BUSINESSEUROPE

REVISED POSITION PAPER

21 September 2009

REVISED BUSINESSEUROPE POSITION PAPER ON EU-CHINA RELATIONS

Summary

China's strong export performance stands out as one of the principal features of today's international trade landscape. However, China also has been affected by the current economic and financial crisis which significantly has lowered Chinese growth prospects for the coming years.

Businesses in China and the European Union have a common interest in stable and internationally agreed rules-based framework conditions to ensure broad-based market access for trade and investment, improved global regulation, financial stability and strong climate change commitments.

The European Commission and the Chinese government should make real use of the EU-China High-Level Economic Dialogue (HED), created in 2008. Through implementation at the highest political level at both sides, it must aim at achieving concrete progress in removing regulatory obstacles and facilitating two-way trade and investment. An EU-China Action Plan should set and implement objectives and milestones to be reached within clear established deadlines.

The revised EU-China Partnership and Cooperation Agreement should focus on economic issues and be based on full reciprocity. Whereby China's transition towards a market economy needs to be further supported, the granting of Market Economy Status (MES) needs to be dealt with on the basis of the proper fulfilment of the established criteria.

Key areas for fostering business and trade:

- Improve access to the Chinese market for EU companies, non-discriminatory treatment and effective protection for EU investment, in particular in the areas of services and government procurement.
- Ensure that China implements its WTO commitments and responsibilities, including cancellation of WTO-incompatible subsidy schemes.
- Promote adoption of existing international standards, push for the voluntary character of technology transfer, and increase EU-China regulatory cooperation activities in order to avoid unnecessary new China-specific standards.
- Encourage China to improve product safety, health and environmental standards to protect consumer interests in domestic and export markets.
- Push for effective enforcement of intellectual property rights (IPR).
- Support the adjustment of the Chinese yuan to market forces.
- Secure a level playing field for access to raw materials.
- Cooperate on bilateral and global approaches to climate change and energy.

THE CONFEDERATION OF EUROPEAN BUSINESS a.i.s.b.l.

AV. DE CORTENBERGH 168
BE-1000 BRUSSELS
BELGIUM
VAT BE 863 418 279

TEL +32(0)2 237 65 11
FAX +32(0)2 231 14 45
E-MAIL: MAIN@BUSINESSEUROPE.EU
WWW.BUSINESSEUROPE.EU

21 September 2009

REVISED BUSINESSEUROPE POSITION PAPER ON EU-CHINA RELATIONS

1. General political and economic context

a) Recent developments

China's strong export performance stands out as one of the principal features of today's international trade landscape. As a result, from 2000 to 2006, China's share in total world exports more than doubled, from 5.2 to 11.1%. However, China also has been affected by the current economic and financial crisis which has significantly lowered Chinese growth prospects for the coming years. This being said, China is now, after the European Union, the world's second exporter with its exports amounting to €907 billion in 2007.

In addition to steel, Chinese specialisations include textiles, electronics and electrical equipment. These last three sectors on their own make up 40% of China's export surplus. Although we should not exaggerate the increasing sophistication of Chinese exports because of China's frequent role as an assembler of final products, we can expect competition from China for EU exports across the board as a defining trend of the next few years. It is important to note, however, that European companies also benefit from the rise of China in world trade. Between 38% and 55% of Chinese exports are actually made by foreign-owned companies, some of them of European origin. Second, in addition to supplying China's domestic market, Chinese imports of European goods are transformed in Chinese factories into goods for the export market.

There is a strong interest in a close economic and trade partnership with China. Businesses in China and the European Union have a common interest in stable and internationally agreed rules-based framework conditions to ensure broad-based market access for trade and investment, improved global regulation, financial stability and strong climate change commitments. This BUSINESSEUROPE position paper lays out recommendations for improving EU-China relations from an institutional perspective and outlines a number of areas where substantial progress is necessary.

b) Improving EU-China bilateral relations

BUSINESSEUROPE supports the Chinese reform agenda which seeks to move its economy up the value chain from a low-cost production platform to an innovation-oriented economy. China's rapid integration into the world economy and increasing interdependence with the EU offers significant opportunities for European business. However, there are growing concerns over China not implementing its economic and trade rules. BUSINESSEUROPE calls upon the European and Chinese authorities to prevent trade frictions from escalating, and to closely cooperate with business in addressing all harmful business issues and practices in their bilateral relations. Companies need to work in a predictable economic environment. This is incompatible with the sporadic politicisation of specific problems as a result of issues over which companies have no influence.

i) EU-China cooperation mechanisms

BUSINESSEUROPE urges the European Commission and the Chinese government to make real use of the **EU-China High-Level Economic Dialogue** (HED), created in 2008; which has to be implemented at the highest political level at both sides and focus on the key economic issues in EU-China relations. All **EU-China horizontal and sectoral policy dialogues** (trade, industrial, regulatory cooperation, energy, IPR, environment, aviation, incl. CRS, etc) should aim at achieving concrete progress in removing regulatory obstacles and facilitating two-way trade and investment.

The HED should ensure better coordination between the existing bilateral dialogues, avoid duplication of activities and make sure they are part of a single strategic vision. This also needs to be supported by an effective organisation and pooling of resources within the respective public administrations. EU Member States should be involved in the HED to ensure that they actively support the negotiations in the framework of their bilateral relations. The Chinese government should ensure that any decisions reached within this framework are consistently implemented at all levels, being it national, regional or local.

To follow up on the 2006 Communication “EU-China: Closer Partners, growing responsibilities”, the European Commission should regularly evaluate the EU-China relationship and the progress accomplished. This should be done in the form of an **EU-China Action Plan** which should set and implement objectives and milestones to be reached within clear established deadlines. The Action Plan should be agreed jointly by the two sides and evolution reviewed at the **annual meetings** of the **High-Level Economic Dialogue**.

ii) Revision of Partnership and Cooperation Agreement

BUSINESSEUROPE follows with interest the negotiations on the revision of the EU-China Partnership and Cooperation Agreement. The new agreement should be distinct from political cooperation agreements and based on full reciprocity considering China’s economic weight. It should be negotiated on its own merits and not linked to stand-alone issues, such as the granting of Market Economy Status (MES) to China. It should provide solutions to the problems faced by European companies in China underlined throughout this paper.

iii) Assessing and supporting China's transition to a market-economy

While China's transition to a fully functioning market economy requires time for legislation to be adopted and effectively enforced, there are strong concerns about continued state practices that distort the Chinese market for European companies. If the EU is to retain its credibility and leading position in international trade negotiations, it must lead by example in the implementation of its trade policy. In particular the matter of **granting Market Economy Status (MES) to China must be dealt with according to its merits**. China must properly fulfil the established criteria before being granted MES[1].

Ultimately, it is in the interests of both the EU and China that the Chinese economy is as efficient, transparent and predictable as possible. Considering the implications for EU companies of granting MES to China, BUSINESSEUROPE encourages the European Commission to conduct a thorough and impartial **assessment of the current implementation of the MES criteria** and to work out, in cooperation with the Chinese authorities, a **road map** for their effective fulfilment. Given the fact that China will automatically be granted MES in 2016 pursuant to its WTO Accession Protocol, the pressure on China to meet the criteria is diminishing. Under these circumstances it is all the more important that the Commission ensures that efficient processes of implementation and evaluation of the MES criteria are attained. In the meantime, the EU Anti-Dumping/Anti-Subsidy Basic Regulations already enable the granting of Market Economy Treatment (MET) to individual Chinese companies.

2. Key areas for fostering business and trade

a) Promote market access and improve investment conditions[2]

Transparency and consistency of the regulatory framework

It can be difficult for EU business to have a clear and comprehensive understanding of the legal context in which it has to operate in China. Central government regulations are often implemented differently at a local or provincial level, and local regulations often supplant or exist in contradiction with central rules. In addition, European business is not systematically consulted on regulatory changes.

The EU should press the Chinese authorities to:

- Increase their efforts to establish a **stable, predictable, reliable and transparent legal and administrative framework** which fosters investment and smooth business development;
- **Enforce laws and regulations, and apply legislation consistently** at national and regional levels.

---

[1] See BUSINESSEUROPE letter to Commission President Barroso, 14 November 2008

[2] BUSINESSEUROPE cooperates closely with the EU Chamber of Commerce in China (EUCCC; www.euccc.com.cn) on how to improve the trade and investment conditions in China.

Moreover,
- where legislation in China favours domestic products, they should be defined as goods produced by manufacturing companies duly registered as a legal entity in China and not on the basis of the the nationality of the shareholders of the company.
- as long as market access for certain technologies is not fully open, companies that have transferred technology to domestic companies in China within the framework of the "quasi-compulsory" market for technology requirements, should be qualified and have the right to set own operations in China for these product families and get access to the market.
- the anti-monopoly law should apply equally to all businesses, including State-Owned Enterprises (SOE).

Services sector

The **services sector**, which now accounts for 40% of GDP, is increasingly important for China. However, services markets are **heavily regulated** and trade in services is restricted. Burdensome capital and joint venture requirements act as deterrents to entering the Chinese market. A prime example is the Chinese financial services field which should be further opened to foreign companies. The Chinese market should be opened to EU service providers on a non-discriminatory basis. This will also be beneficial for China as it will lead to gains in competitiveness and efficiency.

The EU should persuade China to:
- progressively revise its laws and regulations to **comply with the spirit of its existing liberalisation commitments**, based on transparency, improved market opening and a sound and non-discriminatory regulatory environment;
- implement in 2009 its WTO commitments to open large sectors such as **wholesale services, insurance, telecom and retail sectors** as well as specific sectors like computer reservation system services.

Investment

China's successful policy of attracting foreign direct investment (FDI) would be enhanced further by eliminating state practices that distort market access for European companies. For instance, due to statutory limitations, investments still require 50%-50% joint ventures in China.

To improve this situation, China should:
- reinforce **legal protection of private property rights,** and the predictable and transparent implementation of laws and regulations affecting business;
- continue its **privatisation process** – especially for companies working in the commercial sector;
- **remove limits on foreign investment** in those sectors where investment is restricted such as automotive, banking or telecoms;
- **eliminate requirements for local content** which undermine companies' strategies and violate China's WTO commitments;

- **ease visa requirements and quotas** for the employment of foreigners, as they are an impediment for the movement of key business personnel. The EU should also facilitate visa requirements for Chinese business personnel to the EU;
- explore ways with the EU to **promote two-way flows of investment** through the appropriate national bodies and in cooperation with business.

The EU should tackle the problem of **forced technology transfer**, which is a very harmful practice for cooperation with Chinese partners and public tenders. Those practices, which need to be stopped, take the forms of requests for a deep technological cooperation and documentation with Chinese "design institutes", as well as compulsory inspections which go far beyond the duty of mere certification procedures for foreign products. For instance, China's 11^{th} 5-Year Program (2006-2010) for Utilizing Foreign Investment urges large multinationals to move their high-tech and high-value-added processing facilities and R&D capacities to China.

Government procurement

Competitive government procurement is an important incentive for more efficient production and lower government expenditures. BUSINESSEUROPE is concerned about the discrimination against European companies in bidding for Chinese government projects. The **"Buy China" provisions** published in June 2009 are a **particular harmful practice** and should be removed.

To address these issues, China should:

- **work towards the removal of discrimination against foreign companies** and ensure access to public procurement projects at all levels, which includes the elimination of "buy local" conditions that hamper market access for foreign companies.
- implement its commitment to become a signatory to the WTO **Government Procurement Agreement (GPA)** and accordingly improve its offer to allow for a rapid and successful conclusion of the process.

b) Ensure compliance of international commitments and responsibilities

WTO

Accession to the WTO has encouraged economic reforms and improved the business climate in China through greater predictability, stability and transparency. However, China should do much more to **implement fully its WTO accession commitments** address cases of non-implementation effectively. Special attention should be paid to transparency, the elimination of burdensome regulations, the dismantling of non-tariff barriers to trade in goods and services and abuse of dominant positions, notably in the energy sector, which seriously undercut the benefits of Chinese market opening.

Furthermore BUSINESSEUROPE is very worried that a part of China's competitiveness is based on the existence of complex, pervasive and sometimes even prohibited **subsidy schemes** and calls upon the Chinese authorities to **remove these WTO-incompatible practices**.

Considering the key role of China in the world economy and its position in international trade, the Commission should encourage China to help to further strengthen the multilateral trading system by continued market liberalisation and **assuming greater leadership and responsibility in WTO Doha Round negotiations**.

NTBs and standards

Non-tariff barriers (NTBs) represent a major obstacle for EU companies, particularly for SMEs, in China. **Chinese Compulsory Certification (CCC)**, which affects a broad range of industries ranging from electronics to automotive and machinery, is especially burdensome, lengthy, expensive and non-transparent. China also often deviates from internationally accepted norms and modifies standards and licensing procedures significantly prior to national absorption. Chinese standards and requirements change rapidly and authorities are increasingly promoting local standards that are incompatible with international standards and approaches.

The EU and China should:

- deliver **tangible and visible results** from the existing regulatory dialogues which should be streamlined and strengthened in the framework of the EU-China High-Level Economic Dialogue;
- work more closely in the **WTO negotiations to eliminate NTBs**;
- increase cooperation in the Customs Cooperation Agreement to develop simplified, efficient and **consistent customs procedures**.

The EU should:

- encourage the Chinese Government to create a **more transparent framework** for technical regulations and standards, in conformity with international standards;
- promote **EU rules in China** to facilitate convergence and, in the long term, help eliminate obstacles to trade and investment;
- further involve EU business, where appropriate, in regulatory cooperation.

China should:

- rapidly adopt existing international standards and avoid **creating unjustified China-specific standards**. For instance, although China is a member of Working Party 29 of the UNECE and signed up to its 1958 and 1998 agreements, it regularly adopts unjustified specific standards in the automotive sector which create technical barriers to trade.
- improve **product safety, health and environmental standards** for its industries and products to protect consumer interests in domestic and export markets.

c) Effective enforcement of intellectual property rights (IPR)

China's progress in streamlining its intellectual property legislation must be acknowledged, but effective enforcement of IPR remains highly problematic, notably at regional and local levels. The **scale of the production of counterfeit and pirated goods** inside China remains at an **alarmingly high level**. In 2008, 54% of all counterfeit goods seized at EU borders came from China. For example, in the semiconductor industry almost 100% of counterfeits are sourced from China.

Considering the fact that China recently reviewed its patent rules and is currently finalising the patent regulations, as well as the trademark law and other key legal provisions, it is important to stress that the **Chinese legal framework** must be in line with **international standards**.

BUSINESSEUROPE calls on the EU, in the context of the EU-China Dialogue on Intellectual Property and other frameworks like the EU-China High-Level Economic Dialogue, to step up its action in this field and make every effort with China to ensure the effective protection of intellectual property rights in accordance with international/WTO commitments. Work should be based on:

- **strict enforcement** of intellectual property rights in line with international standards;
- clarification of the interpretation of legal procedures on criminal intellectual property enforcement and increased criminal enforcement of IPR violations;
- promotion of **public awareness** of the dangers of IPR violations;
- reinforced **customs controls** and border management in the enforcement of IPR.

BUSINESSEUROPE is working with business organisations from other parts of the world to improve collaboration in dealing with counterfeiting and piracy as a global problem. It supports reinforced coordination between the different initiatives on this issue at the bilateral, regional or global level.

BUSINESSEUROPE would welcome an intensified participation by China in IPR treaties. China is not yet a member of the following WIPO-administered treaties:

- the Patent Law Treaty, which simplifies formal aspects of patent law,
- the Singapore Treaty on the Law of Trademarks, which simplifies formal aspects of trademark law, and
- the Geneva Act (1999) of the Hague Agreement Concerning the International Registration of Industrial Designs, which provides for an international registration of industrial designs.

d) Support adjustment of the Chinese yuan to market forces

The pegging of the Chinese currency to the US dollar has helped promote Chinese exports and China as an investment destination but it has also contributed to current global trade and account imbalances which played a non-negligible role in the ongoing financial crisis. A **more flexible currency regime** is essential for a rebalancing of the Chinese economy, reducing its reliance on exports and encouraging domestic demand. Allowing for a further appreciation of the Chinese currency will also contribute to a balanced recovery of the global economy and a reduction of trade and macroeconomic imbalances.

To improve the situation:

- the EU should continue to encourage China to **pursue the yuan's gradual adjustment to market forces**, while ensuring that financial stability is preserved.
- the EU and China should **place the exchange rate** and its impact on EU-China trade at the core of their relations. The EU-China High-Level Mechanism and the EU-China macroeconomic dialogue should hereby allow the EU and China to

improve mutual understanding and coordination. Moreover, they should develop further cooperation on this issue and on foreign exchange reserve management at bilateral, regional (ASEM) and international levels.

e) Secure a level playing field for access to raw materials

As the world's third largest importer of raw materials, China's enormous demand for energy and natural resources has an impact on global markets for commodities.. While BUSINESSEUROPE recognises that this is a natural consequence of the industrialisation in China, it cannot accept that the free operation of market forces in respect of supply and prices of raw materials and energy is distorted by Chinese governmental measures for the benefit of Chinese producers.

Securing a **level playing-field for access to raw materials** is a high priority for Europe's diverse and interdependent industries. It is therefore crucial that the objective of a level playing field for access to natural resources and unfettered trade is pursued. BUSINESSEUROPE is concerned that **China increasingly resorts to restrictions and distortions regarding trade in raw materials** (export restrictions / taxes). To fight against this mushrooming practice, the EU should address this problem not only at multilateral level, but also consistently in its bilateral relations.

The EU and China must **find prompt and effective solutions in close consultation with EU business** to ensure fair competitive conditions on international markets in accordance with the letter and spirit of WTO regulations.

f) Further coordinate approaches on climate change and energy issues at bilateral and global levels

China is a major player and partner in addressing climate change. To arrive at a truly global agreement by 2009 in Copenhagen, all major emitters must make binding commitments based on the principle of common but differentiated responsibilities. On current (2008) projections, world CO_2 emissions will have increased by more than 50% in 2030, with China having already overtaken the USA as the country with the highest absolute CO_2 emissions. It is therefore essential that **China accepts its responsibilities for reducing emissions**.

The EU and China should **increase cooperation on global approaches** that involve all nations to ensure the sustainable use of resources and to combat climate change.

*****