

## **BIAC PRIORITIES FOR REGULATORY REFORM IN CHINA**

### **I. Introduction**

1. The OECD business community affirms its strong interest in the OECD's Regulatory Reform Review on China. For international businesses, China represents a vast opportunity. It is not only a very large and increasingly wealthy market to sell to but also an attractive location for establishing business operations. Nevertheless, numerous challenges to doing business in China remain, including many obstacles related to institutions, regulatory frameworks, and regulatory enforcement. The OECD's regulatory review therefore represents an important next step in the organization's co-operation with China which has the potential to benefit OECD countries and businesses and the Chinese people alike. The purpose of this submission is to communicate to the OECD at an early stage those areas for regulatory reform which, from a business point of view, should receive particularly close attention in the review and to provide sector specific examples which illustrate some of the regulatory reform challenges faced by foreign companies in China. BIAC also stands ready to work with the OECD throughout the course of this important project.

### **II. Overall Objectives**

2. By assisting China with the reform of its regulatory system, the OECD must help China create a business environment that is transparent and accessible to business. Such an environment would facilitate increased business transactions and investment, in turn leading to more jobs, growing domestic expertise, greater wealth and an increased standard of living in China. Moreover, improving the regulatory environment will provide increased opportunities for OECD Member Countries to achieve higher levels of trade and investment with China, resulting in increased specialization and wealth for all countries.

3. Good public governance and a high quality regulatory framework are crucial pre-requisites for a superior business and investment environment. BIAC encourages the OECD to work with the government of China to improve government accountability at all levels of government, increase the transparency and predictability of rules, rigorously enforce laws and contracts, fully respect property rights, develop and implement more cost-effective regulatory frameworks and strongly commit to fighting bribe solicitation and corruption. In this context the OECD Policy Guiding Principles for Regulatory Quality and Performance and the OECD APEC Integrated checklist on Regulatory Reform are an important reference for this OECD China review.

4. Regarding the openness of the Chinese economy, BIAC acknowledges that China has made significant efforts to meet its obligations under the terms of its WTO accession agreement. However, a number of compliance concerns remain and the OECD should strongly encourage China to fully implement its WTO obligations. In the area of investment, China needs to significantly reduce the complexity and restrictiveness of regulations as they apply to foreign investors in order to provide for an environment in which domestic and foreign companies can compete effectively. BIAC calls on the OECD to encourage China to improve its institutional regulatory framework for foreign trade and investment related policies. Chinese trade and

investment related policies should be open and transparent, non-discriminatory, avoid unnecessary restrictions, use internationally harmonized measures, streamline conformity assessment procedures and apply competition principles on an international scale.

### **III. Horizontal Priority Issues**

#### **A. Transparency**

5. Increasing transparency in the formulation, implementation and enforcement of laws and regulations at all levels of government is central to improving the business environment in China. Transparency is a key driver of better laws and regulations. It is also a fundamental principle enshrined in WTO agreements.

6. BIAC appreciates the actions that China has already taken to increase transparency. These include MOFCOM's decision to post many new trade-related rules and regulations on the Internet and in the China Foreign Trade and Economic Cooperation Gazette. The promulgation of the Provisional Regulations on Administrative Transparency in 2003 was a significant step forward. However, much more needs to be done to reduce the lack of transparency which is one of the most important obstacles to business in China.

7. Thus far, however, rulemaking practices in China still favour the use of government-approved academic and technical experts who are often unable to impart into the rulemaking process the full range of industry experience relevant to a particular issue. As a consequence, many rules are made that present very difficult compliance challenges to foreign investors.<sup>1</sup> Furthermore, while many Chinese agencies are providing opportunities for OECD companies to comment on proposed rules, such opportunities are usually brief and sometimes offered only by invitation. Comments are often solicited only at the early stages of the rulemaking process, and rarely involve agency feedback on submitted comments. Moreover, it is not uncommon for drafts of new laws and regulations to be circulated only to Chinese partners of Joint-Ventures or selected companies, again with very short timeframes for formulating a reply.<sup>2</sup> Generally-speaking, Chinese agencies also do not provide OECD companies with notification of a final draft rule before promulgation. Normally, it takes at least 1-2 years for an agency to promulgate a new regulation. The time span between publishing new legislation and implementation can often be too short to allow companies to organize and ensure timely compliance.<sup>3</sup>

8. In BIAC's view, Chinese authorities need to develop a much more coherent and consistent approach towards rule-making and the development of regulations. Initial steps in this process

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<sup>1</sup> Example: China Compulsory Certification (CCC) product quality marking regime. Exemptions from the marking requirements are available for certain products. However, in many cases, companies must apply for these exemptions and the exemptions must be renewed each month.

<sup>2</sup> Example: Administrative Measures for the Import of Automobile Components Fulfilling the Characteristics of a Whole Vehicle, which became effective in April 2005.

<sup>3</sup> Example: October 18, 2002, the State Economic and Trade Commission (SETC) (now disbanded) issued Regulations on the Registration of Dangerous Chemicals, Regulations on Licensing for Business and Sale of Dangerous Chemicals, and Regulations on the Manufacturing of Packaging and Containers for Dangerous Chemicals. These regulations entered into effect November 15, 2002. However, the implementing rules for these laws were not released until November 21, 2002, and the associated registration/license application forms were not published until January 2003.

should build on China's WTO accession commitments and include the introduction of a central database/registry that contains all present and upcoming laws, regulations and rules as well as the implementation of a system for advance notification. While the OECD business community welcomes the increased involvement of experts and stakeholders in the policy-making process, the system of public consultations would benefit from still broader participation. The OECD should encourage China to adhere to international best practices and grant all interested parties sufficient time to comment on draft legislation.

## **B. Rule of law**

9. All levels of government in China need to make a stronger commitment to the rule of law. Weak implementation and/or uneven enforcement of law, limited knowledge of or respect for rights, and a lack of access to affordable legal representation all compromise the rule of law. Strengthening the rule of law in China will provide citizens and businesses with greater confidence in state institutions. It will also strengthen respect for China's regulatory frameworks and significantly raise compliance levels.

## **C. Regional inconsistencies**

10. It has been the experience of OECD businesses in China that the rule of law is seriously weakened by a lack of coordination between the central and local authorities. Regional inconsistencies in the interpretation and enforcement of regulations, coupled with weak communication between government ministries, results in situations where foreign companies are regulated in different and sometimes contradictory ways. This greatly complicates investment and business planning decisions. Investors can also find themselves caught between conflicting requirements. Sometimes regional governments simply make demands on companies regardless of the law. While the problem of regional inconsistencies in regulations and enforcement is not unique to China, the sheer size of China and the speed of its economic growth exacerbate the situation and present major obstacles for foreign companies active in China. As more foreign investors push inland from the coast, we anticipate that this problem will become even more severe.

## **D. Misuse of criminal proceedings**

11. OECD businesses are also concerned about some aspects of the close relations between local political authorities and State Owned Enterprises (SOEs). In certain instances, local officials and their business partners have gone so far as to use Chinese police to seize and detain foreign businessmen or their local advisors in an attempt to intimidate them into resolving commercial disputes on terms favourable to the Chinese parties. These detentions can often last many months and frequently ignore the rules of Chinese criminal procedure. They sometimes lack even the pretext of criminal charges. The OECD must urge the Government of China to stop the use of criminal proceedings to influence the outcome of commercial disputes, and address these rule of law issues quickly. The emergence of a fair, transparent legal system in China that is free of corruption will require many changes - legislative reform, better trained and compensated judges and greater accountability on the part of governmental officials. Once these issues are addressed, China will enter into a new era of increased trade and quality investment to the benefit of all nations.

## **E. Protection of Intellectual Property Rights**

12. The protection of property rights, including intellectual property rights (IPR) is a key element of rule of law and a prerequisite for a well-functioning business environment. Since acceding to the WTO and taking on obligations in the area of intellectual property rights (IPR) protection, China has

made limited progress, implementing practical measures for combating copyright piracy and trademark counterfeiting, despite the fact that its legislation is generally considered to be of high quality. BIAC welcomes the new IPR laws and regulations China has issued in recent years<sup>4</sup>, and while recently promulgated IPR regulations are an important step towards improvement, inadequacies remain which result in shortfalls in the legal protection necessary for IPR in the current context of rampant piracy and counterfeiting. Furthermore, what potential effectiveness those measures may have largely depends on the implementation and enforcement thereof. If implemented and enforced effectively, these measures will benefit the development of China's own IPR-dependent industries, not just those of its foreign trading partners. Indeed, China's IPR-dependent industries have become increasingly vocal about their concerns related to counterfeiting and piracy.

13. Regarding enforcement, BIAC recommends that China lower the threshold for bringing criminal actions in copyright cases. The threshold, in spite of being lowered in some respects last year, has proven to be a major obstacle to bringing criminal cases to court. Administrative agencies can only refer cases for criminal action if the numerical or value threshold is met. As soon as an administrative investigation starts, the culprits use this window prior to the filing of criminal charges to ensure that whatever material is seized fails to meet the threshold. This is one of the reasons why few, if any, criminal copyright cases have been launched. The threshold should be removed. (Portions of the thresholds are determined by the pirate rather than the legitimate retail price, making meeting the thresholds that much more difficult). Moreover, China does not initiate criminal proceedings when the current criminal thresholds are met indicating a general lack of political will to combat counterfeiting and piracy through effective criminal enforcement and the application of deterrent penalties.

14. China is still the world's leading source of infractions for virtually every industrial sector with regard to the violation of intellectual property rights. For certain sectors, in addition to lax enforcement of intellectual property rights, market access restrictions fuel counterfeiting and piracy because legitimate products are not available to satisfy demand for them within China. Copies of foreign products are not only being sold in the domestic market but increasingly, in overseas markets as well. OECD based companies are suffering great losses of revenue in China, as fakes displace their sales in the Chinese market. They also suffer loss of reputation, as copies of lesser quality are offered for sale under their brand names. In some cases, they must contend with very serious situations where the health and safety of the end-user is jeopardized by poor quality fakes, as for instance in the case of copied automotive parts, artificial turf and turf fibers, and medicines or pesticides.

15. Piracy and counterfeiting remain rampant in China because criminal thresholds are too high, penalties are inadequate, enforcement is lacking and not coordinated among local, provincial and national authorities, and China's administrative and criminal enforcement system lacks transparency. The OECD must encourage China to take a more credible and effective approach towards respecting IPR. Priorities should include more effective and meaningful criminal enforcement with deterrent penalties and transparency in criminal IP cases as well as quick cancellation of international trademarks obtained in bad faith. In civil law, claims for damages and prohibitive injunctions must serve as a sufficiently powerful deterrent. Work is also needed to

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1. <sup>4</sup> These include the Rules on the Determination and Protection of Well-Known Trademarks, Measures on the Implementation of the Madrid Agreement on Trademark International Registration, Measures on the Registration and Administration of Collective Trademarks and Certification Marks, Measures on the Implementation of Administrative Penalties in Copyright cases, and Regulations on the Customs Protection of IPR.

enhance cross-border cooperation between Chinese enforcement agencies and their counterparts overseas, as well as between the private and public sectors, including through greater voluntary information sharing. Moreover, rights-holders would benefit from obtaining access to large-scale infringers' banking information, to enable them to trace money flows for the purpose of identifying laundered funds.

### **C. Certification and licensing**

16. In a number of areas, the Chinese government has established certification, licensing, and testing requirements on products and production materials. In most cases, these requirements involve government approval of all covered products and materials before these are allowed to enter the market. Due to the lack of capacity to administer the requirements, however, these requirements often serve as de facto barriers to accessing the China market for certain products and materials. These requirements impact a broad cross-section of industries and are a concern to a growing number of our companies. Examples include the new chemical registration regime, the battery registration regime, and the regime for restricting the material content of electronic products. In such cases, particularly as Chinese certification, licensing and/or testing organizations are involved, the ability of a product or material to enter the Chinese market is typically subject to a number of unpredictable and often costly procedures. At present, the systems tend to be "overbuilt," requiring that all covered products or materials, regardless of whether there is any indication of non-compliance with Chinese law, undergo expensive and lengthy reviews or tests. The OECD should recommend that China revisit the balance it has struck between its legitimate compliance assurance needs and the need of business for predictability, fairness, and minimally impeded access to Chinese markets.

### **D. Specific barriers for foreign investors**

17. High and sustained foreign direct investment (FDI), including cross-border mergers & acquisitions, are crucial to sustaining China's rapid economic development and its integration into the global economy. However, the OECD concluded in its recent investment policy review on China that "the broader regulatory framework for investment is complex and incomplete. Government policy on retaining strategic assets is not transparent. Foreign ownership restrictions persist: the foreign investment catalogue regime has not been liberalised and additional discretionary sectoral restrictions are imposed on foreign direct investment (FDI). Cross-border M&A approval procedures are cumbersome, although some streamlining has taken place. There is a lack of transparency in potential acquisition targets, reflecting poor standards of corporate governance and disclosure. Official Chinese valuation methods differ significantly from OECD member country practices, leading to valuations which may unnecessarily discourage purchasers. Hostile takeovers are difficult to accomplish. Current regulations appear to discriminate against foreign investors in the area of pre-merger notification and use unquantifiable notification thresholds."

18. BIAC fully shares this overall OECD assessment on the quality of the regulatory framework for investment in China. Foreign investment is further complicated by continued government influence over industry, overly cumbersome cross-border M&A approval procedures, restrictions on the transfer to foreign investors of state-owned shares and legal person shares of listed companies and lack of a clear definition of "state-owned property" also significantly complicate foreign investment in China. The lack of clarity on this last issue, including a definition of which state-owned assets are off-limits to investors, is a major impediment to greater foreign investment in China. It can also be difficult for investors involved in disputes with local joint venture partners to

seek compensation or other resolution when problems arise. The procedures and effectiveness of the arbitration authority or local courts and officials can also hamper this process.

19. Moreover, the OECD business community is concerned that recent statements by government officials, in particular the speech by NBS Director Li Deshui at this year's NPC alleging domination of whole sectors by foreign investors and calling for "severe measures to curb and punish hostile takeovers aiming to monopolise the Chinese market", as well as the 11th Five Year Plan with its increased emphasis on economic nationalism and self-reliance, may be indicative of an increasingly negative attitude of the Chinese government towards foreign investment, which may translate into a deterioration of the investment climate.

20. BIAC calls on the OECD to remind Chinese authorities in the Regulatory Reform Review of the inefficiencies associated with an overly complex, non-transparent and restrictive regulatory framework for investment and to strongly encourage China to take more open policy approaches towards foreign investment. The Review should therefore contain a strong investment chapter specifically addressing the issues involved in developing an institutional environment favourable to private investment.

### **E. Compulsory technology transfer**

21. In some cases, the Government of China forces foreign companies to divulge know-how by imposing specific conditions or regulations. Thus, foreign companies find themselves compelled to enter into collaboration agreements with Chinese enterprises if they are interested in doing business in China. In order to be permitted to participate in public tender bidding, foreign companies have to guarantee an extremely high percentage of local content - at times up to 80%. To fulfill these local content quotas, OECD companies often cannot use their local subsidiaries in China but have to act as subcontractors under a Chinese firm, whereby a wide-ranging transfer of technology to Chinese enterprises occurs. For many projects, close technological cooperation with Chinese design institutes in the field of 'detailed engineering' is mandatory. In addition to the usual handing-over of documentation, the training of Chinese technicians is being imposed with the objective of enabling them to carry out future projects themselves. The obligatory inspection of factories in Germany by Chinese inspectors, in order to obtain mandatory certification, gives rise to similar fears.

22. The OECD business community does not object to technology transfers in principle, as in many cases, these arrangements can form the basis of a business deal. We also welcome the emergence of China as a global technology centre with its own effective research facilities. However, OECD enterprises want to preserve their ability to decide voluntarily when to transfer technical know-how. The Chinese Government should, therefore, abolish rules and regulations which stipulate the transfer of technology to the enterprises as an involuntary pre-condition for investment. This pertains in particular to the stipulation to make available detailed plans to design-institutes in order to obtain approval for investment projects, the conditions for an unreasonable/inappropriate local content addition in connection with public tenders, as well as the compulsion for collaboration with Joint Venture partners.

### **F. Public Procurement**

23. When China joined the WTO, it simultaneously became an observer to the WTO's Government Procurement Agreement (GPA) and committed to begin accession negotiations "as soon as possible" thereafter. Last year, the Chinese government committed to commence formal negotiations to join the GPA and to provide and offer by the end of 2007. China should be encouraged to realize its plans to join the GPA as soon as possible. BIAC members seek an open,

fair, and transparent procurement regime and we recognize that China has been working to reform its government procurement programs to bring them more strongly in line with global norms in areas such as transparency, fair competition, national treatment, accountability, and Value for Money (VFM). Further progress is necessary. In the case of large, public sector infrastructure projects that are considered critical to China's national interest, especially in the power and transportation sectors, it is increasingly common for only local companies to be invited to take part in tenders. Foreign firms are kept out of the direct bidding process or are allowed participation only under the condition that Chinese firms are the main contractor, that there is a total transfer of technology to those Chinese firms and that an increasing percentage of local content is guaranteed. It is only by lifting these restrictions that free access by foreign firms and their subsidiaries can be achieved and a level playing field between Chinese and foreign firms established. Chinese officials need to be reminded that open, fair and transparent rules and practices need to be put in place at regional and local levels of government as well.

## **G. Independent Regulators**

24. In the context of the peer review of China, BIAC would like to see emphasised the role of independent regulators and the importance they may play in the development of the Chinese economy and across areas subject to review in this peer review. We note that independence must also be characterized by transparent and accountable regulatory institutions. Accountability is a necessary condition for independent authorities. BIAC supports earlier OECD findings that a high quality regulation approach provides various procedural means, which will ensure accountability, while ensuring independence. These means include consultation, access to information, transparency, regulatory impact assessments, and due process rules in making individual rules and sanctions.

## **IV. Sector Issues**

25. The following section provides sector specific examples which illustrate some of the general regulatory reform challenges faced by our companies in China and identified in Part III of this paper.

### **Automobiles**

26. The new version of the Guidelines for Automotive Policy published in 2004 represents a clear improvement over earlier versions. Nevertheless, it is clear that many issues have been dealt with only in a very general sense. Moreover, outside the Export Processing Zones, there has been no change to the ownerships restrictions on foreign investors that place a cap of up to 50% of shares in an OEM vehicle company. Furthermore, there is a proposal to limit the number of potential joint ventures for each foreign investor to two partners in the sector. In addition, there are minimum investment volumes, creditworthiness, profitability, requirements for operating with own capital, the purpose of which is unclear except that they would accelerate consolidation of the presently very high number of Chinese companies involved in the industry. However, they also have the effect of dampening business opportunities for foreign investors. Also, with respect to auto parts and components, we remained concerned that national suppliers are given undue preference.

27. China's 11th 5-Year-Plan includes ambitious targets for Chinese vehicle manufacturers. By 2010, for example, 60% of the passenger cars sold in China should be developed locally and Chinese brands (proprietary brands) are to be promoted. At the same time, high goals have been laid out regarding the efficiency of cars, the attainment of which will require tax and legislative handicaps which are already being introduced with drastic effects in the marketplace. BIAC welcomes China's ambitious goals for raising efficiency in the transport sector and supports China in its quest to build a market for clean, efficient vehicles in the future. However, it is also urgently

necessary to provide the scope for foreign car producers and suppliers to organize their own, independent supply-chains. The scope for participation by foreign investors should be expanded considerably. Second, a level playing field should be created for the automobile industry such that identical competitive conditions face all producers, irrespective of their ownership structure (share of foreign capital), origin and positioning of their brands or the duration of their presence in the market. Legal and fiscal parameters should be also be aligned with the goal so that they provide the same set of incentives in all market segments and no producers, vehicle classes or technologies are discriminated against.

## **Capital Markets**

28. Deep and liquid capital markets are the essential building blocks of today's economy, supplying the funds for economic growth and job creation. The firms that play a role in the markets price risk, allocate capital, provide investors with advice and investor opportunities, make independent assessments of information for decision-making, and supply the liquidity needed to make markets work efficiently. High-quality, transparent regulation of its capital markets will help China's public and private sectors and foreign firms mobilize the massive financial resources necessary to sustain the country's economic growth. OECD firms in the securities, asset management, banking, insurance, accounting and auditing industries have an important interest in China's efforts to develop world-class regulatory structures.

29. The market potential for foreign firms in the capital markets sector to contribute to China's economy is drastically reduced by discriminatory rules that are not justifiable on grounds of supervision. These include ownership restrictions, discriminatory treatment on licenses, capital requirements, and branching legal uncertainty about permissible activities, and what appears to be a regulatory bias against foreign institutions. BIAAC would be pleased to supply additional detailed information for each of the industries that comprise this sector in the course of the OECD's Regulatory Review.

30. One example of these unjustifiable ownership restrictions can be found in the different treatment of foreign banks and foreign life insurance companies. Foreign banks in China can operate as a wholly owned subsidiary or branch of their foreign parent company. However, this is not the case for insurance companies. With the exception of one insurer, all foreign-invested life insurance companies in China are required to be in the form of a joint venture with a local partner. The financial commitment and long-term earnings horizon have resulted in most local partners being reluctant to commit resource and capital to the joint venture. This situation has created conflicts in strategy and management within joint venture companies. Insurance companies should be given similar ownership control as banks for operating in China. BIAAC would be pleased to supply additional detailed information and examples for each of the industries that comprise this sector in the course of the OECD's Regulatory Review.

31. In addition to the differential treatment of foreign and domestic firms, there are a number of issues that relate to regulatory processes in the capital markets sector. These include: a multiplicity of regulators without clarity about which authorities have what responsibilities; inconsistencies among various regulatory agencies and between the central regulatory authorities and provincial authorities; a lack of transparency in the regulatory process and opportunities for regulated industries to contribute to the development of regulations; a mismatch between regulatory rules and the objectives they are intended to achieve; the absence of guidance on regulatory compliance; uncertainty about the appeals process for regulatory decisions; and concerns about the confidentiality and uses of information supplied to regulatory authorities by private firms.

32. A clear example is found with respect to foreign insurance companies operating in China. In the investment area, small and medium insurance companies in China are under very strict control on the investment channels. Particularly in 2006, China's insurance regulator asked all insurance companies to outsource their direct equity investment to the Insurance Asset Management Company (IAMC, a subsidiary company to be set up by insurance companies that have total assets of at least RMB10B). Currently there are only nine approved IAMCs that are all formed by large domestic companies while the all the other foreign joint venture insurers cannot meet the asset requirement due to their short operation time in China. China's regulators acknowledge that an IAMC has better internal controls and investment capabilities. In fact, all of the foreign insurers' parent companies have long and successful histories of self-managed investment in their home countries and overseas. They could support and invest in arch and systems capabilities, and install international-standard risk management systems for investments in their China operations. An Insurer's proper internal controls and risk management should be more important than asset size for the assessment of investment ability. A system of differentiated rules for individual companies with support from their parent companies that have long track record of experience should be established. For foreign insurers that have strong internal controls and risk management capabilities, and a track record overseas, less regulatory constraints should be imposed on the investment channel and investment management. Once again, BIAC would be pleased to supply additional detailed information and examples in the course of the OECD's Regulatory Review.

## **Chemicals**

33. The Chemical Substance Notification Guidelines which stipulate notification and registration of chemicals produced or imported into China are overly cumbersome, costly and impede innovation. The law stipulates extremely elaborate requirements even for chemicals in small volumes. Even product samples have to undergo the formal registration and certification process. Moreover, the law does not distinguish between commercial and intermediate products and thus represents a serious barrier to more innovative production in China. In BIAC's view, the requirements for registration and notification for samples and small quantities should be reduced.

34. OECD companies also have concerns that the regulatory agency does not maintain adequate confidentiality and data protection for the chemicals it registers. In addition, the Chinese regulations stipulate that some required testing of new chemicals must be undertaken only in China on Chinese species at certified laboratories. The principle should be that data generated in a Member country in accordance with OECD Test Guidelines and Principles of Good Laboratory Practice (GLP) shall be accepted in other Member countries for assessment purposes and other uses relating to the protection of human health and the environment. This process reduces unnecessary inefficiencies, duplication and costs in the system and also minimizes unnecessary animal testing. To fully participate in the world trading system, BIAC urges China to readily accept test data generated in other countries under international guidelines for the mutual acceptance of data.

## **Natural Resources**

35. China's future economic growth, and its ability to further increase its manufacturing employment, is dependent on its ability to secure access to mineral and energy resources, whether they are located within China or offshore. The importance of this security is such that some key regulatory policies have been adopted in past years that serve to impede access or to otherwise disadvantage foreign businesses and which should be examined within the OECD regulatory review of China.

36. Chinese companies are increasingly implementing a strategy of backward integration, investing in mines abroad, and increasing the likelihood that primary commodities in the future will bypass world markets on direct route to China. There are also trends in growth markets such as China whereby raw material imports are promoted and exports hampered through policies such as import sales tax refunds, high tariffs on exports, and licensing systems. These trade distortions are aimed at encouraging domestic raw material supply and value-added manufacturing production and jobs. The distortions work against free markets - and they diminish the availability of commodities in sufficient amounts, at high qualities and acceptable prices worldwide. This affects global activity in the computer and automotive production sectors, among numerous others.

37. With respect to direct investment, it is important that companies have confidence that their natural resource exploration efforts can lead to the development, production and marketing of the resource - provided companies meet relevant regulatory requirements. In China, foreign companies are eligible to invest in exploration, although they are generally not allowed to develop mines if they are successful. This closed door to resource investment should be opened - an opening that would also allow advanced technology, safety, training and other practices to enter China.

## **Post**

38. BIAC members recommend that China establish a regulatory authority for its postal system so that there is a complete and transparent separation between the postal regulatory authority, the national postal operator, and other government authorities. The postal regulator should have jurisdiction only over the universal service obligation provided by the universal postal service provider. The general transportation and express industries, both domestic and international, should remain outside the authority of the postal regulator.

## **Telecommunications**

39. In the telecom sector, China is still far from achieving its commitment to establish an independent regulator. The Chinese government owns and controls all of the major operators in the telecommunications industry, and the Ministry of Information Industries (MII) still performs dual roles as protector of the state-owned operators and as industry regulator. The pending Telecom Law could improve this situation by mandating a regulatory body that is organizationally separate from government agencies charged with developing the state-owned telecommunications industry. BIAC suggests that finalizing and adopting this long-overdue law should be made a top government priority. Interested parties must also be provided a reasonable period for review and comment on the MII's regulations and decisions, as required by China's WTO accession documents. Virtually no notice was given, and no comments invited, before the revised Telecom Catalog went into effect last year. At present, the regulatory environment in China is discouraging new entrants from participating in the telecom market. This will continue until foreign investors have confidence that China has made its intention clear and has a demonstrable plan to implement its WTO commitments.

40. China's unreasonably high capitalization requirement for basic telecommunications services has further greatly limited market access. Basic services licenses are subject to a 2 billion RMB (US\$250 million) capitalization requirement, which is 100 times larger than the capital requirement for China's value added service licensees, and comprises an excessively burdensome restriction that violates Article VI of the GATS. A foreign service provider otherwise meeting the licensing qualifications is unlikely to allocate such capital to a new and risky enterprise. A further problematic restriction is the requirement that foreign telecom service providers may only enter into a joint venture with one of the existing state-owned enterprise telecom providers.