



MMLC Group – China Update

April 2008

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Business News

FAW Group Corp auto sales increase

FAW Group Corp, one of China's largest automakers, sold 166,518 vehicles in January, 2008, a rise of 46.9 percent year-on-year. Sedan sales rose 58.3 percent while sales of medium and heavy-duty trucks grew 11.6 percent. FAW VW, its 50-50 sedan joint venture with Volkswagen AG, also sold 65,709 cars in January, a surge of 104.8 percent from a year earlier.

China starts building Fujian nuclear power plant

China started building a nuclear power plant in Fujian Province. The nuclear plant will have four reactors with 1 gigawatt (GW) of generating capacity each. Annual on-grid electricity is expected to reach 30 billion kWh. The project will involve investment of US\$7.13 billion, investors including Guangdong Nuclear Power Investment Co, Datang International Power Generation Co Ltd and Fujian Coal Group. The first reactor is expected to enter operation in 2012 and the remainder will enter service in the following three years.

Rich Chinese are partial to foreign brands

A recent survey by MasterCard Worldwide showed that wealthy Chinese consumers place greater emphasis on brand names, and more favor foreign brands over domestic ones. Their preference for well-known foreign brands is not simply driven by the demand for status symbols as commonly assumed, but real concerns over product quality, design, and environmental considerations.

China's marine sector growth in 2007

The report of the State Oceanic Administration revealed that the value of marine industries grew 15 percent year on year. The main pillars of the rapid growth were the traditional industries of transport, tourism and fishing, which accounted for more than 80 percent of total output value. Emerging industries, for example, the oceanic biological pharmaceutical industry, also grew swiftly, a rise of 37 percent from previous year.

China's wind power generation growing

The wind power sector generated electricity of 5.6 billion kilowatt hours last year, a

growth of 95.2 percent over the previous year. By the end of 2007, China had wind power facilities with a combined installed capacity of 6.05 million kw while wind power projects under process will make up for a combined installed capacity of 4.2 million kw.

Gansu to be China's largest wind power generation base

Gansu Province is expected to be the country's largest wind power generation base in ten years. There have been seven wind power generation stations with a total installed capacity of 500,000 kW in Gansu. The Changma Wind Power Generation Station in the province with a planned installed capacity of five million kW is under construction.

Baosteel raises prices by 20%

Baosteel, China's largest steelmaker, raised product prices by up to 20 percent for the second quarter, because of increased domestic demand for steel to rebuild infrastructure after severe snowstorms and the 65 percent iron ore price hike. The steel price hike is likely to aggravate inflation because it will lead to a chain reaction of higher prices for cars, home appliances and equipment that relies heavily on steel as a raw material.

China blacklists polluting products

China's environmental watchdog has blacklisted 141 products causing serious pollution or posing serious environmental risks. The list included products closely link to people's daily life and generate chrome residue. The SEPA suggested retrieving the tax refund of 39 of the listed products after they were exported and banning the trade of these products. Further, the SEPA will set up a data bank of such products and deliver regular public reports.

Rising sales and profits of Dongfeng Auto in 2007

Dongfeng Auto Co, a light commercial vehicle producer announced its gross profit

reached US\$95.5 million, up 9.5 percent from 2006. Dongfeng Auto, which is a partner of Japan's Nissan Motor Co, produces Nissan-brand sport utility vehicles whose sales soared 61.6 percent to 12,607 units last year. It also makes diesel engines with US engine giant Cummins Inc, with sales up 42.2 percent to 136,973 units last year.

China, New Zealand ink FTA

China and New Zealand signed a free trade agreement (FTA) in Beijing, being the first such deal between China and a developed country. By reducing barriers to trade in goods, services and investment in China, the FTA will give New Zealand businesses a distinct advantage over competitors into Chinese market. Exports to China are estimated to grow by US\$177.6 million a year more than they would have done without the FTA.

China first-quarter M&A value

Merger and acquisition in China stood at \$43.1 billion in the first quarter of this year, according to statistics from Thomson Financial. The manufacturing sector had \$21.8 billion in M&A transactions, accounting for more than half of the total. It was followed by the financial and energy industries, with \$7.2 billion and \$6 billion, respectively. On February 1, the Aluminum Corporation of China and the US aluminum producer Alcoa bought a 12 percent stake in the British-listed company of iron ore giant Rio Tinto for \$14.05 billion, the largest overseas investment ever by a Chinese enterprise.

20% foreign stake ceiling in Chinese banks unchanged

Under the draft new rules, all foreign investors should hold at least 25 percent of voting shares directly or indirectly to control a Chinese-funded financial institution. It doesn't mean that the 20 percent shareholding ceiling for an individual foreign-funded financial agency has changed. The rules are strengthened in

response to the cases of the de facto controlling positions held by some foreign financial institutions with less than 20 percent shares in some Chinese banks. If the overseas capital takes up at least 25 percent of the total shares, the original Chinese-funded bank will be treated as a foreign-funded one subject to different supervision rules.

Huawei, Bain abandon bid for 3Com

Huawei Technologies and US private equity firm Bain Capital have given up on a plan to acquire 16.5% of 3Com for US\$2.2 billion due to US concerns. The companies were unable to secure approval for the deal from the Committee of Foreign Investment in the US, which vets foreign investments in sensitive sectors, despite taking significant measures to assuage political concerns over the purchase. For example, telecom equipment manufacturer Huawei had agreed to have no management control over the US computer networking company, though it would have gained seats on the board. Bain was also prepared to divest a 3Com unit that sells security software to the US government in order to secure the deal.

Intel sets up China investment fund

Intel has set up a US\$500 million fund to increase investments in China, which is the company's largest single fund in one country. Companies to be targeted by the fund over the next five to seven years include Holdfast Online Technology and New Auto Video Technology. Intel's previous China fund invested US\$200 million in more than 28 companies. With the new fund, a US\$2.5 billion chip factory is being built in Dalian, the company's first such facility in Asia.

Legal News

Judge guarantees fair play in all IPR cases

Cao Jianming, vice-president of the Supreme People's Court called on courts to be independent and neutral in IPR cases involving foreign parties, ensuring fair trials

and equal protection for all involved. Chinese courts will handle all cases strictly according to the PRC laws and international conventions, and must not sacrifice justice to blindly cater to unilateral foreign public opinions.

New approach to patent trials

Various methods will be introduced to help tackle the difficulties of establishing the facts in technical cases. Concerned parties will be encouraged to bring technical experts into court, and foreign experts will be allowed to take part in patent rights trials involving foreign parties. Courts will also use more specialists with technical backgrounds to serve on people's juries in IPR trials. Local courts can also set up an expert consultation system, whose opinions can be used only as reference for judges and not be presented as evidence.

WTO steps to resolve tax dispute respected

The US and EU filed the case to the WTO in March 2006, asking China to reduce taxes on imports of foreign auto parts. A WTO panel recently ruled that the China improperly taxes imported car parts at the same rate as finished vehicles. However, some experts think the decision is unfair to China, since the rule aims to prevent tariff evasion and is not to prejudice against foreign carmakers.

China enhances M&A regulation of listed firms

China has set up the 25-member committee to oversee merger and acquisition of listed companies, as M&A becomes increasingly important in the country's financial markets. It was part of the plan of CSRC to ensure transparency and quality of the examination and approval of the M&A applications. The new committee is to exercise part of the function originally designated to the existing listing committee under the Securities Law.

Announcement of tax and tariff adjustments

China will raise export tax on some fertilizers including diammonium hydrogen phosphate, ammonium dihydrogen phosphate and phosphor, aiming at curbing exports of these fertilizers to guarantee domestic supply after their prices rocketed last year. China has offered tariff and VAT rebates on key products imported by domestic businesses for research and development and for production of new high powered agricultural equipment since January 1, 2008. Additionally, construction materials for block and workshop buildings in the special areas supervised by customs are exempted from export taxes.

Heavy fines await water polluters

The revised Water Pollution and Control Law has been passed by the National People's Congress Standing Committee and will come into force on June 1, 2008. The law raises the upper limits of penalties imposed on companies polluting water, making them responsible for 30 percent of the direct loss from "serious" incidents and 20 percent of the cost for "medium consequences". Executives or other people directly responsible will also be fined up to half their previous year's salary if their companies cause water pollution. Especially, water pollution victims can file class actions to seek civil compensation directly from polluters.

White paper on promoting rule of law

A White Paper on "China's Efforts and Achievements in Promoting the Rule of Law" was issued by the State Council, covering such topics as the historical course of building a socialist country under the rule of law, legislation and a legal system with Chinese characteristics, legal systems of respecting and safeguarding human rights, and legal systems regulating the order of the market economy. Finally, the paper claims that the legal system that regulates the acquisition and operation of government power has taken shape.

Interpretation of the Supreme Court

The Supreme People's Court issued the Provisions of the Supreme People's Court on Issues Concerned in the Trial of Cases of Civil Disputes over the Conflict between Registered Trademark and Enterprise Name with Prior Right, which came into force as of March 1st, 2008. This clarifies several jurisdictional issues which have caused problems in some areas.

Intellectual property rights guidelines approved

The guidelines on the national strategy of intellectual property rights, drafted by the State Intellectual Property Office and other relevant government departments, were approved by the State Council. The strategy would exert greater efforts to crack down on the infringement of intellectual property rights, safeguard market order and the legal rights of the public, strengthen international cooperation and adherence to international practice, and make efforts to raise awareness of intellectual property issues among the public. To implement the guidelines, the government would set up about 40 service centers providing consultation and financial support for those unable to afford to pursue cases.

Advanced and new technology enterprises to be re-recognized

In order to qualify for the preferential CIT rate of 15 percent, previously recognized advanced and new technology enterprises should be re-recognized as such according to the qualifying measures, which will be formulated and promulgated by the State Council. The re-recognition process has not commenced, since the qualifying measures have not been promulgated. The State Administration of Taxation (SAT) has recently clarified in Notice 17 that enterprises which were recognized as advanced and new technology enterprises before 1 January 2008 should conduct provisional CIT filings based on the standard CIT rate of 25 percent until they are re-

recognized as such under the new CIT Law. This has caught many h-tech entities by surprise.

New returns for provisional CIT monthly or quarterly filings

The new CIT returns are issued in compliance with the requirements for monthly/quarterly provisional CIT filings under the new CIT Law, and for the allocation of CIT among headquarters and branches in multiple provinces or municipalities under Notice 10. The key changes to the new CIT returns are focused on enterprises with headquarters and branches in multiple provinces or

municipalities that are required to settle provisional CIT locally. Previous resistance of local governments to FIEs establishing branches in multiple provinces or municipalities may decrease because branches are now required to settle part of their CIT locally.

This update is aimed at keeping our clients informed of developments in Greater China. Whilst every care has been taken to ensure the accuracy of this update, it should not be relied upon before individual advice is obtained. The MMLC Group is an international legal and corporate advisory group.