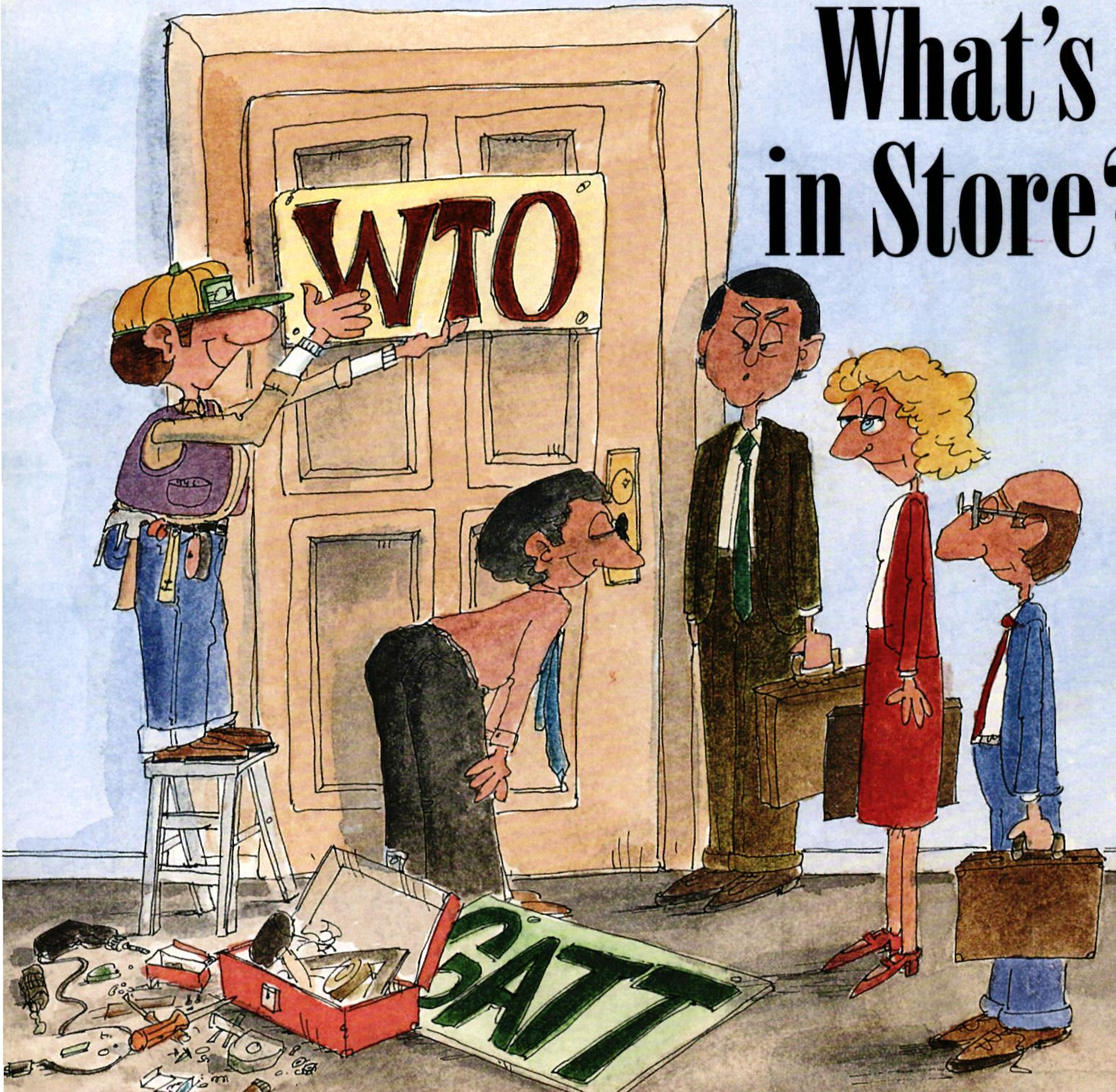
THE CHINA BUSINESS REVIEW

MARCH-APRIL 1995 VOLUME 22, NUMBER 2

What's in Store?



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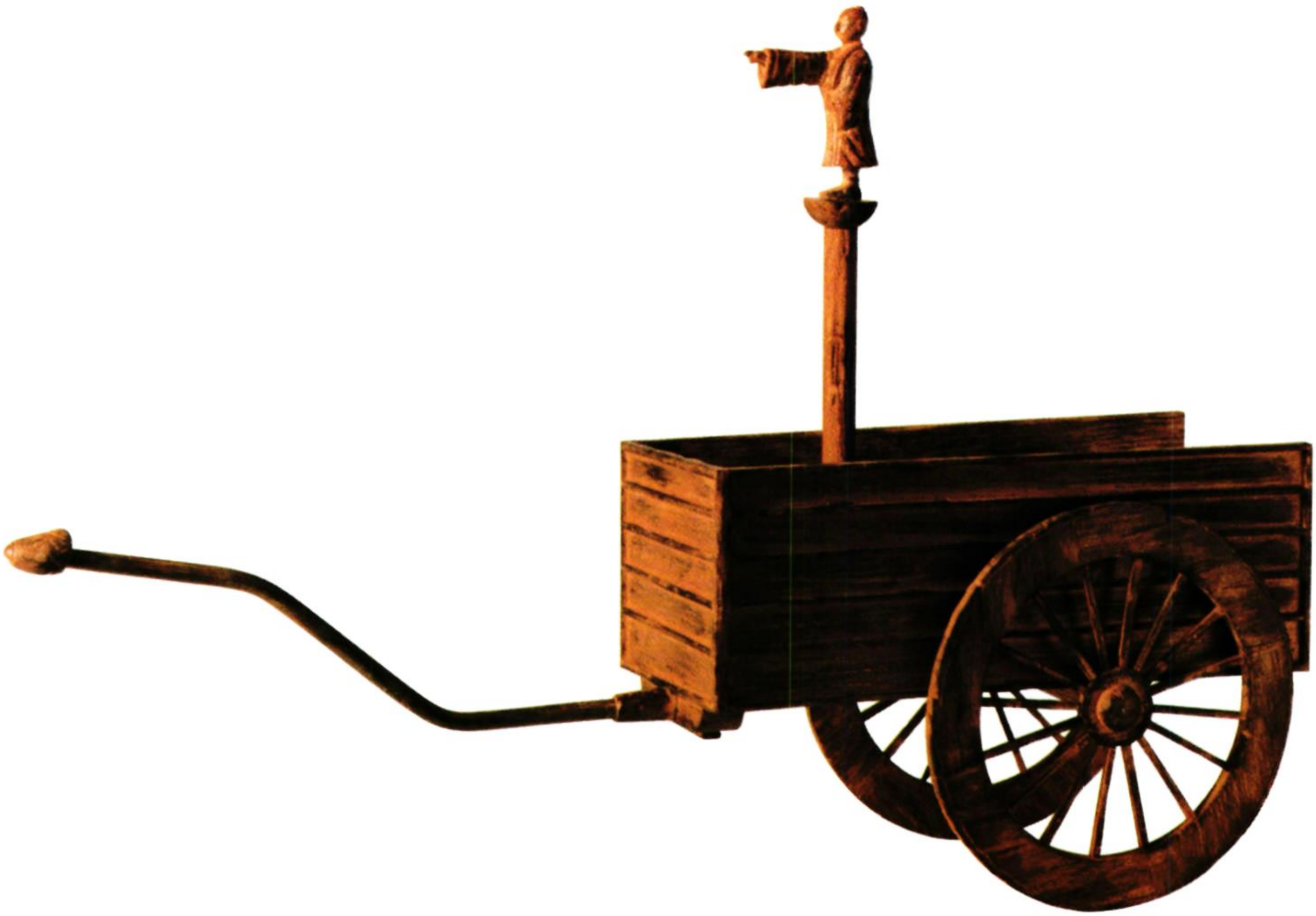
SUCCESS IN CHINA REQUIRES GUIDANCE AS MUCH AS PURPOSE



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A Mixed Economic Report Card

China's economy continued to be among the world's fastest growing last year, despite Beijing's efforts to moderate growth and keep inflation under control. By year's end, the Chinese economy had grown 11.8 percent, only a slight moderation of 1993's 13.4 percent GNP growth. But a 24 percent inflation rate and Beijing's somewhat erratic efforts to control money supply and credit make some economists wary that the "soft landing" Beijing has been seeking for several years will be hard to achieve in 1995.

Despite the ongoing problems with inflation, fast monetary growth, and loose credit, central planners had a few bright notes in 1994. Unlike the situation in 1992-93, when real estate and other speculative deals spurred a massive inflow of capital that fueled inflation, Beijing was better able to manage foreign investment capital in 1994. As a result, more funds were directed to priority sectors, particularly large-scale infrastructure projects.

As in past years, collective, private, and foreign-invested enterprises (FIEs) contributed to much of the 17.5 percent increase in industrial output. Agricultural output rose marginally last year, but Beijing was successful in implementing a number of long-overdue reforms. The government made good on its promise to raise procurement prices of some staple crops to ease the plight of farmers, who have complained for the past several years that they are not benefiting from reforms to the same degree as urban residents. At the same time, however, Beijing ceased subsidizing farm purchases of such inputs as fertilizer and pesticides, leaving some farmers in the red despite the higher procurement prices.

1994 also saw Beijing successfully implement a number of currency and tax reforms designed to boost central government reserves, continue the marketization of the Chinese economy, and pave the way for eventual convertibility of the *renminbi*. The institution of the value-added tax (VAT), for example, should provide more funds to the central government. Though some short-term problems have yet to be resolved, most FIEs seem to have adapted their accounting procedures to the new system with little difficulty. Beijing, for the most part, appears satisfied with the new tax regime, though the current focus on tax collection suggests that the government's tax revenues were less than anticipated last year.

A new rule requiring domestic firms to surrender their foreign exchange earnings helped China's foreign exchange reserves reach over $40 billion by year's end, more than double 1993 figures. But China's budget deficit, which jumped more than 40 percent to $7.7 billion in 1994, looms as a serious problem for officials. While the increase was partly due to adjustments in government purchase prices for grain and other commodities, wage increases, tax collection problems, and the ever-present need to prop up failing State-owned enterprises also contributed to the budgetary shortfall.

What happens in 1995 is anyone's guess, though analysts at the World Bank and Asian Development Bank predict Chinese planners will be able to bring the GNP growth rate down to a more manageable 9-10 percent. Strong exports and a tighter rein on credit and money supply may help Beijing guide the economy into the slow lane. The outlook on inflation is less promising, and another round of demand-driven inflation, a main contributor to unmanageable growth in 1993, remains a very real threat in 1995 if the population loses confidence in Beijing's ability to drive the economy forward at a more manageable pace.

—VLW

Editor's note: 1994 year-end trade and investment statistics will appear in the May-June issue of The CBR.

US Court Holds Firm on Chinese Prison-Made Imports

In early December, Judge Jane A. Restani overruled the protest filed by San Diego-based China Diesel Imports (CDI) against the US Customs Service in the US Court of International Trade. Alleging CDI was importing engines made by Chinese prison labor, Customs in 1991 barred the entry of engines produced by Kunming-based Jinma Diesel Engine Works. The case led to the first US trial involving alleged prison labor-produced imports from China (*see The CBR*, March-April 1992, p.41).

CDI's protest, filed in 1992, argued that even if Customs could prove that prison labor was used to make the engines, the goods should be admitted to the United States under the consumptive demand exception of the 1930 Smoot-Hawley Tariff Act. This provision allows certain products made with forced labor to be sold in the United States if no comparable product is available from domestic producers.

Judge Restani disagreed, ruling that the CDI engines cannot be imported under the consumptive demand exception even though CDI clearly established that the United States does not offer a comparable engine and that a market for such engines exists. In a precedent-setting decision, the judge narrowed the scope of the exception and ruled that the Smoot-Hawley Act does not allow for goods manufactured by convict labor to be imported under any circumstances; only goods produced by non-convict forced labor can be subject to the exception.

CDI has decided not to appeal its case further because of the prohibitive legal costs involved. Attorneys for US importers, however, are concerned by the judge's decision, claiming that Restani's ruling may create an inconsistency in US law by denying importers the ability to apply the consumptive demand exception provided by the Smoot-Hawley Act.

—Caitlin Stewart Harris

Letter from the Editor

Many of you are no doubt wondering why this issue of *The CBR* arrived late. I decided to hold this issue until we learned the results of the down-to-the-wire Special 301 negotiations between the United States and China. Had we stuck to our original printing schedule, the outcome would have been announced while the magazine was being printed—and the news would have been very old by the time we wrote about it in the next issue. Instead, you can read about the basic provisions of the agreement in "Letter from the President" on p.6; more detailed analysis will come in a future issue, after the final text of the agreement is released.

The issues discussed during the Special 301 negotiations are also examined in the focus of this issue—the new World Trade Organization (WTO) and the rules it will use to govern global trade in the future. The articles are not China-specific, though most address how Uruguay Round provisions will affect China's trade and investment climate. Once China accedes to the WTO, we will examine its protocol of accession and the implications for the business world; the situation now is simply too fluid for anyone to guess when that will occur or under what circumstances. By reading this focus, however, you should gain a general idea of the obligations all WTO members will face under the new trade regime.

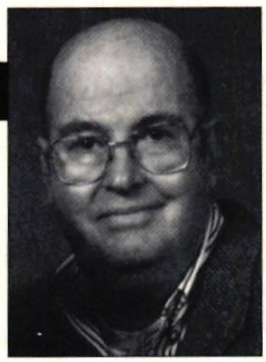
Once you've read and digested this serious stuff, take a moment to check out our new department, "Last Page" (it should be obvious where to look). We hope to run "Last Page" regularly to provide a lighter look at some of the goings-on in China and China business. If you like the idea, let me know—and let us hear your anecdotes and off-beat adventures, too! Enjoy the issue.

Sincerely,

Pamela Baldinger

IN MEMORIAM

Mel Searls



Melvin W. Searls, Jr., former deputy assistant secretary of commerce and Council vice president, died of a brain tumor in Washington, DC on December 28 at the age of 59. Searls was one of the original China hands, lending his integrity and professional expertise to the forging of trust between the peoples of China and the United States.

When Searls came to the Council in 1975, he brought a hands-on Asia business background, having represented Exxon in Cambodia, South Vietnam, Pakistan, and Hong Kong. During his two-year tenure at the Council, he was respected by members and staff for his business know-how, management and communications skills, sensitivity to others, good humor, and fairness.

For Mel Searls, the Council was a point of entry into public service and a stepping stone for his later role as a leader in the expansion of American commercial diplomacy in Asia. Following normalization of US relations with China, Searls was appointed the first US commercial counselor to China in 1981, and later returned to Washington to become deputy assistant secretary of commerce for East Asia and the Pacific.

In 1992, after postings in New Delhi and Paris, Searls returned to Beijing to serve as minister counselor for commercial affairs. At a Beijing memorial service in January, US Ambassador to China Stapleton Roy said Searls "threw his heart and soul into his work. Mel always had a special attachment to China." Searls will be warmly remembered on both sides of the Pacific as a truly good man.

—*Nicholas Ludlow*

Nicholas Ludlow, editor of The CBR *from 1973-80, worked with Mel Searls at the US-China Business Council.*

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The magazine of the US-China Business Council

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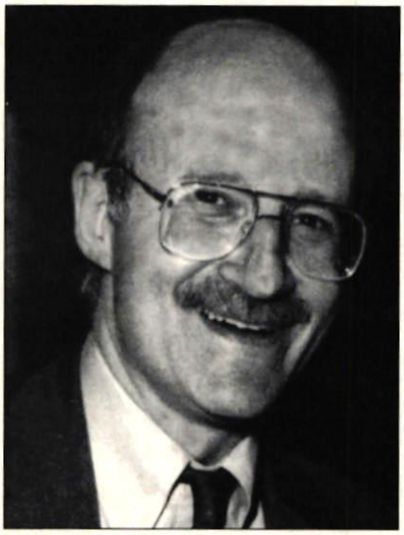

Robert A. Kapp

Onward and Upward

US companies should take heart at the successful conclusion of the Special 301 negotiations

The great "Intellectual Property Crisis" of 1994 appears, finally, to be over—nearly three months late. The United States and China once again walked to the brink and found the terms for a carefully crafted settlement. In the end, despite tense moments and harsh rhetoric along the way, the US team of Deputy US Trade Representative (USTR) Charlene Barshefsky and her deputies, Lee Sands and Deborah Lehr, came to terms with the equally formidable team of Trade and Economic Cooperation Minister Wu Yi and her colleagues, led by Vice Minister Sun Zhenyu. The results? Long-term Chinese commitments to improve protection of intellectual property rights (IPR) in exchange for US removal of a threat to impose prohibitive import duties against Chinese products.

The USTR press statement released February 26, the day the agreement was signed, emphasized the positive results for the United States: swift action against pirate factories and market opening for US audio-visual products. Minister Wu's press statement confirmed that China will take "judicial and administrative means to attack the violators of intellectual property rights."

A sigh of relief can be detected throughout the US business community now that the negotiations are over. Everyone knew that there were serious IPR issues to address in China, and that intellectual property protection is one of the cornerstones of effective long-term investment and trade relations. Business therefore by and large stayed the course with the Administration, even when the threatened US sanctions and Chinese retaliation seemed likely to endanger US company activities in China.

A closer look

Under the agreement, the two sides agreed to take a number of cooperative steps to address IPR protection in China. The full text has not been made available to the public yet, but according to USTR, Beijing agreed to:

- Create a new enforcement structure to ensure that IPR protection is carried out effectively. IPR conference working groups will be formed at the central, provincial, and local levels to coordinate enforcement efforts and the drafting of IPR-related legislation. Task forces under each conference working group will be empowered to carry out enforcement efforts.
- Establish an effective border control to prevent the exportation of illegal products. The US Customs Service will provide technical assistance.
- Enforce all IPR laws strictly and enhance the training of judges, lawyers, officials, and others on the importance of IPR protection. Information regarding China's enforcement efforts will be shared with the United States on a quarterly basis.
- Make all IPR-related rules and regulations transparent.
- Ensure that its government ministries use authorized intellectual property products and ensure that adequate resources are available for acquisition of these goods.
- Allow US patent holders access to effective judicial relief, including national treatment when filing fees. Chinese agencies must provide protection of the evidence of infringement while legal cases are pending.
- Eliminate quotas on the importation of US audio-visual products. Previously, internal Chinese regulations permitted only 10 foreign films to enter the country each year.
- Create a title verification system to help prevent the production, distribution, importation, exportation, and retail sale of US audio-visual works without the verified consent of the US right holder.
- Permit US audio-visual companies to form joint ventures to produce or distribute their products in China, at first in Shanghai and Guangzhou. US joint ventures will be allowed in 13 cities by the year 2000.
- Take actions to discover factories producing infringing products and move against them within the next three months. Over the past three-four weeks, Chinese authorities have already raided seven factories producing counterfeit compact and laser discs, including the

Shenfei Laser Optical Systems Co., reputedly the largest counterfeit compact disc (CD) producer in China.

Pondering the outcome

Without having seen the actual text, it is impossible to speak too confidently about the impact of the agreement. It isn't too early, however, to reflect on some of the issues raised by this latest trade spat.

First, in aiding the development of the "rule of law," the agreement makes manifest the socially constructive role US-China trade can play in the PRC. The new IPR agreement, with its provisions for substantial changes in the definition and prosecution of legal offenses within China, suggests that enhanced trade relations themselves can help bring about stable, impartial, and predictable legal conduct in Chinese society. Those who argue that business activities in China are irrelevant to this expanded "rule of law" are mistaken.

Further, trade disputes are not tantamount to "trade war," and they can be managed. Media hype notwithstanding, many of us argued from the start that the IPR dispute was a relatively focused conflict over a finite amount of monetary damage, and urged that the intense annoyance on both sides not degenerate into a volatile broth of overall bilateral dissatisfaction. If focused trade disputes like IPR get mixed up with all the other grievances many American policymakers nurse with China, the issues will all become impossible to manage. As it is, the successful conclusion of the IPR talks proves that trade conflicts are amenable to dispute resolution, and that the US and Chinese sides alike are keenly aware of the costs of failing to settle them.

Now that the IPR negotiations have come to a close, the exact wording of what has been agreed to will be crucial. Correspondence of the English and Chinese versions of the deal will be central to the successful implementation of the terms of the agreement.

Translation, however, is not an easy matter. While words such as "fan belt" or "ammonium nitrate" have unambiguous dictionary equivalents, the operative terms of formal agreements are far trickier. Words such as "commitment," for example, have more than one Chinese translation, and each possibility has a shaded nuance that may or may not correspond exactly to what Americans think they mean when they use the English word. Chinese verb tenses, too, can be quite ambiguous. The final Chinese version of the agreement—which, after all, will be the definitive version for PRC officials—and the English text must be true to one another. If discrepancies exist, we can expect new "misunderstandings" and feelings of disappointment a year or two down the line.

Finally, this long and tense dispute leaves a mixed message. On the positive side, we have seen once again that bitter rhetoric, personal denunciations, and threat and counter threat need not prevent the two sides from hammering out an agreement. The negotiators reached their settlement despite evidence of growing feelings of distrust in both capitals—and despite China's bitter disappointment at not acceding to the GATT in 1994. It is genuinely encouraging to see that tough negotiators can "cut a deal" in spite of the gloomy atmospherics. The evidence of a common ability to compromise should encourage those on both sides who discern an increasingly powerful tide of disagreement welling in US-China relations.

It is also encouraging to see that the bulk of the new IPR agreement seems to deal with medium- and long-term structural changes in China's intellectual property environment. Raids and plant closures, though important to individual plaintiffs at a particular moment, are not the be-all and end-all of an improved IPR regime in China. The bigger issues are structural: the propagation of broad legal and social approaches to intellectual property rights, the establishment of structures and systems to discover and punish abuses; and the improvement of market access conditions for IPR-based foreign firms in China. As the points summarized earlier reveal, China appears to be taking impressive steps forward. US pledges to help China achieve some of its commitments should be celebrated, not because they give Uncle Sam modern-day gunboats with which to force China to behave itself, but because such cooperation is likely to promote China's integration into the global trading system.

On the negative side, we must remember that this agreement comes only after more than a year of enervating, rancorous debate—both public and private—and extreme brinkmanship. Maybe we could get used to such antics, but should we have to? While US-imposed deadlines seem to have been crucial in galvanizing the negotiators of both sides to reach an agreement, excessive reliance on such ultimatum could cause the two countries to fall into a dangerous pattern, with each side leaving each negotiation more exasperated and cynical about resolving future disputes.

In the end, we need to put this agreement, like any other, in perspective. When I left Beijing on February 26, the US and Chinese negotiators were just wrapping up their discussions. As I passed the US negotiators' hotel, a man outside was busy selling the latest fake CDs from his flatbed tricycle. Clearly, instilling in the Chinese the value of intellectual property and the importance of providing adequate IPR protection will take time. But the February agreement is a major step in the right direction. 完

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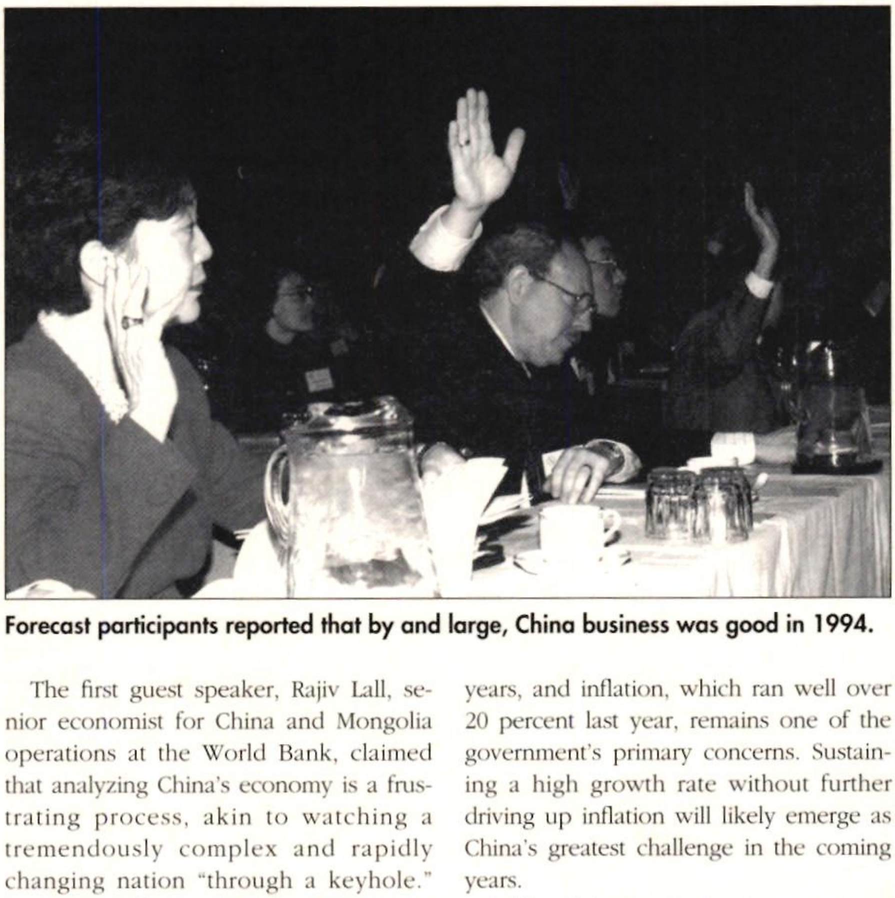
Speed Bumps Ahead

In a straw poll that opened the Council's annual Forecast meeting on January 26, the overwhelming majority of 200 attendees agreed that their China business had grown significantly over the past year. But far fewer could claim that overall operating conditions for their particular businesses had also improved. This dichotomy set the tone for the rest of the day's discussions.



Forecast participants reported that by and large, China business was good in 1994.

The first guest speaker, Rajiv Lall, senior economist for China and Mongolia operations at the World Bank, claimed that analyzing China's economy is a frustrating process, akin to watching a tremendously complex and rapidly changing nation "through a keyhole." However, Lall conceded that 1994 was a watershed year for China's economic growth. Not only did China launch the largest tax reform in its history, Beijing also modified the role and function of the central bank and created three new policy banks.

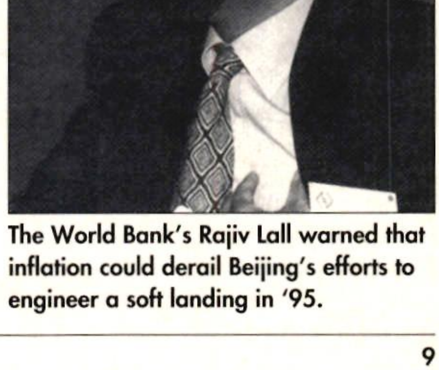
Lall claimed that China's long-term growth potential appears bright, predicting that the country would be able to sustain an average real annual growth rate of 9 percent through the end of the century. He also noted a number of trends that bode well for the future: savings as a percentage of GDP reached 35-37 percent last year, export growth and infrastructure development have begun to improve dramatically, and the labor force is becoming more skilled.

However, Lall cautioned that the picture is not all rosy. Further overheating of the economy would certainly threaten macroeconomic stability in the coming years, and inflation, which ran well over 20 percent last year, remains one of the government's primary concerns. Sustaining a high growth rate without further driving up inflation will likely emerge as China's greatest challenge in the coming years.

Lall's advice to the business community was to remain "cautiously optimistic" about Beijing's ability to bring the economy to a soft landing in 1995. He predicted that inflation could fall to approximately 15 percent this year and suggested that imports, as well as exports, will continue to grow. Ultimately, China's economic performance will be determined by whether authorities can keep inflation down, continue to pursue financial sector reforms, accept lower rates of domestic investment, and improve the productivity of State-owned enterprises.

Following Lall's economic overview, Professor Roderick MacFarquhar of Harvard University delved into China's political future, painting a somewhat bleaker picture. He proposed that China's current political system will not long outlast its aged founders, many of whom have dwindling political power. The legitimacy and power of the Chinese Communist Party are waning, MacFarquhar noted, warning that the potential for a political "earthquake" exists in China's near future. Thus, when trying to predict the future direction of China's development, it is more important to consider which institution—the Party or the military—rather than which person, will lead China after Deng Xiaoping.

Anne Stevenson-Yang, the Council's Beijing-based director of China operations, rounded out the morning session with an insider's view of China's business environment. She addressed the changing nature of foreign investment in China, noting a shift from smaller, labor-intensive projects toward larger, capital-intensive projects in recent months. One of the most notable changes over the last year, she stated, has been in US company attitudes; Stevenson-Yang pointed out that US firms have greater expectations



The World Bank's Rajiv Lall warned that inflation could derail Beijing's efforts to engineer a soft landing in '95.

concerning their investments now, and expect a higher rate of return and faster product turnover than in previous years.

Despite Beijing's ongoing unionization drive and the problems of rising labor costs and land fees, Stevenson-Yang assured investors that China is not looking to discourage foreign investment. She emphasized that foreign companies must

US investments are not the target of Beijing's unionization drive, advised Council China Director Anne Stevenson-Yang.

continue to push for equitable treatment when negotiating with the Chinese. Most important, she concluded, foreign firms should realize that as growth in foreign investment tapers off in China, officials will be more likely to compromise. Therefore, investors "need to deliberate, choose their targets, and strike the best deals they possibly can."

During luncheon, Forecast '95 participants were briefed by Laura D'Andrea Tyson, chairperson of the President's Council of Economic Advisors and newly named head of the National Economic Council, on the Clinton Administration's foreign trade accomplishments over the last two years. Tyson noted progress on the GATT, the WTO, and NAFTA, and praised the ongoing liberalization of China's trade regime, stating that with further reduction of tariff barriers and improvements in transparency and intellectual property rights, China will be admitted into the new WTO. She concluded by acknowledging the Administration's belief that China is and will become an important source of global prosperity in the coming decades.

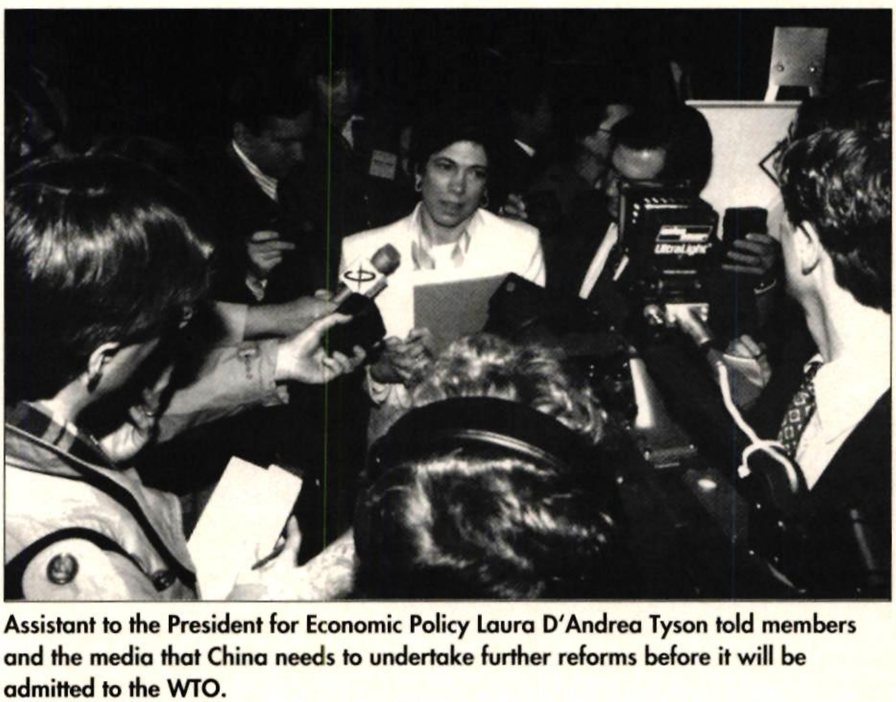
After lunch, members attended workshops covering a broad range of operational issues. In the session on US government programs for China, Department of Commerce (DOC), Export-Import Bank, and Department of Energy (DOE) representatives explained the activities of their agencies in China. Don Forest, director of the Office of China, Hong Kong, and Mongolia at DOC, provided contact information for companies seeking China market information as well as advice on Chinese Customs, inspection, and investment regulations. Forest also discussed the efforts of the Joint Commission on Commerce and Trade (JCCT), a bilateral framework that permits US and Chinese decisionmakers in various industrial sectors to meet and discuss collaborative programs.

Frank Wilson of the US Export-Import Bank conveyed the bank's new attitude toward promoting US business in China. He said Ex-Im Bank wants to increase its role in financing projects in China's heavy industrial sectors, and has set up a Project Finance Group to provide limited recourse financing to selected investments (*see* p.39). Ted Atwood from DOE explained the US government's clean coal program, as well as the types of technical assistance DOE provides to China. Such assistance includes efforts to increase China's energy capacity and efficiency and reduce greenhouse emissions.

Many Council members eagerly attended a workshop on the new Congress and its attitudes toward US-China policy. Ed Gresser, legislative assistant to Senator Max Baucus, urged business executives to discuss their China trade concerns with new members of Congress, many of whom are unfamiliar with the business perspective. Richard Bush, a staffer on the House International Relations Committee (formerly the House Foreign Affairs Committee), warned that companies should pay close attention to such issues as China's weapons exports and US policy regarding Tibet and Taiwan, all of which are likely to be discussed by Congress this year.

In the workshop on real estate, company representatives heard from Clark Friedman, president of Eastern American, Inc., on China's construction industry. Friedman advised companies considering investments in China on how to select a design institute to build their facilities and discussed important issues related to project management, site selection, contractors, and zoning regulations. Friedman warned that while building a plant in China is a lengthy and time-consuming undertaking, patience and good connections can make the process easier.

Management training in China was the focus of the fourth Council workshop. Richard Bouchard, senior project supervisor at the Center of Management and Organizational Learning at Motorola Univer-



Assistant to the President for Economic Policy Laura D'Andrea Tyson told members and the media that China needs to undertake further reforms before it will be admitted to the WTO.

sity, reported on his institution's "China Accelerated Management Program." Though Motorola has successfully trained local mid-level managers through the program, gaps still exist in the understanding of Chinese culture by foreigners and of foreign business culture by Chinese, he noted. Bouchard affirmed that Chinese executives will be critical to the success of foreign companies' China operations in the 21st century; however, these executives must share their companies' goals and keep corporate interests in mind. Other panelists emphasized the importance of trust, good communication, and instilling a sense of accountability in Chinese managers.

Looking at Labor

The Council's Legal Committee convened on January 25 to tackle implementation issues surrounding China's new Labor Law, which went into effect January 1. The law applies to all enterprises in China, including foreign-invested enterprises (FIEs). According to Yvonne Chan, an attorney in the New York office of Paul, Weiss, Rifkind, Wharton & Garrison, FIEs will encounter changes in the way they recruit employees, sign labor contracts, deal with labor unions, and participate in China's new social insurance system. She also noted that US FIEs should not be overly worried about pressure to establish trade unions within their operations because the State's unionization effort is aimed mainly at Asian-owned "sweatshops" that force employees to work in unacceptable conditions.

Joan Fife, a labor attorney with Winston & Strawn, compared the Chinese law to labor regulations in the United States. She noted that China focuses on individual labor contracts, which are rarely signed in the United States, where more attention is paid to enforcement issues. While the new Chinese law protects against some forms of discrimination, it does not protect against sexual harassment or discrimination based on age or physical disability.

Tough Times for Chemical Companies

"How does a company register its chemical product in China without disclosing its composition or its endusers?" This question was the focus of the January 25 gathering of the Chemicals Working Group, which met to discuss the PRC's new chemical regulations. A majority of the 30 Council members in attendance claimed that exorbitant fees, inconsistent treatment of foreign companies, and continuing confusion about the registration process constitute serious barriers to the Chinese market.

Anne Stevenson-Yang, director of the Council's China operations, briefed members on the efforts of the Beijing-based Chemicals Ad Hoc Working Group, an informal coalition of international chemical companies that have banded together to express their concerns about the chemical regulations to the Chinese government. Stevenson-Yang explained that the group seeks to convey to Chinese authorities the difficulty and expense of operating under the regulations.

Because the Ad Hoc Group's discussions with National Environmental Protection Agency (NEPA) officials indicated that the agency is willing to be flexible in its interpretation of the import registration terms and procedures, working-group members reached a consensus that US chemical companies should proceed with registration. However, Stevenson-Yang advised Council members against submitting confidential information and suggested they provide only the requested material safety data sheet (MSDS), UN packaging number, sample product label, and basic information on packaging.

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Tech Transfer Tips

■ **Stuart Ostroff**

Beware of underestimating the costs of training and localization

Since December 1978, when the Chinese Communist Party's Third Plenum adopted Deng Xiaoping's "Four Modernizations" plan to improve agriculture, industry, national defense, and science and technology, China has been keen to upgrade its technology in virtually every industrial sector. For some US companies, the transfer of technology to a developing country such as China can be economically attractive, particularly if the end products can be sold on the domestic market. When negotiating technology transfer deals with Chinese companies, however, foreign firms need to be aware of some of the problems they may encounter along the way.

In broad terms, technology transfer covers the assignment or licensing of patents or other industrial property rights, the provision of technical services, and the sharing of know-how, which is provided in the form of drawings, technical data, and technical specifications. A technology transfer deal can consist of a relatively simple agreement in which a foreign firm allows a Chinese company to use its technology for a set period, or it can involve a far more complex arrangement whereby a foreign firm contributes technical expertise and industrial processing equipment as part of its equity contribution to a joint venture in China. In either case, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) or one of its provincial-level bureaus must approve most technology transfer deals.

Technologies that process raw materials, particularly in industries with high foreign-exchange earning capacity, are likely to be approved without difficulty. Beijing is also interested in acquiring technologies that improve product quality, to make Chinese exports more competitive with those from other Asian manufacturing countries like Japan and Korea. Technology capable of conserving energy, particularly in the production of electricity, is highly desired. Less in demand is equipment that simply saves labor but does not create new products or enhance an enterprise's ability to earn foreign exchange; these technologies tend to command lower prices and also face more difficulty getting approved.

Sales vs. joint ventures

Licensing technology is usually less complicated than transferring technology as part of an investment, because Chinese authorities generally subject a potential joint-venture deal to much tighter scrutiny. Nevertheless, technology-licensing projects still involve the presence of at least provincial-level officials during the contract negotiations. MOFTEC approval is usually required for deals involving more than $5 million in technology transfer.

In transfers unrelated to an investment project, the foreign party generally agrees to license its technology to the Chinese

■ **Stuart Ostroff is the president of Project Direction Inc., a manufacturing engineering consultant group located in Abington, Pennsylvania. He has worked on China projects since 1985, and completed two production-line installations between 1989-92.**

enduser in return for progress payments or a lump-sum payment up front. Some deals may entail more complex purchasing and marketing arrangements between the two parties. Most contracts are valid for 10 years, though this period can be extended to the length of the equipment patent or even longer. The licensor is generally responsible for providing the equipment, training, and service covered by warranty in addition to other basic support, such as the supply of spare parts. The seller's contractual responsibilities typically end at the conclusion of the equipment warranty period.

If a deal involves specific equipment custom-built for the buyer's plant, the contract will also specify the delivery of a drawing package, followed by a design-review meeting to be held at the buyer's offices. Several members of the seller's staff will be expected to participate in this meeting, spending a week (or longer, depending on the scope of the project) consulting with the buyer's technical and operating personnel, various university and outside consulting "experts," and technical bureaucrats from provincial import/export entities. To keep the discussions on track, the seller's representative should create a detailed meeting agenda, submit it to the buyer's groups several weeks before the meeting is held, and update it, as required, for each subsequent meeting day.

The design-review meeting should conclude with the creation of a Memorandum of Understanding that sums up follow-up responsibilities of both buyer and seller. The buyer might be asked to provide an outline of his feasibility study, for example, while the seller would be expected to furnish additional technical and commercial data. This meeting is also a good opportunity to discuss and update shipment and installation arrangements.

In a typical licensing and equipment sale arrangement, both parties enter into a fixed price contract that is usually based on progress payments. The foreign seller receives 10-15 percent of the total contract price upon the signing of the contract, and a further 15-20 percent upon delivery of the drawings and documentation. Another payment is generally due upon presentation of the shipping documents at the US port of shipment. The contract should also specify a definable milestone, such as the start of actual system assembly, to be confirmed by a neutral third party, for a subsequent payment of perhaps 20 percent. A final payment would then normally be paid when the equipment is fully installed and is operating according to the contract's performance specifications.

Technology capable of conserving energy, particularly in the production of electricity, is highly desired.

It may take considerably longer for the foreign company that transfers technology as part of a joint-venture agreement to recoup his technology investment, since the licensor generally receives progress payments or royalties as output is sold. Therefore, the foreign partner will usually extend on-going training and maintenance support as well as marketing and distribution assistance to the venture to ensure it produces output at expected volume and quality levels. The Chinese partner will also expect the seller to help market and sell the venture's products overseas, regardless of whether they would compete with the licensor's own products. The foreign party must therefore undertake a careful study of domestic and foreign demand for a proposed joint venture's output before committing to the project.

Covering all the bases

Whether technology is to be transferred by licensing agreement or joint-venture contract, the prospective technology licensor must negotiate a contract that addresses a number of vital points. All of these points are subject to negotiation, and the licensor must understand each possible trade-off. To avoid being confronted with unexpected demands, foreign parties negotiating technology transfer deals should take the following precautions:

■ **Confirm partner's resources and support**, as well as approval potential, for the technology and/or equipment. Though factory endusers may be highly enthusiastic about a potential deal, they may have little support from local or provincial officials and banks to purchase or license foreign technology. Foreign parties can therefore expend much effort without realizing the project has little chance of success.

One way to improve the chances that Chinese authorities will act promptly to approve a technology transfer is to make sure that the specific technology receives "advanced technology" status in accordance with the 1987 Rules for Examining Export and Advanced Enterprises with Foreign Investment. To be classified as "advanced," the technology should lead to the development of new products, boost imports, substitute for imports, or provide products in short supply in China.

■ **Spell out all details of the equipment to be provided** The final contract should take into account the value of know-how as well as the actual equipment. In a joint venture, however, the Chinese will limit know-how to no more than 20 percent of the foreign partner's capital contribution.

In any technology transfer deal, both sides should insist that the contract detail all the equipment being sold—including number, size, and weight of each piece—as well as transport and unloading particulars. Each item should be priced separately. The seller should expect the Chinese party to attempt to eliminate or reduce the prices of particular items it feels are too costly. If this occurs, the foreign party might seek to identify certain components or subsystems that can be sourced inside China and paid for with *renminbi* rather than foreign currency.

Including such a "domestic content" portion in a contract will often help smooth the approval process by minimizing the amount of foreign exchange the Chinese have to spend to acquire the imported technology. Any substitution of local parts for imported ones must be specified carefully in the contract, and the licensor must be able to confirm that the relevant goods are available and appropriate. In order to do so, the licensor must budget time and resources to inspect the local parts and ascertain that they can be delivered according to the project schedule.

■ **Clarify payment schedules** Chinese buyers generally prefer to make progress payments instead of paying for technology outright. If the licensor is willing to accept progress payments rather than a lump-sum user fee, payment will typically be made through a letter of credit issued by the Bank of China.

If the foreign party is to be compensated through periodic royalty payments, the rates will vary according to the nature of the technology, whether it is being licensed or contributed to a joint venture, and other factors. Generally speaking, royalty rates range from 2-5 percent of the end product's sales price, and can be indexed to inflation. During the negotiations, however, both parties need to agree on the base sales price to be used—a product sold in China may well command a lower price than the same product exported overseas.

The foreign seller receives 10-15 percent of the total contract price upon the signing of the contract.

In some cases, the Chinese party will recommend that the seller take back the enterprise's output in lieu of cash payments. This scheme may be part of the foreign seller's agenda in any case, particularly if his manufacturing process can benefit from China's comparatively low

A Tale of Two Tech Transfers

Editor's note: In 1994, Daniel Martin, an associate with the Council's business advisory services, met with US companies and Chinese officials in several cities to learn more about the technology transfer process. Two of the case studies that resulted from his research provide some insights into the contractual and logistical issues that may arise during technology transfers.

Company A: This US electronics firm chose not to pursue a joint venture, but opted instead to sign a four-year technology transfer contract with a Chinese firm in 1992. Under the arrangement, the Chinese firm assembles US-made kits and installs the completed machines in China, but does not manufacture or sell the end products, which are marked "American Company A—Assembled in China."

During the negotiations, a number of sticking points arose. The US side initially offered the Chinese only a 3 percent commission for each of the $200,000 kits it assembled and installed in China, but later agreed to pay 5 percent. The Chinese partner wanted access to the US side's complete technology as well as the ability to localize production of all parts. The US party would not transfer key components, but did allow the Chinese firm to source some parts locally. Though the Chinese side is convinced that sales would improve if it could assemble more technologically advanced models, the US side remains leery of transferring its latest technologies to China or entering into a joint-venture arrangement.

The US side sent over a small team of engineers on two separate occasions to train the Chinese partner's employees in the assembly and installation procedures. In turn, the Chinese partner sent a delegation to the US plant for on-site training. The contract was structured so that each side was responsible for paying its own traveling expenses. The US side inspected the first two installations, but has not felt it necessary to inspect any subsequent work by the Chinese side. To date, 20 machines have been assembled.

Company B: This US manufacturer chose to enter into a three-way, $7 million joint venture with two Chinese partners. The US side owns a slight majority, while the Chinese partners hold even shares of the remainder. The three parties signed a 20-year contract in 1986, including a 20-year technology transfer agreement, and production began in 1987. Since 1990, the factory has had no US managers or technicians on site, though the US parent is in daily fax contact with the plant and sends representatives to visit it once or twice a year.

During the negotiations, the US side valued its technology at $1.5 million. The Chinese side, which was contributing land to the venture, demanded that its land be valued highly to offset the high US technology cost. Local approval authorities refused to approve the US valuation, claiming that the technology was too old and did not come with spare parts or proper documentation. In the end, the US side agreed to a lower valuation for its technology and the Chinese side lowered the land-use fee considerably.

While bending on the valuation issue, the US partner has been very strict on one point: the Chinese side is not permitted to modify the equipment. The contract also specifies tight quality control guidelines, which initially required the venture to ship every part back to the United States for inspection before the products could be assembled and sold. The Chinese partners complained that this process resulted in unnecessary delays. The venture no longer sends parts to the US partner and has achieved nearly 80 percent localization.

The technology transfer agreement does not include the transfer of patents or trademarks, nor does it include funds for training. Separate arrangements were made to share the initial training costs, though the US side says it has spent more than the budgeted amount because it underestimated the number of training trips needed. Moreover, since the first group of Chinese trainees dispatched to the United States was offended that they were expected to pay all of their own expenses, the US side began picking up more expenses for subsequent groups.

All of the factory's output is labeled "American Factory X—Made in China." Over 80 percent of the products made by the plant are sold for hard currency to the US partner in the United States. Profits have exceeded the US side's expectations, and sales continue to rise.

labor costs. But if the licensing company has no need for the product itself, it should seek to minimize the percentage of "soft payments" it commits to in the contract, since obtaining permission to sell the goods in China might not be possible, and exporting the goods for hard currency would likely involve a third party that would demand a commission for its services and cut into the foreign licensor's profits.

■ **Place reasonable limits on training** In most cases, the Chinese buyer or joint-venture partner will expect considerable training for its operating staff; this is a vital element of the "software" side of the technology. This training might begin at the foreign party's home facilities and then continue at the buyer's site after the equipment is installed—the seller should be sure to budget for considerable on-site training and supervision by a foreign engineer during the start-up period. Though a foreign joint-venture partner, in particular, will generally be keen on providing a sophisticated and continuing training scheme, training demands place a heavy burden on the licensor's staff, particularly if the buyer wants to send a large group to the licensor's factory for several weeks.

In a typical training scenario, the Chinese buyer will send technicians and managers to the foreign licensor's home base for several weeks. In these situations, the buyer usually bears the travel costs for his personnel, but the licensor handles lodging, meals, and local transportation costs. In one project I worked on, however, a group arrived from China for training and demanded an additional "spending allowance" for miscellaneous needs such as cigarettes and haircuts. We ultimately settled on a modest stipend. To avoid such misunderstandings, the particulars of training arrangements should be detailed in the technology transfer contract.

■ **Ensure input quality** In addition to verifying the quality of locally made substitute components, the equipment licensor must also make sure that the raw materials used in the buyer's industrial process are suitable for the imported technology and available when needed. Otherwise, production rates will suffer and progress payments may have to be delayed. The foreign licensor should therefore specify input parameters and, if possible, arrange a supply of known-quality materials for any test runs for quality and endurance.

■ **Specify operating conditions** China's inability to generate enough electric power to meet demand can result in periodic brownouts and blackouts. Moreover, buildings in China are rarely heated or cooled to US standards. Given these operational uncertainties, the technology licensor needs to make sure that its equipment and/or process can perform under adverse conditions. Contractual details related to output or production rate, therefore, must allow for energy shortages and delays in the delivery of materials.

■ **Protect intellectual property rights** Foreign equipment sellers and licensors must be careful to protect their patents and copyrights in China. All intellectual property should be registered in one's home country as well as in the PRC, and the technology transfer contract should spell out the Chinese buyer's rights and obligations. Even if a seller is able to get all of his concerns clearly specified in the final contract, however, problems can still arise. In some cases, the foreign seller may want to protect himself by holding back the most up-to-date or critical technology until a later period, when he is satisfied that his intellectual property rights will be protected.

No end to the demand

Until recently, only large companies had the resources to organize and complete the sale of technology to China. Even a single one of the preceding challenges could seriously derail a project. Better communications, more assistance from external financing sources, and the increased number of companies and individuals able to broker technology transfer deals, however, have translated into a jump in the number of deals struck between Chinese firms and small- and medium-sized foreign companies.

In the next few years, many technologies that boost production and improve efficiency and product quality will continue to be marketable in China. As China's industrial sectors have a long way to go before they catch up with those in the developed economies, there will be huge demand for technologies that boost China's infrastructure. Growing demand for consumer products will augur well for imports of the technologies involved in the production of these goods as well. However, periodic credit crunches brought on by Beijing's efforts to cool down the economy and control inflation could well impede the rate at which China is able to purchase new technologies. Nevertheless, US companies with the right technology and the willingness to negotiate the right terms will no doubt continue to find a ready market in China. 完

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FOCUS

A New World Order

Farewell to the GATT and welcome to the World Trade Organization

James V. Feinerman

On April 15, 1994, in Marrakesh, the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) came to a close. After a record eight years of multilateral trade negotiations, the Uruguay Round, which started out as an ambitious attempt to revamp the GATT and revise many of the procedures that guide international trade, effectively brought the GATT itself to an end by proposing the establishment of a successor trade regime, the World Trade Organization (WTO).

In December, the US Congress voted to approve the implementing legislation for the GATT Uruguay Round Agreement, clearing the way for US participation in the WTO. Though the WTO was officially inaugurated on January 1, the GATT apparatus will continue to guide global trade over the next two years, gradually winding down as the WTO becomes fully operational in January 1997.

The WTO Agreement finalized during the last months of the Uruguay Round creates an overall framework for the fledgling organization, and lays out the procedures and structures for all matters that the WTO will consider in the future. A Preparatory Committee for the WTO (PCWTO) was established at Marrakesh, along with four subcommittees handling: budget, finance, and administrative matters; services; trade and environment issues; and institutional, procedural, and legal matters. Assigned to complete "all necessary work" to ensure a smooth transition to the WTO, the PCWTO and its subcommittees will oversee the continuing negotiations on maritime transport, basic telecommunications and financial services, market access, and other areas that were not completed when the Uruguay Round ended. In addition, the PCWTO will handle other issues on the WTO agenda, including trade and investment; regional trade agreements; the relationship between trade and labor rights and between immigration policies and trade; competition policy and its effect on trade; and policies on finance and monetary matters that affect trade.

■ **James V. Feinerman is director of the Committee on Scholarly Communication with China and professor of law at Georgetown University.**

Years in the making

Almost from the moment the GATT was created in the mid-1940s, many of its contracting parties and outside observers and critics called for the establishment of a more comprehensive organization, one whose oversight and development of international trade would parallel the development finance mission of the International Monetary Fund (IMF) and International Bank for Reconstruction and Development (World Bank). US government officials in the late 1940s, however, were reluctant to create an international body with the potential ability to override domestic law in critical areas of economic activity.

Thus, the GATT, despite seven long rounds of supplementary negotiations prior to the Uruguay Round, had serious limitations. These included unequal obligations among countries at different stages of development and the lack of meaningful rules to cover intellectual property or important sectors such as agriculture and services. Also, the GATT's dispute settlement mechanism was inadequate—and unable to resolve problems quickly (*see* p.28).

By the 1980s, new US attitudes toward global trade began to influence its perception of the GATT. Foreign trade had become a vital component of the US economy; by the end of the decade, exports accounted for around 25 percent of annual GNP, up from 13 percent 20 years earlier. The United States and other countries also began to see the GATT as a means of countering the growing strength of regional trade blocs such as the European Union, since members of such groups who were party to the GATT would face continuing global pressure to provide non-discriminatory treatment to other GATT members, even those outside of the regional trade bloc.

The United States and other industrialized nations initially viewed the Uruguay Round as a means of strengthening the GATT. As the negotiations dragged on, however, many GATT members perceived the need to create a new organization that would have a more permanent status and far greater authority. The United States and other countries sought to broaden the GATT's scope beyond trade in goods to new areas of commerce such as trade in services. The WTO, by incorporating these facets of global economic interaction in its charter, has been widely welcomed as a much-needed institution that will guide the global economy and enforce new rules of fair and open trade in an increasingly complex and interdependent world.

In many ways, the WTO is the realization of the 1940s vision of a strong international trade body.

A new framework

In many ways, the WTO is the realization of the 1940s vision of a strong international trade body. To strengthen the management of world trade and promote international economic integration, the WTO will have a more formal structure than the GATT, with greater powers and a larger arena of activity.

All signatories to the agreement establishing the WTO—including Hong Kong—will become original members of the WTO as long as they were also contracting parties to the GATT and accept all the new requirements of the Uruguay Round. China and other countries that were not GATT contracting parties must negotiate individual protocols of accession to the WTO. Many of these countries are eager to be considered founding members of the new regime, and equally eager to have a say in its workings. Those who do not join in the near future may find themselves subject to stricter standards when they do eventually apply.

The WTO will gradually take over the existing GATT headquarters in Geneva, and will be supported by payments from each WTO member. The 1995 proposed budget of $83 million will support a Secretariat staffed by an elite corps of around 400 international civil servants, drawn largely from current GATT employees. Member states also will send trade officials to the WTO headquarters for short- and long-term assignments.

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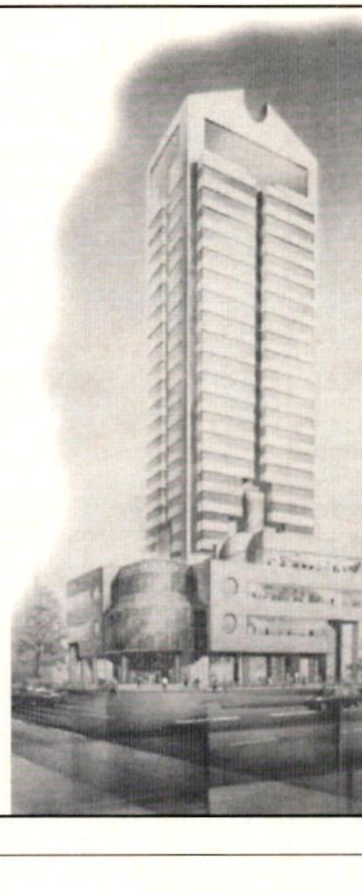

Guiding the overall policy decisions of the WTO is an all-member Ministerial Conference, which serves as the organization's overall policy body and is represented by members' trade ministers. Scheduled to meet at least once every two years, the Ministerial Conference is responsible for high-level policy decisions about all trade-related matters that come before the WTO.

In the period between meetings of the Ministerial Conference, a WTO General Council, composed of representatives deputized by member country trade ministers, will meet to deal with WTO matters and take overall responsibility for all subsidiary councils. The General Council will approve budgets presented by the Secretariat director general, and will also function as the WTO's dispute settlement body.

The WTO also includes various other councils, to be convened in Geneva as necessary, to carry out many of the expanded tasks the organization will undertake. The Council for Trade in Goods, for example, will administer the Uruguay Round agreements with respect to goods, including the Agreement on Trade Related Investment Measures (TRIMs). The Council on Trade in Services is charged with administering the new General Agreement on Trade in Services (GATS) and the Council for Trade Related Aspects of Intellectual Property Rights (TRIPs) will implement the new TRIPs agreement. Three other committees of the WTO will be responsible for trade and development; balance-of-payments restrictions; and the organization's budgetary, financial, and administrative matters. The General Council is also expected to establish additional committees to oversee such matters as environmental and labor issues, which are currently being handled by PCWTO subcommittees.

New tasks

Many issues of concern to foreign companies today were not addressed, or were only partially addressed, under the GATT. Foreign direct investment issues, for example, took a back seat to trade policy and procedures, while trade in services was not even covered. The Uruguay Round agreements, as well as the WTO itself, directly and indirectly address many of these areas through the GATS, TRIPs, and TRIMs agreements.

The TRIMs agreement, which deals only with trade in goods, requires notification, tariffication, transparency, national treatment, and the phased elimination of trade-related investment barriers. After five years, the Council for Trade in Goods will review the operation of that agreement and decide whether supplemental provisions on investment or competition policy are warranted. Thus, the coverage of such issues by the WTO could be broadened considerably in the future (*see* p.20).

The GATS agreement calls for transparency, market access, and removal of barriers to trade in services. The TRIPs agreement, another area not covered under the GATT, primarily protects intellectual property rights holders from infringement of their rights. Patents, copyrights, trademarks, industrial designs, and layout designs transferred from parent companies to overseas subsidiaries in WTO member countries, for example, will now be protected under TRIPs (*see* p.25).

Another major area of change in the new WTO is the way in which disputes will be settled. Disputes concerning the matters covered under the just-mentioned agreements, as well as all other trade matters subsumed under the WTO, will now be subject to the dispute settlement procedures established by the Dispute Settlement Understanding (DSU), an annex to the GATT 1994 Final Act Embodying the Results of the Uruguay Round. The WTO will act as DSU administrator, with its General Council serving as the Dispute Settlement Body. The DSU makes significant changes in the procedures for trade dispute resolution and, more important, for in the manner in which member governments consider the recommendations of dispute panels. It should result in disputes being resolved faster and more equitably than under the GATT (*see* p.28).

The US and the WTO

Like other WTO members, the United States will have to make certain changes in its laws and trading practices to comply with the Uruguay Round agreements. For instance, the United States, pursuant to the agreement establishing the WTO, will reduce Customs duties in the next 3-5 years by roughly an average of about 30 percent for goods produced in the other 123 WTO members. In addition, all US import quotas must be replaced by tariffs, which must eventually be eliminated. US import policies will also change with regard to previous requirements on local content, as such requirements will no longer be permitted for high-tech manufactured products (though they will still be permitted on some products).

Overall, US government and private sector analysts believe that the WTO trade regime will bring far greater benefits than risks to the US economy. They project expanded US sales abroad—especially of agricultural products, manufactured goods, and services—could add more than $200 billion in new US exports over the next 10 years. These exports should generate as many as 1.3 million new jobs in the United States, many of them in high-paying export industries.

As countries phase in the new WTO rules and requirements, industrialized countries like the United States stand to gain considerably from the expansion of world trade. Already, however, there are signs that the new organization will face plenty of controversy. Unresolved issues such as foreign participation in telecommunications and maritime services, for example, will likely involve lengthy future discussions. Negotiations over labor and environmental standards, too, will no doubt be heated.

And, in the short term, the battle over the new organization's first director general has pitted industrialized nations against developing nations. Of the three candidates for the position, former Italian Trade Minister Renato Ruggiero is favored by European and other Western nations, while former Mexican President Carlos Salinas de Gotari is supported by many developing nations. East-West factors are also at play, as many Asian members favor South Korean Trade Minister Kim Chul-su.

As the deadlock over the choice of director general indicates, the creation of the WTO, in and of itself, does not necessarily mean that all trade disputes between member nations will automatically disappear. However, by providing substantial improvements over the GATT system, the WTO should bring about overall improvements in the international trade climate. 完

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TRIMming Protectionism

■ Michael Daniels, Richard King, and Peter Bernstein

The WTO will phase out investment policies that inhibit trade

■ Michael Daniels is a partner with the Washington office of Mudge Rose Guthrie Alexander & Ferdon. Richard King is an associate and Peter Bernstein a staff attorney at the same firm.

One of the most important agreements reached during the eight-year Uruguay Round multilateral trade negotiations covers trade-related investment measures (TRIMs). The Agreement on TRIMs targets for the first time trade distortions created by countries that apply restrictive policies against foreign investment. The Agreement prohibits measures that are inconsistent with the GATT principle of national treatment (Article III), which provides that domestic and foreign firms be subject to the same rules and receive equivalent treatment under the law; as well as the GATT prohibition on quantitative restrictions (Article XI), which, with few exceptions, bans quotas outright. Once it accedes to the WTO, China, too, will be obligated to adhere to the agreement.

The United States was the main proponent of the TRIMs Agreement, which is primarily aimed at developing countries. Because of opposition from certain developing nations, the TRIMs negotiations were limited in scope from the beginning and apply only to trade in goods, not services. Since this agreement is the first of its kind, it is difficult to predict how effective it will be at enhancing global investment. In theory, however, many foreign investor concerns will be addressed by the TRIMs provisions, and the agreement itself should prove a sound base from which to launch further liberalization efforts.

Nuts and bolts

Negotiations over TRIMs started from a virtually blank slate in the early 1980s, even before the commencement of the Uruguay Round. The final agreement includes nine articles and an annex. Most significant, the annex provides an illustrative list of prohibited measures, including:

- local content requirements that force foreign firms to use local inputs;
- trade balancing requirements that limit investors' imports to the amount of their exports;
- foreign exchange balancing requirements that limit imports by restricting access to foreign exchange; and
- restrictions on enterprise exports.

All of these measures are prohibited, even if a country's own laws require a particular action, such as localization of products by foreign investors. The Agreement on TRIMs prohibits such activities even if they do not restrict access but confer an advantage; for instance, granting firms a subsidy or tax holiday for using local inputs is not allowed under the agreement. Certain activities, however, may be exempted from the TRIMs Agreement proscriptions on national security, health and safety, government procurement, balance of payments, or export controls grounds, provided the WTO agrees. Developing countries may also receive certain exemptions, subject to the approval of other WTO members.

The Agreement will be monitored by the Committee on TRIMs, which will report annually to the WTO's Council for Trade in Goods. The Committee, composed of representatives from a broad spectrum of countries, will review compliance of individual countries one at a time. Member states may consult with the Committee on any question on the TRIMs Agreement. Both the Committee and individual member states will have access to the WTO dispute settlement procedures, which will also be subject to the WTO's new transparency rules.

Timing and eligibility

Within 90 days of entering the WTO, member countries must notify the Geneva-based Council for Trade in Goods of all investment policies that do not conform to the TRIMs Agreement. Developed countries are allowed a two-year phase-out period in which to eliminate any inconsistent policies. Developing countries, meanwhile, receive a five-year phase-out period, while the least-developed countries have seven years to get rid of offending practices. Exemptions or extensions may be granted to developing or least-developed members that show difficulty implementing the agreement or demonstrate a need to protect their infant industries or balance of payments. The procedures for requesting and granting extensions are not set in stone, however, as the Council for Trade in Goods will examine the requesting country's financial and trade activities when deciding whether to grant an extension.

To prevent countries from using the phase-out period to increase protection, the TRIMs Agreement states that WTO contracting parties may not make their investment procedures more restrictive during that time. Moreover, any restrictive measures imposed less than 180 days before a country joins the WTO must be phased out immediately, a rule designed to discourage members from implementing new, last-minute restrictions to circumvent WTO rules.

The TRIMs Agreement does allow existing investment-related rules to be applied to new investments during the phase-out period if such action is necessary to avoid disadvantaging existing investments. For example, if, during the phase-out period, an existing firm is subject to a local content law, the same law applies to new firms as well. The measures that apply to the new investment must be equivalent in competitive effect to those applying to existing foreign investors, and must end at the same time.

The TRIMs Agreement becomes binding once a country is admitted to the WTO. Member countries wishing to appeal any Council decision or bring another member before the Council on TRIMs matters must abide by the WTO's Dispute Settlement Understanding (*see* p.28).

The China question

Since China is not yet a member of the WTO, it is not subject to the Agreement on TRIMs. Once China joins the international organization, however, it will have to examine its investment regime to determine which investment policies violate the TRIMs Agreement. Within 90 days of joining, China would have to inform the WTO of such policies and begin to phase them out. The phase-out period and eligibility for certain exemptions will depend on whether the WTO considers China a developing country, and will be outlined in China's protocol of accession. China will undoubtedly seek exemptions to protect its infant industries and balance of payments, though it is not automatically entitled to any such exemptions. As the WTO has just been established, there is no prior practice from which to form any conclusions about how China will be treated.

Important gaps

For both current and future WTO members, the TRIMs Agreement is limited in some key areas. While the agreement prohibits certain protectionist measures, it applies only to trade in goods and does not address a number of measures currently used by some countries to limit foreign investment, such as bans on foreign participation in the legal or financial sectors. While service sectors are covered by the new General Agreement on Trade in Services (GATS) (*see* p.22), GATS does not address measures that restrict investment in service industries. However, the scope of TRIMs may be expanded in the future; within five years, the WTO Council for Trade in Goods will consider whether additional provisions on investment and antitrust policy should be added to the current agreement.

Despite the current gaps, the TRIMs Agreement is far from toothless. Though the general exceptions for national security and balance of payments reasons are broad, requests for additional exemptions are not automatic, as they may be challenged by other WTO members. If a country is found to violate the TRIMs Agreement, the new WTO dispute settlement mechanism should ensure swifter and surer remedies for injured members than did previous procedures.

Overall, the TRIMs Agreement is a significant, though somewhat limited, step forward in global efforts to eliminate trade-related barriers to transnational investment. Dramatic changes should not be expected overnight, as developing countries that still rely on investment restrictions will need more time to wean their local economies from the benefits of these trade-distorting measures. Once they accomplish this task, however, US investors should find new areas opening up for manufacturing-related investments. 完

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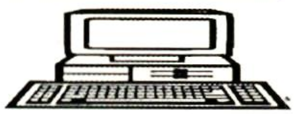

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Unfinished Business

■ Michael P. Mabile

The WTO agreement on services calls for further negotiations in critical sectors

■ Michael P. Mabile, a partner in the Washington, DC office of King & Spalding, specializes in international trade regulation and Customs law. He formerly served as international trade counsel to the US Senate Committee on Finance.

A major accomplishment of the Uruguay Round negotiations was the General Agreement on Trade in Services (GATS), the first multinational agreement governing global trade in services. The GATS affects a broad array of international businesses, including those involved in financial services (banking, insurance, and securities); communications and telecommunications; professional services (accounting, architecture, engineering, and law); technical and business services (advertising, computer services, consulting, leasing, and market research); construction; health services; retail and wholesale sales; travel and tourism; and transportation and distribution.

The GATS covers nearly all types of services, except those provided on a non-competitive basis under government authority, such as State-owned telecommunications monopolies. The agreement applies to services delivered across national boundaries as well as to those provided within a country by foreign-owned companies.

However, the GATS leaves unfinished several matters of importance to the United States and its trading partners. Although GATS provides a strong foundation for future trade liberalization, some major service sectors—financial services, basic telecommunications, and marine transport services—were largely excluded. Unable to overcome major obstacles to agreement in these sectors, negotiators built into GATS an obligation to hold additional discussions in the future.

Moreover, countries that have signed onto GATS have been permitted to exclude selected service sectors or regulations from GATS obligations on a one-time basis. The exemptions are contained within the appendices to the GATT and are subject to periodic negotiations among WTO countries. Whether the GATS will gradually evolve into a comprehensive set of obligations equaling those established by the GATT for trade in goods will depend on the outcome of these future negotiations, which are likely to begin no later than the year 2000 and continue for a number of years.

Before the GATS

From its inception in 1947, the GATT focused entirely on trade in merchandise and excluded rules for international trade in services. Initially, the GATT's lack of coverage for services was not viewed as a major problem because services accounted for a relatively small share of international trade. Over time, however, services have become an increasingly important component of international trade, particularly for the United States, which captured 17.3 percent of the $1 trillion global services market in 1993.

In the 1970s and 1980s, US service providers became concerned that their ability to develop new business opportunities abroad was being greatly limited by discriminatory regulations and other barriers to foreign market access. Because the GATT was limited to trade in goods, it did not provide a forum for addressing these concerns. This gap led the United States to include liberalization provisions for services trade in such recent treaties as the North American Free Trade Agreement. It also led the United States to make the elimination or reduction of barriers to services trade a primary objective of the Uruguay Round.

The United States stands to gain the most from liberalization of services trade. Service industries represent the fastest-growing segment of the US economy and generate 75 percent of US non-farm employment. The United States is also the world's largest exporter of services, registering $173 billion in services exports in 1993. Although these exports represent only one-third the value of US exports of goods, services exports are growing much more rapidly. In 1993, the United States achieved a $57 billion surplus in services trade, compared to a $133 billion deficit in merchandise trade. By requiring WTO members to loosen restrictions on foreign firms' access to international services markets, the GATS should provide a significant boost to US services exports.

The fundamentals

The GATS has three major components: a framework agreement on trade in services that mirrors key GATT obligations such as Most Favored Nation (MFN) treatment; schedules of country-specific commitments to liberalize trade and open markets; and a set of annexes containing additional provisions for certain service sectors. The Council for Trade in Services, composed of representatives from all WTO member countries, acts as a governing body, overseeing implementation of the GATS. Disputes between countries regarding services trade are governed by the WTO's dispute resolution mechanism (*see* p.28).

Part I of the framework agreement establishes that the GATS generally applies to all services except those provided by a government on a non-commercial and non-competitive basis. Part II sets out basic rules applicable to all WTO countries and to all sectors of services trade. The most important of these rules requires that MFN treatment be granted to all WTO members; service providers of any one WTO country must receive treatment that is no less favorable than that given to the providers of any other WTO country. Each country was allowed, however, to provide a list of specific exemptions from MFN treatment. In principle, these exemptions are effective for at most 10 years and are subject to further trade liberalization negotiations.

Due to the country-specific exemptions, the GATS as it now stands achieves only partial liberalization of trade in services.

The framework agreement also requires full transparency of all regulations governing trade in services and prohibits any WTO country from imposing restrictions on international transfers and payments for transactions relating to any services for which it has made a specific trade liberalization commitment. This obligation will greatly lessen the incidence of national rules restricting the free international flow of funds related to services.

Part III of the framework agreement contains country-specific commitments that bind WTO members to the extent provided in their schedules in the appendices to the GATS. Ninety-seven countries have submitted trade-liberalization commitment schedules covering a wide variety of services sectors. The schedules establish the terms, limitations, and time frame for implementation of each commitment. Generally speaking, the United States and other countries with highly developed economies pledged the most far-reaching commitments, while less-developed countries made more limited commitments. In most instances, countries listed specific sectors in which they were willing to make changes, subject to the limitations set forth in the schedules.

Opening markets

The country-specific commitments governed by Part III of the GATS include the requirement to provide market access—to the extent provided in each WTO member's schedule—to foreign services and service providers. This requirement is targeted at removing such barriers as limits on the total value of service transactions, the number of employees, the number of service operations, and the number of suppliers allowed to compete in a particular country's market.

GATS also requires WTO members—to the extent provided in each country's schedule—to provide other members national treatment; that is, to treat the services and service suppliers of other WTO countries in at least as favorable a manner as domestic services and service providers are treated. In addition to forbidding restrictions that formally discriminate against foreign services and service suppliers, this requirement prohibits treatment that tilts the conditions of competition in favor of domestic companies.

WTO members are permitted to withdraw or modify specific commitments listed in their individual schedules at any time after three years from the date they become effective, as long as they provide notice of the withdrawal or modification. If another WTO country would be adversely affected by the change, it may request negotiations to ensure that the same approximate degree of mutual commitment is maintained. If the countries cannot agree, they may seek arbitration. The framework agreement specifically states that WTO countries are not required to apply any form of trade liberalization required under the GATS, including MFN treatment, to services supplied by non-WTO members.

New rounds of negotiations

Due to the country-specific exemptions, the GATS as it now stands achieves only partial liberalization of trade in services. For this reason, the framework agreement mandates that additional rounds of negotiations be held at five-year intervals. Their purpose is to achieve "a progressively higher level of liberalization" of services trade.

In addition, several GATS annexes provide rules specific to certain service sectors. These annexes cover the politically sensitive financial, telecommunications, and transportation sectors, areas in which agreement was particularly difficult to reach during the Uruguay Round. These annexes contain the following provisions:

■ **Financial services** are covered under two annexes to the GATS. The first clarifies that the GATS does not apply to the activities of central banks and other public entities related to monetary and exchange rate policies. It also stipulates that the GATS does not prevent a WTO member from protecting consumers of financial services or the integrity and stability of its financial system, provided that such protective measures are not used to circumvent GATS obligations.

The second annex on financial services reflects the negotiators' decision to continue negotiations on financial services through July 1, 1995. After these negotiations have ended, WTO countries will be allowed to exempt *any* or *all* of their financial service sectors from the MFN requirement or to modify or withdraw their national treatment or market access commitments with respect to financial services. This provision was included largely at the insistence of the United States, which cited the unwillingness of major trading partners—including Japan—to open up their financial services markets to US companies. It allows the United States to use the threat of selectively closing its financial services market as leverage to gain trade liberalization commitments from other countries during the extended period of negotiation.

■ **Telecommunications** are covered in a separate annex, which requires WTO member countries to provide service suppliers of other WTO members reasonable and nondiscriminatory access to basic telecommunications services, such as telephone networks. This means foreign service providers must be allowed access to any public telecommunications network or service, both within the country and across its borders, and must be permitted to attach equipment of their own choice and to interconnect private circuits with the network.

Although these provisions should boost international competition for the provision of certain telecommunications services, they do not permit companies to compete for the provision of many basic telecommunications services in foreign markets, as US negotiators desired. Because basic telecommunications services in most countries remain the province of government-owned monopolies, other countries were reluctant to allow foreign competition in this area. Further negotiations to liberalize trade in basic telecommunications services are expected to be completed by April 30, 1996. Until then, WTO member countries are not required to provide MFN treatment in basic telecommunications.

■ **Transportation** issues also proved difficult to resolve under the GATS. The annex on air transport services exempts air traffic rights and most related services from GATS requirements. The GATS does apply, however, to aircraft repair and maintenance, the selling and marketing of air transport services, and computer reservation services.

Maritime transport services are also excluded from the GATS, largely due to US resistance to opening up that sector. Instead, agreement was reached to conduct further negotiations, which are scheduled to conclude by June 30, 1996. These negotiations will cover international shipping and access to port facilities, but not cabotage.

The financial, telecommunications, and transportation sectors remain important to US interests. The US legislation implementing the Uruguay Round agreements specifies US negotiating objectives in these areas. In the extended negotiations on trade in financial services, US negotiators will seek commitments from commercially important countries to reduce or eliminate barriers—including the denial of national treatment and market access—to the supply of financial services. Whether the United States will continue to provide access to the US market to foreign financial service providers on a non-discriminatory, MFN basis will depend on other countries' willingness to provide similar treatment to US providers. In the basic telecommunications negotiations, US negotiators will seek to open foreign markets on nondiscriminatory terms and conditions.

Whither China?

China will not be subject to the GATS until agreement is reached on its accession to the WTO. The United States in particular has made Chinese commitment to significant liberalization of trade in banking, insurance, telecommunications, transportation, and other services a priority in the accession negotiations.

China represents a large potential market for US services. According to US Department of Commerce estimates, the dollar value of US services exports to China nearly doubled from 1987 to 1992, rising to $269 million. This growth rate was much stronger than that recorded for US services exports to Canada, Japan, Mexico, or the European Union. Continued growth in US exports of services to China will be impeded, however, unless China substantially reduces its current restrictions on foreign service companies.

Anticipating demands that it provide greater market access to foreign service firms if it wants to join the WTO, China has already made limited reforms in such areas as banking, insurance, retailing, and real estate. Foreign service firms are nevertheless often denied the ability to establish offices in China, to do business in more than a few geographic areas, to operate other than through a joint venture with a Chinese partner, or to do business with Chinese nationals.

Given the significant exemptions from GATS obligations—especially in the key telecommunications, financial services, and transportation sectors—already negotiated among current WTO members, it is difficult to predict how far China will be required to free up its services market as a condition of joining the WTO. At a minimum, China will be required to adhere to the basic obligations of the GATS framework. This alone will provide benefits to US service suppliers, since the transparency requirement will require China to disclose fully all its restrictions on foreign firms' participation in the Chinese market. As a result, Chinese regulations on services should become more comprehensible and predictable.

For the present, however, negotiators in China's accession talks are a long way from achieving a breakthrough on services. Relatively little progress has been made to date and, considering US insistence on liberalization of Chinese restrictions on foreign service providers, the ball appears to be in China's court to get the talks moving. 完

Protection on a Global Scale

■ Carlos A. Primo Braga

The TRIPs Agreement should foster greater harmonization of rules and practices for protection of intellectual property

Debate on trade matters relating to intellectual property rights (IPR) in the GATT began during the 1973-79 Tokyo Round of multilateral trade negotiations. At that time, the discussions had a narrow focus on the issue of counterfeit trading. During the Uruguay Round, however, IPR emerged as a major topic for negotiation. The resulting Agreement on Trade Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods, (TRIPs) is the most comprehensive international agreement on intellectual property rights ever negotiated.

The TRIPs Agreement follows GATT tradition in adopting the multilateral disciplines of non-discrimination (as embedded in the principles of Most Favored Nation (MFN) and national treatment) and a commitment to transparency. It provides an innovative approach by establishing minimum standards of protection and guidelines for enforcement, while leaving to the member countries the decision on how to implement these standards. The Agreement is composed of seven sections that include: a set of general provisions and basic principles that define the scope of the obligations; the relationships between the Agreement and existing IPR conventions; provisions for dispute prevention and settlement; transitional arrangements for implementation; and other institutional standards and arrangements.

General obligations

Articles 3 and 4 of the Agreement establish that WTO members shall accord each other national treatment and MFN treatment. Similar to existing IPR conventions, national treatment applies at the level of persons (or legal entities) rather than goods, as was the case in the GATT. Exceptions to national treatment identified in international protocols such as the Paris and Berne conventions are recognized by the TRIPs Agreement.

Exceptions to MFN treatment are allowed in the context of the provisions that allow certain types of copyright protection to be granted on the basis of reciprocity, as outlined in the Paris and Berne conventions. Deviations from the MFN norm are also allowed if they reflect international agreements on judicial assistance or law enforcement of a general nature, rights not covered by TRIPs, or IPR-related international agreements that entered into force prior to the WTO Agreement (e.g., the IPR rules in the European Union).

Aside from national treatment and MFN, WTO members are required to publish (or to make publicly available) laws and regulations, as well as final judicial decisions and administrative rulings related to the themes of the Agreement. The negotiators' intention is to allow governments and IPR holders to become acquainted with measures that can affect their intellectual property interests.

■ **Carlos A. Primo Braga is a senior economist in the international trade division at the World Bank. This article is based on a paper presented at a January 1995 World Bank conference on "The Uruguay Round and the Developing Economies." The ideas expressed in this article are his own and do not represent those of the World Bank.**

Setting minimum standards

Part II of the Agreement establishes minimum standards concerning the availability, scope, and use of IPR. It covers copyrights and related rights, trademarks, geographical indications, industrial designs, patents, layout-designs (topographies) of integrated circuits, undisclosed information (i.e., trade secrets), as well as anti-competitive practices in contractual licenses. Some of the main points covered include:

■ **Copyrights and related rights** The principle of copyrights covers the original expression of an idea rather than the idea itself. Copyright laws protect works as of the moment of creation. Related (or neighboring) rights, in turn, protect the work of performers, phonogram producers, and broadcasters. The TRIPs Agreement establishes that countries should comply with the disciplines of the Berne Convention with respect to copyrights, but does not require observance of moral rights (i.e., an author's inalienable right to protect the integrity of his/her work and to object to changes that would be prejudicial to his/her honor or reputation).

By bringing the minimum standards of protection of the Berne Convention to the WTO structure, the TRIPs Agreement will strengthen copyright protection on a global scale. The Agreement also expands and clarifies Berne disciplines. It states, for example, that the term of protection should not be less than 50 years in cases in which the term is "calculated on a basis other than life of a natural person." This provides clear guidance for the term of protection of works that belong to corporations. The main innovations of the TRIPs Agreement, however, are related to computer programs and compilations of data and rental rights.

The Agreement establishes that both software and data compilations are to be protected as literary works under the Berne Convention. Article 11 provides that "at least" for computer programs and cinematographic works, the title-holder should be entitled "to authorize or prohibit the commercial rental to the public of originals or copies of their copyright works." This obligation, however, only applies to cinematographic works when widespread copying linked to rental of these works is impairing the economic rights of the title-holder. But, the adoption of a 50-year minimum term of protection for performers and producers of phonograms expands the 20-year protection period required under the Rome Convention.

■ **Trademarks**

The TRIPs Agreement confirms and clarifies the disciplines of the Paris Convention, stating that procedures for registration should be transparent and not related to the nature of the goods or services to which the trademark is applied for. Article 16 clarifies the scope of the rights conferred and strengthens the protection of well-known trademarks. By determining that owners of well-known trademarks should be allowed to challenge confusingly similar marks (including those used for goods and services that are not similar to the ones covered by the well-known trademark), the TRIPs Agreement should help deter "speculative" registration, a common practice in many developing countries.

The term of protection between registration and its renewal should be no less than seven years under TRIPs, and indefinite renewals are allowed. A registered trademark may be canceled after at least three uninterrupted years of non-use, but circumstances beyond the owner's control "shall be recognized as valid reasons for non-use." Companies cannot be required to display domestic marks in combination with foreign marks. Article 21 permits WTO members to regulate the licensing and assignment of trademarks, but prohibits the use of compulsory licensing.

■ **Industrial designs** The Agreement allows for protection of industrial designs under either copyright law or industrial design law. Industrial designs protect the ornamental features such as the shape, lines, designs, and colors of a product. The TRIPs Agreement establishes a minimum 10-year protection term for designs that are "novel" or "original."

■ **Patents** The negotiations over patent protection were at the very core of the North-South conflict over IPR during the Uruguay Round. The main problem areas for developed countries included limited coverage in terms of products or processes, short terms of protection, broad scope for compulsory licensing, and ineffective enforcement in developing counties. The Agreement addresses all of these areas, introducing higher standards of patent protection than available under the Paris Convention.

TRIPs Article 27 defines patentable subject matter in broad terms, stipulating that patents "shall be available for any inventions, whether products or processes, in all fields of technology" for a period of 20 years from the filing date. Exclusions are allowed to protect mortality; the environment; and human, animal, or plant life. These broad exceptions, however, are constrained by the requirement that the non-patentable invention be barred from commercial exploitation in the member country.

Exemptions from patentability are also permitted for "diagnostic, therapeutic, and surgical methods," an approach consistent with the patent laws of most countries. However, the Agreement adopts a conservative approach toward biotechnology, citing non-patentability of plants and animals. This exclusion, however, does not apply to micro-organisms, microbiological processes, and plant varieties.

The implication of these distinctions is that countries are required to provide protection for biotechnological inventions—both "frontier" innovations (e.g., cell and gene manipulations) and more conventional ones (e.g., fermentation processes)—but may exclude from patentability traditional breeding methods and "higher-life" organisms. With respect to plant varieties, however, members are required to provide protection "either by patents or by an effective *sui generis* system or by any combination thereof." Accordingly, many developing countries will have to expand the coverage of their patent systems or introduce additional protection (e.g., plant breeders' rights) for plant varieties.

■ **Trade secrets** Article 39 of the Agreement makes explicit reference to the protection of "undisclosed information," or trade secrets. This was another area of heated North-South debate, with developing countries opposed to treating trade secrets as an intellectual property right. In the end, TRIPs treats undisclosed information as a category of IPR, but only the acquisition of undisclosed information "in a manner contrary to honest commercial practices" can lead to action against an infringer. The Agreement also requires that trade secrets submitted to governments in order to gain approval for pharmaceutical or agricultural chemical products be protected against unfair commercial use and unnecessary disclosure.

■ **Anti-competitive practices** The last section of Part II addresses one of the main concerns of developing countries: the use of IPR to impose abusive contract terms hampering the transfer and diffusion of technology. Article 40 recognizes the possibility that licensing practices and the exercise of IPR may have anti-competitive effects. It leaves to member countries, however, the implementation of measures to counter such practices, with the condition that the measures not conflict with the other provisions of the Agreement. It also provides for a system of bilateral consultations to avoid arbitrary enforcement of remedies against anti-competitive practices.

Article 40 establishes a link between the multilateral trade regime and national competition laws, perhaps reflecting the long-standing efforts of developing countries to negotiate an international code of conduct on transfer of technology under the auspices of the United Nations. The language of Article 40, however, is essentially prescriptive and no precise definition of anti-competitive practices is provided. These vague prescriptions are more likely to generate friction among trading partners than to deter anti-competitive practices effectively.

Tackling enforcement problems

Enforcement of IPR measures should get a boost under the TRIPs Agreement. WTO members are required to provide "expeditious remedies to prevent infringement and remedies which constitute a deterrent to further infringements." These measures should be fair and equitable, create no barriers to legitimate trade, be available both to foreign and domestic right holders, be open to judicial review, and should not be too costly or complicated. However, there is no obligation for countries to put in place a dedicated judicial system for IPR.

The TRIPs Agreement requires that right holders have access to civil and administrative procedures, and includes provisions on evidence of proof, injunctive relief, payments for damages, and indemnification of parties wrongfully enjoined or restrained. Provisional measures for expeditious action—e.g., when there is the risk of evidence being destroyed—should also be available. Under the Agreement, Customs officials should also be allowed to seize counterfeit goods. Moreover, WTO members should employ criminal procedures "in cases of willful trademark counterfeiting or copyright piracy on a commercial scale."

Overall, these disciplines will demand a significant overhaul of enforcement practices in most developing countries. As implementation of the TRIPs Agreement proceeds, however, disputes about compliance are bound to occur, given the limited administrative resources and capabilities of the judicial systems in many developing countries.

These disputes, when they occur, will be handled by the WTO Dispute Settlement Body. The possibility of cross-sectoral retaliation is expected to play an important role in strengthening IPR protection on a global basis. There is, however, a five-year moratorium (equal to the standard transitional period for developing countries) in the use of the WTO dispute settlement procedures for indirect IPR violations. In other words, measures that may nullify or impair the benefits of the Agreement without being a direct violation of its obligations (e.g., the application of an unusually high creativity threshold for acquiring copyright protection) cannot be brought to the WTO's attention in the next five years. The decision on how to treat these kinds of complaints will be examined further by WTO members during the moratorium period.

A short transition...

The Agreement gives countries one year from the date they enter the WTO to apply the TRIPs provisions. Developing countries and economies in transition undertaking structural reforms of their IPR regimes are entitled to an additional four-year exemption period from the date of application—except for the obligations concerning national treatment and MFN treatment. These countries, however, are also entitled to an additional five-year transition period with respect to product patents in areas of technology that were not protected at the date of application of the TRIPs Agreement. Least-developed country members must abide by national treatment and MFN guidelines, but are entitled to a 10-year phase-in period from the date of application, and may request an extension of this period.

The long transition periods allowed for developing countries are tantamount to special treatment, although they do not involve permanent derogations of TRIPs obligations. WTO members are not required to provide "pipeline-protection"—retroactive protection of a subject matter already patented in another member country and not yet marketed in the country that will be assuming new obligations under TRIPs. TRIPs obligations apply from the date of application of the agreement for each member, but WTO members may also limit the remedies available to right holders with respect to products that become infringing as a consequence of the application of the agreement.

...for long-term IPR protection

The TRIPs Agreement will require significant changes to the IPR regimes of many developing countries, including China, which has yet to join the WTO. Compliance with TRIPs disciplines—particularly with respect to enforcement of IPR—is a must for the United States to support China's accession to the WTO. In this context, the resolution of the Special 301 investigation of China's IPR regime should help China meet many of the criteria set forth in TRIPs (*see* p.6).

As WTO members introduce the minimum standards of protection required under TRIPs, IPR should gradually be strengthened on a global scale. However, the achievements of the TRIPs Agreement fall short of the expectations of knowledge-intensive industries in many developed countries. As a result, some of these industries will continue to support unilateral actions to promote further change in IPR protection and enforcement. It is too early to tell how successful the WTO will be in diffusing trade-related IPR frictions and in preventing unilateral actions by major trading nations, but the question of enforcement, in particular, is likely to become a major area of contention in the years to come. 完

Making Up

■ Michael Daniels and Jayme Roth

Dispute resolution should become easier thanks to new deadlines and remedies under the WTO

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Could a judicial system be effective if there were no time limits for resolving disputes and the guilty party had the option of refusing punishment? Although this scenario may seem absurd, it basically describes the way in which the GATT dispute settlement system operated. There were no time limits for completing each stage of the settlement process under the GATT and cases could drag on indefinitely. Many trade disputes lasted for years and still remain unresolved due to the absence of time constraints.

Moreover, a prevailing party in a GATT dispute had no assurance that the judgment would be carried out. A country found to be violating GATT rules could veto or block the presiding panel's findings, since such a decision had to be adopted by a consensus of the contracting parties before it could take effect. Thus, even a country that won a positive verdict from the GATT dispute resolution body might have had little choice but to resort to unilateral action to resolve the disagreement.

Frustrated at the ineffectiveness of the GATT system, Uruguay Round negotiators crafted the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) to eliminate some of these problems. Effective from the day the WTO became operational—January 1 1995—the DSU improves upon the GATT system by imposing time limits on each phase of the resolution process, giving the contending countries the right to appeal, and making it more difficult for the defending party to block findings it dislikes. These changes make the dispute resolution process more predictable and increase the likelihood of obtaining a decision that is actually carried out.

New rules

The DSU will be administered by the Dispute Settlement Body (DSB) in Geneva. Each WTO member will have a permanent representative on the DSB, which is responsible for establishing panels to rule on dispute cases, overseeing and adopting the panel rulings and recommendations, adhering to appellate decisions based on appeal hearings, and authorizing retaliatory measures. The WTO Secretariat proposes the panelists, typically individuals who have served in a government trade office, presented a case before a GATT panel, or in some other way demonstrated relevant knowledge and expertise. If the disputing parties cannot agree on whether to accept the nominees, the WTO director general, in consultation with the DSB chairman and the disputing parties, will appoint them directly.

The WTO system is much more effective than the GATT at enforcing panel decisions, since the DSU sets strict time limits on each stage of the dispute settlement process (*see* box). The entire process, including an appeal, normally will be concluded within 12 months. While the time limits should prevent countries from stalling the process indefinitely, the DSB, like its GATT predecessor, does not have the authority to enforce compliance with panel decisions. It must rely on its ability to authorize retaliatory measures, such as suspension of concessions or obligations, to encourage compliance. To date, only two cases have been filed before the DSB, but many cases will likely come before the body in the future.

Room for appeal

Aside from stipulating time limits, the WTO differs from the GATT in that members will now have the opportunity to appeal panel decisions to the Appellate Body, which will be established by the DSB. A total of seven independent individuals, experts either in international law or in the subject matter of the Uruguay Round agreement covering the disputed issue, will serve four-year terms on the body. Three individuals from the Appellate Body will comprise an appeal panel for a particular case. As in appeals courts in most countries, including the United States, only issues of law and legal interpretation will be addressed. The appellate panel may affirm, reverse, or modify legal findings of a DSB panel and must render its decision within 90 days of the filing of an appeal.

Since the GATT required unanimous consent from all member countries to adopt a panel recommendation, one single country could veto or "block" the recommendation if it disagreed with the panel's findings. In essence, this rule made it difficult for the GATT to adopt any dispute resolution reports, since countries were reluctant to vote against themselves. In contrast, DSB decisions may be blocked only if *all* WTO members agree to do so. This provision will prevent countries that are in violation of an Uruguay Round agreement from nullifying a DSB panel or Appellate Body decision.

The appeals process, though as yet untested, should add greater consistency to the WTO dispute settlement process. Future DSB panels are likely to rule consistently with appellate interpretations, since the Appellate Body has greater authority than the DSB panel.

Aside from stipulating time limits, the WTO differs from the GATT in that members will now have the opportunity to appeal panel decisions to the Appellate Body.

Implementing DSB decisions

Once a DSB panel or Appellate Body reaches a decision on a case, the WTO requires that a deadline be set for compliance. The time period will be determined, with the DSB's concurrence, by the government of the defending country; or by an agreement between the parties to the dispute. If neither method is successful, the parties can turn to binding arbitration. Arbitrators must follow specific WTO guidelines when deciding upon a time frame for member compliance with the panel's decision. This change in procedures should prevent countries from indefinitely delaying the implementation of DSB decisions.

If the losing party fails to implement a DSB decision, the prevailing party may request authority from the DSB to suspend WTO tariff treatment. Such an action should first be taken in the same sector in which the panel found a violation. If the retaliating country believes that suspending tariff concessions in the same sector would not be "practicable" or "effective," it may consider action in another sector under the same agreement, or it may "cross retaliate" in an area covered under other agreements in the Uruguay Round. For instance, if a violation occurs on a product covered under the Agreement on Trade in Goods,

cross retaliation would involve retaliating against a sector covered by the Agreement on Trade in Services (*see* p.22). If the country facing retaliation believes that the retaliation procedures are not followed properly, it may submit the case to arbitration.

Procedures authorizing retaliatory measures were infrequently involved under the original GATT as many reports were blocked by countries that simply refused to accept them. The strengthened retaliatory mechanism in the WTO adds credibility to the dispute settlement process, as defending countries now have greater incentive to comply with DSB rulings.

The dark spot

Once China joins the WTO, the DSU should strengthen and speed up settlement of PRC trade disputes with other WTO countries, including the United States. The new dispute settlement process would benefit both countries by providing a specific time frame for the resolution of disputes, making available an appellate panel to interpret specific Uruguay Round provisions, and requiring disputing parties to negotiate a satisfactory solution or resort to retaliatory measures that have been approved by the WTO. The DSU should make it much more difficult than before for countries to evade the responsibilities they accepted under the Uruguay Round agreements.

However, because the Jackson-Vanik provisions of US law require annual review of China's Most Favored Nation (MFN) status, some believe the United States cannot meet the GATT Article I requirement that unconditional MFN treatment be extended automatically to all other WTO members. For this reason, even if China is admitted to the WTO, the United States may have to invoke Article XIII of the WTO (which parallels Article XXXV of the GATT), which would result in mutual non-application of the WTO between the United States and China. Such an action would effectively nullify all WTO agreements between the two countries.

The Article XIII threat reduces Beijing's incentive to meet US demands for trade concessions as the price of accession to the WTO. Repeal of the Jackson-Vanik amendment would be the most decisive solution to this problem, although the likelihood of such action in the near term appears remote. Other possibilities, including a side bilateral agreement on the Article XIII issue, are being considered. Until a solution to the Article XIII dilemma is found, however, trade disputes between the United States and China will continue to carry a high risk for *all* US traders, even after China enters the WTO. 完

Settling Disputes

The DSU emphasizes the importance of consultation in resolving disputes. Countries that wish to bring a dispute before the DSB must go through the following steps, which can take about a year to complete:

■ **Hold initial consultations with the other party** The complaining government must seek consultations with the government whose practices are at issue before asking that a DSB panel be established. Article 3 of the DSU requires the complaining party to wait 60 days from the date it requests consultations before asking for a panel to be established.

■ **Request the establishment of a panel** A party must submit to the DSB a written request seeking the establishment of a panel to resolve the dispute. The DSB will establish a panel at the first or second meeting at which the request for a panel is placed on the DSB agenda. The DSB is obliged to "meet as often as necessary" to resolve the dispute.

■ **Wait for the issuance of a panel report** A report containing the panel's decision on the disputed matter, and any compensation that may be owed to the complaining party, will generally be issued within six months after the creation of the dispute panel.

■ **Adoption of the panel report** The DSB must decide whether to adopt the panel report within 60 days after the report is circulated. Within 30 days after the adoption of a panel or appellate body report, the member country that has to comply with the panel decision shall inform the DSB of its intentions with regard to the recommendations contained in the panel report.

—Michael Daniels and Jayme Roth

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Mixed News for Importers

■ Peter O. Suchman and Susan Mathews

GATT anti-dumping measures shouldn't have much impact on Chinese exports in the near term

US antidumping and countervailing duty law and procedures are undergoing significant changes as a result of the Uruguay Round Agreements Act (URAA) approved by Congress last December. For the most part, the URAA changes US laws to make them consistent with the Uruguay Round agreements covering anti-dumping, subsidies, and countervailing measures. However, some provisions in the URAA go beyond those required to implement the WTO agreements. Although the URAA went into effect on January 1, it will take several months before many of its requirements have been fully implemented; this delay might lead to a slight downturn in the number of trade remedy cases filed during the first part of this year, since industry will wait to see how the Department of Commerce (DOC) and International Trade Commission (ITC) deal with the changes.

Dumping a,b,c's

Both US trade laws as well as international agreements such as the GATT permit importing countries to impose additional duties upon imported products if those products are being sold at "less than fair value"—or dumped—in the importing country, or if the manufacturers benefit from subsidies bestowed by a foreign country. In the first case, the additional duty is referred to as an anti-dumping duty; in the latter, it is a countervailing duty (CVD). The United States has a two-pronged procedure for determining whether anti-dumping or countervailing duties should be imposed. First, after a domestic producer, trade union, or association files a dumping petition against a foreign product, the ITC conducts an investigation to determine whether such imports are injuring the US domestic industry. Then, DOC, through its International Trade Administration, investigates the foreign producers named in the petition and determines whether the goods are being dumped or subsidized in the US market. If the DOC finds the goods are being unfairly traded, it will also determine the extent, or margin, of dumping or subsidy. Both agencies issue preliminary as well as final determinations on each petition.

Anti-dumping duties are assessed only after the two separate agencies each make "affirmative" determinations: the DOC must find dumping is taking place and the ITC must find that the dumped goods are causing injury. Although DOC considers China a non-market economy (NME), this status does not exempt it from US anti-dumping law. However, US imports of Chinese goods are subject to a special method for calculating whether anti-dumping duties should be imposed. The URAA provisions make no changes to the NME provisions of US anti-dumping law. Therefore, imports from China will continue to be subject to dumping

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determinations based upon cost of production data obtained by DOC from market economy countries at roughly the same stage of economic development as China. India, Pakistan, and the countries of Southeast Asia are most often used for this purpose. In the past, the use of such substitutes often resulted in extremely high dumping margins against Chinese goods (*see The CBR*, March-April 1991, p.8). The Clinton Administration, in an effort to assist Russia and the other former Soviet Republics, attempted—but ultimately failed—to get congressional approval for special treatment of "economies in transition" under the URAA. Such a provision would have protected these countries from the arbitrary treatment they now are subject to under the NME provision of the anti-dumping law. Even had the provision been approved, however, China would not have been included in this category.

Relief for importers

While China's status as an NME will not change under the new trade remedy provisions, some of the changes stipulated under the US GATT implementing legislation will modify the procedures governing dumping investigations in ways that may benefit US importers of Chinese goods. These include:

■ **Stricter definition of injury** Under the new law, whenever imports from a single country are "negligible"—i.e., they constitute less than 3 percent of all US imports of the merchandise under investigation for the most recent 12-month period—the investigation will be terminated, provided all "negligible" imports together constitute less than 7 percent of US imports of that product. The new test is a much more straightforward approach to determining injury; in the past, the ITC had much more discretion when making injury determinations.

■ **Higher minimum dumping levels needed to trigger imposition of duties** From now on, an investigation will be terminated automatically if DOC calculates the margin of dumping to be 2 percent or less. The current minimum is 0.5 percent.

Safeguarding Domestic Industries

The issue of safeguards has become a major barrier to China's accession to the WTO. Under Article XIX (the safeguard provision) of the 1947 and 1994 GATT, countries are allowed to apply import restrictions when imports injure, or threaten to injure, a domestic industry producing "like or directly competitive products." The WTO also permits such action. Many WTO members, however, especially the United States and the European Union, want China's WTO protocol of accession to include a special safeguard provision that will give WTO members extra protection against market disruptions caused by Chinese exports.

Trouble with GATT

In part, the new WTO safeguard provisions reflect inadequacies with the original GATT safeguard measures, which were neither effective nor transparent. Some countries circumvented Article XIX of the GATT and protected their industries through other methods, weakening the GATT regime. A major goal of the Uruguay Round Agreement on Safeguards (the Safeguard Agreement), therefore, was to address these problems and strengthen Article XIX.

In the past, GATT members were discouraged from applying safeguard measures because Article XIX required that they be applied on a Most Favored Nation (MFN) basis. Thus, even if only one trading partner's exports were causing harm, the country invoking safeguard measures would have to apply restrictions and provide compensation to *all* GATT members from which it imported the goods in question. This practice resulted in extremely high compensation costs to countries needing protection. If compensation was not provided, Article XIX permitted countries affected by the safeguards to retaliate by increasing import duties, for example, on products from the country seeking protection. Article XIX, therefore, though designed to provide relief to countries threatened by import injury, actually proved a disincentive to many GATT member countries seeking protection.

Rather than invoke Article XIX, many GATT members resorted to "grey area" measures such as voluntary restraint agreements (VRAs), orderly marketing arrangements, and export or import price-monitoring schemes. These trade-distorting measures, which generally were not subject to multilateral monitoring, proved less costly than applying Article XIX. The increasing prevalence of "grey area" agreements was one of the main reasons negotiators sought a new safeguard agreement under the WTO.

New remedies

The WTO Safeguard Agreement attempts to address the problems of compensation, retaliation, and grey area measures in several ways. First, there is no strict MFN requirement. Instead, Article 5 provides guidelines for members to follow when invoking safeguards. WTO members applying these measures will, in some circumstances, have to negotiate only with affected exporting countries when determining the market restrictions. Also, if quotas are applied, members seeking protection must allocate exporting countries market share in proportion to the shares claimed by these countries during a "previous representative period," usually the three previous years.

Second, to reduce the costs of applying safeguard measures, the new provisions do not require importing countries to provide compensation for the first three years of a safeguard. Similarly, exporting countries cannot retaliate for the first three years of a safeguard action if the action was taken because of an absolute increase in imports. However, exporting countries need not delay retaliation if the safeguard measure was invoked because of a relative increase in imports. The terms "absolute" and "relative" are not defined, however, nor is the timeframe within which countries may determine

■ **More rigorous petition requirements** Petitioners in anti-dumping investigations will have to demonstrate that they are actually representative of the industry on whose behalf the petition is filed. The parties supporting the petition must represent at least 25 percent of total US production of the product in question. Furthermore, more than 50 percent of the domestic producers who express an opinion on the petition to DOC must support the call for an investigation.

■ **Dumping duty exemption for new shippers** Exporters not previously covered by a DOC investigation or review but selling goods subject to anti-dumping duties have the right to petition for an expedited DOC dumping evaluation to establish their own company-specific duty rate. In the interim, while the DOC review is underway, the new shipper is not required to post duty deposits based on the margins of other companies, as required previously, but may post bonds instead. This change requires an importer to tie up only a fraction of the amount of money he would have had to spend before, thereby posing less of a cash-flow problem.

The sunset review process will automatically result in the termination of antidumping duties after five years.

■ **Tighter restrictions on the use of punitive information** DOC's current practice of using the most adverse possible information as "best information available" (BIA) for any missing facts has been somewhat circumscribed. The use of BIA, which usually was based on the allegations of the petitioner, often resulted in extremely high and unrealistic dumping margins being imposed on imports. Under the new procedure, DOC

whether imports have increased specified in the agreement.

Article 11 of the Safeguard Agreement prohibits WTO members from establishing voluntary export restraints, orderly marketing arrangements, or any other market-distorting measure. Members with VRAs or other grey area agreements in place when the WTO becomes operational must phase out these measures within four years. This provision should encourage countries to utilize safeguard procedures that are more transparent and subject to multilateral monitoring.

Standards and deadlines

The Uruguay Round seeks to ensure that under the WTO, countries resorting to safeguards follow established procedures and demonstrate that the safeguards are justified—practices not required under the GATT. A country seeking to invoke a safeguard does not need prior approval from the WTO, but must be prepared to defend its action before the Dispute Settlement Body (DSB), should it be challenged by other WTO members.

Besides defining essential terms such as "serious injury" and "threat of serious injury" and specifying how they are to be determined, the Safeguard Agreement requires that a country prove there is a causal link between the imports and the injury before it can take protective action. To satisfy due process concerns, a country must give "reasonable" notice of the proposed safeguard action and allow the affected parties an opportunity to respond. A country requesting safeguard protection can expedite procedures if delays would cause irreparable damage to its economy, however.

An investigation as to whether safeguards are warranted must be conducted by a "competent domestic authority," which would be the International Trade Commission in the United States. If an exporting country rejects the domestic authority's findings, it may file a complaint with the DSB.

Under the WTO, safeguards may be implemented only for specific periods—the GATT, in contrast, permitted countries to impose import restrictions indefinitely. Article 7.1 of the Agreement states that safeguard restrictions may remain in place for four years and may be extended if the importing country can show that the protection must remain. A safeguard may not be imposed for more than eight years, though, and must be gradually phased out during that period. Once a safeguard against a certain product has been removed, a new measure against the same product may not be imposed until a period of time has passed that is equal to the duration of the original measure.

Exceptions

Developing countries are granted special treatment under Article 9 of the Safeguard Agreement. WTO members are not allowed to implement a safeguard measure against a developing country as long as that country does not account for more than 3 percent of all imports of that particular product or the combined imports of the product from all such developing countries does not exceed 9 percent.

Developing countries safeguarding their own industries are entitled to extend the period of safeguard protection from 8 to 10 years. Moreover, Article 9.2 says developing countries need only wait for a period equal to half that of the prior measure before re-imposing the safeguard.

Whether China will benefit from these provisions is unclear. The United States and European Union have proposed that China's protocol of accession contain a special safeguard provision that would lower threshold standards for other countries wishing to protect their markets and allow selective application against Chinese exports in most instances. The protocol may include a sunset clause which will terminate the special provision after a phase-in period. Resolution of the special safeguard provision awaits resolution of the general issue of China's accession to the GATT/WTO.

—Michael Daniels and Jayme Roth

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and ITA are required to examine all of the facts on record ("facts available" as BIA has been renamed) to determine the most appropriate information for use in the case. The information used must, if practicable, be corroborated by independent sources.

New deadlines

In addition to these changes, the GATT implementing legislation puts forth a new "sunset review" procedure, though its benefits may be marginal in practice. The sunset review process will result in the automatic termination of anti-dumping duties after five years, unless a request for a review is received and DOC and ITC determine there is a reasonable indication that dumping and injury will continue or recur if the order is rescinded. Previously, duties could be imposed indefinitely unless a respondent showed its circumstances had changed, or a petitioner lost interest in the case.

Unfortunately for importers, the URAA stipulates that any improvement in the condition of a US industry following the imposition of dumping or CVD duties be presumed to have resulted from the penalty. According to this logic, if the dumping order were revoked, injury would re-occur. The exporters/importers have the burden of refuting this presumption.

These parties, however, stand to gain from URAA changes involving the process for gathering information on suspected dumpers. Until now, the foreign producer has been asked to respond to a lengthy technical request for information regarding, among other things, the basis for its export price. Completing the questionnaire could be an extremely difficult and frustrating process, especially given the short response time (often only a few weeks), language and translation difficulties (forms are provided in English only), and DOC's rigidity regarding the survey format (responses not conforming to format requirements may be disregarded). Companies that failed to respond fully to the questionnaire were assessed a high duty based on information supplied by the petitioner. The URAA requires DOC to be more flexible in its requirements, and prohibits it from rejecting incomplete or misformatted information that is otherwise usable and verifiable.

Finally, the new law will also make it easier for individual companies to file "voluntary responses" to DOC questionnaires regarding their production practices. Under the old law, voluntary respondents were subject to time limits and format requirements even more strict that those applied to mandatory respondents. As DOC is now obliged to take into account the voluntary responses filed in each case, companies that are not singled out by the DOC investigation should find it easier to obtain a company-specific anti-dumping margin, rather than be subject to a general rate covering all those exporters not individually investigated.

Protection for domestic producers

The new GATT implementing regulations also contain several changes that will likely prove adverse to US importing interests, including those buying Chinese goods. The law will restrain the ITC's current practice of treating internally consumed production of a product by a US industry in the same manner as it treats production sold on the open market. This new policy will dramatically shrink the ITC's calculations of domestic production of a particular good. If a dumping investigation involved the steel industry, for example, the ITC would no longer count the steel destined for further processing in its determination of the size of the US market. As a result, imports of steel would represent a proportionately larger share of the US market, and the ITC would likely increasingly find that injury has occurred.

A series of changes regarding how DOC calculates dumping will probably also lead to higher dumping margins. The most adverse changes involve the way DOC constructs a US price for goods imported by an affiliate of a foreign manufacturer or exporter. The new procedures for calculating "constructed export price" will result in dramatically reduced US prices, which will lead to greater dumping margins.

Changes in CVD law

Should US authorities decide that China is no longer an NME country, either with regard to a specific industry or as a whole, the US countervailing duty law will be applied to the Chinese products under scrutiny. Were that to occur, one of the provisions of the new law would, in all probability, have a profound effect on foreign exports. The provision was added to the URAA by Congress to reverse a recent Court of International Trade decision that previous subsidies to a company are extinguished by the privatization of that company.

The new law allows DOC, at its discretion, to amortize over the life of a facility subsidies received from the State before the enterprise was bought and paid for at market rates by a non-State supported entity. Theoretically, this provision means DOC might have to figure out the subsidies granted to every enterprise in the former Soviet bloc as well as in China—an impossible undertaking. No party will be able to appeal this provision until the DOC applies it in a case, which could take more than a year.

Other features of the GATT subsidies agreement as implemented in US law are potentially more beneficial to China. If and when China becomes a WTO member, certain "green light" subsidies will no longer be actionable. These include subsidies for industrial research and pre-competitive development activity; assistance to disadvantaged regions; and assistance to adapt existing plant and equipment to new environmental requirements.

The verdict

In many instances, the full meaning of the often highly technical changes in the URAA provisions will only become clear once the two administering agencies, ITC and DOC, clarify how they intend to interpret and apply the new US regulations. All in all, however, the changes to US laws are unlikely to have a significant impact on most Chinese imports any time soon. Certain procedural amendments will probably prove mildly beneficial to importers of Chinese goods and may provide them with greater impetus to participate in the ITC and DOC administrative process. However, while importers have much to gain by actively defending their interests, they have little control over the investigation process, which, though tightened under the WTO, still leaves ITC and DOC considerable latitude when determining dumping and CVD cases. 完

Textiles and Apparel Trade under the WTO

■ Brenda A. Jacobs

Significant US liberalization remains a long way off

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Thanks to the Uruguay Round GATT agreement, the massive quota system that has constrained China's exports of textile and apparel products to the US market and generated much of the trade tension between the United States and China may become a thing of the past. But the process of terminating these quotas will be slow, and perhaps even delayed for Chinese-made goods.

The Textiles and Clothing Agreement (TCA) under the Uruguay Round establishes a 10-year phase-out of the quotas established under the Multifiber Arrangement (MFA), the international agreement that provided the basis for US quotas on imports of textile and apparel products for 20 years. Though the MFA expired on December 31, 1994, the bilateral agreements negotiated between individual importing and supplier governments, such as the United States and China, remain in force. If the signatories to such bilateral arrangements are members of the World Trade Organization (WTO), the quota levels established under those agreements are now governed by the TCA. This means that the quotas must be adjusted in accordance with TCA rules.

The extent to which Chinese-made products, which have been a subject to US quotas since 1980, will benefit from the liberalization plan is far from clear. Because China is not yet a member of the GATT/WTO and because the US legislation implementing the Uruguay Round agreements creates new obstacles to liberalization of textiles trade, Chinese-made textile products may initially be disadvantaged by the results of the Uruguay Round.

Change comes slowly

As a general matter, the TCA was designed to increase opportunities for trade in the textiles and apparel sector. It liberalizes the current trading rules in two ways: by increasing and then eventually removing quotas, and by requiring all participants to provide improved access to their markets.

Thus, on January 1 this year, each industrialized nation was required to "integrate" into normal GATT rules textile and apparel products accounting for at least 16 percent of the trade (in terms of volume) covered by the TCA, using 1990 as the base year. Integration means that any existing quotas on integrated products automatically become void and no new quotas may be imposed upon such products unless there has been a determination of injury under GATT Article XIX, the safeguards provision (*see* p. 32).

Approximately three years from now, on January 1, 1998, importing nations will have to integrate another 17 percent of textiles trade, and on January 1, 2002, an additional 18 percent. By the year 2005, all textile and apparel trade should fall under normal GATT/WTO rules.

US Adopts New Textile Origin Rules

In a bid to appease a domestic industry fearful of the WTO quota liberalization process, the Clinton Administration included within the US GATT/WTO implementing legislation a major change in the rules of origin for textile and apparel products. Because of the rules change, which is scheduled to go into effect on July 1, 1996, many products that are currently considered Hong Kong or Taiwan products (because they were cut there) will be counted as PRC-made products.

The rules change came as a surprise both to US importers and foreign producers. It was slipped into the House version of the GATT implementing bill before most even knew the change was being considered. Although US importers mounted an extensive and successful campaign to preclude inclusion of the new rules in the Senate version of the GATT/WTO bill, the failure of a House-Senate conference to resolve the difference permitted the Clinton Administration to make the final call. And textile importers, who had refused to negotiate an implementation date with the Administration during the conference period, found themselves with the short end of the stick.

Industry flip-flop

The change in rules means that the place of assembly will generally determine the origin of a textile product. Under current rules, the origin of a piece of apparel depends upon the complexity of the apparel's assembly; garments requiring only simple assembly, such as the sewing together of four or five pieces, are usually considered to be made in the country in which those pieces were cut. More tailored garments, in contrast, are considered to be produced in the country of assembly. Now, both types of garments will be assigned to the country of assembly. Knitted garments will continue to be assigned to the quota of the country in which the knit-to-shape pieces were formed. For non-apparel products, such as bed linens, the country in which the fabric was produced will be the country of origin; current rules look at the country in which the fabric is cut and sewn to determine the country of origin.

While the new methods for determining origin are disturbing enough to importers, the mid-year implementation date of the rules is particularly troublesome. Since most quotas operate on a calendar-year basis and shipments do not occur evenly throughout the year, the realignment of the origin determination is likely to create substantial confusion and disruption.

The US textile industry sought the rules of origin change on the grounds that foreign suppliers were purposely splitting their manufacturing operations among various countries in order to get around US quotas; the Administration accordingly labeled the rules change a "loophole closing device." Ironically, the rules of origin were changed in 1984 from assembly-based to cutting-based—*also* at the behest of US domestic industry. At that time, however, US textile producers argued that cutting constituted a more substantial operation than sewing. The 1994 rules effectively reverse the 1984 change.

Who's hit hardest?

The new US rules of origin are expected to affect a broad range of products, from T-shirts to pants to dresses. Because the change in the rules of origin will affect existing quotas, the United States, as a signatory to the Uruguay Round agreements on clothing and textiles, must adjust those quotas to ensure that its "balance of rights and obligations" under GATT/WTO is maintained. US officials indicate they will talk with nations that come forward with adjustment requests. However, the prospect of negotiations is not popular with either the supplier nations or US importers.

In particular, Hong Kong suppliers, who stand to lose under the new rules, would prefer to maintain the status quo, which permits them to manage the lucrative quota allocation business. Importers, meanwhile, are skeptical that negotiations would ensure the continued availability of affordable goods, since US negotiators have suggested they will not increase China's quotas to compensate for the goods currently assigned to Hong Kong and Taiwan that will be charged to China under the new system.

If China is not granted additional quota, textile exports to the United States may actually fall, because high wage, tight labor suppliers in Hong Kong and Taiwan will not be able to produce sufficient quantities of goods to fill their quota levels. Separate quota administrations will prevent China from obtaining Hong Kong's quota in 1997, when Hong Kong reverts to Chinese sovereignty.

Other countries most affected by the change in US rules include Singapore, which relies on Indonesia and Malaysia to assemble goods cut in Singapore; Sri Lanka, which assembles pieces cut in Australia; and a host of African nations that are cutting and sewing bed linens from Pakistan-made fabric. Even France could be affected because silk scarves printed there are made from Chinese fabric.

US importers claim that the new Republican congressional leadership is sympathetic to their interests and may seek to introduce new legislation that would overturn the rules of origin change, or at least postpone its implementation until January 1, 1998. (The date corresponds with the three-year period established under the Uruguay Round for completion of a new program on the international harmonization of rules of origin for all products). Given the substantial lead time required to bring imported goods into the US market, however, the big question for US importers is whether such legislation could get through Congress and be signed by a reluctant Administration before suppliers and importers are forced to adjust their plans.

—Brenda A. Jacobs

The United States, through the Committee for the Implementation of Textile Agreements (CITA), the inter-agency group responsible for administering the US quota program, announced last October which products it intended to integrate first. Because 30 percent more products are included within the scope of the TCA than were covered by the MFA, no products that had been subject to MFA quotas were integrated into normal GATT rules on January 1.

The Textiles and Clothing Agreement establishes a 10-year phase-out of the quotas established under the Multifiber Arrangement.

The Uruguay Round Agreements Act (URAA), enacted last December to bring US law in line with Uruguay Round rules, requires CITA to decide by April 30 which products will be included in each of the next two integration tranches. CITA issued its proposed integration plan on January 30, and has requested written comments from interested parties. A public hearing is scheduled for mid-March.

Under the CITA proposal, some products actually under quota are scheduled to be included in the next tranche. However, these products—babies' garments (for which quotas have not been particularly restrictive), some down-filled coats, and silk products—are not considered to be particularly sensitive, since domestic producers are not threatened by these imports. Further, China is the only supplier to the US market subject to quotas on its silk exports (*see The CBR*, May-June 1994, p.13)

The United States will be able to avoid real quota liberalization until the third tranche, which begins in 2002. Even then, only a few products will be removed from the US quota program. Under the proposed CITA plan, some 70 percent of the textile and apparel goods currently subject to US quotas will remain under the quota system during the entire 10-year phase-out period. According to the calculations of a private consultant hired by US apparel importers, 89 percent of the apparel products subject to US quotas today will remain under quota until the year 2005.

Further enabling the United States to prolong the textile quota liberalization process are the TCA rules that replace bilateral agreement re-negotiations with a provision that increases existing growth rates—the amounts by which quota levels are to rise each year—gradually. According to the TCA, the increase in growth rates is to be applied in three stages, with each stage's growth to be applied on top of existing rates. During stage one, the first three years of the agreement, the level of annual growth for each individual quota is to be increased by 16 percent. For stage two, the annual growth rate is to increase another 25 percent, and during stage three, covering the last three years of the phase-out process, the "growth-on-growth" rate is 27 percent.

While the growth-on-growth feature of the phase-out process can be significant for a supplier with a high 1994 bilateral growth rate, a country like China, whose annual growth rates are currently limited by the United States to an average of about 1 percent, will find the benefits of the liberalization in growth rates quite small. For example, in the first three years, a 16 percent rise in China's 1 percent annual growth rate would yield a new rate of 1.16 percent. In the second stage, the annual growth rate would move up to 1.45 percent, and in the last stage, it would reach 1.84 percent. Not surprisingly, over the last several years the US government, anticipating the growth-on-growth obligation, was zealous in negotiating reduced growth rates in many of its bilateral agreements, particularly those with its larger suppliers.

There is one potential exception to the TCA's growth-on-growth provision. Importing governments may seek to preclude a supplier country from obtaining such benefits if the supplier provides inadequate market access for textile products. Any WTO member may bring a market access complaint before the WTO's

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Textile Monitoring Board (TMB), a 10-member body of importing and exporting government representatives, which may then authorize the importing nation not to increase growth rates for the relevant supplier at the next stage of the transition.

US plays hardball

At least three factors are expected to complicate the textile/apparel liberalization process in the United States. First, the US implementing legislation directs the US Treasury Department to change the rules of origin for a long list of products, including apparel and bed and table linens, by July 1, 1996. Rules of origin determine which country's quotas should be charged for particular imports when manufacturing of the goods occurs in more than one country. In most instances, the new rules will make the country in which assembly occurs the origin country. China, which does a great deal of assembly work on parts cut in Hong Kong and Taiwan, will be greatly affected by the rules change (*see* p.36).

Second, the United States could exclude or delay Chinese textile products from participation in the quota liberalization scheme as long as China is not a member of the WTO, or as long as the United States does not recognize China's membership in the WTO. The basis for the US threat not to recognize China's membership is Article XXXV of the GATT (or Article XIII of the WTO), under which a member country may refuse to recognize another member, so long as the two have not entered into bilateral tariff negotiations (*see* p.30).

The US government's chief textile negotiator, who is also a CITA member, stated last year that Article XXXV could be invoked to exclude China from the textile quota liberalization process. However, more recently, CITA indicated that once the PRC joins the WTO, the United States will follow the TCA requirements with respect to China. The clarification came in a December 21 *Federal Register* notice announcing the 1995 quota levels for Chinese products, in which CITA stated that China's quota levels may be adjusted to include the 16 percent increase in the growth rate should China join the WTO.

Even so, US domestic industry advocates are suggesting that China should not simply be able to join the phase-out in mid-stream. Instead, US industry contends that China should have to follow a full 10-year phase-out schedule, beginning with the date the United States recognizes China's membership in the WTO. Time will tell whether that threat is real.

> CITA has indicated that once the PRC joins the WTO, the United States will follow the TCA requirements with respect to China.

Growth of China's textile exports to the United States will still be tightly controlled in the early years of the WTO.

Photo courtesy of Pamela Baldinger

The final factor complicating US liberalization of textile quotas stems from the TCA's "transitional safeguard" mechanism. Under this mechanism, if CITA determines that imports of a particular product are causing "serious damage," a term which is not specifically defined in the TCA, it will be able to establish quotas on *all* unrestrained supplier countries of that product. This right to act globally is substantially broader than that permitted under the MFA.

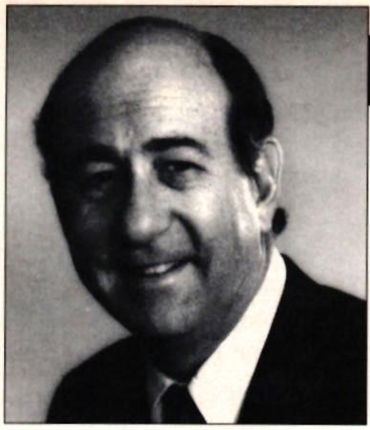
Under that agreement, before CITA could request consultations with a particular country for the purpose of negotiating a quota, it had to determine that imports of a certain category of products from that country were causing—or threatening to cause—"market disruption." Thus, under the MFA, the injury determination was both product- and country-specific. Now, the injury must only be product specific, and once an injury determination is made, the importing country can seek a quota with any supplier whose exports of that product are "increasing sharply and substantially," no matter how minimal its exports to the United States.

As a result, under the WTO there could be a proliferation of very small quotas that might not have been justifiable under the MFA. Furthermore, those quotas will be permitted to remain in place for up to three years, unless the product is integrated into normal GATT rules before then. The size of the quota is determined by a formula set out in the TCA and, at a minimum, is equal to the volume of trade during a recent 12-month period. Under the URAA, the determination of whether there is serious damage will be made by CITA. All such determinations will be reviewed by the TMB.

Disappointment for China

US importers of Chinese goods who had been looking forward to the prospect of a quota-free environment are bound to feel disappointed, if not deceived, by the gap between the textile liberalization rhetoric and reality. The terms of the TCA and URAA and the back-end loading of the quota phase-out process will slow implementation of market-opening measures.

The quota liberalization process itself is also bound to be rocky, especially with respect to China, the world's biggest textile supplier. US domestic industry leaders have made it clear that they expect much in return for the protection domestic producers will lose under the WTO and they will be watching carefully to ensure that US officials look out for US textile manufacturers' interests. Under these circumstances, no long-range business plan can afford to exclude the possibility that domestic industry interests may demand further "temporary" extensions of protection as the day that most quotas are to be eliminated appraoches. 完



INTERVIEW

Pushing US Exports

Over the past 60 years, the Export-Import Bank of the United States, an independent agency of the federal government, has helped finance more than $300 billion worth of US exports. Ex-Im Bank backed over $15 billion in US exports worldwide last year, including $5.3 billion worth to Asia. Of this figure, $1.3 billion worth went to China—a 63 percent increase in Ex-Im support over the previous year. China is now Ex-Im's largest customer in Asia, and one of its top clients worldwide.

Headed by Chairman and President Kenneth A. Brody, who joined the agency in 1993 after spending 20 years at Goldman Sachs, Ex-Im Bank has made a number of changes to its programs over the last 18 months, including the establishment of a new project finance program to boost US competitiveness abroad. CBR *Associate Editor Vanessa Lide Whitcomb recently spoke with Brody about these developments and their impact on US business in China.*

Q What programs does Ex-Im Bank offer US companies exporting to China?

A Ex-Im Bank has recently been restructured from A to Z. Our objective is to be much more service-oriented to exporters of all shapes and sizes, while at the same time giving good value to the taxpayer. Our major areas of emphasis are project finance and small business. Obviously, project finance has great potential application in China as the country has tremendous infrastructure needs—particularly in the areas of power, telecommunications, and transportation—and since the Chinese government appears to want to finance much of this development through the private sector.

Q Ex-Im Bank set up a project finance division in 1994 to provide limited-recourse financing for the first time (*see* box). Where does the program now stand, and when can we expect the first approvals for China to be announced?

A As 1995 unfolds, I think it will become clear that Ex-Im Bank is a leader in project finance. I believe that countries seeking project finance will show they want to do business with us by putting more US exports into their projects than they otherwise would have. Our project finance group was fully established last September, and is headed by two professionals, each with more than 10 years of experience in the private sector. In addition to our internal group, we have five outside project advisers, giving us unique ability to assess the merits of each project.

We held our first project finance seminar in mid-February in Hong Kong. We're telling the world how Ex-Im Bank operates to their benefit; if [government policymakers, project developers, lenders, and US exporters] are able to use us, they can achieve substantial benefits.

We are already working on a number of project finance deals in China. Some are pretty far along, but I can't talk about them in public. The actual timing of when the first project will go forward is not within our control; it depends upon the project sponsors and the Chinese government, both at the local level and in Beijing.

Q Do you think Ex-Im Bank will be able to approve some China project-finance deals this year?

A I sure hope so! I would be very surprised if this were not the case.

Q The practice of tied-aid financing in China is another subject of great importance to our readers. What is Ex-Im Bank doing to help US exporters compete with foreign companies?

A Tied-aid certainly is an important area for us. Our view, simply put, is that the United States cannot afford to have its companies continually lose major business because other countries are giving low-interest, long-term loans and tying the sale of goods and services to those loans. So our objective is to continue to reduce the tied-aid activity of others.

That said, we believe that unilateral disarmament will not convince others to act as we want, so we set up a new tied-aid matching fund last year. Now if someone else offers tied-aid financing in China or another country, we'll be there to match the terms for US exporters. This achieves two objectives. First, it provides a level playing field for US exporters. Second, over time, there will be an overall reduction in the use of tied-aid in the world.

Q **What are the early results?**

A The signs are good. We've made tied-aid counteroffers worth about $500 million since last spring. In a number of cases, other countries have pulled back their offers after we issued ours; in other instances, the US exporter used our matching funds to win a piece of the project. A number of our counteroffers have been made for projects in China. We'll see what happens.

Q **Isn't there a danger that in dealing with a country like China, which has become quite good at soliciting tied-aid funds, you run the risk of falling into a "how low can you go" bidding war to promote US exports?**

A We make matching offers only; there's no incentive for anyone to start a bidding war. Everyone knows we would simply match the offer, which would negate any advantage a country hoped to get by offering tied-aid in the first place.

Q **What does a US company have to do to get a tied-aid offer from Ex-Im Bank? Does the company itself bear the burden of proof?**

A The US company must come to us or to a US embassy. To get a preliminary match offer from Ex-Im Bank, the US company simply needs to tell us that there's a tied-aid offer standing in its way. For a final offer, proof [of the offer] is needed. We previously required proof even for a preliminary offer, and that was impossible to obtain in many cases.

Q **You also mentioned Ex-Im Bank's programs for small businesses—what's happening on that front?**

A The US government has made the decision that exporting—and instilling an "export mentality" in our country—is important for the future prosperity of America. What naturally follows are outreach, information, and financing programs for small- and medium-sized businesses.

The outreach and information functions are provided through four recently established Export Assistance Centers, which we operate jointly with the Department of Commerce and Small Business Administration (SBA). By the end of the year, businesspeople will be able to get assistance and advice on exporting at one of 15 such centers. Ex-Im Bank programs are basically able to provide any level of export assistance, though we leave requests for guarantees under $750,000 for SBA to handle.

We have substantially stepped up our finance and loan programs. Our pre-export working capital guarantee program [which covers 90 percent of the principal and interest on commercial loans to creditworthy small- and medium-sized companies], expanded to about $180 million last year. We achieved this big jump over the previous year's levels by making some technical changes: our previous guarantee, which wasn't particularly good, was replaced by a better one. Commercial lenders are now more willing to rely on Ex-Im guarantees to make those loans.

As a small agency, we found ourselves unable to process large numbers of small deals, so we've now delegated authority to banks. As a result, we now have 40 banks able to approve pre-export working capital deals directly, without coming to us. We just need to check up on [the banks] occasionally to make sure they're doing the right thing.

Actually, insurance is our biggest program for small businesses; it's easy to use and has great appeal. We took our old program, which offered coverage for one year or less, and introduced a five-year program so that receivables are insured for a longer period. Once the receivables are insured, the US exporter can sell them off or borrow against them. To get the private sector working with us, we substantially increased the commissions we give to insurance brokers to give them more incentive to market our program—similar to what we did with the banks. We think this will pay off.

Q **You visited China last fall; how do you perceive the business climate there for US exporters backed with Ex-Im Bank support?**

A China is a large country trying to manage an enormous transition, and it's no easy task. China has a very competitive environment with enormous potential, though there will be lots of bumps along the road. In the short term, there are some problems that limit the effectiveness of our programs. In project finance, for example, [the Chinese] have not got their act together. But it's a short-term problem, one I think they will get over.

Q **There has been some discussion that Ex-Im Bank will soon open its first foreign office in Beijing. Where does this proposal now stand?**

A Not an office; we will put a person in the US embassy to answer questions from US companies and the Chinese about Ex-Im Bank programs. We have no official target date for this, but I would hope to have someone in Beijing before the end of this summer.

Q **There's no question that 1994 was a phenomenal year for Ex-Im Bank; the agency's overall support for US exports stayed near the record levels set in 1993, while authorizations for Asia were up 15 percent. To what do you attribute the huge jump in Ex-Im activity in Asia, particularly in China?**

A There are a number of factors, really, including both the region's and China's growth; the increasing interest and sophistication of US exporters; and Ex-Im's shaking off some of its own stodginess.

Q **What do you see in 1995 for Ex-Im Bank?**

A I expect continued growth in the level of support available for US exports worldwide, and a continued focus on Asia and China.

Q **Aren't you concerned about the impact of the Republican Congress on Ex-Im Bank financing?**

A I don't try to predict Congress. But Ex-Im Bank is more important and more needed than ever before, and it would be a clear mistake to lose ground now.

Ex-Im Bank Programs

Project Finance

At a November 1994 conference co-sponsored by the US-China Business Council, Ex-Im Bank President Kenneth Brody noted his agency has "unlimited funds available for project finance in China." Project finance, unlike traditional financing arrangements available through Ex-Im Bank, does not require a guarantee from a foreign government or bank. Instead, Ex-Im Bank will now participate in a limited-recourse financing arrangement, accepting a project's anticipated returns as a guarantee.

Since announcing its intention in 1994 to set up a project finance division, Ex-Im Bank has processed two power plant loans in the Philippines and has received a number of applications from US companies seeking to use the project finance approach in China. There is no maximum or minimum size for these projects, and the agency can provide a combination of direct loans and guarantees for commercial bank loans. Because repayment of any loan depends on the ultimate success of the project itself, Ex-Im Bank requires substantial information on estimated project costs, risks, offtake agreements, pricing structure, demand projections, marketing strategies, and other factors that will affect the rate of return. Final approvals for project finance applications, therefore, can take considerably longer to process than other Ex-Im loans or guarantees.

Tied-Aid Capital Projects Fund

Under the 1992 Helsinki Agreement, the United States and other Organization for Economic Cooperation and Development (OECD) members agreed to abide by common guidelines discouraging the use of tied-aid, or the practice of tying "soft" or low-interest government loans to the receiving country's purchase of the lending country's goods and services (*see The CBR*, March-April 1993, p.36). US companies vying for projects in China, however, still sometimes find themselves outbid by European, Canadian, and Japanese competitors backed by tied-aid offers.

The US government continues to endorse the 1992 OECD guidelines, which require any country offering tied-aid to seek an OECD consensus. But US policy toward tied-aid began to shift when the Clinton Administration decided a more aggressive program to match tied-aid offers by other countries would help US exporters compete and also make other countries realize that their tied-aid would no longer ensure exports.

Ex-Im Bank's Tied-Aid Capital Projects Fund was set up in 1994 to provide an early intervention mechanism when a US exporter faces a disadvantage from a foreign competitor backed by tied-aid. Under the agency's new program, the US company can inform Ex-Im Bank of its suspicions and receive a preliminary US offer to match the terms of its competitors. If the US company wins the bid, Ex-Im Bank will process the soft loan or mixed credit after it receives evidence that the initial tied-aid offer exists. Such documentation can include an OECD tied-aid notification, a letter or reference to the financing arrangements by the recipient or donor government, or confirmation by a US embassy.

To date, Ex-Im Bank has made preliminary match offers to help US companies bid competitively on a number of projects, including several in China. In several cases, the country offering concessionary financing withdrew its offer when Ex-Im Bank matched it. As *The CBR* goes to press, however, no US company has used a final Ex-Im Bank match offer to bid successfully on a project in China.

Programs for Small Businesses

According to US Census Bureau estimates, more than half of the US companies that export employ less than 20 workers. Ex-Im Bank, working with the Small Business Administration (SBA), has been aggressively promoting US exports by small- and medium-sized firms through a number of different programs:

- **Working capital guarantees** are designed to help smaller exporters obtain pre-export financing. The program provides an Ex-Im Bank guarantee of 90 percent of the principal and interest on working capital loans extended by commercial lenders. In a change from previous practice, certain lenders can now offer exporters up to $2 million directly in Ex-Im Bank-backed loans or credits, reducing the paperwork and time required for US exporters to obtain financing.

- **Export credit insurance** protects companies in case the foreign buyer fails to live up to his credit obligations for commercial or political reasons. Ex-Im Bank insurance is available from the agency itself, from a regional office or Export Assistance Center, or from an insurance broker. Companies just beginning to export that meet the SBA definition of a small business can apply for short-term (up to 180 days) policies in which Ex-Im Bank assumes 95 percent of the commercial risk and 100 percent of the political risk of extending credit to an overseas buyer. Longer-term policies are also available.

CONTACTS

For More Info

Information on all of these programs is available from the Ex-Im Bank Business Development Group.

Tel: 202/565-3900
Fax: 202/565-3931

China Employment Manual

China Investment Manual

China Trade and Marketing Manual

edited by Donald Lewis and Duncan Freeman. Hong Kong: Asia Law and Practice Ltd., 1994. $210 per volume, softcover.

Any company looking East should buy these guides to doing business in China, which may be purchased as a set or individually. Human resource managers will find the employment manual particularly valuable, while companies seeking to penetrate China's domestic market can obtain much useful information from the trade and marketing volume. Foreign investors, too, will not be disappointed with the guide designed for their use.

Readers familiar with other Asia Law and Practice publications will recognize the helpful abstracts and analyses of key PRC laws and regulations that are the trademarks of this publisher. But these well-written manuals provide a wealth of details on China's business environment as well. Each volume contains a nicely organized table of contents, and the text is arranged by topics in alphabetical order, making it easy to locate specific information. Appendices to the volumes provide model contracts, government tax forms, and the texts of major laws and regulations.

As with all reference guides to China's rapidly evolving commercial environment, these volumes contain some information that is already outdated. Nevertheless, the books are still useful. For example, the explanation of how to create salary packages for local hires and expatriates in the *China Employment Manual* is still applicable even if the information on salary scales in major cities is a bit old. *China Investment Manual* is valuable for readers seeking insight on contract negotiations and approval procedures; joint-venture taxation; and intellectual property rights (IPR). The *China Trade and Marketing Manual* addresses the murky, critical issues of sales and distribution in China. Much of this volume explains the differences between various forms of contracts, but advertising, tax, and IPR issues are also covered.

— *Richard Brecher*

Richard Brecher is director of the Council's business advisory services in Washington, DC.

The National Economic Atlas of China

Hong Kong: Oxford University Press, 1994. 314 pages. $400 hardcover.

This huge volume is a map-lover's dream. Supported by the State Planning Committee and three other Chinese institutions, *The National Economic Atlas* is one piece of the four-volume "National Atlas Series," a project begun in 1958 and halted during the Cultural Revolution. Research to complete the series was resumed in 1981, and led to the publication of this book.

Both beautiful and useful, the atlas is a treasure-trove of information. Over 300 color maps illustrate everything from population density to mineral deposits to productivity of the industrial workforce. Four companion booklets provide an explanation of each map as well as a brief analysis of the development of the relevant sector or trend being depicted. Due to the long lead time necessary to compile the information and print the volume, however, the data for most maps only goes up to 1989.

If *The National Economic Atlas* has a drawback, it's the book's unwieldy size and weight. Nearly 18 inches high, the atlas weighs around 10 pounds. Nevertheless, the large pages make the maps easier to read than those in more conventionally sized books.

Filled with both general and specific sectoral information, *The National Economic Atlas* would make an excellent addition to any company's reference library. Let's hope that Oxford University Press and the Chinese team up again to create the historical and agricultural atlases that will complete the national series.

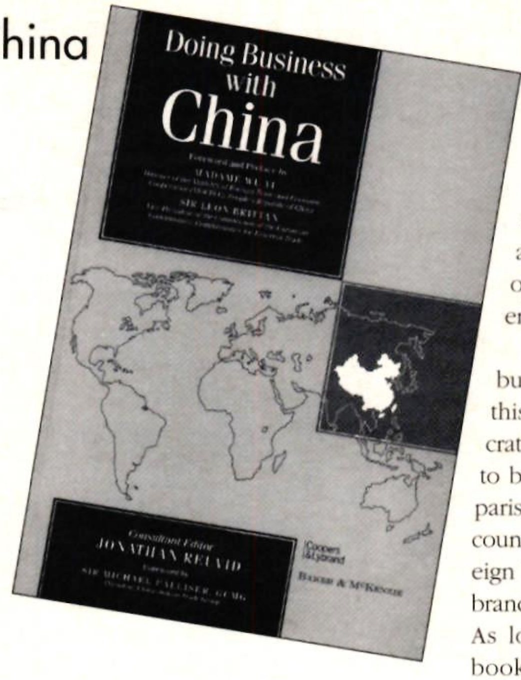
—*PB*

Doing Business with China

edited by Jonathan Reuvid. New York, NY: Kogan Page Ltd., 1994. 672 pp. $120, softcover.

Readers planning to buy this book should first understand what this reference guide contains—and more important, what it does not. The book provides the official PRC view of Chinese laws and regulations and offers some valuable information, including an overview of China's macroeconomic conditions in 1993, a rundown of the PRC's foreign trade policies and administration, and well-organized lists of major foreign-invested enterprises in several Chinese cities. However, this weighty volume does not provide practical advice on common business practices in the PRC or critical analysis of the laws and regulations it covers.

The section on the legal framework for foreign representative offices and branch operations, for example, would be much improved if framed in a clear-cut, "how-to" manner. Sections on intellectual prop-



erty rights protection, foreign-exchange balancing, and commodity inspection, likewise, would be far more useful if they described how business practice differs from the published guidelines.

The book's assortment of authors—PRC government officials, Hong Kong consultants, and American lawyers and accountants—is the heart of the problem. With such a diverse set of interests represented on its pages, *Doing Business in China* clearly lacks a central organizing theme or style, and is more useful as a source of facts and figures than as a guide to one of the world's most opaque and complicated commercial environments.

As with most books featuring contributions by PRC government officials, this volume suffers from stiff bureaucratic writing. That said, there is much to be gleaned from this guide: the comparison of US, PRC, and international accounting standards and the listing of foreign bank representative offices and their branches in China are particularly useful. As long as the reader is aware of the book's limitations and has ample patience, *Doing Business in China* can be a worthy addition to his business reference collection.

—Peng Qiren

Peng Qiren is an independent consultant on China trade based in New York.

KOMPASS China 1994/95

Volume I: Products and Services; Volume II: Company Information

West Sussex, England: Reed Information Services, 1994. $325, hardcover; $495, CD-ROM.

UK-based Reed Elsevier PLC Group and the Computing Center of China's Ministry of Foreign Trade and Economic Cooperation (MOFTEC) have teamed up to produce this excellent reference guide that provides detailed product and contact information for Chinese companies. Volume I contains data on 55,000 different products and services available in China—from abaca fibers to zinc clinker; Volume II lists contact information for 50,000 Chinese enterprises in all provinces and major cities.

A real bonus is each directory's comprehensive index. Readers can simply turn to Volume I to look up items, such as "heat exchange coils" or "pipe coupling seals, bituminous," and locate Chinese manufacturers of these products. Volume II provides the address, phone and fax numbers, names of factory directors, number of employees, office hours, and sale turnover in *renminbi* for each enterprise. The set is easy to use and lists major product and service categories in English, French, and German.

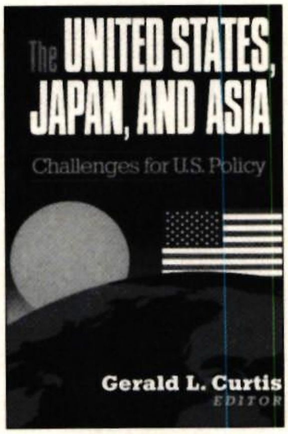
Because the volumes are cross-referenced, *KOMPASS China* is a substantial improvement over the classic *1989 China Directory of Industry and Commerce*, which is no longer being updated. At $325 for the set, the two volumes are reasonably priced, considering the depth of information provided. The information in both volumes can also be perused quickly and easily in the CD-ROM format, but the read-only disc does not allow for any data manipulation. Thus, the user cannot download a series of companies and print the file.

The main drawback to this first edition is that not all of China's enterprises are included. Still, 50,000 companies constitute a large base, and the publishers plan to expand the number of Chinese enterprises included in *KOMPASS China* each year. Companies that wish to explore sourcing options or seek potential joint-venture partners in China will find this set a good investment. *—Dan Martin*

Dan Martin is a business advisory associate at the US-China Business Council.

The United States, Japan, and Asia: Challenges for US Policy

edited by Gerald L. Curtis. New York, NY: W.W. Norton & Co., 1994. 288 pp. $9.95, softcover.



A discussion of trade and economic relations between the United States and Japan cannot be complete without taking into account China's potential impact on the balance of power between these two economic giants. Compiled by Columbia University's American Assembly, this volume looks at how each country plays its "China card" and examines the trilateral relationship among the three countries amid the rapidly changing East Asian region. The book's authors, experts on US policy in Asia, discuss whether the United States can compete with Japan economically in Asia and if a secure and peaceful Asia is attainable given China's growing economic and military muscle and the reduced US military presence in the region.

Akira Iriye's opening essay dissects US-Japan relations from the early 20th century through subsequent periods of harmony and discord. Throughout the years, China has proved both a divisive—during World War II, in particular—and unifying element in the relationship. Michel Oksenberg, who looks at the history of the trilateral relationship, argues that the United States and Japan must consult each other on China policy, but need to be careful not to provoke Chinese fears of conspiracy. Oksenberg concludes that although the United States and Japan will have to deal with a "sprawling, territorially amorphous, culturally confident, socially undisciplined, economically vibrant, and politically messy China" in the near future, they can help maintain regional security and economic stability with sustained consultation and coordination with Beijing.

Thomas McNaugher, meanwhile, claims that an economically and militarily strong China is a potential threat to its smaller East Asian neighbors, making a stronger US military role in Asia crucial to the region's stability. Bruce Stokes and C. Michael Aho argue that Washington also needs to encourage greater US economic cooperation with Asian countries, and should provide better government programs to stimulate US exports to the region. Gerald Curtis sums up the various schools of thought on US policy in the region and suggests a framework for solid US approaches to Japan and Asia.

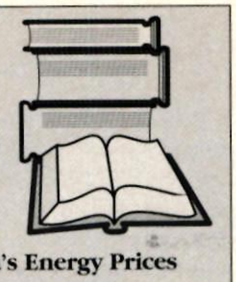
All the authors support the notion that the United States should rely increasingly on economic cooperation and alliances rather than on military and strategic might to stay competitive in Asia. As China's growing economic and military strength could tilt the US-Japan balance of power in the region, US policy must try to keep China cooperative, rather than hostile, to US interests. The book provides a blueprint for the United States and Japan to work together successfully to guard against potential Chinese territorial advances and make sure Asia evolves into a peaceful and prosperous region.

The American Assembly and Gerald Curtis deserve accolades for producing this collection of essays. The authors are extremely knowledgeable, and although some of the arguments will not be popular, their theories are logical and well articulated. For businesspeople with interests in Asia, this book provides a glimpse into the types of government policies that could improve the business environment.

—Caitlin Stewart Harris

Caitlin Stewart Harris is circulation manager of The CBR.

Books Received



A Survey of Asia's Energy Prices
by Anil K. Malhotra, Olivier Koenig, and Prasert Sinsukprasert.
Washington, DC: World Bank Publications, 1994. 184 pp. $11.95, softcover.

China Since the Cultural Revolution
by Jie Chen and Peng Deng.
Westport, CT: Greenwood Publishing Group, 1994. 144 pp. $49.95, hardcover.

China Under Reform
by Lowell Dittmer.
Boulder, CO: Westview Press, 1994. 228 pp. $19.95, softcover.

Chinese Foreign Policy
edited by Thomas W. Robinson and David Shambaugh.
New York, NY: Oxford University Press Inc., 1994. 644 pp. $59, hardcover.

Directory of Officials and Organizations in China
by Malcolm Lamb.
Armonk, NY: M.E. Sharpe, Inc., 1994. 1355 pp. $160, hardcover.

Harvesting Mountains: Fujian and the China Tea Trade
by Robert Gardella.
Berkeley, CA: University of California Press, 1994. 259 pp. $40, hardcover.

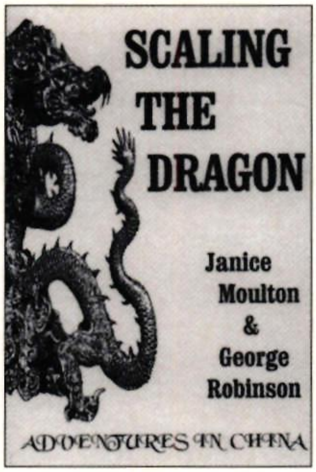
On Leaving Bai Di Cheng: The Culture of China's Yangzi Gorges
by Caroline Walker, Ruth Lor Malloy, Robert Shipley, and Fu Kailin.
Toronto, Canada: NC Press Limited, 1994. 263 pp. $16.95, softcover.

The Chinese Financial System
by Cecil R. Dipchand, Zhang Yichun, and Ma Mingjia.
Westport, CT: Greenwood Publishing Group, 1994. 240 pp. $59.95, hardcover.

Scaling the Dragon

by Janice Moulton and George Robinson. Notre Dame, IN: Cross Cultural Publications, Inc., 1994. 258 pages. $19.95, softcover.

Scaling the Dragon is an enlightening personal account of the trials and tribulations of two Smith College research associates who spent a year at Wuhan's Central China University in the 1980s. The book is aimed at both business travelers and exchange scholars planning to work and live among Chinese on a full-time basis.



From the outset, Moulton and Robinson emphasize that foreigners face significant cultural and social challenges in China. Through their experiences dealing with such common problems as overcoming language barriers, haggling with merchants, and coping with the Chinese bureaucracy, the authors are able to impart practical lessons to businesspeople negotiating contracts in China. They stress that patience, compromise, personal connections, and respect for Chinese authorities are indispensable to conducting successful meetings and negotiations in the PRC.

The authors urge readers to understand the significance of "face," or reputation, and the importance of information that can be used to secure favors or ruin a reputation. Moulton and Robinson also discuss the Chinese use of social pressure to enforce compliance and conformity, and the widespread use of the "indirect approach," a method of criticizing without taking responsibility for assigning the blame. For example, if a Chinese official's English is not very good, his Chinese subordinates would not tell him so directly. Rather, they would say that American experts criticized his speech.

Scaling the Dragon is both entertaining and informative. Through acute observations, Moulton and Robinson are able to look at China both as insiders and outsiders. Furthermore, they are able to compare the cultures of the United States and China in a critical, objective manner, setting this book apart from many of the "how to deal with the Chinese" books currently flooding the market.

—Meredith Gavin

Meredith Gavin, a graduate student in East Asian Studies at the George Washington University, is a research assistant at The CBR.

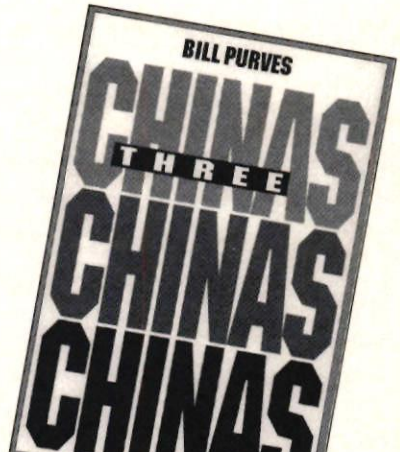
Three Chinas

by Bill Purves. Toronto, Canada: NC Press Limited, 1994. 205 pp. $16.95, softcover.

Three Chinas succeeds superbly in providing a snapshot of life in China, Taiwan, and Hong Kong. The author, a Canadian engineer, chronicles the worries, joys, and daily grind of people living in the rapidly changing societies that together comprise the entity called "Greater China."

Purves follows the life of a computer science professor in Taipei, an administrator in an exclusive Hong Kong social club, and a physician in the inland Chinese city of Hefei. The first chapter provides an overview of the common culture shared by these three individuals, from language to eating habits. From there, Purves examines their different lifestyles, providing an enormous amount of detail—from a complete description of each person's home to an overview of telecommunications facilities in their areas of residence. The rest of the book analyzes such important issues as health care, education, money, and marriage, revealing how each locale differs from the other.

Business readers will find the book most useful in describing the environment, hospitality, and entertainment aspects of life in the three areas. While Purves describes how mainland China still lags behind Taiwan and Hong Kong in such areas as health and environmental safety, it is changing rapidly. At the same time, he implies that residents of China, unlike those of Taiwan and Hong Kong, focus too much on personal connections (*guanxi*) as a means of achieving their goals. Purves is hesitant to suggest that the three components of Greater China will become fully integrated in the near future, but hints that traditional institutions like the close-

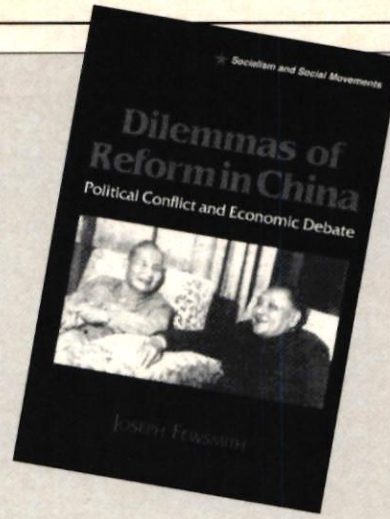


knit Chinese family may provide a basis for future unity.

—Alan Kahn

Alan Kahn, a graduate student at the School of International Service at American University, is currently an intern with the US-China Business Council.

Dilemmas of Reform in China: Political Conflict and Economic Debate



by Joseph Fewsmith. Armonk, NY: M.E. Sharpe Inc., 1994. 289 pp. $21.95, softcover.

This absorbing study highlights the debate between Chinese intellectuals and officials over the course of the PRC economy. Drawing heavily on the writings of Chinese policymakers and economic researchers, Fewsmith, a professor at Boston University, clarifies the links between the various schools of Chinese economists and the recurrent leadership struggles at the highest level of the Communist Party during the 1978-89 period.

In the early- to mid-1980s, it seemed to many Western observers that China's economy was following a linear course: liberalization in one sector led inexorably to liberalization in another. But as the decade progressed, the line became harder to follow. A policy breakthrough in one area created obstacles and bottlenecks in another; this season's infatuation with management reform faded with next season's flirtation with price control. A reformist paper from a relatively obscure academic could become, sometimes overnight, the acknowledged foundation for policy decisions at the highest level, only to be eclipsed in a few weeks or months by a new policy from the top. Beijing often made ominous political attacks on the authors of discarded policies and, implicitly, their patrons in leadership positions.

While Fewsmith notes that much recent Western research has concentrated on local-level politics in the PRC, his account of the schisms and debates at the top brings us back to the leadership contest among the small group of senior and generally elderly Party officials at the core of China's policymaking process. We can hope that what Fewsmith terms the Chinese Communist Party's tradition of "struggle for total victory," in which the advocates of rejected policies are politically destroyed, has been put to rest in the 15 years since the end of the Cultural Revolution. But it seems very likely that in the future, as in the past, the debate over macroeconomic policy will once again be "inextricable from the contention for power."

—*Robert A. Kapp*

Robert A. Kapp is president of the US-China Business Council.

War and Peace with China

by Marshall Green, John H. Holdridge, and William N. Stokes. Bethesda, MD: DACOR Press, 1994. 211 pp. $15, softcover.

A fascinating oral history of the careers of three respected foreign service professionals, this book covers the turbulent decades between World War II and President Nixon's historic visit to Beijing in 1972. The authors do not attempt to rewrite history; instead, they recount their own experiences, making the book necessarily subjective and leaving some holes in its coverage. No criticisms are warranted, though, as the authors report and analyze in the best foreign service tradition what happened on their various watches.

William Stokes was the first of the three to be posted to China, arriving soon after the defeat of Japan in 1945. He witnessed the failure of both Americans and Chinese to avert the eventual complete breakdown of communication between Washington and the new communist government of Beijing. The first part of the book describes the authors' experiences with the consequences of that fateful break: the Korean War, PRC-assisted insurgencies in Southeast Asia, and the failed communist coup in Indonesia.

US perceptions of China began to change in 1967, however, evidenced by Green's account of his conversations with Richard Nixon, then a New York lawyer. At that time, Nixon already argued that "any American policy toward Asia must come to grips with the reality of China...Taking the long view, we simply cannot afford to leave China forever outside the family of nations." The book then details the slow but steady thawing of US-China relations, culminating in the 1972 Nixon visit and the signing of the Shanghai Communique.

Of particular relevance today are the book's descriptions of how these professional China analysts could look beyond Mao Zedong's bluster and the threat posed by PRC and Soviet foreign policy collusion and recognize the underlying political and economic factors at work in China that might, if properly encouraged, lead to favorable changes in the US-China relationship. China specialists in business or government today would do well to follow the analytical approach these writers describe and look beyond conventional wisdom when assessing China's likely future path. All of us want to know whether China will keep growing and become more open to foreign business and ideas, or whether it will sink back into repression and xenophobia. Though the book does not answer these questions, it inspires all with a vested interest in China's future to read the signs as carefully as its authors did during the first 23 years of US-PRC history.

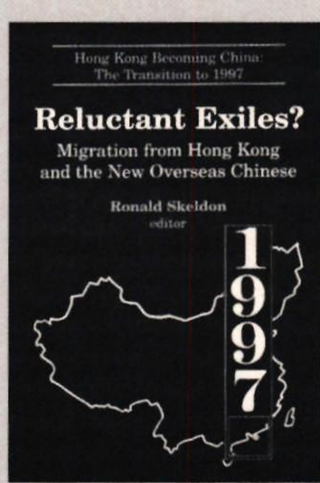
— *Roger W. Sullivan*

Roger W. Sullivan is a retired foreign service officer and former president of the US-China Business Council.

Reluctant Exiles? Migration from Hong Kong and the New Overseas Chinese

edited by Ronald Skeldon. Armonk, NY: M.E. Sharpe Inc., 1994. 380 pp. $27.50, softcover.

Part of the publisher's "Hong Kong Becoming China: The Transition to 1997" series, *Reluctant Exiles* examines the phenomenon of Hong Kong emigration to North America, Australia, Britain, and Singapore from the mid-1980s to the present. Unlike the wave of Chinese emigration to the United States in the 19th century and again after the passage of the New Immigration Act of 1965, many recent Hong Kong emigrants—over 305,000 individuals left the territory from 1987-92 alone—were motivated by political concerns in their homeland rather than economic opportunities in the host countries. *Reluctant Exiles* focuses on this unusual trend.



Through multiple country profiles, the authors, mostly social scientists, examine the social and economic backgrounds of the emigrant families, their reasons for leaving Hong Kong, and the problems they experience finding jobs and adapting to the ways and customs of their new homelands. Except for the article on Chinese immigrants in Britain, in which Hugh Baker of London University spends a considerable amount of time discussing the immigrant situation before 1983, most of the essays focus on Hong Kong's current emigration trends.

The authors conclude that most Hong Kong emigrants are reluctant to leave the territory and lack the desire to stay in their adopted countries. According to the Hong Kong government, as many as 50,000 of the 400,000 emigres who left Hong Kong in the past 10 years have returned to the territory, armed with new passports and determined to cash in on China's economic growth. Many recent Hong Kong emigres spend so much time flying back and forth between Hong Kong and their countries of residence that they are known as "spacemen" (*taikongren*)—certainly a more humane description than "aliens," as many are classified in their new homelands.

—MH

Precarious Balance: Hong Kong Between China and Britain 1942-1992

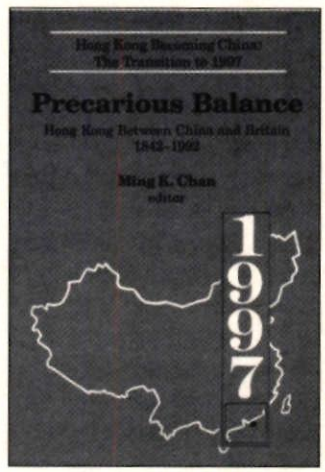
edited by Ming K. Chan. Armonk, NY: M.E. Sharpe Inc., 1994. 248 pp. $22.00, softcover.

The reasons Hong Kong residents choose to leave and return to the territory are further elucidated in this excellent account of the sunrise and sunset of British Hong Kong. The editor, Hong Kong University history professor Ming K. Chan, has assembled 10 original studies by academics and local experts on the major political and legal turning points in the 155 years of British rule of the colony.

Leased by Qing Dynasty rulers to Britain for 99 years in 1898, British Hong Kong was long the model for colonial rule elsewhere in the British Empire. The Europeans and the Chinese formed separate communities, living in separate quarters of the city. Until 1991, when Hong Kong enacted the Bill of Rights Ordinance, there was no constitutional prohibition of racially discriminatory laws in Hong Kong and statutes such as the Peak District (Residence) Bill permitted only Europeans to live in the most exclusive neighborhood of the island.

After the mid-1950s, the colony became an export and financial dynamo, thanks to the development of the textile, toy, and electronics industries. According to Hong Kong University researcher John D. Young, the colonial government was the main facilitator of Hong Kong's resulting prosperity, in massive housing, education, and medical programs that improved the territory's living standards.

Now, British Hong Kong faces its last great challenge: how to make sure the economic miracle continues after Britain cedes sovereignty of Hong Kong to the PRC on July 1, 1997. Although *Precarious Balance* does not predict how modern



Hong Kong will be managed as a Chinese territory, this book can deepen businesspeople's understanding of Hong Kong's remarkable political, social, and economic evolution in the twilight of British rule.

—MH

■ Meredith Gavin

The following tables contain recent press reports of business contracts and negotiations exclusive of those listed in previous issues. For the most part, the accuracy of these reports is not independently confirmed by *The CBR*. Contracts denominated in foreign currencies are converted into US dollars at the most recent monthly rate quoted in the International Monetary Fund's *International Financial Statistics*.

Firms whose sales and other business arrangements with China do not normally appear in press reports may have them published in *The CBR* by sending the information to the attention of the editor.

SALES AND INVESTMENT November 1, 1994-January 15, 1995
Foreign party/Chinese party **Arrangement, value, and date reported**

Accounting and Insurance

OTHER

Prudential Corp. PLC (UK)
Opened representative offices in Beijing, Guangzhou, and Shanghai. 1/95

Coopers & Lybrand (US)
Opened representative office in Dalian. 12/94

Price Waterhouse (US)
Established accounting and management training center in Shanghai. $500,000. 12/94

Willis Corroon Overseas Ltd., an affiliate of Willis Corroon (UK)
Opened office in Beijing. 12/94

Nippon Life Insurance (Japan)
Opened representative office in Shanghai. 11/94

Agricultural Commodities and Technology

CHINA'S IMPORTS

Jaques Hall & Co. (UK)/Ministry of Agriculture
Will sell poultry houses for chicken breeding. $1.3 million. 12/94

OTHER

US Department of Agriculture
Authorized credit guarantees for sale of US agricultural products to China. $100 million. 12/94

Abbreviations used throughout text: BOC: Bank of China; CAAC: Civil Aviation Administration of China; CNAIEC: China National Automotive Import-Export Corp.; CATIC: China National Aero-Technology Import-Export Corp.; CITIC: China International Trust and Investment Corp.; CITS: China International Travel Service; CNOOC: China National Offshore Oil Corp.; ETDZ: Economic and Technological Development Zone; ICBC: Industrial and Commercial Bank of China; MPT: Ministry of Posts and Telecommunications; NA: Not Available; NORINCO: China North Industries Corp.; P&T: Post and Telecommunications; PBOC: People's Bank of China; SEZ: Special Economic Zone; SINOCHEM: China National Chemicals Import-Export Corp.; SINOPEC: China National Petrochemical Corp.; SINOTRANS: China National Foreign Trade Transportation Corp.; SPC: State Planning Commission; UNDP: United Nations Development Program.

Banking and Finance

CHINA'S INVESTMENTS ABROAD

Bank of Communications (PRC)
Opened office in Frankfurt, Germany. 11/94

OTHER

Bank of Tokyo (Japan)
Opened representative office in Chengdu. 1/95

The Muslim Commercial Bank Ltd. (Pakistan)
Opened office in Beijing. 12/94

ABN AMRO Bank N.V. (Netherlands)
Upgraded representative office in Shanghai to full branch. 11/94

Bank of America (US)
Upgraded representative office in Guangzhou to full branch. 11/94

Banque Nationale de Paris (France)
Upgraded representative office in Guangzhou to full branch. 11/94

Belgian Bank (Belgium)
Opened representative office in Guangzhou. 11/94

Commonwealth Bank (Australia)
Opened representative office in Beijing. 11/94

Goldman Sachs & Co. (US)
Opened office in Shanghai. 11/94

Hokuriku Bank (Japan)
Opened representative office in Shanghai. 11/94

Westdeutsche Landesbank Girozentrale (Germany)
Opened representative office in Shanghai. 11/94

Chemicals, Petrochemicals, and Related Equipment

CHINA'S IMPORTS

Mitsui Engineering and Shipbuilding Corp. (Japan)
Will sell phosphoric acid and granular phosphate-producing equipment to the Wengfu Phosphate Fertilizer plant. $53.9 million. 11/94

INVESTMENTS IN CHINA

Chisso Engineering Co. Ltd. (Japan), Japan Synthetic Rubber Co. Ltd. (Japan), Nichimen Corp. (Japan)/China National Chemical Construction Corp., Jilin Chemical Industry Corp.
Formed joint venture to build an acrylonitrile butodiene styrene (ABS) plant in Jilin City. $60 million. 12/94

Dainippon Ink and Chemicals Inc. (Japan), Itochu Corp. (Japan)/Tianma Group Corp.
Established Changzhou Huari New Material Co. Ltd. joint venture to produce polyester resin and sheet-molding compounds. $16 million. (Japan:40%, 20%-PRC:40%). 12/94

Henkel KGaA Germany (Germany)/Shanghai Petrochemical Co. Ltd., Shanghai Surfactant Factory
Formed Shanghai Henkel Oleochemicals Ltd. to produce and market natural and synthetic oleochemicals, polymers, and related products. $30 million. (Germany:60%-PRC:10%, 30%). 12/94

NA (Russia)/Zhejiang Juhua Co.
Established Zhejiang Jusheng Flourine Chemical Co. Ltd. joint venture to produce polytetrafluoroethylene. $27 million. 12/94

Snamprogetti SpA (Italy)/Nanjing Chemical Industrial Corp.
Will produce synthetic ammonia and urea production equipment for a fertilizer project in Jiangsu Province. $100 million. 12/94

Air Liquide Group (France)/China Hangzhou Oxygen Plant Group Corp. (Zhejiang)
Established joint venture to produce oxygen-processing equipment for domestic and overseas customers. $14.1 million. 11/94

BASF AG (Germany)/Yangtze Petrochemical Corp. (Jiangsu)
Formed Yangtze-BASF Styrenics Co. joint venture in Nanjing to produce ethyl benzene, styrene, and polystyrene. $187.2 million. 11/94

E. I. du Pont de Nemours & Co. (US), Rhone-Poulenc SA (France)
Will jointly construct nylon plant in Shenyang. 11/94

Consumer Goods

INVESTMENTS IN CHINA

Mitani Optical Inc., a subsidiary of Mitani Corp. (Japan)
Established Shanghai Sangu Glasses Co. wholly owned subsidiary to produce eyeglass frames. $4 million. 12/94

US Mint (US)/China Gold Coin Inc.
Will jointly promote and sell 1996 Olympics commemorative coins in China. $1 million. 12/94

Whirlpool Corp. (US)/Beijing Snowflake Electric Appliance Group Corp.
Formed Beijing Whirlpool Snowflake Electric Appliance Co., Ltd. joint venture to manufacture refrigerators. 12/94

China-Hong Kong Photo Products Holdings, the distributor of Fuji film products in China, Hong Kong, and Macao (HK)
Will open 1,000 retail outlets and five joint ventures in China by the end of 1995. 11/94

Electronics and Computer Software

CHINA'S IMPORTS

AST Research Inc. (US)/Legend Holdings
Will sell desktop, server, and notebook computer systems. $129 million. 12/94

INVESTMENTS IN CHINA

Daimler Benz Group (Germany)/Shanghai Metallurgical Research Institute
Established SIM Daimler-Benz Lab to conduct research on packaging electronic components. $812,500. 12/94

Matsushita Electric Industrial Co. (Japan)/China Hualu Electronics Co. Ltd.
Formed China Hualu-Matsushita Video Recorder Co. Ltd. joint venture in Dalian to produce VCRs. $272 million. (Japan:50% -PRC:50%). 12/94

Microsoft Corp. (US)/Ministry of Electronics Industry
Will develop Chinese version of the Windows 95 operating system. 12/94

Nan Ya Plastics Corp., a division of Formosa Plastics Group (Taiwan)
Formed Nan Ya Technology Co. to produce computer chips and liquid crystal display screens. $1.02 billion. 12/94

S. Megga International Holdings (HK)/NA (Liaoning)
Formed China Electronic Systems & Engineering joint venture to manufacture and sell fax machines, cordless phones, and global positioning systems. $11.5 million. 12/94

Apple Computer Inc. (US)/China Research Institute of Printing Science and Technology
Opened joint electronic publishing center. 11/94

IBM (China) Co. Ltd. (US)/Qinghua University (Beijing)
Established Beijing Dingxin Information System Ltd. Co. joint venture to develop computer software. $2 million. 11/94

NEC Corp. (Japan)/Shougang Corp. (Beijing)
Formed Shougang NEC Electronics Co. joint venture to produce integrated circuits. $263 million. (Japan:40%-PRC:60%). 11/94

OTHER

Apple Computer Inc. (US)
Will open three offices in China. 12/94

IBM Corp. (US)
Established a China research laboratory in Beijing. 12/94

Quantum Corp. (US)
Opened office in Beijing. 12/94

Engineering and Construction

CHINA'S IMPORTS

Caterpillar China Ltd. (US)/NA
Will sell 20 off-highway trucks to the Yangtze River Three Gorges Project. $12 million. 11/94

Rotec Industries (US)/NA
Will sell tower belts to be used in the Three Gorges Dam project. $13.4 million. 11/94

INVESTMENTS IN CHINA

Hoechst China Investment, a subsidiary of Hoechst AG (Germany)/China New Building Materials, China Worldbest Corp.
Established joint venture to manufacture polyester building materials. $29 million. (Germany:60%-PRC:15%, 25%). 12/94

Sea Kyung Sowa Co. (S. Korea), Sowa Resin Manufacturing Co. (Japan)/Yaohua Glass Co. (Hebei)
Formed Qin Hung Dao Yao Hua San Rong FRP Co. joint venture to produce plastic bathtubs for export to South Korea. 12/94

Stow International NV Storage Solutions (Belgium)/China National Forest Farm Development Co.
Formed joint venture to produce storage equipment. $2.4 million. (Belgium:70%-PRC:30%). 12/94

Broken Hill Proprietary Co. Ltd. (Australia)
Established BHP Steel Building Products (Guangzhou) wholly owned subsidiary to manufacture roof and wall panel systems. $12 million. 11/94

C.S. Johnson Co. (US)/NA
Will construct a concrete mixing plant for the Yangtze River Three Gorges Project. $5 million. 11/94

CSR Ltd. (Australia)/Beijing Light Building Materials Co.
Established a joint venture to produce plasterboard. $9.4 million. 11/94

Ken On Concrete Co. Ltd., a subsidiary of Shui On Group (HK)/Guangzhou No.1 Construction Co.
Built joint-venture concrete batching plant. 11/94

CHINA'S INVESTMENTS ABROAD

China Road and Bridge Engineering Co., Shandong Local Products Import-Export Corp./Myanmar Railway Engineering Corp. (Burma)
Will sell bridge and railway equipment. $10 million. 12/94

OTHER

Economic Development and Cooperation Fund (S. Korea)
Provided loan to construct a bridge, airport, and other infrastructure projects in Jilin, Heilongjiang, and Shandong provinces. $43 million. 12/94

Environmental Technology and Equipment

OTHER

Asian Development Bank
Will provide loan and technical assistance grants for an environmental improvement project in Beijing. $159 million. 12/94

Food and Food Processing

INVESTMENTS IN CHINA

Nestle SA (Switzerland)/NA (Yunnan)
Set up a coffee plantation and processing base in Xishuangbanna. 12/94

Jusco Co. (Japan)/Qingdao Gongxiao Hezuoshe
Will establish a joint venture to manage large supermarkets in Qingdao. 11/94

San Miguel (Philippines)/Hebei Bada Group
Formed San Miguel Bada Baoding Brewery to produce beer. $21 million. (Philippines:70%-PRC:30%). 11/94

Foster's Brewing Group Ltd. (Australia), Wheelock Pacific Ltd. (HK)/Tianjin Chief Brewery
Formed Tianjin Foster's Brewery Co. to produce beer. 1/95

Machinery and Machine Tools

INVESTMENTS IN CHINA

Hussmann Corp. (US)/Luoyang Refrigeration Machinery Factory
Formed Luoyang-Hussmann Refrigeration Co. Ltd. joint venture to produce refrigeration systems for the Chinese market. $10 million. (US:55%-PRC:45%). 12/94

Linde AG (Germany)/Jinzhou Heavy Machinery Works (Liaoning)
Formed Dalian Linde Jinzhong Air Separation Co. joint venture to produce air-separation equipment. 12/94

NA (Japan)/Tianjin Hydraulic Pressure Machinery Group Co.
Established joint venture to produce hydraulic gear pumps. $7 million. 12/94

Philips N.V. (Netherlands)/Hubei Autolamps
Formed Philips Automotive Lighting Hubei joint venture to manufacture automobile lamps. $40 million. (Netherlands:70%-PRC:30%). 12/94

Shi Yun Co. (S. Korea)/Shandong Wendeng Heibao Joint-Stock Co. Ltd., Weihai Economic and Technology Development Zone
Established joint venture to produce motor-driven vehicles for agricultural use. $29.8 million. (S. Korea:50%-PRC:50%). 12/94

Medical Equipment and Devices

INVESTMENTS IN CHINA

NewVision Technology Inc. (US)/China Neo Vision Medical Technology Corp.
Will jointly set up multiple refractive-surgery centers in China. 12/94

Metals, Minerals, and Mining

INVESTMENTS IN CHINA

Asian Minerals Corp., a subsidiary of Canadian Royal Oak Mines Inc. (Canada)/Shandong Zhaoyuan City Gold Corp.
Will develop a gold mine in Shandong Province. $35 million. 12/94

Kyoritsu Seiki Industry Co. Ltd. (Japan), Mitsubishi Corp. (Japan)/Shanghai Haiguang Smeltery

Established Shanghai Jingde Foundry Manufacturing Co. Ltd. to process metals and produce weights for forklift trucks. $2.6 million. (Japan:40%, 20%-PRC:40%). 12/94

Inland International, Inc., a wholly owned subsidiary of Inland Steel Industries (US)/Baoshan Iron & Steel Corp., Shougang Iron & Steel Corp.

Will investigate joint-venture opportunities for metal distribution and logistics management in China. 11/94

Packaging, Pulp, and Paper

INVESTMENTS IN CHINA

BC Development, a joint venture between Swire Pacific (HK), CITIC (PRC), and The Coca-Cola Co. (US)/Beijing Chong Yin Industrial Trading Co., Zhengzhou General Food Factory

Will build a bottling plant in Zhengzhou. $18 million. (HK, PRC, US:60%-PRC:40%). 12/94

Petroleum, Natural Gas, and Related Equipment

CHINA'S IMPORTS

Silicon Graphics, Inc. (US)/China National Petroleum Corp.

Sold Power Challenge system for oil and gas prospecting in Xinjiang Province. $2 million. 12/94

Caltex Inc., a joint venture between Texaco Inc. (US) and Chevron Corp. (US)/Shantou Marine Corp.

Will sell berth and underground storage tank for liquefied petroleum gas. 11/94

INVESTMENTS IN CHINA

Phillips Petroleum International Corp. Asia, a subsidiary of Phillips Petroleum Co. (US)/CNOOC

Will explore for oil in Bohai Bay. 12/94

Goldpark China Ltd. (Canada), Hong Kong Eastern Petroleum (Singapore) Co. (Singapore)/Beijing Gas and Oil Corp., China International United Petroleum and Chemicals Co., Tianjin Economy and Technology Development Zone Corp., and Tianjin Gas

Will jointly produce, process, store, and distribute liquefied propane gas and other petroleum products in Beijing, Hebei, and Tianjin. $10 million. 11/94

OTHER

Chase Manhattan Bank (US)/BOC

Provided loan to purchase naphtha gasification equipment and technology for gas project in Pudong area of Shanghai. $38.9 million. 12/94

Pharmaceuticals

INVESTMENTS IN CHINA

Pfizer Inc. (US)/Chinese Academy of Traditional Chinese Medicine

Will jointly study Chinese herbs for potential medicinal use. 1/95

Ciba-Geigy Ltd. (Switzerland)/Institute of Microbiology and Epidemiology (Beijing), Kunming Pharmaceutical Factory (Yunnan), NA

Will jointly develop an anti-malarial drug. 12/94

Faulding China Ltd., a subsidiary of F.H. Faulding Co. (Australia)/Foshan General Pharmaceutical Co. Ltd. (Guangdong)

Formed joint venture to produce cancer medications. $29.8 million. (Australia:90%-PRC:10%). 12/94

Hoffmann-LaRoche Ltd. (Switzerland)/Shanghai Sanwei Pharmaceutical Corp.

Established Shanghai Roche Pharmaceuticals Ltd. to produce drugs. $30 million. (Switzerland:70%-PRC:30%). 12/94

Ports and Shipping

INVESTMENTS IN CHINA

Van Ommeren Ceteco N.V. (Netherlands)/NA (Zhejiang)

Established Van Ommeren Tank Terminal Ningbo joint venture to store solid and liquid chemicals. $10 million. 11/94

CHINA'S SALES ABROAD

China Shipbuilding Trading Co. (Beijing), Qiu Xin Shipyard (Shanghai)/P&O Tankships Ltd., a subsidiary of P&O Steam Navigation Co. (UK)

Will sell four 3,700DWT clean-product carriers with double hulls. 11/94

OTHER

Direct Container Line (US)/China Ocean Shipping Co.

Will begin weekly direct service from California to Shanghai. 12/94

Hyundai Merchant Marine Co. (S. Korea)

Upgraded Beijing office to full subsidiary. 12/94

Power Generation Equipment

CHINA'S IMPORTS

Westinghouse Electric Corp. (US)/China National Machinery Import-Export Corp.

Will sell turbo generator to Yangzhou No.2 Power Plant in Jiangsu Province. $157 million. 12/94

Babcock & Wilcox Co., an operating unit of McDermott International, Inc. (US)/China National Machinery Import-Export Corp.

Sold boiler system to Yangzhou No.2 Power Plant in Jiangsu Province. $155 million. 12/94

INVESTMENTS IN CHINA

INET Corp. (US), Universal Energy Inc. (US)/NA (Guangdong)

Will build a 50MW power plant in Jiaoling County. $45 million. 12/94

Southern Electric International (US)/Huaneng Power International

Will jointly build power plant in Nanjing. $1.1 billion. (US:30%-PRC:70%). 12/94

Crosby Investment Co. (UK)/Ningbo Tianan Co. (Zhejiang)
Established Tiancheng High Tension Electric Appliances Co. joint venture to produce high-tension electric equipment for power transmission. $29.8 million. (UK:16.6%-PRC:83.4%). 11/94

Dessau (Canada)/Sichuan Electric Power Administration
Will construct the Pubugou Hydroelectric Dam along the Dadu River and provide technical consulting services and financing for the project. $4 billion. 11/94

CHINA'S SALES ABROAD

China International Water and Electric Corp./Pakistan Suzuki Cement Ltd. (Pakistan)
Will sell equipment and technology to construct two 25MW power plants in Haripur. 11/94

Property Management and Development

INVESTMENTS IN CHINA

Izumisouken Co. Ltd. (Japan)/Dianshanhu Town Model Project (Jiangsu)
Will build tourism and sports facilities in Kunshan. $720 million. 12/94

Austin Co. (US)/See's Enterprise Holding Co. Ltd.
Will design and construct World Village Theme Park in Shanghai. $43 million. 11/94

Greater China Leisure Ltd., a subsidiary of Bay Shore Pacific Group (Canada)/Physical Culture and Sports Commission (Guangdong)
Will build Yuexiu Water Playland in Yuexiu Park, Guangzhou. $15 million. 11/94

Mitsubishi Corp. (Japan), Daiwa House Co. (Japan)/Dalian Shipyard Industries Co.
Formed Dalian Seaside Villa Co. joint venture to build houses in Dalian. $5.3 million. (Japan:30%, 30%-PRC:40%). 11/94

CHINA'S INVESTMENTS ABROAD

China State Construction Engineering Corp./NA (US)
Will build the China Commercial & Scenic Park in Orange County, New York. $500 million. 11/94

OTHER

World Bank
Provided loan for development of housing and social security programs in Beijing. $158 million. 11/94

Telecommunications

CHINA'S IMPORTS

AT&T (US)/Guangdong Provincial Post and Telecommunications Bureau
Will sell advanced telecommunications equipment. $150 million. 1/95

Ericsson AB (Sweden)/Guangdong Mobile Communication Corp.
Will sell advanced telecommunications equipment for the Guangzhou Digital GSM Exchange expansion project. $28.8 million. 12/94

AT&T (US)/Shenzhen Posts and Telecommunications Bureau (Guangdong)
Will sell synchronous digital hierarchy system to Shenzhen. $13 million. 11/94

INVESTMENTS IN CHINA

ADC Telecommunications Inc. (US)/Shanghai Posts and Telecommunications Equipment Ltd.
Established Shanghai ADC Telecommunications Equipment Co. joint venture to produce fiber-optic video transmission equipment. $4.8 million. (US:50%-PRC:50%). 12/94

AT&T (US)/Tianjin Electronic Cable Co.
Established Tianjin AT&T Cable to produce cables for program-controlled telephone systems. $3.8 million. (US:60%-PRC:40%). 11/94

GPT Ltd. (UK), Hewlett-Packard Co. (US), Siemens AG (Germany)/MPT
Will sell high-speed, high-capacity transmission networks. $5.6 million. 11/94

Northern Telecom Ltd. (US), Philips Electronics Southeast Holding BV (Netherlands)/NA (Shanghai)
Formed joint venture to produce integrated circuits. 11/94

Northern Telecom Ltd. (US)/NA (Guangdong)
Established joint-venture manufacturing company to build switches for Chinese phone networks. (US:40%-PRC:60%). 11/94

Textiles and Apparel

INVESTMENTS IN CHINA

George Johnstone Co. (UK)/No.1 Woolen Mill (Qinghai)
Will jointly manufacture and sell cashmere and yak hair knitwear. $4 million. (UK:50%-PRC:50%). 11/94

Libya State Overseas Investment Co. (Libya)/China Zhejiang International Trust and Investment Co., Ningbo Development Zone Joint Development Co., Ningbo Textile Industry Co.
Will build Sino-Libyan Textile Co. Ltd. joint venture to manufacture cotton cloth and blended fabric for export. $26 million. 11/94

OTHER

Chase Manhattan Bank (US)/ICBC
Provided loan to upgrade China's textile industry. $100 million. 12/94

Transportation

CHINA'S IMPORTS

Boeing Co. (US)/China Yunnan Airlines
Will sell three 767-300 jetliners. $600 million. 1/95

Alenia (Italy)/CAAC
Will sell 15 air traffic control radar systems. $63 million. 11/94

Deutsche Waggonbau Aktiengesellschaft (Germany), Waggonbau Ammendorf Gmbh (Germany)/China National Machinery Import-Export Corp., Ministry of Railways
Will sell 20 railway passenger coaches in kits for assembly in China. $81 million. 11/94

Fiat Avio (Italy), General Electric Co. (US), Ishikawajima-Harima Heavy Industries Co. (Japan), and Snecma (France)/China Southern Airlines
Will sell GE90 aircraft engines. 11/94

INVESTMENTS IN CHINA

Daewoo Corp. (S. Korea)/Sichuan Province Automobile Co.
Launched Chengdu-Daewoo Automobile Transport Co. to provide express bus service in China. $12.5 million. (S. Korea:50%-PRC:50%). 12/94

FCC Co., an affiliate of Honda Motor Co. (Japan)/Jianghua Machinery Factory (Sichuan)
Formed joint venture in Chengdu to manufacture clutches. $8 million. 12/94

Ford Motor Co. (US)/Yaohua Glass Co. (Shanghai)
Established Shanghai Fuhua Glass Co. joint venture to produce glass for cars. $20 million. 12/94

Kowloon-Canton Railway Corp. (HK)/China Railway Container Transport Center, a subsidiary of the Ministry of Railways
Launched joint container shuttle service between Hong Kong and Zhengzhou. 12/94

Bombardier Inc. (Canada), Power Corp. (Canada)/China National Railway Locomotive & Rolling Rock Industry Corp.
Will create joint venture in Shandong Province to produce passenger railway cars. 11/94

Packard Electric, a division of General Motors Corp. (US)/Hebei Automotive Electrical Equipment Factory (Henan)
Established an auto-wiring joint venture in Hebei. $10 million. (US:60%-PRC:40%). 11/94

OTHER

World Bank
Approved loan for highway construction and renovation in Shaanxi Province. $200 million. 11/94

World Bank
Approved loan to build the Turpan-Urumqi-Dahuangshan Highway in Xinjiang. $150 million. 11/94

Miscellaneous

OTHER

Universal Ideas Consultants Corp. (Canada)
Opened representative office in Beijing. 11/94

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In the Public Welfare

I wanted the debut of this new *CBR* department to be special. It had to be relevant. It had to be fun. It had to be insightful. It had to be—short. And unique. The pressure was on.

So, on my recent trip to Beijing, I kept my eyes and ears open for juicy tidbits I could turn into a column. Review of Cultural Revolution restaurants? Already been done. Interview with counterfeit-CD sellers? Boring. Expose of China's growing underclass? Depressing. Time passed. Panic set in.

And then I found it. A subject of great importance—if not affection—to everyone who has ever traveled or lived in China. We're talking toilets. To be more precise, public toilets. To be more descriptive, hold-your-breath-as-you-enter-or-pass-by outhouses. Whatever the name, Beijing intends to do away with the old and foster in the new. Some members of the local press are even referring to the phenomenon as a "public toilet revolution."

Public toilets often combine function. . .

The first blow at the city's malodorous public facilities was waged last fall, when nine organizations in Beijing—including four newspapers and five municipal departments—sponsored a public-toilet design contest. Claiming that "building a public toilet is an enterprise of benefit to the public," the competition notice in the *Beijing Daily* called on designers near and far to submit their sketches of the ideal restroom. Entries had to conform to Beijing municipal building codes and standards, but contestants were permitted to select the location, "theme," and attributes of their toilet and its surroundings.

Now, I don't know about you, but I doubt my local newspaper has ever run a commode competition. Surely, this is unique to China? (please—this is a rhetorical question. Do not send me proof otherwise). Facilities designed of the people, by the people, for the people. But really, what a great idea! Besides improving the air quality of Beijing, clean johns would go a long way toward making the capital the "sanitary, civilized" metropolis its street signs, billboards, and Olympic propaganda proclaim it to be.

Perhaps I'm giving the old public toilets a bum wrap. According to architect Timothy Geisler, a visiting design instructor at Qinghua University, many of China's public restrooms show "great variety in style and imagination. They are remarkably artistic for something so purely functional." Indeed, the 340 entries to the competition were apparently so artistic that *Beijing Daily* and a local engineering association are considering displaying them in a public exhibition, if they can raise the funds. Apparently, several publishers have also expressed interest in putting out a book containing all the designs.

Better yet, the city actually intends to build 30 of the proposed toilets by June, though it has not yet announced who the lucky designers are or where the fruits of their labor will be located. To give you an idea of what you might experience in the future, the contest's winning design, submitted by a young woman from the Beijing Design Institute, featured an outhouse as the focal point of a park; outside were phones, benches, and a book kiosk—perhaps it will sell the "toilet design anthology." Geisler's entry, a more utilitarian model that came in sixth place, was strategically designed to be placed at Tiananmen Square—a move that would undoubtedly earn him the thanks of Beijing residents and tourists alike.

. . . and style.

Photos courtesy of Wan Yingchun

Though a welcome first step, the construction of 30 new facilities represents a drop in the bucket when viewed against the thousands of Beijing toilets currently screaming out for reclamation. According to Beijing Environment Department estimates, it will take 125 years to "reform" them all.

—Pamela Baldinger

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