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THE CHINA BUSINESS REVIEW

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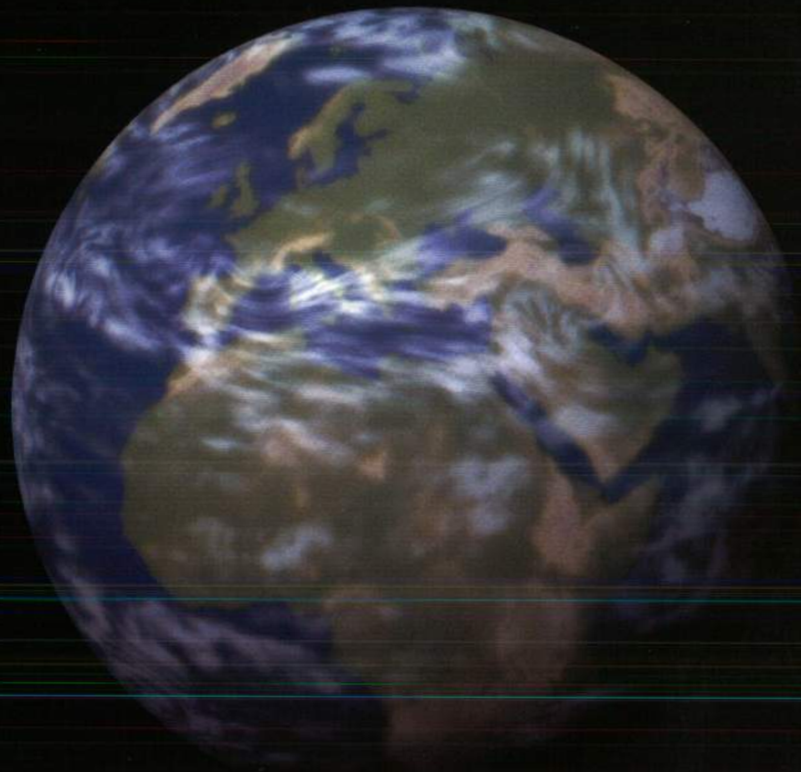

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Letter from the editor

Global Justice?

Walking around the police-delineated World Bank/International Monetary Fund perimeter, on the first official day of the protests in Washington known as the Mobilization for Global Justice, I saw this sign, carried by a college-age student strolling toward the "permanent demonstration" at the Ellipse:

DOWN WITH TRIPS—
AFFORDABLE MEDICINE FOR EVERYONE

By coincidence, this issue of *The CBR* contains an article that talks about the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as it will apply to China. It assumes, of course, that intellectual property rights (IPR) protection is a good thing, not just for foreign companies operating in China, but also for the domestic producers whose goods are often pirated—and the domestic consumers protected from fake, potentially dangerous, products such as food and drugs. The readers of this magazine surely understand the importance of IPR. But if nothing else, this sign brought home just how easy it is to oversimplify the complexities of global commerce—and just how difficult it is to be right about exactly who or what is the enemy of global justice.

This issue of *The CBR* addresses quite a few of the nitty gritty issues of trade and WTO membership, and a quick glance might leave readers wondering why US companies are supporting China's WTO membership. After all, according to the two articles that make up this issue's WTO section, protection of IP in China will probably get worse before it gets better (*see* p.22). And access to China's closed services markets—specifically in telecommunications—might come only gradually (*see* p.12). These are the benefits WTO will bring? But authors Douglas Clark, and Bing Zhang and Mike Peng, also point out that international pressure has been instrumental in improving China's domestic effectiveness in the IPR and telecom areas respectively. Such reforms benefit domestic Chinese as much as, if not more than, foreign companies.

The two focus articles of this issue, on PRC and US antidumping rules, touch on another WTO contribution to fairness. Attorneys Lester Ross and Susan Ning note that WTO rules on antidumping will require China to make its newly enacted procedures more transparent (*see* p.30). Attorneys Ying White and Katherine Jones discuss how the US changes to its antidumping laws (to comply with WTO rules) could benefit Chinese producers and exporters (*see* p.32).

This is dry stuff. These discussions lack dramatic resonance and even the hope of distillation to sound-bite size. But they are just as important to the debate over whether multilateral economic institutions are, ultimately, beneficial or detrimental to "global justice."

Cath Gelb

WILL AMERICA LOSE TO
OTHER COUNTRIES BEFORE
WE GRANT NORMAL TRADE
STATUS TO CHINA?

Many people don't realize what is at stake if we don't grant normal trade status to China: $18 billion annually in orders for goods and services. And exports are estimated to rise by nearly $14 billion within the first five years of the agreement's implementation. If it isn't granted, overseas competitors unburdened by trade barriers with China will be able to outbid American industries in every instance. It's a risk we can't afford to take. Let your Congressional representatives know it's time we granted normal trade status to China. America has everything to gain if we do. And everything to lose if we don't.

Taiwan's New Face

Taiwan voters elected Chen Shuibian of the Democratic Progressive Party (DPP) president on March 18, marking the end of Kuomintang (KMT) Party rule, at least for the next four years. Chen's inauguration on May 20 takes Taiwan into uncharted territory, as the KMT prepares to transfer power for the first time. Just as the governments in Washington and Beijing are assessing how they will work with the new DPP leadership, US business is also trying to gauge how the transition might affect stability and the cross-Strait economic picture.

Political straightjacket = Status quo

To a large extent, US companies can expect continuity, as a combination of internal and external forces will ensure moderate policymaking in the new Chen administration. A middle course is critical to the DPP's ability to enact its polices, to gain and retain legislative power, and to have a chance at holding onto the presidency in 2004. Chen won a plurality (39.3 percent), not a majority of the popular vote. Despite recent signals of KMT/DPP realignment, Chen is still a minority president facing a KMT-controlled legislature, and he will likely have to bargain over policy issues such as the annual budget. Chen also faces a population divided on how best to proceed with Beijing, although there is consensus that some form of stability must be achieved. Pressure from Beijing on the "one China" issue and from the United States to moderate statements vis-à-vis independence will also probably influence the new administration's policies.

The transition: Focusing inward

Chen will first need to turn his attention to pressing domestic issues, including creating a new administration, forging consensus between the executive branch and the legislature, and initiating political reform. Neither the KMT nor the DPP is familiar with how to transfer power, and Taiwan lacks an institutional mechanism to facilitate this process. At its own admission, the DPP lacks policymaking expertise, especially in foreign policy, cross-Strait relations, national defense, and economic affairs. With the selection of former defense minister and KMT member Tang Fei as premier, Chen made good on his early pledge to build a coalition government. As *The CBR* goes to press, Tang is already proving instrumental in retaining key KMT leaders in sensitive foreign policy and national security positions. Most importantly, Tang's appointment signals a desire for stability that could improve the Taiwan military's confidence in Chen. Recent defense reforms should continue, and if allowed to de-politicize procurement, Taiwan may shift from purchases of hardware and equipment to a focus on training and acquiring systems and technology.

Despite the rhetoric, Taipei and Beijing tread cautiously

As president, Chen will have to proceed as carefully on cross-Strait issues as he did as candidate. Unfortunately, it will be much easier to inflame tensions than it will be to find common ground. For the time being, Beijing appears to be giving the new leadership time to find its way. Concerned that it could lose diplomatic control of the Taiwan issue, Beijing has left itself significant leeway to work with the new administration in Taipei. For the most part, PRC leaders did not specifically target Chen as an unacceptable candidate or president, as they did with his predecessor Lee Teng-hui. Rather, Beijing's efforts appeared directed at the candidates' platforms and policy proposals. While Beijing has attacked Vice President-elect Annette Lu personally, in response to her recent public statements, the mainland leadership has been relatively quiet on Chen.

In some respects, Chen is uniquely qualified to negotiate with Beijing. His election as a non-KMT candidate, who has stepped down from his own political party, eliminates the problem surrounding party-to-party talks, though it reopens the more difficult question of the level at which talks will take place. Moreover, Beijing may sense a strategic advantage in Chen's lack of diplomatic finesse and try to force concessions. But what he lacks in foreign policy experience, Chen makes up for in political savvy. He will likely hold his ground.

The key will be whether the two sides can come to a mutually acceptable definition of "one China" that is broad enough for Taiwan and specific enough for the PRC, and that gives Taiwan equal status in negotiations. The week before the elections, PRC Foreign Minister Tang Jiaxuan commented that the PRC could return to the relatively apolitical definition of "one China" used in 1992. The degree of consensus in Beijing on this position is unclear, however.

Posturing to buy time

While the DPP victory changes the dynamic of cross-Strait relations, it does not diminish the opportunities for both sides to work out their differences, nor does it necessarily accelerate the timeframe to reach a solution. The United States would be wise to continue to adhere to its "one China" policy, and ensure that neither side is forced into an unacceptable arrangement, and that the situation in the Taiwan Strait remains peaceful. While recent bellicose statements from Beijing should be monitored closely, for now, Beijing appears to be waiting to see what tone Chen's May 20 inaugural address will establish for cross-Strait relations. Recent PRC exercises in diplomatic brinkmanship appear to be designed primarily as an attempt to influence Chen's policies. Pressuring Taiwan business executives to denounce independence does not erase the fact that Beijing remains heavily dependent on Taiwan investment. In response, Chen is likely to craft a statement that aims to buy time from Beijing while allowing him to focus on more pressing issues closer to home.

Pressures on the Beijing leadership to keep Taiwan in check remain real and constant, and several developments could upset this delicate situation. In the United States, congressional rejection of permanent Normal Trade Relations status for China or passage of the Taiwan Security Enhancement Act; significant US steps to bolster Taiwan's military; or the success of interest groups in pressuring the two US presidential candidates to shift their stances away from current US policy, would leave moderates in Beijing open to attack—and weaken the effectiveness of non-military US restraints on the PRC.

Economic policy, trade, and investment

Economic development will be Chen's highest priority. His first task must be to build a credible policy team that restores public confidence in the ability of his administration to manage economic policy.

Many in Taiwan hope the DPP will introduce open bidding for construction projects, crack down on insider trading on the stock market, and allocate greater resources for housing construction for victims of the September 1999 earthquake in central Taiwan. But it is unlikely that the DPP will be able to break KMT party links with business, as Chen will face strong opposition in the KMT-controlled legislature and will have trouble pinning down highly liquid KMT assets. Only the KMT itself can undertake significant change in this area—if it wants to use real reform as a strategy to regain the presidency.

The "three links" and WTO

With Taiwan's World Trade Organization (WTO) bid all but completed and the PRC expected to complete its final accession package this spring, Taiwan will likely be admitted to the WTO by the end of this year. There is little reason to expect any changes in Taiwan's position on WTO membership. The new government will need to address several related issues, however.

- In response to both domestic business pressure and the need to prepare for WTO accession, all of Taiwan's presidential candidates advocated establishing the "three direct links"—in communications, shipping, and transportation—with the PRC. Within a few days of Chen's victory, the Legislative Yuan proposed a bill to initiate the three links through the offshore islands of Kinmen (Quemoy), Matsu, and Penghu. Influential companies such as Evergreen will continue to push for liberalization, but full linkage will take time, largely for reasons of national security. To what extent US firms will be allowed to participate in these new commercial opportunities remains to be seen. One of the sticking points between the United States and the PRC on maritime issues involves the PRC's refusal to accept transshipments on US carriers via Taiwan.
- Debate in central Taiwan is particularly intense over the implications of accession for the agricultural sector, which is expected to be particularly hard hit by North American and Australian exports. The central government will probably respond by providing compensation to those most affected.
- The outgoing administration appears to be quietly but seriously considering the option to apply the non-application clause of the WTO (Article 13) to the PRC in order to prevent PRC investment in sensitive sectors such as financial services and information technology. The new government may also consider this option, for similar reasons. There may be counter-pressure, however, from local firms that want to take advantage of new investment opportunities on the mainland, especially in services.
- There is also quiet talk in Taipei about the establishment of a Free Trade Area for Taiwan and the PRC, but the discussions to date seem to be preliminary and lack specifics.

A final note

While the transition has been relatively smooth to date, there remains the possibility that debates and power struggles during the transition could prompt individuals in Taiwan to issue conflicting or provocative messages. In assessing these messages, maintaining perspective will be important, as will discerning whether such views reflect those of individuals or a new policy position that has been appropriately vetted with the DPP or incoming administration. The DPP will need time, assistance, and breathing space as it moves from being an opposition party to a party in power, with not only national, but for the first time international, responsibilities.

—Karen M. Sutter

Karen M. Sutter is director of Business Advisory Services in The US-China Business Council's Washington, DC office.

short takes

Smooth Sailing for Waigaoqiao-bound Cargo

If current customs-clearance negotiations are successful, goods arriving at Pudong International Airport should be able to enter Waigaoqiao Free Trade Zone directly in a matter of months. Sang Zhangsui, deputy director of the zone, hopes to improve services in response to the recent wide-ranging PRC tax reductions, which have undercut Waigaoqiao's edge in the market.

TV News Leaves Asia Out

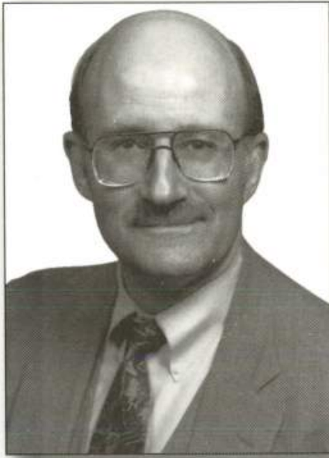
Despite the fact that TV coverage of Asia is less than complete, most Americans get their Asia news from television. Nearly three-quarters of respondents to a Luce Foundation study said that TV news is their main source of information, and that they considered Japan and China to be vitally important to US political, economic, and security issues. Over half of the respondents felt that China's human rights situation is unfavorable, and that China is "a threat that must be contained." Despite this, only two out of ten respondents closely followed last year's reports of China's alleged theft of nuclear secrets—the most-followed China issue, as reported by participants. Nearly half of respondents, however, favor a hands-off policy with regard to Taiwan Strait tension, preferring to let the Chinese work it out on their own.

More Work, More Pay

The Ministry of Labor and Social Security recently issued a Salary Calculation Standard Regulation mandating overtime pay calculations. Pay for overtime work performed during the week must be at least 150 percent of the regular salary. On weekends, pay should be at least 200 percent of the normal wage. And for a worker to come in on a holiday, the employer must pay 300 percent of the worker's usual salary.

Shanghai Visa Update

Shanghai's municipal government recently released details on its new short-stay visa policy. All overseas travelers passing through Shanghai via either the Pudong or Hongqiao airports can stay in the city and visit surrounding towns such as Hangzhou and Suzhou for up to 24 hours without a visa. Citizens of some countries, including Australia, Austria, Belgium, Canada, France, Germany, Greece, Italy, Japan, Luxembourg, the Netherlands, Portugal, Singapore, South Korea, Spain, and the United States, can stay for up to 48 hours visa free. Visitors must go through a special procedure to leave the airport, but there is no cost associated with it.



Robert A. Kapp

LETTER from the President

At Crunch Time, Back to the Merits

If the old annual ritual had been as successful a form of "leverage" as anti-PNTR activists now suggest, there would be nothing to complain about today!

The debate over whether to treat China as a full World Trade Organization (WTO) member when the PRC enters the world trading body, and thus to bring home to America the opportunities that China will extend to the rest of the WTO, appears to be wrapping up. The issue is, for some, solely domestic politics. The 2000 election lies like a soggy blanket over the debate. For many, the decision appears to be a matter of the "throw weight" brought to bear by opposing sides. Knowing Hill denizens smile indulgently, or laugh out loud, when you suggest that maybe the merits ought to determine the outcome.

We've been through this before. In the end, members of the US House of Representatives and the US Senate will still consider the economic and commercial content of the November 1999 US-China market-access agreement as the central question. They will recognize the folly of walking away from America's opportunities while handing those chances to our competitors. Thus Permanent Normal Trade Relations (PNTR) will win, on the merits. After the vote, we will all congratulate ourselves on the abiding built-in common sense of the American legislative process, and our overly chewed fingernails will gradually grow back.

Therefore, this will likely be my last letter to readers on the PNTR question. It will be good to turn to other topics. For now, though, a final wrap-up of key points:

1 After all the distractions and all the politics, the merits are in full view.

The extraordinarily rich content of the US-China WTO agreement of November 15 forms the substance of Congress's decision. The overwhelming preponderance of views—from industry, agriculture, high tech, and all manner of service sectors—stands behind PNTR as the necessary step that will ensure US access to China's economy on the terms to which China has agreed at our own insistence. As I said in an earlier letter, it is on Congress's shoulders to bring home to Americans the equality of economic opportunity that we won at the negotiating table, and not to turn America's back on those opportunities while our competitors throughout Europe and Asia capitalize on them.

2 The anti-PNTR "leverage" argument does not stand up.

The argument that PNTR must be discarded so that the United States can preserve "leverage" just doesn't hold water.

If China's accumulated record, viewed in the year 2000, is as grotesquely miserable as anti-PNTR critics say it is, why would anyone want to perpetuate the situation that failed for 20 years to improve it? What kind of mistaken nostalgia for the "good old days of annual MFN/NTR" is at work here?

Here is China, on the brink of WTO accession, agreeing to massive and bitterly painful behavior modification at our demand. Yet PNTR opponents insist that the United States cling to the same annual NTR renewal system whose abject failure is the starting point of the anti-PNTR tirade in the first place! If the old annual ritual had been as successful a form of "leverage" as anti-PNTR activists now suggest, there would be nothing to complain about today!

The whole anti-PNTR "leverage" line is in fact a diversion, attractive, perhaps, but simply insupportable on its face. We should not—and in the end, we won't—set ourselves up for a fall by conjuring for ourselves a mythic "leverage," and then compound the mistake by imagining that an act of self-mutilation will finally make that "leverage" materialize.

The real promise of genuine "leverage" in all this lies in China's binding international agreement to alter its entrenched systems of legal and economic cronyism and to abide by globally defined standards of conduct, on pain of international sanction, when it enters the WTO.

The real promise of genuine change lies in China's internal decision to continue forward along the paths defined by its WTO commitments. The United States should wholeheartedly support that decision, by establishing PNTR-based WTO relations with China.

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3 **The argument continually thrown at the Congress—that passing PNTR is a "reward" to China—is hollow.**

China is submitting to a range of external requirements, backed by international sanctions, unlike anything that this regime or its predecessors has ever even approached before, in the teeth of intense opposition from nationalist/protectionist/Marxist-Leninist ideologues and zealots within Chinese society. China's unprecedented commitments are fact; Congress does not vote on them.

What Congress does vote on is whether the United States will be able to engage economically with China on this new basis or not, and whether the United States will thereby encourage China's further progress in these positive directions or not. If we walk, we discard our own future and embrace China's oft-criticized past. There's no "reward for China" involved here; the reward, which I am confident we will have the common sense to see and to seize, is for ourselves when PNTR passes and the United States enjoys full WTO-based economic relations with the PRC.

4 **On the core issues in the anti-PNTR onslaught—labor and environment—the Congress should stand on the side of full US involvement in China's economy, not against it.**

Take the labor issue. Twelve of America's most judicious academic specialists on China's economy, in a recent open letter, put it this way:

China's workers need higher labor standards, but opposing Permanent Normal Trade Relations for China is not going to help. To the contrary, China's participation in the WTO and the implementation of full WTO-member relations between the United States and China through the passage of...PNTR offer greater, more dependable prospects for progress on this long-term challenge.... Normal trade relations in the context of China's membership in the...WTO are an important way for China to raise the standard of living of its people. WTO membership will also contribute to the development of a law based system in economic relations.... China's low wages and often poor working conditions are mostly the result of China's poverty. Child labor similarly is more the product of families so poor that the small extra income these children bring in is important to family survival. China's failure to regularly and vigorously enforce its existing laws against child labor and poor labor standards reflects a system of law that is only slowly being reestablished after decades of neglect.... With China on the brink of entry into the WTO, what is needed is an energetic effort to help China enforce its own laws and to strengthen its legal system in general. Efforts of this sort have been underway for some time through bilateral and multilateral public and private bodies and have already born modest fruit.

*Attempts to enforce labor laws by means of trade sanctions are by contrast a weak and blunt instrument for enforcing China's labor standards. Opposing PNTR and WTO membership for China would undermine the very forces that are contributing to rising standards for Chinese labor and enforcement of its existing labor laws. Denial of normal trading relations and resort to sanctions are also easily prey to abuse by special interests desirous of disguising their true protectionist purpose....Whoever may benefit from a sanctions approach to trade with China, it will certainly not be Chinese workers or their children.**

And on China's towering environmental problems, which indeed pose a threat not only to the country's enormous population but to the global commons, can anyone seriously believe that shutting China's door to the entry of US environmental services and US-based innovations in production, energy utilization, management, and market economics is going to make a positive difference? Can anyone maintain with a straight face that the long-term American foreign policy goal of drawing China into international commitments on the environment will be made easier if the United States turns its back at the last moment on the results of 13 years of WTO negotiation with the PRC?

The idea behind so many of the demands that the United States abandon PNTR, that is, that we stand on the sidelines with arms folded, waiting until China somehow passes some undefined American test for better behavior in these areas, is misguided. China is not the prisoner of the United States, and the United States is neither China's warden nor its parole board, notwithstanding the pretentious anti-PNTR rhetoric about "putting China on probation." Decking out the debate over PNTR with that kind of self-deception might again make good politics in the short run; in the longer run—longer than six months, in fact—it is a recipe for ignominious American policy failure, or worse.

5 **The "1979 bilateral trade agreement is good enough; no need for PNTR" distraction is in ruins.**

Don't ask me; don't ask business. Ask the General Accounting Office and the Congressional Research Service, the two key research bodies that report to Congress itself. That whole line of attack took up a lot of time and wasted a great many calories; it is discredited.

6 **The bottom line: loading PNTR down with all the baggage of America's dilemmas over China's modernization will not resolve those dilemmas.**

This truth is hard for some to accept, but that makes it no less true. Approving PNTR is not going to bring peace or war between the PRC and

Taiwan. It will not create a two-party political system in Beijing. It will not create American-style judicial review or institute habeas corpus. It is not going to get people out of jail—or put them in jail. It is not going to alter the Tibet problem one way or the other. It will neither validate the "China Threat" theory so beloved of legions of paid publicists and policy consultants, nor make China into an earnest ally of the United States against enemies seen or unseen. Blaming PNTR for failing to achieve these miracles, or insisting that destroying PNTR will accomplish them, makes good marketing for some; it makes bad policy for all.

Conclusion: PNTR on the merits, not on dreams

We have a chance to play our part, along with the rest of the world, in a drama of real historical significance: the inclusion of China within the demanding expectations of a world trading system profoundly shaped by American ideas and American examples.

But let us not inflate our role beyond recognition. The drama will proceed with or without us.

Taking our part in the drama probably won't reinvent China; walking off the stage surely will not.

By taking part in the experiment just ahead, we open the door to American opportunities, both for economic betterment and for respectful American influence over the decisions that China will make for itself.

By walking off, we close that door and throw away the fragile chances we have for progress with China on matters of political and ethical concern to Americans.

And if PNTR were to go down, the United States would face infinitely heavier burdens trying to maintain a semblance of stability in its relations with China on all manner of other issues, including Asian regional relations. The implications of the PNTR vote do extend beyond trade in goods and services. But the notion that compromising a WTO-based US-China economic relationship will help to bring about "regime change" in China suggests a seriously overheated imagination.

That is why America's lawmakers will in the end enact this very, very modest change in American law, and ideally also turn to the long-term task of making sure China's WTO membership is good for us, good for China, and good for the world.

---

*Signatories to the open letter:

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Gary H. Jefferson, Brandeis University
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Telecom Competition, Post-WTO Style

Foreign investors may want to wait and see how China implements its WTO telecom services commitments before making decisions about new investments

Bing Zhang and Mike W. Peng

Much has already been written about the implications of China's accession to the World Trade Organization (WTO) for current and would-be foreign investors in the PRC (*see The CBR*, January-February 2000). But not much is known about how China will meet its WTO market-opening obligations, specifically in its presently closed telecommunications services market. (The telecom-equipment market has been open to foreign investment for nearly two decades.) Consequently, little concrete information exists about the prospects for foreign telecom service providers interested in investing in China in the post-WTO era.

China's telecom market at a glance

China's telecom market has developed enormously over the past two decades. In 1980, phone penetration—or teledensity, defined as the number of subscribers divided by the population—was only 0.4 percent, and the total number of fixed-line telephone subscribers was just 4.1 million. By the end of 1999, teledensity had reached 13 percent, and the total number of fixed-line subscribers had climbed to 108.8 million, making China the second-largest market in the world, behind only the United States. Starting from zero in 1980, the number of paging and mobile-phone customers reached 47.2 and 43.2 million by 1999, ranking China first and second, respectively, in the world. In addition, the estimated number of Internet users totaled 8 million at the end of 1999, quadrupling in just one year (*see* Table 1 and Figure, and *The CBR*, March-April 2000, p. 20).

In terms of market structure, the fixed-line services market in China is similar to that in the United States before AT&T's breakup in 1984. The state-owned China Telecommunications Co. Ltd. (China Telecom) monopolizes this sector, including local, long-distance, international, and data transmission services. In the wireless services market, China Telecom and its state-designated competitor, China United Telecommunications Corp. (Unicom), constitute a duopoly, controlling 94 percent and 6 percent of the market, respectively, at the end of 1998. The paging sector is more competitive, with over 2,000 operators hustling for a slice of the market. Nevertheless, by 1998 China Telecom and Unicom still managed to account for 66.6 percent and 3 percent, respectively, of the paging market, according to the Yankee Group (*see The CBR*, July-August 1999, p.34).

China prepares for competition

Recognizing the need to prepare for the inevitable arrival of foreign competitors after WTO accession, the industry has undergone fundamental changes over the past few years. First, the Ministry of Information Industry (MII) replaced the Ministry of Posts and Telecommunications (MPT) as the industry overseer in 1998. Second, the postal and telecom sectors split, a move that eliminated cross-subsidization. Third, MII has made some effort to enable the second national carrier, Unicom, to mount a credible challenge to the leading carrier, China Telecom. For example, MII mandated that China Telecom relinquish Guoxin Paging Co., a highly profitable subsidiary, to Unicom. MII also granted Unicom an exclusive operational license to build a nationwide Code Division Multiple Access network, an advanced wireless system—though Beijing recently put plans for the system on hold.

Finally and most important, China Telecom, which often provides poor service at high prices, has faced mounting political pressure to get its act together. As a result, in 1999, the company started to restructure itself into four separate operational entities focusing respectively on fixed-line, mobile, paging, and satellite services. However, it is premature to view China Telecom's restructuring as an AT&T-style breakup. In fact, the post-restructuring China Telecom, with no geographically based separation, is still similar to the pre-divestiture AT&T in terms of market coverage.

China Telecom generally has not welcomed its domestic challenger, Unicom, and MII has had to use administrative means to create a more level playing field. For interested foreign telecom companies, the critical questions are whether domestic players are likely to embrace even more competition, and if not, how MII will behave in its dealings with foreign entrants.

WTO and the telecom sector

In 1997, 69 WTO members accounting for about 95 percent of the world's telecom traffic signed the WTO Basic Telecommunications Agreement (BTA), opening basic telecom ser-

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Recognizing the need to prepare for the inevitable arrival of foreign competitors after WTO accession, the industry has undergone fundamental changes over the past few years.

vices to their fellow WTO members. This agreement not only legally binds all current WTO members, but also serves as an entry requirement for prospective members, such as China.

Historically, and in large part due to national security and sovereignty concerns, China has banned foreign investment in its telecom services industry—although there is significant foreign investment in the telecom equipment industry, and some investment in gray areas such as Internet services and ventures with Unicom. But according to the bilateral market-access agreement between China and the United States, China must open its telecom services market to international competition immediately after entering the WTO. Foreign firms can take up to 50 percent ownership in valued-added services in two years, and 49 percent ownership in both mobile and fixed-line services in five to six years. To facilitate such drastic policy changes, China has agreed to implement BTA regulatory reforms.

Table 1

Development of China's Telecom Industry (millions of subscribers unless otherwise noted)

	Phone penetration (%)	Fixed-line services	Mobile services	Paging services	Internet services
1980	0.4	4.1	0.0	0.0	0.0
1999	13.0	108.8	43.2	47.2	8.0

SOURCES: *MII Monthly Report of Post and Telecommunications Development* (1999); *Telecommunications and Development: An Introduction*; and *Telecommunications and Development in China.*

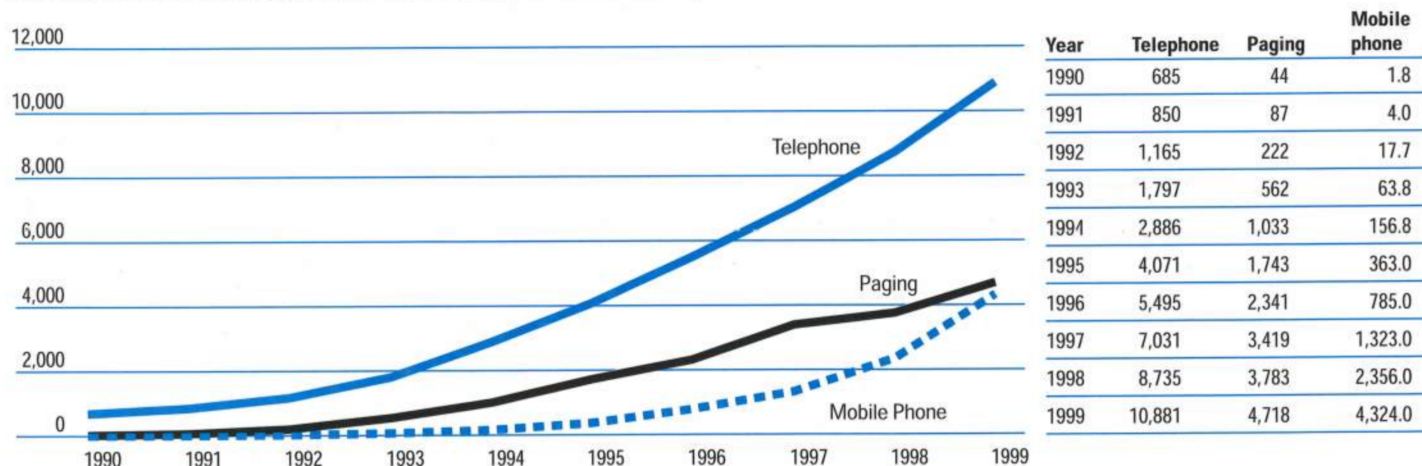
Six hurdles

The BTA requires WTO members to erect pro-competitive regulatory institutions in six areas: competitive safeguards, interconnection, universal service, public availability of licensing criteria, regulatory independence, and allocation and use of scarce resources (*see* Table 2). At present, none of these six areas of China's telecom sector seems to comply with WTO rules—although some are in better shape than others. Overall, there are huge gaps between the current regulatory regime and the ideal outlined by the BTA. These gaps will act as regulatory barriers to foreign entrants until sound regulations are available. Once they are in place, however, MII's implementation of these regulations will be another matter entirely.

- **Competitive safeguards** As the industry's regulator, MII should prevent China Telecom and other domestic carriers with market power from engaging in anti-competitive behavior such as cross-subsidization and concealment of technical information and network and service specifications. However, the industry still lacks national legislation safeguarding competition. Before 1998, as both the regulator and the operator, MPT basically monopolized the industry via China Telecom. There was little need for clear and specific laws and regulations, since internal negotiations and occasional intervention from the State Council sufficed to resolve disputes.

At present, telecom regulation is supported by fragmented administrative decrees mainly dealing with technical standards and service tariffs. The overall framework concerning competition policy is inconsistent and lacks transparency. The legislative outlook over the next five years is uncertain, as reforms have not yet created the necessary conditions for China to enact national telecom legislation, and many basic questions such as state-owned-enterprise re-

Growth of Telecom Services in China (10,000 subscribers)



Year	Telephone	Paging	Mobile phone
1990	685	44	1.8
1991	850	87	4.0
1992	1,165	222	17.7
1993	1,797	562	63.8
1994	2,886	1,033	156.8
1995	4,071	1,743	363.0
1996	5,495	2,341	785.0
1997	7,031	3,419	1,323.0
1998	8,735	3,783	2,356.0
1999	10,881	4,718	4,324.0

SOURCES: Ministry of Posts and Telecommunications and Ministry of Information Industry (MII) annual statistical reports (1997, 1998), monthly statistical report (December, 1999).

forms, private participation in telecom, antitrust, and property rights remain unresolved.

But WTO entry is pushing China to make some rules, however crude. As a transitional measure, China is expected to issue a telecommunications regulatory ordinance (*dianxin guanli tiaoli*) in the middle of this year, which will give Beijing plenty of flexibility to handle telecom competition and accumulate experience before finalizing a telecom law. MII also issued an interconnection regulation last September, and Internet services regulations are expected to be released in the next two months. As *The CBR* goes to press, drafts have been sent to the State Council for approval.

◆ **Interconnection** will be the main issue on Chinese regulators' agenda. Currently, telecom competition in China only occurs in wireless and other value-added services. For telecom competition to take place, any new competitor must reach customers through interconnection with incumbents' networks. In most countries, interconnection is mandatory and subject to close monitoring from regulators because strong incentives exist for incumbents to abuse their market power and refuse, delay, or manipulate interconnection. In September 1999, MII issued the Temporary Regulation on Telecommunications Network Interconnection, which covers critical issues such as obligation, time, cost, and arbitration. In terms of interconnection scope and depth, however, China's interconnection rule is much looser than the BTA requirements. For instance, MII's interconnection order, unlike BTA, does not require that technology be "sufficiently unbundled" so that suppliers need not pay for network components or facilities that it does not use. If future MII rules do not sufficiently address unbundling, telecom competition—except at the facility level—will be hin-

dered, and other forms of competition such as resale prevented.

Universal service obligations BTA has no specific regulation about universal service obligations—the requirement that telecom services be available to everyone in the country, regardless of location, at affordable prices. But it will become an important item on the regulatory agenda, because telecom coverage is thin in the vast rural areas of western China. According to the BTA, universal service obligations should not be regarded as anti-competitive, and should be administered in a "transparent, non-discriminatory, and competitively neutral manner." As this manner is not clearly defined, however, MII is left with plenty of room to formulate universal service policies based on its own interpretation.

A fair and transparent mechanism to allocate licenses will be essential if foreign carriers are to be competitive with Chinese domestic carriers.

Criteria for obtaining telecom services The BTA mandates that the criteria for obtaining telecom services licenses be made publicly available. China has issued some regulations concerning licensing competitive value-added services. The licensing criteria for core fixed-line, wireless, and satellite services are still unavailable, though China may improve the licensing process in the next five years.

Regulatory independence The BTA specifies that the regulatory body should be independent from service providers and should be impartial to all market participants, whether domestic or foreign. This represents perhaps the biggest policy reform challenge for China. The legacy of decades of central planning has left the central ministry—previously MPT, now MII—intimately connected with telecom firms. For example, MII still significantly influences strategic issues such as pricing, assets, and personnel matters at both China Telecom and Unicom.

While progress may be expected, it is not certain whether the boundaries separating MII from the firms it oversees can be clearly demarcated by the time China joins the WTO. Moreover, China will interpret "independent regulator" in its own way, so there will likely be little difference between the pre- and post-WTO MII in the short term.

Resource allocation The allocation of scarce resources such as frequencies, numbers, and rights-of-way should be "objective, timely, transparent, and non-discriminatory," according to the BTA. Currently, the Chinese government allocates these scarce resources administratively with limited transparency, which is unacceptable under WTO rules. Without clear regulations concerning spectrum assignment and allocation, competition in paging, cellular, satellite, and other wireless services is almost impossible.

The hazardous absence of a telecom law

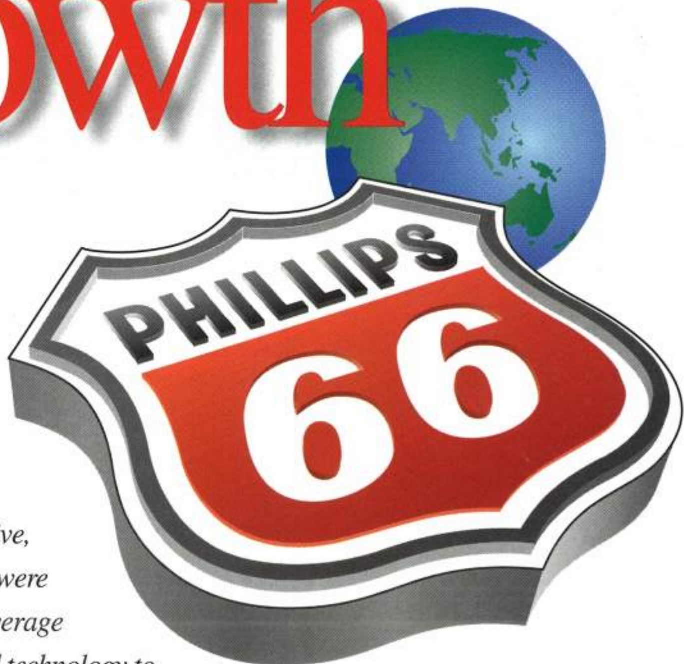
While China has enacted legislation to facilitate foreign investment in general, the country lacks a specific law governing the telecom sector to serve as a basis for implementing WTO commitments. If China joins the WTO this year, it will have to work hard and fast to prepare the telecom services sector, which is currently guided only by a few fragmented administrative rules and regulations. Several drafts of a telecom law have been prepared, but bureaucratic inertia and irreconcilable interests have stymied the process. Moving to implement BTA protocols in a piecemeal fashion could lead to chaos and confusion, however. Without a national law with an overarching set of regulations, procedures, and en-

Table 2
Regulatory Status of China's Telecom Sector

WTO Basic Telecommunications Agreement-mandated regulatory category	Current situation	Forecast for the next 5 years
Competition safeguards	• No national telecom legislation • Extensive administrative control	• No timetable for a telecom law • Overall development uncertain
Interconnection	• Interconnection order issued, but limited in scope and depth	• Further improvements
Universal service	• Current telecom services not universal • Strong urge to provide services to rural, western regions	• More regulations • Rules may favor incumbents and require new entrants to share more universal service burdens
Licensing criteria	• Applied administratively with little transparency	• Improvements in opening, transparency, and nondiscrimination • Possible difficulty complying with WTO national treatment principle
Independent regulator	• The MII's independent regulatory role formally established • Boundaries between the MII and state-owned carriers still unclear	• Some effort to improve regulatory independence • Real independence contingent on macro political reforms
Resource allocation	• Handled administratively with little transparency	• More competition and transparent methods

SOURCES: Bing Zhang and Mike Peng

China: A Commitment To Growth



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forcement mechanisms, the legality of foreign investment projects remains unclear, and foreign investors are left vulnerable to MII's heavy-handed intervention. Of course, even though such an approach may be challenged under WTO rules, MII may have little alternative in the absence of a telecom law.

The "heavy-handed intervention" scenario is an extrapolation of the existing state of foreign investment in China's telecom services sector. The Chinese-Chinese-foreign (CCF) fiasco serves as a well-publicized case in point. Despite the official ban on foreign investment, 21 foreign investors injected $1.3 billion between 1995 and 1998 into Unicom's provincial cellular networks via their Chinese-foreign joint ventures—hence the term "Chinese-Chinese-foreign." The legal ambiguity of the CCF model sent a misleading signal to carriers such as Bell Canada, Cable and Wireless Plc., France Telecom, Nippon Telephone and Telegraph Corp., and Sprint International, which took a risk in the absence of clear rules, hoping for a future slice of Unicom's market.

If future MII rules do not sufficiently address unbundling, telecom competition—except at the facility level—will be hindered.

However, in fall 1999, Unicom unilaterally ordered these investors to withdraw their investments in exchange for the refund of their principal plus a nominal return far below what the foreign investors had hoped for. By December 1999, such withdrawals were complete, despite the investors' protests. Whether the ejection of foreign investors was a political decision made by MII (or higher authorities) to enforce the ban strictly, or a business decision made by Unicom to put its financial house in order before floating its shares publicly in 2000, prospective foreign carriers have hardly been encouraged by the lack of protection for their investments.

Another example of legal ambiguity is foreign investment in Chinese Internet service providers and Internet content providers, which witnessed a combined inflow of about $175 million in 1999, according to The Yankee Group. Though MII Minister Wu Jichuan has reiterated that foreign investment in this area is prohibited, for the most part the authorities have chosen to turn a blind eye to such investments. Moreover, Wu's assertions were countered by the November 1999 US-China WTO agreement, which states that foreign investment in Internet-related ventures will be permitted once China becomes a WTO member. But in the absence of a telecom law protecting the legality of foreign investment, there is no guarantee that experiences similar to those of CCF investors will not recur. According to The Yankee Group, MII officials argue that they would rather have no law than a bad one, and have yet to provide a timetable for the adoption of a telecom law. But most foreign investors interested in China's post-WTO telecom market are wary of this lack of protection, and many are holding off on further investments until the investment environment improves.

Interconnection as a bottleneck

Interconnection is widely regarded as a necessary condition for telecom competition. In the United States, the fundamental spirit of the 1996 Telecommunications Act is to promote competition in all telecom sectors, especially in local phone markets, which are still monopolized by the regional Bell operating companies (RBOCs). Sections 251 and 252 specifically address network interconnection and arbitration. In addition, the Federal Communications Commission (FCC) issued its "First Report and Order" (FCC96-325) in 1996 to clarify interconnection rules consisting of obligation, pricing, and arbi-

Table 3
Main Differences in Interconnection Policies between US and PRC Regulators

Items	US Federal Communications Commission (FCC)	PRC Ministry of Information Industry (MII)
Interconnection Scope	Resale, unbundling network elements, and facility	Facility at network level only
Collocation	Yes	No
Number portability	Yes	No
Operation support system	Yes	No
Tandem, common transport, and switching	Yes	No
Pricing	Future total element long-run incremental cost (TELRIC)	Cost based (unclear about historical cost or future cost)
Negotiation	Business negotiation with conflicting interests	Negotiation under "friendly and cooperative" principles
Arbitration	State commissions, court	MII, Post and Telecom Administrations (PTAs), court

SOURCES: US Federal Communications Commission: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and First Report and Order [CC Docket 96-98] (1996). PRC Ministry of Information Industry: Temporary Regulation on Telecommunications Network Interconnection [MII No. 728, 1999].

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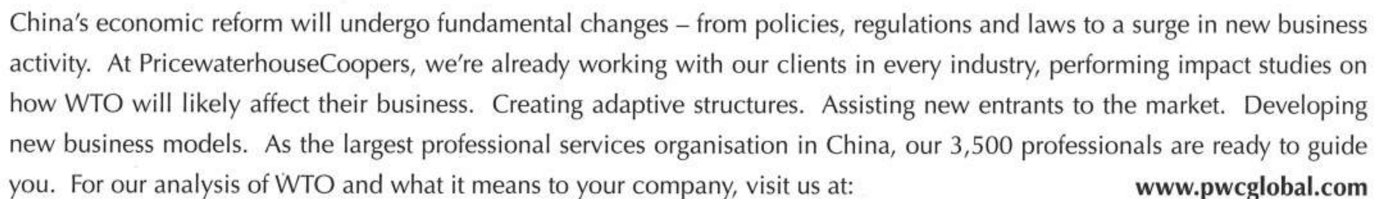

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tration. The US experience demonstrates that a sound interconnection order plays a crucial role in promoting and safeguarding competition.

China's interconnection rule, issued last September, is weak in comparison, although the two laws share certain aspects (*see* Table 3). Among the greatest discrepancies is that the PRC rule does not require China Telecom to have an operation support system (OSS). Without an OSS, competitors cannot realistically provide efficient, quality service in ordering, billing, repairing, and marketing. Most important, MII's interconnection order only addresses inter-networks interconnection—telecom competition is not yet permitted in resale and unbundling. The low entry barriers of such services in other countries mean they are generally the first point of entry for new competitors. Such conditions virtually exclude a majority of the would-be competitors because they cannot afford the huge sunk costs of constructing telecom networks, or to take on the requisite financial risks. Put another way, China's interconnection regulation has implicitly but significantly increased the barriers to telecom competition.

In one possible scenario, foreign carriers entering China would be "invited" to provide universal services to rural, western areas before they are allowed a free hand to compete in the larger and richer eastern China market.

Universal services—an unavoidable burden

Traditionally, China Telecom has been responsible for the national telecom network rollout and operations across the country. In 1998, about 33 percent of rural villages, mostly in western China, still had no access to phone services. The central government is eager to change that. The operational costs in western China are believed to be exceptionally high because of the harsher natural conditions and the smaller and poorer population.

As a result, cross-subsidies from eastern to western China, and from wireless and long-distance services to local phone services, were necessary for China Telecom to cover most of the country. However, China Telecom's recent restructuring, and the impending competition in the post-WTO era in basic phone services, will force MII to reconsider how to allocate universal service obligations fairly among different telecom service providers. The broad terms and conditions of the BTA fail to offer effective guidelines on how to achieve universal service.

In one possible scenario, foreign carriers entering China would be "invited" to provide universal services to rural, western areas before they are allowed a free hand to compete in the larger and richer eastern China market. China would not be the first to adopt such a strategy—India and Pakistan both require telecom companies to obey rules aimed at achieving universal service.

Such universal service obligations could act as a non-tariff barrier to entry for foreign investors, but according to the national treatment principle in the General Agreement on Trade in Services, the host country may not treat domestic and foreign providers differently. Ironically, in sharing the universal service burden, rather than providing favorable treatment for foreign firms, MII could implement national treatment for foreign carriers without reservation.

Licensing as a regulatory instrument

One of the first things that foreign carriers need in China is a license from MII. Although the BTA recognizes the important relationship between licensing and competition, it says nothing about the specifications and criteria for granting licenses. Because the number of licensees for some telecom services such as fixed-line, wireless, and satellite services is extremely limited, MII has the power to control telecom competition by manipulating its licensing authority. For instance, MII could impose strict conditions on licensees operating in metropolitan areas, but apply attractive and favorable terms to licensees operating in rural and high-cost areas. Such measures would be consistent with China's WTO commitments. In short, a fair and transparent mechanism to allocate licenses will be essential if foreign carriers are to be competitive with Chinese domestic carriers.

An independent regulator?

The BTA clearly commits members to create domestic regulatory institutions to facilitate competition. An independent regulator treats domestic and foreign carriers equally, and is not accountable to either side. First, the regulator should be exempt from undue political intervention. MII's top priority, however, is to implement the policies of the Chinese Communist Party and the government faithfully, and its independence can only be viewed in a comparative rather than absolute sense. MII's real independence will be contingent upon wider political reforms, the outcome of which is uncertain.

Second, independence means that the regulator has no interests in the regulated industry and does not favor the regulated industry at the expense of consumer interests. However, because China's domestic carriers are state owned rather than private, MII has strong structural, political, and economic incentives to favor Chinese carriers. MII's potential ability to channel foreign investment to poorer western areas is just one example. Such actions could lead to a face-off with other WTO members. But China's main motive for such a tactic would be to delay the entry of foreign carriers to win transitional time for do-

mestic carriers. As even the shortest WTO dispute settlements are time consuming, such moves could buy time and thus be a sensible strategy on China's part.

Allocating scarce resources

Telecom competition inherently makes a number of resources, such as frequencies, telephone numbers, and rights-of-way, scarce and irreplaceable. With more carriers entering the market, competition for these resources will heat up. Currently, allocation is carried out through administrative mechanisms. While this method worked well in a monopolistic situation, it will likely be unable to meet the demands of a competitive market.

Regulations regarding telephone-number allocation are problematic, for example. When customers change locations or shift carriers, they generally prefer to keep their old number. However, MII's interconnection rules do not require China Telecom to satisfy consumer preference for number portability. Several studies have shown that most consumers will not change their telecom carriers if they cannot keep their phone numbers. Other domestic and foreign carriers are thus at a disadvantage, as customers will consider the cost of switching too high if they are unable to take their numbers with them. Foreign carriers' ability to compete may be especially undermined, because they are likely to target business customers in metropolitan areas who have strong commercial reasons for keeping their existing numbers.

Prospects for foreign carriers

Despite the many restrictions that exist, the opening of China's telecom market that has occurred to date is a direct result of the country's desire for WTO membership. Without the pressure to comply with WTO obligations, China would probably not be restructuring its regulatory regime and telecom industry so quickly. At the same time, the BTA's terms and conditions are often vague. Thus, whether WTO membership and compliance with the BTA will have any real effect on safeguarding competition in China is an open question. The nationalistic, protectionist sentiments among Chinese regulators and companies, combined with the WTO's lack of teeth, may mean that foreign carriers find the lucrative telecom services market in China out of reach—the same is perhaps true for many foreign services firms in China, regardless of industry. In other words, foreign firms may find a nominally more open telecom market in China after WTO accession, but one that comes with significant regulatory constraints.

Wait, monitor, and see

Although widely applauded as a step in the right direction, China's entry into the WTO will not bring major changes in the telecom sector overnight. Having lost the political battle to keep foreigners out, domestic carriers will continue to mount severe resistance at every turn. The lack of rules of engagement between competing carriers creates numerous hidden regulatory barriers.

Moreover, China Telecom and Unicom are unlikely to behave like Western companies in China's present cultural and political environment. However, to win entry to China' markets, especially in telecoms, foreign companies need to engage—rather than compete and fight with—these state firms. One avenue foreign companies could take to speed up the process is to work with MII on joint projects or training programs that benefit both PRC and foreign companies. But in the final analysis, removing regulatory barriers is most important to improving access for foreign companies. To that end, companies could offer advice or training to decisionmakers. In addition, expanded exchanges between US and PRC regulators (FCC and MII) would help China to implement its WTO commitments. Only by developing mutually beneficial relationships can foreign companies gain a foothold in these restricted markets.

To win entry to China' markets, especially in telecoms, foreign companies need to engage—rather than compete and fight with—these state firms.

In the absence of concrete evidence of pro-competition regulations required by the BTA, companies have little immediate incentive to expand their investments in China. Even if such regulations were in place, the outlook for foreign companies in the longer term would still be clouded unless transparency improves. The recent exit of RBOCs from China illustrates this point. The companies, which converged on China with enthusiasm in the early 1990s, are now completing their departure, empty-handed, on the eve of the country's long-awaited WTO entry.

It is safe to say that the 50 and 49 percent foreign-ownership ceilings set in the US-China WTO agreement will be high ones that foreign carriers will find hard to touch, especially for core services such as fixed-line and mobile service. Therefore, a "wait, check, and see" strategy is more likely to pay off than a "full speed ahead" approach. Navigating an economy in transition has always demanded greater flexibility and patience on the part of foreign participants, and China's post-WTO telecom sector will prove to be no exception. 完

IP Rights Protection Will Improve in China—Eventually

Douglas Clark

WTO membership should facilitate a stronger IP rights regime over the long term, but will cause a surge in fakes first

Once China joins the World Trade Organization (WTO), the country will be obliged to comply with various obligations to open its markets, including the General Agreement on Tariffs and Trade (GATT)-Agreement on Trade Related Aspects of Intellectual Property (TRIPS). TRIPS, which requires members to provide high levels of intellectual property (IP) rights protection and enforcement for copyrights, trademarks, patents, and trade secrets, among other forms of IP rights, must be implemented within one year of accession.

Within the first five years of China's WTO membership, the production and sale—both domestic and international—of counterfeit and pirate products will rise. But more than five years out, China's WTO accession should lead to a decrease in the infringement of IP rights. This trajectory is likely because the growth of IP infringement in China has paralleled the growth of China's economy and Chinese companies' greater access to domestic and international markets—both of which will grow even further with WTO membership. China's accession will require the government to implement more extensive reforms to further liberalize its domestic market and allow PRC and foreign companies to import and export products freely.

In the short term, what will assist the production, distribution, export, and sale of genuine products will equally assist the production, distribution, export, and sale of counterfeit products. But over the long term, economic growth should provide opportunities for domestic companies to profit from legitimate activities, thereby reducing the number of companies churning out counterfeit products. Further, as the legal system develops, China's IP rights enforcement efforts should improve.

The PRC legal system and IPR

China's wide-ranging economic and legal reforms over the past two decades have brought renewed recognition for IP rights—the Trademark Law was enacted in 1982, the Patent Law in 1984, the Copyright Law in 1992, and the Anti-Unfair Competition Law in 1993 (*see* p.28). Other non-IP specific laws have provisions that touch on IP issues as far as they relate to the imposition of those laws. However, the enforcement of IP rights is governed by specific IP laws.

Intellectual property developments in the last three years include amendments to the trademark and patent laws and the empowerment of the Public Security Bureaus to receive complaints and investigate allegations of counterfeiting activities. According to State Administration for Industry and Commerce (SAIC) statistics, raids and seizures of counterfeit goods have increased nearly 50 percent from 1997, with over 400 million units of infringing goods seized in 1998.

There remain two fundamental shortcomings in the enforcement regime, however. First, penalties remain weak. Fines and compensation orders are generally low—the average fine in 1998 was ¥5,805 ($701)—and almost no IP infringers are imprisoned. Large fines, even when levied, are rarely collected. The second is the poor funding of, and other support for, China's administrative IP enforcement bodies, which have been criticized both in China and abroad. Some enforcement bodies, such as SAIC and the State Copyright Administration, have seen cutbacks in staff and resources in recent years, due to government restructuring. Enforcement agencies also find it difficult to finalize a case. They must obtain confirmation from rights holders that goods are counterfeit, but such confirmation is often not easy to secure because enforcement agencies cannot reach rights holders or do not have the budget for onsite inspections.

The birth of a problem

In the mid-1980s, there were virtually no counterfeit products on sale in China. Even in 1990 counterfeiting was not a major problem, although small quantities of counterfeit products (especially cigarettes) could be found in some markets. In the early 1990s, the production, export, and domestic sale of counterfeit products started to increase dramatically. This trend can be attributed to a number of factors, including:

- The continued liberalization of China's economy, which allowed domestic companies to produce goods of their choice and to distribute them where they chose;
- The establishment of manufacturing facilities in China by Hong Kong and Taiwan companies (including counterfeiters); and
- The growing appreciation within China of the value of IP rights, particularly an appreciation of the money that could be made from the ingenuity of others.

At this time, however, most Chinese counterfeit products were of low quality. While they ob-

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Some customers are harder to support than others. Trade barriers, market access rules and bureaucracy keep them at arms length. These restrictions have prevented us from offering Chinese customers the same array of products and services we offer elsewhere around the world.

China's decision to become a member of the World Trade Organization and be part of a rules-based international trading system means that Xerox can provide Chinese customers a world-class level of solutions, service and support. With fewer restrictions and less red tape, our customers stand only to benefit.

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TRIPS and China's Intellectual Property Laws Compared

TRIPS AGREEMENT		CHINESE LAWS	
Article of TRIPS	**Requirement**	**Degree of compliance**	**Relevant provision of Chinese law/Comment**
Part I: General Provisions and Basic Principles			
2(1)	Members to comply with Arts. 1-12 and Art. 19 of Paris Convention	Compliant	China is a party to the Paris Convention
3	National Treatment required	Compliant	Law does not discriminate between Chinese and foreigners
4	Most-favored-nation treatment forbids discrimination between the nationals of Members (Art. 4)	Compliant	Law does not discriminate between nationals of Members
Part II Section 1: Copyright and Related Rights			
10(1)	Computer programs, whether in source or object code, to be protected as literary works under the Berne Convention (1971)	Compliant	Art. 7 Provisions Implementing International Copyright Treaties
10(2)	Compilations of data to be protected	Compliant	Art. 14 Copyright Law Art. 8 Provisions Implementing International Copyright Treaties
11	Rental Rights: Authors of computer programs and certain cinematographic works have the right to authorize or prohibit the commercial rental of their copyright	Compliant	Art. 14 Provisions Implementing International Copyright Treaties
12	Term of protection of a work, other than a photographic work or a work of applied art, is not less than 50 years	Compliant	Art. 21 Copyright Law
14(1)	Performers to have fixation rights for performance on phonograms and to prevent broadcast of live performance	Compliant	Art. 36 Copyright Law
14(2)	Producers of phonograms have the right to prohibit direct or indirect reproduction	Compliant	Art. 39 Copyright Law
14(3)	Broadcasting organizations have the right to prohibit copying of broadcasts; alternatively copyright owner to have such rights	Compliant	Art. 42 (producers) Art. 36 (performers) and Art. 10(v) Copyright Law (copyright owner)
14(4)	Producers or other rights holders in phonograms have the right to authorize or prohibit commercial rental of their copyright	Compliant	Art. 14 Provisions Implementing International Copyright Treaties
14(5)	Term of protection for phonograms to be at least 50 years except for broadcast rights, which shall be at least 20 years	Compliant	Art. 39 Copyright Law Art. 42 Copyright Law
Part II Section 2: Trademarks			
15	Signs or combinations of signs capable of distinguishing goods shall be capable of being registered as a trademark	Compliant	Art. 7 Trademark Law
16	Owners of registered trademarks have right to prevent third parties from using identical or similar signs	Compliant	Art. 38 Trademark Law
18	A trademark is to be registrable for a term of no less than seven years and renewable indefinitely	Compliant	Art. 23 Trademark Law (10 year validity) and Art. 24 Trademark Law (renewable)
19	Minimum three-year period before cancellation for non-use	Compliant	Art. 30(iv) Trademark Law (three-year non-use period)
20	Use of trademark should not be unjustifiably encumbered	Compliant	No provisions in Trademark Law breach this requirement
21	No compulsory licensing of trademarks; assignment of trademark with or without goodwill allowed	Compliant	No requirement for compulsory licensing; trademarks may be assigned with or without goodwill
Part II Section 3: Geographical Indications			
22	Protection of geographical indications	Not compliant	No legislation to protect geographical indications
23	Additional protection for geographical indications for wines and spirits	Not compliant	No legislation to protect geographical indications
Part II Section 4 : Industrial Designs			
25	Member must provide for the protection of independently created industrial designs that are new or original	Compliant	Art. 23 Patent Law
26	Protects against the making, selling or importing of industrial designs by unauthorized third party	Compliant	Art. 60 Patent Law
Part II Section 5: Patents			
27	Patentable subject matter: Patents available for any inventions, whether products or processes, in all fields of technology provided that they are new, involve an inventive step, and are capable of industrial application	Essentially compliant	Art. 22 Patent Law Art. 25 excludes scientific discoveries, rules and methods for mental activities and substances obtained by means of nuclear transformation. Exclusions not covered by TRIPS.
28	Rights conferred to patents' owners: Patent owner to have exclusive right to work patent	Compliant	Art. 60 Patent Law

TRIPS and China's Intellectual Property Laws Compared *(continued)*

TRIPS AGREEMENT		CHINESE LAWS	
Article of TRIPS	**Requirement**	**Degree of compliance**	**Relevant provision of Chinese law/Comment**
29	Conditions on patent applicants: Patent shall disclose invention sufficiently clearly so that person skilled in the art can work the patent	Compliant	Art. 26 Patent Law
31	Compulsory licensing and government use without authorization of the rights holder are allowed	Compliant	Art. 51-58 Patent Law
32	Opportunity for judicial review of any revocation or forfeiture of a patent available	Compliant	Art. 49 Patent Law
33	Term of protection: Minimum 20 years from filing date	Compliant	Art. 45 Patent Law
34	Process patents: Burden of proof may be placed on defendant to show different process used in civil infringement proceedings	Compliant	Art. 60 Patent Law
Part II Section 6: Layout Designs (Topographies) of Integrated Circuits			
35-38	Protects layout designs (topographies) of integrated circuits	Not compliant	No legislation to protect layout designs of integrated circuits
Part II Section 7: Protection of Undisclosed Information			
39	Parties to be able to protect undisclosed information	Compliant	Art. 10 Anti-Unfair Competition Law
Part II Section 8: Control of Anti-Competitive Practices in Contractual Licenses			
40	Control of anti-competitive practices in contractual licenses: A mechanism whereby a country seeking to take action against anti-competitive practices in contractual licenses can enter into consultations with that other Member	Not compliant	Will become bound upon joining WTO
Part III Section 1: General Obligations			
41	General obligations in enforcement of IP rights: Effective enforcement procedures and judicial review shall be available. However, does not require special intellectual property judicial system	Compliant	Laws are compliant, but practice not always compliant. *(See main text)*
Part III Section 2: Civil and Administrative Procedures and Remedies			
42	Civil and administrative procedure and remedies: Requires fair and equitable procedures	Compliant	Laws are compliant, but practice not always compliant. *(See main text)*
43	Evidence: Availability of disclosure/discovery of other side's evidence	Not compliant	No discovery or disclosure obligation, but People's Court has power to collect evidence from defendant and others. Arts. 64 & 65 Civil Procedure Law. *(But see note below)*
44	Injunctions to be available	Compliant	Arts. 118 and 134 General Principles of Civil Law Art. 50 Copyright Law Implementing Rules Art. 39 Trademark Law and Art. 43 Implementing Rules Art. 60 Patent Law Art. 25 Anti-Unfair Competition Law
45	Damages to be available	Compliant	Arts. 118 and 134 General Principles of Civil Law Art. 53 Copyright Law Implementing Rules Art. 39 Trademark Law and Art. 43 Implementing Rules Art. 60 Patent Law Art. 20 Anti-Unfair Competition Law
46	Other remedies: Destruction and disposition of infringing products to be available	Compliant	Arts. 118 and 134 General Principles of Civil Law Art. 50 Copyright Law Implementing Rules Art. 39 Trademark Law and Art. 43 Implementing Rules Art. 60 Patent Law Art. 25 Anti-Unfair Competition Law
47	Right of information: Court to have power to order disclosure to plaintiff of third-party infringer	Arguably compliant	No specific provision, but Art. 118 of General Principles of Civil Law provides plaintiff has rights to have ill effects of infringement eliminated. This should include disclosure of third-party infringer. *(See also note below)*
48	Indemnification of the defendant: Courts to have power to order damages to be paid by plaintiff to defendant if enforcement procedures are abused	Arguably compliant	Art. 98 Civil Procedure Law requires compensation be paid if interim preservation obtained and plaintiff loses lawsuit. Except for this, no specific provision, but defendant would have right to make claim. *(See also note below)*
49	Administrative procedures: Remedies under administrative procedures to conform with judicial remedies	Compliant	Remedies essentially the same

China complies, at least on paper, to most of the requirements of TRIPS. The areas where substantial non-compliance remains are the protection of the layout design of integrated circuits and protection of geographical indications.

viously attempted to copy foreign brands, the products often suffered from misspellings and poor finishing.

The 1990s—a turning point

In the mid-1990s things started to change. Manufacturers worldwide simplified production techniques to cut costs, and merchandising rapidly grew beyond core products. To compete with increased world competition, Western and Japanese companies have aggressively reviewed their manufacturing processes to cut costs wherever possible by reducing unnecessary steps and parts. This has simplified the processes for production of genuine products but also made the job of a counterfeiter copying the product much easier. The following equation describes these developments:

Fewer parts + simplified production technique = easily copied product

Chinese companies, meanwhile, grew to benefit from a better-trained skill base and sophisticated machinery. It is now not uncommon for Chinese factories to have computer-aided design (CAD) machines for manufacturing molds, and staff who have been trained overseas or in foreign enterprises in China.

Many brand-owners now license the manufacture of a range of products. For example, The Walt Disney Co. sells products including, toys, clothing, bed linen, and stationery. Manchester United, the English soccer club, even has a licensed beer for sale in Hong Kong. Such large-scale licensing can result in licensors effectively losing control of the quality of their products, making it easy for counterfeiters to offer goods that are indistinguishable from the genuine item.

Counterfeiters capitalized on these trends by either improving the quality of their goods, making it more difficult to identify genuine from fake products, or purposely producing similar products that were not "dead copies" but designed to look like famous brands, thereby avoiding IP-law violations. A large market has developed for these "look-alike" goods. This, coupled with the dramatic increase in the quality of counterfeit products and sophistication of counterfeiters, is of serious concern to IP rights holders.

Fakes take off

Several additional trends have fueled the increase in supply and demand for counterfeit products:

- Further freeing of China's internal market and semi-privatization of companies;
- The increased spending power of domestic Chinese consumers;
- The continued shift of manufacturing from Hong Kong and Taiwan to China;

TRIPS and China's Intellectual Property Laws Compared *(continued)*

TRIPS AGREEMENT		CHINESE LAWS	
Article of TRIPS	**Requirement**	**Degree of compliance**	**Relevant provision of Chinese law/Comment**
Part III Section 3: Provisional Measures			
50	Provisional measures: Judicial authorities to have power to order provisional measures to preserve property and evidence	Compliant	Art. 92/251 (property) and Art. 74 (evidence) Civil Procedure Law
Part III Section 4: Special Requirements Related to Border Measures			
51-60	Special requirements related to border measures: Power for Customs to seize on a complaint or ex officio	Compliant	Customs Protection of Intellectual Property Rights Regulations
Part III Section 5: Criminal Procedures			
61	Criminal procedures and penalties to be applied at least in the case of willful trademark counterfeiting and copyright piracy	Compliant	Arts. 213-215 (trademark) and 217-218 (copyright) Criminal Law
Part IV: Acquisition and Maintenance of Intellectual Property Rights and Related Interparties Procedures			
62(1-4)	Formalities may be required for acquisition and maintenance of rights	Compliant	Required formalities are not overly onerous
62(5)	Final administrative decisions should be subject to review by a judicial or quasi-judicial body	Compliant	Laws make provision for appeal from Administrative decisions to People's Court
Part V: Dispute Prevention and Settlement			
63	Transparency: Laws required to be publicly available	Essentially compliant	Some internal regulations still not published
64	Dispute Settlement: Under GATT Rules	Not compliant	Will be required to comply when joins the WTO

SOURCE: Douglas Clark

NOTE: Part IV of the Civil Procedure Law contains special provisions for civil procedure for cases involving foreign elements. According to Article 238: *If an international treaty concluded or acceded to by the People's Republic of China contains provisions that differ from provisions of this Law, the provisions of the international treaty shall apply, except those on which China has made reservations.*

Accordingly, as far as the Civil Procedure Law is not compliant with TRIPS, Article 238 will bring China into compliance upon accession.

* General Agreement on Tariffs and Trade (GATT) Agreement on Trade-Related Aspects of Intellectual Property (TRIPs)

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China's Legal Development

Prior to the implementation of China's reform program in the late 1970s, the country had no legal system that would be recognized as such by Westerners. The only effective laws on the books were criminal laws. Disputes between enterprises were resolved administratively, as part of the state planning system. Similarly, the lack of a free market in which to sell goods eliminated the need for intellectual property laws to protect inventions or brands.

After the reforms began, it became necessary to develop economic and commercial laws, including laws providing for registration and enforcement of intellectual property (IP) rights, to regulate the parts of the economy no longer subject to state planning. Initially, these laws were of little value, as they were implemented by a poorly trained and understaffed judiciary (many judges are demobilized soldiers with no legal training), and were further weakened by political interference in decisionmaking, protection of local interests, and widespread corruption. In the past few years, the quality of the courts and legal system has markedly improved, at least in larger cities, through better training of judges and the appointment of legally trained judges.

In the early 1980s, China reintroduced the concept of intellectual property, promulgated laws protecting various forms of IP, and established special departments within administrative bodies to enforce the new IP laws. The State Administration for Industry and Commerce enforces the Trademark Law and Unfair Competition Law; the Patent Administration Office enforces the Patent Law; and the State Copyright Administration enforces the Copyright Law. The State Bureau of Quality and Technical Supervision is also empowered to enforce the Trademark Law as part of its duty to enforce the Product Quality Law. In addition, most major Chinese cities established intellectual property chambers in the People's Courts in 1993 to help enforce intellectual property rights.

—*Douglas Clark*

- The greater access of Chinese manufacturers to world markets through the loosening of export controls; and
- Improvements in China's domestic distribution networks, particularly in communication and transport infrastructure.

In addition, successful implementation of trade-related treaties such as GATT supports freer world trade. With the reduction of both tariff and non-tariff trade barriers, small and medium-sized companies can now easily source products from around the world. Smaller companies tend, however, to be more easily tempted than large companies to source fake products. And the explosive growth of the Internet gives even the smallest manufacturer the ability to advertise and sell its wares worldwide. Finally, one effect of the Asian crisis was a rise in counterfeiting, as some manufacturers that previously did not manufacture infringing products did so to stay in business. As the recovery in the region has picked up, there has been a reduction in this type of counterfeiting.

TRIPS and TRIMS

The November 1999 US-China negotiations over the WTO did not touch on IP issues, and accession to the WTO in itself will not result in a sudden improvement in IP protection in China, principally because Chinese IP laws are already essentially TRIPS compliant (*see* Table). Nevertheless, in addition to adhering to TRIPs, upon joining the WTO China must remove import and export license barriers, free up distribution networks, and—if Taiwan also joins—institute direct trade with the island.

Article 3 of TRIPS requires members to give nationals of other members "treatment no less favorable" than treatment they give their own nationals. Article 4, the often-quoted "Most Favored Nation Treatment" clause, ensures that any favorable treatment a member extends to another member is reciprocally extended to all members. Article 64 applies WTO dispute resolution procedures to TRIPS.

China complies, at least on paper, to most of the requirements of TRIPS. The areas where substantial non-compliance remains are the protection of the layout design of integrated circuits and protection of geographical indications. Where Chinese laws are not compliant, member countries can bring complaints under the WTO dispute resolution procedures. China is currently reviewing all of its laws, including IP laws, to ensure compliance with GATT when it joins the WTO. The Trademark law and Copyright Law are currently being re-drafted and, as far as they are not currently compliant, will be brought into compliance with TRIPS.

Some of China's rules of civil litigation procedure are also not compliant, or not explicitly compliant. However, Article 238 of the PRC Civil Procedure Law provides a catch-all clause stating that where an international treaty concluded or acceded to by China contains provisions that differ from those of the Civil Procedure Law, the provisions of the international treaty shall apply, except treaties for which China has made reservations.

Thus, the main barrier to the effective implementation of TRIPS in China will not be the lack of appropriate laws, but rather, the weakness of the enforcement regime. Administrative penalties are often low, local protectionism can make enforcement actions difficult, and court decisions can go unenforced, especially outside the major cities.

The WTO's dispute resolution mechanisms will allow members to address these problems with China and, if necessary, file complaints with the WTO. This will not affect the outcome of individual cases, but may help improve the enforcement system within China. The United States has, for example, in the past three years instituted WTO dispute settlement proceedings against Sweden (claiming that its laws did not provide provisional remedies in civil enforcement proceedings), Ireland (claiming its copyright law was deficient), Denmark (claiming its provisional remedies were weak), and Greece and the European Union (claiming rampant television copyright piracy in Greece).

According to the US Trade Representative (USTR), in late 1999, Sweden amended its intellectual property laws to provide provisional remedies in civil-enforcement proceedings. The cases against Ireland, Denmark, Greece, and the European Union are still pending, although some progress has been achieved over the past few years. In February 1998, Ireland committed to accelerate its work on a new comprehensive copyright law, and in July 1998 passed expedited legislation addressing two pressing enforcement issues. Denmark is presently considering options for amending its law to strengthen provisional remedies available to IP rights holders. In Greece, the rate of television piracy declined in 1998, and in September, 1999, Greece enacted legislation that provides an additional administrative enforcement procedure against copyright infringement by television stations. Similar results could be expected from WTO member complaints about China's enforcement of IP laws under the WTO dispute resolution procedures after China joins the WTO.

USTR also expressed satisfaction with the recent conclusion of the United States' dispute settlement proceedings against India. In December 1997, the WTO Appellate Body upheld a panel ruling in favor of the United States in this pharmaceutical and agricultural chemicals patent protection case. India's deadline for compliance was April 19, 1999. In 1999, India promulgated a temporary ordinance to meet its obligations, and in January, enacted permanent legislation entitled the Patents (Amendment) Act 1999. These laws establish a mechanism for the filing of so-called "mailbox" patent applications, and a sys-

tem for granting exclusive marketing rights for pharmaceutical and agricultural chemical products. While some parts of the new Indian law regarding exclusive marketing rights are problematic, the discretionary nature of some of these provisions, as well as the significant steps that India has taken to mitigate the impact of others, has led USTR to announce that it will take no further action at this time. Should any of the problematic provisions in the Indian law be invoked to the detriment of US rights holders in the future, the United States reserves its right to take further action.

The Agreement on Trade-Related Investment Measures (TRIMS) prohibits members from imposing measures that violate national treatment standards or constitute import or export restrictions, such as local-content requirements, import restrictions based on volume or value of exports, or restrictions on access to foreign exchange based on foreign-exchange earnings. China has agreed to implement TRIMS upon accession, but will have three years to remove its current export- and import-licensing scheme.

Export rights for all firms will result in greater participation in the export business for companies that previously had to work through a state-licensed trading company. However, it will also result in diminished control over what leaves China's borders. For counterfeit goods, this means that more counterfeiters will be able to export their fakes directly.

Distribution and IPR

In order to join the WTO, China will be required to phase out all restrictions on distribution services for most products within three years. This will encourage further growth of China's wholesale markets, which have already seen phenomenal expansion over the past five years. These wholesale markets are replacing the old centrally planned distribution system—a system that created regional markets and impeded the formation of a national market. The WTO will bring greater availability of freight forwarding, warehousing, and other aspects of a distribution network, along with the resulting growth in regional wholesale markets.

It is through this vast network of wholesale markets that most of the country's counterfeit products find their way around the country. There are now over 1,000 wholesale markets with an annual turnover of more than ¥100 million ($12.1 million) each. Greater access to these markets will undoubtedly result in increased flow of counterfeit goods. With a decentralized distribution system and open access to export channels, these goods will invariably end up on foreign shores.

Direct trade with Taiwan

With most of Taiwan's bilateral trade agreements completed, it should join the WTO soon after China. At present, under the Taiwan government's prohibition of direct trade with mainland China, almost all cross-Strait trade goes through Hong Kong. There are no truly direct shipping links or flights between Taiwan and China (*see The CBR*, March-April 1999, p.8). But this obstacle has not stopped Taiwan counterfeiters from establishing manufacturing facilities in China. Once China and Taiwan join the WTO, Taiwan must allow direct trade with the mainland. Taiwan is itself a hotbed of counterfeiting, and direct trade will open up further the current trade in counterfeit goods between the two areas.

Long-term benefits

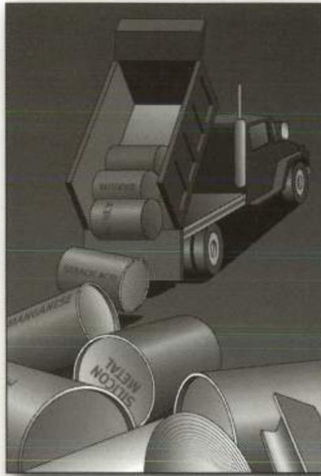
There is little doubt that freer trade will result in greater counterfeiting in the short term. But greater counterfeiting in China would have occurred with or without China's accession to WTO, as long as China's economic growth continued.

The counterfeiting problems in China today are not unique to China. All developing countries pass through a stage of development where copying of products is widespread.

Moreover, the counterfeiting problems in China today are not unique to China. All developing countries pass through a stage of development where copying of products is widespread. Both the United States and Japan have passed through similar stages. The difference in China's case is that a country with one-fifth of the world's population will soon join the world's trading regime at the very time that international trade is freer than ever before. This has unleashed a flood of products—both genuine and counterfeit—onto the world market.

As China's economy develops, companies demand protection for their rights, and international pressure encourages China to improve enforcement of its IP laws, the problems should eventually subside. Domestic pressure is, to a small extent, driving China to improve its IP rights enforcement, with large companies such as Haier pushing for improvement in the law. Most cases in the courts are being brought by domestic companies, a situation which is developing China's jurisprudence. Overseas pressure on China to improve its IP protection has also forced central authorities to bring the worst cases of local protectionism to heel. Economic development in underdeveloped areas tends to reduce local protectionism by decreasing the importance of the counterfeiting industry to the local economy.

Until these trends bring about better IP protection, however, IP rights holders must be prepared to invest resources to control the production of counterfeits in China and the distribution of such products both within China and overseas, lest (at least in the short term) they lose their market to counterfeiters altogether. 完



Modern Protectionism: China's Own Antidumping Regulations

Lester Ross and Susan Ning

After years on the receiving end of Western countries' dumping rules, China hits back with some of its own

Antidumping and countervailing duty laws and regulations have a long history in the United States and other industrialized countries, and have been invoked dozens of times against Chinese exporters of goods ranging from apple juice and aspirin to textiles and tungsten (*see* p.34). Though China's own antidumping regulations are of recent vintage and much less well known, this novelty is no reason for complacence.

Chinese companies, particularly beleaguered state-owned enterprises struggling to modernize and fend off competition from abroad, have already triggered five antidumping investigations against exporters from countries in North America, Asia, and Europe, and additional applications for relief are currently pending (*see* Table). The products targeted were newsprint, cold-rolled silicon steel sheet, polyester film, stainless steel strip and sheet, and acrylates. In China's first antidumping case, the final decision resulted in substantial antidumping duties of up to 78 percent against North American newsprint exporters. Should such success be repeated, the number of petitions is likely to increase, with attendant risks for exporters to China.

Dumping ABCs

China's State Council promulgated the Antidumping and Anti-subsidy Regulations (the Regulations) on March 23, 1997, with immediate effect. The Regulations aim to counter the effects of dumping or subsidization of exports that result in substantial injury, or the threat of substantial injury, to an established domestic industry, or that substantially impede the establishment of a comparable domestic industry (Article 2).

The Regulations define dumping simply as the export of a product at a price below the product's normal value (Article 3). Normal value is calculated where possible by referring to the comparable price in the exporting country for an identical or like product. If there is no comparable price for such a product in the exporting country, reference is made to the price at which the exporter sells the identical or like product in a third country. Normal value may also be calculated on the basis of production costs plus reasonable expenses and profit (Article 4). The Regulations make no provision for calculating prices in non-market economies according to prices in market economies, a practice that the United States and European Union have used to the detriment of Chinese exporters in the past, despite China's vehement objections. The dumping margin is the percentage by which a product's export price is less than its normal value as defined above, with the comparison between the export price and normal value in all investigations so far made at the ex-factory level.

MOFTEC and SETC lead

The Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and the State Economic and Trade Commission (SETC) are the principal PRC government bodies responsible for antidumping matters. MOFTEC is in charge of antidumping investigations, which involve examining the application, deciding (after consultation with SETC) whether to initiate an investigation, and determining whether dumping exists (Articles 11 and 13).

MOFTEC conducts investigations together with the General Administration of Customs and SETC, in consultation with other concerned departments of the State Council. SETC industrial bureaus responsible for the well-being of the domestic industry submitting the antidumping application may also be involved in the investigations. Both the applicant(s) and interested parties (including respondents) are permitted to review MOFTEC and SETC investigation files (Article 21) but access is limited to the public portions of the application and questionnaire responses.

The application

The application must identify the relevant domestic and imported product(s), the quantity

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and price of the imported product(s) and their impact on the domestic industry, as well as the connection between the alleged dumping and injury to the domestic industry (Article 12). In practice, the application is a relatively elaborate but not especially sophisticated analysis of the plight of the domestic industry and the impact of imports. The evidence cited in the application tends to be spare and the causal relationship postulated between the alleged dumping and injury tends to be relatively simplistic and conclusory relative to a petition in the United States.

The application is also segmented into "public" and "confidential" volumes. Respondents may not access the confidential volume. By contrast, in the United States, attorneys for the parties may be permitted access to business proprietary information submitted by the other party under stringent administrative protective orders. The lack of such access in PRC dumping cases diminishes the ability of the respondents to analyze and rebut the applicants' evidence and arguments, and thereby deprives the relevant government authorities of information that would be available in a more open process. Consequently, the investigative authorities have less accurate and complete information to guide their determination than their US counterparts.

The applicants must comprise all or most of the producers of the same or like products in China, or produce most of the total gross value of output of the same or like products in China. Producers affiliated with exporters or importers of the dumped products, or who are themselves importers of the dumped products, are excludable (Article 10). If the application is accepted, MOFTEC notifies the applicants, the governments of the exporting countries (through their diplomatic missions in China), and the identified producers and exporters of the subject product(s) in or from the exporting countries (Article 14).

MOFTEC seeks to determine whether to accept an application within 30 days of receipt, but that target has sometimes proven elusive. Once MOFTEC accepts an application, potential respondents then have 30 days to request a copy of the public portion of the application. They can also obtain a copy from the diplomatic mission of an identified exporting country. MOFTEC must complete its investigation within 12 months of the date that it accepts an application, although 18 months is permissible under special circumstances, such as when an on-the-spot investigation in the exporter's country is required or the facts are particularly complex (Article 15).

MOFTEC has the discretion to require respondents to complete a detailed investigation questionnaire (Article 19), and has done so in each case to date. Though neither identified nor published as a standard form, the MOFTEC questionnaire is comparable in concept to the US Department of Commerce International Trade Administration's Standard Questionnaire for Antidumping Investigation.

The increase in antidumping actions originates in the growing sophistication of China's trade laws and vulnerable industries' search for protection from imports.

Respondents must be represented in the investigation by Chinese lawyers. Most respondents have opted to engage international as well as Chinese counsel to facilitate the preparation of their response, among other reasons. Respondents to date have been given 37 days to complete the questionnaire, subject to limited extensions which now tend not to exceed 15 days and which MOFTEC grants with reluctance. Translation (of both the questionnaire and the response) quickly eats into such time, which is less than that afforded respondents in the United States. (In comparison, the US International Trade Commission allows 45 days.) Respondents may also segregate their responses into public and confidential volumes.

Preliminary determination of dumping

MOFTEC aims to issue a preliminary determination on the existence of dumping within two to four months of accepting an application, but does not always meet this self-imposed target. If there is a preliminary determination of the

China's Dumping Cases to Date

Targeted Country/ies	Product	Application submitted	Investigation initiated	Preliminary determination	Final determination
Canada, United States, South Korea	Newsprint	October 16, 1997	December 10, 1997	July 9, 1998	June 3, 1999
Russia	Cold-rolled silicon steel sheet	November 12, 1998	March 12, 1999	December 30, 1999	—
South Korea	Polyester film	March 16, 1999	April 16, 1999, supplemented May 7, 1999	December 29, 1999	—
Japan and South Korea	Stainless steel strip and sheet	January 25, 1999	June 17, 1999	April 13, 2000	—
Germany, Japan, and United States	Acrylates	September 2, 1999	December 10, 1999	—	—

SOURCES: Lester Ross and Susan Ning
— Not available

existence of dumping during the period of investigation, respondents have 20 days to file a supplemental response. Requests for hearings and invitations to conduct on-the-spot investigations may also be submitted, although MOFTEC may commence such procedures on its own initiative.

Withdrawal of the application or a preliminary determination by MOFTEC of no dumping during the investigation period terminates the investigation (Article 18[1]-[2]). In contrast to US practice, SETC does not await the preliminary dumping determination, but rather conducts the injury investigation simultaneously. Although injury cannot be found in the absence of a preliminary determination of dumping, such

Only the first investigation, against newsprint, has proceeded to final determination, but each of the first three investigations have resulted in the imposition of hefty but varying interim or permanent antidumping duties on exports of the dumped product from the producing countries.

overlap in timing and built-in coordination compromises the integrity of the separate phases of the investigation.

An SETC finding of no injury also terminates the investigation (Article 18[2]). However, a provisional determination of dumping and injury may result in the imposition of an interim antidumping duty or the requirement to post a cash bond or other security proportionate to the dumping margin. The State Council's Customs Duty Commission (CDC) determines the percentage of any interim antidumping duty based on MOFTEC's recommendation, while MOFTEC itself determines the duty to be paid in the form of cash bond or other security (Article 22). CDC ordinarily imposes an interim duty, based on MOFTEC's recommendation, for a maximum of four months, which may be extended for up to nine months in special circumstances, such as when the investigation departments examine whether a duty lower than the dumping margin would be sufficient to remove the injury (Article 24). Alternatively, the investigation will terminate if the exporter or exporting country proposes satisfactory measures to eliminate the injury (Article 25). Such measures might include voluntary restraints on the quantity of exports of the subject products to China.

A dumping case can also be terminated after a full investigation if MOFTEC finds that there has been no dumping or injury to the domestic industry during the period of investigation, or that the dumping margin or quantity of imports is negligible (Article 18[3])-[4]). If the final determination is that dumping has caused injury, CDC will impose an antidumping duty based on MOFTEC's recommendation up to the amount sufficient to reflect the dumping margin (Articles 27 and 29). Antidumping duties or price undertakings are imposed for five-year periods, subject to interim review by MOFTEC in consultation with SETC (Article 33).

CDC may also retroactively impose duties on imports during the 90-day period prior to publication of the preliminary determination—if an import surge has caused injury to the domestic industry and, in accordance with Article 32, the subject product has a history of dumping causing injury to the domestic industry, or the injury caused by the dumping was foreseeable or should have been foreseen by the exporter(s).

Protecting domestic industry

The increase in antidumping actions originates in the growing sophistication of China's trade laws and vulnerable industries' search for protection from imports. Attorneys, who have emphasized the protectionist benefits of antidumping actions for state-owned enterprises, have encouraged this trend.

All investigations to date have involved basic commodities. Only the first investigation, against newsprint, has proceeded to final determination, but each of the first three investigations have resulted in the imposition of hefty but varying interim or permanent antidumping duties on exports of the dumped product from the producing countries (*see* p.33). It is important to note, however, that the level of the duties has varied by producer and exporter, reflecting in part the quality of their responses to the investigation.

No implementing rules, limited transparency

A dozen or more applications are said to be pending, mostly filed by state-owned enterprises against exports from Organization for Economic Cooperation and Development countries. The lag in deciding whether to accept an application is due in part to inadequate staffing. MOFTEC's Antidumping Office in particular has fewer than a dozen personnel to handle its large and growing caseload. Moreover, the investigative departments have yet to demonstrate the capability to investigate non-basic industrial commodities.

The government's delay in issuing implementing rules, which have existed in draft form for some time, also hampers the investigative process. Such rules would ideally provide clearer definitions of key terms and greater detail with respect to such procedures as maintenance of the written record and hearings. Mandatory hearings would increase transparency and force government departments to justify discretionary decisions. For example, hearings might compel government departments to explain why Taiwan has not yet been made a subject of an antidumping investigation, despite the volume of its export

sales to China. Respondents were initially reluctant to request hearings, fearing that the responsible government departments would regard such requests as a challenge to their authority.

MOFTEC held the first such hearing on March 30, 2000, at the request of the respondents in the silicon steel investigation, showing the readiness of the Chinese investigative authorities to discuss the merits of the case in an open forum with the interested parties. The MOFTEC panel allowed a domestic non-party to participate. Each party was allowed 20 minutes to make its oral presentation, and cross-examination was not permitted. Curiously, the applicants centered their presentations on injury rather than dumping, even though injury is outside MOFTEC's jurisdiction.

Dumping and the WTO

At the troubled opening session of World Trade Organization (WTO) trade negotiations in Seattle in November 1999, the United States continued to defend antidumping regulations like those in the United States despite criticisms from developing countries—and often-targeted developed countries, particularly Japan—that such measures are protectionist and inhibit their development. Regardless of the merits of such regulations, it would be short-sighted to ignore the fact that developing countries such as China can and are wielding this weapon against exporters from developed countries, as well as against one another. Foreign-invested enterprises in China are also eligible to file applications against foreign competitors, and have done so in at least one instance.

Under these circumstances, producers and exporters of commodities destined for China should familiarize themselves with PRC antidumping regulations, as well as other applicable regulatory rules, to reduce the prospect of punitive antidumping duties. China itself would do well to undertake a serious review of the Regulations with an eye toward making its regulatory process more practical, transparent, and equitable.

After China's accession to the WTO, the Regulations and their implementing rules, when issued, will have to conform fully to the Agreement of Implementation of Article VI of the General Agreement on Tariffs and Trade (1994) (the Agreement), which governs antidumping, subsidies, and countervailing measures. Although many provisions of the regulations and China's scheduling sequence are already largely WTO-compatible, the government will need to allow for more liberal filing extensions, hearings, adherence to the written record, and an independent review tribunal or procedure. For example, the Agreement provides that extensions of the deadline for filing responses "should be granted whenever practicable" upon a showing of cause for such extension (Article 6.1.1), and calls for independent judicial, arbitral, or administrative review of administrative action relating to final determinations and review of determinations (Article 13). Implementation of these measures may take some time, though China reportedly has begun evaluating the legal changes it must undertake to bring its commercial legal regime into line with WTO obligations. In the meantime, foreign firms should be mindful of antidumping regulatory risk when selling to China. 完

Although many provisions of the regulations and China's scheduling sequence are already largely WTO-compatible, the government will need to allow for more liberal filing extensions, hearings, adherence to the written record, and an independent review tribunal or procedure.

China's First Antidumping Ruling

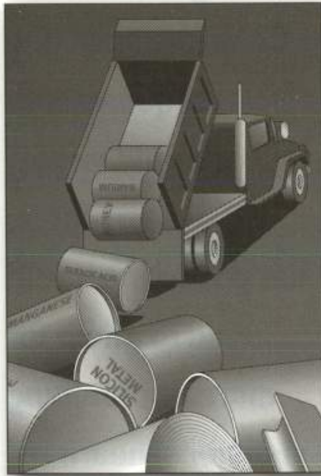
The Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and State Economic and Trade Commission (SETC) announced the final verdict of the PRC's first antidumping case in June 1999. Punitive antidumping tariffs on newsprint imports from the United States, Canada, and South Korea went into effect on June 3, 1999, in accordance with China's Antidumping and Anti-subsidy Regulations.

The tariff rates vary widely by country and company. US newsprint importers must pay a tax of 78 percent on a normal price, which is based on the CIF value of the product. Canadian companies are subject to tax rates ranging from 57-78 percent. South Korean companies pay a 55 percent tariff, except for South Korea's Hansol Paper Co., which pays 9 percent. The tariffs differ because costs and market prices vary from company to company.

MOFTEC and SETC jointly undertook the case in November 1997 after receiving complaints from nine domestic manufacturers, including four listed firms. Antidumping officials at MOFTEC sent questionnaires about the alleged activities to the accused companies, but only received timely responses from five Canadian companies and one Korean firm. Reportedly, US companies are subject to a single tariff because none of them responded to MOFTEC's questionnaires.

SETC and MOFTEC investigators concluded that the 1997 influx of newsprint from those countries had serious consequences for China's domestic newsprint industry. Newsprint prices dropped 9.1 percent, and the total profits of the nine domestic newsprint firms fell 88 percent, leading to inventory buildup, large-scale layoffs, and rising debts.

—Staff of The US-China Business Council



The Sun Sets on US Antidumping Orders

Ying Z. White and Katherine M. Jones

The next several years present US and PRC companies dealing with China a valuable opportunity to increase bilateral trade. This opportunity comes as a result of a new US law requiring the government to evaluate every existing antidumping duty order to determine whether the order is still necessary. Because these duties are imposed on products from a certain country, all companies that import those products into the United States, and companies that produce and export them to the United States, are potentially affected. Antidumping duty orders typically impose a duty on the value of imported products, which can make importing and exporting these products uneconomical.

It's a whole new ball game in the United States now that five-year reviews of US antidumping duty orders have begun—if companies participate

US antidumping duty orders have imposed a particular burden on US-China trade. Currently, at least 42 antidumping duty orders, covering various products from China, are in effect (*see* Tables). US importers as well as companies that manufacture products in China for export to the United States (for purposes of this article, collectively referred to as China-related interested parties) increasingly find their operations hamstrung by antidumping duties.

A possible remedy for this situation is participation in the newly instituted "sunset reviews" of antidumping duty orders. China-related interested parties now have the opportunity to try to convince the US International Trade Commission (ITC)—a quasi-judicial federal agency consisting of six commissioners—that revoking the order will be unlikely to cause material injury to domestic US industries. The law governing sunset reviews of antidumping duty orders differs from the pre-existing law applicable to the original dumping investigations. Under this new scheme, US importers, as well as producers and exporters in foreign countries (respondent interested parties) stand a better chance of having an order revoked than of successfully defending themselves against the imposition of an order in an original investigation.

An examination of the differences between a sunset review and an original investigation, and a review of the performance of China-related interested parties in the sunset reviews conducted to date, provide some insight into the sunset-review process and successful strategies for participating in reviews of antidumping duty orders. Although a sunset review involves two US government agencies—the US Department of Commerce (DOC) and the ITC, this article focuses on the proceedings before the ITC. This is in large part because success at the ITC can result in the complete lifting of the order.

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The views expressed in this article are those of the authors and do not represent the views of King & Spalding or the World Bank.

The new ground rules

The sunset review process arose out of the passage of the Uruguay Round Agreements Act (URAA) in the United States, a law that implements the changes in US trade law to which the United States agreed in the Uruguay Round of the General Agreement on Tariffs and Trade, which concluded in 1994. The statute creates a new type of investigation which, for the first time, incorporates into US trade law a mechanism for automatic and mandatory review, and possible termination, of existing antidumping duty orders. Under this so-called sunset review, DOC and the ITC must review every antidumping duty order after it has been in effect for five years to determine if its lifting would cause a recurrence or continuation of material injury to the affected US industry.

The sunset review procedure applies to all antidumping duty orders, including 317 orders issued before the URAA took effect on January 1, 1995, which are known as "transition orders." These orders are treated as having been issued on January 1, 1995. Review of these transition

orders will be spread over a three-year period that began in July 1998. Transition orders have been grouped into 105 transition reviews, 39 of which involve products imported from China.

The ITC began its review of orders issued after January 1, 1995, in early 2000. Thus, for the foreseeable future, all new antidumping duty orders, as well as the old ones, will be continuously reviewed every five years. Most of the sunset reviews conducted to date are reviews of the transition orders, though the first sunset review of a post-1995 order was initiated in January 2000.

Similar to an original dumping investigation, a sunset review also involves a bifurcated determination process. Typically, DOC determines whether revoking the order (or terminating the suspended investigation) would be likely to lead to continuation or recurrence of dumping. The ITC determines whether revocation of the order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. DOC must revoke the existing order unless, first, it finds that the respondent interested parties are likely to resume dumping if the order is lifted; and, second, the ITC finds that dumping is likely to cause material injury to the domestic industry (*see* p. 36).

Sunset reviews are officially initiated when DOC publishes a notice in the Federal Register requesting that persons—foreign or domestic—interested in taking part in the proceeding submit a written notice of intent to participate, and submit certain information concerning their company. If the notice receives no response from any domestic interested party, DOC will revoke the existing order immediately. If some interested parties respond, the review will proceed. The ITC will then publish a notice, which in fact is an information request, asking interested parties to file responses concerning the likely effects of revoking the order, as well as other information.

Within 95 days from the date of the ITC's information request, the ITC will determine whether the responses it has received are adequate—that is, whether enough members of either the relevant domestic industries or respondent interested parties provided sufficient information. Called an "adequacy determination," its purpose is to assess the level of concern among interested parties. Only if it finds that sufficient interest exists will the ITC conduct a full review, in which it collects additional data about the products, producers, and market conditions, and holds a hearing that enables both sides to present their positions on the issues in more detail. A full review typically takes a year to complete.

If, on the other hand, the ITC finds that the responses are inadequate, it generally conducts an expedited review, in which it undertakes no further investigation and may take "adverse inferences" against any party that did not provide information. Thus, the ITC commissioners will base their injury determination on the information available, including responses from the domestic parties and prior injury determinations. This information may be biased against those who failed to submit their own responses. An expedited review typically lasts 150 days. At the conclusion of either type of review, the ITC issues a final determination as to whether revoking the order will likely lead to material injury to the domestic industry concerned.

US antidumping duty orders have imposed a particular burden on US-China trade. Currently, at least 42 antidumping duty orders, covering various products from China, are in effect.

In determining "whether revocation of an order . . . would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time" (19 U.S.C. § 1675a), the ITC considers the likely effect that removing the order will have on the volume of imports previously covered by the order, their likely prices, and the likely impact of those imports (at those prices and new volumes) on the domestic industry concerned. Congress has instructed the ITC to take into account three considerations when making its determination. First, the ITC must consider its original injury determination—especially the volume, price, and impact of the imports during the period before the order was initially issued. Second, the ITC must assess whether the US industry is better off now than at the time of the original order, and if so, whether its improvement was a result of the order. Finally, the ITC must determine whether the industry is vulnerable to material injury if the order is revoked.

While sunset reviews are in some ways similar to original dumping investigations, the differences in the two types of proceedings require participants (especially respondent interested parties) to employ different strategies in presenting their cases. For example, in an original injury investigation, the ITC looks at current market conditions and recent historical data to ascertain whether the domestic industry is materially injured. In contrast, although current and past market conditions are likely to be relevant to its inquiry, the ITC's fundamental task in a sunset review is to predict whether the domestic industry is likely to be materially injured if the order is revoked. Thus, providing information to show a particular pattern of imports in the relevant industry, and market trends, is even more important in sunset reviews than in original investigations.

The procedural structure of a sunset review also differs significantly from that of an original investigation. Rather than first conduct a preliminary and then a final phase of the investigation,

as it does in an original investigation, the ITC conducts only a single investigation in a sunset review. Before beginning its review on the merits of the case, the ITC determines whether it will conduct a full or expedited review. Thus, if the parties want the ITC to review their case on its merits—that is, through a full review—they must respond to the ITC's initial information request.

The ITC's fundamental task in a sunset review is to predict whether the domestic industry is likely to be materially injured if the order is revoked.

Results to date: less than they could be

Case law to date shows that US importers as well as producers and exporters in China have not fared well in sunset reviews. This is mainly because few of them have participated in the sunset reviews involving goods from China at all. Out of the 31 orders involving products from China initiated before March 1, 2000, 11 were expedited either because no China-related interested parties responded to the ITC's information request or because the parties who did respond failed to provide "adequate" information. Eight of the expedited reviews resulted in the continuation of the orders, while the remaining three still await the ITC's final determination.

Out of the 16 full reviews involving products from China, six were the result of a co-respondent's participation, which did not necessarily benefit China-related interested parties. For example, in the sunset review of iron construction castings from Brazil, Canada, and China, and iron metal castings from India, respondent interested parties from India adequately replied to the ITC's information request and caused the order to undergo a full review. The ITC then decided to conduct a full review of the order involving a similar product, iron construction castings, from

US Antidumping Regime Basics

If a US commercial entity believes that a counterpart in another country is selling goods into the United States at less than fair market value, it can seek redress by filing a petition with the US government. A filer must be a manufacturer, union, or coalition of these bodies competing against the imported product and representing at least 25 percent of the industry. The petition, filed with the Import Administration under the US Department of Commerce (DOC) and the US International Trade Commission (ITC), must contain information about the industry and evidence of the dumping activity.

A petition filing triggers a two-tiered process. Both agencies conduct preliminary investigations. Within 45 days of the petition filing, the ITC makes a preliminary finding about whether a "reasonable indication" exists that the domestic industry has been injured or threatened with injury. If so, DOC then makes a preliminary determination, within 160 days of the filing, about whether there is a reasonable basis to believe that imports are being dumped in the US market. If the preliminary investigations find that both dumping and injury have occurred, affected importers must post a bond or cash to cover an estimate of the potential duties. If DOC finds that dumping has occurred, it determines the dumping "margin"—the level of dumping—and the case moves to the ITC.

A quasi-judicial federal agency with six commissioners and a staff of more than 300, the ITC must investigate whether the dumping has "materially injured" or "threatened with material injury" the US industry. The full investigation typically takes about 12-18 months. DOC and the ITC each gather information for their respective investigations.

The ITC's six commissioners make the final determination of injury at a public hearing. These commissioners, nominated by the President, are bipartisan—a maximum of three members may be of the same party. The commissioners serve for nine-year terms, and rotate the chairmanship every two years. The commissioners vote on the evidence presented at the hearing. If a majority finds that dumping has occurred, the US Customs service imposes duties on the targeted importers.

The ITC and injury investigations: Not always a sure thing

The ITC phase of the investigation is often the more important, as it is rare for DOC to find that dumping has not occurred. But the ITC has occasionally found that the domestic industry has not been injured—in the 1990s, the percentage of "no injury" decisions was around 40 percent. In the recent case against citric acid from China, for example, even though DOC found that dumping had occurred, the ITC found that US citric acid producers were not injured by imports from China.

The reason the ITC's investigation offers at least a chance of finding no injury is because it takes a large amount of industry data into account. The ITC sends out detailed questionnaires to all affected parties to determine the pricing of the product, competitive characteristics of the industry, and other market conditions of both the domestic and foreign industry

China for administrative efficiency. Because no China-related interested parties participated or provided any information, the full review did not benefit them. The order pertaining to China was continued and the Indian order revoked. The same held true for the sunset review of potassium permanganate from China and Spain. The order was revoked for Spain and continued for China.

In sum, in only 9 out of the 31 reviews initiated as of March 1, 2000, did China-related interested parties respond adequately to the ITC's information request and trigger a full review: tapered roller bearings, hammers and sledges, picks and mattocks, axes and adzes, sparklers, bars and wedges, helical spring lock washers, silicomanganese, and silicon metal. These reviews are still under way.

US importers, as well as producers and exporters in China, may have been discouraged from participating in US regulatory-agency proceedings in part because so often in the past, their interests have not prevailed. In the case of sunset reviews, however, their non-participation has resulted in the complete forfeit of a promising opportunity to argue for revocation. The result speaks for itself: China-related interested parties have failed to participate adequately in each of the 11 sunset reviews completed as of March 1, 2000, and the ITC reached an affirmative injury determination and continued the order in each case.

The order will be revoked if the ITC finds that dumping is not likely to cause material injury to the domestic industry—*even if* the respondent interested parties resume dumping after the order is lifted.

A glance at the results of all expedited versus full reviews conducted to date illustrates that the likelihood of having the order lifted increases

concerned. An example of one of the criteria the economists use to examine a dumping case is whether the dumped product is a direct substitute for a comparable US product. Often this alone can trip up a plaintiff's case. For instance, in an investigation of wines from Europe, it was found impossible to prove that a particular brand of foreign wine was chosen merely on the basis of price—the market for wine is too finely segmented. Cases involving commodity-type products that compete primarily on the basis of price may be easier for petitioners to win.

On the flip side, the legislation guiding ITC antidumping investigations does not allow the commissioners to take into account certain domestic characteristics of an industry. For example, in the case of glycine from China, one of only two domestic producers of glycine controlled over 80 percent of the market. The fact that a near-monopoly was claiming injury was irrelevant to the investigation. Because the domestic producers were found to have been injured, the ITC voted to impose dumping duties.

China has often been a respondent in antidumping duty investigations. As US legislation considers China a "non-market economy" (that is, one that does not set prices using market mechanisms) DOC often uses third-country pricing data—typically that of India—to calculate the market value in China of the allegedly dumped product. This imperfect comparison tends to work in the petitioners' favor.

Before the 1995 Uruguay Round Agreements Act, which brings US trade law into compliance with the World Trade Organization (WTO)'s antidumping agreement, US dumping orders could remain in force indefinitely. The WTO mandates, however, that all members review dumping orders at least every five years using a process similar to that followed in original antidumping investigations.

Is it just protectionism?

Antidumping rules have been used by developed countries for decades to fend off low-cost imports and shelter domestic industries from unfair trade. Dumping can be a genuine predatory trade practice, since producers can in theory be subsidized or otherwise assisted to sell goods abroad at less than they sell them at home, or even below production costs. But developed countries' antidumping rules can sometimes appear indistinguishable from non-tariff trade barriers.

The WTO's basic guidelines for antidumping and countervailing duties (a related measure to correct for instances in which the overseas industry is subsidized) attempt to prevent the use of dumping as a non-tariff barrier. The topic is contentious among WTO members, however. Japan and the United States clashed over dumping issues at the November 1999 WTO meetings in Seattle. Meanwhile, developing countries, including China, have caught on to the effectiveness of this protective tactic, and have issued their own rules and now conduct their own antidumping investigations (*see* p.30).

—Catherine Gelb

Catherine Gelb is editor of *The CBR.* Ying Z. White and Katherine M. Jones contributed to this article.

Table 1
Sunset Reviews of US Antidumping Duty Orders Involving Products from China

Product/Industry	Date of Original Order	Date of Initiation of Sunset Review	Participation of China-Related Interested Party (Other party)	Type of Review	Outcome
Barium Chloride	October 17, 1984	October 1998	None	Expedited	Order continued for 5 years effective March 10, 1999
Chloropicrin	March 2, 1984	November 1998	None	Expedited	Order continued for 5 years effective April 4, 1999
Greige Polyester Cotton Print Cloth	September 16, 1983	November 1998	None	Expedited	Order continued for 5 years effective April 26, 1999
Iron Construction Castings	May 9, 1986	November 1998	None (India, in a related case)	Full	Order continued for 5 years effective November 12, 1999
Potassium Permanganate	January 31, 1984	November 1998	None (Spain)	Full	Order continued for 5 years effective November 24, 1999
Sebacic Acid	July 14, 1994	December 1998	None	Expedited	Order continued for 5 years effective May 26, 1999
Natural Bristle Paintbrushes	February 14, 1986	January 1999	None	Expedited	Order continued for 5 years effective June 10, 1999
Petroleum Wax Candles	August 28, 1986	January 1999	None	Expedited	Order continued for 5 years effective September 23, 1999
Cotton Shop Towels	October 4, 1983	January 1999	Peru	Full	Order continued for 5 years effective February 17, 2000
Porcelain-on-Steel Cookware	December 2, 1986	February 1999	None (Mexico)	Full	Affirmative ITC Determination on March 17, 2000 (order to be continued for 5 years)
Tapered Roller Bearings	June 15, 1987	April 1999	Yes	Full	Hearing expected March 21, 2000
Carbon Steel Butt-Weld Pipe Fittings	July 6, 1992	May 1999	None	Expedited	Order continued for 5 years effective January 6, 2000
Industrial Nitrocellulose	July 10, 1990	June 1999	None (France, Germany, the United Kingdom)	Full	Hearing expected June 8, 2000
Hammers and Sledges	February 19, 1991	June 1999	Yes	Full	Hearing expected May 16, 2000
Picks and Mattocks	February 19, 1991	June 1999	Yes	Full	Hearing expected May 16, 2000
Axes and Adzes	February 19, 1991	June 1999	Yes	Full	Hearing expected May 16, 2000
Sodium Thiosulfate	February 19, 1991	July 1999	None	Expedited	Order continued for 5 years effective March 7, 2000
Sparklers	June 18, 1991	July 1999	Yes	Full	Hearing expected May 11, 2000
Bars and Wedges	February 19, 1991	June 1999	Yes	Full	Hearing expected May 16, 2000
Chrome Plated Lug Nuts	September 20, 1991	August 1999	None	Full	Decision to conduct full review on November 4, 1999
Tungsten Ore Concentrates	November 21, 1991	August 1999	No domestic parties	NA	Order revoked effective January 1, 2000
Sulfanilic Acid	August 19, 1992	October 1999	Inadequate	Expedited	Decision to conduct expedited review on January 7, 2000
Helical Spring Lock Washers	October 19, 1993	November 1999	Yes	Full	Decision to conduct full review on February 3, 2000
Silicomanganese	December 22, 1994	November 1999	None (Brazil and Ukraine)	Full	Decision to conduct full review on February 3, 2000
Silicon Metal	June 10, 1991	November 1999	None (Brazil and Argentina)	Full	Decision to conduct full review on February 3, 2000
Compact Ductile Iron Waterworks Fittings	September 7, 1993	November 1999	No domestic parties	NA	Order revoked effective January 1, 2000
Paper Clips	January 25, 1994	December 1999	None	Expedited	Decision to conduct expedited review on March 3, 2000
Cased Pencils	December 28, 1994	December 1999	Inadequate	Expedited	Decision to conduct expedited review on March 3, 2000
Fresh Garlic	November 16, 1994	December 1999	Yes	Full	Decision to conduct full review on March 3, 2000

SOURCE: US International Trade Commission; compiled by the authors
NA = not available

dramatically if the review goes to a full rather than an expedited investigation. For example, in 13 out of 28—or 46 percent—of all full reviews completed to date, the ITC found that the order could be lifted. In contrast, in only 11 of 38—or around 29 percent—of the expedited reviews completed to date was the order lifted. This evidence reinforces the argument that participation in the adequacy phase is key to ensuring that the ITC will conduct a full review.

Some lessons and strategies

Based on the information available to date, it is possible to draw a number of conclusions about ways to participate successfully in sunset reviews:

- **Allocation of resources**

Although the sunset review uses a bifurcated determination process, which involves both DOC and the ITC making their respective determinations, precedents show that a respondent interested party should focus its resources on the ITC portion of the review proceedings. This is because the threshold for DOC to find a likelihood of continuation or resumption of dumping is quite low, and, as a result, DOC has found a likelihood of resumed or continued dumping in the vast majority of cases. Thus, the ITC's determination as to whether dumping will likely cause material injury to the domestic industry becomes crucial. The order will be revoked if the ITC finds that dumping is not likely to cause material injury to the domestic industry—*even if* the respondent interested parties resume dumping after the order is lifted. If material injury is found likely, however, the order will be continued for another five years. (If the ITC finds no injury in a review, the domestic industry can file a new petition for a new, original antidumping case and a new order may be imposed. The original order—once revoked—may not be re-imposed, however.

- **Participation in the adequacy phase**

In addition, responding adequately to the ITC's information request is pivotal to the outcome of the review, as a respondent interested party can benefit from having more complete information on the record.

By causing the review to proceed to a full investigation, a respondent interested party can compel the domestic industries to divulge such information as the domestic industry's market share, production and sales revenue, capacity utilization level, gross profit and operating income, and demand in the US market—some of which may be adverse to the domestic industry. In the adequacy phase of the review, the statute does not require domestic producers to provide data on their financial condition or market conditions because the ITC is merely trying to gauge the interested parties' willingness to participate. This information, however, can be very helpful to a respondent interested party because the ITC must consider whether the domestic industry is better off now than at the time of the original order, and whether the industry is vulnerable to material injury caused by imports.

If a respondent interested party chooses not to participate in the review and the ITC decides to conduct an expedited review, the information on the record that the ITC will use to decide the case will consist only of incomplete information supplied by the domestic industry. This typically does not include any information on market conditions or the domestic industry's financial condition.

Responding to the ITC's information request will also help a respondent interested party avoid the use of adverse inferences by the ITC. Section 751(c)(3) of the URAA and ITC regulations provide that in an expedited sunset review, the ITC may select from among the facts otherwise available. Since the record in an expedited review is likely to be particularly skimpy, this rule allows ITC commissioners to resolve ambiguities in favor of the participating parties—with significant impact in close cases.

Continued on page 43

Table 2
Upcoming Sunset Reviews of US Antidumping Duty Orders, 2000-05

Product/Industry	Date of Original Order	Date of Sunset - Review Initiation
Coumarin	February 9, 1995	January 2000
Glycine	March 29, 1995	February 2000
Pure Magnesium	May 12, 1995	April 2000
Furfuryl Alcohol	June 21, 1995	May 2000
Honey	August 16, 1995	July 2000
Manganese Metal	February 6, 1996	January 2001
Polyvinyl Alcohol	May 14, 1996	April 2001
Melamine Institutional Dinnerware	February 25, 1997	January 2002
Brake Rotors	April 17, 1997	March 2002
Persulfates	July 7, 1997	June 2002
Crawfish Tail Meat	September 15, 1997	August 2002
Cut-to-Length Carbon Steel Plate	October 24, 1997	September 2002
Collated Roofing Nails	November 19, 1997	October 2002
Preserved Mushrooms	February 19, 1999	November 2003
Barium Chloride (2nd Review)	October 17, 1984	February 2004
Chloropicrin (2nd Review)	March 2, 1984	March 2004
Greige Polyester Cotton Print Cloth (2nd Review)	September 16, 1983	March 2004
Sebacic Acid (2nd Review)	July 14, 1994	April 2004
Natural Bristle Paintbrushes (2nd Review)	February 14, 1986	May 2004
Petroleum Wax Candles (2nd Review)	August 28, 1986	August 2004
Iron Construction Castings (2nd Review)	May 9, 1986	October 2004
Potassium Permanganate (2nd Review)	January 31, 1984	October 2004
Cotton Shop Towels (2nd Review)	October 4, 1983	January 2005
Creatine Monohydrate	February 4, 2000	January 2005

SOURCE: US International Trade Commission; compiled by the authors

China's Tenth Five-Year Plan: Statements of Intent

John Frankenstein

China's preparation of its next five-year plan reveals Beijing's hopes for the future of the economy

John Frankenstein
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The Tenth Five-Year Plan (FYP, 2001-05) will surface this year—so what? The Chinese economy is increasingly market driven. Enterprises outside the state sector have become the engines of what meaningful economic growth has occurred over the last 20 years. Furthermore, business buzz is focused on China's final push for World Trade Organization (WTO) membership. Lurking in the background are also 10- and 15-year plans. Some leaders even speak of a "great plan lasting a century" that will ensure China's growth.

So it is fair to ask why we should be concerned about another short-term central plan for the country. Is it a vestige of the old bureaucracy—a kind of Energizer Bunny that just keeps going? Or is it something completely different? And why should we, as businesspeople, care about it?

China comments on its problems...

A look at the current wide-ranging, and sometimes conflicting, discussion in the Chinese press is a good first step toward answering these questions. In the early days of discussion, writers in the *People's Daily*, *Securities Daily*, and *Economic Daily*, to name just three major state-run newspapers, were hardly bashful about outlining China's economic problems. Their observations also reveal the nature of the debates that go on during the plan's formation.

For starters, the commentators have noted that the Chinese economy appears to be in the kind of "crisis of production" that Karl Marx predicted for the end of capitalism: over-production of unsold goods, idle factories, a deflationary spiral brought on by a collapse in consumer demand, rising unemployment, a slowing economy, and an increasing gap between rich and poor. While the irony of this situation appears to have escaped Chinese commentators, they are quite forceful about outlining other issues: a contradiction in the countryside, where agricultural production is up but farm incomes are down; declines in foreign investment; the need for financial reforms; and the continuing drain on resources brought on by state-owned-enterprise (SOE) debt.

And underneath all of this discussion run several anxious themes. First, Chinese commentators worry about changes in the current structure of international relations. They see a shift from the current "unbalanced" system, in which one superpower dominates, to a multipolar system in which China will pay its rightful role. Yet they also anticipate that that superpower (guess who?) will attempt to obstruct China's rise.

Second, they perceive that the country's proposed solutions to its problems will test China's social stability. They recognize that a fine line divides small-scale protest from large-scale social disorder. So they caution that reform must take into account "the social capacity for acceptance of reform." In other words, they're saying, "Don't push too far too fast."

Third, Chinese commentators perceive that the rules of the economic game have changed. They see that in a knowledge-based, communications-driven economy, where growth is dependent on mastering science and technology, the old rules of macroeconomics may not apply. (Marx also wrote about the transformative power of science and technology.) China's relative advantage in cheap labor and land is no longer enough. They worry that in this "new age" there are no models to follow. And they acknowledge that in this crucial area China lags.

...the solutions, and the plan

Thus, Chinese commentators say, the Tenth FYP must allow China to reach key targets:

- **Seven percent annual GDP growth,** which will allow China's 2010 GDP to be double that of 2000. And this level of growth is necessary simply to absorb new labor coming onto the market. Indeed, an even higher rate of growth would be necessary to make even a dent in current and projected unemployment levels.
- **Increased investment, to total $2.7 trillion.** Just over two-thirds of this investment is projected to come from domestic sources—though it seems clear that reaching this target is contingent on broad reform.
- **An emphasis on key "pillar" sectors,** namely information technology, infrastructure, housing, automobiles, and chemicals.

More broadly, the FYP must also:

- Ensure "Correct handling of the relationship between reform, development and stability";
- Conduct state-owned enterprise reform and deal with "an unreasonable economic structure";

- Reduce the urban/rural split and eliminate the disparities between rich coastal regions and the impoverished interior—that is, raise peasant incomes;
- Carry out financial-sector reform;
- Ensure reflation by dealing with "insufficient domestic demand";
- Deal with unemployment; and
- Utilize science and technology in the economy more efficiently.

If some of these sound like a tune we've heard before, well, that is because we have heard most of them in discussions of previous five-year plans. The recurrence of these themes reflects both the difficulties and intractabilities of reform.

And many of the strategies advocated to deal with these problems are old songs too:

- Use of the market mechanism
- "Opening to the outside"
- "National regeneration" based on science and technology
- Environmental protection, now repackaged as "sustainable development"
- Further development of capital markets so as to attract more investment
- Opening of more sectors to foreign investment, especially, some commentators urge, in industries that are "not internationally competitive." In other words, get foreign investors to bring in modern technology and management to turn these industries around.
- Investment in education to overcome the "bottleneck" of poor labor quality
- Stimulation of the economy through infrastructure projects

To be sure, the problems and challenges of economic development take more than time to overcome. The persistence of these issues suggests that what is really needed is political will. Until then, many of these issues will appear intractable—and promise to reappear in future plan discussions.

Straight talk

But the current debate in the press exhibits some variations as well. Chinese commentators say China's risks and challenges must be met head on, not swept under the carpet:

- **Financial risk**: Firms shouldn't assume that the central bank will bail them out.
- **Commodity risk**: China must figure out a way to deal with the over-production of unwanted goods.
- **Industry risk**: Reform should make SOEs internationally competitive, not merely shore them up. And the debt problem should be solved, in part at least through debt-equity swaps (though it is unclear whether factory managers really understand that this is not just another form of easy subsidy).
- **Population risk**: China must decide how to deal with an aging population and workforce.
- **Decisionmaking risk**: Plans shouldn't be overly optimistic. They should allow for crises and unforeseen events. (And the bureaucrats beyond Beijing are constantly urged to get off their duffs and implement the central government's wishes—yet another indication that the age-old contradiction between center and periphery is alive and well.)
- **Technology risk**: China must confront its backwardness and difficulties in absorbing technology. High-tech imports should be as much for study as immediate utilization.
- **WTO membership**: China's entry will bring more competition and require changes in laws and regulations.
- **Rural development**: China must increase urbanization in the hinterland to raise rural standards. This massive plan calls for resettling 300 million peasants.
- **Recognition of international comparative advantage**: China must import more food and energy.

And as an apparent step beyond rationalizing party-state relations with the economy, some writers suggest that "the government's role must change fundamentally, with the private sector dominating the economy."

Some of this is pretty far from the often-repeated mantras of self-sufficiency and the state-owned enterprises as "the core" of the socialist-market economy. Clearly, this FYP has already traveled far from the mandatory model of the old system. The frankness of the discussion and the varieties of proposed programs are a response to calls from all sides for "more democracy" in planning. But at the same time we have to understand that the five-year plan, like a State of the Union address, is as much a political statement of intent, aimed at a domestic audience, as it is an economic blueprint.

But so what?

So what should the businessperson take away from press discussion about the plan? Perhaps the key is to note that like all previous plans, the Tenth FYP shows where the hearts of the approval authorities might be. The process and discussion that surround the FYP give insights into Chinese hopes, worries, and targets. Take the language and intent of the plan, fold them into your own China business projects, and you will at the very least find sympathetic listeners. For instance, businesses should look for opportunities in the interior, technology transfer, and agricultural trade, and in China's future infrastructure and rural urbanization projects, and environmental and "sustainable development" efforts. Even if, as veteran investors will no doubt observe, there's little new here, a project proposal that incorporates one or more of these goals into its rationale may have better prospects for success.

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Indeed, paying attention to the plan is one of the hoariest bits of strategic advice in the China consulting handbook. For the immediate future, it might be just as well to follow another piece of well-worn advice, and seek truth from facts. Foreign-invested enterprises (FIEs) have, for the past several years, accounted for about half of China's foreign trade—and in one of the economy's few bright spots, the share of China's export trade held by FIEs has increased significantly faster than overall foreign-trade growth. So just on structural grounds, the future of FIEs in the foreign-trade sector appears solid. And if the prize is access to China's domestic market, consider the tactical steps China is taking to revamp its laws and regulations to become WTO compliant. But even as China makes progress in that direction, business savvy will be key.

At the same time, it is important to keep in mind that while China may be making progress toward becoming a market economy, it is not there yet. Even the most liberal of Chinese commentators still sees an important role for the state. As a Beijing-based Chinese lawyer who services foreign firms once remarked, "The economy is still under state control, and thus the state can legitimately intervene in any deal, at any time, under any pretext." In this period of transition, big projects must conform to FYP intentions. It may be, as one skilled China operator observed, that "if you have the money, you can do what you want." But the government's vermilion brush can still suddenly descend from heaven and cause unexpected disruption—as Beijing's recent interventions concerning the Internet make clear (*see The CBR*, March-April 2000, p.20). The government may succeed in reducing Internet content it finds objectionable. But it risks impeding, if not scaring off, the development of e-commerce.

Something new, something old

The Tenth Five-Year Plan will be something new, something old. Sometime during the plan's lifespan, China will, assuming no disasters, become a member of the WTO. And during the plan, China has pledged to implement the market-access agreements it has reached with the United States and other WTO players. The process promises to be long and arduous. Chinese commentators recognize that the reforms embedded in the Tenth FYP are a double-edged sword. The reforms promise economic progress but not without challenges, in the form of increased foreign penetration and potential social instability (*see The CBR*, January-February 2000, p.54).

Matching the visions of the plan with the realities of engagement—that's where the action will be. Businesspeople should credit many of the Chinese contributors to the ongoing discussions in China about the Tenth FYP and WTO with insight into problems of the past and anticipated problems of the future. That is, foreign companies should realize that the visible process that informs the plan is as important, if not more so, than the plan itself. For foreign investors concerned about advancing engagement with the People's Republic of China, understanding Chinese points of view is crucial. 完

Planning the Plan

The Tenth Five Year Plan (FYP, 2001-05) will be the offspring of the State Development Planning Commission (SPDC), which was formed out of the old State Planning Commission (SPC) in the March 1998 shake-up of the Chinese bureaucracy.

To keep all the names straight, it is useful to keep track of what happened to the other key economic commissions in that bureaucratic reorganization two years ago. The State Economic and Trade Commission expanded its role to oversee policy for former industrial ministries, which were reshaped into enterprise groups. The State Commission for Restructuring the Economy became what the Chinese press has called "a top-level State Council consultative agency"—in other words, a think tank for Premier Zhu Rongji.

Two years ago Chinese spokesmen said these commissions were "macro-monitoring departments" whose overall aim was reform. The professed goal was to get the inefficient state out of the way of an increasingly market-oriented economy. Commentaries on the Tenth FYP note that it will be the first one constructed with markets in mind.

Thus, the Tenth FYP will be rather different from previous planning efforts. It will focus on macro, indicative planning. Its aim, according to press reports, will be to kick off the push to raise China's annual GDP per capita to $4,000—"approaching the level of moderately advanced countries."

But how are these economic plans—both past and present—formulated? This current plan will be the result of at least two years of consultations and studies by local, provincial, and central government offices. In addition, a wide range of opinion on the plan has been expressed by a variety of experts, not all of them officials or Chinese Communist Party cadres.

This differs from the time when planning was closely held within the state apparatus. But even then, in the bad old days of the mandatory plan, the process was one of back-and-forth negotiation and compromise between the center and the ministries.

A foreign trade ministry official once explained how the process worked. The center would set a target, he said. Then the central ministries would inhale sharply through their teeth, consult downwards in their organizations, and come back with the report that reaching the goal would be "difficult." After several rounds, a target with which everybody could be comfortable would be agreed upon.

There may have been some bean counters playing around with Soviet-style input-output tables, but the process was largely one of compromise. Whether the plans in those days would be realized, of course, depended on externalities, not the least of which were the whims of the leadership. For the Tenth FYP, externalities—ranging from the impact of WTO membership and global economic conditions to the high politics of China's foreign relations—still count.

—*John Frankenstein*

The Sun Sets on US Antidumping Orders

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For example, in the sunset review of greige polyester cotton print cloth from China, Commissioner Jennifer A. Hillman stated that she reached particular conclusions "in the absence of any contrary evidence or argument from respondent interested parties." Similarly, in the sunset review of polychloroprene rubber from Japan, commissioners Carole Crawford and Thelma T. Askey remarked on the possible effects of nonparticipation on the outcome of a review:

[W]e note that this full sunset investigation is somewhat unusual in that Denka Kagaku Kogyo Kabushiki Kaisha...the only foreign producer to respond to the notice of institution subsequently ceased participating in this review. In a case such as this, where only one party participates in an investigation or review, that party has an advantage in terms of being able to present its information to the ITC without rebuttal from the other side.

Proceeding to full review

Once a review proceeds to a full investigation, a respondent interested party should take advantage of the benefits that exist in sunset reviews compared to original investigations. For instance, in sunset reviews, the domestic industry has no control over the timing of the investigation. By contrast, in an original dumping investigation, the domestic industry typically and naturally files its petition for relief at a time when the performance of the industry is particularly weak. The sunset review, however, is automatically initiated on the five-year anniversary of the original antidumping duty order regardless of the domestic industry's condition. For example, in the sunset review of potassium permanganate from Spain and China, the domestic industry was showing strong performance and the US market was expected to grow. Therefore, the ITC found that the growing market would be able to absorb any increase in the volume of imports from Spain, which might follow revocation of the order, without any significant adverse effect on the domestic industry.

In addition, a respondent interested party can take advantage of data from the period after the order's imposition. In a full review, the ITC often compares the data on the domestic industry and conditions of competition from the original investigation with similar data from the period after the duty order was put in place. This data sometimes can show that the original order had little or no beneficial impact on the domestic industry. Such information arguably suggests that unless conditions have changed dramatically for the worse, lifting the order is unlikely to result in an adverse effect upon the industry.

Furthermore, a respondent interested party can take advantage of any changes in the industry and market. Many persuasive arguments for lifting antidumping duty orders in sunset reviews revolve around the claim that changes in industry structure have made the antidumping duty order obsolete.

This argument may have particular force when applied in transition orders, where nearly 60 percent of the original cases were decided between 1966 and 1989—some more than 30 years ago. Much change may have taken place since the order was issued. For example, original US manufacturers may have shifted production overseas or the US manufacturers may have moved into the high-end segment of the market. In both cases, the continuation of the antidumping duty order arguably no longer serves any purpose. The sunset review of elemental sulfur from Canada is one example in which the domestic industry changed so dramatically as to render the order obsolete. In that case, the primary producers of the product were now oil companies that produced the sulfur as a byproduct of their oil and gas production. The respondents argued, in part, that the health of such producers was unlikely to be affected by an increase in the imports of elemental sulfur.

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Lastly, respondent interested parties can take advantage of the changes in the world market and technology to show that lifting the order would not cause undue damage to the domestic industry. For example, changes in world markets may have caused imports to shift to sources from other countries not subject to the order. This, in turn, may have eliminated the effectiveness of the antidumping duty order. In some other cases, technological advances in the industry have led to the rapid replacement of the original product by a more technologically advanced one. This again could show that continued protection of the older product has no effect.

A new dawn for sunset reviews?

US importers as well as producers and exporters in China would do well to take advantage of the new trade law's sunset-review procedure and actively participate in the sunset-review proceedings. China-related interested parties should view the new procedure as an additional tool to assist in increasing their exporting and importing options. A final word of advice: as in so many other areas of life, simply showing up can be half the battle! 完

An Inside Guide to Negotiating

Carolyn Blackman

Foreign negotiators should be well prepared before heading to the table with the Chinese

When negotiators do not share the same economic and legal background, business experiences, and language, negotiations are protracted and, as a result, demanding on individual negotiators. Business negotiations in the People's Republic of China contain all of these ingredients, and even seasoned negotiators can forget how testing such negotiations can be until they are suddenly in China, face-to-face with the reality of another negotiation.

A negotiation over a model contract for commodities export to China provides an opportunity to examine four important issues in Chinese-Western negotiations: decisionmaking, contract discussion, self and team management, and the use of interpreters. The exporting country, the commodity, and the participants involved in the case study are not named for reasons of confidentiality. This case involves foreign and PRC government and commercial groups, as most commercial negotiations do. The elements visible in these negotiations are commonly found in most foreign-PRC negotiations—whether governmental or commercial.

A case study

This model-contract negotiation came about because foreign exporters to China had come up against the limitations of the typical Chinese contract they were using. Simple and short on technical specifications, such contracts put foreign exporters at a disadvantage by narrowing business negotiations to price only. The Chinese endusers were also unhappy with the Chinese contracts, which failed to differentiate the quality characteristics of the commodity, resulting in unpredictable quality in the end product.

The negotiations over the new model, on which subsequent contracts would be based, had the backing of the Chinese government through the chief of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC). Even with this level of support, the negotiations from the initial proposal to the final agreement lasted five years. The negotiations over the clauses and wording of the contract took two years. Eight three-day sessions took place at MOFTEC headquarters in Beijing, and one session was held in the home country of the foreign negotiating team.

Each side had 15 members. The Chinese team was led by a senior bureaucrat at vice-ministerial level. Under him were a deputy team leader (a senior bureaucrat) and 13 officials representing different constituencies such as the Bank of China, the State Administration for Inspection of Import and Export Commodities, the Chinese Arbitration Commission, and industry sectors. The Western team included representatives from the government agency overseeing the industry, banks, independent trading companies, and technical experts. The Western team leader was a senior lawyer, experienced in negotiating contracts in both his own country and in China. His descriptions of various issues of the negotiating process are quoted throughout the case study.

Decisionmaking

Decisionmaking is one of the great problems for Western negotiators in China, who are often uncertain because they do not understand the Chinese decisionmaking process well.

Western negotiator

"Our problem was that the Chinese chief negotiator was a high-ranking bureaucrat. While he was negotiating with us he was also negotiating many other contracts. When we started he was negotiating a China-South Africa Treaty, then he went off to negotiate an Intellectual Property Agreement, then he went to negotiate a Sale of Goods Agreement, then he was doing the new China Contract Law in the National People's Congress. So he was never there. So who were we dealing with? We were dealing with his junior staff who would not make a decision unless he approved it. If he is not there, nobody makes decisions. So you spend day after day with the Chinese side saying 'no' to everything, 'no' to every compromise you put up, 'no' to every variation, 'no' to the most basic clause that you've ever seen—clauses that Westerners wouldn't bat an eyelid about. 'No. We're not clear about this, we don't understand what it means.' So until you have the boss, you really can't get anywhere. All you do is walk backwards and forwards over the same ground.

"Because of this, in the last week of negotiations we walked out. We got fed up with not seeing the chief negotiator. He didn't turn up because he thought we weren't getting anywhere, but we weren't getting anywhere because he hadn't turned up. [T]wo days into the negotiation session we said to the Chinese, 'This is

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going nowhere. We are not achieving anything. We believe we should cease now and probably go back home. There is no point in continuing with this contract,' and we walked out.

"That was at 3:00 pm on the Tuesday. We were leaving China on the Thursday. We returned to our hotel. Nobody was bad-mannered, nobody lost his temper, nobody said anything offensive. Later that afternoon our interpreter got on the phone. The Chinese told him that the chief negotiator would be [at the negotiating table at] 9:00 the next morning, and that he could work all through the night if required. The next morning he was there, and progress was rapid. We negotiated until 6:00 pm. Then at 1:00 am we were called back to negotiate until 3:30 am. Later that morning we flew home with the agenda completed."

Lessons learned

- **The importance of the lead negotiator** This case study illustrates the important role of the Chinese chief negotiator as well as the multiple demands on people in positions of authority. It also illustrates the willingness of junior staff, in the absence of their chief, to practice their negotiating skills at the expense of their foreign counterparts. The negotiation session held in the home country of the foreign negotiating team was very rewarding because it gave them unlimited access to the Chinese chief negotiator.

Western teams have experienced the mirror image of this situation: the Chinese tend to be willing to reach agreement only when the top foreign negotiator is present. The Chinese are used to decisions being pushed to the top level and are unaccustomed to foreigners' occasional delegation of decisionmaking power. Thus, while Western teams with decisionmaking power may try to settle outstanding issues in the absence of their boss, the Chinese team is reluctant to come to agreement. When the Western boss arrives, issues that formerly seemed intractable are suddenly concluded. This model of authority is consistent with the experience of Western general managers in foreign-invested enterprises in China. Chinese middle managers are wary of taking responsibility for decisionmaking and prefer to leave such power and responsibility to their bosses. Quite simple decisions, such as where the photocopier will be located, end up on the boss's desk. Inter-departmental disputes are also referred to the managing director instead of being solved further down the management hierarchy.

- **Unexpected delays** Overlapping or unclear jurisdictions of government ministries slows decisionmaking in China. Most negotiations involve bureaucrats to some degree. In the case study, MOFTEC assumed it had the power to make decisions on behalf of the Chinese side, which included other government departments and agencies. However, recent political changes have resulted in more independence for certain agencies.

In this case, one government body refused to accept MOFTEC's decision. Another proposal made during the negotiation would have reduced the income of some ministries while boosting that of others. This proposal necessitated intra-Chinese negotiations behind the scenes and lobbying by the Western team leader. If Western negotiators can uncover what the blockages are and who is responsible for them, they can approach those involved privately, change negotiation strategy, or pressure the Chinese chief negotiator to force an agreement between disputing parties.

- **The walkout** The walkout, as used in the case study, is a negotiation tactic called "ultimate consequences." The reasons for and the consequences of a walkout must be laid out clearly. It is a dangerous tactic. The person using it must have credibility and must demonstrate commitment to what he or she threatens. Western businesspeople in China frequently use this tactic—and generally with success. It signals very clearly that one is no longer prepared to accept the current situation, that the bottom line has been hit. In price negotiations it comes about when one hits the table and shouts, "That's it! No more!" This signals a total shutdown of the negotiation. A walkout usually prompts the Chinese to rethink their position and sometimes return to the table ready to close the deal. This tactic can fail, however, if the Chinese believe they can easily strike a deal with another foreign party, or if the Chinese lack the solid commercial knowledge and experience to accommodate the foreign party's demands.

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Contract discussion

Contract negotiations with the Chinese tend to be drawn out, in part because the Chinese are not familiar with standard international contract terms. Negotiations also tend to take on a tit-for-tat nature.

Western negotiator

"The Chinese team had little exposure to the West. The most basic clauses they had not seen before. They pored over every clause. For example, the date of the contract, the words 'buyer' and 'seller,' every single word that you mightn't have thought was important is examined. You have to let them discuss it thoroughly. Don't assume that the standard clauses in the West will

be accepted. They say, 'That might be well-known in the West but China is a civil law jurisdiction, and we don't have clauses like that.' In fact they do, but these negotiators had not seen them before. Every clause has to be explained word for word. Even the 'to serve notice' clause involved a two-hour discussion. 'Fax on the same day' and 'deemed to be received in five days' had to be negotiated. The 'entire agreement' clause, which is very familiar to us, had to be negotiated. My advice is not to put up any clause that is not absolutely essential, otherwise you are going to go through the torture of negotiating clauses that don't count for anything.

The emotional factor in negotiating in China should not be underestimated. The endless grind, the need to explain so many factors that are taken for granted in the West, and the time this takes are very wearing for Western businesspeople.

"We spent two hours discussing which law should apply to the contract. The Chinese wanted Chinese law. They said, 'There is a law relating to determining applicable law. It is *The Oxford Rules*, and it supports Chinese law as the applicable law.' And they brought out this little book published in the 1920s. All MOFTEC negotiators seem to be trained in this book. We had never heard of it. It isn't used, or even available in the West. We ended up agreeing that any disputes would be arbitrated in accordance with the Vienna Convention.

"It is advisable to take copies of contracts with objective wording, for example from an authoritative body such as the International Chamber of Commerce, because the Chinese will not agree to anything that exposes them to risk. When we would put a proposal to them—sometimes a four-line clause, they would spend two hours across the table discussing it—all 15 of them. You're sitting there in the negotiation room and nothing happens between 10:00 am and noon while they discuss your clause.

"Any clause seen as too biased in our favor could not be accepted. We had to give something back. To rebalance things the Chinese used arguments such as 'This is China,' '[There] is a civil law system in China,' 'This is not correct.' A clause must be read as mutual otherwise they reject it. We used the concept of mutuality ourselves as an influence tactic.

"The issue of penalties in the contract caused a long argument. In the contract we were exporting commodities to the Chinese, which they would pay for by Letters of Credit. Their concern was about late delivery, while our side was worried about the Chinese opening Letters of Credit late. The Chinese wanted 8 percent of contract value if goods were late. We said, 'If you open the Letter of Credit late we want 8 percent of the Letter of Credit value.' They said, 'No, that is not acceptable. It should only be 2 percent of the Letter of Credit.' We said, 'Well, why is it 8 percent of the goods and only 2 percent of the Letter of Credit?' That discussion went for a whole day. It revolved around *yin* and *yang*, what is fair and equitable, what's balanced, what's the usual principle of equality and mutual benefit. We said, 'According to the principles of equality and mutual benefit it has to be 2 percent for both or 8 percent for both.' Our fallback position was to delete the whole reference. In the end there were no penalties in the contract at all. This was a better outcome for us than to accept their position, which was to accept less [in] damages for the late opening of Letters of Credit. If you cannot get agreement, delete it altogether rather than agree to something that is unacceptable.

"If you have a number of negotiating visits, you must get a Memorandum of Understanding (MOU) at the end of each visit. If you don't have an MOU saying what you have achieved, they will assume that everything is still open. We did not do this. When we went back with three clauses remaining in the contract after one hour of discussion we found that we then had seven clauses to be discussed because they didn't regard four of them as closed and completed. Without an MOU a new negotiating team will start all over again. And the MOU must be signed by the people on both sides who have authority, otherwise it will be discounted. An effective strategy is to use the visits of your own government officials to coincide with an MOU signing. That fixes a deadline for that section of the negotiation.

"Our negotiations were complicated because there is so much restructuring going on in China, which is putting the ministries under pressure. This led to changes in personnel on the Chinese team. There were changes on our side as well over the negotiation period."

Lessons learned

- **Be prepared for long and detailed discussions.** Because the Chinese do not share the same legal heritage or commercial infrastructure as most Western countries, discussions on contract clauses were long and detailed. It is wise not to assume common understandings and common ground. Western negotiators must be prepared to explain and educate, to a degree unparalleled in their home environment. One strategy the Western team used was to print clauses one to a page, translated into Chinese, and to send these prior to negotiation.
- **Mutual benefit (*huhui*) is important to the Chinese, and many Western negotiators have found it a useful concept.** "Mutual benefit" has been a part of Communist Party doctrine since the Bandung Conference in 1955, when Premier

Zhou Enlai enunciated "equality and mutual benefit" as one of the Five Principles for Peaceful Coexistence. And Mao Zedong's *Little Red Book* stated "trading between countries should be equal, and no one country should take advantage of another."

- **MOUs are helpful** in avoiding typical problems Western negotiators encounter in China, such as the renegotiation of apparently settled issues and the change of personnel between sessions. MOUs help affirm what issues have been completed to new negotiators.

Self and team management

The emotional factor in negotiating in China should not be underestimated. The endless grind of negotiating, the need to explain so many factors that are taken for granted in the West, and the time this takes are very wearing for Western businesspeople. When the Chinese question everything, challenge quite straightforward clauses, or reopen issues previously agreed upon, it is easy for Western businesspeople to lose their cool and say things that they later regret. Such loss of self-control, while understandable, can be damaging to the atmosphere and the progress of negotiations.

Western negotiator

"There was a woman from the Bank of China who was very professional, but very hard-line and very difficult. She kept bringing up items that we had already agreed about previously and telling us these had not been discussed before. At one point I suggested that it might be a good idea if we swapped around clauses 5.1 and 5.2. She said, 'We disagree, we disagree' in a high, aggressive tone. I unfortunately made an unflattering remark about the difficulty she created, and then said to her, 'If we leave it like this, in six months, when someone picks up this contract, they'll think it's been drafted by a bunch of back-woods lawyers.' It was a throw-away comment and meant to be as much a criticism of ourselves as of her, and it came out of a sense of enormous frustration.

"The result was that the Chinese called a break. During the break they came up to one [member] of our team and said that they had a lot of junior staff present and the comment about 'back-woods lawyers' wasn't attractive to them; it caused great grief, and if nothing was done about it they would get on the plane and fly back to China. They saw it as challenging their professional credibility. After lunch I made a 20-minute personal self-criticism and apology in front of both negotiating teams. I laid out all my misdemeanors on the table. Things went smoothly thereafter."

Lessons learned

- **When the atmosphere is becoming tense, it is best, if possible, to call a halt.** This at least allows the Western negotiating team to let off steam privately, and allows emotions to cool. It can also be an opportunity for the Chinese team to talk together and possibly come back with a changed position. The chief Western negotiator advised, after his scourging experience, "It is really essential to accept the fact that it is going to take a long time. Never get angry, never raise your voice. Show deference and respect. Shake hands at the beginning and end of negotiating sessions. Engage in small talk to create a relaxed and sympathetic atmosphere." Negotiators also need to monitor their fatigue levels. It is not uncommon for negotiations to go long into the night. Such long hours can result in bad-tempered outbursts.
- **Debriefings can be helpful.** One of the Western team's strategies was to go to the hotel bar at the end of each day and discuss the day's proceedings. They went over what they thought the Chinese were really saying and why, who they thought was driving it, what they thought the Chinese team was going to accept, and the things their own team did wrong. Apart from boosting morale, which can be seriously flagging after a day of no movement, such discussion contributes to the development of the strategy for the next day. Strategy must be thought through in detail and aligned with Chinese needs, although discovering Chinese needs is not always an easy undertaking.

Strategy must be thought through in detail and aligned with Chinese needs, although discovering Chinese needs is not always an easy undertaking.

Language and interpreters

When conducting negotiations in two or more languages, interpretation must be taken very seriously.

Western negotiator

"We took our own interpreter. This meant that when we put a four-line clause to them and they spent the next two hours discussing it among themselves, [our interpreter] was able to inform us of what was going on on the other side. He'd say, 'The leader is saying this is a perfectly reasonable clause, but so-and-so doesn't like it for this reason, and so-and-so wants such and such.' That is extremely useful intelligence that will rarely be given to you by an interpreter appointed by the Chinese side. Without him, we would not have known what was going on when we put a proposal [forward]. He was also invaluable in 'corridor talks,' when we would seek out key players to whom we put across our point of view and who would give us a real feeling for what issues we needed to address."

Lessons learned

There are two questions to ask when hiring interpreters:

- **What is their level of competence?** Language is a subtle, extensive, and complex medium. The real message, the feeling of the message, and the technical details must be conveyed. And because of gaps in background, many concepts cannot be simply interpreted on a word-for-word equiva-

lence. They have to be put into context and explained. Addressing these issues is difficult if the interpreter has no experience in international business or technical background. There are many excellent interpreters in China, but Western businesspeople do need to keep interpretation in mind as a factor in the negotiation process and outcome.

In this case study, the Western negotiating team was in no doubt that using their own interpreter gave them a strategic advantage.

- **If interpreters owe their employment to the Chinese side, how free are they to interpret all that is being said?** Will they act as a filter rather than a black box? Whether or not to engage one's own interpreter from outside China or to use one provided by Chinese counterparts depends upon the importance of the negotiation and the point-of-view of the Western business team. Interpreters from outside China are more familiar with the Western business context and presumably with the specific business under discussion, and thus are more able to explain the case accurately. They will also be completely free to pass on to the Western team the content of the Chinese team's discussion.

Interpreters engaged in China will be more familiar with the local situation. Competent interpreters can explain the Western case in a way that is acceptable to the locals and provides the Western team with insights into local behind-the-scenes issues. The Chinese side may trust these local interpreters more than outside interpreters. In this case study, the Western negotiating team was in no doubt that using their own interpreter gave them a strategic advantage.

A winning strategy

The negotiations in this case study were concluded successfully, and the contract was duly signed by the trade ministers of both countries. Though negotiations in China can be strenuous, foreign negotiators can prepare for them by following a few helpful guidelines (*see* above).

Ten Useful Tips for Negotiating in China

1. Identify the decisionmaker
2. Make sure the decisionmaker will be present
3. Don't assume a shared legal background
4. Prepare for long and detailed discussion
5. Use "mutual benefit" to assess clauses
6. Cut inessential clauses
7. Use memorandums of understanding to document agreements
8. Exercise self-control
9. Allow time-outs, daily debriefings
10. Consider taking your own interpreter

—Carolyn Blackman

Commercial and state-to-state negotiations are similar in many ways. As recent World Trade Organization talks between China and one Western country indicate, negotiations with the Chinese take time and are often difficult. The long timeframe of discussions dated some issues, some of which became irrelevant, and required others to be renegotiated. On the other hand, continuity within teams and familiarity with team members proved helpful. The Chinese chief negotiator had been with the team for seven years. Knowing the other side helped in reading the body language, which provided clues as to what was unacceptable, or where there might be room for movement. It also allowed both sides to share a joke or personal feelings after a tense period, which helped maintain a good atmosphere for the long haul.

The biggest problem for the Western negotiators was not knowing where things stood. The Chinese did not like to write things down. They preferred verbal agreements. Although the Western team prepared documents on their understanding of what had been agreed to, the Chinese were not prepared to make such documents official. This open-endedness, which often leads to renegotiation, is common to negotiations with the Chinese at all levels. Whether it can be overcome, as in the case study, depends upon the importance of the political and economic impact of the issue being discussed.

In all negotiations in China, it is helpful for Westerners to realize that China's commercial system is not like those of the advanced Western economies, that the Chinese economy is in rapid transition, and that PRC negotiators have a highly competitive, and often distrustful, attitude toward Western business. Westerners should also keep in mind that "all politics is local," and try to gain an understanding of what is happening between players on the Chinese side. 完

www.China

www.chinapharmanews.com *China Pharma News*, a joint service of China Concept Consulting and the Information Center of the PRC State Drug Administration (SDA), provides daily news, company activity and licensing announcements, sector reports and market opportunities, SDA policy and regulatory news, and pricing information. The latest stories and daily e-mail notification of headlines are free of charge, but archives are only available to subscribers, for $695 a year.

www.chinapntr.gov Run by the White House's China Trade Relations Working Group, the official US government site on Permanent National Trade Relations (PNTR) features news, speeches, congressional testimony, presidential messages, press releases, editorials, newspaper articles, and quotes from supporters of PNTR. The site also contains sector and state fact sheets, state reports, and information on small business and China.

www.china-legal-change.com *China Legal Change*, a twice-monthly update of PRC legal developments published by Legal Support Services Ltd., lists new laws, rules, announcements, and interpretations from central and local governments. Each issue also features detailed summaries of several new major laws or regulations. Such information costs $128-188 per year, depending on the type of subscription.

www.state.gov/www/global/human_rights/1999_hrp_report/china.html The US State Department's annual human rights report details how China's human rights situation has "deteriorated markedly" in the last year.

www.gotrade.org GoTRADE is devoted to promoting international trade, countering anti-trade arguments, and explaining trade issues. It also shows the beneficial effects of trade on US states and metropolitan areas.

www.flychina.com Florida-based FlyChina Infotek, Inc. specializes in discount airfares between the United States and China. The site carries information on tours and travel specials, and posts flight schedules not only of transpacific flights but of US and Chinese domestic connecting flights. Best of all, its Low Fare Wizard allows users to select a departure city and date and destination city and date, and then finds the lowest available fare.

www.asiaobserver.com Set up by a Norwegian journalist based in Hong Kong, this site aims to serve as a starting point for observers of East and Southeast Asia. It contains news, information on politics and the economy, and general background information. The China page carries the daily headlines and links to other news sources. It also contains links to several China portals, and sites on Chinese politics, society, and economy, as well as human rights, Tibet, and academic sources.

www.usatrade.gov/website Run by the US Department of Commerce's Commercial Service (USCS), USA Trade aims to help US companies export their products and services. USCS provides advice on finding international contacts, financing, market research, trade events, and the basics of exporting. While some information, such as market reports, are free, USCS charges fees for other services.

www.chinaenvironment.net The Professional Association for China's Environment is a non-profit, nonpartisan organization committed to improving China's environment. The site features two online magazines, *Sinosphere* and *China Environment Reporter*, a discussion forum, and links to other environmental resources.

SITES IN CHINESE

www.pbc.gov.cn The website of the People's Bank of China, China's central bank, features press releases, information on payment systems, statistical data, and the full text of 23 financial and banking regulations.

www.xbdkf.com *Xibu Da Kaifa* (Develop the West) contains news and information about China's central and western regions, enterprises, and economies. Perhaps most useful, the site features not only central policies and laws, but also those of Chongqing Municipality; Gansu, Guizhou, Qinghai, Shaanxi, Sichuan, and Yunnan provinces; and Tibet and Xinjiang Uygur autonomous regions.

—Virginia A. Hulme

Group Financing Companies: Financing Flexibility

Jingzhou Tao and Alexander Lunshof

A young investment structure offers greater financing options for foreign-invested enterprises

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Despite some foreign investors' optimism that China's accession to the World Trade Organization (WTO) will bring financial-sector liberalization, many are already looking at alternate means of financing their China investments. Large-scale foreign-invested enterprises (FIEs), such as electronics giant Siemens AG, are opting for a new and relatively unexploited investment vehicle, known as the group finance company (GFC), to exercise greater control over financial aspects of their China operations. Regarded as a non-bank financial institution by the Chinese government, this investment vehicle essentially acts as a bank for FIEs belonging to the same group (FIE group members). By allowing for the provision of financial services to subsidiaries, the GFC investment structure promises foreign investors not only greater control but also greater flexibility in managing the financial affairs of their China investments.

A solution for holding-company limitations

GFCs were originally introduced as an adjunct investment structure to compensate for the limitations on holding companies. After the inception of the holding-company structure in 1995, foreign investors complained that rigid financial restrictions prohibited them from conducting intra-group lending and foreign-exchange transactions, among other key business activities. In response to these criticisms, the People's Bank of China (PBOC) promulgated two notices in 1996: The Provisional Measures for the Management of Finance Companies of Enterprise Groups, and the Notice Concerning Certain Questions about the Establishment and Operation of Finance Companies of Foreign-Funded Enterprise Groups (PBOC Notices). The PBOC Notices introduced the GFC structure for the purpose of allowing an FIE group with a pre-existing holding company to streamline the provision of financial services to FIE group members.

These two regulations, effective upon promulgation, set forth a general regulatory framework for the establishment, by an FIE group, of a finance company in China to provide financial services to its members. It is noteworthy that the PRC Law on Wholly Foreign-Owned Enterprises, and its Implementing Rules, as well as the 1994 Administrative Rules of the PRC Governing Foreign-Funded Financial Institutions and its Implementing Rules also apply to this type of investment structure. In the case of a conflict, however, the PBOC Notices prevail.

Scope of financial services

Under the GFC investment structure, foreign investors may conduct a broad range of intra-group financial transactions. First, GFCs may accept deposits from and extend loans to FIE group members in both *renminbi* (RMB) and foreign exchange. They may also perform a wide variety of services on behalf of FIE group members, including issuing finance-company bonds; representing members in the purchase and sale of bonds and foreign exchange; handling entrusted investment activities on behalf of members; conducting internal-account transfers and settlements between members; acting as the agent for the issue of corporate bonds; and handling guarantees, credit verifications, credit investigations, and consultancy activities. It is even contemplated that, upon PBOC's approval of the official business scope, GFCs may provide FIE group members' customers with certain financial services, such as accepting payment of FIE group members' clientele and handling finance leasing of FIE group members' products. However, this practice has yet to be implemented.

Additionally, GFCs may be able to circumnavigate foreign-exchange restrictions and thereby increase their members' access to both RMB and foreign currency. In the wake of PBOC and State Administration of Foreign Exchange (SAFE) efforts to crack down on foreign-exchange loopholes in mid-1998, many FIEs have encountered much difficulty in both securing foreign exchange and repatriating profits and dividends to their country of origin. The flurry of PBOC and SAFE circulars and notices aimed at increasing the supervision of foreign-exchange transactions has in some cases slowed such transactions to a standstill (*see The CBR*, March-April 1999, p.26). However, as GFCs are permitted to accept deposits and extend loans to subsidiaries in both RMB and foreign currency, as well as represent subsidiaries in procuring foreign exchange, members may be able to avoid the bottlenecks and delays that characterize the current foreign-exchange process. Of course, as

financial institutions registered in China, GFCs will still be subject to the same scrutiny as other FIEs when conducting foreign-exchange transactions.

Drawbacks

Although the GFC offers several advantages over traditional investment structures, it does present certain obstacles with respect to its own financing. According to PBOC officials, the GFC may not conduct financial transactions with any entity outside the FIE group, and as a result may not approach a Chinese or foreign bank for a loan or any other form of financing. Essentially, the GFC may only receive funding from the FIE group members. Consequently, such restrictions on acceptable financial transactions severely narrow the GFC's financing options.

Steep requirements

To establish a finance company in China, an FIE group must meet four major prerequisites, according to the PBOC Notices. First, each FIE group member may only operate in an industry that is in accordance with China's state industrial policies. According to PBOC officials, the FIE group's investments in China should conform to the Provisional Regulations on Foreign Investment Guidelines, promulgated in June 1995 by the Ministry of Foreign Trade and Economic Cooperation. Second, the FIE group must have a pre-existing wholly foreign-owned holding company engaged in direct investment consistent with the relevant Chinese laws and regulations.

Third, foreign investors of the holding company, in accordance with China's state industrial policies, should have more than $80 million of actual equity investments in China. According to PBOC officials, the actual amount of equity investments should include only the equity capital contributed by the investor, not the equity capital legally committed but yet to be paid in. And finally, foreign investors seeking to establish a GFC must have had annual operating revenues of $3 billion or more for three consecutive years prior to the application.

Applications from foreign investors that meet these conditions will generally be accepted, although final approval is at PBOC's discretion and is based on the company's specific situation. Three major requirements apply to the formal establishment of a GFC:

- **Form** A GFC must take the form of a limited-liability company, the equity interest of which must be held by the FIE group members.
- **Registered capital** The finance company's registered capital should be at least ¥100 million ($12 million). An additional $10 million in registered capital is required if the GFC's business scope includes foreign-exchange transactions. The GFC's registered capital may be increased upon PBOC approval. Again, registered capital must be contributed only by the FIE group members, which can include the holding company.
- **Personnel** The upper-level management—chairman, vice chairman, general manager, and deputy general manager—must meet PBOC education and experience qualifications. PBOC has the right to verify these qualifications. The finance company must employ at least one Chinese national in its upper-level management, and at least a third of the total staff must each have five or more years experience in finance.

In addition, the finance company must have a sound organizational structure and management system, and maintain a place of business, security measures, and facilities appropriate for its contemplated business operations.

GFCs may eventually provide FIE group members' customers with certain financial services, such as accepting payment of FIE group members' clientele and handling finance leasing of FIE group members' products.

As the requirements for establishing a GFC are quite strict, so far only Siemens has been awarded a business license. However, as this investment structure becomes more attractive, several other companies are expected to follow suit. Royal Philips Electronics, Volkswagen AG, and Ford Motor Co., among others, have reportedly applied and are currently awaiting licenses.

The establishment process

As is typical of PBOC practice, the specific procedures for establishing a finance company are divided into two main stages: the preparatory stage and the operational stage.

The preparatory work for establishing a finance company may only begin after PBOC has approved the application. FIE groups wishing to apply must submit both Chinese and English versions of the standard application documents to PBOC. The feasibility study must contain the status of the assets, liabilities, and business operation of the member enterprises for the three years previous to application, as well as the medium- and long-term development plans, the benefits of setting up the GFC, and forecasts for economic benefits. At its own discretion, PBOC may require additional information based upon various factors such as the business scope, the size of the proposed finance company, and the financial history of the applicant.

The PBOC Notices give PBOC three months to evaluate and respond to the application. If the companies fail to obtain approval within the three-month period, they must wait another six months before submitting another application with the same contents.

The PBOC Notices also allow the applicant six months to conduct the preparatory work. All necessary preparations should be finished within this period, as the documents approving this

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The Branding Revolution in China

Kai-Alexander Schlevogt

Chinese entrepreneurs are waking up to the value of brands

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Branding is the most powerful invention in commercial history. An intangible asset, a solid brand is often a company's most important source of future cash flows and earnings. Western companies have long recognized the value of a solid brand. But until recently, Chinese companies entrusted their unhappy customers and happy competitors with the task of creating, or rather destroying, their brand identities—both at home and abroad. Ask people on the streets of Berlin, Paris, London, or New York to name three famous mainland Chinese brands, and you will most probably encounter puzzled faces. But if, a few years ago, you had asked the ordinary Chinese in Beijing, Shanghai, or Lanzhou, Gansu Province, to recall famous brands in China, they would readily have provided you with a list of Western household names like Coca-Cola, McDonald's, or Whirlpool. Only a few would have mentioned Chinese brands. But the winds of change have been blowing through the Middle Kingdom.

Brand consciousness development in China has passed through four distinctive eras: central planning, catching up, hypercompetition, and post-industrialism (*see* Figure 1). Managers focused on supply during the first two eras and have paid more attention to demand in the last two.

1 Traditional disregard for brands: the legacy of central planning

Many China-based businesspeople can remember the days when brand management was not an important executive function. In the planned-economy era, production, not market demand, dictated resource allocation. The visible hand of the PRC government assigned products to someone, somewhere, sometime; courting customers and creating competitive advantage through strong brands was unnecessary. In this system, fulfillment of production quotas was the ultimate measure of performance. The pure accumulation of physical capital itself—regardless of the market demand for the goods and services produced—was an achievement worthy of praise and rewards from the highest government officials. "Carrots" varied according to a recipient's place in the hierarchy, from promotions to senior levels, better access to resources for production, chauffeur-driven cars, and larger apartments, to honorary prizes, small financial bonuses, dinners, and food.

As a consequence of these misguided incentives, regional economic tycoons—provincial and state-owned-enterprise leaders—invested heavily in fixed assets to generate "show-off capital" (*kuayao ziben*) such as basic infrastructure and facilities. In contrast, these leaders viewed invisible assets—such as brands, corporate reputation, customer good will, and intellectual and social capital—as unimportant at best. At worst, they were completely ignorant of these concepts. This general disregard for marketing persists in the state sector today. Companies still fail to market and sell a large part of industrial output—according to the Economist Intelligence Unit, involuntary stock-building contributed roughly 1.2 percentage points to GDP growth in 1998.

2 Produce and sell: catching up with demand in the fat years

In the second stage, the catching-up era, companies still felt little pressure to build brands. In the early years of reform, companies simply had to secure capital, source technology, and thus increase production. They could sell everything they produced to a virgin market with huge pent-up demand. It is no wonder they failed to appreciate the value of intangible assets.

The case of Japanese exports of television series to China illustrates this neglect—and its dire consequences. Early in the reform days, the Japanese volunteered to donate their programs to Chinese television stations in exchange for free advertising space. Without hesitation, the Chinese negotiators agreed, utterly convinced that they had struck the bargain of the century. The Japanese skillfully used the advertising time to promote their brands. Through this cunning revival of the Trojan horse stratagem in the electronic age, they reached millions of Chinese consumers and created strong competitive positions that were later difficult to assail.

3 The winds of change: surviving hypercompetition

A number of factors drove a major discontinuity in the early 1990s, as China entered a third stage of market-driven brand consciousness—the era of hypercompetition. First, as factories used similar technology, many Chinese-made products had comparable features. Distribution, sales, and after-sales service were poor, and thus could not serve as marketing levers either. Products with no names, which did not "speak" to customers, sat side by side on the shelves, waiting for customers to choose them at random. At the same time, customers lost confidence in the economy. While they still could be seduced into

buying famous, high-quality (most often foreign) products, demand for price-sensitive goods stagnated. Price became the last competitive variable. Ferocious discounting wars followed, especially in the market for color televisions and other household appliances.

As competition against domestic counterparts intensified, Chinese entrepreneurs had to find a way to compete against the recently arrived, strong foreign companies that understood how to build strong brands and efficient sales channels, even if their products initially did not meet customer tastes. Several years ago, a Chinese consumer trying a foreign soft drink for the first time would have asked, "What is this medicine for?"

The prospect of entering international markets and competing with foreigners on their own turf was even more daunting. Unstable markets for price-sensitive exports in the late 1990s made things worse. In the wake of the Asian crisis, foreign buyers were quick to reduce purchases of undifferentiated goods that had become more expensive.

The high volatility of stock markets abroad threatened to spread to China. Strong brand names can be among the best defenses against gyrations in the stock market, while companies without such an invisible asset can be among the worst hit. For example, during the October 1987 stock-market crash on Wall Street, the 20 public US companies with the strongest brand power gained market value, while those with the weakest names lost value.

The emergence of new market segments and changes in consumer behavior also marked the hypercompetition era. Tastes and key buying factors in the new market segments, such as the super-rich—most highly concentrated in Beijing—and the emerging middle class, differed greatly from the uniform customers of the Maoist era. Rich bar hostesses, actors, and private entrepreneurs became very brand conscious, choosing well-promoted foreign products with appealing images, from cars and clothes to apartments. The new rich want to wear their status, literally—even if a watch, for instance, costs more than $1,000. Rado, the high-end Swiss watchmaker, was one of the earliest luxury brands to enter China. In 1979, it became the first foreign company to advertise in China, and its China sales have grown at an average annual rate of 10 percent since then. The company recently announced that the number of Rado buyers from China's interior has increased.

Even ordinary consumers have become more sophisticated and knowledgeable about products. Apart from prices, brand names now are a key buying factor. For example, a survey by the Central China Television (CCTV)-affiliated Investigation and Consulting Center revealed that the 38 percent of Chinese consumers who buy Coca-Cola do so because of its famous brand, while only 19 percent make the purchase based on price. The survey also revealed that television commercials are the most influential factor in the purchasing decisions of 57 percent of consumers. According to a survey by Beijing Meilande Information Co., only 16 percent of the women in Beijing stated that they do not pay attention to brands.

Witnessing these changes, Chinese leaders have become well aware of the value of a brand—as a competitive weapon, a temporary substitute for lack of critical sales skills at the front line, a shelter against market uncertainty, and a springboard for synergistic expansion at home and abroad. Politicians—China's state entrepreneurs and "philosopher-kings"—have adopted the strategy of promoting domestic brands, and a veritable crusade has followed. Shanghai, for instance, has compiled a ranking of the city's top 50 brand names (based on sales, profits, market share, and company assets), with the aim of placing three to five local brands in the ranks of the world's top 500 by 2010. Such rankings inform consumers and act as incentives for companies.

Major Chinese provinces and cities now regularly hold best-brands exhibitions and contests, such as the China Jiangsu Fair of Celebrated Brands, Quality Goods, and New Products and the Sichuan Famous, Excellent, Special, and New Products Fair. Such events encourage modern methods of marketing and promote brand names in other provinces and abroad, thereby increasing market shares. In 1999, a total of 298 *China Daily* articles mentioned the word "brand."

Executives also have jumped on the brand wagon enthusiastically. Just try to repeat the Japanese example mentioned earlier and ask a Chinese TV executive for a similar "series-for-advertising" deal now. He will laugh at you and advise you to go back to business school. Chinese executives also now recognize brands as important intangible assets they must build, manage, and leverage to create economic value. They understand that branding will be the only way to survive cutthroat competition with strong domestic players and Western giants. Acting on this insight, large-scale enterprises and, more recently, entrepreneurs at the grassroots level have started to build brands that challenge foreign companies in China and abroad.

Chinese executives now recognize brands as important intangible assets they must build, manage, and leverage to create economic value.

Mega-entrepreneurs build national and international brands

A few large companies—state-owned and non-state "jewels"—have developed strong brands in the domestic market. These mega-entrepreneurs have injected a new entrepreneurial spirit into large conglomerates. Some players even have started to build brands in the international arena.

Success in all these cases derives from good quality at reasonable prices. In a recent survey by Gallup (China) Research Ltd., 62 percent of respondents held positive opinions about the quality of Chinese products. In the third quarter of 1999, the State Bureau of Quality and Technical Supervision conducted a nationwide quality test

of products in 1,764 categories covering about 1,600 enterprises. About 79 percent of all products met state standards, with home appliances showing the greatest quality improvements. The Haier Group's refrigerators, for example, have survived the scrutiny even of discriminating German distributors, according to company accounts.

Quality and price alone do not guarantee the success of a brand, however. Building strong recognition, positioning, market share, and equity are just as important.

The Tianrun Crankshaft Co. Ltd. positions itself as the "most famous trademark in Shandong Province" and claims to be the first Chinese crankshaft company to have obtained ISO 9002 certification.

● **Recognition** Gallup polls indicate that Chinese consumers previously favored Japanese and US brands but now prefer Chinese brands. Eighty percent of consumers favor local brand names, and 79 percent prefer products labeled "Made in China" over goods produced abroad. Seven of the top 10 brands in China ranked according to name recognition were Chinese. Two other brands, Head and Shoulders and Santana, were considered local—the companies, realizing that Chinese consumers prefer Chinese brands, may not have emphasized their brands' foreign identities. Wahaha, a food and soft drink company, ranked first out of all brands in China, outperforming Coca-Cola, which ranked fourth. Local brand names like Bank of China and TV set maker Changhong, which ranked second and third, also enjoy strong recognition.

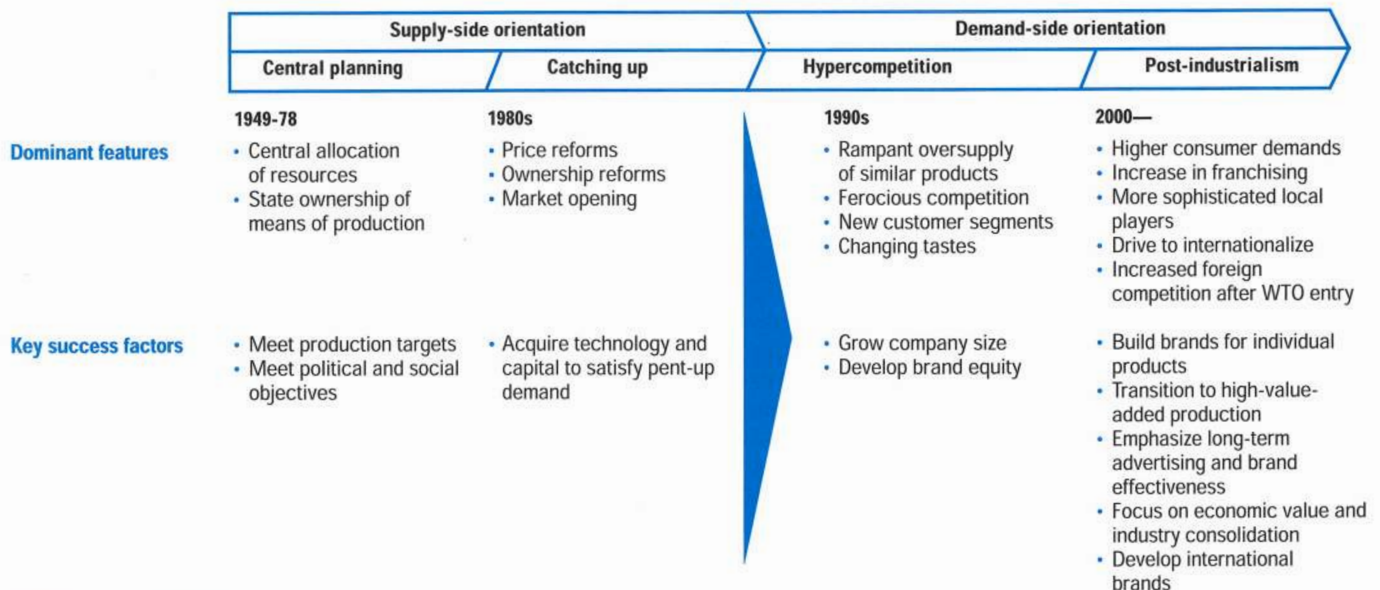
● **Positioning** No territory is holy. The Shanghai Hero Co. positions its best fountain pen as a luxury writing instrument and sells it for about $64 per pen, competing with foreign high-end brands, such as Montblanc. The China Construction Bank set up the first "lady's bank" of the People's Republic, providing specialized financial services for women. Commodity firms also brand their products. Unilever Plc took over the Beijing-based Jing Hua Tea Processing Factory, the largest jasmine tea producer in northern China, and retained the company's original name in the belief that the Chinese brand could withstand the competition from foreign rivals such as Lipton. Foreign companies in other sectors have also partnered with or bought out Chinese companies and revived Chinese brands.

Mundane industrial companies also are establishing specialized brands. The Tianrun Crankshaft Co. Ltd. positions itself as the "most famous trademark in Shandong Province" and claims to be the first Chinese crankshaft company to have obtained ISO 9002 certification. To promote further growth and maintain its position as leader in China's crankshaft industry, it established a cooperative joint venture with the Merrill Lynch Group in 1996.

Some marketers have started to brand ethnic specialties. This strategy creates a sustainable competitive advantage that is difficult to imitate. Local brands such as Enjoy, Slidon, and Birch are finding a niche in Yunnan Province folk art and fashion, combining modern designs and manufacturing with the traditional costumes of the province's ethnic minorities. These brands are reaching customers across the country and throughout the world through regular appearances at national and international trade exhibitions.

● **Market share** While market shares for most durables became more concentrated during the 1990s, brands of daily consumer goods proliferated. Foreign companies still dominate some product categories. For example, Wm. Wrigley Jr. Co.'s Double Mint chewing gum and Nestle S.A.'s Nescafe hold 91 percent and 89 percent shares in their markets, according to the CCTV survey. But market shares for most other products are evenly distributed between foreign and domestic brands. In some industries, domestic producers

Figure 1
The Development of Brand Consciousness in China



SOURCE: Kai-Alexander Schlevogt

are clearly leading—the top three brands of television and video compact disc player are domestic, for example. Chinese brands also dominate in electrical home appliances: Whirlpool Corp. sells its washing machines in the Chinese market under the Kelon brand name and Maytag International uses its partner Rongshida's brand name.

Foreign mobile phone companies currently occupy more than 95 percent of the Chinese market, but optimists estimate that within two years, local brands, with the help of the government and international strategic alliances, will attain shares of more than 50 percent. To help reach this goal, in 1999, the government approved nine local mobile phone manufacturers, such as Ningbo Bird Co. Ltd., a well-known pager maker.

- **Brand equity** Top companies are also building up significant brand equity, mainly in consumer goods. A recent survey by the Beijing Brand Equity Evaluation Institute ranked Chinese brands by value, based on international standards (*see* Figure 2). The top three brands account for 65 percent of the total brand equity of the leading 10 brands. There is a strong positive correlation between company size as measured by revenues, and brand value—and the absolute gap between the average size of the top 10 and top 30 brands has widened over the past five years. In 1998, the average revenue of the top 10 brands ($1.4 billion vs. $0.7 in 1994) was 2.1 times higher than the average revenue of the top 30 brands ($0.6 billion vs. $0.3 in 1994). The revenue growth of several top 10 brand names from 1994 to 1998, ranging from 456 percent (TCL) to 189 percent (Changhong), exceeded the top 30 average of 117 percent. The growth rates were also higher than China's 70 percent growth in nominal GDP from 1994 to 1998.

Some leading companies, such as Haier, have leveraged their brand equity and technology, using existing sales channels to enter new industries. This diversification has made it difficult to say to which industry they belong. The trend is most pronounced in household appliances, where companies have crossed lines between air conditioning, refrigerators, washing machines, and TVs.

Despite this tremendous growth, the values of Chinese brands are still low compared to the most valuable brand names in the world. Transactions involving brand acquisitions are among the best estimates of brand value; in China, however, accounting for good will is still in its infancy. For example, when Philip Morris Cos. took over Kraft Foods in 1988, the total acquisition price of $12.9 billion included $11.6 billion for good will, most of it for Kraft brand names. China's most valuable brand, Hongtashan, is worth $5.1 billion.

Some Chinese companies have been able to compete successfully abroad, either through exports, or, more recently, foreign direct investment, especially in other developing countries. The high trade deficits many developed countries have with China indicate that Chinese companies are successfully selling to international markets—though most of the goods sold are OEM-produced products exported under foreign brand names.

According to the Beijing Brand Equity Evaluation Institute, exports of the top 30 Chinese brands grew 300 percent from 1994 to 1998, while their domestic revenue grew 117 percent.

The Haier Group exported $55.1 million in products during the first half of 1999, a 127 percent increase over the same period in 1998. To boost exports further, the government has drawn up a catalogue of 33 brands that it wants to promote abroad, though the criteria for selection have not been widely publicized. These brands will be given priority when applying for financial support and enjoy other preferential treatment, though few have been selected to participate to date. The catalogue spans five sectors—electrical household appliances, bicycles, motorcycles, textiles, and other light industry products.

Chinese brands are also penetrating international markets through direct investment channels. Haier entered Iran in 1997, selling products customized for the local market. After establishing a strong brand name, it began producing washing machines in Iran. The company also recently invested in a South Carolina plant, which will begin operation this year. In international markets, Haier emphasizes that its products are "Made in China" for nationalistic reasons. Another Chinese brand that is performing well in foreign markets is Golden Star brandy, China's largest alcohol export. The Chinese brandy has earned gold prizes at food fairs in France and Spain.

In contrast to most of China's mega-entrepreneurs, who buy brand equity through advertising, grassroots entrepreneurs build their reputation on the ground through solid business models.

Guerrilla entrepreneurs start branding at the grassroots level

In contrast to most of China's mega-entrepreneurs, who buy brand equity through advertising, grassroots entrepreneurs build their reputation on the ground through solid business models. These small-scale, private enterprises tend to establish their brands locally and then introduce them at the regional, national, and international levels, and even in cyberspace. Two cases in particular illustrate the importance of brand building. The information that follows is based on personal interviews.

- **Jinsanyuan** Shen Qing, an environmental protectionist by profession and entrepreneur by vocation, dreamed of setting up a unique Chinese restaurant in Beijing. To many this might seem a reasonable ambition, but the large number of restaurants in Beijing makes it difficult to succeed. Yet Shen's actions confirmed that an entrepreneur is a visionary with a game plan. The Heilongjiang Province native realized his ambition by building a sustainable competitive advantage that other domestic restaurants—and most other Chinese enterprises—lack: strong brand equity developed through unique products, services, and processes. The newly created invisible asset catapulted him above the noise level generated by the many other small Chinese restaurants in one of the most competitive markets in the world.

To set his restaurant *Jinsanyuan* (Glorious Three Elements) apart from others, Shen developed a new product, the "Braised Pig Face" (*Pazhulian*). It was the first food item in China to receive a patent. Not an everyday item in typical Western diets, it quickly has become a best-seller in Beijing.

Jinsanyuan embedded this product innovation in a web of pioneering services and shrewd processes. In every restaurant, a young lady sporting a pig-shaped cap greets patrons, a gimmick customers are sure to remember. Patrons can get a preview of the menu by admiring various signature dishes in a glass display, much like the ubiquitous plastic food imitations found in the windows of many Japanese restaurants.

And before ordering, the customers have the option of undergoing a free computerized health check and obtaining personalized dietary recommendations. Customers can also browse through a broad range of articles on international and domestic issues, as well as reports about the company, in a reading corner. These are all quite new experiences for many Chinese accustomed to the lack of service variety in typical restaurants.

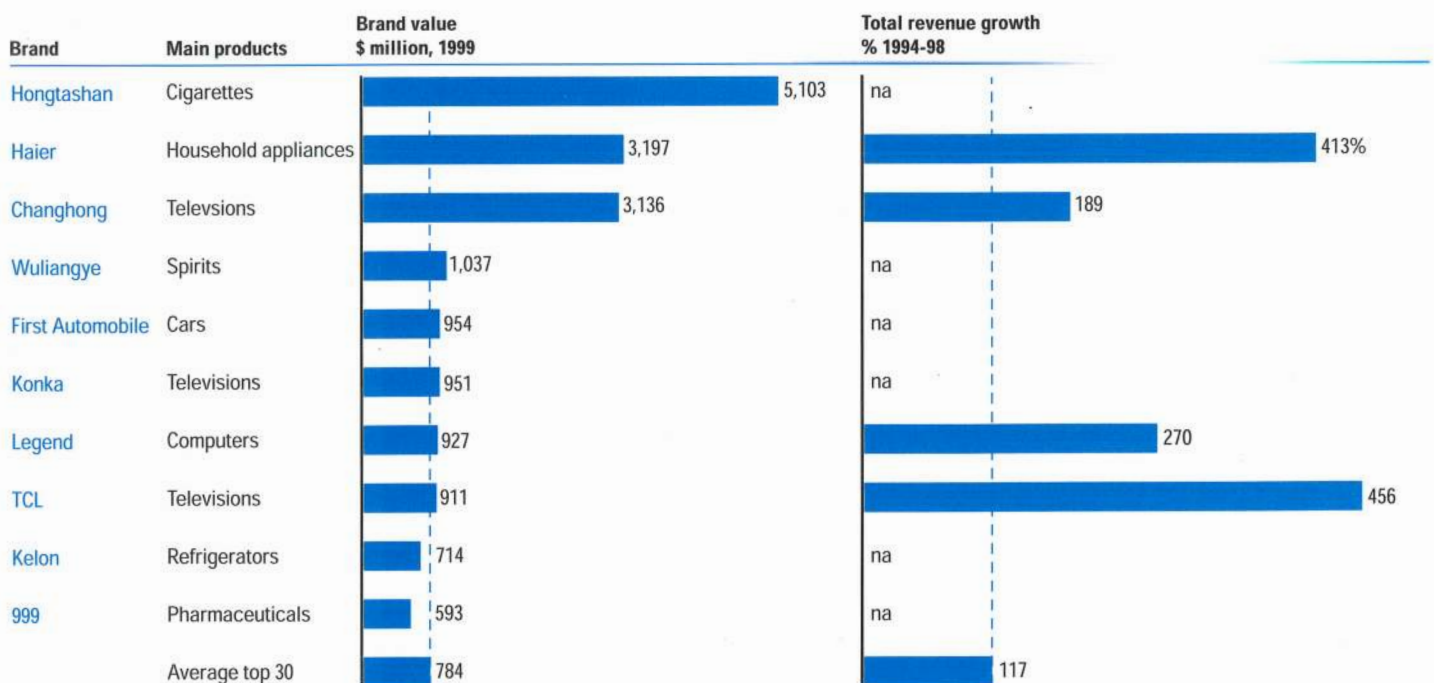
Jinsanyuan's management processes are equally innovative. A sophisticated chain-management system leverages the newly created customer good will in many locations at once. Shen, preferring slow and solid development over hasty empire building, began by establishing the brand in one small restaurant employing 20 workers in 1993, then expanding into a chain of restaurants. He now employs over 200 people and enjoys a loyal following of residents young and old. Most of them are Chinese, but foreigners are also starting to enjoy the exotic flavors—the Japanese embassy, for example, holds an annual dinner there.

To standardize the quality of the products throughout the chain, Shen developed a new automated process to produce half-finished dishes for shipment to restaurants in the system. The procedure makes counterfeiting impossible. This is important for pioneering a brand in China—whether foreign or domestic.

Shen aims to capitalize on the success of his brand. He is eyeing several cities for expansion and plans to offer the braised pig face as a frozen good in China's supermarkets. This April, he opened a restaurant in Xi'an, Shaanxi Province, where a thousand years ago residents were known to eat pig's heads. He is also tinkering with the delicacy to create a product to be featured on the menu of a new Chinese fast-food chain he intends to build.

• **Shazi seeds** Nian Guangjiu, known throughout China as the "king of roasted seeds," is another grassroots entrepreneur who emphasized branding. A former street peddler from Anhui Province, he set up a firm that competed with state enterprises just after reforms started. He built the famous, low-price *Shazi* (Simpleton) brand of melon seeds that every Chinese knows and that made him one of the first millionaires in the PRC. The Party later arrested Nian for corruption, closed his business, and confiscated his assets. He made his comeback in the mid-1990s, incorporating Shazi Seeds Co. Ltd., with

Figure 2
Top 10 Chinese Brands



SOURCES: Beijing Brand Equity Evaluation Institute, Kai-Alexander Schlevogt

shareholders' capital. He set up 96 shops across China in less than six months and successfully rebuilt the brand.

Nian is not the first to restore a brand successfully. Even brands that existed before the Chinese revolution have revived their fortunes. For example, *Tongrentang*, a well-known name in traditional Chinese medicine, used its brand to open a restaurant in Beijing. It features traditional imperial cuisine based on recipes from the Qing Dynasty (1644-1911). The strategy is to market authentic Chinese food that unifies different regional styles.

Farmers, too, have woken up to the value of branding. By 1998, they had registered almost 1,000 "famous brands" for commodities ranging from rice to chickens. To qualify as a famous brand and obtain approval from the product-inspection bureau, companies need to lead a product category for at least five years and excel in developing products, among other things. Consumers are willing to pay hefty premiums for brand-name foods. For example, the price of Dangyuan brand pears from Anhui Province is 30 percent higher than brandless competitors.

Branding has also extended to persons and events. For example, the author Wang Li, a self-styled economist, engaged in a myriad of marketing activities throughout China to establish his name, thus increasing book sales and gaining bargaining power vis-à-vis the publisher. He now commands royalties of 15 percent, compared to the 8 percent average in China. Philip Morris established the Marlboro Soccer League in 1994, laying the ground for a foreign quasi-monopoly in sports marketing. Now a new breed of domestic certified sports agents à la Don King is trying to turn China's sports heroes into valuable brand names at home and abroad. The female table tennis player Deng Yaping and female soccer player Sun Wen, nicknamed "*Mr.* Football," have become icons in China. Deng has set up her own firm, Dengyaping Sports Goods Co., to promote sportswear and table-tennis equipment.

A new breed of entrepreneurs has targeted the Internet. Founded in China, Alibaba.com has established itself as the world's leading brand for business-to-business exchanges on the Internet. In business-to-consumer marketing, Sohu.com, the leading Internet search engine in China, recently linked up with 8848.net, a well-known online shopping company that ranks among the most important PRC e-commerce brands. And Sina.com has become the leading web portal on the mainland.

4 Building momentum: towards Chinese post-industrialism

While generally growing rapidly, annual revenue growth of brands has slowed down in the last five years, according to the Beijing Brand Equity Evaluation Institute. For example, the annual growth rate of the top 10 brands, in double digits from 1994 to 1996, fell to 8.3 percent in 1997-98. It will become increasingly important for a company to build brands for individual products. In China, a company's name is usually the brand name. Many enterprises still do OEM work, which generates quick profits but fails to build strong brands. In view of the declining returns to advertising, marketing effectiveness must improve. Strategic emphasis must shift to value creation in consolidated industries, not simple revenue growth.

At the same time, branding is becoming increasingly expensive. Companies need more than ¥100 million ($12.1 million) to maintain a major brand image in China. About ¥200-¥300 million ($24.1-$36.2 million) per year is needed to establish a new name. This creates powerful barriers to entry and demonstrates that those already in the market possess clear "first-mover advantages" over newcomers.

Branding is becoming increasingly expensive. Companies need more than ¥100 million ($12.1 million) to maintain a major brand image in China. About ¥200-¥300 million ($24.1-$36.2 million) per year is needed to establish a new name.

In the upcoming era of "Chinese post-industrialism," pressures to develop strong brands will grow. Consumer protection will increase, making it necessary for companies to back up their brand image with strength in quality, not only money. For example, a new website, *www.e315.com*, is the first Chinese website that allows Chinese consumers to voice complaints, serving as a whistle-blower. Widespread dissatisfaction will spawn a community of interest, pressuring companies to address these complaints. With rising living standards, demand for luxury branded items will increase further. The individualism of China's "little emperors," now reaching adulthood, will reinforce this demand.

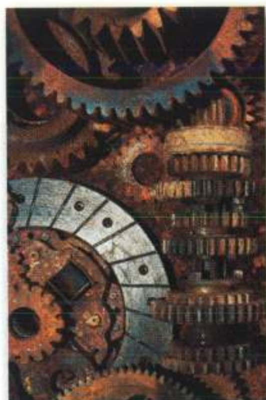
Franchising will become increasingly popular. For example, McDonald's recently allowed private Chinese enterprises to apply for franchises. This will increase pressures to keep quality consistent in order to maintain strong brand names. In the face of increased local and, following China's accession to the World Trade Organization, international competition, and in the absence of decisive cost advantages, strong brand names are one of the most important weapons companies can use to survive in China. Branding will be essential for Chinese companies that want to internationalize successfully.

Despite the new brand awareness and pioneering efforts by a few gifted entrepreneurs, the list of strong Chinese brands to date is short. The brands of private enterprises may create more long-term value relative to company size, since they are based on solid business models, not simply advertising. These pioneers will serve as role models and mentors for aspiring entrepreneurs. But it will take some time before a significantly larger number of indigenous Chinese brands become nationally, and eventually globally, successful. Chinese firms' branding will have to improve further to be successful in the impending post-industrial environment in China. 完

China DATADATADATA

China's Economic and Financial Indicators, 1994-99

(All figures are in billions of RMB or percent unless otherwise indicated)

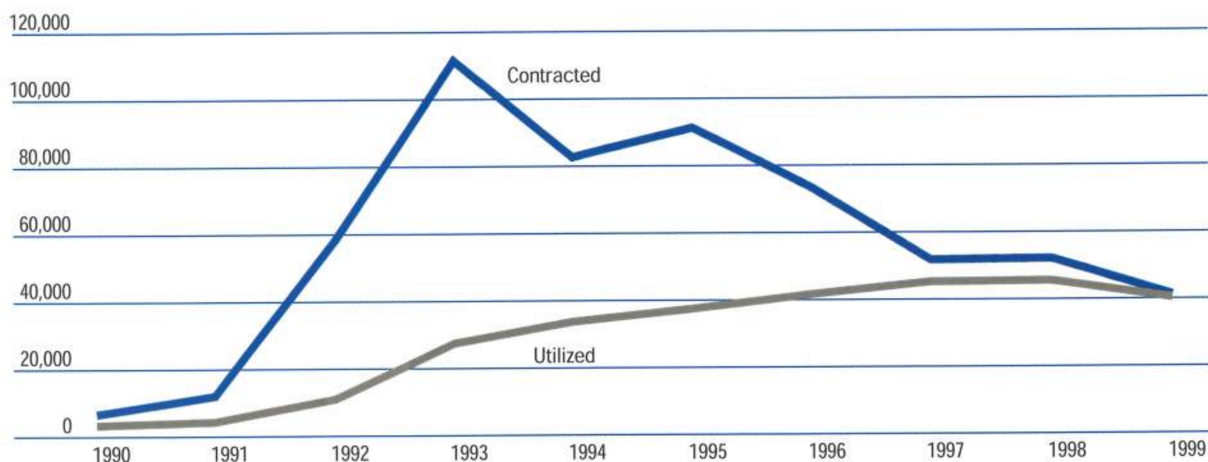


Main indicators	1995	1996	1997	1998	1999 (prelim.)
Gross Domestic Product (GDP)	5,847.8	6,788.5	7,446.3	7,939.6	8,205.6
Real GDP growth	10.5	9.6	8.8	7.8	7.1
Retail price index	14.8	6.1	0.8	-2.6	-3.0
Consumer price index	17.1	8.3	2.8	-0.8	-1.4
Urban per capita income (RMB)	4,283.0	4,838.9	5,160.3	5,425.0	5,854.0
Rural per capita income (RMB)	1,577.7	1,926.1	2,090.1	2,162.0	2,210.0
Urban unemployment rate (%)*	2.9	3.0	3.1	3.1	3.1
Total Industrial Output	9,189.4	9,959.5	11,373.3	11,904.8	3,535.7**
Total Fixed Investment	2,001.9	2,291.4	2,494.1	2,840.6	2,987.6
Financial indicators					
M0 supply	830.9	927.3	1,017.8	1,120.4	1,345.6
% growth	14.0	11.6	15.6	10.1	20.1
M1 supply	2,397.0	2,851.0	3,482.6	3,895.0	4,583.7
% growth	18.0	18.0	17.3	11.9	17.7
M2 supply	5,823.0	7,609.5	9,099.5	10,449.9	11,989.8
% growth	29.9	30.7	17.1	15.3	14.7
Exchange rate (RMB/$)	8.4	8.3	8.0	8.3	8.3
Foreign-exchange reserves ($ billion)	73.6	105.0	139.9	145.0	154.7
Government revenue (total)	624.2	740.8	865.1	987.6	—
Tax revenue	603.8	691.0	823.4	926.3	1,031.1
Domestic debt	151.1	184.8	241.2	322.8	60.0***
Foreign debt ($ billion)	10.6	11.6	13.1	14.6	—
Government deficit	58.2	53.0	58.2	92.2	—

SOURCES: *Almanac of China's Finance and Banking 1996*; PRC State Statistical Bureau *China Statistical Yearbook*, 1997, 1998, 1999; *China Monthly Statistics*; Dow Jones News Service; Foreign Broadcast Information Service; CNN; *Financial Times*; *Inside China Today* (*www.insidechina.com*)

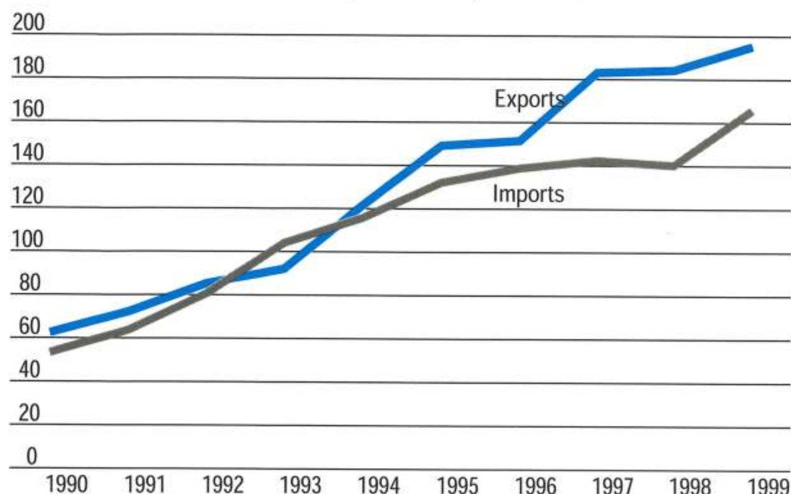
NOTES: * SSB figures do not include under-employment or the migrant population.
— Not available
** Value-added
*** Treasury Bonds only

Foreign Direct Investment in China, 1990-99 ($ million)



SOURCE: MOFTEC

China's Trade with the World, 1990-99 ($ billion)



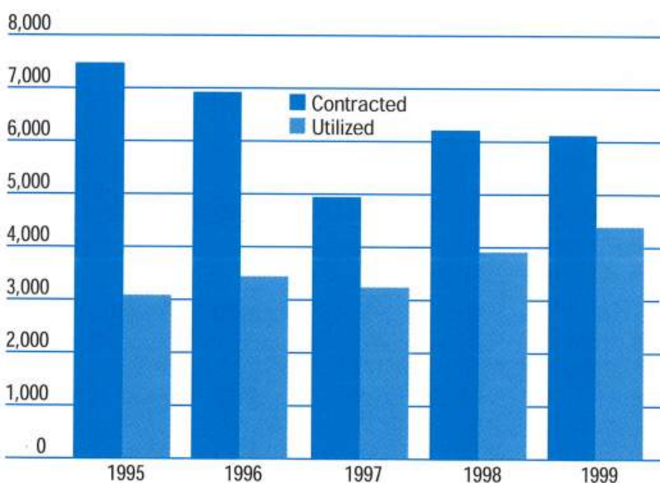
SOURCE: PRC General Administration of Customs, *China's Customs Statistics*
NOTE: PRC exports reported on an FOB basis; imports on a CIF basis

China's Trade with the United States ($ billion)

	1995	1996	1997	1998	1999
US Exports	11.8	12.0	12.8	14.3	13.1
% change	26.9	1.7	6.7	10.9	-8.0
US Imports	45.6	51.5	62.5	71.2	81.8
% change	17.5	12.9	21.4	13.9	14.9
Total	57.4	63.5	75.3	85.4	94.9
% change	19.3	10.6	18.6	13.4	11.1
Balance	-33.8	-39.5	-49.7	-56.9	-68.7

SOURCE: US Department of Commerce

US Direct Investment in China ($ million)



SOURCE: Ministry of Foreign Trade and Economic Cooperation (MOFTEC)

Foreign Investment In China by Source ($ million)

Country/Region	1995	1996	1997	1998	1999	% Change over 1998
Hong Kong	40,996	28,002	18,220	16,516	13,048	-21.0
USA	7,471	6,916	4,940	6,212	6,116	-1.6
Taiwan	5,849	5,141	2,810	3,107	3,424	10.2
Japan	7,592	5,131	3,400	2,699	2,489	-7.8
Others	29,374	28,086	22,410	23,598	16,162	-31.5
Total	91,282	73,276	51,780	52,132	41,238	-20.9

SOURCES: MOFTEC, *Almanac of China's Foreign Economic Relations and Trade*

A Snapshot of China in 2000

Product	Beijing (RMB)	Shanghai (RMB)	Hong Kong ($HK)
Can of Coca-Cola	1.9	2	2.5
Base subway fare	3	3	4
Scoop of Haagen-Dazs ice cream	25	25	24
Domestic ice cream	Yi Li 1.5	Wall's 5-8	Dairy Farm 6-8
5 km taxi ride	11-14	14	35-40
Large Pizza Hut cheese pizza	85	95	82
Large tube of Colgate toothpaste	17.9	10.8	19.5
Jieyin toothpaste (120 g)	3.2	3.2	—
Apples (1 kg)	4	4.8	9
Oranges (1 kg)	4	3.8	10
Rice (1 kg)	2.6	2	6
Handmade noodles (1 kg)	2.8	3.8	8-10
Pork (1 kilo)	15	11.8	45
Cabbage (1 kilo)	0.6	1.6	9.3
Big Mac	9.9	9.9	10.7
Liter of soy sauce	4	10	15
Liter of milk	7.5-10.7	6.7-9	15-17
Liter of gasoline	2.4	2.4	10.5
Movie ticket	20-80	15-200	50-70
Fenghuang bicycle	378-462	300-400	—

SOURCE: The US-China Business Council
NOTES: $1=RMB 8.28; HK$7.8
— Not available

Group Financing Companies: Financing Flexibility

Continued from page 51

work automatically expire if the criteria for business operation have not been met by the end of the preparatory period, or if the finance company fails to apply for a business license. As with "other information required by the PBOC," PBOC determines the operation criteria case by case. However, under extraordinary circumstances and subject to PBOC approval, the preparatory time period may be extended for an appropriate period of up to one year. Since the PBOC Notices do not clearly state either what qualifies as "extraordinary circumstances" or the specific duration of an "appropriate" period, it is likely that PBOC will decide, at its own discretion, both whether to grant an extension and the duration of any such extension.

The GFC investment structure illustrates China's long-term commitment both to encourage greater foreign participation in the financial sector and provide Chinese consumers with a broader array of financial means and options.

The PBOC Notices provide that following the preparatory work, the foreign investors should apply for business operation within six months. Applicants must submit draft articles of association; a list of the proposed senior managers, and their resumes and certificates of qualification; certificates of qualification of the employees working in finance for more than five years; a list of the shareholders and their individual capital contributions, equity rights, and certificates of creditworthiness and investment capability; capital verification certificates issued by China's legally authorized capital-verification agencies, and certificates recognizing receipt of the currency capital, issued by PBOC-appointed financial institutions; operational principles and planning; and information regarding the operating premises and business-related facilities. PBOC may also require other information.

Upon approving the GFC's business operation application, PBOC will issue a Financial Institution Legal Person Permit (the Permit), which sets forth the finance company's RMB and foreign-exchange business scope. This Permit enables the finance company to register with the relevant administration for industry and commerce. However, the PBOC Notices fail to address when and how to proceed with the requisite registration formalities. According to the provisions of Article 15 of the Administrative Rules of the PRC Governing Foreign-Funded Financial Institutions, within 30 days of the receipt of a PBOC document of approval (in this case, the Permit), a foreign-funded financial institution must raise its paid-in capital or working funds in full, have the paid-up capital or working funds transferred into the territory of China, and, following the verification of the paid-up capital or working funds by a certified public accountant registered in China, should complete the standard legal registration procedures with the administration for industry and commerce. Article 10 of the Implementing Rules for the Administrative Rules of the PRC Governing Foreign-Funded Financial Institutions further provides that a certified public accountant registered in China must conduct the capital verification, based upon the deposit receipt of a Chinese bank.

Within 30 days of the Permit's date of issuance, the finance company should apply to SAFE for a Foreign-Exchange Business License. Should the finance company fail to begin operations within three months of receiving the business license, PBOC will revoke the Permit.

WTO and beyond

In the run-up to China's WTO accession, PBOC officials have stated that they envisage two significant adjustments to GFC policy. First, upon WTO entry, PBOC will loosen the requirements for the establishment of GFCs, allowing for a greater number of FIE groups to take advantage of this investment structure. Second, conditional on PBOC's approval, GFCs will be permitted to provide a broader scope of financial services to third parties, including customers of the FIE group members. This would permit companies like Volkswagen and General Motors Corp. to open lines of credit to potential car buyers, thereby enabling Chinese consumers, who lack access to necessary financial means, to purchase their own cars. Moreover, the resulting ability of GFCs to extend loans and open lines of credit to consumers will help to compensate for the lack of personal financing options under China's current banking regime.

Although some questions still await PBOC clarification and interpretation, it is clear that PBOC intends to promote the GFC as a major investment vehicle for use by foreign investors. While still relatively new, this style of investment structure illustrates China's long-term commitment both to encourage greater foreign participation in the financial sector and provide Chinese consumers with a broader array of financial means and options. As this new investment vehicle may provide foreign investors in China with the opportunity to improve financial management over their China operations, it is crucial for foreign investors to keep abreast of policy adjustments with regard to this important investment opportunity. 完

Council Bulletin

Event Wrap-Up

Washington

March

Capitol Hill Reception Rescheduled from January

Breakfast Briefing: Transportation and Distribution Sector

Issues Lunch Featured Minister Counselor He Yafei

April

Meeting with Delegation from China's Unirule Institute of Economics The impact of WTO accession on SOE reform and current M&A efforts under way in China

Roundtable Breakfast: China's Rural Sector, WTO Accession and Implications for US Business Featured Frederick Crook, president of The China Group

Luncheon Featured The Honorable Bo Xilai, Mayor of Dalian Municipality

Roundtable Breakfast: China's Environmental Priorities and the Tenth Five-Year Plan Featured Zhang Qingfeng, a SEPA official temporarily on assignment at the World Bank

Issues Lunch: Recent Developments in Taiwan Politics: Implications for American Policy in the Region Featured Richard Bush, director of American Institute in Taiwan

Beijing

April

Roundtable Discussion: Permanent Normal Trade Relations for China Featured John J. Foarde, vice president, The US-China Business Council

Hong Kong

Breakfast Briefing: The Campaign for PNTR Featured John J. Foarde, vice president, The US-China Business Council

Council Posts Information Online About China, the WTO, and PNTR

Visit the Council's PNTR/WTO web page (*www.uschina.org/public/wto/*) for Council resources and other links on WTO and PNTR, including information on the US-China trade balance, and explanation and analysis of key issues.

Upcoming Events

Washington
Thursday, June 1
Gala Dinner and Program

Friday, June 2
27th Annual Membership Meeting

Beijing
May
Roundtable: China, Taiwan and the WTO
Featuring Willem van Kemenade, author of *China, Hong Kong, Taiwan, Inc.* (Alfred A. Knopf, 1997)

June
Meeting
Featuring Robert A. Kapp, president, The US-China Business Council

THE US-CHINA BUSINESS COUNCIL *27th Annual Membership Meeting*

Friday, June 2, 2000 Washington, DC

PRESENTATIONS

State of the Council Report and Board Elections Robert A. Kapp, President, The US-China Business Council

WTO Implementation: What are the Chinese Doing to Prepare? James Feinerman, The Georgetown University Law Center

Turning the Corner?: The Economic and Investment Outlook Iain McDaniels, Deputy Director of China Operations, The US-China Business Council, Beijing

Opportunities for Foreign Investors in High Tech: The Realities of E-Business
James McGregor, Vice President and Chief Representative, China, Dow Jones & Company

LUNCHEON KEYNOTE SPEAKER

China's Upcoming APEC Chairmanship: Opportunities for Progress
Donald M. Phillips, Assistant US Trade Representative for China, Hong Kong, Taiwan and Mongolia

The Annual Membership Meeting is a members-only event. Pre-registration and payment are required. Contact Gloria González-Micklin, ggonzalezmicklin@uschina.org

China Business

Sales and Investment

JANUARY 15, 2000 – MARCH 15, 2000

Compiled by Beth Burghaze

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.

Advertising and Public Relations

OTHER

Alexander Ogilvy Public Relations Worldwide, Ogilvy Public Relations (US)/etang.com, Inc. (Shanghai)

Formed a strategic partnership whereby Alexander Ogilvy and Ogilvy Public Relations will represent etang.com in the United States and China. 2/00.

Agricultural Commodities and Technology

INVESTMENTS IN CHINA

Techedge Corp. (US)/Shenzhen Shenbao Industrial Co., Shenzhen Agricultural Products Co., and an information center reporting to the Ministry of Agriculture

Will form an Internet company offering e-commerce in agricultural products. $3.62 million. 3/00.

Banking and Finance

INVESTMENTS IN CHINA

Concept Industries (Canada)

Will contribute a significant portion of the proceeds of a private placement of 6 million special warrants as capital to its paging joint venture in Shandong Province. 2/00.

Softbank China Venture Investments No. 8, a wholly foreign-owned subsidiary of Softbank Corp. (Japan)/ChinaWeb, Ltd. (Beijing)

Agreed Softbank would take an 8% equity interest in ChinaWeb. 2/00.

Citicorp Capital Asia Ltd., Softbank China Ventures (Japan)

Invested $10.8 million in MeetChina.com. 1/00.

Abbreviations used throughout text: ADB: Asian Development Bank; BOC: Bank of China; CAAC: Civil Aviation Administration of China; 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.; CNPC: China National Petroleum & Gas Corp. ETDZ: Economic and Technological Development Zone; ICBC: Industrial and Commercial Bank of China; MII: Ministry of Information Industry; NA: Not Available; NORINCO: China North Industries Corp.; P&T: Posts 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.; SDPC: State Development Planning Commission; UNDP: United Nations Development Program; UNICOM: China United Telecommunications Corp.

OTHER

DLJdirect, the online brokerage service of Donaldson, Lufkin & Jenrette, Inc. (US), Hutchinson Whampoa Ltd. (Hong Kong)

Entered into a joint-venture agreement to expand DLJdirect's online investment service into mainland China and throughout Asia. (HK:50%-US:50%). 2/00.

Chemicals, Petrochemicals, and Related Equipment

INVESTMENTS IN CHINA

DSM Fibre Intermediates (The Netherlands)/Guangdong Xinhui Meida Nylon Co. Ltd.

Will form a joint venture to produce nylon-6 polymers in Xinhui. (Netherlands:25%-PRC:75%). 3/00.

Spanish Crimidesa (Spain)/Jiangsu Nanfeng Chemical Shareholding Co. Ltd.

Will jointly develop thenardite resources in Hongze County. $17.2 million. 2/00.

Uzin Utz AG Ulm, NA (Germany)/Shanghai Shenzhen Enterprise Development Co. Ltd.

Will build a joint-venture factory in Shanghai to produce adhesives for floor coverings, primer, and tile adhesives for the building trade. 2/00.

Consumer Goods

INVESTMENTS IN CHINA

Pentech International Inc. (US)/NA

Pentech will form a joint venture with a Shanghai manufacturer to develop, manufacture, and market Pentech's products in China. (US:50%-PRC:50%). 2/00.

OTHER

NCR Corp. (US), Asia Pulp and Paper (Singapore)

Signed a distribution agreement to introduce NCR's computer-related products into China and Hong Kong. 2/00.

Rongshida-Maytag, a joint venture of Maytag Corp. (US)
Opened the Rongshida-Maytag Innovation Center in Hefei, Anhui Province. 2/00.

Electronics and Computer Software

CHINA'S IMPORTS

Dransfield China Paper Corp. (Hong Kong)
Will place PC stations or set-top boxes at the 4,000 railroad stations in China and at over 1 million corner stores over five years. 2/00.

EMC Corp. (US)
Will provide Shanghai-based Internet site etang.com with information-storage solutions. 2/00.

Fujitsu Ltd. (Japan)
Will construct an SDH digital microwave radio system connecting Beijing and Harbin, Heilongjiang Province, for China Telecom. 2/00.

Lilly Software Associates, Inc. (US)
VTech Holdings Ltd. of Dongguang, Guangdong Province, announced implementation of Lilly Software's supply chain management solution. 2/00.

Lucent Technologies, NeTrue Communications, a majority-owned company of Global Light Telecommunications (US)
Signed agreement to provide Zhejiang Guanglian Information Network with software and hardware for the implementation of a cable TV and broadcast backbone network. 2/00.

MeetChina.com (US)
Will work with the Chinese government to provide 100,000 Chinese companies with international e-commerce tools by the end of the year. 2/00.

Qingdao Harbor Trading Co., Inc., a subsidiary of Digital Gas, Inc. (US)
Signed two-year agreements with approximately 100 companies to create a web-based electronic exchange. 2/00.

INVESTMENTS IN CHINA

Computer Associates International Inc. (US)/Anyi Software Co. (Beijing)
Formed a joint venture to sell Internet-based accounting, financial management, and customer-service tools, among other software programs, in China. 3/00.

Fairform Holdings (Hong Kong)/China Infohighway Communications Co., Ltd.
Will form joint venture to create Internet portals targeting women and primary and secondary school students in mainland China. (HK:50%-PRC:50%). $4 million. 3/00.

GraphOn Corp. (US)/Tianjin Development Holdings Ltd., a Hong Kong enterprise owned by Tianjin Municipal Government
Formed GraphOn China Ltd., a joint venture to bring GraphOn Bridges and other technology solutions to China. (US:50%-PRC:50%). $7 million. 3/00.

Leapfrog Smart Productions, Inc. (US)/TopGroup (Sichuan)
Will form a joint venture in Chengdu, Sichuan Province, to develop smart-card products for China's Golden Card Project. 3/00.

MIH Ltd. (South Africa)/Wisdom Network Technology Ltd., a subsidiary of Tsinghua University Enterprises Group (Beijing)
Formed a joint venture to develop and produce online information systems to deliver education services in China. 3/00.

Southland Financial Inc. (US)/China Changfeng StarBridge Computer Technology Ltd. (Beijing)
Will jointly develop Internet, intranet, and e-commerce businesses in China and overseas. 3/00.

CYBeR-CARE (US)/SIIC Medical Science and Technology Ltd., a subsidiary of Shanghai Industrial Holdings Ltd.
Will form a joint venture to market CYBeR-CARE's Electronic Housecall System in parts of Asia. 2/00.

Digital Kommerce Network, Inc., a subsidiary of Digital Gas, Inc. (US)/Qingdao Abundant Dragon Products Ltd. (Shandong)
Signed agreement to partner in the manufacture and distribution of computer technology. 2/00.

Houston InterWeb Design (US)/China Culture Information Net, part of the Chinese Ministry of Culture, and Hainan Dingshen Investment Co. Ltd.
Formed Beijing Artists Online LLC, a joint venture, to build the first government-approved MP3 music site in China. 2/00.

Nam Tai Electronic & Electrical Products Ltd., a wholly foreign-owned subsidiary of Nam Tai Electronics, Inc. (Hong Kong); Toshiba Battery Co., Ltd. (Japan)
Announced an agreement to establish BPC Co., Ltd., a wholly foreign-owned enterprise in Shenzhen. 2/00.

Pearl Oriental Cyberforce Ltd. (Hong Kong)
Will acquire a 50% stake in Zhongguancun Online Corp., a China-based electronic trading network. 2/00.

UNICO Holding Berhad (Malaysia)/Qiao Xing Universal Telephone Inc. (Guangdong)
Will form CHOSEN UNICO Technology Ltd., a joint venture in Huizhou, Guangdong Province, to manufacture and sell digitally enhanced cordless phones, 8-channel telephones, and other telecommunications products. 2/00.

Xpress Print Pte Ltd., a subsidiary of i-One.Net (Singapore)/Cheng Cheng Colour Printing Co. (Hunan)
Will form a joint venture providing time-sensitive financial printing services for corporate clients. (Singapore:45%-PRC:55%). 2/00.

Xpress Print Ltd., a subsidiary of i-One.Net Co. Ltd. (Hong Kong)/Cheng Cheng Wood Stone Education and Investment Co. (Hunan)
Will form a joint venture to develop and install broadband network-supported multifunctional public terminals delivering an i-One.Net portal. 2/00.

Desay Holdings Co., Ltd. (Hong Kong); GPE Industries Ltd., the electronics division of Gold Peak Industries Ltd. (Singapore); Ohmi Electric Wire Co., Ltd. (Japan)
Formed a joint venture, Huizhou GP Wiring Technology Ltd., to manufacture and sell automotive wire harness products for export and domestic sales. (Hong Kong:10%-Japan:10%-Singapore:80%). 1/00.

Total China, Inc., a subsidiary of Total Film Group, Inc. (US)
Acquired a 20% stake in MeetChina.com. 1/00.

OTHER

Microsoft Corp. (US)
Won approval to sell Windows 2000 software in China. 3/00.

M-Web China, a subsidiary of NASDAQ (US), MIH Ltd. (South Africa)/Shanghai Kingway Information Systems Ltd.'s eefoo.com
M-Web will deliver eefoo.com's finance-related information through its Chinese portal. 3/00.

NDS Group Plc, a unit of News Corp. (UK)/Legend Computer Systems Ltd. (Beijing)

Will jointly create a Legend-branded digital set-top box to be manufactured by Legend in Beijing and Huizhou, Guangdong Province. 3/00.

Shanghai P&T Equipment Co.

Acquired another 25% interest in Shanghai ADC Telecommunications Equipment from joint-venture partner ADC Telecommunications Inc. for $150,000, raising its total stake to 75%. 3/00.

Top Technology Ltd. (Israel), Communication Intelligence Corp. (US)

Signed a licensing agreement for a Hebrew version of the Jot handwriting recognition system to be developed by CIC China, CIC's joint venture in Nanjing. 3/00.

Dell Computer Corp. (US)

Now offers TurboLinux as a pre-installed option on Dell PowerEdge™ servers and Dell Precision™ Workstations in Hong Kong and China. 2/00.

MagneTek Electronics China (Shanghai)

Received ISO-9001 certification. 2/00.

New ePoch Information Co. Ltd. (Hong Kong)/China International Electronic Commerce, the Internet arm of MOFTEC

Launched ChinaTradeWorld.com, a web portal that will allow foreign businesses to import goods directly from more than 180,000 factories, farms, and production facilities in mainland China. 2/00.

Sohu.com Inc. (Beijing)

Filed for an initial public offering in the United States. 2/00.

The Linksys Group, Inc. (US)/Beijing Telecommunications Equipment Factory, a subsidiary of China National PTIC Information Industry Group Co.

Formed a partnership for the distribution of Linksys networking hardware products in China. 2/00.

VirtualAcademics.com, Inc. (US)/Global Development, Ltd. (Shanghai)

Signed an agreement making VirtualAcademics.com the exclusive worldwide representative of Global's software and eligible to receive hosting services for its websites through Global's Internet service provider. 2/00.

Alcatel (France)

Will open a major research center and headquarters in Shanghai. 1/00.

Forlink Software Corp. Inc. (Beijing)

Received its operating license from China and $10 million from its European private placement. 1/00.

Microsoft Corp. (US), Tengtu United Electronics Development Co., Ltd. (Beijing), a 57% owned joint-venture subsidiary of Tengtu International Corp. (Canada)

Will work together to modernize China's K-12 school system with information technology. 1/00.

Softlink, Inc. (US)/China Financial Net Information Technology Co., Ltd., a joint venture of PBOC and NA

CFN will market Softlink's eMail VOICELink™ and eMail inChorus™ products to staff of major bank branches. 1/00.

Viasystems Group, Inc. (US)

Purchased Marconi's Network Components & Service business in Europe and China. $115 million. 1/00.

Engineering and Construction

INVESTMENTS IN CHINA

John Deere Construction Equipment Co. (US)

Agreed to purchase 80% of the foreign-held shares of joint-venture Shanghai GE Construction Equipment Engineering Co., Ltd. 3/00.

OTHER

Eagle Capital International, Ltd. (US)

Renegotiated its ownership position in its China subsidiary, Great Wall Building Systems, from 55% to 100%. 2/00.

Environmental Technology and Equipment

OTHER

Automation Tooling Systems Inc. (Canada), Government of Canada

Will promote and provide solar panel technology in remote regions in China. $5 million. 2/00.

GF Technology Development Inc., a wholly foreign-owned subsidiary of Golden Fortune Investments Ltd. (Canada)/Laikeman Trading Enterprise, a joint-venture partner of Golden Fortune and Nanjing Zhongbei Co., Ltd.

GF Technology will install DeSmog units on Zhongbei buses to demonstrate pollution reduction and fuel savings, and promote production and distribution of the product in China. 2/00.

Government of Japan

Will lend 16 billion yen to Chongqing Municipality; Dalian, Liaoning Province; and Guiyang, Guizhou Province, to promote environmentally friendly policies. 2/00.

Food and Food Processing

INVESTMENTS IN CHINA

Danone SA (France)

Acquired Robust, one of China's leading water and milk-drink producers. 3/00.

OTHER

China Premium Food Corp. (US)

Signed a membership agreement with Quality Chekd™ Dairies (US) for use of the Quality Chekd™ program in China. 2/00.

Rocky Mountain Drug Co. Ltd. (Fujian), a wholly foreign-owned subsidiary of Rocky Mountain Ginseng, Inc. (US)

Will begin production of Rocky Mountain brand Ginseng Tablets, Royal Jelly, and Ginseng Instant Tea. 2/00.

Machinery and Machine Tools

OTHER

Caterpillar Inc. (US)

Will establish Caterpillar Paving Products Xuzhou Ltd. in Jiangsu Province to manufacture the CS/CP-500 D series vibratory compactor for sale in China and Asia. 3/00.

Medical Equipment and Devices

CHINA'S INVESTMENTS ABROAD

NA (Cambodia)/Rixing Group (Guangdong)
Will open a traditional Chinese medicine factory in Cambodia as a joint venture with a local partner. (Cambodia:20%-PRC:80%). 2/00.

INVESTMENTS IN CHINA

Houston InterWeb Design (US)/State Administration of Traditional Chinese Medicine and Hainan Dingshen Investment Co. Ltd.
Will form a joint venture to create a new Internet portal offering traditional Chinese medicines online. 3/00.

PharmaPrint Inc. (US)/Shenzhen Zegu Venture Capital Co., Ltd., a subsidiary of China New Industries Investment Co., Ltd.
Will form a joint venture to sell a wide range of herbal-based health products in China and the Asia-Pacific region using the proprietary PharmaPrint™ Process. (US:51%-PRC:49%). 2/00.

BioModa Inc. (US)/Cancer Center of Sun Yat Sen University of Medical Science (Guangdong)
Will form a joint venture to develop a China-wide cancer diagnostics business. 1/00.

OTHER

Houston InterWeb Design (US)/China Preventive Medicine Association
Signed an agreement to build an Internet community for more than 800,000 preventive-medicine professionals. 3/00.

Metals, Minerals, and Mining

INVESTMENTS IN CHINA

Inter-Citic Mineral Technologies Inc. (Canada)/Haiwei Rare Earth Processing Facility
Will form Techmat Inc. joint venture to acquire and operate the Haiwei Rare Earth Processing Facility. (Canada:80%-PRC:20%). 2/00.

Corus Aluminum Extrusions, part of the Corus Group Plc (Germany)/Tianjin Non-Ferrous Metal Group
Formed a joint venture in Tianjin to design, produce, and sell large extruded aluminum sections in China. (Germany:61%-PRC:39%). 1/00.

OTHER

Goldpark China Ltd. (Canada)
Won open bid for the exploration rights of significant gold property on Hainan Island. 2/00.

Goldpark China Ltd. (Canada)
Acquired right to explore gold property in Inner Mongolia. 2/00.

Vega-Atlantic Corp. (US)
Purchased 80% interest in issued and outstanding shares of Tun Resources Inc. (including China holdings) from Golden Thunder Resources Ltd. (Canada). 2/00.

Miscellaneous

INVESTMENTS IN CHINA

Pacific E-Link Corp. (Canada)/Zhong Jing International Trade and Exhibition Centre, an SETC company (Shanghai)
Signed a Letter of Intent to create "Vertical Communities," a joint venture representing different industries in China. 3/00.

Boomstone Entertainment Inc. and Crawleys i Inc. (Canada), TIC Beijing Digital Pictures Ltd., a wholly owned subsidiary of Tengtu International Corp. (Canada)
Formed a joint venture to co-produce prime-time entertainment programs. $50 million. 2/00.

Iwerks Entertainment Inc. (US)
Will open its first Iwerks 3D/4D FX™ Theater in Shenzhen, Guangdong Province. 2/00.

OTHER

Itochu Corp. (Japan)
Obtained MOFTEC approval to conduct export business. 3/00.

Mitsui & Co. (Japan)
Obtained MOFTEC approval to conduct export business. 3/00.

Sumitomo Corp. (Japan)
Obtained MOFTEC approval to conduct export business. 3/00.

Forbo Holding AG (Switzerland)
Acquired 20% stake held by joint-venture partner Shenyang General Rubber Belt, making it a wholly foreign-owned subsidiary. 1/00.

Packaging, Pulp, and Paper

CHINA'S IMPORTS

Thermo Black Clawson, a subsidiary of Thermo Fibertek Inc. (US)
Received orders from four Chinese paper manufacturers for its recycled-fiber systems. $10 million. 2/00.

INVESTMENTS IN CHINA

Central Package Group (Singapore)
Acquired a 61.6% stake in Beijing Gold Hawk Package & Production Co. Ltd. $6.5 million. 2/00.

Petroleum, Natural Gas, and Related Equipment

INVESTMENTS IN CHINA

The Valvoline Co., a division of Ashland Inc., Cummins China, a unit of Cummins Engine Co., Inc. (US)
Signed agreement to form joint-venture VC Lubricating Oil Co. Ltd., in Shanghai. (US:50%-PRC:50%). 2/00.

OTHER

PetroChina Co. Ltd., a subsidiary of CNPC (Beijing)
Filed with US Securities & Exchange Commission to list its shares on the New York Stock Exchange. 2/00.

Ports and Shipping

INVESTMENTS IN CHINA

Peninsular and Oriental Steam Navigation Co. (UK)/Qingdao Port Authority (Shandong)
Will form a joint venture to develop and operate a new container terminal. (UK: 49%-PRC: 51%). $177 million. 2/00.

Property Management and Development

INVESTMENTS IN CHINA

ITE Group Plc (UK)/Dalian Xinghai Convention and Exhibition Centre, Dalian Wanda Group Co. Ltd. (Liaoning)
Formed ITE China Exhibitions Ltd., a joint venture, to expand the existing exhibitions in Dalian. (UK:46%-PRC:54%). 3/00.

Telecommunications

CHINA'S IMPORTS

Adaptive Broadband Corp. (US)
Signed a contract with Casil Telecommunications Holdings Ltd. to deploy AB-Access in Guangdong Province. $20 million. 3/00.

Lucent Technologies (US)
Awarded a series of contracts by Chinese service providers to provide optical, cable, wireless, and data solutions. $100 million. 3/00.

ANTEC Corp. (US)
Shanghai Bell, a joint venture between Alcatel and the MPT Design Institute of China, will deploy its Laser Link optical transmitters and receivers in Foshan, Guangdong Province. 2/00.

Interfax Communications Ltd., a wholly foreign-owned subsidiary of Interprovincial Satellite Services Ltd. (Canada)
Signed a Memorandum of Understanding for technology and knowledge transfer to Bright Oceans Corp. 2/00.

LM Ericsson (Sweden)
Signed a contract with Jiangsu Mobile Communications Corp. for GSM network expansion in Jiangsu Province. $68 million. 2/00.

TCSI Corp. (US)
Subcontracted with AT&T to provide China Telecom SPTA with TCSI's Catalant Service Fulfillment System. 2/00.

INVESTMENTS IN CHINA

Predict It Inc. (US)/China Interactive Media Group (Beijing)
Signed an agreement to create Predict It China, a Beijing-based online prediction company, which documents and rewards users based on their prediction performance in event categories such as sports, finance, politics, and entertainment. (US:30%-PRC:70%). 3/00.

Adicom Wireless Inc. (US)/Piono High Tech Corp. Ltd., a subsidiary of Great Dragon Telecommunications (Guangdong)
Piono will manufacture and market Adicom's Aditus family of wireless access products in China under the Piono name. 2/00.

China Prosperity Holdings Ltd. and its affiliate Win's Prosperity Group Ltd. (Hong Kong)
Will form joint ventures with partners in Fujian, Heilongjiang, and Sichuan provinces to develop broadband networks. 2/00.

Intelect Network Technologies, part of Intelect Communications (US)/NA
Signed an original-equipment manufacturer agreement with one of China's telecommunications-equipment suppliers. 2/00.

Lucent Technologies (US)/CITIC Beijing
Signed agreement to develop CDMA mobile phone technology in China. 2/00.

MyWeb Inc.com (US)/Soyea, a division of West Lake Electronics Group and Hunan Multimedia Communications Bureau
Will introduce low-cost, TV-based Internet access in Hunan Province. 2/00.

New World China Land Ltd., New World CyberBase Ltd. (Hong Kong)
Formed Cyber China Inc., a 50/50 joint venture to provide Internet service and e-commerce in China. 2/00.

Pacific Internet, Thakral Corp. Ltd. (Singapore)
Will form a joint venture in China to advise Chinese Internet service providers. 2/00.

Tak Sing Alliance Holdings (Hong Kong)/China Aerospace Changfeng Group
Formed joint venture, Beijing Changfeng Guozheng Information, to develop virtual private network products and design websites and networking systems. (Hong Kong:60%-PRC:40%). 2/00.

ZDNet (US)
Invested cash and stocks in ZDNet China. $10 million. 2/00.

internet.com Venture Fund II (US)
Announced investments in Spottrader.com and Beijing-based Madeforchina.com. 1/00.

Virtual China Inc. (US)/China Buzz Inc. (Beijing)
Virtual China acquired all shares of China Buzz. 1/00.

OTHER

Concept Industries Inc. (Canada)
Concept's paging joint-venture partner in China received approval for a wireless-messaging license. 3/00.

Sinobull.com, a subsidiary of The Hartcourt Companies Inc. (US)
Will develop a wireless-technology platform to enable Chinese investors to trade stock online through mobile phones and wireless PDAs. 3/00.

Tengtu International Corp. (Canada)
Formed e-bizTengtu.com, Inc., a wholly foreign-owned subsidiary, to engage in electronic business-to-business and business-to-consumer commerce in Greater China and North America. 3/00.

Zhong Guan Cun Technology Development Co. (Guangdong)
Signed an agreement with Beijing Shenzhou Great Wall Communications Centre to invest $25 million to develop a mobile-phone system using the CDMA standard. 3/00.

Asia Internet Holding Co., Ltd. (Japan)/UNICOM
Reached an agreement to link UNICOM to A-Bone, the Asian-wide international IP backbone network. 2/00.

Avaterra.com (US) and M-Web China, a division of MIH Holdings Ltd. (South Africa)
Formed a strategic partnership to develop VZChina, a China-specific e-commerce virtual world. 2/00.

CCSoft Technology Developing, Ltd. (formerly Beijing Zhongruan Zhixun Technology Developing Co.)
Granted global distribution rights of its Call Center Platform to joint-venture partner ChinaSoft, Inc., a unit of CBQ, Inc. (US). 2/00.

internet.com (US)
Will open a Beijing office. 2/00.

Lion Teck Chiang (Singapore)
Will receive HK$147 million and HK$10 million worth of UNICOM shares as compensation for the termination of its investments in GSM. 2/00.

Qualcomm Inc. (US)/UNICOM

Signed an agreement allowing UNICOM to build CDMA mobile-phone networks, based on Qualcomm's technology, in exchange for royalty payments. 2/00.

Telpac Industries, a subsidiary of Intermarket Ventures (US)/Beijing Red Sail Communications, an affiliate of Beijing Telecom

Will form a joint venture to own a state-of-the-art, broadband, multimedia, e-commerce platform and service center in Beijing; Intermarket Ventures will contribute 50% of its holdings of Telpac to Red Sail. 2/00.

ChinaSoft, an affiliate of CBQ, Inc. (US)/Beijing Zhongruan Zhixun Technology Development Co., Ltd.

Plan to launch an Internet service provider in China. 1/00.

Textiles and Apparel

OTHER

Entrade Inc. (US)

Will launch TradeTextile.com, to facilitate online trading of Chinese textile products. 2/00.

Transportation

CHINA'S IMPORTS

Shanghai Alstom Transport Equipment Co., a joint venture of Alstom SA (France)/Shanghai Jiushi Co., an investment firm of the Shanghai municipal government

Signed a contract to supply 152 railway cars for the new Xinmin Metro Line. $142 million. 3/00.

Shanghai Alstom Transport Equipment Co., a joint venture of Alstom SA (France)/Shanghai Jiushi Co., an investment firm of Shanghai's municipal government

Signed a letter of intent for the supply of the signaling and train-control system for the Pearl line of the city's subway. 3/00.

Bombardier Aerospace, a unit of Bombardier Inc. (Canada)

Sold 3 CRJ200 Series regional jet aircraft to Shanghai Airlines. $68 million. 2/00.

CHINA'S INVESTMENTS ABROAD

Daltac Co. (Argentina)/Jincheng Group (Beijing)

Formed Jincheng-Argentina, a motorcycle assembly joint venture with an estimated annual output of 30,000. 2/00.

INVESTMENTS IN CHINA

Daewoo Motor Co. (South Korea)/China First Automobile Works Group Corp. (Shandong)

Plan to set up a joint-venture automobile assembly plant in Yantai, Shandong Province. $80 million. 2/00.

Lufthansa Technik, technical services subsidiary of Lufthansa (Germany)/Shenzhen Investment Holding Corp. (Guangdong), Beijing Kailan Aviation Technology Co.

Will form Shenzhen Lufthansa Technik Co. Ltd., a component-supply joint venture. 2/00.

OTHER

American Electric Automobile Co. Inc. (US)/Guangdong Vick Wei Electric Vehicle

The automobile produced by the joint venture, America Electric Automobile, has been licensed for use on all of China's roads. 2/00.

Arvin Industries, Inc. (US)

Increased its stake in Shanghai Hua Wen Exhaust Systems Co. Ltd., its joint-venture exhaust firm, from 35% to 55%. 2/00.

Johnson Matthey (US)

Will establish a new autocatalyst manufacturing facility in the Shanghai area. 2/00.

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last PAGE

Animal Kingdom

Southern newspapers, such as the *Guangming Daily* and the *Yangcheng Evening News*, are publishing warnings against eating wild animals from unlicensed restaurants, citing environmental protection and possible illness. A recent survey by the China Wild Animal Association found that about half of the respondents believe that wild animals are rich in nutrients. And its survey of more than a thousand restaurants revealed that while nearly half of them sell wild animal meat, less than 20 percent are legally permitted to do so. To preserve endangered animals and other wildlife, the Protection of Wildlife campaign is fighting such illegal sales.

Domestic animals, however, are faring better than their wild cousins. In late February, the district court of Hangzhou, Zhejiang Province tried a case in which a dog ran into a car. The owner of the unregistered dog asked for ¥3,000 ($362) in compensation, claiming that it was a very expensive dog. The case is still under investigation. Pigs and oxen can rest easy, though—the State Forestry Administration has drawn up regulations to curb the feeding of live animals to captive lions and tigers. In accordance with the new rules, the Guilin Xiongsen Lions and Tigers Mountain Villa has discontinued this practice.

Pigs and Politics

While braised pig face (*see* p.52) is doing quite well in Beijing, pigs are causing the *Nanfang Dushibao*, a sister daily of the official *Nanfang Ribao*, to lose face in Guangzhou. The newspaper incurred the wrath of Chinese Muslims across the country by publishing a picture of cloned pigs beside a photo of Islam's holiest shrine in Mecca. Fearing public protest, Beijing authorities fired the editor-in-chief and fined the editor responsible for the layout. The newspaper has since published three apologies.

Shocked Sheep

Scottish blackfaced sheep imported to Hainan Province, off the coast of southern China, are experiencing serious culture shock—they don't understand the Chinese shepherds or their dogs. The sheep, imported from Scotland to strengthen the gene pool of Hainan's sheep stock, grew up with Scottish sheepdogs, which are specially trained to respond to a particular series of whistle commands. Hainan is now importing Scottish sheepdogs, and the sponsors of the program are hoping to send Hainan shepherds to Scotland for training.

Blue Whale Blues

Elsewhere on Hainan Island, residents of a fishing village had a brush with the deeps when a 15-ton blue whale beached itself at Yanhai beach on the first day of the Lunar New Year. The whale lay in 1.5 meters of water while onlookers from around the island took pictures and prayed to the whale for good fortune in the coming year. After four days, marine officials and volunteers towed the whale out to deeper water. Despite their efforts, the whale's corpse washed up days later. Officials praised the rescue attempt, which they said revealed a new awareness of conservation and animal rights. In the past, they maintained, a beached whale would have been butchered and sold. The whale was finally buried about 10 km away. Its skeleton will be unearthed later for display in a soon-to-be-built museum.

Other Last Page News:

April foolishness

According to the *Beijing Youth Daily*, Shenzhen's 21st Century Fortune Web was closed down because of an April Fool's joke that did not amuse the Guangdong Computer Safety Supervision Office. The site e-mailed over 2,000 users across the country, warning them of a PC virus that could only be cured by daily visits to the 21st Century Fortune website.

Hacker Attack: Annoyance or Status Symbol?

Recent hacker attacks on Chinese websites have spurred lawsuits, security improvements—and advertising campaigns. Dangdang.com and Sparkice.com have emphasized the prestige value of their recent victimization by hackers by noting that world-famous sites such as Yahoo! have also been under attack. Dangdang credited its technicians with tracking the origin of the attacks to 8848.net. *China Youth Daily* commented, however, that such capable technicians should have been able to prevent the attack in the first place, and protect consumers. Dangdang's technicians may have other things on their minds, though—Sparkice claims that the hacker attacking its site used Dangdang's IP address. Dangdang, meanwhile, in conjunction with ec123Net, is suing 8848.net for allegedly employing hackers to sabotage its site.

—Lissa Michalak

Lissa Michalak is the Publications Assistant at *The CBR*.

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