Exporting goods, services and technology to the Chinese market

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Are you ready for China? - Report 3

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Exchange rates

All exchange rates in this report are calculated on the basis of: EUR 1 = CNY 7.80 = USD 1

1. Exporting goods, services and technology to the China market

Exporting refers to the shipment of goods, provision of services, or transfer of technology across national borders. The seller of the goods, services, or technology is the "exporter", is based in the country of export (such as in an EU member state), and sells products or services to the overseas buyer or consumer (based in China). All exporting requires detailed planning, and exporting to a country such as China, which differs from EU member states' markets in a number of key ways, is in particular need of such planning to stand the greatest chance of establishing stable and long-term export agreements and relationships.

Exporting of goods to China always involves engagement of a company that has the right to carry out the import/export activities stated in its business licence. Such a company has to be registered in China. This means that the term "importer" in Chinese trade terminology usually refers to the China-registered company possessing an import/export licence. Such a company can be a buyer and thus importer in the general sense, but most often it is only an intermediary assisting with importing, in that it may focus on bringing goods across the border and facilitating international payment, rather than actually getting these goods to the consumer.

2. Goods

2.1. Process for exporting your goods to China

1. Determine which category the product falls into;
2. Apply for any required import licences or quotas with the Chinese Ministry of Commerce (中华人民共和国商务部, “MOFCOM”);
3. Ensure that the product meets the relevant Chinese standards;
4. Apply for a China Compulsory Certification (“CCC”) mark (if required);
5. Ensure that the product meets all labelling and packaging requirements (if applicable);
6. Affix relevant labels to products before arrival in Chinese port (if required);
7. Have all required paperwork ready (such as licences, quota licences, and contracts) to present to customs for inspection at the Chinese port;
8. Be ready for Chinese customs to take a sample of the product for inspection and to hold the products until all inspections are completed (if applicable);
9. Pay relevant customs taxes and fees;
10. Products are released by customs and successfully imported into China.

The first step for an organisation is to determine which category the goods for export fall into. MOFCOM regulates the import of foreign goods. According to the latest version of the Foreign Trade Law, which came into effect in November 2016, goods are classified into one of the following categories:[1]

- Free imports;
- Restricted imports (under licence or quota management);
- Prohibited imports.

2.2. Free imports

Freely importable goods are the least regulated category of goods and, in most cases, can be imported into China without any restrictions. However, selected items require an automatic import licence, which is granted to all companies that apply. This licence enables the Chinese government to monitor the imported amounts of certain products. For a selection of goods that require this automatic licence, please see **section 9.2** of this report. The list is jointly updated by MOFCOM and General Administration of Customs (中华人民共和国海关总署, “GACC”) on a regular basis.

2.3. Restricted imports

For the purposes of this report, the phrase “restricted imports” refers to imports for which the importer must obtain an import licence, a quota import licence, a tariff quota licence, or any combination of these.

According to the Regulation of the People's Republic of China on the Administration of the Import and Export of Goods (中华人民共和国对外贸易法) published by the State Council (国务院),[2] the only goods that are considered “restricted” are those subject to quantity-based restrictions (through the use of quotas) and those which require specific licences. Goods subject to tariff-rate quotas are not considered “restricted”.

[1] http://tradeinservices.mofcom.gov.cn/article/zhengce/flfg/201710/2543.html
[2] http://www.gov.cn/gongbao/content/2002/content_61769.htm

2.3.1 Import licences

Since joining the World Trade Organization ("WTO") in 2001 China has been reducing the amount of paperwork required to facilitate imports, yet importers must still receive approval in the form of an import licence from MOFCOM before importing certain goods.

The documentation required to obtain an import licence includes an application form bearing the seal of the importer, and other documents are also required for ozone-depleting substances and mechanical and electrical products.[3] It is important that companies verify whether their products require an import licence prior to shipping. Examples of goods restricted by import licence regulations include chemical equipment, ozone-depleting substances, and agricultural machinery. For a selection of goods that require this type of licence, please see **section 9.3** of this report; it should be noted that the official list is updated on a regular basis.

2.3.2 Import quotas

An import quota determines the maximum quantity of foreign goods that can be imported into a country during a given period of time. This type of trade restriction limits the supply of overseas goods available in the market, therefore raising the market price of the goods.

There are currently no import quotas applied to foreign goods imported into China.[4] Natural rubber was the only good subject to an import quota in 2003, a restriction that was removed in 2004.[5]

2.3.3 Tariff-rate quota management

In order to import goods that are subject to tariff-rate quota management, an application must be submitted and approved. The quantity of imported goods that falls within the quota is then subject to the in-quota tariff, whilst the quantity that exceeds the quota is subject to the out-of-quota tariff. The documentation required for this application includes a tariff-rate quota application form, the business licence of the importer, a purchase contract, and other supporting documents.[6]

Goods currently subject to tariff-rate quota management include wheat, maize, rice, sugar, wool, cotton, and chemical fertiliser.[7] For a selection of goods that require this type of documentation, please see section 9.4 of this report, although it should be noted that this list is also updated regularly.

2.4. Prohibited imports

Some goods are prohibited from being imported into China for national security or health and environmental reasons. Prohibited imports include weapons, ammunition, explosives, and illegal drugs. For a selection of the prohibited imports, please see **section 9.5** of this report.

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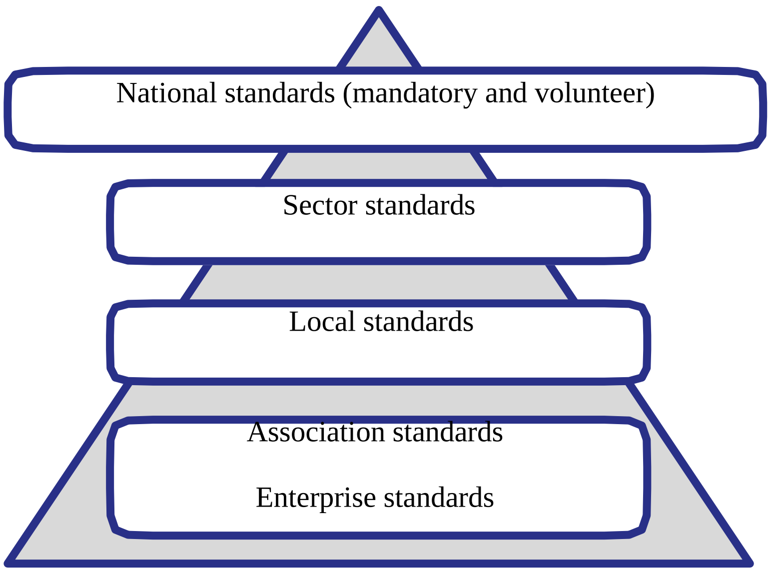
[3] http://imp.mofcom.gov.cn/
[4] http://expzb.mofcom.gov.cn/
[5] https://www.ndrc.gov.cn/fggz/tzgg/ggkx/200612/t20061230_1032002.html
[6] http://zhylsexp.mofcom.gov.cn/
[7] http://www.gov.cn/xinwen/2019-12/23/content_5463213.htm

2.5. Standards

Figure 1: The levels of standards in China



Once an organisation has confirmed the import category that its goods fall into and familiarised itself with the necessary paperwork, it will need to ensure that its product meets the corresponding Chinese standards. Although some Chinese standards correlate with European or other international standards, meeting such international standards does not necessarily mean that a product will automatically meet the Chinese standards.

There are four levels of standards in China: mandatory national standards and volunteer national standards (indicated by the initials "GB" and "GB/T" respectively), volunteer sector standards, volunteer local standards, and standards autonomously developed by associations and enterprises.[8] Mandatory standards are compulsory, while volunteer standards are merely encouraged to be followed. The technical requirements of all volunteer standards should be greater than or equal to those of the mandatory standards. All imported goods and services must meet at least the mandatory standards in order to be imported to and sold in China.

2.5.1 National standards

- Administered nationally by the Standardization Administration of China (国家标准化管理委员会, "SAC") and consistent across China;
- Mandatory national standards are developed in order to impose technical requirements that safeguard public health and security, personal property, national and environmental security, and to meet basic economic and social management demands;
- Volunteer national standards are developed in order to impose technical requirements that are basic and generic, supplement mandatory national standards, or play a leading role within particular industries;
- National standards can be searched (in Chinese) online at: http://openstd.samr.gov.cn/bzgk/gb/std_list_type?p.p1=1&p.p90=circulation_date&p.p91=desc

2.5.3 Local standards

- Developed to meet special technical requirements, such as environmental conditions and local customs;
- Developed by the standardisation administrative department of each province, autonomous region, or and directly-administered municipality;

- Indicated by the initials "DB".

2.5.4 Association standards and enterprise standards

- Association standards (indicated by the initials "TB") can be applied by the members of an association or voluntarily by the public according to an association's stipulations;
- Enterprise standards (indicated by the initials "QB") can be developed by one enterprise or multiple enterprises together;
- The Chinese government encourages standards made by associations and enterprises to have higher technical requirements than other volunteer standards.

2.6. China Compulsory Certification ("CCC")

The China Compulsory Certification ("CCC") system is a system designed for the purpose of protecting the safety of consumers, plants and animals, the environment, and national security. This safety mark, shown in **Figure 3**, must be obtained before certain products can be imported and sold in China. The mark is either a standard physical sticker that is applied to individual products as a label, or is printed or moulded onto the product or its packaging.

Figure 3: The CCC mark

The CCC mark is administered by the Certification and Accreditation Administration (中国国家认证认可监督管理委员会, "CNCA"). The CNCA publishes an online catalogue of products for which CCC is mandatory; it covers 119 products grouped into 21 categories. Parts of individual products can be certified by completing a self-declaration form. This list is updated irregularly, so it is important that companies refer to the most recent version when checking whether their products are listed. Products for which CCC is mandatory include household and small electrical appliances, motor vehicles, children's products, fire control products, and information technology equipment. For a list of these products, please see **section 9.6** of this report. CNCA has appointed a number of authorities to enforce the certification, each of which is in charge of different product categories.

If a CCC certification is required, it is strongly recommended that European companies work with an experienced Chinese third-party consultant, contractor, or partner to obtain it. This also helps foreign companies to overcome barriers created by language, culture, and geographical distance, and can significantly speed up the certification process.

The certification process is fairly straightforward and can generally be completed within three months. Costs vary depending on the specific product and between certification authorities. Once CCC is granted, it is valid for five years and must be renewed within the 90-day period before the expiry date.

[8] http://www.sac.gov.cn/sbgs/flfg/fl/bzhf/201803/t20180323_342012.htm

Certain goods - such as devices for use in scientific research and goods only for commercial display - can be exempted from requiring the certification; this requires a separate application.

2.6.1 CCC mark certification process

The certification process varies depending on the product in question, but generally involves the steps below:[9]

- Application: The applicant submits an application and supporting materials to the certification authority appointed by the CNCA;
- Application and material review: After confirming that the application and supporting materials have been approved, the certification authority requests that the applicant send a sample product to the laboratory appointed by CNCA;
- Testing: The laboratory conducts sample testing and sends its report to the certification authority;
- Factory inspection: The certification authority inspects the factory and manufacturing facilities;
- Evaluation: The certification authority approves CCC certification and the applicant receives certification, or does not approve CCC certification, in which case retesting is required;
- Product marking: The applicant prints or moulds the CCC mark onto the product or packaging following the Management Requirements of the CCC mark, or uses the standard CCC mark stickers received from the certification authority;
- Annual follow-up factory inspections: Manufacturing facilities must be inspected by the certification authority every year. Costs for follow-up inspections are much lower than for the initial inspection.[10]

2.7. Other industry standards

In addition to GB standards and the CCC mark, numerous government agencies in China issue industry-specific standards or testing requirements for products under their jurisdiction. For example, the export of medical devices, cosmetics, and food must also receive approval from the State Administration for Market Regulation (国家市场监督管理总局, "SAMR") before being imported into China.[11] For information on specific industry standards, it is recommended that EU SMEs refer to specific industry guidelines for their products.

2.8. Labelling

All products entering China require some form of labelling, usually in Chinese. Chinese labels are mandatory, in particular, for imported food and beverages and cosmetic products. Since October 2019 it is no longer necessary for these labels to be filed before products are imported into China for the aforementioned categories, although they must be prepared and attached to products in order to be cleared by the customs authorities.[12] In addition to food, beverages, and cosmetics, labelling requirements also apply to other products and vary by industry. The labelling requirements for some typical products are listed below.

2.8.1 Food and beverages

A Chinese label is mandatory for pre-packaged food and food additives imported into China. Each Chinese label must contain the information listed below:

- Product name, specification, net content, and production date;
- Ingredients;
- Name, address, and contact details of the manufacturer and/or the local distributor;

[9] http://www.cnca.gov.cn/xxgk/ggxx/ggxx2009/201512/t20151230_44442.shtml
[10] http://www.cnca.gov.cn/xxgk/ggxx/2018/201803/W020180315557741804955.docx
[11] http://www.samr.gov.cn/

- Expiration date;
- Product standard code;
- Storage condition;
- Generic name of additives according to the National Standard;
- Other information required by laws, regulations, or food safety standards.[13]

2.8.2 Cosmetics

A Chinese label is mandatory for cosmetic products imported into China. Labels can either be attached to the product container or packaging, or be provided in a separate booklet inside the packaging. Labels must contain information including:

- Product name;
- Name and address of the manufacturer;
- Place of manufacture;
- Name and address of the distributor/importer;
- Ingredients;
- Manufacture date and validity period, or manufacture lot number and expiration date;
- Net content;
- Approval number or registered product number;
- Other information required by laws, regulations, or the relevant food and drug administration authority.[14]

2.8.3 Electronics

- Products on the List of Products Subject to Energy Efficiency Labelling (中华人民共和国实行能源效率标识的产品目录)[15] must affix an energy efficiency label (China Energy Label) onto the product or indicate this information in the product specification;[16]
- Products must also bear a label (or an indication within the product specification) of the name and content of any hazardous substances contained therein, including in which part of the product they are used, whether they can be recycled, the consequences of inappropriate use, and the time limits in which it can be used in a way that does not damage the environment.[17]

2.8.4 Chemicals

- In 2011, based on the Globally Harmonized System of Classification and Labelling of Chemicals ("GHS") published by the United Nations, China adopted its own China GHS, which regulates the classification, labelling, and packaging of chemicals and chemical products;
- All chemicals and chemical products must be accompanied by a Safety Data Sheet ("SDS") and a safety label which meet relevant national standards;[18]
- General rules relating to the preparation of precautionary labels for chemicals (GB 15258-2009) can be found at: http://c.gb688.cn/bzgk/gb/showGb?type=online&hcno=4D487D68BF0BD87E68CE0EA68183DAD6 (in Chinese).

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12 http://www.customs.gov.cn/customs/302249/302266/302269/2393416/index.html
13 http://gkml.samr.gov.cn/nsjg/tssps/201905/t20190506_293407.html
14 http://www.nmpa.gov.cn/WS04/CL2160/319565.html
15 https://www.ndrc.gov.cn/hdjl/yjzq/202001/W020200110549799678968.pdf
16 https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/201603/W020190905495017011772.pdf
17 http://www.miit.gov.cn/n1146285/n1146352/n3054355/n3057254/n3057260/c4608532/content.html
18 http://www.gov.cn/flfg/2011-03/11/content_1822902.htm

2.9. Packaging

In addition to product standards and labelling, goods imported into China are also subject to various packaging requirements. Depending on the specific product and packaging material, packaging requirements are administered by different government bodies and can vary greatly. For packaging laws and standards, EU SMEs are invited to consult the packaging regulations of their specific industry on the World Packaging Organisation's website: https://www.worldpackaging.org/wpo/25/.

2.10. Entry-exit commodity inspection and customs

The GACC is the administrative body responsible for quality control, measurements, inspection of imported and exported commodities, entry-exit health quarantine, and entry-exit animal quarantine in China. Enforcement of these operations is performed by local entry-exit inspection and quarantine authorities.[19] The Catalogue of Import-Export Commodities Subject to Compulsory Inspection and Quarantine (出入境检验检疫机构实施检验检疫的进出境商品目录) lists the types of commodities that are required to be subject to entry-exit inspection and quarantine, and is updated on a regular basis.

Once goods arrive at a Chinese port or other point of entry, they must pass Chinese customs inspection. Chinese importers (for example, agents or distributors) are responsible for gathering the documents required and providing them to the Chinese customs agent. The approval process for these documents should be started well in advance of a product's arrival in China to ensure smooth passage through customs and on to the final destination.

Required customs documentation varies from product to product, but standard procedures include:

- A customs declaration;
- Submission of documents (such as sales contracts, bills of lading, original commercial invoices, original packing lists, and transport documents);
- The original commissioned agreement on custom clearance (if applicable);
- An import licence, certificate of origin, or other certificates required for commodity import (if applicable);
- Evidence of payment of taxes and fees.[20]

2.11. Relevant taxes and fees for the import of goods

The customs duties applied to imported goods and the import link taxes levied by customs authorities are collectively referred to as import duties. Import duties are collected by customs authorities at the point of entry into China.[21]

Several common taxes are listed below:

2.11.1 Customs duty

For customs duty purposes, the taxable value of an imported good is its cost, insurance, and freight ("CIF") price, which includes the normal transaction price of the goods plus the cost of packing, freight, insurance, and seller's commission. China's customs office is in charge of assessing the customs duty of all imports, and uses a valuation database that lists the values of various imports based on international market prices, foreign market prices, and domestic prices. Typically, customs officers will accept the importer's price. However, if the

[19] http://www.customs.gov.cn/customs/302249/302266/302267/2369666/index.html
[20] http://online.customs.gov.cn/static/pages/treeGuide.html
[21] http://www.customs.gov.cn//customs/302249/302266/302267/2558681/index.html

reported value diverges too greatly from that in the database, customs officers will estimate the value of the goods based on China's customs rules and regulations for tax calculation purposes. To look up tariff rates, products can be searched for by HS code on the China Customs website:

http://www.customs.gov.cn/customs/302427/302442/shangpinshuilv/index.html.

2.11.2 Value-added taxes ("VAT")

VAT is levied based on the appreciation value during the sales and import period, and takes into account the costs of processing, repair, and replacement services. It is levied after the tariff and incorporates the value of the tariff:

- The basic VAT rate is 13%, but a lower rate of 9% applies to the following goods (among others):[22] agricultural products, edible vegetable oil, edible salt, tap water, heating, air conditioning, hot water, coal gas, liquefied petroleum gas, natural gas, dimethyl ether, methane gas, coal and charcoal products for household use, books, newspapers, magazines, audio and video products, electronic publications, animal feed, chemical fertilizer, pesticides, agricultural machinery, and agricultural plastic sheeting.[23]

The following formula can be used to calculate VAT:

- VAT = VAT rate x (duty paid value + customs duty) / (1 - consumption tax rate)

The importer may enjoy tax exemption for the import of certain goods identified in relevant regulations. For example, the import of devices for use in scientific research and teaching can be exempted from VAT.[24]

2.11.3 Consumption tax

15 categories of goods are subject to consumption tax, which may be calculated based on the price and/or volume of the imported goods respectively or collectively, depending on the specific legal regulations applicable. The rate of the consumption tax calculated based on price is between 1% and 56% when entering China. Goods subject to consumption tax include:

- Tobacco;
- Liquor;
- High-grade cosmetics;
- Precious jewellery and precious jade and gems;
- Firecrackers and fireworks;
- Refined oil products;
- Motorcycles;
- Small motor vehicles;
- Golfing equipment;
- High-grade watches;
- Yachts;
- Disposable wooden chopsticks;
- Real wood flooring;
- Batteries and coatings.[25]

[22] http://www.customs.gov.cn/customs/302249/302266/302267/2369380/index.html
[23] http://www.chinatax.gov.cn/n810341/n2340339/c4180655/content.html
[24] http://www.gov.cn/zhengce/content/2017-12/01/content_5243734.htm
[25] http://www.chinatax.gov.cn/chinatax/n810356/n810961/c5140457/content.html

3. Services

3.1. Process for exporting services to China

Determine which category the services fall into

↓

Decide whether to use direct or indirect entry

↓

Meet relevant guidelines

↓

Pay relevant taxes and fees

For the purposes of this report, the export of services to China is divided into direct market entry covering investment, and indirect market entry covering all other types of service export.

3.1.1 Direct market entry – requires more resources but provides full market access

Companies should open an office on the ground in China by establishing a foreign-invested enterprise ("FIE"), and should provide services as they would in all other places in which they have offices. FIEs are subject to all laws, regulations, and taxes imposed by the Chinese government.

3.1.2 Indirect market entry – requires fewer resources but provides only limited market access

This option allows EU SMEs to export their services to China without setting up an office on the ground. Once an agreement is reached with a Chinese client, companies become able to send consultants to China on a short-term basis. It works best for companies seeking to build a customer base in China for services that they provide in Europe, such as travel services, and is not particularly suitable for services that companies would like to provide on the ground in China because of the high value placed on face-to-face meetings and personal interactions within Chinese business culture.

One option for providing services without a permanent establishment in China is to offer them online. The basic resources required to sell services online in China are:

- A Chinese website;
- Chinese language communication abilities, either in-house or contracted;
- The flexibility to arrange calls and virtual meetings with participants working in China's time zone:
- The ability to accept international payments via credit card or wire transfer;
- The ability to send employees to China on a short-term basis.

3.2. Service industries into which investment is permitted

Foreign investors are permitted to provide a range of services in China, including tourism, transportation, construction, consulting, finance, and technology services.

The development of China's services import market is subject to it serving the country's overall national development strategy, which involves transitioning from a phase of rapid growth to a period of high-quality development, and meeting the increasing services needs of Chinese consumers.

Travel services are the largest foreign services export to China, accounting for 54.5% of China's total imported services. In 2017, China imported USD 254.79 billion (EUR 229.54 billion) worth of travel services (a year-on-year decrease of 2.4%), and USD 92.9 billion (EUR 83.7 billion) worth of transportation services. More marked growth is observable in relation to the importing of services relating to intellectual property ("IP"); the total import value of charges applied to the use of IP increased from USD 1.94 billion to 28.74 billion (EUR 1.73-25.89 billion) between 2001 and 2017, a 14-fold rise. Meanwhile, the importing of telecommunication, computer, and information services increased from USD 670 million to 19.18 billion (EUR 604 million-17.28 billion) between 2001 and 2017 (a 29-fold increase), and services imports from these sectors correspondingly saw a year-on-year increase of 52.5% in 2017.[26] Although traditional services such as tourism and transportation remain of a significant value, their growth rates are decreasing, while the importing of emerging services such as IP royalties, financial services, and telecommunication, computer, and information services is growing rapidly.

Foreign investment in China is governed by the Foreign Investment Industrial Guidance Catalogue (外商投资产业指导目录), which classifies industry sectors as one of the following:

- Encouraged;
- Permitted;
- Restricted;
- Prohibited.

In order to further liberalise the investment environment through the implementation of high-level trade and investment facilitation policies, in 2018 China fell into step with international common practice on market access, specifically through its negative list management system. The negative list is no longer divided into two categories: restricted and prohibited; instead, it appears as a whole with any specific corresponding measures included in the main text.

There are two negative lists for China: one is the Special Administrative Measures for the Access of Foreign Investment [Negative List] (外商投资准入特别管理措施【负面清单】) and the other is the Negative List for the Pilot Free Trade Zone (自由贸易试验区外商投资准入特别管理措施【负面清单】, "FTZ Negative List").

[26] http://www.gov.cn/xinwen/2018-11/13/5339803/files/a3496f84939545fba8f0dbb4843045df.pdf

Between 2011 and 2019, the number of prohibited or restricted items on the foreign negative list fell from 180 to 40, while the number of prohibited or restricted items on the Pilot Free Trade Zone negative list was reduced from 190 to 37 between 2013 and 2019.[27]

In addition to the lists above, these measures are accompanied by the Catalogue of Industries for Encouraging Foreign Investment (鼓励外商投资产业目录) and the Catalogue of Services Encouraged to Import (鼓励进口服务目录).

All services that are not included in the prohibited sections of a negative list can be considered as services in which investment is permitted. Government approval for services not listed on a negative list is usually granted automatically.

Furthermore, according to the standard negative list:[28]:

- Foreign companies investing in non-prohibited areas of the negative list must obtain a permit before investing;
- Where free trade area agreements and investment agreements have been concluded between China and the relevant countries, or there are international treaties to which China is a party, and these contain more preferential and open measures for eligible investors, the provisions of these agreements apply.

3.3. Service industries into which investment is encouraged

On 10th April 2019, the Ministry of Commerce (中华人民共和国商务部, "MOFCOM"), the National Development and Reform Commission (国家发展改革委员会, "NDRC"), the Ministry of Finance (中华人民共和国财政部), the Ministry of Ecology and Environment (中华人民共和国生态环境部), and the National Intellectual Property Administration (国家知识产权局商标局, "CNIPA") jointly issued the Catalogue of Services Encouraged for Import.[29]

Encouraged industries are generally those that can introduce new or advanced technology to China, increase product quality and efficiency, or conserve resources and protect the environment. Also urgently needed by China are services capable of assisting the country in meeting its goals for high-quality development, an aim which reflects current national strategy and policy orientation and is in line with economic and social development trends.

China's importing of intellectual property rights royalties has increased significantly in recent years, reaching CNY 235.52 billion (EUR 30.2 billion) in 2018, a year-on-year increase of 22% The total import value of technical services reached CNY 83.92 billion (EUR 10.76 billion) in the same year, a year-on-year increase of 7.9%, demonstrating the strong demand for high-end productive services within the China market.[30]

Service activities within the R&D design service, energy saving and environmental protection service, environmental service, and consulting service industries are currently encouraged.

3.4. Service industries into which investment is restricted

Investments in restricted industries face stricter scrutiny from the Chinese government and require higher levels of approval. Industries may be restricted for a variety of reasons, including in situations in which China

[27] https://www.amchamchina.org/news/how-to-use-chinas-2019-negative-lists-encouraged-catalogue
[28] http://images.mofcom.gov.cn/wzs/201906/20190629212130154.pdf
[29] http://www.mofcom.gov.cn/article/b/xxfb/201904/20190402851433.shtml
[30] http://www.mofcom.gov.cn/article/i/jyjl/m/201902/20190202834731.shtml

does not stand to gain new technology, if the industry may have an adverse effect on the environment, or if the industry in question is highly regulated by the State Council.

Although not impossible, services in restricted industries are much more difficult to export to China. In order to enter restricted industries, China may require foreign companies to establish a joint venture with a Chinese partner and/or limit their shareholding ratio.

Some service activities in the following industries are restricted: transportation, finance, commercial services, education, medical institutions, and certain areas of telecommunications. For a more exhaustive list, please see **section 9.8** of this report.

3.5. Service industries into which investment is prohibited

Services in prohibited industries are completely off limits to foreign investors. These industries are prohibited because the Chinese government has deemed that such imports might harm national security, the public, public health, or the environment, or might lead to a loss of Chinese intellectual property.

The sectors into which foreign investment and provision of services is prohibited are within a number of industries including:

- Wholesale and retail services;
- Transportation services;
- Postal services;
- Internet and related services;
- Legal services;
- Scientific research and special technological services;
- Education services;
- Culture services;
- Media services;
- Publication services;
- Entertainment services.

For a selection of prohibited industries, please see **section 9.9** of this report.

3.6. Relevant taxes and fees for the import of services

According to Chinese tax laws and regulations, all service companies that have obtained income in China or have consumers located in China are subject to Chinese taxes, unless expressly exempted by Chinese regulations. These taxes vary depending on the industry, income, place of service, and business model of each company.

3.6.1 Direct market entry and establishment of an FIE to provide services

- Subject to all taxes applicable to an FIE;
- Enterprise income tax: 25% (rate for SMEs under Chinese law is 20%);
- Individual income tax: 3% to 45%;
- VAT: 3% (or 5%), 6%, 9%, or 13%;
- Other applicable taxes and fees: as regulated by Chinese government ministries, depending on industry and locality.

3.6.2 Indirect market entry, no office on the ground

- Enterprise income tax: 10%;

- Unless expressly exempted by Chinese laws and regulations, a foreign service provider is subject to VAT, which is generally 3% (or 5%), 6%, 9%, or 13% of any income derived from the provision of services to Chinese service receivers. Additional surtaxes such as city construction and maintenance taxes, education surcharges, and local education surcharges can also be levied, and vary according to local regulations.

A selection of the VAT rates payable by both direct and indirect market entrants are listed in **Figure 4**, broken down by service industry.

Figure 4: VAT rates payable by both direct and indirect market entrants[31]

Taxable item	VAT rate
Small-scale SME taxpayer	3-5%
Modern services (such as R&D and technical services, information technology services, cultural and creative services, logistics support services, and consulting services), financial services, value-added telecommunications services, insurance services	6%
Transportation services, postal services, basic telecommunications services, books, newspapers, magazines, audio and video products, electronic publications	9%
Tangible movable property rental services	13%

3.6.3 Reform of service industry taxation

On 1st May 2016, services rendered by a foreign services provider to a Chinese entity or individual are no longer subject to business tax; instead, they are subject to VAT calculated with reference to the income derived from the services provided.

3.6.4 Tax treaties

A foreign services provider is also subject to enterprise income tax at a rate of 10% or 20% of the taxable income, if no permanent establishment is China, which is calculated based on the income derived from the service provided. The rate is 25% if a permanent establishment constituted. However, the enterprise income tax payable in China by a foreign services provider may be mitigated by tax treaties. Tax treaties are those signed between countries with the goal of reducing double taxation, eliminating tax evasion, and encouraging cross-border trade efficiency. Companies are recommended to research their specific tax obligations by referring to any tax treaties made between their home country and China.

[31] http://www.sohu.com/a/343020542_99913718

4. Technology

If a company's business is based on intellectual property, exporting technology to China could be considered. There are many reasons to enter the China market: access to growing Chinese demand, establishment of R&D facilities, engagement in cooperative development, access to a skilled work force, access to a large number of suppliers, and the development of long-term partnerships with Chinese businesses. One way to get a foothold in China is to license or transfer ownership of key technology and designs to Chinese subsidiaries of European firms, joint venture partners, or Chinese manufacturing and service companies. One of the challenges facing European companies using this method to enter China is devising creative solutions to minimise the risk to their IP associated with technology transfers.

A technology transfer is the process of transferring patent rights (ownership of patent), rights to apply for patents, licences for the exploitation of patents (patent licence), technological know-how, technical secrets, as well as the provision of technical services and technology transfers in other forms.

4.1. Process of transferring your technology to China

Understand the project (including technology ownership, core advantages, IP status, and project maturity)

↓

Evaluate the competitiveness of your technology in order to develop an IP strategy appropriate for the China market (including any advantages, IP position in target market, market potential, risks, value, equity, and structure/ownership structure

↓

Conduct market research and partner identification in China

↓

Conduct a feasibility study

↓

Carry out due diligence for the partner

↓

Decide to carry out licensing and ownership transfer

↓

Negotiate a technology transfer contract

Technology can be transferred in the following ways:

- Licensing: A common practice; includes patents, designs, technical secrets, and know-how;
- Ownership transfer: An uncommon practice; generally not recommended due to the risk of IP infringement.

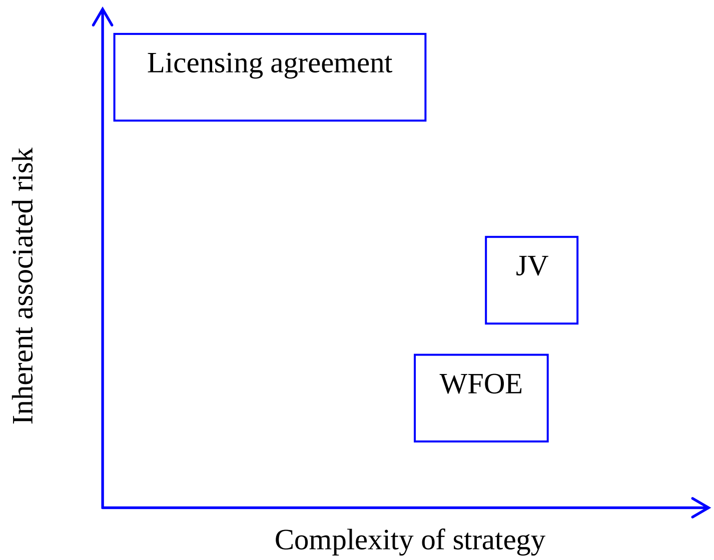
Technology transfers are not limited to advanced technology. Many companies manufacture less-advanced technology, consumer, or industrial products and designs in China through a manufacturing contract. No matter the level of technology, all companies that transfer technology to China face the same risks of intellectual property ("IP") infringement.

Based on the exclusive rights conferred by a patent, licensing is permission granted by the patent owner to another party to use the patented invention based on agreed terms and conditions (including, for example, the payment of royalties), while the patent owner continues to retain ownership of the patent. Licensing not only creates an income source for the patent owner, but also establishes a sound legal framework for the transfer of technology.

With the issue of licensing in mind, technology can be exported to China in various ways:

- Licensing the technology to an unrelated Chinese company:
    - Licensing to unrelated Chinese companies generally gives owners the least control over their IP. However, a modular strategy can be used, i.e. using different Chinese suppliers to source different components of a product so that no single Chinese supplier would be able to duplicate the product;
    - Phased implementation of the licensing contract can also be used in order to test out a Chinese partner before transferring additional technology;
    - Both of these strategies are widely used by many European companies.
- Setting up a joint venture ("JV"):
    - In some industries, Chinese law requires foreign companies to establish a JV in order to transfer technology to a Chinese partner. The Foreign Investment Industrial Guidance Catalogue (外商投资产业指导目录), published by the National Development and Reform Commission (国家发展改革委员会, "NDRC"), can be consulted in order to determine whether this is required. In addition to the Foreign Investment Catalogue, the requirement to set up JV can also be imposed by other legislation and regulations;
    - Although it may be difficult to adopt a modular or phased approach in dealings with a Chinese JV partner, it remains important to take steps to protect IP. Many European companies keep critical design and IP components overseas or held in a separate wholly foreign-owned enterprise ("WFOE");
    - A Chinese JV partner's local contacts and distribution network are valuable from a sales and distribution perspective.
- Setting up a WFOE:
    - A WFOE (if permitted within the relevant industry) gives owners the greatest amount of control over their IP;
    - In WFOEs, IP risk should be managed by preventing leaks by employees and business partners;
    - The use of confidentiality agreements and non-compete agreements is important and strongly advised.

Figure 5: The relative risks and complexities of a licensing agreement, a JV, and a WFOE



4.2. Technology approved for import

In China, the Ministry of Commerce (中华人民共和国商务部, "MOFCOM") regulates the importing of technology. Technology imports are divided into three categories:

- Freely importable;

- Restricted;
- Prohibited.

MOFCOM publishes lists of technologies that are prohibited and restricted for import and updates them on a regular basis. Technology that is not included in the restricted or prohibited lists is freely importable. Aside from a few sectors deemed harmful to national security or national interests, most technology falls within the freely importable category.

Freely importable technology can be imported directly without prior approval, although the importer should register the technology import-export contract with MOFCOM. Registration can be started online but must be finished on-site at MOFCOM. Since a registration certificate is needed to be able to carry out foreign exchange, banking, customs, tax, and other import-related issues, registration is highly advised as a practical measure.

4.3. Restricted technology

MOFCOM's import catalogue currently lists around 100 technologies that are restricted for import. In each case, the rationale of the Chinese government for restricting the import of these technologies is that:

- They are likely to endanger national security;
- They are likely to have a negative effect on public morale and public interests;
- They are likely to cause harm to the health of humans, animals, and plants;
- They are likely to damage the environment.

A listing on the restricted catalogue does not mean it is impossible to import the technology into China, just that it is more difficult than it otherwise would be. In order to import technology on the restricted list, an import licence must first be obtained from MOFCOM. A contract for the import of restricted technology is only legally effective after an import licence has been obtained.

Applications for import licences for restricted technology must be submitted to the relevant branch of MOFCOM at provincial level. Once the application is submitted, MOFCOM reviews the trade and technical aspects of the application, and a decision on whether or not to approve the application is required within 30 working days.

Factors considered by MOFCOM when deciding whether or not to approve an application for an import licence include:

- Whether the import complies with China's foreign trade policies and external trade obligations;
- Whether the import promotes the development of foreign economic cooperation;
- Whether the import endangers national security or threatens the public interest;
- Whether the import endangers lives and the health of the people;
- Whether the import damages the ecological environment;
- Whether the import complies with China's industrial policies and economic development strategies, accelerates technological development and progress, and supports the economic and technology rights and interests of the country.

If it approves the application, MOFCOM then has 10 working days to review the authenticity of the import contract before making a final decision on whether or not to issue an import licence. The importer is additionally required to complete an online registration of the contract once the import licence is granted.

Updates must be registered with MOFCOM for approval or filing if:

- Substantive modifications to the contract require an application for a new import licence;
- A contract is terminated.

For a selection of the technology restricted for import into China, please see **section 9.10** of this report.

4.4. Prohibited technology

MOFCOM's import catalogue currently lists approximately 10 categories of technology that are prohibited from import into China. Examples include technologies relating to non-ferrous metal processing, chemical engineering, and petrochemical production. For a selection of the technology prohibited from being imported into China, please see **section 9.11** of this report.

4.5. Technology transfer contract

In order to import technology into China, a technology transfer contract with a Chinese partner must be entered into. Technology transfer contracts are those that involve the import of technology, and include contracts for:

- Transfer of patent rights;
- Transfer of the right to apply for a patent;
- Transfer of technological know-how;
- Licence for exploitation of patents.

All of these contracts must be made in written form.

4.5.1 Process and content of a technology transfer contract

- File for IP protection: Ensure that appropriate IP protection for the technology in question (such as the patent, trademark, and copyright) has been filed for within both China and the country of origin before entering into technology transfer negotiations. More information is available through the China IPR SME Helpdesk at www.china-iprhelpdesk.eu.
- Confirm technology is legally importable into China: MOFCOM's catalogues of restricted and prohibited technology should be consulted in order to check whether the technology is freely importable into China. If it falls into the category of restricted technology, ensure that an import licence has been applied for and received from the relevant Chinese government bodies.
- Select a Chinese partner (if needed): Due diligence should be conducted and a comprehensive and thorough check of potential Chinese partners, as well as local industrial policies and laws, should be carried out. It is important to be aware that a key motivation for many Chinese companies in a technology transfer is to obtain foreign technology and know-how, choosing the right Chinese partner is paramount as a first step to protecting IP in a technology transfer. The ideal partner will be complementary, but not well-positioned to directly compete with the foreign partner.
- Negotiate a technology transfer agreement: The purpose of a technology transfer contract is to protect IP, and the structure of a technology transfer contract is critical to effectively doing so. It is recommended that companies use IP licences when dealing with their Chinese partners; in addition to establishing each party's rights, the IP licence ensures that the technology transferred is documented in case issues subsequently arise.

The contract should clearly define and document the technology in question, establish each party's rights, and include specific clauses for improvement and confidentiality. Important topics that should be covered in a technology transfer contract include:

- Definitions of technology and rights: The specific technology in question, and the rights that each party has, should be clearly defined in writing by the parties. This includes detailed definitions of the recipient of the transfer, the geographic scope of the technology's usage, those who may use the technology, and how it may be used.

- Licensing: Where possible, it is advisable that technology be licensed to Chinese partners rather than ownership rights being transferred. Ensure that any sharing of information and technology through documents, drawings, and oral communications is clearly recorded and covered by the agreement.
- Improvements: One of the most heavily negotiated clauses of a technology transfer agreement concerns the creation and ownership of improvements made by the Chinese partner. Unless specified in the contract, commissioned IP belongs to the commissioned party. This means that if a Chinese partner develops improvements to another party's technology, the Chinese partner will, by default, own the IP rights to those improvements, and in practice be able to copy and use the transferred technology freely. In addition, under Chinese law, a Chinese partner is legally allowed to make improvements to transferred technology and use such improvements. For these reasons, it can be very risky to transfer or license one's technology to a Chinese partner, and special attention should be paid to the improvement clause in any technology transfer contract in order to ensure adequate legal protection for IP.
- Confidentiality: It is very important to include strong confidentiality provisions in a technology transfer contract. Depending on the number of employees involved in the process of the technology transfer, it may even be desirable to require employees to sign individual confidentiality agreements.
- Non-competition agreements: In order to avoid unnecessary competition, a non-Chinese company should ensure that the jurisdiction of the Chinese partner is restricted to markets that it is not currently operating in.
- Reverse engineering: Reverse engineering is permitted under Chinese law and is not considered a theft of trade secrets. To safeguard IP, a technology transfer contract should include a provision that prohibits the Chinese partner from engaging in reverse engineering.
- Technical training and personnel: If applicable, the conditions under which technical training of employees will occur should be specified.
- Limitations: It should also be specified that the Chinese party cannot sell the technology to third parties without authorisation. As far as possible, the amount of sub-licences given should be limited.
- Price, payment and taxes: The value of the contract should be specified, as should the manner in which payments will be made and who will be responsible for taxes in each market.
- Delivery terms and packaging: The contract should specify how the technology will be packaged and delivered to the Chinese partner, and should also include a timeline for delivery.
- Termination: A clause governing early termination of the agreement and a timeline for the end of the contract should be included. This agreement can always be amended and modified in the future.

In the case of restricted technology, approval from the relevant branch of MOFCOM should be sought:

1. Sign the contract: A contract for freely importable technology is only valid if signed by both parties. In the case of restricted technology, the contract only becomes effective when the technology import licence is issued.
2. Register the contract: The contract must be registered with the relevant branch of MOFCOM within 60 days of being signed, or, if payment is made on a commission basis, within 60 days of the point when the initial base amount of commission can be claimed. This step is a required contractual obligation.
3. Management and compliance: Regular communication between the parties must be maintained in order to manage the partnership and ensure compliance. Successful agreements are managed by both sides, and good contract management will ensure sound and profitable collaboration.

4.6. Relevant taxes and fees for the transfer of technology

Certain taxes and fees are owed by both parties entering into a technology transfer agreement.

- The Chinese party: for any transfer or license of IP, the Chinese party must register its tax obligations with the relevant Chinese tax bureau within 30 days of signing the contract. They must present the signed contract, in addition to all other required documentation, to the tax authorities. Only after registration can the Chinese party pay taxes on behalf of the foreign party. If the contract is a licence, the Chinese party must file for taxes on behalf of the foreign party before each payment. Where the amount of a payment exceeds USD 50,000 (EUR 45,000), the Chinese party, as the payer, shall apply for tax record-filing for the payment with its in-charge state tax bureau.

- The foreign party: under Chinese tax law, if the foreign party has not established itself in China, technology transfers are usually taxed at a rate of 10% of the gross sales price. In some cases, and subject to approval, income may less, or even be fully exempt.

5. Import contracts

Once a company has selected a Chinese partner that will import its goods to China, it is necessary to negotiate an import contract. While the specific content of the contract will depend on the goods to be exported, it is important to have a clear and binding contract in place whenever exporting goods to China. The importer does not necessarily need to be a buyer.

5.1. Fundamentals of a sales and purchase contract

A sales and purchase contract is the most basic form of import contract, and also the most common. If a company is looking to export its products to a Chinese importer, the two sides will need to negotiate and agree upon a sales and purchase contract. A foreign company that suitably negotiates a sales and purchase contract, along with fair and favourable dispute resolution mechanisms, will greatly reduce the risks of exporting to China.

Important components of a sales and purchase contract:

- Selection of legal jurisdiction: According to China's contract law, when a foreign party enters into a sales and purchase contract with a Chinese party, they have the choice to decide whether Chinese law or foreign law will govern the contract. Although European companies would generally prefer the laws of their home country, the Chinese party is not necessarily supportive of this approach;
- Clear definition of buyer and seller: Clearly define which parties are bound by the contract;
- Contract product: Give a detailed description of the product to be exported, so there is no confusion about the product in question;
- Quantity: The quantity, as well as the unit of measurement of the goods to be exported, should be specified;
- Quality enforcement: Many disputes in sales and purchase contracts arise as a result of product quality issues. To manage these issues, a well-developed and agreed upon system for product inspection should be put in place. For product inspections, the standards and specifications of the product can be included in the sales and purchase contract. Quality maintenance systems can include the following:
  - A sample of the product to be inspected with the contract;
  - Pre-shipment of the product for inspection;
  - Inspection at the port by the Chinese importer;
  - Inspection at the final destination by the Chinese importer;
  - In case of dispute, both parties should first try to solve it through mediation;
- Price and payment method: Define the price for the goods and whether the Chinese party will pay in CNY, EUR, or another currency. A payment process and timeline should also be included in the contract. In addition, it is sensible to specify which party will be responsible for each cost associated with the contract and transfer of the goods (including port charges, tariffs, import-export fees, taxes, and storage).
- Confidentiality: If exporting products that contain intellectual property – such as copyrighted or trademarked material – a company should include a confidentiality clause in the sales and purchase contract to protect the IP. In any event, registration of all intellectual property ("IP") is highly recommended.
- Delivery: Provide a specific delivery schedule, delivery port, and destination for the shipment in the contract, and find out whether partial shipments are available.
- Time of effectiveness: Indicate when the contract will become effective and when it will be terminated.
- Insurance: Find out which party will be responsible for the insurance of the goods during transport, and which after shipping and delivery is complete.
- Liability for breach of contract: Include a clear liability clause for breach of the contract, including what actions will be taken if a contract is breached and how dispute settlement will be reached.

- Dispute settlement: If a dispute arises, there are generally two ways to solve it if the two parties are not able to find a solution through mediation: either through litigation or arbitration. Under the Arbitration Law of the People's Republic of China (中华人民共和国仲裁法), the parties in conflict must agree on one method to solve a dispute, either litigation or arbitration, they cannot chose both. If no agreement on arbitration is made, parties will automatically resort to litigation.

5.1.1 Letters of credit as a form of payment

A letter of credit is a promise to pay that is issued from the Chinese buyer's bank to the European exporter. The letter guarantees that as long as the European exporter provides its goods to the Chinese buyer as agreed upon, it will be paid. Even if the Chinese buyer ultimately fails to pay the European exporter, its Chinese bank will still pay the full amount. Letters of credit are commonly used in large international transactions to lower the risk for the seller. Letters of credit are often used by European businesses exporting to China. Only letters of credit from well-established Chinese banks should be accepted. With letters of credit, it is possible to receive advance payments for sales and purchase contracts even before the product is delivered. The usual amount of an advance payment is 10-20% of the total value of the contract.

5.1.2 Litigation

Litigation is typically lengthy and expensive. A lawsuit involving an international sales and purchase contract can take more than a year to resolve. Furthermore, trade secrets and IP may be leaked due to the public nature of some lawsuits. According to Chinese law, litigation brought against a Chinese legal entity usually has to be resolved where the defendant is registered.

5.1.3 Arbitration

The contract parties are free to choose the arbitration institution. It is possible to select an international arbitral body to ensure neutrality. This is a relatively simple procedure that leads to a faster decision. Arbitration is the predominant dispute resolution mechanism for sales and purchase contracts in China and can take place in a third country that is neither China nor the foreign enterprise's home country.

The decision to enter into arbitration is binding and legally enforceable in China, even if it is made outside the country, as long as the place where arbitration takes place is a member country of the Convention on the Recognition and Enforcement of Foreign Arbitration Awards.

6. Foreign exchange controls and limitations

Foreign exchange involves the buying and selling of currencies and is a key part of international transactions. Within an import contract with a Chinese partner, companies must specify in which currency they would like to receive payment. Typically, European companies prefer to receive payment for products and services in euros (EUR), whilst Chinese importers prefer to pay in CNY. Foreign exchange risk enters the equation at the point at which one currency is converted into another. The risks associated with foreign exchange can be controlled by:

- Requesting that all transactions be made in euros or the currency of the company's home country;
- Developing a strategy to manage foreign exchange risk.

Sometimes Chinese partners are reluctant to pay for transactions in a currency other than CNY because the process of foreign exchange in China is typically cumbersome and highly restrictive. As regulated by the State Administration of Foreign Exchange (国家外汇管理局, "SAFE"), foreign exchange can only be purchased from certain banks in specified amounts. There are also multiple regulations relating to the usage and holding of foreign currency. Regulations relating to foreign exchange are available on SAFE's website at:

http://www.safe.gov.cn/safe/hwmywhgl/index.html

Examples of these regulations include:

- The Regulations on Foreign Exchange Control of Trade in Goods (Appendices 1-5);
- The Regulations on Foreign Exchange Control for Trade in Services (Appendices 1-2).

7. Distribution channels

There are several distribution channels in China available to foreign exporters. Each channel varies in complexity, risk, and suitability for the distribution of different types and volumes of products. Specific product, sector, and industry regulations and distribution goals should be considered when selecting a distribution channel for China.

The following channels will be discussed in more detail in this section of this report:

- Cross-border E-commerce;
- Local distributors and partners;
- Franchising;
- Foreign-invested enterprises.

7.1. Cross-border E-commerce

The cross-border E-commerce sector has grown rapidly in recent years. Spurred on by the advent of E-commerce platforms like Tmall Global and JD Worldwide, Chinese consumers have become more at ease with purchasing international products online. E-commerce is a readily available distribution channel that provides access to the China market, and distribution through online platforms allows for the promotion of goods to a vast market spread across a large geographic area at a relatively low cost.

There are two different methods through which foreign businesses can distribute their products to Chinese consumers via cross-border E-commerce:

- Standalone websites;
- E-commerce platforms.

7.2. Local partners

A popular way to sell products in China is through a local partner, such as a distributor or an agent:

- An agent is a company's direct representative on the ground, and is paid a commission;
- A distributor buys an organisation's products and sells them on to customers through a third party. Their income is derived from the difference between the buying and selling price.

For small and medium-sized enterprises, using a well-known agent or distributor is one of the easiest ways to sell products in China. Local Chinese agents possess the knowledge, contacts, and distribution networks to promote an organisation's products and can also help to overcome language and cultural barriers.

In addition, sales and distribution agents can assist with tracking policy and regulatory updates, collecting market data, and responding to new developments in an efficient manner.

However, finding a dedicated, reliable, professional, and credible agent or distributor can be a challenge. An agent could be a manufacturer in a similar field or an import-export company that has well-established connections and an extensive network of suppliers.

Sometimes the local partner requests an exclusivity agreement. On the one hand, this can simplify marketing strategy, pricing structure, and management, and also improve communication efficiency. On the other hand, as an exclusivity agreement can often last for at least three years, working with incompetent poor-performing local partner could be a costly error.

Criteria indicative of a good agent or distributor include:

- Knowledge of your product/service and its market;
- Good references and previous experience;
- Language skills, including English and standard Mandarin, and also, where possible, Cantonese and relevant local dialects;
- Access to a strong network and geographical coverage;
- Access to a support team, staff, and sub-agents;
- Soft skills and sales experience;
- The ability to work with incentives (such as commission-based incentives and those related to receiving the customer's payment first);
- A strong work ethic, such as the ability to prepare and submit reports and marketing plans, conduct training, work with limited marketing budgets, translate documents, travel, respect the professional image of the company, and be transparent about any potential conflicts of interest.

7.3. Franchising

Franchising is a method of distributing products and services. At least two levels of personnel are involved in a franchise system: the franchisor, who lends their trademark or trade name and a business system; and the franchisee, who pays a royalty and often an initial fee for the right to do business under the franchisor's name and system. The McDonald's business model is an example of franchising.

When considering franchising in China, organisations should be aware of China's legal framework for commercial franchises. In February 2007, China's State Council (国务院) published the revised Regulations on Administration of Commercial Franchises (商业特许经营管理条例). These regulations apply to both domestic and foreign franchisors engaged in commercial franchising in China.

7.3.1 Franchise requirements

Below is a list of the most important requirements for franchise businesses:

- Only enterprises may engage in franchising as franchisors;
- A franchisor must own a developed business that can provide long-term commitment, technological support, business training, and other services;
- A franchisor must have prior experience of ownership and operation of at least two outlets for at least one year before they can establish their own franchise in China;
- In order to act as franchisee, a foreign company must first establish a foreign-invested enterprise in China.

7.4. Foreign-invested enterprises and representative offices

The establishment of a foreign-invested enterprise gives foreign companies more control over the distribution of their product and the management of their brand. Depending on the product and industry, the process of setting up a foreign-invested enterprise can be relatively simple or more complicated and time-consuming. It is important that enterprises first research Chinese regulations in their industry in order to familiarise themselves with the laws and regulations that govern foreign-invested enterprises.

The types of foreign-invested enterprise in China are:

- Wholly foreign-owned enterprise ("WFOE", although also sometimes known as "WOFE");
- Equity joint venture ("EJV");
- Cooperative joint venture ("CJV");
- Foreign-invested partnership ("FIP");

- Representative office ("RO").

7.4.1 Wholly foreign-owned enterprises ("WFOE")
- Independent limited liability corporations registered with foreign capital under Chinese law;
- The most common form of foreign-invested enterprise in China today;
- Allows a foreign company to establish an office and own its stock without a Chinese partner;
- Offers complete control over the business;
- Establishment process can be difficult and time-consuming;
- The appropriate structure for companies whose main activities in China are to manufacture and sell products, or provide services such as research and development or business consultancy.

7.4.2 Equity joint ventures ("EJV")
- Limited liability corporations established between a foreign company (or companies) and a Chinese company;
- Jointly-held operations, ownership, risk, and reward;
- Foreign investor must generally hold at least 25% of the registered capital (exceptions exist);
- Profit is distributed in the form of a dividend to the parties in accordance with equity contributions;
- The form of foreign-invested enterprise preferred by the Chinese government and Chinese businesses.

7.4.3 Cooperative joint ventures ("CJV")
- Established through a partnership between a Chinese organisation and a foreign enterprise, organisation, or individual;
- Can be incorporated arrangements with a limited liability corporation or a contractual cooperation agreement;
- Ownership of profit and losses is usually not shared based on equity contributions, but based on contractual agreement;
- Provides more flexibility regarding profit sharing and risk management.

7.4.4 Representative offices ("RO")
- Not legal entities, but rather liaison offices for foreign companies in China;
- Prohibited from engaging in profit-making activities on behalf of their foreign headquarters;
- Not a viable choice for product distribution in China.

8. Recommendations on how to enter the China market

Before entering the China market, it is recommended that businesses develop a comprehensive strategy that addresses:

- What stands to be gained by entering the China market;
- What China stands to gain through this entry into the market;
- What risks are likely to be faced;
- How potential risks can be managed.

Below are several questions, arranged in the form of a SWOT analysis, intended to help companies determine the strengths, weaknesses, opportunities, and threats they may encounter. The following questions may be helpful in determining what strategy to employ, what potential opportunities exist, and what risks are likely to be faced. By honestly and comprehensively discussing these and other topics, it is possible to create a more refined strategy that will increase the probability of success when expanding to China.

8.1 SWOT analysis

8.1.1 Strengths and weaknesses

The questions listed below should all be asked by enterprises looking to enter the China market:

- What is your current level of brand recognition a) in your home market, and b) in China?
- How capable is your company of adapting its structure and/or current practices to fit the Chinese business environment?
- Is your current staff capable of managing a transition into China (in view of factors such as workload capacity and cultural and language challenges)?
- What are your current competitive advantages (such as costs, quality, market permeation, and customer service) and are these transferrable to China?
- Does your current customer base have a presence in China, and if so, can these relationships be leveraged in order to aid in gaining traction?
- What other strengths and weaknesses that exist within your organisation will need to be addressed while developing a China-specific entry strategy?

8.1.2 Opportunities

The questions listed below should all be asked by enterprises looking to enter the China market:

- What level of demand for your product currently exists in China?
- Does your market offering coincide with current political agendas in a) your home market, or b) in China?
- Is there potential for technological advances to strengthen your organisation's position?
- What does your current target consumer group look like? In what ways is it likely to change?
- What is your prime motivation for entering the China market?

8.1.3 Threats

The questions listed below should all be asked by enterprises looking to enter the China market:

- How will fluctuations in the local and global economy affect your market position in China?
- Do you have a strategy to protect your IP (namely patents, trademarks, copyrights, and trade secrets)?
- Do your products face restrictions on market access?
- What challenges have your competitors faced, and how have they managed them?
- Do you have a strategy to manage foreign exchange risk?

- What assumptions are you making regarding your motivations for entering China, and how can you confirm/disprove them?

9. Appendices

9.1. Key policy and legislation update

9.1.1 General

- 2005 – Administrative Measures on Commercial Franchise Businesses;
- 2007 – Labour Law of the People's Republic of China;
- 2007 – Enterprise Income Tax Law of the People's Republic of China;
- 2008 – Foreign Exchange Control Regulations of the People's Republic of China;
- 2008 – Anti-monopoly Law of the People's Republic of China;
- 2015 – 13th Five-Year-Plan;
- 2019 – Special Administrative Measures for foreign Investment (2019 Negative List);
- 2019 – Special Administrative Measures for Foreign Investment in the Pilot Free Trade Zone (2019 Edition);
- 2019 – Catalogue of Industries Encouraging Foreign Investment (2019 Edition);
- 2019 – Regulations on the Improvement of the Business Environment;
- 2020 – Securities Law of the People's Republic of China;
- 2020 – Foreign Investment Law.

9.1.2 Intellectual property

- 2009 – Patent Law of the People's Republic of China;
- 2010 – Copyright Law of the People's Republic of China;
- 2019 – Trademark Law of the People's Republic of China.

9.1.3 Foreign trade

- 2009 – Measures for the Administration of Prohibited and Restricted Import of Technologies;
- 2017 – Cultural Relics Protection Law of the People's Republic of China;
- 2018 – Catalogue of Import-Export Commodities Subject to Compulsory Inspection and Quarantine;
- 2019 – Instructions for Completing the Customs Declaration Forms for the Import and Export of Goods (Annually updated);
- 2020 – Draft Export Control Law.

9.1.4 Data and the internet

- 2017 – Cyber Security Law of the People's Republic of China;
- 2018 – Personal Information Security Specification;
- 2019 – E-Commerce Law of the People's Republic of China;
- 2019 – Measures on Cross Border Transfer Security Assessment;
- 2020 – Provisions on the Governance of the Online Information Content Ecosystem.

9.2. Goods subject to automatic import licence

The Ministry of Commerce's (中华人民共和国商务部, "MOFCOM") Catalogue of Goods Subject to Automatic Import Licensing includes, but is not necessarily limited to, the following goods:

- Beef
- Pork
- Mutton
- Milk
- Milk powder
- Cassava
- Barley
- Broomcorn
- Soybean
- Rapeseed
- Sugar
- Distilled maize
- Soya meal
- Tobacco
- Crude oil
- Processed oil
- Chemical fertiliser
- Cellulose diacetate filament tow
- Tobacco machinery
- Mobile communication products
- Satellite, broadcast, and television equipment and key components
- Automotive products
- Aircraft
- Watercraft
- Broiler chicken
- Vegetable oil
- Iron ore
- Copper ore and concentrates
- Coal
- Steel
- Engineering machinery
- Printing machinery
- Textile machinery
- Metal smelting and
- processing equipment
- Metal-working machines
- Electrical equipment
- Medical equipment

9.3. Goods subject to import licence

MOFCOM's Catalogue of Goods Subject to Import Licensing includes, but is not necessarily limited to, the following goods:

- Ozone-depleting substances
- Chemical equipment
- Metal smelting equipment
- Engineering machinery
- Hoisting and transport equipment
- Papermaking equipment
- Power and electric equipment
- Food processing and packaging equipment
- Agricultural machinery
- Printing machinery
- Textile machinery
- Watercraft
- Toner cartridges
- X-ray tubes

9.4. Goods subject to tariff-rate quota management

MOFCOM's and the National Development and Reform Commission's (国家发展改革委员会, "NDRC") catalogues for goods subject to tariff-rate quota management include the Announcement on the Application Conditions and Allocation Principles on the Import Tariff Quota of Sugar (2020年食糖进口关税配额申请和分配细则), the Implementation Rules on the Import Tariff Quota of Wool and Wool Tops (2020年羊毛、毛条进口关税配额管理实施细则), the Announcement on Total Import Tariff Quota of Chemical Fertilizer – Quota Allocation Principles and Relevant Procedures (2020年化肥进口关税配额总量、分配原则及相关程序), the Announcement on the Application Conditions and Allocation Principles on the Import Tariff Quota of Grains (2020年粮食进口关税配额申请和分配细则), and the Announcement on the Application Conditions and Allocation Principles on the Import Tariff Quota of Cotton (2020年棉花进口关税配额申请和分配细则), which in turn include, but are not necessarily limited to the following goods:

- Wheat
- Maize
- Rice
- Sugar
- Wool
- Wool tops
- Cotton
- Chemical fertiliser

9.5 Goods prohibited from import

MOFCOM and the Ministry of Ecology and Environment's (中华人民共和国生态环境部) catalogues of prohibited imports can be found online in the following locations:

- Commodities Prohibited from Being Imported (First Batch) (禁止进口货物目录【第一批】)
- Commodities Prohibited from Being Imported (Second Batch) (禁止进口货物目录【第二批】)
- Commodities Prohibited from Being Imported (Sixth Batch) (禁止进口货物目录【第六批】)
- Commodities Prohibited from Being Exported (Third Batch) (禁止出口货物目录【第三批】)
- List of Solid Wastes Forbidden to be Imported (进口废物管理目录)
- Adjustment to the List of Solid Wastes Forbidden to be Imported (关于调整《进口废物管理目录》的公告)

9.6 CCC mandatory products

The Certification and Accreditation Administration's (中国国家认证认可监督管理委员会, "CNCA") catalogue of CCC mandatory products includes:

- Electrical wires and cables
- Information technology equipment
- Safety and protection products
- Circuit switches and electrical devices for protection or connection
- Lighting equipment
- Decoration and renovation products
- Low-voltage electrical equipment
- Vehicle and motorcycle safety components and accessories
- Children's products
- Low-power electromotors
- Vehicle and motorcycle tyres
- Explosion-proof electrical products
- Electrical tools
- Safety glass
- Household fuel gas appliances
- Electronic welding machines
- Agricultural machinery
- Fire control products
- Household and small electrical appliances
- Telecommunication terminal equipment
- Audio and video equipment

9.7. Service industries into which investment is encouraged

The general service industries (as opposed to specific services) into which investment is encouraged includes, but is not limited to:

- R&D services
- Intellectual property services
- Soil pollution control and remediation services
- Industrial design and creative design services
- Energy saving engineering services
- Air pollution control services
- Digital technology development services
- Energy saving management services
- Technical research and development consulting services
- Technical testing and analysis services
- Resource recycling services
- Technical management consulting services

- Mechanical equipment inspection and repair services
- Water pollution treatment services
- Environmental advisory services

9.8. Service industries into which investment is restricted

The general service industries (as opposed to specific services) into which investment is restricted includes, but is not limited to:

- Domestic water transportation
- Public air transportation
- General aviation
- Construction and operation of civil airports
- Telecommunications and basic telecommunication industry
- Securities and securities investment funds
- Futures
- Life insurance
- Market surveys
- Pre-school, high school, and higher education institutions
- Medical institutions

Please note: Only equity requirements, executive requirements, and/or some activities within these industries are restricted.

9.9. Service industries into which investment is prohibited

The Special Administrative Measures for the Access of Foreign Investment [Negative List] (外商投资准入特别管理措施【负面清单】) and the Negative List for the Pilot Free Trade Zone (自由贸易试验区外商投资准入特别管理措施【负面清单】, "FTZ Negative List") prohibit investment within some activities within these industries, amongst others:

- Wholesale and retail of tobacco products
- Air traffic control
- Postal services
- Internet and related services
- Chinese legal affairs
- Society-focused investigative work
- Development and application of human stem cell and genetic diagnosis and treatment technology
- Humanities and social sciences research institutes
- Special technical services
- Compulsory education institutions and religious education institutions
- Press and publications
- Broadcasting, transmission, production, and operation of radio and television

9.10. Technology restricted for import

Technology MOFCOM's Catalogue of Goods Subject to Import Licensing gives the following information:

Within the agricultural industry:

- Compound microorganisms;
- Genetically modified organism application technology;

Within the food manufacturing industry:

- Genetic engineering microorganism technology used for fermentation;
- Co-production of salt and glauber salt;

Within the textile industry:

- Shuttle loom production;
- Printing and dyeing technology;

Within the processing of petroleum, coking, and processing of nuclear fuel:

- Sodium cyanide;

Within the manufacturing of raw chemical materials and chemical products:

- Ammonia synthesis catalysts produced using low temperature and low pressure;
- Phthisic anhydride production technology;
- Ammonium phosphate technology;
- Diammonium phosphate production technology;
- Sulfuric acid production technology;
- NPK production technology;
- Pigment production technology;
- Toluene disproportionation technology;
- Packaged process of aromatic extraction;
- Packaged process of butadiene extraction using the DMF method;
- Packaged process of acrylonitrile;
- Packaged process of polyester;
- Dicarboxylic acids technology;

Within the manufacturing of non-metallic mineral products:

- Continuous drying/sintering by ceramic roller kiln;
- Fully automatic compressing technology for ceramic tiles;

Within the smelting and pressing of ferrous metals:

- Hematite beneficiation;
- Plain steel and general slab continuous casting machinery;
- Infrared carbon and sulfur analysis and atomic absorption analysis;
- Plain steel continuous square billet caster;
- Wet-ESP;
- Hot strip mills and steel coil-temper mill;
- Hot slab heating furnace;
- Hot rolled strip slitting line;
- Hot rolled thin gauge strip shearing line;
- Small-sized bar and wire rod production line;
- Flying shear control system of bar-wire mill in start stop mode;
- Basic automation control system of bar-wire mill;
- Cold-drawn pipe;
- Welded pipe units;
- Continuous hot-dip galvanization;
- Heating furnace vapourisation cooling;
- Middle- and low-grade non-oriented electrical steel;
- Middle- and low-grade cold rolled non-oriented silicon steel;

Within the smelting and pressing of non-ferrous metals:

- Pre-oxidation of raw ore and concentrate;
- Diasporic bauxite alumina production;
- Electrolysis process for 350kA prebaked aluminium reduction cell;
- Extrusion machine and technology (<1,600 tonnes);
- Design and manufacturing technology for 350kA prebaked aluminium reduction cell;

Within the manufacturing of general purpose machinery:

- Oil-burning boiler manufacturing;
- Design and manufacturing technology for general butterfly valves (with calibre less than 1040mm);
- Design and manufacturing technology for general high and middle pressure cast steel valves;
- Design, manufacturing, and application technology for conventional centrifuge;

Within the manufacturing of special purpose machinery:

- Packaged technology for EAF automatic control system;
- Fixed-length and rolling cut technology;
- Double-side trimmer (three-eccentricity) technology;
- Small and medium tractor manufacturing technology;
- Seed processing machine technology;
- Rapid economic die based on RPM& NC technology;
- Design and manufacturing technology for cold punching die;
- Design and manufacturing technology for plastic moulding;

Within the manufacturing of electrical machinery and equipment:

- Design and manufacturing technology for GIS&GCB;
- Porcelain insulator in wet moulding process;
- Small- and middle-power diesel generators technology and its products;
- Generator manufacturing technology;
- Manufacturing technology for high energy consumption household appliance;
- Subcritical pressure boiler and its auxiliary equipment (≤600MW);
- CFB technology (<300MW);
- Transformer and reactor technology;
- System design and investigation technology for converter station;
- Design and manufacturing technology for cold punching die;
- Design and manufacturing technology for plastic moulding;

Within the manufacturing of measuring instruments and machinery for cultural activity and office work:

- Civil used kilowatt meter, water meter, and gas meter manufacturing technology;
- One-component gas element analyser technology;
- Digital and conventional photofinishing equipment manufacturing technology;
- Stenograph (mimeograph) manufacturing technology;
- Paper shearer manufacturing technology;
- Packaged technology for VD automatic control system;

Within the production and distribution of electric power and heat power:

- Supercritical pressure fossil fired unit technology;
- Design and manufacturing technology for subcritical pressure fossil fired unit;
- Typical wet mode limestone/gypsum wet FGD system technology;

Within the banking industry:

- Counterfeit deterrent technology especially used for printing CNY;

Within the environment management industry:

- General electrostatic precipitator and supply power manufacturing technology;
- Power plant limestone-gypsum method and CFB-FGD technology;
- General wastewater treatment technology;
- Large load damping spring isolation technology.

9.11. Technology prohibited from import

The List of Technology Subject to Prohibited Import and Restricted Import (中国禁止进口限制进口技术目录), the Catalogue of Industries for Encouraging Foreign Investment (鼓励外商投资产业目录), and the Catalogue of Dual-Use Items and Technologies Subject to Import and Export Licence Management (两用物项和技术进出口许可证管理目录) include the following goods:

- Production technology for ethoxyabietic amine
- Production technology for magnesia- carbon bricks
- Rare earth metallurgy technology
- Production technology for span
- Refractory material technology
- Lead smelting technology
- Production technology for rosin amine
- Coking technology
- Imperial smelting furnace for smelting copper
- Lead printing process technology
- Second-hand equipment and supplementary equipment for ironmaking, steelmaking and steel rolling
- Acid making by fume dry scrubbing technology and hot concentrated acid washing technology
- Visbreaking technology
- Hot-dip galvanising technology
- Gold ore dressing, refining technology
- Production technology for pesticide
- Bell-type annealing furnace with HPH technology
- Single rare earth separation and preparation technology
- Production technology for sodium carbonate
- Drive control system of mercury converter
- Pre-treatment of rare earth concentrate
- Aniline technology
- Steelmaking technology by cupola furnace
- Lead contained insulating coating technology
- Production technology for sodium cyanide
- Hot sintering mineral technology
- Halogenous copper clad panel technology
- Production technology for chromium salt
- Production technology for copper oxide mast
- Automotive freon air conditioning system technology and asbestos friction material production technology
- Formula for petrochemical industrial water treatment chemicals
- General CIP process
- Freon refrigeration technology
- Production technology for phthalic anhydride
- Continuous production line of cyanide brass plating

- Drugs packaging technology for scalding wax cork

About the Centre

The EU SME Centre helps EU SMEs prepare to do business in China, by providing them with a range of information, advice, training and support services. Established in October 2010 and funded by the European Union, the Centre has entered its second phase which will run until April 2020.

The Centre is implemented by a consortium of six partners – the China-Britain Business Council, the Benelux Chamber of Commerce, the China-Italy Chamber of Commerce, the French Chamber of Commerce in China, the Eurochambres, and the European Union Chamber of Commerce in China. All services are available on the Centre’s website after registration, please visit: www.eusmecentre.org.cn.

About CBBC

This report is compiled in partnership with the China-Britain Business Council (“CBBC”) and is an introduction to Chinese economics. It aims to help EU SMEs gain an understanding of the different BRI programmes and how EU SMEs can take advantage of these programmes in a cost-efficient way.

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