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Dennis W. Bryan

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# **The China Trade: Legal and Economic Considerations for American Lawyers and Businessmen**

by Dennis W. Bryan \*

## *Introduction*

The dream of a vast and untapped "China market" has stirred the imaginations of Western businessmen since the time of Marco Polo. After twenty years of ideological and commercial isolation, the People's Republic of China [P.R.C.] has again emerged as a potentially important trading partner for Western nations.<sup>1</sup> Trade with the P.R.C. is attractive not only in terms of economics but also in terms of the prospects for peace and rule by law that arise with close trade ties.

Westerners who contemplate trade with the Chinese must confront an economic and legal environment that is vastly different from that encountered in trade with other countries. The goal of this article is to acquaint Westerners with basic Chinese legal institutions, concepts and problems as well as with the primary economic influences that an exporter or importer may expect to meet. An understanding of the legal problems of Chinese trade requires a basic awareness of the historical and ideological background behind the trade law and policy of the P.R.C.

Any understanding of the trade policy and law of the P.R.C. must be based upon an understanding of the forces that shape Chinese opinion. The historical and cultural background of Chinese civilization and of its initial and continuing contact with the West affects Chinese attitudes toward Westerners and trade with them. This background is overlaid with the influence of Marxist and Maoist ideology and the twentieth century confrontation between China and the West. Finally, the Chinese approach to trade is shaped by its government structure and the natural and industrial resources that exist in China. These factors will be briefly addressed.

Because of the long and glorious history of their country, the splendor of its various empires, and its advanced intellectual and philosophical level, the Chinese have traditionally regarded their

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\*Member of the North Carolina Bar; J. D. 1977, University of North Carolina School of Law.

<sup>1</sup>The term "Western" refers to ideological tendencies rather than strict geographical location. For example, Japan is included under the term "Western." "Western" is used interchangeably with "capitalist." "Capitalist" refers to systems in which market and economic operations are mainly determined by private incentives with relatively minimal state control. "Communist" refers generally to systems of social organization in which all economic and social activity is controlled by a single and self-perpetuating party.

country as the center of the civilized world, the "Middle Kingdom."<sup>2</sup> They regarded all foreigners as "barbarians" from whom the Chinese could gain nothing. Since the Chinese could gain nothing, trade was of no use, so the government banned or discouraged it. Finally, in the sixteenth century,<sup>3</sup> the Chinese permitted trade on a limited basis. Until 1842, trade with the West was limited to Canton.<sup>4</sup>

Beginning in 1842, however, Chinese isolation ended as the Western powers waged wars<sup>5</sup> to open other Chinese ports to trade with the West. The wars ended with a number of treaties that violated China's sovereignty and reduced her to a state of semi-colonialism.<sup>6</sup> The social fabric of Chinese society began to dissolve, and numerous bloody popular uprisings against the foreign Manchu rulers occurred.<sup>7</sup> By the end of the nineteenth century, China was a tottering giant that had yet to adapt to the modern world.

Western domination of China caused deep humiliation among the strongly ethnocentric Chinese. It stifled Chinese economic growth by destroying native industry that could not withstand the competition of more advanced Western industry.<sup>8</sup> Moreover, Western domination exposed the Chinese to Western economic thought and the advantages of the modern industrialized economy.<sup>9</sup> As a result of this Western imperialism, the twentieth century brought attempts at reform, the overthrow of the Manchus by Sun Yat-sen, and partial industrialization controlled by foreign capital and management.<sup>10</sup> It also brought the beginnings of Chinese Marxism.

When the Marxists, led by Mao Tse-tung, split with the Kuomintang in 1927, a long civil war began. The result was a further weakened

<sup>2</sup>I. HSU, *THE RISE OF MODERN CHINA* 10, 136-38 (2d ed. 1975) [hereinafter cited as Hsu].

<sup>3</sup>The Portuguese were the first Westerners to actively trade with the Chinese. They were soon replaced by the Spanish and the Dutch. Hsu, *supra* note 2, at 130-33.

<sup>4</sup>Hsu, *supra* note 2, at 185. For additional information on this system of limited trade, see Hsu at 189-201.

<sup>5</sup>They were: the "Opium War" — ending in 1842 — in which England sent a fleet to attack the Chinese in order to defend the British right to trade in China; the "Arrow War" of 1856-58 in which British and French vessels bombarded Canton for alleged Chinese encroachments on British and French ships in the Canton harbor; the Sino-French war of Annam in 1884-85 in which the technical and military backwardness of the Chinese was woefully demonstrated; and aggression and territorial encroachments by the Japanese and Russians, beginning in 1871 and culminating in the defeat of China in the Sino-Japanese War in 1895. On this series of Sino-Western wars, see Hsu, *supra* note 2, at 237-47, 259-63, 398-403, 386-97 and 406-18.

<sup>6</sup>Hsu, *supra* note 2, at 245. "The Opium War introduced a century of humiliation for the Chinese people." Hsu at 245.

<sup>7</sup>Hsu, *supra* note 2, at 550-51.

<sup>8</sup>Hsu, *supra* note 2, at 534. On the other hand, Western presence provided the Chinese with at least a model for industrial undertakings and trained a substantial number of Chinese technicians and industrial managers. Hsu at 535.

<sup>9</sup>Hsu, *supra* note 2, at 595.

<sup>10</sup>For in-depth treatment of Chinese history and institutions during the first half of the 20th century, see generally Hsu, *supra* note 2, at 513-774.

China that was faced with Japanese aggression in the 1930's. Only in 1949, after twelve years of war with Japan and four more years of civil war, did Mao's communist forces finally establish dominance in China.<sup>11</sup> China, then, had known only domination, oppression, conflict and cultural strife since its contact with the West had forced adaptation to the modern world and its concomitant dislocation upon it.

In common with other communist countries, a striking feature of the P.R.C. is the extent to which its Marxist-Maoist ideology<sup>12</sup> permeates its institutions. The very structure of government as well as the approach of that government to international law is shaped by Marxist ideology.

Institutions of the government and of the Chinese Communist Party [C.C.P.] are arranged in a parallel manner so that, for every government agency, there is a similar C.C.P. body.<sup>13</sup> The C.C.P. in reality is dominant and sets policy, including foreign trade policy. The institutions of government, therefore, are merely instruments through which the C.C.P. implements its programs and policies.<sup>14</sup>

Although the party-government structure of the P.R.C. closely resembles that of the U.S.S.R., Chinese communism is distinctive. In 1949 China was less industrialized than Russia had been in 1917 and far less so than Marx and Engels had envisioned. Mao's support came mostly from dissatisfied peasants, and in the civil war, his forces controlled the countryside while the Kuomintang held the cities. Because of this background, peasant life and rural collectivism have been stressed since the revolution at the expense of the development of heavy industry (with the notable and dismal exception of the "Great Leap Forward").<sup>15</sup> Since the P.R.C. is less industrialized, it neither exports many industrial goods nor seeks many technological imports.

The result of the historical and ideological forces that exist in China is that the official P.R.C. policy is to achieve limited self-

<sup>11</sup>Hsu, *supra* note 2, at 761.

<sup>12</sup>Mao's interpretation of Marxism calls for the removal of all class distinction, the withering away of the state, and the creation of a communist society characterized by mutual assistance rather than class strife. The tactics by which the Maoist theory hopes to accomplish these goals are peculiarly Chinese and explicitly collectivist. The Chinese Communist Party [C.C.P.] claims the right to use whatever tactics are necessary to eliminate class distinctions and establish a communist state. See F. HOUN, *A SHORT HISTORY OF CHINESE COMMUNISM* 78 (2d ed. 1973).

<sup>13</sup>For additional information on this P.R.C. Party-Government parallel structure, see generally Hsu, *supra* note 2, at 775-82; F. HOUN, *supra* note 12, at 83-109.

<sup>14</sup>F. HOUN, *supra* note 12, at 77.

<sup>15</sup>Mendel, *China and Orthodox Leninism*, in *ESSENTIAL WORKS OF MARXISM* 487 (A. Mendel ed. 1961). For additional information on Mao's version of Marxism, see generally F. HOUN, *supra* note 12, at 77-111; see also essays collected in *ESSENTIAL WORKS OF MARXISM* 499-562 (A. Mendel ed. 1961). Particularly enlightening is Mao Tse-tung, *On Practice*, *id.* at 499, in which Mao gives his own explanation of putting communist theory into practice.

sufficiency.<sup>16</sup> Chinese distrust of the West caused by its nineteenth century exploitation and its historical xenophobia was exacerbated by the precipitate withdrawal of Soviet aid in 1960.<sup>17</sup> Moreover, because the Chinese view themselves as being ideologically pure in a world of imperialists and revisionists (including the Soviet Union), self-sufficiency prevents taint from contact with the outside world, promotes the collective spirit, and prevents the degeneration of the revolutionary spirit into revisionism.<sup>18</sup> Because of the policy of self-sufficiency, trade between the P.R.C. and the West is and probably will remain predominantly agricultural.

The P.R.C.'s theory of international law is also heavily influenced by the everpresent Maoist ideology. The P.R.C., in accordance with the U.S.S.R., officially maintains that capitalist nations assert principles of international law in order to justify and further their imperialist aggressions throughout the world. Chinese international law theory otherwise differs from that of the Soviet Union. According to the Soviets, international law is really an "agreement," or series of agreements, between sovereign states. These agreements are reached through a process of cooperation, struggle, consultation, and compromise among capitalist and communist nations.<sup>19</sup> Originally, the P.R.C. also adhered to this school of thought. Chinese theorists today, however, reject the public policy and agreement-oriented approach of the Soviets and assert the existence of a universal international law based upon fundamental principles reflected largely in custom. The United Nations Charter, to some degree, is deemed to express this higher order of law. The Chinese believe that individual nations, particularly capitalist ones, attempt to manipulate the United Nations and other international organizations for nationalistic (and primarily imperialistic) purposes. These manipulations are then justified by being termed acts of international law.<sup>20</sup> The Chinese approach to international law thus reflects a wariness of the motives and acts of other countries and a preference for a relatively informal approach to the regulation of conduct. Nowhere is this more apparent than in the conduct of Chinese foreign trade.

China has never had a tradition of comprehensive national codes. Before contact with the West, law was based upon the ethical teachings of Confucius. Western law that was imposed in trade transactions of the nineteenth century had an unsettling effect:

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<sup>16</sup>Lubman, *Trade Between the United States and the People's Republic of China: Practice, Policy, and Law*, 8 LAW & POLY INT'L BUS. 1, 12 (1976).

<sup>17</sup>*Id.* at 11.

<sup>18</sup>*Id.*

<sup>19</sup>Hsiung, *Peking's Attitudes Toward International Law*, 3 CHINESE L. & GOV'T 20, 84 (1970) (originally published in 1963).

<sup>20</sup>Chou Keng-sheng, *New Trends in Contemporary Anglo-American Theory of International Law*, 3 CHINESE L. & GOV'T 20, 84 (1970) (originally published in 1963).

In the realm of law . . . it might be argued that the impact of Western law served to undermine the Confucian ethic as a basis for administration and the achievement of social justice, without being able to take its place. It may be that the weakening of the ethical basis of the Confucian state was not compensated by a firm establishment of Western legal institutions, and that China has been left somewhere in between.<sup>21</sup>

Law in the P.R.C. is subservient to ideology.<sup>22</sup> Its purpose is to foster the policies of the C.C.P.<sup>23</sup> Because law is derived for the masses, it must be expressed so simply that the masses can understand and obey.<sup>24</sup> Lawyers play no role in the legal system.<sup>25</sup> There is no comprehensive legal code for any area of substantive law.<sup>26</sup> The National People's Congress has the responsibility of drafting and enacting law, but it rarely meets. Instructions and regulations most often emanate instead from the C.C.P. Central Committee or administrative agencies.<sup>27</sup>

Moreover, courts have very little function in the P.R.C.<sup>28</sup> The Chinese disdain for courts, lawyers, and lawsuits reflects a long Chinese tradition favoring friendly negotiation and conciliation over adversarial confrontation.<sup>29</sup> Even disputes between state enterprises, involving large economic transactions crucial to the fulfillment of the State Plan, are settled by negotiation and conciliation between the administrative superiors of the enterprises.<sup>30</sup> In setting guidelines for conciliation and mediation, the Chinese select decisions which represent a general "summing up of experience" rather than common law *stare decisis*.<sup>31</sup>

<sup>21</sup>SSU-YU TENG & J. FAIRBANK, *CHINA'S RESPONSE TO THE WEST* 2 (1954).

<sup>22</sup>Brown, *Present-Day Law in the People's Republic of China*, 61 A.B.A.J. 474, 475 (1975).

<sup>23</sup>Edwards, *The Legal Framework of Chinese Trade*, in *LEGAL ASPECTS OF DOING BUSINESS WITH CHINA* 63, 66 (H. Holtzmann ed. 1976). Indeed, the Chinese legal system seems to conform much more closely to traditional Marxist thought than does the Soviet model. The Soviets have fixed, comprehensive legal codes and procedures whose application can generally be predicted and relied upon. As a result, in most cases Soviet law is less flexible for government and Party manipulation than is Chinese law. The role of law in the P.R.C. is perhaps the product not only of Party doctrine but also of the absence of any tradition of an independent legal system throughout Chinese history. Lubman, *supra* note 16, at 3.

<sup>24</sup>Edwards, *supra* note 23, at 66.

<sup>25</sup>Lubman, *On Understanding Chinese Law and Legal Institutions*, 62 A.B.A.J. 597, 598 (1976).

<sup>26</sup>For Americans to complain that the Chinese have no comprehensive legal codes is somewhat ironic since neither does the United States. Cohen, *China's Legal System*, in *TRADE WITH CHINA* 126, 127-28 (Boorman ed. 1974).

<sup>27</sup>Edwards, *supra* note 23, at 67.

<sup>28</sup>*Id.*

<sup>29</sup>Starr and Kaplan, *The Legal Framework of China Trade*, in *DOING BUSINESS WITH CHINA, AMERICAN TRADE OPPORTUNITIES IN THE 1970s*, 382 (W. Whitson ed. 1974).

<sup>30</sup>Edwards, *supra* note 23, at 68.

<sup>31</sup>Starr and Kaplan, *supra* note 29, at 382.

The American businessman who seeks to secure his contractual expectations in trade with China should not look to the Chinese legal process. He should instead become familiar with the administrative structure and procedure that the Chinese have established for the conduct and regulation of foreign trade.<sup>32</sup> He should also look to the experiences of other Western traders dealing with China.<sup>33</sup>

The extent to which the P.R.C. will promulgate more formal laws and procedure in the future is uncertain. Since World War II the Chinese bureaucracy has grown. This growth, however, has not been without struggle. Mao Tse-tung feared that bureaucratic rigidity would undermine his doctrine of "uninterrupted revolution." In the late 1960's he initiated the "cultural revolution," partly in an effort to halt Chinese bureaucratic growth.<sup>34</sup> The tension between the conflicting forces of bureaucracy and "uninterrupted revolution" remains. It is likely that as the ideological fervor of these early years of the P.R.C. is slowly left behind, the complexity of the Chinese bureaucracy and its role in the government will substantially increase. The result would almost certainly be further development of more structured Chinese legal institutions.<sup>35</sup>

Largely in reaction to a century of pre-1949 foreign economic exploitation, the P.R.C. has been reluctant to modify a legal system and ideology whose effect is to discourage trade with the West. Now, more secure in foreign respect for their national integrity, the Chinese seek further development of the rich natural resources that attract Western business interests. The following is a brief survey of those resources.<sup>36</sup>

The first resource is people. Estimates of the Chinese population as of 1971 range from 750 million to 900 million people, 95% of whom are concentrated in the eastern half of the country where most of the nation's arable land is located. P.R.C. citizens constitute one-fourth of the world's population. Although sixteen Chinese cities have a population of over one million, the great majority of the Chinese people live in rural areas. Shanghai is the largest city, with a population of more than seven million. The Chinese labor force is 341 million, compared to 129 million in the Soviet Union and 86 million in the United States.

China ranks third in the world in proven coal reserves, which are mostly in the country's north and northeast. More important to

<sup>32</sup>See text accompanying notes 45-65 *infra*.

<sup>33</sup>See Edwards, *supra* note 23, at 65.

<sup>34</sup>Chinese bureaucracy dates back to prehistory. Basing its principles on the Confucian classics, the bureaucracy became firmly entrenched in Chinese society by the second century B.C. See Fairbank, *The Nature of Chinese Society*, in *IMPERIAL CHINA* 47-55 (1967).

<sup>35</sup>Lubman, *supra* note 25, at 599.

<sup>36</sup>Most of the information in the section is from CENTRAL INTELLIGENCE AGENCY, *PEOPLE'S REPUBLIC OF CHINA ATLAS* (1971). Any other sources are footnoted separately.

American interests are China's 2,700 million tons of proven oil reserves and an estimated 4,000 million tons of undiscovered oil reserves.<sup>37</sup> Chinese oil production has grown in the last decade at an average annual rate of twenty per cent.<sup>38</sup> The P.R.C. goal is a twenty-five per cent annual growth rate through 1980. Even if Chinese oil production increases at a lesser annual rate of ten per cent, the P.R.C. will be producing 130 million tons of oil per year by 1980. It will then need to import infrastructural oil equipment such as pipelines, drilling rigs, and refining apparatus.<sup>39</sup>

Mountainous areas of southern and parts of southwestern China possess immense hydroelectric potential. Despite the enormous potential, however, development of hydroelectric power has been slow in China. Conventional thermal electric plants account for over 70% of the country's installed generating capacity. Although China's electric power industry meets present Chinese demand, its development and technology are below Western standards.

These power sources, together with abundant metal ores (particularly iron, tin, tungsten, antimony, and magnesium) favor the development of a diversified manufacturing complex comparable to that of the United States or the Soviet Union. Because of the shortage of modern equipment, paucity of modern plants, and scarcity of skilled managers, engineers, and scientists, the P.R.C. is presently unable to establish such a sophisticated industrial network. As a result, the Chinese must continue to rely heavily on foreign technology for the design and manufacture of complex processing, refining, and finishing equipment.

Despite its wealth in natural resources and the size of its labor force, the P.R.C. is still relatively underdeveloped. While it is second only to Japan in gross industrial output among Asian nations, it ranks far behind the Japanese in per capita production. Chinese industry, which is concentrated in China's northeast, has nevertheless grown enormously since 1949. The increase in Chinese industrial output has averaged ten per cent annually over the last fifteen years.<sup>40</sup>

Agriculture remains the most important sector of China's economy. Most Chinese today still earn their living from the soil, despite P.R.C. efforts to industrialize. Chinese agriculture not only

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<sup>37</sup>CHINA TRADE REPORT 3 (P. Weintraub ed. Sept. 1977): Figures given are based on 1975 estimates.

<sup>38</sup>N. Y. Times, March 20, 1977, at 4, col. 1. For recent Central Intelligence Agency projections of future Chinese oil production and exportation, see N. Y. Times, April 16, 1977, at 11, col. 1.

<sup>39</sup>CHINA TRADE REPORT, *supra* note 37, at 3. The Japanese and the Romanians currently lead in sales to the Chinese of petroleum equipment, which the P.R.C. uses in its extensive offshore drilling. See *id.* at 3-5.

<sup>40</sup>N. Y. Times, March 20, 1977 at 4, col. 1. Chinese production increased only three to five percent in 1976. However, industrial growth is expected to accelerate as a result of the emphasis that Mao's successors have placed on economic expansion.



must provide enough food and clothing for 900 million people, but also must supply its growing industry with raw materials. The P.R.C. also relies upon agricultural exports to provide it with foreign currency with which to purchase vital imports. Foodstuffs, animal products, and textiles constitute 75% of all Chinese exports.<sup>41</sup>

Only 11% of Chinese land is suitable for cultivation. Nearly all of this arable land is located in China's eastern half. However, in a country where agriculture is so important, cultivated land per capita is only .32 acres in the P.R.C., as opposed to 2.2 in the U.S. and 2.3 in the U.S.S.R.

One obstacle to exploiting China's resources is the rudimentary Chinese transportation system. China's principal form of transportation is railroads, which have been improved greatly since 1949. Roads supplement the railway system and are primarily important for their farm-to-market use. Only a small fraction of China's 300,000 miles of roads is paved. Inland waterways provide an additional significant means of transporting cargo in China.

Despite its resources, the P.R.C. accounts for only about 1% of all world trade.<sup>42</sup> The total volume of China's two-way trade amounts to four to five billion dollars per year, or about seven dollars per person. In contrast, the United States has eighty to ninety billion dollars of foreign trade per year, or approximately four hundred dollars per person.<sup>43</sup> Eighty per cent of P.R.C. foreign trade is conducted with non-communist countries. The only significant commodities of which the Chinese export more than they import are foodstuffs, crude materials, fuels, and edible oils.<sup>44</sup>

### *Legal Framework For Foreign Trade*

The Chinese legal framework for foreign trade, modeled partly after the Soviet structure, reflects the adaptation of a communist economic system to international trade.<sup>45</sup> The P.R.C. trades not only with communist and underdeveloped nations but also with ideologically incompatible capitalist countries, some of whom do not officially recognize the Peking government. The P.R.C. conducts foreign trade for two main purposes: 1) to strengthen its industrial and military base

<sup>41</sup>Note that these are items for which there is relatively little American demand. *Problems and Prospects of Trade with Eastern Europe and China* (seminar speakers), 4 GA. J. INT'L & COMP. L. 1, 21 (1974) [hereinafter cited as *Problems and Prospects*].

<sup>42</sup>M. KLINGENBERG, L. MCQUADE, L. MULKERN, S. SWEET & D. TARNOWIESKI, *TRADE WITH CHINA*, AN AMA RESEARCH REPORT 3, 4 (1972) [hereinafter cited as *RESEARCH REPORT*].

<sup>43</sup>*Id.* at 21.

<sup>44</sup>For a 1973 list of the particular products the Chinese import and export, see E. NEILAN & C. SMITH, *THE FUTURE OF THE CHINA MARKET* 51-4 (1974). For up to date lists, write the U.S. Department of Commerce, Washington, D.C.

<sup>45</sup>Cohen, *Chinese Law and Sino-American Trade*, in *CHINA TRADE PROSPECTS AND U.S. POLICY* 148 (A. Eckstein ed. 1971) [hereinafter cited as *Cohen*].

and provide for the material needs of its citizens,<sup>46</sup> and 2) to achieve economic self-sufficiency so that it need not depend on either assistance or trade from the rest of a world that has threatened the spiritual and physical integrity of China for the last two centuries. Some experts have attributed a third purpose to Chinese foreign trade. They deem it a political tool for extending P.R.C. influence among both communist and non-communist nations.<sup>47</sup>

Chinese foreign trade is governed by import and export plans. The export plan shapes trade so that the maximum amount of foreign currency or import goods obtainable by barter is obtained.<sup>48</sup> Because self-sufficiency is an economic goal, only those goods are imported that will lead to the reduction of the Chinese industrial dependence upon imported goods.<sup>49</sup> The import plan permits importation of goods only after a search of domestic resources reveals that the goods cannot be provided from within the P.R.C.<sup>50</sup> This search conserves valuable foreign exchange.

In order to accurately determine import needs and export capabilities, and to insure that appropriate measures are taken in carrying out trade goals, the P.R.C. found it necessary to establish highly centralized planning and control over foreign trade.<sup>51</sup> Through comprehensive control of a network of organizations, the P.R.C. Ministry of Foreign Trade directs the Chinese foreign trade monopoly.<sup>52</sup> The Ministry submits annual import and export plans to the P.R.C. State Council. Upon Council approval of these plans, the Ministry supervises their execution.<sup>53</sup> The Ministry is also responsible for developing trade relations with other nations, for negotiating bilateral and multilateral trade agreements, and for supervising the following organizations: the Chinese Commodity Inspection and Testing Bureau [CITB], the Chinese Foreign Trade Corporations [FTCs], the China Council for the Promotion of International Trade [CCPIT], and the Chinese Foreign Trade Arbitration Commission [FTAC].<sup>54</sup>

<sup>46</sup>*Id.* at 149.

<sup>47</sup>Usack and Batsavage, *The International Trade of the People's Republic of China*, in *PEOPLE'S REPUBLIC OF CHINA: AN ECONOMIC ASSESSMENT (A Compendium of Papers of the Joint Economic Committee of the U.S. Congress 1972)*.

<sup>48</sup>Cohen, *supra* note 45, at 149.

<sup>49</sup>CENTRAL INTELLIGENCE AGENCY, *PEOPLE'S REPUBLIC OF CHINA ATLAS 68* (1971); Hsiao, *Communist China's Foreign Trade Contracts and Means of Settling Disputes*, 22 *VAND. L. REV.* 503, 508 (1969).

<sup>50</sup>Hsiao, *supra* note 49, at 508.

<sup>51</sup>Cohen, *supra* note 45, at 149.

<sup>52</sup>The P.R.C. Ministry of Foreign Trade, which is headed by a minister and three deputy ministers, divides the world into three major trading areas. The United States, Europe and Canada are in the Third Department. *RESEARCH REPORT*, *supra* note 42, at 27; Starr and Kaplan, *supra* note 29, at 382.

<sup>53</sup>*Id.*

<sup>54</sup>*Id.* at 380.

The CITB has the important task of monitoring the quality and quantity of imports and exports.<sup>55</sup> It consists of more than fifty branches in Chinese ports and in key production and transportation centers.<sup>56</sup> The individual branches issue certificates of origin, inspection, testing and weight, as well as notarial documents.<sup>57</sup> Chinese foreign trade contracts often call for the CITB to act as final arbiter for the conformity of goods shipped with contract terms. The CITB has a reputation for both fairness and reliability.<sup>58</sup>

Western businessmen may expect to deal primarily with the Chinese FTCs, since these organizations have major responsibility for the actual conduct of Chinese foreign trade.<sup>59</sup> Each of the eight FTCs is responsible for a distinct set of commodities and services.<sup>60</sup> Each FTC is also a distinct legal entity that can sue and be sued (but only to the amount of its capital).<sup>61</sup> It may negotiate and enter into contracts with foreign companies. The Peking government is not liable for actions of the FTC. Although they are deemed separate legal entities, they serve to carry out the economic and foreign trade plans of the government.<sup>62</sup>

The CCPIT fulfills a number of functions important to Chinese foreign trade. These include: 1) maintaining contact with foreign business groups, chambers of commerce, and trade associations; 2) conducting trade fairs and exhibitions at home and abroad; 3) hosting foreign delegations; 4) acting as an informal liaison for the FTCs; and 5) running a service for the registration of foreign trademarks.<sup>63</sup> The precise legal status of the CCPIT is unclear. Some sources, however, consider it an independent legal entity in that it has the authority to make trade agreements (albeit "unofficial" ones) with foreign organizations in its own name.<sup>64</sup>

Operating within the CCPIT are the Chinese FTAC and the Maritime Arbitration Commission [MAC]. Each has authority to settle foreign disputes within its respective competence.<sup>65</sup>

While the American businessman need not necessarily deal with all of the branches of the P.R.C. Ministry of Foreign Trade, he can expect negotiations with the Chinese to be time consuming and often

<sup>55</sup>*Id.*

<sup>56</sup>Cohen, *supra* note 45, at 151.

<sup>57</sup>Edwards, *supra* note 23, at 68.

<sup>58</sup>Starr and Kaplan, *supra* note 29, at 380.

<sup>59</sup>RESEARCH REPORT, *supra* note 42, at 22.

<sup>60</sup>For a list of the Chinese FTCs, their addresses, and the products they import and export, see China's Foreign Trade, Corporations and Organizations (China Council for the Promotion of International Trade 1975). This booklet can be obtained by writing to: Tai Ping Chiao Street, Peking, People's Republic of China.

<sup>61</sup>Cohen, *supra* note 45, at 152.

<sup>62</sup>Starr and Kaplan, *supra* note 29, at 380.

<sup>63</sup>*Id.*

<sup>64</sup>Cohen, *supra* note 45, at 153-54.

<sup>65</sup>For more on the Chinese FTAC, see text accompanying note 145 *infra*.

costly and arduous. Thus, before contacting a Chinese FTC, a feasibility study of a company's potential benefits from trade with the P.R.C. is necessary in order to determine whether potential rewards warrant embarking on such an adventure. Research on the Chinese market is difficult because of the P.R.C.'s closed political and social system. The Chinese rarely report hard economic data, and Western businessmen have practically no access to Chinese consumers.<sup>66</sup> The American businessman may, however, limit his risks by considering the following factors.

First, the American trader should evaluate Chinese interest in the product he wishes to buy or sell. He should concern himself primarily with the immediate Chinese interest and market, since long range predictions are highly speculative and risky.<sup>67</sup> One source of information is an examination of recent P.R.C. transactions with other Western firms dealing in the same or a similar product area.<sup>68</sup>

Second, the American firm or businessman should look to potential competition from other Western firms trading in similar products. Many such firms have relatively long-standing contacts and experience with the Chinese. Unless an American wishes to sell a unique or technologically advanced product, the Chinese may prove reluctant to change trading partners when the present one has "old friend" status.<sup>69</sup>

The potential trader must also consider the volume of trade in China in the product in question. China does not have a consumer-oriented economy, and the government is often unwilling to redistribute production emphasis because there is increased foreign demand.<sup>70</sup> As a result, an American company may find trade with the P.R.C. in a given area to be impractical because of volume limitations.

Fourth, American importers must be concerned with the quality of Chinese goods. Laws in the United States that regulate labeling, design, workmanship and material may exclude a Chinese product

<sup>66</sup>Hersh, *Entering the China Market*, in *DOING BUSINESS WITH CHINA*, AMERICAN TRADE OPPORTUNITIES IN THE 1970s 434 (W. Whitson ed. 1974) [hereinafter cited as Hersh].

<sup>67</sup>*Id.* at 440.

<sup>68</sup>See, for example, the International China Notes section in the back of any issue of the U.S.—CHINA BUS. REV., a magazine published bi-monthly by the National Council for U.S.—China Trade. There one may find selling and buying reports concerning activities of American and foreign companies with China in specified product areas.

The Central Intelligence Agency, Research Aid, People's Republic of China: International Trade Handbook, prepared annually, is also a good source for evaluating P.R.C. interest in a particular product area. The publication discusses the volume and commodity composition of Chinese imports and exports in the preceding year and projects P.R.C. trading trends for the following year.

<sup>69</sup>Hersh, *supra* note 66, at 440.

<sup>70</sup>*Id.*

from resale in the United States.<sup>71</sup> American exporters of technologically advanced goods must consult United States laws to determine whether the sale of the product to the Chinese is prohibited.<sup>72</sup>

Last, projected delivery dates should be ascertained for a given product before an American businessman concludes a contract with a Chinese exporter. The time lag between contract and delivery by the Chinese varies according to the type of product, its quantity, and its place of manufacture in the P.R.C.<sup>73</sup> Delayed delivery may have seriously adverse effects on resale in the United States.<sup>74</sup>

For competent advice on these and other general considerations, the American businessman should contact the following agencies or representatives:

- 1) the National Council for U.S.-China Trade in Washington, D.C.;
- 2) the P.R.C. Desk, U.S. Department of State;
- 3) the P.R.C. Desk, U.S. Department of Commerce;
- 4) the U.S. liaison office in Peking; and
- 5) the Commercial Section, Chinese liaison office in Washington, D.C.<sup>75</sup>

When a company decides to attempt trade with China, it must first send a letter to the appropriate Chinese FTC.<sup>76</sup> In this letter the American company should include product literature describing in detail what it wishes to sell or buy. The prospective importer should also "describe in detail the size and scope of the company's activity, its annual sales volume, and its experience in importing and distributing goods of the type it seeks to purchase from the P.R.C."<sup>77</sup> After further correspondence, the FTC will issue an invitation. The American businessman might then visit Chinese commercial delegations in the United States or abroad.<sup>78</sup> Hopefully, the end result will be an invitation to the Chinese Export Commodities Fair in Canton.

The Canton Trade Fair, established in 1957, is the largest and most important of several Chinese trade fairs.<sup>79</sup> It is held twice a year: in the fall, from October 15 to November 15, and in the spring, from April 15 to May 15. The Chinese supplement the Canton Fair with smaller trade fairs that specialize in selected commodities. Two examples are the Chinese Forest Products Fair in Canton in February and the Garments

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<sup>71</sup>*Id.*

<sup>72</sup>See text accompanying notes 154-94 *infra*.

<sup>73</sup>Hersh, *supra* note 66, at 440.

<sup>74</sup>Green, *Fireworks From China*, U.S.-CHINA BUS. REV. 14-16 (May-June 1976).

<sup>75</sup>Theroux, *Exporting to China: Practical Legal Problems*, in LEGAL ASPECTS OF DOING BUSINESS WITH CHINA 129 (H. Holtzmann ed. 1976) [hereinafter cited as Theroux].

<sup>76</sup>See note 18 *supra*.

<sup>77</sup>Lubman, *supra* note 16, at 18.

<sup>78</sup>Theroux, *supra* note 75, at 130.

<sup>79</sup>CANADIAN DEPT OF INDUSTRY, TRADE AND COMMERCE, MARKETS FOR CANADIAN EXPORTERS, THE PEOPLE'S REPUBLIC OF CHINA 17 (1974) [hereinafter cited as MARKETS].

Exhibition in Shanghai in March.<sup>80</sup> The P.R.C. negotiates approximately 40% of all its foreign trade at the Chinese trade fairs.<sup>81</sup>

Most businessmen who trade, or who seriously desire to trade, with the Chinese attend the Canton Trade Fair.<sup>82</sup> Although the P.R.C. is increasingly sending technical and commercial delegations abroad, the Chinese much prefer to conduct business at home.<sup>83</sup> The Canton Trade Fair not only provides the Chinese with a convenient setting for dealings with Western traders, but also gives them an opportunity to display new industrial designs and prototypes as evidence of the PRC's technological progress.<sup>84</sup> While the Canton Fair is primarily an export fair that displays goods, it also offers goods for sale.<sup>85</sup>

An invitation from a Chinese FTC is a prerequisite for attendance at the Canton Fair. The Chinese often extend these invitations on the basis of inquiries as to trade opportunities or on the basis of previous trade, negotiation or attendance at the Canton Trade Fair.<sup>86</sup> The 1972 Canton Trade Fair was the first to be open to Americans. Approximately one-half of the one hundred Americans who were invited attended.<sup>87</sup> Since 1972 American attendance has increased substantially. Hospitality and treatment of U.S. businessmen at Chinese trade fairs has been excellent, which perhaps signifies the importance the Chinese attach to American trade and encouragement of American businessmen.<sup>88</sup>

While the Canton Fair provides the prospective foreign trader with an overview of products available for sale by all branches of each Chinese FTC, a foreign purchaser may already know which FTC branch offers the product that he wishes to import. In this case, he may be better able to obtain the product by visiting the branch at its home office between Fairs to do business there.<sup>89</sup> If the Canton Fair is not currently in session, the purchaser may contact an FTC and ask permission to visit the home office of that FTC. The Chinese have increasingly permitted U.S. importers to negotiate in Peking, Shanghai, Tientsin, and Canton. There the buyer may visit factories to

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<sup>80</sup>J. METCALF & V. RANGANATHAN, CHINA TRADE GUIDE 9 (1975) [hereinafter cited as CHINA TRADE GUIDE].

<sup>81</sup>MARKETS, *supra* note 79, at 17.

<sup>82</sup>It is also known as the Kwangchow Trade Fair. "Kwangchow" is the Chinese word for Canton.

<sup>83</sup>MARKETS, *supra* note 79, at 15.

<sup>84</sup>CHINA TRADE GUIDE, *supra* note 80, at 414.

<sup>85</sup>Chavkin, *The Canton Trade Fair*, in DOING BUSINESS WITH CHINA, AMERICAN TRADE OPPORTUNITIES IN THE 1970s 414 (W. Whitson ed. 1974) [hereinafter cited as Chavkin].

<sup>86</sup>MARKETS, *supra* note 79, at 17.

<sup>87</sup>Chavkin, *supra* note 85, at 412.

<sup>88</sup>*Id.*

<sup>89</sup>Lubman, *supra* note 16, at 24.

discuss design, packaging, and labeling, rather than deal indirectly through a Canton Fair trade negotiator.<sup>90</sup>

Whether negotiating at a trade fair, at a Chinese FTC in Peking, with FTC representatives in Shanghai, Tientsin, or Canton, or with Chinese delegations abroad, the process is often costly and time-consuming. Success or failure in reaching an agreement is frequently determined by how the negotiations are conducted. Western businessmen should thus be aware of some of the basic Chinese rules of the game.

The Chinese trade fair is the most typical setting for negotiation between a Western trader and his Chinese counterpart (usually a representative of the appropriate FTC). The Western importer or exporter must be prepared to fail to conclude an agreement at his first Chinese trade fair. While failure to conclude an agreement on the first visit is not inevitable, a visit is a success if the groundwork has been established for negotiation and possible sales at a future trade fair.<sup>91</sup> Patience is crucial. The American businessman must be willing to devote from two and one-half to three months per year to negotiations in China.<sup>92</sup> Exceptions to this prolonged negotiation and sales process occur only when the exporter has much needed technology that the Chinese find unavailable from any other country.<sup>93</sup>

During negotiations, the American businessman may receive a lecture on communist ideology and the "hostile discrimination" of American tariffs against Chinese products.<sup>94</sup> Ideological and political overtones at Canton Trade Fair negotiations, however, have apparently decreased in recent years.<sup>95</sup>

Generally, the Chinese expect very detailed information on the wares of a Western seller in advance of a meeting so that face-to-face discussion will be more productive.<sup>96</sup> An expert on the product that the company is seeking either to sell or buy should accompany any American delegation. Ideally, the expert should be the company president, or at least some company executive, since the Chinese deem such representation important for both practical and social reasons. The Chinese are somewhat reluctant to deal with a subordinate.<sup>97</sup> The company executive should have the authority to approve all sales and purchases immediately.

Negotiation in China is conducted by Chinese teams with three to six members, and decisions are made on the basis of consensus among

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<sup>90</sup>*Id.* at 23.

<sup>91</sup>Chavkin, *supra* note 85, at 420.

<sup>92</sup>*Id.* at 415.

<sup>93</sup>*Id.*

<sup>94</sup>*Id.* at 417.

<sup>95</sup>CHINA TRADE GUIDE, *supra* note 80, at 8.

<sup>96</sup>Theroux, *supra* note 75, at 130.

<sup>97</sup>Chavkin, *supra* note 85, at 415.

team members.<sup>98</sup> Once terms are agreed upon, Western businessmen may be frustrated by the Chinese practice of leaving these terms out of the final draft of the written contract! Upon objection, the Chinese assure the Western negotiator that any previously made verbal agreement will be carried out.<sup>99</sup> Most American businessmen are accustomed to having the smallest detail written into the contract and find it difficult to trust the effectiveness of verbal transactions. Experience has shown, however, that Chinese negotiators will live up to their verbal commitments.<sup>100</sup> Interestingly, the Chinese take a different approach when buying. In that case, they want all product specifications written out in detail.<sup>101</sup>

In negotiation, the Chinese emphasize continuity and personal contacts. The Chinese want to know the person with whom they are dealing and prefer to negotiate with the same individual from year to year.<sup>102</sup> This further illustrates the importance the Chinese attach to "old friend" status when trading with a foreigner.

While the Chinese have a reputation for firmness and doggedness in negotiation, they are actually often willing to be flexible and to compromise.<sup>103</sup> However, hard-sell and know-it-all tactics have no success in China. The Chinese place a premium on soft-sell, civility, and politeness.<sup>104</sup>

The length of negotiations is determined to a great extent by the communication skills, adaptability, and flexibility of the trading parties. One expert on Chinese trade, Wallace Chavkin, attributes negotiation difficulties in part to the exodus of the most experienced Chinese businessmen to Taiwan with Chiang Kai-shek in 1949.<sup>105</sup> The traders active in the P.R.C. today have a high degree of expertise and knowledge. Nevertheless, their wary and inflexible stance is in part the consequence of inexperience with Western commercial negotiations. This inexperience often results in unnecessary prolongation of talks when P.R.C. representatives negotiate with Western businessmen.<sup>106</sup>

One alternative to direct contact and negotiation with the Chinese is to use the services of a trading firm as an agent. These trading firms are located mainly in Hong Kong and Macao. They usually conduct

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<sup>98</sup>*Id.* at 416.

<sup>99</sup>*Id.*

<sup>100</sup>*Id.*

<sup>101</sup>*Id.* at 417.

<sup>102</sup>*Id.* at 420.

<sup>103</sup>Theroux, *supra* note 75, at 131.

<sup>104</sup>Chavkin, *supra* note 85, at 420.

<sup>105</sup>*Id.* at 416.

<sup>106</sup>*Id.* For a detailed model approach to negotiating with the Chinese, including comments on the modern Chinese psyche, as well as a suggested (and rather lengthy) reading list for American negotiators, see H. Hoose, *How to Negotiate with the Chinese of the PRC*, in *DOING BUSINESS WITH CHINA, AMERICAN TRADE OPPORTUNITIES IN THE 1970s* 449-69 (W. Whitson ed. 1974).



their own trade with the Chinese, as well as serving as agents for other companies.<sup>107</sup> By leaving contact and negotiation to the proximately located Hong Kong or Macao agent, the Western company can save in travel, personnel, and administrative costs. Moreover, the agent firm may often bring along any Western client who wishes to attend the appropriate trade fair.<sup>108</sup>

These trading firms are sometimes more successful in negotiation than novice Western traders in China since the agent firms usually have "old friend" status because of dealings with the Chinese in the past.<sup>109</sup> The trading firms are also generally experts in the Chinese market. Some of them, for example, have full-time research staffs monitoring P.R.C. radio broadcasts as well as national and provincial newspapers. Personal family contacts in China also often gather information for the trading agents.<sup>110</sup> A number of Western companies have found the use of these Hong Kong and Macao based firms extremely helpful.<sup>111</sup>

Trading by means of such an agent firm, however, does pose some potential problems. Conflict of interest is possible where the agent is already representing other clients in the same product area or is itself trading in similar goods with the P.R.C.<sup>112</sup> Further, these trading firms charge high fees, making their use prohibitive to the small or medium-sized Western company. In some cases, the Chinese prefer to deal directly with the American businessman rather than through a foreign middleman.<sup>113</sup> Thus, an American company that wishes to trade with the Chinese should consider carefully before using a trading firm as an agent.

Whether or not the American company chooses to be represented by a trading firm, the Chinese view the negotiation process as crucial. Negotiation provides the Chinese with an opportunity to learn about a potential trading partner, the company's product, Western technology, and Western market conditions in general, as well as a chance to expound their political and ideological views. Despite the importance attached to the give and take of negotiation, however, the Chinese are somewhat inflexible as to what will be written in the final draft of their foreign trade contracts. Since American businessmen will find Chinese

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<sup>107</sup>Hersh, *supra* note 66, at 438.

<sup>108</sup>*Id.*

<sup>109</sup>*Id.*

<sup>110</sup>*Id.*

<sup>111</sup>For the experiences of two American importers, the Pyrotechnics Corporation and the Atomic Fireworks Company, see Green, *supra* note 74, at 15-16. The Pyrotechnics Corporation, for example, resorted to a Hong Kong agent when it found it was incapable of assuring that fireworks, negotiated and contracted for during the spring Canton Fair, would be delivered in time to profit from annual July 4 sales.

<sup>112</sup>Hersh, *supra* note 66, at 438.

<sup>113</sup>*Id.*

foreign trade contracts distinctive, the most salient features and patterns of such contracts demand separate consideration here.

Chinese foreign trade contracts fall into two major categories: those with communist countries and those with non-communist countries.<sup>114</sup> Chinese contracts with communist states are governed by intergovernmental agreements and protocols called "general conditions of delivery" that serve to simplify their bilateral contract negotiations.<sup>115</sup> Contracts between the Chinese and non-communist governments are much more complex. For example, unlike most contracts in international trade, P.R.C. contracts are not made subject to any foreign law.<sup>116</sup> The Chinese, moreover, attempt to execute their foreign trade contracts in China because of the importance of the concept of *lex loci contractus* in determining which law will apply. When Chinese law applies under conflicts rules, the Western businessman will find little guidance for his conduct in case of breach or uncertainty of contract terms, because the Chinese have no commercial code or comprehensive set of laws governing basic commercial relations. The absence of a well-defined commercial law, combined with Chinese refusal to submit their contracts to foreign law, makes each contract's provisions particularly important.

Although Chinese FTCs employ seven forms of trade contracts with non-communist countries,<sup>117</sup> the most common forms are straight sale and straight purchase.<sup>118</sup> The Chinese FTCs have their own standard contract forms and insist that they be used in transactions with Western firms.<sup>119</sup> The Chinese assiduously seek to obtain provisions for use of the Bank of China<sup>120</sup> and the CCPIT arbitral commission, the CITB, and the *renminbi* [RMB]<sup>121</sup> is the currency for payment in trade agreements.<sup>122</sup> Insistence on contract provisions for the use of PRC organs and currency reflects a certain Chinese paranoia resulting from bitter decades of foreign exploitation of China.

<sup>114</sup>Hsiao, *supra* note 49, at 504.

<sup>115</sup>Cohen, *supra* note 45, at 160.

<sup>116</sup>Starr and Kaplan, *supra* note 29, at 381.

<sup>117</sup>These are: 1) straight sale or purchase, or reciprocal trade (when either party is both seller and buyer); 2) barter; 3) consignment; 4) agency, sole or general; 5) conditional agency; 6) distributorship; and 7) fixed distributorship. For a discussion of each form, see Hsiao, *Chinese Trade Contracts*, in *LEGAL ASPECTS OF DOING BUSINESS WITH CHINA* 137-43 (H. Holtzmann ed. 1976).

<sup>118</sup>Hsiao, *id.* at 143.

<sup>119</sup>Cohen, *supra* note 45, at 161.

<sup>120</sup>For a discussion of the role of the Bank of China in Chinese trade, see text accompanying note 134 *infra*.

<sup>121</sup>The *renminbi* [RMB] is the official Chinese currency. Its basic unit is the yuan, and it is worth approximately .15 of one U.S. dollar. See Denny, *Recent Developments in the International Financial Policies of the People's Republic of China*, in *CHINA'S CHANGING ROLE IN THE WORLD ECONOMY* 177 (B. Garth ed. 1975) for a table of the value of the RMB vis-a-vis Western currencies over a two year period (1973-74).

<sup>122</sup>Starr and Kaplan, *supra* note 29, at 383.

P.R.C. contracts of sale are less complex than those of purchase.<sup>123</sup> They also differ in the nature of delivery costs and insurance employed; the Chinese usually seek to purchase on an FOB<sup>124</sup> and sell on a CIF basis.<sup>125</sup> This permits the Chinese to arrange the shipping and to handle the insurance through the People's Insurance Company of China.<sup>126</sup>

P.R.C. contracts with Americans are usually written both in English and in Chinese (though sometimes solely in English) and provide that both languages are "equally controlling." When in both languages, however, the contracts generally fail to provide which language will govern in case of an inconsistency in the texts.<sup>127</sup>

Another potential problem may be found in contract provisions covering *force majeure*. Events constituting *force majeure* are often not sufficiently specific in Chinese foreign trade contracts.<sup>128</sup> The Chinese apparently do not deem labor disputes and strikes to be such an event. Moreover, whether P.R.C. administrative interference with contract execution constitutes *force majeure* is not clear.<sup>129</sup>

Chinese preoccupation with obtaining maximum protection, as well as their desire to extol the virtues of communist ideology, often results in excessively detailed and even puzzling FTC contract terms.<sup>130</sup> As mentioned earlier, however,<sup>131</sup> the Chinese prove to be much more flexible and conciliatory when actually performing the contract than the terms seem to indicate. For example, the Chinese frequently will not enforce provisions concerning payment of indemnities and penalties.<sup>132</sup> Again, this illustrates the traditional Chinese preference for friendly conciliation and mediation.<sup>133</sup>

Payment provisions constitute a particularly important aspect of Chinese foreign trade contracts. P.R.C. contracts generally require an

<sup>123</sup>*Id.*

<sup>124</sup>FOB ("Free on board") means without charge to the buyer for goods placed on board a carrier at the point of shipment. CIF ("cost, insurance, and freight") is used by a seller to indicate that the price quoted includes the cost of the merchandise, packing, crating, forwarding, and freight to a specified destination, plus insurance charges on the shipping. THE UNABRIDGED RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (J. Stein ed. 1971).

<sup>125</sup>Chinese Trade Contracts, *supra* note 117, at 158.

<sup>126</sup>Starr and Kaplan, *supra* note 29, at 384.

<sup>127</sup>*Id.*

<sup>128</sup>*Id.* at 385.

<sup>129</sup>The question would arise, for example, where the Chinese Ministry of Foreign Trade revoked an FTC's import license for goods already purchased and shipped by an American supplier for political reasons unrelated to the transaction. Starr and Kaplan, *supra* note 29, at 385.

<sup>130</sup>Reghizzi, *Legal Aspects of Trade with China: The Italian Experience*, 9 HARV. INT'L L. J. 1, 107 (1968) [hereinafter cited as Reghizzi].

<sup>131</sup>See text accompanying notes 53 and 55 *supra*.

<sup>132</sup>Reghizzi, *supra* note 130, at 108.

<sup>133</sup>See text accompanying notes 145-53 *infra*.

irrevocable letter of credit issued through a bank having a correspondent relationship with the Bank of China.<sup>134</sup> The Bank of China is controlled and directed by the P.R.C. Chinese People's Bank.<sup>135</sup> The latter is responsible to the Chinese Ministry of Finance. The Bank of China represents the Chinese People's Bank abroad and makes international payments for the FTCs.<sup>136</sup> By its articles of association, the Bank of China is a joint private-state enterprise in which private investors receive a fixed 5% dividend per year and supposedly have voting rights.<sup>137</sup> Because the Bank of China is so organized and is a separate legal entity, it would seem that it could not invoke the defense of sovereign immunity.<sup>138</sup> The Bank of China has an excellent reputation for honoring its obligations.<sup>139</sup>

Provisions for letters of credit in Chinese trade contracts sometimes call for payment in a Western currency.<sup>140</sup> Previously, payment was almost always made in Western currencies until a series of European currency crises occurred during the late 1960's and early 1970's. Because a planned economy must give high priority to order and stability, the P.R.C. has increasingly sought to use its own currency, the *renminbi*, in trade with the West.<sup>141</sup> The RMB is now widely used in Chinese foreign trade and appears to be a very sound currency.<sup>142</sup>

The Chinese, however, have exhibited a marked unwillingness to accept foreign credit (unlike the Russians, who accept it readily). Only recently have the Chinese become willing to finance their purchases of goods by using short and medium-term foreign credits. Chinese policy in the area of credit remains very conservative.<sup>143</sup> If Chinese credit policy changes, the P.R.C. may anticipate having few problems obtaining credit from the West because of its high credit standing.<sup>144</sup>

P.R.C. foreign trade contracts with Western companies usually include provisions for settlement of disputes between the contracting parties. These provisions call first for amicable settlement between the

<sup>134</sup>Starr and Kaplan, *supra* note 29, at 384.

<sup>135</sup>Smith, *Standard Form of Contracts in the International Commercial Transactions of the PRC*, 21 INT'L & COMP. L.Q. 13, 135 (1972) [hereinafter cited as Smith].

<sup>136</sup>Starr and Kaplan, *supra* note 29, at 384.

<sup>137</sup>Smith, *supra* note 135, at 135. The Chinese People's Bank owns two-thirds of the Bank of China's stock. Starr and Kaplan, *supra* note 29, at 384.

<sup>138</sup>Smith, *supra* note 135, at 135.

<sup>139</sup>*Id.*

<sup>140</sup>Starr and Kaplan, *supra* note 29, at 384.

<sup>141</sup>Denny, *Recent Developments in the International Financial Policies of the People's Republic of China*, in CHINA'S CHANGING ROLE IN THE WORLD ECONOMY 163, 167-68 (B. Garth ed. 1975) [hereinafter cited as Denny].

<sup>142</sup>Starr and Kaplan, *supra* note 29, at 384. Still, the RMB remains an inconvertible currency, since foreign-held RMB's must be deposited at the Bank of China and since RMB exchange for other currencies is strictly regulated. Denny, *supra*, note 141, at 175.

<sup>143</sup>Denny, *supra* note 141, at 164.

<sup>144</sup>Gott, *China's Foreign Trade Policies and Practices*, in TRADE WITH CHINA, ASSESSMENTS BY LEADING BUSINESSMEN AND SCHOLARS 92 (P. Boarman ed. 1974).

parties by direct negotiation before resorting to arbitration.<sup>145</sup> This position is no different from that adopted by the International Chamber of Commerce. Distinctively Chinese, however, is the lack of concern for, or specification of, formal procedures for this amicable conciliation.<sup>146</sup> Negotiation at this stage usually involves discussion over tea (or perhaps over wine and dinner). Only when conciliation and mediation fail can arbitration be pursued.<sup>147</sup>

Whether the arbitration will be located in the P.R.C. or the Western state is perhaps the most important single issue involved in the arbitration area. Location is crucial not only in determining the applicable law and procedure, but also in choosing the arbitrators and umpire (who may tend to favor their compatriots).<sup>148</sup> It becomes particularly critical because of the ideological split between the Chinese and the West. Since Chinese Marxist ideology asserts that law is the instrument of the ruling class, the Chinese feel that they will not receive fair treatment under capitalist laws.<sup>149</sup> As a result, the Chinese (like the Soviets) seek to arbitrate in their own capital; however, the ambiguities of Chinese law render arbitration in Peking an unpredictable process. In addition, the close connection of the FTAC and MAC with the Chinese Ministry of Foreign Trade and the various foreign trade corporations raises the question of Chinese impartiality in Peking.<sup>150</sup> The American businessman may thus prefer to seek arbitration in a third country.<sup>151</sup>

The Chinese FTAC is much less active than the Soviet FTAC after which it was modeled. It also has fewer discernible formal procedures than its Soviet counterpart.<sup>152</sup> The great majority of disputes that do reach the P.R.C. Foreign Trade Arbitration Committee are resolved by means of adjustment or conciliation.<sup>153</sup>

#### *U. S. Strictures*

When trading with China, the American businessman must be aware not only of the legal and economic forces at work in the P.R.C., but also with the U.S. laws restricting trade with a country that the

<sup>145</sup>Hsiao, *supra* note 45, at 513.

<sup>146</sup>*Id.*

<sup>147</sup>*Id.* Western businessmen should avoid resorting to lawsuits not only because they are costly and time consuming, but mainly because such action would perhaps irreparably affront the Chinese. *Id.*

<sup>148</sup>*Id.* at 515.

<sup>149</sup>*Id.*

<sup>150</sup>Starr and Kaplan, *supra* note 29, at 385.

<sup>151</sup>Provisions for third country arbitration must be included in the terms of the Chinese FTAC contract. Depending upon the bargaining position of the Western party, the Chinese have been willing to compromise and accept arbitration in third countries agreeable to both sides. Smith, *supra* note 135, at 139.

<sup>152</sup>Cohen, *supra* note 45, at 165-66.

<sup>153</sup>*Id.* at 166.

United States government still deems potentially hostile to its interests. Quite often the American businessman will find that U.S. laws constitute a much more inhibiting factor on desired trade than Chinese policy or the peculiarities of the Chinese foreign trade system.

U.S. legal restrictions on trade with China began almost at the inception of the P.R.C. government. The victory of Mao Tse-tung's communist forces over the Chinese Nationalist Army in 1949 prompted the United States, in the name of national defense, to enact legislation which effectively imposed an embargo on United States trade with China from 1949 to 1969. The embargo was designed to inhibit Chinese economic and military growth by commercially isolating it.<sup>154</sup> The U.S. Congress began by passing the Export Control Act of 1949<sup>155</sup> restricting U.S. exports to China. When the P.R.C. became involved in the Korean War, Congress increased the severity of trade restrictions by passing a series of measures that threatened withdrawal of United States aid to countries that traded with the Sino-Soviet bloc.<sup>156</sup> The United States then sponsored a United Nations resolution recommending an embargo on shipments of strategic goods to China and North Korea.<sup>157</sup> Congress then amended the 1922 China Trade Act<sup>158</sup> definition of "China." The effect of the amendment was to exclude all P.R.C. controlled areas from tax deductions available to China Trade Act corporations.<sup>159</sup>

The Chinese, however, were willing and eager to trade with the United States in 1949. They made substantial overtures towards reestablishment of trade with the United States during the early years of the embargo.<sup>160</sup> Today the Chinese have no laws directly restricting U.S.-China trade.<sup>161</sup> Indirect P.R.C. legal restraints do exist, such as those curtailing entry into and travel within the Chinese mainland.<sup>162</sup>

The effectiveness of the U.S. embargo decreased as the Chinese greatly increased their trade with non-communist countries during the

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<sup>154</sup>Lee and McCobb, *United States Trade Embargo on China, 1949-1970: Legal Status and Future Prospects*, 4 N.Y.U.J. INT'L L. & POL. 1 (1971). [hereinafter cited as Lee and McCobb].

<sup>155</sup>Ch. 11, 63 Stat. 7 (1949), (current version at 50 U.S.C. app. §§ 2401 *et seq.* (1977)).

<sup>156</sup>For a description of these measures, see Lee and McCobb, *supra* note 154, at 3-10.

<sup>157</sup>G.A. Res. 500, 5 U.N. GAOR, Supp. (No. 20A) 2, U.N. Doc. A/1775 (1951).

<sup>158</sup>The 1922 China Trade Act was enacted to encourage trade with China. See 15 U.S.C. §§ 141 *et seq.*

<sup>159</sup>1.R.C. § 941. For cogent arguments to the effect that the United States embargo violated the traditional international law of reprisals, embargo, and boycott, as well as laws of the United States and the United Nations, see Lee and McCobb, *supra* note 154, at 15-21.

<sup>160</sup>Cohen, *supra* note 45, at 129-31.

<sup>161</sup>*Id.* at 140.

<sup>162</sup>*Id.* at 144.

1960's<sup>163</sup> in an effort that was prompted by the Sino-Soviet political split to diversify their trade.<sup>164</sup> Amelioration of U.S. policy accompanied this increased Chinese trade with the West. The 1969 relaxation of the Foreign Assets Control Regulations that permitted a limited amount of Chinese noncommercial goods to enter the United States was the beginning of a series of legislative and executive enactments that removed most U.S. legal restrictions on trade with China.<sup>165</sup>

Significant legal restraints on potential U.S.-China trade remain. The 1917 Trading with the Enemy Act gave the Treasury Department authority to issue Foreign Assets Control Regulations. These Regulations still provide the basis for freezing all bank accounts and assets in the United States owned by the P.R.C. or its nationals, as well as for prohibiting unauthorized transactions with the P.R.C.<sup>166</sup> In December 1950, the Chinese expropriated assets of American nationals after the United States had frozen P.R.C. assets. Although the Chinese have stated their willingness to negotiate a settlement,<sup>167</sup> the expropriated/frozen assets question remains a major obstacle to the expansion of trade between the two countries.<sup>168</sup>

The 1969 Export Administration Act,<sup>169</sup> which updates the 1949 Export Control Act, is the principal means of control of U.S. exports.<sup>170</sup> It gives the President the authority to restrict any and all U.S. exports to China in order to safeguard national security, promote foreign policy, and prevent the drain of goods that are in short supply domestically.<sup>171</sup> United States proscription of exports under the 1969 Act are the most stringent in the world in terms of what commodities may be exported and who may export them.<sup>172</sup> The Office of Export Administration of the Bureau of Trade Regulation, within the U.S. Department of Commerce, bears direct administrative responsibility for the enforcement of the 1969 Act.<sup>173</sup>

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<sup>163</sup>*International Trade Taxation-United States Taxation of Trade with China: Problems and Alternatives*, 8 VAND. J. TRANSNAT'L L. 189, 191 (1975). [hereinafter cited as *International Trade Taxation*].

<sup>164</sup>Cohen, *supra* note 45, at 140.

<sup>165</sup>For a list of executive and legislative enactments removing most United States legal restrictions on trade with China, see Starr and Kaplan, *supra* note 29, at 387-90.

<sup>166</sup>50 U.S.C. app. §§ 1 *et seq.* (1970) and 31 C.F.R. § 500 (1971). Faced with the possibility of frozen bank accounts, the Chinese refuse to establish a branch of the Bank of China in the United States.

<sup>167</sup>See N.Y. Times, Feb. 16, 1977, at 9, col. 1; BUSINESS WEEK, Aug. 22, 1977, at 42.

<sup>168</sup>See *Expropriated Property, Frozen Assets, and Sovereign Immunity: Legal Obstacles to United States-China Trade Relations*, 15 COLUM. J. TRANSNAT'L L. 254, 254-55 (1976). P.R.C. funds frozen in the United States total \$76.5 million, while American assets seized by the P.R.C. are worth \$196.9 million. N.Y. Times, Feb. 16, 1977, at 9, col. 1.

<sup>169</sup>50 U.S.C. app. §§ 2401 *et seq.* (1970).

<sup>170</sup>Starr and Kaplan, *supra* note 29, at 387.

<sup>171</sup>S. PISAR, COEXISTENCE AND COMMERCE; GUIDELINES FOR TRANSACTIONS BETWEEN EAST AND WEST 116 (1970) [hereinafter cited as PISAR].

<sup>172</sup>*Id.* at 118.

<sup>173</sup>The Bureau of Trade Regulation is a component of the Industry and Trade Administration.

A number of other agencies in the executive branch regulate the export of goods within their respective purviews. The U.S. Department of State's Office of Munitions Control, pursuant to Section 414 of the Mutual Security Act of 1954, as amended, controls the export of weapons and related technical data.<sup>174</sup> The Atomic Energy Commission, pursuant to the Atomic Energy Act of 1954, controls exports of nuclear energy, materials, facilities, and related technology.<sup>175</sup> The Maritime Administration and the Department of Agriculture also control exports within their fields of responsibility.<sup>176</sup>

Under the 1969 Export Administration Act, export to China requires a license. The Office of Export Administration determines whether the license will be issued in each case.<sup>177</sup> The Office's wide discretion, along with the unpredictability of its decisions, has proven to be as inhibiting to trade with communist countries as the export restrictions themselves.<sup>178</sup> If a license is denied, administrative review or appeal to the Appeals Board of the Department of Commerce is possible, but only in cases of obvious abuse will relief be granted.<sup>179</sup>

United States regulation of exports to communist countries falls into three categories, reflecting different degrees of strictness. In 1972, President Nixon effectively placed China in country group "Y", along with the Soviet Union and other East European bloc countries. The P.R.C. is thus no longer a member of the most severely restricted group, consisting of North Korea, Vietnam, and Cuba.<sup>180</sup>

Several other U.S. legal considerations concern the American businessman who contemplates trade with the P.R.C. Failure to grant the Chinese "most-favored-nation" [MFN] status inhibits trade not only by affronting Chinese national pride but also by often making

<sup>174</sup>22 U.S.C. § 1934 (1970).

<sup>175</sup>42 U.S.C. §§ 2011-2078 (1970).

<sup>176</sup>46 U.S.C. §§ 808, 835 (1970); 7 U.S.C. §§ 516, 581 (1970).

<sup>177</sup>PISAR, *supra* note 171, at 121-22.

<sup>178</sup>*Id.* at 121. In fairness, however, this unpredictability stems from the necessity that the office weigh conflicting objectives in a setting that is often highly volatile. For example, items considered sensitive only a short time ago may suddenly no longer be deemed strategic either because they have become obsolete or because the communists have discovered their secrets. *Id.* at 121, 122.

<sup>179</sup>*Id.* at 122.

<sup>180</sup>Poland and Romania comprise the other group. This group is treated least stringently. Yugoslavia is not treated, in this context, as a communist country. See Starr and Kaplan, *supra* note 29, at 389.

Any rational basis for treating China differently from the U.S.S.R. for purposes of export regulation seems to have long disappeared. The reason for the disparity in past years had been that the P.R.C. represented a greater threat to United States national security than did the U.S.S.R. But since the Korean War, the Chinese have invaded or militarily intervened in no country (the 1962 Sino-Indian conflict was really a border dispute), while the Soviets have invaded both Hungary and Czechoslovakia, initiated the Cuban missile crisis, and injected Russian military personnel in North Africa. Lee and McCobb, *supra* note 154, at 21-22.



Chinese imports to the United States economically unsound because comparatively high tariffs are placed on P.R.C. imports. The Trade Act of 1974<sup>181</sup> in effect sets two prerequisites for granting MFN status to the P.R.C.: 1) a bilateral trade agreement between the two countries covering, *inter alia*, safeguards for domestic industry, protection of patent, trademark, and copyright interests of United States citizens, and arrangements for trade promotion and settlement of disputes,<sup>182</sup> and 2) Chinese compliance with the Jackson-Vanik Amendment free-emigration stipulations.<sup>183</sup>

The American businessman must also be aware of U.S. Food and Drug Administration regulations that cover the quality and labeling of products. Chinese goods often fail to meet these regulations.<sup>184</sup> Insurance coverage may be necessary to protect him against the usual P.R.C. refusal to accept responsibility for FDA rejection of imported Chinese goods.<sup>185</sup> Furthermore, tax incentives under the 1922 China Trade Act, which once encouraged trade with pre-1949 China, no longer apply to the P.R.C.<sup>186</sup>

Moreover, pursuant to the 1951 Mutual Defense Assistance Control Act, as amended [Battle Act], the United States participates with fourteen other nations in the International Coordinating Committee on Strategic Trade with Communist Countries [COCOM], in which the members voluntarily restrict exports to preserve their mutual security.<sup>187</sup> COCOM arrangements are considered moral obligations rather than commitments binding members under international law.<sup>188</sup> The United States has attempted to adopt a separate, independent position in which its export restrictions to China and other communist countries are stricter than those of the other COCOM members.<sup>189</sup> The effectiveness of this position, however, depends upon the extent to which the other member nations adopt restrictions as strict as those defined in the Battle Act.<sup>190</sup> The result, particularly during times of détente, is a double standard whereby firms in Japan and West Europe

<sup>181</sup>Pub. L. No. 93-618, 88 Stat. 1978 (codified in 31 U.S.C. §§ 5, 19, 26 (1975)).

<sup>182</sup>Surrey, *Growth and Outlook for U.S.-China Trade*, in *LEGAL ASPECTS OF DOING BUSINESS WITH CHINA* 7, 14 (H. Holtzmann ed. 1976).

<sup>183</sup>Chinese compliance with the Jackson-Vanik Amendment in the near future is, to say the least, improbable.

<sup>184</sup>U.S. FOOD AND DRUG ADMINISTRATION, DEP'T OF HEALTH, EDUCATION AND WELFARE, REPORT NO. 76-11, *COMMERCIAL IMPORT DETENTIONS* 7, 8, 10, 11, 12, 16, 20 (Nov. 15-19, 1976).

<sup>185</sup>Lubman, *supra* note 16, at 22.

<sup>186</sup>*International Trade Taxation*, *supra* note 163, at 189. See also text accompanying notes 4-5 *supra*.

<sup>187</sup>Starr and Kaplan, *supra* note 29, at 387. COCOM members include Japan and all NATO countries other than Ireland.

<sup>188</sup>PISAR, *supra* note 171, at 131.

<sup>189</sup>*Id.* at 133.

<sup>190</sup>*Id.* at 134.

may engage in commerce forbidden to American companies.<sup>191</sup> Thus, American firms are sometimes the victim of an essentially ineffective U.S. law.

Lastly, the United States businessman must consider the attitude of the labor movement in the United States and the possible effect that trade with the P.R.C. might have on labor-management relations.

Since the 1960's, and particularly since 1972, when the U.S. registered a trade deficit for the first time since 1888, the AFL-CIO has become a major proponent of import regulation. The AFL-CIO is afraid that keeping U.S. markets open for low-wage, foreign-made goods could lead to the eventual destruction of American markets, industries, and jobs. This concern has found substantial expression in the 1972 Foreign Trade and Investment Act.<sup>192</sup> In addition, the Amalgamated Clothing Workers of America, the Textile Workers Union of America, and the International Ladies Garment Workers Union are particularly concerned about the effect of a potentially large influx of Chinese textiles, fiber, and clothing into the U.S. These unions have actively urged additional regulations to curtail the importation of such goods from China in case overall American-Chinese trade increases substantially.<sup>193</sup>

Concern for domestic employment thus leads United States labor to favor exports and discourage Chinese imports.<sup>194</sup> In the future, however, the Chinese will probably insist on balanced trade with the United States.

### *Conclusions*

The volume of future U.S.-P.R.C. trade will be largely determined by the quality, type and amount of Chinese goods produced. For example, sophisticated foreign markets such as the United States frequently require the redesign of Chinese export commodities. The P.R.C. often finds this difficult because many of its exports are manufactured in decentralized units in rural areas or urban neighborhoods. In such small and isolated units, changing design and materials and retraining workers can prove particularly difficult and time-consuming. As a result, Chinese planners are often unable or reluctant to meet foreign market preferences by using limited production resources to redesign export commodities.<sup>195</sup>

Moreover, Chinese exports are predominantly agricultural; the United States can generally satisfy its demand for food, animal pro-

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<sup>191</sup>*Id.*

<sup>192</sup>Bonner and Kaufman, *Control of Imports: Attitudes of American Labor*, in *DOING BUSINESS WITH CHINA: AMERICAN TRADE OPPORTUNITIES IN THE 1970s* 114, 116 (W. Whitson ed. 1974).

<sup>193</sup>*Id.* at 117.

<sup>194</sup>*Id.*

<sup>195</sup>Lubman, *supra* note 16, at 14.

ducts, and textiles at home. On the other hand, potentially immense Chinese oil reserves could supply the United States with significant future petroleum imports. In turn, American technological exports and expertise could help accelerate P.R.C. industrial growth and exploitation of China's natural resources.

Ideology will continue to play a critical role in determining the volume of P.R.C. domestic production and thus the extent of its trade with the United States. One Chinese economics expert notes that P.R.C. domestic economic performance since 1949 has varied according to the degree to which the regime has emphasized ideology.<sup>196</sup> The greater the emphasis on ideological purity, the slower the Chinese have developed commercially. Furthermore, ideological dissension within the Chinese ranks has led to periods of domestic instability, such as the Cultural Revolution of the 1960's, which severely curbed P.R.C. industrial output. Chinese exports will necessarily be limited by the level of Chinese industrial development.

Chinese ideology will also influence the *willingness* of the P.R.C. to trade with the United States. P.R.C. doctrine still deems communism and capitalism to be ultimately irreconcilable forces with the United States being the world's primary capitalist, imperialist aggressor. What is uncertain is the extent to which the P.R.C. might continue to limit its trade with the United States for ideological reasons. At present, the Chinese wish to avoid too much dependence on capitalist nations for trade; thus, a large proportion of their foreign trade is with other communist countries.<sup>197</sup> Furthermore, Chinese ideological sympathy with Third World nations encourages development of trade relations with those countries. Not only will the under-developed nations meet many of China's raw material import demands, but they will also absorb significant portions of Chinese productive output.<sup>198</sup> Western nations must compete for what is left of Chinese demand and supply.

Despite significant P.R.C. trade allocations to communist and Third World countries, the Chinese conduct most of their trade with Western, advanced nations. The 300 percent increase in their trade with the West since 1961<sup>199</sup> perhaps reflects a softening of CCP doctrine. As a result, American businessmen must compete primarily with other Western businessmen for the China trade. At present, American businessmen and companies generally find themselves at a

<sup>196</sup>Richman, *Ideology: The Ultimate Constraint on China Trade*, in *TRADE WITH CHINA; ASSESSMENTS BY LEADING BUSINESSMEN AND SCHOLARS* 62, 63 (P. Boorman ed. 1974).

<sup>197</sup>See generally Donnithorne, *China's Trade with the Communist World*, in *DOING BUSINESS WITH CHINA: AMERICAN TRADE OPPORTUNITIES IN THE 1970's* 55, 66 (W. Whitson ed. 1974).

<sup>198</sup>U.S. Bureau of Intelligence and Research, Dep't of State, Report No. 298, *Communist States and Developing Countries: Aid and Trade in 1974*, at 6, 20 (1976).

<sup>199</sup>Yeh, *China's Trade with the Third World*, in *DOING BUSINESS WITH CHINA: AMERICAN TRADE OPPORTUNITIES IN THE 1970s* 70, 72 (W. Whitson ed. 1974).

competitive disadvantage to Japanese and Western European firms.<sup>200</sup>

As a result of this competitive disadvantage, the U.S. government can and should take steps to create a legal environment facilitating U.S.-Chinese trade. For example, it should initiate negotiations for a tax treaty between the U.S. and China similar to the 1973 U.S.-Soviet tax treaty.<sup>201</sup> By superseding I.R.S. provisions, such a tax treaty would permit the resolution of tax problems on an intergovernmental level rather than in the courts of either nation. It would also create more certainty in trade relations between the two countries than is created by complicated and frequently amended U.S. tax statutes.<sup>202</sup>

The U.S. legislative and executive branches should also work together to draft and negotiate a comprehensive bilateral trade agreement between the two countries as a step toward the granting of MFN status to the P.R.C.<sup>203</sup> Because of China's insistence upon equal treatment in its trade relations with other countries, the granting of MFN status to China will ultimately be necessary to realize the full potential of U.S.-P.R.C. trade.

The U.S. government might consider further action. For a number of years the British have offered an excellent model for an approach to developing trade relations with the Chinese. Since the late 1950's, British businesses, trade organizations, and government have worked together to determine general trade possibilities with China and to establish strong trading ties between the two countries. The idea is that, while trade with China remains competitive even among British businesses, a concerted effort can attract a greater portion of Chinese trade from which all British businessmen will ultimately benefit.<sup>204</sup> Canada has adopted a similar approach. In this manner, the British and Canadians have established a great competitive edge in the China trade.

The death of Mao Tse-tung in the fall of 1976 has led to a further question. It is unclear whether the new leadership, under Party Chairman Hua Kuo-feng, will continue the policy of enhancing trade relations with the West or give way to more hardline forces within the government that advocate a return to ideological purity. It would seem that as the ideological fervor of the early days of the P.R.C. subsides, the existing regime will place increased value on stability and economic

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<sup>200</sup>Especially in light of applicable U.S. restrictions. See text accompanying notes 154-94 *supra*.

<sup>201</sup>For text, see Convention between the United States of America and the Union of Soviet Socialist Republics on Matters of Taxation, June 20, 1973, 12 INT'L LEGAL MATERIALS 899 (1973).

<sup>202</sup>International Trade Taxation, *supra* note 163, at 204.

<sup>203</sup>See text accompanying notes 181-183 *supra*.

<sup>204</sup>Chavkin, *supra* note 85, at 421.

prosperity. This likelihood, together with a recent trend in the liberalization of U.S. laws and policy, bodes well for prospects of future trade relations between the U.S. and the P.R.C.