

THE ADMINISTRATION OF FOREIGN TRADE IN THE PEOPLE'S REPUBLIC OF CHINA

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INTRODUCTION

IN 1979, the People's Republic of China adopted a new policy for the reform of the economy. This has meant a shift from a centralized command economy to a more decentralized form. The market principle was introduced to supplement the planned economy and the various economic units were allowed more discretionary power in their activities. This was a part of the attempt to modernize the country at a rapid rate. Such modernization, however, was seen as requiring foreign investment and technology. Influenced by the experience of a number of developing countries, where rapid economic growth was achieved by utilizing considerable foreign funds and technology, the Chinese abandoned their rather isolationist policy and adopted one involving an active expansion of foreign trade and investment. Since then, economic relations with non-socialist countries have developed considerably. Moreover, foreign investment and loans have been encouraged. As a result, various mechanisms of foreign commerce have developed in China. Compensation trade, joint ventures, processing trade, etc. have come to be widely utilized.

The expansion of trade with non-socialist countries necessitated a reform of China's foreign trade system, which had originally been designed to cope with a limited range of foreign transactions, mainly within the socialist bloc. This reform was a departure from the Soviet pattern of foreign trade and an increasing similarity to the system of some of the countries in Eastern Europe. First, the right to engage in foreign trade, which was previously enjoyed only by foreign trade corporations attached to the Ministry of Foreign Trade, was given to other corporations under the control of local governments as well as to those under the control of industrial ministries. Further, these corporations were given new powers. They were allowed to retain a certain amount of the profits gained, exercise discretion in dealing with foreign enterprises, and employ foreign exchange. There was also an organizational reform of agencies directly or indirectly involved in foreign trade, which included the establishment of a number of new institutions. In addition, several areas were designated as Special Economic Zones (SEZ), in which foreign investors were accorded special treatment not available in other parts of China.¹

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¹ For an outline of China's foreign trade system, see [28]. See also [7].

This policy of modernization with the assistance of foreign funds and technology has not progressed entirely smoothly. For example, it suffered a setback in 1981 when certain undesired side effects of the new policy became evident. First, there were growing fears that the decentralization of the economy was encouraging regionalism and departmentalism and that the free market inhibited implementation of central plans. Undue competition among Chinese corporations led to the duplication of investment and the overproduction of consumer goods. Moreover, the eagerness of various economic units to import foreign products and to attract foreign funds for the renovation of their obsolete equipment resulted in financial deficits [32]. The case of the Baoshan Steel Plant is symbolic of the financial difficulties with which the Chinese were faced. In this instance, China's National Technical Import Corporation "suspended" contracts which it had concluded with Japanese and German firms because of the shortage of foreign exchange. Although the contracts had been initially approved by the authority, later, when the State Council assessed the Bank of China's foreign exchange reserves, it became clear that there were simply not enough funds to finance the project.² It should be added that from a political point of view the expansion of foreign trade relations also had undesirable effects, such as an increase in economic crime and a growing materialism among the citizenry.

Thus, a "readjustment policy" came into being in late 1981 in order to curb the "excesses" of the previous policy. To what extent this new policy might reverse the previous policy of expanding foreign trade and attracting foreign investment is arguable. Nevertheless, it is unlikely that the general orientation will be changed insofar as the modernization policy is maintained. In fact, the Chinese government was quick to reassure foreign countries that it would pursue its door-opening policy, although the rush to modernization might be tempered. Deng Xiaoping stated in early 1983 that the readjustment policy would not affect the overall policy for developing commercial relations with foreign countries. However, at the same time, it was felt that measures to increase controls over foreign trade dealings would be necessary and a number of such measures were in fact introduced [33] [9, pp. 1-2].

First, there was an organizational reform at the central level. The overall administration of foreign trade and investment is now handled by a newly established Ministry of Foreign Economic Relations and Trade (MFERT)—which is a merger of the former ministries of Foreign Trade and Foreign Economic Relations with Foreign Countries, the Foreign Investment Control Commission, and the Import-Export Commission. This was not merely a streamlining of the system, but was also indicative of a shift towards tightened controls. This is evident in that the previously powerful Foreign Investment Control Commission was put under the direct control of MFERT. Moreover, it was no coincidence that the State Planning Commission (the counterpart of the Soviet Gosplan), charged with drawing up and enforcing state economic plans, regained power at the expense of other powerful commissions. As if to underline the point, the

² A detailed account on this incident is given in [14].

new chairman of the State Planning Commission emphasized the necessity of regaining unified control over all aspects of the economy [25, p. 24].

Second, a licensing system for exports was reintroduced for some items, including oil, coal, steel products, and cement, while restrictions on the importation of consumer goods were also introduced. Third, customs controls and the controls on foreign exchange were reorganized and systematized. Finally, the Criminal Code was amended to make the penalties for economic crimes more severe.

The role of the law in this context—expansion of foreign trade and investment—is twofold. As in other developing countries, the Chinese are aware of the necessity to enact a body of laws governing foreign trade to assure foreign investors and businessmen of predictability and stability in their dealings with China. On the other hand, the law can also play a major role in the exercise of state control, i.e., to secure the “commanding heights” in foreign trade. This is particularly important from the viewpoint of the Chinese government when economic units are to continue to enjoy a certain degree of discretion in this field.

At present, there is no uniform law in China concerning foreign trade, such as in Hungary and Czechoslovakia, except for the Provisional Statute on the Administration of Foreign Trade, which was enacted in 1957. However, since 1978, a number of specific laws regarding foreign trade and investment have been enacted. The first major legislation in this field was the Joint Venture Law, which was followed by the Statute on Income Taxes for Foreign Corporations, Statute on the Guangdong Special Economic Zones, the Provisional Rules of Civil Procedure and Patent Law. Several other laws, including a civil code are expected to be enacted in the near future [27]. Despite these legal advances, it must be said that there is still a wide area which is not regulated by law but by less accessible administrative rules—or which is left solely to the discretion of officials.

I. BASIC ECONOMIC ENTITIES PARTICIPATING IN FOREIGN TRADE

As in the Soviet Union and other socialist countries, foreign trade in China is monopolized by the state. Previously, in most socialist countries, this has meant a concentration of foreign trade in the hands of a group of specialized corporations, usually attached to a Ministry of Foreign Trade. Ordinary corporations and firms have not generally been entitled to trade directly with foreign countries. This arrangement has the disadvantage that it is difficult for a relatively small number of foreign trade corporations to deal effectively with the wide range of commodities under their jurisdictions, controlling both their importation and exportation. Furthermore, since domestic corporations had no direct links with world markets, their interests and aims could not be adequately represented in foreign trade. It was evident that such direct links were particularly indispensable when the policy was to modernize domestic industry via foreign trade and investment as in China. Indeed, the sheer magnitude of foreign trade which

has developed made it impractical to rely solely on the foreign trade corporations [20, pp. 177-78].

Thus, following the model of some countries in Eastern Europe, where suitable corporations came to be given the right to deal directly with foreign countries, China has modified the monopoly held by its foreign trade corporations. The reform was intended to put producers and users into closer contact with foreign countries and also to mobilize various economic units behind modernization via foreign trade and investment.

The monopoly was modified in two ways. First, each industrial ministry established its own specialized corporations for trading in commodities and raw materials in its respective field. For example, the Fourth Ministry of Machine Building established the China National Electronic Technology Import and Export Corporation while the Ministry of Metallurgical Industry established the China National Metallurgical Products Import and Export Corporation. These industrial product and trading corporations function on the export side to promote and handle products made in the ministries' network of factories, and on the import side to purchase foreign equipment and technology for them. It should be added that existing corporations and firms under the control of industrial ministries were also given the right to deal with foreign corporations. Each industrial ministry is now allowed to retain 30 per cent of the foreign exchange which it earns [23, p. 43].

Second, provincial, prefectural, and municipal authorities have been given wider powers to engage in foreign trade. This was initiated in three major cities—Beijing, Shanghai, and Tianjin—and later broadened to include other localities. The local authorities have established new organizations responsible for the planning and coordination of foreign trade in their respective regions as well as for directly participating in foreign trade.³ Various existing corporations and firms under the control of local governments have also begun to participate in foreign trade. In Beijing, three major corporations—Beijing Economic Development Corporation, Beijing International Trust and Investment Corporation, and Beijing General Import-Export Corporation—were established. The first is responsible for compensation trade, technology and service purchases, and turn-key plant and equipment contracts. The second is in charge of attracting loans and negotiating joint ventures, while the third handles products trade. These corporations conduct business either in their own names or on behalf of other corporations and firms within the area. They also act as agents of foreign corporations. The local governments, too, are now entitled to retain a certain amount of foreign exchange if they meet the foreign trade targets. The percentage of foreign exchange to be retained differs from place to place, but for Beijing, it is reportedly 40 per cent, while for other municipalities, it stands at 30 per cent [13].

While the new arrangement will undoubtedly contribute to the expansion of foreign trade, the ambiguity surrounding the division of responsibility has led

³ [30, pp. 15-17]. See also [13].

to confusion on the part of foreign corporations. As a rule, trade in certain commodities, usually those of politically sensitive nature or for which there are quotas (grain, oil, and steel, for example), continue to be handled centrally, and projects which involve more than one province (such as railway construction), or those which span several industries, are controlled by the central government. At present, there are 26 items, including oil, coal, metals, and foods which the central government retains exclusive rights to deal in. Another 120 items can be dealt with by local authorities only after price and trading partner have been authorized by the central government [12, pp. 80-81].

The decision-making process governing foreign trade involving local corporations is not particularly clear. It is known, however, that if a local corporation plans to import equipment, it contacts the local import-export commission, which submits its proposals along with the corporation's own report to the local planning and economic commissions. They review the likely impact of the import on the local development plan and check whether it contradicts the overall import program stipulated by the central government. Once the plan is authorized by the relevant authorities, the general foreign trade corporation of the locality exercises control over the negotiations with foreign corporations. It draws up a contract after negotiations and submits the draft to the local import-export commission and eventually to MFERT for approval [30, pp. 21-22].

There are contradictory views on whether there is any absolute limit on the degree to which local authorities may act independently of the central government. Previously, it was reported that municipal authorities were entitled to deal with sales and projects up to a ceiling of from 3 to 5 million U.S. dollars [21, p. 13]. However, there is a view which denies the existence of any such absolute limit to the freedom of action of local authorities [13, p. 7].

The legal nature of the described corporations—including the foreign trade corporations attached to MFERT as well as corporations controlled by industrial ministries and local governments—is not entirely clear either. At present, there is no corporation law, although the enactment of such a law is being considered [27].

Under socialist systems, corporations are generally established by the state, which allocates certain assets to them and provides them with working capital, either directly or via the State Bank. The activity of the corporations must conform with the rules of a comprehensive central plan. Contract partners for the supply of materials or the sale of products are determined by the plan, and the terms of the contracts are also predetermined. The profits earned by such corporations are transferred to the state. Thus a corporation cannot use its profits for expanding its production capacity on its own volition. Under such a system, a corporation can hardly be regarded as an independent economic entity or a juridical person in the strict sense, although in most countries in Eastern Europe, they have been so designated. Nevertheless, this ideal type of corporation under a planned economy has been altered to a certain extent by the economic reforms pursued in a socialist country, namely, in Hungary with

corporations being given more autonomy in decision-making and being allowed to retain some profits.⁴ This is also the case with China.

In 1978, the government decided to give corporations some autonomy in matters of personnel, finance, production, purchase, and sale. Most importantly, corporations may now retain a certain percentage of profits, provided that they have achieved the target figure given by the plan. As a rule, corporations take 5 per cent of the planned profit and 20 per cent of those profits in excess of the plan. On the other hand, they are also now responsible for their losses. In other words, they have become economically accountable. Second, corporations were given the right to sell their surplus products and to purchase needed materials which they find themselves short of from corporations other than as prescribed in the plan. They were also given a certain amount of discretion to decide the prices of their commodities. Finally, corporations were endowed with the right to retain and use a limited amount of foreign exchange [26].

Whether corporations with such a range of powers should now be regarded as juridical persons can still be questioned. In the two decades after 1958 the term juridical person itself was not used at all in China. It was only after the promulgation of the Economic Contract Law that it again began to be used in the literature. A recent Chinese textbook on Economic Law lists the fundamental attributes of a juridical person: (1) it should either be approved by the state or organized on the basis of the laws and statutes of the state; (2) it should own or have the right to use property; (3) it should be capable of engaging in economic activities in its own name, assuming rights and obligations; (4) it should be able to sue and be sued in the courts; and (5) it should be economically accountable [17, pp. 34–35].

Chinese corporations certainly did not fulfill these criteria before the economic reforms, although after the reforms they have come closer to the definition [22, p. 190]. However, even at present, not all corporations fulfill all the above mentioned criteria. For instance, a majority of corporations have not publicized their charters, although there are some exceptions, such as the Bank of China and the China International Trust and Investment Corporation (CITIC). Actually, industrial corporations have a summary charter which consists of five relevant points, but these are not published either.⁵ This gives rise to a difficulty for foreign businessmen, since contracts concluded in breach of the stipulated scope of activity, supposedly given in the charter, are void.

The extent to which corporations are responsible for obligations arising from contracts is also unclear. It is generally considered that the corporations, as juridical persons, are independent subjects under civil law, that they are separate from the state and bear liability within the limit of their assets. Waivers of sovereign immunity are sometimes explicitly laid down in contracts but more often are implicit in arbitration clauses [8, pp. 111–12].

⁴ [20, pp. 181–87]. See also [22, pp. 185ff.].

⁵ [22, p. 190]. The five points are: the scope and quantity of production, personnel and organization, the usual consumption of materials and energy, capital, and business relations with other entities and organizations.

It also remains problematic whether the state will ultimately bear liability for the activities of Chinese corporations. The fact that corporations are considered to be juridical persons in China does not necessarily exclude ultimate liability of the state. However, there is no hard evidence to suggest that the Chinese have deviated from the practice of other socialist countries which have not acknowledged state liability for the debts incurred by corporations, which are supposed to be independent of the state.⁶ On the other hand, as in other socialist countries, the Chinese government has never knowingly allowed corporations to become insolvent. Thus it "stands behind" the contracts concluded by the corporations, even though its legal liability might be disclaimed [2, pp.44-45].

II. SPECIAL ECONOMIC ZONES

Special Economic Zones have been developed in Guangdong and Fujian Provinces since 1979, when the governments of these provinces were given the right to adopt extraordinary measures to develop foreign investment and trade and to encourage tourism.⁷ It is said that this move was inspired by the "Export Commodities Production Bases" of Taiwan and Korea. An SEZ is an area where, according to a Chinese official, "a more open way of administration is adopted than . . . in other parts of China" in order to facilitate cooperation with foreign investors and overseas Chinese. Among the SEZs, Shenzhen—in close proximity to Hong Kong—is the largest and best developed. Foreign investment in the zone has taken the form of processing and assembling contracts and property and tourism developments. As of the end of 1981, the Shenzhen SEZ had approximately 1,000 joint ventures and projects for compensation trade totalling U.S.\$1.32 million in overall value [3, p. 223].

In order to attract foreign investors and develop foreign trade, foreign corporations in the SEZs are given special advantages not available in other parts of China. According to the Regulations of the Guangdong Special Economic Zone: (1) corporations within the zones are mainly private entities and their profits can be retained and remitted abroad after the appropriate taxes have been paid; (2) the rate of income tax to be levied on these corporations is to be 15 per cent, which is lower than that in other parts of China. (High technology enterprises or businesses which have longer capital turnover cycles may be given further preferential tax treatment); (3) equipment, parts, and raw materials which are imported are exempted from import duties; (4) products produced in the SEZs are exempted from export duties; (5) entry and exit controls for foreigners and Chinese from abroad are simplified; and (6) foreign exchange may be used in the zones [3, pp. 239-41].

Guangdong's SEZs are administered by the Provincial Special Economic Zone

⁶ According to G. T. Hsiao, the Chinese let it be known to foreign businessmen that the state treasury supports all corporate business activities, including liabilities arising from foreign claims [15, p. 86]. However, this information has not been substantiated by either Japanese or British trade specialities.

⁷ As regards SEZs, see [23, pp.95-136]. See also [3, pp.218-25].

Administration. Its functions involve planning and development of the SEZs, examination and approval of investment projects, registration of corporations and land allotment, coordination of banking, insurance, taxation, etc., within the zones, and maintenance of public order. Along with the SEZ administration, the Provincial Special Economic Zone Development Corporation was established to induce foreign investment, operate corporations with foreign investment in the form of joint ventures, and act as an agent for investors in the sale and purchase of commodities in other parts of China [23, pp. 105-6].

The SEZs have not been without their difficulties. Financial support for the development of infrastructure was insufficient and the lack of skills, both at the management and shop floor levels, deterred some foreign investors. When the reform policy came under scrutiny, the policy to develop SEZs was also reconsidered, and the rate slowed [23, p. 124]. Although the Chinese have adopted a more cautious approach on the tempo and scale of the zones, they still seem intended to play an important role in Chinese foreign trade.⁸

III. CENTRALIZED CONTROL OVER FOREIGN TRADE

Previously, the Ministry of Foreign Trade, the Import-Export Commission and the Foreign Investment Control Commission together formed the major central apparatus responsible for the administration of foreign trade and investment. After the reform of the State Council in 1982, a new ministry, the Ministry of Foreign Economic Relations and Trade, was established and the two commissions became departments under it. The new ministry is responsible directly to the Premier and Vice-Premiers and has thirteen departments including General Planning, Law and Treaties, Foreign Trade Administration, Import-Export, Foreign Investment Administration, and Technical Import-Export [19].

There are several mechanisms by which MFERT controls foreign trade and investment. First, the licensing system governing exportation empowers MFERT to allocate physical quotas to exporting corporations through the Import-Export Department. According to the Provisional Rules on Export Licenses, foreign trade corporations attached to MFERT are given general permission to participate in foreign trade. Other corporations should apply to the local office of MFERT for export licenses.⁹

Second, foreign investment in China is subject to the approval of the Foreign Investment Administration and the Law and Treaties Department of MFERT. The two are jointly responsible for drafting investment regulations and approving projects and they also have the authority to approve offshore oil exploration and development contracts. MFERT is not only responsible for the approval of joint venture contracts, but also for the supervision of the activity of the firms created thereby. Joint venture corporations are obliged to submit their general plans of establishment and operation to MFERT.¹⁰

⁸ [33, p. 35]. See also, for example, [27, p. 8].

⁹ [24]. See also [4, pp. 4-5].

¹⁰ Law on Joint Ventures, Article 8; Regulations of the PRC on the Exploitation of Off-shore Petroleum Resources in Co-operation with Foreign Corporations, Article 6.

Third, there are the centralized foreign exchange controls. According to the Provisional Regulations on Exchange Control, the state pursues centralized control and unified management of foreign exchange, while "domestic organizations"—i.e., state organs, corporations, rural units, etc—are allowed to retain a portion of their foreign exchange income. The use of foreign exchange retained by corporations and other bodies is, however, strictly controlled by the state through the State General Administration of Exchange Control which is now a part of the Bank of China. Corporations shall not possess foreign exchange, deposit foreign exchange abroad, or offset foreign exchange expenditures against foreign exchange income without the approval of the SGAEC.¹¹

IV. BANKING INSTITUTIONS

The banking system in China is undergoing a large scale transformation as the economy becomes more decentralized and markets and profits play more important roles. The functions of the existing banking institutions have changed, and new institutions are being established [16, p. 462].

Most importantly, the role of the People's Bank of China (PBC) is being reconsidered. The PBC was established in 1948 in order to issue a central currency, the renminbi, to draft financial policy, and to set interest rates. However, the bank is not a central bank in the strict sense as it deals directly with corporations and even individuals through its numerous branches throughout China. The PBC closely supervises the activities of corporations, each of which must be affiliated with a branch of the bank and submit detailed financial reports to that branch at regular intervals. Funds for wages and bonuses, for example, cannot be drawn without the approval of a branch of the PBC. Thus, the PBC is one of the devices of the state to control the economy. Still, the bank has not played a major role in the economy, since its own autonomy was limited. Capital construction funds and the working capital of the corporations were not distributed through the PBC, but through the Ministry of Finance, thus relegating the PBC to the position of a mere cashier of the state.

As a part of the economic reforms, it was decided to give the PBC a more active role in steering the economy through the control of the amount of currency in circulation, the right to adjust interest rates and to grant credits. The PBC is now expected to play a major role in assisting the corporations and firms to speed up the circulation of working capital. The bank was also given the freedom to decide to whom, and on what terms, to grant credits [3, pp. 152–53]. It should be noted that there is a proposal to transform the PBC into a true central bank, responsible entirely for the management of the money supply and interest rates, while at the same time creating commercial banks whose functions would be to absorb enterprise deposits, grant loans to enterprises and arrange the settling of accounts between them [16, pp. 465–66].

Second, the functions of another of China's key financial institutions, the Bank of China (BOC), have been considerably enlarged by the expansion of

¹¹ Provisional Regulations for Exchange Control, Articles, 1, 5, and 6.

foreign trade and investment, for it is the agency which mainly handles foreign exchange, savings deposits and loans relating to foreign trade. In the past it had a virtual monopoly over all international business involving China. Even now, all payments for foreign trade are made through the BOC. Previously, China was reluctant to accept foreign loans, but it has now become active in attracting foreign funds, and the BOC has come to play an active role in the securing of foreign exchange loans and the issuance of bonds in foreign countries. Furthermore, the BOC is expected to occupy a key position in facilitating the production of export goods through the effective utilization of foreign currency loans to domestic corporations. In this connection, the Internal Rules for Short Term Foreign Exchange Loans of the Bank of China have been amended in order to endow the BOC with broader discretionary powers. Henceforth the BOC is enjoined to grant loans to facilitate the importation of advanced technology and equipment, to enlarge the production of export goods and to finance compensation trade and processing. Moreover, the bank may grant loans to joint ventures to cover their equipment needs, trade payments, and short-term working funds.¹²

On the other hand, the BOC also controls the activities of corporations and joint ventures. Foreign exchange which the corporations have retained or funds borrowed in foreign currency must be deposited in accounts opened with the BOC. Furthermore, joint ventures are obliged by law to open renminbi accounts with the BOC or a bank approved by it.

It should be added that the charter of the Bank of China which was adopted in 1980 also lists consultation and "trust" functions as within its scope of operation. Such functions include the recommendation of suitable domestic corporations to foreign corporations for trade, marketing and financial research services, and the guaranteeing of contract performance.¹³

The rapid development of foreign economic relations has also necessitated the establishment of more financial institutions and foreign exchange banks. The most important of these are the China International Trust and Investment Corporation (CITIC). The corporation was established in 1978 following the enactment of the Joint Venture Law. It is directly attached to the State Council, but is also supervised by MFERT through the Foreign Investment Administration. It is entitled to buy, sell, or borrow foreign exchange without receiving clearance from the government. The charter of the corporation adopted in 1979 lists its functions as follows: (1) to attract foreign funds and loans; (2) to issue bonds abroad; (3) to arrange for and organize joint ventures, compensation trade, etc.; (4) to invest in domestic corporations; and (5) to provide market and financial research and consultation services. Thus, it is a semi-banking institution aimed at attracting foreign investment. The corporation seeks foreign loans in its own name and administers and repays such loans itself. Recently, it issued 10 million yen worth of bonds for private placement. As regards joint ventures, CITIC

¹² [3, pp. 152-55]. See also [6].

¹³ The BOC's charter does not explicitly provide for the guaranteeing of the performance of contracts as a BOC function. See [28, p. 8].

functions as a "match maker" in the initial stage of their creation, then as an advisor when such a venture is commissioned and, in some cases it even itself becomes a participant [16, pp. 466-67] [10, pp. 4-5].

Finally, the role of the People's Insurance Company (PIC) has also become more important in recent years. PIC, which was founded in 1949, deals with international business as well as with the domestic market. Its foreign trade activity consists mainly of transportation insurance, marine insurance, aircraft insurance, and insurance on the property of foreign organization and residents in China. Furthermore, PIC has also taken to covering such items as oil exploration, processing and compensation trade, employers' and product liability, political risks, and exchange fluctuations. PIC's definition of political risk includes war, actions similar to war, strikes, riots, and confiscation. The company also has a monopoly over insurance related to joint ventures. There are now, also, two other insurance companies which deal exclusively with foreign trade [3, pp. 160-63] [18, pp. 1-2].

V. INSTITUTIONS FOR SETTLING DISPUTES

The Chinese tend to avoid arbitration, preferring "friendly negotiation" or conciliation. Typically, contracts contain a provision stipulating that differences should be solved by negotiation and conciliation whenever possible, before recourse is had to the arbitration commission [5, pp. 48-49]. "Friendly negotiation" is no more than a discussion between the disputing parties. If it fails, the parties are encouraged, usually by the China Council for Promotion of International Trade (CCPIT), to consider conciliation. It is reported that over 90 per cent of all foreign trade disputes are settled through conciliation [11, p. 162]. When conciliation, too, fails, the case may be referred to arbitration. The newly enacted Provisional Code of Civil Procedure provides that parties which have agreed in writing that disputes should be settled by arbitration cannot take matters to court. It also provides that after a dispute has been settled by arbitration, the parties involved cannot have recourse to the courts.¹⁴

China has not, in principle, denied the possibility of arbitration in a third country—Holland, Sweden, etc. [5, p. 50]. In general, however, arbitration is handled in Beijing. There are two organizations for arbitration: the Foreign Economic and Trade Arbitration Commission and the Maritime Arbitration Commission. Both organizations are attached to CCPIT, which has functions similar to those exercised by the international chambers of commerce in the West. CCPIT was previously the sole agency responsible for the promotion of foreign trade, and was best known in its role as the organizer of the Guangzhou Trade Fair. The significance of CCPIT increased after the economic reforms, especially through its dispute-settling function.

The Maritime Arbitration Commission deals with cases arising from maritime contracts, collisions between vessels, etc., whereas the Foreign Economic and

¹⁴ Provisional Code of Civil Procedure of the PRC, Articles 192 and 193.

Trade Arbitration Commission has jurisdiction over disputes arising from joint venture contracts, contracts relating to the building of factories in China, credits extended to China by foreign countries and institutions, technology transfers, coproduction, processing and compensation trade contracts. The Foreign Economic and Trade Arbitration Commission is composed of fifteen to twenty arbiters selected and appointed by CCPIT. These include lawyers, economists, and officials from the Department of Legal Affairs of CCPIT [15, pp. 158–59].

The procedure for arbitration is regulated by the Provisional Rules of both commissions, enacted in 1957 and 1959 respectively and likely to be amended in the near future. A special feature of the rules is that all arbiters have to be selected from among the members of the arbitration commission and arbitration proceedings are to be conducted in Chinese. However, it may be possible to adopt the United Nations Commission on International Trade Law (UNCITRAL) Rules or the Rules of the Swedish Chamber of Commerce [11, pp. 166–68]. When going by the Provisional Rules, it is not clear whether foreign lawyers can now represent a foreign party in arbitration proceedings in Beijing. Although the Provisional Rules themselves allow it, the newly adopted Provisional Statute on Advocates and the Provisional Code of Civil Procedure seem to suggest that only Chinese lawyers are entitled to represent foreign parties. What is more, comments by Chinese officials support this reading. Nonetheless, the possibility of foreign lawyers acting as advisers in arbitration proceedings has not been denied by them [31, p. 39].

The principles governing Chinese arbitration are said to be “equality and mutual benefit, initiative and independence, and...the consideration of international practice” [11, p. 165].

As regards the enforcement of arbitration awards, China has not signed the New York Convention, but so far, there has yet to be a case where the Chinese authorities refused to enforce a decision. A Chinese official has stated that “a foreign arbitral award will be enforced in China ‘so long as it is fair and not in violation of China laws and policies’.” [5, p. 51].

Some recent developments in legal advisory institutions are also noteworthy. Legal Advisory Offices, aimed at foreign and domestic parties engaged in foreign trade both in China and abroad, have been established by CCPIT and, in some localities and SEZs, law firms specializing in international transactions are being established [3, pp. 185–86].

Finally, as regards judicial organs, the recently introduced economic courts should be mentioned. Economic courts is one of the three divisions of the people’s courts provided for in the Organic Law of the People’s Courts. By the end of March 1980, 29 economic divisions were established in the higher people’s courts, 277 in prefectural courts and 697 in the basic people’s courts. The economic court’s jurisdiction includes disputes arising from contracts and related matters between Chinese corporations; trade, maritime insurance, and other business disputes involving foreign corporations; and cases of economic crime. Thus, there is the possibility that foreign parties will appear in such courts where recourse to them is stipulated in a contract, or in cases involving

such things as negligent acts by employees, industrial accidents, and environmental pollution. Routine commercial disputes, such as those over product defects, delivery delays, or insurance claims may also involve foreign parties in court proceedings at the appropriate level. In point of fact, no foreign party has yet appeared in an economic court, but such a possibility cannot be ruled out [1].

CONCLUDING REMARKS

The Chinese economic system, including the foreign trade system, has been in a state of flux for some time. The Chinese are learning from experience, their own as well as that of some countries in Eastern Europe. Insofar as the overall policy of expanding foreign trade and investment is maintained, the foreign trade system in China is likely to become more sophisticated, increasingly taking into consideration international trade practices. The legal system governing foreign trade and investment is also expected to develop further, thus providing a certain predictability and stability in transactions. It must be said however, that, at present, China's laws regulating foreign trade and trade are far from complete. Various matters are left to administrative rules which are not accessible to foreigners—or even left to the discretion of individual officials. This seems to be particularly disadvantageous for foreigners, at a time when control by the central organs over foreign transactions is being strengthened. Therefore, it is correct to advise foreign businessmen and investors to be prudent in dealing with the Chinese, to take into consideration all contingencies, and to take all possible measures to protect themselves from unforeseeable problems.

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