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THE CHINA BUSINESS REVIEW

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The Fight for Intellectual Property Protection

China's New E-Sign Law

High-End Hotels

The Clean Development Mechanism

Plus: Reviews, Trade Update, and Charitable Projects

THE
CHINA BUSINESS
REVIEW

TABLE OF CONTENTS

NOVEMBER-DECEMBER 2002

FOCUS: INTELLECTUAL PROPERTY RIGHTS IN CHINA

FEATURES

DEPARTMENTS

Cover by Greg Berger Design, Inc.
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CHINA'S HOTEL BOOM

KATTIE LEE

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More choices and better quality are good news for the travel-weary

As the number of tourists and foreign business travelers in China grows in step with China's economy, China's rapidly maturing hotel industry is among the key beneficiaries. Long gone are the days when thirsty hotel guests had to fill up their own thermoses of drinking water with *kaishui* (boiled water) from the boiler down the hall. Thanks to strong competition and healthy demand, travelers have more choices and access to better-quality services in China than ever. The country has entered the world of five-star hotels offering full-service gyms, golf courses, and child-care facilities.

Growth of an industry

The number of international travelers to China has risen steadily and rapidly over the last two decades (except for the dips in 1989 and 1998 because of Tiananmen Square and the Asian economic crisis, respectively). According to the China National Tourism Administration (CNTA), more than 83.4 million tourists visited China in 2000—a 14.7 percent increase from 1999. Of that number, foreign business arrivals totaled more than 1.74 million, or 17 percent. In the last two years, China has become a bright spot in the otherwise gloomy global economy. With most economists predicting a steady PRC economy over the next year, international and domestic business travelers should continue to flow to China—and to need somewhere to stay.

During the 1980s and 1990s, the Chinese government encouraged foreign investment in the hotel industry and allowed foreign-owned hotel companies to develop hotels that met international standards. By late 1997, the country had 2,724 star-rated hotels, including 57 five-star and 157 four-star hotels. Today, China boasts more than 7,358 hotels for overseas tourists, of which 129 are rated five-star and 441 are rated four-star.

Hotel ratings are determined differently in each country (and even in regions within a country). Most of the top international hotel chains are based in the United States, where the American Automobile Association's diamond rating system and Mobil Travel Guide's star rating system are accepted and long established. Once a US hotel chain establishes itself at the four- or five-star level domestically, it then helps set the industry standard when opening new hotels in China (*see* Table).

CNTA is responsible for rating China's hotels, but the distinction between four- and five-star hotels is not always clear—even in price (*see* p.8). Generally, the four-star hotels are foreign-invested or, in some cases, state-owned. They feature modern rooms with private baths, air conditioning, television, and a full-service restaurant on the premises. Five-star hotels are usually owned by international hotel chains. They offer English-speaking staff and rooms with private baths, air conditioning, 24-hour room service, and cable TV. Five-star hotels also offer a wide range of amenities, such as a fitness center, gift shop, several full-service restaurants, and a lounge.

Beijing

China's capital is a natural destination for business travelers. Many international visitors come from Europe, Japan, South Korea, and the United States. But domestic business travelers make up a growing percentage of guests, even for some of the largest foreign-invested hotel chains, such as the Harbour Plaza and the Kempinski Hotel. Beijing's hotel industry grew rapidly during the booming economy of the 1990s, but hotel rates plunged during the late 1990s because of the economic downturn, oversupply, and competition from local hotels, which catered to the growing domestic market.

Pointing to China's entry into the World Trade Organization (WTO) and Beijing's successful bid for the 2008 Olympics, foreign hotel managers express optimism about industry growth for the next few years. The citywide hotel occupancy rate for June 2002 was 72 percent, a "healthy average" according to Marcus van der Wal, general manager for the Kempinski Hotel in Beijing. Van der Wal reported that Kempinski's occupancy rates during the March-April peak season have averaged in the mid-90 percent range for the last two years.

A result of this expanding demand for hotel rooms is rising rates, at least in Beijing. One chain's estimate of the average rate for Beijing's five-star hotels in June 2002 was $102. A few managers expect average rates eventually to catch up with hotel rates in large Western cities. One general manager said he looked forward to witnessing the transformation of five-star establishments in China into true five-star hotels of international standards—quite distinct from their four-star counterparts.

Indeed, Beijing's top hotels are trying to differentiate themselves from others to establish brand loyalty among their customers by focusing on quality service. Strategies to encourage new and repeat visitors include corporate packages, alliance deals with airlines and travel agencies, and roadshows in Asia, Europe, and the United States.

To appeal to their multinational clientele, many Beijing hotels provide a variety of restaurants, often with Chinese or Asian, European, and American selections. Some established restaurants also attract diners who are not hotel guests. For instance, the Jianguo Hotel's restaurant, Justine's, claims that it is known for its classic French cuisine, and the Kempinski's Paulaner Bräuhaus brewery is popular with the locals.

Though the mood is generally optimistic among managers of top international hotels in Beijing, one manager expressed concern that the city has not adequately developed its infrastructure to support long-term growth. She also questioned whether the city would need all of the newly constructed Olympics-related facilities after the games are over, implying that the market could become over-supplied. Nevertheless, like her peers, she projects steady hotel industry growth for at least the next five years.

Photographs courtesy of the Grand Hyatt Pudong.

China's Hot Hotels

Selected International Hotel Chains	Hotels in China (mainland)
Accor (Sofitel and Novotel [France])	11
Best Western International (United States)	1
Carlson Companies (Radisson [United States])	4
Cendant Corp. (Days Inn and Howard Johnson [United States])	3
Choice Hotels International (Comfort Inn [United States])	1
Four Seasons (Canada)	1
Hilton Hotels Corp. (United States)	5
Hyatt Corp. (United States)	6
Marriott International (United States)	15
Raffles (Swissotel [Switzerland])	2
The Ritz-Carlton (United States)	1
Shangri-La (China World, Kerry Centre, and Traders [Hong Kong])	19
Six Continents Hotels (Crowne Plaza, Holiday Inn, and Inter-Continental [United States])	36
Starwood Hotels (Sheraton, St. Regis, and Westin [United States])	13

SOURCE: Compiled by the author from corporate websites

Shanghai

Shanghai, as China's most dynamic city, is another top destination for business travelers. Like Beijing, Shanghai's hotel industry projects rising demand for the next decade, in part because Shanghai is at the forefront of WTO liberalization. The top end of the Shanghai hotel market has financially outperformed mid- and lower-priced establishments, which shows the potential for growth in the high-end hotel market.

The Shanghai government wants the city to become China's economic and financial center. The government has aggressively recruited trade exhibitions and conferences to Shanghai—examples include the Asia-Pacific Economic Cooperation meetings in September 2001, the sixth Shanghai International Film Festival in June 2002, and the city's recent bid to host the 2010 World Expo. Infrastructure projects such as the Pudong International Airport, the planned magnetic train from the airport into the city, and the extension of the metro will serve to meet rising resident and visitor needs.

Whereas hotel managers can find more experienced local staff than ever before, perhaps the toughest difficulty they face is finding employees with strong English-language skills—even in Shanghai. For example, during a recent visit by the author to an international five-star hotel in


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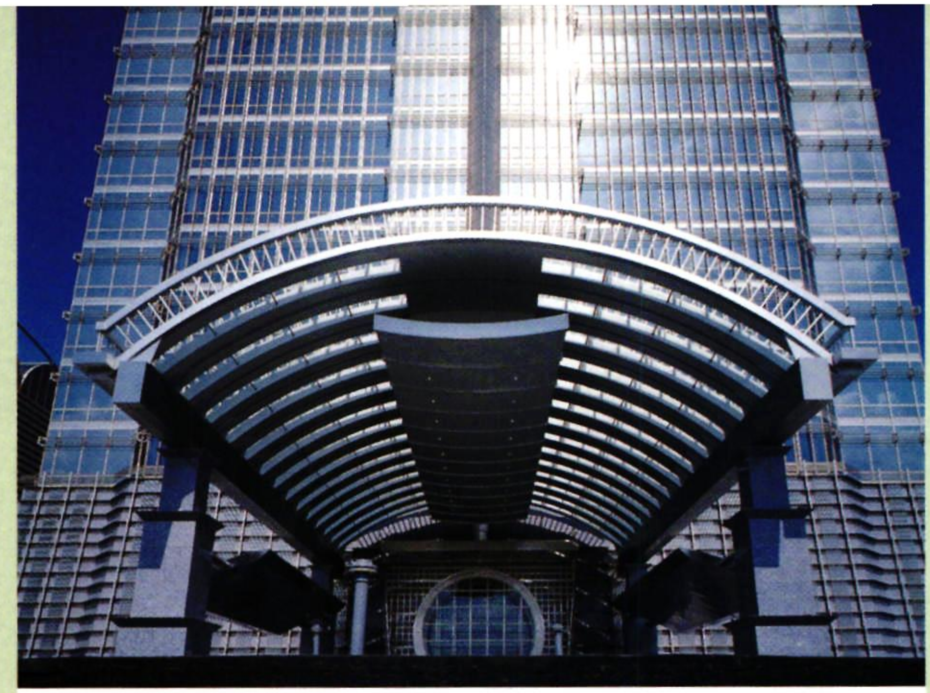


Shanghai, an employee working in the lobby lounge could not understand a basic request in English. This seems to be a common problem at some of the top international hotels in Beijing and Shanghai, but several managers who stressed that quality of service was a high priority for their chain said they were working closely with staff to improve language skills.

Many Shanghai hotels offer extraordinary services, such as the Four Seasons's full range of business services and 24-hour butler and concierge services, which include valet, laundry and pressing, in-room dining, and spa treatments. The hotel also offers custom shopping tours with a private car and English-speaking guide.

Western expansion

Before Hong Kong's transfer back to China in 1997, Guangzhou served as a popular location for new hotels, and major chains rarely considered setting up operations in western China. Now, some managers view Guangzhou as a city with weakened potential to support growth in the hotel industry and talk—albeit conservatively—about expanding in China's interior. The *South China Morning Post* reported that Shangri-La—which already has hotels in many second- and third-tier Chinese cities—plans to expand to western locations such as Chengdu, Sichuan, and Chongqing. Nevertheless, as one general manager explained, "Five-star hotels are not meant to be pioneers."

A competitive future

The general opinion among those in the hospitality industry in Beijing and Shanghai is that a growing supply of hotels will be needed to support ever-rising demand. But they are also aware that competition will increase as well. The hotels that were the first to offer shopping centers or a five-star rating must now work on their services and offerings to stay competitive. As a result, business travelers should see more choices and ever-better quality in China's four- and five-star hotels for some time to come. 完

Hotel Ratings and Criteria

The majority of international visitors to China stay in star-rated hotels. According to the China National Tourism Administration, a hotel rated with three or more stars has the following features, facilities, and services:

- Bathrooms with 110/220-volt electric sockets and hot water 24 hours a day
- Rooms equipped with sufficient air-conditioning to keep the room temperature at a comfortable level
- A telephone in each room to allow the guest to make domestic or international long-distance calls through an operator
- Guest rooms containing a color TV and stereo system
- Effective soundproof facilities, as well as curtains that can block the sunlight
- Stationery appropriate to the rating of the hotel available in every room
- Chinese restaurant
- Western restaurant
- Café
- Banquet hall
- Ball room
- Massage parlor
- Gift shop
- Beauty parlor
- Conference room
- Business center
- Gym
- Florist
- Clinic
- Parking lot
- Bookstore
- Credit-handling and foreign exchange conversion center
- DDD and IDD telephone services
- Room service
- Child care
- Facilities for the disabled
- Karaoke hall
- KTV room
- Chess and card playing room
- Billiards room
- Ping-pong room

Some four- and five-star hotels are also equipped with:

- Swimming pools
- Bowling alley
- Golf courses
- Saunas
- Safety-deposit boxes
- Facilities for fishing, boating, horseback riding, hunting, sharp shooting, and other sports

—*Kattie Lee*

LETTER FROM THE EDITOR

Patents Versus Profits

This issue of *The CBR* focuses on China's successes and failures in the area of intellectual property protection, specifically as defined by the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

An interesting thing about this agreement is that although it is a central component of the drive to create a rules-based "level playing field" in China for foreign and domestic companies, it has come under fire from critics who say that TRIPS, like the WTO as a whole, is really about the protection of developed-country interests at the expense of progress (or even survival) in developing countries.

One of the battlegrounds staked out by WTO critics is that of drug patents. These critics—notably Oxfam, in its 2001 report, *Rigged Rules and Double Standards: Trade, Globalization, and the Fight Against Poverty*—argue that public health should be a number-one priority, and thus that foreign makers of drugs in demand in poor countries ought to allow these countries access to medicines at affordable rates. Indeed, the social, economic, and even political costs of the global AIDS epidemic, to name just one example, make it hard to dispute this argument.

But drug companies point out that without prices that cover the costs of research and development—and the patent protection that enables such pricing—they have few incentives to engage in R&D for new drugs.

Nevertheless, there are some legitimate economic arguments for what economists call differential pricing of drugs, that is, charging different prices in different markets. In fact, pharmaceutical companies are aware that lowering prices in poorer markets expands market share at the same time that it serves more patients, and they have negotiated with foreign governments to lower prices of AIDS drugs, for example, on which they hold patents.

As noted Berkeley economist Hal Varian wrote in the *New York Times* ("Examining Differences in Drug Prices," September 21, 2000), "The critical question, from the viewpoint of economics, is whether differential pricing or a flat price leads to more people getting the drug. In the case of [an] AIDS drug, differential pricing leads to more total consumption; in the case of [an] antimalarial drug, it is the other way around." This is because large markets for AIDS drugs exist in both developed and developing countries, and thus drugmakers will charge a higher price where they can—that is, in developed countries, which can afford higher prices—and a lower price where they have to—that is, in poorer countries, which otherwise cannot afford the drugs at all. This strategy preserves the most market share for drug companies. Under a flat price structure, companies charge either a high flat price or a low one. Varian explains that a low flat-price strategy can be profitable in the case of the antimalarial drug, for which the market is small in developed countries but enormous in developing ones. (As residents of the Washington, DC, area read this, with the recent cases of malaria in northern Virginia in mind, they may wonder whether a different drug might have made for a better example.)

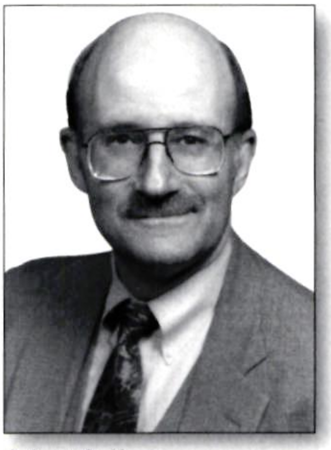
Another way of ensuring that drugs are priced low enough to be accessible to as many sufferers as possible is by producing low-cost generic drugs, even if it means ignoring patent holders' rights. Oxfam argues for more flexible and shorter patent protection rules for poor countries. Pressure from Oxfam and other advocates for poor countries no doubt contributed to the WTO's declaration at Doha last year that countries could put public health priorities ahead of patent concerns in cases of national health emergency.

The distinction between market size and wealth for different drugs also has implications for patents, as Yale economist and Brookings Visiting Fellow Jean Lanjouw notes in a 2001 paper, "A Patent Policy Proposal for Global Diseases" *(www.brookings.edu/comm/policybriefs/pb84.htm)*. She proposes a policy "fix" that would facilitate the production of generic medicines for "global" diseases that occur in both rich and poor countries by forcing a drug producer to forsake patent protection in poor countries when applying for a patent in a given developed country. This way, the larger market can be preserved for the company, and the developing countries can produce or purchase the affordable generic drugs they desperately need. What is important about this policy proposal is that it not only preserves the larger source of revenue for the company but also preserves the company's incentives to develop new medicines.

China has recently become involved in this debate because of its AIDS epidemic. It has issued confusing signals about whether it will abide by standard TRIPS rules or will allow local firms to produce generic versions of drugs regardless of who owns the patent. Companies have already negotiated with China to reduce prices on some key drugs, but press reports indicate that China would like these prices to end up at about one-tenth the level the companies have offered. This is probably just the beginning of an ongoing negotiation, with the outcome far from clear. What is clear is that reasonable proposals are emerging that would allow for the pricing of drugs at truly affordable levels while preserving drug companies' incentives—and thus that supporters and critics of TRIPS may yet find common ground.

Catherine Gelb

LETTER from the President of the US-China Business Council



Robert A. Kapp

WTO: Toward "Year Two"

China's implementation record in its second year of WTO membership will be a crucial indicator of the country's commitment to abide by WTO rules.

The US-China Business Council recently joined other trade organizations in offering a detailed analysis to the US government of China's progress in adjusting to the demands of its World Trade Organization (WTO) membership since it joined the world trading body last December. The Council's presentation was part of a multi-agency US government process of information-gathering and evaluation that will result in an official administration report to the US Congress by December 11, the first anniversary of China's accession. (The Council's full presentation can be found on the Council's website, *www.uschina.org*.)

In a brief oral presentation accompanying the written submission, the Council summed up its overall estimation of China's WTO progress as follows:

In the starkest of "glass half full/glass half empty" terms, the Council considers the glass more than half full as the end of the first year approaches, thanks to the extensive and highly visible efforts China has made in many areas of WTO-mandated reform.

These efforts included

- Elimination of laws and regulations incompatible with WTO terms and issuance of new legislation and regulations designed to comport with WTO requirements;
- Reduction of China's tariffs to levels pledged in the terms of China's WTO accession;
- Widespread commitment to "capacity-building," or the development of WTO-trained personnel in central and sub-central government agencies, and efforts at public education on the WTO and its implications for Chinese economic and commercial life.

These developments, we felt, were appropriate "infrastructure" measures as China turned to building a new economic and commercial environment under the terms of its WTO membership. But we went on to offer a cautionary comment:

We perceive, however, a tone of impatience and uneasiness among some respected and experienced business observers within China over the PRC's accomplishments and intentions in some of the areas which have proven most problematic in Year One. Because we are still in "early days," American companies have not seen fit to issue, through the US-China Business Council, stark characterizations at this time, but the concerns registered in our written submission require close observation and may require additional action.

The full content of the Council's written analysis, produced by Council staff in Washington, Beijing, and Shanghai, mentions several examples of worrisome developments—or non-developments—in the post-accession PRC trade and investment environment. Widely acknowledged problems with agricultural tariff-rate quotas (TRQs) and other traded goods under quota; the appearance of new procedural obstacles, such as opaque registration processes or onerous standards or prudential requirements; and the persistence of massive intellectual property abuse were a few of the concerns mentioned in the Council's presentation. The Council also pointed to signs of an apparent inability or unwillingness of some government agencies to overcome other bodies' entrenched resistance to thorough WTO implementation.

In the question-and-answer session that followed, we were asked whether any particular year, in the nearly decade-long process of China's WTO implementation, was of special concern. We replied that Year Two was crucial.

We suggested that China had appropriately offered unique Year One responses to the challenges of the inaugural WTO year: updating its legal framework, cutting tariffs, moving toward the kind of consultative transparency that the Internet makes so technically feasible, and training WTO-competent administrators.

But as the United States and other WTO members track Chinese WTO adjustment in Year Two, they will increasingly raise questions appropriate to an *ongoing* implementation process:

- Will China remedy the acknowledged inefficiencies and confusions encountered in Year

One? China itself has acknowledged that agricultural TRQs were inadequately determined and allocated in the first year. There are other significant examples. A second year of disappointment on TRQs and these other issues will not be attributable to start-up difficulties.

- Will measures that were to have been completed in Year One, but that were not, appear decisively in Year Two, and closer to the beginning of the year than to the end?
- Will Year Two phase-ins take place on time? Delays in effecting these crucial market-opening reforms will pile up in ensuing years; prompt delivery on phase-in commitments is essential.
- Will China find the necessary powers of persuasion to compel full WTO implementation by recalcitrant central and sub-central agencies?

The process of evaluating China's progress in adjusting to the requirements of WTO membership takes place, like everything else in international relations, in a broader context. Here are just some of the background factors that directly or indirectly relate to the WTO implementation process:

- US-China trade continues to expand vigorously, in spite of sluggish economic conditions in the United States, Europe, and many of the Asia-Pacific economies. First-half 2002 US exports to China were up more than 10 percent year-on-year, while Chinese exports to the United States in the same period were up nearly 15 percent. China is a critically important export market for many US firms struggling with deep declines in other markets.
- Foreign investment, perhaps buoyed by the terms of China's WTO entry, is moving into China at a very high rate.
- China and the United States appear, superficially at least, to be getting along somewhat more civilly of late, thanks to the "War on Terror" and signs that the top leadership in both countries sees the value of cooperation. Signs of progress on Chinese control of missile and missile-technology exports, a series of releases of politically sensitive prisoners, and the recent visit to China by senior associates of the Dalai Lama are recent indications that progress can be made between the two countries. Diplomatic contacts are again in high gear, and the network of consultative arrangements between the two governments appears to be widening. The presidential meeting in Crawford, Texas, suggests a commitment at the top to continued US-China engagement.
- The United States is preoccupied with the possibility of major war in the Middle East; on top of the response to September 11, 2001, this preoccupation has deflected the energies of those earlier concerned with the likelihood of confrontation with China and has become the primary index by which the United States gauges *every country's* positive or negative relationship to the United States. Though many observers note that the underlying factors auguring for an ultimate clash of interests between the United States and China are basically unchanged, it would be hard to conclude today that the authoritative short-term American assessment of China is as gloomy as it seemed to be in 2001.
- And last but emphatically not least, China is on the brink of long-awaited changes in its political leadership, within the Communist Party this fall and within the government next spring. While no one expects this leadership transition to result in wholesale and radical changes, hope appears much more widespread that new principal office-holders will at least permit forward motion to resume and gather speed on many policy issues currently perceived to be in suspended animation.

Energetic implementation of China's WTO commitments must be one of the vehicles moving forward at full speed after the transition in China's political leadership. That China's new leaders will face daunting domestic economic challenges is a given: rural-urban disparities of income and wealth, East-West disparities, unemployment associated with economic transition, looming troubles in the banking and securities sectors—each of the major economic challenges facing the regime can be portrayed as dangerously susceptible to the disrupting effects of WTO compliance. It will take concentrated attention by China's new leadership team, and reaffirmation that WTO compliance is in China's clear interests, for Year Two to yield decisive progress in uncertain areas.

Immediately after publishing the Council's written USTR presentation in mid-September, I heard from a number of knowledgeable friends in the Council business community in China. I close with portions of one such message.

If one asks what positive difference WTO membership has meant to foreign business, it would be difficult to point to anything that the Chinese would not have done on their own, except maybe for some tariff reductions; companies that were doing reasonably well prior to WTO accession continue to advance, while companies that faced daunting barriers continue to beat their heads against the wall.

...[China has] feverishly written new regulations and trained thousands of people, and hailed all that as progress toward transparency and rule of law. But in reality there has been little, if any, evidence of the structural change that WTO was meant to trigger. Indeed, I would argue that thus far the Chinese have been busily hijacking WTO rulemaking to further obstruct foreign participation in key sectors, while maximizing the access of their own companies to more liberal foreign markets ...[such as the United States]. I still think the top leadership embraces not only the letter, but the intent, of WTO membership. But too many parts of the regime do not, and the leadership has not demonstrated a firm grip. Yes, there's a big transition taking place...[, but there are also] many entrenched interests that we knew opposed WTO. But they can't make excuses—or be excused—indefinitely.

[Though] I assume your "glass half full" characterization was intended to encourage the good guys, I don't think it is accurate.

It will be up to China, in Year Two, to show this writer and many others that my friend's concerns were off the mark. American business—and many in American government—want to be constructive partners with China in WTO progress. But in the end, the laws, the regulations, the judicial rulings, and the changes in work style that the world is rooting for lie in the hands of the Chinese themselves. 完

The TRIPS Agreement and China

Thomas T. Moga

Nearly one year after China's entry into the World Trade Organization (WTO), it is clear how difficult it will be for China, a country that remains a leading violator of intellectual property (IP) rights, to implement one of the most important WTO agreements—the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

TRIPS Agreement basics

All WTO members must comply with the TRIPS Agreement as part of their WTO obligations. The agreement provides basic standards for IP protection and includes rules related to the enforcement of IP rights. In brief, members must ensure that their enforcement procedures "permit

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China's compliance with the WTO's intellectual property rules is a work in progress

effective action against any act of infringement of intellectual property rights covered by this agreement, including expeditious remedies to *prevent* infringements and remedies which constitute a *deterrent* to further infringements..." (TRIPS Agreement Article 41.1, emphasis added).

Members must also agree to abide by transparency requirements that call for the publication of laws and regulations, judicial decisions, and general administrative rules that pertain to IP matters (TRIPS Article 63.1). According to China's Protocol of Accession, China must, with some minor exceptions, make new laws and administrative measures available to the public for comment *before* adoption.

China changes its IP laws and regulations

Beijing added, deleted, and rewrote hundreds of laws during the run-up to its WTO entry because, by accession, China agreed to establish IP laws and enforcement procedures that comply with the TRIPS Agreement. Many of the provisions of these new laws were vast improvements over their predecessors. Some key provisions of the most important IP laws follow.

● Patents

The Patent Law, enacted in 1985, was first amended in 1993. The changes included extending patent protection from 15 years to 20 years, pursuant to TRIPS Article 33, and allowing the patenting of chemical and pharmaceutical products as well as food, beverages, and flavorings, in compliance with Article 27.1.

China amended its Patent Law for the second time in 2001 (*see The CBR*, July-August 2001, p.38). Article 11 of China's Patent Law was amended to include unauthorized "offering for sale" as a violation of a patent holder's right. (Article 28 of the TRIPS Agreement defines "offering for sale" as an exclusive right conferred on the patent owner.) Article 53 of China's Patent Law parallels TRIPS Article 31—which aims to define clearly the relative value and type of patent that can be subject to a compulsory license. Article 57 of the Patent Law shifts the burden of proof of infringement to the defendant as required by Article 34.1 of the TRIPS Agreement. Finally, Article 61 of the Patent Law complies with TRIPS Article 44.1, which requires the availability of injunctive relief.

● Trademarks

China enacted the Trademark Law in 1983, amended it in late 2001, and amended its implementing rules in late 2002.

Article 3 of the amended Trademark Law expands the definition of what may be registered to include collective marks and certification marks, and Article 12 provides protection for three-dimensional symbols. (TRIPS Article 15 requires protection for traditional subject matter, including signs, names, and words.) Articles 13 and 14 enhance protection for well-known marks and Article 57 provides pre-litigation injunctive relief, in compliance with TRIPS Article 44.1. Finally, Article 56 allows a court to assess damages for infringement in the form of either the amount of the improperly earned profit or, where it is difficult to determine the profit, in an amount not to exceed ¥500,000 ($60,474). The former law specified no such damage award.

The amended implementing rules allow the registration of geographic indications (Rule 6) and provide more detailed explanations of protection for well-known marks (Rules 45 and 53).

WTO membership does not yet appear to have had much influence on the production levels of counterfeit goods in China.

- **Copyright**

China's Copyright Law, first enacted in 1991, was amended in late 2001. The amendments changed the way copyrights are assigned and broadened the list of protected works to include mask works—a series of related images representing a pattern of metallic, insulating, or semiconducting layers of a semiconductor product—and models. The also expanded the list of owner's rights to include online transmission. Article 48 provides statutory damages up to ¥500,000 if actual damages cannot be determined. The amended law also provides for preliminary injunctions (Article 49). The Copyright Law's implementing regulations provide more details on enforcement and took effect in September 2002.

- **Computer software and integrated circuit protection**

China enacted the Regulations on Computer Software on January 1, 2002, defining the scope of software protection. And to comply with TRIPS Articles 35 through 38, which require that members provide protection for the design of integrated circuits, China implemented the Regulations for the Protection of the Design of Integrated Circuits on October 1, 2001 (*see The CBR*, November-December 2001, p.22).

Outstanding issues of non-compliance

Skepticism over Beijing's ability to comply with WTO requirements existed from the beginning—full compliance is a tall order. Despite China's progress in bringing its laws into line with WTO rules, the country still has yet to address several areas of concern.

- **IP standards**

Even as amended, China's various IP laws still do not entirely comply with the TRIPS Agreement. With respect to patents, Article 5 of the PRC Patent Law denies the granting of patents to inventions that "violate the laws of China," are "contrary to social morality," or may "prejudice the public interest." This general provision is overly broad and may justify the exclusion of an invention that would otherwise be patentable under the TRIPS Agreement. In addition, compensation for acts of infringement remains too low.

Regarding compulsory licensing, the Patent Law fails to specify clearly what the proposed user must do to obtain authorization from the right holder, as required under TRIPS Article 31(b). TRIPS Article 31(f) further demands an adequate assurance that the patented good produced under compulsory license will be made "predominantly for the supply of the domestic market of the Member authorizing such use." Finally, China must also amend the Patent Law to specify that the right holder will be paid "adequate remuneration in the circumstances," as required by TRIPS Article 31(h).

On the trademark front, concern remains that the "famous marks" provisions of the PRC Trademark Law are directed to benefit Chinese marks and fail to provide protection for well-known foreign marks. Moreover, as the WTO Working Party noted during China's negotiating process, certain licensing provisions provided for under China's Trademark Law are incompatible with the language of TRIPS Article 40.

With respect to copyright practice, observers are concerned that some of the provisions of the Copyright Law are inconsistent with international standards—such as the PRC law's failure to specifically extend to "[p]roducers of phonograms...the right to authorize or prohibit the direct or indirect reproduction of their phonograms..." (TRIPS Article 14.2). In addition, the amendments have no bearing on criminal liability, one of the greatest weaknesses of the system. As it stands now, Article 47 of the amended Copyright Law provides only that "if the infringing act constitutes a crime, the infringer shall be prosecuted for his criminal liability."

Article 17 of China's computer software regulations, which permits any use of software for training, is inconsistent with TRIPS Article 13 because such use of software could include reproduction without permission.

- **Transparency**

China has improved its compliance with transparency requirements. In the last year, several judicial decisions and legal interpretations clarified the application of certain rules. China still does not publish all requisite regulations, however, nor does it publish proposed IP rules in advance. China asserts that the quantity and difficulty of the texts interfere with its ability to provide proper translations in one of the WTO's official languages. But even relatively simple items, such as the size of a penalty imposed in a given case, are unavailable in translation.

Enforcement of IP rights

China is the world's largest source of counterfeit products. WTO accession notwithstanding, it is commonly accepted that counterfeits make up between 15 and 20 percent of all products made in China and that counterfeiting accounts for about 8 percent of the country's GDP (*see The CBR*, May-June 2000, p.22). By its own estimate, China admits that counterfeiting is a $16 billion industry. In 2001, officials seized more than 51 million counterfeit video compact discs in China. Earlier this year officials impounded 4 million counterfeit compact discs in the country's single largest seizure. Internet piracy—a relatively new phenomenon—is on the rise as well (*see* p.20).

Even as the export situation improves from the US perspective, less-developed countries are importing ever more counterfeit goods from China. Accurate numbers are difficult to come by, but according to one US manufacturer in China, counterfeits to destinations in Southeast Asia and eastern Europe, where border control is weak, are definitely on the rise. He noted that his colleagues in these countries can readily distinguish counterfeit goods produced in China from those made in other countries because the Chinese counterfeits are of much higher quality.

Enforcement efforts in China continue to be hobbled for a variety of reasons, including corruption, poor training of judges and law enforcement officials, structural impediments, local protectionism, resistance to any action that might increase unemployment, rising activities of organized crime, and, most important, inadequate punishment for infringement. And while revisions to the laws may allow for higher damages than before, judges may well decide not to impose the most severe penalties.

China has a two-track system of enforcement: One is an administrative track under which a complaint is prepared and filed with the local administrative office; the other is through the court system. China established a chamber of specialized IP courts distributed throughout the country. This exceeds the standards for TRIPS Agreement compliance.

Yet the absence of real punishment options prevents China's enforcement system from providing the "expeditious remedies which constitute a deterrent to further infringements," as envisioned by TRIPS Article 41.1. China's Criminal Code makes criminal sanctions available where the conditions are "serious" or where sales by counterfeiters have been "relatively large." The lack of clear and consistent guidelines as to what the terms mean, however, combined with the relatively low levels of punishment, contribute to recidivism. Few cases are referred to criminal prosecution (*see* p.22).

Thus, by definition, China is not in compliance with the TRIPS Agreement in the area of enforcement. Moreover, WTO membership does not yet appear to have had much influence on the production levels of counterfeit goods in China. The Chinese government needs to clarify its enforcement standards and must demonstrate—through action—a willingness to get tough on counterfeiting through criminal sanctions, which, though available, are rarely used.

Nurturing IPR Awareness in China

Post-Mao China has embarked on the enormous task of replacing "rule by man" or "rule by law"—characteristics of the legal regimes of past emperors and bureaucrats—with "rule of law" and civil society. To achieve this end, China's reformers have attempted to cultivate a legal consciousness among individual citizens and economic actors and build a foundation of professional academic training institutions for attorneys, judges, officials, and administrators. Initiatives to reconstruct intellectual property rights (IPR) laws and campaigns to raise legal awareness began in the mid-1980s and advanced rapidly throughout the 1990s. Such efforts instilled a basic IPR consciousness in professional and non-professional urban Chinese, but room remains for quantitative and qualitative improvements.

The first efforts to promote legal education came through the media: by the mid-1980s, 71 legal periodicals had reportedly entered into circulation. In November 1985, a national conference attended by the law commissions of the People's Congress, the Supreme People's Court, the Ministry of Public Security, and others sought to coordinate efforts to educate administrators and citizens.

Legal training

The training of judges not only in the principles of law, but in the particulars of intellectual property (IP) law, anchors the new legal regime. Previously, judges were not required to have formal legal training, and many former military officers were appointed to the bench. In the 1980s, however, China's leaders advocated formal legal training for all legal professionals, including IP chambers. In 1986, People's University in Beijing founded a center for IP teaching and research and invited non-law students to enroll to supplement their education. Authorities also selected some graduate students with technical backgrounds and steered them toward judicial training programs, increasing the numbers of students specifically focusing their research on IP law. In 1993, Beijing University followed suit and established its own School for Intellectual Property Rights. Law scholars from these two universities' IPR research institutions developed training sessions for individual courts and chambers across China, supplementing policy study.

PRC authorities established special IP courts in the early 1990s, disseminated educational materials on IP law, and developed training programs for non-specialists. Annual colloquiums invited specialist lecturers to address judges and legal professionals and discuss the most difficult IP cases. The accelerated education of a judiciary capable of handling a heavy caseload of technical IP cases quickly got under way. Indeed, by 1998 more than 100,000 judges and administrators had reportedly received IP training.

Support from abroad

China's efforts to develop indigenous IP technical and judicial capabilities received technical support from a host of organizations, the most important of which was the World Intellectual Property Organization (WIPO). By 1994, WIPO had reportedly held more than 30 training seminars across China for roughly 3,000 people. The US Department of Commerce has likewise made efforts to train local officials and has, in recent years, held training seminars in numerous coastal and interior cities. Multinational corporations have been at the forefront all along, pushing for reform and education. In 2000, 28 multinationals formed the Quality Brands Protection Committee to work with central- and local-government authorities and industry representatives to strengthen IPR in China. In the last two years the committee's membership has tripled.

Reaching the people

Most recently, China's mass media, especially television and the Internet, have opened new channels for public education and information dissemination. China Central Television broadcast its first live trial in 1998, a case filed by 10 Chinese film studios accusing three companies of copyright infringement. The broadcast ran nearly four hours, with detailed commentary and call-in questions from viewers. On World Intellectual Property Day 2002, the State Intellectual Property Office sponsored a public question-and-answer session at Wangfujing, Beijing's trendy shopping street, on patent, trademark, and copyright issues. The website Lawinfo China (*www.lawinfochina.com, see* p.36) also hosts in-depth discussions on the finer points of law, including case studies, procedure, and legal reasoning.

The government has sought to set an example of proper conduct and behavior in its in-house policies in advanced cities such as Beijing and Shanghai. Beijing has reportedly spent ¥1 million ($120,000) to publicize its use of authorized software for its 1.2 million students in primary and middle schools and colleges. The Tianjin municipal government launched a one-month drive to promote authorized software in spring 2002.

IPR consciousness is rising in China, and the media's coverage of violations and IP court cases has played an important role. Nevertheless, for the vast majority of Chinese, the role of IPR in society remains unclear. Educational campaigns—consistently reinforced in the media and by government example—are critical to the development of a meaningful IPR regime. These efforts, if reinforced over time, will lead to new customs and practices in the next generation, solidifying a new social structure from which a knowledge economy can blossom.

—Jonathan Raiti

Jonathan Raiti is an international specialist with the Urban Redevelopment Authority of Pittsburgh, PA.

Local authorities are slow to promote compliance, fearful that efforts to support enforcement will weaken the local economy (which is in many instances supported largely by counterfeit production, particularly in the poorer provinces) and increase unemployment.

Since accession, fines for infringement have risen but the number of raids and criminal prosecutions for IP rights violations in China has fallen.

Government infighting

Foreign businesspeople in China are generally confident that China's top leaders are truly committed to protecting IP rights. But many observers rely on the mistaken belief that China has a single force for IP rights protection that is integrated at all levels and in all places. The agencies in China responsible for registration and enforcement, including the national patent, trademark, and copyright offices, have horizontal and vertical dimensions. The array of bodies involved in IP in China are broad and deep because of the sheer size of the country and its relatively complex system of enforcement. China's IP offices have sub-offices and enforcement agencies scattered throughout the country at provincial and local levels. Turf wars among these offices are common, and coordination between different agencies remains a problem.

In the relatively brief time since WTO entry, internal disagreement has arisen over TRIPS Agreement compliance. Old rivalries among government ministries, in which some ministries support increased protection while others resist it, persist. And local authorities are slow to promote compliance, fearful that efforts to support enforcement will increase unemployment and weaken the local economy (which is in many instances supported largely by counterfeit production, particularly in the poorer provinces). The unemployment issue is a particular concern in regions such as the northeast where unemployment is relatively high and state-owned enterprises are failing. Serious crackdowns on counterfeit operations, the authorities reason, would only worsen an already dismal situation.

China's top leaders are aware of these problems and are also aware that the typical approach taken by officials—staging the occasional large-scale, high-profile raid accompanied by the requisite media frenzy—will not satisfy the requirements of the TRIPS Agreement or the international business community. Something more is needed. One place to start would be closing the gaps in compliance with the TRIPS Agreement.

Cautious optimism

Indeed, though China has made positive efforts in a narrow group of areas, such as the use of legitimate software by national and local governments, it must take a number of steps for complete TRIPS Agreement compliance. In general, the commitment made at China's top levels to protect IP in China will need to trickle down to the provinces, cities, towns, and villages through education, discipline, and training. Corruption at the local level—which leads to

Though China's government must sustain a dedicated, continuous effort to make its IP laws and practices comply fully with the TRIPS Agreement, the IP rules and regulations in place now are far better than those that existed one year ago.

local protectionism—will have to be reduced. Judges responsible for IP matters need better and more consistent training. The recently amended Judges Law, which requires new judges to pass an examination before appointment, will likely help. But additional steps, such as preparing a uniform judicial guide for application in IP matters, must be taken. Most important, China will have to increase, and liberally administer, punishment for violations of IP rights. As applied today, even the amended IP laws fail to provide adequate deterrence to continued violations.

It is important for foreign firms not to lose sight of the fact that China's compliance is a long-term effort requiring extensive transformation. Full compliance is a complicated process, and all parties responsible for registration and enforcement must be persuaded that effective IP protection is in China's best interests.

Meanwhile, WTO members are watching China very carefully. The country's accession documents subject it to transitional reviews annually in the first eight years following accession, followed by a final review in the tenth year. At present, the United States sends an envoy to China once a month to monitor developments. But monitoring did not begin well—in June 2002, China rebuffed US initiatives to define how China and WTO members will exchange the information it must submit for the transitional review.

Nevertheless, observers almost universally agree that cautious optimism is warranted. Though China's government must sustain a dedicated, continuous effort to make its IP laws and practices comply fully with the TRIPS Agreement, the IP rules and regulations in place now are far better than those that existed one year ago.

Chinese officials also appear increasingly honest about the present reality and the responsibilities the country bears as a WTO member. During a pre-accession judicial conference held in Xi'an, Shaanxi, in February 2001, a Chinese judge responsible for IP matters in his province stoically remarked, "We must not forget that accession to the WTO will not mark the end of our work, but the beginning."

Precisely. 完

The Fight Against Trademark Counterfeiting

Timothy P. Trainer

Not only are Coca-Cola®, Disney®, Marlboro®, Mercedes®, Microsoft®, and Nokia® among the world's best-known brands, but they are also some of the world's most valuable assets. *BusinessWeek* recently listed these six trademarks—and the patent, trade-secret, copyright, and integrated-circuit topography assets that they incorporate—as among the 10 most valuable in the world, with a combined estimated value of more than $238 billion. These trademarks and others are competing for part of the enormous Chinese market, despite the fact that China's counterfeiting industry puts them at constant risk.

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The future of foreign investment in China's manufacturing sector depends on the effectiveness of the country's anticounterfeiting enforcement

Worldwide scourge

Companies and the PRC and US governments are taking steps to battle the industry—but they have their work cut out for them. China's own Development Research Center, the research institution affiliated with the State Council, reported that counterfeiting in China is a $16 billion industry. China's transition to a market economy, its large work force, and the availability of newer technologies all contribute to the growth in counterfeiting, as some manufacturers seek easy profits by illegally using others' intellectual property (IP) assets. Unauthorized manufacturers blatantly and consistently use famous trademarks to sell their products and profit from well-recognized brand names.

The flow of Chinese-made manufactured counterfeit goods has kept US Customs officers busy: From October 1996 to March 2002, US Customs seized 3,866 shipments of counterfeit goods, worth more than $111 million, from China—far exceeding those from any other country. Though these numbers may seem low, it is important to remember that US Customs is able to inspect only a small percentage of the goods that enter the country.

The European Union recently issued a report stating that 18 percent of the 95 million pirate and counterfeit goods seized at external borders in 2001 were of Chinese origin, a percentage exceeded only by Thailand. If counterfeits that come through Hong Kong and those seized in eastern Europe are included, China becomes Europe's top counterfeiter.

The owners of the world's most famous trademarks have found China-made counterfeit and pirate products in countries around the world, including Brazil, the Czech Republic, India, Indonesia, Japan, the Philippines, Russia, Saudi Arabia, and South Africa, to name just a few. And counterfeit exporters take extreme measures to evade detection. In one case, New Zealand customs officers found counterfeit tobacco products valued at $900,000 hidden inside furniture.

The products targeted by counterfeiters is cause for concern. Counterfeiters in China target a wide range of products, including apparel, auto parts, cigarettes, computers, electronics, food, mobile phones, pharmaceuticals, skin-care products, tools, and toys. Counterfeiters applying famous trademarks and brand names to skin lotions and foodstuffs are unlikely to worry about quality standards—they are looking to earn profits. Thus, companies that own those trademarks must try to keep the market safe for consumers and prevent damage to their own reputations. Substandard counterfeit pharmaceuticals and machinery are particularly dangerous.

PRC government efforts

PRC government agencies have, during the past several years, amended an impressive number of IP laws and regulations to meet World Trade Organization (WTO) obligations, including the country's laws on copyrights and trademarks. But the real test of the system occurs when the owners of these assets, whether Chinese or foreign, attempt to obtain the protections that the laws afford. IP owners, despite available recourse via police, customs, and

The owners of the world's most famous trademarks have found China-made counterfeit and pirate products in countries around the world.

administrative authorities, often face reluctant prosecutors and an ill-trained judiciary when trying to address IP theft. In some cases, collusion between local officials and counterfeiters has been suspected.

Chinese officials have raided counterfeiters' facilities, seizing a broad array of counterfeit products, from alcoholic beverages and air conditioners to printer cartridges, mobile-phone products, and watches. Many famous trademark owners nevertheless contend that, despite these raids, prosecutions typically result in penalties that are too low to have a deterrent effect. Moreover, officials often fail to search for documents that might provide information about counterfeiting operations and the people involved.

Successful counterfeiters who run highly profitable operations will not be easily deterred. They have sophisticated networks that are difficult to uncover fully. In addition, the longer the counterfeiters are able to operate without fear of serious penalties, the more entrenched they become in the economy and the more brazen their illegal activities. The Chinese enforcement system must include harsh penalties such as the destruction of goods, seizure of equipment, monetary fines that are sufficiently high to remove financial incentives, and imprisonment for individuals who don't pay fines or who engage in large manufacturing operations.

The Chinese government will need to take bold steps at the national, provincial, and local levels to be effective. It will need to target all products and involve every aspect of the enforcement system: administrative agencies, police, prosecutors, and judges. Indeed, industry representatives, foreign governments, and intergovernmental organizations have conducted many enforcement training seminars throughout China over the past several years. Given the scope of the problem and the size of the country, however, much more education and training is necessary.

Companies take a stand

Trademark, copyright, and patent owners have long realized that they need to be active in the fight against counterfeiting and piracy (*see*

Criminal Enforcement Against Counterfeiters

The explosion of counterfeiting in China over the last 10 years is clearly a side effect of the country's breakneck economic growth. The rising tide of counterfeit exports likewise reflects China's ability to sell just about anything at a competitive price. Most observers assume that the weakness of the "rule of law" in China prevents the government from keeping counterfeiting in check. This assumption is basically correct, but as with anything else in China, the reality is a bit more complicated.

The courts

In China, as in all other countries, trademark owners can pursue counterfeiters civilly (usually for compensation and an injunction against further violations) or criminally. Chinese courts handle only a very small percentage of the counterfeiting cases that arise each year, however. The vast majority are instead dealt with by a range of administrative enforcement bodies, including local offices of the General Administration of Customs, the State Administration for Industry and Commerce (SAIC), and the Technical Supervision Bureau, the enforcement powers of which are generally limited to confiscating fakes and imposing monetary fines. Predictably, most counterfeiters have come to regard the threat of such economic penalties as a mere cost of doing business, and brand owners with experience in the field regard such fines as having little or no deterrent impact.

The most recent statistics from the PRC Supreme People's Court indicate that the success rate of China's criminal justice system in pursuing counterfeiters is no better this year than it was in 2001. Between January and May 2002, the criminal tribunals of the People's Courts convicted only 187 trademark counterfeiters. This number represents far less than one percent of the tens of thousands of counterfeiting cases that administrative authorities dealt with during this period.

Enforcement resources

In China, and most other countries with serious counterfeiting problems, civil remedies and administrative penalties are considered secondary tools for dealing with violations. Counterfeiters worldwide normally operate in the shadows, and it is inherently quite difficult for brand owners to recover compensation for damages, including investigation and legal costs, and for enforcers to collect administrative fines.

In recognition of these difficulties, the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) explicitly requires that criminal enforcement be made available to address both counterfeiting and copyright piracy (*see* p.12).

In most countries, trademark owners complain of the lack of resources and training for criminal enforcement. The same is true in China, and will likely remain so for the foreseeable future. (For a comparative view of counterfeiting in China and other countries, see the most recent "301 Report" of the International AntiCounterfeiting Coalition at *www.iacc.org*.) But in response to concerns of both local and foreign rights holders, including the 83 American, European, and Japanese corporate members of the Quality Brands Protection Committee (QBPC, a Beijing-based industry group that promotes anticounterfeiting efforts with the PRC government, judiciary, and other stakeholders), the Chinese government recently began providing more resources and training to Chinese police and prosecutors for anticounterfeiting work. As a result, a few foreign companies report significant increases in criminal prosecutions against targets they have pursued over the last year. Unfortunately, most QBPC members still report that the level of counterfeiting they suffer in China is the same as, or worse than, it was a year ago.

Ambiguities in the law

China's Criminal Code (last amended in 1997) allows prison terms of up to three years for counterfeiters if the circumstances are

The CBR, November-December 2000, p.28). Accordingly, companies have made substantial investments to protect their assets. Though all have different strategies depending on the perceived size of the problem, most maintain internal staff to work with appropriate enforcement authorities, whether they are police, customs, or other administrative authorities. Companies confronting large-scale counterfeiting and piracy problems need additional human and financial resources. Outside lawyers and investigators can be used to find counterfeit retail outlets or production sites.

Companies are also working together to try to preserve precious resources. A smart counterfeiter is likely to produce fakes of several companies' products in a particular product line. If a counterfeiter is illegally using one shoe manufacturer's trademark, they reason, why not use the marks of several others? This duplication occurs in many product lines, whether software, film, batteries, or auto parts. Thus, companies that are normally competitors in the legitimate market can work together to share the expenses for investigations and raids in order to stretch their enforcement dollars. Many corporate victims have formed associations, such as the International AntiCounterfeiting Coalition, Inc. and the Quality Brands Protection Committee, to combat the problem both operationally and politically.

A smart counterfeiter is likely to produce fakes of several companies' products in a particular product line. If a counterfeiter is illegally using one shoe manufacturer's trademark, he reasons, why not use the marks of several others?

deemed "serious" or the sales "relatively large" and up to seven years if the circumstances are "especially serious" or the sales "huge." These penalties are consistent with international standards. Government enforcers and brand owners alike have long complained, however, that police and prosecutors have been reluctant to commence criminal investigations and prosecutions because of the lack of guidance from the central government over the meaning of the terms "relatively large" and "serious."

In April 2001, just prior to China's WTO entry, the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Public Security issued two documents that attempt to clarify the standards for prosecution and imposition of criminal liability in cases involving trademark counterfeiting, the production and sale of "fake and shoddy goods," trade secret violations, and a range of other economic crimes. Unfortunately, most of the new counterfeiting standards in these documents are either ambiguous, unreasonably high, or both.

In connection with China's WTO review this fall and in response to complaints from local and foreign brand owners, the government and judiciary are now conducting research that may lead to new criminal liability standards in the coming months. Industry associations, including QBPC, hope that any new standards will, in particular:

1. Clearly define how the value of products seized in raids should be calculated, and set minimum valuation levels that are not unreasonably high;

2. Provide clear and practical standards for criminal prosecution of repeat offenders, particularly those who have already received administrative sanctions for counterfeiting or related offences;

3. Require criminal prosecution of counterfeit manufacturers or vendors that operate without a valid business license (so-called "underground operators"); and

4. Establish less onerous standards for criminal action against counterfeiters that target "well-known" trademarks.

Aside from criminal enforcement reforms, brand owners hope that new Customs regulations will eliminate or substantially reduce the obligation of brand owners to pay bonds and storage fees following seizures of counterfeit products. Perhaps more important, industry associations are seeking corresponding reforms that will require Customs to transfer promptly to police all cases involving the seizure of significant quantities of counterfeit goods.

Brand owners were encouraged by China's revised Trademark Law and its implementing regulations—which took effect December 1, 2001 and September 15, 2002, respectively—particularly provisions that raise maximum fines for infringers and that seem to require mandatory confiscation of all infringing products seized by local SAIC offices. The provisions also give trademark owners access to preliminary injunctions and allow up to ¥500,000 ($60,500) in compensation for statutory damages. The recently amended Copyright Law and Patent Law include similar changes.

To date, most of these new weapons for administrative and civil enforcement remain untested by foreign companies. The Supreme People's Court and SAIC's Trademark Office are expected to issue guidelines and interpretations by the end of 2002 to help brand owners and enforcement authorities use them effectively. But given the inherent limitations of civil and administrative enforcement measures, all eyes remain firmly fixed on reforms in the pipeline that may facilitate criminal enforcement.

—Joseph Simone

Joseph Simone is partner with Baker & McKenzie Hong Kong/Beijing. He is currently vice chair of the Quality Brands Protection Committee (*www.qbpc.org.cn*), representing British American Tobacco plc.

As counterfeiters produce increasingly sophisticated goods, customs officials should refine targeting techniques and information exchanges with IP owners.

Battles on all fronts

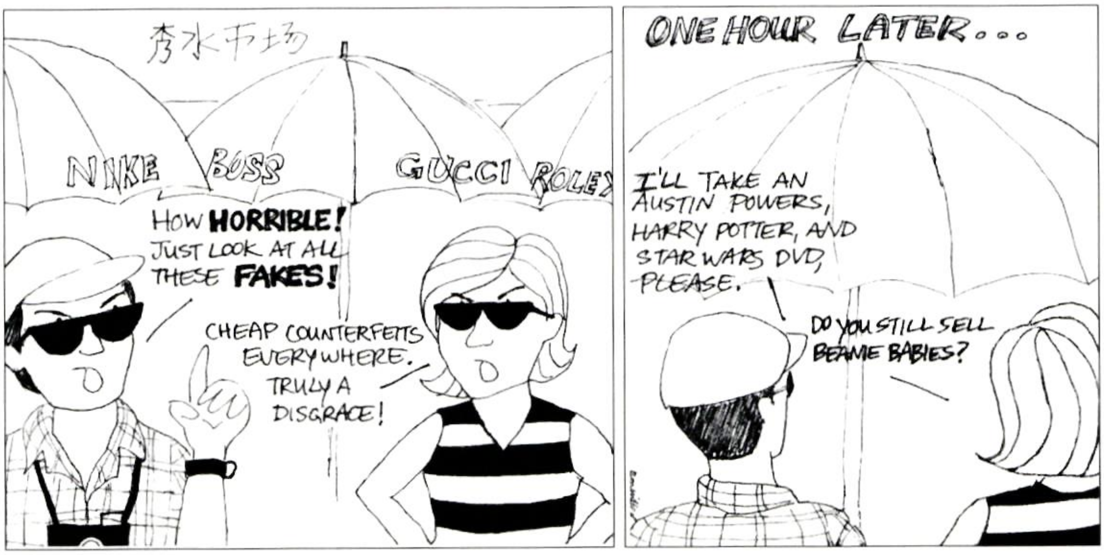
The global counterfeiting problem requires a strategy that includes not only ground-level operational raids, seizures, and arrests, but also political work to make decisionmakers understand the severity of the economic and social consequences, such as loss in government tax revenues, tolerance for crime, and risk to public health and safety. Chinese authorities are willing to take action when public health is threatened. The *Straits Times* recently reported that PRC officials discovered more than 100 fake brands of pharmaceutical products that were either ineffective or deadly.

The sheer volume of counterfeit goods from China poses a massive challenge to customs agencies around the world. European and US customs officials must continue to expand cooperation with Chinese customs authorities to improve detection rates. And as counterfeiters produce increasingly sophisticated goods, customs officials should refine targeting techniques and information exchanges with IP owners (*see The CBR*, January-February 1999, p.8).

War of attrition?

IP owners will have to decide if enough is being done to warrant their continuing presence in China. Unfortunately, leaving China may only make the situation worse—PRC authorities are unlikely to pursue counterfeiters if the IP owners are absent.

Ultimately, the success of China's counterfeiting industry is exacting a huge toll on China itself—the industry injures consumers, damages China's international reputation, undermines confidence in its legal institutions, and robs domestic inventors and innovators. Indeed, as China's own industries develop, the call for IP protection from domestic companies may prove to be the most important factor in improving China's IP enforcement record. The battle to gain control of a market rife with counterfeit products requires time and commitment at all levels. The question for some companies may be simply: How long can we afford to wait before the fight to protect these assets pays off? 完



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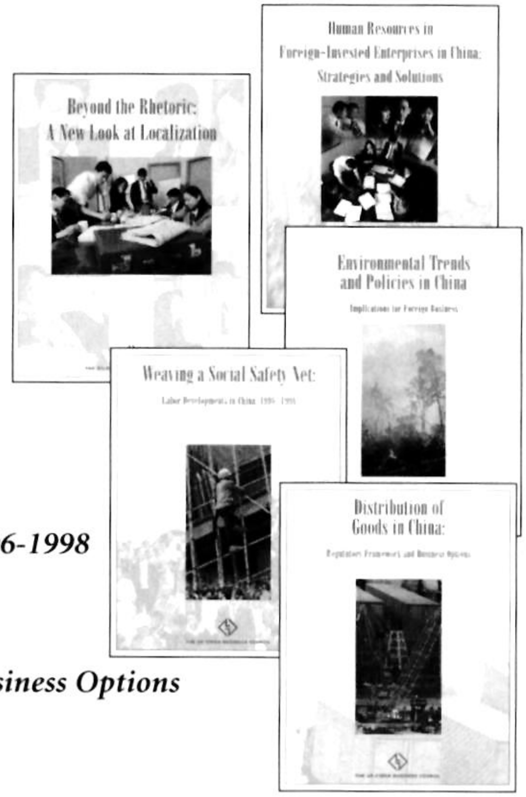

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THE CLEAN DEVELOPMENT MECHANISM IN CHINA

TAUNA SZYMANSKI

China may emerge as the world's largest market for investment projects that reduce greenhouse gas emissions, so companies should start planning their projects now

Tauna Szymanski
will receive her JD degree from Stanford Law School in May 2003 and is the editor-in-chief of the *Stanford Environmental Law Journal*. She previously served as a US-China government relations consultant. Szymanski spent the last two summers working in Baker & McKenzie's Global Climate and China Practice groups in Chicago and Hong Kong and would like to acknowledge the assistance and support of her former colleagues in the research and preparation of this article.

Most existing and potential foreign investors in China assume that the Kyoto Protocol is irrelevant to their business, particularly if they are US-based companies. Indeed, many people believe the treaty imposes economic constraints on corporations. But the protocol's Clean Development Mechanism (CDM), created to promote and facilitate investment in greenhouse gas emissions-reduction projects, will provide business opportunities and encourage economic growth. CDM projects in China, in particular, promise to generate revenue and other benefits for companies from industrialized countries that invest in qualifying projects.

China ratified the protocol in August 2002. With Russia and Canada leaning toward ratification, the protocol may take effect within the year. When it does, the demand and premium for viable CDM projects will escalate rapidly.

What is the CDM?

Article 12 of the Kyoto Protocol establishes the CDM to foster sustainable development in developing countries and to help developed countries meet their mandated greenhouse gas emissions-reductions targets cost-effectively (*see* p.28). Investment in emissions-abating CDM projects, therefore, will generally be undertaken *by* entities from developed countries *within* developing countries. Developed-country entities may in turn use the certified emissions reductions (CERs) accumulated through such projects to meet their national commitments under the protocol. Only nations that have ratified the protocol will receive CERs—thus precluding official participation in the CDM by the United States and US entities. US companies need not sit on the sidelines, however—they can undertake CDM projects and transact CERs through foreign subsidiaries or other avenues.

Though protocol rules dictate precisely what projects will qualify to earn CERs, any project that results in fewer greenhouse gas emissions than before will potentially qualify. For example, a 600 MW wind farm in Inner Mongolia, replacing coal-fired power in the region, would abate carbon dioxide emissions by about 500,000 tons per year, according to PricewaterhouseCoopers's climate change services. The developed-country entity investing in the wind farm, assuming it structured the project to retain ownership of the CERs, could opt to sell these credits on the international market to a company anticipating a regulated reduction in its own emissions. Thus the buyer continues to emit greenhouse gases at an equivalent level and the seller could generate an added revenue stream of up to $25 million over 10 years (at an estimated carbon dioxide reduction price of $5 a ton).

The operational details of the CDM were to be finalized in October 2002 at the Eighth Conference of the Parties to the United Nations Framework Convention on Climate Change in New Delhi (after *CBR* went to press). In the meantime, CDM projects established after January 1, 2000 are creditable and governed by existing rules.

China's role in climate change and the CDM

China is the world's second-largest emitter of greenhouse gases, behind the United States, and its growing economy and large population are becoming wealthier and more consumption-oriented by the day. Electricity demand is expected to grow 5.5 percent per year through 2020. With its thirst for foreign investment and its dependence on carbon-intensive coal as a primary source of energy, China may become the largest single recipient of CDM projects. In fact, the China Council for International Cooperation on Environment and Development forecasts that China will draw 60 percent of the CDM's potential benefits, because of the comparatively low cost of emissions abatement in China. The Asian Development Bank estimated that the Chinese market for carbon emissions reductions could amount to $13 billion per year.

China is playing an active role in negotiating both the details of the broader Kyoto treaty and the operational establishment of the CDM Executive Board under the treaty's Secretariat. Indeed, one of the alternate members of the first CDM Executive Board is Lu Xuedu, a Ministry of Science and Technology official who has long been active in the Kyoto negotiations.

China also recognizes the negative domestic impacts of climate change. Officials in China's Meteorological Administration directly attributed last summer's heavy flooding, which killed more than 1,000 people, to climate change. The rains occurred in normally arid areas and caused at least $3.6 billion in damage to agriculture, transportation, power, and other infrastructure, according to official estimates. Worldwide, the effects of climate change are predicted to cost $300 billion annually by 2050, according to the German insurance company Munich Re.

Despite its reluctance to adopt binding targets, China is one of the few countries in the world to have delinked, on a long-term basis, its economic and energy emissions growth rates. Its energy intensity (the ratio of energy consumption to GDP) has fallen dramatically since the 1970s, largely as a result of energy efficiency measures. And its carbon dioxide emissions decreased 7.3 percent between 1996 and 2000, a period of high economic growth, according to the November 2001 issue of the journal *Science*, though these emissions seem to be on the rise again.

China likely considers the CDM as killing three birds with one stone, resulting in more economic development, mitigated global climate change, and less acid rain.

Understandably, China views the CDM as a way to attract more foreign investment, with the added (though perhaps secondary) benefit of obtaining a cheap fix for some of its domestic environmental problems. Since coal is not only the primary source of China's contribution to global climate change, but also the cause of China's major domestic environmental menace—acid rain—China likely considers the CDM as killing *three* birds with one stone, resulting in more economic development, mitigated global climate change, and less acid rain.

PRC authorities

As early as 1990, China established a National Coordination Group on Climate Change, made up of 13 ministries and agencies. The Ministry of Foreign Affairs represents China at the multilateral Kyoto Protocol and CDM negotiations while the State Development Planning Commission (SDPC) takes the lead on domestic climate change and CDM issues.

SDPC will also likely serve as the lead coordinating agency for China's eventual CDM National Authority, which is in the process of being established. This authority will draw up any additional eligibility requirements for CDM projects in China and will grant the required "national approval" letter, which certifies that proposed projects promote sustainable development.

For the moment, the government appears both tentative and noncommittal about formally endorsing CDM projects. Chinese officials repeatedly emphasize the preliminary nature of the government's work on the CDM and are still studying its potential costs and benefits. The government has not yet issued formal guidelines

If China imposes onerous requirements and large taxes on projects, it may lose CDM investment to other large developing countries such as India and Brazil.

indicating what types of projects it might approve to generate CERs. Officials also appear to be debating internally a number of difficult technical and political issues, such as how to establish project emission baselines and whether or not to tax or retain ownership of some CERs. Though a few other countries have discussed the possibility of a CER tax, foreign corporations warn that such a tax will likely hurt the financial viability of CDM projects, thus diminishing investor interest.

If China imposes onerous requirements and large taxes on projects, it may lose CDM investment to other large developing countries such as India and Brazil. Michael Molitor, director of Climate Change Services for PricewaterhouseCoopers, foresees direct competition among "super-CDM" countries to lure plum investment dollars. As soon as the protocol enters into force, Molitor predicts that a "bulge" of investment monies will rush to structure CDM projects in the most welcoming and cost-effective areas with the fewest barriers to entry.

Nevertheless, a CER tax could serve as a significant source of revenue at a time when the Chinese government is facing huge revenue shortfalls. Several foreign government representatives have observed hints of political infighting among Chinese ministries—virtually all of whom are facing budget cuts—over the inflow of CDM projects and thus the power to levy and collect portions of CERs as taxes.

The early bird...

There is no guarantee that the Kyoto Protocol will enter into force and that CERs or other verified emissions reductions will become valuable commodities under a formal regime. Forward-looking companies are not deterred by the lack of formal institutional mechanisms, however, and are structuring current projects to reduce emissions even in the absence of a regulatory framework requiring them to do so.

Multilateral bank and governmental funding is often available to support CDM projects, as long as it does not displace existing overseas development assistance. The Asian Development Bank, the World Bank, the Global Environment Facility, and others have financed the CDM and other emission-reduction projects in developing countries. In addition, the Dutch Government and the World Bank's Prototype Carbon Fund are purchasing emissions reductions from eligible projects, often providing additional up-front financing.

How to pursue a CDM project in China

The October 2001 Marrakech meeting of signatories to the climate change convention established the main rules governing CDM operation and CER issuance. The CDM project cycle begins with the investor and host entity drawing up a project design document that includes a quantified estimate of greenhouse gas reductions. The project participants then establish the "business-as-usual" emission baseline and the "project boundaries" to demonstrate that the project brings additional environmental benefits. Host countries may set more specific guidelines regarding emission baselines, sustainable development, financing, and other issues. At this

The Basics of Emissions Reductions: A New Commodity?

More than 160 nations met in December 1997 to negotiate the Kyoto Protocol, which commits its industrialized-nation parties to reduce their contribution to global climate change. The protocol will likely enter into force within the next year, without the participation of the United States.

The Kyoto Protocol confers on its ratified parties both a right to emit and a right to trade verified emissions reductions. Developed countries are assigned legally binding reduction quotas for six greenhouse gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, chlorofluorocarbons, and sulfur hexafluoride. National reduction targets range from 8 percent below 1990 emissions levels to 10 percent above by the year 2012.

After 2012, developed countries can buy and sell these greenhouse gas emission allowances to meet their commitments more efficiently. The standard unit of this new commodity is measured in tons of "carbon dioxide equivalent." If the gas at issue is not carbon dioxide but one of the other greenhouse gases, the "equivalent" is calculated as a standard multiple of the "global warming potential" of the gas. Trading thus easily incorporates all six gases.

Most developed-nation parties, to reach their protocol targets, will likely allocate quotas among their largest-emitting industries and will establish domestic greenhouse gas emission-trading programs. Accordingly, trading is expected to take place among national governments as well as among private and public entities within a developed country. Experts estimate that the greenhouse gas emissions trading market will climb to $100 billion a year after the trading provisions of the protocol enter into force.

In the meantime, the protocol mechanisms of Joint Implementation (for projects in developed countries) and the Clean Development Mechanism (for projects in developing countries) enable public and private developed-country entities to undertake emissions reduction projects in other countries and to apply these credits, known as certified emissions reductions, against their own domestic targets imposed under the protocol.

—Tauna Szymanski

point the project must also obtain any necessary financing. The project proponents must also obtain a letter of approval from the CDM National Authority of the host country.

Adding to project costs is the requirement that an independent third party validate the project as eligible to participate under the CDM. Some organizations already active in validating, monitoring, and certifying emissions reductions include DNV, Ecosecurities Ltd., IT Power, KPMG, and PricewaterhouseCoopers. Investors may also need the assistance of auditors, lawyers, and consultants to locate the most appropriate project partners, accurately establish emission baselines and boundaries, clearly define ownership of credits generated, and monitor the project's emissions reductions (*see* below). These are potentially significant costs—the World Bank recently estimated that validation, monitoring, and verification could easily cost $250,000 per project. Thus, budgets must consider and account for this outlay in ascertaining financial viability. Yet a number of companies are swallowing these costs to gain experience, take advantage of the low competition, develop relationships, and improve public and community reputations (*see* p.30).

Investors must register the project with the CDM Executive Board under the protocol's Secretariat. If the project meets all requirements, implementation of the project proceeds, with project participants hiring independent monitoring and certifying entities. The CDM Executive Board then issues CERs and deposits them in the investor country's national registry, which will contain accounts for private and public entity investors.

Sectors for investment

Because China relies on coal to generate almost three-quarters of its power, the electricity sector contains perhaps the largest potential source of viable CDM projects. But Scott Roberts of consulting firm Cambridge Energy Research Associates downplays the short-term potential of generating CERs in this sector. He notes that the massive and complex restructuring of the State Power Corp. (SPC) has distracted regulators from environmental goals and has discouraged foreign investors from exploring traditional coal-fired power plants, not to mention more advanced environmentally friendly power projects that are usually less commercially viable. In addition, in recent years foreign investors have lost enthusiasm in this sector after local players reneged on power purchase agreements. Another disincentive to introduce cleaner and more efficient technologies to China's power sector lies in the fact that SPC regularly reviews the financial performance of generators and ratchets prices downward if they become more efficient.

Forward-looking companies are not deterred by the lack of formal institutional mechanisms, and are structuring current projects to reduce emissions even in the absence of a regulatory framework requiring them to do so.

In the shorter term, CDM investment in China will likely involve incremental projects

Important Questions for Potential CDM Project Participants

Martijn Wilder, the Asia-Pacific regional director for climate change for the global law firm Baker & McKenzie, notes that companies need to appreciate the opportunities and liabilities that the CDM creates before committing to a project. He adds, however, that the CDM is a key mechanism by which multinational corporations in certain jurisdictions can obtain additional revenue and government support. Wilder has advised potential CDM project participants in China, at a bare minimum, to answer the questions listed below before finalizing project contracts and side agreements on emissions reductions rights.

- **Baselines** What are the current emissions levels from the standard facility of your project type in the region? This information will serve as the baseline above which emissions reductions by the planned project will be "additional."
- **Reduction potential** How do the existing emissions profiles alter with the adoption of the new technology? How many tons of emissions reductions might be generated?
- **Ownership** Who will own the resulting emissions reductions? Who owns the project facilities? Who actually controls and operates the project? Who owns the equipment, if any, being installed to facilitate the emissions reductions of the project facility?
- **Liabilities** If the facility already exists and is being acquired, or has previously been acquired, were all assets and liabilities acquired? Were any arrangements entered into regarding emissions reductions?
- **Constraints** Do any other commercial arrangements exist that may affect the ability to generate and transact emission reductions?

Answering these and other questions will help ensure that emissions reductions are real and that future ownership of emissions reductions will not be in doubt. Contractual language must be straightforward and clear, and this may require providing a primer on the basics of climate change to the Chinese party and undertaking careful subsequent negotiations.

Wilder does not advise US companies to commence CDM projects except through their foreign subsidiaries or as "unilateral CDM" projects. He notes that because the United States is not a party, US entities will not even be permitted to register their projects under national registries. He adds, "We're seeing a lot of competition between Australian, US, UK, and other EU companies to get new investments in China, particularly in renewable energy projects—the hope is that many of these will become CDM projects."

—*Tauna Szymanski*

In the shorter term, CDM investment in China will more likely involve incremental projects such as the introduction of highly efficient boilers, energy-efficient buildings, coalbed and landfill methane recovery and utilization, biomass gasification, wind energy, solar heat, electric and natural gas-fired public transportation, and district heating improvements (ideally with natural gas boilers).

such as the introduction of highly efficient boilers, energy-efficient buildings, coalbed and landfill methane recovery and utilization, biomass gasification, wind energy, solar heat, electric and natural gas-fired public transportation, and district heating improvements (ideally with natural gas boilers). If projects like these can demonstrate greater efficiency and lower emissions, CDM potential exists.

Qinghua University's Global Climate Change Institute has estimated the financial benefits of one such project. A few years ago, roughly 500,000 industrial boilers existed in China, consuming about 400 million tons of coal each year. Retrofitting 15 percent of these, they predicted, would require an initial, one-time investment of \$205 million and result in a carbon dioxide emissions reduction of 16.2 million tons a year. Fuel savings would be 7.5 million tons of coal per year, saving \$226 million annually. By structuring the project under the CDM, revenue generated from the sale of CERs would provide significant extra income to the investors.

In this uncertain, pre-protocol stage, a number of institutions are undertaking studies of CDM project feasibility, market opportunities, and policy recommendations. The Asian Development Bank, the German Development Cooperation organization, Qinghua University, SDPC's Energy Research Institute, the World Bank, and organizations under the Canadian, Dutch, British, German, and Italian governments are all involved in studies of the future operation of the CDM in China.

Likely constraints on CDM projects

China's government will likely consider a number of factors in evaluating CDM projects for approval: the project's contribution to economic development, including job creation; environmental benefits, including mitigation of greenhouse gas emissions and more localized pollution reduction; conditions placed on technology transfer, including accounting for local capacity and localization of the technology; and the scope and scale of investment, including the extent to which it involves state-owned enterprises. China's priority CDM projects will lie in the areas of energy efficiency, renewable energy, and the substitution of fossil fuels.

The central government's initial skepticism toward CDM projects and the issuance of CERs is likely to result in an assertion of control not only over project approval, but also monitoring, verification, and granting of credits. An imposition of strict oversight could be an additional deterrent to foreign CDM investors in China's otherwise promising market.

US firms shut out?

US entities face a potentially deal-breaking obstacle because their current government refuses to ratify the Kyoto Protocol. This could result in a virtual shutting-out of US entities from worldwide CDM projects, in protest of or retribution for US intransigence on the treaty, or for the simple practical reason that project partners and hosts want as much certainty as possible with regard to earning additional income from the eventual sale of CERs. And, as mentioned earlier, if the United States remains a non-party, US entities by definition cannot generate CERs.

US entities may get around this rule by structuring CDM projects in developing countries and transacting CERs through their foreign subsidiaries. They may also be able to undertake a "unilateral CDM" project. In such a project, the contract would assign all emission-reduction rights to the host country entity, for later private contractual transfer to the US investor. A few projects have already adopted this arrangement, and investors appear quite willing to accept any risks associated with its uncertainty under future CDM rules.

In the meantime, before the protocol enters into force and emissions trading begins, an ac-

Why Undertake Early CDM Projects?

- Gain experience for anticipated future regulation of greenhouse gases
- Generate additional revenue
- Improve public and community relations
- Insure against future regulation
- Hedge against potential shareholder liability suits
- Establish market dominance
- Obtain low-cost abatement projects, or "low hanging fruit"
- Develop relationships in host countries
- Help guide and advise governments on future regulation
- Contribute to public health and environmental improvements

—*Tauna Szymanski*

tive speculative market for emissions reductions has emerged. Companies, particularly those in the European Union already facing domestic and regional regulatory constraints on greenhouse gas emissions, have been buying and selling verified emissions reductions created by various investment projects worldwide. Brokers and platforms like Natsource LLC, CO2e.com, and Cantor Fitzgerald LP have been active facilitators of these trades, which have ranged between $4 and $8 a ton for carbon dioxide emissions reductions. China presents an attractive market for generating even speculative emissions reductions because of the range and low price of emissions abatement options.

A "carbon-constrained future" is virtually inevitable, and all investors in China should begin thinking now not only about how they will adapt to legal restrictions on emissions imposed by their home countries, but also how they might benefit financially—and gain early experience—by participating in the CDM.

Adapting to a "carbon-constrained" future

Potential investors should be open-minded but cautious about the costs of structuring their project within the CDM framework, but if the project meets China's basic criteria and will generate a large number of CERs, then costs will be less of a deterrent. A "carbon-constrained future" is virtually inevitable, and all investors in China should begin thinking now not only about how they will adapt to legal restrictions on emissions imposed by their home countries, but also how they might benefit financially—and gain early experience—by participating in the CDM.

Worldwide, the possibility of generating credits from CDM projects has only existed for three years. The status of the CDM is particularly new and uncertain in China. Nevertheless, the active speculative market in verified emissions reductions, coupled with the probable future entry into force of the Kyoto Protocol, suggest that project investors should seriously consider emissions-reduction aspects of their projects in developing countries. China's size, economic growth, and energy mix offer huge opportunities for generating revenue from the sale of CERs. Given its absence of binding emissions-reduction obligations, the CDM is also China's best bet to reduce its own considerable contribution to global climate change. 完

WINNERS AND LOSERS UNDER CHINA'S E-SIGN LAW

THOMAS R. HEALY AND KEVIN E. DUKE

A forthcoming law on electronic signatures could affect foreign firms' competitive advantage in China

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By late 2003, China will likely have passed new laws governing electronic signatures that will make electronically executed contracts as legally binding as those signed with a pen. This new "e-sign" law will be the first in a series of administrative regulations for e-commerce that the State Council is expected to issue over the next several years (*see* p.34). It follows on the passage of the PRC Contract Law in 1999, which generally recognized the validity of contracts documented electronically, but did not specifically address authentication or electronic signatures. In the coming months, as the e-sign law's formal drafting process gains momentum, China's leaders will face many of the same policy choices that produced winners and losers in the United States and the more than 50 other countries that have passed their own electronic signature laws.

As the process moves forward, American and international companies looking to do business in the world's most populous market should closely watch how four questions are resolved. The first is whether China's laws provide the certainty and predictability international businesses demand. The second relates to process: Why will China's e-sign law be issued by the State Council as an administrative regulation instead of by the National People's Congress (NPC) or its Standing Committee (SCNPC) as legislation? The third and fourth questions are policy choices: Will China's e-sign law be "technology neutral"—that is, will it refrain from favoring one technology over another—or will that concept be abandoned in hopes of accelerating e-commerce activity in China? And fourth, will the law address consumer protection issues?

Question 1: Rule of law and e-commerce

International businesses want legal certainty from a host country's law and justice from its courts, and there has been reason to be skeptical about the strength of the rule of law in China. However, recent trends and developments indicate that China's laws increasingly provide the certainty and predictability that businesses demand. Over the last 10 years, the NPC has largely followed its declaration that the state must adhere to the law, and that the application of a law should not adjust with changes in leadership or the views of particular leaders. The Communist Party's continuing support for the adoption of rules to guide a socialist market economy and its consent to the application of certain capitalist innovations have allowed market participants to stimulate further economic growth. Other positive indicators—entrance into the World Trade Organization (WTO), the rise in the number and social status of Chinese lawyers, the cross-pollination effects from Hong Kong's judicial system, the number and complexity of laws passed since 1992—suggest that law matters more in China today than it did 10 years ago.

Another strong indicator that the rule of law matters in China, particularly with respect to e-commerce, comes from the Chinese government's forecast for growth in its e-commerce marketplace: The current Five-Year Plan (2001-05) anticipates that e-commerce will grow from less than $1 billion in 2001 to more than $20 billion in 2005. The PRC government recognizes that laws that facilitate e-commerce will be needed to foster such growth.

The current Five-Year Plan (2001-05) anticipates that e-commerce will grow from less than $1 billion in 2001 to more than $20 billion in 2005. The PRC government recognizes that laws that facilitate e-commerce will be needed to foster such growth.

Question 2: The rulemaking process

The process by which China's e-sign policy would become law, namely promulgation by the State Council, is a favorable consideration for international businesses seeking certainty in the laws applicable to electronic transactions in China. As the highest administrative organ in China, the State Council is the dominant lawmaking body for China's social and economic affairs. The country's premier leads the State Council, whose members include vice premiers, state councilors, select ministers of various ministries and commissions, the secretary-general, the auditor-general, and the governor of China's central bank. Although the State Council could draft an all-inclusive body of legislation for deliberation by the NPC or SCNPC, this option was rejected in 2000 when the NPC mandated that the State Council issue rules governing different aspects of e-commerce as separate, but related administrative regulations (*see* Figure).

Furthermore, promulgation of these regulations by the State Council will go a long way toward cleaning up the patchwork presented by competing municipal regulations and the regulatory overlap among several national ministries and commissions, including the Ministry of Information Industry, the Ministry of Foreign Trade and Economic Cooperation, and the State Administration for Industry and Commerce. It is estimated that this diffused regulatory scheme encompasses more than 100 different national, provincial, and local e-commerce regulations. Since the State Council's administrative regulations stand only under laws passed by the NPC or SCNPC and pre-empt any local laws, companies and consumers should be able to rely on these administrative regulations, including the e-sign law, for definitive guidance on transactions in digital information.

Question 3: Technology neutrality

The first critical policy decision facing the State Council is whether China's e-sign law should follow the principle of technology neutrality. That principle is a cornerstone of the Electronic Signatures in Global and National Commerce Act, or "E-SIGN," which the United States enacted into law in June 2000, and of the United Nations Commission on International Trade Law (UNCITRAL)'s Model Law on Electronic Signatures. The argument over technology neutrality centers on whether legal structures should advance specific technologies that support secure e-commerce. Proponents of technol-

China's E-Sign Law Potential Timeline

NOTE: MOFTEC = Ministry of Foreign Trade and Economic Cooperation

Choosing technology neutrality could mean fewer electronic transactions in the short run, as businesses will hesitate to devote resources to compliance if they are uncertain that the technology they select will in fact be compliant.

ogy neutrality believe that legal bias toward one technology will undermine investment in other technologies. In the United States, however, one problem with a technology-neutral approach has been a lack of clarity about which technology or process actually satisfies E-SIGN's requirements—especially on the issues of integrity (ensuring the communication is protected) and authentication (verifying the identity of the person sending the message).

Choosing or rejecting technology neutrality is a choice between innovation strategies—and the State Council's decisions will likely affect the growth of e-commerce in China. Choosing technology neutrality could mean fewer electronic transactions in the short run, as businesses will hesitate to devote resources to compliance if they are uncertain that the technology they select will in fact be compliant. Critics of E-SIGN in the United States argue that business and government have delayed investment in currently available technologies while waiting for common-law rules to develop through state and federal litigation in the United States. Since China is a civil-law country, the process for finding the solution will be somewhat different, though the results may be no more satisfactory. In China's civil law system, the burden of defining what satisfies legal standards could fall on China's scholars and not the judiciary.

On the other hand, if the State Council chooses immediate certainty by specifying a particular technology in its e-sign law, consumers and companies will understand exactly what they need to do to ensure legally enforceable contracts. For example, China's e-sign law could require the use of public-key infrastructure (*see* p.35), rather than a biometric or other authentication procedure, to verify that an online transmission has originated from the person who claims to have made it. This policy option has been considered in the drafting processes in the European Union, Brazil, and, most visibly, UNCITRAL, where Germany and several other countries pushed for a stronger regulatory approach to digital signatures. Supporters of this approach believe dispute resolution should occur more rapidly and posit that legal certainty should, all other things remaining the same, stimulate an increase in the total level of

Next at the Plate?

The State Council's e-sign law will be the first in a series of administrative regulations that will cover a broad range of e-commerce activities in China. Other regulations will likely address:

- Electronic payment
- Electronic data messaging
- Electronic evidence
- Privacy
- Electronic information transactions
- Jurisdiction and transnational disputes

Although each of these areas is critical to the development of e-commerce in China, regulations dealing with electronic information transactions will be especially important to software licensors and licensees. In the United States, widespread adoption of the Uniform Computer Information Transactions Act (UCITA) has been delayed by opposition from several quarters, particularly software licensees (including large companies, libraries, and consumer protection groups) and the attorneys general of 32 states. In particular, the initial "self-help" provisions, whereby a software licensor could remotely disable software without notification in the event of a license dispute, caused industrial manufacturers grave concern at the prospect of millions of dollars in lost revenue because of the suspension of manufacturing operations by a disgruntled software vendor. Manufacturers, financial services firms, and other companies in China that depend on electronic transactions would welcome an administrative regulation that limits, or even prohibits, this kind of self-help.

On the other hand, UCITA would help software licensors protect their products in cases of copyright infringement and outright piracy because, for a software licensor, remote disabling and non-transferability provisions are very effective remedies. In China, where software piracy is a widespread problem, software licensors have a vested interest in making sure that their concerns are clearly addressed by the State Council.

As legal scholars and policymakers in China consider how to facilitate electronic information transactions, they will face the same difficulties and competing interests faced by UCITA's drafters and state legislators. The strength of the competing interests, whether they be suppliers and distributors, retailers and consumers, or licensors and licensees, and the clarity of their respective positions could determine who ends up with a competitive advantage.

—Thomas R. Healy and Kevin E. Duke

e-commerce. However, even proponents of mandating a specific technology concede that after the immediate benefit has occurred, the growth in e-commerce in the long run may be depressed below optimal levels if the cost of the mandated technology either hampers innovation or needlessly increases the cost of transactions.

Clear winners will emerge if the State Council chooses not to adopt technology neutrality and identifies specific products or technologies as compliant. Either choice will affect the demand for Internet hardware, software, and services as China's e-commerce industry develops. The policy choice may also affect profitability and competitive advantage for companies in various industries—including insurance, banking and financial services, consumer products, and manufactured industrial goods—as they attempt to reduce administrative costs and expand market reach in China through electronic contracts and online transactions.

Question 4: Protecting consumers

Finally, consumer protection issues could also have a substantial impact on the final form of China's e-sign law. With accession to the WTO, and with more goods and services available to Chinese citizens, concern for consumers' rights continues to grow in China. Indeed, officials at the March 2002 NPC session debated such issues as consumer protection, dispute resolution mechanisms, and revisions to China's consumer protection law.

The consumer protection issues that colored the E-SIGN debate in the United States, such as electronic versus paper notice requirements for modification of warranties or termination of utility service, will likely be prevalent in China's consideration of the e-sign law. However, China may reach different conclusions because of various factors that differentiate China from other countries, including disposable income, state social services, and Internet, landline telephone, and wireless penetration rates.

Planning ahead

China's e-sign law will be an important development for US and international companies interested in expanding their electronic transactions to China. As the rest of the world's e-sign debates have shown, competitive advantages can be gained or lost. Companies that wish to take advantage of the benefits and economies of electronic contracting in China should consult with their counsel to ensure their practices provide adequate authentication to support a valid and enforceable agreement. 完

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E-Sign Laws: Technology Mandates Vs. Choices

Legal scholars and policymakers in China are giving serious consideration to abandoning technology neutrality for electronic signatures in favor of mandating the use of public-key infrastructure (PKI)—a security system that allows users of the Internet to exchange information privately by using a public and private cryptographic key pair, thus reducing the risk of compromised passwords. Obvious beneficiaries of such decisions are providers of PKI authentication products and services, such as Verisign, Inc. or Network Associates Technology, Inc., as well as e-commerce participants that have already adopted PKI.

Although a mandate of specific technology might inhibit development of other authentication technologies, it may also increase companies' use of electronically executed contracts. More than one year after the enactment of the Electronic Signatures in Global and National Commerce Act (E-SIGN) in the United States, few industries have widely adopted e-sign technologies; even financial services companies and others that supported E-SIGN are not taking advantage of the legally recognized enforceability sanctioned by E-SIGN. Part of the problem has been uncertainty as to which authentication technology to use.

Nevertheless, recent "e-government" technology choices might have the same effect on the use of electronic signatures. In a process that governments of other nations have watched closely, four US government agencies (the departments of Defense and Treasury, the National Finance Center of the Department of Agriculture, and the National Aeronautics and Space Administration) recently signed on to an interoperability program requiring the use of PKI technology. Their choice may lead government contractors and others to follow suit in order to maintain compatibility. In China, policymakers can use this example to learn how technology choices in national or provincial e-government programs can influence the choices of private e-commerce participants.

—Thomas R. Healy and Kevin E. Duke

www.China

WTO/GATT Uruguay Round Goods Schedules

are posted on a recently revised World Trade Organization (WTO) page, which also explains the format and content of goods schedules for the lay reader. The page offers downloadable files of goods schedules for all signatories of the Uruguay Round, completed in 1994. Visitors can also link to a page with schedules for new WTO members and a page with services schedules. The goods schedules are available only in their original languages.

www.wto.org/english/tratop_e/schedules_e/goods_schedules_e.htm

The US Trade Representative Office of China, Hong Kong, Mongolia, and Taiwan

has posted an extensive executive summary of China's WTO commitments. The summary covers every aspect of China's Protocol of Accession, including rule of law, existing multilateral WTO agreements, trade liberalization, safeguard mechanisms, and US monitoring efforts. The site also posts a link to the Department of Commerce's China Gateway site (**www.mac.doc.gov/china**), which includes sector-specific fact sheets.

www.ustr.gov/regions/china-hk-mongolia-taiwan/accession.shtml

The Beijing Investment Platform

lists more than 70 infrastructure, real estate, and industrial projects in the Beijing area that are open to foreign investment. This free site also posts English translations of Beijing government regulations relating to foreign investment, information on taxation and the investment application process, and the text of a number of investment-related documents, including the Catalogue Guiding Industrial Development in Beijing and the Beijing General Development Plan. Visitors can also find contact information for foreign-investment authorities and links to the websites of each of Beijing's 18 districts.

www.bjinvestus.com

Chinainvest,

run by the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), has more than 1,400 investment projects listed in its free database. Visitors can browse the projects by sector, location, or keyword. The site also includes contact information and links to various development zones and regional governments, as well as information on commercial exhibitions and fairs.

www.chinainvest.com.cn

Lawinfo China

features translations of PRC regulations, case studies, law review articles, and other legal documents. The archive includes more than 2,000 translations of laws and regulations, including all National People's Congress and State Council laws since 1949 and most departmental or local laws related to foreign investment. The service, which is run by a joint venture between the Beijing University Law School and Orchid Inc., takes recommendations for priority translations and will respond to requests for specific translations of technical terminology. The cost is $10 per translated document or $500 for a year of unlimited downloads. The Chinese-language version of this site (**www.chinalawinfo.com**) includes free copies of recent laws and hosts online discussions of legal topics.

www.lawinfochina.com

China Internet Information Center: Western Provinces

offers a wealth of background information on China's 12 western provinces, which constitute 56 percent of the country's land area and 23 percent of its population. Visitors to the site can find information on each province's natural resources, population, economic growth and investment, and telecommunications and transportation infrastructure. The provincial profiles also outline preferential investment policies, including tax and land-use breaks, available in various industries.

www.china.org.cn/e-xibu/1aNew/indexban.html

Stefan Landsberger's Chinese Propaganda Poster Pages

is an expansive online collection of post-1949 Chinese propaganda art. The posters are catalogued by subject matter—everything from population policy to Communist Party leaders to song and dance—and are accompanied by informative historical analysis. The site also includes an index of artists and links related to Chinese cultural history.
www.iisg.nl/~landsberger/

Websites in Chinese

The Ministry of Foreign Trade and Economic Cooperation

recently revised its Chinese-language website. The new site is more informative and transparent than before and includes four major sections: *Foreign Economic and Trade News*, a publication that covers foreign trade and the economy; recently issued regulations, updated regularly; *Research on Foreign Economics and Trade*, a column that publishes research and analytical reports from other publications; and links to each MOFTEC department, including background information, news, regulations, and contact information. MOFTEC also recently introduced a website devoted entirely to WTO issues (**www.chinawto.gov.cn**).
http://www.moftec.gov.cn

The West Lake Online Legal Bookstore

is run by the Justice Bureau of Hangzhou's Xihu District, in Zhejiang. This site posts the latest PRC laws and regulations and has a search engine that covers thousands of post-1949 laws. China has numerous websites that post PRC regulations, but this site, particularly the law-reference page (**www.law-lib.com/law**), is more user-friendly than most.
www.law-lib.com

The Shanghai WTO Affairs Consultation Center

is run by the Shanghai Municipal Government. This website features an abundance of WTO-related information, including news, legal documents, and dispute solution cases. Visitors can also take part in an online WTO forum and use the center's fee-based consulting services. The site offers links to key government departments and associations in Shanghai and to key PRC ministries and international organizations. Some parts of the site are still under construction.
www.sccwto.org

—Dennis Chen and Drake Weisert

OPPORTUNITIES

NOVEMBER-DECEMBER 2002

Opportunities introduces significant charitable, cultural, and educational projects that seek American business support and aims to assist companies in identifying programs meriting their assistance. The materials contained in *Opportunities* are boiled down; our aim is to provide contact information and only the most skeletal description of each organization's interests. I strongly encourage interested companies to make direct contact with the programs contained here, so that each firm can review for itself the more detailed materials that individual organizations can provide.

The importance of American corporate participation in programs that bring benefit to the people of China and strengthen the bonds of US-China friendship beyond the commercial realm cannot be overstated. We congratulate the many American firms that support a wide range of important and positive efforts in China and hope that *Opportunities* will help companies to explore new ways of making a difference.

Robert A. Kapp
President, The US-China Business Council

(Note: The purpose of *Opportunities* is to facilitate direct contact between interested companies and project developers. The US-China Business Council is not a sponsor of any project listed in *Opportunities* and makes no recommendation with regard to corporate assistance to any specific project.)

US Institution: **Meridian International Center**
Chinese Institution: **China International Exhibition Agency**
Project Description: **Along the Silk Road: A new exhibition of contemporary art from the Chinese section of the Silk Road**

This exhibition will explore the contemporary art that is being produced in northwest China, where cultures have been intermingling for centuries as merchants and others have traversed this ancient route connecting east and west. The exhibition seeks to find ways in which the past has influenced the present in the cultural diversity that characterizes the area today. The exhibition will open at Meridian in Washington, DC, in mid-2004 and then be sent by Meridian's Traveling Exhibition Service on a nationwide tour of the United States. Sponsorship is being sought from a consortium of corporations and foundations.

Contact Information: Nancy Matthews, vice president for the Arts; or
Alison Leonard, development officer
Meridian International Center
1630 Crescent Place, NW
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E-mail: nmatthew@meridian.org
www.meridian.org

US Institution: **Center for Business and Government, Kennedy School of Government, Harvard University**
Chinese Institution: **School of Public Policy and Management, Qinghua University**
Project Description: **An AIDS public policy training program for China**

China's AIDS epidemic is unfolding rapidly and threatens to undermine the remarkable economic progress China has made in the last 20 years. Local officials throughout China are largely unaware of international success stories in halting or reversing the progression of the disease or the public policies and required budget needed to do so in China. We therefore propose to organize an executive training course on AIDS public policy for Chinese officials. Coordinated by Harvard and Qinghua universities, a team of international experts will work with Qinghua to develop a core curriculum and design a two- to three-week training course to be conducted in China for national, provincial, and local government officials. The course will be launched in China in summer 2003 and co-taught by Harvard and Qinghua faculty for the first few times (twice a year). Provinces and counties most severely affected by the AIDS epidemic will be invited to join the early sessions. Eventually Qinghua would assume responsibility for teaching the course, with Harvard consultation and assistance as needed. Within as short a time as possible, Qinghua would assist provincial-level academic institutions to conduct the course for county level government staff throughout China.

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(Signed) Catherine Gelb, Editor

China Business

Sales and Investment

JULY 16 – SEPTEMBER 15, 2002

Compiled by Collins Alt

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.

Accounting and Insurance

INVESTMENTS IN CHINA

Aviva plc (UK)/CEROILS
Will form joint venture insurance company in China. (UK:50%-PRC:50%). $62 million. 08/02.

ING Groep NV (the Netherlands)/Beijing Capital Group
Will form joint venture, ING Life Insurance Co., Ltd., to offer life insurance in Dalian, Liaoning. (the Netherlands:50%-PRC:50%). $24.15 million. 07/02.

OTHER

Pacific-Aetna Life Insurance Co., Ltd., a subsidiary of ING Groep NV (the Netherlands)
Will raise its registered capital to $60 million. 08/02.

Swiss Reinsurance Co. (Switzerland)
Won license from CIRC to operate life and property insurance ventures in China. 07/02.

Advertising and Public Relations

INVESTMENTS IN CHINA

Tom.com Ltd. (Hong Kong)
Will purchase 81% of Southwest PRC Co., to set up an outdoor media advertising company. $6.3 million. 08/02.

Banking and Finance

CHINA'S IMPORTS

NCR Corp. (US)
Won contract from BOC to supply automated teller machines. $20 million. 08/02.

INVESTMENTS IN CHINA

The Bank of Nova Scotia (Canada), International Finance Corp., a unit of the World Bank Group/Xi'an City Commercial Bank
Will open joint venture bank in Xi'an, Shaanxi. 09/02.

Standard Chartered plc (UK)/BOC
Will set up credit card joint venture. 09/02.

China Prosper Investment Guarantee Co. (Taiwan)
Will set up WFOE subsidiary, China Prosper Investment Guarantee (Jiangsu) Co., Ltd., to offer financial services in China. $25 million. 08/02.

SG Asset Management, a unit of Societe Generale (France)/Fortune Trust and Investment Co., Ltd., a subsidiary of Shanghai Baosteel Group Corp.
Will form joint venture fund-management company. (France:33%-PRC:67%). 07/02.

OTHER

KBC Bank and Insurance Holding Co. NV (Belgium)
Won license from PBOC to conduct RMB-related business in China. 09/02.

UBS AG (Switzerland)/Guotai Asset Management Co. (Shanghai)
Signed MOU to offer fund management services in China. 08/02.

Chemicals, Petrochemicals, and Related Equipment

CHINA'S INVESTMENTS ABROAD

CITIC
Won contract from Uzbek Chemicals to assist in constructing Kungrad sodium plant in Tashkent. $32.3 million. 07/02.

INVESTMENTS IN CHINA

DSM NV (the Netherlands)/Nanjing Chemical Industries Co., Ltd. (Jiangsu)
Will form joint venture, Nanjing DSM Oriental Chemical Co., Ltd., to manufacture industrial chemicals. (the Netherlands:60%-PRC:40%). $258 million. 08/02.

Abbreviations used throughout text: ABC: Agricultural Bank of China; ADB: Asian Development Bank; BOC: Bank of China; CAAC: General Administration of Civil Aviation of China; CATV: cable television; CCB: China Construction Bank; CCTV: China Central Television; CDB: China Development Bank; CDMA: code division multiple access; CEIEC: China National Electronics Import and Export Corp.; China Mobile: China Mobile Communications Corp.; China Netcom: China Netcom Corp. Ltd.; China Railcom: China Railway Communications Co., Ltd.; China Telecom: China Telecommunications Group Corp.; China Unicom: China United Telecommunications Corp.; CIRC: China Insurance Regulatory Commission; CITIC: China International Trust and Investment Corp.; CITS: China International Travel Service; CNOOC: China National Offshore Oil Corp.; CNPC: China National Petroleum & Gas Corp.; COSCO: China Ocean Shipping Co.; ETDZ: economic and technological development zone; ICBC: Industrial and Commercial Bank of China; MII: Ministry of Information Industry; MOFTEC: Ministry of Foreign Trade and Economic Cooperation; MOU: memorandum of understanding; NA: Not Available; NORINCO: China North Industries Corp.; P&T: Post and Telecommunications; PBOC: People's Bank of China; PetroChina: PetroChina Co., Ltd.; RMB: Renminbi; SARFT: State Administration of Radio, Film, and Television; 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; WFOE: Wholly foreign-owned enterprise

L'Air Liquide SA (France), Praxair, Inc. (US)
Will form joint venture, Shanghai Chemical Industrial Park Industrial Gas Corp., Ltd., to provide industrial gases to local clients. 07/02.

LG Chemical Ltd., a subsidiary of the LG Group (South Korea)
Will build an engineering plastics compounding facility in Guangdong. 07/02.

Consumer Goods

INVESTMENTS IN CHINA

Carrefour SA (France)/Tianjin Quanye Bazaar (Group)
Will set up retail joint venture. (France:65%-PRC:35%). $10 million. 09/02.

OBI Heimwerkemaerkte AG (Germany)/Haier Group (Shandong)
Will set up joint venture retail company. (Germany:50%-PRC:50%). $177.5 million. 08/02.

OTHER

PriceSmart, Inc. (US)
Began construction on an outlet store in Xinjiang. 09/02.

Electronics and Computer Software

CHINA'S IMPORTS

AsiaInfo Holdings, Inc. (US)/China Unicom
Will provide new IP network application of videoconferencing services. 09/02.

AsiaInfo Holdings, Inc. (US)
Won contract from Hubei Telecom, a subsidiary of China Telecom, to provide billing services in Hubei. 08/02.

AsiaInfo Holdings, Inc. (US)
Won contract from China Unicom to expand data networks and provide billing services in Beijing, Hainan, Ningxia, and Qinghai. 08/02.

AsiaInfo Holdings, Inc. (US)
Won contract from Zhejiang Mobile, a subsidiary of China Mobile, to provide customer management software. 07/02.

Sybase, Inc. (US)
Won contract from Sinopec to provide electronic payment software for gas stations. $4 million. 07/02

INVESTMENTS IN CHINA

Accton Technology Corp. (Taiwan)/Shanghai General Electronics Co., Ltd.
Will form joint venture to produce network communications products. $25 million. 08/02.

GR Pacific Resource Corp. (Canada)/Beijing CASW Data Technology Co., Ltd.
Will form joint venture, Qinhuangdao CASW Data Technology Co., Ltd., to develop and market data products. (Canada:40%-PRC:60%). 08/02.

Microsoft Corp. (US)/Stone Group, Adminstration Commission of Zhongguancun Science Park (Beijing)
Will form joint venture, Censoft, Inc., to design and develop IT software. $12 million. 08/02.

National Semiconductor Corp. (US)
Will set up WFOE semiconductor manufacturing plant in Jiangsu. $200 million. 08/02.

Toshiba Corp. (Japan)/Dalian Daxian Group (Liaoning)
Will form joint venture to manufacture digital television transmitters in China. (Japan:51%-PRC:49%). 08/02.

Axcelis Technologies, Inc. (US)
Will purchase the semiconductor manufacturing division of Tritek International Co. of Shanghai. 07/02.

Digital China Holdings (Hong Kong)
Will purchase controlling stake of Guangzhou Xinlong Technology Co., Ltd. $3.6 million. 07/02.

SK Corp. (South Korea)
Will set up WFOE, SKC Suzhou New Material Co., Ltd., to produce liquid crystal display (LCD) components. $10 million. 07/02.

OTHER

Access Co. (Japan)/China Unicom
Will cooperate to sell Access Co.'s messaging software to Unicom's clients. 08/02.

Koninklijke Philips Electronics NV (the Netherlands)/TCL Corp. (Shanghai)
Will form strategic alliance to sell electric appliances in China. 08/02.

ON Semiconductor Corp. (US)
Will invest $231 million in Leshan-Phoenix Semiconductor Co., Ltd., a joint venture between ON Semiconductor and Leshan Radio Co., Ltd. of Sichuan. 08/02.

Toshiba Corp. (Japan)
Began construction on notebook computer construction base in Hangzhou, Zhejiang. 08/02.

Eastman Kodak Co. (US)/Founder Electronics Co., Ltd. (Beijing)
Will form strategic partnership to develop and market digital cameras. 07/02.

General Electric Co. (US)
Will move Asia regional headquarters from Tokyo to Shanghai. 07/02.

Sharp Corp. (Japan)/Kingsoft Co., Ltd. (Beijing)
Agreed to give Kingsoft's anti-virus software free with purchase of Sharp's LCD monitors. 07/02.

Food and Food Processing

CHINA'S INVESTMENTS ABROAD

Tsingtao Brewery Co., Ltd. (Shandong)/Sanyo Whisbih Group (Taiwan)
Will build joint venture brewery with annual capacity of 100,000 tons in Kaohsiung, Taiwan. 09/02.

INVESTMENTS IN CHINA

The Castel Group (France)/Changyu Wine Group (Shandong)
Opened Changyu Castel Chateau, a joint venture wine-making facility. $6 million. 09/02.

Tate & Lyle plc (UK)/China Anhui BBCA Biochemical Co., Ltd.
Will form joint venture to grow and process corn. $350 million. 07/02.

OTHER

KFC Corp., a subsidiary of Yum! Brands Inc. (US)
Will open drive-through restaurant in the Asian Olympics Village of Beijing. 09/02.

Anheuser-Busch Companies, Inc. (US)/Tsingtao Brewery Co., Ltd. (Shandong)
Will form strategic alliance to produce and market beer in China. 07/02.

Metals, Minerals, and Mining

INVESTMENTS IN CHINA

Kumba Resources Ltd. (South Africa)/Chifeng Hongye Zinc Smelting Co., Ltd., Baiyinnuoer Lead Zinc Mine Co., Ltd. (Inner Mongolia)
Will form joint venture to expand and operate a zinc refinery and smelting operation in Inner Mongolia. 08/02.

Pechiney SA (France)/Lanzhou Aluminum Industry Co., Ltd. (Gansu)
Will set up joint venture aluminum plant with an annual capacity of 260,000 tons. (France:51%-PRC:49%). 07/02.

OTHER

Mitsui & Co., Ltd. (Japan)/Shanghai Baogang Group Co.
Will form strategic alliance to produce, market, and transport steel in China. 07/02.

Miscellaneous

INVESTMENTS IN CHINA

Nippon Electric Glass Co. (Japan)
Will set up WFOE in Fujian to manufacture glass bulbs for cathode-ray tubes. $117.6 million. 08/02.

Pitney Bowes, Inc. (US)/Shanghai Post
Will form joint venture to offer web-based postage management services. 08/02.

Underwriters Laboratories Inc. (US)/China National Import and Export Commodities Inspection Corp.
Will form joint venture, UL Mei Hua Certification Co., Ltd., to offer testing and certification services in Beijing and Suzhou in Jiangsu. $15 million. 08/02.

Asahi Diamond Industrial Co., Ltd. (Japan)
Will form WFOE, Shanghai Xu Hui Diamond Industrial Co., Ltd., to produce and market diamond dice. 07/02

Packaging, Pulp, and Paper

INVESTMENTS IN CHINA

Delta Print and Packaging (UK)/Tangshan No. 1 Packaging Co., Ltd. (Hebei)
Launched joint venture, Huabei Delta Print and Packaging Co., Ltd., after a one-year probationary period. (UK:49%-PRC:51%). 08/02.

Petroleum, Natural Gas, and Related Equipment

CHINA'S INVESTMENTS ABROAD

CNOOC
Will purchase 5% of Australia's North West Shelf Gas Project. $320 million. 08/02.

INVESTMENTS IN CHINA

Royal Dutch/Shell Group (the Netherlands)/Sinopec
Will form joint venture to build 500 gas stations in Jiangsu. $187.4 million. 07/02.

OTHER

Australia LNG, a consortium between Woodside Petroleum Ltd. (Australia) and the Australia-based subsidiaries of BHP Billiton Group, BP plc (UK), ChevronTexaco Corp. (US), Japan Australia LNG Pty. Ltd., and Royal Dutch/Shell Group (the Netherlands)
Won contract from CNOOC to supply 3 million tons of liquefied natural gas annually for 25 years to Guangdong. $13.5 billion. 08/02.

Phillips Petroleum Co. (US)/China United Coal-Bed Methane Corp. (Shanxi)
Will cooperate to explore for coal-bed methane in Shanxi. 08/02.

Ports and Shipping

CHINA'S IMPORTS

Algoma Central Corp. (Canada)
Won contract from Jiangnan Shipyard Co., Ltd. of Shanghai, to construct a double hulled product/chemical tanker. $29.7 million. 07/02.

INVESTMENTS IN CHINA

Hitachi Transport System Co., Ltd. (Japan)/Dahang International Ferry Co., Ltd., a joint venture between Shanghai Airlines and C.T. Enterprise Shipping Co., Ltd. (Shanghai)
Will form joint venture to offer logistics services. (Japan:45%-PRC:55%). 08/02.

Peninsular & Oriental Steam Navigation Co. (UK), Swire Pacific Ltd., Wharf Modern Terminals Ltd., a subsidiary of Wharf Holdings Ltd. (Hong Kong)
Will purchase stake in Shekou Container Terminals Co., Ltd. of Guangdong. (UK, Hong Kong:49%-PRC:51%). $210 million. 07/02.

Power Generation Equipment

CHINA'S IMPORTS

Mitsubishi Heavy Industries Ltd. (Japan)
Won contract from Harbin Turbine Co., Ltd. of Heilongjiang to supply components for steam turbines. 07/02.

INVESTMENTS IN CHINA

CLP Holdings Ltd. (Hong Kong)/Guizhou Electric Power Corp., Guizhou Infrastructure Investment Corp.
Will form joint venture, Guizhou CLP Power Co., to produce electricity. (Hong Kong:70%-PRC:30%). $301 million. 08/02.

OTHER

Mitsubishi Heavy Industries Ltd., Mitsubishi Corp. (Japan)/Dongfang Electric Corp. (Sichuan)
Will form consortium to bid for a large gas turbine project. 07/02.

Property Management and Development

INVESTMENTS IN CHINA

Toyoko Inn Co., Ltd. (Japan)
Will open hotel in Shenyang on October 18, 2002. $2.56 million. 09/02

Telecommunications

CHINA'S EXPORTS

Huawei Technologies Co., Ltd. (Beijing)
Won contract from Advanced Info Service plc (Thailand) to develop information networks. $50 million. 08/02.

CHINA'S IMPORTS

Nortel Network, Ltd. (Canada)
Won contract from China Mobile to provide an Optical Ethernet solution for networks in Shanghai and Zhejiang. 09/02.

Oy Nokia AB (Finland)
Won contract from Jiangxi Mobile, a subsidiary of China Mobile, to expand GSM network in Jiangxi. $70 million. 09/02.

Alcatel Shanghai Bell, a subsidiary of Alcatel SA (France)
Won contracts from the Gansu and Jilin subsidiaries of China Mobile to expand GSM networks. $27 million. 08/02.

Alcatel Shanghai Bell, a subsidiary of Alcatel SA (France)
Won contract from Guangdong Telecom, a subsidiary of China Telecom, to expand broadband access network capacity. 08/02.

Computer Associates International, Inc. (US)
Won contract from Shanxi Mobile, a subsidiary of China Mobile, to supply security and stability systems. 08/02.

Juniper Networks, Inc. (US)
Won contract from Shanghai Telecom, a subsidiary of China Telecom, to provide ERX Edge Routers to expand Shanghai Telecom's broadband network. 08/02.

LM Ericsson AB (Sweden)
Won contract from China Mobile to expand GSM networks in three Chinese provinces. $70 million. 08/02.

Lucent Technologies (US)
Won contract from the Guangdong subsidiary of China Unicom and the Shanghai, Guangdong, and Zhejiang subsidiaries of China Telecom to provide optical networking systems. $15 million. 08/02.

Nortel Networks Corp. (Canada)
Won contract from Shaanxi Mobile, a subsidiary of China Mobile, to expand GSM network. 08/02.

Novatel Wireless, Inc. (US)
Won contract from Chongqing Mobile, a subsidiary of China Mobile, for Merlin G201 PC card modem services. 08/02.

Telson Electronics Co. (South Korea)
Won contract from Ningbo Bird Co., Ltd. to supply 500,000 handsets. $67.5 million. 08/02.

Siemens AG (Germany)
Won contract from Inner Mongolia Mobile, a subsidiary of China Mobile, to expand wireless network. $22 million. 07/02.

CHINA'S INVESTMENTS ABROAD

Eastern Communications Co., Ltd. (Jiangsu)
Will purchase 10.3% of interWAVE Communications International, Ltd. (Bermuda). $4.35 million. 08/02.

INVESTMENTS IN CHINA

Alcatel SA (France)/Fiberhome Telecommunication Technologies Co., Ltd. (Hubei)
Will form joint venture to make and supply fiber optics in China. (France:50%-PRC:50%). 09/02.

Motorola, Inc. (US)
Will build global production base in China and global research and development center in Beijing. 09/02.

Sagem SA (France)/Ningbo Bird Corp., Ltd. (Zhejiang)
Will manufacture mobile phones and related electronic equipment and accessories. $25.4 million. (France:50%-PRC:50%) 09/02.

Microcell SA (Switzerland)
Purchased LM Ericsson AB's stake in Ericsson Panda Mobile Terminals Co., Ltd. 08/02.

HSBC plc (UK)
Will invest an additional $5 millon into Sparkice Co., Ltd. of Beijing. (UK:10%-PRC:90%). 07/02.

OTHER

China Telecom
Won license from US telecom authorities to provide international telephone and Internet data services between the United States and the PRC. 09/02.

Infineon Techologies AG (Germany)/Huawei Technologies Co., Ltd. (Guangdong)
Huawei will develop VDSL chipset according to standards set forth by Infineon. 09/02.

Cellon International (US)/Qiao Xing Universal Telephone Inc. (Guangdong)
Signed preferred customer agreement to sell Cellon-powered handsets in China. 08/02.

LM Ericsson AB (Sweden)/Huawei Technologies Co., Ltd. (Beijing)
Will cooperate to offer WCDMA-based services. 08/02.

STM Wireless, Inc. (US)/Beijing Changfeng Century Satellite Hi-Tech Co., Ltd., a subsidiary of China Aerospace Science & Industry Corp.
Will form strategic alliance to offer VSAT networks systems in China. 08/02.

Transportation

CHINA'S IMPORTS

Bombardier Inc. (Canada)
Won contract from Shandong Airlines Co., Ltd., for two CRJ700 Regional Jets. 09/02.

Rolls-Royce plc (UK)
Won contract from China Eastern Airlines Corp., Ltd. of Shanghai to provide parts for engines used in the carrier's fleet over the next 10 years. $100 million. 08/02.

INVESTMENTS IN CHINA

Nissan Motor Co., Ltd. (Japan)
Will set up WFOE, Nissan Forklift Ltd., to produce forklifts in Shanghai. 08/02.

RDM Holdings NV (the Netherlands)/Jiangxi Hongdu Aviation Industrial Shareholding Co., Ltd., a subsidiary of AVIC II.
Will form joint venture to manufacture aerospace products. (the Netherlands:55%-PRC:45%). $800 million. 08/02.

ROK APOLLO (South Korea)/China Bluestar Group (Beijing)
Will form joint venture, Beijing Apollo Zhongqi Auto Spareparts Co., Ltd., to provide components for South Korean cars manufactured in China. $20.5 million. 08/02.

Toshiba Corp. (Japan)/Dalian Locomotive and Rolling Stock Works (Liaoning)
Will form joint venture, Dalian Toshiba Locomotive Electric Equipment Co., Ltd., to manufacture, market, and service rolling stock. (Japan:60%-PRC:40%). $1.66 million. 08/02.

Hamilton Sundstrand Corp., Woodward Governor Co. (US)
Will form joint venture to overhaul and repair jet engine accessories in Xiamen, Fujian. 07/02.

OTHER

Toyota Motor Corp. (Japan)/First Automotive Works Corp. (Shanghai)
Will cooperate to produce and sell luxury sedans, mini-vehicles, and sport-utility vehicles. 08/02.

CLASSIFIED

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PRC Trade Update

China's exports to other Asian nations are rising as companies from around the region move their lower-end manufacturing processes to China, import parts for processing, and then export finished products.

China's trade with the world rose 12.3 percent in the first half of 2002, propelled by a 14.1 percent increase ($142.1 billion) in exports over the first half of 2001, according to the PRC General Administration of Customs (Customs, *see* Table 1). Imports rose 10.4 percent ($128.5 billion) to boost China's trade surplus to $13.4 billion, compared with an $8.2 billion surplus in the first half of 2001. This trend will likely continue through 2002, although a weak US economy could slow China's overall trade growth.

China's exports

A series of structural factors, particularly intra-regional trade, contributed to China's steady export growth throughout 2002. China's exports to other Asian nations are rising as companies from around the region move their lower-end manufacturing processes to China, import parts for processing, and then export finished products. Electronics manufacturers are increasingly moving assembly plants to China. China's two-way trade with Malaysia jumped more than 50 percent in the first half of the year, propelled by a 74 percent rise in PRC exports. Electronics and power generation equipment composed more than 61 percent of China's total exports to Malaysia.

Trade with China's other large trading partners, Japan and the European Union, grew modestly during January-June 2002 (*see* Table 2). According to Customs statistics, exports to Japan increased 1.1 percent, while imports from Japan climbed 10.1 percent. China's overall trade with the European Union also inched up during the first half of 2002.

Exports from China's nonstate sector increased almost 60 percent in January-June 2002 over the same period in 2001, another contributing factor to China's overall export growth. Although some analysts cite expanded trading rights for nonstate companies as an explanation for the growth, China has not yet extended many of these rights to foreign-invested enterprises (FIEs). According to Customs, 51.7 percent of China's exports during the first half of 2002 came from FIE manufacturers.

China's comparatively weak currency, which is unofficially pegged to the dollar, is also making its exports more attractive. China's exports have become more competitive as the dollar has slid against the euro and the yen. And the fact that China's leading exports are predominantly lower-end goods means that they sell well in otherwise slow economies.

Finally, a sizeable jump in government export rebates has also propelled exports. The PRC government budgeted ¥100 billion ($12.1 billion) for export rebates in 2002, of which it spent more than ¥45 billion ($5.5 billion) in the first half of the year. The State Council's Development Research Center has noted that exports could slow in the second half of the year if the government does not continue to provide export rebates.

China's imports

Virtually all of China's traditional import commodities saw double-digit growth in January-June 2002 over the same period in 2001. Only China's imports of mineral fuels and petroleum products dropped significantly, most likely the result of rising costs and uncertainty of supplies from the Middle East.

China's automobile imports also saw double-digit growth in the first half of the year, increasing more than 20 percent from the same period

Table 1
China's Trade with the World ($ billion)

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	H1 2001	H1 2002
Exports	52.5	62.1	71.9	84.9	91.7	121.0	148.8	151.1	182.7	183.8	194.9	249.2	266.2	124.6	142.1
% change	10.5	18.3	15.8	18.1	8.0	32.0	23.0	1.5	20.9	0.5	6.1	27.8	6.8	8.8	14.1
Imports	59.1	53.3	63.8	80.6	104.0	115.6	132.1	138.8	142.4	140.2	165.7	225.1	243.6	116.4	128.6
% change	6.9	-9.8	19.7	26.3	29.0	11.2	14.3	5.1	2.6	-1.5	18.2	35.8	8.2	14.0	10.4
Total	111.6	115.4	135.7	165.5	195.7	236.6	280.9	289.9	325.1	324.0	360.6	474.3	509.8	241.0	270.7
% change	8.6	3.4	17.6	22.0	18.2	20.9	18.7	3.2	12.1	-0.4	11.3	31.5	7.5	11.2	12.3
Balance	-6.6	8.8	8.1	4.3	-12.3	5.4	16.7	12.3	40.3	43.6	29.2	24.1	22.5	8.2	13.4

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

in 2001. Deep price cuts because of lower tariffs resulting from China's World Trade Organization (WTO) entry and more financing options for Chinese buyers spurred the growth. Nevertheless, officials at the China Trading Center for Automobile Imports said that foreign automakers should not rely on importing their autos into China as the "government will continue to control vehicle imports and protect local manufacturers." Japanese officials have pressed the PRC government to be more transparent in allocating import rights for autos; they have questioned why China only imported about 50,000 vehicles in the first six months of the year even though, based on the annual value limit for auto imports, it could import as many as 400,000 vehicles for the entire year.

US-China Trade

China's trade with the United States grew roughly 13 percent in January-June 2002, with US exports to China up 11.7 percent to $10.2 billion, according to US Customs figures (*see* Table 3). The United States remained China's largest export market and second-largest trade partner. The $1.1 billion growth in US exports to China is the largest figure for any US export market this year. Significant increases in the export of aircraft and fertilizers helped to propel this trend.

The 136.7 percent increase in US exports of fertilizer to China in the first half of 2002 is somewhat surprising in light of problems in the allocation of tariff-rate quotas (TRQs). China delayed allocating fertilizer TRQs until the second quarter; US officials responded by requesting WTO consultations with the PRC, citing WTO violations. Most of the growth in US fertilizer exports can be attributed to a relatively low base of comparison in 2001.

The $1.1 billion growth in US exports to China is the largest figure for any US export market this year. Significant increases in the export of aircraft and fertilizers helped to propel this trend.

US imports from China in the first half of 2002 rose 14.6 percent over the same period in 2001, exceeding $56 billion in value. US imports of footwear, apparel, and medical equipment contracted, while imports of power generation equipment grew substantially. The "power generation equipment" category is misleading however, as it includes automatic data-processing equipment (HS#8471), which was the single-largest US import from China in the first half of 2002.

Table 2
China's Top Trade Partners ($ billion)

	Economy	H1 2002	% change
1	Japan	44.78	5.6
2	United States	41.96	11.7
3	Hong Kong	31.01	19.6
4	Taiwan	19.64	31
5	South Korea	19.06	10.2
6	Germany	11.94	9.9
7	Malaysia	6.16	50.4
8	Singapore	5.94	10.9
9	Russia	5.45	18.7
10	United Kingdom	5.18	6.7

SOURCE: PRC General Administration of Customs, *China's Customs Statistics*

Table 3
China's Trade with the United States ($ billion)

	1996	1997	1998	1999	2000	2001	H1 2001	H1 2002
US Exports	12.0	12.8	14.3	13.1	16.3	19.2	9.1	10.2
US Imports	51.5	62.5	71.2	81.8	100.1	102.3	46.2	56.9
Total	63.5	75.3	85.4	94.9	116.4	121.5	55.3	67.1
Balance	-39.5	-49.7	-56.9	-68.7	-83.8	-83.0	-37.1	-46.7

SOURCES: US International Trade Commission, US Department of Commerce, US Bureau of the Census

Policy developments

Throughout the first half of 2002, Chinese policymakers worked on several issues that will alter China's trading system under the WTO. As mentioned, China has not yet extended trading rights to FIEs. Ministry of Foreign Trade and Economic Cooperation (MOFTEC) officials have stated, however, that China is researching provisions that would meet its commitment to extend trading rights to all domestic and foreign companies by December 11, 2004. China has committed to extend trading rights to all FIEs in which the foreign investor has a minority stake by December 11, 2002, and is expected to revise relevant rules accordingly by the end of 2002.

MOFTEC also released rules on the establishment of FIE logistics companies. The rules meet China's WTO commitment to allow foreign investment in joint ventures for wholesale and commission agent business for most imported and domestic products, although several questions remain outstanding. Coupled with the impending trading rights regulations, these two pieces of legislation could have a significant impact on the ease and cost of importing into China.

Prospects

Some observers predicted that China's trade surplus would decrease further after WTO entry, expecting lower tariffs to prompt greater demand for imports. But China's strong export performance, which is likely to continue through 2002, may actually expand the surplus for the first time since 1998. Several Western analysts have suggested that China's trade could grow as much as 15 percent in 2002. Chinese estimates have been more conservative—PRC government analysts predict 7-9 percent growth, citing mixed signals in the US market.

—Julie Walton

Julie Walton is associate, Business Advisory Services, at the US-China Business Council's Washington, DC, office.

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short takes

Chindex Receives Corporate Excellence Award from US State Department

Secretary of State Colin Powell honored the business practices of Chindex International, Inc. at a ceremony in Washington, DC, on October 1. Chindex, which has sold healthcare products and services in China since 1981, received the Corporate Excellence Award for its successful business efforts in the country as well as its public service work. The company beat out 60 other nominees and is the first US company or subsidiary in China to win the award since the State Department established it in 1999.

Powell highlighted Chindex's contributions to the development of China's private healthcare industry and its work in promoting US-China governmental exchanges. The company has donated funds and services to China's orphanages and has sponsored educational and training programs for Chinese citizens in the United States. Powell also noted the company's efforts to improve China's laws: "Chindex has also worked closely with Chinese officials and hospital directors to help chart new directions in China's public health policies. Health officials who frequently visit Chindex's Beijing United Hospital often consult with Chindex when drafting new medical industry regulations affecting foreign trade and investment."

The annual Corporate Excellence Award goes to US firms that exhibit "outstanding corporate citizenship, innovation, and exemplary international business practices." Chindex, which has 500 employees in the United States and China and had revenue of $56 million in 2001, received the award for small- and medium-sized enterprises. Coca Cola Egypt won the award for multinationals.

PRC Releases Family Planning Law

China's first family planning law took effect on September 1, after eight months of public education on its contents. Although the government has enforced the one-child policy since 1980, this law finally provides a legal framework for family planning and fundamental rights for parents.

The Population and Family Panning Law maintains the goal of one child per family, but forbids forced sterilization, abortion, or contraception as well as sex-selective abortions. Significantly, the law stipulates the rights of the father along with the rights of the mother and allows paternity leave along with maternity leave for parents with one child. The law further states that family planning should not be limited to reproductive-health education, but should include efforts to improve women's education levels and employment opportunities. The law lists the general policies of the state; local legislative departments will specify sections of the law that vary by region.

Although some may see little difference between the new law and the former one-child policy (for example, instead of parents with multiple children paying "fines" under the old policy, parents now pay a "social compensation fee"), international observers may appreciate the codification of citizens' rights regarding family planning for the first time.

China by the Numbers

Top State-Owned Enterprises (SOEs) by Revenue, 2001

Rank	Enterprise	Revenue ($ million)
1	State Power Corp.	48,376.8
2	SINOPEC Corp.	41,522.1
3	PetroChina Co., Ltd.	41,091.8
4	Industrial and Commercial Bank of China	19,828.8
5	Bank of China	18,082.2
6	China Mobile Communications Corp.	16,272.7
7	SINOCHEM	16,165.2
8	China Telecommunications Group Corp.	14,377.9
9	COFCO	13,040.5
10	China Construction Bank	12,973.3

SOURCES: China Enterprise Confederation and China Enterprise Director's Association (*www.jjckb.xinhua.org/asp/Article.asp?TempNum=14145*)

Top Foreign-Invested Enterprises (FIEs) by Export Value, 2001

Rank	Enterprise	Export Value ($ million)
1	Motorola (China) Electronics Co. Ltd	1,730.0
2	Guangdong Yida Textile Co. Ltd.	1,240.0
3	Beijing Capitel-Nokia Mobile Telecommunications Co., Ltd.	1,120.0
4	China International Marine Containers (Group) Co., Ltd.	790.0
5	LG Electronics (Huizhou) Co., Ltd.	789.0
6	TPV Technology (Fujian) Ltd.	700.0
7	Seagate International Science & Technology (Shenzhen) Co., Ltd.	670.0
8	Suzhou Epson Co., Ltd.	667.0
9	Great Wall International IT Product (Shenzhen) Co., Ltd.	660.0
10	Cannon (Zhuhai) Co., Ltd.	642.0

SOURCE: *International Business Daily*, September 10, 2002

Top Non-SOEs by Revenue, 2001

Rank	Enterprise	Revenue ($ million)
1	Legend Group	3,972.2
2	Wan Xiang Group	1,044.3
3	Heng Dian Group	966.8
4	Zheng Tai Group	895.8
5	De Li Xi Group	753.4
6	Xin Jiang Guang Hui Industry Investment Ltd.	733.5
7	Shanghai High Technology Group	686.3
8	Shanghai Xin Gao Chao Ltd.	671.4
9	Oriental Group	670.3
10	Tengen Group	611.5

SOURCE: All-China Federation of Industry and Commerce (*China Business Times*, August 27, 2002)

Top FIEs by Revenue, 2001

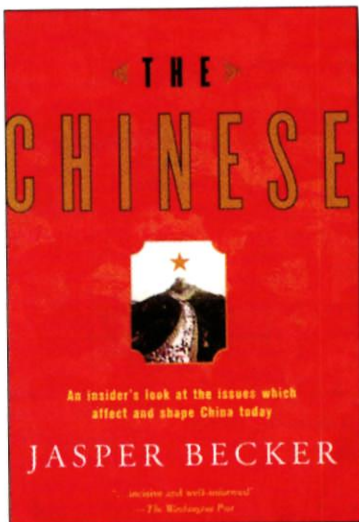
Rank	Enterprise	Revenue ($ million)
1	Motorola (China) Electronics Ltd.	4,939.8
2	Shanghai Volkswagen Co. Ltd.	3,825.0
3	Beijing Capitel-Nokia Mobile Telecommunications Co., Ltd.	3,313.3
4	FAW-Volkswagen Automotive Co., Ltd.	2,626.5
5	Legend Group (Beijing)	2,000.0
6	Shanghai Siemens Mobile Telecommunications Co., Ltd.	1,873.5
7	Nanjing Ericsson Panda Telecommunications Co., Ltd.	1,626.5
8	Guangdong Yida Textile Co., Ltd	1,485.5
9	Dalian West Pacific PetroChemical Co., Ltd.	1,397.6
10	Shanghai General Motors	1,349.4

SOURCE: *International Business Daily*, September 10, 2002

REVIEWS

The Chinese

by Jasper Becker.
Hardcover: New York: The Free Press, 2000. 304pp. $27.50.
Softcover: New York: Oxford University Press, 2002. 464pp. $17.95.



Today's China is a rapidly changing behemoth. In the last 20 years or so, gray and dingy cities have sprouted shiny new skyscrapers and shopping malls and offered new job opportunities. Society has become more open, and even attitudes toward work, family, and politics have changed. Rural China has also been affected, with millions leaving the countryside to find work in the cities. Yet these sweeping changes have not reached every corner of China. In some remote pockets of the countryside, life goes on in almost the same way it has for centuries. And the changes that have brought rising living standards to millions (and millions to a few) have, at the same time, plunged others into desperate straits. In *The Chinese*, Jasper Becker, a long-time China correspondent, draws on his experience of nearly two decades living in, and reporting on, this complex country.

The book starts out with a brief overview of China's entire history, stressing events—such as the reign of the first emperor and the Opium Wars of the nineteenth century—and schools of thought, such as Legalism and Confucianism, among others, that still influence China today. Then Becker turns to exploring the genesis of different aspects of contemporary society.

He starts out with the poorest of the poor—hill tribes in southwest China—but notes that other areas, notably the northwest and the loess plateau, where Chinese civilization was born, are also severely afflicted. He then moves on to China's peasants, now taxed to the breaking point in many places by greedy local officials, and to township-and-village enterprises, which promised prosperity in the 1980s but collapsed in a heap of debt, poor management, and market saturation in the late 1990s.

He explores the urbanization debate—whether to encourage mega cities or smaller towns and cities—and the role of Special Economic Zones, which successfully attracted foreign investment but also brought back evils such as prostitution and sweatshops. He describes the decline of state-owned enterprises, once the mainstay of the Chinese economy, now collapsing in a heap of debt and corruption and giving rise to massive unemployment, and the rise of private enterprise, once the scourge of the Communist Party but now its main hope for job creation and social stability. Becker tracks the path of the nouveau riche and the rise of living standards that helped create this new class, and explains the evolution of education and healthcare, both of which have suffered greatly as the state has cut funding. He also discusses the country's intellectuals and their place in society and relationship to the Communist Party and government.

Turning to China's modern institutions, Becker discusses the relationship of the People's Liberation Army to the Party, government, and society, and he argues that the bureaucracy and legal system have changed little since imperial times, though current legal reforms hold hope for the future. In chapter after chapter, the state, Party, and personal connections (*guanxi*) seem to form a web of nepotism and corruption that ensnares nearly every facet of life in China and makes political reform extremely difficult.

The Chinese is written as an introduction to contemporary China for those with little knowledge of the country. Lengthy explanations of various historical periods and movements can be a little tedious to readers already familiar with them, but these passages also serve as a useful refresher and a reminder that many of China's current problems have roots in ancient and not-so-ancient history. The text is eminently readable, with well-researched background information and explanations of Chinese habits and customs, interspersed with colorful interviews with people from all walks of life. *The Chinese* succeeds in drawing an accurate portrait of this society and is recommended for anyone who wants to understand contemporary China better.

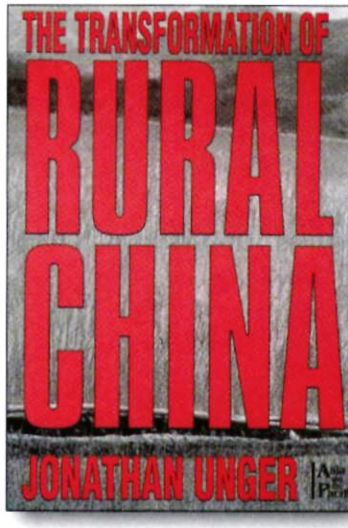
—*Virginia A. Hulme*

Virginia A. Hulme is associate editor of *The CBR*.

REVIEWS

The Transformation of Rural China

by Jonathan Unger. New York: M.E. Sharpe, 2002. 272pp. $60.95 hardcover; $23.95 softcover.



As we are inundated with articles about World Trade Organization implementation, company press releases, and congressional testimony, it's easy to forget how far China has come in the last half-century. It's also easy to forget, amidst the dizzying bustle of Chinese cities, that most Chinese citizens live in the diverse landscape of the Chinese countryside. In *The Transformation of Rural China*, Jonathan Unger, director of the Contemporary China Centre at Australian National University, does more than remind us of these common oversights; he traces the political, ideological, and social structures in rural China from the early 1950s to the present day in a way that clarifies just how deep the roots of the country's problems lie.

The first four chapters focus on rural life under Mao. Unger spends little time dwelling on the disasters of the Great Leap Forward (1958-61) and instead sets his sights on the reorganization of collectives, which took place in its wake. He explains how "production teams" were modified to constitute a village and contain 10 to 50 households. These families collectively owned and worked a block of land, and shared the harvest. Unger points out the positive consequences of this system, including the democratic election of team leaders. In many villages, by the late 1960s, production team revenues provided economic security and almost-free healthcare, education, and welfare for the needy. But ultimately, Unger argues, it was paranoid government interference from above that caused the downfall of Mao's socialist experiment. Communist Party leaders dictated which crops to grow without taking into account local conditions. This not only resulted in failed harvests, but cut off trade between production teams, making them dependent on the state rather than on each other.

The last several chapters of the book explore the post-Mao period in both poor and prosperous areas of the countryside. Unger's research shows that the movement away from collective agriculture and toward small family holdings was not a result of farmer initiatives, as many scholars argue, but of government directives. De-collectivization raised productivity in some villages and gave farmers more freedom to decide what crops to grow, but also created new problems. Unger thoroughly explores how the land was divided among farming families, the growing gap in incomes of—and in opportunities available to—villagers, the plight of rural migrant laborers, the rise of private entrepreneurs in more prosperous rural areas, current peasant protests against local officials' abuses of the system, and grassroots elections, among other topics.

The author's long experience in China is by far the greatest strength of this book. *The Transformation of Rural China* is the culmination of 25 years of research and in-depth interviews with people from well over a hundred Chinese villages.

The result is a sometimes surprising view of volatile topics. For instance, Unger states that of the 31 villages he interviewed about the Cultural Revolution, 11 escaped relatively unscathed. He then plunges into the horrifying depths of those who were less fortunate. And, undermining the notion that many of China's minorities yearn for independence, Unger includes an interview with a Yao peasant in Guanxi Zhuang Autonomous Region who told him, "If we could afford to, we'd live in Han homes...we wouldn't mind, if we lived where the Han are the majority, if we were to speak Chinese at home—and wouldn't mind if our grandchildren couldn't speak Yao."

Unger points out that while most Western economists are impatiently urging a shift to a full-fledged private property regime in the Chinese countryside, a survey of 800 farmers in eight counties across China found that only 14 percent of the respondents wanted farm households to own their own land. Some farmers, particularly among minority groups, fear that their families or entire minority groups will become dispossessed because poor families will be forced to sell off their land to wealthier (usually Han) farmers to survive. Many farmers truly believe in the idea of community ownership—if it is done well.

Though Unger's field research certainly lends credence to his arguments, a closer look into the lives of the interviewees and their surroundings would have provided a much-needed personal touch and would have made for a more engaging read. Nonetheless, *The Transformation of Rural China* provides unparalleled insight into the heart of the Chinese countryside and should be on the reading lists of historians, economists, political scientists, and students of China alike.

—Rick Burns

Rick Burns is a former research assistant at *The CBR*.

Council Bulletin

Upcoming Events

MARK YOUR CALENDAR!

Forecast 2003
February 13, 2003
Washington, DC

November Issues Luncheon
November 21, 2002
Washington, DC

December Issues Luncheon
December 12, 2002
Washington, DC

Event Wrap-Up

Washington

September

Issues Luncheon: Does China Face a Governance Crisis? Featured presentations by Dr. Minxin Pei, senior associate, Carnegie Endowment for International Peace; Dr. Nicholas Lardy, senior fellow, Brookings Institution; and Dr. Robert Kapp, president, The US-China Business Council.

Third Biennial Reception in Honor of the Joint Economic Commission Featured PRC Finance Minister Xiang Huaicheng and Secretary of the Treasury Paul O'Neill.

Luncheon with Beijing Vice Mayor Mme. Lin Wenyi on Olympics-Related Clean Energy Projects Featured an eight-person delegation from the Beijing Municipal Science and Technology Commission, Beijing Municipal Foreign Affairs Office, and Qinghua University.

Dinner with PRC Delegation of Senior IPR Judges Featured PRC Supreme People's Court (SPC) Chief Justice Jiang Zhipei.

October

Issues Luncheon: A Discussion of the Congressional-Executive Commission on China's New Report Featured presentations by Ira Wolf, staff director and John Foarde, deputy staff director of the Congressional-Executive Commission on China, and key members of the commission staff.

Quarterly WTO Working Group Briefing: USTR's WTO Compliance Work with China Featured Wendy Cutler, assistant US Trade Representative (USTR) for North Asia, and Charles Freeman, deputy assistant USTR for China, Hong Kong, Taiwan, and Mongolia.

Reception and Dinner honoring Yu Xiaosong, China Council for the Promotion of International Trade (CCPIT) and CCPIT delegation The US-China Business Council co-hosted with the US Chamber of Commerce a reception and dinner for CCPIT Chair Yu Xiaosong and a CCPIT delegation.

Luncheon with Ministry of Foreign Trade and Economic Cooperation (MOFTEC) Vice Minister Mme. Ma Xiuhong Featured an eight-person delegation from the Department of Foreign Investment Administration, the Department of American and Oceanian Affairs, and the newly established Department of Fair Trading, which deals specifically with WTO-related issues, including anti-dumping, trade barriers, and safeguard measures.

US Treasury Secretary Paul O'Neill, US-China Business Council President Robert Kapp, and PRC Minister of Finance Xiang Huaicheng at the September 9 Council reception for the US-China Joint Economic Committee meeting participants in Washington.

Beijing

August

Luncheon Talk: "The China Dream—Can It Ever Come True?" Featured Joe Studwell, freelance writer, economist, broadcaster, and speaker

October

Luncheon Talk: "China's Hidden Governance Deficits" Featured Dr. Minxin Pei, senior associate, Carnegie Endowment for International Peace

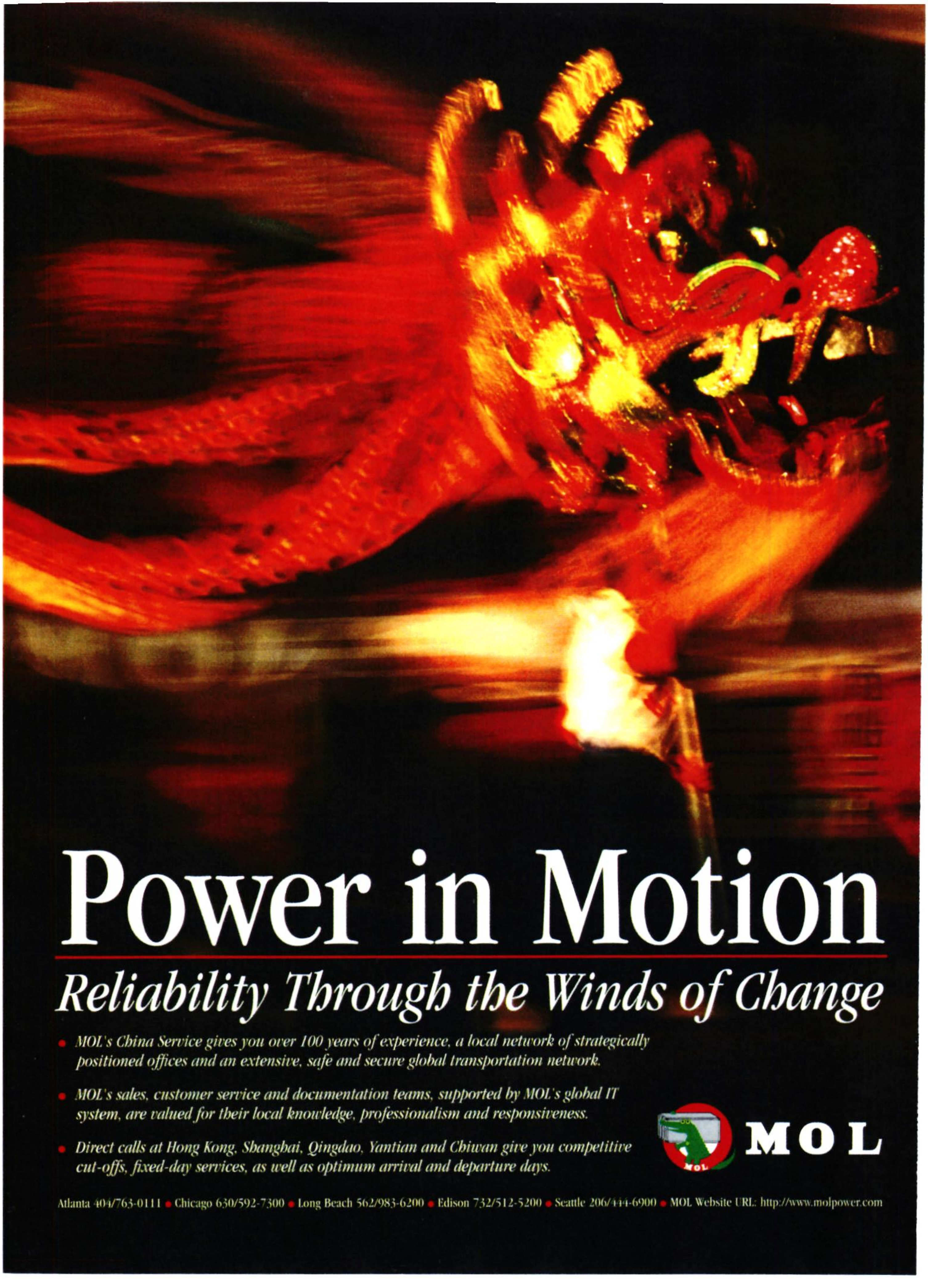
Shanghai

August

USCBC/American Chamber of Commerce Beijing Roundtable on PRC WTO Implementation

August

Luncheon Talk: "Political Challenges Facing China's New Leadership" Featured Dr. Minxin Pei, Senior Associate, Carnegie Endowment for International Peace.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