



MMLC Group – China Update

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Business News

China's Growth Likely to Make 10%

According to a report issued by Remin University and Donghua Securities, China is likely to have reduced a reduced growth rate of 10.4% for 2008 due a slowdown in the global market. The report added the CPI might rise 7.1 percent, well above the government target of 4.8 percent, and that the trade surplus may fall by US\$3.4 billion for 2008. The surplus dropped to US\$20.2 billion in May, down 10 percent from a year ago. Last year, it surged 47.7 percent to a record of \$262.2 billion. In August, China is reporting that exports are significantly lower than this time last year.

Rolls Royce Wins US\$25m Bid

Rolls-Royce Plc, has won a bid to design and equip one of the world's most advanced seismic research vessels for China. The US\$25.58 million contract is its first such contract in the important Chinese market for offshore seismic vessels. The seismic streamer vessel has been ordered by BGP Marine China, a subsidiary of China National Petroleum Company (CNPC), and set to be delivered by late 2009 or early 2010. It will operate worldwide in support of oil and gas exploration and production.

GE Invests in Guangdong Airport

GE has agreed to invest over RMB3b in the Jieyang Chaosan airport in Guangdong. The airport is one of 11 major airports in the Pearl River area and it is due to replace the Shantou airport in 2011. It is thought that the new airport could become a hub for South East Asian travel involving Mainland China and Taiwan. GE's stake should be limited to a maximum of 25% according to current foreign investment regulations.

China Mobile Aiming for 4G in 2010

It has been claimed that the4G technology will begin trials in 2009, using TD-LTE, or time-division duplex of long-term evolution platform, an upgraded version of TD-SCDMA, the nation's 3G standard. It is claimed that this platform can make downloads 10 times faster than with 3G. China Mobile has teamed up with strategic partner Vodafone and its subsidiary Verizon for the trial, in a move that could help the standard enter the global market.

NFL Signs up with Sina.com

The NFL has started offering free video streaming of its league to Chinese consumers via Sina.com. This comes in advance of a planned demonstration game for Beijing in 2009 – originally, the demonstration game was to be offered in 2007, however it was put on hold due to logistical reasons. Many feel that the rule and equipment focused sport may not be attractive enough for the Mainland, however the NFL stakeholders are confident that there is enormous potential to attract interest if marketed properly. Ideally, a character like Yao Ming, LeBron James or a David Beckham, is urgently needed to push the marketing side.

Chery to set up Auto Financing Entity

Chery has become the first Mainland based auto maker to gain approval to establish an auto financing company. Chery claims that it will set up the entity with an initial registered capital of RMB500m. In 2007, it was estimated that only 20% of all new car purchases were financed by loans – this is far below the West and Asian neighbours and is likely to dramatically change in the future. The China Banking Regulatory Commission has tightened criteria for setting up car-financing companies. The commission announced at the end of last month that non-financial institutions with plans to set up car-financing arms should ensure that those units have a net asset value of 8 billion yuan, up from the previous 4 billion yuan. Annual revenue should be 5 billion yuan, against 2 billion yuan previously.

China Credit Card Numbers Increase Dramatically

The number of Chinese credit cards in circulation at the end of March reached 104.73 million, up 92.9% from a year ago, state media reported, citing a statement posted on the People's Bank of China website. The transaction value on bank cards, which also includes the more commonly used debit cards, rose 58% year-on-year to US\$118.5 billion. Debit cards still dominate the country's bank card market, accounting for 93.4% of the market total.

China's Largest Steel Maker Comes out of Merger

In early July, the merger of Hebei Iron & Steel and Tangshan Iron & Steel, produced "Handan Iron & Steel" – currently China's largest steel maker. It is expected to have an annual output capacity of 50m tonnes by the end of 2009, making it significantly larger than Shanghai's Baosteel.

COFCO Buys 4.95% of US Pork Producer

China's largest agricultural and food company, COFCO, has agreed to invest in Smithfield Foods, in the hope of being able to access Smithfield Foods' technology and management skills. This acquisition comes at a time when COFCO is investing "billions of yuan" in China's largest new pig farming enterprise.

RMB12b put aside for Farm Development

China has increased its financial support for the improvement of low yield farms. 60% of the RMB12b is to go to grain farmland, focusing on improving irrigation, terracing techniques, improving soil quality, and training.

Legal News

China and Registration of 3D Trademarks

Although the current Trademarks Law clearly allows for 3D trademarks to be registered in China, it seems that the examiners are extremely conservative when it comes to examining such applications and approving them. Some recent case examples provide an insight into how the examiners are currently viewing these applications:



This mark was to be used in relation to construction services. It was claimed to be an

application for a 3D mark. It was refused on the basis that the 3D effect of the sample of the mark could not be determined from the application.



This mark was claimed to a 3D mark and was stated to be used in relation to wines and spirits. This application was accepted on appeal as a 3D trademark as it was distinctive and not common to beverage products.



In this case, the application was refused upon re-examination, since it was claimed that the applicant had not submitted evidence to prove that the 3D shape was distinctive and uncommon for the goods referred to in the goods description. Upon appeal, the court overturned this decision.



In this case, the well known ZIPPO lighter shape was at issue. The case was taken all the way to a court hearing, at which the court decided that the 3D mark was not common as such to lighters and was therefore distinctive and registrable.

BOCOG Enforces Anti-Ambush Marketing Measures

Despite relatively relaxed enforcement of IP rights generally in China, the authorities have been extremely diligent in relation to ambush marketing and protection of the rights of the sponsors of the Olympics. The confiscation of branded caps from tour groups and the careful framing of television images have caused a stir, but also indicate just how well IP rights can be managed in China, when the will exists.

Taiwan's New IP Court

Taiwan's first IP Court was inaugurated on July 1, marking the latest in a series of moves by the Taiwanese government to improve intellectual-property rights. The court, which is modeled after

similar courts in Japan and Germany, will have nine judges, each of whom has undergone four months of intensive training on IP rights and copyright-infringement issues. Nine officials from the Taiwanese government's Intellectual Property Office have been assigned to the newly-established court to help judges keep track of the often complex patchwork of patents and trademarks involved in IP litigation.

Competition Law Kicks Off

Following much speculation, the authorities announced the establishment of a special Anti-Trust Commission for overseeing the implementation and enforcement of the new Competition Law by the Ministry of Commerce (foreign trade and M&A issues), the National Development and Reform Commission (pricing issues) and the AIC (abuse of dominant market positions and administrative monopolies). So far, no major investigations or actions have been officially announced - October and November should see some intensive action in this regard. Regarding civil suits under the new law, the Regulation on Cause of Action in Civil Cases, promulgated by the Supreme People's Court on April 1, 2008, and the Notice on Study and Adjudication of AML Disputes, published by the SPC on July 28, 2008, confirmed that the IP Tribunals in the Chinese courts, will be primarily responsible for handling such cases.

New Regulation for SOEs Going Abroad

Under a new regulation for State-Owned Enterprises, it is vital that they obtain "international contractor" qualifications from the relevant Chinese authorities, prior to providing services outside of China. Failure to do so, can render the SOE liable for significant fines and leave the contracts signed unenforceable. Further, the regulation seems to mirror the US's Foreign Corrupt Practices Act in some regard, making Chinese SOEs liable for acts of corruption occurring abroad.

China's Judges to be Monitored

In late June, the Supreme People's Court announced that it would be start more closely monitoring judges whose trials more often resulted in retrials. Those judges that are found to be regularly making mistakes as to the application of laws to facts, will be disciplined or dismissed.

It is of concern that this may lead some judges to delay issuing of decisions or to aggressively urge the settling of cases so as to avoid having to issue decisions which could later be scrutinised.

IBM Found Guilty in Labor Discrimination Case

A Shanghai labor arbitrator has found IBM guilty of job discrimination and ordered it to pay RMB57,000 to an employee that was fired, after he was diagnosed as having depression. Further, IBM was ordered to reinstate the employee under the original employment contract.

Carrefour Employees Prosecuted for Accepting Bribes

The Beijing Chaoyang District Court has sentenced eight employees for accepting bribes from suppliers. One employee received RMB114,000 in bribes over a 12 month period, and was sentenced to 5 years imprisonment. The criminal proceedings follow an internal investigation by Carrefour into corruption across the region. Whilst the locals have cherished the autonomy in deciding which suppliers to work with, it has also led to significant corruption opportunities.

Vietnam IP Circular

The People's Supreme Court, the People's Supreme Procuracy, the Ministry of Culture, Sport and Tourism, the Ministry of Science and Technology and the Ministry of Justice have adopted Inter-Ministerial Circular 02/2008/TTLT-TANDTC-VKSNDTC-BVHTT&DL-BKH&CN-BTP, which aims to provide guidance on civil IP rights disputes. The new circular came into effect on May 22 2008.

The key features of the circular include:

- IP rights holders may request that the court order the infringers to pay for the costs incurred during the proceedings.
- Plaintiffs and defendants in IP rights disputes must provide evidence of their rights. The plaintiff must prove that it has suffered actual damage as a result of the infringement and provide a specific basis for the determination of compensation under the Intellectual Property Law.

- Depending on the facts of each case, the court may:

- at the request of the plaintiff, issue an order enjoining the defendant from continuing the infringing acts. The court must specify which IP rights have been infringed and which infringing acts are involved. In addition, the court must specify exactly which actions must be taken by the defendant in order to comply with the court's order.

- order that the defendant issue a public apology and rectification notice in order to restore the fame, prestige, human dignity and honour of the IP rights holder. The public apology and rectification notice must be issued in the area where the aggrieved person is domiciled, or published in a national daily newspaper or in a local newspaper (in three consecutive issues).

- order the performance of civil obligations.

- order that the defendant pay damages to the IP rights holder.

India Customs Protection for IP

Despite the laws being passed around 12 months ago, India's Customs Office is now appearing to have commenced following the Customs protection laws regarding IP rights. The Customs notification system applies to all goods imported into India which may infringe IP rights (trademarks, patents, designs, copyright and geographical indications).

The recordal system covers 36 ports (12 major and 24 intermediate ports). In order to benefit from the system, IP owners (or their authorized representatives) must:

- file a single application;
- pay the official fee; and
- provide a general bond without security and an indemnity bond.

Under the system, Customs will notify the rights holder (or its authorized representative) of the seizure of a consignment of goods that are suspected of being counterfeit. Such a consignment may be detained for 10 days. The consignment may be examined by Customs officials in the presence of the rights holder (or its

authorized representative) and the alleged infringer. Samples may be taken for testing and analysis in order to determine whether the goods are counterfeit or otherwise infringe any IP rights. Unless the rights holder objects, infringing goods will be destroyed.

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.