

The original documents are located in Box 1, folder “China - Possible Elliot Richardson Trip” of the Richard B. Cheney Files at the Gerald R. Ford Presidential Library.

Copyright Notice

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

With best regards

**EUGENE A. THEROUX
BAKER & MCKENZIE
ATTORNEYS AT LAW**

TELEPHONE (202) 298-8290
CABLE ABOGADO
TELEX 248441

815 CONNECTICUT AVE., N.W.
WASHINGTON, D. C. 20006
U. S. A.

**LEGAL AND PRACTICAL PROBLEMS IN
THE CHINA TRADE**

by

EUGENE A. THEROUX



Reprinted from China: A Reassessment of the Economy,
Joint Economic Committee, Congress of the United States, July 1975.

LEGAL AND PRACTICAL PROBLEMS IN THE CHINA TRADE

By EUGENE A. THEROUX*

CONTENTS

	Page
I. Introduction.....	536
II. Organization and function of China's foreign trade apparatus.....	536
Economic plans and foreign trade policy.....	536
The ministry of foreign trade.....	538
The China council for the promotion of international trade.....	539
China's foreign trade corporations.....	540
Collateral trade and related organizations.....	542
III. The Chinese export commodities fair.....	543
How Peking views the Fair.....	543
Organization of the fair.....	544
Business aids at the fair.....	546
Participation at the fair.....	548
Contract negotiation at the fair.....	549
Other Chinese trade fairs.....	551
IV. Problems in importing from China.....	551
Obstacles on the American side.....	552
Obstacles on the Chinese side.....	555
V. Problems in exporting to China.....	561
Establishing and maintaining contact.....	562
How China shops for foreign goods and know-how.....	564
Chinese autarky and the U.S. exporter.....	567
Licensing U.S. technology to China.....	568
VI. Pending legal issues.....	570
Dispute settlement and arbitration.....	570
Protection of property rights.....	573
Outstanding U.S. claims and frozen Chinese assets.....	575
Contracts: Law and practice.....	576
Federal and State regulation.....	579
Export-import bank credits, private financing, and the Johnson Debt Default Act.....	579
VII. Facilitating commercial relations.....	580
Bureau of East-West trade, U.S. Department of Commerce.....	581
Office of PRC affairs, U.S. Department of State.....	581
United States liaison office, Peking.....	581
People's Republic of China Liaison Office.....	581
National council for United States-China trade.....	582
VIII. Recommendations.....	582
Elements of a Sino-U.S. trade agreement.....	582
Conditions precedent to MFN for China.....	585
Private trade accord.....	593
Areas which merit congressional attention.....	593
IX. Summary and prognosis.....	594
APPENDIXES	
I. China's foreign trade corporations.....	596
II. China's trade related agencies.....	597
III. United States-People's Republic of China trade statistics.....	599

*Mr. Theroux, a partner in the law firm of Baker & McKenzie, Washington, D.C., visited China six times between 1972 and 1975. He served 2 years as Vice President of the National Council for U.S.-China Trade.

I. INTRODUCTION

After nearly a quarter century of commercial estrangement, the United States and China are trading again. But the record of this trade over the last 3 years, and the current opportunities and obstacles, augur an uncertain growth in the level and the nature of Sino-American commerce.

Since the Shanghai Communique of February 1972, trade volume first bounded above ceilings forecast by the most optimistic analysts. It has now begun to fall back. Apprehensions that China would flood our markets with inexpensive goods have proven mistaken; expectations that China would be an inexhaustible market for American goods and know-how are proving illusory; and confidence that a common desire to do so would readily solve problems inherent when systems so different come together in commerce has been somewhat shaken. In the new United States-Sino commerce, traders on both sides have often learned that the achievement of a single step must begin with a journey of 10,000 miles.

Difficulties are of course to be expected in the nascent United States-China trade. Aside from the fundamental principles of China's foreign trade, that it would be conducted on the basis of "equality and mutual benefit," and "helping to meet each other's needs," there are numerous business practices with which American businessmen cannot come to easy understanding, appreciation or agreement. The Chinese, too, face in the American entrepreneur, whether importer or exporter, a character for which contact with European traders has only partly prepared them.

This paper is intended to summarize the principal agencies and instrumentalities on both sides which bear upon commerce between the two countries, to review legal and practical impediments to expanded trade, and to offer for consideration some suggestions for facilitation of bilateral trade more accelerated than the "step-by-step" progress to which both sides pledged themselves in the Joint Communique at Shanghai. Insofar as the following material reflects the actual experiences, achievements as well as frustrations, observed in Sino-U.S. trade, it is but a "worm's eye view," yet only by confronting the small realities can the two sides pursue an informed trade policy.

II. ORGANIZATION AND FUNCTION OF CHINA'S FOREIGN TRADE APPARATUS

Economic Plans and Foreign Trade Policy

The most populous nation on earth has by far the fewest "businessmen." Foreign trade in China is a monopoly of the state, and is conducted principally through eight foreign trade corporations (FTC's). Neither manufacturing units nor end-user entities in China conclude contracts with foreign individuals or firms; instead, the FTC's act as their agents in both import and export transactions. This is the first and most important fact to be grasped by American firms interested in doing business with China.

The FTC's carry out a trade plan under the guidance of the Ministry of Foreign Trade, aided in part by the China Council for the Pro-

motion of International Trade (CCPIT). In addition to headquarters at Peking, the Foreign Trade Ministry maintains local bureaus in major Chinese cities, and the FTC's and the CCPIT likewise have local branches and offices in certain major cities.

The ultimate blueprint and authority for the import and export contracts executed by the FTC's are China's national economic plans. Peking's Fourth Five-Year Plan continues through 1975; the Fifth Five-Year Plan begins in 1976.

In his speech to the Fourth National People's Congress in January 1975, Premier Chou En-lai announced that the Fourth Five-Year Plan would be fulfilled, and that the State Council would formulate "a long-range Ten-Year Plan, Five-Year Plans, and Annual Plans" in order "to accomplish the comprehensive modernization of agriculture, industry, national defense, and science and technology before the end of the century."

More than a few American businessmen have been puzzled by the fact that the elaborate import and export plans developed by the Chinese, like China's Five-Year Plans, are State secrets. No substantive details of these plans are ever released, and general plan outlines can only be divined by very close attention to official statements and policy pronouncements emanating from Peking and, to some extent, by analysis of trade and business data made public by China's trading partners. The official report of the Tenth Party Congress, for example, contained not one sentence on the subject of foreign trade, and officially reported production and trade achievements are invariably expressed in percentage increase rather than absolute terms.

It may be understandable that Peking is reluctant, for strategic reasons, to publish import and export plans. But foreign businessmen point out that at least a selective release of import needs, or an invitation to submit proposals and bids, and announcements of goods available for export, could enable the Chinese to buy and sell at more favorable prices and terms.

Among the most recent major statements of China's foreign trade policy appeared in an article by Trade Minister Li Chiang appearing in the periodical *China's Foreign Trade*. This publication, resurrected in 1974 after a long absence, appears in several languages and is, therefore, obviously intended for foreign consumption. The lead article, by the Minister of Foreign Trade, offers a good illustration of China's reluctance to publish trade data. Import and export volume is discussed not in absolute terms, but as percentages of base years for which no Chinese-source data exist. Thus, for example, total export-import volume for 1973 is reported to be "2.5 times that of 1965" with exports 2.50 times greater and imports at 2.45 times higher than in 1965.

Trade Minister Li's article is also instructive for the broad policy guides it sets forth. In the absence of other kinds of information, American businessmen are wise to heed these general remarks, which not only embody current trade principles, but which, despite intentional ambiguity, do illuminate the factors at work influencing the trade policymakers. Li quotes from the pronouncement of Mao Tse-tung almost invariably cited in official statements about China's trade:

The Chinese people wish to have friendly cooperation with the people of all countries and to resume and expand international trade in order to develop production and promote economic prosperity.

In pursuing international trade, China seeks "to learn from other countries' merits and obtain necessary materials, equipment, and techniques through exchange." As if to anticipate and deflect criticism from elements at home fearful of undue dependence on the outside world, Li explains that this "is an implementation of the principle of making foreign things serve China, and combining learning with inventing in order to add to our ability to build socialism independently and with the initiative in our own hands through self-reliance to speed up the pace of our socialist construction. Facts prove," Li states, "that foreign trade is necessary to the development of our national economy."

The justification for foreign trade thus established, Li emphasizes that the New China will not succumb to the encroachments of foreign enterprise which afflicted old China:

We resolutely oppose the policy of plundering the natural resources of other countries, dominating their national economies and interfering in their internal affairs * * * socialist China will never try to attract foreign capital or exploit domestic or foreign natural resources in conjunction with other countries.

She will never go in for joint management with foreign countries, still less grovel for foreign loans.

But, while China will adhere to the policy of maintaining independence, keeping the initiative in its own hands and relying on its own efforts in socialist construction, "under no circumstances does (this) mean pursuing a 'closed-door' policy." This principle was reaffirmed at the National People's Congress in January 1975.

The Chinese, in trade as in other matters, unhesitatingly concede "shortcomings and deficiencies," acknowledge that theirs is a "developing country, as yet backward in many fields." Assuring the outside world of a determination to broaden foreign trade, the Trade Minister has offered exporters to China the assurance that "China's imports will be increased," and holds out to importers the expectation that "we will gradually be able to export more and better goods to meet the requirements of the people of other countries." Responding to criticisms which Americans, and no doubt others, have made about current Chinese export goods, pledges are more and more frequently found in Chinese statements to increase the quantity, quality, packing, packaging, designs, and varieties of such products.

The Ministry of Foreign Trade

Under the supervision of the Staff Office of Finance and Trade of the State Council, the Ministry of Foreign Trade formulates an overall import and export plan to be used as a basis for specific planning by the FTC's and other agencies with collateral foreign trade responsibilities. After review and approval by the Trade Ministry of their specific import-export plans, the FTC's carry out, under Ministry supervision, their individual trade plans.

The job of the Ministry of Trade cannot be an easy one. China, like the United States, is not by tradition or by need a trading nation. Trade occupies only a small fraction of its gross national product. Aside from some limited trade undertaken to achieve foreign policy goals, the motivation to trade is essentially limited to the need to generate foreign exchange sufficient to finance needed agricultural and

industrial imports. There is no "profit motive" which, for example, has made Japan such an aggressive and adaptable participant in the world of international business. On the contrary, there governs China's trade a Marxist-Leninist-Maoist ideology which curbs not only mercantile tendencies, but which requires sound ideological justification as a predicate for commercial decisions. The needs of socialist construction dictate a need for foreign exchange; a need which is more pressing because of a fiscally conservative anticredit policy. Foreign exchange thus comes to China primarily from exports, but the reality of international trade is, at base, competition for the foreign consumer dollar, a competition in which innovation, compromise, flexibility, and even salesmanship, somewhat anathema to Marxist orthodoxy, are essential. It is with such realities that economic plans for trade expansion and increased hard currency earnings collide.

The Ministry of Foreign Trade is organized into eight bureaus. Of these, five have geographic responsibility, the others handle import, export, and planning matters respectively. In addition to administrative offices, the Ministry oversees customs, commodities inspection of imports and exports, a training school for foreign trade personnel, a market study institute, the eight FTC's and other trade-related agencies.

In function, the Ministry is not dissimilar to foreign trade ministries in other socialist countries. It is involved in the appointment of commercial counselors abroad and is the agency for the conclusion of trade agreements and exchanges with other nations.

The China Council for the Promotion of International Trade

Aiding the Ministry of Trade is an organization known as the China Council for the Promotion of International Trade (CCPIT). The CCPIT, founded in 1952, is described in China's publications variously as "a permanent agency performing duties similar to those of Chambers of International Commerce in other countries." It has been described by its leadership to this writer as "a people-to-people organization, not a governmental organization;" without its own sources of income, however, it can only be financed through an appropriation by the Chinese Government. Whatever its charter, which remains secret, it seems clear that the CCPIT is governed today by persons from the eight FTC's, the Ministry of Foreign Trade, and the Ministry of Foreign Affairs, who, acting as a kind of board of directors, meet periodically to review and formulate plans and activities.

A permanent staff, supervised by a Chairman, four Vice Chairmen, a Secretary-General and Deputy Secretary-General, consists of six major departments in addition to units responsible for administration and research. These are:

Legal Affairs Department, which advises the CCPIT's Foreign Trade Arbitration Commission and Maritime Arbitration Commission: informs the FTC's and other trade agencies trade-related about legal developments and requirements abroad; analyzes foreign contracts, laws, and regulations having an impact on China's trade; and oversees registration of foreign trademarks.

Department for Average Adjustment, which administers the Provisional Rules for General Average Adjustment promulgated by the CCPIT on January 1, 1975.

Liaison Department, which sends and receives foreign trade delegations and maintains contact with trade associations in other countries.

Foreign Exhibitions in China Department, which assists foreign countries, associations, and companies in staging trade exhibitions and technical symposia in China. Between 1972 and 1975 alone, there have been more than 30 such exhibitions in China. Usually these are held in Peking, but they have also occurred in Shanghai and Tientsin.

Overseas Exhibitions Department, which is responsible for organizing China's trade exhibitions abroad. In the last 2 years, the Chinese have staged or taken part in some 70 trade fairs or exhibitions abroad.

Publicity Department, which publishes a variety of periodicals describing China's economy and foreign trade.

Despite the independent status claimed for it, it can be safely assumed that no significant activity is undertaken by the CCPIT without the prior approval or direction of the Chinese Government as expressed through the relevant ministries. This is to be expected in part because it is the CCPIT which is the main commercial link to countries, like the United States, which do not enjoy diplomatic relations with China. Indeed, the CCPIT has in the past signed, in its own name, trade accords of commercial consequence with foreign trading firms or trade associations semigovernmental or private in character. The CCPIT also plays some part, though its extent is unclear, in the organization and conduct of the twice-yearly Chinese Export Commodities Fair at Kwangchow (Canton).

Wang Yao-ting, the current Chairman of the CCPIT, and a former high official of the China National Textile Import and Export Corp., wrote in *Peking Review* in October 1974, of China's trade policies and achievements. Wang placed stress on another theme which not only recurs in China's trade pronouncements, but which remains today at the heart of the organization and conduct of China's trade. "In the century and more before liberation," he says, "imperialist countries imposed by armed force on the Chinese people unequal treaties by which they got from China the privilege of dumping goods, plundering industrial materials, and exporting capital." He recalled that in the century before 1949 foreign interests "dominated China's important trading ports, customs, finance, insurance, and navigation" and "engaged in prolonged, harsh exploitation and plunder of the Chinese people, bringing great damage to old China's national economy and untold suffering to the people." Following the dictum of Chairman Mao Tse-tung that "the restoration and development of the national economy of the people's republic would be impossible without a policy of controlling foreign trade" New China has now, Wang said, "built up an independent foreign trade serving China's socialist revolution and construction."

China's Foreign Trade Corporations

The actual conduct of China's foreign trade, through a socialist State system deemed essential by Chairman Mao in light of unquestionable and relentless exploitation by foreign powers before 1949, now

rests with China's Foreign Trade Corporations.¹ These FTC's at present number eight, seven of which have both import and export jurisdiction. Arranged on a product area basis, they are:

China National Cereals, Oils and Foodstuffs Import and Export Corp.;

China National Native Produce and Animal By-Products Import and Export Corp.;

China National Textiles Import and Export Corp.;

China National Light Industrial Products Import and Export Corp.;

China National Chemicals Import and Export Corp.;

China National Machinery Import and Export Corp.;

China National Metals and Minerals Import and Export Corp.; and

China National Technical Import Corp.

Only the last, the Technical Import Corp., concerns itself solely with imports into China, and its area of interest is confined to complete plants and advanced technology.

The corporate charters of the FTC's, if any, have never been made public. The legal nature of the existence of the FTC's is therefore unclear. What is clear is that the FTC's act as the exclusive agents for China's producing and consuming entities in the sale and purchase of goods with foreign firms. It is an arresting coincidence of history that China's trade in the late 18th century was likewise monopolized, then by eight Chinese merchant firms operating at Canton with the imperial sanction of the Dragon Throne at Peking.

Presumably the FTC's do have some "profit and loss" accountability. Whether they are "legal persons" capable of suing or being sued is somewhat a moot point; there are no civil courts as such in China, and the FTC's maintain no offices or assets abroad. They do act, on occasion, through "agents"—firms in Hong Kong and Macao—which are probably more accurately considered independent contractors.

Contracts concluded with foreign firms do not bear the name of the Chinese commune or factory which has produced goods for export, or Chinese end-users on whose behalf foreign goods or equipment is purchased. Instead, the name of the FTC concerned, or its municipal or regional branch, appears as the Chinese party to the agreement. It is the staff of the FTC, supplemented only when and as necessary by knowledgeable producers, end-users, or technicians, which carries on negotiations with foreign firms and executes contracts.

The Chinese Export Commodities Fair, China's principal export event, is organized and operated in cooperation with the FTC's. And it is at this biannual Fair that the FTC's are seen functioning in the fashion intended for them. FTC representatives from Peking, supplemented by negotiators from the regional and municipal branches, come to Kwangchow (Canton) each spring and fall to sit across the table from foreign traders and negotiate purchases and sales. There is little turnover from Fair to Fair among the senior negotiators, and thus the foreign businessman confronts experienced and resourceful men and women, generally well apprised of international prices, supplies, and other market conditions. Likewise, when negotiations occur between Fairs or in Peking at the head offices of the FTC's, the foreign businessman encounters professional Chinese negotiators.

¹ A list of China's Foreign Trade Corporations, together with their addresses and areas of product responsibility, appears as Appendix I.

It has been observed by Americans who import from and export to China that, however skillful the Chinese negotiators may be in arriving at contract terms as favorable as possible to the Chinese side, there is little or no "salesmanship" involved. On the selling side, the FTC negotiators are primarily "order takers." Only rarely are there reports of the Chinese making more than a perfunctory effort to interest a prospective buyer in a product in which he has not expressed curiosity. On the buying side, the FTC's seem to proceed in similar fashion; there is keen interest in achieving the best terms for a given item, and some effort to extract from the seller information even about the nature of and price of competitive products. But the advantages inherent in monopoly buying and selling do not appear to be fully utilized and, as critics of Marxist economics have noted, there appears some lost opportunity for commercial gain. This the Chinese might readily concede, explaining that the quest for commercial advantage may motivate a capitalist but not a Communist. But since the Chinese foreign trade apparatus certainly has among its responsibilities the acquisition of the maximum amount of foreign exchange in sales, and expenditures of the minimum in purchasing, more entrepreneurial behavior might be expected.

As would seem obvious, the FTC's are functionally organized first into import and export departments, and then subdivided into units each with responsibility for certain of the many products handled by the corporation as a whole. In addition, there are, within these divisions, departments which are geographically composed, so that expertise can be developed and maintained with respect to the peculiarities of different foreign countries and areas.

Collateral Trade and Related Organizations

In addition to the FTC's, there are other agencies which do not handle the purchase or sale of merchandise but which are nevertheless an integral part of the foreign trade apparatus.² These include:

China National Foreign Trade Transportation Corp., which arranges documentation, shipping, and delivery of imported and export goods.

China National Chartering Corp., which charters vessels and books shipping space for Chinese cargoes.

China Commodities Inspection Bureau, which performs final inspection of imported and export goods on behalf of the FTC's to determine whether or not such goods are in conformity with underlying contracts.

Bank of China, which from its head office in Peking and branches abroad, handles all foreign exchanges transactions for China, including international payments and disbursements as required by China's foreign trade corporations.

People's Insurance Co. of China, which underwrites marine, land transportation, air transportation, post, ship's hull, and machinery insurance and reinsurance.

China Insurance Co. Ltd., a joint state-private enterprise, which underwrites marine, fire, life, accident, workmen's compensation, and motor vehicle insurance.

The Tai Ping Insurance Co. Ltd., another state-private enterprise, whose business parallels that of the China Insurance Co.

China National Export Commodities Packaging Corp., created in 1974, which, among other functions, advises the FTC's on packing and packaging requirements of foreign markets.

China Publications Center (Guozi Shudian), which handles books, periodicals, phonograph records, and postcards, and functions in particular as the export agent for China's publications in foreign languages.

² These agencies are listed, together with their addresses, as appendix II.

China Film Distribution and Exhibition Corp., which is the sole importer of foreign films and the export agent for Chinese films.

China Stamp Export Co., which is the exclusive agent for the export of Chinese stamps.

Chinese Scientific and Technical Association, which is involved, with the CCPIT, in arranging contacts between China's scientific and technical communities and professional societies and associations abroad.

All of the foregoing agencies are based in Peking and, with the exception of the Packaging Corporation, have branch offices in a number of other Chinese cities. All are likewise represented at the Chinese Export Commodities Fair.

III. THE CHINESE EXPORT COMMODITIES FAIR

In the annals of international trade, it would probably be impossible to find a foreign commercial event which has exerted so magnetic a pull over so great a distance on so many American businessmen as the Chinese Export Commodities Fair, more often referred to as the Canton Fair or Kwangchow Fair.

The Fair has been held twice each year, in the spring between April 15 and May 15 and in the autumn between October 15 and November 15, at Kwangchow (Canton) since 1957. Attendance is by invitation only. Americans were not invited until April 1972, the first Fair following the visit to China by President Nixon in February of that year.

It is estimated by some that, since the 1972 Spring Fair, no fewer than 50,000 U.S. businessmen have sought—unsuccessfully—to gain admission to the Fair. Probably not more than 2 percent of that number have actually attended to date. Yet, enthusiasm has not dimmed, and requests for invitations to forthcoming Fairs are still flowing to Peking.

How Peking Views the Fair

The most authoritative, if brief, explanation of the Fair is provided by the Chinese in a pocket handbook provided free to Fairgoers as they register for the event. It says that the Fair is "jointly sponsored by China's import and export corporations in accordance with the directive of the great leader of the Chinese people, Chairman Mao," once again citing the justification for contact with foreign traders, that "the Chinese people wish to have friendly cooperation with the people of all countries and to resume and expand international trade in order to develop production and promote economic prosperity."

"The Fair," says the handbook "takes the form of combining trade negotiations with the display of exhibits." The FTC's are represented at the Fair by trading delegations, and "on-the-spot business talks are held and transactions against samples concluded between the trading delegations and businessmen from all parts of the world." At the Fair, where Peking does between 35 to 40 percent of its export business annually, "China sells her export commodities and buys what she needs, while views are exchanged for the development of reciprocal trade."

The Fair is not without political content:

Introduced in each Hall are some of the outstanding deeds performed by the Chinese people as a result of studying and applying Marxism-Leninism-Mao Tse-tung Thought in grasping revolution and promoting production. Put on display are a rich and varied range of export commodities and products of successful

achievements from China's various provinces, municipalities, and autonomous regions (with the exception of Taiwan Province), reflecting the new attainments in socialist revolution and construction scored by the Chinese people under the guidance of Chairman Mao's proletarian revolutionary line.

Fairgoers are reminded that:

Following the daily development of China's socialist construction and the constant development of her foreign relations, the scope of the Fair has continuously expanded. The number of foreign guests visiting the Fair has increased from 1,200 from over 20 countries and regions at the first session of the Fair to more than 26,000 from over 100 countries and regions * * *. The volume of both import and export trade has also increased with each passing year. Since its inauguration, by resolutely carrying out China's foreign trade policy of "equality, mutual benefit and supplying each other's needs," the Fair has promoted normal trade exchange between China and the rest of the world and enhanced mutual understanding and friendship between the Chinese people and the peoples of all countries.

Though the Fair is, as its name suggests, an event designed to sell China's goods and thus earn foreign exchange, it is not an ordinary "profit-motivated" event, as a number of characteristics of the Fair clearly reveal.

Businessmen are put on notice of the political character of the Fair, and of some Fair business decisions, by a quotation from Mao Tse-tung displayed on a large red billboard which, together with a portrait of Chairman Mao, dominates the entrance lobby of the main Fair exhibition hall: "The Theoretical Basis Guiding Our Thinking Is Marxism-Leninism."

The New China News Agency dispatch announcing the opening of the Spring 1975 Fair led with this paragraph, another of many indicators that business is not alone the substance of the Fair:

China's Export Commodities Fair opened here today as the nationwide movement to criticize Lin Biao and Confucius is deepening and advancing victoriously.

On opening day, red balloons trailed inscribed streamers over the Fairgrounds, but the messages were political, not commercial. Among them: "Resolutely support the just demands of the Third World!," "Long live the victory of the Great Proletarian Cultural Revolution!," and "Long live Marxism-Leninism-Mao Tse-tung Thought!"

At the banquet which closed the Fair, officials summarized the event by announcing that China:

Will adhere to the principle of independence, initiative and self-reliance, grasp revolution, promote production, and expand our foreign trade on the basis of developing industry and agriculture in a big way, so as to serve China's socialist construction better and contribute to the promotion of friendship between the Chinese people and the people of other countries.

Organization of the Fair

Kwangchow (Canton) today is China's principal trading center, as it has always been so far as Western traders are concerned. Though the historic city has over time permitted the introduction of foreign goods into China, it has principally been an outlet for Chinese merchandise. And it is so today.

Recent American visitors to the Fair have discovered, as their forebears did, that their travel in China is essentially confined to Canton. John Paton Davies, writing of another era, says that:

China humored the seaborne barbarians to the extent of tolerating foreign merchants at one port only, Canton. It was the tradesman's entrance, where they were treated as disreputable peddlers, not permitted to cross the threshold into the house.

Today foreign businessmen, with a few exceptions, are likewise allowed no further than Canton. Each Fair finds a large number of them, especially Americans, dickering with the Chinese for permission to leave sweltering Canton for sightseeing in Peking or Shanghai. But the Fair is not intended as a tourist attraction. Political overtones notwithstanding, the main emphasis is on selling. And the Chinese have done a great deal to make the businessmen's sojourn in Canton as pleasant as possible.

The Chinese obviously intend to maintain and expand Canton as the prime trading city of the People's Republic. Beginning with the Spring 1974 Fair, the event was moved to an enormous modern complex of buildings, newly constructed, with over 1 million square feet of display area and negotiating rooms at the northern end of the city. At the same Fair, the Chinese opened an 800-room 11-story addition to the Tung Fang Hotel, across the street from the Fair compound, and inaugurated a massive new railroad station which now deposits visitors within a 15-minute walk of the Fair buildings, the Tung Fang Hotel, and two beautiful public parks boasting lakes, boating, swimming, restaurants, and other facilities. The Tung Fang Hotel, in a move almost unthinkable in austere China, now offers an artificial pond with lounge chairs arranged in a secluded garden around it, two bars, a billiard room, a table tennis room, a badminton court, a barber shop, a beauty parlor, a shopping arcade, and a roof garden for the convenience of Fair guests. Business is made easier with the recent introduction at the hotel of telex as well as cable, overseas telephone, banking and postal facilities.

Display areas in the Fair complex, arranged by the foreign trade corporations, beautifully exhibit thousands of varieties of merchandise, from numerically controlled machine tools to frozen foods, from petroleum products to textiles and handicrafts. Access to the Fairgrounds is strictly limited to registered businessmen, identifiable by a pink ribbon bearing the Chinese characters for "Honored Guest."

In addition to the exhibit of goods available for export, numerous displays, consisting of large photographs and massive topographic scale models, show the visitor examples of rural or industrial achievements. Such displays are ordinarily manned by very personable young men and women guides from the area represented in the exhibit. In other areas, workers demonstrate the skills which have made Chinese art objects and handicrafts among the finest in the world.

Weekend excursions are arranged for groups of Fairgoers to visit model factories, communes, schools, hospitals, power stations, and the like. Travel without escort for shopping or sightseeing may be undertaken throughout the city of Canton, without restriction, but special permission must be obtained to go beyond the city limits. So complete are the services and amenities available within walking distance of the Fair, however, that many guests never venture into the city proper.

The business aids available at the Tung Fang Hotel (and other major hotels in the city used by Fairgoers) are also available at the Fair compound itself. Telex, cable, overseas telephone, typewriters, banking, post office, insurance, shipping, and customs services are all

provided for the foreign trader. A cinema, garden, restaurant, and retail stores round out the amenities at the Fairgrounds.

Actual business at the Fair is transacted mostly in private discussion rooms on floors above the exhibit areas, though owing to lack of space even in this large complex some contract negotiation occurs at tables in display areas essentially without privacy and occasionally in the presence of competing business representatives.

A permanent secretariat based in Canton throughout the year conducts logistic planning between Fairs, and carries on the day-to-day business of Fair organization and operation. Opening and closing days of the Fair are marked with earshattering fireworks displays, specially lighted streets and buildings, and mass banquets, the largest of which is held at the Tung Fang Hotel where several thousand guests are addressed, usually by a Vice Minister of Foreign Trade. Throughout the Fair, Canton's restaurants and other public places are bedecked with signs or streamers extending "Warm Welcome to the Guests of the Chinese Export Commodities Fair." Students from China's foreign language institutes appear in the city, where the best of them are utilized as interpreters in business discussions and those with less experience are employed as hotel and restaurant workers.

The Fair, then, serves primarily as China's sales outlet to the world. Secondarily it is a showcase of socialist achievement, not only to the West and to the Third World, but also to China's own citizens who may occasionally be seen in special groups moving through the complex. Finally, the Fair localizes commercial activity with foreigners as to time and place, and permits a relatively orderly conduct of trade.

Business Aids at the Fair

Even with the banking and communications facilities described earlier, the American at the Fair is without tools most consider customary if not necessary in the conduct of international business.

Secretarial service is unavailable, and senior executives who deem it essential that they, rather than subordinate buyers, attend the Fair and place orders have found themselves perspiring over telex keyboards and punching tapes, slowly agonizing over a letter at a time. Telex channels are so limited relative to the number of users that the instruments cannot be employed in the manner which makes them most efficient. That is, a sender is not permitted to keep a channel open in order to converse with the home office; he may only send, and keep the line open only long enough to receive immediately at the conclusion of his transmission a reply to his previous message. This requires advance communications planning and coordination which Fair regulars alone have mastered.

Foreign exchange may be converted into Renminbi, the Chinese currency, without difficulty. But if a visitor is caught short, without Chinese or foreign currency, or acceptable travelers checks, he will discover that no credit cards are honored (other than international telecommunications cards), nor are personal checks accepted in payment of anything, anywhere, without a delay of 7 to 10 days at best for clearance through Hong Kong. Anticipating possible shortages of funds, experienced Fairgoers have resorted either to maintenance of

local non-interest-paying deposit accounts with the Canton Branch of the Bank of China, into which funds may be cabled from abroad, or, perhaps more conveniently, travelers letters of credit issued by the Bank of China's Hong Kong Branch (or other acceptable banks) which may be redeemed in needed amounts, up to the face value of the letter, in Canton or at the Bank's branches in other Chinese cities.

Transportation to Canton, for most Fairgoers, is via Hong Kong, by train to the New Territories border village of Lowu, then by foot through a covered bridge spanning the border, to the Chinese village of Schumchun for a second train ride from there to Canton. The total trip of some 90 miles takes about 7 hours, depending upon the number of travelers, which includes passport, customs, and immigration stops at each side and a luncheon on the Chinese side prior to the rail trip to Canton. Arrangements for travel into China are handled in Hong Kong by China Travel Service (H.K.) Ltd., an independent concern which acts for China International Trade Service (CITS), the official travel service of the People's Republic of China. The return trip for most is by the same route, arrangements being made this time by CITS in Canton. With the inauguration of air service between Tokyo and Shanghai, air connections are now possible to Canton for trans-Pacific travelers, though it is expected that most Fair guests will continue to reach Canton by rail from Hong Kong.

Except for purchase of train tickets in Hong Kong for the trip to Canton the Fair visitor directly handles none of his travel arrangements in China. No air or rail passage can be booked except in person through the CITS officers at the Fair hotels. This, too, of course, is a departure from the norm for most American businessmen, who are accustomed to making plane or train reservations independently with the relative ease of a phone call or two.

To help the visitor through what on a bad day can be a formidable bureaucratic maze, the Fair authorities maintain in each major hotel a Liaison Office with a multilingual staff. With very rare exception, these young men and women are cheerful, courteous, and helpful in assisting with necessary travel arrangements, Fair appointments and many other matters.

Supplementing the assistance provided by the Chinese are two additional sources of help and advice upon which American visitors at Fairs since 1973 have come to depend. One is an office manned throughout the Fair by representatives of the National Council for United States-China Trade (National Council), the other is the availability during the Fair of commercial officers detailed from the U.S. Liaison Office at Peking. Both maintain regular office hours in the Tung Fang Hotel, across the street from the Fair.

The National Council's facilities offer electric typewriters, a photocopier, a library of tariff and trade periodicals, including U.S. Tariff Schedules and relevant Food and Drug, Customs, Federal Trade Commission, and Department of Agriculture regulations. Both the National Council's China trade specialists and the commercial officers from the U.S. Liaison Office are available for private consultations with American businessmen as specific questions or difficulties arise. And it is through the good offices of these individuals that informal contacts are often initiated with officials of the Fair and the FTC's.

Participation at the Fair

Attendance at the Fair is limited to representatives of business firms in market economies. Peking's trade with the Soviet Union and East Europe is conducted on a State-to-State basis, and these countries are represented at the Fair, if at all, only by commercial counselors posted at Peking who stop by Canton at Fair time for opening or closing ceremonies.

The total attendance figures, usually in the neighborhood of some 25,000 for recent Fairs, given out by Fair authorities are somewhat misleading. Not all such visitors do business. Included in that figure appear to be trade and other fraternal delegations, visitors to China for nonbusiness reasons whose travel to Canton coincides with the Fair, and a substantial number of local Chinese workers, peasants, and soldiers invited to circulate through the Fair. In all, there are perhaps no more than 9,000 attendees who actually transact business at the Fair.

Aside from one or two U.S. citizens of Chinese heritage known to have attended the Fall 1971 Fair, no Americans attended until about 40, including Senate leaders Mike Mansfield and Hugh Scott, were invited to the Spring 1972 event, following the historic Joint Shanghai Communique of February that year. Step-by-step increases in U.S. participation followed, as some 60 firms were invited to the Fall 1972 Fair, 80 to the Spring 1973 Fair, 100 to the Fall 1973 Fair, 120 in the Spring of 1974 and, owing perhaps to a sagging world economy which cut attendance from other countries, an increase only to an estimated 175 firms invited to the Fall 1974 Fair. About 225 U.S. companies attended the Spring 1975 Fair. Actual attendance by individual Americans has ranged from 30 to 50 percent above the numbers just given, since wives and business colleagues are sometimes included on the one invitation extended to a given firm.

The largest group at the Fair, after a contingent of some 5,000 Hong Kong traders, has traditionally been the Japanese. After having representatives in the neighborhood of some 2,500 at each Fair the last 3 or 4 years, Japanese attendance fell to close to or below 2,000 at the Spring 1975 Fair, while U.S. individuals in attendance, which passed 450, made Americans the second largest national group after the Japanese in Canton. Not surprisingly, economically hard hit countries like Italy saw their attendance drop sharply at the 1975 Spring Fair. The fact that, whatever its troubles, the U.S. economy is relatively better off than most any other in the industrialized world, may well mean that measurably more invitations will be extended to U.S. firms for forthcoming Fairs. Indeed, Americans went against a downturn at the Spring 1975 Fair and did a record \$55 to \$60 million worth of business.

Unlike trade shows elsewhere around the world, one cannot simply decide to attend the Fair and then make arrangements to go. The Fair, as noted earlier, is by invitation only. Indeed, no travel of any kind may be undertaken to China unless there is a ready host at that end. In the case of the Fair, invitations are extended by the Chinese Export Commodities Fair itself, and a recipient never really knows for certain why or by whom he was selected. It seems rather sure, however, that each FTC is allocated a certain number of invitations, and these are

extended, naturally, to those firms that FTC considers to be live prospects for business. Queries by Americans for Fair invitations, without a compelling showing of genuine interest and capacity for business, are very likely to go unanswered.

One experienced trader commented after the autumn 1974 Fair—considered by most to be a disappointing one for the Chinese—that he felt the best way to get an invitation to the next Fair would be to “write to Peking and tell them you want to buy handicrafts.” He was not being entirely facetious. The person who wants to buy what China wants to sell is a natural potential invitee. The problem for Americans eager to go has been difficulty in communicating their readiness and willingness to buy to the Chinese.

The most surefire way yet found to secure an invitation has been to show an interest in buying by actually buying, in advance of the Fair. No case is known in which a firm who placed and paid for an order prior to a Fair was not, if it wished, invited to the Fair which followed. Firms which, because of the nature of the products in which they have an interest, cannot place such orders, have had success in simply writing to the appropriate FTC in Peking a letter which:

Clearly states the reason for writing, e.g., that the letter is a request for invitation to Fair for the purpose of making purchases.

Describes the company, including briefly its history and record of growth.

Gives recent sales volume by type of goods handled, including current sources of supply.

Describes the size and scope of the company's activity relative to that of other firms in the industry.

Stresses unique practices or capabilities of the company, citing ways in which these features can be especially important in bringing Chinese goods successfully into the U.S. market.

Furnishes background information on officers, directors, or buyers of the company who will, if invited, go to the Fair.

States a willingness to exchange views, information, and advice on methods by which Chinese goods might be fabricated, styled, and shipped to improve marketability in the United States.

Copies of such letters, or similar representations to the Commercial Staff of the Liaison Office of the People's Republic of China in Washington, may also have the desired effect, since this office is, among other things, charged with locating reliable U.S. firms for Fair invitations. Member firms of the National Council for United States-China Trade, too, have something of an advantage, since it is known that the Chinese solicit suggestions of prospective invitees from the organization.

Contract Negotiation at the Fair

In China as elsewhere, no business transpires until the agreement of the parties has been reduced to writing. The process by which foreign businessmen and Chinese negotiators at the Fair proceed toward a final contract, however, and the agreement to which they finally give mutual assent, have characteristics unique to the China trade. What follows are general findings which, of course, admit of exceptions in particular cases.

In a typical transaction, the American businessman new to the Fair will begin by going to the FTC discussion area of interest to him within the Fairgrounds. There he presents his business card to any one of a number of Chinese officials going to and fro, none of whom are identifiable by name, rank, or function. He will be asked what country he is from, whether he wants to buy or sell, the commodity and then will be asked to be seated in the hallway. Shortly thereafter, he will be approached and informed of the time and place of his first meeting. Ordinarily, it will be for a day or two later, unless the FTC is not too pressed or if the businessman successfully insists upon an earlier meeting owing to a tight travel schedule, in which case he may be accommodated that same day.

First meetings have an almost ritual format. The discussion room is bare except for a table with two or three chairs along each side. The Chinese are seated on one side, and indicate the visitor is to seat himself opposite. Hot green tea is poured, Chinese cigarettes offered, and the visitor is asked a few general questions, such as whether he has previously visited China, before the Chinese ask about his particular interest and then indicate to him to "please go ahead"—the signal to discourse about his company, his business objectives with that FTC, and so forth. All of his remarks will be carefully taken down in a small notebook by a person on the Chinese side of the table.

Only rarely will the discussion occur solely in the English language. While a number of China's negotiators speak English, even these prefer to carry on the discussion through an interpreter. In practice, this gives each side time to consider statements carefully.

Interpreters are part of the Chinese team; it is unusual for the Fairgoer to have one of his own with him. Chinese interpreters for these meetings are generally very good, as they must be if a contractual meeting of the minds of the parties is to occur. Occasionally, though, discussions are stymied by inadequate interpretation.

American buyers at recent Fairs have often been struck by the essentially passive attitude of Chinese negotiators who, as suggested earlier, function more as order-takers than sales personnel. American buyers have found themselves often forcing the discussion, concerned at the apparent lack of interest displayed by the Chinese side, and occasionally struck by the almost condescending impassivity shown in response to American representations that, for example, given appropriate price and terms, orders of very substantial size may be placed. Americans who tout the amount of business possible in the U.S. market strike many Chinese as impolite if not commercially garrulous. The Chinese, in fact, have shown some sign of overreacting to the big-business puffery of some U.S. importers, and subsequent American buyers are now occasionally troubled with minimum quantity order requirements for U.S. buyers which are quite different from those imposed on traders from other countries.

Well-prepared traders, interested in laying a basis for trust and "mutual benefit" with the Chinese, come to these discussions with information about United States and world market conditions for the commodities under discussion. A buyer who appears without knowledge in his product area, or only grudgingly willing to share his information, forfeits a chance to establish a good working relationship with the Chinese, to whom such a personal relationship

counts heavily. Although the Chinese rarely reciprocate with business information they possess.

For their part, Chinese negotiators usually possess very accurate information about world market conditions. They not only have the data which any good professional trader would possess whose sole function is to deal in a relatively specialized range of commodities, but they have the advantage which accrues when and as they are able, in the course of the Fair, to obtain, check and verify market information in discussion with different traders of varying outlook from around the world.

Other Chinese Trade Fairs

In a departure from earlier practice, in which the Chinese Export Commodities Fair alone was the mechanism for export sales, the China National Native Produce and Animal By-Products Import and Export Corp. held two new sales events in early 1975. Between February 25 and March 5, a Carpet Fair was held at Tientsin, and between February 21 and March 2 a Forestal Products Fair was held at Kwangchow. The goods displayed and sold at these two events were no different from those ordinarily handled at the Canton Fair, and since the invitees from abroad were of no special category, it is not known why these events were held or whether they will become regular annual events. Americans in small numbers were invited to both.

IV. PROBLEMS IN IMPORTING FROM CHINA

The first American ship to reach the Middle Kingdom, the *Empress of China*, sailed up the Pearl River to Canton in 1784. Endeavoring to explain to the Chinese the difference between themselves and Englishmen, whom the Chinese had some difficulty distinguishing, the Americans aboard, according to their report to John Jay in 1785, "by the map conveyed to them an idea of the extent of our country, with its present and increasing population," adding that the Chinese "were highly pleased at the prospect of so considerable a market for the production of their own empire."

Americans have off and on for 200 years dreamed of capturing even a small part of the vast Chinese consumer market. The fur merchants, chewing tobacco agents, and kerosene sellers of yesterday have their spiritual progeny in the pantyhose, chewing gum, and soft drink salesmen of today. All are mesmerized at the prospect of nearly a billion customers.

It is not surprising, then, that some Chinese may harbor similar hopes about penetrating the American market. After all, no society in the history of the world has had the mammoth potential for China's goods made possible by our huge consumer spending. Sears, Roebuck & Co. alone has annual retail sales well in excess of China's total foreign exports.

In the first 3 years of trade with New China, however, our imports have been modest, to say the least. In 1972, we imported some \$32.5 million, in 1973 some \$67 million, and in 1974 just over \$100 million. From a two-to-one balance in our favor in 1972, however, our exports to China in 1974 exceeded our imports by a factor of some 8-to-1.

This kind of imbalance violates the principle of "equality and mutual benefit" which is central to China's foreign trade policy. We

ourselves would find such a disparity unacceptable were we on the short end of such a trade. Chinese officials at the Canton Fair and in Peking, in discussions with commercial visitors from the United States, almost invariably point out that the imbalance is bothersome to them, even though they recognize that it is not really possible to balance trade absolutely equally with each trading partner. The "fault" for the relatively low level of Chinese exports to the United States lies both in Washington and Peking.

Obstacles on the American Side

Without question, the major inhibition to expanded Chinese exports to the United States is the imposition of discriminatory U.S. tariffs. Chinese goods like those of other socialist states, excepting Poland and Yugoslavia, are currently subject to duties at the column II rates of the Tariff Schedules of the United States. These range as much as 100 to 300 percent higher than those assessed on imports from the "most-favored-nations." Children's building blocks imported from Hong Kong or Japan, for example, are charged an ad valorem duty rate of 10.5 percent, but the same blocks coming from China are socked 70 percent ad valorem. Base price advantages available on some Chinese goods are more than wiped out by such staggering levies. These discriminatory duties were originally imposed at the time of the Korean War. As our relations with China have improved, the disparity between most-favored and non-most-favored rates has actually increased, since column I but not column II rates have been reduced as a result of the Kennedy Round international trade negotiations. For a number of reasons, these tariffs are unjustifiable and should be removed:

First, the Shanghai Communique requires good faith efforts by both sides toward removal of trade obstacles. China imposes no such restrictions on imports from the United States, nor any similar barriers, and we should, wherever possible, lead, not retard, the movement toward normalized trade relations with China. The United States reaffirmed its desire to improve trade relations in another joint communique issued at the conclusion of Secretary Kissinger's visit to Peking in November 1973. In that joint statement, the two sides agreed that:

It is in the interest of both countries to take measures to create conditions for the further development of trade on the basis of equality and mutual benefits.

Second, as a practical matter, China cannot be expected indefinitely to buy from U.S. firms if she is denied reasonable access to our markets. As noted earlier, in 1972 we had a favorable balance of trade with China of nearly two to one. In 1974, we sold China nearly 8 times as much as she sold us. Most-favored-nation access to the United States can help China earn some of the foreign exchange necessary to finance large agricultural and industrial orders American companies are now making, or hoping to make, to China.

Third, China was removed from among our trading partners during the Korean War, 24 years ago, when American and Chinese troops faced each other in combat. We have now returned to peaceful relations, and our foreign trade policy should reflect that fact.

Fourth, China has inexpensive yet high-quality products to offer American consumers. At present, potential consumer savings and consumer choice are effectively nullified by tariff duties. With nondiscriminatory tariff treatment on Chinese imports, American consumers—at a time of sharply rising domestic prices—can have access to less expensive Chinese foodstuffs, wearing apparel, and other consumer goods.

Fifth, the fear expressed by some, that China will compete unfairly in our market, appears unfounded. Australia, Canada, Germany, and Japan, for example, currently admit Chinese goods on a most-favored nation basis and none has experienced difficulty in this respect. Moreover, present legislation provides ample relief measures should imports from China ever cause market disruption and material injury to domestic industries. Similarly, it is most unlikely that China would jeopardize the evolution of important political gains by pursuing unfair trade practices. Our own Department of Commerce has estimated that imports from China would rise only some 15-20 percent should nondiscriminatory status be granted.

Sixth, the United States naturally has among its own interests the desire for reciprocity for tariff concessions, such as agreement on certain commercial practices with our trading partners. A further Sino-American trade agreement can achieve, in addition to most-favored-nation treatment, agreement respecting commercial arbitration, protection of American patents and trademarks, and various trade promotion activities of benefit to both sides.

Seventh, the United States now appears to be pursuing a commendable foreign policy, in pursuit of a stable and peaceful world, which treats the U.S.S.R. and the People's Republic of China evenhandedly. Now that trade negotiations have occurred between the United States and the Soviet Union, similar discussions should be undertaken with China without delay.

Eighth, the view of a few that China should be denied most-favored-nation treatment on strategic grounds is unsound. The Soviet Union is unquestionably more militarily dangerous to our country than is China, and yet this objection has not been seriously raised with respect to the U.S.S.R.

Ninth, failure to achieve nondiscriminatory tariff treatment for China, thereby continuing past the mid-1970's a sanction whose roots are in the Cold War at its coldest, would, in fact, be taking a step backward from hope represented by the Shanghai Communique of 1972. Examining United States-China trade relations from the point of view of the Chinese, rank discrimination is present in our trade relations with them so long as our present tariff policy continues in effect. We are thus open to the criticism that it is the United States, not China, which is impeding progress in our economic relations.

Tenth, good trade relations, conducted on the basis of equality and mutual benefit, can serve the cause of peace. Good commercial relations between the American and Chinese peoples can lead to contact, cooperation, and friendship in other spheres. All of us benefit when the threat of tension, conflict, and war is reduced.

Tariffs are not the only barrier Chinese goods must hurdle on their way to the American consumer. Another vestige of the nearly quarter century of estrangement is the abnormal, more accurately nonexistent,

banking relationship between the two countries. There are no legal restrictions imposed by the United States on private financing of trade with China. There do, however, remain outstanding U.S. private claims against China for property seized by Peking in retaliation for U.S. Government confiscation of Chinese assets in American banks at the outbreak of hostilities in Korea. The frozen Chinese assets represent a claim by Peking. Negotiations spanning some 3 years have not yielded a settlement of this matter. Until the issue is resolved by the two countries, China has been unwilling to establish a correspondent relationship with any American bank.

For trade, there are several adverse implications of the private claims-frozen assets problem. Among them are added headaches for U.S. importers which, consequently inhibit Chinese exports to this country. It is not now possible, for example, for a U.S. importer to make payment on his orders for Chinese goods except through third country banks. This adds time and expense to his transactions. Nor may a U.S. importer presently obtain the protection of a forward purchase of Renminbi, as a safeguard against fluctuations of the U.S. dollar, with the result that he really does not know, at the time he signs his Canton Fair contract in Renminbi (the Chinese have only recently relaxed a firm policy requiring payment in RMB) what his order will cost him in U.S. dollars when the time arrives for payment.

Some but not all American banks have made it a practice to absorb or reduce the costs and fees attendant on serving U.S. importers where certain expenses result from using third country banks in what would otherwise be a standard, direct transaction. These complexities and uncertainties in financing United States-China import trade, according to a number of importers, also have made it difficult for them to get operating financing from American banks. This is particularly true of the smaller and newer firms willing to take the risk of introducing Chinese products to the U.S. markets. To avoid the risk of attachment of their ships or cargo by American claimants, the Chinese have not allowed their own flag vessels to call at U.S. ports. The result has been some delays in transshipments which in turn slows and complicates the flow of Chinese exports to this country.

Aside from the foregoing obstacles, Chinese products are subject to the same conditions governing entry of foreign products into the United States. But as a practical matter this does not, at the present time, put China on a par with other exporting countries for the simple reason that insufficient time has passed for the Chinese to grasp and adapt to the full range of our consumer protection and related statutes and regulations. For sheer puzzlement and skepticism, for example, little can match the Chinese reaction to explanations that a toy auto exported to the United States must bear a label "Not recommended for children under 5 years of age," that garments for adults must bear instructions for their care, or that Chinese teacups are inadmissible altogether because they pose a lead-poisoning hazard. Many importers still wonder if they have successfully persuaded the Chinese of the truth of the situation, that Federal regulations apply to all suppliers, foreign and domestic, and are not part of a seamless web of discriminatory nontariff barriers for which China has been singled out. Regulations, procedures, and decisions of the Food and Drug Administration, the Federal Trade Commission, the Department of Agriculture, the

Bureau of Customs, the Bureau of Alcohol, Tobacco and Firearms and the International Trade Commission, not to mention the welter of State and local laws governing goods in commerce, have driven some of our own manufacturers to distraction, and it will likely be some time before China's FTC's adjust to the reality of these nonnegotiable conditions of export to the United States.

In a practical sense, another obstacle to successful exporting to this country is represented by the phenomenon market competition itself holds for an austere, socialist country like China. While it may be an exaggeration to say, as our manufacturers and retailers are fond of insisting, that here "the consumer is king," it is quite true that the range, style, packaging, and labeling of goods, often more than the quality of the product, determine success or failure at the retail level. In this sense, Chinese products are, on the whole, as yet inadequate for measurable penetration of the American market. This reality of our market is one of which the Chinese acknowledge awareness, but the necessary adaptations have yet to be made.

Certain dressed or undressed furs and skins from China—ermine, fox, kolinsky, marten, mink, muskrat, and weasel—are also currently prohibited entry into the United States. Feeble Administration efforts have been made, unsuccessfully, to induce the Congress to end what is now a rather inexplicable sanction on Chinese exports.

Obstacles on the Chinese Side

The problems in increasing Chinese exports to the United States which can be attributed to the other side add up, fundamentally, to a reflection of the inherent limitations of a rigidly planned socialist economy endeavoring to succeed in the markets of the citadel of free enterprise. Some difficulties are inevitable.

China is first among the socialist states, if not among all other nations, as a potential supplier of consumer goods to the United States. She has the combined advantages of abundant raw materials and manpower, low production costs, and the incentive born of foreign exchange requirements. On the other hand, there must be considered against these factors a Marxist economic outlook, inherently antagonistic to the requirements of capitalist markets, a domestic economy of unprecedented austerity, and an autarkic tradition of centuries. So the potential importer from China confronts contradictions.

A seller with China's potential advantages might be expected assiduously to seek out buyers. She does not. The first requirement of the importer, to determine the range, depth, quality, availability, and price of China's products can be met, really, only by a personal journey by himself or an agent to China. Information about raw materials, which can be described in accordance with accepted international standards, of course, may be obtained through an exchange of cables or correspondence with the proper FTC in Peking. But for other products, such as textile piece goods, apparel, and the wide range of light manufactures, which is where China's potential lies, personal inspection is ordinarily essential. While the Chinese are willing to ship samples, the catalogs from which samples may be selected are limited in quantity and scope, and available from Peking, as importers have found, often only after protracted delay.

China maintains no product showroom in the United States, has yet shown no interest in exhibiting products in any of the numerous trade shows here, has neither hired nor authorized representative agents to develop a market for her products, has not engaged any market research organization to obtain product potential data, and has responded to only one of the hundreds of invitations, from importers, trade associations, retail chains, and others, to send commercial visitors to the United States to promote Chinese sales or study the market for Chinese goods. The single trade group from China to visit the United States as of this writing has been a five-member delegation from the China National Textiles Import and Export Corporation which visited present and potential customers during February and March 1975. The group came at the invitation of the National Council for United States-China Trade.

Introduction to Chinese products is, then, done in China on Chinese terms. And those terms generally require a trip to the Canton Fair, where goods for export are displayed and export contracts signed. American requests to meet with factory or FTC branch office personnel have generally (but not always) been refused. Some companies which have done substantial business have been invited to China between Fairs for factory visits, the rest must be content with the Canton Fair.

Aside from the inevitable lament of buyers that prices should be lower, there is a fairly consistent litany of difficulties encountered by American businessmen in buying from China.

Large U.S. manufacturing or retail firms have found the Chinese unwilling to manufacture or pack under private American labels. These firms have sought, unsuccessfully so far, to persuade the Chinese that brand identification in the United States is so strong, that canned Maling Peaches, White Elephant flashlight batteries, Temple of Heaven sweaters, Pearl River shirts, or Aeroplane tennis rackets will never capture a meaningful segment of the American market unless they are improved and then sold, for example, under the names Del Monte, Eveready, Jantzen, Arrow, or Spalding. Firms such as these (and these are hypothetical examples) argue that consumers do not appear at the counter and ask for Chinese products, much less for a Chinese brand name. Instead, they have explained to the Chinese, American consumers want the assurance of safety, quality, and reliability afforded by a well-known brand name. "You will succeed in the American market," the Chinese are told, in effect, "because we have invested hundreds of thousands of dollars to develop consumer confidence in products bearing our name, and the origin of the product becomes immaterial." Such companies have offered to perform exhaustive testing of Chinese products, turn over know-how and specifications, and supply technicians to assist in production. They also are prepared to guarantee sourcing of the end-product from Chinese plants in substantial quantities over long-term agreements. To all of this, the Chinese have demurred. They maintain that the matter can be discussed, but the lack of positive response has already discouraged a number of firms. The Chinese have, however, come part way. They have agreed in certain cases to affix special labels, alongside their own, stating that a given product was made in China "exclusively for" a certain American firm.

Some of the U.S. firms interested in having the Chinese manufacture to private specifications and labels have gone to considerable time and expense to convince the Chinese of the good commercial sense of such a course. Since the Chinese show little inclination to market their own goods aggressively in a free market, and since they do express interest in boosting sales to the United States, why have they not acquiesced to these American proposals? Only the Chinese really know the answer, but some deductions are possible. First, they have not had to make such broad adaptations for any other foreign market, and they are selling to other nonsocialist states in Western Europe, for example, with but minor adjustments. Many believe, too, that Chinese supplies of foodstuffs, textiles, and light manufactures available for export are simply too small to justify gearing up for the American market, at least for now. This is particularly true as the Chinese have had to apportion export goods among a rapidly growing number of traders, not only from the United States, but from the several other countries which, over the last 3 or 4 years, have expanded diplomatic and trade ties with Peking.

While any country's production units would be strained to meet such rising foreign demand, the stress on China is especially acute, since a large percentage of manufacturing is done in factories which are small, scattered, and ill-equipped, and thus slow to respond and adapt to qualitative and quantitative change urged by new foreign customers.

Also, there may be residual suspicion—understandable in light of the predatory and deceptive trade practices of the West in Old China—that trade names the Chinese consider sound and internationally known will be deliberately and forever cut off from the most lucrative potential overseas market, the United States, if they accede to using U.S. tradenames and trademarks. Pride, too, is involved. China is unwilling to become a production appendage for foreign enterprise. A related practical problem may be that of satisfying the revolutionary committees which run a given factory that abandonment of Chinese labels, styles and so forth to meet foreign requests are worthy ideas.

There is truth, though, in the representations made by U.S. firms who press for private labels to this extent: the Chinese must either themselves overcome a disinclination to sell aggressively into the American market, agree to private labels, or be content with a very minimum market share for the foreseeable future.

Unready for aggressive marketing, if not philosophically averse to it, the Chinese must thus rely upon the initiative and resources of U.S. importers to bring their products before the American consumer. Here again, the Chinese confront a dilemma. For illustrative purposes, consider Mou Tai Chiew, a unique hard liquor introduced to Americans in part through its use in toasts Nixon and Chou En-lai offered each other at the Peking's Great Hall of the People in 1972. It is a Chinese product whose quality, price, and novelty make it potentially attractive in the United States. It can only be successful, however, to the extent its existence is made known to the American consumer. Development of a distribution system and necessary advertising requires time and money. The prospect for future sales does not by itself make it worthwhile for an importer to undertake introduction of this product, however; he may be willing to invest heavily in the promo-

tion of the beverage only if he is assured that he will be the sole individual buying it from China. Before he expends the time and money required to capture a respectable portion of the market, he will want assurance that the Chinese will not sell the same item to one or more of his competitors allowing them, in effect, to capitalize on his marketing efforts and gain a free ride into the market. The importer will want, in other words, an exclusive arrangement for that product, protecting his investment over a defined geographic area for a specified period of time. Some cases have been reported that the Chinese have granted such "exclusives" to importers of more esoteric commodities, in the bristles and essential oils areas, for example, but no instances are known in which such exclusive arrangements have been reached with Americans for over-the-counter retail items. (The only exceptions here have been certain shoes and articles of clothing which the Chinese have made, on an exclusive basis, according to specifications furnished by certain importers.)

Federal regulations have already been mentioned as posing problems for the Chinese. Red meats cannot be sold into the United States unless and until the Chinese packing plants are open to inspection by the U.S. Department of Agriculture. Herbal-based medicines, however much the Chinese believe them efficacious, cannot be sold in the United States without exhaustive analysis by the Food and Drug Administration, nor may certain canned fruits and vegetables be admitted without proper factory registration and ingredients labeling. The Federal Trade Commission will not pass a number of Chinese labels which are prima facie misleading, though perhaps unintentionally so. Toys painted with lead-based paint are inadmissible, as are certain stuffed toys. Fabrics must not be flammable. Fireworks must meet a host of standards.

Where foodstuff exports are concerned, the Chinese will not issue guarantees that their product will meet FDA standards and inspections, although most other foreign suppliers do so routinely. The importer's risk, therefore, is larger with China than with other suppliers, and he must cover himself with "rejection insurance."

The Chinese have, at best, groped their way toward understanding of and compliance with some of these regulations. U.S. suppliers employ squads of attorneys and in-house technical experts to help them thread their way through the Code of Federal Regulations. So do most foreign suppliers. The Chinese, on the other hand, have relied for such guidance almost entirely on informal chats with importers at the Canton Fair and on assembled documents, statutes and regulations, mailed by such importers, always in English and usually without particularized analysis, to the FTC's in Peking. The Chinese have not yet sought the disinterested professional advice required to guide them through the tangle of Federal law. To proceed at a faster pace, the FTC's must either engage professional counselors in the United States, train their own experts in American law and trade practice, or unhappily learn the truth of the American adage that information you get for nothing is usually worth about what you pay for it.

Pricing has been another occasionally troublesome feature of the United States-China trade. The Chinese cannot be blamed if they thought it fair and reasonable to sell a given product at the same price to each American buyer at the Fair. Traders and commission

agents, as opposed to retailers buying for their own account, have objected, however, and thus puzzled the Chinese. Their objection is that the procedure is not only unfair but contrary to accepted international practice. The problem here stems from the fact that if the Chinese sell a carpet to Retailer Smith for \$100, he may be able to offer it for sale at \$200. But the same carpet bought for \$100 by Trader Jones must pass through a longer distribution chain before arriving at the retail level, and thus must, perhaps, be offered at not lower than \$250 in the same community as Retailer Smith's store. Traders in Jones' position have argued that, as specialists in a given product, their capacity for larger volume purchases, and, consequently, greater public exposure to Chinese goods, warrants a discount. Without it, they say, the Chinese in effect deprive themselves of broader markets, for how long can a carpet be sold at \$250 when some stores are advertising the same one at \$200? This proposition is usually accompanied by the plea that in large orders, a "quantity discount" is warranted; that the per unit price for 1,000 carpets should be lower than that for 100 carpets. The Chinese have been very slow to accept the notion of quantity discounts, holding that economies of scale really do not occur in socialist production and, anyway, that the 1,000th carpet is not of lower value than the 100th carpet. This whole problem is further exacerbated when traders seeking quantity discounts argue that the occasional large order by a retailer, even if larger than that of a trader, should be denied the quantity discount so that the trader is protected against the kind of price-cutting possible in a single-tier pricing system.

This pricing problem is far from theoretical. American retailers and traders have nowhere in the world come to more ferocious disagreement among themselves than in China. After all, in nonsocialist countries production is so pluralistic that retailers and traders can readily make separate deals with different manufacturers. Each may also source his needs from the same supplier, but differing terms can be negotiated by each of them since the system more readily admits of flexibility. Socialist countries other than China have not matched Peking's pull on importers, nor are they significant suppliers of consumer goods to the United States. Thus it is in Canton that, to their undoubted distress, the Chinese strive to accommodate the antithetical wishes of their American customers, and try to do so in a State-controlled system where consistency, if not rigidity, is a quality more respected than rejected.

To their credit, the Chinese have shown interest and resourcefulness in working on this problem. It should be an easy one for them to conceptualize since they do maintain different prices for the same goods along geopolitical lines: Third World Friends pay less than American Friends for the same item, for example. One obvious solution to the puzzle is simply to sell different—even if only marginally different—goods to retailers than to traders. Then there is no suggestion of preferential or "two-tier" price treatment, but only "different prices for different goods."

Chinese awareness of international commercial practice is also evident in payment of commissions to buying agents. Some U.S. principals might be surprised to learn, in fact, that the commission they pay to their purchasing agent at Canton may be supplemented by

a commission paid to him by the Chinese. These commissions range from 1 to 5 percent. If payment for the goods is made by the principal in a letter of credit to the agent or broker who, in turn, pays the Chinese then the agent or broker simply deducts his commission from the first letter of credit and pays the balance over to the Chinese. If the arrangement is for direct payment by the principal to the Chinese, then the Chinese by prior arrangement with the broker or agent may simply rebate his commission to an agreed-upon bank. This practice of rewarding business-getters is the only one which might be said to illustrate entrepreneurial tendencies on the part of the Chinese in the export of goods. That there is no intention to deceive the ultimate purchaser may be evident from a case in which the Chinese consented to a commission to an agent who happened to be the spouse of the purchaser, and to agree to do so even though both were physically present at the Fair together, and together were involved in negotiating the purchase agreement.

Where goods must be brought by sea over a long distance, as in the case of imports from China, importers naturally wonder how well goods are likely to be packed and whether or not they will be shipped on time. On these matters, it is impossible to generalize. Some importers could be cited to prove that goods always arrive in perfect order and on time, and others to show that shipments usually arrive late and in pieces. On the whole, however, American importers have found goods to be well packed and shipped in accordance with the contract.

In those instances where goods arrive at variance with the contract, and it has happened, sticky problems do arise. China's practice is that inspection is final in China, and thus the burden of showing nonconformity with the contract rests at least initially with the importer. The Chinese have a deserved reputation for reasonableness in composing disputes short of arbitration, much less litigation. If settlement of differences cannot be achieved by cables or use of the mails, it is the Chinese habit to pursue the matter, in friendly fashion over green tea. This practice has the appeal of sweet reasonableness until one recognizes that the tea is poured in China; claimants under purchase contracts with the Chinese must therefore invest the time, effort, and expense in a trek to Peking or to the Canton Fair for dispute settlement discussions. While standard Chinese export contracts do usually provide for arbitration in the event that "friendly discussion on the principle of seeking truth from fact" is unavailing, no case is known in which such formal arbitration with an American firm has occurred. Ingenuity in composing disagreements, though, such as discounts on future orders, cash refunds, rights to product exclusivity, substituted goods, and the like, has kept most of China's customers coming back.

Another example of problems arising out of the relative unfamiliarity of one side with the business practices of the other occurs where testing standards are concerned. This is well illustrated in the area of textiles, one of China's traditional exports and one which holds good promise of success in the United States. Among the prime requirements of the American textile buyer is that fabric or apparel must be subject to minimum shrinkage. Buyers of Chinese textiles were, at first, reassured to discover that the China National Textile Corp. was willing to guarantee shrinkage of less than a specified minimum

percentage in most cases. Only after samples were tested in U.S. laboratories (or, in more unfortunate instances by retail customers) was it discovered that the degree of shrinkage was often greater than that specified. This occurred usually not because the Chinese intentionally misled buyers, but instead because garments here, but not in China, are ordinarily washed with detergents in hot water in automatic washing machines. The testing standards for shrinkage, in other words, are substantially different in the United States and China. While this problem was first identified in the early days of United States-Sino trade, it remains among those which are yet to be satisfactorily resolved.

V. PROBLEMS EXPORTING TO CHINA

A British firm in the 19th century is said to have shipped on speculation to China a very large quantity of sterling silver eating utensils. The firm lost a substantial amount of money, because in a flush of enthusiasm over the realization that the Middle Kingdom's 400 million people had to eat, it overlooked the fact that they ate with chopsticks. This may be an apocryphal tale, but it surely has a timeless moral for Western businessmen where trade with China is concerned: exporters must know the market potential for their goods and not simply conclude that large numbers of people plus a vast land area adds up to a ready market for nearly everything.

Visions of skyrocketing sales dance in the heads of international sales vice presidents even today, whether they are marketing diapers for 20 million new births annually or calculating the various needs of a nation of 800 million potential autoists.

While it has not proven to be the ultimate market that many foreign businessmen have dreamed about, China is not a market mirage, either. U.S. sales to China, near absolute zero in 1971, jumped to \$689 million in 1973 and to over \$800 million in 1974.

The bulk of America's trade with China so far has been in agricultural commodities. In 1973 and 1974, between 80 and 85 percent of all U.S. exports to the People's Republic comprised agriculture goods, principally wheat, corn, raw cotton, and soybean oil, though a sag in 1975 agricultural sales is a good reminder that we are only a residual supplier of such commodities to the Chinese.

Besides agriculture items, the United States has major contracts to supply China aircraft, ammonia plants, blast-hold drills, mining trucks, medical and scientific apparatus and oilfield equipment.

Our export trade has not been limited to sales and purchases of products, but has included licensing technology to China in connection with sales of plants, either directly or indirectly. The \$200 million sale of eight ammonia plants to the People's Republic of China by M. W. Kellogg was one of the largest single export sales by a United States firm in 1973.

These transactions may be only a start. Two countries as different as the United States and China, isolated from one another for more than two decades, have a great deal of learning to do about each other. And it has become clear to U.S. companies that exporting to the People's Republic of China differs markedly from doing business with other socialist nations.

Unlike East European nations or the Soviet Union, China permits no direct or indirect investments, and no joint ventures with foreign firms. Also, unlike East Europe and the Soviet Union, China publishes no details of its Five-Year Plan, its national accounts, or even its foreign trade, except in passing and sometimes confusing references, as noted earlier.

Establishing and Maintaining Contact

For U.S. exporters, trade with China is, for the most part, begun by writing to the appropriate Chinese Foreign Trade Corporation and sending descriptive company and product data. It is carried on from there by visits to Peking, by invitation only, and by cable and further correspondence. Companies interested in making sales to China are now using sophisticated techniques to promote their sales, including translation of booklets, films, and other material describing their products into modern, simplified Chinese. Our firms are discovering that trying to sell to China demands a thorough, long-term approach, and at least the amount of planning required for any other major foreign market.

For all but the few firms which have products of such renowned, unique, and unquestioned quality, utility, and indispensability that the Chinese probably know all about them, approaching the China market takes initiative, careful research, a large amount of patience, and unflinching persistence. It has already been mentioned that the U.S. exporter will need first to identify the FTC which handles his product line, and then he must try to determine whether or not that FTC has an interest in discussing possible purchase of his product.

Experience over the last 3 years has proven that there is really no alternative for the basic first step of preparing a written proposal for review by the Chinese and sending it to the relevant FTC in Peking. Some proposals have been more elaborately done than others. At a minimum, though, the company will want to introduce itself and its products, highlight the products available for sale to China with stress on the technology and performance involved, offer to the Chinese some mutually beneficial relationship, and seek an early meeting to talk business. Such proposals, in the opinion of many, are likely to be reviewed more readily, and even perhaps more favorably considered, if they are prepared in the Chinese language as well as in English. In any event, it is essential that multiple copies, as many as 10 or 20, be sent to the FTC. This is particularly true for the more diversified companies whose product variety may span a large number of departments within an FTC.

Once a company has invested the time and effort required to produce an introductory proposal for the Chinese, it is naturally hopeful for a prompt response. In most cases, responses have been anything but immediate. One American firm, distressed over the passage of months without a response from the FTC in Peking, became very troubled indeed at a rumor that the FTC in question had a policy of destroying its files at the end of every year to make room for the following year's papers. The firm reportedly cabled the U.S. Liaison Office in Peking imploring someone to visit the FTC to try to verify the rumor. Replies by return mail, even interim replies, are not to be expected from the

FTC's. After all, the FTC only acts as an agent for end-users. The FTC buys nothing for its own account. It must give the U.S. firm's proposal some preliminary analysis simply in order to know which end-users to involve before making broader distribution to permit, probably by end-users and technicians, a more thorough assessment of the submission.

It would be a substantially easier matter than in fact it is if the Chinese published or in some other easily ascertainable fashion made known a "shopping list" of foreign products, processes, or plant in which it had an interest. Assumptions can be made, of course, by persons who regularly follow China's trade and economic planning but, for a given firm's purposes, the guesswork can only be removed to its satisfaction if the Chinese are meticulously advised of that company's products and given a chance to respond positively or negatively to that company.

While U.S. sales to China are by no means unsatisfactory, a look at the volume and range of exports from Western Europe and Japan will be enough to show that in transportation, materials handling, telecommunications, data processing, machine tools, and equipment for the medical, construction, petroleum, and extractive industries, areas in which we are the leaders, the United States is lagging behind its potential. Since this may be partly explained by the fact that the United States and China remain for the moment becalmed in a less favorable diplomatic relationship, some U.S. firms with branches or affiliates in countries on better political terms with China have used them to good advantage in gaining access to Chinese diplomatic and commercial posts abroad, engaging Chinese commercial visitors to foreign countries for plant visits to subsidiaries, obtaining invitations for senior foreign-based executives to carry a sales package to China, and even arranging for display of their products to trade exhibitions organized by other countries in China.

Beginning as early as the 1971 announcements that Henry Kissinger had made a secret visit to Peking and that President Nixon intended to pay a call on the Chinese, there began an emergence of a plethora of "experts" eager for sizable up-front fees in exchange for commercial assistance to U.S. firms, and possessed, so they said, of unequalled personal contacts with persons calling the shots in China. This minor scourge, visited especially upon many of the larger U.S. firms in the earlier days of resumed United States-Sino trade, is finally on the wane.

Today, most successful U.S. firms have made their own direct approaches to the Chinese, perfecting and sustaining their efforts, in many cases, with consultative assistance without the firm of persons genuinely knowledgeable about China and the product who spend a major share of their time monitoring the company's Peking effort.

U.S. firms have sometimes found it useful to augment their direct approaches to the FTC's with collateral efforts directed at the Commercial Staff of the Liaison Office of the People's Republic of China in Washington, D.C., and in a few instances to the Bank of China branches in Singapore, Hong Kong, or London, or the China Resources Co. in Hong Kong. Finally, practical assistance has been available from the U.S. Departments of State and Commerce, the Commercial Sections of the American Consulate in Hong Kong and the U.S.

Liaison Office in Peking, and from the privately organized, nonprofit National Council for United States-China Trade in Washington, D.C. All of these latter institutions have been able to provide substantial assistance to interested companies uncertain about how to proceed toward the China market.

How China Shops for Foreign Goods and Know-How

If executives of a large American company took the trouble to formulate a 5-year plan of plant expansion, very likely they would widely publicize their capital equipment and other needs to suppliers and invite competitive bids. This would not only help assure them the lowest price but, as well, could turn up in bid submissions new information useful in the development plan.

It is one of the curious things about China that, having expended the effort to map out detailed trade and economic plans, these are kept secret. Moreover, even the annual plans of the FTC's involving the acquisition of plant and equipment are kept under wraps, and revealed piecemeal only as word trickles out of China that a certain company has had representatives in Peking for discussions. Limited manpower resources at the proposal review and negotiation levels appear to have contributed to the fact that FTC's which have made significant purchases have done so from abroad without the benefit of competitive bids. Instead, the Chinese seem to single out just a few of the leading firms in a given field, invite preliminary proposals, and, once having digested and compared the first set of submissions, zero in on only one firm for negotiations in depth. While it may be that sifting through early proposals is enough to isolate the most promising suppliers, it has been a regular lament of many U.S. exporters that better and more frequent access to the FTC's and a clearer idea of the particular interest and need would enable them to offer far more informative proposals and even lower prices than those which, owing to uncertainty about the buyer's need, they must build into less sharply focused proposals.

As in the case of selling her goods abroad, China is what might be termed a "passive" buyer. In the nearly 3 years since the Shanghai Communiqué, the Chinese have sent not a single commercial purchasing mission to the United States. With only one exception, the only Chinese "business" visitors have come in connection with training or familiarization under the contracts already signed with U.S. firms. The sole exception was a gas turbine "study group" from the China National Technical Import Corp. in January 1975. No contracts were signed during their visit. Thus, in the Middle Kingdom tradition, sellers must either themselves or through sales literature trek to China. Since an American President, the Secretary of State and a dozen Congressmen appear to have fallen into line on this timeless practice of journeying to China without yet having Chinese counterparts come here, businessmen should not be surprised that they, too, must carry the initiative in this fashion. It is this feature of Sino-American relations which suggests that, in trade at least, a single step may begin with a journey of 10,000 miles. It is true that the Chinese have sent what might be termed commercial surveying missions to West Europe and Japan. But the give-and-take of final negotiation almost invariably takes place in China.

From the Chinese point of view, one very satisfactory method for commencing the introduction of products from abroad is to invite foreign countries, at their own expense, to mount trade exhibitions in China.

Foreign exhibitions in China, organized by the China Council for the Promotion of International Trade, are an especially carefully monitored gauge of China's shopping interests. This is so in part because the Chinese themselves play an important part in selecting the products to be displayed and the firms to participate. Since 1971, there have been 38 such exhibits. Last year, for example, 52 Japanese concerns displayed about \$5.3 million worth of sophisticated scientific and electronic equipment, including measuring, testing, analyzing, and recording instruments as well as numerical control systems, in Peking. The Japanese exhibits alone were visited by an estimated 105,000 Chinese, most of whom were specialists, and almost all the exhibits entered for sale were sold. Last October, France held a special exhibition in Peking devoted solely to measuring and scientific instruments, and the United Kingdom's Sino-British Trade Council arranged for a display of instruments in Shanghai April 1975.

The last major British experience in exhibiting in China occurred between March 26 and April 7, 1973 in Peking. Chinese attendance was a reported 200,000 and some \$20 million worth of business is said to have been generated by the event.

All told, some 350 exhibitors participated. Exhibitors show their products not only from display stands and Chinese-language catalogs, but through a massive 300-plus page color catalog, fully translated into Chinese, which is issued quarterly by the Sino-British Trade Council. A very important part of this exhibit, and all such events, are the technical "exchanges" in which foreign experts give detailed technical presentations to Chinese engineers, scientists and end-users. More than 300 such lectures were given at the British Exhibition alone.

Italy had a large industrial exhibition in Peking during October 10-22, 1973, which was planned jointly by the Italian Institute for Foreign Trade, the Italian Ministry of Foreign Trade, the Chinese Ministry of Foreign Trade, and the China Council for the Promotion of International Trade. Like the British Industrial Exhibition, the products displayed covered a broad spectrum, from farm machinery to shipping.

From May 22 through June 7, 1974, the French mounted a major industrial, scientific, and technical exhibition in which nearly 350 companies participated. U.S. firms currently troubled by U.S. export control laws and regulations may be interested to learn that Aero-spaciale's Division of Space and Ballistic Systems distributed fascinating full-color Chinese language literature describing the "Ariane," a multistage satellite-launching rocket system. There were no reports of this system being sold, but the Chinese did buy measuring recorders, oscillographic instruments, ultraviolet recorders, spectrum analyzers, radiation detectors, neutron generators, oceanographic instruments, seismology equipment, cardiac defibrillators, intravenous filtration systems, and a range of intensive care units.

An earlier French exhibit, in which 29 firms participated, and composed solely of measuring and scientific instruments, was held at

Peking between October 9-19, 1973, and reportedly drew 20,000 visitors.

Just prior to the 1974 French exhibition, the Austrians held in Peking, between March 29 and April 4, the largest industrial exhibition that country ever held anywhere abroad. Among sales off the stands was a variety of scientific and measuring instruments, and medical equipment.

Between August 28 and September 9, 1974, Sweden held a combination "Biomedical Symposium and Exhibition" in China. This event featured pharmaceuticals and surgical tools as well as various diagnostic, therapeutic treatment, and laboratory equipment. Only eight firms participated in the exhibition, which, as its name suggests, combined in-depth technical presentations as well as product exhibits.

In other such events, Japan drew 100,000 Chinese visitors to an electronic and medical equipment show in Peking over 15 days between June 19 and July 3, 1973. Canada's Department of Trade, Industry, and Commerce sponsored an exhibit of electronic and scientific equipment from 36 countries in Shanghai between April 16-26, 1974; and 10 Danish firms showed electronic and medical instruments in a two-city (Peking and Shanghai) exhibit during August and September this year.

In the balance of 1975, the Chinese will host a number of major exhibitions. The British machine tool and scientific instruments show in Shanghai in the spring was cosponsored, among others, by the U.K.'s Scientific Instrument Manufacturers Association, and the Sino-British Trade Council.

Hungary, Argentina, and Japan all plan industrial exhibitions during 1975, but the largest such event of the year will certainly be a 2-week West German exhibit in Peking in September. It will cover 22,000 square meters of floor space, more than a third larger than the 1973 British Exhibition, which drew 200,000 visitors. It is interesting to bear in mind that the Chinese have asked the Germans to emphasize information dissemination aspects of the event.

While there has been no U.S. exhibition in China to date, some two dozen American firms, using foreign subsidiaries, have managed to display products in exhibits arranged in China by other countries, most recently in April, 1975, at the Belgian exhibit in Peking and the British exhibit in Shanghai.

In foreign capitals of industrialized countries with which Peking has diplomatic relations, the commercial sections of China's Embassies are generally organized in part in such a way that each FTC is represented by a person from that corporation. This arrangement permits experienced trade representatives not only to monitor but to become involved in commerce within their area of specialization. In some cases, such representatives are able to negotiate initial contracts on behalf of the FTC. This higher degree of commercial activity has not been possible in the United States, where the individuals composing the Chinese mission in Washington are limited in number. Nevertheless, the commercial staff of the Chinese Liaison Office in this country grew from two people in the summer of 1973 to more than a dozen by early 1975. Owing to a vast workload, Chinese commercial officers in Washington have only recently been able to travel outside of the city for visits to American trade shows, factories, and other

points of commercial interest. In the meantime, however, they have been active as hosts for visiting business executives who call on the Liaison Office to leave literature and seek guidance on how best to proceed in mounting a sales effort to China. Once again, however, business discussions are invariably confined to the premises of the Liaison Office. Only in exceptionally rare cases have the Chinese visited the office of a firm's Washington representative, or even the neutral ground of a restaurant, to discuss a U.S. firm's interest in selling to China. Indeed, on very few occasions have the Chinese ventured out for visits of any kind, and these have been more social than business events.

China's Autarky and the U.S. Exporter

Business observers seeking clues to China's interest in plant and equipment from abroad are perhaps best advised to monitor foreign press accounts of deals actually concluded and negotiations actually begun rather than to try to fathom occasional press and broadcast pronouncements emanating from China.

Peking's interest in and need for advanced goods and techniques from abroad is undeniable. But so are the evident pressures from those Chinese, who for reasons of politics, ideology, or economic priorities, oppose such transactions as violative of the objective of "self-reliance." Recurring Chinese rhetoric, in fact, seems to strain to satisfy all sides of the continuing domestic debate over to what extent China should purchase abroad.

People's Daily, for example, has editorialized that:

[W]e rely on our own hands to equip ourselves technically. The introduction of some essential new equipment and techniques is also for implementing the principle of making foreign things serve China and linking study with original creation so as to promote better self-reliance and accelerate the building of socialism.

The same newspaper, China's most important, recently reminded the Chinese people that:

The erroneous notion of blind faith in the "advanced" technology of foreign countries still exists among some of the comrades * * * they see only the foreign countries, and seek only to import things * * * if they are permitted to have their way, they would take the evil road of revisionism * * * (but) in emphasizing adhering to the policy of maintaining independence and keeping the initiative in our own hands, and relying on our own efforts, we do not mean discriminating against learning from foreign countries * * * [we should] absorb whatever experience is useful to us * * * the introduction of a bit of foreign technology is permissible.

Still more recently, the influential Shanghai theoretical monthly Hsuehshi Yu Pipan ("Study and Self-Criticism") exoriated some Chinese for "worshipping things foreign"—those "who think the moon is rounder abroad." The journal directed its attack specifically at "certain servile lackeys of imperialism" working to "hawk the ideology that Chinese industry is incapable of developing without technical aid from abroad." It asked: "Did not China launch atomic bombs and artificial satellites in the sky, one after another, depending on our own abilities?"

On this same subject, Chou En-lai in his speech to the 1975 National People's Congress quoted Chairman Mao: "Rely mainly on our own efforts while making external assistance subsidiary * * *"

Historically, of course, the importation of foreign things has often led to vexing problems for China. The introduction of foreign ways and foreign goods in the 19th century was followed by systematic political exploitation and economic bullying. It proved impossible for China to have the benefits of foreign commerce without companion difficulties.

The most notable 20th century reminder to the Chinese that intolerable foreign interference can accompany the introduction of things from abroad occurred in the early 1960's. Reflecting a variety of disputes between the two countries, the Soviet Union abruptly withdrew its specialists, who took with them blueprints, plans, specifications, and every other tangible shred of technology they could deny the Chinese. The result was to leave the Chinese unable even to complete plants under construction, some of which they had no choice but to destroy. It is little wonder, then, that those charged with industrial development will seek in contracts with foreign firms to squeeze out every drop of disclosable technology. Nor is it surprising that there is a shrill chorus of criticism by those who fear that China may become too infatuated with and dependent upon foreign products and know-how.

The U.S. trade embargo of the fifties and sixties, as well as the Soviet's massive pullout of 1960, make understandable the fact that self-reliance, "walking on two legs," has become a major Maoist tenet. The import of advanced technology, know-how, capital goods, and plant remains essential, however, to China's industrialization. Herein lies the rub. China, quite naturally, would rather run on two legs to industrial modernity than walk. "More, Better, Faster, and More Economical" is a common slogan. The problem is where to draw the line. When and how often should the Chinese rely on what they consider to be the crutch of imported technology to advance their economic development?

One of the few certainties about the anti-Lin, anti-Confucius campaign has been its antiforeign technology component, and the alarm of the Chinese left at what it perceives as a dangerous increase in foreign dependency is part of the record.

Despite this dialog, however, China's high technology and capital goods purchases continue. The policy of selective absorption of foreign technology does not conflict with the guiding principle of self-reliance. Today's major purchases are of a type which can enable the Chinese eventually to increase agricultural and industrial production thereby cutting down imports and expanding exports.

Licensing U.S. Technology to China

Most foreign countries offer the American exporter a commercial environment hospitable to direct and indirect investment in a variety of forms. The most populous nation on earth does not.

In China it is impossible for foreign firms to lease a local office or hire a single local employee, much less to form a local partnership or corporation or establish a local plant. It is not possible to buy any local real or intangible property. It is not possible to make a capital investment of even 1 cent in any local enterprise, or to form a joint enterprise with any local entity. It is not even possible to travel to China to dis-

cuss the sale of products or technology without a firm prior invitation in writing.

It has been said that licensing is the "third best" alternative to doing business abroad, when neither exports nor direct investments appear practical. It ought to be, and is, of substantial interest to U.S. companies, that licensing appears to be a promising means to do business with China. Without it, many firms would be foreclosed from the market entirely.

For the Chinese, too, licensing U.S. technology has definite appeal. China is a country which, in a sense, could move from an agrarian to a technological society without encountering an industrial revolution along the way. And by what more efficient way than through licensing? Through licensing the Chinese can economize in domestic research and development costs, accelerate development, and even build needed depth and breadth into the current range of export products. And, unlike contracts for capital goods, licensing agreements are not ordinarily the subject of escalator clauses.

As in all technology transfers, the licensor to China must be conscious that today's licensee may well be tomorrow's competitor. The transfer of production secrets almost certainly dooms export of the product itself. Disclosure of patents and know-how, though restricted by all reasonable means, can never be fully protected from potential abuse.

Yet in transactions with China as elsewhere, licensing does help a company to recapture research and development costs, to enter a new or untried foreign market, and to do this generally without commitment of large amounts of capital. At a time when most raw materials and finished goods are in acutely short supply, and inflation is a scourge everywhere, it may be that United States-China licenses offer good opportunities to both sides of the transaction.

At this early stage of our bilateral commercial relations, however, it remains to be seen how amenable the Chinese will be to ordinary license practices. For example, licensing foreign patents and know-how will in some respects clash with restrictive notions of Chinese autarky. Secrecy provisions, though agreeable in principle to the Chinese, may prove difficult to monitor. How agreeable will the Chinese be to provisions often included to compel return of all blueprints, drawings, specifications, reproductions, and similar material in the event the licensing agreement goes sour? Can the Chinese be expected to require a licensee's employees to sign licensor-drafted non-disclosure agreements? Are such agreements needed, or enforceable, in China? Without a Chinese patent law, how is patent protection obtained? Without meaningful access to local courts, how may know-how be protected? What happens if the Chinese Government makes it impossible for the licensee to perform on his contract? What are the licensor's remedies should the licensee breach his agreement? What, if any, unusual provisions should be included in license agreements with the Chinese? Currency for payments? Penalty charges? Choice of law? Technical services or personnel training? Warranties? Term? Force majeure? Improvements? Taxes?

Although these questions have not been thoroughly explored in less than 3 years of United States-China trade, several U.S. firms have demonstrated the reality of this particular opportunity by concluding license transactions with the Chinese.

VI. PENDING LEGAL ISSUES

An old Chinese proverb says it is better to die of vexation than to get involved in a lawsuit. It is a statement which well reflects the misgivings the Chinese historically have had about formal legal resolution of commercial disagreements. "To enter a court of law," says another adage, "is to enter a tiger's mouth." Lawyers in old China were almost entirely occupied with the criminal law, and, as in other Asian societies, theirs was not an altogether savory reputation for ethics or compassion. Consequently, there are today no lawyers as such to be found in China, nor is there what could be called a body of commercial law, nor are commercial disputes often submitted to formal tribunals for resolution. The Chinese perhaps have a greater faith than we do in the reasonableness and rationality of man.

In view of all this, Americans, perhaps the most litigious business people in the world, have expected legal complexities and misunderstandings to bedevil United States-Sino-trade. While such fears have proven largely unfounded, some legal problems do exist.

Dispute Settlement and Arbitration

Chinese import and export form contracts, though short, simple, and straightforward, often but not always have a clause which anticipates the possibility of disputes arising under the agreement. Such clauses simply say that disputes arising between the contracting parties shall be settled through negotiation, and that in case no settlement can be reached, the case under dispute may then be referred to arbitration. Variations on such clauses add that the parties should attempt to settle disagreements "through friendly discussion on the principle of seeking truth from fact."

Among the simplest arbitration clauses found in a standard Chinese contract provides that "should there be any disputes between the contracting parties, they shall be settled through negotiation. In case no settlement can be reached, the case under dispute may then be referred to arbitration." In this particular case, the form agreement is that used by one of the FTC's in export transactions, and it is evident that a dissatisfied buyer's rights and remedies are not very well spelled out in such a clause.

In standard form contracts where China is the purchaser, the arbitration clause is sometimes more detailed. Such a contract, in use by the China National Machinery Import and Export Corp., provides that:

All disputes in connection with this Contract or the execution thereof shall be settled friendly through negotiations. In case no settlement can be reached, the case may then be submitted for arbitration to the Arbitration Committee of the China Council for the Promotion of International Trade in accordance with the Provisional Rules of Procedures promulgated by said Arbitration Committee. The Arbitration shall take place in Peking and the decision of the Arbitration Committee shall be final and binding upon both parties; neither party shall seek recourse to a law court or other authorities to appeal for revision of the decision. Arbitration fee shall be borne by the losing party. Or the Arbitration may be settled in the third country mutually agreed upon by both parties.

Tradition and contemporary practice in China's foreign trade is such that there is no public record at all of decisions rendered in disputes referred even to the relative informality of arbitration, and

precious few cases go to arbitration at all. This is so despite the fact that the Chinese have evolved a mechanism of their own for arbitration of disputes.

In 1954, Peking established the Foreign Trade Arbitration Commission of the China Council for the Promotion of International Trade, and then a Maritime Arbitration Commission, also under the CCPIT, in 1958. A body of rules has been promulgated for each Commission, and parties seeking arbitration under the rules are required to select from the Commission's 15 to 21 members one arbitrator or, if they wish, one arbitrator apiece who together agree upon a third to form a panel of three. A list of members of the panel is not available from either Commission. Peking is the site for arbitration set forth in most form contracts. The language of the proceedings is, under the rules, to be Chinese, and proceedings must be in writing, but a party may be represented by an attorney or agent who is not a citizen of China, and arrangements for translation and interpretation may be made. Decisions of the arbitrator or panel are not appealable, and enforcement of an award, if the parties cannot themselves achieve it, may be ordered and executed by the People's Court.

American firms beginning in 1972 expressed unease over a dispute resolution system which seemed to compel "friendly discussion" in China on Chinese terms, and which offered in the event of deadlock only the more uncertain prospect of arbitration in Peking before a panel of Chinese arbitrators following Chinese rules and proceeding in the Chinese language. The arbitration clauses themselves do not specify how a foreign claimant may initiate the arbitration process, and some cases are known where the Chinese side, preferring to continue "friendly discussions," have declined a claimant's request for arbitration.

Perhaps in response to these misgivings, adjustments have begun to appear in China's form import and export contracts. One, for example, provides explicitly that if no settlement can be reached the dispute may be referred to the Foreign Trade Arbitration Commission "or a competent Arbitration Committee in a third country approved by the two Contractual Parties for arbitration" and, further, that arbitration fees "are to be borne by the losing party."

U.S. exporters, in particular, have been concerned that dispute resolution mechanisms open to them were inadequate, and they have been satisfied in some recent major contracts to secure Chinese agreement to arbitration in such third countries as Sweden, Switzerland, and Canada. The fact that no cases in recent years have gone to arbitration may be reassuring to U.S. firms. But this fact must also be viewed as raising the question of whether the Chinese will ever really go to arbitration, notwithstanding such a contract clause. Skeptical corporate counsel have concluded that the Chinese have "reluctantly" agreed on the matter of third country arbitration only to insist on "reciprocal" concession from the American side of far greater commercial consequence in the overall transaction. Also, some firms have been so delighted at the prospect of arbitration in a third country and not in Peking that they have not sought to press the Chinese for a more elaborate clause spelling out the rules to govern the form, commencement, and legal procedure of the arbitration, the applicable law and when necessary, enforcement of any award. Failure to give attention to these essential points may, for practical purposes, nullify the clause.

*List of panelists released July, 1975; available from the author.

An interesting indicator of China's preference for nonarbitrated, informal resolution of commercial disputes is a report given in January 1975, by CCPIT legal officials to two representatives of the American Arbitration Association in Peking, that in 1974 only one dispute was settled through arbitration and award, 12 were resolved through mediation, and more than 100 cases were composed through "friendly negotiation."

A recent U.S. Supreme Court decision has a potentially important bearing on contracts between American firms and China's Foreign Trade Corporations.

In *Scherk v. Alberto Culver*, decided June 17, 1974, the Supreme Court had before it the question of enforceability of an arbitration clause in a contract between a U.S. firm and a German citizen.

The clause provided, in part, that "any controversy or claim [that] shall arise out of this agreement or the breach thereof" would be referred to arbitration before the International Chamber of Commerce in Paris, France, and that Illinois law would govern the agreement and its interpretation and performance. The Alberto-Culver Co. sought to avoid arbitration in Paris that have exclusive recourse to U.S. courts, notwithstanding the clause. The Court rejected Alberto-Culver's plea and, instead held that "the Agreement of the parties in this case to arbitrate any dispute arising out of their international commercial transaction is to be respected and enforced by the Federal courts in accord with the explicit provisions of the Arbitration Act."

The Arbitration Act of 1925, 9 United States Code § 1, provides that an arbitration agreement of the type involved in the *Alberto-Culver* case "shall be valid, invocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." In the majority opinion, Mr. Justice Stewart said the act, "reversing centuries of judicial hostility to arbitration agreements, was designed to allow parties to avoid the costliness and delays of litigation." The arbitration clauses of international agreements, in particular, were held deserving of enforcement:

A contractual provision specifying in advance the forum in which disputes shall be litigated and the law to be applied is, therefore, an almost indispensable precondition to achievement of the orderliness and predictability essential to any international business transaction. Furthermore, such a provision obviates the danger that a dispute under the agreement might be submitted to a forum hostile to the interests of one of the parties or unfamiliar with the problem area involved.

Citing with approval the Court's decision in an earlier case, *The Bremen v. Zapata Offshore Co.*, 407 U.S. 1, Justice Stewart concluded that to invalidate the arbitration agreement would reflect "a parochial concept that all disputes must be resolved under our laws and in our courts * * *. We cannot have trade and commerce in world markets and international waters exclusively on our terms, governed by our laws, and resolved in our courts."

In reaching its decision, the Court had before it an amicus curiae brief filed by the American Arbitration Association (AAA) which urged "the fullest recognition possible to arbitral forums bargained for by the parties to international agreements."

Not only is international arbitration desirable, and in some cases a superior method for dispute settlement between parties of different countries, argued the AAA in its brief but effect should be given

where possible to U.S. policy, reflected in American adoption of Foreign Arbitral Awards. The United States acceded to the Convention in 1970 (3 U.S.T. 2517), T.I.A.S. No 6997), and Congress gave it practical effect by amendment to the Arbitration Act (9 U.S. Code §§ 201 ff).

In a final footnote to the opinion in the *Alberto-Culver* case, the Court recalled that the goal of the Convention, to which this country subscribed:

Was to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries.

The decision ought to be read and carefully weighed by counsel to U.S. firms doing business with China. It is a reminder that persuading the Chinese to accede to arbitration at a site outside of China is not alone enough, but that careful attention should be given to the procedural and substantive law to govern any eventual arbitration in a third Country. The *Alberto-Culver* case is also notice to the Chinese that American courts are now all but certain to enforce international arbitration agreements wherever possible to do so.

China is not a signatory to the United National Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and the prospect of Chinese enforcement of an arbitral award in American courts may be considered dim because of reluctance to resort to a lawsuit. For the time being, then, U.S. firms may have to be content with faith in China's demonstrated ingenuity in composing disagreements fairly and in timely fashion through friendly discussion.

Disputes which invariably pose thorny and unavoidable confrontations are those arising out of maritime collisions and other marine accidents where ships and cargoes are involved. In recognition of this, the CCPIT promulgated in January 1975, "Provisional Rules for General Average Adjustment" and, at the same time, established a Department for Average Adjustment. Presumably China's form contracts will be amended, where and as necessary, to incorporate these new rules by reference.

Protection of Industrial Property Rights

Marxist hostility to private property and monopoly control of socially useful inventions are reflected in China's scant protection of what the nonsocialist world refers to as industrial or intellectual property.

China is completely without such. All inventions and technology are considered to be the property of the State. An awareness that some incentive can foster invention is, however, evident from the fact that in 1963 a system was established whereby inventors were made eligible for an official certificate of recognition and a cash award. Nevertheless, the Chinese neither recognize foreign patent rights as such, nor provide any statutory procedure for their protection. China's position on this issue is that they are willing to provide protection for foreign inventions by contract on a transaction-by-transaction basis. For example, the Chinese have agreed that they will limit their use of potential technology to the single installation

for which it has been made available. A number of U.S. companies have expressed concern about the lack of established patent procedures as well as the refusal of the Chinese to adhere to multilateral conventions concerning patent rights, a concern which has not been diminished with the discovery in two instances that the Chinese have copied and exhibited internationally without permission or acknowledgment certain agricultural chemicals developed by U.S. firms. Such discoveries were made because the Chinese offered these chemicals under the U.S. brand name thinking, apparently, that the names were generic.

China lacks internal copyright laws and it has not agreed to adhere to any of the multilateral copyright conventions or any national legislation abroad. The lack of copyright protection has not been of serious concern to U.S. firms, since the Chinese voluntarily refrain from commercially exploiting foreign literature domestically. The potential for abuse exists nevertheless.

A procedure, administered by the China Council for the Promotion of International Trade, is available for the registration of foreign trademarks in China. A law providing "Measures for the Control of Trade Marks" was issued in China in 1963. However, the Chinese require a bilateral agreement between themselves and the country of the potential registrant before they will permit such trademark registration. The United Kingdom, Sweden, Switzerland, Denmark, Finland, and Italy are among the countries which have concluded such bilateral agreements. There is no United States-China agreement on the subject.

Some U.S. firms are known to be studying the possibility of registering their trademarks in China through overseas subsidiaries in countries which do have trademark agreements with China.

Registration of a foreign trademark in China is granted to the first applicant on an exclusive basis for 10 years and renewable for further 10-year periods. Registration, based on 78 classes of goods, may not be in a foreign language for goods intended for use in China. Registered foreign-owned trademarks may be assigned to other foreigners.

Since the Chinese import very few consumer goods, there appears to be little need at the moment for American firms to register their trademarks. The only foreign consumer goods seen in China for sale to the general public have been Swiss and Japanese watches and Cuban cigars. Not registrable are words or markings similar to China's national flag or other official emblems of other countries, similar to marking of the Red Cross, and those which have an ill effect politically. There are no opposition provisions, nor time limit for governmental processing of applications. A trademark registration may be canceled where the quality of the product does not meet governmental requirements, reflecting a policy paralleling trademark law in the United States: Consumer protection. A registration may also be canceled where it is altered without governmental authority, where a registration has not been used for 1 full year and no permission for such nonuse has been granted and where the Government approves a third party application for cancellation.

The lack of a United States-Sino trademark agreement at present seems to pose more difficulties for the Chinese than for firms in this country. U.S. trademark law protects the first user of the mark, and

bilateral national agreements are, from the U.S. point of view, not necessary to enable a foreign national, individual, or corporation, to register a trademark here. Thus, the Chinese factory producing "Lion Brand" footballs sold here is as free to register that mark in the United States as any American manufacturer is free to register its marks.

Mutuality as a principle in China's foreign trade, and the fact that the United States and China do not yet accord each other formal diplomatic recognition, may be two important reasons why the Chinese have not yet taken steps under U.S. law to protect at least some of their more internationally known trademarks here, as they have in other places. Without taking such steps, however, the Chinese risk the possibility that another "first user"—an importer, distributor, retailer, or commission agent, for example—might himself successfully make application for trademark registration. The danger to China, should such registration be granted, is that the independent owner of the Chinese trademark may then be able to prevent further importation and sale of the product bearing that mark except on his own terms. In effect, such a registrant may wrest what amounts to an exclusive right to sell that product in the United States; this has happened to other foreign firms. The Chinese have expressed some awareness of this problem, but as yet they have authorized no applications on their behalf. Such applications, if accompanied by the customary trademark search, would also reveal whether or not any Chinese marks currently in use infringe upon existing U.S. marks.

While the People's Republic of China is a member of no international patent, trademark, or copyright convention, the Chinese did send, in observer status, the chief of the Legal Department of the CCPIT to a recent meeting of the World Intellectual Property Organization in Geneva.

Outstanding U.S. Claims and Frozen Chinese Assets

As noted earlier, the United States at the time of the Korean War, seized approximately \$80 million worth of assets of the People's Republic of China, the majority of which were held in U.S. banks. The Chinese retaliated with the confiscation of private U.S. property in China. The Foreign Claims Settlement Commission has, under the Chinese Claims Act of 1966, validated private U.S. claims totaling approximately \$196 million. Interest is not being paid or accrued on the frozen Chinese assets in this country; interest is accruing at the rate of 6 percent per annum on the claims certified by the Foreign Claims Settlement Commission.

In February 1973, it was announced by the United States that an agreement "in principle" had been arrived at with China for the settlement of this issue. As of this time, however, the Chinese side has not signified its agreement to any settlement of the matter. "Technical difficulties" have been ascribed as the reason for the delay.

Without a settlement, validated claims held by U.S. claimants could, at least theoretically, form the basis for attachment of private Chinese property within the jurisdiction of American courts. Chinese Government property, such as diplomatic buildings and furnishings, are protected against such settlement under the doctrine of limited sovereign immunity. But private property (more difficult to define where, as in the case of China, there ought never to be "privately owned" property

as we ordinarily understand the term) would be subject to seizure in satisfaction of claims.

The problem poses enough of a peril that the Chinese Archeological Exhibition which opened in December 1974, at the National Gallery of Art in Washington, D.C. was accorded exemption from attachment by Suitors Act of Congress. Also, the Chinese, in making purchases of equipment and agricultural commodities in this country, do not take title to the goods until delivery is made in China. For the same reason, China has not risked any of its own flag cargo vessels in U.S. ports; those vessels which have called here have been under charter and have flown third country flags. It has already been noted that the claims/assets difficulty has prevented direct U.S. banking relationships with China. It is unlikely that the Chinese will be able to mount any kind of a trade exposition in this country without either a resolution of the problem or some other device to take the goods to be displayed clearly out of the category of attachable property, nor for the same reason can Chinese commercial aircraft be expected to put down at U.S. airports.

The Trade Act of 1974, embodies a section potentially troublesome where settlement of the claims issue is concerned. Section 408 requires a claims settlement, previously negotiated with Czechoslovakia by the State Department, to be renegotiated and submitted for congressional review on the grounds that the settlement reached was unfair to U.S. claimants. China is not mentioned in the section, but any eventual settlement negotiated with Peking is at least potentially liable to a similar congressional "veto."

Contracts: Law and Practice

The Chinese have a saying: "Honor the contract." It is a rule to which the Chinese attach considerable importance, and therefore the party who does business with the Chinese is well advised to pay close attention to what the contract says.

A Chinese export contract, often simply called a "sales confirmation," is a simple, standard form. Usually it is printed in both Chinese and English. While the forms do vary from FTC to FTC and, as necessary, within each FTC to accommodate differences in commodities, they ordinarily provide blank spaces for recitation of no more than these elements: date, parties, description, quantity, and price of the article, loading port, destination, time of shipment, packing and shipping mark, insurance, terms of payment, and "remarks." Often, but not always, the reverse side of the contract forms list certain conditions, relating to documentation instructions, finality of inspection; shipping advices, letter of credit procedures, force majeure, arbitration, and claims. In some respects, Chinese form contracts resemble purchase orders with which U.S. firms are familiar.

Buyers who seek deletion or modification of material terms which appear on the printed contract or who seek to add terms and conditions, encounter resistance from the Chinese. Yet it is important for such buyers to press for inclusion of terms they deem genuinely essential to a complete expression of the understanding of the parties. The Chinese do ordinarily live up to their own injunction to "honor the contract" but oral understandings or conditions, in China as here, are not regarded as forming part of the contract.

Certain features of Chinese form contracts have proved troublesome to American businessmen. Force majeure clauses, for example, have been found not to cover strikes or "Acts of God," as far as the Chinese are concerned. They will not accept as an excuse for late delivery or failure of performance the fact of striking workers, whom they ideologically *a priori* assume to be resisting unjustifiable exploitation, nor do they concede existence of God. Nor do the Chinese ordinarily forgive late or nonperformance due to the intervention of foreign government authorities, the theory being that no foreign government is a party to the contract and thus cannot alter its terms. The Chinese still regard as an impermissible breach of contract the failure of certain American firms to deliver steel scrap, rejecting as legally insufficient the excuse that the U.S. Government made the export of such steel scrap illegal. The force majeure debate has been a frustrating one for U.S. firms, since the Chinese neither want to enumerate the many instances which the concept might embrace, nor do they always accept the kind of "catch-all" clause (such as "all other unforeseen circumstances of each and every kind beyond the control of the parties") which are frequently found in Western agreements.

Some standard form Chinese agreements provide simply that "sellers shall not be held responsible for late delivery or nondelivery of the goods due to Force Majeure." Such a clause may be found in both import and export form Chinese contracts, although an obvious conflict may later arise over what is embraced by the term "force majeure" and what is not.

In certain of their export contracts, the Chinese appear more concerned about safeguarding the seller who meets with problems. The China National Cereals, Oils and Foodstuffs Import and Export Corp., for example, uses a clause in its printed sales contracts which provides that "should the Sellers fail to deliver the contracted goods or effect the shipment in time by reason of war, flood, fire, storm, heavy snow, or any other causes beyond their control, the time of shipment might be duly extended, or alternatively a part or whole of the Contract might be canceled without any liability attached to the Sellers, but the Sellers have to furnish the buyers with a certificate attesting such event or events."

Inspection of goods in trade, whether they are exported from China or imported to China, will under Chinese contracts be final in China alone. This is a notable instance in which the principle "equity and mutual benefit" seems as a matter of practice to be ignored. Perishable and breakable goods, arriving decayed or in pieces at a U.S. port, may be the subject of a claim, but it will be a claim in the face of a final certificate of inspection issued by the Chinese authorities that the goods were in proper condition at the time of shipment from China. The FTC's do not reciprocate this requirement in their own purchasing: goods purchased by the Chinese must meet final inspection tests at the port of discharge in China, or a claim will lie. The only known departure from this latter requirement is a reported willingness on the part of the Chinese to accept as final a certificate from U.S. agricultural inspection authorities that a given wheat shipment is free of a certain type of infestation. This procedure responds to a specific problem, however, and shipments as a whole, whether agricultural or nonagricultural, remain subject to final inspection in China.

Late delivery or delayed payment by a foreign firm makes that firm subject to penalties, and the Chinese, as sellers, have successfully assessed such penalties as a charge of 1 percent of the contract price per month on late payments even where the contract does not specify that penalties are to be imposed.

A typical clause governing penalties to be assessed for late delivery of goods to China is the following, excerpted from a preprinted purchase agreement used by the China National Machinery Import and Export Corp.:

Should the Sellers fail to make delivery on time as stipulated in the Contract, with exception of Force Majeure causes * * * the Buyers shall agree to postpone the delivery on condition that the Sellers agree to pay a penalty which shall be deducted by the paying bank from the payment under negotiation. The penalty, however, shall not exceed 5 percent of the total value of the goods involved in the late delivery. The rate of penalty is charged at 0.5 percent for every 7 days, odd days less than 7 days should be counted as 7 days. In case the Sellers fail to make delivery 10 weeks later than the time of shipment stipulated in the Contract, the Buyers shall have the right to cancel the contract and the Sellers, in spite of the cancellation, shall still pay the aforesaid penalty to the Buyers without delay.

In complex sales to China, U.S. firms have not been required to accept standard penalty clauses, but instead have been able to negotiate their own. Typically, the Chinese negotiators give oral assurances that they never intend to assess penalties as long as the U.S. supplier is making a good faith effort to perform, no substantial delays occur, and the Chinese side is kept fully apprised of any changes in delivery dates. It is, nonetheless, wise for American firms in this connection to bear in mind another standard clause commonly found in Chinese contracts, to wit:

Any alterations and additions to this Contract shall be valid only if made out in writing and duly signed by both parties.

Chinese export contracts usually call for shipment to occur within a specified period of time, sometimes over as much as 3 months, rather than on a particular date. When the goods are ready for shipment, the FTC concerned notifies the buyer of that fact and requests payment through a confirmed and irrevocable letter of credit. Not until the Chinese have payment in hand will goods be shipped. They buy on generally the same basis. Normally the Chinese sell on a C. & F. or CIF basis; they usually buy f.o.b. the U.S. port, thus using insofar as possible their own insurance and cargo transport.

Naturally, it is not possible in large and complex transactions, particularly where the Chinese may be acquiring plant, processes, or complicated equipment or systems, for the entire agreement to be expressed in a preprinted short form document. Plans, specifications, drawings, warranties, involved delivery and payment terms, training arrangements, spare parts schedules, inspection procedures, know-how transfer and a host of other terms and conditions have, in China as elsewhere, swollen agreements into weighty volumes. The contract for the sale of 10 Boeing 707 aircraft to China, for example, is well over 100 pages. Not surprisingly, as a result, the Chinese legal experts have shown interest in reviewing copies of typical commercial agreements, or agreement checklists, for large and involved transactions.

An important element of disagreement and concern in recent contract negotiations between U.S. sellers and the Chinese involves the use of

an escalator clause on price. Thus far, the Chinese have successfully resisted any language which makes the price of goods at the time of delivery uncertain. Consequently, American firms had to inflate somewhat the fixed price finally written into the agreement. The Chinese recognize this, but evidently prefer the certainty of a firm price over the possibility—perhaps remote these days—that an inflation-index price formula might, in the end, afford them a lower price.

Federal and State Regulation

The formidable array of State and Federal laws and regulations governing goods in commerce in the United States has understandably proved confusing to the Chinese. Compliance even by U.S. firms with consumer protection statutes, as mentioned earlier, has become very involved, and China can be forgiven if, after more than two decades of freedom from such complexities, some of these and similar laws were at first viewed as intended to frustrate China's entry into the U.S. market.

The Chinese have yet to arrive at a systematic method for grappling these requirements. To date, they have done little more than ask importers to provide them with copies of the relevant statutes, or excerpts from Federal regulations on the very elaborate requirements of the Food and Drug Administration, the Federal Trade Commission, the Department of Customs, and the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury. Without concomitant and particularized analysis, as U.S. firms and experienced foreign suppliers know, the language of the Code of Federal Regulations, the United States Code and various Department and Agency guidelines and forms afford marginal guidance at best to those seeking to understand and comply with the legislative will. Chairman Mao's instruction that "all genuine knowledge originates in direct experience" ought eventually to be an incentive to the FTC's to meet with American experts in the various regulatory fields, including the relevant U.S. agencies themselves, rather than rely upon incompletely informed businessmen for guidance.

Export-Import Bank Credits, Private Financing, and the Johnson Debt Default Act

The Chinese People's Republic has consistently expressed abhorrence to long-term debt. This extended, until relatively recently, even to medium-term financing. There is, in China, an ideological unwillingness to accept debt financing which is grounded as much on an awareness of the stranglehold Western finance gained over China in the 100 years before 1949 as it is on Lenin's warnings about the pernicious proclivities of the banking establishment. Debt service of foreign loans alone in old China required a level of taxation which, in no small part, helped enslave the world's largest national population. Payment under large contracts with American firms, for Boeing Aircraft, M. W. Kellogg ammonia plants, Bucyrus-Erie blast-hole drills and shovels, and shipments of agricultural commodities, has been on a cash on the barrelhead basis. The Chinese have not so much as hinted that they are interested in loans from the U.S. Export-

Import Bank or any other U.S. or foreign bank. It is true that some medium-term financing with interest payments included but not denominated as such (the Chinese use the term "deferred payment" not "credit") has been a part of some sales to China. But it is illustrative of the Chinese commitment to a conservative payments policy that they sought deferred shipments, and thus deferred payments, of some agricultural and industrial shipments in late 1974 and early 1975, with the attendant probable dislocations in domestic planning or production, rather than accept the credit which would surely have been available to them abroad. More recently, there have been reports that the Bank of China has sought funds in the Eurodollar market, but it is too early to tell if this foreshadows major Chinese borrowing abroad.

Under present law, loans or guarantees of the Eximbank would not be available in connection with sales to the People's Republic of China anyway without a determination by the President, applicable to loans to all socialist countries, that such credit would be in the national interest. Moreover, in the case of China, there must be some resolution of the problem currently reflected in the Bank's books, namely that China remains obligated for the repayment of some \$20 million in loans made prior to 1947. While such loans were made to the Kuomintang regime of Chiang Kai-shek, the Bank in its regular reports to Congress has testified that the People's Republic of China succeeded to assets purchased with the proceeds of such loans, and thus stands obligated for repayment.

Since such obligations, and perhaps other U.S. Government claims on China, may be said to place Peking in default of obligations to the United States, there are activated the provisions of the Johnson Debt Default Act, which prohibits under such circumstances certain private U.S. individuals, partnerships, corporations, and associations from certain types of financial transactions with China or its state instrumentalities. Under an advisory opinion of the Attorney General, issued in 1967, it is clear that the act does not proscribe export financing by American firms or banking institutions so long as the terms of the transactions are grounded on bona fide business considerations and do not involve a public distribution of securities. While the Attorney General's opinion does clarify somewhat the circumstances under which credit arrangements may be made with the Chinese, the act has sufficed such possible transactions in such legal uncertainty that the administration has wisely but so far unsuccessfully sought its repeal.

VII. FACILITATING COMMERCIAL RELATIONS

In the relatively short time since 1972's Shanghai Communique, there have come into existence in the United States several practical aids to American firms fully the equal of those to be found in any other country. This has responded to a genuine need, since interest in trade with China sprung immediately from a host of firms, large and small, import and export, and has continued to grow. These reliable sources of advice and assistance have also tended to reduce the mischief done, intentionally or not, 2 or 3 years ago when it seemed that every person of Chinese heritage, every ex-GI who had served in the China-Burma-India campaigns, and every recent student of Chinese

history or literature was offering himself to U.S. firms as consultant or commission agent. The principal sources of information and assistance on trade with China are:

Bureau of East-West Trade, U.S. Department of Commerce

The People's Republic of China Affairs Division in the Office of East-West Trade Development of the Bureau of East-West Trade is staffed with specialists in most aspects of doing business with China. The Chinese linguists, economists, and commercial officers of the Division have been able to augment their familiarity with China with visits to the Chinese Export Commodities Fair, and with discussions with the Foreign Trade Corporations and U.S. commercial officers in Peking. The Division prepares "Doing Business With China," one of a series available from the Department of Commerce in the "Overseas Business Reports" series. This indispensable publication is supplemented from time to time by other literature from the Division.

Address: PRC Affairs Division, Bureau of East-West Trade, U.S. Department of Commerce, Washington, D.C. 20230. Telephone 202-967-2908.

Office of PRC Affairs, U.S. Department of State

Like its counterpart at the Commerce Department, the Office of People's Republic of China Affairs in the State Department is composed of career specialists on China and the Far East. A former Director of this office became the first Deputy Chief of the U.S. Liaison Office in Peking. The office has continued to be the unit principally involved in day-to-day liaison with the American mission in Peking, and its staff members, who travel to China with some frequency, have made themselves available to firms interested in the Department's views on trade and political developments in China.

Address: Office of PRC/M Affairs, U.S. Department of State, Washington, D.C. Telephone: 202-632-0670.

U.S. Liaison Office, Peking

Commercial officers of the U.S. Liaison Office in Peking have provided invaluable assistance not only to businessmen visiting Peking, but also to firms with specific questions posed by mail or cable. Much of their reporting on economic conditions and commercial opportunities in China is available from the China Affairs Office in the State Department.

Address: Commercial Section, U.S. Liaison Office, 17 Kuang Hua Lu, Peking, People's Republic of China. Telephone 522-033.

People's Republic of China Liaison Office

Many firms have found it useful to establish and maintain contact with commercial officials of the Chinese Liaison Office in Washington by apprising them of direct contacts initiated with the Foreign Trade Corporations in Peking and in seeking guidance on approaches to China. Though understaffed, given the high degree of interest in working with them, these commercial officers have shown a ready willingness to meet with U.S. businessmen.

Address: Commercial Section, Liaison Office of the People's Republic of China, 2300 Connecticut Avenue NW., Washington, D.C. 20008.

National Council for United States-China Trade

Responding to a situation in which the lack of diplomatic relations left something of a vacuum in bilateral trade promotion and information efforts, the National Council for United States-China Trade was formed in May 1973. It is a private, nonprofit association of some 250 companies, large and small, interested in doing business with China. The Council publishes a valuable bimonthly magazine, *United States-China Business Review*, as well as a number of other studies on practical aspects of U.S. trade with China. Recognized as a counterpart organization by Peking's China Council for the Promotion of International Trade, and maintaining a close working relationship with the FTC's, the Canton Fair, and the Chinese officials in Washington, the Council is the focal point in the United States for reciprocal trade missions and exhibitions. An extensive translation, research, and business counseling service is available to its members.

Address: National Council for United States-China Trade, 1100 17th Street, NW., Washington, D.C. 20036. Telephone: 202-331-0290.

In addition to the foregoing, American businessmen have found useful assistance available from the Commercial Sections of the American Consulate in Hong Kong and the U.S. Embassy in Tokyo, as well as from the American Chambers of Commerce in Hong Kong and Tokyo.

VIII. RECOMMENDATIONS

One experienced China hand regularly advises newcomers to the trade that, in doing business with the Chinese, nothing is easy, and everything takes longer than it should. It is not always the fault of the Chinese, he explains, but largely the effects of a commercial hiatus of two decades. The accumulation of experience over the fullness of time should solve most of the problems currently vexing traders on both sides. In the meantime, however, progress in that direction can be expedited by the two sides at official and unofficial levels. Whether and to what extent the two governments do so will have an important bearing on the evolving political relationships between them.

Elements of a Sino-United States Trade Agreement

The prospect of a trade agreement between the United States and the People's Republic of China has, since the Shanghai Communiqué, offered the possibility of marked forward motion in the relations between the two countries. It assumes substantial importance for both sides in light of the passage of the Trade Act of 1974 in the closing days of the 93d Congress. Under the act, Public Law 93-618, signed by the President on January 3, 1975, the authority to lower tariffs on imports from China has shifted from Congress to the Executive. There are limitations on the authority of the President to grant most-favored-nation tariff treatment to China, to be sure, but the negotiat-

ing authority now is there, and there is no good reason not to proceed with all deliberate speed to trade negotiations with Peking.

The threshold question, of course, is whether or not the United States should contemplate a trade agreement with a country to which it has not yet accorded diplomatic recognition. Precedent for such an agreement under international law, if such were needed, lies in a trade agreement entered into between Great Britain and the Soviet Union in 1921, a step which preceded formal diplomatic relations. The same question may be raised in Peking, although the Chinese have previously concluded trade agreements in the absence of diplomatic ties. While the two sides will have to examine whether, on pragmatic grounds, a trade agreement should precede or follow the establishment of full diplomatic relations, trade negotiations toward such an agreement can certainly begin prior to fully normalized political relations.

Assuming a trade accord could be drawn which achieves gains for both sides in the commercial sphere, and one which at least offers no obstacle toward fully normalized State relations, it seems the sensible view that negotiations for a trade agreement should begin without delay, and that they should not await an exchange of ambassadors. Indeed, such an agreement could accelerate the move toward mutual recognition and, should recognition occur prior to or in the course of trade negotiations, obviously that poses no added difficulties.

In a strictly commercial context, there seem ample reasons to seek trade accord now. Both sides, for example, can benefit from the following possible elements of such an agreement:

AN AGREEMENT TO SETTLE EXISTING CLAIMS

As noted earlier there has been no perceptible movement on the \$196 million in private U.S. claims for property taken by China, and some \$80 million worth of claims by Peking for assets seized in this country at the time of the Korean War. There has been speculation that the Chinese are presently unwilling to implement a reported "agreement in principle" on this matter for unspecified domestic political reasons. A trade agreement would provide an overall framework for the resolution of outstanding matters such as this, perhaps providing the justification necessary for the Chinese to proceed on what appears to have become a wholly stalemated matter. Such a settlement would also compensate, at least in part, Americans who deserve some restitution for confiscation of private property. Agreements to settle claims of this sort are not uncommon in trade agreements. The Soviet Union agreed to settle \$722 million in lend-lease obligations as part of the United States-U.S.S.R. trade agreement signed in October 1972. Resolution of this matter, as suggested earlier, would also break a log-jam which presently prevents direct banking relationships, air routes, and maritime accords, and which exposes to attachment all non-diplomatically protected Chinese property coming within the jurisdiction of U.S. courts. Not to proceed on this particular matter has some important negative effects. Improvements in United States-China relations presently enjoy the support of the American public. It is rare to hear from the Congress or elsewhere any serious opposition to the rapprochement begun in 1972. History is replete, however, with lessons of how unexpectedly changes in public mood or snags in official policy

can occur. The impact on the Trade Act of the question of Jewish emigration from the Soviet Union, which led ultimately to Soviet nullification of the 1972 trade agreement with the United States, is a striking example.

Negotiation of the United States-China claims matter in the context of a trade agreement which balances benefits to the two sides also offers less chance of exposing the eventual settlement to perils of the type encountered by the United States-Czech accord. Although the Chinese may justifiably wish some clear prior assurance from the U.S. side with respect to the acceptability of the Settlement to the Legislative Branch so that their pact is not, as the Czech one was, overturned by Congress.

More delicate politically than the matter of private claims are certain U.S. Government claims carried as delinquent against Peking. These arise out of loans, credit, and lend-lease to the Chiang Kai-shek regime prior to 1949. Included in such claims is an item carried by the Export-Import Bank as a receivable from "China (Mainland)" for loans to the Nationalists. Peking does not acknowledge such debts, and if pressed by the United States in trade negotiations, the subject could be expected to sink the discussions in a quagmire. For that reason, this matter should best be left to separate discussion, where more politically charged issues can be considered together.

MOST-FAVORED-NATION TARIFFS

Under the Trade Act of 1974, only through a trade agreement with the United States can China be accorded most-favored-nation tariff treatment by the Executive Branch. The possibility exists that Congress, notwithstanding the Trade Act, could enact a law unilaterally lowering tariffs for China, but such an eventuality is most unlikely. This subject, then, represents for both sides an important part of eventual trade discussions. The Chinese side might be expected to show indifference if not irritation over the fact that the matter arises at all in the context of trade negotiations. After all, the imposition of column II rates of duty on Chinese goods was a unilateral form of economic discrimination by the United States in the first place; why should the Chinese now be expected to deal for lower tariffs? In both the Shanghai Communiqué and subsequent joint statements, the two sides have pledged themselves to a dismantling of obstacles to trade, but there really is no question about the fact that current U.S. tariffs are a unilaterally maintained hindrance to trade even though the embargo erected by this country has for the most part been dismantled. While the Chinese must be conceded debate points on this score, the hard fact of the matter is that the Executive is not free to grant MFN status unconditionally, and the Congress simply will not stand for extension to the Chinese the privilege of exporting to the United States on a reduced tariff basis without some form of reciprocity. That reality is carefully and expressly engraved in title IV of the Trade Act. It is not enough that China would allow U.S. goods to enter her market at preferential duties, since the range of goods marketable in China's nonconsumer society is severely limited. In fact, no nonmarket economy can really grant foreign products the same market benefits as those enjoyed by her own.

The clause by which the two sides extend MFN treatment to each other should express the fact that such treatment will be unconditional and unrestricted, applying to all matters concerning customs duties, surtaxes, and subsidiary charges, as well as customs clearance formalities, regulations, and procedures. China has been willing, however, to reciprocal limitations on unconditional most-favored-nation treatment to special trade relationships the other party may have with neighboring countries, customs unions, or similar international pacts.

Conditions Precedent to MFN for China

The Trade Act also provides, at section 404 of title IV, that the President "may, by proclamation, extend nondiscriminatory treatment to the products of a foreign country which has entered into a bilateral commercial agreement referred to in section 405."

Section 405 provides, subject to certain conditions, that "the President may authorize the entry into force of bilateral commercial agreements providing nondiscriminatory treatment to products of countries heretofore denied such treatment"—language which is the authority for trade accords with Communist countries, including China.

It is not surprising that the Congress attached strict conditions to Presidential authority to proclaim lower duties on imports from Communist countries. Congress historically has jealously guarded its sole power, under article I, section 8 of the Constitution, to lay and collect taxes and duties and regulate commerce with foreign nations. The 93d Congress in title IV simply sought to afford the Executive enough flexibility to conduct foreign trade negotiations while, at the same time, to establish the limitations within which that flexibility may be exercised.

The limitations of section 405 provide that a bilateral commercial agreement with China must promote the purposes of the act, be in the national interest, and meet other very specifically enumerated conditions, as follows:

1. The agreement must be limited to an initial period of no more than 3 years, renewable for additional periods of up to 3 additional years, if:
 - (a) A satisfactory balance of concessions in trade and services has been maintained, and
 - (b) Actual or foreseeable reductions of U.S. tariff and non-tariff barriers resulting from multinational negotiations are reciprocated by the other party;
2. The agreement is subject to termination or suspension for national security reasons;
3. The agreement must contain safeguard arrangements to protect domestic industries from threatened or actual injury or market disruption;
4. The agreement must protect property rights of U.S. nationals in patents and trademarks not less than the rights specified by the Paris convention for the Protection of Industrial Property (to which China is not a party);
5. The agreement must protect copyright interests of U.S. nationals not less than the rights specified in the Universal Copyright Convention (to which China is not a party);

6. The agreement must provide for protection of industrial rights and processes;

7. The agreement must provide arrangements for the settlement of commercial disputes;

8. The agreement must provide arrangements for trade promotion, such as for trade and commercial officers, participation of trade fairs and exhibits, trade missions, and for facilitation of entry, establishment, and travel of commercial representatives;

9. The agreement must provide for consultations and periodic review, as well as make provision for such other commercial arrangements as will promote the purposes of the act.

In addition to the foregoing, the President is precluded, by section 402 of the act, the "Jackson Amendment," from concluding a trade agreement with any country which he determines:

1. Denies its citizens the right or opportunity to emigrate;

2. Imposes more than a nominal tax on emigration or on the visa or other documents required for emigration, for any purpose or cause whatsoever; or

3. Imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice.

No nonmarket economy country is eligible for MFN tariff treatment under a trade agreement with the United States unless the President certifies to Congress that the country in question is not in violation of the foregoing three conditions.

Under rather complex provisions of the statute, the President may waive these three requirements if he can assure Congress that such a waiver will (1) substantially promote the objectives of freedom of emigration, and (2) that he has received assurances that the emigration policies of the foreign country will lead substantially to the achievement of freedom of emigration.

The entire "freedom of emigration" section, while directed solely against the Soviet Union's policy of restricted Jewish emigration, by its terms also would apply to China. Secretary Kissinger acknowledged this in testimony before the Senate Finance Committee adding, however, that the provision would "present massive difficulties if we attempt to apply it to China."

The provision is ill-advised. Early confirmation of its mischief came swiftly, in the form of a repudiation by the Soviet Union of the entire October 1972, United States-U.S.S.R. trade agreement. It is hard to imagine China—or any country—permitting the kind of interference in domestic affairs which is represented by such a condition on normal bilateral trade relations. There is as yet, however, no indication that the Executive or the Congress is inclined to press hard for repeal of section 402, and, without repeal, any United States-Sino trade agreement could be undone by Congress on the ground that the Chinese violate one or more of the section's freedom of emigration conditions. It is also possible that the Chinese may be reluctant to start trade discussions with the United States as long as the freedom of emigration section remains in the statute. An approaching U.S. election year may not be the best time to seek repeal of the Jackson Amendment, yet the administration should at least send to Congress proposed remedial legislation.

MARKET DISRUPTION

The Trade Act's requirement of safeguards against dumping, market disruption, or other unfair practices as a condition precedent to the extension of most-favored-nation tariffs to nonmarket countries ought to give the Chinese little difficulty. China trades according to the principle of equality and mutual benefit. She really has no excessively favorable balance of trade with any country, nor do China's products, excepting the unusual situation of Hong Kong, heavily predominate in any foreign market. Where China enjoys most-favored-nation tariff access to Western markets, in Canada, for example, there has been no capture of a large part of any market, no instance of dumping nor any other unfair trade practice. There is some small evidence, in fact, that the Chinese do not for long allow their own base price advantages to exist: one American importer of an item which is dutiable at the same rate from column I and column II countries at first found a significant price advantage in the Chinese product. Recently, however, he reports that Peking has raised the price of that product to a point where it is no longer profitable to opt for the Chinese model. Many traders believe that with MFN treatment, the Chinese, in a quest for foreign exchange, will raise their prices to a point at which dumping would be improbable. Also, as the Chinese readily suggest to foreign visitors concerned on this score, China's own domestic consumption is so large that exportable surplus is not likely to be substantial in any category of manufactures. It is worth recalling that China, unlike Japan, is not by tradition or ideology an aggressively trading nation, and China's current exports to this country are at about the same level as those from tiny Nicaragua. Moreover, it may be more than a little unbecoming for the United States, which has reaped a surplus of more than \$1.5 billion in trade with China in 3 short years, to quibble about a possible adverse impact of Chinese exports on this economy.

If there is an ominous aspect in the area of market disruption, it lies with an amendment to section 205 of the Antidumping Act of 1921 by the new Trade Act. This amendment codifies a questionable Treasury practice with respect to determining foreign market value of goods from state-controlled economies, for dumping purposes, in a manner which, potentially at least, could place a severe limitation on the ability of China to export manufactured goods to the United States. The amendment, at section 321, ch. 2, to title III of the Trade Act, authorizes the Secretary of the Treasury to find the foreign market value of the merchandise on the basis of normal costs, expenses, and profits as reflected by either (1) the prices at which such or similar merchandise produced in a non-state-controlled-economy country is sold either for consumption in the home market, or to other countries, or (2) on the basis of constructed value of such or similar merchandise in the non-state-controlled-economy country. The amendment would even permit a constructed value comparison with the sales price of merchandise produced in the United States in the absence of an adequate basis for comparison in other non-state-controlled economies. The effect of this new provision could be to deny U.S. market access to certain Chinese exports by, in effect, wiping out price advantages of products which become the subject of a dumping complaint.

DISPUTE SETTLEMENT MECHANISMS

As may be seen from the earlier discussion of this subject, a systematic method for resolving commercial disputes arising between the Chinese and American firms is for practical purposes nonexistent. While U.S. parties have been able to name certain cities other than Peking as a situs for arbitration proceedings, the very important question of the rules to govern such proceedings has not been addressed, much less resolved. The National Council for United States-China Trade, the China Law Panel of the American Society of International Law, and the American Arbitration Association are presently working together on this subject. Their work includes attention to the all-important questions of a model arbitration clause for contracts in United States-China trade, the matter of a panel of arbitrators acceptable to both sides, rules of procedure, award enforcement, and applicable substantive law. As matters stand, most contracts concluded between U.S. firms and a Chinese FTC which do provide for arbitration in a third country leave these questions open. These subjects have been discussed in Peking between attorneys representing the National Council, American Arbitration Association representatives, and officials of the Legal Department of the China Council for the Promotion of International Trade.

Some form of agreement by the two sides on these questions will not only lend an important element of certainty to commercial transactions, it will also minimize the likelihood of deadlocked business disagreements which, in the evolving United States-Sino-rapprochement, could have an unfortunate political impact. Since neither the Chinese nor American firms may wish in every case to be limited to dispute resolution through arbitration, provision ought to be made in any trade agreement making clear the fact that legal and natural persons have access to the domestic courts of the two countries, and that sovereign immunity from suit or execution of judgment with respect to commercial matters will not be invoked by either side. Such a provision is particularly important when, as with China, the State owns and controls the means of production and the instruments of foreign trade transactions.

Private talks with CCPIT legal officials indicate that Chinese interest in orderly, fair, and expeditious resolution of commercial disputes makes this element of a United States-China trade agreement uncontroversial.

PROTECTION OF CERTAIN PROPERTY RIGHTS

It has already been mentioned that China is without any law protecting foreign patents or copyrights, and that Peking's trademark law operates to permit registration of foreign marks only after conclusion of a formal bilateral trademark agreement. Thus, American patents are presently protectable only case-by-case in connection with contracts concluded with the Chinese. American authors and composers have no protection whatever against copying by the Chinese, who theoretically at least could produce books or records in Chinese or in English, for domestic use or export abroad, without permission and without compensation to copyright owners. At least some U.S. trademark owners are sufficiently concerned about losing marks to China

that, as suggested earlier, they are seeking to register their trademarks in Peking through foreign subsidiaries in countries having a bilateral trademark agreement with Peking. But the matter is not as one-sided as the foregoing may suggest. China, too, has inventions, processes, copyrightable material, and valuable trademarks, and a trade agreement can do more than merely encourage protection of these property rights under U.S. law. It may also, by public notice of such rights, serve to broaden awareness of the American people to China's own achievements.

BILATERAL TRADE PROMOTION EVENTS AND FACILITIES

The occasionally fashionable slogan, "World peace through world trade," may claim more for international commerce than is justified by experience. But trade can and does play an important part in the web of relationships through which people come to understand each other better, and by which countries help meet each other's needs. Recognition of this byproduct of trade is acknowledged in a negative way each time countries sever trade ties in times of conflict. The U.S. embargo on trade with China is such an example. Countries hoping to achieve better bilateral ties, then, do well to look to commercial relationships for areas of cooperation.

At the present time, there exists a definite need for improved assistance to American businessmen engaged in doing business with China. Existing communications are slow. Travel to China cannot be undertaken without special invitation from the Chinese side, and even when that permission is given logistical arrangements are not always easily made. Once in Peking for discussions, or at the Chinese Export Commodities Fair, businessmen often find they are without the aids to trade and business upon which they have elsewhere come to depend. They may need access to a photocopier, telex, movie projector, et cetera, or the collateral equipment required when these items break or wear out unexpectedly. These matters may sound minor, but to businessmen 10,000 miles from the home office, negotiating major transactions, these everyday take-for-granted tools can be the *sine qua non* of successful business. The U.S. Liaison Office cannot, without distortion of its major purposes, undertake to offer these kinds of services to visiting businessmen on a major scale. Consequently, the United States should strive, in negotiations leading toward a trade pact, for Chinese agreement to the establishment of a trade center or similar facility which affords this support. The Chinese themselves would be perhaps the greatest beneficiaries, since they would have a place in addition to the official Liaison Offices to which to address, for transmission to the United States, questions and requests about U.S. firms or products of interest, prices, and other market conditions, and so forth. The United States should, in exchange, be prepared to offer the Chinese access to one or more reciprocal facilities in this country. The People's Republic presently lacks any outlet of its own, beyond the Liaison Office in Washington, to display goods or discuss trade matters.

Trade promotion worthy of the name cannot be confined to static offices or showrooms. To date, there have been far too few trade missions exchanged between the two countries. Only one visit, to Peking

in November 1973, occurred in which a broadly representative group of American business executives, from the National Council for United States-China Trade, have visited Peking, at the invitation of the China Council for the Promotion of International Trade. The return Chinese delegation, invited in 1973, is expected in this country in September 1975. There has, of course, been some travel by individual representatives of American firms to the Canton Fair, and by Chinese technicians to United States plants in connection with existing contracts. Some Americans have been invited to Peking for informal talks with the FTC's, or the CCPIT. But these visits are rarely publicized, with the result that an unnecessary perpetuation of unfamiliarity and ignorance in one side about the other occurs. Visible and active efforts at commercial interchange should be fostered. Washington and Peking should agree to institute a regular exchange of commercial missions. The primary purposes of such exchanges would be the generation of two-way trade, but an important secondary objective is served as economic leaders from the two sides have more frequent opportunities to meet and exchange views. Still another purpose served is that of awakening the communities visited in the two countries to the reality of improved United States-Sino relations.

Another opportunity for trade promotion combined with a visible sign of improved relations is that of reciprocal trade exhibitions. While this subject has been discussed between the National Council and the CCPIT, no dates have yet been set. Announcement of such events, and the pledge of the two sides to work to insure their success, could form an important part of a bilateral trade agreement.

MARITIME AND AIR ACCORDS

Included in connection with a number of China's existing trade agreements are accords by which the two sides agree that the ships flying the flag of one party shall, in entering, berthing, and sailing from the ports of the other party, enjoy most-favored-nation treatment in all respects, and that neither party will act to restrict the liberty of ships from the other with respect to normal competition with third country vessels. Such provisions ought to pose no problem in any U.S.-Sino agreement. In fact, it becomes an important element as China builds her merchant fleet, and as expanding maritime trade increases the need for direct shipping between the two countries. The question of air routes is more complex. It is doubtful that a trade agreement can or should be the medium for determination of the details of scheduled air service between the two countries. A trade agreement could, however, acknowledge a mechanism for the settlement of such questions and commit the two sides to negotiate eventual agreement. Until scheduled air service can begin, permission at least in principle could be given in a trade treaty for unscheduled or charter air service. At present, only the unresolved problem of conflicting U.S. claims and Chinese assets keeps China's airliners from U.S. airports; there is no American restriction on such flights to or from China. Peking has not yet agreed, however, to permit charter carriers from the United States to land in China, except in connection with delivery of official visitors or carriage of goods intended for use at the U.S. Liaison Office.

TOURIST PROMOTION

Despite a sharp rise in the cost of international air travel, China remains a very substantial potential market for tourism from the United States. It is the last and most exotic of "undiscovered" lands. Thousands of eager travelers have written to Peking, to the Chinese Liaison Office in Washington, to airlines and to travel agents inquiring about opportunities to visit China. Peking has been most reluctant to admit tourists on a large scale, and has begun to open its doors to them only in the most gradual way. Despite the fact that an inflow of the tourist dollar represents hard currency earnings without significant capital investment, the Chinese still acknowledge their hotel, transport, and related facilities as inadequate by world standards. As conscientious hosts, they are unwilling to move before they are truly ready. China must also look upon the prospect of tourism as potentially disruptive to revolutionary values and order. A country with a xenophobic tradition, regimented and austere, can hardly greet with enthusiasm the prospect of free-spending and demanding, if not misbehaving, foreigners wandering around loose. Since the existing law governing movement of foreign nationals within China is extremely rigid, this is a potential handicap to development of tourism.

Placing the undeniable risks and problems alongside the unquestionable foreign exchange gains to the Chinese, it appears that a mutually determined effort to advance U.S. travel to China step-by-step could form a useful part of a bilateral trade agreement. The U.S. Government need not become involved in the arrangements for actual visits, but through cooperation with reputable professional travel agencies, trade promotion associations, ocean carriers, and airlines in the United States, Washington could help Peking's China International Travel Service, the official Chinese travel organization, build toward expanded visits by Americans. Public interest in travel to China needs to stimulus beyond some reliable and efficient means, presently unavailable, to learn about travel opportunities. The accord on tourism reached in October 1974, between the United States and the U.S.S.R., could provide a model clause for an agreement on this subject.

COMMERCIAL STUDIES PROGRAM

A major theme of the present study illustrates the gulf in understanding of commercial practices which exists between individuals on the two sides who are charged with actual business or trade promotion. What else could be expected when a two-decade separation is compounded by the sudden collision of nearly antithetical economic systems? The experience of actual business transactions, and the trade promotion mechanisms suggested here, will help bridge the knowledge gap. The great differences in economic outlook, however, should inspire a greater interest by each side in mutual study, and not permit isolation out of fear that exposure to the ideology of one side will fatally infect the other. Chairman Mao has urged the value of study by stating flatly that one who has not studied a subject has no right to speak about it. Within the four corners of a trade agreement, then, the two sides could agree to a reciprocal program of education of commercial specialists—in trade, banking, and law, for example—or more extended

programs in the two countries than is possible in 3- to 4-week excursions. These programs, combining the admirable feature of China's own educational processes, a work-study experience, could be financed out of a fund made possible by the settlement of adverse claims, through matching funds appropriated in the two countries, or in cooperation with professional and academic institutions in the two countries.

UNITED STATES-CHINA COMMERCIAL COMMISSION

Upon his return from China in July 1972, the late Hale Boggs, then Majority Leader of the U.S. House of Representatives, proposed in a report to the Joint Economic Committee the creation of a joint United States-Sino Commercial Commission. "Until we have more normal State relations with China," he said, a "quasi-public body" could lay a basis for a variety of trade accords. The National Council of United States-China Trade is by nature equipped to negotiate some commercial steps beneficial to both sides. Unlike the CCPIT, which has concluded some semiofficial trade agreements which bound the Chinese Government, the National Council as a private corporation has no corollary authority. In Peking's trade agreements with other countries, it has occasionally been decided to form mixed trade commissions to meet annually in the two countries to review trade matters of mutual interest. Particularly in the absence of diplomatic relations, such a commission could devote itself to a number of important subjects, and do so short of formal contact between the U.S. Department of Commerce and China's Ministry of Foreign Trade. A shared role for the National Council, U.S. Government officials and business leaders on this side, for example, and participation by the CCPIT, the FTC's and the Foreign Trade Ministry on the Chinese side, would blend public and private involvement. In addition to trade promotion activities, such a commission could be a useful forum for ongoing discussion of such trade issues as quotas, tariffs, nontariff barriers, commodities inspection by authorities on each side, international monetary and energy problems, and other subjects.

PAYMENTS ACCORD

Although technical arrangements are ordinarily left to separate instruments, China's trade agreements often address the subject of payments transactions between the central banks of the two countries. A United States-Sino trade agreement could contain a similar article, specifying among other things the acceptability of payments in U.S. dollars as well as in other mutually acceptable currencies.

LEGAL STATUS OF PRIVATE COMMERCIAL REPRESENTATIVES

The very strict restrictions in Chinese law over the entry, residence, and travel of foreign nationals in China, and the absence of any agreement to date on the rights and legal status of U.S. business visitors to China, suggest that a trade agreement could be the appropriate instrument for clarification of the status and treatment of private American commercial travelers to China. The two sides could further signify an interest in facilitating trade between them on a reciprocal basis,

by simplifying, for commercial travelers, such matters as visa application, in-country travel, customs clearance, and security regulations over temporary residence.

Private Trade Accord

The two governments may, of course, fail to achieve any time soon the kind of diplomatic progress they may deem essential as a condition precedent to a government-to-government trade agreement. In such a case, each side ought to be looking to other means for insuring and demonstrating forward motion in their relations. One means of doing so is the encouragement of a private trade agreement, perhaps similar to those which preceded Sino-Japanese diplomatic relations. The CCPIT and the National Council for U.S.-China Trade are the most logical parties to such an agreement, which could address many of the elements otherwise appropriate in a government agreement, such as a bilateral program of exchanges, trade exhibits, and private trade promotion facilities in the two countries. An accord of this sort could even establish unofficial arrangements for the resolution of commercial disputes, means for the protection of intellectual and industrial property rights, mechanisms for the regular exchange of trade and business data, and channels for mutual assistance in achieving purchase and sales objectives of mutual interest.

Areas Which Merit Congressional Attention

All of the foregoing steps toward expanded bilateral trade can be accomplished in a United States-Sino trade agreement. Should negotiations falter, however, the Congress can itself achieve some forward movement in United States-China trade. The existence of authority in the President to extend most-favored-nation tariff benefits does not deprive the Congress from acting unilaterally to remove present tariff discriminations on imports from China. Should the Congress undertake consideration of such a measure, or pass it, however, the Chinese interest in negotiating other possible elements of a trade agreement might diminish. A middle ground would be for the Congress to vote the lower column I tariffs for China subject to and effective upon conclusion of a trade agreement with the United States satisfactory to the administration. This would have the salutary effect of acknowledging the unilateral and discriminatory nature of present U.S. duties, but at the same time withhold restoration of most-favored-nation treatment pending a sign that the two sides are achieving progress in bilateral trade facilitation. Alternatively, duties could be lowered selectively, on such items as silk goods, where China represents a unique source of supply essentially noncompetitive with U.S. firms. To be sure, the Executive Department may object to such a scenario on the ground that it curtails certain U.S. negotiating strategies, and the Chinese may view such action as amounting to a kind of blackmail to come to agreement on other trade issues, but this method of dealing with the question of MFN for China does offer one way to expedite what could otherwise involve interminable negotiations.

Congress should also exercise more of an oversight function on the administration of U.S. export controls. The Export Administration

Amendments of 1974 do not reach a number of the concerns expressed in congressional testimony of American firms. These include those related to maintenance of bothersome administrative requirements, such as that for end-use information on Government forms; the inordinate delay in processing of some export license applications; the apprehension that the administration sometimes turns a blind eye to less rigorous export licensing by other COCOM members; the generally accepted view that, notwithstanding administration protestations to the contrary, a "China differential" does exist precluding certain sales to China which are approvable to the Soviet Union and other Communist countries, and the belief by many high technology firms that existing criteria for export license decisions are substantially out of date.

Appropriate committees of the Congress should also examine the legality and practical effect of certain kinds of quantitative U.S. export controls. The adverse impact on United States-China trade of suddenly imposed limitations on soybean and steel scrap exports, for example, has understandably shaken the faith of the Chinese in the willingness or ability of American firms to abide by their contracts. This is not to suggest that the national security or welfare should be subordinated to the commercial interests of China's FTC's or U.S. exporters, but only that ill-considered and unnecessary Government actions can be an irritant which unduly jeopardizes a diplomatic relationship of overriding importance.

Finally, Congress ought to accomplish two other steps it should have taken, but didn't, in the Trade Act of 1974, to repeal the Johnson Debt Default Act and the continuing embargo on seven furs and skins from China.

IX. SUMMARY AND PROGNOSIS

Through 1975 and beyond, there will continue to be substantial United States trade with China. Following total two-way United States-Sino trade in 1974 of \$930 million, trade between the two countries will probably decline to about \$550 million in 1975. The downturn will be reflecting, primarily, a softening of Chinese demand for American agricultural commodities—principally wheat, corn, and cotton.

Despite this projected decline, however, there will be an overall increase in the proportion of U.S. exports of machinery, technology, and equipment sold to China.

Imports from China, presently running at about \$12 million a month, will continue to increase, but slowly. Chief imports from China will continue to be such items as textile goods, tin and tin alloys, bristles, works of art, and so on. With the annual volume of imports running at close to the level of our imports from Nicaragua, protectionist elements in this country ought not to become aroused, although certain especially sensitive industries, such as textiles and footwear, can be expected to keep careful watch over import trends.

The imbalance in our trade with China, which has so far been heavily in the favor of the United States by 10 or 11 to 1, will be considerably reduced in 1975, perhaps to about 2 to 1. There will continue to be a rising level of U.S. businessmen visiting China. The Spring 1975

Canton Fair saw record numbers of Americans—well over 400—transact substantial business. The National Council for United States-China Trade has been given assurance by the China Council for the Promotion of International Trade that the first broadly representative trade mission from Peking will visit the United States in 1975.

American executives charged with developing the China market will need to keep their perspective. Occasional deals of major proportions by some firms are bound to spark the fires of euphoria in other companies. Political zigs and zags in both countries, on the other hand, will add elements of uncertainty if not discouragement. And what is bound in any event to be a gradual growth in trade will remain a stern test of entrepreneurial patience and perseverance.

The basic lesson, as in all enterprise, will be to try to learn what is true and relevant about China and to plan accordingly. China remains today, as it was two centuries ago, a self-contained and fundamentally agrarian peasant society. Some 80 percent of the people live in rural areas and are engaged in agriculture. The economic onslaught from the West in the 19th century, as much as Marxist-Leninist-Mao Tse-tung Thought, explains recurring apprehension among Chinese leaders about the motive of foreign enterprise. Caution and even skepticism about outside influence was reinforced in the decade following Liberation, when the Chinese learned that even a socialist brother and neighbor is capable of cynical economic manipulation.

Yet, attempts at wholly self-supported development following the rupture with the Soviet Union have shown severe limitations. The Chinese have proven almost miraculously able to develop agriculture at a pace sufficient to feed the world's largest population, but population increases will require still greater achievements in food production. Industrialization does not as easily lend itself to mass mobilization of labor. Industrial capacity is not only now inadequate, but plants are fast becoming obsolete. Coal and iron ore deposits cannot be efficiently extracted with existing equipment and methods. But improvements here, and in transportation, can permit accelerated steel production. Modernized machine tools are needed to build capital goods. Sophisticated equipment and know-how can enable rapid development of China's petroleum reserves. Needs are compelling for improved power generation, materials handling equipment, and communications. Computers, farm equipment, chemical processes, petroleum refining, synthetic fiber production, and plastics all represent not only the harbinger of an improved living standard and an enhanced capacity for exports but, perhaps most importantly, a more solid opportunity for self-sufficiency.

Herein, of course, lies the paradox. To sustain and build toward the modern industrialized state to which the Chinese pledged themselves in January 1975 at the Fourth National People's Congress does require acquisition of foreign goods and technologies. Purchase of needed imports in turn requires more than a little contact with the West. Not all such contact is likely to be palatable to a political leadership which is bound to fear that revolutionary values may wane in the process. The post-Mao, post-Chou period cannot be far away, and succeeding leadership is certain to be preoccupied with political consolidation, preserving revolutionary fervor, and maintaining the monumental accomplishments of the old leadership. This process can

obviously sharply influence China's trade and development policies. But Peking's 1975 pledge to achieve "comprehensive modernization * * * before the end of the century" should be signal enough that the China's foreign trade ought to hold interest for American firms.

APPENDIX I

CHINA'S FOREIGN TRADE CORPORATIONS

China National Chemicals Import and Export Corp.,
Erh Li Kou, Hsi Chiao,
Peking, People's Republic of China.
Cable: Sinochem Peking.

Organic and inorganic chemicals, chemical raw materials, rubber, rubber tires, and other rubber products, crude petroleum and petroleum and petrochemical products (except aromatics), chemical fertilizers, insecticides, fungicides, antibiotics and pharmaceuticals, medical instruments, apparatus and supplies, dye-stuffs, pigments, and paints.

China National Native Produce and Animal By-Products Import and Export Corp.,
82 Tung An Men Street,
Peking, People's Republic of China.
Cable: Chinatuhsu Peking.
Telex No.: 716432 Answerback: Chinative PK432.

Tea, coffee, cocoa, tobacco and cigarettes, fibers (hemp, ramie, jute, sisal, flax, et cetera), rosin, manioc, starches, and seeds, cotton linters and waste, timber, certain papers and forest products, waxes, spices, essential oils, aromatic chemicals, nuts, dried fruits and vegetables, patent medicines and medicinal herbs, fireworks, nursery stock as well as other native produce, including bristles and brushes, horsetails, feathers, down and down products, feathers for decorative use, rabbit hair, goat hair, wool, cashmere, camel hair, casings, hides leathers, fur mattress, fur products, carpets, living animals.

China National Metal and Mineral Import and Export Corp.,
Erh Li Kou Hsi Chiao,
Peking, People's Republic of China.
Cable: Minmetals Peking.

Steel plates, sheets and strip, steel sections, steel pipe and tube, railway materials cast iron products pig iron ferroalloys fluor spar limestone nonferrous metals, precious rare metals, ferrous ores, nonferrous ores, rare earths, nonmetallic minerals refractories coal and coke, cement, granite, marble, bricks and other construction materials, and hardware.

China National Light Industrial Products Import and Export Corp.,
82 Tung An Men Street,
Peking, People's Republic of China.
Cable: Industry Peking.
Telex No.: 716430 Answerback: Chinlight PK430.

General merchandise of all kinds, paper, stationery, musical instruments, typewriters, cameras, film, radios, refrigerators, sporting goods, toys, building materials (plywood, insulation board, p.v.c. fittings and pipe, tiles, glass, sanitary ware, et cetera) and electrical appliances, clocks and wristwatches, fishnets, net yarns, leather shoes, leather products, pottery and porcelain, human hair, pearls, precious stones and jewelry, ivory and jade carvings, lacquerware, straw and other plaited articles, furniture, artistic handicrafts, and other handicrafts for daily use.

China National Textiles Import and Export Corp.,
82 Tung An Men Street,
Peking, People's Republic of China.
Cable: Chinatex Peking.
Telex No.: 716428 Answerback: Chitextil PK428.

Cotton, cotton yarns, raw silk, steam flature, wool tops, rayon fibers, synthetic and manmade fibers, cotton piecegoods, woolen piecegoods, linen, garments and wearing apparel, knitted goods, cotton and woolen manufactured goods, ready-made silk articles, drawn works.

China National Cereals, Oils and Foodstuffs Import and Export Corp.,
82 Tung An Men Street,
Peking, People's Republic of China.
Cable: Ceroilfood Peking.
Telex No.: 716426 Answerback: Chinafood PK426.

Cereals, edible vegetable and animal oils and fats, vegetable and animal oils and fats for industrial use, oil seeds, seeds, oil cakes, feedingstuffs, salt, edible livestock and poultry, meat and meat products, eggs and egg products, fresh fruit and fruit products, aquatic and marine products, canned goods of various kinds, sugar and sweets, wines, liquors and spirits of various kinds, dairy products, vegetables and condiments, bean flour noodles, grain products, nuts and dried vegetables (some nuts, dried fruits, and vegetables also carried by Native Produce).

China National Machinery Import and Export Corp.,
Erh Li Kou, Hsi Chiao,
Peking, People's Republic of China.
Cable: Machimpex Peking.

Machine tools, presses, hammers, shears, forging machines, diesel engines, gasoline engines, steam turbines, boilers, industrial and institutional refrigeration and air-conditioning equipment, mining machinery, metallurgical machinery, compressors and pumps, hoists, winches and cranes, transport equipment (aircraft, railroad, automotive, ships and parts thereof), power and handtools, agricultural machinery and implements, printing machines, knitting and other textile machines, building machinery, machinery for the chemical, rubber, plastics and other industries, ball and roller bearings, tungsten carbide, electric machinery and equipment, telecommunication equipment, electric and electronic measuring instruments, and scientific instruments (except medical instruments).
line engines, steam turbines, boilers, industrial and institutional refrigeration

China National Technical Import Corp.,
Erh Li Kou, Hsi Chiao,
Peking, People's Republic of China.
Cable: Techimport Peking.

Importation of complete plants and technology.

APPENDIX II

CHINA'S TRADE-RELATED AGENCIES

China Council for the Promotion of International Trade (CCPIT),
Hsi Tan Bldg.,
Hsi Chang An Chieh,
Peking, People's Republic of China.
Cable: Comtrade Peking.

Although the CCPIT is said to be a ungovernmental "public" organization, it is an important part of China's foreign trade structure. As such it works with the Ministry of Foreign Trade and the FTC's on China's external trade and serves as a liaison between China's trade enterprises and their counterparts abroad.

Its responsibilities include informing foreign trade organizations of China's trade and keeping abreast of developments in foreign markets; arranging economic and trade-related exchanges, which include Chinese exhibitions abroad as well as foreign exhibitions in the PRC; and registration of trademarks. The CCPIT does make "unofficial" trade agreements with foreign organizations in its own name. Through its Foreign Trade Arbitration Commission, Maritime Arbitration Commission, and Department for Average Adjustment, the CCPIT has responsibility for settlement of legal disputes related to foreign trade and maritime affairs.

Chinese Scientific and Technical Association,
Kan-mien Hu-t'ung No. 31,
Peking, People's Republic of China.

With CCPIT, this organization plays a role in and should be consulted in connection with arranging scientific and technical symposia in China.

This association is responsible for planning scientific research and development. It plays a lead role in organizing and controlling the professional societies, such as the Society of Automation, Society of Electronics, and many others.

China National Foreign Trade Transportation Corp.,
Erh Li Kou, Hsi Chiao,
Peking, People's Republic of China.
Cable: Zhongwaiyun Peking.

Arranges customs clearance and delivery of all import/export cargoes by land, sea, and air, or by post. May act as authorized agents clearing and delivering goods in transit through Chinese ports. Arranges marine and other insurance and institutes claims on behalf of cargo owners on request.

China National Chartering Corp.,
Erh Li Kou, Hsi Chiao,
Peking, People's Republic of China.
Cable: Zhongzu Peking.

Under direction of China National Foreign Trade Transportation Corp., charters foreign vessels and books shipping space required for Chinese import and export cargoes. Also, does similar business on behalf of principals located abroad. Canvasses cargo for shipowner.

People's Insurance Co. of China,
34 Fan Ti Road,
Peking, People's Republic of China.

Provides international trade and marine risk underwriting at competitive rates. Has overseas agents in leading countries.

Complete Plant Export Corp.,
Fu-Wai Street,
Peking, People's Republic of China.

Exporters only of complete factories, works and production units, usually, but not exclusively, as part of an economic aid agreement.

Guozhi Shudian,
P.O. Box 390,
Peking, People's Republic of China.

Export of books and periodicals in Chinese. Arranges subscriptions to Chinese newspapers and periodicals on behalf of foreign readers.

China National Publications Import Corp.,
P.O. Box 88,
Peking, People's Republic of China.

Import of books and periodicals.
Certain of China's organizations have representative agents in Hong Kong. These agents, their addresses, and the FTC's they represent are as follows:

China Resources Company (CRC),
Bank of China Building,
Des Voeux Road, Central,
Hong Kong.
Cable: Cireco Hong Kong.

CRC represents China National Machinery Import and Export Corp., China National Chemicals Import and Export Corp., China National Metals and Minerals Import and Export Corp., and China National Textile Import and Export Corp.

Ng Fung Hong,
Bank of China Building,
Hong Kong.
Cable: Ng Fung Hong Kong.

Ng Fung Hong represents China National Cereals, Oils and Foodstuffs Import and Export Corp.

Teck Soon Hong Ltd.,
37-39 Connaught Road West,
Hong Kong.
Cable: Stillon Hong Kong.

Teck Soon Hong represents China National Native Produce and Animal By-Products Import and Export Corp., China National Light Industrial Products Import and Export Corp., and China National Textiles Import and Export Corp.

Hua Yuan Co.,
37-39 Connaught Road West,
Hong Kong.
Cable: Hycomp Hong Kong.

Hua Yuan represents China National Light Industrial Products Import and Export Corp., and China National Native Produce and Animal By-Products Import and Export Corp.

Far East Enterprises Corp. (FARENCO),
Bank of China Building,
Des Voeux Road Central,
Hong Kong.

FARENCO represents the China Foreign Trade Transportation Corporation and arranges transshipment of goods to and from the PRC through Hong Kong.

APPENDIX III

UNITED STATES-PEOPLE'S REPUBLIC OF CHINA TRADE STATISTICS

10 LEADING UNITED STATES EXPORTS TO THE PEOPLE'S REPUBLIC OF CHINA, 1974

[By 7-digit schedule B category]

	Amount	Percent of all exports
Wheat, unmilled, except relief.....	\$234, 014, 893	28.5
Cotton upland, 1-in to 1½-in.....	157, 411, 915	19.2
Soybeans.....	140, 482, 966	17.1
Corn, unmilled, except seed and popcorn.....	95, 671, 435	11.4
Aircraft, passenger carrying, commercial, 33,000 lbs and over.....	33, 695, 195	4.1
Aircraft, passenger, transport 33,000 lbs and over.....	16, 179, 200	2.0
Cotton, upland 1½-in and over.....	15, 226, 079	1.9
Cotton, upland, under 1 in.....	12, 963, 345	1.6
No. 1 heavy metal steel scrap except sheets.....	9, 044, 207	1.1
Tallow, inedible.....	7, 538, 854	.9
Total, leading 10 exports.....	722, 227, 189	88.0
Total, all exports.....	820, 479, 497	100.0

10 LEADING UNITED STATES IMPORTS FROM THE PEOPLE'S REPUBLIC OF CHINA, 1974

[By 7-digit TSUSA category]

	Amount	Percent of all imports
Piece shirting n.e.s. white cotton, not fancy, bleached or colored.....	\$11, 364, 491	9.9
Tin other than alloys, unwrought.....	9, 395, 564	8.2
Rosin, nonspecified.....	7, 876, 325	6.9
Antiques, nonspecified.....	6, 764, 925	5.9
Bristles, crude or processed.....	5, 925, 012	5.2
Shrimps and prawns, shell on.....	5, 269, 761	4.6
ABC sheeting, white cotton, not fancy, bleached or colored, ordinary.....	4, 314, 100	3.8
Silk, raw in skeins, etc., n.e.s.....	2, 576, 034	2.2
Cigarette, leaf, not stemmed barley.....	2, 575, 776	2.2
Twill n.e.s. white cotton, not fancy, bleached or colored, ordinary.....	2, 490, 902	2.2
Total, leading 10 imports.....	58, 552, 890	51.1
Total, all imports.....	114, 689, 406	100.0

¹ Reproduced by permission, from the U.S. China Business Review, vol. 2, No. 2, March-April 1975, p. 19, published by National Council for United States-China Trade.

REVISED SINO-AMERICAN TRADE FIGURES, 1971-74

[In millions of dollars]

	1971	1972	Percent change	1973	Percent change	1974	Percent change
U.S. exports.....	0	63.5		1,739.7	1,064.9	1,820.5	10.7
U.S. imports.....	4.9	32.4	561.2	63.9	97.2	114.7	79.5
Total.....	4.9	95.9	1,857.1	803.6	738.0	935.2	16.2

¹ Includes \$50,600,000 worth of cotton transshipped through Canada.

² Includes \$11,700,000 worth of soybeans transshipped through Canada.

Source: NCUSCT based on East-West Trade Bureau Data.

THE WHITE HOUSE
WASHINGTON

Dick Cheney -

The attached was returned in the
President's outbox.

Jim Connor

THE SECRETARY OF COMMERCE
WASHINGTON

April 16, 1976

NOTE FOR RICHARD B. CHENEY
ASSISTANT TO THE PRESIDENT

RRY

I appreciate your informing me of the President's views on the prematurity of the proposed China visit--given the present Chinese political context. While the state of flux in the Chinese situation is, of course, an obvious and important variable in the overall equation, my own analysis of this and other considerations led me to weigh the balance differently. My views--and the views of others whom I consulted--are summarized in the attached "talking point" memorandum which reflects the points I would have made to the President.

At this stage I would not wish to ask the President to reconsider his view, but I would appreciate it if you would bring the attached memo to his attention--in order that he might appreciate the range of considerations which led me to my recommendation.

Thanks very much.



Elliot L. Richardson

Attachment



THE SECRETARY OF COMMERCE

WASHINGTON, D.C. 20230

April 14, 1976

SUMMARY OF POINTS FOR DISCUSSION
WITH THE PRESIDENT

SUBJECT: PROPOSED CHINA VISIT

I. INTRODUCTION

On March 19, we discussed a proposal to expand my May trip to the Far East in order to take certain Commerce-related initiatives in relation to the People's Republic of China. At that time, you suggested that I do some further consultation--with a view toward your reaching some decision by the second week in April, i.e. in time to allow implementation should you reach an affirmative decision.

II. SUMMARY OF CONSULTATIONS AND RECOMMENDATION

Because the issue of the trip involves considerations of energy policy, trade policy, foreign policy and domestic politics, I have sought the advice of a range of your advisers--whose judgment, in short, would seem to be as follows:

- o Frank Zarb: strongly favorable on several grounds--most significantly with regard to energy policy and potential contribution to ongoing oil negotiations with Soviets and Iran. (It is my understanding that Frank has discussed this with Alan Greenspan who is also favorably disposed.)
- o Fred Dent: strongly favorable--particularly when viewed as follow-up to specific Textile Manufacturers commitment, and more generally, as creative commercial dimension to foreign policy.



- o Henry Kissinger: skeptical on grounds of current internal Chinese conditions and past Chinese reluctance to move on trade issues--however, Henry notes that the question of whether there should be a trip is separable from what should be discussed; if a trip is decided upon, he would wish to keep the substantive agenda within carefully circumscribed limits.
- o George Bush: generally favorable--although uncertain re timing given current Chinese situation.
- o Brent Scowcroft: neutral to favorable on the symbolic (and indirect substantive) value of the trip; although favorable on oil, has serious negative concern re substantive issues of claims and textiles; would wish to go very lightly (if at all) on these, lest Chinese interpret initiative as opportunistic.
- o Rog Morton: favorable on both substantive and political grounds.

My personal recommendation is as follows: that you

- o authorize the trip--to be led by Richardson, accompanied by Zarb and a high-level State Department official (Robinson or US/Economic Affairs or AS/Economic Affairs);
- o limit the substantive agenda to "exploratory conversations" re oil and energy technology; and to only the most gingerly treatment of claims and textiles in the context of a more general discussion of trade relations (details to be worked out in coordination with State/NSC);
- o direct that necessary action be taken with the Chinese to gain the appropriate invitation--perhaps best by indirectly suggesting that the Chinese might, at this point, find it in their own interest to show signs of "business-as-usual" with the West.



III. SUMMARY OF ARGUMENTS PRO AND CON

A. ARGUMENTS IN FAVOR (substantive and political)

- (1) Symbolic value. The trip would seem to build upon your own China visit--in effect giving greater force to your initiative by showing positive, substantive follow-up.
- (2) General pressure on Soviets. For all the Soviet-related reasons which argued for the original China re-opening, it makes general foreign policy sense--particularly in the light of the controversy surrounding "detente." Given the recent change in Chinese leadership, it may be particularly opportune to remind the Russians that U.S.-Chinese relations will continue to be developed nonetheless.
- (3) Help re oil price negotiations. It would provide an opportunity to put pressure on OPEC and on the Soviets with regard to oil prices. China has been distinctly cool over joining OPEC and has undercut OPEC prices for some small sales in Southeast Asia. At the very least, the trip could increase uncertainty over China's potential export role. Although our estimates of likely Chinese export quantities tend to be pessimistic, world press has frequently likened China to a new Saudi Arabia. We should be able to take advantage of the uncertainty to help in our continuing oil negotiations with the Soviets and the Iranians.

Although a significant direct Chinese oil deal may not actually be a likely outcome, the very fact (or even just the presumption) of "exploratory discussions" should be advantageous in other international oil price-setting contexts. (To my mind, the unoptimistic prospects for Congressional action on your full energy program--and the associated unfavorable implications for "independence"--require us to take every reasonable step internationally to help restrain irresponsible cartel pricing. This could be an important helpful step.)



- (4) Other oil-related benefits. The trip would have several other potential oil-related benefits: It could accelerate the Chinese use of U.S. oil equipment (particularly for off-shore development); it could facilitate Japanese acquisition of Chinese crude; it could conceivably increase the U.S. ability to exploit Southeast Asian OCS in areas now claimed by China; and it could advance considerably U.S. knowledge of China's oil potential.
- (5) Possible progress on claims. The trip could provide an opportunity for further discussion of the claims issue--resolution of which is necessary for any significant expansion of Sino-U.S. commercial relations. While the Chinese have resisted settlement of this issue pending resolution of other "political" issues (Taiwan), a case could be made (or re-made) that the Chinese would be well advised to start with small steps in the trade area--from which they might better move toward resolution of political issues.
- (6) Follow-up re textiles. It will provide an opportunity to suggest specific follow-up of your March 29 commitment to the American Textile Manufacturers:

"I can assure you that I am genuinely committed to finding the most appropriate way of dealing with the problem to insure that our domestic market is not seriously disrupted and that our objectives under the multifiber arrangement are met. I can assure you that they will be."

This commitment was clearly understood, widely publicized and much appreciated. But the textile import problem remains. And the textile industry remains highly concerned.



Further, the industry is not politically unsophisticated. It is watching closely for signs of Administration follow-up. It is, as you know, heavily based in the South--and may well move to gain a commitment similar to yours from Carter. But it wants some action before the election. And if none seems likely to be forthcoming, it is reasonable to anticipate mounting Congressional pressure for you to exercise your authority under the MFA and Section 204 of the Agricultural Act to impose unilateral restraints on P.R.C. exports. This situation would be undesirable in foreign policy, trade policy and political terms. It ought to be--and can be--avoided.

This is not to suggest that the trip should or would resolve the textile trade problem. It would, however, inevitably be viewed as a helpful step (regardless of the content of the discussions).

- (7) General political benefits. It would be politically beneficial to you--not simply because it would expand upon your own foreign policy initiatives as noted; but also because it would provide an opportunity to give your foreign policy a commercial dimension suggesting "there's-something-in-it-for-us." The possibility of textile discussions, the possibility of equipment sales, the implicit pressure on the Russians and OPEC (which the press would surely pick up)--these could be cast to your advantage with conservatives, and with important segments of labor and industry, while at the same time the forward movement with China generally would deepen your appeal among the wide base of independents who are concerned that America continue its dynamic internationalism.



B. ARGUMENTS AGAINST

It may reflect a bias on my part, but I have been able to identify only the following three arguments against the proposed trip:

- o Due to the current Chinese internal situation, the Chinese may feel that the timing of the proposed visit is not right.
- o Due to the current Chinese internal situation, the Chinese might view any initiative on claims or textiles as an opportunistic effort on our part.
- o In the past, the Chinese have shown no significant favorable interest in achieving progress on trade issues.

*

*

*



Elliot L. Richardson



THE WHITE HOUSE
WASHINGTON

Dick Cheney

I've read.
Timing is just not
good now.

