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China: Governing for development

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European companies in China are key drivers behind surging EU-China trade relations. In 2004 the European Union became China's largest trading partner and China the European Union's second largest. China's remarkable progress in implementing its WTO commitments has helped create shared opportunities for Chinese and European businesses alike. Yet with shared interests come shared responsibilities. While the internationalization of Chinese enterprises is a welcome trend, European companies in various sectors are finding it difficult to compete on a level footing with domestic companies in China. European industry should remain patient, supportive and open to exchanging ideas and practices, so long as measurable, verifiable and meaningful steps are taken by Chinese authorities to improve overall transparency and provide for greater competition at home.

On 11th December 2005 China has entered the fifth and final year of implementation of its WTO commitments. As the transition period comes to an end, it is time to depart from strict interpretations of accession protocol and focus on what is and is not working. Looking beyond the commitments to the practical situation, concerns remain surrounding the replacement of trade barriers (which are not permitted under WTO) with more subtle barriers. In a country of 1.3 billion people, implementation and enforcement are the most challenging aspects of accession and the WTO negotiators could not have anticipated many of the current difficulties.

Particularly over the past year China has made significant strides to promote the importance of protecting IPR and it is clear the government is taking action. Lowering the threshold for criminal prosecution was a milestone in IPR protection and demonstrates the openness of the Chinese courts and authorities. At the same time, Chinese companies are themselves becoming more aware of the dangers and threats of excessive counterfeiting - the majority of civil litigation in trademark infringement cases is between Chinese parties.

Yet despite these positive steps the Chamber survey revealed that more than half of the respondents believe that the present enforcement of IPR laws and regulations in China is not effective enough. Enforcement of IP rights of foreign and domestic companies at all levels remains a challenge and needs to be improved in terms of consistency, inter agency communication, efficiency and improved enforcement. Ideally qualifying thresholds ought to be removed, however Chamber members recognize the important role they play in the Chinese legal system. Nevertheless further reductions of the threshold would support the work of the authorities to deal effectively with this pressing concern.

Moreover, there is growing concern among a broad sector of European companies regarding the disclosure of confidential know-how and sensitive commercial information. Another key concern relating to unfair competitive behavior is the excessive infringement

of copyrights and trademarks. In order to continue the promotion of China as the top worldwide destination for foreign investment as well as encouraging technological transfer, it will be necessary to provide adequate legal remedies to protect confidential material and improve the enforcement of well-developed IPR legislation.

Strategic sectors are increasingly driven by market-forces. The authorities have done much to reduce their daily management of the economy and encourage greater domestic competitiveness.

In any economy, regulation plays an important role to secure a fair and stable system. Whereas China has taken important strides towards establishing independent regulators, concerns still remain about the close partnership between SOEs and government agencies especially in the energy and telecom sectors. The recent introduction of local content requirements may further hamper the natural evolution of China's markets and its increasingly prominent role in the global supply chain. These obstacles to competition may decrease the competitiveness of Chinese companies and their ability to acquire international market share and to operate in foreign countries. For European companies forced localization and limited strategic options will become an important consideration when deciding where to direct investment, especially in light of India's emergence as a viable alternative.

The WTO is founded on the recognition that competition and free trade on equal terms is mutually beneficial. The principle of national treatment binds all member states to maintain a level playing field for all parties, both foreign and domestic. China's phenomenal development has put immense pressure on government agencies to ensure that the regulatory framework evolves at the same pace as the economy. Overlapping competency of agencies or legislation, especially in relation to regulating foreign trade, often puts domestic companies at an advantage. Even though substantial progress has been made, government policy specifically promoting domestic companies still persists in some areas and further progress is therefore vital in a number of sectors, such as Public Procurement and Banking.

As the integration of the world economy progresses and the technological frontier advances, international accepted standards become more fundamental to ensuring the harmonization of the multilateral trading system. China has recognized the benefits of complementary standards, and since its WTO accession has adopted or based its own standards on those of numerous international bodies including ISO, IEC and ITU. However in some sectors European companies express concerns that China specific standards are used as non tariff barriers to trade, that the WTO TBT Agreement specifically prohibits.

Participation in international standardization bodies has significant benefits. Compliance allows China to proactively participate in preparing international standards that are in line with Chinese interests. However, if China is to partake in international standards setting, reciprocal treatment is a necessary condition, and foreign entities should be granted full membership of Chinese standards bodies. Indeed, inviting foreign bodies to participate will quash fears that certain domestic standards, such as the CCC, hide protectionist measures.

Another industry where standards are perceived as trade barriers is the IT&T sector. China-specific regulations inflict additional costs and delay the introduction of new

products. Moreover, the Chinese government shows a tendency to disregard open standards patents and will not allow Chinese companies to participate in licensing negotiations. Royalty fees associated to these standards should be recognized as compensation for R&D, and viewed as part of normal business practice.

In the past year Chamber contact with important Chinese interlocutors has intensified at all levels. The Chamber actively focused on communicating the operational business concerns of European companies to policymakers, not only in China but also back in Europe. These consistent and constructive dialogues have deepened the mutual understanding and facilitated even stronger EU-China trade relations. The relationship between Beijing, Brussels and European business in China was cemented at a recent meeting between Minister Bo Xilai, President Barroso and members of the Chamber Advisory Council.

In China's final year of WTO transition, the focus of dialogue has to shift from the strict interpretation of accession requirements to the practical reality of implementing and enforcing commitments. Progressing beyond meeting legal obligations will need a more flexible and adaptable outlook. Indeed, further strengthening the dialogue with European business will allow the Chinese authorities to make full use of European experience and expertise, in order to shape policies that promote competition, transparency and economic growth. The Chamber hopes to formalize dialogues with the Chinese authorities and become an established reference point in drafting policy directives. Initial steps could involve Chamber participation in commenting and contributing to draft legislation, such as the up-coming Anti-Monopoly Law, Telecoms Law and Enterprise Income Tax legislation, among others.

A few points worth stressing in conclusion:

- going global is getting to be easier for Chinese companies if international practices are also applied in China,
- leading Chinese companies are also concerned about the enforcement of the law in China as they need to protect their investments in R&D or branding,
- more laws may create more biased competition if only applied by foreign and leading Chinese companies. The current discussion about the labor Contract law is a case in point.