2023-01/02/content_5734611.htm>

raise legitimate complaints related to any IPR-issues encountered during VBP.

3. Refine Market Access Procedures to Encourage Innovative Treatment Approaches, Enhance the Approval Mechanism for Including Innovative Technologies in the Medical Service Catalogues and Medical Insurance Catalogues, and Provide a Clear Definition of 'Innovative Medical Technologies/Devices' Accepted by the Relevant Authorities

Concern

The lack of clear guidelines on public procurement of innovative medical technologies and devices is resulting in market access challenges for manufacturers of cutting-edge products, to the detriment of patients in China.

Assessment

Innovative medical technologies form a vital foundation for enhancing people's health and fostering development of the healthcare industry. Accordingly, relevant departments have released related policies to spur innovation of medical consumables. As of March 2024, the NMPA had approved 255 innovative products through the 'green channel',²³ improving the identification and market entry of innovative medical products.

However, some policies related to innovative medical products could still be improved. Currently, after obtaining NMPA certificates, medical device products must first be assigned a medical insurance classification code in the NHSA system to qualify for subsequent market entry. However, the frequency and criteria of system updates by the NHSA remain unclear. Consequently, some innovative products may face delays in obtaining a classification code or may receive a classification that does not align with their innovative features and associated clinical value. Without appropriate classification, subsequent processes such as VBP, medical services pricing and medical insurance payments could be significantly impacted.

23 The NMPA created a 'green channel' to expedite the approval of innovative medical devices. *National Medical Products Administration's Approved Innovative Medical Devices List*, National Medical Products Administration, 2nd April 2024, viewed 27th April 2024, <<https://www.nmpa.gov.cn/directory/web/nmpa/zhuanti/cxylqx/ylqxgmlhz/20210531163512106.html>>



In September 2022, the NHTA issued the *Response to Recommendation No. 4955 from the Fifth Session of the 13th National People's Congress*,²⁴ stating that innovative medical devices are not included in VBP due to a lack of clinical use data, making demand difficult to predict. However, the definition and criteria for inclusion of innovative products in centralised procurement also remains unclear. This uncertainty sometimes leads to certain innovative products being included in VBP tenders and subjected to the same price reductions as standard products. Currently, VBP lacks a formal mechanism to grant innovative products a temporary exemption from VBP or special incentives, which considers their distinctive characteristics and potential benefits that may not be acknowledged under traditional VBP methods.

Furthermore, the current process of applying for new medical service items to be included in the pricing catalogue, following NMPA approval, is quite lengthy. This is due to a tiered review system involving local medical institutions, provincial/municipal health commissions, healthcare security administrations (hsas), and ultimately the NHTA. This extended process hinders the prompt introduction of new treatment methods and medical devices.

For patients, these inefficiencies result in them being unable to access high-quality medical treatment. In terms of industrial development, the delay in being able to bring innovative products to market hits companies bottom lines. In turn, this impacts overall competitiveness and innovation, as those affected are less incentivised to reinvest more in R&D, thereby hindering the industry's overall development.

Recommendations

- Develop a system for clearly defining innovative technologies/products along with relevant guidelines to clarify the overall review process, review frequency, timeline and participating parties.
- Accelerate the establishment of a dynamic mechanism for adjusting the classification, code and generic name of medical consumables—particularly innovative products—within the health insurance system to optimise the process for including

innovative medical consumables in medical services catalogues.

- Establish an expert evaluation mechanism in VBP to clearly distinguish between standard medical devices and those that are considered technologically advanced, and develop rules that encourage innovation and long-term industry growth.
- Accelerate the approval of new innovative medical service pricing items with the creation of a transparent communication mechanism.
- Establish a green channel system for medical service pricing items that have been approved by the NHTA, to accelerate the process when other provinces apply for the same medical services items.

4. Continue to Advance the Development of Regulatory Science and Regulatory Innovation

4.1 Optimise the Requirement for Registration Modification 4

Concern

While the number of medical devices that require registration modification during their life cycle has increased significantly, the current regulatory framework makes it difficult to do so in a timely manner, resulting in challenges for manufacturers and a potential discontinuation of supply to the Chinese market.

Assessment

When Class II and III medical devices that have already been approved by the NMPA for marketing are upgraded, a registration modification is needed before the upgrade takes place. However, the NMPA does not have a separate, simplified procedure, with such modifications requiring basically the same documentation and approval time as new registrations.

According to international best practices, as well as the NMPA's regulatory policies for the pharmaceutical industry,²⁵ regulations exist for product modifications, which specify the procedures required for significant, moderate or minor changes. Moderate modifications can be approved within five working days and seldom require additional documentation, while minor modifications only need to be noted in the annual report by the

²⁴ *Response to Recommendation No. 4955 from the Fifth Session of the 13th National People's Congress*, National Healthcare Security Administration, 3rd September 2023, viewed 27th April 2024, <http://www.nhsa.gov.cn/art/2022/9/3/art_110_8971.html>

²⁵ *Announcement of the Administrative Measures for Post-marketing Modifications of Drugs (Trial) (No. 8, 2021)*, National Medical Products Administration, 13th January 2021, viewed 26th April 2024, <<https://www.nmpa.gov.cn/xxgk/fgwj/xzhgfxwj/20210113142301136.html>>



manufacturers to the regulatory authorities.²⁶

When medical device registration certificates need to be split,²⁷ there are no clear procedural guidelines. The current approach involves removing certain models from the original certificate and then declaring these deleted models during a new product registration.

There is no flexible regulatory procedure for handling concurrent product modifications involving multiple registration certificates. For example, when software components undergo modifications like version updates, these changes must be implemented simultaneously across all registration certificates. The updates cannot be staggered or separated based on the approval dates of the respective modification approval certificates.

It is particularly important that the registration modification process be expedited in cases where patients' safety could be at risk, for example, when an enterprise needs to apply for a registration modification due to a product recall.

An additional challenge is that, according to current NMPA requirements, any changes to a product described in an application for registration modification must be implemented immediately following approval. However, it is very difficult for manufacturers and traders to immediately switch to a new product version, and it may be necessary to discard existing stocks of raw materials or finished products, which is very costly and wasteful.

Recommendations

- Implement a regulation that adequately resolves issues related to the splitting of registration certificates, defining significant changes and simplifying the process of updating multiple certificates with the same information.
- Establish a special notification channel for modifications due to product recalls to increase product safety.

²⁶ Medical device enterprises must submit an annual report to the medical product administrations, which acts as a self-inspection report. This report includes the company's basic information, significant changes over the past year, product quality (including any spot checks), quality management practices, annual sales volume of medical devices, and information on imported products if the company is a general agent for imported medical devices. The purpose of this report is to demonstrate to the authorities that the company has been operating in compliance with prescribed requirements.

²⁷ This refers to a scenario in which a medical device registration certificate may need to be divided into separate certificates. This could happen if multiple devices were originally registered together under a single certificate and later require individual documentation due to reasons such as changes in device specifications, changes in ownership, or differing regulatory requirements for the devices.

- Grant a transitional period for implementing product changes following NMPA approval of registration modifications.

4.2 Accelerate the Promulgation of the Medical Device Administration Law and Remove the Requirement for CoO Certification in Pre-Market Approvals

Concern

All imported medical devices—other than those identified by the Centre for Medical Device Evaluation (CMDE) as an 'innovative medical device'—must obtain market approval in the country of origin (CoO) before the manufacturer can apply for registration in China, resulting in market access delays of up to three years.

Assessment

In the *Regulations for the Supervision and Administration of Medical Devices (Order 739)*, the requirement for market approval in CoO was waived only for products categorised as an 'innovative medical device', but remains a prerequisite for other imported medical devices that companies need to register.²⁸

For patients, hospitals, manufacturers and financiers of medical services, the most efficacious and cost-efficient way to market new medical devices is to launch them simultaneously in all major markets, avoiding version gaps between different countries. For regulators in China, demanding prior CoO certification has the limited advantage of allowing them to refer to overseas evaluation results. However, given that China's regulatory environment and level of standardisation is continuously improving, the CMDE is capable of conducting independent evaluations of imported medical devices without relying on CoO certificates. This approach would align with the efforts by Chinese regulatory authorities to promote the convergence of standards, as well as single review and single approval processes at the international level.^{29&30}

²⁸ *Regulations for the Supervision and Administration of Medical Devices* (in Chinese), State Council, 18th March 2021, viewed 23rd April 2024, <https://www.gov.cn/gongbao/content/2021/content_5595920.htm>

²⁹ *Shanghai Hosts the 27th Annual Meeting of the Global Harmonisation Task Force on Medical Devices*, National Medical Products Administration, 30th November 2023, viewed 24th April 2024, <<https://www.nmpa.gov.cn/directory/web/nmpa/III/yaowen/ypjgyw/ylqx/yw/20231130185424106.html>>

³⁰ *2024 National Medical Supervision Working Conference was Held*, National Medical Products Administration, 10th January 2024, viewed 24th April 2024, <<https://www.nmpa.gov.cn/yaowen/ypjgyw/hyxx/zhyxx/20240110172910106.html>>





Given that *Order 739* explicitly mandates CoO approval, any alteration to this requirement would necessitate a revision of the order. The promulgation of the Medical Device Administration Law would present an ideal opportunity for this necessary revision, enhancing the efficiency and inclusivity of the medical device market.

Recommendation

- Remove the requirement for CoO certification as a precondition for the registration and filing of imported medical devices.

4.3 Permit End Users to Extend the Use of Active Device Products that Have Been Utilised Beyond Their ‘Expected Lifetime’ Based on Regular Evaluations of the Device’s Status, Performance and Maintenance Records

Concern

Discrepancies over the understanding of the service life of active devices can lead to unnecessary penalties and discontinuation of their use, which is wasteful from a circular economy perspective.

Assessment

As detailed in *Order 739*, using expired, obsolete or invalid medical devices is strictly prohibited and may lead to penalties, including fines and confiscation.

However, the concept of ‘expiry’ for active medical devices is more complex than simply adding the manufacturing date to the expected service life (ESL). Unlike disposable medical supplies, factors such as frequency of use, installation time and part replacements can influence the lifespan of active medical devices. Thus, a device should not be considered ‘expired’ based solely on exceeding its ESL. The International Electrotechnical Commission defines the ESL as the period during which a medical device is expected to remain safe and effective.³¹ If the device, with suitable servicing and maintenance, can uphold these standards, it is considered to still be within its service life and therefore safe to use.

³¹ *International Standard: IEC 60601-1:2005+AMD1:2012+AMD2:2020 CSV*, International Electrotechnical Committee, 20th August 2020, viewed 26th April 2024, <<https://products.iec.ch/view/pub/67497?q=eyJxdWVyeSI6IjYwNjAxLTIiLCJtb2RlIjoifUFVCTEIDQVRJT04iLCJzZWxiY3RIZEZHY2V0cyI6WyJpY3MubHZsLjEuMTEiXSwic29ydEJ5IjoicmVmZXJlbnmNLS1hc2MlLCJsYW5ndWFnZSI6ImVuln0%3D>>

Prohibiting or penalising the use of high-quality, high-value active medical devices contradicts the principles of a circular economy and would result in the waste of resources, while also increasing the burden on the end user as it bears primary liability.

Recommendations

- Expand the definition of ‘ESL’ for active medical devices in all relevant regulations, and ensure this is understood by the regulatory authorities at all levels.
- Clarify that utilising an active device beyond its ESL does not equate to using an expired product.
- Increase the end user’s capacity to reasonably evaluate and dynamically extend the actual service life of in-use devices.

5. Promote Market Access for High-precision and Innovative IVD

5.1 Reflect IVD’s Technical Features in both VBP and Medical Treatment Pricing Catalogues



Concern

Part of local VBP regulations for procurement of IVD products and pricing policies for medical treatment do not reflect different technical features of IVD products, preventing patients’ access to innovative diagnostic methods.

Assessment

In clinical practice, IVD devices and reagents are the basis for the correct diagnosis of diseases. Manufacturers are permanently developing new IVD products to increase the accuracy, sensitivity, specificity, stability and speed of diagnosis methods. Correct diagnosis is a precondition for efficacious treatment, whereas a wrong diagnosis may be very costly for the healthcare system. Testing for COVID-19 provides a very pertinent example — a false-negative test result may not only delay the treatment of one patient but also be a starting point of mass infection.

According to international best practice, IVD products with different diagnosis methods and technical features are procured in separate tenders. However, in China, in most cases, the same price is assigned to products that have different diagnosis methods, which does not accurately reflect the different characteristics and complexities of each product. In addition, the tendency in China’s procurement practices to cut prices across



the board may lead to erroneous outcomes. This is because IVD instruments and reagents are developed together as one complete system, therefore if a specific reagent were to be replaced by a cheaper alternative it may result in an inaccurate diagnosis, which could have serious health implications.

At present, several provinces are trialling programmes to separate the costs of medical consumables from medical services in IVD. However, given that IVD tests have been bundled into package charges for many years, this reform needs careful consideration. Factors that need to be taken into account in the reform process include the cost of medical services, hospital operations and compensation. It should therefore be understood that the new pricing may not accurately reflect the actual cost of IVD medical service items, which could ultimately impact their use in hospitals.

Recommendations

- Include different diagnosis methods and technologies in procurement catalogues, and purchase according to the clinical demand for different technical features of IVD products and different diagnosis methods.
- Ensure that only validated reagents are used with IVD devices.
- Advance the separation of prices for medical consumables from medical services in IVD, based on the quality of clinical diagnosis and treatment, and scientifically gauge the cost of medical items.
- Evaluate in a comprehensive fashion the unique characteristics of IVD products to find a suitable price management method for the implementation of VBP.

5.2 Shaping a Rational IVD Reagent Regulatory Environment

Concern

The requirements of dynamically changing regulations increase both the administrative burden placed on businesses and their regulatory and compliance costs.

Assessment

Even though the main laws applicable to the medical device industry remain unchanged, the regulatory environment has become more complex, which has resulted in increased regulatory costs and other burdens for businesses.

With the introduction of the guidelines *IVD Reagent Raw Materials and Instruction for Use* in 2023,^{32&33} alongside the *Stability Study Guidelines* scheduled for 2024,³⁴ the range of issues that must be addressed or documented during IVD registration has increased. This has made modifications to IVD reagent registrations more likely, resulting in an increase in registration modification applications and a more complex registration process.

For instance, the transition from natural materials to recombinant materials has been complicated by the influence of biotin. Manufacturers must now provide clinical trial evidence to prove the safety and effectiveness of their products and carry out stability studies using real samples. These additional requirements have led to longer registration timelines for IVD.

For companies importing products, the ethical requirements and test operating principles differ between countries, posing further challenges. The collection of a large number of real samples for stability studies is labour-intensive and time-consuming. Additionally, the absence of a transition period for the implementation of guiding principles means that manufacturers of products currently in the process of being registered do not have enough time to supplement their stability experimental data, potentially leading to unsuccessful registration.

Recommendations

- Formulate criteria for acceptance of clinical evidence of IVD reagents in the registration process.
- Decrease the scope of issues that must be specified during the registration of IVD reagents.
- Provide suitable transition periods for the implementation of guiding principles that have significant changes or implications, such as those related to stability studies.

32 *Guiding Principles for the Compilation of Instructions for In Vitro Diagnostic Reagents (Revised Edition 2023) (No. 1, 2024)*, Centre for Medical Device Evaluation, 3rd January 2024, viewed 28th April 2024, <<https://www.cmde.org.cn/flfg/zdyz/zdyzwbk/20240109140628110.html>>

33 *Guiding Principles for the Registration Review of Primary Raw Material Research for In Vitro Diagnostic Reagents (No. 1, 2024)*, Centre for Medical Device Evaluation, 3rd January 2024, viewed 28th April 2024, <<https://www.cmde.org.cn/flfg/zdyz/zdyzwbk/20240109135745161.html>>

34 *Announcement on the Launch of the 2024 Annual Medical Device Registration Review Guiding Principles Development Plan (Announcement No. 17, 2024)*, Centre for Medical Device Evaluation, 3rd January 2024, viewed 28th April 2024, <<https://www.cmde.org.cn/xwdt/shpgzgg/gztg/20240411090918165.html>>





5.3 Phase Out the ‘Two-invoice System’

Concern

Continued use of the ‘two-invoice system’ could prevent collaboration between domestic and international companies, interrupt business operations and lead to inefficiencies in the IVD sector.

Assessment

The ‘two-invoice system’ system—which is still implemented in some parts of China—limits the number of distributors that manufacturers or importers can use. The manufacturer (or in the case of imported products, the importer) sells its products to a distributor (first invoice), with the distributor then selling directly to the hospital (second invoice). This creates a challenge in the IVD sector, due to the fact that IVD products require the concurrent use of equipment and reagents.

First, it is increasingly common for foreign-invested IVD manufacturers to allow their equipment to be tested by other qualified reagent manufacturers, thus creating more opportunities for local reagent manufacturers and encouraging cooperation between domestic and international companies. However, under the ‘two-invoice system’, when a reagent manufacturer supplies reagents to an equipment manufacturer, this would be considered the ‘first invoice’, which may deter IVD manufacturers from entering into such relationships.

Second, if a foreign-invested IVD company establishes a factory in China or collaborates with a local manufacturer, the invoice for product transfer between manufacturing and trading companies within the same group would also be considered the ‘first invoice’. This obliges manufacturers to directly invoice their distributors, leading to numerous issues for their trading entities, potentially disrupting normal business operations and possibly deterring foreign investment in the China market.

In areas where the ‘two-invoice system’ is still applicable to medical devices, HSAs have introduced additional regulations, such as the requirement to choose only local agents for distribution. However, this also creates complications in the IVD sector. This is because IVD distributors vary in capabilities given that they offer comprehensive solutions, including IVD testing equipment, delivery, maintenance services and digital support for clinical laboratories. Such

services are technical and require ongoing training from manufacturers. A forced shift from experienced distributors to local firms with limited IVD experience would therefore complicate the process of finding distributors that could meet clinical laboratory standards, which would impact delivery and therefore limit patients’ access to such devices. While local distributors can be trained, it is time-consuming and unnecessary. Such an approach would also not be in line with the idea of creating a unified national market, and would negate the benefits of scale. Even with capable local distributors, restricting choices and impeding market competition risks creating local monopolies, reducing market dynamism and making negotiations more difficult, while also leading to increased operating costs.

In recent years, the NHSA has put measures in place that have significantly cut distribution costs, which was the original aim of the ‘two-invoice system’. This, coupled with the fact that the challenges of working with the ‘two-invoice system’ now outweigh the benefits, means that it is advisable to reconsider the applicability of the ‘two-invoice system’ in the IVD sector.

Recommendations

- Refrain from designating the supply of reagents from manufacturers to IVD equipment manufacturers as the ‘first invoice’.
- Refrain from designating transactions between trading companies and manufacturers within the same group in China, or between foreign-invested trading companies in China and domestic manufacturers with which they have invested and cooperated, as one invoice under the ‘two invoice system’.
- Avoid mandating a shift from experienced distributors to local firms, and allow IVD manufacturers to select the vendor that provides the most appropriate level of service.



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Abbreviations

CMDE	Centre for Medical Device Evaluation
CoO	Country of Origin
ESL	Expected Service Life
IPR	Intellectual Property Rights
IVD	In-vitro diagnostics
NHC	National Health Commission
NHSA	National Healthcare Security Administration
NMPA	National Medical Products Administration
R&D	Research and Development
VBP	Volume-based Procurement





Maritime Manufacturing and Industrial Services Working Group

Key Recommendations

1. Increase Foreign Companies' Access to Green Demonstration and Pilot Projects

- Provide a comprehensive roadmap detailing how the maritime sector will be included in China's 2060 carbon neutrality pledge.
- Increase foreign companies' access to participate in demonstration and pilot projects regarding green shipbuilding power.
- Establish fora for best-practice sharing, and build up a network for cooperation between foreign and domestically owned companies and institutes on green demonstration projects.
- Participate in international groups and joint industry projects to establish global standards and harmonised regulations for the use of emerging technologies and fuels.

2. Accelerate the Deployment of Liquefied Natural Gas (LNG) Bunkering and Ship-to-Ship Regulations along Coastal Areas

- Accelerate the deployment and authorisation (licence issuance) of LNG bunkering services in Chinese coastal areas.
- Issue relevant national guidelines for ship-to-ship transfers in Chinese open sea waters, in accordance with international guidelines.

3. Clarify the Entry/Exit Policies for Foreign Experts Carrying an 'M' Business Visa Entering China for Short-term Onsite Instruction Work

- Expand the scope of those eligible for 'M' visas by including criteria related to business events, post-sales, onsite equipment maintenance and relevant services, project inspection, training and volunteer work.

4. Enhance Collaboration between Regulators and Industry Players on Decarbonisation in the Maritime Sector

- Enhance exchanges and collaboration between European and Chinese policymakers and industry players to pursue decarbonisation in the maritime sector.

5. Amend Both Import Duty Regulations on Imported Ship Components from Outside China for Assembly Onboard, and the Value-added Tax (VAT) Requirement for Onboard Services Provided on International Vessels

- Exempt imported ship components for assembly onboard from import duties, in line with international practice, in order to foster the domestic ship-repair-and-conversion business.
- Exempt onboard services provided on international vessels from the VAT requirement.



6. Support the Decarbonisation of China's Domestic Fleet by Clarifying the Application Process and Timeline for Certification of Maritime Equipment Imported from Abroad for Installation on China-flagged Vessels

- Ensure that the Maritime Safety Administration Type Approval Certificate application process is transparent, and clearly designate a single point of contact with whom to liaise and submit relevant documentation to.
- Issue official documentation once the application has been received.
- Stipulate the timeline for reviewing an application from when it is received to when the permits will be issued.
- Create a mechanism that allows companies to track their applications.

Recent Developments

In 2023, China retained its position as the largest shipbuilding nation in the world in terms of annual orders across the three measures of shipbuilding output, newbuilding orders and orders on hand, which accounted for 50.2, 66.6 and 55 per cent respectively of global market share, according to the China Association of the National Shipbuilding Industry (CANSI).¹

Green Development

In China

On 26th December 2023, the Ministry of Industry and Information Technology (MIIT) and five other departments issued the *Action Plan for the Green Development of the Shipbuilding Industry (2024–2030)*. According to the plan, China aims to build over 50 per cent of global vessels powered by lower-carbon fuels such as liquefied natural gas (LNG) (either fossil form, bio type or green type) and green methanol by 2025 and lead the green shipbuilding market by 2030.²

In Europe

On 1st January 2024, the European Union (EU) extended the coverage of its Emissions Trading System (ETS) to include carbon dioxide (CO₂) emissions from all large ships (of 5,000 gross tonnage and above) entering EU ports, regardless of the flag they fly. According to the policy, “shipping companies have to purchase and surrender (use) EU ETS emission

allowances for each tonne of reported CO₂ (or CO₂ equivalent) emissions in the scope of the EU ETS system” after a phase-in period from 2024 to 2026.

Meanwhile, the FuelEU Maritime (Regulation (EU) 2023/1805), which was adopted on 13th September 2023, will enter into force on 1st January 2025, to ensure that the greenhouse gas (GHG) intensity of fuels used by the shipping sector (ships with a gross tonnage above 5,000, regardless of their flag) will gradually decrease over time, by 2 per cent in 2025 to as much as 80 per cent by 2050.³

International Cruise Shipping

On 10th August 2023, the Ministry of Culture and Tourism (MCT) issued the third *Resumption of Travel Agency Operations of Outbound Group Tours for Chinese Citizens to Relevant Countries and Regions*, which expands the scope of outbound group tour services from 60 to 138 countries and regions.⁴ The working group welcomed this announcement and the subsequent *Notice on Full Resumption of International Cruise Shipping* issued by the Ministry of Transport (MOT) on 19th September 2023.⁵ According to the China Waterborne Transport Research Institute (WTI), China's

3 Regulation (EU) 2023/1805 of the European Parliament and of the Council on the Use of Renewable and Low-carbon Fuels in Maritime Transport, and Amending Directive 2009/16/EC, Official Journal of the European Union, 13th September 2023, viewed 16th April 2024, <<https://eur-lex.europa.eu/eli/reg/2023/1805/oj>>

4 *Resumption of Travel Agency Operations of Outbound Group Tours for Chinese Citizens to Relevant Countries and Regions (Third Batch)*, MCT, 10th August 2023, viewed 16th April 2024, <https://www.gov.cn/zhengce/zhengceku/202308/content_6897780.htm>

5 *Notice on Full Resumption of International Cruise Shipping*, MOT, 19th September 2023, viewed 16th April 2024, <https://xxgk.mot.gov.cn/jigou/syj/202309/t20230919_3921649.html>

1 *Analysis of the Economic Performance of the Shipbuilding Industry in 2023*, CANSI, 2nd February 2024, viewed 16th April 2024, <https://www.miit.gov.cn/gxsj/tjfx/zbgy/mycb/art/2024/art_fa7806370d844d0785c9960cdb90fc53.html>

2 *Action Plan for the Green Development of the Shipbuilding Industry (2024–2030)*, MIIT, 26th December 2023, viewed 16th April 2024, <https://www.gov.cn/zhengce/zhengceku/202312/content_6923175.htm>





cruise market is expected to resume 60 to 70 per cent of its pre-pandemic business levels in 2024.⁶

Key Recommendations

1. Increase Foreign Companies' Access to Green Demonstration and Pilot Projects



Concern

European companies are largely prevented from participating in China's green demonstration and pilot projects, because tendering processes and related information sources favour Chinese-owned entities.

Assessment

Coastal and inland waterway shipping contributes to about six per cent of overall carbon emissions from transportation in China,^{7&8} an issue that must be addressed by developing and deploying low-emission solutions.⁹ Marine equipment and energy-saving technologies are at the heart of the critical task of decarbonising shipping. In the short term, there is potential for the use of transition fuels such as LNG in large ships, and batteries and hydrogen in smaller ships. Alternative carbon-neutral fuels such as green ammonia, green methanol, green LNG and green hydrogen—which take well-to-wake emissions, meaning emissions from fuel production, transportation, distribution and eventually combustion onboard into account—may become more dominant fuels in the long-term. This approach is in line with Regulation (EU) 2023/1805 on the use of renewable and low-carbon fuels in maritime transport adopted by the EU and action plans by China.^{10&11&12}

6 *Cruise services being revived along Chinese coastal lines*, *Global Times*, 16th January 2024, viewed 16th April 2024, <<https://www.globaltimes.cn/page/202401/1305487.shtml>>

7 *Potential Pathways for Decarbonizing China's Inland Waterway Shipping*, International Council on Clean Transportation (ICCT), February 2023, viewed 16th April 2024, <https://theicct.org/wp-content/uploads/2023/02/China-inland-shipping_fs_final.pdf>

8 *Decarbonizing China's coastal shipping: The role of fuel efficiency and low-carbon fuels*, ICCT, June 2022, viewed 16th April 2024, <<https://theicct.org/publication/china-marine-decarbonizing-chinas-coastal-shipping-jun22/>>

9 *New Energy Applications for Ports and Inland Waterway Shipping in the People's Republic of China*, ADF Briefs, February 2024, viewed 16th April 2024, <<https://www.adb.org/publications/energy-ports-inland-waterway-shipping>>

10 Regulation (EU) 2023/1805 on the use of renewable and low-carbon fuels in maritime transport and amending Directive 2009/16/EC, EUR-Lex, 22nd September 2023, viewed 22nd April 2024, <<https://eur-lex.europa.eu/eli/reg/2023/1805/oj>>

11 *The 14th Five-year Plan for Development of Green Transportation*, MOT, 21st January 2022, viewed 16th April 2024, <https://xxgk.mot.gov.cn/2020/jigou/zghgs/202201/t20220121_3637584.html>

12 *Action Plan for the Green Development of the Shipbuilding Industry (2024–2030)*, MIIT, 26th December 2023, viewed 16th April 2024, <https://www.gov.cn/zhengce/zhengceku/202312/content_6923175.htm>

The introduction of such new and breakthrough technologies is not possible without political support. Accordingly, China has introduced policies to encourage the reduction of carbon emissions from short-sea shipping, comprising inland waterways, coastal and ports service vessels.¹³ However, European companies in China are not being involved, and to some degree lack access to, or insight into, discussions or plans for incentives and penalties aimed at increasing the competitiveness of low and zero-emission solutions.

It is not clear how China is planning to address the fact that low and zero-emission vessels may—for quite some time to come—be more expensive in terms of both capital expenditure and operating expense than conventional vessels. It will be possible to reduce these costs through economies of scale but this will require China to join international standardisation organisations and ensure the adoption of common standards, which will then enable European and Chinese suppliers to more easily deploy green products and technologies in the global market.

According to a 2022 mapping exercise carried out by the Getting to Zero Coalition on green demonstration projects, China had 15 maritime zero-emission pilots and demonstration projects.¹⁴ Of these, eight targeted domestic shipping and none included a foreign equipment or technology provider as a project partner.¹⁵

Most working group members do not receive information directly from the Chinese state or regional authorities on green demonstration projects for domestic, inland shipping but rather tend to hear of them when it is too late to get involved or when no foreign suppliers are being considered. Some recent examples include:

- A state-sponsored project for the Yangtze River Three Gorges 1, the world's largest electric cruise ship, powered by a battery with a capacity of 7,500 kilowatt hours, allowing it to sail 100 kilometres on a

13 *Measures for the Technical Assessment and Identification of Inland River Demonstration Vessels*, MOT, 25th August 2014, viewed 16th April 2024, <https://www.gov.cn/xinwen/2014-08/25/content_2739436.htm>

14 The Getting to Zero Coalition is a multi-stakeholder, multi-country, industry-led platform for collaboration that brings leading stakeholders from across the maritime and fuels value chains together with the financial sector and other stakeholders committed to making commercially viable zero-emission vessels a scalable reality by 2030: Kilemo, H, Montgomery, R, and Leitão, A, *Mapping of Zero Emission Pilots and Demonstration Projects Third Edition*, The Getting to Zero Coalition, 31st March 2022, viewed 16th April 2024, <<https://nextgen.imo.org/news/76>>

15 Data shared courtesy of the Getting to Zero Coalition.





single charge.¹⁶

- The ‘Green Pearl River’ project that includes the design and construction of 50 LNG-fuelled river vessels. As far as the working group is aware, foreign suppliers and Chinese suppliers with foreign sub-suppliers were not considered for inclusion.¹⁷
- The *Workplan to Promote the High-quality Development of Shipbuilding and Marine Engineering Equipment (2021–2023)* was issued by the Fujian Provincial Government, outlining a minimum of 10 demonstration projects for electric inland waterway and coastal ships.¹⁸
- The Shanghai Pudong Government released the Group Open Innovation (GOI) plan to encourage sector leaders to set up open innovation platforms to promote “high-quality development”.¹⁹ As of May 2024, over 100 innovation centres under the GOI plan have been set up.²⁰ The Research and Development (R&D) Centre of Shipbuilding Power Engineering is a GOI centre established and operated by a state-owned enterprise. This centre was set up to undertake national-level ship power demonstration and pilot projects by attracting global industrial players from the whole supply chain. However, based on public information, no foreign businesses have been involved in the relevant projects.
- The *Action Plan for High-quality Development of Shanghai’s Shipbuilding and Offshore Engineering Equipment Industry (2023–2025)* states that China aims to achieve over 95 per cent self-reliance in critical components for low-speed engines by 2025, and that the country will establish R&D and manufacturing competence covering the full power range of engines.²¹

¹⁶ Zhang, Y. and Liu, K., *Largest electric cruise ship makes debut*, *China Daily*, 30th March 2022, viewed 16th April 2024, <<http://www.chinadaily.com.cn/a/202203/30/WS62438ffaa310fd2b29e5403b.html>>

¹⁷ CSSC commences construction of 50 LNG-fuelled bulk carriers for ‘Green Pearl River’ project, *Manifold Times*, 5th April 2021, viewed 16th April 2024, <www.manifoldtimes.com/news/cssc-commences-construction-of-50-lng-fuelled-bulk-carriers-for-green-pearl-river-project/>

¹⁸ *Workplan to Promote the High-quality Development of Shipbuilding and Marine Engineering Equipment (2021–2023)*, Fujian Government, 26th August 2021, viewed 16th April 2024, <<https://fdi.swt.fujian.gov.cn/show-11626.html>>

¹⁹ *Pudong Group Open Innovation (GOI) Programme Brochure*, GOI Comprehensive Empowering Cloud Service Platform, 1st February 2023, viewed 16th April 2024, <<https://kfw.pudong.gov.cn/pdkjwmsesp/pdkjwmsesp-website/moryq/article/996030173646172160>>

²⁰ *Shanghai Pudong: The GOI Plan Has Over 100 Members*, *China News*, 20th May 2024, viewed 27th May 2024, <<https://zmgr.chinanews.com/cj/2024/05-20/10220338.shtml>>

²¹ *Action Plan for High-quality Development of Shanghai Shipbuilding and Offshore Engineering Equipment Industry (2023–2025)*, Shanghai Government, 3rd November 2023, viewed 16th April 2024, <<https://www.shanghai.gov.cn/hqcyfz2/0231106/8628a66c733440878fe354f49e9e490f.html>>

- The China Electric Ship Innovation Alliance was launched on 8th February 2023, coordinated by the China Ocean Shipping Company (COSCO). Only Chinese companies are members, and foreign stakeholders were not invited to participate.²²

These and similar projects around the country are of great interest to European maritime companies. However, there appear to be three key reasons for them being unable to join. First, for these kinds of projects, the provider must be certified by the China Classification Society (CCS), and foreign-made maritime equipment and technology destined for China-flagged vessels must have additional certification from the Maritime Safety Administration (MSA). Second, budgets and prices tend to be low, meaning that in most cases, only low-end local manufacturers can meet the requirements — this can also discourage mid-range and high-end Chinese suppliers. Third, China’s focus on developing self-sufficiency in the maritime industry means domestic manufacturers are to a certain degree still favoured. All these factors make it challenging for European companies to increase their market share, to the detriment of industry competition.

However, the main issue is that invitations for participation in demonstration projects for domestic, inland shipping projects are not transparent. While foreign companies are sometimes invited to provide training and workshops and engage in consultancy for domestic shipping projects (most notably foreign classification societies), only domestic companies are invited to join as full-fledged project partners or technology providers. In rare cases, Chinese participants that obtain government funding for R&D projects may subcontract to or partner with a foreign company.

For China to reach its emission reduction targets for domestic and inland shipping, it is imperative to upgrade its existing fleets with new technologies; a task to which European companies could make significant contributions. In view of potential future exports of vessels to Europe through these local projects, cooperation with European suppliers is also in the interests of Chinese shipbuilders, equipment manufacturers and other stakeholders. According to the Getting to Zero Coalition, there were 45 green

²² Chambers, S., *COSCO forms the China Electric Ship Innovation Alliance*, *Splash*, 14th February 2023, viewed 16th April 2024, <<https://splash247.com/cosco-forms-the-china-electric-ship-innovation-alliance/>>





demonstration projects in the maritime industry in Asia excluding China, and 114 in Europe, in addition to commercial projects.²³ This illustrates just how rapidly both the industry and related technologies are developing, and emphasises why cross-border cooperation on developing and deploying green infrastructure is imperative in order to successfully reach the targets for decarbonising shipping.

For foreign enterprises to get involved in the development of green domestic shipping, an open mechanism for project bidding and certification of marine equipment and technology destined for China-flagged vessels needs to be established. In addition, establishing a decarbonisation task force in shipping and maritime manufacturing, involving policymakers and businesses—both Chinese and foreign—would enable best practice sharing and ensure mutually beneficial outcomes in the global fight against climate change.

The CCS has issued several draft standards relevant to low and zero-carbon emission solutions for shipbuilding, including the *Specification on Green Ecological Ships 2022*, the *Specification on LNG-Fuelled Ships 2023*, and the *Specification on Inland Waterways Green Ships 2023*.^{24&25&26} European companies could contribute their expertise and experience to China's green shipbuilding industry if they were allowed to join the standard drafting process, something they are well positioned to do. According to the findings of the European Chamber's report, *Carbon Neutrality: The Role of European Companies in China's Race to 2060*, 46 per cent of Chamber member companies have taken concrete steps to decarbonise their China operations, and around 67 per cent have achieved at least a basic level of preparation.²⁷

23 The Getting to Zero Coalition is a multi-stakeholder, multi-country, industry-led platform for collaboration that brings leading stakeholders from across the maritime and fuels value chains together with the financial sector and other stakeholders committed to making commercially viable zero-emission vessels a scalable reality by 2030: Kilemo, H, Montgomery, R, and Leitão, A, *Mapping of Zero Emission Pilots and Demonstration Projects Third Edition*, The Getting to Zero Coalition, 31st March 2022, viewed 16th April 2024, <<https://nextgen.imo.org/news/76>>

24 *Specification on Green Ecological Ships 2022*, CCS, 25th November 2022, viewed 22nd April 2024, <<https://www.ccs.org.cn/ccswz/specialDetail?id=202211250199628050>>

25 *Specification on LNG-Fuelled Ships 2023*, CCS, 20th February 2023, viewed 22nd April 2024, <<https://www.ccs.org.cn/ccswz/articleDetail?id=202302200343484488>>

26 *Specification on Inland Waterways Green Ships 2023*, CCS, 3rd March 2023, viewed 22nd April 2024, <<https://www.ccs.org.cn/ccswz/articleDetail?id=202303030266455286>>

27 *Carbon Neutrality: The Role of European Companies in China's Race to 2060*, European Union Chamber of Commerce in China, 25th May 2022, viewed 22nd April 2024, <www.eurochamber.com.cn/en/publications-carbon-neutrality-report>

According to the *2022 Catalogue of Encouraged Industries for Foreign Investment*, foreign investment is encouraged in areas related to the design and application of clean and new energy.²⁸ However, in practice, foreign companies do not have equal access to the market, and they struggle to obtain government incentives that encourage investment in clean and new energy applications such as LNG, methanol, ammonia and hydrogen.

Recommendations

- Provide a comprehensive roadmap detailing how the maritime sector will be included in China's 2060 carbon neutrality pledge.
- Increase foreign companies' access to participate in demonstration and pilot projects regarding green shipbuilding power.
- Establish fora for sharing best practices, and build up a network for cooperation between foreign and domestically owned companies and institutes on green demonstration projects.
- Participate in international groups and joint industry projects to establish global standards and harmonised regulations for the use of emerging technologies and fuels.

2. Accelerate the Deployment of LNG Bunkering and Ship-to-Ship Regulations along Coastal Areas

Concern

The current lack of standardised regulations on LNG ship-to-ship transfers presents challenges to both domestic and international shipping operations along China's coast.

Assessment

National regulation of LNG ship-to-ship transfers has been discussed for many years.²⁹ In August 2021, the MSA issued the *Measures for the Safety Supervision and Administration of Water Liquefied Natural Gas Filling Operations*, which took effect on 30th September 2021 and will remain active for five years. However, as detailed guidelines are yet to be released by local MSA authorities (branch offices), ship-to-ship transfer remains

28 *2022 Catalogue of Encouraged Industries for Foreign Investment*, National Development and Reform Commission & Ministry of Commerce, 26th October 2022, viewed 22nd April 2024, <<http://wzs.mofcom.gov.cn/article/n/202210/20221003362982.shtml>>

29 Bunkering LNG ship-to-ship can take place between two sea-going ships at anchorage or in port.





impossible in most provincial ports. This affects ship-to-ship operations between LNG carriers and floating storage and regasification units (FSRU); LNG carriers' transshipment; and rapid deployment of LNG bunkering services, whereby LNG is transferred from an LNG bunkering vessel to an LNG-fuelled merchant vessel. This situation would be improved by issuing relevant national guidelines for ship-to-ship transfers in Chinese open sea waters, in accordance with international guidelines such as the *Ship to Ship Transfer Guide for Petroleum, Chemicals and Liquefied Gases*, jointly published by the International Chamber of Shipping, the Society of International Gas Tankers and Terminal Operators, the Oil Companies International Maritime Forum and the Chemical Distribution Institute.³⁰

Recommendations

- Accelerate the deployment and authorisation (licence issuance) of LNG bunkering services in Chinese coastal areas.
- Issue relevant national guidelines for ship-to-ship transfers in Chinese open sea waters, in accordance with international guidelines.

3. Clarify the Entry/Exit Policies for Foreign Experts Carrying an 'M' Business Visa Entering China for Short-term Onsite Instruction Work

Concern

China's current visa restrictions make it difficult for foreign, specially-trained experts carrying 'M' business visas to enter China to conduct short-term work related to installation, inspection, drydocking maintenance and repairs, or class surveying.

Assessment

As part of mandatory ship inspections—including technical inspections and assisting with onsite ship upgrades—foreign experts need to enter China on short-term assignments (less than three months). While local shipyards need such experts to provide crucial support, the difficulties they encounter when trying to enter China—with 'M' visas not being applicable and 'Z' visas being impractical—cause many to choose to work in other Asian or global shipyards.

³⁰ *Ship to Ship Transfer Guide for Petroleum, Chemicals and Liquefied Gases*, CDI/ICS/OCIMF/SIGTTO, 2013, viewed 28th May 2024, <www.ocimf.org/publications/books/ship-to-ship-transfer-guide-for-petroleum-chemicals-and-liquefied-gases>

Foreign experts coming for short-term assignments must apply for a China business visa ('M' visa) according to the *Regulations of the Administration of the Entry and Exit of Foreigners (State Council Decree No. 637)*, released in September 2013.³¹ However, the *Procedures for Foreigners Entering China to Complete Short-term Work Tasks (Trial) [2014] No. 78*, issued by the Ministry of Human Resources and Social Security, which entered into force on 1st January 2015, widens the scope of those eligible for 'M' visas, including but not limited to personnel involved in the following:³²

1. Complementary servicing, installation, commissioning, disassembly, guidance and training for machinery equipment.
2. Guidance, supervision and inspection for an awarded tender project in China.
3. Short-term work assignments in a branch, subsidiary or representative office in China.

In order to facilitate the entry of short-term experts that are crucial for the healthy development of the maritime industry, the working group recommends expanding the scope of those eligible for 'M' visas to include the following criteria:

- Business meetings or conferences, business-to-business marketing activities and contract negotiations.
- Post-sales, onsite activities, such as equipment maintenance and repair, installation, testing and dismantling, upgrading and conversion, and coaching and training services.
- Coaching, supervision or inspections related to bid-winning projects in China.
- Performing short-term technical guidance, training, supervision and knowledge transfer for subsidiaries, branches or representative offices in China.
- Providing volunteer work in China without remuneration, or when remuneration is covered by an overseas organisation.

Recommendation

- Expand the scope of those eligible for 'M' visas by

³¹ *The regulations state that, "The 'M' visa is issued to persons who come to China for commercial trade": Administration of the Entry and Exit of Foreigners (Decree of the State Council [2013] No. 637)*, State Council, 22nd July 2013, viewed 21st March 2024, <http://www.gov.cn/zhuanti/2013-07/22/content_2610606.htm>

³² *Procedures for Foreigners Entering China to Complete Short-term Work Tasks (Trial)*, Ministry of Human Resources and Social Security, 6th November 2014, viewed 21st March 2024, <http://www.mohrss.gov.cn/xxgk2020/fdzdgknr/qt/201411/t20141121_144780.html>





including criteria related to business events, post-sales, onsite equipment maintenance and relevant services, project inspection, training and volunteer work.

4. Enhance Collaboration between Regulators and Industry Players on Decarbonisation in the Maritime Sector



Concern

Without close collaboration with policymakers, industry players in the maritime sector will continue to lack the guidance they need to successfully pursue decarbonisation.

Assessment

The lifespan of a ship is approximately 25 to 30 years,³³ therefore, ships under construction at the time of writing can be expected to operate until the mid-2050s. It is pivotal that they are built with the fuels and technologies of the future in mind.

Today numerous new fuels and technologies—such as synthetic fuels, hydrogen, biofuels and electrification—are being trialled by the shipping industry, as they are often promoted as ‘zero-carbon’ solutions. This is true when they are actually used in vessels, however, their production results in more CO₂ emissions than the combustion of conventional liquid marine fuels. It is therefore essential to promote the use of fuels that are carbon neutral throughout the entire value chain. This can only be achieved with synthetic fuels such as e-LNG or e-methanol. Meanwhile, when a fuel is burned the production of nitrogen and sulphur oxides, methane slip and fine particulate matter should also be carefully considered.

The EU and China share the goal of decarbonising the maritime sector, which is also aligned with the International Maritime Organization’s target of reaching net-zero GHG emissions from international shipping around 2050.³⁴ The EU is the global leader in marine equipment and services and China is the largest

shipbuilding nation in the world, making them logical and complementary partners for collaboration in the maritime industry.^{35&36} The two sides maintained high-level contact from 2011 to 2019 and held the annual EU-China Shipbuilding Dialogue for nine consecutive years. However, the dialogue has not taken place since 2020. The working group recommends that European and Chinese regulators and shipyards resume bilateral exchanges and cooperation, with a focus on developing economically-competitive, zero-emission vessels on a global scale, while also extending the dialogue to involve more industry players.

Recommendation

- Resume the EU-China Shipbuilding Dialogue and involve more industry players in bilateral exchanges and cooperation on green shipbuilding.

5. Amend Both Import Duty Regulations on Imported Ship Components from Outside China for Assembly Onboard, and the VAT Requirement for Onboard Services Provided on International Vessels 3

Concern

Equipment installed in/on ships bound for international routes and onboard manpower services should be exempt from both import duties and VAT.

Assessment

According to international practice, no additional VAT is required on imported components being assembled onboard a seagoing vessel if it is operated on the high seas for at least 70 per cent of the time and 100 per cent commercially. In China, the VAT is payable on all *renminbi* (RMB) contracts for both domestic and imported products. However, Chinese shipbuilders do not need to pay the import duty of 10 per cent if products are destined for international seagoing vessels flying a Chinese flag, though they are required to pay the VAT if the ship components and equipment

33 Do you know what happens to a ship when it's too old to sail anymore?, Safety4sea, 4th February 2020, viewed 25th April 2024, <<https://safety4sea.com/cm-do-you-know-what-happens-to-a-ship-when-its-too-old-to-sail-anymore/>>

34 International Maritime Organization (IMO) adopts revised strategy to reduce greenhouse gas emissions from international shipping, IMO, 7th July 2023, viewed 22nd April 2024, <<https://www.imo.org/en/MediaCentre/PressBriefings/pages/Revised-GHG-reduction-strategy-for-global-shipping-adopted-.aspx>>

35 “In terms of market share, the European Union is the world’s largest supplier of marine equipment (including services), followed by South Korea, China and Japan.” *Analysis of the Marine Equipment Industry and Its Challenges*, Organisation for Economic Co-operation and Development (OECD), 19th January 2023, viewed 22nd April 2024, <[https://one.oecd.org/document/C/WP6\(2022\)15/FINAL/en/pdf](https://one.oecd.org/document/C/WP6(2022)15/FINAL/en/pdf)>

36 *China’s shipbuilding industry retains top spot globally in 2023*, *Xinhua*, 15th January 2024, viewed 22nd April 2024, <<https://english.news.cn/20240115/1bbaa3fa3d2b435f962487f3cbd2864e/c.html>>



are manufactured outside of China. This requirement unfairly impacts the competitiveness of the foreign maritime equipment manufacturers. However, it should be noted that China does not impose VAT on components and equipment destined for so-called 'export projects', which include a foreign shipowner and foreign flag, conducted in foreign currency.

This practice affects Chinese shipbuilding businesses when it comes to ship repair and conversion, as many ship operators prefer to go to Singapore or elsewhere in Southeast Asia to repair and convert their ships. A direct consequence of this is that China's ship repair and conversion industry is not growing to its full potential, and Chinese shipyards are generating losses. It is notable that it is not currently possible to replace all ship components made overseas with locally produced components, as neither the standards nor the quality assurance are compatible. To promote the domestic ship repair and conversion industry, the working group recommends exempting imported ship components for assembly onboard vessels in China from VAT in alignment with international practice.

Foreign companies operating in China also experience challenges regarding VAT imposed on manpower services. When they issue an invoice to an international customer for a post-sales, onboard service—either in RMB or a foreign currency—six per cent VAT needs to be added, even when the work is carried out on non-Chinese flagged vessels sailing in international waters. Although they can apply for a VAT refund, the application process is not clear, and it takes significant time and resources to navigate. It is therefore suggested to exempt such onboard services provided on international vessels from VAT, which would benefit the Chinese market through alignment with international industry norms, while providing a more level playing field for local and foreign players.

Recommendations

- Exempt imported ship components for assembly onboard from import duties, in line with international practice, in order to foster the domestic ship repair and conversion business.
- Exempt onboard services provided on international vessels from the VAT requirement.

6. Support the Decarbonisation of China's Domestic Fleet by Clarifying the Application Process and Timeline for Certification of Maritime Equipment Imported from Abroad for Installation on China-flagged Vessels

Concern

The process of applying for and obtaining the MSA Type Approval Certificate (TAC), which is required to install equipment on China-flagged vessels, is not transparent.

Assessment

Foreign-manufactured marine equipment destined for China-flagged vessels needs two TACs: first, a TAC for vessels classified by the CCS and flying a foreign flag; and second, a TAC for vessels flying a China flag from the MSA. Based on the experience of working group members, while the process for obtaining the first TAC is relatively straightforward, the process for obtaining an MSA-TAC is highly opaque and ambiguous. Among other issues, there is neither a clear point of contact with whom to liaise and submit relevant documentation to, nor a timeframe for the process.

European manufacturers must obtain the MSA-TAC because China does not accept the EU Marine Equipment Directive (MED) certification procedure or 'wheelmark' for equipment, components or materials destined for China-flagged ship classes, despite the CCS being authorised to perform MED certification.³⁷ As a result, European equipment manufacturers are forced to apply for and obtain CCS certification, which often results in additional costs. This practice is unfair, as Chinese marine manufacturers can automatically obtain a MED certification from the CCS or another classification society approved by the EU, allowing them full access to the European market and vessels flying flags of any member state.

In addition, some European manufacturers are also subject to higher certification costs at the CCS than local manufacturers, even though their products are similar and have similar safety criticality or environmental performance. Likewise, it is unclear whether Chinese authorities will approve ballast water

³⁷ The MED certification covers a limited number of types of marine equipment, such as life-saving and firefighting equipment and scrubbers, and does not cover ballast water devices. However, it is still considered essential certification for European maritime manufacturers.





treatment systems (BWTS) manufactured by European or other foreign equipment manufacturers for installation on Chinese vessels, regardless of whether they have an International Maritime Organization-TAC issued by the CCS or other classification society.

This issue has been a long-term concern for working group members, as previously detailed in the *Shipbuilding Working Group Position Paper 2019/2020*.³⁸ One member company noted that although it first applied for the TAC in 2015, it did not obtain approval until 2018. In addition, the approval was granted as a 'one-off' by the CSS on behalf of the MSA but did not include approval for China-flagged vessels. While it has since become easier for foreign BWTS manufacturers to obtain both the CCS and the MSA-TAC approval, the process for certifying other foreign-made energy efficient technology and marine equipment is still unclear and complicated.

According to the Asian Development Bank (ADB), in 2020, more than 90 per cent of Chinese domestic, inland vessels operated on traditional diesel engines.³⁹ Depending on sources consulted, estimates of the number of domestic, inland river vessels in China range between 115,000 to 200,000, and all will need to be replaced or upgraded over the next 40 years.^{40&41}

European suppliers would be able to deliver around a quarter of this upgrading demand if barriers were lowered. Therefore, considering the average price of a new inland ship is approximately euro (EUR) 1.5 million, with equipment representing about 70 per cent of the newbuilding cost, the yearly market potential for European suppliers would be between EUR 650 million and EUR 2 billion. Apart from the business

opportunities, the decarbonisation of domestic shipping could be accelerated if foreign-made marine equipment (with suitable technology) could be made readily available to Chinese vessels.

Recommendations

- Ensure that the MSA-TAC application process is transparent, and clearly designate a single point of contact with whom to liaise and submit relevant documentation to.
- Issue official documentation once the application has been received.
- Stipulate the timeline for reviewing an application from when it is received to when the permits will be issued.
- Create a mechanism that allows companies to track their applications.

Abbreviations

ADB	Asian Development Bank
BWTS	Ballast Water Treatment Systems
CANSI	China Association of the National Shipbuilding Industry
CCS	China Classification Society
CO ₂	Carbon Dioxide
COSCO	China Ocean Shipping Company
ETS	Emissions Trading System
EU	European Union
EUR	Euro
FSRU	Floating Storage and Regasification Units
GHG	Greenhouse Gas
GOI	Group Open Innovation
LNG	Liquefied Natural Gas
MCT	Ministry of Culture and Tourism
MED	Marine Equipment Directive
MIIT	Ministry of Industry and Information Technology
MOT	Ministry of Transport
MSA	Maritime Safety Administration
R&D	Research and Development
RMB	Renminbi
TAC	Type Approval Certificate
VAT	Value-added Tax

³⁸ *Shipbuilding Working Group Position Paper 2019/2020*, European Union Chamber of Commerce in China, 24th September 2019, viewed 22nd April 2024, <https://www.eurochamber.com.cn/en/publications-archive/711/Shipbuilding_Working_Group_Position_Paper_2019_2020>

³⁹ *People's Republic of China: Study on the Development of Green Ports and Shipping*, ADB, December 2021, viewed 22nd April 2024, <<https://www.adb.org/projects/55032-001/main>>

⁴⁰ Information on the number of domestic ships is not precise and varies largely depending on the sources consulted. Both the ADB and the Chinese consultancy Zhi Yan estimate that there were 115,000 domestic inland vessels in 2020, but Statista estimates there were 126,800 vessels at the end of 2020: *Ibid.*; *Current Competition and Investment Outlook of Transport Vessel Industry in China 2021–2027*, Zhi Yan Consultancy, 3rd June 2021, viewed 22nd April 2024, <<https://www.chyxx.com/industry/202106/954998.html>>; Zhang, W, *Number of transport vessels in China from 2008 to 2021 (in 1,000s)*, Statista, 1st February 2022, viewed 22nd April 2024, <<https://www.statista.com/statistics/258515/number-of-vessels-in-china/>>

⁴¹ In 2021, the working group held a meeting with the China Transport Planning and Research Institute, which noted that there were approximately 200,000 inland river vessels in China.





Petrochemicals, Chemicals and Refining Working Group

Key Recommendations

1. Legislation and Law Enforcement

1.1 Strengthen Legislative Processes through Better Communication and by Involving a Broader Group of Stakeholders

- Involve chemical companies at all stages of the development of relevant regulations and standards.
- Provide a reasonable transition period and clear guidance at the local level when releasing updates to laws and policies.
- Strengthen current communication channels to better collect feedback from foreign enterprises and associations on regulation drafting and implementation to avoid 'one-size-fits-all' measures.
 - Provide a central platform on which relevant parties can raise questions and publish standard answers to frequently-asked-questions.
- Clarify the distinction in standards between mandatory requirements and good practices.
- Clarify the definition of 'two-high' projects and provide corresponding industry development guidelines on local project approvals.

1.2 Establish a Standardised Regulatory Environment

- Conduct regulatory training for authorities at all levels (municipal, provincial and national) and companies to align interpretations and enforcement.
- Involve and consult industry-specific experts on law enforcement regarding specialty chemicals to respect the uniqueness and best practices of this complex industry.
- Strengthen the permit approval process for projects and facilities to better align compliance requirements between the authorities and companies, based on the regulations related to chemical plants.

2. Sustainability and Green Chemistry

2.1 Promote the Chemical Industry's Participation in and Contribution to Sustainability, Innovation and the Green Economy

- Strengthen cooperation between the government and international businesses.
 - Encourage the central authorities to involve companies and international industrial associations as key stakeholders, particularly regarding the emissions trading scheme (ETS), carbon neutrality, environment, social and governance (ESG); 'responsible care' and health, safety and environment (HSE) management.
- Increase promotion of the 'Open to the Public' programme to improve societal awareness of both the sustainability and overall image of the chemical industry.
- Establish guidance and support for power purchase agreements (PPAs), trade in renewable electricity between neighbouring entities, energy storage and other emerging energy transition tools to accelerate decarbonisation of the chemical industry.
- Strengthen unified planning for the construction and management of industrial gas, public





- pipelines, heating, HCs waste disposal facilities and other public utilities at chemical parks.
- Accelerate the deployment of measures geared towards improving energy consumption intensity and efficiency by building, optimising, or sharing common utilities such as steam, wastewater treatment, and hazardous waste facilities.
 - Encourage renewable energy investment by establishing mechanisms such as a fast-track approval procedure for on-site photovoltaics and distributed wind power project installations in chemical parks.
 - Provide incentives and accelerate or simplify the permit approval process for demonstration projects.
 - Develop a national product carbon-footprint standard compatible with European standards to promote reduction of scope-three carbon emissions.
 - Develop national ESG regulations dedicated to the chemical industry by leveraging European best practices, such as ESG disclosure.
 - Deepen engagement with European petrochemicals, chemicals and refining companies on the implementation of ESG Action Plans at the local level.

2.2 Improve Policies for the Promotion of the Circular Economy within the Chemical Industry 5

- Foster value chain cooperation, and provide regulatory, financial and tax support, to promote the implementation of circular economy principles.
- Encourage energy and resource sharing and collaboration within chemical parks by simplifying the permit allocation process and providing more regulatory flexibility for innovative pilots.
- Simplify the certification and approval requirement to encourage waste recycling and utilisation projects, while offering the possibility of case-by-case exemptions.
- Pilot cross-provincial collaboration on waste recycling and utilisation.
- Grant tax incentives that promote plastic recycling processes, further improve urban waste infrastructure and accelerate the construction of a standardised system for recycled plastics.
- Standardise regulatory requirements for the chemical recycling of plastic waste, particularly regarding any necessary onsite pre-treatment and transportation to industrial parks for chemical recycling facilities.

3. Investment and Manufacturing Costs

3.1 Guarantee Fair and Reasonable Treatment by Local Authorities with Respect to Relocations and Temporary Closures of Enterprises and Chemical Parks B

- Ensure that any criteria provided and actions undertaken to compel businesses to relocate or temporarily close are based on laws and regulations that are transparent and published well in advance.
- Adopt a 'case-by-case' approach to address suggestions for plant relocations, providing significant lead-time and lenient timelines when relocations are deemed necessary to avoid disrupting chemical supply chains.
- Reach mutual agreement with companies on both relocation timelines and fair compensation to decrease their associated costs.



- Factor in secondary risks in overall shutdown policies to avoid disruptions to chemical plant operations and the subsequent possibility of explosions, particularly when measures are given at short notice.

3.2 Simplify the Regulatory Process to Support New Investments, and Market and Technology Innovation in Fine and Dangerous Chemicals Manufacturing 4

- Simplify the permit allocation process for minor recipe changes within the same product category to promote quick market responses and encourage innovation.
- Simplify the permit allocation process for plant debottlenecking projects that aim to increase production capacity and optimise the workflow without changing the main production process or increasing emissions.
- Establish a standardised permit approval process and provide measures to correct permit applications during the approval procedure.
- Optimise the application and approval processes for the Safety Production Licence permit.
 - Provide an online application and approval service.
 - Grant fast-track and simplified procedures for companies that perform well within the validity period.
- Regulate safety consulting agencies and experts.
- Open the channel for employees of foreign companies to join the 'expert pool' for safety inspections.
- Extend the validity period of SPLs in a timely manner when companies undertake new, modification or renovation projects.

4. Optimise the Legislative Framework for the Regulation of Chemicals to Ensure a Sustainable, Market-orientated and Internationalised Business Environment 11

- Improve the traceability code system.
 - Extend the grace period for implementation.
 - Conduct a gradual expansion of the application scope starting with 35 critically restricted hazardous chemicals (HCs).
 - Exempt HCs with packaging specifications of less than one litre (or one kilogram) from affixing traceability codes to internal and external packaging.
- Continue to optimise the online registration system for new chemicals.
 - Create a function to automatically identify repeatedly registered substances and special formats.
 - Allow deletion of incorrectly registered items or provide a one-click modification function, in case of errors.
 - Establish a dynamic adjustment mechanism to fix issues with the system itself in a timely manner.
 - Restore the function of creating sub-accounts.
 - Exempt laboratory-scale research or products used as reference standards from the catalogues of prohibited goods for import and export to encourage research and innovation.
- Strengthen industry-to-government exchanges on HC inspections.



Recent Developments

In 2023, China's production capacity of 24 major chemical products—including ethylene, propylene, polythene and polypropylene—increased by nearly 50 million tonnes, a 15 per cent year-on-year increase,¹ taking its “global share of petrochemicals capacity” up to 25 per cent.² By contrast, domestic consumption in China remained sluggish, reflected in the utilisation rate of 75 per cent in 2023, down 0.5 percentage points year-on-year. One of the main contributors to the emergence of overcapacity, which was reported by 51 per cent of respondents from the petrochemicals industry to the Chamber's *Business Confidence Survey 2024*,³ has been the poor performance of China's construction industry.⁴

Other recent developments that have impacted members of the Petrochemicals, Chemicals and Refining Working Group include the following.

Legislation and Law Enforcement

There has been some progress in overall industry regulation, specifically:

- improvements to the legislative processes, with more public consultation during the drafting of regulations;
- the release of detailed instructions on operational requirements;^{5&6&7} and
- reinforced legislation and law enforcement.

Sustainability and Green Chemistry

The chemical industry is undergoing a significant

transformation due to a series of factors including intensified global competition, fluctuations in energy markets, increasing de-industrialisation, and the strengthening of decarbonisation policies across the world. Consequently, companies are re-assessing and adjusting their corporate strategies.

China set out the 30/60 goals in 2021⁸ and has been building the national carbon emissions trading scheme (ETS).^{9&10&11} However, the development of China's ETS market has been slow due to the poor data management of carbon emissions, and to date, it still has not included cement, petrochemicals and many other heavy-emitting sectors, impeding the country's decarbonisation progress.¹² In 2024, the Ministry of Ecology and Environment (MEE) released two drafts on guiding the accounting and reporting procedures for the aluminium smelting industry which are expected to enhance the data management of the carbon market, thus accelerating its expansion.¹³ The working group hopes that the official regulations will be in place and that petrochemical-related sectors will be included in the national ETS as soon as possible. At the same time, the guideline for the chemical industry has not yet been issued or published. As explained in the European Chamber's *Carbon Neutrality: The Role of European Companies in China's Race to 2060*, the ETS's impact remains limited due to its restricted scope, the low carbon pricing and the lack of an absolute cap on emissions.¹⁴

1 *China's chemical product export growth further accelerated*, Sinopec News, 22nd May 2024, viewed 7th July 2024, <http://www.sinopecnews.com.cn/xnews/content/2024-05/22/content_7095915.html>

2 *2024 Chemical industry outlook*, Deloitte, viewed 5th May 2024, <<https://www2.deloitte.com/us/en/insights/industry/oil-and-gas/chemical-industry-outlook.html>>

3 *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, p.11, 10th May 2024, viewed 9th July 2024, <https://www.europeanchamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>

4 Pflug, K, *Tougher Times for China's Chemical Industry*, CHEManager, 24th January 2024, viewed 9th July 2024, <<https://www.chemanager-online.com/en/news/tougher-times-chinas-chemical-industry>>

5 *Technical Guidelines on Key Industrial Performance Grading and Emission Mitigation Measures Under Heavy-polluting Weather—Petroleum Refining and Petroleum Chemistry Industry, (Draft for Comments)*, Ministry of Ecology and Environment (MEE), 7th November 2023, viewed 5th May 2024, <<https://www.mee.gov.cn/xxgk2018/xxgk/xxgk06/202311/W020231107365152601573.pdf>>

6 *Interim Guidelines for the Safe Disposal of Abnormal Conditions in the Production Process of Chemical Enterprises (Draft for Comments)*, MEM, 22nd December 2023, viewed 5th May 2024, <https://www.mem.gov.cn/gk/zfxxgkpt/fdzgknt/202312/t20231222_472846.shtml>

7 *Action Plan for the Integrated Development of Oil and Gas Exploration and New Energy (2023–2025)*, National Energy Administration, 27th February 2023, viewed 5th May 2024, <http://zfxxgk.nea.gov.cn/2023-02/27/c_1310704758.htm>

8 The 30/60 goals refer to two headline climate goals set out by China in 2021: to peak carbon dioxide (CO₂) emissions before 2030 and achieve carbon neutrality before 2060. The two goals are often referred to as the '30/60' goals. Further to its obligations under the Paris Agreement, China announced its commitment to peak its national carbon emissions by 2030 and to achieve carbon neutrality by 2060: *China headed towards carbon neutrality by 2060; President Xi Jinping vows to halt new coal plants abroad*, United Nations, 21st September 2021, viewed 5th May 2024, <<https://news.un.org/en/story/2021/09/1100642>>

9 *Measures for the Administration of Carbon Emission Trading (Trial)*, MEE, 5th January 2021, viewed 5th May 2024, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk02/202101/t20210105_816131.html>

10 *Ministry of Ecology and Environment Releases Report on the First Compliance Cycle of the National Carbon Emissions Trading Market*, MEE, 1st January 2023, viewed 5th May 2024, <https://www.mee.gov.cn/ywqz/ydqhbh/wsqtqz/202301/t20230101_1009228.shtml>

11 *Interim Regulation on the Administration of Carbon Emission Trading*, State Council, 25th January 2024, viewed 5th May 2024, <https://www.gov.cn/zhengce/zhengceku/202402/content_6930138.htm>

12 *National Carbon Market Expansion May Be Delayed to 2023*, China Dialogue, 19th May 2022, viewed 5th May 2024, <<https://chinadialogue.net/en/digest/national-carbon-market-expansion-may-be-delayed-to-2023/>>

13 *Guidelines for Enterprise Greenhouse Gas Emission Accounting and Reporting—Aluminium Smelting Industry, and Technical Guidelines for Enterprise Greenhouse Gas Emission Verification—Aluminium Smelting Industry*, MEE, 15th March 2024, viewed 5th May 2024, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk06/202403/t20240315_1068508.html>

14 *Carbon Neutrality: The Role of European Companies in China's Race to 2060*, European Union Chamber of Commerce in China, 25th May 2022, viewed 5th May 2024, <<https://www.europeanchamber.com.cn/en/publications-carbon-neutrality-report>>



Investment and Manufacturing Costs

The Yangtze River Protection Law prohibits constructing or expanding chemical parks and projects within one kilometre of the river,¹⁵ with no recognition for projects intended to upgrade plants' safety and ecological protection. Several working group members have since reported that local authorities ordered them to shut down within unreasonably short timeframes. In addition, many companies received conflicting information from different government departments and encountered difficulties establishing direct negotiation channels with the relevant authorities. The government should avoid a 'one-size-fits-all' approach to closures, and provide transparent and fair criteria, and adequate timeframes, for plant shutdowns to minimise business disruptions.

According to the Chinese regulation,¹⁶ companies engaged in mining, construction, and the production of hazardous chemicals (HCs) must obtain the Safety Production Licence (SPL) before commencing production. However, the SPL application procedure is complicated and time-consuming, placing a heavy administrative burden on companies and hindering efficient production. Moreover, in response to the ongoing revisions being made to SPL-related laws and regulations, enterprises are required to promptly adapt to new regulatory requirements by constantly updating their safety management systems accordingly, which generates heavy costs and further exacerbates their administrative burden.

Management of HCs and Pollutants

Implementing the *National Plan for Centralised Management of Hazardous Chemical Safety Risks* has been a challenge for companies.¹⁷ Specifically, it requires companies to make quick changes under stringent timelines, posing huge compliance challenges for European multinational companies (MNCs) given their internal reporting procedures to headquarters and the

involvement of multiple stakeholders.¹⁸

While the working group appreciates China's effort to optimise the national framework for pollutant management,^{19&20&21} and to strengthen local implementation, there is still a lack of detailed guidance on the management of new pollutants. The working group will continue to closely monitor the progress of the relevant regulations and recommends the timely release of supporting guidelines.

The MEE's *Action Plan for New Pollutants Treatment*,²² issued in May 2022, calls for effective regulations to monitor and control the environmental risks triggered by toxic and HCs. However, two years after the MEE statement that the draft measures were ready for legal review,²³ as of June 2024, relevant regulations or measures are still to be released.

Key Recommendations

1. Legislation and Law Enforcement

1.1 Strengthen Legislative Processes through Better Communication and by Involving a Broader Group of Stakeholders

Concern

Unreasonable and/or ambiguous regulations, combined with a lack of effective communication between companies and government, have led to both difficulties in corporate implementation and inconsistencies in local law enforcement.

Assessment

Although the Chinese Government has ambitious plans for greening the economy and promoting innovation,

15 *The Yangtze River Protection Law*, The National People's Congress, 26th December 2020, viewed 8th May 2024, <http://www.npc.gov.cn/npc/c2/c30834/202012/120201226_309444.html>

16 *Regulations on Safety Production Licence (2014 Revision)*, State Council, 29th July 2014, viewed 8th May 2024, <<https://flk.npc.gov.cn/detail2.html?ZmY4MDgwODE2ZjNjYmlzYzAxNmY0MGYwIOWVINTBJMGY>>

17 *This policy proposes enhancing the digital and intelligent control of HC risks throughout a product's entire life cycle*: National Plan for Centralised Management of Hazardous Chemical Safety Risks, MEM, 5th January 2022, viewed 8th May 2024, <https://www.mem.gov.cn/gk/zfxxgkpt/fdzdgknr/202201/t20220105_406261.shtml>

18 Companies are required to meet the requirements by the end of 2024: *Notice on Promoting the Informatisation Management of HC in and out of Storage and Dangerous Goods Loading and Unloading Based on the 'One Enterprise, One Product, One Code' System*, Shanghai Emergency Management Bureau and Shanghai Municipal Transportation Commission, 9th February 2024, viewed 8th May 2024, <<https://yjglj.sh.gov.cn/xxgk/zfxxgk/zcwj/aqscgl/20240218/9c7db26fd6bb45d4a278fd5c2b285444.html>>

19 *Action Plan for New Pollutants Treatment*, MEE, 24th May 2022, viewed 8th May 2024, <https://www.mee.gov.cn/zcwj/gwywj/202205/t20220524_983032.shtml?keywords=%E6%96%B0%E6%B1%A1%E6%9F%93%E7%89%A9>

20 *List of New Pollutants for Priority Management (2023)*, MEE, 30th December 2022, viewed 8th May 2024, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk02/202212/t20221230_1009167.html?keywords=>>

21 *Measures for the Administration of Pollutant Discharge Permitting*, MEE, 1st April 2024, viewed 8th May 2024, <https://www.mee.gov.cn/gzk/gz/202404/t20240408_1070147.shtml>

22 *Action Plan for New Pollutants Treatment*, MEE, 24th May 2022, viewed 8th May 2024, <https://www.mee.gov.cn/zcwj/gwywj/202205/t20220524_983032.shtml?keywords=%E6%96%B0%E6%B1%A1%E6%9F%93%E7%89%A9>

23 *Reply to Recommendation No. 3358 of the Fifth Session of the 13th National People's Congress*, MEE, 12th September 2022, viewed 8th May 2024, <https://www.mee.gov.cn/xxgk2018/xxgk/xxgk13/202301/t20230117_1013354.html>





there is a lack of mechanisms for facilitating cooperation between companies and institutions. This is reflected by the fact that certain requirements and regulations are not reasonable, making it difficult for companies to implement and comply with them. The standard for volatile organic compounds (VOCs), for example, requires manufacturers to remove 90 per cent of VOCs even if emissions are already limited. This comes at a high cost in terms of both investment and energy efficiency. Meanwhile, in the *Guiding Opinions on Promoting the Development of the Petrochemical and Chemical Industry in the 14th Five-year Plan Period*,²⁴ requirements include significantly reducing energy consumption and carbon emissions per unit of bulk products and reducing total VOC emissions by more than 10 per cent compared to the 13th Five-year Plan period.

In addition, some regulations lack clarity, resulting in inconsistent enforcement among different provinces and cities. For example, if there is ambiguity in a newly released regulation, a local government department might stop issuing permits until receiving further guidelines from higher authorities. This has occurred frequently in the past few years in relation to environment and safety management and is currently a concern for classifying projects under the 'two-high' requirement.^{25&26} The working group therefore recommends that regulations be clarified to enable alignment among local and central authorities before they go into force.

Even when clarification is provided, regulations may still not be adequately enforced, as is the case with the Pollutant Discharge Permit. The MEE has clarified that it will be the only management tool for site-specific supervision in multiple policy documents,²⁷ yet this is still not adequately enforced, despite being in place since 2018.²⁸

24 *Guiding Opinions on Promoting the Development of the Petrochemical and Chemical Industry in the 14th Five-year Plan Period*, MIIT and five other ministries, 28th March 2022, viewed 9th May 2024, <https://www.gov.cn/zhengce/zhengceku/2022-04/08/content_5683972.htm>

25 In the transition to a low-carbon economy, China has curbed 'two-high' projects (high energy consumption, high pollution including carbon emissions), which focus on carbon-intensive industries such as steel manufacturing, nonferrous metals and petrochemicals.

26 *Plan for Improving the Dual Control System of Energy Consumption Intensity and Total Amount*, State Council, 11th September 2021, viewed 9th May 2024, <http://www.gov.cn/zhengce/zhengceku/2021-09/17/content_5637960.htm>

27 *MEE Answered the Reporter's Questions on the Technical Specifications for the Application and Issuance of Pollutant Discharge Permit and Industrial Solid Waste*, MEE, 15th November 2021, viewed 9th May 2024, <https://www.mee.gov.cn/ywdt/zfbt/202111/t20211115_960421.shtml>

28 *Suggestions on Comprehensively Promoting Post-Pollution Permit Management*, Guangmingwang News, 24th April 2020, viewed 16th May 2024, <<https://aiqicha.baidu.com/qifuknowledge/detail?id=10004447468>>

Recommendations

- Involve chemical companies at all stages of the development of relevant regulations and standards.
- Provide a reasonable transition period and clear guidance at the local level when releasing updates to laws and policies.
- Strengthen current communication channels to better collect feedback from foreign enterprises and associations on regulation drafting and implementation to avoid 'one-size-fits-all' measures.
 - Provide a central platform on which relevant parties can raise questions and publish standard answers to frequently-asked-questions.
- Clarify the distinction in standards between mandatory requirements and good practices.
- Clarify the definition of 'two-high' projects and provide corresponding industry development guidelines on local project approvals.

1.2 Establish a Standardised Regulatory Environment

Concern

Inconsistent regulatory enforcement negatively impacts companies' operations.

Assessment

The chemical industry is complex, and while current regulations and standards can cover most commodity products and processes, some requirements will not be suitable for speciality chemical companies. Therefore, it is important to respect best practices in sub-industries and involve industry-specific experts in the implementation processes for risk-based management.

In addition, inspection and law enforcement officials do not necessarily have expertise in chemicals. Therefore, when implementing regulations related to chemical manufacturing sites, targeted training for officials is essential to achieve alignment between companies and the authorities.

Another issue commonly encountered by chemicals companies is inconsistency across certain standards and guidelines, which makes it difficult for them to determine the correct criteria or requirements regarding environment, health and safety (EHS) management, findings and even penalties for certain items.



Recommendations

- Conduct regulatory training for authorities at all levels (municipal, provincial and national) and companies to align interpretations and enforcement.
- Involve and consult industry-specific experts on law enforcement regarding speciality chemicals to respect the uniqueness and best practices of this complex industry.
- Strengthen the permit approval process for projects and facilities to better align compliance requirements between the authorities and companies, based on regulations related to chemical plants.

2. Sustainability and Green Chemistry

2.1 Promote the Chemical Industry's Participation in and Contribution to Sustainability, Innovation and the Green Economy

Concern

Government policies have reinforced negative views of the chemical industry in China, overlooking its contributions to a responsible, green and innovative economy.

Assessment

Many accidents in the chemicals industry stem from a lack of risk awareness and knowledge about best practices. European MNCs in the industry are well advanced in implementing EHS and environmental, social and governance (ESG) practices. However, their expertise has still not been fully recognised by the Chinese authorities which continue to apply a 'one-size-fits-all' approach to the industry, such as imposing EHS-related barriers to all chemical companies regardless of their compliance status.²⁹ A formal channel for communication and cooperation between chemical companies and government officials would therefore help to promote responsible and sustainable practices, and improve preventative measures. This collaboration should include chemical parks and/or associations, such as the Association of International Chemical Manufacturers (AICM), the China Petroleum and Chemical Industry Federation and the Together for Sustainability (TFS) Initiative. Doing so would help to promote good corporate practices such as 'responsible

care' and ESG,³⁰ as well as programmes such as 'Open to the Public', the purpose of which is to improve societal awareness about the chemical industry and its sustainable development.³¹

Chemical parks face challenges adapting to green development. This situation could be improved by establishing fast-track approval procedures for renewable energy investments such as installing onsite photovoltaics and distributed wind power. Establishing guidance and providing support for energy transition tools, such as power purchase agreements (PPAs), trade in renewable electricity between neighbouring entities, and energy storage, would also accelerate green development in the industry. Although the Ministry of Industry and Information Technology (MIIT) released the *Guiding Opinion for Promoting Standardised Development of Chemical Parks in 2015*,³² there is still insufficient infrastructure and utilities to support such development, while energy curbs are often imposed on energy-intensive industries.

The lack of facilities in chemical parks is largely due to the pressure on park management to attract further investment, which results in them neglecting important planning issues such as optimising public utilities, including access to electricity, heating and gas. To contribute meaningfully to China's 30/60 Goals,³³ chemical parks need to optimise industrial waste treatment, steam generation, carbon capture, utilisation and storage, and other public utilities. Developing a national product carbon-footprint standard compatible with European standards, to promote the reduction of scope 3 carbon emissions,³⁴ is also recommended.

In March 2024, the municipalities of Shanghai and Beijing issued documents on improving their respective

²⁹ *AICM Points Out Barriers to Responsible Care in China*, Chemical Watch, 28th July 2016, viewed 9th May 2024, <<https://chemicalwatch.com/48853/aicm-points-out-barriers-to-responsible-care-in-china>>

³⁰ *Responsible Care*, International Council of Chemical Associations, viewed 9th May 2024, <<https://icca-chem.org/focus/responsible-care/>>

³¹ Chemical companies and associations in China regularly organise 'open to public' events for the public to learn more about the industry and its sustainability efforts and plans.

³² *Guiding Opinion to Promote the Standardised Development of Chemical Industry Parks*, Ministry of Industry and Information Technology, 10th December 2015, viewed 9th May 2024, <https://www.miit.gov.cn/zw/gk/zcwj/wjfb/qt/art/2020/art_568c1587f2af497192c10290a277c2cc.html>

³³ China's 30/60 Goals are to peak carbon emissions before 2030 and to achieve carbon neutrality by 2060.

³⁴ *Briefing: What are Scope 3 emissions?*, Carbon Trust, viewed 9th May 2024, <<https://www.carbontrust.com/our-work-and-impact/guides-reports-and-tools/briefing-what-are-scope-3-emissions>>





ESG systems.^{35&36} The working group welcomes these developments, and will closely monitor the implementation in these cities, and recommends that more cities roll out similar plans.

Recommendations

- Strengthen cooperation between the government and international businesses.
 - Encourage the central authorities to involve companies and international industrial associations as key stakeholders, particularly regarding the ETS, carbon neutrality, ESG, 'responsible care' and EHS management.
- Increase promotion of the 'Open to the Public' programme to improve societal awareness of both the sustainability and overall image of the chemical industry.
- Establish guidance and support for PPA, trade in renewable electricity between neighbouring entities, energy storage and other emerging energy transition tools to accelerate decarbonisation of the chemical industry.
- Strengthen unified planning for the construction and management of industrial gas, public pipelines, heating, HCs waste disposal facilities and other public utilities at chemical parks.
- Accelerate the deployment of measures geared towards improving energy consumption intensity and efficiency by building, optimising or sharing common utilities such as steam, wastewater treatment and hazardous waste facilities.
- Encourage renewable energy investment by establishing mechanisms such as a fast-track approval procedure for on-site photovoltaics and distributed wind power project installations in chemical parks.
- Provide incentives and accelerate or simplify the permit approval process for demonstration projects.
- Develop a national product carbon-footprint standard compatible with European standards to promote the reduction of scope-three carbon emissions.
- Develop national ESG regulations dedicated to the chemical industry by leveraging European best

practices, such as ESG disclosure.

- Deepen engagement with European petrochemicals, chemicals and refining companies on the implementation of ESG Action Plans at the local level.

2.2 Improve Policies for the Promotion of the Circular Economy within the Chemical Industry



Concern

China's policy enforcement lacks flexibility to promote circular innovation within the chemical industry and establish a complete plastic waste collection and recovery system.

Assessment

Foreign chemical companies operating in China already have a strong focus on sustainability throughout a product's whole life cycle, as well as on developing products that are recyclable by design at the end of their lifespan.

However, in China, incomplete physical and policy infrastructure is hindering the mass adoption of chemical recycling of waste plastics, generally sourced from the 'dry waste' category of urban waste. On top of this, it is often difficult to separate waste plastics of sufficiently high quality to be used as raw materials from other dry waste. Advances in urban domestic waste infrastructure are therefore necessary to improve overall recycling processes. In this regard, a cross-provincial disposal system that can combine capacity and facilities for all types of waste is recommended. The working group also recommends standardising the regulatory requirements for chemical recycling of plastic waste, particularly regarding onsite pre-treatment as well as transportation to industrial parks for the purpose of using chemical recycling facilities.

It would also be beneficial to increase industry/government collaboration on the creation of green standards for the whole plastic recycling supply chain. Tax reforms that exempt green products and services from consumption tax and moving tax collection to the end of retail consumption would be positive reforms that would boost the development of the chemical recycling industry. Furthermore, full value-added tax refunds, and extending or expanding various existing preferential tax treatments (for example, the catalogues of preferential

³⁵ *Three-year Action Plan to Accelerate the Improvement of Environmental, Social and Governance (ESG) Capabilities of Foreign-related Enterprises in Shanghai*, Shanghai Municipal Commission of Commerce, 1st March 2024, viewed 9th May 2024, <<https://www.shanghai.gov.cn/gwkw/search/content/d4259e64a62042689879fb3901c86bef>>

³⁶ *Implementation Plan for Promoting the High-quality Development of an Environmental, Social and Governance (ESG) System in Beijing (Draft for Comments)*, Beijing Municipal Commission of Development and Reform, 15th March 2024, viewed 9th May 2024, <https://fgw.beijing.gov.cn/zmhd/dczj/yjgg/202403/t20240315_3590999.htm>



corporate income tax treatment for specialised equipment in the areas of environmental protection, water conservation or energy usage reduction),³⁷ could likewise offset investment costs of the sophisticated equipment and technology required by chemical recycling industries.

Following the release of *Circular Economy Promotion Plan during the 14th Five-Year Period*,³⁸ issued by the National Development and Reform Commission (NDRC) in 2021 to promote circular development of industrial parks and improve the waste recycling system, a series of supporting policies were issued over the past two years. However, policies dedicated to the chemical industry and relevant pilots are still insufficient, especially those regarding waste valorisation along the entire value chain, shared wastewater treatment plants and utilisation facilities.

In general, the application scope of current regulations and standards is not broad enough to encompass enough specific cases. Currently, projects that have a favourable impact on the circular economy are not sufficiently recognised, and are still subject to complicated permit allocation processes and ‘one-size-fits-all’ regulations, which is not conducive to engaging more plants and chemical parks in innovative pilot projects.

Recommendations

- Foster value chain cooperation, and provide regulatory, financial and tax support, to promote the implementation of circular economy principles.
- Encourage energy and resource sharing and collaboration within chemical parks by simplifying the permit allocation process and providing more regulatory flexibility for innovative pilots.
- Simplify the certification and approval requirement to encourage waste recycling and utilisation projects, while offering the possibility of case-by-case exemptions.
- Pilot cross-provincial collaboration on waste recycling and utilisation.
- Grant tax incentives that promote plastic recycling processes, further improve urban waste infrastructure

³⁷ A Summary of China's Corporate Income Tax Incentives, Jones Day, July 2008, viewed 9th May 2024, <<https://www.jonesday.com/en/insights/2008/07/a-summary-of-chinas-corporate-income-tax-incentives>>

³⁸ *Circular Economy Promotion Plan during the 14th Five-Year Period*, NDRC, 1st July 2021, viewed 9th May 2024, <https://www.gov.cn/zhengce/zhengceku/2021-07/07/content_5623077.htm>

and accelerate the construction of a standardised system for recycled plastics.

- Standardise regulatory requirements for the chemical recycling of plastic waste, particularly regarding any necessary onsite pre-treatment and transportation to industrial parks for chemical recycling facilities.

3. Investment and Manufacturing Costs

3.1 Guarantee Fair and Reasonable Treatment by Local Authorities with Respect to Relocations and Temporary Closures of Enterprises and Chemical Parks

Concern

The implementation of measures to prevent the unfair closure or relocation of EHS-compliant chemical facilities has been inconsistent, particularly at the local level.

Assessment

Closure or relocation initiatives should involve continuous communication between authorities and enterprises, and employ a customised ‘one enterprise, one policy’ approach. However, authorities are currently adopting one-size-fits-all enforcement with a focus on quotas rather than performance, which can damage the chemical supply chain and have other negative repercussions. Working group members have also reported that the time allowed for relocating entire operations is often unrealistic.

Provincial safety and environmental offices advise municipal governments on which plants should be closed or relocated. However, enterprises are unable to communicate directly with these offices and therefore rely on information from local industry and information bureaus. These bureaus take the advice of the provincial offices as orders rather than suggestions, even if there is no evidence that the operations concerned pose an environmental hazard.

When closures or relocations are unavoidable, the working group urges that secondary risks be factored in to polices to avoid both disruptions to chemical plant operations and the risk of explosions, particularly when measures are introduced at short notice.

Recommendations

- Ensure that any criteria provided and actions undertaken to compel businesses to relocate or temporarily close are based on laws and regulations that are transparent



and published well in advance.

- Adopt a 'case-by-case' approach to address suggestions for plant relocations, providing significant lead-time and lenient timelines when relocations are deemed necessary to avoid disrupting chemical supply chains.
- Reach mutual agreement with companies on both relocation timelines and fair compensation to decrease their associated costs.
- Factor in secondary risks in overall shutdown policies to avoid disruptions to chemical plant operations and the subsequent possibility of explosions, particularly when measures are given at short notice.

3.2 Simplify the Regulatory Process to Support New Investments, and Market and Technology Innovation in Fine and Dangerous Chemicals Manufacturing

Concern

Strict permit allocation requirements for increasing production capacity or making minor changes to product recipes hinder fine and dangerous chemicals manufacturers from quickly adapting to market conditions.

Assessment

The permit allocation process for fine chemicals manufacturing is very stringent, and includes requirements for safety, environmental impact and occupational health assessments, as well as capital expenditure thresholds. To adapt to market changes, downstream fine chemicals manufacturers sometimes need to adjust recipes or technologies. If these adjustments involve raw materials that are not on the plant's list of registered chemicals, the new materials must undergo an entirely new permit allocation process, even if they are replacing an ingredient with similar properties and do not bring any additional operational risks or create more pollution.

The same constraint is true for production increases. Permit allocation processes stipulate maximum production capacity. Therefore, to increase manufacturing capacity—for instance, when debottlenecking is required—manufacturers must relaunch the permit process, which usually takes six months to one year.³⁹ Creating a simplified permit allocation process for minor

replacements of fine chemical ingredients or slight capacity increases would reduce administrative burdens and allow manufacturers to respond more competitively to market changes. Since China implemented the HSE-related regulatory system in 2011,⁴⁰ many companies have faced challenges in closing the gap between existing facilities and new requirements. This is partly due to the lack of mechanisms to support companies in both compliance and safety training. As each chemical producer handles thousands of different products, professional expertise, including sufficient industrial knowledge, is required to conduct risk-based permit reviews.

The SPL application process for the manufacturing of dangerous chemicals is excessively complicated, and requires the submission of numerous documents and materials on the safety production responsibility system, safety production procedures, safety training certificates and safety assessment reports, among others. Preparing and submitting this documentation is time-consuming and places high demands on enterprise management capabilities. Additionally, in response to the continuous revisions of relevant laws and regulations related to production safety, companies are required to promptly adapt to new regulatory requirements by making constant changes to their safety management systems, which imposes a heavy administrative burden.

Qualified safety assessment consulting agencies are entrusted to conduct safety assessment reports in accordance with the law and rectify existing safety production issues. However, the scope of application between new and old laws and regulations is unclear, which can lead to third-party agencies advising companies to modify production facilities to an extent that may be unnecessary under the new laws and regulations. Nevertheless, in such cases, European MNCs will still make the advised changes to ensure compliance, resulting in unnecessary additional operating costs.

Moreover, most of the inspection personnel have gained professional experience from Chinese universities, state-owned enterprises or design institutes, with few having worked with MNCs. These experts tend

³⁹ *Debottlenecking: What It Is and How It Can Help Optimize Downstream Processes*, Audubon, 21st August 2014, viewed 9th May 2024, <<https://auduboncompanies.com/debottlenecking-what-it-is-and-how-it-can-help-optimize-downstream-processes/>>

⁴⁰ *Health, Safety and Environment (HSE), Workplace Testing*, 14th March 2021, viewed 9th May 2024, <<https://www.workplacetesting.com/definition/16/health-safety-and-environment-hse>>



to adopt a conservative approach, relying solely on Chinese national GB standards without considering actual situations or the advanced and proven methods deployed by international companies. This has led to redundant and contradictory standards systems co-existing within the same company: one (the GB standards) just for passing inspection checks to obtain the SPL; and the other (the company's own system) for actual operations.

Recommendations

- Simplify the permit allocation process for minor recipe changes within the same product category to promote quick market responses and encourage innovation.
- Simplify the permit allocation process for plant debottlenecking projects that aim to increase production capacity and optimise the workflow without changing the main production process or increasing emissions.
- Establish a standardised permit approval process and provide measures to correct permit applications during the approval procedure.
- Optimise the application and approval processes for the SPL permit.
 - Provide an online application and approval service.
 - Grant fast-track and simplified procedures for companies that perform well within the validity period.
- Regulate safety consulting agencies and experts.
- Open the channel for employees of foreign companies to join the 'expert pool' for safety inspections.
- Extend the validity period of SPLs in a timely manner when companies undertake new, modification or renovation projects.

4. Optimise the Legislative Framework for the Regulation of Chemicals to Ensure a Sustainable, Market-orientated and Internationalised Business Environment



Concern

Increased supervision and law enforcement inspections at all levels increases operational challenges and impacts profitability.

Assessment

Traceability Code System

At the beginning of 2022, the Work Safety Commission

of the State Council published a circular aimed at enhancing the level of digitalised and intelligent control of HC safety risks.⁴¹ The circular requires the Ministry of Emergency Management (MEM) to lead the upgrading and transformation of the chemical registration system, implementing the 'one-enterprise, one-product, one-code' management of each HC for each relevant enterprise. Each registered chemical is assigned a quick response (QR) code from the National Registration Centre of Chemicals (NRCC), known as the HC safety information code or the NRCC code.

The NRCC code has been piloted for several years in multiple provinces, including Guangdong, Shandong, Zhejiang and Jiangsu. The traceability code was then launched by Shanghai in February 2024. The traceability code could be considered an upgrade of the national pilot of the 'one-enterprise, one-product, one-code' system, as it records not only the product registration information (that is already contained in the NRCC code), but also the details throughout the full life cycle of the product. However, the Shanghai system has brought significant compliance challenges for HC companies.⁴²

First, HCs are individually coded for each lot of each good, which imposes a significant burden and increased operating costs for companies in the HC industry. Second, companies are required to complete registration of all the HCs on the *Catalogue of Hazardous Chemicals (2015 Edition)*⁴³ with the system by the end of 2024. The application scope is too extensive for such a short timeline. For MNCs, it would take at least one to two years and incur high costs to upgrade and connect corporate enterprise resource planning (ERP) systems with the government system. MNCs face even more complexity due to the involvement of multiple stakeholders along the supply chain. On top of this, MNCs need to gain approval from their headquarters before making any changes

⁴¹ Circular of the Work Safety Commission of the State Council on the Issuance of the National Programme for Concentrated Management of Safety Risks of Hazardous Chemicals, State Council, 5th January 2022, viewed 10th July 2024, <https://www.mem.gov.cn/gk/zfxxgkpt/fdzdgknr/202201/t20220105_406261.shtml>

⁴² Notice on Advancing the Management on the Inventory of Hazardous Chemicals and the Loading and Unloading of Dangerous Goods through the Implementation of 'One Enterprise, One Product with One QR Code', ChemRadar, SEMB and Shanghai Municipal Transport Commission, <<https://www.chemradar.com/tools/rsdb/detail/dd7q5mmd08hs>>

⁴³ Catalogue of Hazardous Chemicals (2015 Edition), MIIT, 9th March 2015, viewed 7th July 2024, <https://wap.miit.gov.cn/ssqqhxpityflhbqzdgz/fgzc/zywj/art/2023/art_0b9007c77d384fd2ac47da4e60231af9.html>



to their existing systems, an additional step that may lead to them exceeding the specified timeline. The grace period for the transition is not sufficient even for local regulatory departments to deploy appropriate implementation plans. It is therefore recommended to conduct a phased implementation, starting with 35 critically regulated HCs, then gradually expanding the scope with a reasonable grace period.

In addition, although the policy exempts companies from registering traceability codes for small packages below 100 millilitres (or 100 grams), reagent companies still face significant obstacles. Some small-sized packaging exceeding 100 millilitres (or 100 grams) still does not have enough space to accommodate a proper traceability code.

Online Registration System for New Chemicals

Since the online registration system for new chemicals under *Order 12* was put in place in 2020,⁴⁴ the MEE has been taking positive steps to address issues and improve the system's efficiency. For example, the upper limit of substances in a single filing has been raised based on companies' suggestions. Nevertheless, the system still has room for further optimisation.

First, the system is not able to identify repeatedly registered substances, leading to duplicate registrations and increased compliance challenges for companies. Second, the system lacks a one-click modification function or a function to remove incorrectly registered substances to help companies efficiently correct mistakes during the registration process. Third, there is currently no dynamic adjustment mechanism to fix issues with the system itself in a timely manner. Fourth, the working group recommends that the system restore the function of creating sub-accounts and incorporate an automatic recognition feature for special format.

In addition, the draft revisions of the *Regulations on Environmental Risk Management of Toxic and HC* and the Hazardous Chemical Safety Law suggest that HCs and new chemicals in small volumes could be

exempted from registration.^{45&46} However, the revision process of these two documents has been slow. As of May 2024, the finalised versions still have not been published, meaning a scientific and regulatory basis for chemical management is still absent in China.

Products that are categorised as strictly restricted toxic chemicals and yet meet the exemption provisions for laboratory-scale research or reference standards are still required to obtain an import release permit, posing challenges for companies. First, the application requires companies to provide certain client and project information that is too detailed to gather, especially in the initial stages of research and development (R&D). Second, the certification process is time-consuming, causing delays in business operations and hindering research progress, which is not conducive to research and development and innovation activities in China.

Post-inspection Dialogue

Over the years, the Chinese Government has strengthened inspections of HCs companies. The working group appreciates the adoption of its recommendation from the *Position Paper 2023/2024*,⁴⁷ to issue specific law enforcement plans and clear guidelines to clarify the implementation and criteria for chemical inspections. To further optimise inspection work, the working group recommends that information-sharing meetings be held after inspections have taken place in order to deepen communication between industry and government on the matter, to exchange best practices and inspection findings so that companies can better comply.

Recommendations

- Improve the traceability code system.
 - Extend the grace period for implementation.
 - Conduct a gradual expansion of the application scope starting with 35 critically restricted HCs.
 - Exempt HCs with packaging specifications of less than one litre (or one kilogram) from affixing traceability codes to internal and external packaging.

⁴⁴ *Measures for the Environmental Management Registration of New Chemical Substances* ([2020] Order No. 12), MEE, 29th April 2020, viewed 20th May 2024, <https://www.mee.gov.cn/xxgk/xxgk02/202005/t20200507_777913.html>

⁴⁵ Reply to Recommendation No. 3358 of the Fifth Session of the 13th National People's Congress, MEE, 12th September 2022, viewed 20th May 2024, <https://www.mee.gov.cn/xxgk/xxgk13/202301/t20230117_1013354.html>

⁴⁶ Hazardous Chemical Safety Law (Draft for Comments), MEM, 2nd October 2020, viewed 20th May 2024, <https://www.mem.gov.cn/gk/tzgg/tz/202010/t20201002_368140.shtml>

⁴⁷ *Petrochemicals, Chemicals and Refining Working Group Position Paper 2023/2024*, European Chamber, 20th September 2023, viewed 10th July 2024, <https://www.eurochamber.com.cn/en/publications-archive/1135/Petrochemicals_Chemicals_and_Refining_Working_Group_Position_Paper_2023_2024>



European Chamber
中国欧盟商会

- Continue to optimise the online registration system for new chemicals.
 - Create a function to automatically identify repeatedly registered substances and special formats.
 - Allow deletion of incorrectly registered items or provide a one-click modification function, in case of errors.
 - Establish a dynamic adjustment mechanism to fix issues with the system itself in a timely manner.
 - Restore the function of creating sub-accounts.
 - Exempt laboratory-scale research or products used as reference standards from the catalogues of prohibited goods for import and export to encourage research and innovation.
- Strengthen industry-to-government exchanges on HC inspections.

Abbreviations

AICM	Association of International Chemical Manufacturers
EHS	Environment, Health and Safety
ERP	Enterprise Resource Planning
ESG	Environment, Social and Governance
ETS	Emissions Trading Scheme
HC	Hazardous Chemical
HSE	Health, Safety and Environment
MEE	Ministry of Ecology and Environment
MEM	Ministry of Emergency Management
MIIT	Ministry of Industry and Information Technology
MNC	Multinational Corporation
NDRC	National Development and Reform Commission
NRCC	National Registration Center of Chemicals
PPA	Power Purchase Agreement
QR Code	Quick Response Code
R&D	Research and Development
SPL	Safety Production Licence
TFS	Together for Sustainability
VOC	Volatile Organic Compound





Pharmaceutical Working Group

Key Recommendations

1. Harmonise the Regulatory System with International Standards 5

- Accelerate harmonisation of the China Pharmacopoeia (ChP) with international standards and monographs.
- Adopt a definition for ‘new drugs’ that is aligned with international norms, i.e., ‘new to China’, not ‘new to the world’.
- Strengthen inter-departmental coordination to explore regulatory pathways beneficial to pharmaceutical innovation and research and development (R&D).
- Implement more effective and efficient management of post-approval chemistry, manufacturing and control (CMC) changes to ensure continuity of supply, including adjusting the ‘implementation date’ definition, waiving the certified documents for approval and providing a grace period for new labelling.
- Ensure that MAHs’ rights are unaffected (in terms of nationality, trade name, Reference Listed Drug (RLD) and drug substance (DS)/drug product (DP) segmented manufacturing), categorise technical transfer under post-approval changes, and allow MAHs’ selection of dosage strengths during the localisation of the marketed drugs’ production.
- Expand the number of pilots for cross-border-and-province manufacturing and segmented manufacturing of biological products.
- Establish a regulatory mechanism for the cross-border transfer of clinical trial data to ensure timely and efficient transmission and reasonable utilisation of the data globally.

2. Align Pharmaceutical Intellectual Property (IP) Regulations with Global Best Practices, and Ensure Consistent Enforcement among Central and Local Government Agencies 3

- Provide a broader protection scope during patent term extension (PTE) for ‘new to China’ drugs.
- Expedite the implementation of both regulatory data protection (RDP) for new drugs (i.e., small molecule drugs and biologics that are ‘new to China’, not ‘new to the world’) and marketing exclusivities for paediatric and rare disease drugs by publishing the *Drug Administration Law Implementation Regulations (DALIR)* as soon as possible.
- Improve patent linkage rules.
 - Clarify that the system is equally applicable to chemical drugs, biological products and traditional Chinese medicines.
 - Include all types of patents.
 - Allow conditional approval or delay of approval for generics making category three patent declarations.
 - Provide clear rules for objecting to erroneous patent declarations.
- Optimise standards for post-filing data admission and inventive step tests to reduce the invalidation rate of pharmaceutical patents.
- Implement and continue to optimise the new measures for strengthening IP protection in drug procurement procedures at both the central and local levels.
- Provide a broader protection scope to co-administration patents allowing the use of one active





pharmaceutical ingredient (API) during the manufacture of a pharmaceutical composition for use with a separate API/pharmaceutical composition.

3. Develop Rare Disease (RD) Legislation and Optimise Inter-departmental Coordination to Strengthen the Overall Framework for RD Drugs

- Establish legislation for, and clarify the statutory definition of, RDs.
- Build a central government-level RD working scheme/committee.
 - Strengthen inter-departmental and inter-provincial coordination.
 - Optimise full-cycle RD management in China.
 - Integrate innovative access reviews, scientific evaluations, payment systems and the multi-layered funding scheme in a holistic manner, to work seamlessly with commercial health insurance (CHI).
- Adopt a fit-for-purpose value assessment framework (such as abandoning cost-effective analysis modelling or raising the incremental cost-effective ratio (ICER) threshold) both to meet the unique characteristics of RD drugs and reflect their true value in terms of innovation, patient benefits and societal advancement.
- Improve the National Reimbursement Drug List (NRDL) system for RD drugs by raising the Chinese Yuan (CNY) 300,000 annual price cap, creating an RD-drug reimbursement payment system (RPS), and integrating NRDL-listed RD drugs into the outpatient reimbursement system.
- Explore a multi-layer funding system for RD drugs, including a government-led, national special fund for ultra rare diseases, robust CHI with wider drug coverage and a higher reimbursement ratio, and charity funds, to keep RD patients' co-payments at a reasonable level.
- Encourage innovative RD funding pilots at the provincial level and exempt RD drugs from being delisted from provincial reimbursement schemes.
- Optimise the IP system dedicated to RD drugs.
 - Continue to strengthen the PTE/regulatory data protection (RDP) mechanism for RD drugs.
 - Expedite the promulgation of the draft *DALIR* and implement the marketing exclusivity of RD drugs.
- Streamline procedures for import inspections, sample testing, registration reviews and approvals of RD drugs, in the interests of meeting urgent clinical needs.
 - Accept inspection applications of commercial imports produced before approval, and reduce the sampling volume for import inspections.
- Expedite the approval procedure for RD drugs—especially plasma-derived products—to allow timely clinical application.

4. Improve Patients' Access to Innovative Pharmaceuticals by Optimising the Price Formation Mechanism, and the Payment and Reimbursement Systems

- Provide market freedom for the price formation of innovative drugs.
- Design a price formation mechanism with due discretion.
 - Remove economic constraints and price risk alerts for drugs with a high score for innovation.
 - Improve economic indicators for dynamic price adjustments to avoid excessive





- intervention and drive true innovation.
- Continue to improve the NRDL negotiation mechanism.
 - Strengthen communication transparency and policy clarity.
 - Optimise the evaluation framework and selection of comparators through value and science-based assessments.
 - Adjust the pricing and reimbursement scope in line with fund affordability.
 - Improve the NRDL evaluation framework and accessibility for innovative drugs.
 - Increase credits for clinical value.
 - Ensure equal treatment for imported and domestic products.
 - Formulate differentiated RPS.
 - Adjust information disclosure requirements for innovative drugs.
 - Improve access to innovative drugs and associated biomarker testing, thereby standardising disease diagnosis and treatment.
 - Increase the payment standards for innovative drugs and update in a timely manner the diagnosis-related group (DRG) grouping for disease categories related to innovative drugs.
 - Continue to improve NRDL implementation both in hospital listing and dual-channel management to meet patient needs.
 - Strengthen inter-departmental and cross-provincial coordination.
 - Expedite provincial listings.
 - Optimise outpatient reimbursement.
 - Promote the innovative drug exclusion mechanism and allocate a dedicated budget to promote innovative drugs' clinical application at the local level.
 - Develop a long-term, follow-up evaluation mechanism on the cost and quality of all volume-based procurement (VBP) products, and fully respect doctors' and patients' medication choices based on clinical needs, to accumulate evidence for VBP policy improvements.
 - Continue to exclude patent dispute medicines (including but not limited to patent disputes on compounds) from VBP.
 - Guide regional authorities to not pilot VBP on biologics and narrow therapeutic index (NTI) drugs, considering the high risk of un-interchangeability outweighing patient benefits.
 - Establish a multi-layer medical security system by integrating CHI and basic medical insurance (BMI), and encouraging the roll-out and scope expansion of CHI to meet the demands of high-quality healthcare and medical treatment.

5. Develop Policies to Promote Vaccines and Innovative Preventive Solutions



- Increase the availability of innovative vaccines and immunisation programmes to the Chinese population by harmonising the regulatory environment with international standards, including multi-regional clinical trial (MRCT) requirements, technical guidance, pharmacopeia and a science-based strategy to introduce real world evidence.
- Establish special guidelines to fully implement the Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH) E17 for vaccines by removing operational hurdles from the clinical study stage.
- Update the current biological registration category and regulatory approach for prophylactic bio-products to ensure they are appropriately classified and to guide their usage, boost innovation and enhance the diversity and accessibility of advanced measures for disease prevention.



- Introduce national policies related to adult immunisation services.
- Expedite the registration approval of vaccines by allowing post-approval trials for vaccine products that have already been registered overseas and allow trialling programmes in pilot zones.

6. Clarify which Areas Related to the Development and Application of Human Stem Cells, Genetic Diagnosis and Treatment Technologies are Permitted under the Foreign Investment Negative List, and Establish a Fit-for-purpose Reimbursement Mechanism for High-value Genetic Therapies 3

- Issue clear, consistent and risk-based guidelines from all relevant authorities to define the scope of 'prohibited investment', and open channels for consultation and exchange.
- Implement and support pilot projects in selected areas, such as Beijing's 'two zones', Shanghai's Pudong New Area, the Tianjin Free Trade Zone, the Greater Bay Area, and Hainan Free Trade Port, to gradually ease foreign investment restrictions before applying successful outcomes nationwide.
- Organise regular discussions between relevant regulatory authorities and industry stakeholders—including enterprises, industry associations and chambers of commerce—to map out a unified standard for risk assessments that balance innovation and safety.
- Re-define the scope of technologies prohibited and restricted from export, and lift the prohibition on [clustered regularly interspaced palindromic repeats] CRISPR gene editing technology based on adequate technical analysis and assessment.
- Streamline procedures for import/export inspections and quality testing of CGT-related materials and products to meet urgent clinical needs and ease companies' administrative and cost burdens.
 - Adopt a project-based, one-time risk assessment for the import/export of CGT-related materials and products that have the same specifications and description.
 - Apply the same requirement for chemical drugs to biological products, i.e., conduct quality testing for the first batch of commercial supply only.
- Develop a full-cycle CGT support mechanism covering import, customs clearance, quality testing and distribution.
- Establish a fit-for-purpose NRDL mechanism for CGT, raising the annual price threshold to a suitable level, exploring an outcome-based payment mechanism for co-payment with CHI and charity funds, and providing a CGT-specific insurance policy.

Recent Developments

China's healthcare system continued to undergo significant reforms in 2023, aimed at increasing patients' access to healthcare and promoting innovation.^{1&2} In

the pharmaceutical industry specifically, the Chinese Government made efforts to strike a balance between innovation and cost control.³ There was a series of

¹ *Government Work Report: Accelerating the development of new quality productivity*, State Council, 5th March 2024, viewed 8th May 2024, <https://www.gov.cn/zhengce/jiedu/tujie/202403/content_6936388.htm>

² *Opinions of the State Council on Further Optimising Foreign Investment Environment and Strengthening Efforts to Attract Foreign Investment*, State Council, 13th August 2023, viewed 3rd May 2024, <https://www.gov.cn/zhengce/content/202308/content_6898048.htm>

³ *The State Council executive meeting adopted the Action Plan for High-Quality Development of the Pharmaceutical Industry (2023–2025) and other measures*, *Xinhua*, 25th August 2023, viewed 3rd May 2024, <https://wap.miiit.gov.cn/xwdt/szyw/art/2023/art_8ec3bf30ffb7467ca114e67406a9f925.html>; Circular on the Action for Comprehensive Improvement of Healthcare Quality (2023–2025), National Health Commission (NHC) and National Administration for Traditional Chinese Medicine, 26th May 2023, viewed 3rd May 2024, <https://www.gov.cn/zhengce/zhengceku/202305/content_6883704.htm>; Guidance Catalogue for Industrial Structure Adjustment (2024), National Development and Reform Commission (NDRC), 27th December 2023, viewed 3rd May 2024, <https://www.gov.cn/zhengce/202401/content_6924187.htm>





improvements and policy breakthroughs, which included the following:

- An optimised pharmacovigilance system.⁴
- An anti-corruption campaign aimed at creating a healthier market environment.⁵
- Enhanced transparency and predictability regarding adjustments to the National Reimbursement Drug List (NRDL).
- Strengthened supervision of the basic medical insurance (BMI) fund.
- The release of the second *Catalogue of Rare Diseases*.⁶
- Progress on intellectual property (IP) protection and cross-border data transfer (CBDT).⁷
- The expansion of pilots for innovative pharmaceutical technologies.^{8&9}

4 This included further harmonisation with international standards, strengthening quality control and simplifying review and approval procedures: *National Medical Product Administration (NMPA) Becomes Official Applicant for Drug Inspection Cooperation Program (PIC/S)*, NMPA, 9th November 2023, viewed 3rd May 2024, <<https://www.nmpa.gov.cn/yaowen/ypjgyw/ypyw/20231109101918137.html>>; *Working Procedures for the Review and Approval of Applications for Conditional Approval for Listing of Pharmaceutical Products (for Trial Implementation) (Revised Draft for Public Comments)*, NMPA, 25th August 2023, viewed 3rd May 2024, <<https://www.nmpa.gov.cn/xxgk/zhqyj/zhqyjyp/20230825104212129.html>>; *Work Norms for Expediting the Review of Marketing Authorisation Applications for Innovative Drugs (for Trial Implementation)*, Centre for Drug Evaluation (CDE), 31st December 2023, viewed 3rd May 2024, <<https://www.cde.org.cn/main/news/viewInfoCommon/ace377c025ad4f2bbf94790673b2646e>>;

5 *Video conference on the centralised rectification of corruption in the national pharmaceutical sector held in Beijing*, NHC, 21st July 2023, viewed 8th May 2024, <<http://www.nhc.gov.cn/ylyjs/pqt/202307/7baafccccc244af69a962f0006cb4e9c.shtml>>; *On the issuance of the deepening of the reform of the medical and health system in the second half of the 2023 key tasks*, NHC, 21st July 2023, viewed 8th May 2024, <https://www.gov.cn/zhengce/zhengceku/202307/content_6894073.htm>; *Draft Amendment (XII) to the Criminal Law submitted to the Standing Committee of the National People's Congress for deliberation*, China Court, 26th July 2023, viewed 8th May 2024, <<https://www.chinacourt.org/article/detail/2023/07/id/7418877.shtml>>; *The Central Commission for Discipline Inspection (CCDI) and the State Supervisory Commission (SSC) held a mobilisation meeting to deploy discipline inspection and supervisory organs to cooperate in the nation's centralised rectification of corruption in the field of medicine, which was attended by Yu Hongqiu, who also spoke*, CCDI, 28th July 2023, viewed 8th May 2024, <https://www.ccdi.gov.cn/toutiao/202307/t20230728_278985.html>; *Amendments (XII) to the Criminal Law of the People's Republic of China*, State Council, 29th December 2023, viewed 8th May 2024, <https://www.gov.cn/yaowen/liebiao/202312/content_6923386.htm>

6 *Notice of publication of the second catalogue of rare diseases*, State Council, 18th September 2023, viewed 8th May 2024, <https://www.gov.cn/zhengce/zhengceku/202309/content_6905273.htm>

7 *Provisions to Facilitate and Regulate the Cross-border Flow of Data*, Cyberspace Administration of China (CAC), 22nd March 2024, viewed 3rd May 2024, <https://www.cac.gov.cn/2024-03/22/c_1712776612187994.htm>

8 *Opinions of the State Council on Further Optimising Foreign Investment Environment and Strengthening Efforts to Attract Foreign Investment*, State Council, 13th August 2023, viewed 3rd May 2024, <https://www.gov.cn/zhengce/content/202308/content_6898048.htm>

9 *Action Plan for Concretely Promoting High-level Opening-up and Making Greater Efforts to Attract and Utilise Foreign Investment*, State Council, 28th February 2024, viewed 3rd May 2024, <https://www.gov.cn/gongbao/2024/issue_11266/202404/content_6944107.html>

China's economic downturn and the ongoing healthcare reforms have had a considerable impact on the development of the pharmaceutical industry, with overall revenue and profit declining 3.7 and 15.1 percentage points year-on-year respectively.¹⁰ European pharmaceutical companies' overall revenue in China grew about eight per cent and accounted for five to 10 per cent of their global business, signalling a downward trend of growth compared to previous years.¹¹

The working group remains committed to working with the Chinese authorities to contribute industry expertise, and help build an innovative, healthy and sustainable healthcare system predicated on fair competition.

Key Recommendations

1. Harmonise the Regulatory System with International Standards

Concern

Gaps in the harmonisation of China's regulatory framework with international standards continue to hinder patients' timely access to innovative medicines.

Assessment

China's National Medical Products Administration (NMPA) has made progress with encouraging research and development (R&D) and the registration of innovative drugs in China and overseas. Results can be seen in terms of:

- an increased number of International Council for the Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH) guidelines adopted by China;¹²
- improved regulatory efficiency and transparency through greater alignment with international practices;
- streamlined and accelerated approval process for drugs, including a fast track for innovative drugs;¹³ and

10 *Profit of industrial enterprises above the national scale fell by 2.3 per cent in 2023*, National Statistics Bureau, 27th January 2024, viewed 8th May 2024, <https://www.stats.gov.cn/sj/zxfb/202401/20240126_1946914.html>

11 *Multinational drug companies' 2023 China results are out! Behind the return to growth, what did the giants do right?*, Bion, 12th February 2024, viewed 8th May 2024, <<https://news.bion.com/article/51cc813045c7.html>>

12 Since joining the ICH in 2017, China has implemented 68 ICH guidelines (as of 31st December 2023): *Aligning with International Standards: A Comprehensive Compendium of ICH Guidelines for Transformation and Implementation in China in 2023*, CPHI, 27th February 2024, viewed 27th April 2024, <<https://www.cphi.cn/news/show-213580.html>>

13 The 2019 Drug Administration Law and the 2020 *Drug Registration Regulation* have significantly streamlined and accelerated the drug approval process.





- steps to establish a marketing authorisation holder (MAH) system.¹⁴

However, harmonisation of China's regulatory framework with international standards is still incomplete, which hinders patients' timely access to innovative medicines. This can be seen in the following areas.

China Pharmacopoeia (ChP)

There are still gaps in the general monographs in the ChP that have already been harmonised by the Pharmacopoeial Discussion Group (PDG), as well as differences in the requirements of some ICH guidelines.

The definition of 'new drug'

The term 'new drug' lacks an official definition in both the 2019 Drug Administration Law (DAL) and the 2020 Drug Registration Regulation, or any other existing laws or regulations. In China's practice, a new drug is considered one that has not been marketed anywhere globally, and not one that is simply new to China. This interpretation diverges from widely accepted international standards.¹⁵

Management of post-approval changes

Before changes can be made to the chemistry, manufacturing and control (CMC) of a product after it has obtained marketisation approval, an application for the review of post-approval CMC changes must be submitted. However, this cannot be done simultaneously in China and overseas. In addition, the manufacture of drugs that have been changed can only take place in China after the CMC changes have been approved, which takes up to 19 months between the implementation of CMC changes overseas and the supply of the changed drugs to the Chinese market. As a result, companies have to store the manufacturing materials for the changed product in advance, sometimes valued at hundreds of millions of euros, to ensure production and supply in the Chinese market during the waiting period. However, such reserves can only be maintained for nine months at most, resulting in a high risk of supply interruption.

¹⁴ The NMPA is taking steps to establish a marketing authorisation holder (MAH) system that further fosters innovation, notably through the draft *Drug Administration Law Implementation Regulations (DALIR)* issued in May 2022: *The Comprehensive Affairs Department of the National Medical Product Administration solicits public opinions on the Implementation Regulations for the Drug Administration Law of the People's Republic of China (Draft for Comments)*, NMPA, 9th May 2022, viewed 30th May 2024, <<https://www.nmpa.gov.cn/xxgk/zhqyj/zhqyjyp/20220509222233134.html>>

¹⁵ According to international standards, only a drug entering the domestic market for the first time is considered a 'new drug'.

Cross-border holding and segmented manufacturing

The MAH systems in the European Union (EU) and the United States (US) allow segmented manufacturing,¹⁶ which ensures a stable drug supply to patients in various markets through the mobilisation of different manufacturers worldwide. This is currently not fully realised in China where, in the absence of specific requirements in current laws and regulations, the practice is that the nationality of the MAH/applicant holding the drug must be the same as the manufacturing site.¹⁷ This leads to registration challenges when trying to transfer the production of innovative chemical and biological drugs from overseas to domestic sites.

For licence-in products of a foreign MAH,¹⁸ the entire manufacturing of the drug substance (DS), drug product (DP) and all dosage strengths must be localised in a bundle. This is neither in line with an MAH's global operations for production and supply nor with international best practices, and it is not conducive to building an efficient and flexible supply chain. Consequently, manufacturers will struggle to supply the local market in a timely manner.¹⁹

For investigational drug products,²⁰ cross-border production and technical transfers are currently prohibited in both directions on the Chinese side, impeding China's participation in global R&D activities.

Issues are also observed in the context of localisation, as there is currently no cross-provincial coordination and data-sharing platform that can effectively manage an MAH's various manufacturing sites within China.

In Article 69 of the 2022 draft *Drug Administration Law*

¹⁶ There is no official definition of 'segmented manufacturing'. However, according to the understanding commonly shared among those in the pharmaceutical industry, it means that the whole process of drug production is divided into two or more stages to complete the manufacturing of one product in multiple production sites. Each production site is responsible for its own production and quality management, with the MAH fully responsible for the overall product quality.

¹⁷ The MAH and its manufacturing sites must be either both Chinese or both overseas. In this case, the domestic production of a biological product cannot adopt a drug substance produced from a foreign manufacturing site, and vice versa.

¹⁸ Licence-in products are those resulting from a process in which a company (the licensee) acquires the rights to a product, technology or intellectual property from another organisation (the licensor). This can include rights to develop, manufacture and market a particular pharmaceutical product.

¹⁹ Under a MAH's global production and supply scheme, the common practice is that the biologics' drug substance (DS) is produced centrally and then distributed to local markets for next-stage production, including the DP. Since the early-stage production takes place overseas, it defines the foreign nationality of the MAH in question.

²⁰ Investigational drug products refer to the drug products that are under development and not yet approved.





Implementing Regulations (DALIR),²¹ the NMPA has made some progress by issuing a written opinion on segmented manufacturing, however, the conditions under which drugs will be eligible for segmented manufacturing are vague. At the local level, the Shanghai Medical Products Administration followed up in 2024 by piloting segmented manufacturing as well as inter-provincial coordination, including data sharing.²² While this is a positive development, the working group looks forward to more details of additional pilot plans in the interests of optimising China's pharmaceutical industry.

MAH status and rights in cross-border technical transfer

For marketed drugs, including chemical and biological products, the localisation of their production from overseas impacts the originator drug's due rights and innovative status. This is because the foreign MAH that owns the originator drug is required to make significant changes, including but not limited to, its MAH identity, registration classification, the Reference Listed Drug (RLD) attributes and the approved trade name(s).

For instance, currently, after localising, an originator drug would be registered in China as a generic drug held by a domestic MAH,²³ which would significantly increase the complexity of, and uncertainty over, registration and marketing channels for the originator drug.²⁴ Instead, this operation should be considered as the original foreign MAH making post-approval changes by either changing its DS/DP manufacturing site from overseas to China, or adding a new DS/DP manufacturing site in China, which is the approach currently taken by stringent regulatory agencies (SRAs).²⁵

21 *Call for Public Consultation on the Implementation Regulations of the Drug Administration Law*, NMPA, 9th May 2022, viewed 27th April 2024, <<https://www.nmpa.gov.cn/xxgk/zhqyj/zhqyjyp/20220509222233134.html>>

22 *Several Measures on Benchmarking Reforms to Continuously Create a First-Class Business Environment in the Field of Pharmaceutical Regulation*, Shanghai Medical Products Administration, 11th March 2024, viewed 30th April 2024, <<https://yj.sh.gov.cn/cmsres/2d/2def3e6eeaf54a2da433add9fe983260/99ab079cde44c8adcf879e8ba1d83e5.pdf>>

23 *Call for Consultation on the Draft Dossier Requirements on Marketing Authorisation Application for Marketed Drug Product Transferring from Foreign to Domestic (for chemical drugs)*, CDE, 23rd March 2023, viewed 27th April 2024, <<https://www.cde.org.cn/main/news/viewInfoCommon/15e9b5c46d3617a84fc4f0a964df5148>>

24 For instance, after obtaining registration approval and domestic production certification, also known as technology transfer certification, the manufacturer of the originator drug is required to submit additional material and an application for the RLD identity. The whole approval process can take from six months to three years, preventing drugs from entering local hospitals in a timely manner.

25 A stringent regulatory agency (SRA) refers to a national drug regulation authority that the World Health Organization (WHO) recognises as applying stringent standards for quality, safety and efficacy in its regulatory review of drugs and vaccines for marketing authorisation.

Cross-border transfer of clinical trial data

Multinational pharmaceutical companies need to carry out clinical development in China as a part of their global R&D programmes. To do so, timely and efficient cross-border transmission of clinical trial data is a prerequisite. Although the Cyberspace Administration of China's (CAC's) 2024 regulations on cross-border data flows were notable in their aim of facilitating cross-border data transfer,²⁶ China's Personal Information Protection Law (PIPL) and related measures do not fully consider the pharmaceutical industry's unique characteristics, including the essential need to be able to transmit clinical trial data quickly and efficiently.²⁷ The current data regulations in China also still lack reasonable anonymisation standards for clinical trial data, a definition of 'personal information', recognition of 'important data' under the Data Security Law, and coverage of ethical reviews of technology. Furthermore, inadequate coordination among the relevant authorities—including the Human Genetic Resources Administration of China, the CAC and the Ministry of Science and Technology—has led to complicated and sometimes overlapping data approval processes.

Recommendations

- Accelerate harmonisation of the ChP with international standards and monographs.
- Adopt a definition for 'new drugs' that is aligned with international norms, i.e., 'new to China', not 'new to the world'.
- Strengthen inter-departmental coordination to explore regulatory pathways beneficial to pharmaceutical innovation and R&D.
- Implement more effective and efficient management of post-approval CMC changes to ensure continuity of supply, including adjusting the 'implementation date' definition, waiving the certified documents for approval and providing a grace period for new labelling.
- Ensure that MAHs' rights are unaffected (in terms of nationality, trade name, RLD and DS/DP segmented manufacturing), categorise technical transfer under post-approval changes, and allow MAHs' selection of dosage strengths during the localisation of the marketed drugs' production.

26 For further detail, please refer to the *Cybersecurity Working Group Position Paper 2024/2025*.

27 For example, the PIPL does not regard de-identified information as anonymised data, and requires the informed consent of the patient to be obtained a second time (including critically ill patients) if there are any changes in the data transmission process.





- Expand the number of pilots for cross-border-and-province manufacturing and segmented manufacturing of biological products.
- Establish a regulatory mechanism for the cross-border transfer of clinical trial data to ensure timely and efficient transmission and reasonable utilisation of the data globally.

2. Align Pharmaceutical IP Regulations with Global Best Practices, and Ensure Consistent Enforcement among Central and Local Government Agencies

Concern

The inadequate scope of protection for the patent term extension (PTE), unclear definitions related to regulatory data protection, insufficient stay periods for patent linkage and the high invalidation of patents remain a concern for pharmaceutical companies in China.

Assessment

IP rights are crucial for pharmaceutical companies, as they provide an incentive for R&D of products that address unmet medical needs, developing the industry overall and benefitting patients. China has implemented several laws and policies to advance IP reforms in the pharmaceutical industry, such as establishing PTE mechanisms and patent term adjustment (PTA), paired with implementation rules.²⁸ While welcoming this initiative, the working group recommends making further improvements in the following areas.

PTE

PTE mechanisms should provide a reasonably broad scope of protection for pharmaceutical patents for drugs that are ‘new to China’—for example, a basic compound patent—during their extended patent terms, such as covering the first approved indication and expanded indication(s) of the concerned drug. Existing drugs should also benefit from retroactive application of PTE, so as not to penalise innovative companies that made their products available to Chinese patients early rather than tactically waiting for PTE to be implemented in China.

²⁸ Following the establishment of the PTE and PTA mechanisms for medicinal products in the Patent Law (Fourth Amendment) in 2021, the corresponding implementation rules were issued in 2023 providing detailed provisions on implementing PTE and PTA. In response to the demands of the pharmaceutical industry, a maximum of five years’ patent term compensation has been granted for new drugs licensed in China.

Regulatory Data Protection (RDP)

Provisions in China’s draft *DALIR* related to RDP for ‘certain drugs that have been approved for marketing’ and marketing exclusivities for paediatric and rare disease drugs are a positive development.²⁹ However, the terminology ‘certain drugs’ is vague and thus needs to be accurately defined to provide a clear scope of protection. Furthermore, in line with international standards, RDP should be granted to both small-molecule drugs and biologics that are ‘new to China’.

Patent linkage

Despite the implementation of the patent linkage system, concerns regarding drug innovators remain, including short stay periods for chemical drugs (nine months only); the lack of a stay period for biological drugs; limited types of patents eligible for patent linkage, particularly for biologics; and the lack of clear rules for raising objections when a generic or biosimilar manufacturer submits erroneous or inconsistent patent declarations.³⁰ Furthermore, the prevailing linkage rules do not prevent the premature launch of a generic that has made a category three patent declaration under the linkage system.³¹ Patent linkage-related rules should be further improved to address these concerns.

Invalidation of pharmaceutical patents

The high invalidation rate of pharmaceutical patents in China is a concern for the industry, particularly concerning patents for important drugs. Rules related to post-filing data admission and inventive step tests of pharmaceutical patents should be optimised to mitigate the invalidation rate.

New measures for IP protection in drug procurement

Following the national guidance on IP protection in drug procurement procedures, including drug listings on provincial tendering platforms and volume-based procurement (VBP),³² Shanghai initiated in 2023 a pilot to explore ways to strengthen IP protection in

²⁹ *Call for Public Consultation on the Implementation Regulations of the Drug Administration Law*, NMPA, 9th May 2022, viewed 27th April 2024, <<https://www.nmpa.gov.cn/xxgk/zhqyj/zhqyjyp/20220509222233134.html>>

³⁰ The NMPA has established a new module on the Platform for Registration of Patent Information on Marketed Drugs, which includes a section for filing objections, but the rules on how objections will be handled are not yet clear.

³¹ A category 3 patent declaration means that the patent information registration platform for drugs marketed in China includes a patent related to the relevant originator drug, and the generic drug applicant undertakes that the generic drug will not be marketed before the expiration date of the relevant patent.

³² *Opinions on Strengthening the Protection of Intellectual Property in the Field of Centralised Drug Procurement*, NHSA and CNIPA, 30th December 2022, viewed 27th April 2024, <http://www.nhsa.gov.cn/art/2022/12/30/art_104_9968.html>





the field of pharmaceutical procurement.³³ Originator companies are encouraged by these measures, and hope to maintain regular and effective exchanges with government on these issues at all levels.

Interpretation of co-administration patents

In China, co-administration patents are narrowly interpreted as not covering the use of one active pharmaceutical ingredient (API) in the manufacture of a pharmaceutical composition for use with a separate API/pharmaceutical composition. This diverges from the widely accepted interpretation in other countries and regions, including Europe and the United States, causing enforcement difficulties.

Recommendations

- Provide a broader protection scope during PTE for 'new to China' drugs.
- Expedite the implementation of both RDP for new drugs (i.e., small molecule drugs and biologics that are 'new to China', not 'new to the world') and marketing exclusivities for paediatric and RD drugs by publishing the *DALIR* as soon as possible.
- Improve patent linkage rules.
 - Clarify that the system is equally applicable to chemical drugs, biological products and traditional Chinese medicines.
 - Include all types of patents.
 - Allow conditional approval or delay of approval for generics making category three patent declarations.
 - Provide clear rules for objecting to erroneous patent declarations.
- Optimise standards for post-filing data admission and inventive step tests to reduce the invalidation rate of pharmaceutical patents.
- Implement and continue to optimise the new measures for strengthening IP protection in drug procurement procedures at both the central and local levels.
- Provide a broader protection scope to co-administration patents allowing the use of one API during the manufacture of a pharmaceutical composition for use with a separate API/pharmaceutical composition.

³³ *Implementation Opinions on Strengthening the Protection of Intellectual Property Rights in the Field of Pharmaceutical Procurement in the City*, Shanghai Municipal Intellectual Property Bureau and Municipal Health Security Bureau, 21st September 2023, viewed 27th April 2024, <<https://www.shanghai.gov.cn/nw12344/20231011/94e06c0305b746dcb6db3da057fed7.html>>

3. Develop Rare Disease (RD) Legislation and Optimise Inter-departmental Coordination to Strengthen the Overall Framework for RD Drugs

Concern

The overall framework for supporting patients with RDs remains weak.

Assessment

China has made significant improvements to the regulatory framework,^{34&35} optimised both the NRDL and 'dual channel' systems,³⁶ and expanded coverage of commercial health insurance for RD drugs, all of which have contributed to enhancing the accessibility and affordability of RD drugs in China. However, a considerable gap still exists between Chinese and global standards in the following areas.

Rare disease legislation

The National Health Commission (NHC) regulates RDs through the *Catalogue of Rare Diseases*,³⁷ but the catalogue lacks a scientific and legislative foundation. Consequently, the notion of RDs is not well defined, and the number of RDs recognised in the catalogue is much lower than the international standard, resulting in many patients' needs being unmet.³⁸ Updates to the catalogue are also insufficient and should be done at least every two years.³⁹

Inter-departmental cooperation

Relevant departments—including the National Healthcare Security Administration (NHSA), the NHC,

³⁴ The *Lists of Clinically Needed Drugs Launched Abroad* and the *Drug Registration Administrative Measures* released by the NMPA have established a priority channel for accelerated review and approval of RD drugs.

³⁵ *Call for Public Consultation on the Implementation Regulations of the Drug Administration Law*, NMPA, 9th May 2022, viewed 27th April 2024, <<https://www.nmpa.gov.cn/xxgk/zhqyj/zhqyjyp/20220509222233134.html>>

³⁶ *2022 NRDL Pricing Implementation and Access Outcomes in China*, Trinity Life Sciences, December 2023, viewed 30th April 2024, <<https://trinitylifesciences.com/wp-content/uploads/2023/12/Trinity-White-Paper-2022-NRDL-Pricing-Implementation-and-Access-Outcomes-in-China.pdf>>

³⁷ To date, two catalogues of rare diseases have been released, in 2018 and 2023 respectively. The first includes 121 rare diseases and the second 86, with a cumulative total of 207 rare diseases.

³⁸ Compared to the 207 RDs recognised in China, there are around 7,000 RDs recognised globally.

³⁹ The first RD catalogue was released in 2018 and the second in 2023, with a five-year gap in between. This frequency fails to include in a timely manner any new rare diseases: *Notice of publication of the first catalogue of rare diseases*, NHC, 11th May 2018, viewed 8th May 2024, <https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5435167.htm>; *Notice of publication of the second catalogue of rare diseases*, NHC, 18th September 2023, viewed 8th May 2024, <https://www.gov.cn/zhengce/zhengceku/202309/content_6905273.htm>





the NMPA, and the Ministry of Finance—have all made individual efforts to address RD-related issues, which include the approval of RD drugs, reimbursement and access, and patient usage. However, the noticeable lack of a systematic and unified strategy at the central level to coordinate diverse departments has resulted in inefficiencies, most notably overlapping and contradicting policies.

NRDL system and the reimbursement payment standard (RPS)

Despite more RD drugs being added to the NRDL on yearly basis, the list's annual Chinese yuan (CNY) 300,000 price cap for all drugs discourages the listing of high-value drugs for the treatment of extremely rare diseases, which have high upfront R&D investment costs. The current economic evaluation also poses major challenges for RD drugs' pricing in NRDL negotiations. Specific issues include a lack of transparency in the calculation, the deficient premium of incremental cost-effectiveness ratio per gross domestic product (ICER/GDP) for RD drugs in China due to the cost-effective modelling and a low ICER per quality adjusted life years (ICER/QALY) threshold adopted by China. Furthermore, some NRDL-listed RD drugs are not included in the outpatient reimbursement system, limiting the accessibility and affordability of such treatment. In addition, because the national NRDL has a low RPS, many high-quality, effective RD drugs are not available to patients in China.⁴⁰

Multi-layered funding system

There is currently a lack of sufficient multi-layered funding schemes for RD drugs. There is no special national fund dedicated to ultra-rare diseases; choices are limited for commercial health insurance (CHI) and charity funds that provide supplemental coverage to RD patients' co-pay; and the recently released city supplementary insurance still has very limited coverage of RD therapies.

⁴⁰ There had previously been successful pilots trialled to support innovative payment methods that would cover the costs of some high-value treatments for RDs, as a result of policy and fiscal flexibility from some local governments, including Hunan, Hebei, Zhejiang, Jiangsu and Shandong, among others. Such local pilots were later discouraged and gradually terminated after the increasing centralisation of the payment system from 2021 onward. The NHSA mandated in 2021 to "follow the NRDL and not develop additional lists.": *Opinions on the Establishment of a Medical Insurance Treatment List System*, NHSA, 19th January 2021, viewed 27th April 2024, <https://www.gov.cn/zhengce/zhengceku/2021-08/11/content_5630791.htm>; This messaging was later reiterated in the State Council's *2022 Government Work Report*, which said, "the reimbursement scope shall be unified": *2022 Government Work Report*, State Council, 12th March 2022, viewed 27th April 2024, <http://www.gov.cn/premier/2022-03/12/content_5678750.htm>

IP policy for RD drugs

The draft *DALIR 2022* outlined a marketing exclusivity policy for RD drugs. However, the IP system is still inadequate for RD drugs in terms of insufficient PTE protection, and lacks special considerations with regard to requirements for Chinese patients' data and samples in clinical trials of RD drugs. The working group urges that the final *DALIR* be updated in timely manner to positively address these issues, and be released soon after.

Import inspection, sampling and review procedures

Despite some favourable policies having been issued to accelerate RD drugs' access to the domestic market, complex and lengthy procedures, including import inspections, sampling and testing, reviews and approvals still hinder their timely supply to patients in China.

A recent notice issued by the National Institutes for Food and Drug Control (NIFDC) stipulates that, for clinically urgent drugs, the batches that are produced before obtaining the registration approval in China are allowed to apply for importation inspection.⁴¹ However, the NIFDC does not accept import applications for RD drugs manufactured for commercial purposes before approval by the Centre for Drug Evaluation (CDE). The working group also notes that the list of clinically-urgent drugs has not been updated since 2020.

Additionally, RD drugs typically arrive in very small quantities, yet the existing 'commercial importation test' rules can result in up to a 45 per cent loss of the imported batch due to testing requirements.⁴² This delays patients' access by three months on average and adds significant costs for companies.

Recommendations

- Establish legislation for, and clarify the statutory definition of, RDs.
- Build a central government-level RD working scheme/committee.
 - Strengthen inter-departmental and inter-provincial coordination.

⁴¹ According to an internal document issued by NIFDC, titled *Notice on the Acceptance Conditions for Application for Importation Inspection of Production Batches Before Registration Approval (2021)*.

⁴² According to China's *Administrative Measures for the Import of Drugs (2012 Revision)*, imported drugs need to undergo sample testing upon arrival at customs. Pharmaceutical Working Group members, in practice, have experienced losses of up to 45 per cent during testing.





- Optimise full-cycle RD management in China.
- Integrate innovative access reviews, scientific evaluations, payment systems and the multi-layered funding scheme in a holistic manner, to work seamlessly with CHI.
- Adopt a fit-for-purpose value assessment framework (such as abandoning cost-effective analysis modelling or raising the ICER threshold) both to meet the unique characteristics of RD drugs and reflect their true value in terms of innovation, patient benefits and societal advancement.
- Improve the NRDL system for RD drugs by raising the CNY 300,000 annual price cap, creating an RD-drug RPS, and integrating NRDL-listed RD drugs into the outpatient reimbursement system.
- Explore a multi-layer funding system for RD drugs, including a government-led, national special fund for ultra rare diseases, robust CHI with wider drug coverage and a higher reimbursement ratio, and charity funds, to keep RD patients' co-payment at a reasonable level.
- Encourage innovative RD funding pilots at the provincial level and exempt RD drugs from being delisted from provincial reimbursement schemes.
- Optimise the IP system dedicated to RD Drugs.
 - Continue to strengthen the PTE/RDP mechanism for RD drugs.
 - Expedite the promulgation of the draft *DALIR* and implement the marketing exclusivity of RD drugs.
- Streamline procedures for import inspections, sample testing, registration reviews and approvals of RD drugs, in the interests of meeting urgent clinical needs.
 - Accept inspection applications of commercial imports produced before approval, and reduce the sampling volume for import inspections.
- Expedite the approval procedure for RD drugs—especially plasma-derived products—to allow timely clinical application.

4. Improve Patients' Access to Innovative Pharmaceuticals by Optimising the Price Formation Mechanism, and the Payment and Reimbursement Systems

Concern

The current focus on price over efficacy hinders the sustainable development of and innovation in the pharmaceutical industry.

Assessment

A sustainable and predictable system of evaluation, pricing, access, reimbursement and payment is essential to encourage industry innovation and ensure patients' access to innovative drugs. While reforms have been implemented to optimise the system, challenges remain for European pharmaceutical companies, particularly regarding their innovative products.

First, the value assessment framework does not fully reflect the value of innovation. Second, reforms are driven by sharp price cuts which discourages innovation. Third, the implementation of various policies remains inconsistent and lacks continuity in practice. The current payment and reimbursement framework does not adequately incentivise drug innovations, resulting in limited patient access to innovative drugs.

Price formation mechanism

China's reforms of drug prices, instigated from 2015 onwards, have targeted price setting and procurement, as well as the outpatient and out-of-hospital sectors,^{43&44&45} with the aim of regulating and unifying drug prices at the central and local levels, as well as between different purchasing channels, based on cost-effectiveness modelling. Price control is being applied to BMI and online pharmacies,⁴⁶ and, in some regions, even non-VBP drugs in retail pharmacies, which is not only uncondusive to pharmaceutical innovation, but also obstructs free pricing in the retail market.

The NHTA is designing a launch-price formation mechanism for newly listed chemical drugs before NRDL inclusion.⁴⁷ Despite this well-intentioned move to promote market-driven pricing, the specific

⁴³ *Notice on Strengthening the Supervision of Pricing Activities in the Pharmaceutical Industry*, NDRC, 5th May 2015, viewed 30th April 2024, <https://www.gov.cn/xinwen/2015-05/05/content_2857226.htm>

⁴⁴ *Notice on the Promotion of Fair and Honest, Transparent and Balanced Interprovincial Prices of Drugs with the Same Generic Name and the Same Brand Name*, NHTA, 5th January 2024, viewed 30th April 2024, <http://www.nhtsa.gov.cn/art/2024/1/5/art_53_11914.html>

⁴⁵ At the national level, health insurance-designated retail pharmacies are encouraged to join VBP; at the local level, in regions such as Shanghai and Zhejiang, health insurance-designated outpatient clinics and pharmacies are guided to purchase through local online bidding and purchasing platforms. In some places, such as Nanjing, the retail pricing of non-VBP drugs is also advised to be capped at online bidding prices, which has removed pharmacies' discretion to add any mark-ups.

⁴⁶ The retail price of an online pharmacy will be used as reference to request a price reduction in both provincial listings and retail pharmacies that are covered by BMI.

⁴⁷ *China Issues Draft Document on Innovative Chemical Drug Pricing*, Pacific Bridge Medical, 5th March 2024, viewed 30th April 2024, <<https://www.pacificbridgemedical.com/news-brief/china-issues-draft-document-on-innovative-chemical-drug-pricing/>>





requirements set in the draft—including price risk alerts, dynamic price adjustments and cost effectiveness—interfere with enterprises' pricing autonomy.⁴⁸ Companies' right to free pricing, driven by the market rather than government intervention, is essential for the sustainable development of the retail market to maintain free competition and provide patients with abundant choices.

NRDL negotiation and implementation

The annual NRDL adjustment mechanism, introduced in 2017, has increased the accessibility of innovative drugs and led to improved predictability of pricing.

However, the NRDL negotiation mechanism still lacks sufficient recognition of the value of innovative drugs, especially those that cannot be adequately measured by traditional cost-effectiveness models or ICER, such as drugs for RDs, mental health diseases and life-threatening malignancy tumours. It is difficult for high-value drugs to be listed in the NRDL without compromising on price, which is caused by the low NRDL price ceiling, and by the lack of a science-based evaluation of innovative drugs. The NRDL price negotiation should instead assess value through premium pricing across comparator products.

In addition, there is insufficient transparency and communication in the overall process, and a lack of clarity in the comparator selection criteria, and the (re-) negotiation and renewal procedures. In addition, despite China's continuous advances in precision medicine,⁴⁹ reimbursement of biomarker testing required for precision treatment is still limited.

In terms of NRDL implementation, while local Pharmaceutical Affairs Committees (PACs) have made some progress in expediting hospital listings—which is an essential channel for NRDL-listed drugs

through price negotiation (or 'negotiated drugs') to enter local markets—there are still issues with outpatient reimbursement and dual channel management.⁵⁰ Policy discrepancies still exist across regions; most hospitals still face barriers to PAC inclusion given the limits placed on the number of drugs designated to hospitals and the control of medical insurance funds. At major hospitals across the country, the average rate of hospital listing for negotiated drugs is around 33 per cent, indicating limited drug accessibility.⁵¹ Hospital listing of innovative drugs is yet more difficult as the current health insurance payment scope is highly inadequate.

VBP

Six years after its introduction in 2018, China's pharmaceutical VBP system still prioritises low prices in bidding.⁵² In fact, during the past nine rounds of state-organised VBP, the average price cut has exceeded 50 per cent.⁵³ Another issue is the lack of quality consistency evaluation in the VBP issue, leading to 'forced switches' of drugs that are essentially not interchangeable, which puts patient safety and therapeutic continuity at risk. This is a particularly critical for certain products such as narrow therapeutic index (NTI) drugs,⁵⁴ which require an ultra-high level of dosage precision and product quality. Discrepancies between local policies have also led to administrative complexities in contract renewals and other aspects of VBP.

The joint policy from the NHTA and the China National Intellectual Property Administration (CNIPA), which

48 For instance, the draft mechanism sets up price risk alerts placing products into categories A, B or C according to their price from low to high. Price risk alerts for each product will be indicated in the cross-province healthcare system, and local health institutions are encouraged to prioritise the use of category A drugs (i.e., the cheapest). For most new and innovative drugs to be classified as Category A, price cuts are needed. This is not conducive to encouraging high-quality innovative development of pharmaceuticals. In addition, the fact that products within the price stabilisation period may face price reductions in order to be listed in the NRDL, as well as the requirement for a 15 per cent price reduction after the stabilisation period, is also not conducive to encouraging product innovation. The European Chamber Pharmaceutical Working Group has submitted detailed related comments to the NHTA on 26th February 2024.

49 *Guidance on the Clinical Application of Novel Antineoplastic Drugs (2022 Version)*, NHC, 30th December 2022, viewed 30th April 2024, <<http://www.nhc.gov.cn/cms-search/xxgk/getManuscriptXxgk.htm?id=be9a91e2176e405e92977b-aaaa42438>>

50 'Dual channel management' refers to a mechanism that meets the reasonable demand for negotiated drugs in terms of supply guarantee and clinical use through two channels (designated medical institutions and designated retail pharmacies) and synchronises them into the BMI payment. *Guidance on Establishing and Improving the 'Dual Channel' Management Mechanism of NRDL Negotiation Drugs*, NHTA & NHC, 10th May 2021, viewed 30th April 2024, <http://www.nhsa.gov.cn/art/2021/5/10/art_37_5023.html>

51 *Research on the Current Situation on NRDL Negotiation Products Implementation and Local Practice Experience*, RDPAC, January 2024, viewed 8th May 2024, <https://cnadmin.rdpac.org/upload/upload_file/1706526864.pdf>

52 *Notice on the 14th Five-year Plan for National Medical Security*, State Council, 29th September 2021, viewed 30th April 2024, <https://www.gov.cn/zhengce/content/2021-09/29/content_5639967.htm>

53 *Ninth batch of state-organised centralised banded purchasing of medicines opens for bidding*, *Xinhua*, 6th November 2023, viewed 8th May 2024, <https://www.gov.cn/lianbo/bumen/202311/content_6913890.htm>

54 NTI drugs are those for which small differences in dose or blood concentration may lead to serious therapeutic failures and/or adverse drug reactions that are life-threatening, or result in persistent or significant disability or incapacity. Given this characteristic, NTI drugs are highly uninterchangeable: Jiang, W, *FDA Drug Topics: Understanding Generic Narrow Therapeutic Index Drugs*, U.S. Food and Drug Administration (FDA), viewed 16th May 2024, <<https://www.fda.gov/media/162779/download>>





excludes products with compound patent disputes from VBP,⁵⁵ is helpful to innovation and should be further applied to national and regional VBP activities. However, it would be more conducive to pharmaceutical innovation if its scope can be extended to cases beyond compound patents.

Diagnosis-related group (DRG)/diagnosis-intervention packet (DIP)

Since 2021, China has been promoting the DRG/DIP payment method as an important tool for measuring the quality and efficiency of medical services and for making medical insurance payments.⁵⁶ However, in other countries, the DRG/DIP system has created distortions, resulting in a decrease in the value of the service provided by hospitals.⁵⁷ The DRG determines diagnosis and treatment groups, as well as budget, based on past diagnoses and treatment, which makes it difficult for innovative drugs and therapies to be applied within budget. The working group is concerned that China may face similar issues.

CHI and a multi-layer medical security system

The 14th Five-year Plan states that China should establish a multi-layer medical security system,⁵⁸ and proposes that CHI be leveraged to partly cover innovative treatments and technologies that may not be affordable under BMI alone.⁵⁹ However, China's proposal to establish a multi-layer medical security system through the integration of BMI and CHI has a long way to go. CHI is still in its early stage of development, and currently faces critical barriers and challenges such as limited coverage,⁶⁰ and a low enrolment and pay-out ratio, leaving clinical needs largely unmet.

Recommendations

- Provide market freedom for the price formation of innovative drugs.
- Design a price formation mechanism with due discretion.
 - Remove economic constraints and price risk alerts for drugs with a high score for innovation.
 - Improve economic indicators for dynamic price adjustments to avoid excessive intervention and drive true innovation.
- Continue to improve the NRDL negotiation mechanism.
 - Strengthen communication transparency and policy clarity.
 - Optimise the evaluation framework and selection of comparators through value and science-based assessments.
 - Adjust the pricing and reimbursement scope in line with fund affordability.
- Improve the NRDL evaluation framework and accessibility for innovative drugs.
 - Increase credits for clinical value.
 - Ensure equal treatment for imported and domestic products.
 - Formulate differentiated RPS.
 - Adjust information disclosure requirements for innovative drugs.
 - Improve access to innovative drugs and associated biomarker testing, thereby standardising disease diagnosis and treatment.
- Increase the payment standards for innovative drugs and update in a timely manner the DRG grouping for disease categories related to innovative drugs.
- Continue to improve NRDL implementation both in hospital listing and dual-channel management to meet patient needs.
 - Strengthen inter-departmental and cross-provincial coordination.
 - Expedite provincial listings.
 - Optimise outpatient reimbursement.
- Promote the innovative drug exclusion mechanism and allocate a dedicated budget to promote innovative drugs' clinical application at the local level.
- Develop a long-term, follow-up evaluation mechanism on the cost and quality of all VBP products, and fully respect doctors' and patients' medication choices based on clinical needs, to accumulate evidence for VBP policy improvements.

55 *Opinions on Strengthening Intellectual Property Protection in the Field of Centralised Procurement of Medicine* clarify drugs, NHTA and CNIPA, 5th December 2022, viewed 30th April 2024, <https://www.gov.cn/zhengce/zhengceku/2023-01/02/content_5734611.htm>

56 *The Three-year Action Plan on DRG/DIP Payment Reform*, NHTA, 26th November 2021, viewed 30th April 2024, <http://www.nhsa.gov.cn/art/2021/11/26/art_104_7413.html>

57 As reported by a Pharmaceutical Working Group member that has decades of experience working in the health and pharmaceutical sector in the EU.

58 *Circular of the General Office of the State Council on the Issuance of the '14th Five-year Plan for Universal Healthcare Security'*, State Council, 29th September 2021, viewed 30th April 2024, <https://www.gov.cn/zhengce/content/2021-09/29/content_5639967.htm>; *Circular of the General Office of the State Council on the Issuance of the Key Tasks for Deepening the Reform of the Medical and Health System in 2024*, State Council, 6th June 2024, viewed 30th June 2024, <https://www.gov.cn/zhengce/content/202406/content_6955904.htm>

59 In 2021, the NHTA and the China Banking and Insurance Regulatory Commission both issued policies to encourage the development of CHI and provide guidance on the development of city supplementary insurance (CSI).

60 It covers mainly oncology drugs and RD drugs that are already on the CHI-city supplementary insurance list.





- Continue to exclude patent dispute medicines (including but not limited to patent disputes on compounds) from VBP.
- Guide regional authorities to not pilot VBP on biologics and NTI drugs, considering the high risk of non-interchangeability outweighing patient benefits.
- Establish a multi-layer medical security system by integrating CHI and BMI, and encouraging the roll-out and scope expansion of CHI to meet the demands of high-quality healthcare and medical treatment.

5. Develop Policies to Promote Vaccines and Innovative Preventive Solutions

Concern

Under current immunisation practices, the Chinese population—including key populations such as infants, young children and the elderly—has limited access to innovative vaccines and prophylactic biological products in a timely manner at vaccination clinics.

Assessment

Since ‘prevention first’ serves as one of the core strategies of the Healthy China initiative, China needs to make further advances in vaccination services to meet the public demand for vaccines and innovative preventive products, including upgrading adult vaccination services and validating the inclusion of innovative passive immunoprophylaxis (prophylactic monoclonal antibodies) in the management of the vaccination system.

The working group calls for further regulatory and policy reforms and clear implementing guidelines, to foster the creation of an ecosystem that supports innovative prophylactic biologics, including active and passive immunity biologics. The working group further recommends harmonising China’s vaccine regulatory framework with international standards, to enable the Chinese population to get quicker access to more innovative vaccines and potentially attract more foreign investment in vaccine manufacturing in China. Doing so will establish an effective ecosystem that can prevent China’s ageing population from suffering potential comorbidities. In turn, this will reduce the number of people requiring lengthy and expensive hospital treatment, thereby relieving pressure on the public healthcare system.

The lengthy process for vaccine registration and approval in China remains challenging and affects simultaneous global development. Additionally, there is a lack of clarity over technical guidance, ChP, requirements for multi-regional clinical trials (MRCTs), and a science-based strategy to introduce real-world evidence.

Numerous operational hurdles remain that prevent China’s inclusion in the vaccine MRCT. These include rigid testing requirements and processes before the initiation of a clinical trial, the lack of a channel for importing comparator vaccines that are not marketed in China, and limitations on exporting blood samples for global testing. Moreover, there is lack of clear and specific guidelines to ensure the implementation of ICH E17 guidelines for vaccines that can ultimately enable China to take part in vaccine MRCTs.⁶¹

Pilot launches for healthcare products in China’s free trade zones are one pathway that could accelerate vaccine registration, with several pilots having already been conducted at the regional level that have effectively addressing patients’ unmet needs. The working group recommends that vaccines be included in such pilots as soon as possible.

The current national regulations and legislative framework fail to properly recognise innovative preventative solutions, particularly passive immunisation, and are not open enough to incorporate new therapies into the immunisation infrastructure, further impeding the registration pathways for these innovative solutions.⁶² In addition, current immunisation programs and services in China are focussed on infants and young children, lacking sufficient immunisation services for adults.

Recommendations

- Increase the availability of innovative vaccines and immunisation programmes to the Chinese population by harmonising the regulatory environment with international standards, including MRCT requirements, technical guidance, pharmacopeia and a science-based strategy to introduce real world evidence.

⁶¹ The ICH E17 guidelines, as part of the ICH framework, describe general principles for the planning and design of MRCTs with the aim of increasing the acceptability of MRCTs in global regulatory submissions.

⁶² For instance, prophylactic agents such as monoclonal antibodies/insulin, have emerged to protect against infectious diseases, but there is no corresponding categorisation in China’s regulation for such innovative prophylaxes. The registration category therefore needs to be optimised accordingly.





- Establish special guidelines to fully implement the ICH E17 for vaccines by removing operational hurdles from the clinical study stage.
- Update the current biological registration category and regulatory approach for prophylactic bio-products to ensure they are appropriately classified and to guide their usage, boost innovation and enhance the diversity and accessibility of advanced measures for disease prevention.
- Introduce national policies related to adult immunisation services.
- Expedite the registration approval of vaccines by allowing post-approval trials for vaccine products that have already been registered overseas and allow trialling programmes in pilot zones.

6. Clarify which Areas Related to the Development and Application of Human Stem Cells, Genetic Diagnosis and Treatment Technologies are Permitted under the Foreign Investment Negative List, and Establish a Fit-for-purpose Reimbursement Mechanism for High-value Genetic Therapies

Concern

Foreign investment in the development and application of human stem cells, genetic diagnosis and treatment technologies is still prohibited, which hinders China's harmonisation with global frontier biotechnology R&D development trends, patients' access to new innovative therapies, and cooperation between domestic and foreign enterprises.

Assessment

Cell and gene therapy (CGT) is a cutting-edge and effective treatment for genetic and other challenging diseases. Its global manufacturing market size reached United States dollar (USD) 9.95 billion in 2023, and is expected to grow tenfold by 2033.^{63&64} China's CGT

ecosystem, despite having a few supportive policies,⁶⁵ still has a number of challenges—including limitations on foreign investment, localisation requirements for technology and IP, varying levels of related capabilities among medical organisations and inconsistent reimbursement periods—which significantly hinder both the commercialisation of and patients' access to innovative CGT products.

R&D and the production of cell therapy products are encouraged in the *Catalogue of Industries for Encouraged Foreign Investment (2022)*.⁶⁶ However, the *Negative List for Foreign Investment* prohibits investment in the development and application of human stem cells, genetic diagnosis and treatment technologies,⁶⁷ without providing clear definitions of the terms 'prohibited investment' and 'development and application'. Foreign companies are therefore uncertain about both whether they can carry out CGT clinical trials and new drug applications and to organise related investment plans. Although the CDE has issued technical guidelines on CGT,⁶⁸ concerns remain about the feasibility of the clinical development and subsequent commercialisation of CGT products. Because there is a great deal of variance among

⁶⁵ *Opinions of the General Office of Shanghai Municipal People's Government on Promoting the High-quality Development of the Municipal Biomedical Industry*, Shanghai Municipal People's Government, 16th April 2021, viewed 27th April 2024, <<https://www.shanghai.gov.cn/202110bgtwj/20210520/957f2366f41b4ac7a7d68b4e6a4aba6c.html>>; *Regulations on Building Shanghai Pudong New Area Zhangjiang the Biopharmaceutical Innovation Highland*, Pudong New Area People's Government, 21st July 2022, viewed 27th April 2024, <<https://www.pudong.gov.cn/zwgk/zcxwj-bsqgljzcwj/2022/286/29757.html>>; *Measures on Shanghai Accelerating the Building of a Global Biopharmaceutical R&D Economy and Industrialisation Highland*, General Office of Shanghai Municipal People's Government, 25th October 2022, viewed 27th April 2024, <<https://www.shanghai.gov.cn/nw12344/20221118/57912cee07a540eda9d0fe1ab70e31d7.html>>; *Action Plan for Promoting Scientific and Technological Innovation and Industrial Development of Cell Therapy in Shanghai (2022–2024)*, Shanghai Science and Technology Commission, Shanghai Economy and Informatization Commission and Shanghai Health Commission, 31st October 2022, viewed 27th April 2024, <<https://www.shanghai.gov.cn/nw12344/20221110/a03d67c9ccde4152a069f69ca63cf42.html>>; *Action Plan for Promoting Technological Innovation and Industrial Development of Gene Therapy in Shanghai (2023–2025)*, Shanghai Science and Technology Commission, Shanghai Economy and Informatization Commission and Shanghai Health Commission, 31st August 2023, viewed 27th April 2024, <<https://stscm.sh.gov.cn/cmsres/89/89cfd4122ad24243a4377664cd630811/bebc4fd6425bf0a15dd931a16653afa3.pdf>>; *Guidance Catalogue for Industrial Structure Adjustment (2024 Edition)*, NDRC, 27th December 2023, viewed 27th April 2024, <https://www.gov.cn/zhengce/202401/content_6924187.htm>

⁶⁶ *Catalogue of Industries for Encouraged Foreign Investment (2022)*, NDRC, 28th October 2022, viewed 27th April 2024, <https://www.gov.cn/zhengce/2022-11/29/content_5730383.htm>

⁶⁷ *Foreign Investment Negative List (2021 Edition)*, NDRC and Ministry of Commerce, 27th December 2021, viewed 27th April 2024, <https://www.gov.cn/zhengce/zhengceku/2021-12/28/content_5664886.htm>

⁶⁸ *Technical Guidelines for the Communication of Clinically Relevant Cell and Gene Therapy Products*, CDE, 28th December 2023, viewed 27th April 2024, <<https://www.cde.org.cn/main/news/viewInfoCommon/29a3f634b5ece698d65c372c28ea5fe6>>

⁶³ *Cell And Gene Therapy Manufacturing Market is Rising Rapidly*, BioSpace, 4th April 2024, viewed 5th May 2024, <<https://www.biospace.com/article/cell-and-gene-therapy-manufacturing-market-is-rising-rapidly/>>

⁶⁴ CGTs range from early to late stages of clinical development with a focus on a wide spectrum of diseases, including neurological conditions, genetic disorders and cancer.





different CGTs' technological maturity and associated risks, foreign investment and R&D into relatively well-developed, low-risk technology should be permitted.

China's export controls on CGT technologies also restrict local R&D and business in general. In China's 2023 import/export control catalogue, the export of some applications of [clustered regularly interspaced palindromic repeats] CRISPR gene editing technology is still prohibited – a technology critical for advancing basic biomedical research and pharmaceutical R&D.⁶⁹ These restrictions significantly impact collaborative research between China and global affiliates,⁷⁰ which will potentially further isolate China's innovation ecosystem.

Under China's current inspection and testing regulations,⁷¹ the lengthy and complex procedures,⁷² coupled with the high volume of sampling required during quality testing,⁷³ result in heavy administrative and economic costs, which acts a further deterrent to foreign investment.

Importantly, from a patient point of view, the high out-of-pocket expenses for CGT therapies, as a result of limited coverage on the NRDL,⁷⁴ makes CGT drugs unaffordable to wider populations.

Recommendations

- Issue clear, consistent and risk-based guidelines from all relevant authorities to define the scope of 'prohibited investment', and open channels for consultation and exchange.
- Implement and support pilot projects in selected areas, such as Beijing's 'two zones', Shanghai's Pudong New Area, the Tianjin Free Trade Zone, the Greater Bay Area, and Hainan Free Trade Port, to

- gradually ease foreign investment restrictions before applying successful outcomes nationwide.
- Organise regular discussions between relevant regulatory authorities and industry stakeholders—including enterprises, industry associations and chambers of commerce—to map out a unified standard for risk assessments that balance innovation and safety.
- Re-define the scope of technologies prohibited and restricted from export, and lift the prohibition on CRISPR gene editing technology based on adequate technical analysis and assessment.
- Streamline procedures for import/export inspections and quality testing of CGT-related materials and products to meet urgent clinical needs and ease companies' administrative and cost burdens.
 - Adopt a project-based, one-time risk assessment for the import/export of CGT-related materials and products that have the same specifications and description.
 - Apply the same requirement for chemical drugs to biological products, i.e., conduct quality testing for the first batch of commercial supply only.
- Develop a full-cycle CGT support mechanism covering import, customs clearance, quality testing and distribution.
- Establish a fit-for-purpose NRDL mechanism for CGT, raising the annual price threshold to a suitable level, exploring an outcome-based payment mechanism for co-payment with CHI and charity funds, and providing a CGT-specific insurance policy.

Abbreviations

API	Active Pharmaceutical Ingredient
BMI	Basic Medical Insurance
CAC	Cyberspace Administration of China
CBDT	Cross-border Data Transfer
CDE	Centre for Drug Evaluation
CGT	Cell and Gene Therapy
CHI	Commercial Health Insurance
ChP	China Pharmacopoeia
CMC	Chemistry, Manufacturing and Control
CNIPA	China National Intellectual Property Administration
CNY	Chinese Yuan
CRISPR	Clustered Regularly Interspaced Palindromic Repeats
DAL	Drug Administration Law

69 *Public Notice 2023 No. 57 Catalogue of Export-Prohibited and Export-Restricted Technologies*, Ministry of Commerce and Ministry of Science and Technology, 21st December 2023, viewed 27th April 2024, <<http://www.mofcom.gov.cn/article/zwgk/gkzcfb/202312/20231203462079.shtml>>

70 For example, patent applications by global headquarters, and patent or technology transfers or licensing-out to global affiliates.

71 *Administrative Measures for the Imported Drugs*, NMPA, 18th August 2003, viewed 8th May 2024, <https://www.samr.gov.cn/zwfxfxgk/fdzdgknr/bgt/art/2023/art_7dde931fd2fc4f3eb8699a0edc5d4ca9.html>

72 CGT-related materials and products are categorised as high-risk special articles for the purposes of customs import/export inspections, some of which are required for additional risk assessments. Completing the procedure would exceed the time limits set for inspection.

73 Every commercial batch of biological products, including CGT products, must undergo quality testing using one-third of the sampling quantity.

74 The NRDL sets an annual price cap of CNY 300,000 that applies to all drugs, including CGT products which are high-value and high-cost products.





DALIR	Drug Administration Law Implementation Regulations
DIP	Diagnosis-intervention Packet
DP	Drug Product
DRG	Diagnosis-related Group
DS	Drug Substance
EU	European Union
GDP	Gross Domestic Product
ICER	Incremental Cost-effective Ratio
ICH	International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use
IP	Intellectual Property
MAH	Marketing Authorisation Holder
MRCT	Multi-regional Clinical Trial
NDRC	National Development and Reform Commission
NMPA	National Medical Products Administration
NRDL	National Reimbursement Drug List
NHC	National Health Commission
NHSA	National Healthcare Security Administration
NIFDC	National Institutes for Food and Drug Control
NMPA	National Medical Products Administration
NRDL	National Reimbursement Drug List
NTI	Narrow Therapeutic Index
PAC	Pharmaceutical Affairs Committee
PDG	Pharmacopeial Discussion Group
PIPL	Personal Information Protection Law
PTA	Patent Term Adjustment
PTE	Patent Term Extension
QALY	Quality Adjusted Life Years
R&D	Research and Development
RD	Rare Disease
RDP	Regulatory Data Protection
RLD	Reference Listed Drug
RPS	Reimbursement Payment System
SRA	Stringent Regulatory Agency
US	United States
USD	United States dollar
VBP	Volume-based Procurement





Rail Working Group

Key Recommendations

1. Continue to Expand Market Access and Improve Fair Competition in the Rail Industry

- Accelerate the revision and issuance of the *Tender Evaluation Method*, to ensure a fairer and more reasonable scoring system.
 - Remove clauses that explicitly or implicitly discriminate against the ownership structure of enterprises.
- Ensure effective implementation of the revised *Tender Evaluation Method* in all regions after its issuance.
- Eliminate de facto discrimination against foreign-invested enterprises (FIEs) resulting from discretionary policy interpretation by different local rail authorities.
- Implement fully the policies related to increasing foreign investment and creating a level playing field for FIEs and Chinese companies that have already been issued.

2. Increase the Participation of FIEs and Utilise Their Advantages in National Initiatives and Projects in Order to Boost the Economy

- Increase communication between FIEs and the Chinese Government, with the inclusion of FIEs' headquarters, when formulating and implementing national initiatives.
- Facilitate the exchange of leading industry practices and technologies by increasing the participation of European companies in Chinese rail infrastructure projects, both in China and the rest of the world.

3. Promote the Adoption and Absorption of FIEs' Advanced Technologies in the Rail Industry to Help the Formulation of Domestic Standards and Technical Specifications and Improve both the Participation of FIEs and Joint Ventures (JVs) in, and the Transparency of, Standard-setting Processes

- Provide equal access to all companies legally registered in China to participate in the standardisation activities of relevant technical committees or working groups.
- Ensure FIEs can participate equally in the formulation of national standards, industry standards and social organisation standards.
 - Encourage close and non-discriminatory coordination between relevant standard-setting technical committees, government agencies and FIEs.
- Encourage both the adoption of advanced technologies in Chinese standards, and the convergence of Chinese and international standards.
- Accelerate the modernisation of the rail standards system to make it fair, reasonable, inclusive and transparent.
 - Set the extensive participation of stakeholders in the standards-setting process as an





important evaluation indicator.

- Regulate the standardisation activities of social organisations and avoid applying group standards formulated by social organisations to government inspection, product certification and public procurement activities.

4. Optimise the Rail Industry Supply Chain through Improved Enforcement of Intellectual Property Rights (IPR) 4

- Improve IPR enforcement to encourage increased investment in the rail industry and to foster the participation of SMEs in the supply chain.

Recent Developments

In 2023: the length of railways in operation in China totalled 159,000 kilometres (km), with high-speed railways accounting for 45,000km of the total; 2,776km of high-speed railways were newly constructed; and 3.85 billion railway passenger trips were completed in China, a year-on-year increase of just over 130 per cent.¹

As of 31st December 2023: the total length of operational urban rail in 59 major cities in the Chinese mainland was 11,225km, including 8,543km of subways, which account for just over 76 per cent of total urban rail; and a total of 867km of new urban rail transit lines had been constructed, with 25 new lines coming into operation.²

The Chinese Government issued a series of national guiding policies and documents aimed at developing 'a country with a strong transportation network'.^{3&4} In March 2023, five central government agencies, including the Ministry of Transport (MOT), jointly issued the *Five-year Action Plan for Accelerating the Building*

of National Strength in Transportation (2023–2027).⁵

The plan proposes 10 major initiatives, including the construction of modern comprehensive transportation infrastructure and accelerating technological innovation in and low-carbon transformation of the transport sector, and comprises 53 specific tasks.

At the same time, tighter national restrictions have been imposed on urban rail and subway projects to reduce local government debt risk caused by overinvestment. There has been an overall decline in both railway investments and the length of new lines coming into operation since the COVID-19 pandemic. While there was some recovery in fixed-asset investment in 2023, it did not reach pre-pandemic levels; while the rate of new railway lines in operation continued to decline (see figures 1 and 2).⁶

In February 2024, the NRA, together with multiple government bodies, jointly issued the *Implementation Plan for Promoting the Low-carbon Development of the Rail Industry*. The plan proposes low-carbon development strategies in the areas of railway construction and equipment upgrading, as well as optimisation of the overall transportation structure,

1 *Over Chinese Yuan (CNY) 18 Trillion in Fixed Investment in Transportation Over the Past 5 Years, Length of China's Transport Network Exceeds 6 Million Kilometres*, State Council, 29th February 2024, viewed 11th July 2024, <https://www.gov.cn/lianbo/bumen/202402/content_6934873.htm>

2 *2023 Statistics and Analysis Report of China's Urban Rail Transit*, China Association of Metros (CAMET), 29th March 2024, viewed 11th July 2024, <<https://www.camet.org.cn/tjxx/14894>>

3 *The Communist Party of China Central Committee and the State Council Issued the Programme of Building National Strength in Transportation*, State Council, 19th September 2019, viewed 11th July 2024, <http://www.gov.cn/zhengce/2019-09/19/content_5431432.htm>

4 *National Comprehensive Three-dimensional Transportation Network Planning Outline*, State Council, 24th February 2021, viewed 11th April 2024, <https://www.gov.cn/zhengce/2021-02/24/content_5588654.htm>

5 *Issuance and Implementation of the Five-year Action Plan for Accelerating the Building of National Strength in Transportation (2023–2027)*, MOT, 31st March 2023, viewed 11th July 2024, <https://www.gov.cn/lianbo/2023-03/31/content_5749421.htm>

6 *National Railway Administration: Strive to Turn Suggestions and Proposals into Momentum for High-quality Rail Development*, National Railway Administration (NRA), 6th March 2024, viewed 11th July 2024, <https://www.nra.gov.cn/xwzx/xwxx/xwlb/202403/t20240306_344777.shtml>





Figure 1. Fixed-asset Investment in China's Railway System 2020–2023

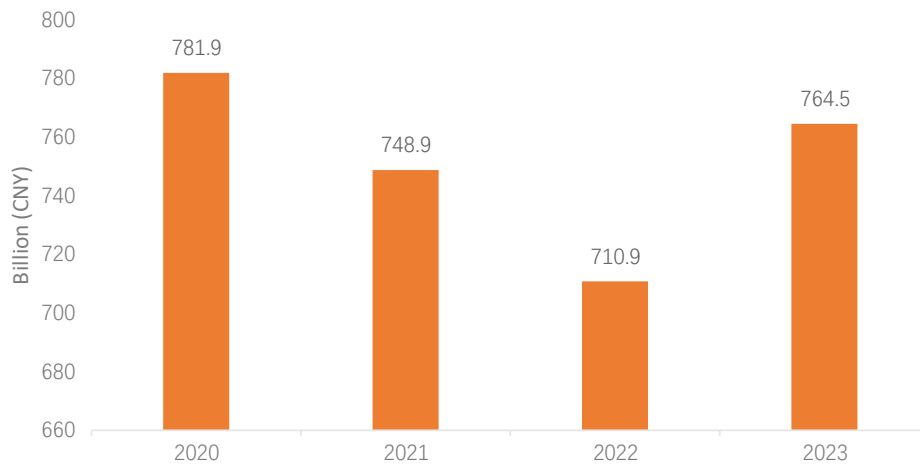
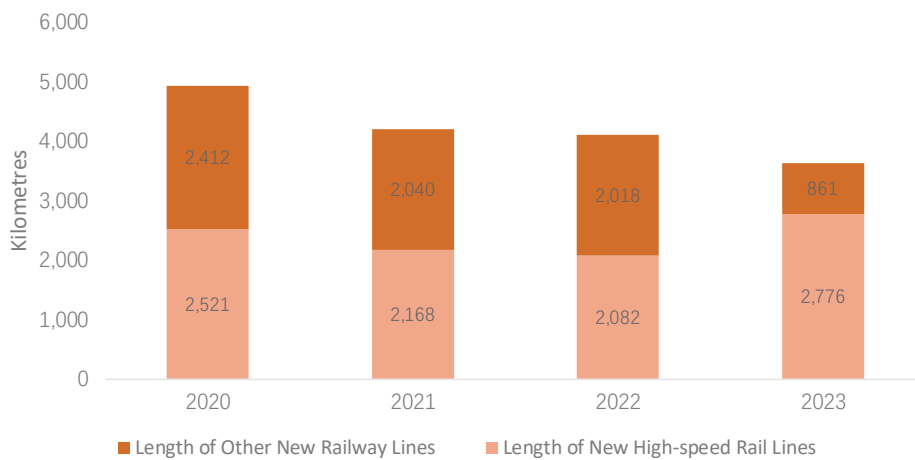


Figure 2. Length of New Railway Lines in Operation 2020–2023



among others.⁷ The working group supports these efforts and its members have already established decarbonisation targets and plans. Some member companies have even taken the lead in the transition to carbon neutrality and are actively promoting the measurement and analysis of carbon emissions throughout all parts of the industrial chain.

⁷ The National Railway Administration, National Development and Reform Commission, Ministry of Ecology and Environment, Ministry of Transport and China Railway Jointly Issued the Implementation Plan for Promoting the Low-carbon Development of the Rail Industry, NRA, 6th February 2024, viewed 16th April 2024, <https://www.gov.cn/lianbo/bumen/202402/content_6930566.htm>

Key Recommendations

1. Continue to Expand Market Access and Improve Fair Competition in the Rail Industry 🌐 4

Concern

Wholly foreign-owned enterprises (WFOEs) and joint ventures (JVs) controlled by foreign investors are at a disadvantage to domestic enterprises in the Chinese rail industry.



Assessment

The rapid development of China's rail industry has led to market expansion for both domestic enterprises and foreign-invested enterprises (FIEs). However, FIEs participating in China's rail industry continue to be treated unfairly compared to domestic competitors, especially in urban rail projects, which has an impact on their ability to develop and contribute to China's economy. According to the European Chamber's *Business Confidence Survey 2024*, 65 per cent of European respondents from the transportation, logistics and distribution sector are losing business opportunities due to market access restrictions and regulatory barriers.⁸

For example, the *Tender Evaluation Method for Urban Rail Transit Vehicles (2014 Trial Version) (Tender Evaluation Method)*, formulated by the China Association of Metros (CAMET), includes a section on the localisation of key components. In this section, different scoring criteria are clearly set for domestic and foreign ownership: WFOEs and JVs controlled by foreign investors often receive zero points; JVs controlled by Chinese investors or in which Chinese and foreign stakeholders have equal shares can receive half a point; while Chinese domestic enterprises receive a full point. With fierce market competition in the sector, a single point may determine which supplier wins a bid. The majority of FIEs are affected by the 'one-point scoring system' and it has a significant impact on their bottom lines, as well as their market share. Not only is the scoring system unfair, it also prevents FIEs and JVs from providing competitive pricing, technologies and services, while undermining their investment confidence in China. Some FIEs have already had internal discussions about adjusting their long-term development strategies for the Chinese market as a result.

The working group understands that policy-making bodies, including the Ministry of Commerce (MOFCOM), the NDRC and the State Administration for Market Regulation, initiated a revision of the *Tender Evaluation Method* in 2023, and that the relevant provisions treating domestic and foreign companies unequally are set to be removed. The working group welcomes this action and believes that creating the conditions for fair

market competition is a prerequisite for sustainable development of both the industry and enterprises. Nonetheless, the new version of the *Tender Evaluation Method* has not yet been released, and therefore FIEs and JVs continue to be negatively impacted. For example, in January 2024, in some local urban rail bidding projects for signalling systems and air conditioning systems, WFOEs and JVs controlled by foreign investors were still subject to the 'one-point scoring system'.

In 2023 and 2024, the Chinese Government issued several policies aimed at increasing foreign investment and creating a level playing field for FIEs. These included the *Opinions on Further Optimising the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment (Opinions)* and the *Action Plan for Solidly Promoting High-level Opening to the Outside World and Making Greater Efforts to Attract and Utilise Foreign Investment (Action Plan)*.^{9,10} Both guidelines also highlight fair and equal access to government procurement and standard-setting activities.¹¹

These policies are very encouraging to the working group. With the Chinese Government emphasising consistency between policy formulation and macro policy orientation, the working group hopes that the relevant authorities will pay attention to the new regulations and ensure their full implementation across all regions.

⁹ *Opinions of the State Council on Further Optimising the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment*, State Council, 13th August 2023, viewed 11th July 2024, <https://www.gov.cn/zhengce/zhengceku/202308/content_6898049.htm>

¹⁰ *Action Plan for Solidly Promoting High-level Opening to the Outside World and Making Greater Efforts to Attract and Utilise Foreign Investment*, State Council, 19th March 2024, viewed 11th July 2024, <https://www.gov.cn/yaowen/liebiao/202403/content_6940174.htm>

¹¹ In addition to the *Opinions* and the *Action Plan*, the Chinese authorities have published other guidelines or adopted measures in an attempt to ensure equal treatment of FIEs in the China market, including fair participation in government procurement activities. These include the MOFCOM's special action to eliminate differential treatment of foreign investors in November 2023; the 2024 Government Work Report's reiteration of the need to provide pre-national treatment for FIEs; and the *Review Rules for Fair Competition in Tendering and Bidding* issued by the NDRC in March 2024: *Letter from the General Office of the Ministry of Commerce Concerning the Special Clean-Up Work on Unreasonable Differential Treatment of Domestic and Foreign Investment*, MOFCOM, 8th November 2023, viewed 11th July 2024, <http://wzs.mofcom.gov.cn/zcfb/art/2023/art_d6d8bda1dc19422a937d2390be4b4dc4.html>; *Government Work Report*, State Council, 12th March 2024, viewed 11th July 2024, <https://www.gov.cn/yaowen/liebiao/202403/content_6939153.htm>; *Review Rules for Fair Competition in Tendering and Bidding*, NDRC, 25th March 2024, viewed 17th April 2024, <<https://zfxgk.ndrc.gov.cn/web/iteminfo.jsp?id=20360>>

⁸ *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 11th July 2024, p.25, <https://www.eurochamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>



Recommendations

- Accelerate the revision and issuance of the *Tender Evaluation Method*, to ensure a fairer and more reasonable scoring system.
 - Remove clauses that explicitly or implicitly discriminate against the ownership structure of enterprises.
- Ensure effective implementation of the revised *Tender Evaluation Method* in all regions after its issuance.
- Eliminate de facto discrimination against FIEs resulting from discretionary policy interpretation by different local rail authorities.
- Implement fully the policies related to increasing foreign investment and creating a level playing field for FIEs and Chinese companies that have already been issued.

2. Increase the Participation of FIEs and Utilise their Advantages in National Initiatives and Projects in Order to Boost the Economy

Concern

Unless FIEs' participation in national initiatives and projects is better encouraged, their level of investment and contribution to China's economic development will remain relatively low.

Assessment

China has emphasised the importance of constructing 'new infrastructure' in multiple policy documents and pieces of legislation,^{12&13} with high-quality development of the rail industry a key part of this initiative.^{14&15}

Members of the working group welcome these national policies and are keen to deepen their presence in the Chinese market, share their technology and experience, and increase their investments. However, the participation of FIEs in the rail industry is still relatively low, and the level of dialogue between their

headquarters and Chinese authorities insufficient. Subsequently, only a few are currently participating in large rail projects.

Since China announced the Belt and Road Initiative (BRI) in 2013, new rail infrastructure opportunities have emerged across the Eurasian continent.¹⁶ The significant trade volumes under the BRI have the potential both to provide more opportunities for multinational enterprises to invest and develop in China, and to enhance the scope of, and opportunities for, cooperation between FIEs and Chinese enterprises.¹⁷

Many European rail companies have established stable and well-recognised local service and operation teams in BRI regions, yet they are struggling to participate in BRI projects. According to a report by the European Chamber on the BRI, out of the small number of European companies involved in the initiative, "nearly 40 per cent of [surveyed] companies believe that procurement systems for BRI projects are not transparent enough".¹⁸

To ensure healthy development of the rail industry in China there is a need for fair market competition, and to provide reciprocal access to investment opportunities. This includes allowing more European companies to participate in the BRI and other national strategies and projects. Doing so would raise the quality, feasibility and sustainability of rail projects through the introduction of world-class technologies and services. Furthermore, the presence of European equipment manufacturers and service providers would help to develop the international competitiveness of Chinese original equipment manufacturers.

In short, providing European companies with equal treatment and access to national projects would

¹² 'New infrastructure' mainly includes information infrastructure, converged infrastructure and innovative infrastructure. *What is New Infrastructure*, *Xinhua*, 26th April 2020, viewed 11th July 2024, <http://www.xinhuanet.com/politics/2020-04/26/c_1125908061.htm>

¹³ *January Press Conference of the National Development and Reform Commission*, NDRC, 18th January 2023, viewed 11th July 2024, <<https://www.ndrc.gov.cn/xwdt/wszb/1yfxwfbh>>

¹⁴ *NDRC Identified the Scope of New Infrastructure for the First Time*, MOFCOM, 21st April 2020, viewed 11th July 2024, <<http://m.mofcom.gov.cn/article/1/yj/1/e/202004/20200402957398.shtml>>

¹⁵ *Notice of the Ministry of Transport on Issuing the Action Plan for New Infrastructure Construction in the Transportation Sector (2021–2025)*, MOT, 31st August 2021, viewed 11th July 2024, <https://www.gov.cn/zhengce/zhengceku/2021-09/29/content_5639987.htm>

¹⁶ For example, the China Railway Express (CR Express) project under the BRI greatly stimulated the rail-related industrial chain, from rail track construction and maintenance to vehicle manufacturing. For more information on the CR Express, please refer to the following: *The State Council's Opinions on Promoting Inner Mongolia's High-quality Development and Striving to Write a New Chapter of Chinese Modernisation*, State Council, 16th October 2023, viewed 11th July 2024, <https://www.gov.cn/zhengce/zhengceku/202310/content_6909412.htm>

¹⁷ According to the State Council, China's trade with 'BRI countries' totalled Chinese yuan (CNY) 19.47 trillion in 2023, accounting for 46.6 per cent of China's total trade, a 1.2 percentage point increase year-on-year. *The State Council Information Office Held a Press Conference on the 2023 Import and Export Situation*, State Council, 12th January 2024, viewed 11th July 2024, <https://www.gov.cn/lianbo/fabu/202401/content_6925700.htm>

¹⁸ *The Road Less Travelled: European Involvement in China's Belt and Road Initiative*, European Chamber, 16th January 2020, viewed 11th July 2024, pp. 15–18, <http://european-chamber.com/en/publications-archives/762/The_Road_Less_Travelled_European_Involvement_in_China_s_Belt_and_Road_Initiative>



accelerate the development of China's rail industry, which would be in line with the government's long-term goals for both building 'new infrastructure' and developing a sustainable economy.

Recommendations

- Increase communication between FIEs and the Chinese Government, with the inclusion of FIEs' headquarters, when formulating and implementing national initiatives.
- Facilitate the exchange of leading industry practices and technologies by increasing the participation of European companies in Chinese rail infrastructure projects, both in China and the rest of the world.

3. Promote the Adoption and Absorption of FIEs' Advanced Technologies in the Rail Industry to Help the Formulation of Domestic Standards and Technical Specifications, and Improve both the Participation of FIEs and JVs in, and the Transparency of, Standard-setting Processes

Concern

Foreign-invested enterprises in the rail industry generally do not have the same opportunities as local companies to participate in the formulation of standards, and also have very limited opportunities to put forward opinions and suggestions, which may create market entry barriers and result in unfair competition.

Assessment

There are several barriers to FIEs' participation in standard-setting activities in China.¹⁹

First, following the reform of China's standardisation system, social organisations have been endowed with the legal status to formulate group standards for themselves.²⁰ While such group standards are often applied during government inspection, certification and public procurement activities, only mandatory national

and industry standards are comprehensive enough to cover all companies' interests and thus these should be applied instead. Although many FIEs are members of standard-setting social organisations, they are usually unable to participate equally in the formulation of standards and regulations and provide their input into the decision-making process compared to local enterprises, thus resulting in a de facto market barrier.

Second, large Chinese state-owned enterprises have been pressuring external suppliers to adopt their internal standards in recent years. Due to the lack of involvement of stakeholders throughout the industry chain in their formulation, these internal standards often lack sophistication and have low universality. This has affected the application of advanced technologies in China to some extent, and has become a significant hidden barrier to FIEs trying to enter the market.

Third, Chinese rail sector standards lack both information and transparency, with some only made available to selected FIEs, and updates to the content of standards are normally confidential.²¹

This is despite the fact that the Chinese authorities have released several policies aimed at improving standards related to the transport industry—including rail—and promoting the participation of FIEs in the standards-setting process. For example, the *Opinions of the Ministry of Transport on Several Issues Concerning Promoting the Modernisation of the Transport Governance System and Governance Capability* emphasises improving the standards system in the transportation sector, strengthening the effective supply of standards in key areas and making use of the guiding role of standardisation.²²

Other overarching policy guidelines, including the *14th Five-year Plan (14FYP) for Transportation Standardisation* and the *Opinions on Encouraging the High-quality and Standardised Development of*

¹⁹ For more information on ensuring FIEs' equal access to standardisation work, including their participation in standard-setting social organisations, please refer to Key Recommendation 2 in the *Standards and Conformity Assessment Working Group Position Paper 2024/2025*.

²⁰ A literal translation of the Chinese term *shehui tuanti* is preferred here to the more usual English usage of non-governmental organisation. This includes both the more autonomous organisations and those set up by state agencies specifically to carry out social welfare functions. *Notice of the State Council on Printing and Distributing the Report Plan for Deepening Standardisation Work*, State Council, 26th March 2015, viewed 18th April 2024, <http://www.gov.cn/zhengce/content/2015-03/26/content_9557.htm>

²¹ *The Shape of Things to Come: The Race to Control Technical Standardisation*, European Chamber, 2nd December 2021, viewed 11th July 2024, pp. 15-17, <https://www.eurochamber.com.cn/en/publications-archive/966/The_Shape_of_Things_to_Come_The_Race_to_Control_Technical_Standardisation>

²² *The Opinions of the Ministry of Transport on Several Issues Concerning Promoting the Modernisation of the Transport Governance System and Governance Capability*, MOT, 24th October 2020, viewed 11th July 2024, <http://xxgk.mot.gov.cn/2020/jigou/zcyjs/202010/t20201024_3479808.html>



Social Organisation Standards,^{23&24} also highlight strengthening standardisation management systems. Both these documents stress further involving FIEs in standard-setting activities, by requiring the participation of a wide range of stakeholders including those involved in production, operation, management, construction, consumption, testing and certification. For rail specifically, the *14FYP of Railway Standardisation Development* indicates that a more encompassing and transparent standardisation mechanism in China's rail industry should be built, with more diverse stakeholders, including FIEs, involved in the standard-setting process.²⁵

Chinese authorities such as the MOT and the NRA have also formulated regulations aimed at strengthening the management of group standards in the rail industry and addressing discriminatory treatment against FIEs in standard-setting organisations. The authorities intend that this be done through stipulating the conditions, processes and management framework for the adoption of group standards as mandatory national standards and industry standards,²⁶ and by stressing that FIEs should have equal access to standard-setting activities of social organisations.^{27&28}

The Rail Working Group recommends that, in line with these policies and regulations—as well as the Foreign Investment Law, the Standardisation Law and the State Councils' *Opinions and Action Plan*—FIEs in the rail industry be provided equal access to

standard-setting activities.²⁹ These companies have accumulated rich experience in the development and applicability of standards in the rail industry, having actively participated in such activities in other countries and regions. Providing such access would therefore allow them to contribute to the modernisation and internationalisation of China's rail standards system, thereby promoting the high-quality development of the country's rail industry overall.

Recommendations

- Provide equal access to all companies legally registered in China to participate in the standardisation activities of relevant technical committees or working groups.
- Ensure FIEs can participate equally in the formulation of national standards, industry standards and social organisation standards.
 - Encourage close and non-discriminatory coordination between relevant standard-setting technical committees, government agencies and FIEs.
- Encourage both the adoption of advanced technologies in Chinese standards, and the convergence of Chinese and international standards.
- Accelerate the modernisation of the rail standards system to make it fair, reasonable, inclusive and transparent.
 - Set the extensive participation of stakeholders in the standards-setting process as an important evaluation indicator.
- Regulate the standardisation activities of social organisations and avoid applying group standards formulated by social organisations to government inspection, product certification and public procurement activities.

4. Optimise the Rail Industry Supply Chain through Improved Enforcement of Intellectual Property Rights (IPR)

Concern

Inadequate IPR enforcement discourages technological innovation in the rail industry, especially by specialised small and medium-sized enterprises (SMEs).

23 *Notice of the Ministry of Transport, Standardisation Administration of China, National Railway Administration, Civil Aviation Administration of China and State Post Bureau on Issuing the 14th Five-year Plan for Transportation Standardisation*, MOT, 15th November 2021, viewed 11th July 2024, <https://xxgk.mot.gov.cn/2020/jigou/kjs/202111/t20211112_3625878.html>

24 17 Government Agencies Including the Standardisation Administration of China Jointly Issued the *Opinions on Encouraging the High-quality and Standardised Development of Social Organisation Standards*, MOFCOM, 18th March 2022, viewed 11th July 2024, <https://ltbzh.mofcom.gov.cn/article/ltbznmgg/202203/2301_1.html>

25 *14th Five-year Plan of Railway Standardisation Development*, NRA, 27th December 2021, viewed 11th July 2024, <https://www.nra.gov.cn/jglz/kjgl/zywj/202112/t20211227_272220.shtml?eqid=e94056d00000cb7b00000003647eaaef>

26 *The Interim Regulations on the Adoption of Social Organisation Standards and Enterprise Standards as National and Industry Rail Standards*, NRA, 15th November 2023, viewed 11th July 2024, <https://www.nra.gov.cn/xxgk/gkml/zjtj/gfzd/gfxw/zuti/kjgl/202311/t20231122_343727.shtml>

27 *Opinions of the State Council on Further Optimising the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment*, State Council, 13th August 2023, viewed 11th July 2024, <https://www.gov.cn/zhengce/zhengceku/202308/content_6898049.htm>

28 *Action Plan for Solidly Promoting High-level Opening to the Outside World and Making Greater Efforts to Attract and Utilise Foreign Investment*, State Council, 19th March 2024, viewed 11th July 2024, <https://www.gov.cn/yaowen/liebiao/202403/content_6940174.htm>

29 Foreign-invested companies' interest in taking part in the setting of rail-related standards and technical specifications derives from their willingness to access the Chinese rail market and specific projects, and is without prejudice to the economic and technological security objectives that China's indigenous innovation policies seek to ensure.



Assessment

While 84 per cent of respondents to the European Chamber's *Business Confidence Survey 2024* reported that China's written intellectual property laws and regulations are excellent or adequate, 46 per cent said that IPR enforcement is inadequate.³⁰ As a result, many are hesitant to bring their latest technology to China, which has the potential to negatively affect both their China operations and their partnerships with Chinese companies. In addition, according to a recent European Chamber study on China's innovation ecosystem, the country's weak IPR protection system is the factor that has the most negative impact on the research and development/innovation activities of European companies in China, as reported by 33.7 per cent of respondents to the survey that accompanied the report.³¹

SMEs are integral to the rail industry: they drive innovation and technological progress for the industrial supply chain; and they have the flexibility and specialised expertise to actively promote innovation and provide necessary products and services for larger rail companies. However, for those SMEs that are still willing to come to China, many are still being compelled to transfer technology to Chinese enterprises or business partners in order to maintain market access. To ensure the healthy development of the rail industry, China therefore needs to secure the participation of SMEs while continuing to improve its IPR enforcement regime.

Recommendation

- Improve IPR enforcement to encourage increased investment in the rail industry and to foster the participation of SMEs in the supply chain.

Abbreviations

BRI	Belt and Road Initiative
CAMET	China Association of Metros
CNY	Chinese Yuan
CR Express	China Railway Express
FIE	Foreign-invested Enterprise
FYP	Five-year Plan
JV	Joint Venture
IPR	Intellectual Property Rights
km	kilometre
MOFCOM	Ministry of Commerce
MOT	Ministry of Transport
NDRC	National Development and Reform Commission
NRA	National Railway Administration
SME	Small and Medium-sized Enterprise
WFOE	Wholly Foreign-owned Enterprise

³⁰ *European Business in China Business Confidence Survey 2024*, European Chamber, 10th May 2024, viewed 11th July 2024, p.25, <https://www.europeanchamber.com.cn/en/publications-archive/1177/Business_Confidence_Survey_2024>

³¹ *China's Innovation Ecosystem: The Localisation Dilemma*, European Chamber, 21st April 2023, viewed 11th July 2024, p. 8, <https://www.europeanchamber.com.cn/en/publications-archive/1077/China_s_Innovation_Ecosystem_the_localisation_dilemma>

4

Section Four

Services

Services

The Services section of the *Position Paper* includes papers from four working groups and two sub-working groups of the European Chamber:

- Aviation and Aerospace
- Construction
- Information and Communication Technology (ICT)
 - Cybersecurity (Sub-working Group)
- Logistics
 - International Liner Shipping (Sub-working Group)

Over the past decade, the share that the services sector contributes to China's gross domestic product (GDP) has been steadily increasing. In 2023, the services sector overall accounted for 54.6 per cent of China's GDP, with trade in services representing 4.9 per cent of the total.^{1&2} As of 2022, China was the EU's fourth largest destination for trade in services, accounting for five per cent of total services exports.³

After suffering considerably throughout the COVID-19 pandemic, due to the highly restrictive measures in China that saw many parts of the service industry grind to a halt, services grew throughout 2023 and into 2024. Activity slowed in June 2024, although still remained in positive territory, according to the Caixin services purchasing managers index.⁴

However, post-zero COVID recovery for services in China has been uneven overall, in large part due to market access and regulatory barriers coupled with diminished confidence in the Chinese business environment. According to the European Chamber's *Business Confidence Survey 2024* (BCS 2024), the proportions of respondents that ranked China as their top investment destination and that reported plans to expand their respective business in 2024 were the lowest on record. In the services industry specifically, more European companies in the transportation, logistics and distribution, civil engineering and construction, information and communication technology (ICT) and education sectors reported revenue decreases rather than increases.⁵

Some of the market access barriers in China's services industry are long-standing. For example, the country's commitment to allow foreign players to provide computer reservation system (CRS) services in the travel industry was part of its World Trade Organization (WTO) accession agreement

1 *Services, value added (% of GDP) – China*, World Bank, 2024, viewed 20th July 2024, <<https://data.worldbank.org/indicator/NV.SRV.TOTL.ZS?locations=CN>>

2 *Trade in services (% of GDP) – China*, World Bank, 2024, viewed 20th July 2024 <<https://data.worldbank.org/indicator/BG.GSR.NFSV.GD.ZS?locations=CN>>

3 *International Trade in Services – Main trading partners*, Eurostat, data extracted in January 2024 (2022 is the most up-to-date record for trade in services), viewed 20th July 2024 <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=International_trade_in_services#Main_trading_partners>

4 *China Services Sector Gauge Shows Slowdown in Activity*, *Wall Street Journal*, 2nd July 2024, viewed 20th July 2024 <<https://www.wsj.com/economy/china-services-sector-gauge-shows-slowdown-in-activity-growth-35f37d19>>

5 *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 20th July 2024, <<https://www.europeanchamber.com.cn/en/publications-business-confidence-survey>>



more than two decades ago.⁶ Foreign participation in this segment remains extremely limited, with global distribution system providers only allowed to offer ticket reservation services for international flights, while continuing to face onerous licensing procedures and unclear regulations.⁷

In other areas, long-standing industry asks have been addressed in a limited way, leaving plenty of room for policy and regulatory improvements. For example, in 2021, the State Council launched a pilot project for shipping companies to conduct international cargo relay via Shanghai Yangshan Port, that will be in place until 31st December 2024.⁸ While welcomed by industry, its temporary nature, the fact the pilot has a limited geographical scope—as it can only be trialled by ships at Yangshan Port in Shanghai arriving from, or departing for, the three northern ports of Dalian, Qingdao and Tianjin—and the restrictions on the carriers and vessels allowed to participate in the pilot, mean that foreign companies are not able to take full advantage of this initiative. According to members of the International Liner Shipping Sub-working Group, if these restrictions were to be lifted and the policy to become permanent, carriers would be able to provide more diversified shipping products to customers, and at the same time benefit from much shorter transit times, thereby increasing efficiency and saving fuel.⁹

Access to China's procurement market is another long-standing pain point, which, in certain sectors, has been exacerbated by the country's focus on localisation and achieving self-reliance in strategic technologies. European companies in the ICT industry, for example, report that tenders give significant weight to domestic suppliers or, in some cases, specify a required localisation percentage in the qualification criteria. The impact of these and other types of restrictions is abundantly clear in telecommunications, with the market share of European vendors having dropped from around 30 per cent in 4G services (the share that Chinese vendors still enjoyed in Europe for 5G as of the end of 2022) to low single digits in 5G services.^{10&11} In addition, procurement-related programmes for IT application innovation (ITAI) products clearly favour domestic ICT suppliers, as no international suppliers have so far managed to qualify for them.¹²

In this context, the emphasis on ensuring foreign players' equal access to government procurement activities outlined in recent policy documents has been well-received by European

6 *Trade in Services – Schedule Of Specific Commitments*, WTO, 14th February 2002, viewed 20th July 2024 <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/SCHD/GATS-SC/SC135.pdf&Open=True>>

7 For more information, please refer to Key Recommendation 3 of the *Aviation and Aerospace Sub-working Group Position Paper 2024/2025*, p. 309.

8 *Approval of the Temporary Adjusted Implementations of Relevant Administrative Regulations in Shanghai Pilot Free Trade Zone Lingang New Area by State Council*, Central Government of People's Republic of China, 18th November 2021, viewed 20th July 2024, <http://www.gov.cn/zhengce/content/2021-11/18/content_5651689.htm>

9 For more information, please refer to Key Recommendation 1 of the *International Liner Shipping Sub-working Group Position Paper 2024/2025*, p. 360.

10 Rühlig, T, and Turcsányi, R, *Evaluating Public Support for Chinese Vendors in Europe's 5G Infrastructure*, German Council on Foreign Relations, August 2023, viewed 10th May 2024, <<https://dgap.org/en/research/publications/evaluating-public-support-chinese-vendors-europes-5g-infrastructure#:~:text=A%20revised%202021%20IT%20Security>>

11 *Market share of 5G base station manufacturers in China in 2023*, Statista, June 2023, viewed 20th July 2024, <<https://www.statista.com/statistics/1194757/china-market-share-of-5g-base-stations-by-manufacturer/>>

12 For more information, please refer to Key Recommendations 1 and 2 of the *Information and Communication Technology Position Paper 2024/2025*, p. 327.

companies.¹³ The ongoing revision of the Government Procurement Law and the Bidding Law also provides a window of opportunity for this commitment to equal access and participation to be enshrined in legislation. At the multilateral level, companies in industries like construction have also been calling for China to speed up its efforts to join the WTO's Government Procurement Agreement, which it committed to do decades ago during its WTO accession process. However, the key metric for success will not be measured by changes on paper, but by on-the-ground improvements for foreign businesses. Failure to achieve meaningful progress may result in increased tensions with key trading partners, as exemplified by the EU's investigation on access to the Chinese procurement market for medical devices under the International Procurement Instrument.¹⁴

European companies in the services industry also encounter challenges linked to China's green and digital transitions. One key topic in this regard is the need for international harmonisation of standards and regulations to facilitate interoperability, reduce costs and develop a more efficient pathway to advance these two goals. For example, in the aviation industry, it is extremely important to develop internationally recognised standards for sustainable aviation fuels (SAF), as any divergence would detract from the motivation for scaling up production, as the economic benefits of doing so would not be as high. This would disincentivise the adoption of SAF, which in turn would significantly hinder decarbonisation of the industry.¹⁵ Similarly, companies in construction see their efforts to deploy new technologies and building materials in zero-carbon building renovation hampered by the lack of a mandatory green labelling system aligned with international standards.¹⁶

With regard to international harmonisation in the area of digitalisation, European industry players are aware of the security considerations influencing policymaking on emerging technologies across the world, and of the overall importance of striking a balance between such concerns and fostering development in related industries. Members of both the Information and Communication Technology Working Group and the Cybersecurity Sub-working Group are therefore calling for the international harmonisation of governance frameworks in emerging technologies, such as artificial intelligence and the Internet of Things. This includes, but is not limited to, policies, regulations, standards and conformity assessment programmes.¹⁷

Another key issue linked to the digital transition affecting companies across nearly all industries and sectors is cross-border data transfer (CBDT). The release of the *Provisions on Promoting and Regulating Cross-border Data Flows (CBDT Provisions)* on 22nd March 2024 represented a

13 Recent examples of wording on ensuring equal access to procurement processes include the *Opinions of the State Council on Further Optimising the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment* and the *Action Plan for Solidly Promoting High-level Opening to the Outside World and Making Greater Efforts to Attract and Utilise Foreign Investment*. *Opinions of the State Council on Further Optimising the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment*, State Council, 13th August 2023, viewed 20th July 2024, <https://www.gov.cn/zhengce/zhengceku/202308/content_6898049.htm>; *Action Plan for Solidly Promoting High-level Opening to the Outside World and Making Greater Efforts to Attract and Utilise Foreign Investment*, State Council, 19th March 2024, viewed 20th July 2024, <https://www.gov.cn/yaowen/liebiao/202403/content_6940174.htm>

14 *Commission launches first investigation under EU International Procurement Instrument*, European Commission, 24th April 2024, viewed 20th July 2024, <https://ec.europa.eu/commission/presscorner/detail/en/ip_24_2044>

15 For more information, please refer to Key Recommendation 1 of the *Aviation and Aerospace Working Group Position Paper 2024/2025*, p. 309.

16 For more information, please refer to Key Recommendation 1 of the *Construction Working Group Position Paper 2024/2025*, p. 318.

17 For more information, please refer to Key Recommendations 2 and 4 of the *Information and Communication Technology Working Group Position Paper 2024/2025*, and Key Recommendation 3 of the *Cybersecurity Sub-working Group Position Paper 2024/2025*, p. 327 and 348.



positive first step towards establishing an efficient regulatory ecosystem for CBDT, as it alleviates some of the compliance burdens for certain companies.¹⁸ At the same time, there are still several outstanding issues that need to be dealt with. These include the interpretation of the ‘necessity’ of conducting CBDTs, the conflation of large volumes of personal information on the one hand and important data on the other, as well as restrictions or uncertainties associated with both the security assessment and the definition of ‘important data’.¹⁹ Addressing these issues will be key in order to develop a CBDT framework that does not create additional operating barriers and costs for foreign businesses, and therefore does not discourage foreign investment.²⁰

The position papers in the following section provide additional input and constructive recommendations from European industry across the services sector on these and other key market access and regulatory issues.

18 *Provisions on Promoting and Regulating Cross-border Data Flows*, Cyberspace Administration of China, 22nd March 2024, viewed 20th July 2024, <https://www.cac.gov.cn/2024-03/22/c_1712776611775634.htm>

19 Defined as the personal information of over 100,000 people in the automotive industry; 1 million people in general; and 10 million people in Tianjin.

20 For more information, please refer to Key Recommendation 2 of the *Cybersecurity Sub-Working Group Position Paper 2024/2025*, p. 345.



Aviation and Aerospace Working Group

Key Recommendations

1. Accelerate the Development of a Sustainable Aviation Ecosystem in China by Actively Involving Industry Players in Greenhouse Gas (GHG) Emissions Reduction Schemes and through Bilateral Cooperation with the European Union (EU)

- Involve more market players in the carbon market thus encouraging airlines to invest in fleet renewal and offer more sustainable credits and loans to airlines to incentivise their sustainable development.
- Create a detailed policy framework to promote the use of sustainable aviation fuel (SAF) in commercial flights to encourage investment in the full value chain of SAF including production, transport, storage and distribution.
- Create a trusted and long-term communication channel between the EU and China, dedicated to the development of sustainable aviation.
- Cooperate on scenarios to prepare for the future of decarbonised aviation, including but not limited to SAF, power-to-liquid technology and hydrogen.
- Relaunch projects on the industrialisation of alternative fuels including power-to-liquid technologies and hydrogen by creating concrete-use cases.
- Leverage existing and previous cooperation frameworks, such as Horizon Europe, to implement concrete bilateral projects on sustainable aviation.

2. Optimise Implementation of the EU-China Bilateral Aviation Safety Agreement (BASA)

- Encourage frequent exchanges between airworthiness certification authorities in China and the EU, with the aim of ensuring all aviation products are certified as per the requirements of applicable airworthiness certification procedures.
- Accelerate the approval process for products when technical justification is sufficient and simplify validation processes in line with the spirit of the BASA/technical information procedures (TIPs).
- Establish a joint taskforce including the European Union Aviation Safety Agency (EASA), the Civil Aviation Administration of China (CAAC) and industrial players to find ways to optimise implementation of the BASA/TIPs.
- Ensure validation item review meetings are held regularly and ensure the availability of both authorities.
- Specify business expectations at the initial phase of the type certificate validation process to facilitate a scientific approach to projects.

3. Fully Open the Computer Reservation System (CRS) Market in China

- Simplify the qualification review procedure for sales agencies eligible to issue licences to provide meaningful market access to foreign CRS providers.





- Stipulate a new regulation to fully open the Chinese CRS market by allowing foreign global distribution system (GDS) providers to offer ticket reservation services for both international and domestic flights.
- Clarify the authorisation process for foreign GDS providers to operate itinerary printing software and validation website services.

4. Increase the Efficiency of Airspace Utilisation in China

4.1 Ease Airspace Congestion by Adopting New Technology and Enhancing Systems Interoperability

- Expand the scope of the flexible entry/exit point policy by allowing airlines to designate more routes for daily operations.

4.2 Clarify the National Strategy for the Development of Low-altitude Airspace

- Strengthen exchanges with departments and organisations in charge of low-altitude airspace reform and the existing pilot zones to provide a better understanding of the helicopter market and development trends in helicopter operations.
- Develop a roadmap that clarifies the percentage of altitude below 6,000 metres per province dedicated to general aviation activities and when the relevant local-level regulations will be issued.
- Improve coordination between national and local airspace management offices to optimise helicopter operations for air emergency rescue services.
- Accelerate the construction of helicopter fields and temporary landing points, especially to serve large hospitals, forests, grasslands and hazardous materials facilities.

Recent Developments

International Passenger Flight Resumption

With the phasing out of COVID-19 travel restrictions in 2023, China began the process of restoring a normalised civil aviation market. On 10th August 2023, travel agencies were given permission to resume outbound group tours to 78 countries and regions, including the United States, Japan, South Korea, Australia, India and most European countries.¹ Then, on 30th August 2023, the requirement for China-bound travellers to take a COVID-19 test before entering the country was rescinded.² The requirement for travellers entering and exiting China to fill in a health declaration

form was dropped on 1st November 2023.³

China also took a series of visa-related measures to facilitate cross-border travel. On 20th September 2023, visa application forms for inbound foreign travellers were simplified,⁴ and on 17th November 2023, China's 72/144-hour visa-free transit policy was expanded to 54 countries, including 40 in Europe.⁵ In late 2023, China announced unilateral visa-free entry for up to 15 days for travellers with passports from France, Germany, Italy, the Netherlands, Spain and Malaysia from 1st December 2023 until 30th November 2024,⁶ with the policy extended to six additional European countries in

1 *Notice on the Resumption of Travel Agency Operations of Outbound Group Tours for Chinese Citizens to Relevant Countries and Regions (Third Batch)*, Ministry of Culture and Tourism, 10th August 2023, viewed 28th April 2024, <https://www.gov.cn/zhengce/zhengceku/202308/content_6897780.htm>

2 *China Removes All Pre-Entry COVID-19 Testing Requirements for Inbound Travelers*, China Briefing, 28th August 2023, viewed 2nd July 2024, <<https://www.china-briefing.com/news/china-removes-all-pre-entry-covid-19-testing-requirements-for-inbound-travelers/>>

3 *China drops health declaration requirements for cross-border travellers*, State Council, 31st October 2023, viewed 28th April 2024, <https://english.www.gov.cn/news/202310/31/content_WS6540a78ec6d0868f4e8e0d15.html>

4 *Chinese visa application forms optimized: FM spokesperson*, Xinhua, 20th September 2023, viewed 28th April 2024, <<https://www.chinadaily.com.cn/a/202309/20/WS650abe74a310d2dce4bb6ca4.html>>

5 *Announcement: China's 72/144-Hour Visa-Free Transit Policies Now Cover 54 Countries*, National Immigration Administration (NIA), 7th December 2023, viewed 28th April 2024, <<https://en.nia.gov.cn/n162/n232/c117519/content.html>>

6 *China tries out unilateral visa-free policy for six countries*, Xinhua, 24th November 2023, viewed 28th April 2024, <https://english.www.gov.cn/news/202311/24/content_WS656067a2c6d0868f4e8e196d.html>





March 2024.⁷ On 11th January 2024, China implemented five additional measures to facilitate the arrival of foreign nationals in China, one of which exempts foreign nationals for 24-hour, visa-free transit at nine Chinese airports from inspection procedures.⁸

The working group welcomes these measures and is encouraged to see the gradual normalisation of China's civil aviation market. In the first quarter of 2024, China's domestic and international passenger flights reached 114.3 per cent and 78 per cent of the numbers of the first quarter of 2019 respectively.⁹

Sustainable Aviation

In China

On 12th July 2023, the Civil Aviation Administration of China (CAAC) published the *Sustainability Requirements for Aviation Alternative Fuels (Draft for Comments)*.¹⁰ This draft aims to become China's first industrial standard on sustainability assessments of alternative aviation fuels and is expected to lay a good foundation for the development of sustainable aviation fuels in China. The working group looks forward to the final document being published as soon as possible.

On 1st October 2023, China issued the *Development Plan for the Green Aircraft Manufacturing Industry (2023–2025)*, outlining China's goal to “achieve an advanced green aviation manufacturing system with integrity and safety”, and to develop new-energy powered aircraft for mainstream use.^{11&12}

In Europe

On 13th October 2023, the Council of the European Union adopted the ReFuelEU Aviation Regulation.

As a part of the European Green Deal, the regulation promotes the increased use of sustainable aviation fuels (SAF) as the single most powerful tool to decrease aviation carbon dioxide (CO₂) emissions. The RefuelEU Aviation Regulation requires aviation fuel suppliers in the European Union (EU) to ensure that at least two per cent of the fuel they supply is SAF by 2025, with this requirement rising to six per cent in 2030 and 70 per cent in 2050.¹³ The initiative is expected to help promote both demand for and supply of SAF and to put air transport on a trajectory to meet the EU's climate targets for 2030 and 2050.

Key Recommendations

1. Accelerate the Development of a Sustainable Ecosystem in China by more Actively Involving Industry Players in GHG Emissions Reduction Schemes and through Bilateral Cooperation with the EU

Concern

Greater efforts and more ambitious targets are needed to encourage more industry players to contribute to the reduction of greenhouse gas (GHG) emissions in the civil aviation industry, as China and Europe share the same goal to reach carbon neutrality though with different timelines.

Assessment

One year after the end of the ‘zero-COVID’ policy, China's air traffic volumes had already surpassed their pre-pandemic levels and reached a record first quarter high. The number of civil aviation passengers in the first quarter of 2024 rose by 10.2 per cent compared to the same period in 2019. Air cargo during this period also increased by 19.6 per cent.¹⁴ This demonstrates the resilience of China's demand for air travel, while also underlining the need for the aviation industry to reduce its carbon footprint.

The working group welcomed both the 14th Five-year (14FYP) Special Plan for Green Development of Civil

7 Wang, C, and Tu, L, *China's visa-free policy takes effect for 6 European countries, showing 'confidence, openness'*, Global Times, 14th March 2024, viewed 28th April 2024, <<https://www.globaltimes.cn/page/202403/1308851.shtml>>

8 NIA Releases Five New Measures to Facilitate Entries of Foreigners, NIA, 11th January 2024, viewed 6th May 2024, <<https://en.nia.gov.cn/n108/c118324/content.html>>

9 Qiu, C, *Total Air Passenger Traffic Reached almost 180 Million Trips in the first Quarter of 2024*, People's Daily, 17th April 2024, viewed 28th April 2024, <<http://yn.people.com.cn/n2/2024/0417/c372455-40812819.html>>

10 Notice on Calling for Public Comments on Two Industrial Standards including the Sustainability Requirements for Aviation and Alternative Fuels (Draft for Comments), CAAC, 12th July 2023, viewed 28th April 2024, <https://app.caac.gov.cn/HDJL/YJZJ/202307/t20230712_220619.html>

11 Notice on Issuance of Development Plan of Green Aircraft Manufacturing Industry (2023-2025), Ministry of Industry and Information Technology, 1st October 2023, viewed 28th April 2024, <https://www.mit.gov.cn/zwgk/zcwj/wjfb/tz/art/2023/art_dbc0f76e69cb4e24b225f9afa16bcdbd.html>

12 Green aviation ecosystem gets bigger thrust, China Daily, 12th October 2023, viewed 28th April 2024, <https://english.www.gov.cn/policies/policywatch/202310/12/content_WS65274388cd0868f4e8e0270.html>

13 RefuelEU aviation initiative: Council adopts new law to decarbonise the aviation sector, European Council, 9th October 2023, viewed 28th April 2024, <<https://www.consilium.europa.eu/en/press/press-releases/2023/10/09/refueleu-aviation-initiative-council-adopts-new-law-to-decarbonise-the-aviation-sector/>>

14 Yang, Z, *Civil aviation sees record highs in cargo and passenger transport*, China Daily, 16th April 2024, viewed 28th April 2024, <<https://www.chinadaily.com.cn/a/202404/16/WS661de89da31082fc043c238a.html>>





Aviation, published in 2021, and the Green Aviation Manufacturing Development Outline (2023–2035), published in 2023, which lay down the guiding principles for the sustainable development of China’s civil aviation industry.^{15&16}

Many industry players, including airports and airlines, have already started taking action to reduce their carbon emissions. One example is that a number of Chinese airlines and airports have been included in the local carbon markets for many years, and several Chinese airports have been recently listed as key industry enterprises to conduct greenhouse (GHG) emissions reporting and verification under the management of the national carbon trading system;¹⁷ another is that some airports have increased their use of electric vehicles¹⁸ and now switch off auxiliary power units when aircraft are grounded.¹⁹ Some Chinese airlines have also started flying delivery flights²⁰ and commercial flights using jet fuel blended with SAF.^{21&22}

However, further efforts are required, especially to reduce the use of aviation fuel. China currently burns an average of 30 million tonnes of aviation kerosene annually,²³ a number that is sure to rise as air traffic increases. According to one study, by replacing the jet fuel with renewable fuels, GHG emissions could

be reduced by 75 to 95 per cent.²⁴ As part of this transition, SAF will need to be widely adopted, with the International Air Transport Association (IATA) claiming that SAF could contribute around 65 per cent “of the reduction in emissions needed by aviation to reach net zero CO₂ emissions by 2050.”²⁵ Other means identified by the IATA to achieve Fly Net Zero include new technology, electric and hydrogen (13 per cent), infrastructure and operational efficiencies (3 per cent), and offsets and carbon capture (19 per cent).²⁶

In order to realise emission reduction commitments while accommodating the growing demand for flights, the aviation industry has the opportunity to take action and cooperate to reach common goals. The EU and China have a massive opportunity to restart cooperation to exchange best practices, especially when it comes to market-based measures — such as the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) and the EU Emission Trading System (ETS) and China’s ETS.²⁷ It is also a suitable moment to develop climate/energy scenarios for China and Europe that take into consideration the evolution of air traffic, energy pathways, competition with other industries for access to renewable energy, regulations and the ecosystem in general. Through such cooperation, both the EU and China can maximise the benefits of a decarbonised aviation industry.

Both the EU and China have recognised SAF adoption as the most beneficial short-term means to move towards a sustainable aviation industry, especially because SAFs can be directly mixed with fossil fuels in existing infrastructure and used in aircraft without modification. Promising EU-China cooperation initiatives have already been launched to create a SAF industry in China for the benefit of both original equipment manufacturers (OEMs) and airlines,²⁸ and there is

15 *China unveils 5-year plan to advance civil aviation development*, Xinhua, 7th January 2022, viewed 28th April 2024, <<https://english.news.cn/20220107/4f5efb93124f88be4257e4e3b60325/c.html>>

16 *Green aviation ecosystem gets bigger thrust*, China Daily, 12th October 2023, viewed 28th April 2024, <https://english.www.gov.cn/policies/policywatch/202310/12/content_WS65274388c6d0868f4e8e0270.html>

17 *Beijing Municipal Ecology and Environment Bureau Notice on the List of Emission Units to be Included in the Management of the National Carbon Market for the Year of 2024*, Beijing Municipal Ecology and Environment Bureau, 20th December 2023, viewed 29th May 2024, <<https://sthjj.beijing.gov.cn/bjhrb/index/xxgk69/zfxxgk43/fdzdgnr2/zcfb/hbjfw/326071951/436320154/>>

18 Hu, T, Liu, E, and Zhou Y, *Across China: Hub airports go green for low-carbon aviation*, Xinhua, 4th July 2023, viewed 28th April 2024, <<https://english.news.cn/20230704/d10b6b403da749f3ae491416a3f16fc5/c.html>>

19 Zhang, J, *Beijing Daxing Airport Installs APU Replacement Facilities at All Nearby Aircraft Positions to Promote Energy Saving and Emission Reduction*, CNR, 14th July 2020, viewed 15th May 2024, <<https://baijiahao.baidu.com/s?id=1672194173335210145&wfr=spider&for=pc>>

20 A delivery flight is the first flight an aircraft makes from the factory where it was assembled to the main hub of its airline.

21 Chen, C, *Air China Marks First Commercial Use of SAF In China*, Aviation Week, 17th July 2023, viewed 28th April 2024, <<https://aviationweek.com/air-transport/aircraft-propulsion/air-china-marks-first-commercial-use-saf-china>>

22 Sustainable aviation fuel (SAF) is an alternative liquid fuel and could be made from renewable or waste-based feedstock such as used cooking oil and municipal and agricultural wastes.

23 *China’s first bio-aviation kerosene producer trials clean energy production*, CGTN, 30th June 2022, viewed 28th April 2024, <<https://news.cgtn.com/news/2022-06-30/China-succeeds-in-bio-aviation-kerosene-clean-energy-trial-production-1bhYU3gh5I/index.html>>

24 Aviation industry net-zero tracker, World Economic Forum, 28th November 2023, viewed 2nd July 2024, <<https://www.weforum.org/publications/net-zero-industry-tracker-2023/in-full/aviation-industry-net-zero-tracker/>>

25 *Developing Sustainable Aviation Fuel (SAF)*, IATA, viewed 28th April 2024, <<https://www.iata.org/en/programs/environment/sustainable-aviation-fuels/>>

26 *Our Commitment to Fly Net Zero by 2050*, IATA, viewed 14th June 2024, <<https://www.iata.org/en/programs/environment/flynetzero/>>

27 Market-based measures refer to economic measures that act for decarbonisation in a sector by complementing other solutions until the sector can rely only on in-sector emission reductions. There are two types of MBMs in aviation industry: carbon offsetting scheme, such as CORSIA, and carbon trading systems, such as the EU ETS. Market-Based Measures, European Regions Airline Association, viewed 17th June 2024, <<https://www.eraa.org/policy/sustainable-aviation/market-based-measures>>

28 *The Business Aviation Sustainable Aviation Fuel Alliance (SAF Alliance) has released new SAF guidelines*, Tanpaifang, 27th August 2020, viewed 26th April 2024, <<http://www.tanpaifang.com/tanguwen/2020/0827/73530.html>>



momentum in China to foster more SAF production.²⁹ Aviation is a global industry and it is paramount that internationally recognised standards are developed for SAF. Any divergence in standards would have a detrimental effect on the whole aviation ecosystem and minimise economic opportunities stemming from the scale-up of SAF production. Following the launch of the CAAC roadmap for sustainable aviation,³⁰ More opportunities now exist for commercial flights to utilise SAF during the 14FYP (2021-2025). In the medium to long term, the development and industrialisation of power-to-liquid technologies and hydrogen will also be key to ensuring the decarbonisation of the aviation industry. It is therefore appropriate that bilateral discussions on the promotion of industrialisation and use of new fuels are relaunched between China and Europe.

Regarding joint sustainable aviation research, the EU and China have launched several coordination and support actions (CSAs) since 2005, as well as several successful research and innovation initiatives, which have benefited both the Chinese and European aviation industries. However, the last long-term CSAs on sustainable aviation technology have already concluded and there are no other joint calls scheduled for the near future.³¹ It is therefore recommended that the EU and China launch new cooperation schemes for joint research, including on the standardisation and certification of advanced new technologies, products and services for sustainable aviation development.

Recommendations

- Involve more market players in the carbon market thus encouraging airlines to invest in fleet renewal and offer more sustainable credits and loans to airlines to incentivise their sustainable development.
- Create a detailed policy framework to promote the use of SAF in commercial flights to encourage investment in the full value chain of SAF including production, transport, storage and distribution.
- Create a trusted and long-term communication channel between the EU and China, dedicated to the

development of sustainable aviation.

- Cooperate on scenarios to prepare for the future of decarbonised aviation, including but not limited to SAF, power-to-liquid technology and hydrogen.
- Relaunch projects on the industrialisation of alternative fuels, including power-to-liquid technologies and hydrogen, by creating concrete-use cases.
- Leverage existing and previous cooperation frameworks, such as Horizon Europe, to implement concrete bilateral projects on sustainable aviation.

2. Optimise Implementation of the EU-China BASA

Concern

The EU-China Bilateral Aviation Safety Agreement (BASA) has not reached its full potential, delaying what should be a smooth Validation of Type Certificate (VTC) process between both parties, thereby preventing numerous business opportunities.

Assessment

The EU-China BASA went into effect in September 2020, giving a boost to both regions' aviation manufacturers by simplifying the process of gaining product approvals from the European Union Aviation Safety Agency (EASA) and the CAAC, while also ensuring that high safety and environmental standards would continue to be met.³² The agreement is the result of several years of successful efforts by experts from the European Commission, the EASA and the CAAC.

The BASA was followed by associated technical implementation procedures (TIPs) that are aimed at reducing the risk of regulatory divergence between the EU and China by allowing their respective aviation authorities to focus on their safety priorities by simplifying validation processes.³³ For example, one such TIP, the *Annex on Airworthiness and Environmental Protection Validation*, significantly improved the process of obtaining airworthiness validations for products from the EU and China. However, in other areas there has been less of an impact. For example, VTC approvals involving a certain level of technical validations still take the same amount of time as before the agreement was

29 *China biofuel makers bet on sustainable aviation fuel*, Reuters, 18th May 2024, viewed on 15th May 2024, <<https://www.reuters.com/sustainability/climate-energy/china-biofuel-makers-bet-sustainable-aviation-fuel-2024-05-16/>>

30 *The 14th Five-year Special Plan for Green Development of Civil Aviation*, CAAC, 21st December 2021, viewed 26th April 2024, <http://www.caac.gov.cn/XXGK/XXGK/FZGH/202201/t20220127_211345.html>

31 *Seventh framework programme of the European Community for research and technological development including demonstration activities (FP7)*, European Commission, viewed 28th April 2024, <<https://cordis.europa.eu/programme/id/FP7>>

32 *EU-China Bilateral Agreement*, EASA, 3rd September 2020, viewed 2nd July 2024, <<https://www.easa.europa.eu/en/document-library/bilateral-agreements/eu-china>>

33 *EASA-CAAC Technical Implementation Procedures (TIP) for Airworthiness and Environmental Certification*, EASA, 3rd September 2020, viewed 2nd July 2024, <<https://www.easa.europa.eu/en/easa-caac-technical-implementation-procedures-tip-airworthiness-and-environmental-certification>>





signed. The EU and Chinese aviation authorities should therefore increase cooperation to ensure that TIPs resulting from the BASA have a meaningful impact on the aviation sector.

Recommendations

- Encourage frequent exchanges between airworthiness certification authorities in China and the EU, with the aim of ensuring all aviation products are certified as per the requirements of applicable airworthiness certification procedures.
- Accelerate the approval process for products when technical justification is sufficient and simplify validation processes in line with the spirit of the BASA/TIPs.
- Establish a joint taskforce including the EASA, the CAAC and industrial players to find ways to optimise implementation of the BASA/TIPs.
- Ensure validation item review meetings are held regularly and ensure the availability of both authorities.
- Specify business expectations at the initial phase of the VTC process to facilitate a scientific approach to projects.

3. Fully Open the CRS Market in China

Concern

Despite China having included the liberalisation of its CRS market among its World Trade Organization (WTO) commitments in 2001, foreign CRS providers still do not have market access.

Assessment

China's WTO commitments on CRS include the following:

- When agreements are in place with Chinese aviation enterprises and Chinese CRS providers, foreign players may provide CRS services to Chinese aviation enterprises and Chinese aviation agents by connecting with the Chinese CRS.
- Foreign players may provide CRS services to representative offices and sales offices established in China by foreign aviation enterprises that have the right to engage in business according to bilateral aviation agreements.
- Direct access to and use of foreign CRS by Chinese aviation enterprises and agents of foreign aviation

enterprises is subject to approval of the CAAC.³⁴

In August 2012, the CAAC promulgated the *Interim Permit Management Measures of Using and Entering the Foreign Computer Tickets Reservation System by the Sales Agency Appointed by Foreign Airline Carriers in China (CCAR315)*, which marked the first important step by China to open up its CRS market.³⁵ According to the *CCAR315*, foreign players can offer global distribution system (GDS) services in China for international flights by foreign airlines to sales agencies in cases where foreign airlines have obtained a relevant CAAC licence on behalf of their sales agencies. However, the CAAC's qualification review procedure of sales agencies before allowing them to issue licences takes more than 50 business days, which is too long for most companies. In addition, the Chinese CRS market was opened in a limited way, with foreign GDS providers only allowed to offer ticket reservation services for international flights, with domestic flights being excluded, which is not in compliance with China's WTO commitments.

The State Taxation Administration (STA) and the CAAC issued the *Administration Measures of Air Transport Itineraries of Electronic Tickets (Interim) (STA No. 54 [2008])* in 2008, and a subsequent notice on the *Issues on International flights using Air Transport Itineraries of Electronic Tickets (STA No. 83 [2012])* in 2012.^{36&37} According to the measures, the itinerary printing software and validation website must be developed, operated and maintained by units authorised by the CAAC. However, in practice, it is not clear how the authorisation process applies to foreign GDS providers. As a result of the invisible market access barriers, although European GDS providers were able to provide itinerary printing and validation services as of 2015, this lasted less than one year.

³⁴ *Report of the Working Party on the Accession of China (WT/MIN(01)/3/Add.2)*, WTO, 10th November 2001, viewed 28th April 2024, <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN01/3A2.pdf&Open=True>>

³⁵ *Interim Permit Management Measures of Using and Entering the Foreign Computer Tickets Reservation System by the Sales Agency Appointed by Foreign Airline Carriers in China*, CAAC, 28th March 2016, viewed 28th April 2024, <http://www.caac.gov.cn/XXGK/XXGK/MHGZ/201605/20160530_37632.html>

³⁶ *Administration Measures of Air Transport Itineraries of Electronic Ticket (Interim)*, STA & CAAC, 19th May 2008, viewed 28th April 2024, <http://www.gov.cn/gongbao/content/2008/content_1157921.htm>

³⁷ *Issues on International Flights Using Air Transport Itineraries of Electronic Ticket*, STA & CAAC, 30th August 2012, viewed 28th April 2024, <<http://www.shuiwu114.com/zcfgkShow/43691.aspx>>



Following the release of the *Special Measures on Foreign Investment (Negative List 2021)* by the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) on 27th December 2021, government agencies were urged to review previous policies and regulations and promptly abandon those not in compliance with the updated list.³⁸ However, some incumbent regulations that are not consistent with the *Negative List 2021* are still in force and need to be rescinded or replaced, including but not limited to: *CCAR315*, *STA No. 54 [2008]* and *STA No. 83 [2012]*.

Given that the implementation of the European CRS system in China requires cooperation and support from relevant Chinese government departments, following the cancellation of the *CCAR315* and the *STA No. 83 [2012]*, it is recommended that the CAAC formulate positive management measures that encourage the deployment of European CRS systems in China.

Recommendations

- Simplify the qualification review procedure for sales agencies eligible to issue licences to provide meaningful market access to foreign CRS providers.
- Stipulate a new regulation to fully open the Chinese CRS market by allowing foreign GDS providers to offer ticket reservation services for both international and domestic flights.
- Clarify the authorisation process for foreign GDS providers to operate itinerary printing software and validation website services.

4. Increase the Efficiency of Airspace Utilisation in China

4.1 Ease Airspace Congestion by Adopting New Technology and Enhancing Systems Interoperability 8

Concern

Congested airspace in China—caused by both limited air routes and a lack of data exchange/communication, in conjunction with inefficient air traffic management (ATM)—leads to additional costs, longer flying times and increased carbon emissions for air carriers.

Assessment

Access to China's airspace by commercial flights is heavily restricted, resulting in airlines being unable to cope with the current demand. Unlike in Europe, where airlines can freely choose flight paths based on weather conditions, operating costs and flying times, airlines are limited to choosing from fixed flight paths in China, leading to congestion during adverse weather conditions and additional carbon emissions, flying times and fuel costs.

In addition, the closure of Russian airspace to EU airlines further limits flightpaths for airlines flying between Europe and Asia. Furthermore, because of the lack of open airspace in China, airlines flying to locations beyond southern China lack options for overflying China, leading to longer flight times and more delays.

The CAAC has begun offering airlines some flexibility to have more than one flight path. By expanding this policy further, traffic congestion and the associated carbon emissions, fuel costs and flying times could all be reduced.

Recommendation

- Expand the scope of the flexible entry/exit point policy by allowing airlines to designate more routes for daily operations.

4.2 Clarify the National Strategy for the Development of Low-altitude Airspace 2

Concern

A clear roadmap is needed for the further opening up of low-altitude airspace following the December 2023 publication of *China's National Airspace Basic Classification Method*.³⁹

Assessment

Since the issuance of the *Opinions on Deepening the Reform of China's Low-altitude Airspace Management* by the State Council and the Central Military Commission in 2010,⁴⁰ the Chinese Government has introduced a series of policies related to the reform of

³⁸ *Special Measures on Foreign Investment (Negative List 2021)*, NDRC and MOFCOM, 27th December 2021, viewed 2nd July 2024, <https://www.gov.cn/zhengce/zhengceku/2021-12/28/content_5664886.htm>

³⁹ *Notice of issuance on the National Airspace Basic Classification Method*, CAAC, 21st December 2023, viewed 28th April 2024, <http://www.caac.gov.cn/PHONE/XXGK_17/XXGK/TZTG/202312/t20231221_222397.html>

⁴⁰ Wang, Q, and Xin, D, *Golden decade takes off for aviation*, *China Daily*, 16th October 2010, viewed 28th April 2024, <https://www.chinadaily.com.cn/china/2010-10/16/content_11417648.htm>



low-altitude airspace management and launched related provincial-level pilot projects.⁴¹ In 2022, China issued the *14FYP on the Civil Aviation Industry Development*, noting that the reform of low-altitude airspace management should be effectively promoted in terms of airspace classification, low-altitude air route network planning, and supervision and management.⁴² At the end of 2023, China released the *National Airspace Basic Classification Method* and the draft *Regulations on Airspace Management of the People's Republic of China*.^{43&44} In both documents, China added two low-altitude uncontrolled airspace categories ('G' and 'W' classes of airspace), marking an important milestone in China's low-altitude reform process.⁴⁵ In March 2024, the term "low-altitude economy" was included in the Government Work Report for the first time, and more than 20 provincial governments' work reports also mentioned related work arrangements.⁴⁶ This seems to indicate that the government is committed to growing China's low-altitude economy.

Meanwhile, Hunan, Jiangxi, Anhui, Sichuan and Hainan provinces have already launched experimental low-altitude airspace projects, and designated airspace at altitudes below 3,000 metres in their territories to implement classification management. It is of paramount importance that European companies operating in the helicopter business in China understand these projects, how they are practically applied on a day-to-day basis for helicopter operations, and what their impact is on the development of helicopter sales, flying hours and missions in China. This will help them to anticipate the market's development and allow them to bring their best practices and know-how to jointly grow the Chinese general aviation market safely, smartly and sustainably.

41 Low-altitude airspace refers to airspace lower than 1,000 metres above ground level (AGL).

42 *China unveils 5-year plan to advance civil aviation development*, *Xinhua*, 7th January 2022, viewed 28th April 2024, <<https://english.news.cn/20220107/4f5efb8b93124f88be4257e4e3b60325/c.html>>

43 *Notice of issuance on the National Airspace Basic Classification Method*, CAAC, 21st December 2023, viewed 28th April 2024, <http://www.caac.gov.cn/PHONE/XXGK_17/XXGK/TZTG/202312/t20231221_222397.html>

44 *Regulations on Airspace Management of the People's Republic of China (Draft for Comments)*, CAAC, 8th November 2023, viewed 28th April 2024, <https://app.caac.gov.cn/PHONE/HDJL/YJZJ/202311/t20231108_221957.html>

45 The draft *Regulations on Airspace Management of the People's Republic of China* categorised airspace into seven classes: A, B, C, D, E, G, and W, with A to E being controlled airspace, and G and W uncontrolled airspace. The newly introduced G-class airspace (less than 300 metres AGL) and the W-class airspace (less than 120 metres AGL) correspond to the primary operating areas for general aviation, electric vertical take-off and landing (eVTOL) aircraft, and small unmanned aerial vehicles (UAVs).

46 *Trillion-yuan new industry gears up for 'takeoff' as low-altitude economy in China gains momentum*, *Global Times*, 21st March 2024, viewed 28th April 2024, <<https://www.globaltimes.cn/page/202403/1309270.shtml>>

The working group recommends that departments and organisations in charge of low-altitude airspace reform strengthen exchanges with the existing pilot zones to provide a better understanding of the helicopter market and development trends in helicopter operations. At the same time, a roadmap clarifying the percentage of altitude below 6,000 metres per province dedicated to general aviation activities, along with a timeline for issuing local-level regulations on low-altitude airspace management, will give visibility to investors in the low-altitude airspace economy.

In March 2024, China issued the *Implementation Plan for Innovative Application of General Aviation Equipment (2024–2030)*, which mentions that China will promote the application of large and medium-sized fixed-wing aircraft, helicopters and drones in full-area emergency rescue scenarios.⁴⁷ To deliver on-time air emergency rescue services by helicopters, it is essential to have good coordination among national and local airspace management offices and to construct enough helicopter fields and temporary landing points, especially to serve large hospitals, forests, grasslands and hazardous material facilities.

Recommendations

- Strengthen exchanges with departments and organisations in charge of low-altitude airspace reform and the existing pilot zones to provide a better understanding of the helicopter market and development trends in helicopter operations.
- Develop a roadmap that clarifies the percentage of altitude below 6,000 metres per province dedicated to general aviation activities and when the relevant local-level regulations will be issued.
- Improve coordination between national and local airspace management offices to optimise helicopter operations for the air emergency rescue services.
- Accelerate the construction of helicopter fields and temporary landing points, especially to serve large hospitals, forests, grasslands and hazardous materials facilities.

47 *Notice on Issuance on the Implementation Plan for Innovative Application of General Aviation Equipment (2024–2030)*, State Council, 27th March 2024, viewed 21st May 2024, <https://www.gov.cn/zhengce/zhengceku/202403/content_6942115.htm>





Abbreviations

14FYP	14 th Five-year Plan
BASA	Bilateral Aviation Safety Agreement
CAAC	Civil Aviation Administration of China
CO ₂	Carbon Dioxide
CORSIA	Carbon Offsetting and Reduction Scheme for International Aviation
CRS	Computer Reservation System
CSA	Coordination and Support Action
EASA	European Union Aviation Safety Agency
ETS	Emission Trading System
EU	European Union
GDS	Global Distribution System
GHG	Greenhouse Gas
IATA	International Air Transport Association
NDRC	National Development and Reform Commission
MOFCOM	Ministry of Commerce
OEM	Original Equipment Manufacturer
TIPs	Technical Implementation Procedures
SAF	Sustainable Aviation Fuels
STA	State Taxation Administration
VTC	Validation of Type Certificate
WTO	World Trade Organization





Construction Working Group

Key Recommendations

1. Continue to Promote Circular Development of the Built Environment to Support Decarbonisation Goals

- Implement a mandatory green building labelling scheme to ensure coherence and compatibility with international standards.
- Involve European companies in the implementation process of green building standards and the calculation of carbon emissions standards.
- Draw on the expertise of European companies to develop knowledge-sharing platforms and public awareness campaigns for industry stakeholders.

2. Allow European Companies Greater Access to the Bidding Process for Government Procurement Work

- Join the World Trade Organization's (WTO) Government Procurement Agreement (GPA) to allow foreign companies greater access to the bidding process for government procurement work and ensure that construction services are covered.

3. Improve Market Access for European Construction Service Providers (CSP) to Encourage Expertise Sharing and to Support the 'Better House' Initiative

- Promote regulatory reforms to ease market access for European CSPs.
- Include European firms in the implementation of the 'better house' initiative.
- Facilitate partnerships between European CSPs and Chinese stakeholders to share best practices and technologies.
- Allow mutual recognition of degrees, certificates and experience to further level the playing field for foreign-invested construction and design firms.
- Allow qualification exams to be conducted in English to offer fair opportunities for foreign professionals.

4. Ensure a Fair, Balanced and Open Market for Foreign Investment in the Real Estate Sector

- Issue further implementation rules for *Circular 122* and the Qualified Foreign Limited Partnership (QFLP) investment scheme to promote a fair market environment for foreign companies investing in the Chinese real estate market.
- Facilitate market access for foreign-invested real estate enterprises to absorb immovable assets from illiquid or insolvent Chinese developers.





Recent Developments

Market Performance in 2023

The construction sector in China includes three core segments — residential property, commercial property and infrastructure. In 2023, the construction market size in China was valued at United States dollar (USD) 4.7 trillion, with its annual average growth rate projected to be over three per cent for the period 2025–2028. According to the National Bureau of Statistics (NBS), the construction industry's value added increased by 7.2 per cent year-on-year (y-o-y) in the third quarter of 2023.¹ However, the sector remains weak due to a downturn in the real estate industry. In 2023, property sales by value dropped to under Chinese yuan (CNY) 12 trillion from 15 trillion in 2021, while new home sales dropped by six per cent. At the same time, new residential developments have fallen to 637.4 million square metres from the 2022 figure of 817.3 square metres.² According to China Index Holdings, as land sales have slumped, 17 major cities have abolished price ceilings on residential land sold at government auctions to increase local revenue.³ Despite falling residential sales, data from early 2024 indicates that state-backed developers are generating more profits than their privately-owned or foreign competitors.⁴

At the same time, property sector vulnerabilities have yet to be addressed, as non-viable developers have avoided bankruptcy through rules that allow lenders to delay recognition of their bad loans. Structural factors, such as population decline and the slowdown of urbanisation, will increase pressure on the market as demand for new housing declines. The International Monetary Fund (IMF) predicts that real estate investment will fall 30 to 60 per cent below its 2022 level, rebounding only gradually in 2024.⁵ However,

since the start of 2024, the NBS has reported a slowing rate of decline in property investment, which has been received as a sign that the market has begun to stabilise.⁶

Policies targeting the development and rebound of the real estate sector were introduced in early 2024. In the *Notice of the Ministry of Housing and Urban-Rural Development (MOHURD) and the National Financial Regulatory Administration (NFRA) on Establishing a Coordination Mechanism for Urban Real Estate Financing*, Chinese regulators promoted targeted support to address the financing needs of real estate developers.⁷ According to the MOHURD, since its establishment, 276 cities across 31 provinces have set up a local mechanism, and around 6,000 real estate projects have applied for financing.⁸

Chinese officials also approved more than USD 17 billion in loans for 'whitelist' real estate projects to ensure the delivery of promised housing. However, analysts believe this will have a limited impact on new investment in the sector.⁹ Zheng Shanjie, head of the National Development and Reform Commission (NDRC) further indicated support for the private sector regarding access to major national engineering projects.¹⁰

'Better House' — A Greener, Smarter and Safer Path Towards Carbon Neutrality

Following the 2022 *General Specification for Building Energy Conservation and Renewable Energy Utilisation*, released by the MOHURD in 2022, the ministry has promoted further efforts toward the low-carbon or

1 *China Construction Market Size, Trend Analysis by Sector, Competitive Landscape and Forecast to 2028*, GlobalData, 11th March 2024, viewed 2nd April 2024, <<https://www.globaldata.com/store/report/china-construction-market-analysis/>>

2 Routley, N, *China's Real Estate Crisis, Shown in Two Charts*, Visual Capitalist, 30th January 2024, viewed 2nd April 2024, <<https://www.visualcapitalist.com/china-real-estate-boom-and-crisis/>>

3 Qing, N, *In Depth: China's Cash Strapped Local Governments Struggle to Revive Land Sales*, Caixin Global, 4th January 2024, viewed 2nd April 2024, <<https://www.caixinglobal.com/2024-01-04/in-depth-chinas-cash-strapped-local-governments-struggle-to-revive-land-sales-102153118.html>>

4 Ao, Y, *China's state-backed developers grow earnings as buyers look for safety in home delivery, shunning troubled builders*, SCMP, 21 March 2024, viewed 2nd April 2024, <<https://www.scmp.com/business/china-business/article/3256254/chinas-state-backed-developers-grow-earnings-buyers-look-safety-home-delivery-shunning-troubled>>

5 Hoyle, H, and Jain-Chandra, S, *China's Real Estate Sector: Managing the Medium-Term Slowdown*, International Monetary Fund, 2nd February 2024, viewed 2nd April 2024, <<https://www.imf.org/en/News/Articles/2024/02/02/cf-chinas-real-estate-sector-managing-the-medium-term-slowdown>>

6 Xie, Y, *China property investment seen stabilising as analysts count on financing lifeline, demand to spur recovery*, SCMP, 18th March 2024, viewed 2nd April 2024, <<https://www.scmp.com/business/china-business/article/3255817/china-property-investment-seen-stabilising-analysts-count-financing-lifeline-demand-spur-recovery>>

7 *Notice of the Ministry of Housing and Urban and Rural Development and the National Financial Regulatory Administration on Establishing a Coordination Mechanism for Urban Real Estate Financing*, MOHURD and NFRA, 12th January 2024, viewed 2nd April 2024, <<https://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1147470&itemId=928>>

8 Du, Y, *Ten days after the two meetings which led to the establishment of the Urban Real Estate Financing Coordination Mechanism, 276 cities have established an urban real estate financing coordination mechanism*, Securities Daily, 2nd March 2024, viewed 2nd April 2024, <<http://www.zqrb.cn/finance/hongguanjinji/2024-03-02/A1709307442135.html>>

9 Huang, J, *China Approves \$17 Billion in Loans for White-List Projects*, Wall Street Journal, 21st February 2024, viewed 2nd April 2024, <https://www.wsj.com/world/china/china-approves-17-billion-in-loans-for-white-list-projects-36f8b8d0?mod=china_news_article_pos2>

10 *Private sector to get active support for major projects*, China Daily, 4th January 2024, viewed 2nd April 2024, <<https://language.chinadaily.com.cn/a/202401/04/WS65967c70a3105f21a507a992.html>>





carbon-neutral development of the sector.¹¹ At the 2023 MOHURD annual work conference in December 2023, the ministry announced its 'better house' initiative, with the aim of promoting high-quality, low-carbon and green development of the built environment.¹² The working group believes its implementation will help realise China's 30/60 Goals¹³ while promoting the renovation market to boost consumption, local manufacturing and regional gross domestic product.

In tandem, the *Notice from the Ministry of Industry and Information Technology, the State Administration for Market Regulation (SAMR), and Ten Other Departments on Issuing the Implementation Plan for the High-quality Development of the Green Building Materials Industry* is aimed at facilitating the transition to lighter and greener construction materials to support sustainability efforts.¹⁴

In early 2024, the MOHURD promoted deeper reform and standardisation of the built environment in relation to decarbonisation. Several public consultations have been published, including a notice soliciting public opinions on the *National Evaluation Standard for Green Industrial Buildings (Revised Draft for Comments)*.¹⁵ The working group welcomes progress on standard setting for green industrial buildings and awaits the publication of the final draft.

Key Recommendations

1. Continue to Promote Circular Development of the Built Environment to Support Decarbonisation Goals

Concern

Procedural and legal inefficiencies prevent the

¹¹ *General Specification for Building Energy Conservation and Renewable Energy Utilisation*, MOHURD, 13th October 2021, viewed 2nd April 2024, <https://www.mohurd.gov.cn/gongkai/zhengce/zhengcefilelib/202110/20211013_762460.html>

¹² *Ministry of Housing and Urban-Rural Development: 2024 Formulating 'Better House' standards, China Concrete and Cement Products*, 28th December 2023, viewed 2nd April 2024, <<https://zhuannan.zhihu.com/p/675034558>>

¹³ The 30/60 Goals are China's dual targets of peaking CO₂ emissions before 2030 and achieving carbon neutrality by 2060.

¹⁴ *Notice from the Ministry of Industry and Information Technology, the State Administration for Market Regulation, and Ten Other Departments on Issuing the Implementation Plan for the High-Quality Development of the Green Building Materials Industry*, SAMR, 29th December 2023, viewed 2nd April 2024, <https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/rzjgs/art/2024/art_60d4b98bfcc3462c84dfc712ab7965d0.html>

¹⁵ *Notice on Publicly Soliciting Opinions on the National Evaluation Standard for Green Industrial Buildings (Revised Draft for Comments)*, MOHURD, 26th February 2024, viewed 2nd April 2024, <https://www.mohurd.gov.cn/gongkai/zhengce/zhengcefilelib/202403/20240313_777010.html>

deployment of new technologies and alternative building materials in zero-carbon building renovation, hindering both the construction sector and China from meeting its overall emission reduction targets.

Assessment

Decarbonisation and renovation of the built environment in China are crucial to supporting and accelerating China's low-carbon transition. Accordingly, China's current decarbonisation initiatives include plans to promote the development of the circular economy over the next several years, including through innovation of key technologies, resource recycling and waste reduction.¹⁶ The Memorandum of Understanding on Circular Economy, signed by the European Union (EU) and China at the 20th EU-China Summit on 17th July 2018, covers the life cycle of construction materials as a key area where circular development should be promoted.¹⁷

A breakdown of carbon emissions throughout the lifecycle of existing buildings indicates that 30 per cent of hidden emissions can be attributed to 'hidden carbon' (carbon generated during the design and construction phase), while 70 per cent of carbon emissions can be attributed to 'operational carbon' (carbon generated from building operations).¹⁸ Renovation and promotion of a zero-carbon built environment is thus key to reducing operational carbon emissions to meet China's emission reduction targets.

The working group recognises several positive policy developments in this area. In 2023, policy support for green development in China's first-tier cities was noticeably strengthened, as evidenced by the issuance of new guidelines aimed at promoting the development of zero-carbon buildings.¹⁹ For example, the *Notice of the Beijing Municipal Commission of Housing and Urban-Rural Development and the Beijing Municipal Bureau of Finance on Issuing the Implementation Rules*

¹⁶ *China plans to promote circular economy*, *Xinhua*, 7th July 2021, viewed 2nd April 2024, <https://english.www.gov.cn/statecouncil/ministries/202107/07/content_WS60e59652c6d0df57f98dc8be.html>

¹⁷ Roberts, G, *China and EU Sign Memorandum of Understanding on Circular Economy*, resource.co, 17th July 2018, viewed 2nd April 2024, <<https://resource.co/article/china-and-eu-sign-memorandum-understanding-circular-economy-12744>>

¹⁸ *Zero-Carbon Technology: Implementing Effective Policies for Architecture Decarbonisation*, Ugreen, 9th January 2024, viewed 2nd April 2024, <<https://mp.weixin.qq.com/s/rU0CG8BDwAVYIjcelAM9CA>>

¹⁹ *Shanghai Green Architecture Development Report*, Institute of Metaverse and Carbon Neutrality, 23rd October 2023, viewed 2nd April 24, <<https://mp.weixin.qq.com/s/l9zF00hrxutoCtF38NveEw>>





for the Management of Beijing's Green Development Incentive Fund Demonstration Projects (Trial) promotes the use of greener and lighter construction materials through incentives for companies who provide such products.²⁰

In addition, the Chinese Government has implemented a series of policies and standards, such as the *Technical Standard for Nearly Zero Energy Buildings* and the *Technical Standard for Zero Carbon Buildings (Draft for Comments)*, guiding the development of green buildings and communities. This not only offers extensive market space for the green transformation of real estate but also indicates that low-carbon development is the future direction of the market.²¹

However, procedural and legal hurdles remain regarding the deployment of new technologies and building materials in zero-carbon building renovation. More than 10 standards are used to assess different types of buildings at various stages of the construction process. At the same time, the application of green building labels remains voluntary.²² The working group recommends moving from a voluntary to a mandatory green labelling system to encourage the decarbonisation of the built environment.

Furthermore, green building design and development require a thorough understanding of the different parameters influencing the overall performance of a building. Crucial sustainability and emissions indicators, such as power consumption, peak demand time, energy processing data, control points, humidity and heating, ventilation and air conditioning (HVAC), must be monitored through software installed at critical points throughout the entire structure of a building. While there has been an increased adoption of the internet of things (IoT), artificial intelligence (AI) and big data analytics technologies in the construction sector

globally, there is still a gap in the application of these technologies in China. In Europe, open databases and tools that utilise such technologies to calculate the environmental performance of building elements are shared with industry professionals, certification bodies and other stakeholders.²³ This data sharing helps to avoid inefficiencies as lessons are learned from other projects.

The working group believes that European companies' expertise in data monitoring, data sharing, and high-efficiency products aligns with China's goals for the application and integration of new technologies in the sector — and with the *2021 Opinions on Promoting Green Development in Urban and Rural Construction*.²⁴

At the same time, the use of greener and lighter materials will ultimately determine the success of decarbonisation efforts in the sector. Most of the construction industry's carbon emissions come from materials used in construction, such as steel and cement, which are some of the most high-polluting, energy-intensive industries due to their reliance on coal.²⁵ Even though policies provide incentives to companies that meet sustainability standards, there is still no standardised database for eco-friendly materials and their performance.

While the transition to green construction has been gaining momentum in China, it is further hindered by a lack of understanding among key players, decision-makers and consumers. Professional training in green building practices, principles of sustainability and green technologies is therefore essential. Public awareness campaigns aimed at increasing demand for zero-carbon building renovation should also be launched. European land developers, suppliers, distributors, architects, engineers, designers and project managers have deep knowledge in this area, having worked with major green

20 Notice of the Beijing Municipal Commission of Housing and Urban Rural Development and the Beijing Municipal Bureau of Finance on Issuing the Implementation Rules for the Management of Beijing's Green Development Incentive Fund Demonstration Projects (Trial), Beijing Municipal Commission of Housing and Urban-Rural Development, 27th June 2023, viewed 2nd April 2024, <<https://zjw.beijing.gov.cn/bjjs/gcjs/jzjnyjcjg/tzgg/tzgg98/326139587/index.shtml>>

21 China's Real Estate Market: The status, the trend, the policies for a structural upgrading, CNEUCN, 14th March 2024, viewed 2nd April 2024, <<https://mp.weixin.qq.com/s/kRCdA38BclVQeNlKT19eIq>>

22 Green Label Management Scheme, MOHURD, 8th January 2021, viewed 2nd April 2024, <https://www.mohurd.gov.cn/gongkai/zhengce/zhengcefilelib/202101/20210115_248842.html>

23 About TOTEM, TOTEM Create | Evaluate | Innovate, 2024, viewed 2nd April 2024, <<https://www.totem-building.be/pages/about.xhtml#2.1>>

24 Opinions on Promoting Green Development in Urban and Rural Construction (in Chinese), State Council, 21st October 2021, viewed 2nd April 2024, <https://www.gov.cn/zhengce/2021-10/21/content_5644083.htm>

25 Lu, H, You, K, Feng, W, Zhou, N, Fridley, D, Price, L and de la rue du Can, S, 2024, Reducing China's Building Material Embodied Emissions: Opportunities and Challenges to Achieve Carbon Neutrality in Building Materials, *iScience* vol. 27, no. 3, viewed 2nd April 2024, <https://www.sciencedirect.com/science/article/pii/S2589004224002499?ref=pdf_download&fr=RR-7&rr=88dd9e3e0f2d04d1>





building certification systems for decades.²⁶ The working group recommends, therefore, that China collaborate with European players to develop knowledge-sharing platforms, training, and educational programmes that can draw on the expertise of European companies and institutions.

Recommendations

- Implement a mandatory green building labelling scheme to ensure coherence and compatibility with international standards.
- Involve European companies in the implementation process of green building standards and the calculation of carbon emission standards.
- Draw on the expertise of European companies to develop knowledge-sharing platforms and public awareness campaigns for industry stakeholders.

2. Allow European Companies Greater Access to the Bidding Process for Government Procurement Work

Concern

Foreign-invested companies face constraints due to unequal treatment when bidding for government procurement projects.

Assessment

China currently has two sets of laws governing public tendering: the Government Procurement Law (GPL) and the Tender and Bidding Law (TBL).^{27&28}

After acceding to the World Trade Organization (WTO) in 2001, China committed to joining the organisation's

Government Procurement Agreement (GPA) “as soon as possible”.²⁹ On 21st October 2019, China submitted its seventh offer (sixth revised offer) for accession to the agreement, which included further commitments to open market access to foreign companies.³⁰ China currently has GPA observer status.

In this context, on 3rd December 2019, the NDRC proposed revisions to the TBL and invited public comments. These revisions are part of a broader effort by China to look into its public procurement framework, which has remained largely unchanged for over 20 years.³¹

The Ministry of Finance (MOF) is examining how the application of the GPL conflicts with the TBL, China's GPA accession and recent reforms to the country's procurement regime.³² This is also in line with the Foreign Investment Law that took effect at the beginning of 2020.³³ According to some, the GPL “is much more closely aligned with GPA requirements than the TBL”.³⁴ The proposed revisions to the TBL by the NDRC could, therefore, positively impact and lead to increased transparency and improved fairness in tendering activities, which would bring it more in line with GPA requirements.³⁵ This would help China pave the way towards fulfilling its WTO commitments. However, it remains to be seen how the revisions will be implemented, as foreign companies still face many issues obtaining government procurement work.

In the European Chamber's *Business Confidence Survey 2024*, 50 per cent of civil engineering and construction companies reported missing business opportunities due to market access restrictions and regulatory barriers, which include barriers to government

26 Internationally, three major certification systems for green buildings were established in the 1990s: the British Building Research Establishment Environmental Assessment Method in 1990; followed by the High Environmental Quality developed by the French in 1996; and finally, the Leadership in Energy and Environmental Design by the US Green Building Council in 1998. Zeinal Hamedani, A, and Huber, F, 2012, *A comparative study of DGNB, LEED and BREEAM certificate systems in urban sustainability, The Sustainable City VII: Urban Regeneration and Sustainability*, WIT Transactions on Ecology and The Environment, vol. 1551, pp. 121–132, viewed 9th April 2024, WIT Press, <https://www.witpress.com/Secure/elibrary/papers/SC12/SC12011FU1.pdf>

27 Broadly speaking, the GPL covers central and sub-central government purchases. See: *Government Procurement Law of the People's Republic of China*, Standing Committee of the NPC, 30th August 2007, viewed 2nd April 2024, <http://www.ccgp.gov.cn/zcfcg/gjfg/201310/t20131029_3587339.htm>

28 The TBL regulates all state-owned enterprise tenders, in particular, large-scale infrastructure projects (such as in construction, aviation, shipping, engineering, architecture, transportation, power and water), as well as large-scale, privately invested projects for public interest (mainly joint ventures). See: *Law of the People's Republic of China on Bid Invitation and Bidding*, China.org.cn, 12th February 2011, viewed 3rd April 2024, <http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/12/content_21908008.htm>

29 Wang, P, 2009, *China's Accession to the WTO Government Procurement Agreement — Challenges and The Way Forward*, Journal of International Economic Law, vol. 12, no. 3, pp. 663–706, viewed 4th April 2024, <https://academic.oup.com/jiel/article-abstract/12/3/663/817776>

30 *China Submits Revised Offer for Joining Government Procurement Pact*, WTO, 23rd October 2019, viewed 3rd April 2024, <https://www.wto.org/english/news_e/news19_e/gpro_23oct19_e.htm>

31 Grier, J, *China: Revising Tendering and Bidding Law*, Perspectives on Trade, 13th April 2020, viewed 3rd April 2024, <https://trade.djaghe.com/?p=6363>

32 *Government Procurement Law (Draft for Comments)*, MOF, 8th December 2020, viewed 3rd April 2024, <http://www.gov.cn/hudong/2020-12/08/content_5567837.htm>; *Administrative Measures for the Management of Government Procurement Demand*, MOF, 10th May 2021, viewed 3rd April 2024, <http://gks.mof.gov.cn/guizhangzhidu/202105/t20210510_3699403.htm>

33 *Law of the People's Republic of China on Foreign Investment*, MOJ, 22nd June 2022, viewed 3rd April 2024, <http://en.moj.gov.cn/2021-06/22/c_634956.htm>

34 Grier, J, *China: Revising Tendering and Bidding Law, Perspectives on Trade*, 13th April 2020, viewed 3rd April 2024, <https://trade.djaghe.com/?p=6363>

35 Ibid.





procurement processes.³⁶ This data illustrates the importance of China's timely accession to the GPA and an optimised revision of the TBL. Also, it is worth noting that the longer China fails to accede to the GPA and open up its procurement markets, the more likely it is to end up in the crosshairs of the EU's International Procurement Instrument, which came into force on 29th August 2022 and has recently targeted the medical device sector.^{37&38}

Recommendation

- Join the WTO's GPA to allow foreign companies greater access to the bidding process for government procurement work and ensure that construction services are covered.

3. Improve Market Access for European Construction Service Providers (CSP) to Encourage Expertise Sharing in Order to Support the 'Better House' Initiative

Concern

CSPs—including architects, designers, project managers and contractors—face difficulties entering the Chinese market, which prevents them from supporting China's national 'better house' initiative through the sharing of expertise and technology.

Assessment

Accounting for over 20 per cent of gross domestic product (GDP)³⁹ and 39 per cent of the total loan balance in the financial system, China's real estate industry is of systemic importance to its overall economy.⁴⁰ In 2023, the MOHURD published the policy focus of the real estate industry for the next several years. Its overarching aim is to advance the design of 'better houses' through the optimisation of urban planning, construction and real estate governance.

These 'better houses' should adhere to the principles of 'green', 'low carbon', 'intelligent', and 'safe' design through improvements in engineering standards. Specifications issued for 'better houses' include those for height, elevators, sound insulation, green features, intelligence and accessibility.⁴¹ Ning Hong, minister of the MOHURD, further clarified that the 'better house' policy should be driven by technological advancements and future-orientated building technologies that promote industrialisation and digitalisation.⁴²

European CSPs are well placed to leverage their extensive expertise in the promotion of high-quality housing that is low-carbon, intelligent and green.⁴³ This expertise is needed to both promote a new development model for the real estate market and to achieve China's carbon neutrality goals. However, while the working group welcomes the recognition of European contributions following an exchange with a representative from the MOHURD, in most cases, European CSPs are not allowed to bid directly for contracts in Chinese government projects. As a result, European service providers gain no public recognition for the value they add and cannot control the quality of the final design, ensuring that their business opportunities in China remain limited.

Despite these challenges, there have been positive developments over the past year. For example, some European CSPs have successfully entered the Chinese market through joint ventures and partnerships with local firms. These collaborations have demonstrated the value of integrating European expertise and standards in Chinese construction projects, yielding benefits in terms of innovation, sustainability and efficiency.⁴⁴

36 *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 16th May 2024, <<https://www.eurochamber.com.cn/en/publications-business-confidence-survey>>

37 *The EU's International Procurement Instrument — IPI*, EUR-Lex, 8th November 2022, viewed 3rd April 2024, <<https://eur-lex.europa.eu/EN/legal-content/summary/the-eu-s-international-procurement-instrument-ipi.html>>

38 *Commission launches first investigation under EU International Procurement Instrument*, European Commission, 24th April 2024, viewed 7th May 2024 <https://ec.europa.eu/commission/presscorner/detail/en/ip_24_2044>

39 Liu, Z, and Stemp, D, *The PBoC Props Up China's Housing Market*, Council on Foreign Relations, 21st March 2023, viewed 25th April 2024, <<https://www.cfr.org/blog/pboc-props-chinas-housing-market>>

40 *China's Real Estate Market: The status, the trend, the policies for a structural upgrading*, CNEUCN, 14th March 2024, viewed 2nd April 2024, <<https://mp.weixin.qq.com/s/kRCdA38BcIVQeNkT19elg>>

41 *MOHURD: Further increase the implementation of the first and second housing policies next year*, *The Paper*, 21st December 2023, viewed 2nd April 2024, <https://www.thepaper.cn/newsDetail_forward_25739722>

42 *Chinese housing planner urges high quality housing projects for all in 2024*, *Global Times*, 21st December 2023, viewed 2nd April 2024, <<https://www.globaltimes.cn/page/202312/1304116.shtml>>

43 Several European countries and the EU have already developed robust policies promoting high-quality building development and the improvement of the construction market. See: *Towards zero-emission buildings by 2050: Council adopts rules to improve energy performance*, European Council, 12th April 2024, viewed 7th May 2024, <<https://www.consilium.europa.eu/en/press/press-releases/2024/04/12/towards-zero-emission-buildings-by-2050-council-adopts-rules-to-improve-energy-performance/>>; *Energy Performance of Buildings Directive*, European Commission, 2024, viewed 7th May 2024, <https://energy.ec.europa.eu/topics/energy-efficiency/energy-efficient-buildings/energy-performance-buildings-directive_en#legislative-timeline>

44 *Savills and Xufang Group established a joint venture, the 'accompanying partner' expands their territory*, Savills, 1st April 2024, viewed 3rd April 2024, <<https://mp.weixin.qq.com/s/hdqHLLTtK0EoFMkFRtergq>>



As an additional challenge, a lack of recognition of qualifications and certifications of European professionals continues to make it difficult for them to operate in China. Encouraging mutual recognition of certificates, degrees and experience between China and the EU may help facilitate the issuance of construction and design licences to European CSPs operating in China, thus allowing them to leverage their expertise in support of housing renovations promoted by the national ‘better house’ initiative. The working group further recommends that foreign professionals in the field of architecture be allowed to conduct exams needed for local Chinese qualifications in English, to guarantee fair and equal opportunities for foreign construction professionals in China.

Recommendations

- Promote regulatory reforms to ease market access for European CSPs.
- Include European firms in the implementation of the ‘better house’ initiative.
- Facilitate partnerships between European CSPs and Chinese stakeholders to share best practices and technologies.
- Allow mutual recognition of degrees, certificates and experience to further level the playing field for foreign-invested construction and design firms.
- Allow qualification exams to be conducted in English to offer fair opportunities for foreign professionals.

4. Ensure a Fair, Balanced and Open Market for Foreign Investment in the Real Estate Sector 15

Concern

Administrative and regulatory hurdles are leaving European land developers locked out of China’s real estate market, hindering China’s policies aimed at encouraging foreign investment.

Assessment

The 2006 *Opinions Governing the Market Access and Administration of Foreign Investment in the Chinese Real Estate Market (Circular 171)* contain a variety of measures aimed at controlling the flow of foreign capital in the real estate sector, meaning foreign-invested enterprises (FIE) continue to face stringent regulations

that limit their market access.⁴⁵ Under *Circular 171*, FIEs are not able to obtain loans from Chinese or overseas sources until they have fully paid their registered capital, obtained land-use rights certification and realised 35 per cent of their total investment. In addition, *Circular 171* requires an equal proportion of registered capital and investment for foreign-invested real estate projects.⁴⁶ These conditions, particularly differing registered capital requirements, constitute unfair competition between local and foreign companies.

In 2007, the *Circular on Further Strengthening and Regulating the Examination, Approval, and Supervision of Foreign Direct Investment in the Real Estate Industry (Circular 50)* introduced requirements for provincial counterparts of the Ministry of Commerce (COFTEC) to file FIE real estate project approvals for review with the Ministry of Commerce (MOFCOM).⁴⁷ In the same year, the *Circular on Further Strengthening and Regulating the Examination, Approval, and Supervision of Foreign Direct Investment in the Real Estate Industry (Circular 130)* stated that FIEs in the real estate sector were subject to MOFCOM filing requirements before converting between foreign currency and *renminbi* (RMB).⁴⁸ Furthermore, the circular restricts FIEs from incurring foreign debts, including loans from shareholders and overseas banks.

In 2015, the *Circular Concerning Adjustment to Relevant Policies on Market Entry and Administration of Foreign Investment in the Real Estate Market (Circular 122)* rescinded requirements relating to the full payment of registered capital by real estate FIEs, removed the 50 per cent registered capital requirement and allowed foreign-invested real estate companies to register

45 Howlett, A, *China introduces further measures to regulate foreign investment in its real estate market*, Jones Day, 7th March 2008, viewed 28th March 2024, (registration required) <<https://www.lexology.com/library/detail.aspx?g=e20cc2f7-a984-4d1e-83d0-6a8bc3303c3c>>

46 The required rate of realisation of total investment is also 35 per cent for domestic companies. See: *Opinions Governing the Market Access and Administration of Foreign Investment in the Chinese Real Estate Market*, Central People’s Government, 30th June 2006, viewed 28th March 2024, <https://www.gov.cn/ztl/2006-06/30/content_323806.htm>

47 Blumenfeld, D, Ma, W, and Guan, P, *Beijing Lifts MOFCOM Filing Requirement for Real Estate FIEs*, Paul Hastings, 12th November 2015, viewed 28th March 2024, <<https://webstorage.paulhastings.com/Documents/PDFs/china-matters-beijing-lifts-mofcom-filing-requirement-for-real-estate-fies.pdf>>

48 *Circular on Further Strengthening and Regulating the Examination, Approval, and Supervision of Foreign Direct Investment in the Real Estate Industry*, SAFE, 10th July 2007, viewed 28th March 2024, <<http://www.chinacfo.net/csf/mj.asp?id=A2007118939103475096>>





foreign currencies directly with their bank.⁴⁹

The working group recognised the positive steps undertaken by authorities to promote a more international investment environment. However, *Circular 122* does not address a significant practical hurdle that FIEs face when seeking foreign loans: according to the relevant regulations issued in the circular, real estate FIEs approved and registered with the MOFCOM after 1st June 2007 may not register foreign debts with the State Administration of Foreign Exchange (SAFE).⁵⁰ This limits the intended benefits and flexibility promoted by *Circular 122*.

On 1st March 2023, the China Securities Regulatory Commission's *Guidelines for Real Estate Private Investment Fund Pilot Filing (Trial)* came into effect, offering investors a range of options for investment in specialist fund management companies in the construction and other sectors.⁵¹ While foreign investors are encouraged to participate through the Qualified Foreign Limited Partnership (QFLP) fund for foreign inbound investment, threshold requirements for QFLP fund participation are inconsistent at the local level. For example, Beijing authorities stipulate extra requirements regarding foreign investors' investment experience, internal control systems and asset amount, while the Zhuhai Government has set preferential policies for Hong Kong and Macau investors.⁵² The working group recognises the specificities of various localities that have resulted in different approaches to QFLP implementation. However, inconsistencies between local and central levels of implementation and differing treatment of foreign and domestic investors decrease the transparency of the policy. Furthermore, this is inconsistent with the August 2023 *Opinions of the State Council on Further Optimising the Foreign Investment Environment and Intensifying Efforts to Attract Foreign*

Investment and the March 2024 Action Plan to Solidly Promote High-Level Opening-up and Vigorously Attract and Utilise Foreign Investment. Both promote full utilisation and fair implementation of the qualified foreign limited partnership fund for investment by qualified foreign investors.^{53&54} Ensuring greater access for foreign investment in the real estate sector, which is necessarily linked to high building standards, can further support the establishment of a new real estate development model promoted by the 2024 *Government Work Report*.⁵⁵

Recommendations

- Issue further implementation rules for *Circular 122* and the QFLP investment scheme to promote a fair market environment for foreign companies investing in the Chinese real estate market.
- Facilitate market access for foreign-invested real estate enterprises to absorb immovable assets from illiquid or insolvent Chinese developers.

Abbreviations

AI	Artificial Intelligence
CNY	Chinese Yuan
COFTEC	Provincial counterparts of the Ministry of Commerce
CSP	Construction Service Providers
EU	European Union
FIE	Foreign-invested Enterprise
GDP	Gross Domestic Product
GPA	Government Procurement Agreement
GPL	Government Procurement Law
HVAC	Heating, Ventilation and Air Conditioning
IMF	International Monetary Fund
IoT	Internet of Things
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
MOHURD	Ministry of Housing and Urban-Rural Development
NBS	National Bureau of Statistics

49 *Circular Concerning Adjustment to Relevant Policies on Market Entry and Administration of Foreign Investment in the Real Estate Market*, MOFCOM, 19th August 2015, viewed 28th March 2024, <<http://www.mofcom.gov.cn/article/bf/201508/20150801093662.shtml>>

50 *Notice of the Measures for the Administration of Foreign Debt Registration*, SAFE, 2013, viewed 1st April 2024, <http://www.gov.cn/zwqk/2013-05/03/content_2395170.htm>

51 *Analysis of real estate private investment fund guidelines*, China Business Law Journal, 4th April 2023, viewed 1st April 2024, <<https://law.asia/real-estate-private-investment-fund-guidelines/>>

52 An overview of the QFLP pilot program and expectation, Baker and McKenzie FenXun, September 2022, viewed 1st April 2024, <[53 *Opinions of the State Council on Further Optimising the Foreign Investment Environment and Intensifying Efforts to Attract Foreign Investment*, State Council, 13th August 2023, viewed 1st April 2024, <\[https://www.gov.cn/zhengce/content/202308/content_6898048.htm\]\(https://www.gov.cn/zhengce/content/202308/content_6898048.htm\)>](https://insightplus.bakermckenzie.com/bm/attachment_dw.action?atkey=FRbANEucS95NMLRN47z%2BeeOgEFCi8EGQJswJiCH2WAAUuQVQjpl3o%2Bd1INPEzHkfs&nav=FRbANEucS95NMLRN47z%2BeeOgEFCi8EGQJswJiCH2WAAUuQVQjpl3o%2Bd1INPEzHkfs&atdocparam=pB7HEsg%2FZ312Bk80IuOIH1c%2BY4beLEAe%2F0XUWj266v8%3D&fromContentView=1>></p>
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54 *Action Plan to Solidly Promote High-Level Opening-up and Vigorously Attract and Utilise Foreign Investment*, State Council, 19th March 2024, viewed 1st April 2024 <https://www.gov.cn/zhengce/content/202403/content_6940154.htm>

55 *Report on the Work of the Government*, State Council, 13th March 2024, viewed 24th April 2024 <https://english.www.gov.cn/news/202403/13/content_WS65f0dfccc6d0868f4e8e5079.html>





European Chamber
中国欧盟商会

NDRC	National Development and Reform Commission
QFLP	Qualified Foreign Limited Partnership
SAFE	State Administration of Foreign Exchange
SAMR	State Administration for Market Regulation
TBL	Tender and Bidding Law
USD	United States Dollar
WTO	World Trade Organization
y-o-y	Year-on-year





Information and Communication Technology Working Group

Key Recommendations

1. Remove Indirect Barriers to European Information and Communication Technology (ICT) Companies' Market Access and their Ability to Fully Contribute to Market Development

- Implement measures to improve market access for European ICT companies to ensure long-term equal treatment in the China market.
 - Avoid an overly restrictive definition of 'made in China' in the context of government procurement.
 - Identify all ICT market segments where market access is lacking or bidding rules are unfair for European Union (EU) companies (especially with increasing requirements on self-reliance and localisation) and develop actions—jointly defined by Chinese and European stakeholders—that address the key challenges to doing business in China.
 - Review the status of market openness and market share regularly.
- Establish an open and effective monitoring and correction system for equal ICT market access and bidding rules for European ICT companies, with bilateral sponsorship, to address the current, prominent issues.

2. Avoid Bifurcation of Supply Chains and Ecosystems to Secure Foreign Investment and Embed China More Deeply into the Global System

- Ensure that regulatory controls improve overall supply chain resilience, instead of pursuing self-sufficiency at the expense of long-term interdependencies and cooperation prospects.
- Rely on internationally harmonised standards to the largest extent possible, rather than imposing undue restrictions on both the usage of such standards, and the scenarios in which they can be used.
- Ensure technology neutrality in ICT policies, regulations and standards to drive innovation, competition and long-term growth.
- Limit regulatory controls to what is strictly necessary, including by clearly delineating the boundaries of concepts like 'national security' and 'critical information infrastructure'.
- Ensure that commercial markets are free from undue regulatory controls and interventions by government authorities and related organisations.
- Avoid expanding the scope of procurement-related localisation programmes to commercial markets.
- Maintain consistency in macro-policy orientation, especially regarding policies developed by government authorities with different security and development mandates.

3. Develop and Implement Commercial Cryptography Laws, Regulations, Standards and Conformity Assessment Systems so that They are Clear, Fair and Conducive to International Harmonisation

- Allow the adoption of international standards related to commercial cryptography.





- Adopt the primary function test in further rule-making and in the roll-out of relevant mechanisms.
- Limit the scope of commercial cryptography testing, certification and application security assessment to critical infrastructure information (CII), and adopt a holistic approach in addressing the unauthorised and discretionary expansion of the scope of application of such programmes across geographies and industries.
- Clarify the requirements relating to the export control of commercial cryptography.
- Ensure technology-neutral and streamlined conformity assessment processes for commercial cryptography, and the protection of intellectual property (IP) and trade secrets.
- Define ‘commercial cryptography in mass consumer products’ as “cryptography features in components and products openly available to the public, that can be either charged or free, for personal or business use, and where the cryptographic functionality cannot be modified by the end user”.
- Ensure that any implementing regulations and standards are fully in line with the Cryptography Law.

4. Open up Value-added Telecoms Services (VATs) sector for International Companies 15

- Reduce further the Negative List and allow increased international participation in telecoms- and internet-related sectors.
- Continue to open up the Telecom Services Catalogue and allow foreign-invested enterprises (FIEs) to obtain VATS licences, particularly for internet resource collaboration (IRC), internet-protocol virtual private networks (IP-VPNs), internet service providers (ISPs), online data processing and transaction processing services, and information services.

5. Create a Policy, Regulatory and Standards System Conducive to the Sustainable Development of Emerging and Future-orientated Industries

- Ensure the timely availability of the 57–64 gigahertz (GHz) band for unlicensed use.
- Strengthen EU-China exchanges regarding spectrum regulation, including by integrating spectrum topics in relevant government-to-government dialogues.
- Incorporate green development mandates into development plans at an early stage for emerging and future-orientated industries, and encourage the adoption of energy-efficient and low-carbon technologies.
- Strengthen industry participation in exploring the best data governance approach to improve the availability, quality and interoperability of data.
- Increase international harmonisation of the governance frameworks for emerging and future-orientated industries, and identify EU-China synergies in key fields.
- Adopt a risk-based approach to regulating relevant industries, so that low-risk technologies and applications are free from undue restrictions, including market entry limitations.

Cybersecurity Sub-working Group

1. Ensure that Chinese Cybersecurity Legislation Does Not Create Discriminatory Market Access Barriers 8

- Define ‘national security’ as narrowly as possible and differentiate it from ‘commercial security’



in a clear manner.

- Narrow the scope of industries subject to foreign investment security review and scenarios subject to the Cybersecurity Review Measures (CSRM).
- Refrain from imposing undue restrictions on the use of ICT products and services in level three networks under the Classified Cybersecurity Protection System (CCPS).
- Limit the applicability and influence of non-binding cybersecurity regimes, in such a manner that they do not go beyond binding legislation.
- Minimise the scope of mandatory product certification only to what is absolutely necessary, to reduce market access barriers.
- Promote mutual recognition, adoption and reliance upon applicable international standards and global industry best practices.
- Ensure that multinational corporations' (MNCs') intellectual property and trade secrets are protected.

2. Continue to Optimise China's Cyber and Data Security Policies to Ensure they Facilitate Industry, Foreign Investment and Global Exchanges

- Give further guidance on exemptions and necessity determinations and avoid overly stringent interpretations.
- Clearly and narrowly define the scope of important data, refrain from classifying production and R&D data at large as 'important data', and avoid conflating large volumes of personal information and sensitive personal information with important data, or at least revise up the volume thresholds.
- Provide a sufficient grace period between any future release of important data identification guidelines and their implementation.
- Strengthen European Union (EU)-China dialogue on data and cybersecurity, and identify concrete areas for cooperation where possible.
- Avoid mandating the disclosure of information related to unmitigated vulnerabilities to parties irrelevant to the coordinated vulnerability disclosure (CVD) process.
- Ensure a coordinated and unified approach for oversight and enforcement among the authorities involved.
- Clearly delineate the boundaries between Critical Information Infrastructure (CII) and non-CII, and avoid interpreting and applying relevant requirements in an expansive manner to cover broader networks.

3. Ensure Proportionality, Industry Involvement, Global Harmonisation and Non-discrimination when Future-proofing Security Legislation

- Provide in a timely manner an open and transparent platform that allows European businesses to fully contribute to the drafting of forward-looking security legislation.
- Give more consideration to the business and operational needs of MNCs.
- Ensure security regulations are appropriate and commensurate with the risk.
- Increase international cooperation and collaboration among governments, regulatory bodies, industry associations and cybersecurity experts.
- Support global cybersecurity initiatives and frameworks to provide guidance and best practices for businesses.
- Ensure that forward-looking security legislation is free from undue market access impediments.



Recent Developments

Emerging and future-orientated industries

The 2024 *Government Work Report* emphasised the development of “new quality productive forces”, a concept that envisages increasing overall productivity through the modernisation of China’s industrial base, and the promotion of innovation in the digital economy and other future-orientated industries.^{1&2} With the information and communication technology (ICT) industry as a cornerstone of this strategy, European ICT companies see ample opportunities ahead.

One such future-orientated industry is artificial intelligence (AI). The 2024 *Government Work Report* states that China will “step up research and development (R&D) and application of big data and AI [and] launch an AI Plus initiative”.

The Ministry of Industry and Information Technology (MIIT) and three other government agencies have already published guidelines on standardising the AI industry. The guidelines envisage that, by 2026, more than 50 national and industry AI standards will have been developed, and that China will have participated in the drafting of over 20 international standards.³ The MIIT also plans to establish a new AI standardisation technical committee.⁴

On 9th May 2024, the State Council issued its 2024 *Legislative Work Plan*, citing the draft Artificial Intelligence Law as a legislative project in progress.⁵

Spectrum

On 4th June 2023, the MIIT announced that China would continue to enhance the whole industry chains

for both mobile and optical communication, plan for next-generation internet and other frontier areas, and promote sixth-generation (6G) technology R&D.⁶ On 27th June 2023, the MIIT updated its *Radio Frequency Allocation Provisions*, effective as of 1st July 2023.⁷ It contains several notable revisions, including the allocation of the 6425–7125-megahertz (MHz) frequency band for international mobile telecommunications (IMT), including fifth-generation mobile technology (5G) and 6G, making China the first country to do so. It also made clear that the 79–81 gigahertz (GHz) frequency band will be reserved for applications like automotive radar on a priority basis. With China now at a critical stage in the large-scale development of 5G applications, priority is now being given to the evolution of 5G, supporting 5G-A⁸ development and increasing 6G technology R&D.⁹

Over the past year, the MIIT also published spectrum regulations relating to ultra-wide band radio equipment, civilian drones and radio frequency identification. The ICT industry is now awaiting the identification of additional, large, and contiguous millimetre wave frequency ranges for unlicensed use. For more information, please refer to key recommendation (KR) 5.

Data systems and infrastructure

On 25th October 2023, China inaugurated a National Data Bureau (NDB), administered by the National Development and Reform Commission. The NDB is responsible for: advancing the development of data-related institutions; coordinating the integration, sharing, development and application of data resources; and advancing the development of the Digital China Initiative, the digital economy and a digital society.¹⁰ A number of policies have already been published in this regard, such as:

1 Full Text: Report on the Work of the Government, Xinhua, State Council, updated 13th March 2024, viewed 22nd May 2024, <https://english.www.gov.cn/news/202403/13/content_WS65f0dfccc6d0868f4e8e5079.html>
2 The concept of 'new quality productive forces' was first put forward by President Xi Jinping in September 2023, before being mentioned again during the December 2023 Central Economic Work Conference, and then further promoted in the 2024 Government Work Report: Xictionary: New quality productive forces, Xinhua, 6th March 2024, viewed 22nd May 2024, <<https://english.news.cn/20240306/a2905236963f4b00adae5e8b1b6c2c2f/c.html>>
3 Publicly Soliciting Opinions on the Guidelines for the Construction of a Comprehensive Standardisation System for the National Artificial Intelligence Industry (Draft for Opinion), MIIT, 17th January 2024, viewed 15th May 2024, <https://www.miit.gov.cn/jgsj/kjs/gzdt/art/2024/art_956f95c93db8432e824b5e68dcc7d2fc.html>
4 Announcement on Plan of Establishing an AI Standardization Technical Committee, MIIT, 1st July 2024, viewed 17th July 2024, <https://wap.miit.gov.cn/zwgk/wjgs/art/2024/art_f9fabce91533494aadb17796a09def14.html>
5 Circular of the General Office of the State Council on the Issuance of the Legislative Work Plan of the State Council for the Year 2024, State Council, 9th May 2024, viewed 15th May 2024, <https://www.gov.cn/zhengce/zhengceku/202405/content_6950094.htm>

6 Graph: The MIIT will comprehensively promote the research and development of 6G technology, Xinhua, 5th June 2023, viewed 9th May 2024, <https://www.gov.cn/zhengce/jjedu/tujie/202306/content_6884571.htm>
7 Radio Frequency Allocation Provisions, MIIT, 27th June 2023, viewed 10th May 2024, <https://wap.miit.gov.cn/gyhxxhb/jgsj/cyzcyfgs/bmgz/wxdl/art/2023/art_1e98823e689f42ca9ed14dcb6feec07a.html>
8 5G-A (5G-Advanced), which is based on the evolution and enhancement of 5G network in function and coverage, is a key information technology to support the digital upgrading of industries such as 3D internet.
9 How to view the situation of China's industrial development? How to promote the development of small and medium-sized enterprises? Jin Zhuanglong, Minister of Industry and Information Technology, talked about promoting new industrialisation on the "Minister's Corridor", MIIT, 9th March 2024, viewed 20th May 2024, <https://www.miit.gov.cn/jgsj/bgt/wxxc/art/2024/art_272488abf1e0454e8925f49606ddb9f2.html>
10 Spotlight on the official inauguration of the National Data Bureau, China News Agency, 25th October 2023, viewed 17th May 2024, <<https://baijiahao.baidu.com/s?id=1780735076224705803&wfr=spider&for=pc>>



On 31st December 2023, the NDB and 17 other departments jointly issued the *Three-Year Action Plan for Data Elements (2024–2026)*, which aims to promote the integration of data in 12 key areas, such as smart manufacturing, smart agriculture and technological innovation, accelerate the application of digital technologies and promote the digital transformation of industries.¹¹ The NDB also made repeated high-level pledges to optimise China’s data-related regulations.

On 8th October 2023, six departments, including the MIIT and the Office of the Central Cyberspace Affairs Commission, jointly unveiled an action plan for the high-quality development of computing power infrastructure.¹² The plan foresees that China’s total computing power will have reached over 300 exaflops by 2025, and calls for the development of efficient, smart, green and low-carbon computing power.

Telecommunications

In April 2024, the MIIT issued the *Circular on the Pilot Scheme for the Further Opening of Value-added Telecom Services to Foreign Investment*, aiming to eliminate, under certain conditions, foreign ownership restrictions in six domestic value-added telecom services (VATs) across four key pilot regions — Beijing, Shanghai, Hainan and Shenzhen.¹³ The six VATs are: 1) internet data centres (including sub-service internet resources collaboration services);¹⁴ 2) content delivery networks; 3) internet service providers; 4) online data processing and transaction processing; 5) information publishing platforms and information delivery services (excluding services relating to internet publishing, internet radio and television, and internet

culture management);¹⁵ and 6) information protection and processing services.

Commercial Cryptography

On 7th October 2023, the State Cryptography Administration (SCA) released two administrative measures, one being the *Administrative Measures on the Security Assessment of Commercial Cryptography Applications (Measures)*.¹⁶ These measures were designed to support the roll-out of the revised *Commercial Cryptography Regulations* released on 1st July 2023.¹⁷ According to the *Measures*, operators of networks and information systems that are “required by laws, administrative regulations and other relevant provisions of the state” to be protected by commercial cryptography, also referred to as “important networks and information systems”, shall carry out regular security assessment of commercial cryptography applications. This is a highly controversial requirement that could potentially lead to further market access barriers, as discussed in KR 3 of this paper.

Key Recommendations

1. Remove Indirect Barriers to European ICT Companies’ Market Access and their Ability to Fully Contribute to Market Development

Concern

The lack of reciprocal market access, coupled with increased localisation requirements in key ICT market segments, has started to result in some European companies de-prioritising the China market and jeopardises the future of European Union (EU)-China ICT industry collaboration.

Assessment

Due to their many years of operating in China, European ICT companies are deeply aware of the importance of sustainable market access for players across industry segments and along the value chain to

11 *Circular of the seventeen departments on the issuance of the Three-Year Action Plan for Data Elements (2024–2026)*, Cyberspace Administration of China, 5th January 2024, viewed 8th May 2024, <https://www.cac.gov.cn/2024-01/05/c_1706119078060945.htm>

12 *Circular of the Ministry of Industry and Information Technology and six other departments on the issuance of the Action Plan for High-quality Development of Computing Power Infrastructure*, MIIT, 8th October 2023, viewed 20th May 2024, <https://wap.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2023/art_fcb3aa793e674960b1c00d7e3b6ad448.html>

13 *Circular on the Pilot Scheme for the Further Opening of Value-added Telecom Services to Foreign Investment*, MIIT, 10th April 2024, viewed 10th May 2024, <https://wap.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2024/art_2326271e1b424e09b6e5924ad2948863.html>

14 Internet Resource Collaboration Service (IRCS) refers to the data storage, internet application development environment, internet application deployment and operation management services provided to users through the internet or other networks in the form of ready access, on-demand use, ready to expand, collaborative sharing, etc. The IRCS licence is particularly important for enterprises engaged in cloud computing, cloud hosting, web hosting, server leasing and other businesses.

15 Internet culture management refers to activities that provide internet cultural products and their services to make profit, by charging internet users or obtaining benefits by means of e-commerce, advertisement or sponsorship. They mainly include: 1. music and entertainment products; 2. game products; 3. works of art; 4. performances; 5. animation and film products; 6. operation of internet cultural products in cybercafés; and 7. exhibitions and competitions.

16 *Administrative Measures on the Security Assessment of Commercial Cryptography Applications*, SCA, 7th October 2023, viewed 17th May 2024, <https://www.sca.gov.cn/sca/xxgk/2023-10/07/content_1061109.shtml>

17 *Commercial Cryptography Regulations*, State Council, 24th May 2023, viewed 7th May 2024, <https://www.gov.cn/zhengce/zhengceku/202305/content_6875928.htm>





develop and thrive. In this regard, the current dynamic of the mobile market landscape is emblematic of the unfortunate impact of indirect barriers on market access.

The global success of the mobile industry relies on harmonised standards. In this field, China and the EU have made the most contributions and have cooperated on both fourth-generation (4G) and now 5G standards, to mutual benefit. However, as China's commercial development of 5G exploded,¹⁸ European firms' market share dropped from around 30 per cent in 4G to low single digits in 5G — a drop so sharp it cannot be explained by commercial reasons alone. According to the latest data published in 2024,¹⁹ European industry's accumulated 5G market share in China was just eight per cent in 2023, compared to 92 per cent for domestic vendors. Meanwhile, Chinese vendors had won more than 30 per cent of the European 5G market by the end of 2022, representing a four-fold imbalance.²⁰

This increasing imbalance is a significant concern and has seriously weakened the importance of the China market to European investors in key ICT market segments, led to a de-prioritisation of China in global investment planning, and jeopardised the outlook for EU-China global collaboration in the broader ICT industry.

Looking beyond the mobile industry, localisation (or domestic substitution) requirements have become a serious fair competition challenge and increasingly a de-facto market access barrier for European companies doing business in China. In many industry sectors, companies are facing growing localisation requirements, which either mandate domestic supply chain support by giving it significant weighting in the tender scoring system or, more severely, by specifying a required localisation percentage in the qualification

criteria. Although localisation requirements vary among different industries, the commonly observed trend is for increased localisation requirements, which may become an existential threat to segments of the European ICT industry in the future.

Added to these existing concerns is the pending definition of 'made in China' in government procurement, as there are fears that it may be defined in an overly restrictive manner.

The ICT Working Group believes that while industrial policy support for indigenous industries is understandable within reasonable and proportionate limits, commercial markets must be free from undue localisation mandates. Ensuring market access by giving all companies fair and equal opportunities to contribute to market development fully is crucial to maintaining and further promoting vital interdependencies.

Recommendations

- Implement measures to improve market access for European ICT companies to ensure long-term equal treatment in the China market.
 - Avoid an overly restrictive definition of 'made in China' in the context of government procurement.
 - Identify all ICT market segments where market access is lacking or bidding rules are unfair for EU companies (especially with increasing requirements on self-reliance and localisation) and develop actions—jointly defined by Chinese and European stakeholders—that address the key challenges to doing business in China.
 - Review the status of market openness and market share regularly.
- Establish an open and effective monitoring and correction system for equal ICT market access and bidding rules for European ICT companies, with bilateral sponsorship, to address the current, prominent issues.

2. Avoid Bifurcation of Supply Chains and Ecosystems to Secure Foreign Investment and Embed China More Deeply into the Global System

Concern

Bifurcation of supply chains and ecosystems risks leading to a dismantling of the globalised system,

¹⁸ In 2019, China began a massive deployment of 5G technology, and now has the world's largest and most advanced 5G network. According to MIIT statistics, by the end of 2023, China had deployed 3.34 million 5G base stations, a year-on-year increase of 46 per cent, and had 805 million 5G subscribers. China's total 5G investment in 2023 amounted to Chinese yuan (CNY) 190.5 billion: *Interpretation of the ICT Industry Statistics 2023*, MIIT, 24th January 2024, viewed 7th May 2024, <https://www.miit.gov.cn/gxsl/tjfx/txyl/art/2024/art_c3f0194a3a8141488885fc26ca5c98fd.html>

¹⁹ *Market share of 5G base station manufacturers in China in 2023*, Statista, June 2023, viewed 24th June 2024, <<https://www.statista.com/statistics/1194757/china-market-share-of-5g-base-stations-by-manufacturer/>>

²⁰ Rühlig, T, and Turcsányi, R, *Evaluating Public Support for Chinese Vendors in Europe's 5G Infrastructure*, German Council on Foreign Relations, August 2023, viewed 10th May 2024, <<https://dgap.org/en/research/publications/evaluating-public-support-chinese-vendors-europes-5g-infrastructure#>>

resulting in fragmented markets, reduced efficiency and higher costs.

Assessment

Over the past two years, China's top leadership has given several positive signals including successive high-level guidelines to attract foreign investment and create a level playing field.²¹ These signals provide the ideal context for the EU and China to jointly facilitate growth and sustainable market access, as advocated in KR 1.

In this respect, the ICT Working Group would like to highlight that treating self-reliance as the overriding and absolute priority, rather than one of many means to achieve supply chain resilience, risks further dismantling the globalised system. In addition to the localisation mandates mentioned in KR 1, a number of other challenges exist in more technical forms and could further bifurcate ICT supply chains and ecosystems:

- Some ICT standards differ from internationally harmonised ones. Restrictions may be imposed either on the usage of international standards, or on the scenarios in which they can be used.
- Certain policies, regulations and standards contain specific technology mandates. The lack of technological neutrality hinders interconnectivity, technological innovation, competition and long-term growth.
- As the boundaries of concepts such as 'national security' and 'critical information infrastructure', as well as between the concepts of 'critical information infrastructure' and 'Level 3 networks under the Classified Cybersecurity Protection System',²² are blurred, regulatory controls sometimes go beyond what is necessary or stipulated in the upper-level legislation.
- Procurement-related programmes like information technology application innovation (ITAI) and security and reliability testing and evaluation, favour domestic ICT suppliers, as no international suppliers have managed to qualify for these programmes to date. The ITAI's scope is reportedly being expanded from party and government procurement, to eight industries including financial services, telecommunications, electricity and healthcare.

²¹ Notably the *Opinions of the State Council on Further Optimising the Foreign Investment Environment and Increasing Efforts to Attract Foreign Investment* in July 2023, and the *Action Plan on Steadily Promoting High-level and Making Greater Efforts to Attract and Utilise Foreign Investment* in March 2024.

²² For more details, please see KR 1 of the *Cybersecurity Sub-working group Position Paper 2024/2025*.

The assessment of macroeconomic policy orientation as demanded by various high-level policy documents, serves as an opportunity to review these non-economic controls. In assessing the impact of controls in any given industry, it is important to look beyond the industry per se, and be mindful of the spill-over effect on broader industries and overall relations and cooperation prospects. Ultimately, safe and controllable supply chains and ecosystems need to be built in such a way that normal activities by international companies remain permissible, a minimum degree of regulatory certainty is provided and returns on investment are still achievable.

Representing international companies that have been investing in China for decades, the ICT working group hopes to see a more balanced EU-China relationship and that there continues to be a sufficient level of cooperation, something that is crucial for Chinese and international companies to develop and thrive.

Recommendations

- Ensure that regulatory controls improve overall supply chain resilience, instead of pursuing self-sufficiency at the expense of long-term interdependencies and cooperation prospects.
- Rely on internationally-harmonised standards to the largest extent possible, rather than imposing undue restrictions on both the usage of such standards, and the scenarios in which they can be used.
- Ensure technology neutrality in ICT policies, regulations and standards to drive innovation, competition and long-term growth.
- Limit regulatory controls to what is strictly necessary, including by clearly delineating the boundaries of concepts like 'national security' and 'critical information infrastructure'.
- Ensure that commercial markets are free from undue regulatory controls and interventions by government authorities and related organisations.
- Avoid expanding the scope of procurement-related localisation programmes to commercial markets.
- Maintain consistency in macro-policy orientation, especially regarding policies developed by government authorities with different security and development mandates.



3. Develop and Implement Commercial Cryptography Laws, Regulations, Standards and Conformity Assessment Systems so that They are Clear, Fair and Conducive to International Harmonisation



Concern

The Cryptography Law's roll-out and the development of its implementing regulations do not accurately reflect the language used in the law itself, which could result in less market access for European companies in China.

Assessment

While most jurisdictions do not apply strict restrictions to the domestic production and use of cryptography, China has long been one of the most challenging environments in this regard for foreign-invested enterprises (FIEs) to navigate. The Chinese commercial cryptography regulatory system needs to further improve for it to remain aligned with the Cryptography Law,²³ established international practices and the World Semiconductor Council principles, which call for deregulating commercial cryptography in mass-marketed ICT products. In particular, the regulatory system should continue to rely on the 'core function' principle clarified by the SCA in 2000,²⁴ or on a similar concept.

Testing and certification

The Cryptography Law replaced the previous administrative licensing-based market access system with one that features mandatory and voluntary testing and certification.²⁵ Given the product certification catalogue's significance to market entry, it is critical to align with the industry, FIEs included, on its scope before any eventual release. Unfortunately, the actual drafting process of the catalogue lacks transparency and public consultation.

23 *China unveils revised commercial cryptography regulations*, Xinhua, State Council, 24th May 2023, viewed 8th May 2024, <https://english.www.gov.cn/news/202305/24/content_WS646df14dc6d03ffcca6ed567.html>

24 In March 2000, the State Cryptography Administration Office of the Security Commercial Code Administration (OSCCA) released the *Year 2000 Clarification: Relevant Questions Regarding Commercial Cryptography Management*, which clarifies that the OSCCA's 1999 *Commercial Cryptography Regulations* only apply to "specialised hardware and software for which encryption and decryption operations are core functions".

25 *Announcement on Releasing the Commercial Cryptographic Products Certification Catalogue (First Batch) and the Commercial Cryptographic Products Certification Rules*, SCA, 11th May 2020, viewed 8th May 2024, <http://www.oscca.gov.cn/sca/xwdt/2020-05/11/content_1060749.shtml>

While FIEs have long been unable to pass China's commercial cryptography product certification, limited progress was made at the time of writing of this paper. That being said, the certification still largely constitutes a process that favours domestic products and technology, at the expense of international ones. Going forward, the working group hopes that European companies' products can continue to be certified in a timely and transparent manner. Meanwhile, to ensure that cryptography regulations and policies do not constitute an unfair advantage for domestic enterprises, SCA-approved technologies should include international ones; the certification should be designed so as to remain technology-neutral and focussed only on elements conducive to improving overall security. Furthermore, commercial cryptography—to the extent considered for certification—needs to be limited to cases in which encryption is the primary function. That means a component in a product should not be considered the product's primary function if encryption is not the core function or set of functions of the component; or the feature set is not specifically designed or fixed and cannot be modified to customer specification. There also needs to be adequate protection for applicants' intellectual property (IP) and trade secrets, ensuring that source code, non-public design information and trade secrets cannot be systematically demanded, and that international laboratories are allowed to conduct relevant testing activities.

Application promotion

There is a worrying tendency for the voluntary commercial cryptography product certification to be mandated via broader cybersecurity rules, sectoral rules, and local rules, often under the guise of 'application promotion'.

According to the *Administrative Measures on the Security Assessment of Commercial Cryptography Applications*, for networks and information systems that are "required by laws, administrative regulations and other relevant provisions of the state to be protected by commercial cryptography",²⁶ their operators shall carry out regular security assessment of commercial cryptography applications, a process associated with the commercial cryptography product certification. In this respect, it is crucial that government agencies

26 *Administrative Measures on the Security Assessment of Commercial Cryptography Applications*, SCA, 7th October 2023, viewed 17th May 2024, <https://www.sca.gov.cn/sca/xxgk/2023-10/07/content_1061109.shtml>



avoid expanding the scope of security assessments of commercial cryptography applications, and of the certification, to Grade III networks under the classified cybersecurity protection system (CCPS), something that goes beyond the upper-level legislation, but has already taken place at the local level.^{27&28} Not only are Grade III networks vast in number, they also present no significant risk to national security, public order and social interests.

Furthermore, as the National Technical Committee of Auto Standardization (NTCAS) is revising a standard titled *GB/T 32960.2 Technical Specifications of Remote Service and Management System for Electric Vehicles – Part 2: On-board Terminal*,²⁹ the revised draft explicitly states that only the security chips used in on-board terminals that possess a Chinese commercial cryptography product certificate, can pass relevant tests. This requirement, if published without revision, will block foreign security chip makers from entering the relevant Chinese market, while bringing significant disruptions to the normal purchasing activities of downstream companies.

Overall, the working group is extremely concerned about such unauthorised and discretionary expansion of the scope of application of commercial cryptography product certification. Rather than playing a whack-a-mole game, the working group calls for a holistic approach to address such expansions that are mushrooming across geographies and industries, inviting the competent authorities to reassess the legality of all such rules, and to give clear reassurances that the voluntary commercial cryptography product certification will not be mandated.

Standardisation

China's national standardisation body for cryptography, the National Technical Committee 260 on Cybersecurity of Standardization Administration of China's (TC260's)

Working Group 3 on Cryptographic Solutions, and the industry standardisation body, the Cryptography Standardisation Technical Committee, have long been closed to foreign participation. The working group is pleased to note that the TC260's Working Group 3 has recently taken in further FIEs, and recommends that more European companies be granted equal access to these standardisation bodies. This is important because while foreign companies are under-represented, they are equally bound by relevant standards.³⁰

At the same time, certain standards developed by these standardisation bodies contain requirements that are not only incompatible with both China's commitments in the World Trade Organization Technical Barriers to Trade Agreement and the Cryptography Law, but also un conducive to improving overall security. For example, although TC260 has been actively pushing domestic Chinese algorithms to become international standards, and with some success, certain standards for information system cryptography application still demand compliance with national and industry standards, while referring to international standards only when global interconnection is needed.³¹

Notably, cryptography standards are steadily covering more and more commercial scenarios. For example, on 21st June 2024, the MIIT released the *Key Points of Automotive Standardisation Work in 2024*, providing comprehensive strategic planning for the standardisation development of the automotive industry in 2024, which mentioned a mandatory standard for vehicle cryptography technologies.³² The working group is concerned that such a standard could discriminate against international algorithms in emerging industries.

Import licences and export controls

In November 2021, China released both the import licence and export control lists dedicated to commercial cryptography and the revised *Catalogue of Technologies*

27 *Chongqing Municipal Cryptography Administration Issues Circular on Further Standardising the Requirements Related to the Application of Passwords for the City's Important Networks and Information Systems*, Chongqing Municipal Cryptography Administration, 26th February 2024, viewed 18th May 2024, <<http://www.cqsmxh.cn/page/zh-cn/TZGG/28.html>>

28 *Circular on the Issuance of the Guidelines for Cryptographic Application and Security Assessment of Important Networks and Information Systems in Shanghai (Version 2024)*, Shanghai Municipal Cryptography Administration, 27th May 2024, viewed 17th July 2024, <<https://mgj.sh.gov.cn/apps/user-view/index#/home/articleView/524671>>

29 *Draft GB/T 32960.2 Technical Specifications of Remote Service and Management System for Electric Vehicles – Part 2: On-board Terminal*, NTCAS, 1st July 2024, viewed 17th August 2024, <<http://www.cataarc.org.cn:8088/zxd/portal/zqyj/503>>

30 KR 3 of the *Standards and Conformity Assessment Position Paper 2024/2025* also discusses FIEs' lack of access to certain Chinese standards development organisations.

31 KR 4 of the *Standards and Conformity Assessment Position Paper 2024/2025* discourages the adoption of recommended national standards as market access requirements and calls for improving the adoption rate of international standards.

32 *Key Points of Automotive Standardisation Work in 2024*, MIIT, 21st June 2024, viewed 3rd July 2024, <https://www.miit.gov.cn/jgsj/zbyz/qcgy/art/2024/art_a58fc16195a4364ad8cc479b4887ba7.html>





Subject to Import Prohibition and Restriction,³³ which lists foreign “data encryption technology employing a key strength greater than 256 bits” as a technology that requires an import permit. The following aspects in both the lists and the catalogue would benefit from additional clarification in explicit, written form, in order to facilitate import and export compliance, especially in the face of technological advancements such as post-quantum cryptographic algorithms:

- Mass consumer product exemption: While the lists seem to have implicitly exempted “commercial cryptography in mass consumer products” as per the Cryptography Law, this term should be clearly defined as “cryptography features in components and products openly available to the public, that can be either charged or free, for personal or business use, and where the cryptographic functionality cannot be modified by the end user”.
- Scope of security chips: A clearer definition is needed for ‘security chips’ subject to export control, excluding general-purpose chips, and including only security chips with indigenous, non-public algorithms tailor-made for such sectors as electricity, taxation, public security and finance, and which meet the technical thresholds.
- Key strength: The threshold of “key strength greater than 256 bits” should explicitly refer to symmetric algorithm keys, as asymmetric algorithms generally have much longer keys for equivalent resistance to attack.

Recommendations

- Allow the adoption of international standards related to commercial cryptography.
- Adopt the primary function test in further rule-making and in the roll-out of relevant mechanisms.
- Limit the scope of commercial cryptography testing, certification and application security assessment to CII, and adopt a holistic approach in addressing the unauthorised and discretionary expansion of the scope of application of such programmes across geographies and industries.
- Clarify the requirements relating to the export control of commercial cryptography.
- Ensure technology-neutral and streamlined

³³ *Catalogue of Technologies Subject to Import Prohibition and Restriction*, Ministry of Commerce, 19th November 2021, viewed 8th May 2024, <<http://cnzh.gov.cn/UploadFile/SiteFile/798/2021/11/19/9e1ff36542654997ae508932492c9b9c.pdf>>

conformity assessment processes for commercial cryptography, and the protection of IP and trade secrets.

- Define ‘commercial cryptography in mass consumer products’ as “cryptography features in components and products openly available to the public, that can be either charged or free, for personal or business use, and where the cryptographic functionality cannot be modified by the end user”.
- Ensure that any implementing regulations and standards are fully in line with the Cryptography Law.

4. Open up VATSs Sector for International Companies 15

Concern

Although many European companies have attempted to enter or expand into the Chinese VATS market, restricted access to the required operating licences acts as a major barrier to their participation.

Assessment

According to China’s *2021 Negative List for Foreign Investment*,³⁴ and *Telecom Service Catalogue 2015*,³⁵ generally, only companies that are less than 49 per cent foreign-invested can apply for a basic telecom services licence. Also, only companies that are less than 50 per cent foreign-invested can apply for a VATS licence, with the exception of e-commerce, domestic multi-party communications services, store-and-forward services and call centre services. The majority of VATSs remain restricted: according to the China Academy of Information and Communication Technology (CAICT), as of June 2023, FIEs accounted for only 4.45 per cent of the VATS business operators permitted by the MIIT.³⁶

As outlined in the Recent Developments section, the MIIT recently opened up six value-added telecoms services in four pilot regions: internet data centres (IDCs), content distribution networks (CDNs), internet service providers (ISPs), online data and transaction processing, information publishing platform and delivery

³⁴ *Special Management Measures for Foreign Investment Access (Negative List) (2021)*, National Development and Reform Commission, 27th December 2021, viewed 10th May 2024, <http://www.gov.cn/zhengce/zhengceku/2021-12/28/content_5664886.htm>

³⁵ *Telecom Service Catalogue 2015*, MIIT, 28th December 2015, viewed 10th May 2024, <https://www.miit.gov.cn/zwgk/zcwj/wjfb/tg/art/2020/art_e98406cd89844f7e92ea1bcf3b5301e0.html>

³⁶ *Analysis Report on Domestic Value-added Telecommunications Business Licensing*, CAICT, June 2023, viewed 5th May 2024, <<http://www.caict.ac.cn/kxyj/qwfb/qwsj/202307/P020230714651443638669.pdf>>

services, and information protection and processing services. Foreign enterprises participating in the pilots are granted equal treatment, thereby removing the previous 50 per cent cap on foreign ownership. The Information and Communication Technology Working Group welcomes this development. However, as the scope of this round of opening up remains limited, a nationwide roll-out is encouraged as soon as possible, to relax the geographical restrictions and to cover additional services such as internet-protocol virtual private networks (IP-VPNs) and all information services.

European enterprises in China are looking forward to a full opening in the following five types of services:

IDC and internet resource coordination services

Cloud services are commonly understood as comprising infrastructure-as-a-service (IaaS), platform-as-a-service (PaaS) and software-as-a-service (SaaS). While China has issued numerous policies promoting cloud services domestically, international providers still encounter market access barriers in the form of licensing requirements. Among the various types of VATS under the *Telecom Service Catalogue 2015*, internet resource coordination (IRC) is one that European players most want to provide.³⁷ In addition, the provision of SaaS, of which there is no clear definition in Chinese policies, could also be subject to licensing, as some types of SaaS might fall within the scope of various telecom services under the *Telecom Service Catalogue*, such as IRC or information services.

IP-VPN

FIEs in China have limited access to domestic IP-VPN services. Businesses, innovation, cross-border transactions and, ultimately, investments are all underpinned by free access to and the flow of information. Further opening up of domestic IP-VPN services to FIEs would therefore help increase competition and bring more affordable solutions to companies, and small and medium-sized enterprises in particular.

ISP services

The working group welcomes MIIT's announcement in April 2024 of a trial policy allowing foreign participation in ISP services. However, the restriction of operating only within the trial zones is disappointing. A large-

scale opening in ISP services is strongly needed at the national level to ensure that this trial will have a positive impact on guiding overall industry openness and development.

Online data processing and transaction processing services (except e-commerce services)

Online data processing and transaction processing services are growing in relevance for big data service providers and other data platform businesses. Therefore, it is still important to ensure regulatory certainty when introducing new data platform business models in China.

Information services (except application (app) store services)

The opening up of information publishing platforms and delivery services, and information protection and processing services in the pilot zones is only a small step forward. Information services encompasses a variety of services that are of particular interest to international companies operating in China, but it is an area that is still highly regulated. As mobile internet and the internet of things (IoT) continue to develop, these kinds of restrictions are increasingly burdensome to European businesses that wish to bring their expertise and contribute to the development of the Chinese market.

Recommendations

- Reduce further the *Negative List* and allow increased international participation in telecoms- and internet-related sectors.
- Continue to open up the *Telecom Services Catalogue* and allow FIEs to obtain VATS licences, particularly for IRC, IP-VPNs, ISPs, online data processing and transaction processing services, and information services.

5. Create a Policy, Regulatory and Standards System Conducive to the Sustainable Development of Emerging and Future-orientated Industries

Concern

For China to develop emerging and future-orientated industries in a sustainable way, related policies need be developed in collaboration with industry to ensure that they are practical and implementable, and that resulting

³⁷ IRC is defined as a sub-category of IDC services, while IaaS is a type of IDC service (IDC with or without IRC). PaaS likely falls into the category of IRC.



governance frameworks are globally interoperable.

Assessment

The 2024 *Government Work Report* pledged to actively foster emerging and future-orientated industries, and promote innovative development of the digital economy, an area in which European ICT companies can make valuable contributions.

Spectrum

Successful spectrum management serves as an enabler of the ICT industry and many emerging and future-orientated industries such as IoT, intelligent and connected vehicles (ICVs), and the low-altitude economy. It is therefore advisable for China to identify key frequency bands in a timely manner that is consistent with international standards, to underpin growth and secure long-term competitive advantages in the global ecosystem.

Progress has been made recently to meet the spectrum needs of such technologies as IMT and ultra-wide band radio equipment. However, China does not currently provide any large and contiguous millimetre wave frequency ranges for unlicensed use, which is important for a broad spectrum of industries such as ICVs, drones, industrial automation, smart home and smart building technologies, smart health and elderly care, and augmented reality/virtual reality (AR/VR).

Currently, the best candidate frequency range for unlicensed use is the 57–64GHz band, which allows for communication links with high-speed data transmission with very high data rates and, for radar, a much higher range resolution that enables detection of micro motions in the millimetre range. In addition, the high free-space path loss and strong oxygen absorption at this band effectively reduces interference risks between devices. These features make this band suitable for short-range technologies like radar, contactless connectors and wireless gigabit protocol.

The ICT working group recommends that the 57-64GHz frequency band be made available for unlicensed use as soon as possible, and stands ready to provide necessary industry support.

Data resources

Following the release of the *Opinions on Building Basic Systems for Data to Better Give Full Play to the*

Role of Data Resources in 2022,³⁸ China established the NDB and published a series of policy documents aimed at fully leveraging the country's abundant data resources and rich application scenarios. This opened a new chapter in the development of the data economy, and raised the urgent need for policymakers, standard setters, academia and the business community to jointly explore the best data governance approach to improve the availability, quality and interoperability of data, both in domain-specific settings and across sectors.

In this respect, the ICT working group acknowledges the NDB's commitment to further improve China's basic data systems, roll out the 'Data Element X' plan to unlock data's multiplier effects, cultivate the data industry ecosystem, work with relevant authorities to continuously iterate and improve policies related to cross-border data flows, strengthen bilateral and multilateral cooperation in the field of data, and actively participate in the formulation of global data rules.³⁹ The working group looks forward to the materialisation and ultimate implementation of these high-level commitments.

As data flows and sharing are also central to the European strategy for data, the working group believes the EU and China have ample rooms for exchanges, at both a horizontal level and with representatives from key, data-driven industries.

Green development

With much attention being paid to technological advancements in emerging and future-orientated industries, it is important that their environmental impact not be overlooked. Technologies like cloud computing and AI are increasingly power-hungry, and the energy required to run AI tasks is accelerating with an annual growth rate between 26 per cent and 36 per cent.⁴⁰ Notably, data centres and data transmission networks each currently account for about one to 1.5 per cent

38 *Opinions on Building Basic Systems for Data to Better Give Full Play to the Role of Data Resources*, Central Committee of the Communist Party of China and the State Council, 19th December 2022, viewed 6th May 2024, <https://www.gov.cn/zhengce/2022-12/19/content_5732695.htm>

39 Zhuo, X, and Ma, J, *Liu Liehong: China to continue iterating cross-border data transfer regulations, and establishing cooperation mechanisms with major economic and trade partners*, *Digital Productivity*, 25th March 2024, viewed 4th May 2024, <<https://m.21jingji.com/article/20240325/herald/b719db4610f7ad370ec04fbf2e5ce002.html>>

40 Ammanath, B, *How to manage AI's energy demand — today, tomorrow and in the future*, World Economic Forum, 25th April 2024, viewed 4th May 2024, <<https://www.weforum.org/agenda/2024/04/how-to-manage-ais-energy-demand-today-tomorrow-and-in-the-future/>>



of global electricity use,⁴¹ with emerging services and technologies like blockchain, AI, machine learning and AR/VR only expected to further boost demand for data services.

To live up to China's green development promises, it is important to incorporate sustainability mandates early into the relevant industry development plans. This should be done by encouraging the adoption of energy-efficient and low-carbon technologies throughout the production process and the lifecycle of relevant products, and handling energy more intelligently and efficiently at all stages of the energy chain. Here, the European business community is well positioned to improve the energy balance of the relevant industries.

Harmonisation of governance frameworks

With new industries comes the need to establish new governance frameworks, including but not limited to policies, regulations, standards, and conformity assessment programmes where appropriate. Bifurcation of the governance frameworks in China and elsewhere needs to be avoided to the greatest extent possible, to minimise the need for product reengineering, reduce costs, and leave room for subsequent international cooperation and exchanges. The ICT working group encourages the EU and China to maximise cooperation, by identifying common principles and pathways in areas like IoT, AI, and ICT product testing and certification.

In developing these governance frameworks, a risk-based approach needs to be taken to ensure that low-risk technologies and applications are free from undue restrictions, including market entry limitations.

Recommendations

- Ensure the timely availability of the 57–64GHz band for unlicensed use.
- Strengthen EU-China exchanges regarding spectrum regulation, including by integrating spectrum topics in relevant government-to-government dialogues.
- Incorporate green development mandates into development plans at an early stage for emerging and future-orientated industries, and encourage the adoption of energy-efficient and low-carbon technologies.
- Strengthen industry participation in exploring the

best data governance approach to improve the availability, quality and interoperability of data.

- Increase international harmonisation of the governance frameworks for emerging and future-orientated industries, and identify EU-China synergies in key fields.
- Adopt a risk-based approach to regulating relevant industries, so that low-risk technologies and applications are free from undue restrictions, including market entry limitations.

Abbreviations

4G	Fourth Generation
5G	Fifth Generation
6G	Sixth Generation
AI	Artificial Intelligence
AR	Augmented Reality
CAICT	China Academy of Information and Communication Technology
CCPS	Classified Cybersecurity Protection System
CII	Critical Infrastructure Information
CNY	Chinese Yuan
EU	European Union
FIE	Foreign-invested Enterprise
GHz	Gigahertz
IaaS	Infrastructure as a Service
ICT	Information and Communication Technology
ICV	Intelligent and Connected Vehicle
IDC	Internet Data Centre
IMT	International Mobile Telecommunications
IoT	Internet of Things
IP	Intellectual Property
IP-VPN	Internet-protocol Virtual Private Network
IRC	Internet Resource Collaboration
ISP	Internet Service Providers
ITAI	Information Technology Application Innovation
KR	Key Recommendation
MHz	Megahertz
MNO	Mobile Network Operator
MIIT	Ministry of Industry and Information Technology
NDB	National Data Bureau
OSCCA	Office of Security Commercial Code Administration

⁴¹ *Data Centres and Data Transmission Networks*, International Energy Agency, viewed 4th May 2024, <<https://www.iea.org/energy-system/buildings/data-centres-and-data-transmission-networks>>





European Chamber
中国欧盟商会

PaaS	Platform as a Service
R&D	Research and Development
SCA	State Cryptography Administration
SaaS	Software-as-a-Service
TC260	National Technical Committee 260 on Cybersecurity of Standardization Administration of China
VATS	Value-added Telecoms Service
VR	Virtual Reality



Cybersecurity Sub-working Group

Recent Developments

China's cybersecurity landscape is governed by the Cybersecurity Law (CSL),^{1&2} the Data Security Law (DSL),³ the Personal Information Protection Law,⁴ the Cryptography Law⁵ and numerous implementing regulations, which have resulted in rapidly evolving regulatory requirements for cybersecurity.

According to the State Council's 2024 Legislative Work Plan, the CSL is under revision,⁶ with a focus on increasing administrative penalties according to a revised draft published in 2022.⁷ At the same time, the *Regulations on Network Data Security Management* are currently being drafted. The *Regulations* will offer an official definition for the often-cited term 'important data'.

The National Technical Committee 260 on Cybersecurity of Standardization Administration of China (TC260) has released and is working on a number of recommended national standards as important references for rolling out cyber and data security requirements. These include but are not limited to *GB/T 43697-2024 Data Security Technology — Rules for Data Classification and Grading*,⁸ which was appended with the *Guidelines for the Identification of Important Data; Information Security Technology — Security Requirements*

for Processing of Important Data (Draft for Public Comments);⁹ and *Information Security Technology — Security Requirements for Processing of Sensitive Personal Information (Draft for Public Comments)*.¹⁰ The sub-working group also looks forward to the standard on data anonymisation, as suggested in TC260's 2024 work plan.¹¹

Another regulatory development was the release of the draft *Measures on the Administration of Cybersecurity Incident Notification* by the Cyberspace Administration of China (CAC) for public comments on 8th December 2023.¹² The draft measures set out specific notification timelines and other requirements with respect to cybersecurity incidents. Notably, cybersecurity incidents are divided into 'extremely significant', 'significant', 'relatively significant' and 'general', with the first three types needing to be reported to the regulators within one hour of their occurrence. On 15th December 2023, the Ministry of Industry and Information Technology (MIIT) released the *Emergency Response Plan for Data Security Incidents in the Fields of Industry and Information Technology (Trial) (Draft for comments)*.¹³ It is presently unclear how the MIIT's draft plan and the CAC's draft measures will interact with each other, especially in areas they overlap, such as regulatory reporting, incident classification criteria and penalties for non-compliance. To some extent, MIIT's draft plan and CAC's draft measures unavoidably overlap regarding the governing of incident reporting, especially in the realms of purpose, legislative basis and scope. Some of

1 *The Cybersecurity Law*, Cyberspace Administration of China, 7th November 2016, viewed 29th May 2024, <https://www.cac.gov.cn/2016-11/07/c_1119867116.htm>

2 On 14th September 2022, the CAC released the *Decision on Amending the Cybersecurity Law of the People's Republic of China (Draft for Comments)*, which proposes the imposition of more stringent legal liabilities for certain violations of the CSL.

3 *The Data Security Law*, National People's Congress, 10th June 2021, viewed 29th May 2024, <http://www.npc.gov.cn/npc/c2/c30834/202106/t20210610_311888.html>

4 *The Personal Information Protection Law*, State Council, 20th August 2021, viewed 29th May 2024, <https://www.gov.cn/xinwen/2021-08/20/content_5632486.htm>

5 *The Cryptography Law*, State Cryptography Association, 4th June 2023, viewed 29th May 2024, <https://www.oscca.gov.cn/sca/xgkj/2023-06/04/content_1057225.shtml>

6 *Legislative Work Plan of the Standing Committee of the National People's Congress for the Year 2024*, National People's Congress, 8th May 2024, viewed 20th May 2024, <http://www.npc.gov.cn/c2/c30834/202405/t20240508_436982.html>

7 *Decision on Amending the Cybersecurity Law of the People's Republic of China (Draft for Comments)*, Cyberspace Administration of China, 14th September 2022, viewed 8th May 2024, <https://www.cac.gov.cn/2022-09/14/c_1664781649609823.htm>

8 *Data Security Technology - Rules for Data Classification and Grading*, The National Technical Committee 260 on Cybersecurity of Standardisation Administration of China, 15th March 2024, viewed 20th May 2024, <<https://std.samr.gov.cn/gb/search/gbDetailed?id=14156507D2210337E06397BE0A0AE656>>

9 *Information Security Technology - Security Requirements for Processing of Important Data (Draft for public comments)*, The National Technical Committee 260 on Cybersecurity of Standardization Administration of China, 25th August 2023, viewed 7th May 2024, <<https://www.tc260.org.cn/front/postDetail.html?id=20230830131050>>

10 *Information Security Technology — Security Requirements for Processing of Sensitive Personal Information (Draft for Public Comments)*, The National Technical Committee 260 on Cybersecurity of Standardisation Administration of China, 9th August 2023, viewed 3rd July 2024, <<https://www.tc260.org.cn/front/postDetail.html?id=20230809175241>>

11 *Notice on the Issuance of the 2024 Work Points of the National Cybersecurity Standardisation Technical Committee*, National Information Security Standardisation Technical Committee, 8th April 2024, viewed 20th May 2024, <<https://www.tc260.org.cn/front/postDetail.html?id=20240408133953>>

12 *Measures on the Administration of Cybersecurity Incident Reporting (Draft for Comments)*, Cyberspace Administration of China, 8th December 2023, viewed 7th May 2024, <https://www.cac.gov.cn/2023-12/08/c_1703609634347501.htm>

13 *Publicly Soliciting Opinions on the Emergency Response Plan for Data Security Incidents in the Fields of Industry and Information Technology (Trial) (Draft for comments)*, MIIT, 15th December 2023, viewed 3rd July 2024, <https://www.miit.gov.cn/gzcyj/yjzj/art/2023/art_7c903aac87514e26b2dbbc42f5e60347.html>





the articles also present inconsistencies, such as roles and responsibilities.

In addition, on 3rd August 2023, the CAC issued the *Administrative Measures for Compliance Audit of Personal Information Protection (Draft for Comment)*, which specified that personal information handlers that handle the personal information of more than one million people must conduct a personal information protection compliance audit at least once a year. Other personal information processors must conduct a personal information protection compliance audit at least once every two years.¹⁴

Cross-border Data Transfer (CBDT)

China's CBDT mechanism is comprised of three different transfer channels, including the CAC-led security assessment, the standard contract filing and the personal information protection certification. On 22nd March 2024, the CAC released the much-awaited *Provisions on Promoting and Regulating Cross-border Data Flows (CBDT Provisions)*,¹⁵ with immediate effect. The *CBDT Provisions* alleviated the compliance burden associated with CBDTs, albeit still leaving a few ambiguities and challenges to clarify and address, and will prevail over existing CBDT rules or guidelines governing the security assessment, standard contract and certification, in case of any discrepancies.

At the same time, the *Version 2.0 Guidelines for Security Assessment* and the *Version 2.0 of Guidelines for standard contract filing* were released, which further streamlined requirements for the security assessment and the standard contract filing.¹⁶

Sectoral and local cyber and data security rules

Over the past year, draft and finalised sectoral cyber and data security rules have been released for industry and information technology (IT), financial services, transportation, and mailing and delivery, to name a few. The sub-working group notes both tightened, or at least more comprehensive, regulatory

requirements, and some positive developments that add to regulatory certainty.

For example, the MIIT's draft *Administrative Penalty Guidelines for Data Security in the Industrial and Information Technology Fields (Trial Implementation)*¹⁷ puts forward clearer substantive requirements for compliance, and states that unintentional violations will not be punished, and that only a one-time punishment should be imposed for the same offence. At the same time, certain sectoral important data identification guidelines remain quite ambiguous and restrictive, as described in Key Recommendation 2 of this paper.

Localities have been empowered to develop their own rules on data classification and grading per the DSL, and pilot free trade zones have been permitted by the *CBDT Provisions* and the State Council to formulate positive and negative lists for CBDTs. This has resulted in a multitude of local regulatory developments taking place at the time of writing, such as in Beijing, Tianjin, Shanghai, Hainan and the Greater Bay Area.

Conformity assessment

Article 23 of the CSL defined "critical network equipment" and "specialised cybersecurity products", with products falling under these two categories that are subsequently listed in a dedicated catalogue being subject to mandatory certification. The catalogue was initially released by the CAC and several other government agencies in 2017, and updated in July 2023. Compared with the previous version, the latest catalogue significantly expanded the scope of specialised cybersecurity products from 11 to 34, covering secure storage, security management, traffic control, load balance and log analysis, among many others.¹⁸ While the previous catalogue defined the affected product categories by performance, the updated catalogue contains no references to technical parameters, so that both high-end and low-end products are covered.

On 26th December 2023, the Ministry of Finance (MOF) and the MIIT jointly released standards defining a long list of government procurement

14 Notice of the CAC on the Public Consultation on the Administrative Measures for Compliance Audit of Personal Information Protection (Draft for Comments), Cyberspace Administration of China, 3rd August 2023, viewed 3rd July 2024, <https://www.cac.gov.cn/2023-08/03/c_1692628348448092.htm>

15 Provisions on Promoting and Regulating Cross-border Data Flows, Cyberspace Administration of China, 22nd March 2024, viewed 8th May 2024, <https://www.cac.gov.cn/2024-03/22/c_1712776611775634.htm>

16 Version 2.0 of Guidelines for Security Assessment and Version 2.0 of Guidelines for Standard Contract Filing, Cyberspace Administration of China, 22nd March 2024, viewed 8th May 2024, <https://www.cac.gov.cn/2024-03/22/c_1712783131692707.htm>

17 Administrative Penalty Guidelines for Data Security in the Industrial and Information Technology Fields (Trial Implementation), Ministry of Industry and Information Technology, 23rd November 2023, viewed 18th May 2024, <https://www.miit.gov.cn/jgsj/waj/wjfb/art/2023/art_e14338d7b2684c79bec7931b75336520.html>

18 Catalogue of Critical Network Equipment and Specialised Cybersecurity Products, Cyberspace Administration of China, 3rd July 2023, viewed 8th May 2024, <http://www.cac.gov.cn/2023-07/03/c_1690034742530280.htm>





requirements for seven types of basic hardware and software products, including operating systems, databases, general servers, workstations, all-in-one PCs, portable computers, and desktop computers.¹⁹ Critical components such as Central Processing Units (CPUs) and operation systems need to pass a newly established security and reliability evaluation performed by the China Information Technology Security Evaluation Centre, largely built upon activities relating to Information Technology Application Innovation (also known as 'Xinchuang'). At the time of writing, two batches of products have passed the evaluation, with a number of domestic CPUs, operating systems and centralised databases listed.²⁰ Additionally, on 20th March 2024, the China National Information Technology Standardization Technical Committee (TC28) released a batch of standards for public review on products that need to be secure and reliable.²¹

Emerging technologies

There have been a number of recent regulatory developments aimed at keeping pace with the rapid evolution of emerging technologies. On 10th July 2023, in the absence of an overarching AI Law, China released the final version of the *Trial Measures for the Administration of Generative Artificial Intelligence (AI) Services*, effective as of 15th August 2023.²² These measures impose a number of compliance obligations on generative service providers, including the need to submit security assessments, complete algorithm filings and ensure the training data's veracity, accuracy, objectivity and diversity. On 7th September 2023, the *Trial Measures for the Ethical Review of Science and Technology Activities* were released by China's Ministry of Science and Technology (MOST) and other government departments,²³ requiring entities engaged in AI among other science and technology activities whose research involves ethically sensitive areas to set up a scientific and technological ethics review committee.

19 Rules and Regulations, MOF & MIIT, 26th December 2023, viewed 8th May 2024, <<https://gks.mof.gov.cn/guizhangzhidui/>>

20 China Information Technology Security Evaluation Centre, viewed 8th May 2024, <<http://www.itsec.gov.cn/aqkkcp/cpgg/>>

21 *Notice on Soliciting Opinions on 9 Industry Standards*, China National Information Technology Standardization Network, 20th March 2024, viewed 3rd July 2024, <<https://mp.weixin.qq.com/s/fY8sL2C8-l2rK9RzzQhc6A>>

22 *Trial Measures for the Administration of Generative Artificial Intelligence Services*, Cyberspace Administration of China, 10th July 2023, viewed 8th May 2024, <https://www.cac.gov.cn/2023-07/13/c_1690898327029107.htm>

23 *Circular on the Issuance of the Trial Measures for Ethical Review of Science and Technology Activities*, Ministry of Science and Technology, 7th September 2023, viewed 8th May 2024, <https://www.most.gov.cn/xxgk/xinxifenlei/fdzdgknr/fgzcz/gfxwj/gfxwj2023/202310/20231008_188309.html>

Key Recommendations

1. Ensure that Chinese Cybersecurity Legislation Does Not Create Discriminatory Market Access Barriers 8

Concern

Notwithstanding some recent positive developments to ease regulatory requirements, certain cybersecurity schemes may lead to the creation of a business environment that is discriminatory towards international businesses, in which they are restricted or even prohibited from providing products and services to segments of the Chinese market.

Assessment

Certain requirements under Chinese security legislation may present de facto market access barriers for international businesses.

a) Foreign investment security reviews in IT and internet services

The foreign investment security review has been in force since 18th January 2021, following the release of the *Foreign Investment Security Review Measures* by the National Development and Reform Commission and the Ministry of Commerce.²⁴ The security review requires foreign investors to pass relevant reviews when investing in "important IT and internet products and services, key technologies and other important fields deemed as being related to national security". However, the scope remains unclear, possibly leading to discretionary enforcement of regulations. This uncertainty increases the burden on foreign investors, as they must conduct an assessment and consult with regulatory authorities in advance to identify if they will be liable for a security review. The consultation process may involve the disclosure of transactions and other documents, which could potentially expose foreign investors to the risk of confidential data being revealed.

b) Classified Cybersecurity Protection System (CCPS)

The CCPS classifies networks into five ascending protection levels based on their sensitivity to individuals' rights and interests, as well as general public and national security, and specifies the corresponding security safeguards for each level. The system is based

24 *Foreign Investment Security Review Measures*, Ministry of Commerce, 19th December 2020, viewed 7th May 2024, <<http://www.mofcom.gov.cn/zfxxgk/article/xxxygz/202112/20211203230801.shtml>>





on a draft *CCPS Regulation* released by the Ministry of Public Security (MPS) in June 2018,²⁵ as well as several already effective standards.

In addition to being burdensome, the CCPS is increasingly being leveraged to advance restrictions on information and communications technology (ICT) products and services, by expanding the scope of application of security requirements that favour specific technology roadmaps. For example, it requires networks level two and above to use cryptography technology, products and services accredited by the State Cryptography Administration, and that networks above level three undergo security assessment for commercial cryptography applications. Such accreditation and assessment processes favour domestic technology, and have long remained an obstacle for many multinational corporations (MNCs) in China. As these requirements go beyond the Cryptography Law, it is of paramount importance that they are not reintroduced into other state and local provisions.

c) Cyber Security Review Measures (CSRM)

The CSRM mandate that Critical Information Infrastructure (CII) operators must proactively apply for a non-transparent cybersecurity review when their purchases of network products and services affect or may affect national security. The CSRM includes broadly defined triggers, including supply chain, political, diplomatic and trade factors.²⁶ These non-technical factors, as well as the review's lengthy processes and lack of transparency, pose market access restrictions for MNCs who supply to CII operators. Furthermore, suppliers may be put at risk of data exposure through the need to disclose confidential information and trade secrets, since disclosure of transactions and other documents may be required.

d) Cryptography Law

Ambiguities in both the Cryptography Law and its implementing regulations have given rise to requirements that are incompatible with well-established international principles, which call for governments to avoid restrictive or burdensome licensing, certification and other obligations that limit or delay the import, trade

and export of mass-marketed ICT products to which commercial cryptography is ubiquitous.^{27&28}

To avoid unnecessary market access barriers, it is important that the various regulatory mechanisms the law seeks to establish remain transparent and narrow in scope. This includes ensuring that commercial products with cryptography as a secondary feature are not subject to certification and import and export restrictions; that terms such as 'national security', 'national economy and people's livelihood', and 'public interests' are *not* interpreted extensively; that the category of mass consumer products exempted from import and export restrictions is broadly defined; that voluntary certification is not enforced as a de facto mandatory requirement; that requirements applicable only to CII and party and government organs are not expanded to networks above level three; and that the adoption of international standards, protection of sensitive intellectual property (IP) and mutual recognition for certification and attestation are all taken into consideration.

e) Data Localisation and CBDT

While the sub-working group commends the relaxation in the *CBDT Provisions*, in the near term, some foreign companies in strategic and data-driven sectors may still find it difficult to move forward with decisions to bring innovative products and services to the China market as a result of certain remaining restrictions or uncertainties associated with both the security assessment and the definition of 'important data', the latter often having a close business correlation. The sub-working group therefore recommends that the sectoral regulators clearly and narrowly define the scope of important data as soon as possible, especially by not capturing the production, R&D and supply chain data of MNCs in general, while allowing CBDTs with sufficient business necessity to be approved provided that relevant security safeguards are in place. In light of the overall trend of promoting cross-border data flows, the sub-working group would also like to underline the importance of ensuring equal treatment in bidding processes, instead of considering MNCs to be inherently less secure,

²⁵ *Regulation on Classified Cybersecurity Protection (Draft for Comments)*, Ministry of Public Security, 27th June 2018, viewed 7th May 2024, <<http://www.mps.gov.cn/n2254536/n4904355/c6159136/content.html>>

²⁶ *Cybersecurity Review Measures*, Cyberspace Administration of China, 28th December 2021, viewed 7th May 2024, <https://www.cac.gov.cn/2022-01/04/c_1642894602182845.htm>

²⁷ *Joint Statement of the 17th Meeting of the World Semiconductor Council*, World Semiconductor Council, 23rd May 2013, viewed 7th May 2024, <http://www.semiconductorcouncil.org/wp-content/uploads/2016/07/May_2013_WSC_-_GAMS_version_Joint_Statement_of_the_17th_Meeting_of_the_WSC_Final_23_M-1.pdf>

²⁸ For more details on cryptography-related market access issues, please refer to Key Recommendation 3 of the *Information and Communication Technology Working Group Position Paper 2024/2025*.





because they have to transfer data across borders.

f) Conformity Assessment

With regard to the critical network equipment and specialised cybersecurity products testing and certification programme, the overly extensive mandatory product certification requirements resulting from the expanded scope of ‘specialised cybersecurity products’—as outlined in the Recent Developments section—could create significant and unnecessary economic burdens for the industry, delay product delivery and create undue market access barriers. It is thus important for the regulators to avoid unnecessary mandatory product certification, and to fully align with the industry in adopting new product categories subject to such certification, ensuring that every new addition is fully communicated and publically reviewed before the eventual release.

At the same time, the sub-working group is monitoring progress and impacts relating to the security and reliability evaluation and the information technology application innovation, especially as the latter is reportedly being expanded to broader industries.

Recommendations

- Define ‘national security’ as narrowly as possible and differentiate it from ‘commercial security’ in a clear manner.
- Narrow the scope of industries subject to foreign investment security review and scenarios subject to the CSRM.
- Refrain from imposing undue restrictions on the use of ICT products and services in level three networks under the CCPS.
- Limit the applicability and influence of non-binding cybersecurity regimes, in such a manner that they do not go beyond binding legislation.
- Minimise the scope of mandatory product certification only to what is absolutely necessary, to reduce market access barriers.
- Promote mutual recognition, adoption and reliance upon applicable international standards and global industry best practices.
- Ensure that MNCs’ intellectual property and trade secrets are protected.

2. Continue to Optimise China’s Cyber and Data Security Policies to Ensure they Facilitate Industry, Foreign Investment and Global Exchanges 9

Concern

Continued optimisation of cyber and data security schemes is needed to help further minimise uncertainty and operational challenges for international companies.

Assessment

Data regulations

At the beginning of 2024, the Chinese Government made high-level pledges to support data flows between foreign-invested enterprises and their headquarters in order to better attract foreign investment.²⁹ The sub-working group is pleased to note that the subsequent release of the *CBDT Provisions* by the CAC,³⁰ incorporated or partially incorporated many industry comments submitted by the European Chamber. As a result, a number of companies have been ‘downgraded’ to standard contract or exempt from the CBDT channels altogether; and those still needing to apply for security assessment generally enjoy a smoother process.

Notable positive changes in the *CBDT Provisions* include but are not limited to: the exemption of certain frequent, low-volume and necessary CBDT transfers; lowered volume triggers for the CBDT security assessment, standard contract and personal information protection certification; greater flexibility for data handlers to assess the necessity of their transfers themselves; streamlined documentation requirements and application processes; and the clarification that the security assessment of important data is only warranted when the data have been categorised or publicly announced by the relevant authorities or regions as important data.

At the same time, the sub-working group notes a number of remaining issues including:³¹

29 *Action Plan on Steadily Promoting High-level Opening up and Making Greater Efforts to Attract and Utilise Foreign Investment*, State Council, 19th March 2024, viewed 4th May 2024, <https://www.gov.cn/zhengce/content/202403/content_6940154.htm>

30 *Provisions on Promoting and Regulating Cross-border Data Flows*, Cyberspace Administration of China, 22nd March 2024, viewed 4th May 2024, <https://www.cac.gov.cn/2024-03/22/c_1712776611775634.htm>

31 Zhuo, X, and Ma, J, *Liu Liehong: China to continue iterating cross-border data transfer regulations, and establishing cooperation mechanisms with major economic and trade partners*, *Digital Productivity*, 25th March 2024, viewed 4th May 2024, <<https://m.21jingji.com/article/20240325/herald/b719db4610f7ad370ec04fbf2e5ce002.html>>





- Any outbound transfer of sensitive personal information of personal information subjects require standard contract filing or a security assessment, regardless of the volume concerned, as long as the transfer scenario is not exempted. Considering the broad scope of ‘sensitive personal information’, the likelihood of triggering standard contract filing, or even a security assessment, remains high in certain instances.
- Non-restrictive interpretation of the exemptions, especially that of “cross-border human resources management in accordance with lawful employment policies and collective contracts”, is crucial for ensuring foreign companies can truly benefit from these exemptions. Notably, as only an extremely small percentage of foreign companies in China have collective contracts, due to it not being mandatory under the Labour Law, the exemption should not be interpreted as only those possessing both employment policies and collective contracts at the same time can be exempted.
- Uncertainties relating to what constitutes a ‘truly necessary’ transfer persist, including whether transfers of certain specific data fields, because of legitimate or exempted transfer scenarios, and transfers due to the use of global IT systems, can be allowed. Public and non-restrictive guidance from the authorities in this respect would be welcome, especially as data handlers not subject to the security assessment are allowed to make their own necessity determinations.
- Uncertainties relating to the progress of identifying ‘important data’ in various sectors and localities also persist, and concern about the potentially broad scope of ‘important data’ is increasing. For example, the draft important data identification guidelines for industrial fields contain vague wording, and appear to be overly stringent when it comes to data relating to AI, supply chains, and certain production and R&D data in the petrochemical, auto components and electronics industries. The sub-working group expects, however, the final version to contain certain improvements.
- There continues to be a conflation of large volumes of personal information on the one hand,³² and important data on the other. For a vast market like China, such thresholds can be easily met, leading to a broadened scope of important data.

³² Defined as the personal information of over 100,000 people in the automotive industry; one million people in general; and 10 million people in Tianjin.

At the same time, since pilot free trade zones have been granted the autonomy to formulate their own positive and negative lists for CBDTs, the sub-working group is closely monitoring the extent to which these lists might offer further liberalisation to cross-border data flows, while remaining “within the framework of the national data categorisation and classification protection system”.³³ The sub-working group further hopes that there can be better synchronisation between the requirements in and out of the free trade zones, and that a clear mechanism is foreseen for liberalisations offered by the free trade zone lists, including with regard to the scope of ‘important data’, to be rolled out nationwide.

Cybersecurity vulnerability management and incident notification

In July 2021, the MIIT, the CAC and the MPS jointly released the *Administrative Provisions on Security Vulnerabilities of Network Products (Administrative Provisions)*,³⁴ complemented by a mandatory national standard titled *Critical Network Devices Security Common Requirements*,³⁵ which contains provisions related to coordinated vulnerability disclosure (CVD). The *Administrative Provisions* includes a specific provision mandating the reporting of vulnerabilities to the MIIT, an obligation which significantly diverges from well-established best practices and international standards in the field of CVD and vulnerability handling—as articulated in standards such as *International Standardisation Organisation (ISO)/International Electrotechnical Commission (IEC) 29147 (2018)* and *ISO/IEC 30111 (2019)*—and is being monitored with concern by the international community.³⁶

The process of CVD is a standardised, multi-step process through which stakeholders identify, develop, validate, distribute and deploy mitigations for security vulnerabilities. To minimise user risk and potential harm and costs associated with the vulnerability, CVD

³³ *Provisions on Promoting and Regulating Cross-border Data Flows*, Cyberspace Administration of China, 22nd March 2024, viewed 29th May 2024, <https://www.cac.gov.cn/2024-03/22/c_1712776611775634.htm>

³⁴ *Administrative Provisions on Security Vulnerabilities of Network Products*, Cyberspace Administration of China & Ministry of Industry and Information Technology & Ministry of Public Security, 12th July 2021, viewed 4th May 2024, <http://www.gov.cn/zhengce/zhengceku/2021-07/14/content_5624965.htm>

³⁵ *Critical Network Devices Security Common Requirements*, Ministry of Industry and Information Technology, 20th February 2021, viewed 4th May 2024, <<http://std.samr.gov.cn/gb/search/gbDetailed?id=BBE32B661B848FC8E05397BE0A0AB906>>

³⁶ *Coordinated Vulnerability Disclosure Policies in the EU*, European Union Agency for Cybersecurity, 13th April 2022, viewed 4th May 2024, <<https://www.enisa.europa.eu/publications/coordinated-vulnerability-disclosure-policies-in-the-eu>>



directs the recipient of a vulnerability to only disclose information about the vulnerability to other parties that are absolutely required to develop and deploy a mitigation, fix or 'patch'.

Unmitigated vulnerability information should only be communicated on a need-to-know basis, to prevent it from being exploited. This is particularly important considering the interdependencies between products. The sub-working group strongly urges a clear clarification that "reporting vulnerabilities to the MIIT within two days" is only required after remediations and mitigations are made available, and recommends disclosing information related to unmitigated vulnerabilities in a confidential manner, and only to the parties necessary to develop and test the proposed remediation or mitigation during the CVD process.

It should also be recognised that in certain limited cases, disclosure of information on an unmitigated vulnerability can support users' responses. For example, when the vendor no longer exists or the vulnerability concerns an open-source software/module or a commonly-used protocol, and there is no owner of the technology or a different coordinator that is developing a mitigation and leading a CVD process.

Another concern is that of mandatory incident notification to "relevant competent authorities" in cases of cyber incidents and "relevant authorities" in cases of data breach. In this regard, it is important to have a unified regulatory framework, with one agency coordinating the different authorities on incident notification. Multiple notifications to different authorities on the same incident may result in potentially different—if not conflicting—responses or demands in response, which will increase both the administrative burden and the level of uncertainty over the potential outcome.

The CAC's latest draft *Measures on the Administration of Cybersecurity Incident Notification (Draft for Public Comments)* provide both a relatively broad scope of, and stringent notification requirements for, "extremely significant", "significant", and "relatively significant" incidents,³⁷ which must be reported to the regulators within one hour. Such requirements will add to the cybersecurity compliance burden of enterprises.

The MIIT latest draft *Emergency Response Plan for Data Security Incidents in the Fields of Industry and Information Technology (Trial)* has made the situation more complicated, with overlapping reporting requirements, incident classification criteria and penalties for non-compliance. Some requirements in the two drafts are even regulated in an opposing way, such as roles and responsibilities.

CII protection

The CII protection requirements contained in various Chinese security legislation are being broadened in ways that bring about significant operational burdens to the business community. For example, the addressees of such requirements have been, or risk being, expanded, regardless of whether the networks/infrastructure in question are truly critical for the normal functioning of the core business. Also, certain requirements that originally were only destined for CII have been expanded to cover networks with classified cybersecurity protection above level three, or even broader network operators, as is the case with the use of commercial cryptography products.

It is important for regulators to clearly determine what falls within the scope of CII and what falls outside, and to avoid interpreting and applying relevant requirements in an expansive manner. This is needed to increase legal certainty, reduce burdensome obligations and leave room for normal business activities, as well as international exchange and cooperation. In this respect, the sub-working group welcomes the fact that the National Cybersecurity Standardisation Technical Committee plans to expedite the roll out of urgently needed standards, such as the one delineating the boundaries of CII.³⁸

Recommendations

- Give further guidance on exemptions and necessity determinations and avoid overly stringent interpretations.
- Clearly and narrowly define the scope of 'important data', refrain from classifying production and R&D data at large as 'important data', and avoid conflating large volumes of personal information with important data, or at least revise up the volume thresholds.
- Provide a sufficient grace period between any future release of 'important data' identification guidelines

³⁷ *Measures on the Administration of Cybersecurity Incident Reporting (Draft for Comments)*, Cyberspace Administration of China, 8th December 2023, viewed 7th May 2024, <https://www.cac.gov.cn/2023-12/08/c_1703609634347501.htm>

³⁸ *2024 Work Priorities of the National Cybersecurity Standardization Technical Committee*, National Information Security Standardisation Technical Committee, 8th April 2024, viewed 4th May 2024, <<https://www.tc260.org.cn/front/postDetail.html?id=20240408133953>>



and their implementation.

- Strengthen EU-China dialogue on data and cybersecurity, and identify concrete areas for cooperation where possible.
- Avoid mandating the disclosure of information related to unmitigated vulnerabilities to parties irrelevant to the CVD process.
- Ensure a coordinated and unified approach for oversight and enforcement among the authorities involved.
- Clearly delineate the boundaries between CII and non-CII, and avoid interpreting and applying relevant requirements in an expansive manner to cover broader networks.

3. Ensure Proportionality, Industry Involvement, Global Harmonisation and Non-discrimination when Future-proofing Security Legislation

Concern

Proportionality, industry involvement, global harmonisation, and non-discrimination are important factors in the making of existing security legislation, and need to be ensured for creating sustainable, future-proof security legislation.

Assessment

As mentioned in the *Information and Communication Technology Position Paper 2024/2025*, emerging and future-orientated industries will develop rapidly in the coming years. This will necessitate that existing security legislation be updated but, more importantly, for it to be done in such a way that industry development will not be impeded. One positive lesson that can be drawn from some of the improvements brought by the *CBDT Provisions*, as well as from recent remarks made by China's top leadership, is that while security should be prioritised, it should not be the only priority. An increased level of security can only be achieved through greater development and openness.

Therefore, to reassure the business community that China's security environment will remain industry-friendly in the face of rapidly emerging new technology, and the subsequent evolving regulatory framework, it is crucial to ensure the following when formulating and implementing forward-looking security-related laws, regulations, and standards:

a) Proportionality and industry involvement

With emerging technology legislation, regulators are stepping into uncharted waters, and the need to balance development and security has never been stronger. Future-proof security legislation needs to be technically credible and innovation-friendly; intervention at all levels, from national regulations to business security measures, should be appropriate to and commensurate with the risk; and it should neither limit the opportunities offered by digital transformation nor create unreasonable costs for businesses.

To determine whether a specific regulatory requirement is proportionate, the sub-working group recommends that regulators consult the international business community which, due to its globalised nature, may share both commonalities and differences with the domestic industry when it comes to regulatory compliance. This is in line with the State Council, which specifically encouraged increasing communication with industry associations in 2019.³⁹

b) Global harmonisation

While governments around the world are considering and adopting regulations in response to the security concerns associated with emerging technologies (such as the internet of things (IoT) and AI), diverging requirements will inevitably lead to higher costs as well as product and operational complexity. The interconnected nature of future technologies and industries, and of global supply chains and business operations, underscores the importance of having robust cybersecurity legislation and practices that are globally harmonised to the greatest extent possible.

It is imperative to address emerging security challenges through harmonised efforts across different regions, and among different stakeholders, including international organisations, governments, industry stakeholders and cybersecurity experts. In addition, comprehensive and consistent guidelines and best practices for securing IoT ecosystems should also be developed. International cooperation should be encouraged to establish transparent and accountable governance frameworks that promote trust, fairness, and responsible use of AI technologies. Such governance frameworks will also

³⁹ Notice on Fully Listening to Opinions of Enterprises, Industry Associations and Chambers of Commerce in the Making of Administrative Measures, Provisions and Normative Documents, State Council, 13th March 2019, viewed 9th May 2024, <http://www.gov.cn/zhengce/content/2019-03/13/content_5373423.htm>





help to inform other emerging areas, such as quantum computing security, supply chain security and cloud security, on a global scale.

On this note, the sub-working group is encouraged by the ongoing talks within the international framework, as well as between China and the European Union (EU) and some of its member states, and is looking forward to increased areas of common ground identified during these meetings.

c) Non-discrimination

As legislation on new technologies is being prepared, the sub-working group calls on the relevant authorities to ensure that resulting laws and regulations do not discriminate against foreign-invested companies. It will be particularly important to ensure that some of the regulatory requirements impeding ICT market access outlined in Key Recommendation 1 of this paper, will not be mirrored in future legislation to favour indigenous innovation and domestic solutions.

Recommendations

- Provide in a timely manner an open and transparent platform that allows European businesses to fully contribute to the drafting of forward-looking security legislation.
- Give more consideration to the business and operational needs of MNCs.
- Ensure security regulations are appropriate and commensurate with the risk.
- Increase international cooperation and collaboration among governments, regulatory bodies, industry associations and cybersecurity experts.
- Support global cybersecurity initiatives and frameworks to provide guidance and best practices for businesses.
- Ensure that forward-looking security legislation is free from undue market access impediments.

Abbreviations

AI	Artificial Intelligence
CAC	Cyberspace Administration of China
CBDT	Cross-border Data Transfer
CCPS	Classified Cybersecurity Protection System
CII	Critical Information Infrastructure
CPU	Central Processing Units
CSL	Cybersecurity Law
CSRM	Cybersecurity Review Measures
CVD	Coordinated Vulnerability Disclosure
DSL	Data Security Law
EU	European Union
ICT	Information and Communication Technology
IEC	International Electrotechnical Commission
IoT	Internet of Things
ISO	International Organization for Standardization
IT	Information Technology
MIIT	Ministry of Industry and Information Technology
MNC	Multinational Corporation
MOF	Ministry of Finance
MPS	Ministry of Public Security
TC28	China National Information Technology Standardization Technical Committee
TC260	National Technical Committee 260 on Cybersecurity of Standardization Administration of China





Logistics Working Group

Key Recommendations

1. Improve the Efficiency of Customs

1.1 Ensure Consistent Interpretation and Implementation of the General Administration of Custom's (GAAC's) Policies at the Local Level 2

- Provide local authorities with clear interpretations of national policies.
- Publish local interpretations of policies issued by the central government.

1.2 Provide Better Training for Industry Players to Improve their Understanding of Customs Policies 2

- Arrange regular training sessions for companies on policy updates and publish a list of frequently asked questions on the topic.
- Establish official hotlines for companies to consult on customs policies.

1.3 Increase and Standardise the Threshold for Declaring Personal Items 4

- Increase the threshold for declaring Category B goods to Chinese yuan (CNY) 5,000 to unify the declaration regime for low-value shipments.

1.4 Optimise the Authorised Economic Operator (AEO) Programme 3

- Provide AEO programme participants with a more streamlined customs experience that results in fewer inspections of low-value shipments.
- Exempt low-value shipments that are not inspected from document submissions.
- Increase the benefits available to AEO-certified companies, such as priority access to pilot programmes.

2. Support the Green Transition of the Logistics Industry

2.1 Strengthen Policymaking in Green Logistics so the Industry can Fully Contribute to China's Carbon Peaking and Carbon Neutrality Goals

- Implement effective policy and practical mechanisms to encourage both supply and demand of sustainable fuels for the logistics industry.

2.2 Improve Both Infrastructure and Related Policies to Support the Deployment of More New Energy Vehicles (NEVs) in the Logistics Industry 2

- Consider the characteristics of the logistics industry when formulating requirements for the use of NEVs.
- Introduce policies supporting the right of way for NEVs in the logistics industry, such as reducing traffic restrictions on NEVs across cities.
- Accelerate the construction of infrastructure for express NEVs, such as charging piles and special parking spaces for delivery services.
- Provide more incentives to encourage logistics companies to switch to e-trucks, including prioritising the right of way of e-trucks over traditional trucks.

3. Improve Transparency in Policy Drafting as well as in the Issuance and Implementation of Government Incentives

3.1 Ensure a Reasonable Value-added Tax (VAT) Policy for the Logistics Industry





- Standardise the VAT rates applicable to all transportation, courier and logistics services.
- Provide equal treatment for all logistics companies through standardised taxation.

3.2 Publish Licence Application Procedures for Express Delivery Service Companies

- Publish written notices on all the materials and specific requirements for business licence applications.
- Inform express delivery service enterprises of any newly added licence management requirements in a timely manner, and set up a reasonable timeline for preparing the materials.
- Set up an adequate transition period for the implementation of any new requirements.

3.3 Ensure Transparency Regarding Access to Subsidies and Incentives

- Publish calls for comments on draft policies and regulations in advance of promulgating them.
- Consolidate the opinions and suggestions of all industry players before making decisions, and ensure foreign-invested enterprises (FIEs) have the same access to information as their Chinese counterparts.
- Merge, simplify and unify all regulatory requirements.

4. Provide Equal Treatment to Foreign Cargo Airlines when Allocating Landing Slots

- Consider the need for cargo air carriers to efficiently coordinate take-off and landing times between important global cargo hubs when allocating landing slots.
- Ensure that air carriers receive a reasonable balance of both daytime and nighttime landing slots.
- Inform air carriers of changes in landing slot allocation policies as early as possible.
- Strengthen exchange with industry participants by collecting opinions on new regulations and organising training before new policies are introduced.

International Liner Shipping Sub-working Group

1. Make the International Cargo Relay Pilot a Permanent Policy after Expanding Coverage to Vessels and Ports, and Simplify the Customs Declaration Process



- Upgrade the international cargo relay pilot to a permanent policy.
- Expand the international cargo relay to more Chinese ports, as either the port of transshipment or the port of origin/destination.
- Allow chartered vessels and short sea vessels to engage in international cargo relay.
- Encourage full support from original/destination ports to deploy a practicable international cargo relay network together with carriers.
- Implement a simplified customs declaration process for international relay cargo.

2. Establish Transparent Filing Rules for Ocean Freight and Local Shipping Surcharges

- Refrain from imposing conditions on approval processes for new or increased tariffs that could have a market distorting effect.
- Create certainty in filing procedures by providing a clear definition of maritime-related charges, specifying the required documents and filing procedures.



- Impose tariff filing and audit requirements on non-vessel operating common carriers (NVOCCs), freight forwarders and booking agents, similar to those imposed on carriers.

3. Amend Current Regulations that Hold Carriers Liable for Misdeclarations of Dangerous Goods by Shippers 4

- Amend current regulations or correct the current practice that holds carriers liable for dangerous goods misdeclarations by shippers.
- Establish an official blacklist of entities with a record of dangerous goods misdeclarations.

4. Strengthen the Supervision of Port/Terminal Groups and Promote Fair Competition 5

- Monitor and report any potential infringement of competition law by port groups and other logistics conglomerates.
- Implement measures and controls to prevent port groups and logistics conglomerates from abusing monopolistic positions both horizontally and vertically.

5. Accelerate Decarbonisation of the Shipping and Logistics Industry by Establishing Adequate Infrastructure and an Optimal Regulatory Framework 4

- Establish an adjustment mechanism for the conversion of different carbon pricing methods, and a dispute mechanism for emission trading between China and the EU.
- Support the introduction of the green balance mechanism (GBM) to incentivise green fuel development and utilisation.
- Develop methanol bunkering infrastructure and standards for Chinese ports and simplify processes and regulations for the export of China-manufactured green methanol as bunker fuel.
- Revise the regulation of shore power utilisation to accommodate the unique technical requirements of liquefied natural gas (LNG)-powered vessels.

Recent Developments

While a return to relative normality for cross-border travel following the end of China's COVID-19 restrictions has benefited operational efficiency, the logistics industry has been negatively impacted by the wider economic slowdown in China and the drop off in COVID-19-driven demand globally. The European Chamber's *Business Confidence Survey 2024* found that more companies in the transportation, logistics and distribution sector experienced a decline in revenue than those in any other sector.¹ Logistics providers are particularly susceptible to fluctuations in demand, so this change is understandable

¹ *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 16th May 2024, <<https://www.eurochamber.com.cn/en/publications-business-confidence-survey>>

given a decline in foreign trade volumes for 2023.²

Throughout 2023, there was considerable uncertainty about how cross-border data transfer regulations would impact the industry. Thus, the decision to exempt cross-border express delivery data from the security assessment requirement, announced in March 2024, was welcomed by European express delivery providers.³

² According to the World Trade Organization (WTO), the volume of global trade in goods fell 0.5 per cent year-on-year in the first half of 2023. While it projected a slight uptick—0.8 per cent—for the whole year, this forecast was partly explained by the low basis from Q4 in 2022, and the WTO highlighted that China's economic slowdown could negatively impact this projection. *Global Trade Outlook and Statistics (Update: October 2023)*, World Trade Organization, October 2023, viewed 27th March 2023, <https://www.wto.org/english/res_e/publications_e/gtos_updt_oct23_e.htm>

³ Article five of the *Provisions to Facilitate and Regulate the Cross-border Flow of Data* state that "cross-border shopping" and "cross-border delivery" are exempt from the security assessment requirement. *Provisions to Facilitate and Regulate the Cross-border Flow of Data*, Cyberspace Administration of China, 22nd March 2024, viewed 15th April 2024, <https://www.cac.gov.cn/2024-03/22/c_1712776611775634.htm>





In October 2023, the Council of the European Union adopted the RefuelEU aviation regulation, which will incrementally increase requirements for fuel suppliers to provide sustainable aviation fuel (SAF) at European airports.⁴ While the provision does not apply to flights departing from third countries to the European Union (EU), it does set the tone for increasing the use of alternative fuels in the logistics industry.⁵

Key Recommendations

1. Improve the Efficiency of Customs

1.1 Ensure Consistent Interpretation and Implementation of the GACC's Policies at the Local Level

Concern

Policies promulgated by the General Administration of Customs (GACC) are interpreted and implemented inconsistently by different local-level authorities leading to uncertainty for businesses importing and exporting goods.

Assessment

Policies promulgated by the GACC represent a general and national perspective, which might not be directly applicable in certain local situations. In such cases, local officials will need to interpret the policy by themselves. The varying levels of both awareness of the importance of certain policies and the professional skills of local officials can result in divergent approaches due to different interpretations. This can result in discretionary enforcement of policies, which raises uncertainty for business.

Recommendations

- Provide local authorities with clear interpretations of national policies.
- Publish local interpretations of policies issued by the central government.

1.2 Provide Better Training for Industry Players to Improve their Understanding of Customs Policies

Concern

The lack of understanding of customs policies among industry players affects operational efficiency.

Assessment

Many companies either have only a small team to handle customs issues or must outsource customs issues to external partners. They therefore may lack the capacity to remain up to date with the most recent customs policies, which—given that customs policies frequently change to meet the government's most recent domestic and international strategies—compromises corporate efficiency. At the same time, when a company has concerns and questions about policies, they often have few channels for consultation and/or do not know which official channel to consult with. Even in cases where written explanations of customs policies are available, companies may not have the knowledge to fully interpret and understand the policy, which raises compliance risks.

Recommendations

- Arrange regular training sessions for companies on policy updates and publish a list of frequently asked questions on the topic.
- Establish official hotlines for companies to consult on customs policies.

1.3 Increase and Standardise the Threshold for Declaring Personal Items

Concern

The current threshold for declarations of personal items impacts efficiency and increases operational workloads.

Assessment

Category B goods (personal items) over Chinese yuan (CNY) 800 (for shipments arriving from or going to Hong Kong, Macao or Taiwan) or over CNY 1,000 (for shipments arriving from or going to overseas destinations other than Hong Kong, Macao or Taiwan) are treated as cargo shipments and subject to additional customs requirements.⁶ However, the same threshold for goods purchased on cross-border, e-commerce channels is CNY 5,000.⁷ This difference in thresholds between retail and personal goods creates confusion and uncertainty for business and consumers because the types of goods being shipped are the same.

⁴ RefuelEU aviation initiative: Council adopts new law to decarbonise the aviation sector, European Council, 9th October 2023, viewed 15th April 2024, <<https://www.consilium.europa.eu/en/press/press-releases/2023/10/09/refueleu-aviation-initiative-council-adopts-new-law-to-decarbonise-the-aviation-sector/>>

⁵ For more information on SAF, see Key Recommendation 2.1 or the *Aviation and Aerospace Working Group Position Paper 2024/2025*.

⁶ General Administration of Customs explains the adjustment of management measures for inbound and outbound personal postal articles, GACC, 10th August 2010, viewed 10th May 2024, <https://www.gov.cn/gzdt/2010-08/10/content_1675880.htm>

⁷ Notice on Improving Tax Policies on Cross-border E-commerce Retail Imports, Ministry of Finance, 29th November 2018, viewed 29th April 2024, <https://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5440499.htm>



Recommendation

- Increase the threshold for declaring Category B goods to CNY 5,000 to unify the declaration regime for low-value shipments.

1.4 Optimise the AEO Programme

Concern

Express delivery companies with Authorised Economic Operator (AEO) qualifications have not experienced a significant reduction in customs compliance obligations, making the programme unattractive.

Assessment

Introduced by the World Customs Organization, the AEO programme is a partnership between businesses and customs agencies that aims to facilitate a more efficient customs clearance process for trusted parties.⁸ The programme was identified by the State Council as part of China's development of a social credit system,⁹ but the programme remains underdeveloped. There has been improvement over the past few years, with the GACC expanding the scope of the AEO system and issuing unique, individual standards for express delivery operators and cross-border e-commerce platforms, as well as water, air and road logistics providers.^{10&11} While these improvements are notable, the specific standards have not resulted in a substantial increase in convenience.

For example, following the promulgation of certification standards for the express delivery industry, there was no significant reduction in inspections of low-value goods arriving via express mail. Likewise, there has not been a significant decrease in the volume of customs declaration documentation that express providers must submit. In fact, the same documents often need to be submitted multiple times during the customs review process. This burden could be reduced by only requiring document submission when a low-value shipment gets inspected.

8 *What is AEO?*, European Commission, viewed 10th May 2024, <https://taxation-customs.ec.europa.eu/customs-4/aeo-authorised-economic-operator/what-aeo_en>

9 *Opinions on Promoting the Construction and High-Quality Development of the Social Credit System and Promoting the Formation of a New Development Pattern issued by the General Office of the State Council of the Central Committee of the Communist Party of China*, Xinhua, 29th March 2022, viewed 30th April 2024, <https://www.gov.cn/zhengce/2022-03/29/content_5682283.htm>

10 *Measures for the Credit Management of Enterprises Registered and Filed with the Customs of the People's Republic of China*, GAC, 13th September 2021, viewed 10th May 2024, <<http://www.customs.gov.cn/customs/302249/302266/302267/3883300/index.html>>

11 *Announcement of the General Administration of Customs [2022] No.106 – Announcement on Issuing the Customs Criteria for Advanced Certified Enterprises*, GAC, 28th October 2022, viewed 10th May 2024, <<http://www.customs.gov.cn/customs/302249/302266/302267/4666541/index.html>>

Policies that streamline the customs clearance process for AEO-certified companies in other industries would also be an improvement. These could include priority participation for AEO-certified companies in pilot customs reform efforts, priority invitations to participate in dialogues concerning revisions to China's customs policies and allowing these entities to apply to the GACC to participate in customs-related training.

Recommendations

- Provide AEO programme participants with a more streamlined customs experience that results in fewer inspections of low-value shipments.
- Exempt low-value shipments that are not inspected from document submissions.
- Increase the benefits available to AEO-certified companies, such as priority access to pilot programmes.

2. Support the Green Transition of the Logistics Industry

2.1 Strengthen Policymaking in Green Logistics so the Industry can Fully Contribute to China's Carbon Peaking and Carbon Neutrality Goals

Concern

There are currently no policies that provide incentives for logistics companies to use sustainable fuels or electric vehicles (EV) to reduce carbon emissions.

Assessment

China is a world leader in green energies, like wind and solar, and is rich in many natural resources.^{12&13} This makes the country well placed to utilise green electricity to produce sustainable energy sources, like hydrogen and green methanol.¹⁴ However, a lack of supply and high prices make these fuels relatively inaccessible to logistics providers in China.

The European Union (EU) faced a similar challenge with the adoption of SAF; a lack of supply led to high prices, making SAF commercially unviable, which in turn

12 Bella, V, *China's clean energy boom 'an example to the entire world'*, IEA analyst says, *South China Morning Post*, 27th January 2024, viewed 15th April 2024, <<https://www.scmp.com/news/china/science/article/3249929/chinas-clean-energy-boom-example-entire-world-iea-analyst-says>>

13 *Minerals of China*, Britannica, viewed 15th April 2024, <<https://www.britannica.com/place/China/Minerals>>

14 Sharma, I, Shah, V, and Shah, M, *A comprehensive study on production of methanol from wind energy*, *Environmental Technology & Innovation*, Vol. 28, November 2022, viewed 16th April 2024, <<https://www.sciencedirect.com/science/article/pii/S2352186422001675>>





prolonged the lack of supply.¹⁵ Recognising that little progress was possible without a regulatory push, the EU introduced the RefuelEU aviation initiative. This mandates that aviation fuel suppliers provide fuel containing a mandatory share of SAF starting in 2025, with gradual increases to the required share planned over time.¹⁶ It also requires that airlines procure 90 per cent of their fuel for flights departing the EU from the EU.¹⁷ This policy ensures both supply and demand for SAF, helping the EU to reach its climate goals and allowing logistics providers to adopt SAF in a commercially viable way. With China facing the same challenge with sustainable fuels, including SAF, it is reasonable that this can also be solved more efficiently through a comparable policy push rather than waiting for demand to drive an increase in supply.

Recommendation

- Implement effective policy and practical mechanisms to encourage both supply and demand of sustainable fuels for the logistics industry.

2.2 Improve Both Infrastructure and Related Policies to Support the Deployment of More New NEVs in the Logistics Industry

Concern

Policy support and infrastructure are currently insufficient to support the transition towards the use of NEVs in the logistics industry.

Assessment

Compared with traditional trucks, e-trucks are often heavier and carry fewer goods. The charging time of e-trucks also needs to be taken into consideration during daily operation. Therefore, more incentives are necessary to encourage logistics service providers to switch from traditional to e-trucks.

The central and local governments at all levels have issued policies and opinions to promote the replacement of traditional fuel vehicles with NEVs. This includes imposing special requirements for transportation and distribution vehicles used in the logistics industry. In fact, some regions

have already stipulated the proportion of NEVs that must be used in express logistics operations when vehicles are updated or added to fleets. However, some provinces and cities have not taken into account the differences between international and domestic express delivery businesses when formulating relevant requirements. For example, international express delivery service providers usually use trucks or mini vans for both port-to-sorting-station routes and sorting-station-to-final customer routes, while domestic express delivery businesses usually use electric tricycles to deliver goods to final customers.

In addition, some supporting infrastructure, such as charging piles for electric vehicles, remains underdeveloped, and right-of-way policies have not been rolled out in some regions. This means that if logistics companies are required to replace large parts of their fleets with electric vehicles over a short time period, they may incur significant economic and administrative costs.

Recommendations

- Consider the characteristics of the logistics industry when formulating requirements for the use of NEVs.
- Introduce policies that support the right of way for NEVs in the logistics industry, such as reducing traffic restrictions on NEVs across cities.
- Accelerate infrastructure construction for logistics NEVs, such as charging piles and special parking spaces for delivery services.
- Provide more incentives to encourage logistics companies to switch to e-trucks, including prioritising the right of way of e-trucks over traditional trucks.

3. Improve Transparency in Policy Drafting as well as in the Issuance and Implementation of Government Incentives

3.1 Ensure a Reasonable VAT Policy for the Logistics Industry

Concern

The current VAT regime imposes a nine per cent tax on transportation, while logistics services are taxed at six per cent, creating an overly complex compliance burden for logistics providers.

Assessment

In 2019, the VAT rate for express delivery and postal companies providing transportation services was lowered

¹⁵ Soubly, K, and Uppink, L, *What 6 aviation executives say about an EU sustainable aviation fuel blending mandate*, World Economic Forum, 16th July 2021, viewed 15th April 2024, <<https://www.weforum.org/agenda/2021/07/what-6-executives-europe-aviation-sector-say-eu-sustainable-fuel-saf-blending-mandate-refueleu/>>

¹⁶ *RefuelEU aviation initiative: Council adopts new law to decarbonise the aviation sector*, European Council, 9th October 2023, viewed 15th April 2024, <<https://www.consilium.europa.eu/en/press/press-releases/2023/10/09/refueleu-aviation-initiative-council-adopts-new-law-to-decarbonise-the-aviation-sector/>>

¹⁷ *Ibid.*



from 10 per cent to nine per cent, but the VAT rate for express delivery and postal companies providing sending and receiving services remained at six per cent.¹⁸ While this slight decrease in VAT is positive for the industry, the effort companies must spend in delineating the difference between transportation services and sending and receiving services is significant, resulting in an unnecessarily large compliance burden. Furthermore, the ability of only some companies to provide services at a six per cent VAT rate and the potential for advantageous accounting practices to change the taxable outcome puts other companies at a disadvantage. Introducing a unified VAT rate would not only reduce compliance costs, but also make the logistics industry fairer for all companies involved.

Recommendations

- Standardise the VAT rates applicable to all transportation, courier and logistics services.
- Provide equal treatment for all logistics companies through standardised taxation.

3.2 Publish Licence Application Procedures for Express Delivery Service Companies 5

Concern

There is no publicly available information on how to apply for express delivery service licences, which leaves room for discretionary interpretation of related policies at the local level.

Assessment

Because the express delivery service licence is one of the most fundamental licences for the industry, international express businesses attach particular importance to its maintenance and management. Since 2020, the authorities have started to systematise and standardise the express delivery service licensing process, and linked the licensing portal to the State Council's national integrated government online service platform to ensure accuracy and prudence of the approval process.¹⁹ However, enterprises still encounter many challenges with the application process, as well as with licence extensions and access to relevant information.

At present, neither the State Post Bureau (SPB) nor provincial and municipal postal administrations have

¹⁸ *New tax cuts implemented, six relate to the postal industry*, The Government of the People's Republic of China, 17th April 2019, viewed 17th April 2024, <https://www.gov.cn/fuwu/2019-04/17/content_5383669.htm>

¹⁹ *SPB Service Portal (trial)*, viewed 17th April 2024, <<https://zfwf.spb.gov.cn/gjj/corp/login>>

officially released to the public the specific list of documentation required for licence approval. In the absence of a convenient communication channel through which enterprises can find out which documents are required for licence approvals or to make changes or extensions to an existing licence, the requirements can only be understood indirectly through the Express Business Licensing Management Information System. This makes it difficult for companies to prepare adequately in advance for any changes.

Recommendations

- Publish written notices on all the materials and specific requirements for business licence applications.
- Inform express delivery service enterprises of any newly added licence management requirements in a timely manner, and set up a reasonable timeline for preparing the materials.
- Set up an adequate transition period for the implementation of any new requirements.

3.3 Ensure Transparency Regarding Access to Subsidies and Incentives 2

Concern

Without official and transparent policies on subsidies and incentives, it is difficult for European logistics companies to access and benefit from them, which constitutes unfair competition.

Assessment

There is a need for greater transparency in the process of formulating legislation, subsidies, regulations and standards that apply to the international express business, as well as specific requirements and standards that apply to express delivery supervision. Currently, often only certain domestic enterprises are invited to participate in preliminary research and consultation, without sufficient prior communication with the entire industry. International express delivery service enterprises, especially foreign-invested ones, are, therefore, unable to obtain timely information on the details of policy formulation and regulatory requirements. This leaves them with insufficient time to prepare for any regulatory changes or apply for subsidies that could support their business operations.

At the Central Economic Work Conference, held in December 2022, China's leadership stressed that national treatment should be implemented for FIEs, and that FIEs should be guaranteed "equal participation





[...] in government procurement, bidding, and standard setting in accordance with laws and regulations.”²⁰ Equal participation of FIEs in the formulation of policies and standards is a fundamental part of providing national treatment. It would also help to ensure compliance and operational stability, as well as healthy and orderly development of the logistics industry.

Short timelines for policy comment periods and implementation often leave FIEs without sufficient time to understand new policies and make prudent changes. Many FIEs also do not have sufficient communication channels with relevant government agencies to get authoritative policy interpretation and compliance guidance.

Recommendations

- Publish calls for comments on draft policies and regulations in advance of promulgating them.
- Consolidate the opinions and suggestions of all industry players before making decisions, and ensure FIEs have the same access to information as their Chinese counterparts.
- Merge, simplify and unify all regulatory requirements.

4. Provide Equal Treatment to Foreign Cargo Airlines when Allocating Landing Slots

Concern

Foreign cargo airlines are subject to an imbalanced allocation of nighttime and daytime landing slots, and often do not receive timely information on landing slot management mechanisms and related regulations.

Assessment

International air cargo is one of the most important services provided by international logistics companies. It offers timely and efficient delivery for customers worldwide and is an indispensable part of the global supply chain. For example, during the COVID-19 pandemic, the international air cargo industry played a crucial role in the global transportation of medical equipment, protective supplies and vaccines.²¹ In order to provide such vital services in the most efficient way possible, international cargo carriers

require an aviation cargo slot management system that is balanced and practical.

It is encouraging that the *Opinions on Promoting the Development of Aviation Cargo Facilities* highlight the need to “continuously optimise the allocation of aviation cargo routes and slot resources.” They also explicitly call for a transition away from the current “passenger over cargo” preference.²² However, despite this, landing slot allocation policy still favours passenger carriers, leaving cargo airlines with a disproportionately large allocation of nighttime landing slots. While cargo airlines, without the need to consider passenger preference, can make the best use of nighttime slots, they must also coordinate take-off and landing times with other airports globally. A more balanced approach to slot allocation between passenger and cargo airlines would give cargo airlines the flexibility they need to coordinate more efficient routes, which is essential for the healthy development of the international aviation industry.

Predictability and policy clarity are also essential for efficient air cargo route planning. This includes cargo airlines being able to receive more timely communication on flight schedule management system changes, as well as better outreach after changes have been implemented. With the *Civil Aviation Slot Management Reform and Regulation Revision* currently under revision,²³ the Logistics Working Group recommends that the final regulation enshrines the need for stability and predictability in slot allocation in a way that allows cargo airlines to plan in advance.

Recommendations

- Consider the need for cargo air carriers to efficiently coordinate take-off and landing times between important global cargo hubs when allocating landing slots.
- Ensure that cargo air carriers receive a reasonable balance of both daytime and nighttime landing slots.
- Inform air carriers of changes to landing slot allocation policies as early as possible.
- Strengthen exchange with industry participants by collecting opinions on new regulations and organising training before new policies are introduced.

²⁰ *Central Economic Work Conference Held, Xi Jinping and Li Keqiang Delivered Important Speeches*, *Xinhua*, 16th December 2022, viewed 5th May 2023, <http://www.news.cn/politics/leaders/2022-12/16/c_1129214446.htm>

²¹ *Air Cargo in 2021: Fighting the COVID-19 Pandemic & Key Policy Challenges*, Airlines for Europe, 11th December 2023, viewed 16th April 2024, <<http://a4e.eu/publications/air-cargo-in-2021-supporting-the-covid-19-crisis-and-key-policy-challenges/>>

²² *Opinions on Promoting the Development of Aviation Cargo Facilities*, National Development and Reform Commission, 4th September 2020, viewed 17th April 2024, <https://www.ndrc.gov.cn/xxgk/zcfb/tz/202009/t20200904_1237640.html>

²³ *Civil Aviation Slot Management Reform and Regulation Revision*, Civil Aviation Administration of China, 5th January 2018, viewed 17th April 2024, <https://www.gov.cn/gongbao/content/2018/content_5303462.htm>



European Chamber
中国欧盟商会

Abbreviations

AEO	Authorised Economic Operator
CNY	Chinese Yuan
EU	European Union
EV	Electric Vehicle
FIE	Foreign-invested Enterprise
GACC	General Administration of Customs
NEV	New Energy Vehicle
SAF	Sustainable Aviation Fuel
SPB	State Post Bureau
VAT	Value-added Tax





International Liner Shipping Sub-working Group

Recent Developments

In 2023, with the end of COVID-19 restrictions in China, global freight rates gradually returned to pre-pandemic levels in the first half of the year.¹ However, attacks on vessels in the Red Sea that began in October, along with China's surging export demand, led to freight rates spiking in the fourth quarter of 2023² and remaining high in the first half of 2024. Freight rates are expected to fall once safe navigation in the Red Sea becomes possible again.

Navigating the Green Transition

Greenhouse gas emissions from the shipping sector have risen 20 per cent over the last decade and, without effective interventions, emissions could reach 130 per cent of their 2008 levels by 2050.³ Therefore, it is imperative that the sector take action to decarbonise. Collaboration among all stakeholders, effective regulatory intervention, cost-efficient investments and green technology breakthroughs are essential to achieve the goal.⁴

China has made some progress in decarbonising its shipping sector. In March 2024, the Ship Energy Efficiency Centre was founded in Shanghai,⁵ aiming to further support all China-flagged vessels above 400 tonnes to comply with international decarbonisation regulations, and provide policy guidance and carbon data verification. China also plans to implement ship power innovation projects to improve the efficiency of marine engines using traditional fuel and liquefied natural gas (LNG), and steadily expand the market application of LNG marine engines.⁶ With abundant wind, solar and biomass resources, coupled with sophisticated

manufacturing capabilities and its ambitious 30/60 goals,⁷ China can be a promising supplier of cost-competitive green methanol.⁸

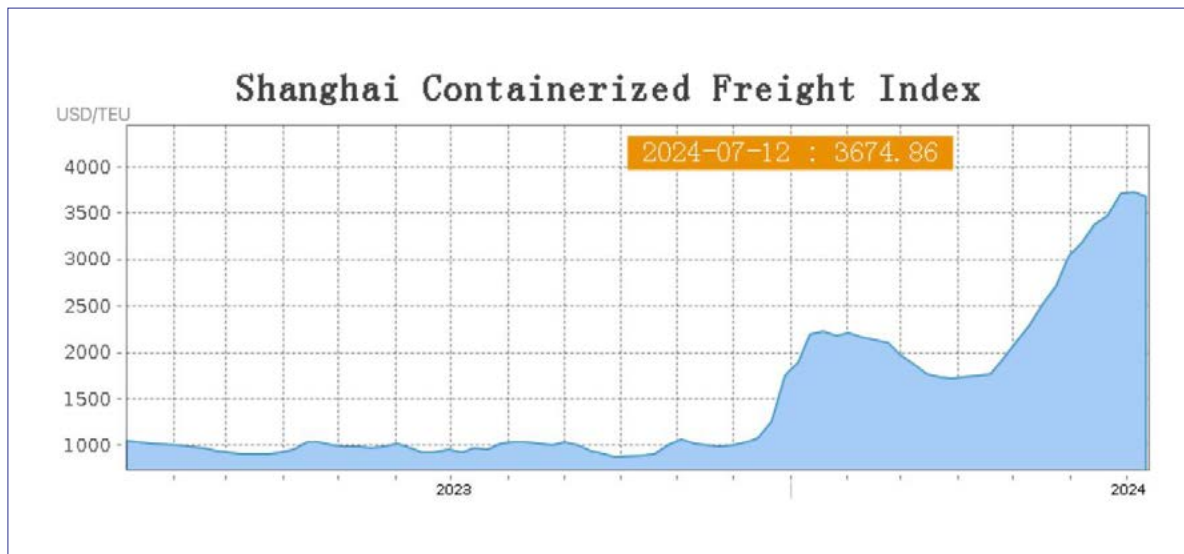
European carriers have also been taking positive steps, such as making investments in technologies to produce renewable or clean fuels, optimising the capacity of vessel bunkers and improving energy efficiency.

However, gaps between Chinese and European Union (EU) regulations in relation to carbon emissions have posed compliance challenges to carriers, impeding the shipping industry's decarbonisation progress. Specifically, the EU's Cross Border Adjustment Mechanism⁹ and the China Certified Emission Reduction scheme,¹⁰ as important tools for carbon emission pricing in the two carbon markets, respectively, lack harmonised standards. Although the EU Commission and China's Ministry of Transport (MOT) currently maintain separate standards on emission trading, they have both agreed to align with any future International Maritime Organization (IMO) standard. Intervention is also needed to avoid potential application conflicts between the existing carbon emission mechanisms and other international laws and regulations relevant to the shipping industry, including international climate law and the law of the sea, among others.

1 *Review of Maritime Transport 2023*, UN Trade and Development, viewed 29th April 2024, <<https://unctad.org/publication/review-maritime-transport-2023>>
2 *Shanghai Containerised Freight Indices*, Shanghai Shipping Exchange (SSE), updated 12th July 2024, viewed 16th July 2024, <<https://en.sse.net.cn/indices/scfi/new.jsp>>
3 *Review of Maritime Transport 2023*, UN Trade and Development, viewed 29th April 2024, <<https://unctad.org/publication/review-maritime-transport-2023>>
4 The International Maritime Organization has set a "target of reducing total emissions from international shipping by at least 50 per cent by 2050 compared to 2008": *Sustainable Shipping: Climate Action*, World Shipping Council, viewed 31st May 2024, <<https://www.worldshipping.org/sustainable-shipping>>
5 *China launches Ship Energy Efficiency Centre in Shanghai*, iMarine, 22nd March 2024, viewed 6th May 2024, <<https://www.imarinenews.com/7375.html>>
6 *China Looks to Corner Market for Green Ship Construction*, NaturalGasWorld, 13th February 2024, viewed 6th May 2024, <<https://www.naturalgasworld.com/china-looks-to-corner-market-for-green-ship-construction-gas-in-transition-109693>>

7 The 30/60 goals refer to two headline climate goals set out by China in 2021: to peak carbon dioxide (CO₂) emissions before 2030 and achieve carbon neutrality before 2060. The two goals are often referred to as the '30/60' goals. Further to its obligations under the Paris Agreement, China announced its commitment to peak its national carbon emissions by 2030 and to achieve carbon neutrality by 2060: *China headed towards carbon neutrality by 2060; President Xi Jinping vows to halt new coal plants abroad*, United Nations, 21st September 2021, viewed 5th May 2024, <<https://news.un.org/en/story/2021/09/1100642>>
8 Green methanol (i.e., carbon-neutral methanol on a well-to-wake basis) has become the most promising green fuel alternative based on the increasing number of new orders for methanol-enabled vessels, some of which are already in operation.
9 Reducing emissions from the shipping sector, European Union, viewed 29th April 2024, <https://climate.ec.europa.eu/eu-action/transport/reducing-emissions-transport-sector_en>
10 Yin, I, *COP28: China, EU face uphill battle to coordinate carbon policies*, SP Global, 4th December 2023, viewed 29th April 2024, <<https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/energy-transition/120423-cop28-china-eu-face-uphill-battle-to-coordinate-carbon-policies>>





Source: Shanghai Containerised Freight Index, Shanghai Shipping Exchange (SSE)

Key Recommendations

1. Make the International Cargo Relay Pilot a Permanent Policy after Expanding Coverage to Vessels and Ports, and Simplify the Customs Declaration Process



Concern

The international cargo relay pilot in Shanghai Yangshan Port is currently only connected to three northern ports, and only for owned and intercontinental vessels,¹¹ which limits the advantages that can be gained from transshipping.

Assessment

On 18th November 2021, the State Council announced permission for foreign carriers/vessels to trial international cargo relay via Shanghai Yangshan Port to/from the three northern ports of Qingdao, Tianjin and Dalian until 31st December 2024.¹² This trial policy is restricted to carriers domiciled in countries that allow international cargo relay by Chinese carriers; and to owned or controlled vessels serving intercontinental routes. If these restrictions were to be lifted and the policy were to become permanent, carriers would be able

¹¹ Per current Chinese regulations, intra-Asia service vessels are not qualified for international cargo relay services.

¹² *Approval of the Temporary Adjusted Implementations of Relevant Administrative Regulations in Shanghai Pilot Free Trade Zone Lingang New Area by State Council*, Central Government of People's Republic of China, 18th November 2021, viewed 10th May 2024, <http://www.gov.cn/zhengce/content/2021-11/18/content_5651689.htm>

to take advantage of China's well-established service network to provide more diversified shipping products to customers, while also benefitting from much shorter transit times.

However, vessels are currently not allowed to discharge cargo for both import to and export from south or east China, but have to tranship via Busan in South Korea or other non-Chinese ports, despite high demand at major Chinese ports, including Qingdao, Ningbo and Yantian. Furthermore, because half or more of carriers' capacity is derived from chartered vessels, restricting the scope of cargo relay only to carrier-owned vessels significantly impacts overall operational efficiency, which in turn limits the benefits that can be offered to customers. In addition to including chartered vessels into the scope of cargo relay, it would be prudent to also include short-sea vessels as this would contribute to creating a more competitive environment.

To ensure that the policy is as effective as possible, buy-in from Chinese ports other than Shanghai is also needed, something that carriers report they are currently unable to secure.

Finally, the customs declaration process is complicated for cargo relay. For the current process, cargo descriptions in Chinese and the harmonisation system (HS) code are required for import shipments. Besides, upon arrival at the destination port, onsite inspection of the container seal is mandatory. Compared to the



customs process for regular shipments, these additional requirements and steps for cargo relay have imposed an administrative burden on carriers and clients, impeding the efficiency of customs clearance. The working group recommends a simplified process to reduce the overall transit time, hence achieving the real purpose and value of the policy.

Recommendations

- Upgrade the international cargo relay pilot to a permanent policy.
- Expand the international cargo relay to more Chinese ports, as either the port of transshipment or the port of origin/destination.
- Allow chartered vessels and short sea vessels to engage in international cargo relay.
- Encourage full support from original/destination ports to deploy a practicable international cargo relay network together with carriers.
- Implement a simplified customs declaration process for international relay cargo.

2. Establish Transparent Filing Rules for Ocean Freight and Local Shipping Surcharges 5

Concern

The Shanghai Shipping Exchange's (SSE's) regulation of ocean freight rates and associated charges creates uncertainty for carriers, with filings often rejected without clear reasons, which is inconsistent with the MOT's established principles.

Assessment

Chinese regulators acknowledged the consensus between the EU Commission and China's MOT that "ocean freight rates and associated charges should be determined by the market, not by government interventions or instructions."¹³ This consensus underpins the collection of charges by carriers, including freight, surcharges, behavioural charges and charges for value-added services. Despite this consensus, carriers often face difficulties filing both freight rate increases and charges for new value-added services requested by customers with the SSE due to the vagueness of relevant regulations.

¹³ The long-term consensus reached between the EU and the MOT that "ocean freight rates should be determined by the market, not by government interventions or instructions," was quoted in a press release concerning the MOT's responses to recent high freight rates. *Ministry of Transport replies to netizens' messages on "recent high sea freight charges"*, Central Government of People's Republic of China, 24th June 2021, viewed 10th May 2024, <http://www.gov.cn/hudong/2021-06/24/content_5620615.htm>

Vague regulations also make it difficult for carriers to achieve compliance, recover increased costs or handle overwhelming demands based on market principles. For instance, Article 15 of the *Regulations on International Maritime Transportation of the People's Republic of China (PRC)* only refers to the filing of public freight rates and negotiated freight rates, with no reference to the filing of additional surcharges.¹⁴ Likewise, the SSE's freight filing rules only specify ocean freight and maritime-related surcharges, including terminal handling charges, without specifying the definition, requirements and necessary supporting documentation.

Article 15 of the SSE's freight filing rules oblige carriers to undertake filing, which can be interpreted as 'notification' without the need for approval. In this regard, it is unreasonable to reject the filing of new charges or freight/surcharge increases, as has been the case in certain circumstances. Moreover, many carriers doing business in China have experienced a significant increase in costs, including the prices for labour, bunkers and vessels. However, due to these vague regulations, carriers face difficulties filing freight or surcharge increases.

There have been attempts by the SSE to control ocean freight rates via carriers' filings. Additionally, while value-added services do not need to be filed, the working group believes that the SSE wants to decide if a service qualifies as a value-added service at their discretion. This has made it difficult for carriers to clarify or dispute a decision if they fail to file a charge that they deem is a value-added service, but the SSE regards as a maritime-related surcharge.

It is important to note that the extremely high freight rates reported by media—which led to unfair and misdirected criticism towards carriers—were most likely a result of the arbitrary price increase initiated by other market players in the logistics chain that are not subject to the ceiling rates that are filed by carriers with the SSE. Therefore, in the interests of fairness and transparency, non-vessel operating common carriers (NVOCCs), freight forwarders and booking agents should also be subject to tariff filing and audit requirements similar to those imposed on carriers.

¹⁴ *Regulations on International Maritime Transportation*, Central Government of People's Republic of China, 2019, viewed 10th May 2024, <http://www.gov.cn/gongbao/content/2019/content_5468927.htm>





Recommendations

- Refrain from imposing conditions on approval processes for new or increased tariffs that could have a market distorting effect.
- Create certainty in filing procedures by providing a clear definition of maritime-related charges, specifying the required documents and filing procedures.
- Impose tariff filing and audit requirements on NVOCCs, freight forwarders and booking agents, similar to those imposed on carriers.

3. Amend Current Regulations that Hold Carriers Liable for Misdeclarations of Dangerous Goods by Shippers 4

Concern

Carriers are being held liable for shippers' misdeclaration of dangerous goods and consequently subjected to penalties, which is unreasonable as they have no means of detecting or preventing such misdeclarations.

Assessment

Although some port administrations have ceased to hold carriers liable for misdeclarations of dangerous goods, this is not the case for all of them. For example, Ningbo and Tianjin port authorities still refer to the *Regulation on Safety Administration of Dangerous Goods in Ports*,^{15&16} issued by the MOT, which stipulates that carriers are the ultimate entrusted parties for terminal operation and makes them liable for misdeclarations of dangerous goods and subject to penalties. However, carriers only receive cargo information from shippers, booking agents or freight forwarders during the booking stage and have neither the right nor ability to check a container's content upon cargo receipt. As such, asking carriers to take responsibility and bear the legal consequence of any dangerous goods misdeclaration is both unfair and contrary to international practice.

Recommendations

- Amend current regulations or correct the current practice that holds carriers liable for dangerous goods misdeclarations by shippers.
- Establish an official blacklist of entities with a record of dangerous goods misdeclarations.

¹⁵ Only for import cargo in Tianjin.

¹⁶ *Regulations on Safety Administration of Dangerous Goods in Ports*, Central Government of People's Republic of China, 4th September 2017, viewed 10th May 2024, <http://www.gov.cn/gongbao/content/2017/content_5241924.htm>

4. Strengthen the Supervision of Port/Terminal Groups and Promote Fair Competition 5

Concern

Both the formation of port groups and insufficient oversight of their market-dominant power is eroding fair competition.

Assessment

The integration of ports in China over the past several years has weakened free market competition. Such integrations create monopolies and limit carriers' choices of terminal operators, as the integrated ports are all controlled by the same operator. This results in ports increasing handling charges, controlling terms of service agreements and offering little room for negotiation. Such abuse of their dominant position leaves carriers with no alternatives.

The integration of port groups and other conglomerates also leads to vertical integration (such as among container manufacturers, depots, feeders, truckers and NVOCCs), significantly reducing competition in various sectors along the logistics supply chain. This puts ocean carriers at a disadvantage when choosing vendors. For instance, when such conglomerates operate both NVOCCs and feeders, ocean carriers have no choice but to use their feeders as vendors.

Recommendations

- Monitor and report any potential infringement of competition law by port groups and other logistics conglomerates.
- Implement measures and controls to prevent port groups and logistics conglomerates from abusing monopolistic positions both horizontally and vertically.

5. Accelerate Decarbonisation of the Shipping and Logistics Industry by Establishing Adequate Infrastructure and an Optimal Regulatory Framework 4

Concern

Inadequacies in both port infrastructure and national regulations are hindering progress with decarbonisation in the EU and China.

Assessment

Decarbonisation of the transport and logistics industry



requires collective efforts from all stakeholders. Although technological changes are gradually being put in place in the transport sector,¹⁷ a lack of alignment between regional and global regulatory frameworks is slowing the pace of the transition towards carbon neutrality and creating enforcement problems.

Lack of EU-China alignment on emission trading systems (ETSs)

From 1st January 2024, maritime emissions have been included in the EU's ETS.¹⁸ As a result, container carriers have had to introduce separate emission surcharges to cover carbon allowances paid to the EU authorities. According to EU regulations, the emission surcharge will be levied against any Chinese exporters that act as a freight payer. The Chinese Government regards this as unilateral enforcement of EU policy outside of EU borders, and therefore has banned carriers from filing emission surcharges in China. This puts pressure on European carriers which need to collect emission surcharges as a mean of cost recovery. Coordination between the EU and China on this issue is therefore urgently required.

Inadequate incentives for the use of green fuel as an alternative to conventional bunker oil

The cost of producing green fuel is higher than for conventional bunker oil, making it currently unsustainable for pioneering carriers to fully absorb the additional cost of green fuel utilisation. The International Liner Shipping Sub-working Group advocates for the introduction of the Green Balanced Mechanism (GBM), as put forward at the IMO by the World Shipping Council. Based on a well-to-wake analysis, the GBM proportionally rewards the use of truly green fuels and penalises fossil fuels, thereby closing the price gap from the outset, without major inflationary disruptions. With such a mechanism in place, the price difference between conventional bunker oil and green fuel will be greatly narrowed and the development and utilisation of green fuel will be incentivised.

¹⁷ Decarbonisation efforts refer to: 1) carriers being mobilised to develop dual-fuel vessels and solicit for the procurement and development of green fuels; 2) the increasing use of shore power for vessels at berth; 3) the widespread use of electrically-propelled vehicles and gantry cranes in port operations; and 4) the emergence of alternative fuel bunkering capabilities at Chinese ports.

¹⁸ *Reducing emissions from the shipping sector*, European Commission, viewed 6th June 2024, <https://climate.ec.europa.eu/eu-action/transport/reducing-emissions-shipping-sector_en>

Lack of infrastructure and regulatory coordination for methanol bunkering

China has abundant biomass as an input for green methanol production. However, although methanol-fuelled container vessels are already being delivered, there is a lack of methanol bunkering infrastructure in Chinese ports, and associated standards and norms are not in place. In addition, it is not clear under the current regulatory framework whether Chinese manufactured green methanol should be classified as a marine fuel or as a Chinese export product.

Conflict between LNG vessel operation and the requirement for shore power usage

The MOT has inaugurated a pilot plan that includes an incentive scheme for the use of shore power for container vessels berthing alongside Chinese ports. The use of shore power has become mandatory if both the vessel and the terminal are qualified for shore power capabilities. For LNG-powered vessels, there is an intrinsic requirement that the auxiliary engine cannot be shut down for more than 10 hours, otherwise the LNG temperature inside the tank will be too high. This requirement however puts vessel safety at risk.

Recommendations

- Establish an adjustment mechanism for the conversion of different carbon pricing methods, and a dispute mechanism for emission trading between China and the EU.
- Support the introduction of the GBM to incentivise green fuel development and utilisation.
- Develop methanol bunkering infrastructure and standards for Chinese ports and simplify processes and regulations for the export of China-manufactured green methanol as bunker fuel.
- Revise the regulation of shore power utilisation to accommodate the unique technical requirements of LNG-powered vessels.

Abbreviations

GBM	Green Balanced Mechanism
EU	European Union
ETS	Emission Trading System
IMO	International Maritime Organization
LNG	Liquefied Natural Gas
MOT	Ministry of Transport
NVOCC	Non-vessel Operating Common Carrier
SSE	Shanghai Shipping Exchange





European Chamber
中国欧盟商会

5

Section Five

Financial Services

Financial Services

In 2024, the European Chamber established the Financial Services Working Group to facilitate advocacy coordination and address the horizontal issues European financial institutions (FIs) face in the financial services sector. Issues specific to different segments of the sector are covered by the following sub-working groups:

- Banking and Securities
- Non-banking Financial Institutions
- Insurance
- Asset Management

European financial services companies in China have reported some opening up in the sector, marked by the release of a series of financial industry and capital market policies, and further relaxation of market access restrictions. The working groups welcome China's continuous efforts to reform and open its financial services sector, and implement policies and measures aimed at developing a sound and sustainable financial industry.

In-person meetings between the various Chinese financial regulators and the European Chamber's Financial Services Working Group resumed following the end of zero-COVID restrictions in China. The open and constructive exchanges that these meetings facilitated have been extremely useful in increasing mutual understanding, identifying and addressing issues, and discussing possible regulatory developments that would allow European Union (EU) FIs to further contribute to both the Chinese and European real economies. The Financial Services Working Group recommends establishing a regular meeting programme—with at least three meetings between the working group and the People's Bank of China, the National Financial Regulatory Administration and the China Securities Regulatory Commission annually—in order to systematically address issues that are currently preventing China's financial services industry from reaching its full potential.

Despite recent positive developments, most EU FIs in the banking and securities, non-banking financial institutions, insurance and asset management sectors are facing difficulties in growing their activities and implementing business models that achieve minimum economies of scale. They are therefore often operating at a low level of profitability. This situation is largely due to regulatory constraints and high associated costs, as well as a financial regulatory ecosystem that currently does not allow EU FIs to leverage their specificities and provide the same complementary products and services that their Chinese peers can.

Members of the working group believe that significant potential for further contributions by European FIs to the Chinese real economy exists—including through enhanced cooperation and partnerships with Chinese FIs—to better serve their respective corporate, retail and institutional clients, both in



China and overseas. The potential for growth is particularly meaningful in the following three areas:

- Cross-border financial services
- Innovative onshore products and services
- Green and sustainable finance

One of the key roles of European FIs in China is to provide cross-border financial services. European FI subsidiaries, branches and joint venture projects in China are particularly well-placed to:

- support international companies that choose to finance and insure their activities—in China and overseas—in *renminbi*, through financing services such as lending, bond issuance, leasing and (re) insurance, among others;
- partner with Chinese companies that wish to build offshore production and commercial capacities abroad; and
- support retail and institutional investors that want to invest outside of their home markets.

In addition to cross-border services, European FIs can make significant contributions to the development of onshore products and services that have not yet been fully developed in China. For example, European insurance and asset management companies have extensive experience providing long-term wealth management and insurance solutions to customers in Europe. They are keen to assist with the development of long-term, sound, safe and sustainable saving and insurance products and services to address the challenges of an ageing population, while reinforcing social stability and consumer confidence in China.

In the field of green finance, the bilateral Common Ground Taxonomy for green and sustainable finance has enabled European and Chinese FIs to fund themselves in the Chinese and international markets. The working group supports an expansion of the use of the taxonomy to promote sustainable development of the Chinese and EU economies. European FIs can further contribute to EU-China cooperation on cross-border green investments in both directions and could support the Chinese market by developing sustainable asset management products for Chinese retail and institutional investors.

The following position papers of this section detail specific proposals for amendments to regulatory rules and guidelines that can help improve the abovementioned areas in terms of development and cooperation.

The Financial Services Working Group and its related sub-working groups look forward to deepening dialogue with Chinese and EU regulators, to further contribute to the development of both the Chinese and the EU's real economies.



Banking and Securities Sub-working Group

Recent Developments

On 1st November 2023, the National Financial Regulatory Administration (NFRA) released the *Rules on Capital Management of Commercial Banks* to encourage banks to strengthen their risk management systems.¹ It required banks to determine their respective capital calculation methodologies and implement the new guidelines by 1st January 2024. This was a welcome step towards creating an environment of fair competition, as it requires Chinese banks to adopt the international standards put forth by Basel IV, which are already followed by European banks.

On 22nd December 2023, the Shanghai Clearing House (SCH) released the 10th edition of its clearing guidelines. The new guidelines classify the SCH's failure to pay or deliver clearing obligations as a new SCH event of default. This will give some members the right to "close out relevant transactions and apply netting upon the occurrence of such an event of default."² This should be a step towards the recognition of close-out netting at the SCH, which the working group has previously advocated for.

On 29th December 2023, the State Administration of Foreign Exchange (SAFE) released the *Measures for Banks to Develop Foreign Exchange Business (Trial Implementation)*, which requires banks to adopt differentiated customer review measures in accordance with the level of risk that customers present.³ This development is expected to offer greater flexibility for banks in balancing their operational efficiency with effective risk management.

In late January 2024, the People's Bank of China (PBOC) and the Hong Kong Monetary Authority (HKMA) announced several measures aimed at

deepening financial cooperation between the Chinese mainland and Hong Kong.⁴ One of these measures aims to broaden channels through which investors can participate in the bond repurchase agreement (repo) business by opening the market to offshore institutional investors that already have access to the China Interbank Bond Market (CIBM). This would expand the range of financing and liquidity management solutions for offshore investors. Following the announcement of the regulation, the PBOC and the SAFE published the *Announcement on Further Supporting Offshore Institutional Investors Engaging in the Bond Repurchase Business on the CIBM (Draft for Comments)*.⁵ The document outlines key legal and regulatory principles for eligible offshore investors, with further implementing rules expected to be published. Another measure of the policy package includes an expansion of the list of eligible collateral for the HKMA's *renminbi* (RMB) Liquidity Facility to include RMB bonds issued by the Ministry of Finance (MOF) or China's policy banks. The regulation came into effect on 26th February 2024 and is a positive step towards attracting greater capital investment into RMB onshore bonds.

Key Recommendations

1. Lift the Constraints that Inhibit Foreign Banks' Scale Efficiencies

1.1 Allow More Foreign Banks to Become Bond Connect Market Makers Without the Precondition of Being a Chinese Interbank Bond Trial Market Maker 5

Concern

Foreign banks encounter difficulties in qualifying to become Bond Connect market makers, which limits their ability to serve their offshore clients' needs for bond price quotes through this channel.

1 *NFRA issues the Rules on Capital Management of Commercial Banks*, NFRA, 1st November 2023, viewed 28th April 2024, <<https://www.cbirc.gov.cn/en/view/pages/ItemDetail.html?docId=1142371&itemId=981>>

2 *Shanghai Clearing House introduces Close-out Netting for Failure to Pay EoD*, Linklaters, 12th January 2024, viewed 28th April 2024, <https://lpscdn.linklaters.com/knowledge/-/media/digital-marketing-image-library/files/06_ckp/2024/january/linklaters-client-alert_shch-adds-new-eod-for-close-out-netting1.ashx?rev=80ddae71-87be-47e4-8e72-e6d08c3dd5b9&extension=pdf>

3 *Measures for Banks to Develop Foreign Exchange Business (Trial Implementation)*, SAFE, 29th December 2023, viewed 29th April 2024, <<https://www.safe.gov.cn/safe/2023/1229/23737.html>>

4 *The HKMA and the PBOC announce measures to deepen the financial cooperation between Hong Kong and the Mainland*, HKMA, 24th January 2024, viewed 29th April 2024, <<https://www.hkma.gov.hk/eng/news-and-media/press-releases/2024/01/20240124-3/>>

5 *China Mainland Opens Up Repo Market To More Offshore Investors*, King & Wood Mallesons, 31st January 2024, viewed 19th April 2024, <<https://www.kwm.com/hk/en/insights/latest-thinking/china-mainland-opens-up-repo-market-to-more-offshore-investors.html>>





Assessment

Foreign banks in China often have stricter compliance requirements and smaller balance sheets than their Chinese peers, making it difficult to compete on bond-trading turnover and inventory size. However, foreign banks usually have bigger overseas client bases that are eager to trade with them via Bond Connect, as well as to get market updates and recommendations to access the onshore CIBM. Therefore, difficulties in qualifying to become Bond Connect market makers are limiting foreign banks' ability to develop business and bring investment into China.

Recommendation

- Grant more qualified foreign banks the status of Bond Connect market makers without requiring them to first become a Chinese Interbank Bond market maker.

1.2 Alleviate Funding Pressures for Foreign Banks and Bank Branches

Concern

Foreign banks and bank branches, which act as global liquidity insurers, are limited in their ability to grow due to funding constraints.

Assessment

According to Article 25 of the *Measures for the Administration of Interbank Lending*, access to the China Foreign Exchange Trade System (CFETS) interbank market for foreign banks is capped at two times their operating capital in China,⁶ which heavily impacts their operations and ability to access onshore funding. Lifting this restriction would result in a more active and liquid RMB interbank market that would benefit all banks.

Locally incorporated banks and bank branches⁷ in China also face problems associated with the issuance of any of the three distinct types of RMB-denominated

debt securities: onshore bonds issued by onshore mainland-based issuers; onshore bonds issued by offshore issuers ('panda bonds'); and bonds issued offshore by both onshore and offshore issuers ('Dim Sum' bonds and 'Lion City' bonds).⁸

Additionally, qualifying foreign locally incorporated banks are allowed to issue onshore negotiable certificates of deposit (NCDs) which allows for short-term funding source diversification. In order to issue NCDs, current regulations require banks to be members of the Market Interest Rate Pricing Self-Regulatory Framework.⁹ However, the membership criteria fail to accommodate the specificities of foreign bank branches, even though some of these branches are held to higher risk and regulatory standards through their inclusion in the list of global systemically important banks (G-SIBs).¹⁰ Allowing foreign branches to become members would further enrich the local market with quality NCD issuance.

Recommendations

- Ease the 'two-times' capital restriction for small and medium-sized banks in China and promote longer tenor transactions at market price.
- Simplify the procedure for foreign banks to issue RMB-denominated debt for funding purposes.
- Facilitate foreign bank branches' access to the Market Interest Rate Self-Regulatory Framework to ease onshore NCD issuance.
- Permit foreign bank branches to issue RMB-denominated bonds.
- Remove the requirement to provide two years' worth of financial data for China operations when a new branch applies to participate in the national interbank lending market and trade in the RMB money market on the CFETS platform.

⁶ *Measures for the Administration of Interbank Lending*, PBOC, 3rd July 2007, viewed 28th April 2024, <<http://www.pbc.gov.cn/en/3688235/3688609/3688615/3926198/index.html>>

⁷ Foreign commercial banks in China operate under several different models. A locally incorporated bank refers to a wholly foreign-funded bank registered overseas and licensed by the financial regulatory authority in its home jurisdiction. A bank branch refers to a branch of a foreign bank operating in China. For details on the differences between locally incorporated banks and bank branches, please see: *Implementation Measures of the China Banking and Insurance Regulatory Commission for Administrative Licensing of Foreign-funded Banks*, NFRA, 26th December 2019, viewed 2nd June 2024, <<https://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=881654&itemId=926>>

⁸ *Emerging Market Focus – Panda: From Zero to a USD 2trn Market in Ten Years [Client Note]*, Credit Agricole Corporate & Investment Bank, 3rd May 2016, viewed 28th April 2024. Please note, this was a non-public client note courtesy of Credit Agricole.

⁹ Access to the Market Interest Rate Pricing Self-Regulatory Framework goes through a Qualified Prudential Assessment. The most stringent conditions relate to financial ratios and pricing governance. See: *Implementation Measures for Qualified Prudential Assessment (Revised in 2023)*, China Foreign Exchange Trade System, 10th April 2023, viewed 30th April 2024, <<https://ftp.chinamoney.com.cn/chinese/gg/20230410/2592198.html>>

¹⁰ *2023 List of Globally Systemically Important Banks*, Financial Stability Board, 27th November 2023, viewed 30th April 2024, <<https://www.fsb.org/2023/11/2023-list-of-global-systemically-important-banks-g-sibs/>>





1.3 Include More Qualified Carbon Reduction Projects in the Carbon Emission Reduction Facility (CERF), and Extend the CERF's Scope to Include European Bank Branches



Concern

Stringent Carbon Emission Reduction Facility (CERF) requirements and limitations on participation prevent European banks from taking part in the CERF tool despite meeting the requirements, thereby limiting their contributions to China's emission reduction goals.

Assessment

The CERF aims to support enterprises registered in China—mainly in the field of clean energy, energy saving and carbon abatement technology—to meet their pledges of achieving carbon neutrality targets by 2060.

Currently, locally incorporated European banks are eligible to participate in the CERF. However, as of 2023, only six European bank projects have been approved by the PBOC, compared with 8,583 projects approved for domestic banks.¹¹ This is due to the different types of customers and financing models of European banks,¹² which are unable to be reimbursed for their clean energy projects through the CERF. This is also a serious issue for foreign bank branches that do not have equal access to apply for the facility. This hinders their ability to support clients' green financing demands and compete in the market.

Recommendations

- Extend the CERF's scope to include eligible European bank branches.
- Consider the specificities of European banks' business models when assessing eligibility for CERF reimbursement.

¹¹ Each bank must include approved projects to the PBOC in their publicly available disclosure reports. See, for example: *Information Disclosure of Carbon Reduction Loans from Industrial and Commercial Bank of China*, ICBC, 2023, viewed 29th April 2024, <<https://v.icbc.com.cn/userfiles/Resources/ICBCLTD/download/2024/DiscloureTJP.pdf>>

¹² European banks' customer base and financing requirements differ greatly from those of Chinese banks. For example, while the CERF prioritises long-term projects of five to 10 years, European banks lack the risk appetite to undertake such financing, especially in the current geopolitical context. Furthermore, European banks are highly sensitive to the risk rating of the customer they are financing. Many CERF projects fail to meet European banks' basic corporate finance criteria. Finally, many projects that Chinese banks approve as green do not meet EU regulatory assessment criteria, such as the requirement that the revenue derived from coal must be less than 50 per cent.

1.4 Allow More Locally Incorporated European Banks to Become OMO Primary Dealers

Concern

Restrictions on most European banks' access to open market operation (OMO) primary dealership certification hinders the implementation of monetary policy and limits opportunities for interbank business development.

Assessment

An OMO is an activity by a central bank to give (or take) liquidity in its currency to (or from) a bank. The central bank can either buy or sell securities in the open market or enter into a repo or securities lending transaction with other banks. Central banks usually use OMOs as the primary means of implementing monetary policy through steering interest rates, managing the amount of liquidity in the financial system and signalling their monetary policy stance. 'Primary dealers' are commercial banks and security firms approved for OMO participation by the PBOC. Of the 49 financial institutions that have been granted OMO dealerships, only one is European.¹³

European banks' China subsidiaries have accumulated a diverse corporate client pool and have been developing a vibrant domestic interbank business. OMO primary dealership certification would grant European banks access to more liquidity and could enable European companies to assist the PBOC with the transfer of RMB liquidity to offshore markets in the context of RMB internationalisation. However, there are neither clear assessment rules nor a transparent application process for OMO primary dealerships, which constitutes an access barrier for European banks.

Recommendation

- Clarify assessment rules to allow more locally incorporated European banks to become OMO primary dealers.

1.5 Allow European Banks to Participate in the Southbound Bond Connect Scheme

Concern

European institutions are ineligible to invest in the Hong Kong bond market through the Southbound Bond Connect scheme, which restricts them from leveraging

¹³ *Notice on Open Market Operation*, PBOC, 27th March 2019, viewed 29th April 2024, <<http://www.pbc.gov.cn/zhengcehuobisi/125207/125213/125431/125469/3795508/index.html>>





their diversified and mature clientele to facilitate domestic institutions' bond issuance in the offshore market.

Assessment

The Southbound Bond Connect scheme, launched in September 2021, allows mainland investors to invest in Hong Kong's bond market to encourage more credit issuance in Hong Kong.¹⁴ Through this scheme, onshore investors are likely to find investment opportunities in offshore G3 bonds issued by European issuers. They are also able to gain diversification value in bonds issued by issuers outside the Chinese mainland through offshore RMB bonds.

There are many benefits to the participation of European banks in this scheme. First, European banks have a sophisticated bond investment track record and rigid risk management frameworks that cover both domestic and overseas issuers. This has given them a unique understanding of both onshore and offshore markets, which can be leveraged to bring more liquidity to the international market. Second, European banks can leverage their diversified and mature clientele to facilitate domestic institutions' bond issuance in the offshore market and can further boost the Dim Sum bond market.

However, one prerequisite for participation in the scheme is OMO dealership certification. While the PBOC has tentatively defined the investor scope for the Southbound Bond Connect scheme to include 41 banks that have been recognised as OMO dealers as of 2020, no European banks were OMO dealers in that year.¹⁵ This means that no Chinese subsidiaries of European banks are currently eligible to participate in the scheme.

The working group has observed that three Chinese securities companies have received approval to participate in the scheme without OMO dealership qualifications, but no such exemption has yet been granted to European banks.

Recommendation

- Allow European banks to participate in the Southbound

¹⁴ Notice of the People's Bank of China on Carrying out Southbound Cooperation by Connecting the Bond Markets of the Mainland and Hong Kong, PBOC, 14th September 2021, viewed 24th April 2024, <https://www.gov.cn/zhengce/jzhengceku/2021-09/15/content_5637530.htm>

¹⁵ Challenges to European banks' OMO certification remain. See Key Recommendation 1.4.

Bond Connect scheme independently of OMO dealership certification.

1.6 Adjust the Classification Indicators for Small and Medium-sized Enterprises (SMEs)

Concern

Subsidiaries of large multinational corporations (MNCs), Chinese state-owned enterprises (SOEs), or leading privately-owned enterprises (POEs) unfairly qualify for bank fee charge exemptions due to classification indicators that do not indicate the real status of large enterprise subsidiaries.

Assessment

Within the current regulatory framework,¹⁶ SMEs are exempted from nearly all financing-related bank fee charges, including commitment fees, fund-management fees and others. The indicators for what qualifies as an SME are based on a 2011 circular published by the Ministry of Industry and Information Technology (MIIT) and rely heavily on the number of employees to indicate SME status.¹⁷ However, due to the impact of automation, this criterion is no longer an accurate reflection of a company's size. European banks' customers are mostly part of large corporate groups, including Chinese subsidiaries of large MNCs, Chinese SOEs or large POEs. These subsidiaries can qualify for SME status under current criteria, meaning that large companies unfairly qualify for bank fee charge exemptions. Exempting MNCs from these charges minimises the effect of the support measures for actual SMEs targeted by the policy and is thereby counterproductive to the objectives of the regulation.

Recommendations

- Review the classification standards for SME subsidiaries of large enterprises.
- Clarify the scope of business exemption fees in accordance with the most recent guidance from the MOF.

¹⁶ Supplementary Notice on Commercial Banks to Further Improve Financial Services for Small and Medium-sized Enterprises, CBIRC, 25th October 2011, viewed 29th April 2024, <https://www.gov.cn/gzdt/2011-10/25/content_1978106.htm>

¹⁷ Notice on Issuing the Regulations for Classification Standards for Small and Medium-sized Enterprises, MIIT, 18th June 2011, viewed 30th April 2024, <https://www.gov.cn/zwqk/2011-07/04/content_1898747.htm>





2 Develop China's Futures and Derivatives Market

2.1 Release Clear Qualification Requirements for Foreign Banks Applying to Trade China Government Bond Futures

Concern

Unclear qualification requirements and timelines for foreign banks that wish to trade China government bond futures affect their application success rates.

Assessment

On 14th February 2020, the MOF and the China Securities Regulatory Commission (CSRC) launched a pilot programme for eligible commercial banks and insurance companies to trade China government bond futures on the China Financial Futures Exchange.¹⁸ On 28th February 2024, the State Council released the *Action Plan for Promoting High-level Opening-up through Attracting and Utilising Foreign Investment* which aims to promote the participation of qualified foreign bonds in the treasury bond futures pilot.¹⁹ However, the requirements and timeline for application remain unclear to foreign banks and, as of May 2024, only one foreign bank has successfully participated in this pilot.

Recommendation

- Release clear qualification requirements and a timeline for foreign banks that wish to trade China government bond futures.

2.2 Allow Onshore Banks to Engage in Non-hedging, Cross-border Derivatives Transactions with Parent Banks

Concern

Prohibiting onshore banks from carrying out cross-border, over-the-counter (OTC) derivatives transactions for non-hedging purposes leads to inefficiencies in transactions with parent banks, thereby negatively impacting parent banks' views of the Chinese market.

Assessment

During working group meetings with Chinese regulators, the recognition of foreign banks' legitimate and traditional business needs in relation to cross-border derivatives hedging transactions between their entities in China's mainland (inclusive of incorporated banks and branches) and their offshore affiliates (normally their head office, or parent banks) was a welcome development.

However, articles two and 17 of the *Guidance on Promoting the Proper Development of Derivatives Business (Draft for Public Comments) (Draft Guidance)*, issued in 2021,²⁰ prohibit cross-border OTC derivatives transactions for non-hedging purposes for all onshore licensed financial institutions in China, except when otherwise stipulated. According to the *Draft Guidance*, together with Article Four of the *Revised Interim Administrative Measures for Derivative Business of Banking Financial Institutions*,²¹ cross-border derivatives transacted intra-group are included in the list of derivatives for non-hedging purposes. The specificities of intra-group transactions have already been recognised in the *Circular on Clarification of Supervisory Requirements of Large Amount Exposure of Foreign-invested Banks to Parent Bank Groups*, which exempts intra-group exposure from regulatory requirements.²² However, no such similar exemption has been put in place for intra-group OTC derivatives transactions for non-hedging purposes. These transactions are crucial for foreign bank subsidiaries and parent banks, which use them to manage risk exposure. Prohibiting non-hedging cross-border derivatives will lead to inefficiencies in transactions with parent banks and risk management, which may negatively impact parent banks' views of the Chinese market.

Recommendation

- Allow onshore banks to engage in non-hedging, cross-border derivatives, and either remove the related prohibition from Article 17 of the *Draft Guidance*, or

¹⁸ *Announcement on Commercial Banks and Insurers' Participation in the Trade of Treasury Bond Futures in the China Financial Futures Exchange*, CSRC, 14th February 2020, viewed 24th April 2024, <https://www.gov.cn/zhengce/zhengceku/2020-02/22/content_5481947.htm>

¹⁹ *Notice of the General Office of the State Council on Issuing Action Plan for Promoting High-level Opening-up through Attracting and Utilising Foreign Investment*, State Council, 19th March 2024, viewed 2nd June 2024, <https://www.gov.cn/zhengce/content/202403/content_6940154.htm>

²⁰ *Guidance on Promoting the Proper Development of Derivatives Business (Draft for Public Comments)*, PBOC, CBIRC, CSRC and SAFE, 3rd December 2021, viewed 24th April 2024, <<http://www.pbc.gov.cn/tiaofasii/144941/144979/3941920/4406767/2021120317533996960.pdf>>

²¹ *Revised Interim Administrative Measures for Derivative Business of Banking Financial Institutions*, CBIRC, 27th January 2011, viewed 24th April 2024, <<http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=3830&itemId=928&generalType=0>>

²² *CBIRC Clarifies Requirements for Large Risk Exposures of Foreign Banks*, Moody's Analytics, 30th April 2021, viewed 28th April 2024, <<https://www.moodyanalytics.com/regulatory-news/apr-30-21-cbirc-clarifies-requirements-for-large-risk-exposures-of-foreign-banks>>





define certain cross-border derivatives transactions that could be carved out from the prohibition.

3 Facilitate Intra-group Data Access and Optimise Local Supervisory Approaches to Data Governance, Cybersecurity and Cloud Use 5

3.1 Ensure Data Management Requirements are Clear and Allow Cross-border Intra-group Data Flows 5

Concern

Current ‘one-size-fits-all’ approaches to data regulations impose unreasonable compliance costs and burdens on financial institutions’ global operating models.

Assessment

Despite several new regulations that focus on cross-border data transfer and personal information protection,²³ the definition and scope of regulations remain unclear and inconsistent. For example, the new Cyberspace Administration of China (CAC) *Provisions for Facilitating and Regulating Cross-border Data Flows* require data processors to apply for the data export security assessment for the offshoring of sensitive personal data for over 10,000 individuals.²⁴ However, how this ‘sensitive’ data is defined is left to interpretation by the regulators. In addition, the criteria for the types of cross-border data-sharing activities that are allowed remain unclear. In particular, there is no guidance on interpreting the principle of “sharing the least amount of information necessary” proposed by the regulation. These stringent regulatory requirements and ambiguities put financial institutions’ global operating models at risk while increasing foreign financial institutions’ operational risks and associated costs. European Chamber members in the financial services sector indicated that this is the main barrier to market

entry and sustainable business growth that they face,²⁵ particularly the limitations on intra-group information sharing. In April 2024, the Banking and Securities Sub-working Group and the Insurance Sub-working Group submitted feedback on the newly published *Measures for Data Security Management of Banking and Insurance Institutions (Draft for Comments)* and will continue to monitor cross-border data transfer regulations.²⁶

Recommendations

- Ensure coordination between various regulators responsible for data protection to promote clear compliance requirements and ease operational burdens.
- Allow more flexibility in the security assessment and standard contract requirements for the cross-border transfer of personal information.
- Simplify requirements for intra-group, cross-border data transfer.
- Issue clear definitions of ‘important data’ and ‘sensitive data’.

3.2 Allow the Usage of Intra-group IT Infrastructure

Concern

Stringent requirements on IT infrastructure localisation hinder foreign banks’ ability to deliver competitive products and services to Chinese customers.

Assessment

Foreign banks operating in China rely on globally deployed IT infrastructure to deliver their products and services. While there is no specific EU regulation that requires banks to localise their infrastructure in a particular location, Chinese laws and regulations require the localisation of banks’ critical business systems.^{27&28}

23 *Provisions on Regulating and Facilitating Cross-border Data Flows (Draft for Comments)*, CAC, 28th September 2023, viewed 18th April 2024, <https://www.cac.gov.cn/2023-09/28/c_1697558914242877.htm>; *China to Strengthen Financial Data Regulations*, Bird & Bird, 11th September 2023, viewed 29th April 2024, <<https://www.twobirds.com/en/insights/2023/china/china-to-strengthen-financial-data-regulation>>; *China Finalises Standard Contract on Cross-border Transfer of Personal Information*, Clifford Chance, March 2023, viewed 29th April 2024, <<https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2023/03/China%20Finalises%20Standard%20Contract%20On%20Cross-Border%20Transfer%20Of%20Personal%20Information.pdf>>; *Provisions on Standardizing and Facilitating Cross-Border Data Flow*, CAC, 22nd March 2024, viewed 29th April 2024, <https://www.cac.gov.cn/2024-03/22/c_1712776611775634.htm>

24 *Announcement on Provisions for Facilitating and Regulating Cross-border Data Flows*, CAC, 22nd March 2024, viewed 2nd June 2024, <https://www.cac.gov.cn/2024-03/22/c_1712776611775634.htm>

25 European Chamber members in the financial services industry indicate that data regulations constitute the most significant regulatory obstacle to doing business in China. See: *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 22nd May 2024, <<https://www.eurochamber.com.cn/en/publications-business-confidence-survey>>

26 *Data Security Management of Banking and Insurance Institutions (Draft for Comments)*, NFRA, 22nd March 2024, viewed 29th April 2024, <<https://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1155853&itemId=951&generalType=2>>

27 *Commercial Bank Information Technology Risk Management Guideline*, State Council, 1st June 2009, viewed 29th April 2024, <https://www.gov.cn/gzdt/2009-06/01/content_1329547.htm>

28 *Banking Financial Institutions Anti-money Laundering and Counter Terrorist Financing Management Measures*, State Council, 15th April 2021, viewed 29th April 2024, <http://www.gov.cn/gongbao/content/2021/content_5616160.htm>





Such requirements present a disadvantage for European banks because they render banks unable to fully utilise the systems deployed overseas by their parent banks. This ‘isolates’ Chinese subsidiaries from the group and obliges banks to provide services to Chinese customers using different technologies. In addition, banks are unable to enjoy the professional technical support provided by the global support centre of the group, nor can they effectively integrate data within the group to improve their customer experience. These barriers harm banks’ ability to provide cross-border services, a distinct advantage of foreign banks, and may lead to some locally incorporated banks exiting the market.

Recommendations

- Allow the usage of intra-group IT infrastructure for European banks.
- Remove mandates requiring banks to localise their data or IT systems.

3.3 Adopt a Risk-based Regulatory Approach to the Cybersecurity Risk Management Framework 5

Concern

Current prescriptive cybersecurity and technology requirements severely impact financial institutions’ ability to optimise their cybersecurity strategies.

Assessment

The Cybersecurity Law (CSL) requires multi-level protection scheme (MLPS) 2.0 compliance from all network operators in China, with focussed protection on critical information infrastructure (CII) in important sectors. The draft *Regulations on the Cybersecurity MLPS (MLPS Regulations)*,²⁹ released by the Ministry of Public Security in 2018, outline several significant requirements concerning the structure and maintenance of networks operating within China. They require local support and maintenance for level-three systems,³⁰

²⁹ *Draft Regulations on the Cybersecurity Multi-level Protection Scheme*, Ministry of Public Security, 27th June 2018, viewed 29th April 2024, <<https://www.mps.gov.cn/n2254536/n4904355/c6159136/content.html>>

³⁰ According to the *Guideline for MLPS Classification*, companies must determine the protection level of their system or application based on two major considerations. A network’s protection level is graded according to its degree of societal impact. As such, networks that do not affect national security, social order or public interests are usually classified as Level 1, while networks that may affect social order and public interest are classified as Level 2 or above. Systems or applications with higher degrees of impact are more likely to be classified as Level 3 or even Level 4. Level 5 is usually reserved for state-owned military systems.

mandate the use of certain network products and services, and require certification for commercial encryption products, services and technologies. These requirements, though prescriptive, impact compliance work and raise concerns about over-regulation at the local level.

Global financial institutions benefit from having a global operation and support model and sometimes leverage firm-wide expertise by working with global teams for technical support and maintenance. The working group would like the Chinese authorities to confirm whether such global technical support will be allowed under the *MLPS Regulations*.

Additionally, the working group advocates for a narrower scope of CII. Including financial institutions in the scope of CII would deviate from the prioritised protection approach demanded by the CSL, while also being counterproductive to business operations from both a security and cost perspective.

Recommendations

- Allow global technical support for MLPS level-three systems.
- Avoid mandating the use of certain products and services and allow global firms to maintain uniform technology stacks in China.
- Narrow the scope of CII to ensure efficient and effective protection.
- Standardise the national security standards for CII protection.

3.4 Adopt Secure Cybersecurity Inspections and Penetration Testing Practices to Reduce Risks to Financial Institutions’ Sensitive Information 5

Concern

The increase in cybersecurity inspections and penetration testing through non-certified, third-party service providers makes financial institutions more vulnerable to data leakage and cyber threats.

Assessment

In 2020, the NFRA kicked off a round of penetration testing (also known as pen-testing) on banks’ IT systems using third-party service providers. Similar requirements have been observed in the CSRC’s





*Measures for the Information Technology Management of Securities and Fund Operators (2019)*³¹ and draft *Cybersecurity Measures for the Securities and Futures Industries (2022)*.³² While the regulators' intention of underpinning financial institutions' cyber resiliency is understandable, this approach may increase or exacerbate existing risks, as pen-testing has the potential to introduce new vulnerabilities and unintentionally expose such institutions' most sensitive information to uncertified third-party service providers.

In addition, the industry also experienced PBOC efforts to collect information on IT assets, such as device models and software versions. The working group would like to highlight the risks associated with such sensitive data collection and encourage financial regulators to only collect data relevant to supervisory objectives.³³

Recommendations

- Allow firms to conduct self-led penetration testing if they have the capabilities and resources to do so.
- Recognise the validity of vulnerability assessments and penetration testing reports independently issued by banks.
- Limit the collection of sensitive data and provide sufficient protection to submitted data.

3.5 Provide Clear Guidelines on Global Financial Institutions' Use of Cloud Services

Concern

Unclear guidance on the use of cloud services in China creates confusion and uncertainty for financial institutions.

Assessment

Adoption of cloud technology can greatly reduce the costs associated with maintaining banks' digital

³¹ *Measures for the Information Technology Management of Securities and Fund Operators*, CSRC, 19th December 2018, viewed 8th May 2024, <<http://www.csrc.gov.cn/csrc/c101838/c1021955/content.shtml>>

³² *Cybersecurity Measures for the Securities and Futures Industries*, CSRC, 3rd March 2023, viewed 8th May 2024, <<http://www.csrc.gov.cn/csrc/c100028/c7202729/content.shtml>>

³³ Penetration testing, also called pen testing or ethical hacking, is the practice of testing a computer system, network or web application to find security vulnerabilities that an attacker could exploit. Pen-testing can be automated with software applications or performed manually. The process involves gathering information about the target beforehand, identifying possible entry points, attempting to break in—either virtually or for real—and reporting back the findings. See: Yasar, K, and Mehta, P, *pen test (penetration testing)*, TechTarget, last updated November 2022, viewed 8th May 2024, <<https://searchsecurity.techtarget.com/definition/penetration-testing>>

infrastructure by reducing expenses related to hardware maintenance and allowing groups to use the same data storage system. Saving these costs would allow banks to allocate more funds to core business activities. Cloud technology is currently widely used in many industries, but the financial industry in China has been very cautious about moving to cloud-based data storage, particularly public clouds. This is largely because there is a distinct lack of regulation, technical implementation and approval guidelines on cloud usage. European banks are unsure whether they are permitted to secure their data on clouds outside of China and use internal group business systems for data storage. There is also a lack of criteria and relevant certification for approved local cloud service providers that European banks may cooperate with when designing their data security systems. Further guidance also needs to be issued on the evaluation processes for a cloud provider's risk management measures.

Recommendations

- Provide clear guidance on cloud usage, including data storage and protection requirements, security measures, and assessment methods.
- Provide certification to qualified financial industry cloud computing service providers.
- Allow EU banks to use group business systems and internal office systems when information has been properly secured.
- Allow EU banks to cooperate with local cloud service providers that have solid infrastructure and mature frameworks for security management.
- Allow EU banks to use cloud services outside of the Chinese mainland.

4 Adjust Requirements for Liquidity Risk Management Ratios to Reflect European Banks' Specificities

4.1 Re-evaluate Classifications of Capital, the Weight of Self-issued Bonds and Treatment of Auto-finance Loans in Liquidity Matching Ratio Calculations

Concern

The classification of tier one capital, the weight given to self-issued bonds and certificates of deposit with a remaining tenor of less than three months, and the classification of financial companies under corporate groups as 'financial institutions' rather than 'corporates'





significantly discourages EU banks from diversifying their funding sources.

Assessment

According to the *Administrative Measures on Liquidity Risk of Commercial Banks*, banks must maintain a liquidity matching ratio (LMR) of over 100 per cent.³⁴ However, easing some constraints on the local liquidity ratio could greatly improve the development of banks' corporate lending capabilities for local clients.

For example, in the LMR, tier one capital is neither classified as a stable source of funds nor included in the calculation of the loan-to-deposit ratio as a source of funds.^{35&36} In practice, tier one capital is a stable source of funds used by foreign banks to provide corporate loans. Furthermore, within the LMR, 'interbank lending' does not distinguish between intragroup and external interbank lending, even though the source of funding for these two types is different.³⁷ In addition, in the LMR calculation, the weight of self-issued bonds and certificates of deposit with a remaining tenor of less than three months is zero per cent. This is consistent with the weight for interbank lending of the same maturity. This discourages EU banks both from issuing bonds and interbank deposit certificates, and from diversifying their funding sources.

For the auto finance business, auto finance companies are treated as financial institutions rather than corporates. This results in a higher discount rate being applied when calculating the weighted fund utilisation in the LMR. However, when managing their business with auto finance companies, EU banks consider these clients as parts of corporate groups rather than as standalone financial institutions. Thus, it is reasonable to classify transactions with such finance companies as 'corporate lending' in the LMR calculation.

34 *Measures to Manage Liquidity Risks for Commercial Banks*, CBIRC, State Council, 23rd May 2018, viewed 28th April 2024, <https://www.gov.cn/gongbao/content/2018/content_5312246.htm>

35 Tier one capital describes the capital adequacy of a bank and refers to core capital that includes equity capital and disclosed reserves. From a regulator's point of view, Tier one capital is the core measure of the financial strength of a bank because it is composed of core capital. See: Grant, M, *What Is Tier 1 Capital?*, Investopedia, 9th May 2019, viewed 24th April 2024, <<https://www.investopedia.com/terms/t/tier1capital.asp>>

36 *CBIRC Issues Measures to Manage Liquidity Risk for Commercial Banks*, Moody's Analytics, 25th May 2018, viewed 24th April 2024, <[37 Intra-group funding is more stable than interbank funding given the relation between the subsidiary and its parent entity.](https://www.moodyanalytics.com/regulatory-news/may-25-18-cbirc-issues-measures-to-manage-liquidity-risk-for-commercial-banks#:~:text=CBIRC%20issued%20measures%20for%20the%20management%20of%20liquidity,asset%20adequacy%20ratio%2C%20and%20the%20liquidity%20matching%20ratio.></p></div><div data-bbox=)

Recommendations

- Treat local tier one capital as a stable source of funds in the LMRs and treat deposits from the head office or parent company as corporate deposits.
- Give intragroup funding the same value as 'corporate deposits' in the LMR.
- Distinguish between funding sources from intragroup and external interbank borrowing when calculating 'interbank lending' in the LMR.
- Increase the weight of bonds and certificates of deposit with a remaining tenor of less than three months in the LMR calculation.
- Consider auto finance company loans as corporate loans in the LMR.

4.2 Ease Monitoring Requirements for Intra-group Cross-border Net Capital Outflow (ICNCO) Ratios

Concern

Cross-border funding controls and the treatment of certain deals as capital cashflow movements block normal deals between onshore foreign banks and their headquarters, thereby discouraging shareholder investment in China.

Assessment

To comply with regulatory provisions for liquidity management,³⁸ European banks are required to monitor their Intra-group Cross-border Net Capital Outflow (ICNCO) ratios daily. If the ratio reaches 25 per cent, European banks must report the deviation to the regulatory authorities. While the working group understands the need for cross-border funding regulations aimed at regulating capital outflow, normal money market deals between onshore European banks and their parent companies are also treated as capital outflow and are thereby limited by controls on the ICNCO. Categorising and limiting normal money flows between parent companies and Chinese subsidiaries brings uncertainty to headquarters regarding access to future returns on investment.

Recommendation

- Ease monitoring requirements for the ICNCO ratio for intragroup cross-border payments.

38 *Measures to Manage Liquidity Risks for Commercial Banks*, CBIRC, State Council, 23rd May 2018, viewed 28th April 2024, <https://www.gov.cn/gongbao/content/2018/content_5312246.htm>





4.3 Remove the Restrictions on the Ratio of Onshore Assets Relative to Onshore Liabilities of Foreign Banks

Concern

The requirement that foreign banks' onshore assets should exceed their onshore liabilities severely restricts their ability to facilitate cross-border trade and investment.

Assessment

In 2022, the PBOC and the SAFE issued the *Notice on Overseas Lending by Banking Institutions* to support and regulate domestic banks' overseas loan business and to facilitate cross-border trade and investment.³⁹ Lending to overseas corporates, particularly loans in RMB, is an effective way to effectively reduce the overseas financing costs of Chinese enterprises and facilitate cross-border trade.

As the demand for such cross-border business grows, foreign bank subsidiaries are gradually extending their lending services to overseas corporates. However, according to the *Measures to Manage Liquidity Risks for Commercial Banks*, foreign banks' onshore assets should exceed their onshore liabilities.⁴⁰ As cross-border business leads to significant growth in the 'onshore liabilities' and 'offshore assets' of foreign banks, this ratio requirement significantly limits European banks that typically have small balance sheets, making them unable to serve their customers' financing needs.

In addition to the impact on cross-border lending, the ratio imposes restrictions on banks' capacity to offer cross-border RMB cash pooling. To fully support automatic cross-border RMB cash pooling, overseas banks must open RMB clearing accounts. However, due to the time difference between overseas banks and their HQs, banks face difficulties in managing clearing accounts, and can usually only arrange funding on a 'T+1' schedule.⁴¹ This may cause overnight financing

overdrafts for overseas banks, which constitute part of their 'offshore assets.' To comply with the ratio requirements, banks are severely limited in the volume of cross-border cash pool business they can support, affecting corporate customers' daily liquidity management.

Recommendation

- Remove restrictions on the ratio of foreign banks' onshore assets relative to their onshore liabilities.

4.4 Extend the Pilot Cross-border Cash Pooling Scheme to Shanghai

Concern

The pilot cross-border cash pooling scheme is not available to European banks operating their cash pooling business from Shanghai, thereby preventing them from supporting cross-border liquidity management solutions.

Assessment

The pilot programme for cross-border cash pooling enhances cross-border liquidity management and supports MNCs to establish capital management centres. The programme has only been piloted in Beijing, Guangzhou and Shenzhen, but many European banks operate their cash-pooling business from Shanghai. Extension of the pilot to Shanghai would allow EU banks to facilitate cross-border liquidity management solutions for a broader client base to support the overseas expansion of Chinese companies and benefit the real economy. These objectives are also in line with the State Council's commitment to promote the high-standard institutional opening-up of the Shanghai Free Trade Zone.

Recommendation

- Extend the pilot cross-border cash pooling scheme to Shanghai.

4.5 Allow Flexibility in Deposit Pricing Assessments for Smaller European Banks and Allow Proper Justification Based on De Facto Situations 5

Concern

The close control exercised over deposits disrupts foreign banks' daily activities.

³⁹ *Notice on Overseas Lending by Banking Institutions*, PBOC and SAFE, 10th February 2022, viewed 28th April 2024, <<http://www.pbc.gov.cn/en/3688253/3689009/4180845/4468527/2022021015175956179.pdf>>

⁴⁰ *Measures to Manage Liquidity Risks for Commercial Banks*, CBIRC, State Council, 25th May 2018, viewed 28th April 2024, <https://www.gov.cn/gongbao/content/2018/content_5312246.htm>

⁴¹ 'T+1' is the transaction date plus one day. *What Do T+1, T+2, and T+3 Mean?*, Investopedia, 22nd April 2024, viewed 30th April 2024, <<https://www.investopedia.com/ask/answers/what-do-t1-t2-and-t3-mean/#:~:text=%27T%27%20is%20the%20transaction%20date.%20The%20abbreviations%20T%2B1%2C,the%20date%20on%20which%20the%20actual%20trade%20occurs.>>





Assessment

Banks in China must undergo assessments of their deposit business and comply with several deposit-related ratios, including the deposit deviation ratio (DDR). For European banks with a smaller deposit base, complying with these requirements impacts both their business and the quality of service they can offer to clients.

The DDR, monitored at the end of each month, compares banks' deposit size at the end of the month with the daily average size during the calendar month. This is intended to prevent banks from unfairly collecting client deposits at the end of each month. In comparison to local Chinese banks, European banks have a significantly smaller deposit scale. This creates challenges in managing the month-end DDR because changes in the deposit balance of a single client can have a significant impact on the overall deposit balance. Thus, European banks may have to sacrifice customer deposit needs and service quality to meet DDR requirements or face regulatory penalties such as access restrictions, downgraded ratings, business restrictions and even stricter DDR requirements.

In addition to the DDR, the deposit pricing assessment results impact the annual prudential assessment of each bank. The assessment requires each bank to benchmark the interest rate of its term deposits and certificate of deposits with its own weighted average interest rate of one-year, two-year, three-year, and five-year term deposits and certificates of deposit during the second quarter of 2022.⁴² If the decrease in the interest rate of a certain tenor during the assessment period is too great, points will be deducted during the assessment. European banks' deposit business is relatively concentrated in a small number of clients, particularly for long-term deposits. These large MNC clients serviced by European banks are sensitive to deposit prices and may choose to pull their deposits out if pricing is not favourable. This creates a dilemma for European banks with a smaller deposit balance, that must maintain deposit stability while also meeting assessment scoring requirements.

Recommendations

- Allow flexibility in the deposit pricing assessment for smaller banks.

- Waive the DDR requirement for banks with smaller balance sheets.

Abbreviations

CERF	Carbon Emission Reduction Facility
CFETS	China Foreign Exchange Trade System
CIBM	China Interbank Bond Market
CII	Critical information infrastructure
CSL	Cybersecurity Law
CSRC	China Securities Regulatory Commission
DDR	Deposit Deviation Ratio
EU	European Union
HKMA	Hong Kong Monetary Authority
ICNCO	Intra-group Cross-border Net Capital Outflow
IT	Information Technology
LMR	Liquidity Matching Ratio
MLPS	Multi-level Protection Scheme
MNC	Multinational Corporation
MOF	Ministry of Finance
NCD	Negotiable Certificate of Deposit
NFRA	National Financial Regulatory Administration
OMO	Open Market Operation
OTC	Over The Counter
PBOC	People's Bank of China
POE	Privately-owned Enterprise
RMB	<i>Renminbi</i>
SAFE	State Administration of Foreign Exchange
SCH	Shanghai Clearing House
SOE	State-owned Enterprise

⁴² The assessment and scoring criteria, published every year, are not publicly available.





Non-banking Financial Institutions Sub-working Group

Recent Developments

During the 2024 National People's Congress (NPC), the Chinese Government set an economic growth target of around five per cent.¹ The government also announced plans to issue Chinese yuan (CNY) one trillion of ultra-long-term special Chinese Government Bonds (CGB) for significant investments in 2024, while running a budget deficit of approximately three per cent of the country's gross domestic product (GDP).^{2&3} Additionally, it is expected that there will be a substantial boost in the supply of ultra long-term government bonds from an annual range of CNY 300 billion to CNY 400 billion to begin with, to over CNY one trillion annually in the next several years. Combined, these measures suggest a continued expansionary fiscal stance in the medium term.⁴

In 2024, the Chinese Government will prioritise measures that can stimulate investment and domestic consumption. Consumption will be incentivised through fresh 'trade-in' initiatives, which target household acquisitions of new energy vehicles and electronic goods.⁵ Additionally, the Chinese Government intends to expedite key investment initiatives outlined in the 14th Five-year Plan by enhancing the efficiency of local government bond allocation and by funding public projects with a greater proportion of private capital.⁶ Alongside these measures, the authorities are attempting to address unemployment through the creation of 12 million new jobs.⁷ The government has also renewed its emphasis on climate objectives, reinstating the target of reducing energy consumption

per unit of GDP by 2.5 per cent.⁸

Non-banking financial institutions (NBFIs) can play a pivotal role in the implementation of these plans, as providers of diverse financial solutions that encompass investment opportunities, risk management, financial advisory services, brokerage, fund transfers and consumer lending. They provide individuals and enterprises—especially micro, small, and medium-sized enterprises (MSME)—with essential financial resources, bolstering domestic spending and fostering economic growth. Moreover, by promoting inclusive development and bridging regional economic gaps, NBFIs actively contribute to achieving China's economic growth targets.

Updates on Financial Leasing Companies

In 2023, both bank-based and commercial leasing companies have come under the jurisdiction of the newly created National Financial Regulatory Administration (NFRA), taking over from the China Banking and Insurance Regulatory Commission (CBIRC) and the Ministry of Commerce (MOFCOM).^{9&10}

In January 2024, the NFRA unveiled the *Management Measures for Financial Leasing Companies (Draft for Comments)*.¹¹ These measures are expected to mark a pivotal phase in financial regulation aimed at bolstering supervision, enhancing financial services and mitigating risks. While the details of how they will be implemented remain unclear, the Non-banking and Financial Institutions Sub-working Group recognises their significance for European leasing companies and is committed to monitoring and assessing their impact.

1 *China unveils 2024 growth targets with focus on high-quality development*, State Council, 6th March 2024, viewed 7th April 2024, <http://english.scio.gov.cn/in-depth/2024-03/06/content_117041759.htm>

2 *China to issue ultra-long special treasury bonds in years to come*, State Council, 5th March 2024, viewed 7th April 2024, <https://english.www.gov.cn/news/202403/05/content_WS65e67fb2c6d0868f4e8e4a79.html#:~:text=China%20will%20issue%20ultra-long%20special%20treasury%20bonds%20over,submitted%20Tuesday%20to%20the%20national%20legislature%20for%20deliberation>

3 *China sets deficit-to-GDP ratio of 3 pct for 2024*, State Council, 5th March 2024, viewed 7th April 2024, <https://english.www.gov.cn/news/202403/05/content_WS65e6786cc6d0868f4e8e4a4c.html>

4 Xiong, Y, and Ou, D, 2024, *What to expect from the National People's Congress*, Deutsche Bank Research, viewed 7th April 2024, paid subscription service.

5 *Full Text: Report on the Work of the Government*, State Council, 12th March 2023, viewed 7th April 2024, <<https://english.news.cn/20240312/0eb7388829f1400cb2bf50a49f1373932/c.html>>

6 *Ibid.*

7 *Ibid.*

8 *Ibid.*

9 *China to deepen reform of local financial regulatory mechanism*, State Council, 7th March 2023, viewed 7th April 2024, <https://english.www.gov.cn/news/topnews/202303/07/content_WS6406f6bc6d0a757729e7d75.html>

10 Bank-based leasing companies, also known as 'golden financial' leasing companies (金融租赁公司) in Chinese and commercial leasing companies (融资租赁公司) in Chinese).

11 *Management Measures for Financial Leasing Companies (Draft for Comments)*, NFRA, 5th January 2024, viewed 7th April 2024, <<https://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1145896&itemId=925&generalType=0>>





Key Recommendations

1. Ensure Consistency and Clarity of Regulations and Policies Related to the Operations of Commercial Leasing Companies

Concern

The local implementation of national regulations aimed at managing the operations of leasing companies is inconsistent and unclear, thereby restricting European financial companies' cross-provincial operations and limiting their ability to contribute to the development of the real economy.

Assessment

Although China has made progress in enhancing its regulatory framework following the establishment of the NFRA, financial leasing companies still face challenges. For example, while the December 2021 *Local Financial Supervision and Administration Regulations (Draft for Comments)*¹² indicate the intention to strengthen financial oversight, the proposed geographical restrictions under Article 11 could inadvertently limit the operational flexibility of European leasing companies.¹³ Most of these companies are registered in Beijing or Shanghai, but a large percentage of their business is conducted in other locations. Therefore, expediting the implementation of the policy and removing restrictions on cross-provincial leasing operations would reduce operational costs associated with establishing new branches. Reducing such costs may result in European companies being able to make a greater contribution to China's economy.

The NFRA's *Management Measures for Financial Leasing Companies (Draft for Comments)* proposes mostly positive regulatory reforms.¹⁴ This includes a proposal to prevent leasing companies from engaging in shadow banking activities by enforcing strict access standards, raising regulatory requirements and

strengthening risk control measures. However, new requirements for bank-based leasing companies have placed additional pressure on industry players. For example, a notice issued by the NFRA in October 2023 is aimed at reducing the proportion of new business that takes the form of post-sale leaseback¹⁵ by 15 per cent compared to the first three quarters of 2023; it also proposes that the proportion of annual new direct leasing business should be no less than 50 per cent by 2026.¹⁶ Although the intention is to limit shadow banking activities by leasing companies, which can take the form of post-sale leaseback contracts, it will also impact legitimate post-sale leaseback business, which represents a significant part of European leasing companies' portfolios. To comply with the regulation, larger, bank-based leasing companies have been able to adjust their business models to decrease their post-sale leaseback proportion. However, the 'one-size-fits-all' approach squeezes the operational space for small and medium-sized commercial leasing companies.

Prior to the October 2023 notification, bank-based and commercial leasing companies were not direct competitors. Bank-based leasing companies typically have a wide variety of asset types but traditionally focussed their leasing operations on high-value assets such as aeroplanes and ships. Following the new regulations, however, bank-based leasing companies have started recruiting employees with commercial leasing experience and have entered the business domain of commercial leasing companies, such as industrial and medical equipment leasing, which is valued in the hundreds of thousands, or even millions of Chinese yuan. While the working group welcomes fair market competition, bank-based leasing companies accessing low-cost financing channels—which are not open to commercial leasing companies—places commercial leasing companies at a disadvantage.

The two-year delay in finalising the supervisory regulations for commercial leasing companies presents an additional challenge, as it has added uncertainty regarding cross-provincial operations and the future development of commercial leasing enterprises. Intense competition, the stringent regulatory environment and unclear operational regulations make it challenging for

¹² *Local Financial Supervision and Administration Regulation (Draft for Comments)* (in Chinese), People's Bank of China (PBOC), 31st December 2021, viewed 7th April 2024, <<http://www.pbc.gov.cn/rmyh/105208/4436903/index.html>>

¹³ If Article 11 of the *Draft Regulation* were to be enforced as proposed, financial leasing companies would in principle not be allowed to engage in cross-provincial business outside of the province they are registered in without establishing a new branch. See: *Local Financial Supervision and Administration Regulation (Draft for Comments)*, PBOC, 31st December 2021, viewed 7th April 2024, <<http://www.pbc.gov.cn/rmyh/105208/4436903/index.html>>

¹⁴ *Management Measures for Financial Leasing Companies (Draft for Comments)*, NFRA, 5th January 2024, viewed 7th April 2024, <<https://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1145896&itemId=925&generalType=0>>

¹⁵ *Notice of the NFRA on Promoting the Standardised Operation and Compliance Management of Financial Leasing Companies*, NFRA, 27th October 2023, viewed 7th April 2024, <https://www.gov.cn/zhengce/zhengceku/202310/content_6912472.htm>

¹⁶ *Ibid.*





parent companies to formulate practical development strategies for their commercial leasing subsidiaries in China.

Recent regulatory measures, including the *Management Measures for Financial Leasing Companies (Draft for Comments)* and the *Management Measures for Consumer Finance Companies (Draft for Comments)*, significantly raise the entry thresholds—in terms of criteria for main contributors and financial requirements for shareholders—compared to previous versions.^{17&18} While the working group understands the intention to enhance financial institutions' risk resilience and promote stable financial development, applying the same standards across the board, such as the requirement that companies must have a minimum registered capital of CNY one billion, poses high operational costs for smaller European commercial leasing companies.

While the NFRA's intention to eliminate the exploitation of regulatory loopholes within the leasing industry is a positive development, regulations should be implemented in a way that does not harm legitimate industry participants. Delayed implementation of the proposed regulations, sole reliance on financial indicators and restrictions on cross-provincial business do not take the specificities of commercial leasing companies' business models into account, thereby threatening their ability to survive under the new regulatory framework.

Recommendations

- Finalise the draft *Local Financial Supervision and Administration Regulations* to resolve ongoing uncertainty affecting the development and operational strategies of commercial leasing companies.
- Revise Article 11 and remove the restrictions on cross-provincial operations.
- Maintain distinct operational guidelines for commercial leasing companies to focus on diversified development paths rather than solely on performance-based metrics.

¹⁷ *Management Measures for Financial Leasing Companies (Draft for Comments)*, NFRA, 5th January 2024, viewed 7th April 2024, <<https://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1145896&itemId=925&generalType=0>>

¹⁸ *Management Measures for Consumer Finance Companies (Draft for Comments)*, NFRA, 19th December 2023, viewed 7th April 2024, <<https://jrj.sh.gov.cn/YWWTBZCCX166/20231219/14fc85716b1b488db67342eb17576d8a.html>>

2. Define Clear Criteria for the Evaluation of Intangible Assets to Promote European Equipment Leasing Companies' (ELC) Participation in Intangible Asset Financing

Concern

The evaluation criteria for intangible assets lack clarity, thereby preventing ELCs from participating in local pilot programmes and sharing innovative solutions — hindering China from achieving its goal of developing the real economy.

Assessment

The emerging trend of financing intangible assets, such as licence-based software, is a crucial way of providing financial support to China's information technology (IT) industry, which in turn supports the development of China's real economy and ELCs in the country.

According to a technological research firm, the total investment in global IT in 2021 was United States dollar (USD) 4.24 trillion, accounting for 4.57 per cent of global gross domestic product. Software and service investment accounted for 76 per cent of this investment, with hardware equipment investment accounting for the rest.¹⁹ An important characteristic of the IT industry is that the proportion of software and service investment far exceeds that of hardware investment, and the growth rate of software and service investment is also higher than that of hardware. Supporting the development of software is therefore inseparable from supporting the overall development of technology-related industries. With IT investment in the Chinese market expected to grow at a rate higher than the global average for the foreseeable future,²⁰ allowing ELCs to offer financing solutions for intangible assets will greatly support this new development.

The know-how that European ELCs have developed over the years has given their customers the opportunity to access expensive IT and industrial software, enabling them to achieve higher efficiency, and become more sophisticated and technologically advanced. However, members of the Non-banking Financial Institutions

¹⁹ *Gartner Forecasts Worldwide IT Spending to Grow 2.4% in 2023*, Gartner, 18th January 2023, viewed 7th April 2024, <<https://www.gartner.com/en/newsroom/press-releases/2023-01-18-gartner-forecasts-worldwide-it-spending-to-grow-2-percent-in-2023>>

²⁰ *Ibid.*





Working Group report that while intangible assets and supply chain financing represent a significant percentage of their overall financing, little progress has been made when it comes to European participation in intangible asset financing activities in China.

While there are some pilot cases of intangible asset financing through leasing in the cultural industry in China, the working group would like the regulator to consider creating a new innovative corridor for ELC engagement in offering financing solutions for intangible assets, particularly through software leasing.²¹ The working group recommends that clear qualification criteria and definitions for intangible assets are put in place, to enable European ELCs' participation in intangible asset financing, particularly in areas such as the Beijing Zhongguancun Comprehensive Bonded Zone, which is focussed on developing breakthrough technologies.²²

Recommendations

- Promote innovation in financial services by permitting some ELCs to use leasing solutions to finance intangible assets, and by enabling ELCs to develop new intangibles' leasing solutions.
- Enable ELCs to participate in intangible asset financing by defining clear qualification criteria and assessment processes for intangible assets.

3. Enable ELCs to Acquire Cross-border Corporate and Bank Guarantees 5

Concern

European leasing companies can use their international connections to finance the Chinese subsidiaries of European small and medium-sized enterprises (SMEs), but eligibility restrictions on cross-border guarantees limit their risk appetite for supporting such investment in China.

Assessment

According to the *Regulations on the Administration of Foreign Exchange for Cross-border Guarantees*,

²¹ *The State Council on Comprehensively Promoting Beijing's Service Industry; Approval of the Comprehensive Pilot Work Plan for Expanding Opening-up*, State Council, 22nd February 2019, viewed 11th May 2024, <http://www.gov.cn/zhengce/content/2019-02/22/content_5367708.htm>

²² *Beijing Zhongguancun Comprehensive Bonded Zone Obtains Official Approval for Establishment*, Beijing Municipal Government, 9th June 2023, viewed 7th April 2024, <https://english.beijing.gov.cn/investinginbeijing/two_zones/updates/202306/120230609_3129247.html>

issued by the State Administration of Foreign Exchange (SAFE) on 15th May 2015, only banks registered in the Chinese mainland are eligible to secure cross-border guarantees. This limits the risk appetite of European ELCs, thereby impeding their willingness to bolster foreign investments in China by financing European SMEs in China.²³ As a result, China-based SME subsidiaries of foreign businesses face challenges when accessing local structured financing.

In some lease agreements, foreign-invested ELCs receive cross-border guarantees for safeguarding lessees in China, to ensure compliance with rental payment obligations. However, despite being categorised as NBFIs in accordance with local financial regulatory guidelines, ELCs in China are not effectively recognised as such in practice.²⁴ Consequently, they are ineligible for Onshore Borrowing with Offshore Guarantees (*waibao neidai*), which permits ELCs to receive guarantees from lessees' parent companies registered outside of China.²⁵ This restriction on foreign ELCs results in an estimated 20 to 30 per cent of potential business remaining untapped.

Recommendation

- Permit ELCs to access cross-border corporate and bank guarantees to promote access to credit facilities in China.

4. Adjust the Rating Criteria Requirements Linked to Non-Performing Loan (NPL) Ratios

Concern

Current regulatory requirements regarding the calculation of NPL ratios pose challenges for smaller European non-banking financial institutions and are also not fully aligned with companies' risk management policies.

²³ *Notice of the State Administration of Foreign Exchange on the Issuance of the Regulations on the Administration of Foreign Exchange for Cross-border Guarantees [2014] No. 29*, SAFE, 15th May 2015, viewed 7th April 2024, <<http://www.safe.gov.cn/shenzhen/2015/05/15/133.html>>

²⁴ See for instance the *Shanghai Local Financial Supervision and Management Regulations* or the *Zhejiang Local Financial Supervision and Management Regulations: Shanghai Local Financial Supervision and Management Regulations*, Shanghai Bureau for Financial Supervision, 10th October 2020, viewed 7th April 2024, <<https://jjj.sh.gov.cn/YWTBZCCX166/20200520/eaadcfee05c9440581f657425204141d.html>>; *Zhejiang Local Financial Supervision and Management Regulations*, Zhejiang Bureau for Financial Supervision, 16th May 2020, viewed 7th April 2024, <http://sjrb.zj.gov.cn/art/2020/5/16/art_1370340_43103760.html>

²⁵ *Notice on the Measures for the Administration of the Registration of External Debt*, SAFE, 3rd May 2013, viewed 7th April 2024, <http://www.gov.cn/zwgk/2013-05/03/content_2395170.htm>





Assessment

The NPL ratio has always been an important risk indicator in the financial industry, and the working group supports regulatory efforts to control NPL ratios. However, during annual inspections of local financial organisations, local regulatory authorities have stipulated a requirement that the NPL ratio must not exceed five per cent. Although this requirement is already in place for banking financial institutions under the *Core Risk Management Indicators for Commercial Banks (Trial)*,²⁶ the working group believes that the NPL ratio metric does not fully reflect the asset quality or the level of risk management and compliance operations of European commercial leasing companies.

European leasing companies operate with a principle of caution, resulting in a low approval rate for leases due to high-quality lease items and smaller appetite for risk exposure. Even in cases of occasional customer delinquency, most losses can usually be recovered through the repossession of leased assets.

Furthermore, European leasing companies in China adhere to legal and compliance guidelines in support of the real economy and SME development. If there is a possibility of repayment from overdue customers, European leasing companies typically delay writing off the entire transaction. As a result, some commercial leasing companies may appear to have a higher absolute NPL ratio. However, a closer inspection of each bad loan often reveals that most are historical NPLs rather than NPLs added in the current period.

European leasing companies are also usually very cautious with tax handling. If there is a possibility of recovering overdue rent, the write-off process is typically delayed. Additionally, the STA's *Announcement No. 86 of 2019, Regarding Pre-tax Deduction of Loan Loss Provisions for Financial Enterprises*, allows certain financial institutions to deduct loan loss provisions before taxes in accordance with the principle that companies "should write off as much as possible."²⁷ The announcement includes financial leasing companies in the scope of pre-tax deduction but excludes commercial leasing companies. This poses potential tax losses if

write-offs are mishandled, further complicating decision-making for European leasing companies. Following the expiration of the 2019 announcement on 31st December 2023, no new rules have been announced.

Recommendations

- Conduct a comprehensive assessment of European leasing companies' loan performance indicators, considering factors other than the NPL ratio.
- Revise the STA's *Announcement No. 86* to include local financial organisations within its scope, thereby removing obstacles for commercial leasing companies in performing write-offs.

Abbreviations

CBIRC	China Banking and Insurance Regulatory Commission
CGB	Chinese Government Bond
CNY	Chinese Yuan
DMV	Department of Motor Vehicles
ELC	Equipment Leasing Company
GDP	Gross Domestic Product
IT	Information Technology
MOFCOM	Ministry of Commerce
MSME	Micro, Small and Medium-sized Enterprise
NBFI	Non-banking Financial Institutions
NFRA	National Financial Regulatory Administration
NPC	National People's Congress
NPL	Non-performing Loan
PBOC	People's Bank of China
SAFE	State Administration of Foreign Exchange
SALB	Sale-and-lease-back
SME	Small and Medium-sized Enterprise
STA	State Taxation Administration
VAO	Vehicle Administrative Office

²⁶ *Core Risk Management Indicators for Commercial Banks (Trial)*, Central People's Government, 15th January 2006, viewed 7th April 2024, <https://www.gov.cn/ztl/2006-01/15/content_159630.htm?e=1449990567460>

²⁷ *Regarding Pre-tax Deduction of Loan Loss Provisions for Financial Enterprises*, STA, 23rd August 2019, viewed 7th April 2024, <https://www.gov.cn/zhengce/zhengceku/2019-09/18/content_5462166.htm>





Insurance Sub-working Group

Recent Developments

Market Overview

In 2023, the Chinese Government's attempts to stimulate the economy through lower interest rates negatively impacted the profitability of insurers. 2023 was a strong year for non-life insurance markets, with motor insurance emerging as a key growth driver. Following a rebound in road traffic after China's zero-COVID control measures were lifted, there was a notable increase in the frequency of claims across the industry, particularly in the motor insurance sector.¹ In 2023, the overall assets of insurance companies reached Chinese yuan (CNY) 29.96 trillion, a 10.6 per cent increase year-on-year.² Breaking this down: the total assets of property insurance companies were CNY 2.8 trillion, an increase of around three per cent from the end of 2022;³ the total assets of life insurance companies reached CNY 25.9 trillion, an increase of around 10.9 per cent compared to the start of 2023;⁴ reinsurance companies' assets were CNY 747.1 billion, an increase of 11.2 per cent compared to the beginning of 2023;⁵ the total assets of asset management companies were CNY 105.2, a 1.6 per cent increase compared to the beginning of the year.⁶ While China's growth target for 2023 of around five per cent was achieved, a weaker macroeconomic growth outlook, the performance of the real estate sector and relatively weak consumption have led to an uncertain outlook for 2024.⁷

Regulatory Developments

The National Financial Regulatory Administration (NFRA) released several policies and regulations relevant to the insurance industry in 2023. New regulations on motor insurance were published during

the first half of the year and were followed by the *Notice on Strengthening the Management of Car Insurance Expenses (Notice 450)*.⁸ These regulations put further emphasis on pricing and cost control, thereby pushing all players to adapt to restrictions on pricing and expenses in every province. In addition, solvency rules under phase II of the China Risk-orientated Solvency System (C-ROSS) were updated to allow insurers more operational flexibility, notably on the investment side.⁹ This development benefited smaller insurers in particular since the rules have been adjusted to consider the balance sheets of insurers when determining minimum capital requirements. This will relieve capital burdens and is expected to help maintain solvency stability for foreign insurers that generally have lower growth and a less favourable investment environment.

In a move to promote foreign investment in the insurance sector, the NFRA established the International Reinsurance Centre in the Lin-gang Special Area within the Shanghai Pilot Free Trade Zone. The centre will include an international reinsurance trading market and a reinsurance international board. Foreign and domestic insurers that establish reinsurance operation facilities in the centre can enjoy favourable tax and cross-border capital policies, as well as differentiated supervision measures for clearing and settlement methods, solvency reinsurance credit risk and registration management regulations for international reinsurance businesses.¹⁰ The working group welcomes this and future developments aimed at international opening up of the Chinese insurance and reinsurance markets.

1 *China's non-life outlook solid, thanks to motor segment: AM Best, Insurance Asia*, December 2023, viewed 18th April 2024, <<https://insuranceasia.com/insurance/news/chinas-non-life-outlook-solid-thanks-motor-segment-am-best>>

2 *The data of the main regulatory indicators of the banking and insurance industries in the fourth quarter of 2023*, NFRA, 23rd February 2024, viewed 18th April 2024, <https://www.gov.cn/lianbo/bumen/202402/content_6933551.htm>

3 *Ibid.*

4 *Ibid.*

5 *Ibid.*

6 *Ibid.*

7 *China's non-life outlook solid, thanks to motor segment: AM Best, Insurance Asia*, December 2023, viewed 18th April 2024, <<https://insuranceasia.com/insurance/news/chinas-non-life-outlook-solid-thanks-motor-segment-am-best>>

8 *Notice on Strengthening the Management of Car Insurance Expenses*, NFRA, 26th September 2023, viewed 18th April 2024, <<https://cn.chinadaily.com.cn/a/202309/26/WS6512abd5a310936092f23d10.html>>

9 *Notice of the National Financial Regulatory Administration on Optimising the Regulatory Standards for Insurance Companies' Solvency*, NFRA, 10th September 2023, viewed 22nd April 2024, <https://www.gov.cn/zhengce/zhengceku/202309/content_6903251.htm>

10 *Shanghai's reinsurance center goals coalescing on supportive regulations*, *China Daily*, 1st June 2023, viewed 18th April 2024, <https://english.www.gov.cn/news/202306/01/content_WS6477f67bc6d0868f4e8dc8d4.html>



Key Recommendations

1. Ensure Consistent Treatment in Supervisory Ratings for Insurance Companies

Concern

The lack of clarity and transparency in supervisory rating indicators and their respective scales risks penalising small and foreign insurers, thereby hindering China's efforts to create both a diversified market and a level playing field.

Assessment

Currently, insurance companies need to regularly deliver different sets of figures and indicators to comply with different types of supervisory ratings. These include the supervisory rating; the integrated risk rating under the C-ROSS framework; the asset liability management rating; the consumer protection rating; the corporate governance rating; and the insurance operation rating, among others.¹¹ Some of the required indicators overlap, while others vary. For example, most of the indicators in the newly promulgated supervisory rating encompass the previous specialised ratings but require additional information such as the product mix, the proportion of long-term business and sales personnel retention figures.

The assessment of individual indicator requirements is also not transparent in either the newly promulgated supervisory rating or the integrated risk rating. Assessment scales for some indicators are not specified, so companies do not know what would result in a better rating and what would not. For example, with regard to the rate of insurance premium growth, there is a lack of clarity over which level of growth is acceptable to the regulator. For other indicators, such as the share of annuity business and the level of sum assured, it is unclear which result is acceptable or preferred in the long term. These uncertainties disproportionately affect insurers with smaller business volumes, as even slight variations in business operations may significantly shift the rating indicators and lead to lower scoring.

¹¹ Ratings may require insurers to submit ratings on an annual, quarterly, or monthly basis. See: *Notice of the NFRA on Issuing the Measures for Regulatory Rating of Life Insurance Companies*, NFRA, 18th March 2024, viewed 18th April 2024, <https://www.gov.cn/zhengce/zhengceku/202403/content_6940022.htm>; *C-ROSS Phase 2 Strengthens Chinese Insurers' Credit Profiles*, Fitch Ratings, 3rd January 2022, viewed 18th April 2024, <<https://www.fitchratings.com/research/insurance/c-ross-phase-2-strengthens-chinese-insurers-credit-profiles-03-01-2022>>

Other indicators assess companies relative to industry players and rankings, such as the share of related-party transactions and commissions, which are incurred in the course of normal business operations through bancassurance channels. The 'time to payment' of claims is also assessed in this manner. However, most industry players have already achieved a very short 'time to payment', meaning that the differentiating effect of the ranking is lost.

In the abovementioned cases, insurance companies do not have access to the results of other companies, so they are unable to benchmark themselves within the industry. At the same time, ranking assessments are not carried out consistently by different provincial regulatory authorities and bureaus. In some cases, companies are ranked based on a nationwide assessment, while in others they are only assessed in comparison to companies within the same province.

Furthermore, the ratings penalise companies that have strategically chosen to sell their products through favoured channels to make full use of their shareholders' backgrounds, such as overweighting bancassurance channels.¹² Bancassurance players also differentiate themselves in terms of product offerings to fulfil the needs of clients buying products through bank branches. However, in the supervisory ratings, any concentration in sales channels is penalised, despite this being a legitimate and healthy business model. Another example is penalties handed down to companies whose insurance premium growth deviates from the industry average. These assessments create an environment that favours large domestic companies with the resources to diversify their sales channels while penalising smaller foreign and domestic insurers that need to surpass the industry average to catch up with larger industry players and reach economies of scale. Given the limited resources of smaller insurers and the unique business model of bancassurance companies, it is necessary to have regulations and supervisory measures that reflect this.

The integrated risk rating requires life insurance companies to attain a risk level and risk rating of 'A'

¹² Bancassurance refers to an agreement between a bank and an insurance company. In bancassurance, the insurance company can use the bank's distribution channels to sell products. Banks, in return, collect a certain fee from the insurance company. Source: *Bancassurance*, Corporate Finance Institute, viewed 18th April 2024, <<https://corporatefinanceinstitute.com/resources/wealthmanagement/bancassurance/>>





to qualify to engage in certain types of normal life insurance business. Related-party transactions' risks are given high weights (40 per cent) in the 'company governance' section of the Integrated Risk Rating system, and a minimum score of 70 in this category is one of the pre-conditions for being awarded an 'A or above' rating.¹³ The current scoring rules for related party transactions are solely based on a simple ranking of the proportion of such transactions among all life insurance companies, which leads to lower scores for bancassurance companies.

Furthermore, members have observed that feedback on the different rating results sometimes has a time lag of one to three months after the assessment period, and that the notice of assessment results often includes only limited and general information about indicators that must be improved. In many cases, the results of these ratings are used internally to assess staff performance and ensure progress, meaning timely and transparent feedback is vital for companies to manage their business consistently within the regulatory framework. One positive development in this regard was the recent decision to change the frequency of the Internal Risk Rating from quarterly to bi-annually.¹⁴ To improve the mechanism further, the working group recommends that feedback be delivered in such a way that clarifies the impact of each indicator directly, and allows them to understand where additional points have been deducted for items not in the official framework. This includes deductions for not correcting findings promptly, or other matters that are important to regulatory authorities.

Recommendations

- Consolidate the individual ratings into one single supervisory rating over the next year to ensure the best use of regulatory resources, and streamline the use of an overall rating in other regulatory frameworks.
- Increase the consistency of the assessment framework and rely on relative rankings only when meaningful, to avoid adverse impacts on small and foreign insurers.
- Tailor the indicators for specialised models, such as

¹³ Notice of CBIRC on Releasing the Solvency Regulatory Rules II for Insurance Companies, China Banking and Insurance Regulatory Commission, 30th December 2021, viewed 18th April 2024, <<https://www.cbirc.gov.cn/cn/view/pages/governmentDetail.html?%20docId=1027892&itemId=861&generalType=1>>

¹⁴ Notice of the NFRA on Issuing the Measures for Regulatory Rating of Life Insurance Companies, NFRA, 18th March 2024, viewed 18th April 2024, <https://www.gov.cn/zhengce/zhengceku/202403/content_6940022.htm>

the weighting of sales channels and related parties' transactions, to ensure a level playing field for companies operating different business models.

2. Ensure that Cross-border Data Transfer and Data Protection Requirements are Clear, and Set a Practical Standard for Defining 'Important Data'

Concern

Some of China's cross-border data transfer regulatory requirements are not very clear or practical, which creates significant uncertainties and, in many cases, results in unfair disadvantages for foreign-invested insurance companies.

Assessment

The provisions of the Cybersecurity Law, the Data Security Law and the *Measures for the Security Assessment of Outbound Data Transfers* impose strict regulatory requirements on the processing of 'important data'. Each industry regulator is required to develop its own catalogue of important data that necessitates a high level of security protection.¹⁵

However, in many industries, such catalogues have not yet been published, and the absence of official clarification on the scope of 'important data' causes significant uncertainty for companies. In this respect, it is notable that European Chamber members in the financial services industry report that data regulations constitute the most significant regulatory obstacle to doing business in China.¹⁶

On 22nd March 2024, the Cyberspace Administration of China (CAC) officially issued the *Provisions on Regulating and Facilitating Cross-border Data Flows* which clarified that all non-personal information that is not defined as 'important data' will not be subject to a security assessment.¹⁷ In addition, the transfer of

¹⁵ Cybersecurity Law of the People's Republic of China, NPC, 7th November 2016, viewed 18th April 2024 <http://www.npc.gov.cn/zgrdw/npc/xinwen/2016-11/07/content_2001605.htm>; Data Security Law of the People's Republic of China, NPC, 10th June 2021, viewed 18th April 2024, <<http://www.npc.gov.cn/npc/c30834/202106/7c9af12f51334a73b56d7938f99a788a.shtml>>; *Measures for the Security Assessment of Outbound Data Transfers*, State Council, 7th July 2022, viewed 18th April 2024, <http://www.gov.cn/zhengce/zhengceku/2022-07/08/content_5699851.htm>

¹⁶ *European Business in China Business Confidence Survey 2024*, European Union Chamber of Commerce in China, 10th May 2024, viewed 22nd May 2024, <<https://www.europeanchamber.com.cn/en/publications-business-confidence-survey>>

¹⁷ *Provisions on Regulating and Facilitating Cross-border Data Flows*, CAC, issued on 22nd March 2024, viewed 11th June 2024, <https://www.cac.gov.cn/2024-03/22/c_1712776611775634.htm>



any employee's personal information overseas for the purpose of cross-border human resources management under lawfully established labour rules and regulations is also exempted from a security assessment. These developments greatly ease the burden on financial institutions. The working group also welcomes the confirmation at a recent exchange with the NFRA that the regulator is making progress toward the creation of an 'important data' reporting and assessment catalogue. In addition, the *Measures for Data Security Management of Banking and Insurance Institutions (Draft for Comments)*, released by the NFRA in March 2024, has introduced proposals that, if implemented, could extend the scope of the NFRA's regulatory intervention into the day-to-day data use of insurance and banking institutions. The relevant working groups have submitted comments on the draft regulation and will monitor the impact of the regulation once it is finalised.

Recommendations

- Apply a simplified security review process to the transfer of low-risk data within multinational companies for management purposes, particularly reinsurance business data and the financial data of local companies.
- Issue a clear and detailed definition of 'important data' and clarify the processing rules for general data.

3. Allow the Designation of Foreign Insurance Groups' Regional HQs as the Primary Service Provider and Shareholder Management Entity

Concern

Unclear regulations on regional HQs of foreign insurance companies has limited their ability to provide services and perform equity management functions for entities within their group, thereby disrupting daily operations.

Assessment

Under the current regulatory framework, foreign insurance companies must comply with the *Measures on the Supervision of Major Shareholders' Behaviour in Banking and Insurance Institutions*

(*Trial Implementation*) issued by the NFRA.¹⁸ Foreign shareholders must also comply with their home countries' regulatory and supervision mechanisms. Therefore, communication between foreign shareholders and the NFRA is crucial to avoid misunderstandings. Under current regulations, foreign institutions may only liaise with the NFRA through insurance institutions in the domestic market. This indirect communication can easily lead to miscommunication of relevant regulatory requirements to foreign shareholders, thereby undermining foreign shareholder interests and causing disruptions to daily operations.

As insurance companies cannot operate beyond their NFRA-approved business scope,¹⁹ the provision of management or support services to another entity within the same group is not directly permitted. Foreign insurance groups are therefore required to set up a 'sister' or 'mother' company to manage their various entities in China, communicate with local regulators and create synergies between operations. The establishment of such a service company would require direct investment (subject to NFRA approval, and involving potentially significant additional costs) and would come with constraints in the way such a subsidiary could operate (for example, certain IT services cannot be provided by a third party even in a single group). Instead, some foreign insurance groups would rather set up regional HQs to manage their domestic investment enterprises, which at the same time can allow the NFRA to manage the foreign shareholders of insurance institutions more directly. In the long term, this would facilitate better communication and supervision of foreign shareholders of insurance institutions. To ensure the efficiency of such a legal set-up, the working group recommends that the relevant authorities clarify the scope of services that can be provided by such companies, as well as the associated tax treatment, notably value-added tax.

In the banking sector, the NFRA has recognised the supervisory status and functions of authorised regional HQs of foreign banks. This recognition is confirmed

¹⁸ *Supervision of Major Shareholders' Behaviour in Banking and Insurance Institutions (Trial Implementation)*, China Banking and Insurance Regulatory Commission, 14th October 2021, viewed 18th April 2024, <https://www.gov.cn/zhengce/zhengceku/2021-10/15/content_5642783.htm>

¹⁹ *Insurance Law of the People's Republic of China*, NPC, 28th February 2009, viewed 19th April 2024, <http://www.npc.gov.cn/zgrdw/englishnpc/Law/2011-02/15/content_1620648.htm>





in Article 63 of the *Implementation Rules of the Regulations of the People's Republic of China on the Administration of Foreign-funded Banks*; and Article 115 of the *Implementation Measures on Administrative Licensing Items for Foreign-funded Banks*.^{20&21} However, no such regulation has been formalised for insurance institutions facing similar issues.

Recommendations

- Formally authorise the regional HQs of foreign insurance groups to assist in exercising the rights of shareholders and managing foreign-invested insurance institutions in China.
- Allow regional HQs of foreign insurance groups to serve as the main liaison between foreign insurance groups and regulators.
- Allow NFRA communication with regional HQs regarding shareholder management information.
- Clarify the legal structure that insurance companies may use to harmonise support services across entities.

Abbreviations

CAC	Cyberspace Administration of China
CNY	Chinese Yuan
C-ROSS	China Risk-oriented Solvency System
CTPL	Compulsory Third Party Liability
GWP	Gross Written Premiums
HQ	Headquarter
KPI	Key Performance Indicator
NFRA	National Financial Regulatory Administration

²⁰ *Implementation Rules of the Regulations of the People's Republic of China on the Administration of Foreign-funded Banks*, China Banking and Insurance Regulatory Commission, 18th December 2019, viewed 18th April 2024, <https://www.gov.cn/zhengce/2019-12/25/content_5725811.htm> Article 63 states: Where two or more branches of a foreign bank are established in China, the head office of the foreign bank or its authorised regional headquarters shall designate one of the branches as the management bank, which shall be responsible in a coordinated manner for the management of the business in China as well as for the consolidated information of all the bank's branches in China. The foreign bank or the authorised regional headquarters shall designate the head of the management bank to be responsible for the management of the business in China and the compliance officer to oversee regulatory compliance in China.

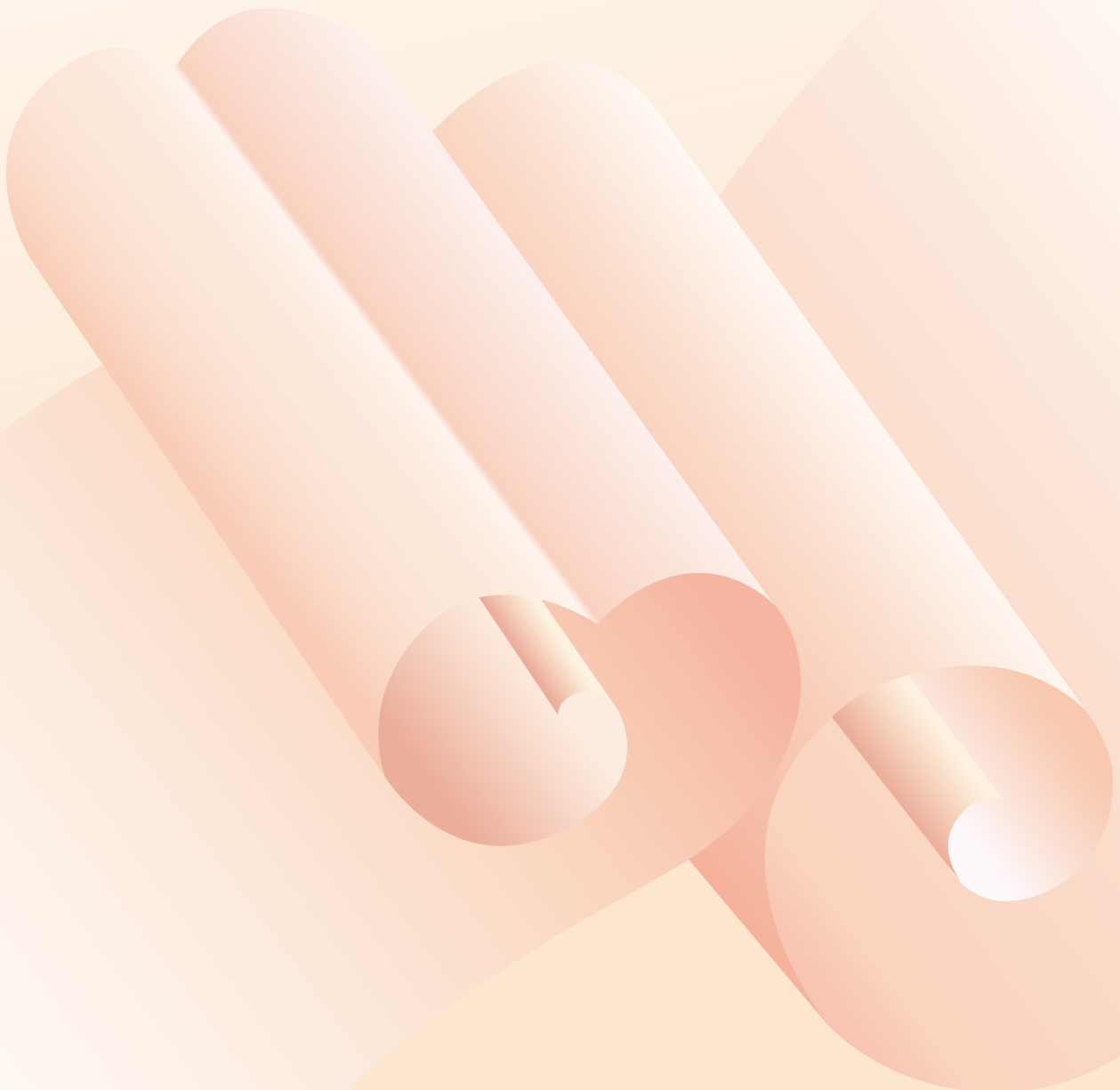
²¹ *Implementation Measures on Administrative Licensing Items for Foreign-funded Banks*, China Banking and Insurance Regulatory Commission, 26th December 2019, viewed 18th April 2024, <https://www.gov.cn/gongbao/content/2020/content_5501063.htm> Article 115 states: A branch of a foreign bank applying to open a derivatives trading business shall be formally authorised by its head office (regional headquarters), its home country shall have a legal framework for the supervision of the derivatives trading business, and the supervisory body of its home country shall have the corresponding supervisory capacity.



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6 Section Six

Forums





Corporate Social Responsibility Forum

The Corporate Social Responsibility (CSR) Forum is an event-driven platform that regularly organises meetings, training courses and events of interest to all European Chamber members. Established in 2005, it is now comprised of more than 250 member companies in China that cover a wide range of corporate functions, such as sustainability/CSR, marketing and communications, public relations, government relations, corporate governance and compliance, human resources, the environment, and health and safety.

The CSR Forum promotes best practices established by European companies and emphasises the importance of a strategic and innovative approach to CSR. Furthermore, the forum fosters CSR collaboration and co-innovation between the European Chamber, Chinese government agencies, professional organisations and local non-governmental organisations.

The CSR Forum held a total of 21 activities in 2023—including meetings, seminars and conferences—in Beijing and Shanghai. One of the forum's flagship events is its SBA Series: Sustainable Business VIP Talks, which brings together corporate leaders for high-level discussions. Topics of past events have included: inclusive employment enhancement; CSR trends; implementation of notices and consent in personal information processing; the European Union's (EU's) Carbon Border Adjustment Mechanism (CBAM); the reboot of China's voluntary carbon market; and the impact of sustainability practices on the consumer goods market.

In 2023, the European Commission launched the Green Deal Industrial Plan, to improve the competitiveness of Europe's green industries and support its rapid transition to carbon neutrality.¹ As the most important shared goal of the EU and China, carbon neutrality is and will continue to be a major focus of the CSR Forum.

2024 marks the eighth year of the Sustainable Business Awards (SBA) in the Shanghai Chapter and the 11th of the CSR Awards in the Nanjing Chapter of the European Chamber. Both awards will continue to reward excellence in sustainability and CSR and raise member's awareness about sustainable business practices and responsible operating models.

The European Chamber has established strong partnerships with governmental stakeholders and affiliated associations to advocate CSR awareness and responsible business conduct in the business community. In 2024/2025, the CSR Forum will continue to foster dialogue between European Chamber member companies and Chinese stakeholders to promote the best European CSR practices and explore new, innovative ways to act sustainably. Regular exchanges between EU stakeholders and member companies on the Corporate Sustainability Due Diligence Directive (CSDDD), the Corporate Social Reporting Directive (CSRD) and relevant policy requirements will be hosted in the upcoming months.

¹ *A Green Deal Industrial Plan for the Net-Zero Age*, European Commission, 1st February 2023, viewed 26th March 2024, <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52023DC0062>>





Government Affairs Forum

Established in 2011, the Government Affairs Forum consists of government affairs (GA) professionals from European Chamber member companies that represent a wide range of industries. Most of the forum's participants have considerable experience in GA and policy advocacy at the local and national levels in both Europe and China. The forum has established itself as a platform for sharing best practices, social networking and where members can learn more about China's political and economic environment, recently-enacted policies and the latest GA trends.

In February 2023, the forum invited Liu Nanxing, director of the National Development and Reform Commission (NDRC) Training Centre, to discuss government-enterprise relations and the opportunities and challenges of GA for foreign companies in the current environment. In June, the European Chamber organised its first annual GA conference to provide guidance to member companies on policy and regulatory trends, as well as best practices.

To help members understand China's changing policy environment, He Mingyang, researcher at the NDRC's Institute of Economic Research, provided an interpretation of the 'Two Sessions' in April 2023 and again in January 2024, delivered a briefing session on the 2023 Central Economic Work Conference and gave his analysis of China's macro-economic outlook.

On the topic of de-risking supply chains, Sun Yanhong, director of the European Economy Division of the Institute of European Studies, Chinese Academy of Social Sciences, introduced the European Union's (EU) economic security strategy and its impact on EU-China economic and trade relations in September 2023.

In addition to organising events on macro policies, the forum also engaged in dialogues with government officials to discuss some of the difficulties encountered by member companies. These included a seminar with the Beijing Municipal People's Congress in March 2023 and a roundtable with the Beijing Municipal Commission of Development and Reform in July. The forum also participated in quarterly seminars for foreign-funded enterprises with the China Council for the Promotion of International Trade.

While it is clear that European businesses in China will face uncertainties and challenges in 2024/2025, the Government Affairs Forum will continue to facilitate dialogue between member companies and Chinese stakeholders, and work towards creating a more open and pragmatic communication platform.





Manufacturing Forum

Since its establishment in 2012, the Manufacturing Forum has kept pace with the challenges faced by European manufacturing companies operating in China. The forum is comprised of 181 member companies that cover a wide range of industries, such as machinery, electronics, automotive, chemicals, consumer goods, energy, telecommunications, healthcare and petrochemicals. It functions as a platform for sharing practical information between members and supporting their operations in China, in formats including:

- local regulation updates;
- business intelligence sharing;
- requests for help from the European Chamber; and
- requests for help from other members.

Throughout 2023 and the greater part of 2024, the Manufacturing Forum held a number of events. Factory visits were conducted at both multinational corporations and small and medium-sized enterprises. Presentations, onsite demonstrations and roundtable discussions were included during the visits to explore topics such as strategies for effective pollution prevention, resource considerations for Kaizen implementation and innovative marketing approaches, while also addressing methods for incentivising production line workers to lead lean projects.

The topic of automation was covered at several events, where members gained insights on advanced automated production lines and warehousing systems, and engaged in discussions on identifying the right technologies, tools and processes tailored to various industrial settings.

The forum also regularly invited experts to share their knowledge and views on subjects as varied as cybersecurity, innovation, and China's economy and industry outlook.

Through participating in the China Hi-Tech Fair¹ and the Industrial Green Development Conference,² forum members met with representatives of the Chinese Government at various levels and exchanged ideas on innovation and carbon neutrality.

During the coming year, the Manufacturing Forum will focus on the development of the sector, organise exchanges on topics chosen by members and explore potential solutions to common challenges, such as labour shortages. The Manufacturing Forum will also explore emerging trends such as artificial intelligence and decarbonisation tools, identifying future growth opportunities.

¹ The China Hi-Tech Fair is jointly held by the Ministry of Commerce, the Ministry of Science and Technology, the Ministry of Industry and Information Technology, the National Development and Reform Commission, the Ministry of Agriculture and Rural Affairs, the National Intellectual Property Administration, the Chinese Academy of Sciences, the Chinese Academy of Engineering, and the Shenzhen Municipal Government. It has been held annually in Shenzhen since 1999. (<https://www.chtf.com/>)

² The 2023 Industry Green Development Conference was held on 1st June 2023 in Guangzhou and was co-hosted by the Ministry of Industry and Information Technology, the Guangdong Provincial Government and the Guangzhou Municipal Government.





Marketing and Communications Forum

The Marketing and Communications Forum is comprised of marketing and communications professionals from a wide range of industries. They represent over 300 member companies based in the European Chamber's Beijing, Shanghai and South China chapters. By organising meetings, seminars and training sessions, the forum serves as a platform for exchanging information, experiences and best practices among members on the most effective use of marketing and communications to achieve business objectives in China.

Throughout 2023, 11 activities were organised by the forum across the three chapters.

Following the November 2022 launch of ChatGPT, OpenAI's text-generating, artificial intelligence (AI) chatbot, AI has once again grabbed the attention of businesses keen to understand its practical applications. On 21st March, the Shanghai Chapter held the event *How is AI Transforming Business?*, which explored the revolutionary impact of AI on business using case studies, and analysed the big data security infrastructure needed by companies to effectively deploy AI. During a 16th May follow-up event, *Digital Transformation and Sustainable Development of Foreign Enterprises in China*, discussion focussed on the digital infrastructure required to support digitalisation, as well as the related legal challenges facing businesses.

Two events were held on China's e-commerce industry. On 11th May, the event *Cross-border E-commerce: The Chinese Market Just a Click Away?*, co-organised with the EU SME Centre, addressed practical guidance on contractual considerations, selling procedures, intellectual property rights (IPR) protection, and challenges and opportunities. A leading e-commerce group also shared examples of how its platform helps SMEs to go global. On 11th July, the event *The New Practices in China's E-commerce Strategies* provided the latest developments in the e-commerce industry and best practices for e-commerce businesses.

The forum also held events to help members understand Chinese policies relevant to marketing and communications activities in China. On 17th May, the forum held an event to provide members with an interpretation of the key provisions in the *Online Advertising Management Measures*, to help them achieve compliance. The measures were released in late March 2023 by the National Administration of Market Regulation, and took effect on 1st May 2023.

Recognising the continued emphasis that businesses place on sustainability, the Marketing and Communications Forum organised the event *How to Build Your Corporate Communication Messages for Sustainability and Carbon Neutrality* on 12th September. Speakers shared insights on how to creatively build a corporate communications strategy with a clear focus on sustainability, providing case studies from different industries.

Understanding the latest marketing tools and platforms that are available is extremely important to marketing professionals. On 26th May, the forum co-organised an event with the Manufacturing Forum to share the latest trends and best practices in marketing and communications. The forum also hosted a session that delved into how to best develop marketing strategies on *Xiaohongshu*, the leading social media and lifestyle platform in China, on 24th November.

Two events on crisis management were also held, one on 26th October in Shanghai and the other on 22nd December in Beijing. Both events used a Chinese cosmetics brand's recent public relations crisis as a starting point to analyse communication strategies.

In the coming year, the Marketing and Communications Forum will continue to monitor market trends and assist member companies in enhancing their marketing and communication strategies.





Small and Medium-sized Enterprise Forum

The European Chamber's Small and Medium-sized Enterprise Forum was established in 2005 as a platform for European small and medium-sized enterprises (SMEs). It comprises more than 200 SMEs in various sectors, from manufacturing to specialised business services.

In 2023, the forum held 21 meetings and roundtables across China tackling topics such as sustainable supply chains, digitalisation and regional business opportunities. The forum also worked closely with the European Union (EU) SME Centre on training workshops and with the European Chamber's working groups on advocacy. Advocacy topics covered open financing, easier administrative access and strengthened business-government communication.

Following the end of COVID-19 restrictions, the Chinese economy recovered slowly in 2023. Larger industrial enterprises saw overall year-on-year profits fall by 2.3 per cent, with overall profits at foreign-invested enterprises (FIEs) decreasing by 6.7 per cent.¹ The European Chamber's *Business Confidence Survey 2023* showed an even worse situation, particularly for European SMEs in China: 36 per cent reported a decrease in revenue, yet only 21 per cent of companies with at least 1,000 employees reported the same.² In addition, 20 per cent of SME respondents stated that they had experienced market closing in their sector.³

On 28th July 2023, the National Development and Reform Commission (NDRC) and other ministries jointly issued a notice on *Implementing Measures to Promote the Development of the Private Economy*.⁴ These measures introduced favourable policies for SMEs in innovation, procurement and financing, including extending access to small and micro-loans until the end of 2024. On 20th August, the Ministry of Finance (MoF) issued a notice on *Enhancing the Enforcement of Financial Support to Promote the High-Quality Development of SMEs*. It stipulated leveraging the leading role of government funds to increase support for eligible SMEs and help them grow. In addition, special funds offered by the central government for innovative SMEs were emphasised.⁵ The notice also endorsed expanding opportunities for SMEs to grow their market presence, stating explicitly that 40 per cent of government procurement projects should be open to SMEs until the end of 2025.

Despite the availability of government incentives, the SME Development Index (SMEDI), released by the China Association of SMEs (CASME), was still significantly below the critical threshold of 100 in the first quarter of 2024.⁶ This indicates that SMEs continue to face numerous challenges to their operations and profitability. Improving China's business environment remains key to boosting market expectations and entrepreneurial confidence.

In 2024/2025, the forum will continue to communicate policy updates and host events on topics relevant to members. The forum will also continue to provide a platform and opportunities for European SMEs to share solutions to common problems and foster success.

1 *The Overall Profit of Industrial Enterprises Above Designated Size in China Decreased by 2.3% in 2023*, National Bureau of Statistics, 27th January 2024, viewed 30th April 2024, <https://www.stats.gov.cn/sj/zxfb/202401/t20240126_1946914.html>

2 Figure 5: SME revenues acutely impacted, *European Business in China Business Confidence Survey 2023*, European Union Chamber of Commerce in China, 21st June 2023, viewed 28th April 2024, p. 6, <[https://european-chamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Business_Confidence_Survey_2023\[1124\].pdf](https://european-chamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Business_Confidence_Survey_2023[1124].pdf)>

3 Figure 39: Big fish welcome, small fry kept at arm's length, *European Business in China Business Confidence Survey 2023*, the European Union Chamber of Commerce in China, 21st June 2023, viewed 28th April 2024, page 30, <[https://european-chamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Business_Confidence_Survey_2023\[1124\].pdf](https://european-chamber.oss-cn-beijing.aliyuncs.com/upload/documents/documents/European_Business_in_China_Business_Confidence_Survey_2023[1124].pdf)>

4 *Implementing Measures to Promote the Development of the Private Economy*, NDRC, 1st August 2023, viewed 28th March 2024, <https://www.ndrc.gov.cn/xwd/tzgg/202308/t20230801_1359008.html>

5 *Enhancing the Enforcement of Financial Support to Promote High-Quality Development of SMEs*, MoF, 20th August 2023, viewed 12th April 2024, <https://www.gov.cn/zhengce/zhengceku/202308/content_6900085.htm>

6 SMEDI was 89.3 for the first quarter of 2024 (below the critical threshold of 100). *China's SME Development Index Rebounded in the First Quarter of 2024*, China Association of Small and Medium-sized Enterprises, 9th April 2024, viewed 28th April 2024, <<https://www.ca-sme.org/content/Content/index/id/50409>>





Sports Forum

The Sports Forum, established in November 2020, comprises 40 member companies active in the sports sector. It serves as a platform that brings together European sports companies, government stakeholders and local communities by integrating sports, education and business. It contributes to the development of the sports environment in China in a cooperative and non-politicised manner. Sports play a vital role in promoting economic and social development. Not only do they enrich people's intellectual and cultural life, but they can also demonstrate a country's soft power.

Since hosting the 2008 Summer Olympics, China has announced a series of national plans indicating its aspiration to become a great sporting nation by 2025.¹ Apart from policy changes and the enormous market potential among middle-class and female customers, e-commerce and digitalisation are the main growth drivers of the Chinese sports market.

The development of the sports sector—including the construction, operation and maintenance of sports facilities—relies increasingly on market mechanisms. This is being achieved, in part, by integrating sports venues and facilities into urban renewal and smart city projects.

In the lead up to the Beijing Winter Olympics 2022, the European Chamber engaged with the General Administration of Sports (GAS) and the chair of the Beijing Olympic Committee. The objective was to discuss strategies for promoting sports and fostering the Olympic spirit in China. One way of achieving this is to support China's ambitions to develop a world-class ice and snow sports industry by establishing centres for related research and development, and training.

Since its inception in 2020, the forum has organised 20 activities, including meetings and roundtable discussions, in both Beijing and Shanghai. On 9th April 2024, the forum hosted the 1st China-Europe Sports Summit: Moving Together. The summit followed the signing of a memorandum of understanding between the European Chamber and GAS, which aims to build bridges between sports communities in Europe and China. European sports companies in China are committed to supporting the country's community goals by promoting healthy lifestyles, sports activities and overall wellness.

Bringing together European sports companies, government stakeholders and local communities—through the integration of sports and education to promote the development of sports in China—is the main goal of the forum's activities. In the coming year, the Sports Forum will continue to organise events, facilitate dialogue between European Chamber member companies and Chinese stakeholders, and promote best practices in sports across the European Union and China.

¹ Notice of the General Administration of Sports on the Issuance of the 14th Five-year Plan for the Development of Sports, State Council, 8th October 2021, viewed 27th March 2024, <http://www.gov.cn/zhengce/zhengceku/202110/26/content_5644891.htm>



Section Seven **7**

Appendix





Abbreviations

4G	Fourth Generation
5G	Fifth Generation
6G	Sixth Generation
14FYP	14 th Five-year Plan
ADB	Asian Development Bank
AEBS	Advanced Emergency Braking System
AEO	Authorised Economic Operator
AI	Artificial Intelligence
AICM	Association of International Chemical Manufacturers
AML	Anti-monopoly Law
API	Active Pharmaceutical Ingredient
AR	Augmented Reality
ASTM	American Society for Testing and Material
ATEX	Equipment for Potentially Explosive Atmospheres
BASA	Bilateral Aviation Safety Agreement
BCS	Business Confidence Survey
BEV	Battery Electric Vehicle
BMI	Basic Medical Insurance
BRI	Belt and Road Initiative
BWTS	Ballast Water Treatment Systems
CAAC	Civil Aviation Administration of China
CAAM	China Association of Automotive Manufacturers
CAC	Cyberspace Administration of China
CAICT	China Academy of Information and Communications Technology
CAMET	China Association of Metros
CANSI	China Association of the National Shipbuilding Industry
CBAM	Carbon Border Adjustment Mechanism
CBDT	Cross-border Data Transfer
CBIRC	China Banking and Insurance Regulatory Commission
CCC	China Compulsory Certification
CCER	Chinese Certified Emission Reduction
CCPS	Classified Cybersecurity Protection System
CCS	China Classification Society
CCU	Carbon Capture and Utilisation
CCUS	Carbon Capture, Use, and Storage
CDE	Centre for Drug Evaluation
CEA	Chinese Emission Allowance
CERF	Carbon Emission Reduction Facility
CFE	Centre for Food Evaluation
CFETS	China Foreign Exchange Trade System
CFP	Carbon Footprint of Products
CGB	Chinese Government Bond
CGT	Cell and Gene Therapy
CHC	Chinese Holding Company
CHI	Commercial Health Insurance
ChP	China Pharmacopoeia

CIBM	China Interbank Bond Market
CIFST	Chinese Institute of Food Science and Technology
CII	Critical Information Infrastructure
CIT	Corporate Income Tax
CMA	China Metrology Association
CMC	Chemistry, Manufacturing and Control
CMDE	Centre for Medical Device Evaluation
CNCA	Certification and Accreditation Administration of China
CNIPA	China National Intellectual Property Administration
CNY	Chinese Yuan
CO ₂	Carbon Dioxide
COFTEC	Provincial counterparts of the Ministry of Commerce
CoO	Country of Origin
COP	Conference of the Parties
CORSIA	Carbon Offsetting and Reduction Scheme for International Aviation
COSCO	China Ocean Shipping Company
CPU	Central Processing Units
CR Express	China Railway Express
CRISPR	Clustered Regularly Interspaced Palindromic Repeats
C-ROSS	China Risk-oriented Solvency System
CRS	Computer Reservation System
CSA	Coordination and Support Action
CSAR	Cosmetics Supervision and Administration Regulation
CSDDD	Corporate Sustainability Due Diligence Directive
CSL	Cybersecurity Law
CSP	Construction Service Providers
CSRC	China Securities Regulatory Commission
CSRM	Cybersecurity Review Measures
CTPL	Compulsory Third Party Liability
CV	Commercial Vehicle
CVD	Coordinated Vulnerability Disclosure
DAL	Drug Administration Law
DALIR	Drug Administration Law Implementation Regulations
DDR	Deposit Deviation Ratio
DG TAXUD	Directorate-General for Taxation and Customs Union
DIP	Diagnosis-intervention Packet
DMV	Department of Motor Vehicles
DNA	Deoxyribonucleic Acid
DP	Drug Product
DRG	Diagnosis-related Group
DRS	Deposit and Return System
DS	Drug Substance
DSL	Data Security Law
DVFA	Danish Veterinary and Food Administration
EASA	European Union Aviation Safety Agency
EBOWN	European Business Association Worldwide Network
EBS	Electronic Braking System
EECS	European Energy Certificate System
EESS	European Economic Security Strategy
EHS	Environment, Health and Safety



ELC	Equipment Leasing Company
ERP	Enterprise Resource Planning
ESG	Environmental, Social and Governance
ESL	Expected Service Life
ETS	Emissions Trading Scheme
EU	European Union
EUIPO	EU Intellectual Property Office
EUR	Euro
EV	Electric Vehicle
FDI	Foreign Direct Investment
FICLS	Foreign-invested Company Limited by Shares
FIE	Foreign-invested Enterprise
FIL	Foreign Investment Law
Fintech	Financial Technology
FIVA	International Federation of Historic Vehicles
FOP	Front-of-Package
FSMP	Foods for Special Medical Purposes
FSRU	Floating Storage and Regasification Units
FTP	Free Trade Port
FTZ	Free Trade Zone
FYP	Five-year Plan
GACC	General Administration of Customs of China
GB	Guobiao (China national standard)
GBA	Greater Bay Area
GBM	Green Balance Mechanism
GDP	Gross Domestic Product
GDS	Global Distribution System
GEC	Green Electricity Certificate
GHG	Greenhouse Gas
GHz	Gigahertz
GI	Geographical Indication
GLP	Good Laboratory Practice
GM	Genetically Modified
GMM	Genetically Modified Microorganism
GMP	Good Manufacturing Practice
GO	Guarantee of Origin
GOI	Group Open Innovation
GPA	Government Procurement Agreement
GPL	Government Procurement Law
GW	Gigawatt
GWP	Gross Written Premiums
HC	Hazardous Chemical
HKMA	Hong Kong Monetary Authority
HNTE	High and New Technology Enterprise
HQ	Headquarter
HR	Human Resources
HSE	Health, Safety and Environment
HVAC	Heating, Ventilation and Air Conditioning
IaaS	Infrastructure as a Service
IATA	International Air Transport Association

IC	Internal Combustion
ICER	Incremental Cost-effective Ratio
ICH	International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use
ICNCO	Intra-group Cross-border Net Capital Outflow
ICT	Information and Communication Technology
ICV	Intelligent Connected Vehicle
IDF	International Dairy Federation
IEC	International Electrotechnical Commission
iFSMP	Infant Foods for Special Medical Purposes
IIT	Individual Income Tax
IMF	International Monetary Fund
IMO	International Maritime Organization
IoT	Internet of Things
IP	Intellectual Property
IPR	Intellectual Property Rights
IP-VPN	Internet Protocol Virtual Private Network
IRC	Internet Resource Collaboration
ISCC	International Sustainability and Carbon Certification
ISP	Internet Service Provider
ISO	International Organization for Standardization
IT	Information Technology
ITAI	Information Technology Application Innovation
IVD	In-vitro diagnostics
JV	Joint Venture
Kg	Kilogramme
Km	Kilometre
KPI	Key Performance Indicator
KR	Key Recommendation
LLC	Limited Liability Company
LMR	Liquidity Matching Ratio
LNG	Liquefied Natural Gas
M&A	Mergers and Acquisitions
MAH	Marketing Authorisation Holder
MARA	Ministry of Agriculture and Rural Affairs
MCT	Ministry of Culture and Tourism
MED	Marine Equipment Directive
MEE	Ministry of Ecology and Environment
MEM	Ministry of Emergency Management
MEPS	Minimum Energy Performance Standard
MHz	Megahertz
MIIT	Ministry of Industry and Information Technology
MLPS	Multi-level Protection Scheme
MNC	Multinational Corporation
MNO	Mobile Network Operator
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
MOH	Ministry of Health
MOHURD	Ministry of Housing and Urban-Rural Development
MOJ	Ministry of Justice



MOST	Ministry of Science and Technology
MOT	Ministry of Transport
MoU	Memorandum/Memoranda of Understanding
MPS	Ministry of Public Security
MRCT	Multi-regional Clinical Trial
MRV	Monitoring, Reporting and Verification
MSA	Maritime Safety Administration
MSME	Micro, Small and Medium-sized Enterprise
MWh	Megawatt-hour
NBFI	Non-banking Financial Institutions
NBS	National Bureau of Statistics
NCD	Negotiable Certificate of Deposit
NDB	National Data Bureau
NDRC	National Development and Reform Commission
NEA	National Energy Administration
NEV	New Energy Vehicle
NFRA	National Financial Regulatory Administration
NGO	Non-governmental Organisation
NHC	National Health Commission
NHSA	National Healthcare Security Administration
NIA	National Immigration Administration
NIFDC	National Institute for Food and Drug Control
NMPA	National Medical Products Administration
NPC	National People's Congress
NPCSC	Standing Committee of the National People's Congress
NPL	Non-performing Loan
NRA	National Railway Administration
NRCC	National Registration Center of Chemicals
NRDL	National Reimbursement Drug List
NSR	National Security Review
NTI	Narrow Therapeutic Index
NVOCC	Non-vessel Operating Common Carrier
OECD	Organisation for Economic Co-operation and Development
OEM	Original Equipment Manufacturer
OES	Original Equipment Supplier
OMO	Open Market Operation
OTC	Over The Counter
PaaS	Platform as a Service
PAC	Pharmaceutical Affairs Committee
PBOC	People's Bank of China
PDG	Pharmacopeial Discussion Group
PET	Polythene Terephthalate
PIPL	Personal Information Protection Law
POE	Privately-owned Enterprise
PPA	Power Purchase Agreement
PR Card	China Foreign Permanent Resident Identification Card
PRC	People's Republic of China
PTA	Patent Term Adjustment
PTE	Patent Term Extension
PTR	Processing Trade Relief

QA	Quality Assurance
QALY	Quality Adjusted Life Years
QFLP	Qualified Foreign Limited Partnership
QR Code	Quick Response Code
R&D	Research and Development
RDP	Regulatory Data Protection
RLD	Reference Listed Drug
RMB	Renminbi
ROP	Refined Oil Product
rPET	Recycled Polythene Terephthalate
RPS	Reimbursement Payment System
S&T	Science and Technology
SaaS	Software as a Service
SAC	Standardisation Administration of China
SAF	Sustainable Aviation Fuels
SAFE	State Administration of Foreign Exchange
SALB	Sale-and-lease-back
SAMR	State Administration for Market Regulation
SCA	State Cryptography Association
SCC	Standard Contractual Clause
SCH	Shanghai Clearing House
SDG	Sustainable Development Goal
SF6	Sulphur Hexafluoride
SME	Small and Medium-sized Enterprise
SOE	State-owned Enterprise
SPB	State Post Bureau
SPC	Supreme People's Court
SPL	Safety Production Licence
SRA	Stringent Regulatory Agency
SRTT	Standard Reference Testing Tyre
SSE	Shanghai Stock Exchange
STA	State Taxation Administration
TAC	Type Approval Certificate
TBL	Tender and Bidding Law
TBT	Technical Barriers to Trade
TC	Technical Committee
TC260	National Technical Committee 260 on Cybersecurity of Standardization Administration of China
TC28	China National Information Technology Standardization Technical Committee
TFS	Together for Sustainability
TIC	Testing, Inspection and Certification
TIPs	Technical Implementation Procedures
TW	Terawatts
TWh	Terawatt-hours
US	United States
USD	United States Dollar
VAO	Vehicle Administrative Office
VAT	Value-added Tax
VATS	Value-added Telecoms Service
VBP	Volume-based Procurement
VOC	Volatile Organic Compound



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VR	Virtual Reality
VTC	Validation of Type Certificate
WFOE	Wholly Foreign-owned Enterprise
WTO	World Trade Organization
Y-o-Y	Year-on-Year



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