Exporting to the People's Republic of China

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Exporting to the People’s Republic of China

by Radovan S. Pavelic*

The full diplomatic recognition of the People’s Republic of China by the United States has opened up innumerable trade opportunities between the two countries. Impacting upon these opportunities for reciprocal trade is thirty years of legislation by the United States Congress which isolates the People’s Republic from the trade and economic communities of the world. This article examines these legislative barriers, the ramifications of full recognition, and suggests the means for greater cooperation between the United States and China.

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I. INTRODUCTION

This article surveys the current United States framework affecting United States exports to the People's Republic of China (PRC), the methods by which this trade is and can be financed by United States institutions, and suggests, where appropriate, how certain of the legal issues might be resolved to facilitate expansion of this trade. The recent announcement that diplomatic relations between the United States and China will be resumed should result in major changes to much of the legal framework described in this article. It is hoped that this article will assist in identifying some of the disparate rules and regulations now in effect which ought to be repealed, modified or revised once diplomatic relations between the United States and China have been achieved.

This article will not consider United States laws governing the importation of Chinese goods into the United States, nor the trade effect of granting the PRC most favored nation tariff treatment.

II. UNITED STATES-CHINA TRADE RELATIONS, 1972 TO 1979

At the conclusion of the historic Shanghai meetings between President Nixon and Prime Minister Zhou Enlai on February 27, 1972, the United States and the PRC issued a communiqué agreeing “to further the normalization of relations between the two countries.” This began

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1 Except where indicated, the material in this article is updated through March 15, 1979.

2 On January 1, 1979, China officially adopted the “Pinyin” (transcription) system of writing characters in the English alphabet. This article will utilize Pinyin for most names. The Chinese have used Pinyin for some time but only recently began using it in foreign dispatches of the New China (Xinhua) News Agency and in periodicals China makes available internationally. For persons used to the Wade-Giles (or, to a lesser extent, the Yale) romanization system, Pinyin may initially be confusing. Those who are familiar with the New Latin system will have little difficulty. See APPENDIX B.
a thaw of relations frozen in 1950 by the outbreak of the Korean War. However, it took nearly seven years for the next significant step to be taken. On December 15, 1978, President Carter and Prime Minister Hua Guofeng announced that diplomatic relations between the United States and the PRC would be established January 1, 1979, and ambassadors exchanged on March 1, 1979.¹

By the end of 1977, with Vietnam (for the United States) and Watergate a memory, the deaths of Zhou and Mao Zedong, the purge of the "Gang of Four," and the second emergence of now Deputy Prime Minister Deng Xiaping, it became evident that China's new leaders had embarked the PRC on a grand plan of modernization, to be completed by the year 2000.² This would lead to major changes in China's foreign policy and have important implications for international trade between the PRC and western nations.

It still remains to be seen why the PRC so abruptly opened itself to the West. It does appear that a combination of reasons is involved. There is a desire by the Chinese to speed their internal progress and a realization by them that the scale and speed of desired modernization cannot be achieved without intensive participation, cooperation and financing from western nations. China's present leadership also appears to be seeking to correct the excesses of the Cultural Revolution and shift the efforts of the Chinese Communist Party from ideological to developmental concerns.³ Additionally, the PRC's turn in foreign policy seems aimed at neutralizing Russia and its allies, such as Vietnam, through closer ties with the West.

However, the recent incursion by China into northern Vietnam, recalling China's 1962 Indian intervention, coming as it did on the heels of Mr. Deng's visit to the United States, could foreshadow a long-term confrontation between China and its Asian neighbors.⁴ For instance, India's Foreign Minister Vajpayee, who was visiting Beijing at

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² In a recent statement, Mr. Deng indicated that China's ten year economic plan covering 1976 through 1985, will cost over one thousand billion yuan (approximately $600 billion). N.Y. Times, Feb. 8, 1979, at A12, col. 6.
³ One of the chief reasons given for the past purges of Mr. Deng was that he was a "capitalist roader" and a "dyed-in-the-wool bourgeois politician." CHI HSIN. TENG HSIAO-PING–A POLITICAL BIOGRAPHY 51, 91 (1978). Chi Hsin is the name of the research group compiling the biography which is a rather glowing description of Mr. Deng's life.
the time the hostilities erupted was recalled home early by his government as a protest against this action. Now that China has unilaterally withdrawn most of its troops from Vietnam and Vietnam has agreed to negotiate with the Chinese, it does appear that the initial stage of this confrontation is over. It would seem nonetheless that long-term hostilities or a tense political situation involving China and Vietnam could have a significant adverse effect on China's ability to realize its ambitious modernization plan. This is especially so because it now appears that China's western friends will have to bear a substantial portion of the financial risk in extending to China the credits and aid it needs to achieve its avowed goals.

In 1978, China noticeably increased its contacts with the West as well as its purchases of western technology and commodities. Despite this, primarily because relations with the PRC had not been normalized, China's trade with the United States lagged behind that with other western nations, particularly Japan and nations of the European Economic Community.

Prior to the normalization of relations, one method which

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8 Id., Feb. 23, 1979, at A10, col. 5.
9 See APPENDIX A. On February 16, 1978, the PRC and the Japanese Trade Consultative Committees signed the Japan-China Long-Term Trade Agreement. On April 3, 1978, the trade agreement between the European Economic Community and the PRC was signed by the Council of the European Commodities and the PRC. For an English text of these two documents, see U.S.-CHINA BUS. REV., Mar.-Apr. 1978, at 46, 50-51.

On September 22, 1978, China signed a trade protocol with West Germany guaranteeing German coal mining and processing equipment manufacturers sales of at least four billion dollars. COMMERCE J., Sept. 27, 1978, at 9, col. 4.

On November 13, 1978, it was reported that China had signed a multi-trade agreement with Brazil. Financial Times (London), Nov. 14, 1978.

Toward the end of January 1979, China also signed a three year wheat agreement with Australia, reportedly worth more than $800 million. N.Y. Times, Jan. 22, 1979, at D5, col. 4.

Britain signed a cooperation agreement worth seven billion pounds with China that would embrace the sale of United Kingdom produced Harrier jump jets and the construction of coal and steel projects in the PRC. Financial Times (London), Feb. 8, 1979; id., Feb. 15, 1979; id., Feb. 21, 1979; id., Mar. 9, 1979.

At this time it is not clear how China's confrontation with Vietnam will affect the sale of weapons systems. The British government has indicated that it will delay its decision concerning the sale of Harrier jets to the PRC. Financial Times (London), Feb. 20, 1979.

For a discussion of additional negotiations between the PRC and other countries, see COMMERCE J., Jan. 19, 1979.
American companies utilized to obtain a larger share of the China market was to enter into joint bids, technical tie-ups and cooperation agreements with Japanese companies which had extensive experience in trading with China. However, it was evident that both countries were striving to normalize relations which could be mutually beneficial. Trade and scientific delegations travelling from the PRC to the United States, and similar delegations travelling from the United States to China began to multiply rapidly in the spring of 1978. This was followed by a series of visits to the PRC by high level Administration officials, including National Security Advisor Zbigniew Brzezinski in May, Dr. Press, Presidential Advisor on Science and Technology in July, Energy Secretary James Schlesinger in October, and Agriculture Secretary Robert Bergland in November. In 1978, trade between the countries also expanded significantly on all fronts. Mr. Deng visited the United States during the last days of January 1979, and generally was well received.

Prospects for full diplomatic relations and substantial direct trade with the PRC appear excellent. Nevertheless, the United States Congress, as well as China's actions along its borders, and its intentions with respect to Taiwan will affect the speed with which the major remaining legal and political issues between the United States and the PRC will be resolved. Some time, luck and effort will be required in order

10 ECONOMIST, Jan. 20, 1979, at 80-81.
11 In August 1978, Mr. Chai Zemin, China's new envoy in Washington, assumed his post. Mr. Chai, an experienced Chinese diplomat, along with Leonard Woodcock, the former president of the United Auto Workers and the American envoy to China, appear to have played an important role in the events culminating with the December 15, 1978 announcement by President Carter that United States relations with China would be normalized. Recently, the Senate voted to confirm President Carter's nomination of Mr. Woodcock as the first American Ambassador to China since 1949. N.Y. Times, Feb. 27, 1979, at A10, col. 4.
13 It was recently announced by the Carter Administration that, except for the Mutual Defense Treaty, all of the more than 50 treaties and executive agreements between the United States and Taiwan would be kept in force indefinitely. N.Y. Times, Dec. 18, 1978, at A1, col. 1. This will mean that once diplomatic relations are established, the United States and PRC governments will be required to negotiate treaties covering a whole gamut of subjects. Many difficult issues will have to be faced. For example, it has been proposed that the United States disassociate itself from Taiwan's claims to vast oil resources in areas of the East China Sea which Taiwan claims to be its own. Id., Sept. 18, 1977, at A21, col. 6. It is not clear at this time whose title to this area the United States should or could recognize. The United States and Taiwan have
for these issues to be resolved.14

III. LONG-TERM TRADE PROSPECTS

Despite the euphoria of the last year concerning the potential of the China market and the reports of numerous "deals" in the making, it is not entirely clear at this time to what extent such potential trade will be realized. A recent study by the Office of East-West Policy and Planning at the Commerce Department concluded that China's ability to import and pay for goods from the United States, though expected to grow, will be limited despite China's ambitious development plans.15 The Central Intelligence Agency's National Foreign Assessment Center also issued a report in December 1978 expressing doubt about China's ability to fulfill planned targets.16 The potential of significant currency earnings by China from its exports (other than perhaps petroleum, rare metals and other raw materials) is not assured, because of competition from other exporting countries. China's tourist trade, though potentially an excellent source of foreign income, will take a number of years to develop. Borrowing of hard currencies to import goods also would be limited due to the resulting high costs.

already agreed on the framework through which "unofficial relations" would continue. The United States will establish the American Institute in Taiwan and the Taiwanese will establish a Coordination Council for North American Affairs. Id., Feb. 16, 1979, at A3, col. 2. It is not clear yet how the American Institute is to be funded.

During Mr. Deng's visit to America in January 1979, the United States and China entered into agreements covering the following areas: cooperation in science and technology; mutual establishment of consulate relations; cultural relations; exchange of students and scholars; agricultural relations; space technology; and high energy physics. For an English text of the documents with respect to these areas, see U.S.-CHINA BUS. REV., Jan.-Feb. 1979, at 23-30.

14 Financial Times (London), Feb. 1, 1979. Modern relations between the world's oldest and newest civilizations have had a fascinating and mercurial history since the announcement by the United States of its "Open Door" China policy in 1899. Less than thirty years ago, the two nations fought in Korea and until 1972 relations were at a virtual standstill. Since 1972, it has taken seven years for normalization of relations to occur. Thus, the first steps have been slow and difficult; perhaps the balance of the journey will be easier. However, the past shows that the journey might still be fraught with hazards. For an overview of United States-PRC relations, see DRAGON AND EAGLE: UNITED STATES-CHINA RELATIONS: PAST AND FUTURE (M. Oksenberg & R. Oxnam eds. 1978); T. TSOU, AMERICA'S FAILURE IN CHINA 1941-1950 (1967); U.S. Policy With Respect to Mainland China: Hearings Before the Senate Committee on Foreign Relations, 89th Cong., 2d Sess. (1966); A. WHITING, note 6 supra; D. ZAGORIA, note 6 supra.

15 N.Y. Times, Mar. 9, 1979, at D4, col. 1.
The Chinese seem aware of this and recently have begun to reassess their needs. This has been evidenced by the slowing of negotiations with respect to certain projects. For instance, in late February 1979, the Chinese abruptly informed Japanese companies that the implementation of approximately three billion dollars worth of plant import contracts negotiated last year would be delayed.\textsuperscript{17} Some American companies, e.g., Bethlehem Steel, have been similarly informed that contracts will not be signed until mid-1979.\textsuperscript{18} There has been speculation that the reasons for this delay include the China-Vietnam conflict\textsuperscript{19} and the lack of agreement between the Chinese and Japanese on financing terms of these projects.\textsuperscript{20} But it also appears that the Chinese leadership is reevaluating the priorities of China's modernization program and is opting for a more modest and selective program which China's present infrastructure is capable of handling. The important aspect of this change, however, is that the new direction may concentrate more on agricultural modernization and production of consumer goods rather than on heavy industry.\textsuperscript{21}

The Chinese also have launched a propaganda campaign to explain why substantial cuts in its plans to boost heavy industry, especially steel, will have to be made. Some observers feel that such a campaign may result in the cancellation or restructuring of the fifteen billion dollar plan for a steel complex at Chidong for which West Germany's Schloemann-Siemag AG has submitted a bid.\textsuperscript{22} In addition, Bethlehem Steel, which is to develop an iron ore mine at Shuichang in the same province as the steel complex, has been informed that its contract signing would be delayed a few months.

It is also important to analyze how profitable trade with China can be for each company or financial institution. Because so many companies and financial institutions from different countries are competing for this market, the returns to be realized by such companies or institutions could prove marginal. Nevertheless, in normalizing relations, China and the United States have made a great leap, and long-term trade prospects between the two countries should prove mutually satisfactory and extensive.

\textsuperscript{17} Wall St. J., Mar. 2, 1979, at 1, col. 1. For further discussion on this point, see Leng & Leng, \textit{Sino-Japanese Trade in the Post-Normalization Era}, 11 CASE W. RES. J. INTL L. 267, 331 n.300 (1979).
\textsuperscript{18} COMMERCE J., Mar. 5, 1979, at 1.
\textsuperscript{19} N.Y. Times, Mar. 2, 1979, at D1, col. 1.
\textsuperscript{21} \textit{Id.}, July 2, 1979, at 14; \textit{id.}, Mar. 21, 1979.
\textsuperscript{22} Wall St. J., Mar. 26, 1979, at 6, col. 1.
Already it has been agreed that a new cabinet level Sino-United States Joint Economic Commission will be set up to resolve important economic issues between the countries. Treasury Secretary Blumenthal was appointed to head the American side of this body before departing for his trip to Beijing in February 1979. Mr. Yu Qiuli, Chairman of China's State Planning Commission, was appointed co-chairman of this Commission. The body is expected to meet formally in Washington or Beijing to discuss emerging problems arising out of the new relationship between the two countries.

IV. UNITED STATES LEGAL RESTRICTIONS ON TRADE WITH CHINA

The Trading with the Enemy Act of 1917 authorizes the promulgation of regulations restraining transactions by United States persons with certain nations. Under this Act, the regulations with the greatest impact on United States-China trade have been: (1) the Frozen Assets Control Regulations, which call for implementing an embargo with respect to the PRC; (2) the Foreign Funds Control Regulations, which restrict transfers to and from accounts blocked under the frozen assets regulations; and (3) the Transaction Control Regulations, which prohibit the shipment of certain merchandise to the PRC.

Exporting of technology to China also is restricted by regulations promulgated under the Export Administration Act of 1969 and section 414 of the Mutual Security Act of 1954.

A. Frozen Assets and Funds

In the past, the frozen assets and funds issue has been seen as one of the major obstacles to United States trade with China. Despite the relatively small size of frozen assets, the Frozen Assets and Foreign Funds Control Regulations have in the past kept most United States banks and companies from trading directly with the PRC because of the possible threat that any Chinese assets or funds coming within the jurisdiction of the United States could be attached by United States
claimants of assets frozen by the PRC. In addition, persons subject to American laws have had to be circumspect in their dealings with China in order not to violate these regulations.

For instance, in 1974, when China exhibited certain of its archeological finds in the United States, the Congress passed special legislation authorizing the indemnification of the PRC for any losses or damage while the exhibit was in the United States. Similarly, Chinese aircraft or ships landing within borders of the United States face the threat of attachment by American claimants. The PRC has long operated a sizable fleet of Somali and Hong Kong flag merchant-marine ships, some of which have been utilized in trade between the two nations instead of PRC flag vessels, thus avoiding the danger of attachment by domestic claimants.

As a result, trade transactions between the two countries have included time consuming stratagems such as the processing of letters of credit, and making arrangements for payments and collections through foreign banks. Sales contracts generally provided that title to American manufactured goods and equipment shipped to the PRC remain in the name of the domestic manufacturer or financing bank until the goods cleared United States jurisdiction. Also, for these and other reasons discussed below, goods would not be shipped directly from the United States to China but rather would be transhipped through a third country.

At the outbreak of the Korean War, the United States froze all property and claims of Chinese nationals in the United States, including safety deposit boxes, bank deposits, equity and debt securities, annuities, other personal and real property, rents, mortgages, patents, trademarks, copyrights and rights in interests arising from any of these assets or claims. On December 17, 1950, the PRC became a designated foreign country subject to the Frozen Assets and Foreign Funds Control Regulations. Under these regulations, assets and

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51 Once the frozen assets question is settled, Chinese owned shipping could come to play a significant role in trade and become a serious competitor to American flag shipping. SEA POWER, Feb. 1975, at 14-18.

52 31 C.F.R. §§ 500.311, 520.01 (1978).


funds of the PRC or its nationals could not be paid or otherwise transferred to them during the period of such designation. It has generally been reported that this action froze Chinese assets in the United States currently valued at $76.5 million. In response the PRC seized property owned by American companies and individuals valued at $196.9 million.\textsuperscript{35}

As explained in a publication of the United States Foreign Claims Settlement Commission, Title V of the International Claims Settlement Act of 1949\textsuperscript{36} authorized the Commission to determine the amount and validity of claims of nationals of the United States against the PRC which arose after October 1949. The determination was to be made in accordance with applicable substantive law, including international law. The purpose of the China Claims Program was to determine claims for: (1) losses resulting from the nationalization, expropriation, intervention, or other taking of or special measures taken against the property of United States nationals; and (2) disability and death resulting from actions taken by or made under the authority of the Chinese Communist regime. Under the Program, claims were to be filed by July 6, 1969 and the Program, as required by law, was completed on July 6, 1972. The claims of 576 individuals were received and settled, with 192 claims wholly denied.

Title V did not provide for the payment of awards made by the Commission but rather provided for a pre-settlement adjudication of claims, thus providing information concerning total amounts involved to be utilized by the United States Government in negotiations with the PRC. Congress further did not make a provision for payment of claims

\textsuperscript{35} \textit{Bus. Week}, Dec. 11, 1978, at 58.

Major United States corporate claims against the PRC resulting from this seizure include:

\begin{tabular}{l c}
Shanghai Power & $53.83 \\
Esso Standard & $27.03 \\
Caltex & $15.44 \\
International Telephone and Telegraph & $ 7.76 \\
General Electric & $ 4.55 \\
International Standard Electric & $ 3.23 \\
Western District Power Shanghai & $ 1.76 \\
First National City Bank & $ 1.56 \\
Shanghai Wharf and Warehouse & $ 1.04 \\
\end{tabular}

once settlement is reached. As a result, it is probable that the Administration will have to seek an amendment to the Act in order to effectuate payment procedures from the frozen assets, as was done in 1973 with respect to Hungarian claims. In the past, Congress has indicated displeasure with settlements awarding claimants less than forty-five cents on the dollar. But since no direct congressional approval will be needed in China's case for the settlement agreed to between the United States and China described below, it will probably be effectuated without too much difficulty.

The Commission awarded six percent interest on the total principal amount adjudicated from the date of a loss to a date in the future when the claims may be settled by agreement between the governments. But as described below, the recently announced United States-China settlement agreement does not include such interest.

On November 14, 1978, the Treasury Department's Office of Foreign Assets Control issued a proposed rule which, if promulgated, would require persons holding Chinese blocked assets or funds to place them in interest bearing accounts in domestic banks. This requirement would reduce the disparity between the claims by enhancing the value of the funds frozen in the United States. The interest requirement, however, would not be retroactive to the time the assets were frozen.

A number of exceptions were proposed by the Office. Sections 500.205 and 520.05 of the proposed rules would except from this requirement holders' offsetting claims to the assets of blocked nationals, to the extent of such offsets. Customer funds held by brokers would not be required to be transferred to banks so long as the balance (not invested in securities pursuant to section 500.513) earns interest of not less than that earned by the shortest term deposits in banks within the applicable jurisdiction. Paragraph (g) of proposed sections 500.205 and 520.05 seeks to make clear that only currency, bank deposits and accounts, undisputed and either liquidated or matured debts, claims and obligations, and the proceeds of the negotiations of checks and drafts, and not other frozen assets would have to be placed in interest bearing accounts.

Proposed sections 500.611 and 520.611 would require holders of

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39 Id. Also see 44 Fed. Reg. 11771-74 (1979).
blocked assets and funds to file a TFR Form 611 with the Office. In
the past such holders have been required to file China Forms TFR 603
(1951) and TFR 610 (1970) with respect to certain of the assets.40 One
difference between TFR Form 611 and previous reports is that the new
form would require reporting of all property held, including that as to
which an exemption is claimed by the holder. Effective March 2, 1979,
the Treasury's Office of Foreign Assets Control amended its Foreign
Assets Control Regulations to require the holding of such assets to be
held in interest bearing accounts.41

The proposed regulations would require reporting by not only
private holders but also governmental agencies and instrumentalities
acting in a private capacity.42 Both federal and state agencies would
be subject to the regulations. Funds representing checks which were
issued, or were to be issued, by the United States to persons residing in
China and that were blocked would now have to be deposited in
private banks. In comments received from federal agencies (including
the Treasury Department), the position taken was that such transfers
would be inconsistent with the purposes of specific appropriations and
invalid on the ground that the United States Government is prohibited

42 43 Fed. Reg. 53016 (1978). One aspect of the proposed regulations that might
prove controversial involves transfer of the frozen assets considered abandoned property
under state law. This has been permitted to date pursuant to licenses under 31 C.F.R.
§ 500.561 (1978). The Office of Foreign Assets Control proposes to revoke this licensing
procedure and has notified affected states having licenses "that the licenses are
suspended pending review of whether the policy will be continued." 43 Fed. Reg.
53017 (1978). The stated reason for this is that the states have not complied with the
requirements of that section to separately index and maintain such funds. The Office
feels that "effective control of the assets by the Office . . . will be more readily main-
tained if the assets remain in the custody of private institutions such as banks and
brokers than if they are transferred to State agencies." Id.

In some older decisions construing section 5 of the Trading With the Enemy Act,
courts have held that to the extent state statutes regulate matters outside the scope of
federal law they are not preempted by such laws or executive orders or regulations prom-
ulgated thereunder. Matter of Braier, 305 N.Y. 148 (1953); Matter of Yee Yoke Ban,
200 N.Y. Misc. 499 (1951). In these cases surrogate courts ordered funds, payable to
persons in Communist countries, paid to state or city treasuries on the ground that it
would be improbable that the beneficiaries would actually receive the funds. States
might well argue that the revocation by the Office of the licenses would be outside the
scope of federal authority, and to the extent interfering with state prerogatives, un-
constitutional.
from depositing funds in a domestic bank for investment without specific statutory authority.\textsuperscript{45}

Other comments received also questioned the validity of the interest requirement. The frozen assets regulations were issued pursuant to section 5(e)(1) of the Trading with the Enemy Act during a declared national emergency. As a result of the National Emergencies Act of 1976,\textsuperscript{44} and the International Emergency Economic Powers Act of 1977,\textsuperscript{45} it is argued that Treasury no longer has the authority to require the payment of interest on blocked funds. Thus, it is not entirely clear if the holders can be compelled by the regulations to pay such interest since contractually they are not obligated to do so with respect to funds for instance, in checking accounts.

Under the regulations, the provisions of section 500.205 will apply to assets held by federal agencies but will permit such agencies to be exempt from the requirement upon the receipt by the Foreign Assets Control Office of an opinion by the agency's general counsel to the effect that the agency in question lacks the statutory authority to comply with the regulations. Section 500.205(b) will require that the transfers to interest bearing accounts be accomplished within thirty rather than five days as originally proposed.

A new paragraph (f) has been added to section 500.205 giving an exemption to any state abandoned property by an agency meeting the requirements of section 500.561, provided such agency credits interest to the assets held by it. Otherwise, the agency will be required to hold the assets in an interest bearing account in a domestic bank on the same basis as other holders. Section 500.561 was amended, rather than revoked as originally proposed. However, blocked assets in which the People's Republic of China or any national thereof has an interest in henceforth is excluded from transfer to state agencies.\textsuperscript{46}

The Foreign Assets Control Regulations also prohibit unlicensed purchasing, transportation, import, dealing in and insuring of merchandise of PRC origin, including articles grown, produced or manufactured there, or rendering of services with respect thereto, by persons subject to the jurisdiction of the United States. However, goods of PRC origin are now authorized to be imported under a general

\textsuperscript{44} 50 U.S.C. § 1601 et seq. (1976).
license contained in the regulations issued February 16, 1972, in the
wake of the Shanghai accord.47

As indicated in published comments to the proposed regulations,
frozen assets appear to include the assets of foreign firms such as the
Banque Belge pour L'Entrange (Extreme-Orient S.A.) which deposited
in the United States assets acquired by the bank from Chinese interests
in connection with the 1950 trade financing denominated in dollars.
Apparently, the Chinese deposited collateral dollar deposits in the
bank's branches in China and London which were commingled with
other bank assets and deposited in New York. In the case of the
Banque Belge, the amount involved is approximately $9.3 million.

Representatives of the two nations have repeatedly attempted to
resolve the issue. At a meeting in Paris in 1973, then Secretary of State
William P. Rogers and China's Foreign Minister Chi Pengfei agreed in
principle to resolve the frozen assets issue, but talks were broken off in
the Fall of 1975. The issue was raised again with the Chinese in May of
1977.48 It appears that the disparity between the amounts frozen by
the countries has become an obstacle in negotiations since, if the
claims were to be cancelled out, as the Chinese are reported to have
proposed, it would have meant that claims of American citizens would
be settled for about forty cents on the dollar.49

Secretary of Treasury Blumenthal arrived in Beijing on February
24, 1979, to open official trade negotiations with the Chinese. The
frozen assets question was one of the most important issues on his
agenda because its resolution could clear the way for the resumption of
normal banking and trade relations between the countries. On March
1, 1979, the United States and China signed a claims agreement which
should result in payment to American claimants of forty-one cents on
the dollar. It was agreed that approximately thirty million dollars will

47 15 C.F.R. § 368.2(a)(7) n.1 (1978); see also id., § 371. The National Council
for United States-China Trade in 1977 prepared a publication entitled, Directory:
American Firms Importing from the People's Republic of China, which contains a
concise listing of who imports what from the PRC. For another listing of American im-
porting practices from the PRC in 1976 and 1977, see U.S.-CHINA BUS. REV.,
Mar.-Apr. 1978, at 42-43. For a statistical analysis of United States-PRC trade in the
last few years, see U.S. INT'L TRADE COMM'N, SPECIAL REPORT TO THE CONGRESS AND
THE EAST-WEST FOREIGN TRADE BOARD ON IMPLICATIONS FOR U.S. TRADE OF GRANT-
ING MOST-FAVORED-NATION TREATMENT TO THE PEOPLE'S REPUBLIC OF CHINA (May
1977).


be paid to claimants on October 1, 1979, and approximately fifty million dollars more will be paid in five equal installments by October 1, 1984. As mentioned above, there is no allowance for past interest on such claims. At the time the first payment is made the funds frozen in the United States will be unblocked.

The difference between this agreement and previous proposals is that the Chinese will pay for the American claims rather than having those claims paid out of the frozen assets. As discussed above, for various legal reasons it has become clear that the size of the frozen assets available to be unblocked in favor of American claimants could turn out to be only half the size of the amount of the settlement. Additionally, the agreed to approach will not require congressional approval which would have been required had the United States taken frozen assets of foreign claimants to compensate American claimants.

Generally, American claimants reportedly were pleased with the settlement. Nevertheless, a closer study of the agreement is necessary to determine its precise consequences. Additionally, it is unclear at this time what legal rights a dissatisfied American claimant would have, since the agreement leaves the resolution of the frozen assets ownership to future adjudication.

B. Export Controls

Export licensing has been the chief administrative means the United States has utilized to restrict direct trading by Americans with the PRC. Former President Truman, pursuant to the Export Controls Act of 1949, began to impose certain export controls on the China trade in early 1949. These became a total embargo which lasted until 1972 with the enactment of the Frozen Assets and Foreign Funds Control Regulations.

Since that time, the Export Administration Act of 1969 has been the legislative authority used by the President to control exports to the PRC. Export control authority has been delegated to the Secretary of

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50 N.Y. Times, Mar. 2, 1979, at 1, col. 5.
52 Id., Mar. 6, 1979, at B3, col. 2.
53 Commerce J., Mar. 5, 1979, at 1, col. 4.
Commerce and is administered by the Office of Export Administration of the Bureau of Trade Regulations.56

The chief rationale for these restrictions is to limit the export of commodities and technology which would contribute to the military potential of certain countries, thus jeopardizing United States national security. Thus, the principal intention in reviewing license applications is whether the item in question is designed for, intended for, or could be applied to a significant military use. Additionally, the Export Administration Office will take into account whether commodities for which export licenses are requested are in short supply domestically and whether comparable foreign made equipment is available.57

The licensing controls administered by the Department of Commerce generally apply to exports from the United States, reexports of domestic origin commodities from a foreign country to another, the use of American origin parts in one foreign country to manufacture an end product to be exported to prohibited destinations, and certain foreign manufactured products based on domestic origin technical data.58 Commerce's controls do not extend to exports by United States subsidiaries, affiliates or branches in foreign countries if the exports in question are of foreign manufacture, or contain no domestic origin materials, and are not based on restricted American technology.59 However, such transactions, if they involve strategic merchandise, may be subject to the Transaction and Frozen Assets and Foreign Funds Control Regulations because the PRC is a country within country group Y.60

An exporter must determine if a specific export to China is a strategically sensitive item. If it is, because China is grouped in the Y country category under the Transaction Control Regulations,61 such export item will be listed in the Commodity Control List (CCL). To export such an item, the exporter will have to apply for a "validated license" from the Office of Export Administration. If the item is not found on the CCL, no specific license application will be required since the export may be made under the established general license authorization.62 This authorization has been available to the PRC since

57 See U.S. DEPT OF COMMERCE, DOING BUSINESS WITH CHINA 16-17 (1979).
59 Id. § 370.
61 Id. § 399.1.
62 Id. § 505.31.
February 6, 1972, despite its country group Y status.\textsuperscript{68}

The Transaction Control Regulations of the United States Treasury Department\textsuperscript{64} also prohibit persons in the United States and subsidiaries and branches of American companies abroad from selling or dealing in certain strategic merchandise in any foreign country without a Treasury validated license when the transaction involves a shipment from a foreign country to a group Y country.\textsuperscript{65}

The most difficult cases are subject to review by other United States Government agencies.\textsuperscript{66} Certain applications also are subject to approval of the Coordinating Committee for East-West Trade Policy (COCOM).

The 1951 Mutual Defense Assistance Control Act (the Battle Act),\textsuperscript{67} provides the legislative framework for participation by the United States with its NATO allies (minus Iceland, plus Japan) in the informal COCOM. COCOM's purpose is to monitor and voluntarily restrict exports which could be detrimental to the mutual security of certain countries, including the PRC.

Originally, COCOM functioned through two subcommittees, one of which concentrated on monitoring Eastern European trade and the other, called the China Committe (Chincom), which monitored trade with the PRC. These two were later merged into COCOM.\textsuperscript{68} The members propose to COCOM the sensitive commodities and technology which should not be exported to the PRC. COCOM prepares a control list of such restricted items, which is not openly distributed. Because agreement by all members of COCOM is necessary for an item to be restricted, the control list does not include a number of items initially proposed by individual countries. The COCOM list of strategic items is secret; however, the Department of State prepares a summary each year in its annual Battle Act reports to Congress.\textsuperscript{69}

Differences in national, political and strategic viewpoints have in the past led to difficulties among the members. With respect to China,

\textsuperscript{63} 37 Fed. Reg. 3520 (1972).
\textsuperscript{64} 31 C.F.R. § 505.101 \textit{et seq.} (1978).
\textsuperscript{65} Id. § 505.30.
\textsuperscript{68} For a description of the origin and development of multilateral consultation on strategic controls and COCOM, see 14 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 844-52 (1970).
\textsuperscript{69} 22 U.S.C. § 1611(b) (1976).
the differences have emerged several times. In 1965, under a former version of the foreign assets regulations, the United States Treasury Department sought to order an American controlled French company to cancel a contract to sell vans to China. The sale reportedly proceeded after intervention by French courts. Similarly, two CDC Lyher computers requiring a license to be reexported to China through France were held up for eighteen months, and the reexport appears to have been permitted only after high level intervention. Today, American-controlled firms in COCOM member countries are not required to obtain an American license in addition to the host country's license for certain exports to the PRC. If the American controlled company is in a non-COCOM country or if the merchandise sought to be exported to the PRC is considered strategic (not on a general license), though not included on the COCOM control list, the original export of technology from the United States to the American controlled company is conditioned on such company's assurance that the reexport of the technology to the PRC will not occur without an American license.

In light of the recent visits of Messrs. Brzezinski and Press to China it has become apparent that the American view concerning the sale of strategic items to China has softened. In the energy field, Secretary Schlesinger agreed with PRC representatives in early November 1978 on an "agenda for cooperation." However, the Chinese refused to sign a formal agreement in the area, apparently because

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73 In a September 2, 1977 press release, the Defense Department announced a directive concerning "interim internal guidance to control exports of critical U.S. technology and related products." These interim guidelines permit exports to "potential adversaries" under certain conditions which could ease such exports to the PRC. U.S.-CHINA BUS. REV., Sept.-Oct. 1977, at 40-41.
74 Earlier in 1978 it was reported that a policy dispute had developed in the Executive branch over the issue of sales of military related technology to China. The debate centered on an interagency study, "Policy Review Memorandum 31," which was to set United States policy on technology exports. N.Y. Times, Jan. 4, 1978, at A7, col. 1. A part of the debate also involved a dispute to which extent the State Department and the Office of Science and Technology Policy in the White House would participate in decisions traditionally handled by the Department of Commerce and the Pentagon. Apparently, President Carter approved the recommendations of the interagency task force that was to streamline decision-making on sensitive export questions under a new organization to be chaired by Mr. Press. BUS. WEEK, July 31, 1978, at 32. The actions of this organization should be followed in the future.
formal recognition of the PRC by the Administration was at that time not yet forthcoming. At approximately the same time Secretary Bergland entered into an oral United States-China agreement on scientific and technical exchanges.

In November 1978, the White House also approved a request by France to sell a Westinghouse designed nuclear plant to China. The Administration reportedly insisted in its approval that the Chinese agree to "some kind of inspection system" to insure that the reactors are not used for military purposes. Apparently, the French had been seeking this sale since January of 1978. Export and reexport of civilian nuclear technology is one area of strategic materials subject to special export licensing controls outside of the general licensing privileges extended to the PRC in 1972.

The export of nuclear energy materials and technology of a military nature is restricted, in part, under the Atomic Energy Act of 1954. Export of nuclear by-product materials to the PRC under a general license is prohibited. However, a special license for export of such products may be obtained by the PRC upon application to the

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75 Id., Nov. 13, 1978, at 36, col. 3.
76 N.Y. Times, Nov. 25, 1978, at 1, col. 4.
77 COMMERCE J., Jan. 5, 1978, at 1, col. 1. COCOM reportedly recently began meetings for the first time in three years to revise the control list, with Japan proposing removal of 53 items, the United States and England of 50, and France and Germany 15 or 20 items. The meeting appears to have been spurred by China's recently expressed desire to purchase "defensive weapons." While it has been rumored for some time that the United States will relax its policy with respect to sales of arms to China, no clear indication was forthcoming until the announcement by Secretary of State Vance that while the United States opposes arms sales to the PRC, "insofar as other nations are concerned, this is a matter which each of them must decide for itself." Wall St. J., Nov. 15, 1978, at 15, col. 1. This relaxation should lead to major weapons sales by NATO countries to China. COMMERCE J., Feb. 5, 1979, at 1, col. 3. Despite the normalization of relations between the United States and China, and because the defense treaty with Taiwan will not expire for a year after the announcement of its termination, and due to congressional reaction to China's Vietnam invasion together with the Administration's policy of refraining from arms sales to both China and the USSR, it is not clear if the United States will commence the sale of American arms to the PRC within the immediate future. Nonetheless, such sales could begin in the not too distant future. The Chinese, for instance have expressed interest in purchasing Lockheed's C-130, military transport plane and its P-3C antisubmarine patrol plane. N.Y. Times, March 8, 1979, at 5, col. 1.

80 10 C.F.R. § 36.50(c) (1978).
Nuclear Regulatory Commission, if in its opinion "the proposed export would not be inimical to the common defense and security."81

The export of arms, ammunition and implements of war, including nuclear materials, are subject to regulation by the Department of State's Office of Munitions Control.82 Equipment on the Munitions List may not be exported without a license from the Department of State, unless it is exempt under applicable regulations.83 Authority for the regulations controlling these activities is derived from section 38 of the Arms Report Control Act,84 which replaced section 414 of the Mutual Security Act of 1954.85 The above regulations were promulgated pursuant to section 414 but continue, along with all others issued thereunder, in force pursuant to the saving provisions of section 212(b)(2) of the Arms Export Control Act.86 A violation of the Act or the making of a false or misleading statement or omission in connection with the issuance of export licenses is a criminal act punishable, upon conviction, with a fine of not more than $100,000 or imprisonment of not more than two years, or both.87

Export of non-military aircraft and aircraft parts to China may be made only pursuant to a special license granted by the Office of Export Administration.88

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81 Id. § 36.12.
82 15 C.F.R. § 370.10 (1978). Supplement No. 2 to § 370, the United States Munitions List, designates what items are classified under the List. Military items mangled, crushed or cut beyond the possibility of restoration to their original identity can be exported under a license granted by the Office of Export Administration for export as scrap metal. 15 C.F.R. § 379.2 (Interpretation 12) (1978).
83 22 C.F.R. § 123.01 (1978). See note 82 supra. As of February 7, 1979, the Maritime Administration removed prohibitions against the sale of scrap resulting from the demolition of United States vessels to the PRC. 44 Fed. Reg. 7700-01 (1979), amending 46 C.F.R. § 221.7 (App. § II(B)(3)).
85 Id. § 1934.
86 Id. Firearms and ammunition also may not be exported without license under regulations implemented under section 414. 27 C.F.R. §§ 178.171, 179.114-.122, 179.193, 181.129 (1978).
88 In late December 1978, the PRC signed a contract for the purchase of three Boeing 747 jumbo jet airliners. In 1972, the Chinese purchased a fleet of 10 Boeing 707's. Licensing for the more recent sale, it was reported, should be forthcoming from the Department of Commerce without much delay although some concern has been expressed about making available to the PRC advanced navigational equipment found in such jets. Wall St. J., Dec. 20, 1978, at 28, col. 6. The number of applications for export licenses to the PRC filed with the Department of Commerce climbed from several dozen in 1976, to 133 in 1977, and 517 in 1978. N.Y. Times, Feb. 19, 1979, at D2, col. 1.
C. Ship Sales to China

Exporters wishing to charter, mortgage or sell ships to the Chinese which were owned by American citizens or registered in the United States, for a long time were prevented from doing so by the provisions of the Shipping Act of 1916,89 which prohibit the chartering or sale of American documented vessels to Communist countries. These prohibitions were lifted by the Maritime Administration, effective as of February 7, 1979. Consequently, the chartering or sale of American vessels to the PRC for carriage of cargoes of any kind to the PRC is now permitted.90

Additionally, the Merchant Ship Sales Act of 194691 prohibits the sale of World War II built United States surplus vessels to citizens of the PRC. It is not clear at this time if this prohibition has been or will be superseded.

Certain ship stores, supplies and equipment also require an export license from the Office of Export Administration before they may be exported to China.92

V. TRANSPORTATION RESTRICTIONS

A. Utilization of PRC Shipping

The PRC has long operated a sizable fleet of Panamanian, Somali and Hong Kong flag merchant-marine ships, some of which have been utilized in the United States-PRC trade instead of PRC flag vessels, thus avoiding the danger of attachment by American claimants.

Once the frozen assets question is settled, Chinese owned shipping could come to play a significant role in the United States-PRC trade and could become a serious competitor to American flag shipping.93

By insisting today that approximately fifty percent of its import-export trade be handled on its own ships, China, without a government-to-

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88 See 46 U.S.C. §§ 808, 839 (1976). However, there is a waiver which permits the charter of United States vessels for the carriage of bulk, raw and processed agricultural commodities from the United States to the USSR or to other permissible ports of discharge. 46 C.F.R. § 221.7 (1979). A similar waiver was promulgated with respect to transportation of agricultural commodities to the PRC on February 7, 1979. See 44 Fed. Reg. 7700-01 (1979).


91 15 C.F.R. § 376.9 (1978).

government treaty such as the United States-Russia agreement, could effectively limit participation in such carriage by American flag vessels. As indicated in a recently completed study by Lloyd's Shipping Economist, the Chinese flag fleet now comprises 680 deep sea vessels totalling over ten million deadweight tons. In the last eighteen months China's fleet was expanded dramatically with the reported purchase of 120 ships totalling 2.35 million deadweight tons.

A recently completed study for Transportation Institution, an American flag ocean shipping trade association, urged that top priority be given in United States-China trade negotiations to the signing of a government-to-government agreement on shipping. China has thirteen such pacts with various trading partners. These pacts exempt the signatories' vessels from China's three percent tax imposed on gross transport income from each outbound voyage by a foreign flag vessel and give favorable berthing arrangements as well as other advantages.

Furthermore, because China's ports are being modernized to include container facilities, it is also possible that the Chinese will seek to include in their fleet additional container vessels. For instance, an article in the Commerce Journal of January 15, 1979, describes an exclusive contract to supply China with container equipment and services, which was negotiated by Sea Containers, Inc.

B. Shipments on American Flag Ships and Aircraft

The main reason why direct shipments to China have been avoided to date appears primarily due to the frozen assets and funds regulations and the care which American companies have taken not to violate them. In addition, certain Transportation Orders adopted pursuant to the authority granted in section 101 of the Defense Production Act of 1950, making it unlawful to sail or fly any United States documented ship or aircraft or to take cargo aboard such vessels if it is destined for the PRC, also have had a constraining effect on shipping to China. Transportation Order T-2 (section 702), which prohibited

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95 Commerce J., Feb. 5, 1979, at 1, col. 3.
96 Id., June 29, 1978, at 2, col. 3.
American flag vessels from calling at any PRC ports to deliver any type of cargo, was amended in 1972 to eliminate such prohibition.\textsuperscript{99} Section 701a has not been amended and still contains language which prohibits direct or indirect shipments to the PRC of United States source strategic goods on American vessels.\textsuperscript{100} Since section 701a was not amended with respect to China at the time section 702 was amended it contains certain provisions with respect to shipments to China which appear inconsistent with the amended section 702.\textsuperscript{101}

On October 5, 1978, Airlift International became the first American company to fly a United States registered plane directly between the United States and the PRC. The cargo consisted of breeding swine supplied by the Illinois Agricultural Service Company. It was reported that the shipment was financed through a private company in Hong Kong which acted as an agent for the PRC.\textsuperscript{102} More recently, Transinternational Airlines announced its filing with the Civil Aeronautics Board (CAB) of a petition to operate a scheduled plane service between the United States and China.\textsuperscript{103} In December 1978, Pan American Airlines petitioned the CAB for similar permission.\textsuperscript{104} By February 1979, four additional carriers (Braniff, TWA, United and Seaboard) had made similar applications with the CAB.

In the joint statement released on January 31, 1979, by President Carter and Vice Premier Deng, it was indicated that an aviation accord will be concluded between the two countries so that formal, direct air links may be established.\textsuperscript{105}

\section*{VI. FINANCING THE CHINA TRADE}

Foreign assistance programs, such as the programs of the United States Export Import Bank (Eximbank), which develop export trade and create credit facilities can greatly assist the competitive position of American companies in international trade. However, with respect to China, Eximbank financing was not available prior to normalization. Moreover, American companies have been at a disadvantage as com-

\textsuperscript{100} Customs officials are not permitted to give clearance to any vessel whose departure or voyage they have reason to believe would be in violation of any transportation order. 19 C.F.R. § 4.74 (1978).
\textsuperscript{101} These inconsistencies should be clarified in the next amendment of Transportation Order T-2.
\textsuperscript{103} N.Y. Times, Dec. 21, 1978, at D5, col. 2.
\textsuperscript{105} U.S.-CHINA BUS. REV., Jan.-Feb. 1979, at 49-50.
pared with Japanese and European companies which have available to them for trade purposes, long-term government supported financing as well as other assistance. In addition, because of the frozen assets issue and the existence of the Johnson Debt Default Act, United States financial institutions also are restricted in the types of financing they may make available to the PRC. Until recently, China's announced policy was to pay for its imports in cash. However, due to China's newly adopted development strategy, this situation has changed and China has begun actively to seek out financing from abroad. The

After the announcement in 1977 of its development plan, China began hinting that, while it was willing to consider "deferred payments" and "deposits in China" as a method paying for imports, it would not consider outright loans. Commerce J., Nov. 14, 1977, at 20A, col. 5. It is believed that this change in position is due to a Chinese trade budget deficit of $3.5 billion in 1979. Financial Times (London), June 29, 1979, at 20, col. 1; N.Y. Times, June 21, 1979, at D1, col. 1. The PRC also began negotiating with the Japanese for Japanese Export Import Bank financing to support trade resulting from the bilateral treaty between the countries. It was reported that the Japanese would extend Japanese Export Import Bank funds to the Bank of China in the form of low interest credits for projects involving purchases from the Japanese. Id., Aug. 18, 1978, at 9, col. 4. The Chinese appear to have agreed in principle in August with Japan to accept credits from the Japanese Export Import Bank. See generally Financial Times (London), Aug. 29, 1978. However, to date terms have not been agreed to because the Chinese have been insisting that the credits be dollar rather than yen denominated. Bus. Week, Nov. 6, 1978, at 164. Most recently, China's Vice Foreign Trade Minister, Mr. Liu Xiwen, asked the Japanese to accept deferred payments on contracts signed last year for which financing was not arranged for at that time. Financial Times (London), March 23, 1979; Wall St. J., Mar. 21, 1979, at 2, col. 3. The Chinese also began discussions with Japanese and European private banks for deposit facility arrangements providing buyer credits for purchases of goods from these countries. Initially, the Chinese indicated they did not consider these buyer credit facilities loans. They have been reluctant to agree to outright loans, especially on a government-to-government basis, reportedly because of China's unhappy experience in the 19th and early 20th centuries with indebtedness to western colonial nations. Wall St. J., Aug. 22, 1978, at 29, col. 3.

Recently, it has been reported that a group of British banks entered into agreements with the PRC for bank credit facilities as follows:

<table>
<thead>
<tr>
<th>Bank</th>
<th>Amount (U.S.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Midland Bank</td>
<td>$400 million</td>
</tr>
<tr>
<td>National Westminster Bank</td>
<td>$300 million</td>
</tr>
<tr>
<td>Barclays Bank</td>
<td>$150 million</td>
</tr>
<tr>
<td>Standard Chartered Bank</td>
<td>$100 million</td>
</tr>
<tr>
<td>Kleinwort, Benson Ltd. and Bank of Scotland</td>
<td>$100 million</td>
</tr>
<tr>
<td>S.G. Warburg &amp; Company and Lloyds Bank</td>
<td>$100 million</td>
</tr>
<tr>
<td>Williams &amp; Glyn's Bank and Royal Bank of Scotland</td>
<td>$ 50 million</td>
</tr>
</tbody>
</table>

These loans are 85% guaranteed by the United Kingdom's Export Credit Guarantee Department. N.Y. Times, Dec. 7, 1978, at D7, col. 2.
Chinese have announced that in the future American companies will be placed on equal footing with those companies whose governments China had dealt with previously.\textsuperscript{107} However, the Johnson Act and lack of Eximbank financing still constrains United States financial institutions in participating in the China trade.\textsuperscript{108}

It is hoped that these questions will be resolved soon, since American financial institutions and companies at this moment are in an excellent position to do business with China because of the PRC's preference for financing denominated in dollars. This is clear from the recent difficulties the Japanese have had in getting the Chinese to agree to yen financing. After several months of Japanese insistence that sales and projects be yen denominated, it now appears that at least one half of the deferred payments will be through commercially raised dollars and the other half in yen supplied by Japan's Export Import Bank.\textsuperscript{109} It also should be noted that the recent PRC-United Kingdom trade agreement is backed by a line of credit in dollars.\textsuperscript{110}

American insurance companies, which are significant lenders of

\textsuperscript{107} N.Y. Times, Dec. 19, 1978, at A1, col. 4. For an excellent article on the manner in which United States companies can utilize financing to gain a competitive edge in the China market over foreign companies, see Deamer, \textit{Financing Plant and Equipment Exports to China}, U.S.-CHINA BUS. REV., Jan.-Feb. 1979, at 37-48.

\textsuperscript{108} Nevertheless, certain United States banks, even before the announcement, began to take steps to participate in the growing China trade. During February 1979, the First National Bank of Chicago became the first United States bank to open correspondent rather than so-called nontrade correspondent relations with the Bank of China. Wall St. J., Mar. 16, 1979, at 9, col. 1. The Chicago bank in May 1979 opened the first direct letter of credit between a United States chartered bank and the PRC in more than 20 years. The transactions, reportedly, involved direct processing of a letter of credit and other documents while funds, in deference to the frozen assets and other legal uncertainties, moved through European and Asian banks. U.S.-CHINA BUS. REV., May-June 1979, at 56. The Chase Manhattan Bank also has announced its willingness to aid in financing China's modernization and recently dispatched its President to China to explore expanding banking cooperation with Chinese institutions. N.Y. Times, Dec. 15, 1978, at D2, col. 4. Citibank has established a trade financing account with the Bank of China and is selling its travellers checks in China. \textit{Id.}, Mar. 6, 1979, at 12, col. 4. During Mr. Blumenthal's visit to Beijing, the United States formally invited the Bank of China to open a branch office in the United States. Wall St. J., Mar. 2, 1979, at 10, col. 3. Bank of America was recently given permission by the Chinese to open a permanent representative office in China. Wall St. J., Mar. 15, 1979, at 6, col. 1; \textit{id.}, Mar. 14, 1979, at 13, col. 4. Bank of America has had a non-commercial bank relationship with China since 1976, and a correspondent relationship since January 1979.

\textsuperscript{109} Financial Times (London), Mar. 20, 1979; \textit{id.}, Mar. 21, 1979.

\textsuperscript{110} \textit{Id.}, Mar. 6, 1979.
fixed rate, long-term dollar loans, will also be able to participate indirectly in such financing through American commercial banks or companies. Such institutional lenders are constrained by American laws in making loans directly to foreign borrowers. This was the conclusion reached in a recent Bank of America report.111

Current United States laws do not merely offer obstacles to the financing of trade with China. With respect to the export of United States commodities, which constitutes a major portion of United States exports to China, American laws also offer certain limited assistance. The provisions of the Agricultural Trade Act of 1978, for example, permit the Commodity Credit Corporation to participate in short-term financing of commodity exports to China. This will be considered in greater detail below.

A. The Johnson Act

The Johnson Debt Default Act,112 originally enacted on April 13, 1934, makes it a criminal offense after that date for any person “within” the United States to make “any loan” to, or purchase or sell “the bonds, securities, or other obligations” of a “foreign government” or “political subdivision thereof,” or any “organization or association” acting on its behalf so long as it “is in default in the payment of its obligations, or any part thereof, to the United States.” A violation of the Johnson Act is punishable by a fine of not more than $10,000 or imprisonment for not more than five years, or both. The PRC falls under the prohibitions of the Johnson Act because it is considered responsible for approximately thirty to forty million dollars in debt owed to the United States by the former Kuomintang government.113

The Act was promulgated in response to defaults by European countries on bonds sold in the United States during World War I and the 1920’s. Today its prohibitions are directed primarily at Communist countries in default within the meaning of the Act. The Act does not apply to foreign governments which are members of both the International Monetary Fund and the World Bank, or to any transactions in which the Eximbank participates.114 Mr. Deng indicated during his recent trip to Japan that China intended to join the International Monetary Fund and the Asian Development Bank “if the Taiwan issue

is settled.' Taiwan is a member of both organizations and Beijing's stance has been that Taiwan must be expelled from world bodies before China will join them.

The Johnson Act's apparent sweeping scope has been limited over time by opinions of a series of United States Attorney Generals. A 1934 opinion indicated that "bonds, securities, or other obligations" in the text of the Act referred to obligations such as those which had been sold to the American public to raise money for the use of the foreign governments issuing them. The opinion concluded that the Act did not apply to "foreign currency, postal money orders, drafts, checks, and other ordinary aids to banking and commercial transactions, which are 'obligations' in a broad sense but not in the sense intended." A subsequent opinion stated that the Act does not apply to activities of foreign subsidiaries of American banks when they act independently as to capital set apart for their separate use or as to their own deposits so long as there is no shifting of funds or securities between the parent and foreign subsidiaries. It is not clear to what extent banks may rely on this opinion in transactions factually differing from those set forth in the opinion, such as, for instance, those involving unincorporated foreign branches.

Former Attorney General Kennedy decided that "sales transactions by American exporters on a deferred-payment basis" and "forms of credit transactions in which private exporters commonly engage in connection with exports sales on credit, involving the assignment or negotiation of contract rights or commercial paper" involving defaulting countries would not be violative of the Act. This decision was based on the conclusion that the "obligations" involved "are issued in the ordinary course of trade and normally move exclusively within the restricted channels of banking and commercial credit" and consequently fell outside the meaning of "obligations" as used in the Act. Former Attorney General Clark also decided that three additional forms of financing, lines of credit, barter arrangements and deferrals of payment until earnings are developed, fell within the types of transactions excluded from the scope of the Act, unless the "financial form of the transaction is a subterfuge to conceal what is, in effect, a general purpose loan."
While financial transactions involving the PRC within the United States and certain other transactions such as general purpose loans or public issues abroad could fall within the scope of the Act, these opinions make reasonably certain that subsidiaries, and perhaps branches, of United States banks abroad may provide eurodollar credit financing to China without violating the Act.

The repeal by Congress of the Johnson Act is unlikely and probably unnecessary since it could easily be taken out of the picture if an agreement can be reached to settle China's outstanding debt in conjunction with (or apart from) the frozen assets question. Although at this time rather unlikely, it might be possible for the PRC and Taiwan to agree on a manner in which this debt could be apportioned between them.\footnote{Recent efforts in this area by the PRC were rebuffed by Taiwan. N.Y. Times, Dec. 19, 1978, at A14, col. 1. The breakthrough in United States-China relations came when the PRC indicated to Washington, but without making a commitment, that China would refrain from military force to unite Taiwan with the Mainland. \textit{Id.}, Dec. 18, 1978, at A12, col. 1. Taiwan appears to have taken developments to date in stride. Financial Times (London), Dec. 21, 1978, at 14. The United States is also doing a balancing act in announcing, shortly after the PRC normalization disclosure, that it would maintain all United States-Taiwan pacts except the Mutual Defense Treaty of 1954. N.Y. Times, Dec. 18, 1978, at A12, col. 1. Both the House and Senate passed bills which will enable the United States to maintain unofficial relations with Taiwan despite diplomatic recognition of China. Both bills state that any effort to resolve the Taiwan issue by other than "peaceful means" would be "of grave concern to the United States." \textit{Id.}, Mar. 14, 1979, at 1, col. 6; Wall St. J., Mar. 14, 1979, at 1, col. 3. The bills thus are intended to offer some assurance to Taiwan of United States support, but stop short of committing the United States to defend Taiwan militarily. It is likely that similar language will remain in the conference version and be signed into law by the President. The Chinese have strenuously objected to the inclusion of such a pledge in any Taiwan legislation and have delivered a protest to Ambassador Woodcock. Also, they have published a dispatch which describes such legislation as "unacceptable to the Chinese Government." N.Y. Times, Mar. 26, 1979 at A13, col. 1. The conference version of the legislation was filed with both houses of Congress on March 26, 1979. The version also contains the following requirements to the effect that the United States is "to assist the people on Taiwan to maintain a sufficient self-defense capability through the provision of arms of a defensive character." \textit{Id}.}

B. Export Financing

poration, formed in 1934, which today is the Export-Import Bank of the United States (Eximbank). Eximbank is an independent agency of the United States whose primary purpose is to aid in financing, insuring and facilitating the export of United States source goods and services. The Eximbank is authorized to do a general banking business including direct loans and guarantees. The Eximbank's programs also include short- and medium-term insurance coverage for United States exports in cooperation with the Foreign Credit Insurance Association (FICA), and guarantees of debt obligations by the Private Export Funding Corporation (PEFCO), which purchases medium- and long-term debt obligations of foreign importers of American exports and which finances such purchases through the sales of PEFCO's own securities to private investors in the United States and abroad.

Eximbank's charter was recently extended through September 30, 1983, and its total loan, guarantee, and insurance authority increased from twenty-five to forty billion dollars by the Export-Import Bank Act Amendments of 1978.

Eximbank is currently prohibited from financing exports to the PRC by virtue of section 402 of the Trade Act of 1974. Section 402 makes a nonmarket economy ineligible for Eximbank financing if it "denies its citizens the right or opportunity to emigrate." The pro-

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124 See Kurst, 64-5th TAX MANAGEMENT, Export Financing—Aid: CCC: EXIMBANK.

FICA will not be able to insure or guarantee deals with China until Congress permits the Eximbank to extend credits to the PRC. COMMERCE J., Jan. 8, 1979, at 1, col. 3.


127 Id. § 2432(a)(1). The United States also may not "conclude any commercial agreements with any such country." Id. China has come under recent attack by Amnesty International over human rights, especially the manner in which it treats political dissenters and for reported abuses of its legal and penal systems. Wall St. J., Nov. 27, 1978, at 22, col. 2. In early 1978, China's leaders began to publicize cases of political persecution along with descriptions of efforts to correct the abuses. N.Y. Times, Mar. 1, 1978, at 1, col. 5. Just prior to the normalization announcement by President Carter, a flurry of wall posters appeared in Peking demanding better civil rights and due process in legal proceedings. The topic of human rights was discussed by the United States and PRC prior to the announcement. Id., Dec. 25, 1978, at 1, col. 4. The recent announcement of Chen Yun's and Hu Yaobang's elevation to the
hibitio may be waived by the President under a complex waiver pro-

procedure set forth in section 402. The Eximbank Act, in section 2(B)(2)
also contains an additional prohibition on Eximbank's participation in
transactions involving any Communist country unless the President
determines such participation to be in the national interest. This
prohibition may be unilaterally waived by the President. Such
presidential determination has not been made to date with respect to
the PRC.

During the 95th Congress, several amendments were proposed by
Les Au Coin (D-Oregon) to amend section 402 of the Trade Act of
1974, to permit the PRC to participate in United States credit,
guarantee or investment guarantee programs (H.R. 5714 and 8196).
Amendments also were proposed to the Eximbank Act to eliminate the
presidential determination requirement in connection with trade with
Central Committee of the Chinese Communist Party, both of whom were purged in
the Cultural Revolution, and the rehabilitation of former Defense Minister Beng Deh
Huai, purged in 1959 after the Great Leap Forward in a clash with Mao, are indic-
tions of this new sensitivity on the part of the PRC leadership to human rights ques-
number of public human rights demonstrations have been held in Beijing. ECONOMIST,
Jan. 20, 1979, at 14. The prominent dissenters known by the pseudonym Lilche, who
in 1974 publicly sought restoration of laws and political rights also were reportedly
rehabilitated. N.Y. Times, Feb. 9, 1979, at A14, col. 1. Nevertheless, more recently
Chinese officials have issued warnings to youthful dissenters against disruptive
demonstrations such as the one held in Shanghai in February 1979. Id., Feb. 13, 1979,
at A7, col. 1. Mr. Deng recently accused some Chinese of going too far with the trend
1. Consequently, at this juncture it is not clear to what extent China's leadership will
allow, as Mao was about to say: "Let the hundred flowers bloom." Nonetheless, in
light of President Carter's public stance on human rights and the world's increasing
awareness of the Helsinki Act's human rights provisions, it appears of paramount in-
terest to the promotion of the United States-China trade for China to take corrective
steps for apparently abusive actions and purges taken during the Cultural Revolution.
For instance, the Export Administration Regulations were amended in support of
human rights to require special licenses for all commodities, particularly those useful
in crime control and detection so that such exports will be used in a manner consistent
with United States foreign policy regarding the preservation of human rights. See EX-
PORT ADMINISTRATION BULLETIN NO. 182, June 26, 1978. China is already subject to
such restrictions and the Export Administration's amendments were aimed at countries
in other country groups. For a survey of past PRC criminal law procedures, see R.
Pfeffer, Crime and Punishment: China and the United States, in CONTEMPORARY
CHINESE LAW: RESEARCH PROBLEMS AND PERSPECTIVES (J. Cohen ed. 1970); J. COHEN,
THE CRIMINAL PROCESS IN THE PEOPLE'S REPUBLIC OF CHINA 1943-1963: AN IN-
TRODUCTION (1967); S. LENG, JUSTICE IN COMMUNIST CHINA (1967).

the PRC. On May 1, 1978, the House Banking Committee approved the Trade Act amendment but the House, on June 2, 1978, rejected the proposal. The Export-Import Bank Act Amendments of 1978 were enacted into law without taking China out of the restricted category. As of this date, China is not eligible for Eximbank financing.

In light of the normalization announcement there is every reason to believe that similar amendments, if proposed, would have a better chance of passage in the next Congress.

C. Eximbank and Taiwan

In accordance with a Presidential Memorandum of December 30, 1978, to all United States federal agencies, all agreements and treaties with Taiwan, except the Mutual Defense Treaty of 1954, will remain in effect until appropriate legislation is passed by Congress. As indicated above, both Houses have already considered and passed such bills.

The Eximbank has addressed the question of existing and continuing Eximbank facilities to Taiwan through a question and answer format in its January 1979 Eximbank Record. The discussion proceeded in part as follows:

Q. What is the status of existing Exim loans, guarantees, and insurance for U.S. export sales to buyers and Taiwan?
A. All prior credit agreements, guarantees, and insurance obligations remain in effect without amendment. Normal business procedures are being followed by the Exim staff.

Q. Will there be any changes in procedure on exporter credits, guarantees, and insurance as a result of normalization?
A. Exim expects no changes will be necessary in the exporter or supplier credit areas as these programs are sought by U.S. exporters and financial institutions and not by buyers on Taiwan.

Q. What about buyer credits, that is the direct loan and financial guarantee program?
A. There has been no interruption or delay in processing direct credit and financial guarantee applications from or in behalf of

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130 A number of legislators led by Senator Barry Goldwater have filed suit to prevent the Administration from terminating the Mutual Defense Treaty of 1954 with Taiwan. Goldwater v. Carter, No. 78-2412 (D.D.C., filed Dec. 22, 1978); N.Y. Times, Dec. 23, 1978, at 9, col. 1. However, the suit has been dismissed for lack of standing. Cleveland Plain Dealer, June 7, 1979, at A28, col. 3.
132 See note 121 supra.
qualified buyers on Taiwan. Exim does expect some adjustments will occur so applications, backed by the authorities on Taiwan, can be communicated and processed through the American Institute in Taiwan. However, U.S. exporters, financial institutions and buyers on Taiwan are assured that Exim's support for qualified sales will be dependable and consistent with pre-normalization policies.\(^\text{133}\)

Now that United States-Taiwan relations are to be conducted by the nongovernmental American Institute in Taiwan (which at the moment is moribund due to lack of appropriated congressional funds), the Eximbank might not be able to deal directly with Taiwanese governmental agencies which are borrowers or guarantors. This may raise some concern about the ability of Eximbank and American commercial creditors to enforce obligations outstanding in Taiwan.

In the event of any defaults in loans to Taiwan (which some estimate exceed more than $3.5 billion, including $1.6 million owed to Eximbank), legal complications might arise due to the recognition of China by the United States. Most loan agreements provide that disputes are to be heard in American courts. However, such clauses are generally subject to certain conditions, such as reciprocity, which were intended to make sure that American courts enforced judgments by Taiwanese courts. These clauses assume, however, that Taiwanese government agencies would have standing to sue in American courts. Now that Taipei is not a recognized government, however, its agencies may lack such standing. Consequently, a judgment obtained in the United States against delinquent Taiwanese borrowers may not be accorded comity in Taiwanese courts, without a review of the merits. This could mean that the only means of enforcement for the lenders in such cases would be to sue directly in Taiwanese courts. Naturally, Eximbank's standing to sue there might be questionable.

Another issue of importance that has been sidestepped for the time being is whether Eximbank can continue to extend facilities to Taiwan. If Taiwan is a part of China, as agreed to by the United States and the PRC, no future financing should technically be extended until a presidential determination is made in accordance with section 2(B)(2) of the Eximbank Act.\(^\text{134}\)

Some of these issues should be faced by the Administration, if they

\(^{133}\) 3 Eximbank Record 4 (Jan. 1979).

\(^{134}\) It was reported that these legal issues were among those discussed in a memorandum prepared for major American banks having large exposure in Taiwan. Wall St. J., Feb. 23, 1979, at 3, col. 2.
are not resolved by the congressional legislation currently being considered concerning Taiwan.

D. CCC Commodity Export Sales Financing

The Agricultural Trade Act of 1978, passed by both the House and Senate, authorizes the Commodity Credit Corporation (CCC) to provide commercial credits for up to three years (under its export credit or deferred sales program) for export sales to the PRC of United States agricultural commodities out of private stocks. The export credit sales program of the CCC is available for financing of commodity export sales for periods of not more than thirty-six months. The program enables American exporters, once their applications for financing are approved by the CCC, to export commodities sold on a deferred basis while receiving payment in cash from the CCC for the instrument of obligation of the buyer, accompanied by an irrevocable letter of credit confirmed (or advised) by a United States bank which is acceptable to the CCC.

The Act also establishes a deferred payment sales program which can be used in commodity sales to the PRC. That program will be available to exporters who sell to the PRC on payment terms not exceeding three years. An exporter must apply to the CCC under a sales plan which shows that the exporter wishes to make such sales "in order to meet sales competition from other nations, or to make additional export sales." Intermediate financing in excess of three years and up to ten years is also authorized under the Act but only upon a determination by the Secretary of Agriculture that the sales will develop, expand or maintain an importing nation as a foreign market on a long-term basis for United States agricultural sales, or will otherwise improve the capability of the importing nation to purchase and use such commodities on a long-term basis. It is possible that in the future, sales of commodities to China will become eligible for this program.

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138 Id. § 1707b(b).
139 Id. § 1707a(b).
140 Agriculture Secretary Bergland returned from a November 1978 trip to the PRC with indications from the Chinese that "the Chinese are likely to become regular and significant purchasers of United States grain and cotton." N.Y. Times, Nov. 15, 1978, at D3, col. 1. Through September of 1978, China's purchases of American com-
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VII. FOREIGN ASSISTANCE PROGRAMS

Under the present regulatory scheme, American foreign military and economic assistance programs, except humanitarian assistance in certain cases, are not available to the PRC because of its Communist status and perceived danger to United States security. The legislation containing the declaration of such prohibitions is the Mutual Defense Assistance Control Act of 1951 (the Battle Act). \(^{141}\) It could have an impact on United States allies trading with the PRC because it provides for termination of military assistance to countries when the President determines that the recipient country is not cooperating with the United States in, for instance, the aims of COCOM. \(^{142}\) While not entirely clear, it appears that the extension of commercial export sales credit facilities, whether directly or through export guarantees or insurance, would not constitute "assistance" within the meaning of the Battle Act. \(^{143}\)

Additionally, provisions of the Foreign Assistance Act of 1961, as amended, generally prohibit the extension of foreign aid by the United States to certain Communist countries, including China. \(^{144}\) However, the President is authorized by the Act to make a finding with respect to a specific country that: (1) the assistance is vital to the security of the United States; (2) that the country is not controlled by the international Communist conspiracy; and (3) that such assistance will further promote the independence of the recipient country from international Communism. \(^{145}\) Also, with respect to countries with which the United States has severed diplomatic relations, no foreign assistance is permitted under the Act unless the following two conditions are met: "(1)
diplomatic relations have been resumed with such country; and (2) agreements for the furnishing of such assistance . . . have been negotiated and entered into after the resumption of diplomatic relations with such country."

The Agency for International Development (AID) of the Department of State administers foreign aid programs. The PRC is excluded from the list of countries authorized to receive such aid. Exports financed by AID have included significant amounts of American origin agricultural commodities and equipment and accompanying ocean transportation. As mentioned earlier, such items constitute a significant percentage of United States exports to China. Sales to China are also not eligible for any other CCC credit programs under the old Public Law 480 legislation, later the Food for Peace Act of 1966. These other CCC credit programs include the Private Sales Trade Agreement Program which is administered by the CCC, and the Cooley Loan Program, now administered by the Overseas Private Investment Corporation (OPIC). The former provides long-term (up to twenty years) financing for commodity sales and the latter provides sales of commodities for inconvertible local currencies. These programs are not available in connection with sales to the PRC because by definition China is not a "friendly country." However, the President is required to periodically review the status of ineligible countries and report the results to Congress.

There have been some suggestions to the effect that despite this situation, China might be eligible for United States aid through AID's Reimbursable Development Program (RDP). This program enables developing countries to obtain technical assistance from American agencies (e.g., the Army Corps of Engineers) though in most instances the country must pay for such services unless performed with respect to projects AID believes would result in later sales by the United States. However, to become eligible for RDP, the State Department must first declare a country "friendly" to the United States. Thus far, this has

146 Id. § 2370(t).
148 Id. § 201.11(b)(4).
151 7 C.F.R. § 17 (1978).
152 Id. § 11; see Kurst, 168-4th TAX MANAGEMENT, Foreign Investment in LDCs—OPIC, EXIMBANK, IFC, IDC, et al. A-3, A-29 to A35.
not been done in the case of China. Additionally, in 1977, the Congress added a provision that agreements to finance commodity sales under the Food for Peace Act can be made only for countries which do not violate human rights.

VIII. INVESTMENT IN CHINA

A. Transfer of Technology

Feng Y, Minister in charge of the PRC’s State Scientific and Technology Commission, in March 1978, unveiled China’s plan for the development of science and technology, with an emphasis on introducing foreign technology in March 1978. In the last few months many American companies have announced contracts to participate in the development of China’s technology. The Amherst Group announced what appears to be a major technical assistance program and a letter of intent to build six hotels in China. Kaiser Engineers, Inc. of Oakland, California signed a mining service contract to upgrade the Nan Fen and Szechaying iron ore mines. Bethlehem Steel also signed an agreement to provide two iron ore processing plants for China. Other large technology business deals involving companies from other countries also have been announced.

These projects, together with increasing export sales to China, raise this question: To what extent can and will the Chinese agree to protect trademark and patent rights of companies trading with China?

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156 See U.S.-CHINA BUS. REV., May-June 1978, at 3-8; cf. Wall St. J., Dec. 22, 1978, at 6, col. 4. Sections 116(d)(1) and 502B(b) of the Foreign Assistance Act, as amended, likewise require reports from the Department of State to Congress on human rights practices in countries receiving economic assistance under Title I of the Act or proposed recipients of security assistance. The Administration can adjust assistance levels to recognize good human rights performance and manifest the United States concern over human rights violations. In the event such assistance were to be rendered to China, reports on its human rights practices would be required under these laws, as they are presently required with respect to Taiwan.
160 BUS. WEEK, Nov. 6, 1978, at 76-77.
161 As required with respect to trademark and patents, the Trade Act of 1974 also required that any bilateral trade agreement between United States and China include provisions for copyrights not less than that afforded by the Universal Copyright Conven-
B. Trademarks

In March 1978, the China Council for the Promotion of International Trade (CCPIT) informed the National Council for United States-China Trade that as of January 1978, American firms could register their trademarks in China under article 12 of the Regulations Governing Trademarks. Since that time more than forty American companies have registered over seventy American trademarks in the PRC. Until that time only trademarks registered in countries with which China had entered into reciprocal agreements on trademark registration could be offered for registration.

Foreign trademarks may be registered in China for ten years, and may be renewed for an additional ten year period. Licensing of trademarks is not provided for in the regulations. In September 1978, CCPIT informed the National Council that foreign applicants need not establish use of a trademark in China. Article 11(3) of the Regulations Governing Trademarks, which provides for cancellation of trademarks if not used for one year, has been held to apply only to domestic trademark applicants. With the increase of consumer sales...
to China (e.g., Coca Cola) the cancellation issue will become of greater concern in the future.\textsuperscript{168}

Under the Trade Act of 1974, the United States is required to establish bilateral treaties for trademark protection equivalent to that provided under the Paris Convention.\textsuperscript{169} Thus, despite the above exchange of letters between CCPIT and the National Council, it is not certain that this is sufficient to meet the requirements of the Trade Act since neither body represents its government.\textsuperscript{170} Companies registering their trademarks under the present method should keep this uncertain registration status in mind.

C. Patents

For many years China did not have an established system of patent protection, although in 1963 a “law” was promulgated by the State Council to “promote the development of science and technology and the national economy.”\textsuperscript{171} It does not appear that this law would prevent the Chinese from acquiring foreign patents or know-how without the consent of or compensation to the owner. To date, foreign companies have relied on contracts negotiated with the Chinese for their patent protection.\textsuperscript{172} The law was recently revised and is effective from December 28, 1978.\textsuperscript{173} Article XII of the New Invention Law provides that, “[o]verseas Chinese residing in foreign countries and foreigners may report their inventions to the State Scientific Commission. They will be examined and approved for rewards according to this regulation.”\textsuperscript{174} Despite this new law, China still does not appear to have adopted a comprehensive system for patent protection.

The Chinese have let it be known that they are planning to enact new commercial laws aimed at, among other matters, protecting industrial property rights of foreigners.\textsuperscript{175} Enactment of such laws, along

\textsuperscript{168} For a useful compilation of PRC trademark regulations, application forms, schedule of processing fees and other information, see NATIONAL COUNCIL FOR UNITED STATES-CHINA TRADE, TRADEMARK REGISTRATION IN THE PRC (Oct. 1978).


\textsuperscript{170} U.S.-CHINA BUS. REV., Jan.-Feb. 1979, at 64.


\textsuperscript{172} Id. at 38.

\textsuperscript{173} For an English text of the law, see U.S.-CHINA BUS. REV., Jan.-Feb. 1979, at 60-61.

\textsuperscript{174} Id.

\textsuperscript{175} N.Y. Times, Dec. 9, 1978, at 1, col. 5.
with China's accession to international industrial property rights conventions, could greatly assist in normalizing the transfer of technology to China.

Currently, in addition to export licenses for technological items sold to the Chinese, American companies must consider the laws concerning the transfer of certain data in their dealings with the Chinese with respect to such matters.

Because of the many PRC delegations visiting American factories and scientific facilities, the bars of the Industrial Security Program also must be kept in mind by American hosts. The Industrial Security Program prohibits access to classified sites in the United States. Also, pursuant to section 414 of the Mutual Security Act of 1954, the Department of State has issued regulations restricting the export by oral, visual or documentary means of not only classified information (which includes equipment and information relating to arms, ammunition and implements of war on the Munitions List) but also any unclassified technical data which can be used, or be adopted for use with respect to such items. Finally, the Espionage Act of 1977 prohibits the communication or transmission of defense information.

D. Joint Ventures

One of the most interesting departures from previous policy has been China's announcement that it will permit direct foreign investment in the form of joint ventures. Already a number of cooperation agreements between Hong Kong companies and the Chinese are in effect. However, these involve no ownership by foreign companies. One joint venture will develop Luk Yeung Sun Chuen, a township to be built in the new territories of Hong Kong. Another, with Novel Enterprises, Ltd. of Hong Kong will set up a yarn spinning mill in Chuhai, Guangdong. Novel will own no equity in the mill, but

176 There have been some reports that China will join the Paris Convention for the Protection of Industrial Property before the end of 1979. U.S.-CHINA BUS. REV., Jan.-Feb. 1979, at 61.


179 Technical data is also subject to special licensing by the Department of Commerce to the extent it is exported to China. 15 C.F.R. § 379 (1978). Finally, certain acts such as the Atomic Energy Act make it a crime for anyone to communicate, transmit or disclose "to any individual" certain restricted data.

180 COMMERCE J., Sept. 1, 1978, at 13, col. 4. Also see Cleveland Plain Dealer, July 2, 1979, A2, col. 1.

Novel's investment will be paid back through production from the plant. In addition, PRC banks in Hong Kong are said to have guaranteed an agreed level of profits to Novel. During Mr. Blumenthal's visit to Beijing, Mr. Yu Chinh, China's Deputy Prime Minister, proposed "cooperation agreements" from American companies. More recently, China also made it clear to western trade delegations that it is willing to offer foreign companies equity participation in Chinese companies up to forty-nine percent on the apparent ground that this would lighten China's borrowing needs for large projects. These companies could then be financed directly by the foreign partners to the extent of their equity in such enterprises.

Among the laws China proposes to enact is one which is to guarantee the rights of foreign investors in joint ventures. It also has been reported that the Chinese hope to announce their newly revised tax law and commercial code in time for the thirtieth anniversary of the founding of the PRC on October 1, 1979. Such laws are expected to cover rules for setting up joint ventures, and new tax policies. Under present tax laws, foreign joint ventures would be subject to an income tax of approximately seventy percent. There has even been mention that the Chinese might be willing to offer more than forty-nine percent equity participation to foreign partners as long as China retains control over the management of the firm.

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182 *Id.*, Feb. 27, 1979, at 13, col. 2.

To date the PRC is not eligible for direct loan investment insurance and guarantee programs of OPIC. 22 U.S.C. § 2191 *et seq.* (1976). OPIC could, for instance, guarantee up to 50% of a United States company's equity investment. Such programs have played a part in promoting investments in Communist countries such as Yugoslavia. *See Overseas Private Investment Corporation, Investing in Yugoslavia with OPIC Assistance* (1973). OPIC provides insurance against expropriation, inconvertibility of currency, war, insurrection and revolution. At present, United States firms can obtain political risk coverage for business they do in China from National Union Fire Insurance Company, a member company of the American International Group (AIG) in New York. N.Y. Times, Jan. 28, 1979, at A10, col. 2. AID can write up to $10 million per transaction for firms doing business with China, on a sales or service basis. Reportedly, AIG's rates for such coverage range from approximately .5% of a policy's amount for transactions in "safe" countries such as Japan to five to six percent for countries such as Sierra Leone. *U.S.-China Bus. Rev.*, Jan.-Feb. 1979, at 58.

184 Cleveland Plain Dealer, July 2, 1979, at A2, col. 1; Wall St. J., June 27, 1979, at 6, col. 1.
185 Wall St. J., Mar. 2, 1979, at 1, col. 3.
186 *Commerce J.*, Mar. 1, 1979, at 1, col. 3.
representatives of foreign partners will be permitted to sit on the boards of such joint enterprises.

This apparent willingness of the Chinese to undertake such radical steps is largely due to the ambitious nature of China's development plan. The Chinese have realized that because of the huge sums involved, and despite the willingness of western nations and companies to partially finance its development, the PRC will have to "foot" the bill for its development. The primary means of achieving this development include not only barter and switch arrangements, involving commodities such as coal and oil, countertrade involving the export from China of a certain portion of the purchase price of foreign imports, and project finance, but also through the establishment of joint ventures which should pay for themselves with their output and which can be sold in China or exported. Later, such ventures should be able to return a profit for their founders which the foreign partners should be permitted to repatriate.

The guarantee by the PRC of repatriation of foreign capital invested in such ventures as well as repatriation of the profits realized from that capital are issues which the proposed trade laws will have to resolve before there will be long-term western participation in China's future development.

E. China Trade Act Corporations

In 1922, the United States enacted the China Trade Act (CTA) to encourage Americans to engage in business in China. Under the Act, "China" includes mainland China, Manchuria, Tibet, Hong Kong and Macao. The CTA corporations are currently chartered by the Bureau of Foreign Commerce if it is found that, "such corporation[s] will aid in developing markets in China for goods produced in the United States." Before the enactment of the Tax Reform Act of 1976 (which provides for the phasing out by 1978 of the special benefits granted to CTA corporations), CTA corporations could eliminate their taxable income if all of such income was derived from sources within "Hong Kong and Formosa," if all of its shareholders were either American citizens or residents of Hong Kong, Formosa or the United States, and if the CTA corporations paid a special dividend to them at least equal

188 Id. § 145.
to their federal tax liability.\textsuperscript{189} In addition, with respect to residents of Hong Kong or Formosa who were shareholders, the pre-1976 Code exempted from taxation, dividends paid to them by CTA corporations.\textsuperscript{190}

Although these benefits have been phased out by the 1976 Tax Reform Act, this vehicle is still available to Congress as a means of promoting trade with the PRC, should it decide to restore the phased out benefits and make revisions in the law to include the PRC in the definition of eligible sources for tax benefits.

IX. CONCLUSION

Because China has a population of almost one billion people does not necessarily mean that the PRC will become a huge market for everything foreign companies and financial institutions across the world seek to offer to the Chinese.

The Chinese are very experienced and tough negotiators so that final terms of various transactions rarely are as lucrative as western firms initially might have hoped for.\textsuperscript{191} An example is the plant import contracts initialled last year by the Japanese. At the time of signing the Japanese agreed to sixty day periods for the Chinese purchasing corporations to obtain import licenses from the Ministry of Foreign Trade.\textsuperscript{192} When the licenses were not obtained within the stipulated periods the Chinese informed the Japanese companies that the contracts were being "suspended" and suggested that the contracts be renegotiated to change the payment terms from cash to deferred payments.\textsuperscript{193} The Japanese perhaps made a mistake in signing the above contracts without also concluding an agreement on the financing of such purchases. This has resulted in the delay of sales under these contracts even though the eventual purchase prices to be paid by the Chinese might be increased.\textsuperscript{194}

\textsuperscript{189} I.R.C. § 941 (1954).
\textsuperscript{190} Id. § 943.
\textsuperscript{191} For an instructive book on negotiating styles utilized by the Chinese in times when relations with the United States were strained see, K. Young, NEGOTIATING WITH THE CHINESE COMMUNISTS: THE UNITED STATES EXPERIENCE 1953-1967 (1968).
\textsuperscript{192} Financial Times (London), Feb. 27, 1979, at 20.
\textsuperscript{193} Id., May 11, 1979, at 4.
\textsuperscript{194} On May 16, 1979, Japan's Export-Import Bank finally signed a "basic memorandum" on an approximately two billion dollar loan to China to be utilized for the development of coal and oil. The loan will be at a 6.25% interest rate and is not tied only to purchases from Japanese firms. Id., May 16, 1979, at 6. Perhaps because of the recent performance of the yen, the Chinese finally agreed to the loan being yen
Consequently, companies should be prepared for protracted negotiations as well as tough contractual terms. However, this does not mean that firms cannot conclude beneficial agreements with the Chinese, merely that they must be realistic in their objectives and, in instances where it is not possible to achieve them, to be prepared to walk away without the deal. In the long-run this should lead to better business relations founded upon mutual respect.

This is the policy the Chinese and the Carter Administration appear to have been following, as can be seen from recent United States-Chinese government-to-government negotiations. Thus, despite the current apparent impasse in United States-Chinese relations described below, progress in trade will be achieved even though it will not be possible to agree on all issues in which the interests of the two countries are different.

On May 31, 1979, the United States imposed quotas on five categories of textile imports from the PRC after Robert S. Strauss, President Carter's special trade envoy, was unable to reach an agreement with the Chinese to limit imports of seven categories of textile goods to the United States under a bilateral trade agreement.

This unilateral action marked the latest phase in several months of crisis-type negotiations between the two countries. During Secretary Blumenthal's visit to China, negotiations on the frozen assets issue appeared to be deadlocked until the last day of Mr. Blumenthal's visit when suddenly a compromise was reached and an agreement initialled.

denominated. The Chinese also are scheduled to conclude shortly letters of intent with Japanese commercial banks for dollar denominated loans amounting to approximately eight billion dollars reportedly carrying, at least as to the first two billion dollar loan, an interest rate of .5% over the London Interbank Rate and repayable over four and a half years. Wall St. J., May 16, 1979, at 14; N.Y. Times, May 18, 1979, at D7, col. 1; Financial Times (London), May 18, 1979, at 4. A number of contractual terms remain to be negotiated including how disputes are to be settled and what kind of repayment guarantees will be provided. The Japanese banks have been insisting on independent arbitration in a third country and the Chinese are said to be taking the view that disputes should be settled by negotiation between the Chinese and Japanese governments. Financial Times (London), May 23, 1979, at 8.

196 Id., June 1, 1979, at A1, col. 5.
197 Id., May 30, 1979, at D2, col. 1. Similarly, China and the United States recently agreed to cooperate in areas of education and health under an agreement reached during Secretary Califano's visit to Beijing. Wall St. J., June 25, 1979, at 2, col. 3.
A similar situation arose during April 1979, when the Chinese withheld final approval of the frozen assets agreement presumably in protest over the bill passed by the United States Congress concerning American relations with Taiwan. The claims issue remained at an impasse up to arrival in Beijing of Commerce Secretary Juanita Kreps who began talks designed to negotiate a trade agreement establishing

198 N.Y. Times, April 4, 1979, at A10, col. 1. President Carter signed the Taiwan Relations Act on April 10, 1979. Taiwan Relations Act of 1979, 93 Stat. 14 (1979) (to be codified at 22 U.S.C. § 3301). The Act establishes the American Institute in Taiwan as a District of Columbia corporation to assist commercial, cultural and other unofficial relations between the American people and the people of Taiwan. The pertinent portions of the Act have been explained in the following manner:

The authorities on Taiwan will maintain a counterpart nongovernmental organization, the Coordination Council for North American Affairs. The Taiwan Relations Act enables Taiwan to maintain the same number of offices and personnel in the United States that it had before January 1, 1979, when official recognition was extended to the People's Republic of China.

The Act also provides that ownership of Taiwanese property in the United States will not be affected by the American recognition of the People's Republic. For purposes of U.S. law, it recognizes the domestic statutes and contracts entered into under Taiwan law, while transacting business on Taiwan.

Any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, the Act declares, will be considered a threat to the peace and security of the Western Pacific Area and of grave concern to the United States. The Act provides for continued sales of American defense articles to the Taiwanese and directs the President to notify Congress of any threat to the security of the social or economic system of the people on Taiwan and any danger to the interests of the United States arising therefrom. Any action to be taken by the United States in response to such danger shall be determined by the President and the Congress in accordance with constitutional processes.

Provision for the protection of American investments in Taiwan through the Overseas Private Investment Corporation (OPIC) for three years is also found in the law, despite the fact that Taiwan's per capita income is so high that OPIC was previously restricted from operating there.

Eximbank loans to buyers in Taiwan have continued, most recently with a United States $9.6 million loan to be used by the Chia Hsin Cement Corporation to purchase United States equipment and services for the expansion of a 3,000 metric ton cement plant. See Exim News, Apr. 5, 1979, at 1. Also, United States naval vessels have continued to make unpublicized calls at Taiwan's ports, and Republic of China military personnel are still being trained in the United States in the use of American supply weapons. N.Y. Times, May 15, 1979, at A6, col. 1.
formal relations between the countries. For the first few days of the visit it appeared that an agreement "seemed unlikely." However, on May 15, 1979, Chinese Foreign Minister Li Qiang and Mrs. Kreps initialled a mutual trade agreement establishing formal commercial relations between the United States and China for the first time in thirty years.

This compromise is instructive not only because it is an important step in the development of relations between the United States and the PRC but also because the last minute compromise reached left many crucial issues unsettled. The agreement provides for trade between countries on a most favored nation basis, which would reduce most present high tariffs on many Chinese goods imported into the United States. The agreement also offers the PRC the possibility of removing obstacles imposed by the Trade Act of 1974 to the granting of Eximbank and other United States export credits. However, before the agreement can go into effect it must be approved by both houses of Congress, not merely the Senate, since the agreement is not a treaty.

At the time of the initialling, the Administration also made it clear to the Chinese that the agreement would not be sent to Congress until an agreement was negotiated limiting Chinese textile imports to the United States.

Mr. Strauss and the Administration also announced that the

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201 Id., May 16, 1979, at D2.
203 ECONOMIST, May 19, 1979, at 42, col. 2. The agreement also considers and treats questions required by the Trade Act to be resolved in such agreements, including multiple exit and entry visas for businessmen, protection of American industry from disruption by imports and protection of patents, trademarks and copyrights.
204 Wall St. J., May 15, 1979, at 8; N.Y. Times, May 15, 1979, at D1; COMMERCE J., May 11, 1979, at 1. A day before the initialling of the trade agreement, six other accords were reached on scientific, technological and business affairs. N.Y. Times, May 14, 1979, at 1. A cargo-sharing accord reportedly was not concluded though negotiations proceeded on that issue. Id., May 15, 1979, at 1; COMMERCE J., May 11, 1979, at 1. That agreement would probably accord one third each of the liner and bulk cargo trades to United States and Chinese ships and one third to other countries' flag vessels. Chinese vessels would be permitted to enter the same 40 ports the Soviets can enter, under the 1972 agreement between the United States and Soviet Union. COMMERCE J., May 14, 1979, at 1.
205 ECONOMIST, May 19, 1979, at 42.
United States preferred an agreement on textiles, but that if an agreement could not be reached by the end of Mr. Strauss’ visit to Beijing, the United States would have no alternative but to impose unilateral import quotas on Chinese textiles.\textsuperscript{206} It was indicated to the Chinese that because of pressures from the textile industry and Congress it was felt that the trade agreement would not be approved by Congress without the textile issue being resolved.\textsuperscript{207}

Complicating this situation is the desire of President Carter to link credit and tariff concessions to Beijing with those to Moscow. Under the Trade Act, Communist countries are required to show that they do not restrict immigration in order to obtain such United States concessions. While it appears that China does not restrict immigration to a great extent the same is not true with the Soviet Union. Consequently, some resistance in Congress to grant the Soviet Union such concessions is expected.\textsuperscript{208}

This impasse in government-to-government relations also comes at a point in which there are increasing signs that the Chinese development program is undergoing a marked restructuring and reduction in scope and goals, and that many commercial transactions, some of

\textsuperscript{206} N.Y. Times, May 30, 1979, at D9, col. 1.
\textsuperscript{207} Id., May 31, 1979, at D1. After imposing the quotas, the Carter Administration changed its stance and indicated that it felt that, with the quota, passage of the trade treaty by Congress would be possible. COMMERCE J., June 1, 1979, at 11, col. 4.
\textsuperscript{208} Financial Times (London), May 15, 1979, at 6, col. 3; ECONOMIST, May 19, 1979, at 42. The PRC formally terminated its 30 year old treaty of friendship with the Soviet Union on May 1, 1979. BUS. WEEK, June 4, 1977, at 82. This also might appear to complicate the situation due to the Administration’s avowed policy of even-handed treatment for China and Russia. However, the Chinese have recently approached the Soviet Union with an offer to improve relations, thus, such policy may not in fact be a complicating fact in United States-China relations. Financial Times (London), June 6, 1979, at 1, 5.

As described in this article, the PRC has also shown a conciliatory attitude toward the United States position on Taiwan, although Deputy Prime Minister Deng has warned that congressional legislation on Taiwan has impaired United States-PRC relations. N.Y. Times, Apr. 20, 1979, at A9.

Taiwan also appears to have adjusted to the break in formal relations with the United States. American trade and investments with Taiwan appear to be on the uptrend. Id., May 11, 1979, at 1; id., May 22, 1979, at A2; Financial Times (London), May 9, 1979, at 6. At first, the transition from formal relations between the United States and Taiwan to nongovernmental status was not smooth. However, the American Institute in Taiwan was formerly opened in mid-April 1979. This Institute is similar to the nongovernmental representative office that Japan has in Taiwan, but is more formalized due to its status under the Taiwan Relations Act of 1979. Financial Times (London), May 9, 1979, at 6.
which have been highly touted, have been either cancelled or delayed by the Chinese.\textsuperscript{209}

One instance is a cancellation of a preliminary accord between Chase Manhattan Bank and the Chinese for a thirty million dollar credit extension.\textsuperscript{210} British companies are also experiencing delays in the implementation of their projects.\textsuperscript{211} Finally, the latest Canton Trade Fair was a disappointment to western businessmen, declining in total value significantly below last fall's Fair.\textsuperscript{212}

Not all news has been bleak, however. The First National Bank of Chicago announced recently that it has signed an eight million dollar short-term loan agreement with China and that the Bank of China would accept Visa checks issued by the bank.\textsuperscript{213} The loan is reportedly guaranteed by the Bank of China with an interest rate described by the bank as "profitable."\textsuperscript{214} Also, Occidental Petroleum Corp. recently announced the signing of a joint venture letter of intent to develop and export China's coal.\textsuperscript{215} France, Italy and Sweden all have recently signed significant pacts with China.\textsuperscript{216}

Similarly, Mr. Kang Shien, China's Deputy Prime Minister, who is in charge of energy development, stated in early June 1979, during his visit to the United States, that China will shortly sign agreements with

\textsuperscript{209} It has been clear for a number of months that the Chinese are significantly readjusting their economic modernization program. U.S.-CHINA BUS. REV., Mar.-Apr. 1979, at 4-5. As described in this article, the Chinese have confirmed this significant slowdown and explained it as a planned effort to correct economic dislocations which have persisted for a number of years. N.Y. Times, May 5, 1979, at 1; Wall St. J., May 3, 1979, at 18. In order to cope with these economic problems the Chinese have appointed Chen Yuan as head of a newly created State Finance and Economic Commission. N.Y. Times, July 2, 1979, at A1, col. 3.

\textsuperscript{210} It has been reported that a change in the site for the proposed office and living complex for foreign companies in Beijing, which was to be financed with this loan, led to the amendment of the financing. N.Y. Times, May 31, 1979, at D5. It appears now that the Chinese will pay cash for the preliminary work. Financial Times (London), June 1, 1979, at 7. One other reason for this cancellation (and indications that certain other credit arrangements and transactions have not been finalized) is that the United States and Chinese governments have not settled all details for normalizing economic relations. N.Y. Times, May 31, 1979, at D5.

\textsuperscript{211} Financial Times (London). May 23, 1979, at 28.

\textsuperscript{212} Wall St. J., May 15, 1979, at 20.

\textsuperscript{213} N.Y. Times, June 7, 1979, at D5, col. 3.

\textsuperscript{214} Id.

\textsuperscript{215} Wall St. J., May 22, 1979, at 25, col. 2.

\textsuperscript{216} N.Y. Times, May 10, 1979, at D1 (France); Financial Times (London), Apr. 24, 1979, at 6 (Italy); COMMERCE J., May 21, 1979, at 10 (Sweden).
several American oil companies to utilize their technology in developing off shore fields in the South China Sea.\textsuperscript{217}

In the author's view, solid progress is being made on the diplomatic and business fronts in the short period since relations have been resumed.

The readjustment of development plans is a positive change since it is not entirely clear that, if China had proceeded with the multitude of announced projects, this would have resulted in more significant long-term trade prospects. Perhaps the contrary could have been the case, as undisciplined and uncoordinated purchasing could place impossible strains on China's infrastructure and polity, leading to destabilizing political and economic crises unwelcome to the West.

It is important to note in conclusion that the Chinese are concentrating on establishing the structure essential to developing commercial relations with the West. For instance, only as late as April 1979 did China establish a foreign exchange agency (the General Administration of Exchange Control) to control such transactions.\textsuperscript{218}

Significant, though somewhat slower than expected, progress is also being made on China's commercial code, joint ventures and other laws, all crucial for the development of investment and trade with China.\textsuperscript{219}

Experience is also being gained in the implementation of the first joint venture projects being formed. An example is the Toho Denki tape recorder venture in Shanghai.\textsuperscript{220}

Viewed in this perspective the present impasse is only that, and one necessary to place future trade and relations on a sound and mutually beneficial basis.

\textsuperscript{217} N.Y. Times, June 4, 1979, at D1, col. 3.


\textsuperscript{220} Business China (Business International), Apr. 4, 1979, at 49-50. The PRC also began promoting the establishment of provincial level enterprises authorized to negotiate joint ventures with foreigners and engage in countertrade. Wall St. J., May 30, 1979, at 19. This is a welcome sign of decentralization on the part of Beijing which should provide flexibility in the formation of local organs providing incentives to foreign investors, perhaps along the line of local development authorities and industrial parks in the United States. As evidence of this decentralization trend, the Chinese Province of Guangdong and the State of Illinois recently entered into an agreement which covers future relations between the parties in the areas of industry, culture and agriculture. Wall St. J., July 3, 1979, at 26, col. 4.
Unless major internal political changes should occur in China or major conflicts with China's neighbors erupt, it can be expected that trade relations between the United States and China will increase solidly, but slower in the next few years than originally expected, at least until China attains capacity to significantly increase the size of its exports and decides on the paths its economic development should proceed for the longer term ahead.
### APPENDIX A

China's major trading partners in 1977 were:

<table>
<thead>
<tr>
<th>Country</th>
<th>Exports to $m</th>
<th>Imports from $m</th>
</tr>
</thead>
<tbody>
<tr>
<td>Japan</td>
<td>1,418</td>
<td>2,150</td>
</tr>
<tr>
<td>EEC (total)</td>
<td>905</td>
<td>996</td>
</tr>
<tr>
<td>West Germany</td>
<td>261</td>
<td>552</td>
</tr>
<tr>
<td>France</td>
<td>177</td>
<td>105</td>
</tr>
<tr>
<td>Britain</td>
<td>167</td>
<td>120</td>
</tr>
<tr>
<td>Italy</td>
<td>147</td>
<td>95</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>1,578</td>
<td>49</td>
</tr>
<tr>
<td>Singapore</td>
<td>250</td>
<td>65</td>
</tr>
<tr>
<td>Other LDCs</td>
<td>977</td>
<td>1,263</td>
</tr>
<tr>
<td>OPEC</td>
<td>842</td>
<td>14</td>
</tr>
<tr>
<td>Australia</td>
<td>124</td>
<td>507</td>
</tr>
<tr>
<td>United States</td>
<td>205</td>
<td>188</td>
</tr>
<tr>
<td>Canada</td>
<td>78</td>
<td>381</td>
</tr>
</tbody>
</table>

APPENDIX B

The following is a comparison between the Pinyin alphabet and the Wade-Giles system. The Wade-Giles system is set out in parentheses.

<table>
<thead>
<tr>
<th>Pinyin</th>
<th>Wade-Giles</th>
</tr>
</thead>
<tbody>
<tr>
<td>a (a) Vowel as in far</td>
<td>l (l) Vowel as in land v (v) Consonant used only to produce foreign words, national minority words and local dialects</td>
</tr>
<tr>
<td>b (p) Consonant as in be</td>
<td>m (m) Consonant as in me</td>
</tr>
<tr>
<td>c (ts) Consonant as in its</td>
<td>n (n) Consonant as in no</td>
</tr>
<tr>
<td>ch (ch) Consonant as in church, strongly aspirated</td>
<td>o (o) Vowel as in law, strongly aspirated</td>
</tr>
<tr>
<td>d (t) Consonant as in do</td>
<td>q (ch) Consonant as in cheek</td>
</tr>
<tr>
<td>e (e) Vowel as in her</td>
<td>r (j) Consonant as in right (not rolled), or pronounced as z in azure</td>
</tr>
<tr>
<td>f (f) Consonant as in foot</td>
<td>s (s,ss,sz) Consonant as in sister</td>
</tr>
<tr>
<td>g (k) Consonant as in go</td>
<td>sh (sh) Consonant as in shore</td>
</tr>
<tr>
<td>h (h) Consonant as in her, strongly aspirated</td>
<td>t (t) Consonant as in top, strongly aspirated</td>
</tr>
<tr>
<td>i (i) Vowel as in eat or sir (when in syllables beginning with c, ch, r, s, sh, z and zh)</td>
<td>u (u) Vowel as in too, also as in the French for tu or the German München zh (ch) Consonant as in jump</td>
</tr>
<tr>
<td>j (ch) Consonant as in jeep</td>
<td>k (k) Consonant as in kind, strongly aspirated</td>
</tr>
</tbody>
</table>

Source:  