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**ENFORCEMENT****China's AIC — A Familiar Face Now on the Global Anti-Corruption Map**

BY DANIEL P. CHUNG AND WILLIAM T. HAN

**S**ince whistleblower allegations of large-scale bribery schemes at GlaxoSmithKline's China operations became public last July, Chinese law enforcement's crackdown on multi-national pharmaceutical companies has splashed the headlines on virtually a daily basis. Authorities in China have alleged that the British pharmaceutical giant paid bribes through local travel agencies to publicly employed doctors and officials. Four GSK executives in China have been arrested by the Chinese police, who claim that GSK employees have confessed to paying bribes.<sup>1</sup> All in all, Chinese authorities have alleged that GSK employees have paid out some three billion RMB (about 490 million USD) to

<sup>1</sup> <http://www.telegraph.co.uk/finance/newsbysector/pharmaceuticalsandchemicals/10192032/GSK-chief-Andrew-Witty-set-to-admit-China-scandal.html>.

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travel agencies and consultancies to facilitate the bribes.<sup>2</sup> For multi-national corporations ("MNCs") that are not newcomers to doing business in China, GSK's saga should be notable for the increasing role that China's Administration for Industry & Commerce ("AIC") — historically a familiar regulatory face to MNCs in China — is playing in investigations of GSK and other companies for corruption-related matters. Indeed, on August 14, 2013, the AIC announced that it would begin a nation-wide probe focusing on bribery in the pharmaceutical sector.

Several organs of the Chinese government are charged with enforcing against bribery and corruption, including the Discipline Inspection Committees of the Chinese Communist Party, the Supreme People's Procuratorate or prosecutor's office, the Ministry of Supervision with the State Council or cabinet, and the Public Security Bureau, China's police force (which was the first on the scene with respect to GSK). The presence and activity of this multiplicity of enforcement organs make China an especially challenging place to operate when it comes to compliance.

Within this landscape, the AIC should not be a stranger to MNCs. Indeed, among the above-listed entities, the AIC historically has had greater interface with MNCs doing business in China due primarily to the enforcement areas and priorities in its wheelhouse. The AIC consists of one central organization, the State Administration for Industry & Commerce of the People's Republic of China ("SAIC") based in Beijing, and provincial branches in every province and China's four "directly-governed" cities — i.e., municipalities that answer directly to the central government rather than the provincial government — namely Beijing, Shanghai, Tianjin, and Chongqing. Originally formed in the 1950s, the SAIC is not one of the departments that form the State Council or cabinet, but it does report directly to the State Council. Its position in the bureaucratic hierarchy was most recently reconfirmed in March 2013.<sup>3</sup> In the provinces and municipalities the local AICs may

<sup>2</sup> New York Times, July 17, 2013, "Chinese State Paper Slams Multinationals Over Bribery, High Prices."

be subdivided further into district or local offices. The Beijing AIC, for example, has seventeen branch offices spread across the capital area.<sup>4</sup>

Generally charged with regulating commercial activities throughout China for the benefit of both businesses and consumers, the AIC serves as China's corporate registry and the enforcer of China's anti-monopoly or antitrust laws. Most legal commentaries on the AIC and public disclosures have focused on these roles. At the same time, U.S. authorities have become familiar with the AIC's anti-corruption role and have taken an interest in the AIC's activities when enforcing the U.S. Foreign Corrupt Practices Act ("FCPA").<sup>5</sup> Correspondingly, local AIC branches increasingly are no stranger to MNCs operating in China when it comes to anti-corruption enforcement, as these local offices are often the incipient touch points for MNCs in the anti-corruption area.

Even so, the U.S. business community generally has only limited understanding of the history, function, inner workings, and authority of China's AIC. Several weeks into the crackdown against GSK, and with the AIC now taking up part of the mantle of anti-corruption efforts in China, MNCs — if they have not already dealt with the AIC — should be prepared to do so.

## The AIC In Evolution: From Pricing To Anti-Corruption

In addition to serving as China's corporate registry, these AIC offices are charged with enforcing a wide variety of commercial laws, from antitrust to counterfeiting. The sheer range of laws within its jurisdiction makes the AIC a very powerful administrative agency. Of special note among these laws is the People's Republic of China Anti-Unfair Competition Law, much of which focuses on combating price-manipulation; consequently, AIC's enforcement activities have historically focused on price-manipulation. In 2008, for example, the AIC promulgated an interim policy applicable to Jiangsu Province for the announced purpose of combating price-fixing behaviors in that province.<sup>6</sup> In July 2013, Chinese media reported an investigation by AIC in Guangxi Autonomous Region into alleged manipulation of prices for sand.<sup>7</sup> In 2010, the AIC, along with other agencies, fined a corn distributor in Jilin Province a total of one million RMB for artificially inflating the price of green beans in the area.<sup>8</sup>

Besides dealing with price-manipulation in and of itself, the Anti-Unfair Competition Law in article 8 prohibits the provision and receipt of bribes in commercial

transactions. Local AIC offices have been known to enforce this provision against MNCs. Indeed, the local AIC offices are often the ones initiating investigations. Consequently, MNCs operating in China often find themselves dealing with officials at these local offices. Though it is unclear whether the SAIC acts as clearing-house or hub for the local offices, the different offices may cooperate with one another as well or at least keep each other abreast of developments with an MNC doing business in multiple jurisdictions.

In recent years SAIC and various local AIC offices have issued policy statements emphasizing the importance of combating corruption. Much of that guidance has focused on corruption within the AIC's own ranks, which is consistent with Chinese law enforcement's earlier focus overall on investigating, prosecuting, and punishing Chinese officials receiving corrupt payments. In a "Work Plan" published in 2000, for example, SAIC focused on improving the bureaucratic organization of the AIC itself in order to reduce instances of corruption by AIC officials, including officials "refusing to work in the absence of bribes, and working wrongly with bribes."<sup>9</sup> State media have in recent years praised the internal anti-corruption activities undertaken by local AIC offices.<sup>10</sup>

Recent policy pronouncements have also begun to turn toward the marketplace that the AIC is charged with supervising. A 2008 guidance published by the Shanxi Province AIC, for example, called for rooting out corruption in the coal industry in that province. The provincial AIC exhorted AIC officials to "seriously inspect violations of regulations, rules, and laws," particularly through "the licensing process and annual inspections," including "the demand and receipt of bribes."<sup>11</sup> One municipal AIC office published an article in 2012 on the provincial office's website outlining four key goals, one of which being "continuing to develop the punishment and prevention of corruption, with AIC characteristics."<sup>12</sup> Although the article did not elaborate on what special characteristics the AIC may display when it comes to anti-corruption, the very concept implies that the AIC would take up the fight against corruption in a way that was distinct from State organs such as the police. The same article underscored that the mission of the AIC is to "maintain order in the So-

<sup>9</sup> SAIC Fighting Corruption at the Source Work Plan (Sept. 20, 2000). Also in 2000, SAIC published a clarification on article 8 of the Anti-Unfair Competition Law, explaining that it covered the provision as well as receipt of bribes. See Reply of the State Administration for Industry and Commerce to the Instruction Request on Whether the Relevant Clauses of the Interim Provisions on Prohibition of Commercial Bribery Promulgated by the State Administration for Industry and Commerce Exceed the Scope of the Anti-Unfair Competition Law (Oct. 18, 2000).

<sup>10</sup> See, e.g., Binyang County AIC Takes Four Measures to Promote Anti-corruption, with Great Effect (Nov. 13, 2012), [www.gx.xinhuanet.com/2012-11/13/c\\_113678872.htm](http://www.gx.xinhuanet.com/2012-11/13/c_113678872.htm); Mengshan County AIC Visits Anti-corruption Education Base to Focus on Preventing Corruption (Aug. 5, 2013), [www.gx.xinhuanet.com/dttx/wzswz/2013-08/05/c\\_116818960.htm](http://www.gx.xinhuanet.com/dttx/wzswz/2013-08/05/c_116818960.htm).

<sup>11</sup> Shanxi Province AIC Opinion Regarding the Work in the Self-Discipline Stage of the Struggle Against Corruption in the Coal Sector (Sept. 16, 2008).

<sup>12</sup> Changzhou AIC Uses Full Force to Improve the Development of Anti-corruption (Nov. 28, 2012), [www.jsgsj.gov.cn/baweb/show/sj/bawebFile/709284.html](http://www.jsgsj.gov.cn/baweb/show/sj/bawebFile/709284.html).

<sup>3</sup> State Council Notice (2013) No. 14.

<sup>4</sup> <http://www.hd315.gov.cn/>

<sup>5</sup> <http://www.bloomberg.com/news/2013-07-15/four-drugmakers-face-china-probes-as-glaxo-woes-widen.html>.

<sup>6</sup> Jiangsu Introduces Prices Control Measures for Retail Markets, SAIC (May 25, 2011), [http://www.saic.gov.cn/ywdt/gsyw/dfdt/xxb/201105/t20110525\\_106380.html](http://www.saic.gov.cn/ywdt/gsyw/dfdt/xxb/201105/t20110525_106380.html).

<sup>7</sup> Guangxi Officials Allegedly Manipulating the Price of Sand, China Daily (Jul. 31, 2013), [http://www.chinadaily.com.cn/hqgj/jryw/2013-07-31/content\\_9729125.html](http://www.chinadaily.com.cn/hqgj/jryw/2013-07-31/content_9729125.html).

<sup>8</sup> Jilin Fined for Manipulating Green Bean Prices by Development and Reform Commission; Company Cries Foul and Intends to Appeal (Jul. 2, 2010), <http://finance.sina.com.cn/g/20100702/10228222361.shtml>.

cialist market economy,” including through punishing and preventing corruption in that economy.<sup>13</sup> This gradual shift in the AIC’s focus to corruption in the marketplace as opposed to within its own ranks corresponds with the increased enforcement activities against MNCs.

Most significantly, on August 14, 2013, SAIC published a policy directive announcing that it would conduct a nation-wide drive against unfair competition. Section 2.1 of the directive specified:

Commercial bribery not only leads to the artificial inflation of prices and damages to fair competition in the marketplace, but it also damages social morals and the atmosphere in the industry and is hated by the people. Industry and Commerce organs at all levels should focus on pharmaceutical sales, medical services, entry into schools and other industries and sectors that closely relate to the well-being of the people, strengthening supervision of bidding activities and strictly investigate and punish commercial bribery in the bidding process. We must be determined to deal with the source of problems as well as the process, investigate and penalize both the payment and receipt of bribes, methodically investigate a slate of major cases that serve as examples and have the effect of deterring illegal conduct, so as to create a market environment of fair competition.<sup>14</sup>

The AIC has therefore announced itself as viewing corruption from the perspective of the consumer and working to push down prices that may have been artificially inflated. Some in the Western press have noted this focus as well,<sup>15</sup> and it comports with the AIC’s historical enforcement activities in other areas such as antitrust. Indeed, it is fair to consider this kind of anti-corruption enforcement – with a populist emphasis on the impact of corruption on consumers – as being anti-corruption enforcement “with AIC characteristics.”

## Other AIC Investigations in China

In the same announcement, the AIC also declared its intention to continue to pursue blockbuster enforcement actions against major companies, particularly in the pharmaceutical sector. As the GSK matter continues to unfold, numerous other multinational pharmaceutical companies have come under scrutiny by the AIC. On July 29, AIC investigators visited the offices of French drug-maker Sanofi in the Manchurian city of Shenyang and left with unspecified company documents. Indeed, the travel agency at the heart of GSK’s alleged payments to Chinese doctors and officials has worked with Sanofi as well, along with Novartis, Merck,

and Roche.<sup>16</sup> Novartis is alleged to have bribed doctors in China to boost sales, and the company has opened an internal investigation into the allegations.<sup>17</sup> According to Chinese media, Roche is now also under investigation,<sup>18</sup> notwithstanding Roche’s denial of the same.<sup>19</sup> AIC also paid visits in July to the Shanghai offices of Brussels-based pharmaceutical company UCB.<sup>20</sup> On August 8, the Danish drug-maker Novo Nordisk announced that the AIC office in the city of Tianjin visited its production facility there on August 1 as part of the widening probe.<sup>21</sup> Johnson & Johnson has also been reportedly under investigation for alleged bribery of a former deputy chief of China’s Food & Drug Administration.<sup>22</sup> Additionally, a Shanghai court recently ruled that Johnson & Johnson must pay damages for violations of China’s anti-monopoly law.<sup>23</sup>

The AIC is extending its efforts to other sectors as well. Recently, for example, the AIC announced that it was investigating the Swiss packing company Tetra Pak International. The AIC has also said that it would begin a probe into dealers of imported automobiles in China.<sup>24</sup>

Illustrating the point that the wave of AIC and other Chinese law enforcement investigations did not begin with GSK and is unlikely to end with it, both AstraZeneca and Sanofi have stated that they saw no reason to believe that the cases against them were connected to the GSK probe. UCB has disclosed that the AIC was carrying out an “inspection and compliance process” without explaining what such a process could mean or entail.<sup>25</sup> Eli Lilly has acknowledged that early in 2013, the Shenyang AIC visited its offices there.<sup>26</sup> It is particularly notable in this connection that Eli Lilly settled FCPA allegations with the SEC in 2012 for alleged im-

<sup>16</sup> <http://www.bloomberg.com/news/2013-07-22/china-travel-agency-in-glaxo-probe-used-by-sanofi-roche.html>

<sup>17</sup> Novartis Opens Investigation in China, Marta Falconi and Laurie Burkitt, Wall Street Journal (Aug. 14, 2013), available at [http://online.wsj.com/article/SB10001424127887323639704579012910236595586.html?mod=WSJ\\_hp\\_LEFTWhatsNewsCollection; Report: China on Verge of Opening Fifth Pharmaceutical Bribery Probe, Katy O'Donnell, Main Justice \(Aug. 14, 2013\), http://www.mainjustice.com/justanticorruption/2013/08/14/report-china-on-verge-of-opening-fifth-pharmaceutical-bribery-probe/](http://online.wsj.com/article/SB10001424127887323639704579012910236595586.html?mod=WSJ_hp_LEFTWhatsNewsCollection; Report: China on Verge of Opening Fifth Pharmaceutical Bribery Probe, Katy O'Donnell, Main Justice (Aug. 14, 2013), http://www.mainjustice.com/justanticorruption/2013/08/14/report-china-on-verge-of-opening-fifth-pharmaceutical-bribery-probe/).

<sup>18</sup> <http://industry.wincn.com/shengwu/20130801136613.html>

<sup>19</sup> <http://www.ft.com/intl/cms/s/0/d0df2542-f4ff-11e2-b4f8-00144feabdc0.html#axzz2b6bW3Fm9>

<sup>20</sup> <http://online.wsj.com/article/SB10001424127887324136204578641463916873212.html; http://info.pharmacy.hc360.com/2013/07/231014469691.shtml>

<sup>21</sup> <http://finance.yahoo.com/news/china-drug-sector-probe-widens-090227389.html>

<sup>22</sup> <http://www.mainjustice.com/justanticorruption/2013/08/14/report-china-on-verge-of-opening-fifth-pharmaceutical-bribery-probe/>

<sup>23</sup> <http://www.scmp.com/business/companies/article/1294034/china-court-rules-against-johnson-johnson-anti-monopoly-lawsuit>

<sup>24</sup> China Raises Scrutiny on Foreign Firms, Laurie Burkitt, Wall Street Journal (Aug. 14, 2013), available at <http://online.wsj.com/article/SB10001424127887323455104579012543957866998.html>.

<sup>25</sup> <http://online.wsj.com/article/SB10001424127887324136204578641463916873212.html>

<sup>26</sup> <http://www.bloomberg.com/news/2013-08-01/j-j-fined-in-china-as-eli-lilly-sanofi-visited-by-regulators.html>

<sup>13</sup> Changzhou AIC Uses Full Force to Improve the Development of Anti-corruption (Nov. 28, 2012), [www.jsqsj.gov.cn/baweb/show/sj/bawebFile/709284.html](http://www.jsqsj.gov.cn/baweb/show/sj/bawebFile/709284.html).

<sup>14</sup> SAIC Notice Regarding Implementing the Work Dealing with Unfair Competition According to Requirements of the Party’s People-Focused Educational Activities, AIC No. 127 (2013) (Aug. 14, 2013), available at [http://www.saic.gov.cn/zwgk/zyfb/zjwj/xxzx/201308/t20130814\\_137248.html](http://www.saic.gov.cn/zwgk/zyfb/zjwj/xxzx/201308/t20130814_137248.html).

<sup>15</sup> China Raises Scrutiny on Foreign Firms, Laurie Burkitt, Wall Street Journal (Aug. 14, 2013), available at <http://online.wsj.com/article/SB10001424127887323455104579012543957866998.html>.



proper payments to officials in several countries, including China.<sup>27</sup>

As China displays a renewed determination to combat corruption, it is a fair bet that the AIC will be one of the agencies leading the charge. In the pharmaceutical sector, which has long been a focus of Chinese anti-corruption efforts, the AIC seems particularly poised to take a prominent enforcement role.

## Conclusion

In addition to underscoring once again the importance of putting in place a robust compliance program and controls when doing business in developing markets such as China, the GSK matter and the AIC's recent announcement of a wider probe have put that agency — and Chinese law enforcement overall — on the global anti-corruption map with respect to MNCs. Whereas in the past the Chinese government's anti-

corruption prosecutions generally focused on prosecuting and punishing Chinese officials who accept bribes and to lesser extent domestic Chinese companies, GSK and its immediate aftermath have served as a clear marker that China's anti-corruption authorities will not shy away from MNCs operating on Chinese soil.<sup>28</sup> Moreover, the AIC has shown that it takes a unique perspective on corruption, emphasizing the impact that corruption can have on consumers over acts of corruption in and of themselves.

Besides instituting and constantly evaluating and improving compliance measures, MNCs should be sure to retain local counsel who are able to advise on any local enforcement actions if and when they occur. Also be aware that an interaction with an AIC office in one province or municipality can have repercussions with an AIC office in another area where an MNC may conduct business. Likewise, remember that an AIC investigation may lead to scrutiny by the DOJ and SEC on this side of the Pacific.

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<sup>27</sup> <http://www.nasdaq.com/article/lilly-ceo-no-contact-by-chinese-officials-monitoring-situation-20130724-00515>

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<sup>28</sup> New York Times, July 17, 2013, "Chinese State Paper Slams Multinationals Over Bribery, High Prices."