

Brussels, September 23 2015

H.E. Jyrki Katainen  
Vice-President  
Commissioner Jobs, Growth, Investment and Competitiveness  
European Commission

H.E. Cecilia Malmström  
Trade Commissioner  
European Commission

H.E. Günther Oettinger  
Commissioner Digital Economy & Society  
European Commission

**Re : Joint industry letter on EU-China**

Dear Commissioners,

The undersigned associations - representing a wide range of businesses in Europe - are committed to improving the European Union (EU)-China relationship. We recognise the strong potential of the Chinese market. We view positively initiatives aiming at improving trade and we support the ongoing bilateral investment negotiations.

In light of your High Level Economic Dialogue with Chinese government leaders this month, we would like to draw your attention to the following points:

**Market access**

We welcome the European Commission's engagement with China on a wide range of technology policy issues.

We encourage you to emphasise that China has greatly benefitted from economic openness and reducing barriers to bilateral trade and investment, including in the ICT sector. New Government policies have attracted innovation, investments, growth and job creation, to the benefit of China and Europe.

Unfortunately, we have recently noticed increasing signs of Chinese protectionism in the technology sector.

We believe that Europe and China should reaffirm their commitment to open and competitive markets, particularly in the ICT sector, recognising the significant benefits from the integration into global industry value chains. It is in our joint strategic interest to create a strong global ecosystem and to cooperate in the field of new technologies.

Guaranteeing free market access and sound, transparent regulatory enforcement in line with WTO obligations would yield a number of benefits to the economy and industry as a whole.

However new national security requirements, including the draft Foreign Investment and Cybersecurity Laws, raise fundamental questions about China's commitment to open its market to trade and investments.

### **Cyber security**

We are of the opinion that China uses overly broad definitions and approach to its national security interests and we encourage you to have a dialogue about our difference in approaches to national security.

China has increasingly pursued policies that could strongly inhibit the ability of ICT firms (and the companies that rely on them) to do business in China. These measures include the draft "secure and controllable" guidelines for the banking sector and a new draft national security law, new restrictions on cross-border data flows, and draft counter-terrorism and cybersecurity laws. We are worried that similar texts coming through other administrations and for other sectors could be published soon.

Cybersecurity is being used to justify increased restrictions on market access. However, security does not need to impact market access. Chinese companies certainly do not experience this restriction in Europe. National security measures appear to disproportionately impact foreign companies compared to local companies, and particularly the state owned enterprises.

Entering and doing business in China remains uncertain and too often investors find themselves operating in grey areas due to vague Chinese regulations and poor enforcement.

Europe is faced with increased costs in terms of security responses to attacks. We encourage both the EU and China to pursue measures that protect national security that are necessary and narrowly-tailored to advance legitimate security objectives and which are the least restrictive of open trade and competition as possible. We must avoid regulations and policies that are designed to advance policies that distort markets and restrict open competition. We also encourage you to refrain from any actions that could be perceived as endorsing or legitimising controversial Chinese practices.

We insist that cyber security policies should be developed in a transparent manner and in partnership with the private sector and should allow for procurement of technologies regardless of the country of origin or the nationality of the technology vendor. They should also enable risk management and innovation, and ensure that any security requirements avoid forced transfer or review of IP, such as source code. We also strongly encourage the development and use of globally recognised, industry-led, voluntary consensus security standards, best practices, assurance programs, and conformity assessment schemes.

## Online rights

Promotion of human rights in terms of privacy and freedom of expression online should remain a top priority for the European Commission's engagement with China.

While freedom online is certainly a human rights issue, blocking online information also has economic consequences as the export of digitally enabled services is a growing part of Europe's economy. EU exports of digitally deliverable services to the world exceed \$748.8 billion, representing a quarter of total EU exports, according to a Brookings study.

Unfortunately, it is often the case that businesses in China and other nations that engage in filtering, blocking, and censorship of European digital trade have full access to the our market. Maintaining a level playing field should be a European priority.

For example, China often blocks foreign services on the basis that they threaten "public morals," but allow similar, domestic offerings with fewer restrictions.

Whatever the domestic aim of these mechanisms may be, they function, intentionally or not, as unlawful barriers to international trade. We encourage the EU to oppose digital trade barriers in China which seems to embolden other governments to follow China's lead.

## Conclusion

The EU-China High Level Economic Dialogue this month could be a right forum to have a constructive discussion on innovation, cybersecurity and national engagement in cyberspace, and a venue to define best practices in this field drawing on lessons learned from other efforts. We thank you in advance for your consideration of these points and we wish you a successful High Level Economic Dialogue.



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