JANUARY–FEBRUARY 2006 VOLUME 33 NUMBER 1

THE CHINA BUSINESS REVIEW

USCBC THE MAGAZINE OF THE US-CHINA BUSINESS COUNCIL

IPR

Best Practice Tips

What China Can Do

Case Study: The Silk Street Market

PLUS:

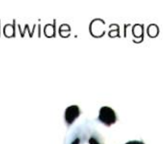
China's Fifth Year of WTO

Spotlight on Tianjin

Chinese Views on Corruption

Letter from Washington

US$22/HK$220



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FEATURES

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THE CHINA BUSINESS REVIEW
THE MAGAZINE OF THE US-CHINA BUSINESS COUNCIL

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Editor's Note

In response to our readers' comments, the *CBR* will be undergoing a series of changes and improvements, starting with this first issue of 2006. Readers may notice a few new departments: First is our new China Conference Calendar, which lists upcoming China-related events and special hotel offers. Second is our rotating Letter from Washington/Beijing/Shanghai, written by US-China Business Council (USCBC) staff in these three cities. We kick off this new department with a comment by USCBC President John Frisbie, who suggests a way to refocus the current debate in Washington on the US-China trade relationship.

Our next few issues will introduce more departments as well as a completely redesigned magazine that aims to make our articles more accessible to readers while delivering the same in-depth analysis of China business you expect.

Short Takes

MOFCOM Clarifies Tax Breaks for Manufacturing FIEs

In early November 2005, officials at the PRC Ministry of Commerce (MOFCOM) told the US-China Business Council (USCBC, publisher of the *CBR*) that existing manufacturing foreign-invested enterprises (FIEs) that expand their business scopes to include distribution will continue to enjoy manufacturing tax incentives as long as they derive more than 50 percent of their total revenue from manufacturing.

MOFCOM had previously set conflicting thresholds for such tax breaks. In April, MOFCOM indicated that a manufacturing FIE would lose the tax breaks if its distribution revenue exceeds 30 percent of its total revenue after it incorporates distribution into its business. (The *CBR* reported this figure in our last issue, November–December 2005, p.24). In September, however, MOFCOM's Practical Handbook for Foreign Investors Investing in the Commercial Sector indicated a minimum of 50 percent revenue from manufacturing as the preferential tax treatment threshold. MOFCOM officials confirmed with USCBC that the September handbook sets the correct requirement. MOFCOM apparently failed to revise the April 2005 notice and did not clarify this change elsewhere in writing.

USCBC also confirmed with the State Administration of Taxation (SAT) that companies may receive the tax breaks as long as their manufacturing revenue is more than 50 percent of their total revenue within a given year in the tax holiday period. Thus, companies whose manufacturing does not reach the 50 percent threshold in one tax holiday year may enjoy the tax breaks in subsequent remaining years as long as the manufacturing revenue is more than 50 percent of total revenue during those years. (SAT reviews companies' tax payment and relevant financial situation each year to determine whether they are qualified for certain tax breaks.)

Continued on page 37

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BULLETIN

EVENT WRAP-UP

Washington

November

Issues Luncheon Featured Robert Sutter of Georgetown University and Larry Wortzel of the Heritage Foundation

Roundtable Discussion Featured Tim Stratford, assistant US Trade Representative for China

December

Issues Luncheon Featured National Security Council (NSC) Director for China and Taiwan Dennis Wilder and NSC Director for Asian Economic Affairs Eric Altbach

Beijing

November

Luncheon Jointly sponsored by USCBC and AmCham-China, the luncheon featured California Governor Arnold Schwarzenegger

Briefing Featured US Embassy Intellectual Property Rights Attaché Mark Cohen and Trade Facilitation Office Director Ira Belkin

UPCOMING EVENTS

Washington

Forecast 2006
January 24–25, 2006
For more information, see p.13

Issues Luncheons
February 16, 2006
March 16, 2006
April 20, 2006
May 18, 2006

Save the Date:

US-China Business Council Annual Meeting
Week of June 5, 2006
Washington, DC

For event updates, see www.uschina.org/info/programs

Shanghai

December

Luncheon on Employee and Company Benefits Featured Paul Vermeulen, regional senior vice president of Greater China, AIU Insurance Company

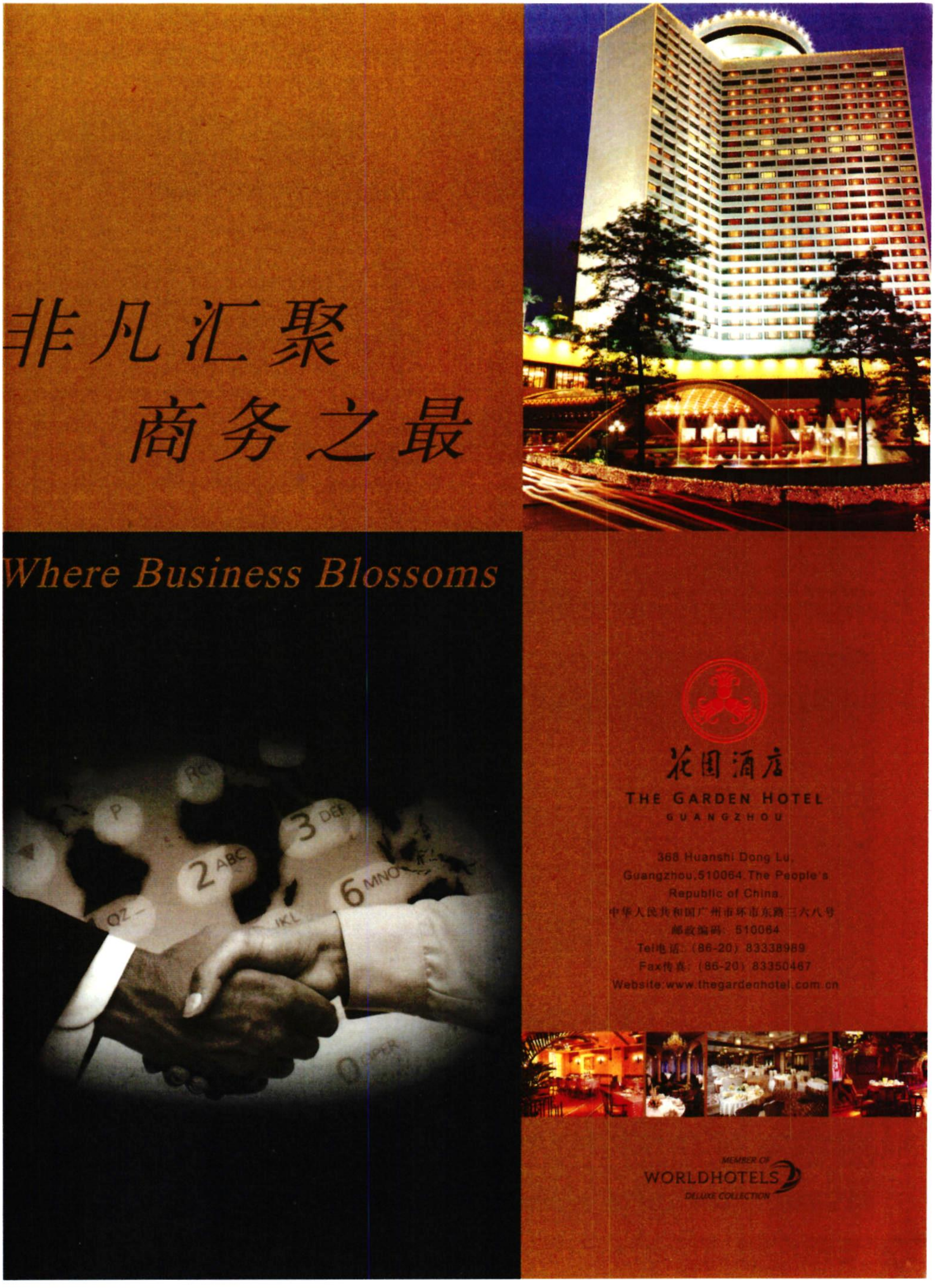
China Operations (CHOPS) 2005 Conference

USCBC held its annual fall CHOPS conference in Shanghai, which was attended by more than 70 executives from USCBC member companies. Michael Eskew, USCBC chair and UPS chairman and CEO, gave the keynote address on how UPS views its growth opportunities in China. Liu Jinping, deputy director of the Shanghai Municipal Foreign Trade and Economic Relations Commission, discussed foreign investment trends in Shanghai and future business opportunities for foreign firms. Andy Rothman, China micro strategist at CLSA Ltd., analyzed the outlook for China's economy in 2006, followed by Jennie Li, chief representative of Emerson Electric China-Beijing, who discussed distribution rights and foreign-invested commercial enterprises. James McGregor, author of *One Billion Customers: Lessons from the Front Lines of Doing Business in China*, delivered the luncheon address, after which USCBC President John Frisbie presented current trends in US-China trade relations and in Washington.

The conference's afternoon best-practices session on treasury and cash management featured Brett Krause, China head of Citigroup Global Transaction Services, and John Bowen, East China Transaction Banking head at Standard Chartered Bank. Zhou Guanshan, senior consultant at White and Case LLP, led the best practices session on customs compliance. PricewaterhouseCoopers's Spencer Chong, partner, Tax Services Transfer Pricing leader, Greater China, and Glenn DeSouza, national leader, Transfer Pricing Services, China, presented on best practices in transfer pricing. Seiichi Yamamoto, Human Capital Group manager for the Greater China Region, Watson Wyatt Worldwide, discussed talent retention and compensation.

Virginia Hulme

USCBC members at the October 2005 China Operations conference in Shanghai



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The China Conference Calendar

China-related events near you

China CNC Machine Tool Fair

February 14–17, 2006
Shanghai: New International Expo Center
The sister exhibition of the China International Machine Tool Show (April 2007, Beijing), CNC features digital manufacturing technology and demonstrations of world-class machine tools for cutting, forming, shaping, milling, drilling, boring, and grinding.
Organizer: China Machine Tool and Tool Builders' Association
Tel: 86-10-6334-5262
E-mail: cmtba@cmtba.org.cn
www.ccmtshow.com/eng/index.asp

International Forum on China Trade Compliance

February 15–16, 2006
San Francisco, CA: Hilton San Francisco
An international faculty of import/export compliance professionals, attorneys, and senior government officials will present perspectives on navigating both US and PRC customs regulations. Hot topics include China's expanded trade and distribution rights and US enforcement of export controls. Post-conference workshops will be held on February 17, 2006.
Organizer: American Conference Institute
Tel: 888-224-2480
www.americanconference.com/chinatrade.htm


Jesse Marth
Make constructive contacts at China Building 2006

Food Ingredients Asia, 2006

February 15–17, 2006
Shanghai: Everbright Convention and Exhibition Centre
Food Ingredients Asia is the largest food ingredient show in China. More than 150 international and 250 national exhibiting companies, ranging from food ingredients to semi-finished products, are expected to attend in 2006.
Organizers: China Food Additive Association (SFAA), China Council for the Promotion of International Trade (CCPIT) Sub-Council of Light Industry
Contact: Zhang Yuechen (SFAA), Zhang Xin (CCPIT)
Tel: 86-10-8229-0623, 86-10-6839-6330
E-mail: cfaa@a-1.net.cn, ccpitsli@public3.bta.net.cn
www.chinafoodadditives.com/d_e.htm

China International Education Exhibition Tour (CIEET)

February 18–March 5, 2006
Beijing; Xi'an, Shaanxi; Chongqing; Shanghai; Shenzhen; and Xiamen, Fujian
CIEET facilitates exhibits by educational institutions, student services providers, language-training centers, educational publishers, and more. The Beijing leg features a special forum on study abroad programs and human resources training (February 18–19, 2006). Visit the CIEET website for the full tour schedule.
Organizers: Chinese Service Center for Scholarly Exchange, Reliable International Exhibition Services Co., Ltd.
Contact: Etta Ho
Tel: 86-10-8589-8181
E-mail: cieet@reliable.org.cn
www.cieet.com

China Building 2006

February 28–March 3, 2006
Beijing: China International Exhibition Center
With a 10-year track record, this exposition is the most established event of its kind for showcasing and promoting American goods and services to the Chinese building materials market. Exhibitor fee: $2,070.
Organizer: US Department of Commerce (DOC)
Contact: Gary L. Stanley (Building Materials Division, DOC, Washington),
Jing Wei (US Embassy, Beijing)
Tel: 202-482-0376,
86-10-8529-6655 x832
E-mail: gary_stanley@ita.doc.gov, jing.wei@mail.doc.gov
www.export.gov/china/trade_events/ChinaBuilding2006.pdf

Catherine Gelb

Food Ingredients Asia 2006 (February 15–17, 2006)

The 16th East China Fair (ECF)

March 1–6, 2006
Shanghai: Shanghai New International Expo Center
Focusing on textiles, light industry, and crafts, ECF is the largest regional trade fair. The 2006 event will have more than 5,000 exhibitors.
Organizer: Shanghai International Trade Promotion Co. Ltd.
Contact: Jennifer He
Tel: 86-21-6353-9977 x1217
www.east-china-fair.com/enindex.htm

Water and Membrane China

March 29–31, 2006
Shanghai: Shanghaimart
This trade show features products, technology, and services related to sewage treatment, filtration, pumps, pipes and fittings, and more.
Organizers: Shanghai Environment Protection Industry Association, Shanghai Society of Environmental Sciences
Contact: Lucia Gao
Tel: 86-10-8532-3275
E-mail: lucia1025@126.com
www.grandexh.com/water2006/overview.htm

2006 Localization Industry Standards Association (LISA) Forum Asia

April 18–21, 2006
Shanghai: Location TBA
Forum participants will review the tools needed to facilitate China's change from a low-cost labor and manufacturing market to one of service, expertise, and quality.
Organizer: LISA
Tel: 41-24-453-2310
E-mail: lisa@lisa.org, events@lisa.org
www.lisa.org/events/2006shanghai/

Want your event or hotel promotion listed in our next issue?

Send your announcements to Jesse Marth at jmarth@uschina.org.

Hotel Update

St. Regis Hotel Beijing

Until February 28, 2006
The St. Regis is offering groups of 10 or more special room rates that include complimentary arrival and departure transportation. The three packages are priced at ¥1,535.00, ¥1,785.00, and ¥2,070.00 (plus service and tax) per room per night and include a breakfast buffet. For reservations contact the sales department at 86-10-6460-6688.

In Memoriam

Donald R. Altman

Donald R. Altman, one of the pioneers of US-China trade in the early 1970s and a resident of Greenwich, CT, passed away on November 20, 2005 at the age of 72 following a long illness. Don was born in Manhattan and grew up in Rye, NY, before attending the State University of New York. He served in the US Army during the Korean War. Don married Elizabeth Mary (Betty) Loosier in her hometown of West Point, GA, in 1955.

During the 1960s, Don was president of the Swedish company, Bonniers, a high-end importer of designer products and *objets d'art* for the home. He formed the Finnish Trade Development Co. in the late 1960s and introduced American buyers, such as Bloomingdale's and many other retailers, to Finnish and Scandinavian artisanal designers and manufacturers like Marimekko, Orrefors, Italia Glass, Finlandia Vodka, and Hamada, as well as the Japanese designer Noguchi.

Don was one of the first Americans to begin working and traveling in China in 1972, just after President Richard Nixon's historic visit in February that year. As such, Don is considered by his peers as a "pioneer" in the current vast US-China trade relationship. Don concentrated on assisting US firms to sell American-made goods and technology into China. Don's firm, Altman, Inc., based in the International Club in Beijing for more than 22 years, was one of the first American-registered firms permitted to do business in China. Altman, Inc. assisted in many projects, including the construction of factories and roads, and in various aspects of the chemical, automotive, aircraft, steel, textile, poultry, and pharmaceutical industries. Don was well known as a soft-spoken, effective negotiator between the many Chinese ministries that were just beginning to emerge from decades of communism and American corporations looking to enter this vast new market.

Often asked to speak about his experiences, Don was candid about the frustrations, intricacies, and rewards of melding communist bureaucracy with capitalist entrepreneurial spirit. Starting back in the 1970s, Don worked closely with a young American attorney, Clark Randt, the current US Ambassador to China, and with Paul Speltz, another young businessman at the time he started his work in China in 1972, who is the current US Ambassador and Executive Director for the United States at the Asian Development Bank.

Randt and Speltz, both contacted by the *CBR*, offered these comments: "I first met Don together with his colleague Paul Speltz at the Canton Trade Fair in October 1974, where we were among the small handful of Americans in attendance. I was a green rookie on my first visit to China, and Don, already a pioneering veteran, took me under his wing. For 31 years, Don Altman remained a friend and a source of sage advice. His personal warmth, quick smile, and gentle strength, even in the face of adversity, will not be forgotten by the many whose lives he touched," said Randt. "In those very early days of US-China trade, there were so few of us from the United States—a handful. In many ways, we counted on each other for support, and Don was an important part of that group as we began our businesses. I, for one, could not have succeeded without Don's good help," said Speltz.

John Holden, former president of the National Committee on US-China Relations, said, "Don Altman was a true gentleman who will be remembered with great affection by everyone who had the privilege of calling him a friend and advisor."

"The expression 'irrational exuberance' was unknown in Beijing in the 1970s, but it afflicted more than a few enterprising Americans in China at the time," recalled Gene Theroux, former vice chair of the US-China Business Council (publisher of the *CBR*). "A comment by Don showed the wise and humorous approach that helped make him successful. Well aware that the opportunities in China were significant, but that negotiations were always a challenge, Don quipped, 'It's important to let them know we're not as euphoric as they think.'" Theroux opened Baker & McKenzie's Beijing office about the time Don established Altman, Inc. there.

Don was a director of the US-China Chamber of Commerce with founder Prescott Bush; he was a director of the Finnish-American Chamber of Commerce and a member of the World Trade Club of Westchester.

Don is survived by his loving wife of 50 years Betty, son Robert, daughter Beth, brother James, and his seven grandchildren, Brooke, Justin, Kristin, Jay, Lexi, Eva, and Billy. He is predeceased by his sons, Thomas and John. He will be missed by his family and his many friends around the world.

—Family and Friends of Don

THE US-CHINA BUSINESS COUNCIL
美中贸易全国委员会

A Balanced Approach to Trade with China

John Frisbie
President of the US-China Business Council

The fixation on China's currency as the root evil of US–China trade relations is a mistake and threatens to distract our political leaders from making real progress with Beijing that could benefit US business, consumers, and workers. The Bush administration recognizes this fact, though some members of the US Congress remain unconvinced.

We need a balanced approach to trade with China. The attention US lawmakers have paid to China's currency policy is understandable, but it is also dangerously narrow. Yes, market forces should set currency rates, and we need to encourage the Chinese along this path. But this won't make much of a dent in the bilateral trade balance or bring back jobs.

It is well known that the United States had a \$160 billion trade deficit with China in 2004, the largest we had with any single country (full year 2005 figures were not available as *CBR* went to press). Less attention is paid to the fact that we had a \$491 billion trade deficit with the rest of the world in 2004. Clearly, China is not the only source of America's trade imbalance.

Between 1994 and 2004, our trade deficit with China increased by \$133 billion. But our trade deficit with the rest of the world rose by \$369 billion during that time—nearly three times as much. No, it's not just oil, either. Our trade deficit with Canada and Mexico rose \$100 billion; with European Union countries, \$92 billion; with OPEC countries, \$59 billion; and with the rest of the world, \$118 billion. Something more fundamental than Chinese currency policy is driving up our trade deficit across the board.

It is also misleading to consider our trade position with China without looking at Asia as a whole. Over the past decade, Asian countries have been moving their manufacturing capacity to China, in essence shifting our trade deficit with them over to China. As China's share of our total trade deficit increased in the past decade from 20 to 25 percent, our deficit with other major Asian exporters plummeted from 63 percent to 20 percent of the total.

Knowing that our trade deficit spans the globe does not help an American worker whose factory has closed. While we must develop policies to meet the challenges faced by these workers, we must also take care not to undercut the substantial economy-wide benefits of trade. Lower-cost imports mean lower prices for US consumers. Gary Hufbauer of the Institute for International Economics estimated that lower-cost imports from the China effect translate into more than \$500 in annual savings for every American—that's \$2,000 for a family of four. Lower prices also translate into lower interest rates, which helps homeowners and small businesses.

In short, while market-influenced movement in China's exchange rate is important, Americans should recognize that this will not solve the trade deficit problem. Even if the renminbi strengthened by 40 percent, as some critics urge, we would just import more from South Korea or Malaysia or Mexico—and pay more for the goods we buy. Higher prices hurt all Americans.

And while US lawmakers focus their attention on imports, they often lose sight of the fact that our exports to China have grown dramatically since China's entry into the World Trade Organization (WTO) in 2001. China was our eleventh-largest export market the year before WTO entry. In 2004, it became our fourth-largest export market. By mid-2005, China and Hong Kong together trailed only Canada and Mexico, our two free-trade area partners and neighbors, as a market for US products.

While the benefits of trade with China are therefore significant, we clearly have trade issues with China that need to be addressed. American businesses want a level playing field and are willing to work hard and speak out to get one. We must look at whether vestiges of the old state-owned economy give China an unfair competitive advantage. For example, we must push for broad financial sector reforms—not just currency policy reforms—that would eliminate unfair credit advantages for Chinese companies. President George W. Bush and Treasury Secretary John Snow raised this issue on their recent visits to China.

Bush also raised the important issues of intellectual property protection and greater market access in China. China has a decent record of adopting WTO standards—witness our export growth as their barriers come down—but it must implement and enforce all of its WTO commitments in full and on time. Advances on these issues will expand US exports and benefit American workers and farmers.

China is not the source of all of our trade problems, but it is the source of many of our opportunities. By focusing squarely on broader financial sector reforms, intellectual property, and the array of market access concerns, the US government and the business community can move us forward in resolving these issues, bringing real benefit to the US economy. 完

THE US-CHINA BUSINESS COUNCIL
美中贸易全国委员会

FORECAST 2006

A members-only annual conference

The St. Regis, Washington, DC

Reception: January 24, 6:00–8:00 pm
Attended by leading Washington policy and PRC diplomatic figures, China scholars, USCBC member firm executives, and conference speakers.

Conference: January 25, 8:30 am–2:00 pm
Opportunity to network with business colleagues, discuss latest US-China economic and policy issues with field experts, and receive the latest USCBC reports on China's economy, investment opportunities, and bilateral relations.

Prospects for Bilateral Relations
David Lampton
Dean of the Faculty and Director, China Studies
Paul H. Nitze School of Advanced International Studies
The Johns Hopkins University

Congress and China Trade Politics

Effects on the US Economy of Trade and Investment with China: A Report by Oxford Economic Forecasting
Erik Britton
Director of Economics, Oxford Economics USA

China's Economy in 2006 and What It Means for Companies
Mustafa Mohatarem
Chief Economist, General Motors Corporation

Key Operating Issues: The View from China
Kenneth DeWoskin
Partner, PricewaterhouseCoopers LLP

Luncheon Keynote: China Trade Agenda in 2006
Senior US Administration Official

Kaveh Sardari

For more details, including fees, lodging, and registration information see **www.uschina.org**
Contact: Gloria González-Micklin, Director of Programs, USCBC
Tel: 202-429-0340; E-mail: programs@uschina.org

Hardy Simes

Counterfeiting in China: A Blueprint for Change

China and foreign companies can both take steps to improve IP protection

Douglas Clark

"Counterfeiting in China has reached a crisis point." This common view is heard from many foreign executives and government officials. The problem appears to be getting worse each year: Not only is the quality of counterfeits improving, counterfeit goods are appearing in more overseas markets.

The problems with intellectual property (IP) infringements are, however, not an issue just for the PRC government. Many foreign companies have done little to protect their IP rights in China, leaving their products vulnerable to counterfeiting. In addition, as a senior official of the PRC Ministry of Public Security pointed out at a recent conference jointly sponsored by the World Customs Organization and Interpol, it is often foreigners who supply the machines to make counterfeits and buy the counterfeits that are produced.

Nevertheless, China can and should improve its IP laws and practices. The great majority of foreign companies would also do well to improve their policies and procedures for tackling counterfeiting in China.

How counterfeiters operate

Counterfeiters worldwide use increasingly sophisticated methods to avoid detection by rights holders and law enforcement bodies. Even if detected, their operating methods are designed to minimize potential penalties.

Corporate practices

Counterfeiters frequently use front companies or front men to register companies that produce counterfeits. This makes it difficult to identify the true players behind a counterfeit operation and make them liable for their unlawful acts. Furthermore, company production and sales records do not indicate that counterfeits are being produced and sold; rather, model numbers and code words are used. Even if a rights holder obtains these records as part of an investigation or raid action, they can be difficult to use unless the meaning of the model numbers and code words can be explained satisfactorily to a court.

Production processes

Like all good modern businesses, counterfeiters use just-in-time production and rarely keep inventories to reduce carrying costs and the risk of seizure. They produce only to order, making it difficult to seize large volumes of counterfeit products. If counterfeiters do keep stock, they usually keep it separate from manufacturing facilities in a secret location leased in the name of a front company, making it difficult to link to the counterfeiter. Rights holders can find these locations only after in-depth investigation.

The more sophisticated counterfeiters will not make products themselves. Instead, they use separate subcontractors to make different

Douglas Clark
is a partner at Lovells, Shanghai.

parts of the counterfeit goods, which are then assembled by another subcontractor.

Sales and distribution

To avoid detection by investigators, counterfeiters do not provide samples to prospective "buyers" and will refuse to deal with potential customers who do not make a substantial purchase. This can make it difficult and expensive to confirm whether counterfeiting activities are occurring. To mount any type of civil or criminal case, it is generally necessary to have a sample of the counterfeit product.

Even if a counterfeiter accepts an order, the main players behind counterfeiting rarely take delivery of counterfeit products themselves. Instead, products are shipped directly from sub-contractors to freight forwarders. Payment for counterfeits is usually made to entities separate from the production and sales companies. This can make it difficult to tie the counterfeiter directly to seized products, hindering criminal prosecution.

Finally, sophisticated counterfeiters will often buy genuine products on the gray market and mix them with counterfeit products. This can make criminal prosecution difficult because in most criminal justice systems, defendants can avoid criminal liability if they can show that they have been innocently caught up in counterfeiting activities. Those found in possession of mixed products can simply claim that they have been duped and that they checked the products, which appeared to be genuine.

Government tools to combat counterfeiting

Countries can do three things in the legal realm to combat counterfeiting: have an effective trademark registration system; criminalize all manufacturing and commercial distribution of counterfeits; and have effective civil procedures, including the availability and enforcement of injunctions and shifting of the burden of proof when necessary.

Effective trademark registration system

First, it is important to have an effective system for the registration of trademark rights. To be effective, a system must be able to examine and approve trademarks rapidly, as well as deal with oppositions or cancellation actions quickly. An efficient trademark registration system provides certainty to all parties involved. Speedy decisions also help to reduce disputes over trademark rights, particularly when more than one company is claiming to be entitled to a particular trademark.

Criminal penalties for all commercial counterfeiting

For maximum deterrence, criminal penalties for counterfeiting must be imposed on all production and commercial sale of counterfeit products. In all detected cases, including seizures by Customs, criminal penalties should be imposed on all individuals involved in the process of producing and selling counterfeits, including factory workers and shop assistants. The criminal justice system should also be designed to take into account the fact that it can be extremely difficult to locate and obtain evidence against counterfeiters.

Like all good modern businesses, counterfeiters use just-in-time production and rarely keep inventories to reduce carrying costs and the risk of seizure.

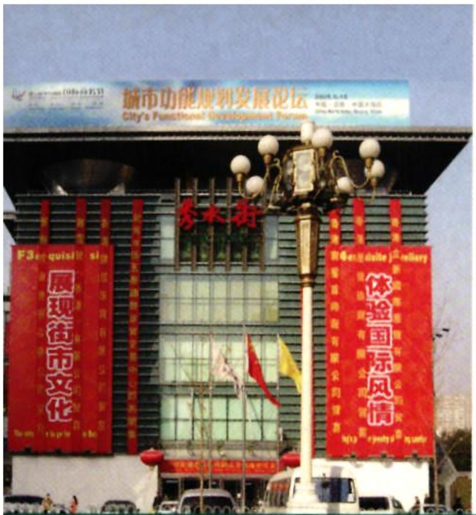
Civil procedures

Civil procedures and remedies should be designed to take into account the difficulties of proving counterfeiting. In particular, civil procedures should provide for the shifting of the burden of proof to a defendant when the plaintiff is able to produce reasonable evidence that counterfeiting activities have occurred, making the defendant responsible for proving that the products in question are not counterfeit. Injunctions should also be granted against all defendants found to be involved in counterfeiting. Defendants who breach an injunction should face fines and imprisonment. Currently, China lacks a method for effectively enforcing injunctions. There are no clear procedures for finding a party breaching an injunction in contempt of court.

Tools for rights holders

The rights holders that have been most successful in combating counterfeiting are those that actively manage their anticounterfeiting program.

Continued on page 46



Focus: IPR

Silk Market Fakes—

Light at the End of the Tunnel?

A new strategy holds promise for fighting fakes

Joseph T. Simone, Jr.

The sale of counterfeit well-known American and European fashion brands in Beijing's notorious Silk Street Market over the last decade has been emblematic of China's difficulties in providing effective enforcement of intellectual property (IP) rights.

Foreign governments and industry associations, including the Quality Brands Protection Committee (QBPC, see p.45), have long pressed for greater use of criminal enforcement to fight counterfeiting. The PRC Ministry of Public Security's recent Mountain Eagle Campaign, which began in November 2004, together with reports from the field by many multinationals, suggests that China is finally beginning to get serious about criminalizing counterfeiting by factories and large-scale wholesalers.

But efforts to bring criminal prosecutions against retailers of fakes in burgeoning shopping malls—such as the rebuilt Silk Street Market—are for now just a pipe dream. The obstacles are many, but the principal ones are both practical and legal. Police lack adequate resources, training, and political support. But even if they did not, the Criminal Code itself precludes the use of criminal sanctions against violations that are deemed too small in scale. The Supreme People's Court and the Supreme People's Procuratorate issued a judicial interpretation in December 2004 clarifying that criminal prosecutions may be pursued only if a vendor is found to have sold or offered for sale fakes in an amount that exceeds designated thresholds—the lowest of which is ¥50,000 (about $6,300).

In the absence of criminal sanctions for retailers, brand owners have for years been resigned to relying on administrative sanctions, which have not proved to be much of a deterrent. Fines imposed by the local administrations of industry and commerce (AICs) have rarely been more than a light slap on the wrist and have provided no incentive for infringers to reveal the source of counterfeits. Consequently, most brand owners had, until recently, abandoned all hope of eliminating fakes in retail outlets like the Silk Street Market.

New strategies

Since early October 2005, visitors to the Silk Street Market and certain other markets in Beijing have been surprised at the lack of visibility of fakes of 48, mainly European, luxury brands listed in two AIC notices prohibiting the sale of counterfeits of those brands. Local AICs throughout China have intermittently issued notices and lists of "specially protected" brands, but with little short-term, let alone long-term, impact. So most observers have assumed that the recent cleanup in the Beijing markets would be temporary and that any improvements in the short term would be a

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standard reaction to AIC pressure to look good while high-level European and American delegations are in town.

But the recent cleanup of the Silk Street Market could, if all goes well, mark the beginning of real change.

The lack of visibility of fakes of the 48 brands is the direct result of a new enforcement initiative by five European brand owners acting under the umbrella of QBPC's Luxury Goods Industry Working Group (IWG). In addition to lobbying the Beijing AIC and other government divisions, the IWG has been targeting *landlords*, not just vendors.

The legal basis for landlord liability in China is fairly simple: By knowingly providing business premises to counterfeiters, the landlord may be held liable for aiding and abetting, or "providing convenient conditions" (*tigong bianli tiaojian*). What's more, by issuing tax receipts (*fa piao*), the landlord may be found directly responsible for the offenses as if he or she were the actual vendor of fakes.

In mid-September, the IWG members, which include the makers of brands such as Burberry, Chanel, Gucci, LVMH, and Prada, filed civil actions against the Silk Street Market's landlord, Beijing Haosen Clothing Co. Ltd. A rash of publicity in the local and international press quickly followed, as did expressions of concern to central and local central by the US and European embassies.

The use of so-called "landlord liability" strategies is relatively new in China, but it has been successful in the United States and other more developed countries. In the United States, the strategy was initially adopted to combat the sale of counterfeits in flea markets. More recently, it has been used to deal with the sale of fakes in established offices and apartment blocks on Canal Street and elsewhere in New York City. The IWG decided the time was right to test a similar strategy in China.

Gathering evidence

Prior to instituting their civil actions, the IWG members made notarized purchases of fake goods from numerous vendors in the Silk Street Market and sent warning letters to the landlord with a deadline for responding. Predictably, the warnings were ignored, after which the brand owners worked closely with the Beijing and Chaoyang District AICs in the hope that the authorities would agree to threaten the landlord with administrative sanctions, in parallel with the pending civil actions.

The AICs in Beijing had previously been reluctant to impose administrative fines on landlords. But following the issuance of penalties against two landlords by the Xicheng District AIC in May 2005, and legal research by the municipal-level AIC that confirmed the legality of these sanctions, other district-level AICs began to feel more comfortable in admonishing Beijing Haosen and other landlords.

Rumors that the Chaoyang District government officials were protecting Beijing Haosen and its charismatic owner, Zhang Yongping, had circulated for some time. But in the last few months of 2005, pressure from a number of directions apparently created cracks in the wall of protection. Following several visits in late September and early October by the head of the Beijing municipal AIC's Trademark Division, Zhang finally seemed to get the message.

The recent cleanup of the Silk Street Market could, if all goes well, mark the beginning of real change.

Beijing Haosen's written defense to the pending civil actions contains an impressive list of measures it has taken to "rectify" the market. These include the termination of 12 Haosen managers (some of whom had been tasked with monitoring the market for counterfeiting), the eviction of the five vendors that are the subject of the pending civil actions, the collection of written undertakings not to sell fakes from more than 100 other vendors found to be selling counterfeits of the 48 brands, and the imposition of contractual fines—worth more than $50,000 in total—on various vendors.

Today, visitors to the Silk Street Market can still purchase fakes of the protected brands but few are openly displayed, at least during weekdays, and many vendors are visibly afraid of handling these products. The Luxury Goods IWG arranged further notarized purchases of fakes and provided the evidence to the Beijing court handling the pending civil actions to demonstrate that the landlord's efforts—however helpful—were still inadequate.

Brand owners hope that Beijing Haosen will act swiftly in the future to terminate the leases of vendors found selling fakes. But they are also anticipating the need for continued pressure against Beijing Haosen from AICs. The IWG may also need to file additional civil actions if real change is not forthcoming.

Landlord cooperation

The ultimate goal of the Luxury Goods IWG is to convince Beijing Haosen and other land-

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IP Protection Best Practice Tips

The best offense is a good defense—and vice versa

Godfrey Firth

Few executives in China, at either Chinese or foreign companies, would be shocked to stumble across a knock-off version of their product somewhere in that country. As China's trade links to the outside world expand rapidly, fewer and fewer foreign companies are surprised to find a China-produced counterfeit in their home market as well. This sobering reality is, however, tempered by some good news: Companies can take steps to prevent intellectual property (IP) theft in China and, increasingly, can pressure the PRC government to enforce the rules of China's developing IP rights regime.

Over the past 20 years, China has created IP laws that generally adhere to international standards. Weaker implementing regulations and judicial interpretations, procedural barriers, and poor enforcement, however, continue to frustrate the efforts of companies to protect their IP in China.

Two decades in the trenches have equipped multinational corporations and their IP protection providers with hard-won experience and a set of strong preventive best practices. At the same time, counterfeiters and infringers in China are more sophisticated and increasingly deploy advanced reverse-engineering techniques, adopt legal measures such as preemptive filing and patent challenges, and find new ways to infiltrate legitimate distribution networks and developed markets.

While the old saying "an ounce of prevention is worth a pound of cure" still rings true, much more than an ounce of prevention is necessary today. Even the best internal IP protection systems face challenges from counterfeiters. Any successful China IP protection strategy needs to encompass both offensive and defensive elements. Defensive actions include filing patents and trademarks, regularly reviewing IP security, and updating the company's

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operations and internal policies. Offensive actions include using PRC laws to take action against counterfeiters and infringers; selectively deploying resources in surveillance; and continuing educational and advocacy efforts with suppliers, distributors, consumers, government officials—and the company's own employees.

Below are some practical measures firms can take to protect their IP in China. The specific measures a company adopts will vary depending on the company's industry and level of involvement in the China market.

Craft a corporate IP protection strategy

The most effective strategies require firms to make internal changes.

- **Make IP protection a core responsibility of the entire China management team,** not merely a function of the legal counsel's office. An effective IP rights strategy should encompass all company departments, including production, human resources, sales and distribution, finance, and legal. The intensive interdepartmental coordination required for a company-wide IP rights initiative makes leadership from top management and support from headquarters critical.
- **Create, communicate, and enforce a clear IP protection strategy throughout the organization.** Though awareness has improved over the past 20 years, the level of "IP consciousness" among Chinese citizens and employees remains quite low. Companies need to play a strong educational role in communicating the value of protecting IP to all employees, business partners, and customers. Especially vital is instilling a sense of "ownership" of company IP in staff. Constant visual reminders of IP policies, whether on office walls or elsewhere, help to reinforce the message. Finally, employees who violate IP policies or procedures should be warned and, in egregious cases, dismissed. Like China's IP laws, any corporate IP policy without enforcement teeth will be easily and rapidly disregarded.
- **Conduct an "IP audit" of internal controls, combined with an "IP survey" of external problems and issues.** The audit should be a comprehensive, top-to-bottom review of existing company policies and procedures concerning IP rights and the company's current patent and trademark portfolio. The survey should include a thorough review of supply chains and distribution channels, visits to points-of-sale and trade fairs, and checks on patent and trademark filings by competitors and infringers.

Go on the defense...

Though catching and prosecuting IP violators is critical, companies should first focus on preventing IP violations. Companies can use several means to protect themselves.

Employ legal measures

Since China follows a first-to-file instead of a first-to-use principle, companies should register their works in China as early as possible. This is, in part, because China does not recognize international patents; if a company does not file in China, it has no rights in China. Wise companies file early.

Companies need to play a strong educational role in communicating the value of protecting IP to all employees, business partners, and customers.

- **Trademarks**

  When registering trademarks, companies should register their brands' English and Chinese names, carefully select the product categories and subcategories in which to file, and check subcategories for similar trademarks filed by competitors and infringers.
- **Patents**

  China offers design, invention, and utility model patents. (Design patents are used to register a new design of a shape or pattern; invention patents are used to register new technical solutions for a product or process; utility patents are used to register new technical solutions related to shape or structure.) Generally, companies should file both utility and invention patents for the same item, since utility patents receive little substantive review and are usually easier to acquire. Once an invention patent is granted, the utility patent can generally be dropped, as utility patents last only for 10 years from the date of application, compared to 20 years for invention patents. Companies should file applications for both their core *and* fringe technologies and make certain their patents are properly translated.
- **Copyright**

  China recognizes copyrights at the time of their creation. Though registration is not required, entities should consider registering their works with the National Copyright Administration (NCA), since registration provides a public record and serves as useful evidence in court. For software companies, registering for copyrights may be quite sensitive, since it may require providing some source code to NCA.

● **Trade secrets**

As in the United States, a trade secret in China must be technical or operational information that is unknown to the public, economically beneficial to the owner, and reasonably protected by the owner (see the *CBR* May–June 2005, p.36). China also requires that the secret have "practical applicability." Trade secrets are often difficult to enforce because of the high burden of proof placed on plaintiffs (see p.14). At a minimum, companies should mark confidential items, restrict access to trade secrets, and implement confidentiality policies and other agreements with employees (see below).

Control the production process

First, companies should design products—and the equipment that produces them—so

PRC Government Intellectual Property Contacts

The following information has been adapted from the US Embassy in Beijing's *IPR Toolkit: Intellectual Property Rights in China*. All websites are in Chinese, except where indicated.

Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ)

AQSIQ is China's standard-setting and quality-control agency. The administration also handles infringements of registered trademarks when the infringing products are of inferior quality.

Administration of Quality Supervision, Inspection, and Quarantine
9 East Ma Dian Road
Haidian District
Beijing 100088
Tel: (Main directory) 86-10-8226-2114
Tel: (Front office) 86-10-8226-0001
www.aqsiq.gov.cn

General Administration of Customs

Customs regulations ban the import and export of goods that infringe on intellectual property (IP) rights. For enforcement, however, rights holders must register their IP with Customs. Registration certificates issued by Customs are valid for seven years and are renewable. Rights holders that suspect infringing goods are being shipped to or from China may submit a written application to halt the goods at points of entry or exit. Rights holders may be required to post a bond equivalent to the value of the goods held while Customs investigates the infringement. In cases of infringement, Customs may impose fines and destroy the infringing product.

General Administration of Customs
6 Jianguomennei Dajie
Dongcheng District
Beijing 100730
Tel: 86-10-6519-5243 or 6519-5399
Fax: 86-10-6519-5394
www.customs.gov.cn

Customs branches
Beijing: www.bjcustoms.gov.cn
Guangzhou: www.haiguan.gzfeihua.com/customs.htm
Nanjing: www.nj-customs.gov.cn
Ningbo: www.nbedi.com
Shanghai: www.shcus.gov.cn/apec/index.jsp
Shenzhen: www.sz-customs.gov.cn
Tianjin: www.tjc.gov.cn

National Copyright Administration (NCA)

Responsible for copyright registration, administration, and enforcement, NCA manages nationwide copyright issues by investigating infringement and supervising administrative authorities. Though some administrative remedies are available, NCA lacks personnel and generally encourages complainants to use the court system.

National Copyright Administration
85 Dongsi Nan Dajie
Dongcheng District
Beijing 100703
Tel: 86-10-6512-7869 or 6527-6930
Fax: 86-10-6512-7875
www.ncac.gov.cn

Ministry of Public Security

China's police, the provincial- and local-level Public Security Bureau (PSB) offices, handle criminal IP rights cases. Administrative organs can transfer cases of egregious infringement to PSB for criminal prosecution. Criminal prosecution, although quite difficult to obtain, is a viable deterrent and substantially more effective than the low fines and penalties obtained via administrative enforcement.

Ministry of Public Security
14 Dong Chang'an Jie
Dongcheng District
Beijing 100741
Tel: 86-10-6520-2114
E-mail: 110@mps.gov.cn
www.mps.gov.cn

State Administration of Industry and Commerce (SAIC) Trademark Office

SAIC registers and enforces trademarks. Provincial- and local-level SAIC offices can investigate and determine infringements, conduct raids, and issue administrative orders that halt the production and sale of infringing products, destroy such products, impose fines, and remove production equipment. SAIC also handles trade secret disputes under the Anti-Unfair Competition Law.

State Administration of Industry and Commerce
Trademark Office
8 Sanlihe Donglu
Xicheng District
Beijing 100820
Tel: 86-10-6803-2233
Fax: 86-10-6801-0463
www.saic.gov.cn
www.tmo.gov.cn (Chinese and English)

State Intellectual Property Office (SIPO)

SIPO is responsible for the examination and issuance of foreign and domestic patents at the national level. SIPO also supervises provincial-level IP offices that handle administrative enforcement of patent complaints.

State Intellectual Property Office
6 Xitucheng Lu
Haidian District
PO Box 8020
Beijing 100088
Tel: 86-10-6209-3268
Fax: 86-10-6201-9615
www.sipo.gov.cn (Chinese and English)

Source: http://beijing.usembassy-china.org.cn/ipr.html that they are difficult to copy. Second, companies should compartmentalize the production process so that no single unit can produce a complete product. Firms should also outsource different parts of a process to different companies to minimize the risk of inadvertently creating a new competitor. When possible, firms are advised to secure key technologies and procedures and keep vital designs or latest-generation technologies in their home countries.

Focus on human resources

From the start of the hiring process, personnel departments should run background checks on key hires. Firms should include non-compete and non-disclosure agreements in contracts because IP leaks commonly occur after an employee leaves a company. Once such agreements are in place, it is critical for companies to educate their employees about the firm's confidentiality requirements—maintaining clear rules and enforcing them. Firms should share information with their employees on a "need-to-know" basis only. It is also good policy to separate engineers from the sales force; when employees who possess knowledge of a firm's production process mingle with those who have access to clients, new competitors often emerge.

Be choosy when selecting suppliers and distributors

Before selecting a partner, firms should conduct comprehensive due diligence on suppliers and distributors, researching their networks and identifying weak points through which counterfeit products could enter the distribution network. Companies should also select partners with brand images and reputations of their own to protect. When a selection has been made, firms should include IP protection clauses in all contracts and agreements and clearly explain their policies and procedures to the contractual partners.

Keep a close eye on competitors

Companies should monitor the patents that their competitors file by reviewing the State Intellectual Property Office's (SIPO) *Design Patent Gazette* and by conducting preliminary, focused searches for invention and utility patents based on the company names of Chinese and foreign competitors.

To research trademarks, companies can request an inexpensive search from the State Administration of Industry and Commerce (SAIC) Trademark Office. Results are usually available within 24 hours. These reviews can help companies prevent the registration of copycat trademarks and patents; firms should

Before selecting a partner, firms should conduct comprehensive due diligence on suppliers and distributors, researching their networks and identifying weak points through which counterfeit products could enter the distribution network.

be especially alert to design and utility patents filed for infringing products.

...And the offense

Even after implementing all necessary preventive measures, companies must devote time and resources to detecting violations and taking legal action. A company's legal rights mean little in China unless the company chooses to protect them.

Take legal action

Companies must use China's legal system to enforce their patents, trademarks, and copyrights. They must also decide which battles to fight. Companies can choose from several routes to enforce their IP rights, including civil, administrative, and criminal actions.

- **Civil actions**

The civil suit is becoming increasingly popular among foreign enterprises in China as a relatively inexpensive method of halting patent, trademark, and copyright infringement. Civil suits are often used in cases of "look-alike" infringement or in complex cases when administrative authorities are unable to make a determination of infringement. The civil suit is also particularly useful in cases when the defendant is an established enterprise from which damages can be collected.

Civil suits have their drawbacks, however. Companies bear the responsibility of collecting evidence and packaging cases for the courts, and litigation can take up to two years if defendants use all available appeal options. Moreover, infringers can halt a civil suit for patent infringement by filing an administrative challenge to the patent with SIPO. Though civil cases are generally decided fairly, judges are not bound by precedents set in other courts.

While civil (and criminal) lawsuits for patent, copyright, and trademark infringement are being adjudicated, companies can also seek injunctive relief from courts. Preliminary injunctive relief can usually be acquired in clear-cut cases, although the plaintiff must be willing to post a substantial bond and demonstrate a strong likelihood of success in the case. Injunctive relief is easiest to acquire in trademark cases, but it can also be useful in copyright and patent cases. Though courts generally grant petitions for injunctive relief, China lacks methods and penalties for enforcing preliminary injunctions—a major flaw in the system. But when plaintiffs win IP-related court cases, permanent injunctive relief is often granted as part of the verdict, and these injunctions are generally enforced.

● Administrative actions

When infringing products are found in China, companies may ask administrative agencies to undertake their own investigations and impose penalties. In these cases, companies often do significant preparatory work before submitting requests to authorities.

Often used in cases of clear infringement or pure counterfeiting, such as exact copies of trademarks or brand names, many companies find administrative actions—particularly raids by the local administrations of industry and commerce—easier and faster than civil or criminal suits (see the *CBR* November–December 2000, p.28). Administrative actions are useful for halting production lines and seizing large quantities of product, and local administrative bodies have the authority to impose fines and destroy infringing goods. Companies should be aware that warehouse raids do not always mean a company is successfully stemming the tide of fake goods. The "raid and pillage" mentality ignores the importance of tracking fakes to their ultimate source. And because administrative penalties are generally low, they are an ineffective deterrent to repeat

US Government Intellectual Property Contacts

In China

US Embassy and Consulates

The US Embassy in Beijing is a good first point of contact in China for US companies with intellectual property (IP) rights concerns or problems. Companies located outside of Beijing can also contact their local consulate's US Commercial Service (CS) offices. Local CS officers can provide advice and guidance to US companies in locating IP rights service providers.

Mark Cohen, IPR Attaché
United States Embassy, Economic Section
3 Xiu Shui Bei Jie
Dongcheng District
Beijing 100600
Tel: 86-10-6532-3831
Fax 86-10-6532-6645
http://beijing.usembassy-china.org.cn

Ira Belkin, Director
Trade Facilitation Office
United States Embassy
Beijing Kerry Center
31st Floor, North Tower
1 Guanghua Lu
Chaoyang District
Beijing 100020
Tel: 86-10-8529-6655
Fax: 86-10-8529-6700
http://beijing.usembassy-china.org.cn

CS Offices

Beijing
Craig Allen, Senior Commercial Officer
US Commercial Service
Beijing Kerry Center
31st Floor, North Tower
1 Guanghua Lu
Chaoyang District
Beijing 100020
Tel: 86-10-8529-6655
Fax: 86-10-8529-6558/9
E-mail: beijing.office.box@mail.doc.gov
www.buyusa.gov/china/en/

Chengdu
Misha Cao, Acting Principal
Commercial Officer
US Commercial Service
4 Lingshiguan Lu, Renmin Nanlu Section 4
Chengdu, Sichuan 610041
Tel: 86-28-8558-3992/9642
Fax: 86-28-8558-9221/3520
E-mail: chengdu.office.box@mail.doc.gov
www.buyusa.gov/china/en/chengdu.html

Guangzhou
Mike Murphy, Principal Commercial Officer
US Commercial Service
14/F China Hotel Office Tower, Room 1461
Liu Hua Lu
Guangzhou, Guangdong 510015
Tel: 86-20-8667-4011 Fax: 86-20-8666-6409
E-mail: guangzhou.office.box@mail.doc.gov
www.buyusa.gov/china/en/guangzhou.html

Shanghai
Ira Kasoff, Principal Commercial Officer
US Commercial Service
Shanghai Center, Suite 631
1376 Nanjing Xi Lu
Jing'an District
Shanghai 200040
Tel: 86-21-6279-7630
Fax: 86-21-6279-7639
E-mail: shanghai.office.box@mail.doc.gov
www.buyusa.gov/china/en/shanghai.html

Shenyang
So-ching Tsai, Principal Commercial Officer
US Commercial Service
52 Shi Si Wei Lu
Heping District
Shenyang, Liaoning 110003
Tel: 86-24-2322-1198
Fax: 86-24-2322-2206
E-mail: shenyang.office.box@mail.doc.gov
www.buyusa.gov/china/en/shenyang.html

Hong Kong
Stewart Ballard, Chief Commercial Consul
US Commercial Service
American Consulate General Hong Kong
26 Garden Road, Central
Hong Kong SAR
Tel: 852-2521-1467
Fax: 852-2845-9800
E-mail: hong.kong.office.box@mail.doc.gov
http://buyusa.gov/hongkong

offenders. Companies should also be wary of the possibility that raids may be faked and that goods seized in raids may find their way back to the market.

If a product that infringes a US copyright, trademark, or patent enters the United States, the IP rights owner can follow Section 337 of the US Tariff Act, which authorizes the International Trade Commission (ITC) to investigate the case. Though ITC actions do not lead to fines, the agency can stop the import of infringing goods at the dock, vital for firms seeking fast relief. The US Court of International Trade also does not require a jury, enabling the court to issue decisions quickly.

● **Criminal prosecutions**

Companies can request that cases of egregious infringement be transferred from administrative authorities to China's police, the Public Security Bureau (PSB). (The thresholds for criminal prosecutions are high, however.) When implemented, criminal investigations and prosecutions can be effective deterrents, particularly since administrative bodies cannot jail offenders and administrative fines are often inadequate. But criminal actions are often much harder to set in motion than administrative actions and civil suits. In cases involving public safety issues, such as counterfeit food products and pharmaceuticals, or state monop-

Companies should be aware that warehouse raids do not always mean a company is successfully stemming the tide of fake goods.

In the United States

National Intellectual Property Rights Coordination Center

The center is a multi-agency coordination office dealing with IP rights violations in the United States.

National Intellectual Property Rights Coordination Center
1300 Pennsylvania Avenue, NW, Room 3.5A
Washington, DC 20229
Tel: 202-344-2410 or 866-IPR-2060
www.ice.gov/graphics/cornerstone/ipr/index.html

US Copyright Office

The Copyright Office registers and administers copyrights in the United States. Though copyright is conferred automatically at the moment of creation, companies should register their copyrights.

Public Information Office
Tel: 202-707-3000
Information Specialists
Tel: 202-707-5959
www.copyright.gov

US Customs and Border Protection

Companies that register their copyrights and trademarks with Customs can request that infringing goods be seized at the border. Patent-infringing products may also be seized under Section 337 of the US Tariff Act.

US Customs and Border Protection
Office of Regulations and Rulings
Intellectual Property Rights Branch
1300 Pennsylvania Avenue, NW
Mint Annex
Washington, DC 20229
Tel: 202-572-8710
www.cbp.gov/xp

US Department of Commerce (DOC)

DOC seeks to ensure that foreign countries comply with IP rights aspects of trade agreements and can assist in developing strategies to fight IP rights infringement in foreign markets.

US Department of Commerce
Intellectual Property Rights Office
1401 Constitution Avenue, NW
Washington, DC 20230
Tel: 866-999-HALT
DOC Strategies Targeting Organized Piracy (STOP) Website: www.stopfakes.gov

US Department of Justice

The Federal Bureau of Investigation investigates large-scale, federal IP rights violations both domestically and internationally, including Internet crimes. Companies should contact local offices, which can be located via the number below.

US Department of Justice, Federal Bureau of Investigation
Tel: 202-324-3000
www.usdoj.gov
www.fbi.gov
www.cybercrime.gov/reporting.htm

US International Trade Commission (ITC)

ITC investigates and adjudicates complaints filed by rights holders. Following investigation, ITC can direct US Customs and Border Protection to halt the import of patent-, copyright-, and trademark-infringing products, and order infringing parties to cease unlawful actions. ITC provides a quick route to halting infringing goods at the docks.

International Trade Commission
Trade Remedy Assistance Office
500 E Street, SW
Washington, DC 20436
Tel: 800-343-9822 or 202-205-2200
www.usitc.gov

US Patent and Trademark Office (USPTO)

USPTO issues and administers patent and trademark registrations.

Tel: 800-786-9199
www.uspto.gov

Sources: http://beijing.usembassy-china.org.cn; DOC brochure *Protect Your Intellectual Property: Stop Trade in Fakes!*; www.stopfakes.gov

Companies must be prepared to spend resources to enforce their non-compete agreements against employees who leave for competitors.

olies, such as tobacco, PSBs will often devote significant resources to investigate infringement and bring criminal actions. In most other cases, however, the IP rights holder must generally do all of the investigative work and package the case for the local PSB, which may not have the resources to conduct a thorough investigation. Companies should pick their targets carefully and work with the local PSBs in key provinces or cities. A good strategy is to seek criminal actions against key infringers or syndicates and to piggy-back on PRC government IP rights protection campaigns.

Conduct surveillance of suppliers and distributors

To gain a better understanding of the counterfeiters that may be operating in their sector, companies should send representatives to visit the Chinese Export Commodities Fair (Canton Fair) and industry trade shows and conduct Internet searches for their products on Chinese e-commerce websites, such as Alibaba.com, and industry association websites. Manufacturers should also check distribution networks at all levels for possible counterfeit product entry points and weak links, and design and implement vendor integrity programs. Furthermore, companies should work with other industry firms to identify and boycott repeat offenders.

Business Association Contacts

American Chamber of Commerce (AmCham), Beijing
China Resource Building, Suite 1903
8 Jianguomenbei Dajie
Dongcheng District
Beijing 100005
Tel: 86-10-8519-1920
Fax: 86-10-8519-1910
www.amcham-china.org.cn

AmCham Shanghai
Shanghai Center, Suite 568
1376 Nanjing Xi Lu
Jing'an District
Shanghai 200040
Tel: 86-21-6279-7119
Fax: 86-21-6279-7643
www.amcham-shanghai.org

Quality Brands Protection Committee
APCO Worldwide,
Beijing Representative Office
16F NCI Tower
12A Jianguomenwai Dajie
Chaoyang District
Beijing 100022
Tel: 86-10-6505-5127
Fax: 86-10-6505-5257
E-mail: qbpc@apcochina.com
www.qbpc.org.cn

US Chamber of Commerce
1615 H Street, NW
Washington, DC 20062
Tel: 202-463-5460
Fax: 202-463-3114
www.uschamber.com

The US-China Business Council (USCBC), Washington
1818 N Street, NW, Suite 200
Washington, DC 20036
Tel: 202-429-0340
Fax: 202-775-2476
E-mail: info@uschina.org
www.uschina.org

USCBC Beijing
CITIC Building, Suite 10-01
19 Jianguomenwai Dajie
Chaoyang District
Beijing 100004
Tel: 86-10-6592-0727
Fax: 86-10-6512-5854
E-mail: info@uschina.org.cn

USCBC Shanghai
1701 Beijing Xi Lu, Room 1301
Jing'an District
Shanghai 200040
Tel: 86-21-6288-3840
Fax: 86-21-6288-3841
E-mail: info@uschina.org.cn

—USCBC staff

Control what walks out of your door with departing staff

Most firms should expect and plan for significant employee turnover. Companies must be prepared to spend resources to enforce their non-compete agreements against employees who leave for competitors.

Firms should also use information technology to carefully track data flows and file transfers and closely monitor the entry and exit of flash disks, portable hard drives, and laptops.

Advocate aggressively

To exert collective pressure on the PRC government to better enforce IP rights laws, firms should consider joining external groups, such as the US-China Business Council (publisher of the *CBR*), the Quality Brands Protection Committee (see p.24), or other relevant business associations.

Firms should also develop a consistent and constructive IP rights message across the organization and repeat it to PRC government bodies and the public. Many companies have built customer awareness about counterfeit products through product hotlines, seminars, and public relations campaigns. Firms can use an array of US government resources as well, such as the US Commercial Service, the US Patent and Trademark Office, the US International Trade Commission, and other bodies (see p.22). 完

Firms should also develop a consistent and constructive IP rights message across the organization and repeat it to PRC government bodies and the public.

WTO: Year Five

Michael Overmyer

With China's WTO entry requirements winding down, will 2006 become China's "Year of the Bank"?

China is reaching the final deadlines to open its services sectors to foreign companies, as set forth in its World Trade Organization (WTO) entry agreement. The focus this year will be on the banking sector, which has been relatively protected from foreign competition and is scheduled to be fully opened by December 11, 2006. This is one of the most anticipated commitments China has yet to phase in.

As China nears the end of its WTO implementation process, however, foreign companies and governments are increasingly looking at more subtle barriers to trade and pressing China to open its markets more widely than its WTO entry agreement requires in an attempt to foster a more competitive, level playing field for all companies in China.

China's 2006 services commitments

Though some year-four commitments remain outstanding (see p.29), China faces a new round of commitments due by December 11, 2006.

- **Architectural, engineering, and urban planning services**

China looks set to meet its commitment deadline to allow wholly foreign-owned enterprises (WFOEs) in architectural, engineering, and integrated engineering services. Urban planning WFOEs have been permitted since May 2003, when the Regulations on the Management of Foreign-Invested Urban Planning Services Enterprises, issued by the Ministry of Construction and the former Ministry of Foreign Trade and Economic Cooperation, took effect. Observers expect other elements of this commitment to be approved in the Administrative Measures on Foreign-Invested Construction and Engineering Services Enterprises, a draft of which the Ministry of Commerce (MOFCOM) released in October 2005.

- **Banking**

Foreign-invested banks should see all geographic and customer restrictions on their local currency businesses removed. Moreover, China is scheduled to eliminate any nonprudential

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measures that restrict the ownership, operation, and operational form of foreign-invested banks. The combined phase-in of these commitments should mark the full opening of China's banking sector to foreign companies: It will allow wholly foreign-owned banks to provide local currency services to any PRC client in any city in China. Currently, WFOEs are permitted to provide local currency business in only a handful of cities and only to businesses and foreign individuals.

Full implementation of these commitments is made particularly important by the likelihood of continuing restrictions on foreign investment in domestic banks, which is capped at 25 percent for all foreign investors and less than 20 percent for any one foreign investor. Domestic banks do not face the geographic and customer restrictions imposed on wholly foreign-owned banks.

- **Distribution and retail**

China is scheduled to allow WFOEs and other foreign-invested wholesalers and commission agents to distribute chemical fertilizers, processed oil, and crude oil. Implementation of this commitment will remove the last remaining product prohibitions for foreign-invested distributors, except for restrictions on salt and tobacco, which are to remain under state control.

In retail, WFOEs and other foreign-invested retailers with 30 or fewer outlets should be allowed to sell chemical fertilizers. Foreign majority-owned chain retailers with more than 30 outlets should be allowed to sell motor vehicles. Implementation of these commitments will mark the completion of WTO-mandated openings in China's retail sector. Although most restrictions will have been lifted, China will retain the right to prohibit foreign-majority owned chain retail outlets with more than 30 stores from selling products listed in Annex 2A of China's WTO entry agreement. These include tobacco products, certain chemicals, some agriculture items, and specific processed oil products.

- **Insurance**

By allowing wholly foreign-owned insurers to engage in reinsurance; international marine, aviation, and transport insurance; and brokerage for reinsurance and large-scale commercial risks, international marine, aviation, and transport insurance, China will have implemented the last of its WTO commitments in insurance.

- **Telecom**

China is scheduled to lift all geographic restrictions on mobile voice and data telecom services for Sino-foreign joint ventures. Foreign-invested mobile voice and data telecom providers are currently restricted to operating in 17 PRC cities, including Beijing, Chongqing, Guangzhou, and Shanghai. After the geographic restrictions are removed, China will have fully implemented its WTO commitments in these services. China's WTO schedule does not require it to lift the 49 percent cap on foreign ownership in a mobile service provider.

In domestic and international services (such as voice, packet- or circuit-switched transmission, fax, and private leased circuit services), China is scheduled to expand the number of cities and regions in which Sino-foreign joint ventures may operate and raise the cap on foreign ownership. Foreign-invested fixed-line telecom providers can currently operate only in Beijing, Guangzhou, and Shanghai. China's year-five WTO commitments allow these service providers to expand into many of China's most important business centers: Chongqing; Chengdu, Sichuan; Dalian and Shenyang, Liaoning; Fuzhou and Xiamen, Fujian; Hangzhou and Ningbo, Zhejiang; Nanjing, Jiangsu; Qingdao, Shandong; Shenzhen, Guangdong; Taiyuan, Shanxi; Wuhan, Hubei; and Xi'an, Shananxi. In addition, the cap on foreign ownership should rise from the current 25 percent to 35 percent and should rise again to 49 percent by 2007.

China is scheduled to lift all geographic restrictions on mobile voice and data telecom services for Sino-foreign joint ventures.

Banking in depth

China's banking sector commitments stand out as the most important of the items on the year-five agenda. In other sectors, such as distribution services and insurance, China's year-five commitments follow through on the more fundamental openings mandated in previous years. In the telecom sector, foreign-invested service providers will continue to face high barriers even with complete WTO compliance. In contrast, China's year-five banking commitments should fully open a sector that until now has largely been protected.

Whether the phase-in will occur smoothly remains uncertain. Poor intra-government communication and minimal transparency has sometimes led to slow issuance of legal and regulatory changes, thereby delaying the implementation of important WTO commitments. China's dilatory pace in implementing its major distribution services commitments is a case in point (see the *CBR* November–December 2005, p.24). China was scheduled to fully implement its distribution rights commitments by December 11, 2004, but vaguely worded regula-

The United States in October 2005 broke new ground in China's relationship with the WTO when it filed a request for information on specific enforcement actions the PRC government has taken to protect the intellectual property rights of foreign businesses.

tions and poorly explained application procedures meant that many foreign-invested companies had a hard time exercising these rights well into August 2005. Businesses and foreign governments will watch the implementation of banking sector openings closely. A similarly slow and difficult process in the banking sector could lead many companies and governments to question China's desire and ability to carry out its remaining WTO reforms.

Most foreign bankers, however, discount the possibility of such a slow process. Indeed, should Beijing make the political decision to open the renminbi (RMB) market to foreign banks, China appears to be in a good position to bring about the full implementation of its WTO banking reforms on time. China governs the activities of foreign-invested financial institutions through the State Council-issued PRC Regulations on the Administration of Foreign-Capital Financial Institutions, which took effect in February 2002, and the China Banking Regulatory Commission's (CBRC) accompanying implementing rules, which took effect in September 2004. Together, these measures already enable CBRC to approve foreign bank licenses to engage in local currency business with Chinese individuals. Moreover, the implementing rules spell out detailed application procedures for existing foreign-invested banks to expand their business scope and open new branches. Therefore, all that appears to be needed for WFOEs to enjoy full access to China's banking sector after December 11, 2006 is for CBRC to approve applications.

In a positive sign, CBRC announced in December 2005 that it would allow foreign banks to provide RMB business in five cities that were not yet required to be opened (see below). Moreover, CBRC also lowered operating-capital requirements by ¥100 million ($12.4 million).

Nevertheless, some PRC officials appear hesitant to allow foreign banks full access to the PRC market. CBRC Vice Chair Shi Jiliang said in May 2005 that China was considering restricting foreign banks to the less-prosperous central and western regions and capping at two the number of PRC banks in which a single foreign bank could take a stake. Although other officials quickly contradicted these comments, according to *EuroWeek*, CBRC Vice Chair Tang Shuangning reiterated the two-bank cap at a November 2005 conference. Also in November, Bloomberg News quoted Tang as saying, "We must set limits because we don't want foreign banks to gain control." CBRC Chair Liu Mingkang endorsed these views in December 2005.

As mentioned, foreign investment in PRC banks is currently limited to 25 percent, and single foreign entities are limited to less than 20 percent of a single bank. Current restrictions on foreign ownership in PRC banks do not violate China's WTO commitments. Even so, comments like those above lend support to worries that PRC officials will look for ways to slow the expansion of wholly foreign-owned banks into the RMB market for Chinese individuals. Indeed, foreign bankers and industry analysts agree that the top priority of China's banking regulators is to protect the domestic market from foreign competition. Thus far, exorbitant capital requirements and slow license approval processes have limited the ability of foreign banks to expand their branch networks. Some banks have reported waits of one year to open new branches. Others have noted that China's regulators are strategic in the granting of approvals, protecting vibrant coastal cities from increased competition while at the same time encouraging investment in less-developed interior cities. The cities that CBRC opened to RMB business ahead of schedule this past December—Changchun, Jilin; Harbin, Heilongjiang; Lanzhou, Gansu; Nanning, Guangxi; and Yinchuan, Ningxia—had 2004 per capita GDP levels ranging from ¥13,693 ($1,654) to ¥21,202 ($2,561). In comparison, Hangzhou in Zhejiang and Suzhou in Jiangsu, which CBRC has yet to open to foreign banks, enjoyed per capita GDP levels of ¥38,574 ($4,659) and ¥57,922 ($6,995), respectively, in 2004.

Though many foreign bankers believe China will implement its banking commitments on time, they expect China's regulators to continue to restrict the RMB business of foreign banks, even after its WTO commitments are implemented, through prudential criteria and protracted approval processes. Regardless of any effort by PRC officials to protect domestic players, in fact, only a handful of foreign banks plan to establish branch networks throughout China after December 2006. Most international banks, including some of the world's largest, expect the cost of organic growth to be prohibitively high. Many of these banks are, however, attempting to benefit from China's growth in other ways, such as through minority stakes in domestic banks.

United States, Japan question China on IPR

Separate from the phase-in of the last WTO commitments, the coming year promises to see more activity in Geneva on China's level of compliance with past commitments. The United States in October 2005 broke new ground in China's relationship with the WTO when it filed a request for information on specific enforcement actions the PRC government has taken to protect the intellectual property rights (IPR) of foreign businesses. Japan quickly followed the United States with an identical filing. Both are known as Article 63 requests, referring to the section of the WTO agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) that authorizes such action.

The requests ask China to provide by January 26, 2006 detailed material regarding judicial rulings and administrative decisions to which China has referred in public reports and previous WTO filings. In these previous comments, China attempted to show its trading partners its progress in, and commitment to, enforcing IPR. US trade officials say, however, that the information China has provided so far has been too general to provide an exact understanding of China's actions.

Although advertised as only an attempt to more fully understand China's actions to protect IPR, the Article 63 request can also be viewed as a preliminary step in a possible WTO dispute settlement case. Should China's response demonstrate an unsatisfactory level of IPR enforcement, the information in the response could be used as evidence in a WTO case.

The Office of the US Trade Representative (USTR) in April 2005 signaled its intent to file the Article 63 request in a report on international IPR matters. In that report, USTR placed

Year-Four Status Check

Fulfilled commitments

China met four significant year-four World Trade Organization (WTO) services commitments by its December 11, 2005 deadline.

● **Advertising**

The nation met its commitment to allow wholly foreign-owned enterprises (WFOEs) in advertising services when the Regulation on Management of Foreign-Invested Advertising Companies, issued by the State Administration of Industry and Commerce and Ministry of Commerce (MOFCOM) in March 2004, took effect on December 10, 2005.

● **Banking**

China also met its banking commitment when the China Banking Regulatory Commission announced on December 5 that it would allow foreign banks to expand their local currency business into Ningbo, Zhejiang; and Shantou, Guangdong. China opened Shenyang, Liaoning; and Xi'an, Shaanxi, in December 2004. In fact, China went beyond its WTO commitments and opened five other cities—Changchun, Jilin; Harbin, Heilongjiang; Lanzhou, Gansu; Nanning, Guangxi; and Yinchuan, Ningxia—in December 2005.

● **Freight forwarding**

And MOFCOM's December 9 posting of the Administrative Measures on Foreign Investment in International Freight Forwarding Agency Services, met China's commitments to allow WFOEs in freight forwarding agency services and to apply national treatment to capitalization requirements for foreign-invested freight forwarders.

● **Insurance**

According to US-China Business Council sources at the China Insurance Regulatory Commission (CIRC), foreign-invested insurers no longer need to cede to the China Reinsurance Corp. a portion of the lines of the primary risk for nonlife, personal accident, and health insurance. CIRC also lowered the minimum required total asset level for an insurance brokerage license from $300 million to $200 million; the lower asset requirement took effect December 11, 2005. (As in past years, CIRC automatically lowered the total asset requirement without issuing a public announcement.) By lowering these requirements, China has fulfilled its year-four insurance commitments.

Outstanding commitments

But a few of China's year-four WTO services commitments remained unfulfilled as *CBR* went to press in mid-December 2005. Foreign companies are still waiting for signs from the PRC government that the following year-four commitments have been met.

● **Courier services**

China was to allow WFOEs in courier services to operate with no business scope restrictions, except for services that were reserved by law to the PRC postal authority at the time of China's WTO entry. Early drafts revising the PRC Postal Law have come under criticism for keeping too much of China's postal market closed to private and foreign courier service providers. As of mid December 2005, there had been no announcement from the National People's Congress on when it plans to approve final revisions or whether the government will otherwise address industry concerns.

● **Hospitality**

China was due to allow WFOEs in hotels and restaurants. As of mid-December 2005, there had been no announcement from MOFCOM confirming the implementation of these commitments.

● **Technical testing and freight inspection**

China was scheduled to allow WFOEs in technical testing and analysis services and freight inspection services, excluding statutory freight inspections. As of mid-December 2005, there had been no announcement from the State Administration for Quality Supervision, Inspection, and Quarantine or MOFCOM to implement this commitment.

—*Michael Overmyer*

As China nears the end of its WTO implementation process, foreign investors and government officials of some of China's main trade partners have begun to call on Beijing to pursue market openings not required by its WTO entry agreement.

China on its Priority Watch List of countries with a questionable IPR enforcement record. Countries included in the list must enter into good-faith negotiations and make significant progress in adequately and effectively protecting IPR to avoid being labeled a "Priority Foreign Country." Such countries could find themselves the subject of a US-initiated WTO dispute settlement case.

The TRM in action

The European Union, Japan, and the United States continued to make frequent use of the WTO Transitional Review Mechanism (TRM) for China in 2005. As in previous years, China's other trade partners used the TRM sparingly, if at all. The TRM is a process specific to China that the WTO established to report on China's implementation efforts and for member countries to question China's trade and business policies.

Subsidies were a key concern that the United States raised in the TRM in 2005. The PRC government agreed at the time of China's WTO entry to provide a full account of the subsidies it provides to companies, but China has yet to meet this pledge. The Office of the USTR said in July 2005 that China agreed once again at the 2005 Joint Commission on Commerce and Trade (JCCT) meeting to provide a full list of its subsidies by the end of 2005 (but as *CBR* went to press, China had yet to submit the list). In a September 2005 TRM filing, USTR asked China to account for its export, agriculture, and state-owned enterprise subsidies; price controls; and industrial assistance programs under the Northeast Revitalization Policy. USTR also asked China to explain what banking and financial sector reforms were planned to increase the role of market forces in determining loan allocations. USTR, and many independent analysts, allege that China's banks often make loans to subsidize companies and industries favored by government officials. The European Union and Japan have also called on China to account for its subsidies.

Trade officials from Brussels, Tokyo, and Washington also share concerns that China is developing policies to promote domestic auto manufacturers at the expense of foreign rivals, even though the WTO does not prohibit industrial policies. Questions have focused on changes to China's classification of certain auto parts that would raise tariffs on a number of currently imported components and therefore encourage localization. In addition, EU, Japanese, and US trade officials have questioned China's development of standards and technical regulations for automobiles.

Concerns with standards, technical regulations, and other nontariff trade barriers appeared throughout TRM filings. US and EU officials said the process companies must go through to acquire a China Compulsory Certification (CCC) mark is overly burdensome and asked China to allow foreign test laboratories to perform the tests needed to grant the CCC mark. US officials repeatedly questioned China's uses of sanitary and phytosanitary regulations, which US agricultural exporters say unfairly limit their sales.

China's dumping laws and procedures, which many observers criticize as opaque and biased, were also questioned in the TRM. China replied to the criticisms, saying its antidumping laws comply fully with WTO requirements.

Inching toward a fair procurement regime

In the second half of 2005, China took preliminary steps that may lead to its eventual accession to the WTO Government Procurement Agreement (GPA). GPA signatories agree to allow companies from GPA countries roughly equal access to government procurement contracts as domestic firms.

China agreed during its WTO entry negotiations to begin the process of joining the GPA "as soon as possible." Serious discussions on the matter did not take place until mid-2005, however, when US officials began to press China to

Although the benefits that foreign firms bring to China in terms of technical and managerial expertise are widely acknowledged, many PRC officials view market openings as one-sided concessions to trading partners and not as mutually beneficial.

move forward on GPA accession in response to proposed PRC rules on government procurement of software. The rules would have introduced high barriers to international software providers seeking to sell to the PRC government. Because observers expect more government procurement regulations to be issued over the next few years, getting China to sign the GPA is a key priority for US trade officials.

USTR said in July 2005 that China agreed at the JCCT meeting in Beijing to begin technical consultations with WTO members regarding GPA accession. Washington interprets this as a first move toward signing the GPA. MOFCOM officials say that they have no timetable for signing the GPA but that it is on the ministry's agenda. MOFCOM officials met with WTO officials in September 2005 to discuss the GPA. US officials say they aim to hold technical talks with their PRC counterparts in February 2006.

Negotiations on GPA accession are certain to involve bureaucratic wrangling within China. Many domestic industries and key PRC ministries view government procurement as a tool to promote domestic firms and therefore oppose China's signing of the GPA. US officials say their task is to show China how it would benefit from signing the GPA by gaining access to the US and other government procurement markets. (Of course, the prospect of PRC bidders for US government contracts is likely to be unpalatable to protectionist-minded lawmakers in Washington.)

Beyond WTO

As China nears the end of its WTO implementation process, foreign investors and government officials of some of China's main trade partners have begun to call on Beijing to pursue market openings not required by its WTO entry agreement. As noted above, China's banking sector commitments do not require the government to allow foreign acquisitions of PRC banks. Raising the caps on foreign holdings of Chinese banks to allow foreign-majority ownership, however, is a key goal of the US banking industry and the US government. Similarly, the US government and US securities firms are pressing China to go beyond its WTO commitments to allow foreign-majority ownership in that industry. Telecom providers are also seeking market access beyond the limited scope required by China's WTO accession protocol.

In industries that China's WTO commitments purportedly open completely to foreign-invested firms, companies sometimes find that China's laws and regulations meet the technical requirements of its WTO agreement but keep foreign-invested companies at a significant disadvantage to their domestic competitors. For example, foreign companies and trade officials point to China's use of technical standards, food-safety regulations, licensing requirements, and professional qualifications, among other nontariff barriers, as evidence of China's efforts to limit foreign access to the PRC market even as it implements WTO-mandated openings.

Whether foreign trade officials will be able to convince China to go beyond what is required by its WTO entry agreement and embrace market openings with fewer qualifications is, at best, uncertain. To date, PRC officials have been reluctant to discuss such market openings. Although the benefits that foreign firms bring to China in terms of technical and managerial expertise are widely acknowledged, many PRC officials view market openings as one-sided concessions to trading partners and not as mutually beneficial. As in all countries, PRC trade officials also face pressure from domestic companies and their bureaucratic champions to limit the market access of foreign competitors, which sometimes results in policies that undermine WTO principles. (For example, Washington continues to violate WTO rulings by distributing funds collected through antidumping duties to domestic companies, and an EU sugar subsidy was also found to violate WTO rules.) Unless its perspective changes, China will likely continue to seek ways to support domestic firms at the expense of foreign investors, while remaining within the bounds of its WTO commitments. 完

BUSINESS INTEGRITY IN CHINA

Michael Hougård Pedersen

Foreign companies with operations in China depend on their employees in China not just to carry out their specific job duties, but also to uphold and safeguard their companies' values and reputations. As a result, foreign companies must ensure that these employees comply with PRC laws and with applicable foreign laws, such as the US Foreign Corrupt Practices Act and Sarbanes-Oxley Act (see p.34). For these reasons—and the fact that China is considered one of the most corrupt countries in the world—understanding Chinese attitudes toward corruption, and toward foreign companies' business practices in China, is crucial.

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This article draws upon 13 recent interviews with a diverse group of Chinese working for US and European companies with operations in China. The interviewees range from senior and mid-level managers to ordinary employees in sales and marketing, finance, legal affairs, and purchasing. Most of them have had 5 to 10 years of work experience with several different foreign companies, all hold a university or business school degree, and some have studied or worked in Europe or in the United States. Because the interviews were conducted on the basis of full confidentiality, the identities of the interviewees and the companies for which they work are not disclosed.

Where to draw the line?

Chinese attitudes toward corruption tend to differ from those of Americans and Europeans. By and large, Chinese agree that corruption is the unfair misuse of power and company funds for inappropriate personal benefit at the cost of others. Yet the Chinese interviewed for this article generally approve of gifts and favors done to maintain *guanxi*, or relationships, with business and government associates (see p.35). They also endorse "facilitation payments" made to public officials to expedite government services that are necessary for business operations. The use of business agents is also seen as a customary and acceptable part of the Chinese way of doing business. Consequently, there is a fine

Chinese attitudes toward corruption, and toward foreign business practices in China, may surprise you

line between what Chinese believe is and is not corruption.

At the same time, there appears to be a general consensus among interviewees that corruption in China is severe, both in comparison to other Asian developing economies and to developing countries in general. "China is very corrupt, both in the public and the private sector," said one interviewee. "Everybody demands something in return for anything." Some interviewees stated that all companies operating in China, including foreign companies, are forced to engage in corrupt activities to make money. A few singled out European companies but also noted that companies whose business is especially dependent on dealings with PRC government entities face severe corruption challenges.

The Chinese interviewed for this article generally perceive business practices to have improved over the past 10 to 15 years in part because of the influx of foreign companies and the return of Chinese who have been educated abroad.

A changing environment?

Although the so-called "prisoner's dilemma is there" and "honest businesses do lose money," according to one interviewee, the Chinese interviewed for this article generally perceive business practices to have improved over the past 10 to 15 years in part because of the influx of foreign companies and the return of Chinese who have been educated abroad. In particular, within the past few years, an increasing number of foreign companies have tried to adjust people's attitudes, and more individuals see the need for and have an interest in change. One interviewee observed, "Just three years ago, you could give a $20,000 gift without problems. That is totally unthinkable today. We fired a lot of people in recent years because of bribes." US-based companies in particular have had to devise stricter internal rules and procedures for their operations in China in comparison to other foreign or domestic Chinese companies. Interviews suggested that while the anticorruption efforts of European companies may lag in comparison to those of their US counterparts, they are beginning to catch up.

According to interviewees, the importance of *guanxi* is gradually changing, especially in coastal cities. Though the Chinese interviewed for this article described *guanxi* as an important way of "getting things done" in a society that still lacks complete transparency, individuals are beginning to recognize that *guanxi*, if it is only based on money, is fragile and not necessarily sustainable. Also, because people frequently change positions and companies in China's rapidly developing economy, *guanxi* with individuals is of limited use. As one interviewee put it, "It is dynamic here. All people in important positions changed [jobs] in the past five years." As a result, more mature companies are now beginning to establish *guanxi* between companies by means of contracts that ensure longer-term business relationships. The importance of *guanxi* with public officials also seems to be declining. One interviewee observed that now companies can better afford to argue with public officials. As governmental transparency and accountability increase, and as government processes become more institutionalized, interviewees expect the importance of *guanxi* with public officials to continue to fade.

The Chinese interviewed for this article tend to look upon the future with optimism. They are confident that Chinese educated abroad will bring good business practices back home and that the growing number of corruption-related trials and imprisonments will have a deterrent effect. The interviewees also believe that China's accession to the World Trade Organization is creating an incentive for more government transparency and less corruption. As one interviewee said, the situation is "changing for the better in big cities and in economically developed areas. Government officials in Shanghai are much more disciplined and have a rule-based mentality." Last but not

More mature companies are now beginning to establish *guanxi* between companies by means of contracts that ensure longer-term business relationships.

least, this optimism is fueled by a growing understanding that kickbacks and the like can be effective only for "short and prompt actions" and that such practices "are not sustainable for long-term engagement" with any business partner.

Promoting business integrity

As foreign companies devise comprehensive ethics policies to ensure and document compliance with relevant laws, they will no doubt be interested in improving the implementation of these policies in their China operations. One key observation that emerged from the interviews is the importance of being appreciative when applying company-wide policies to China operations. As one interviewee pointed out, "The real challenge is to appreciate [the Chinese culture]. Some [foreign] companies come with the attitude: 'This is my way of doing business.' Others are more appreciative. These two approaches lead to different results." Examples of non-appreciative approaches, for which foreign companies have paid dearly, include devising zero-tolerance policies that prohibit the exchange of small gifts, which are considered an important token of appreciation in China, and sanctioning Chinese employees without prior communication or training.

In light of such experiences, some interviewees suggest that foreign companies should apply their ethics policies to their China operations through a more appreciative approach. In particular, foreign companies would do well to clarify and translate their policies through a dual internal learning process: an action-based learning process, aimed at increasing awareness among Chinese employees about the rules of business integrity, and an appreciative learning process, aimed at increasing awareness among non-Chinese employees about Chinese culture.

US Anticorruption Laws: A Primer

Foreign Corrupt Practices Act

The Foreign Corrupt Practices Act (FCPA) prohibits "US persons" from paying or offering to pay "anything of value" to any "foreign official" with the "corrupt purpose" of obtaining business with any person. The term "foreign official" includes officers and employees of wholly government-owned business enterprises. Interestingly, FCPA exempts "any facilitating or expediting payment" for "a routine governmental action," including customs clearance and visa issuance. Though FCPA also allows for "reasonable and bona fide expenditures" that are "directly related" to promotional purposes, legal experts note that it is difficult in practice to determine whether an expenditure is "reasonable," "bona fide," and "directly related" to promotional activities.

Companies that violate this antibribery provision may face a criminal fine of up to $2 million for each violation, be disqualified from US government contracting, and be denied export licenses. Individual violators may face a criminal fine of up to $250,000 and up to five years' imprisonment. Under the separate Alternative Fines Act (AFA), the criminal fine may be increased to up to twice the amount of the benefit that the defendant sought to secure.

FCPA also requires that companies listed in the United States accurately report all financial data in their books and records. Individuals who willfully and knowingly violate this requirement may face a fine of up to $5 million and imprisonment of up to 20 years; a company may be fined up to $25 million. Likewise, under AFA, the fine may be increased to up to twice the benefit that the defendant sought.

At first glance, FCPA appears to not necessarily apply to companies organized outside of the United States. The term "US persons" in the antibribery provision is defined as entities organized in the United States and individual US citizens and residents; the accounting provision applies only to companies listed in the United States. Moreover, FCPA lacks a provision that directly makes a US company liable for a foreign subsidiary's actions.

The US government, however, has interpreted the law to mean that a US parent company is liable for acts of its subsidiaries of which it knew and approved and acts of which it "should have known." Under this broad interpretation, US companies are responsible for the actions of their wholly owned subsidiaries and joint ventures in China, even those in which they hold only minority shares. Finally, under the antibribery provision, an individual US citizen or resident is liable even if he or she is acting on behalf of a foreign company, and US companies are responsible for the acts of their local agents in China.

Sarbanes-Oxley Act

The Sarbanes-Oxley Act of 2002 reinforces FCPA's accounting provisions. Indeed, its financial reporting measures include the requirement that chief executive officers and chief financial officers of companies listed in the United States certify that the company's financial reports "fairly present, in all material respects, the operations and financial condition" of the company. Those who provide such a certification "knowing" that it violates this and other requirements may be fined up to $1 million and face imprisonment of up to 10 years. Those who "willfully" provide certification knowing that it violates the requirements may be fined up to $5 million and face imprisonment of up to 20 years.

—*Victorien Wu*

Victorien Wu is junior editor of the *CBR*.

The interviewees believe that some implementation measures tend to work better than others in China. Successful measures include top management demonstrating exceptional commitment to discover, prevent, and stop corruption; establishing clear rules with clear sanctions; and providing continuous training. It is "important that top management sets strict rules and is seen as 'walking their talk,'" said one interviewee, because Chinese employees tend to see their managers as role models. They also prefer company values and rules to be specified in clear and explicit procedures. Along these lines, sanctions add to the effectiveness of rules. "When you keep on talking and fire bad people, the understanding will improve," one interviewee said.

It is important, however, to "not penalize people for not knowing," to the extent that "not having knowledge is not [the employees'] fault." Management should engage in comprehensive and continuous training efforts to foster awareness and understanding of the rules among its personnel. When designing and

When designing and implementing training programs, it is particularly important to "focus efforts on the employees that handle most of the value transfer," such as staff in purchasing and in sales and marketing.

A Fine Line

The 13 Chinese employees of US and European companies interviewed for this article highlighted the importance of certain long-standing Chinese business practices that are used to get deals in China. Though they noted that foreign companies have engaged in these practices—which may skirt the laws of their home countries, not to mention PRC law—they also mentioned that things are changing and that foreign companies that do not tolerate corrupt practices are having a positive effect on the commercial environment.

● ***Guanxi***, loosely translated as relationships, is considered "the most important factor in business" in China, where "price and quality come second." It is deeply rooted in Chinese culture and is basically "a tool to get business" and "a way of getting things done." It often takes months, perhaps even a year or more, to establish *guanxi*. This typically involves developing a personal relationship based on emotion, trust, and friendship. The most commonly used means include taking people out for meals, giving gifts and favors, and showing attention to both negative and positive developments in an associate's personal and professional life.

Guanxi with customers may be key to getting orders, updated market information, and payments for deliveries. "It is extremely important to maintain good guanxi with the 40–80 most important customers," said one interviewee. The more senior a person is in a company, the more important *guanxi* becomes. *Guanxi* with public entities is also considered important, especially to ensure expedited governmental procedures. One interviewee observed, "In China, interpretation [of regulations] often rests with [public] officials. It is a gray area. That is why relationships are so important. If you do not invite [tax officials] out for dinner, you might have to wait two or three years for a tax refund." On these grounds, companies dependent on the goodwill of public entities often hire senior external relations officers to ensure *guanxi* with government. Some even hire former government officials for such purposes.

There is no strict line between *guanxi* and corruption, according to one interviewee, except for the fact that the latter is legally forbidden. Generally, Chinese consider *guanxi* as normal, and they seem to fully accept gifts and favors as a means of developing good *guanxi*. Furthermore, from a Chinese perspective, "the value of a gift [or a favor] does not matter, if the purpose is business rather than personal benefit." On the other hand, they describe bad *guanxi* as corruption and damaging to one's reputation; this generally takes the form of bribes, kickbacks, and extraordinary commissions or payments for gambling trips to Las Vegas or even MBA studies abroad. If you have developed a relationship based on good *guanxi*, "you do not need to engage in corruption" to get business, according to one interviewee.

● **Facilitation payments** Many Chinese consider facilitation payments a legitimate means of ensuring quick public services, such as customs clearance or visa issuance, either through the exchange of small amounts of money or as an integrated part of "maintaining *guanxi* through regular gifts." By such a definition, "facilitation payments are very common" in China. Chinese generally neither question facilitation payments nor associate such payments with corruption. In fact, they tend to believe that "corruption is more than facilitation payments."

The forms that facilitation payments take seem to be changing simply because exchanges of money are becoming too risky. One interviewee noted, "Facilitation payments [in the form of money] used to be common, but this is changing in the big cities. The risks have become too high. Unless you earn more than $2 million, it is not worth it." Along these lines, it is normal to give small gifts, for example when applying for a visa, and public officials may ask for favors by indirectly asking questions such as, "My son is looking for a job. Are there any openings in your company?" Also, small, regular gifts at Chinese New Year and other special occasions are becoming increasingly common.

● **Agents and distributors** In the PRC market, "it is common practice to use third parties" such as agents and distributors. This practice is widely accepted as an effective means of selling a "product with higher profits," since such entities often substantially reduce transaction costs. Chinese agents and distributors are often corrupt, however. Foreign companies want to "keep clean hands" and consider agents and distributors "useful channels of corruption." One interviewee conceded, "Some expenses simply cannot be reimbursed in foreign companies, and sometimes a commission is the last obstacle to finalizing a deal. If so, we will ask an agent or a distributor to channel the commission." Some companies are eliminating the use of agents or are developing strict rules for their use.

—Michael Hougård Pedersen

implementing training programs, it is particularly important to "focus efforts on the employees that handle most of the value transfer," such as staff in purchasing and in sales and marketing. It is also important to educate managers because "Chinese tend to check with their superiors before taking decisions." One effective way of involving managers is to create incentives for them to participate in training. One interviewee revealed, "We make sure to tell our managers: 'If you want to be promoted, you have to comply [with our rules]. Unless

Realizing that "agents and distributors are often one-person companies, which makes them difficult to manage," some companies even phase out their work relationships with intermediaries.

you have completed compliance training, you cannot be promoted.'" Interviewees stressed that training should be "practical" and "down to earth." For example, some companies' training sessions involved "asking salespeople to come up with good examples" of ethical dilemmas that they have experienced in their work.

In terms of specific company policies, foreign companies are starting to develop innovative means of ensuring compliance with business integrity rules. In addition to seeking exceptionally principled individuals for positions in purchasing and sales and marketing, companies have found it useful to include their rules in employees' employment contracts. Some have even reduced the decisionmaking authority of salespeople. To limit the importance of personal *guanxi*, an increasing number of companies are choosing to establish *guanxi* with their business partners through written contracts that refer to functional units rather than names of particular individuals. Some have also introduced rules that require individuals to obtain the approval of the company's legal affairs department prior to a gift exchange if a gift is more than $500. There are also companies that require all services to be paid through bank transfers. One interviewee noted, "We make sure that there is a bank transfer. It is an effective means [against corruption] because in China no bank transfer is possible between individuals; bank transactions can only be done between companies."

Foreign companies are also struggling with how to handle agents and distributors that act (and sometimes bribe) on their behalf. Some possible solutions to this challenge include stating the company's rules to agents and distributors in writing, engaging problematic intermediaries in dialogue, and undertaking comprehensive due diligence to understand the company's business aspects, reputation, and government relations. Realizing that "agents and distributors are often one-person companies, which makes them difficult to manage," some companies even phase out their work relationships with intermediaries.

A delicate balance

Though interviewees were generally optimistic about the eventual reduction of corruption in China, they offered some words of caution to foreign companies operating in China. One weakness they identified among foreign companies is an aversion to sharing information on the problem of corruption—despite their common suffering and interest in eliminating it—which stands in the way of progress. Another problem they identified arises out of the recognition that structure is sometimes the enemy of innovation—that imposing too many rules on employees may stifle initiative. Of course, the key for foreign companies with operations in China is to channel the initiative of their Chinese employees in ways that bring profits without compromising their companies' values and reputations. 完

Short Takes

Continued from page 4

Top 500 FIEs in China Ranked

In early December 2005, MOFCOM published the 2005 list of the top 500 FIEs in China by sales. The 405 manufacturing enterprises account for 81 percent of the top 500, while services providers make up 18 percent of the total. Hong Kong remains the lead "foreign" investor in China, with 136 enterprises on the list, followed by Japan (83), the Virgin Islands (67), and the United States (32). Hongfujin Precision Industries (Shenzhen) Co. Ltd., Motorola (China) Electronics Ltd., and Shanghai Hewlett-Packard Co. Ltd. ranked as the top three FIEs. As in previous lists, the "foreign" investment of many FIEs is actually domestic Chinese funds that are routed through Hong Kong or another offshore locality to take advantage of preferential policies for foreign investors.

PRC Launches Government Web Portal

In an effort to improve governmental transparency, the PRC government launched an English-language website, english.gov.cn, in late November. Like its Chinese-language counterpart, gov.cn, the English-language portal allows visitors to browse news headlines and link to websites of PRC government bodies. The portal also links to websites containing information for prospective investors, residents, and visitors.

Internet Use Deepens; Broadband Overtakes Dial-Up

Chinese netizens are increasingly accessing the Internet through broadband connections at home, according to a major survey recently completed by the Chinese Academy of Social Sciences. In 2005, nearly 60 percent of people going online used broadband, while only 18 percent used dial-up modems, down from 53 percent in 2003. Slightly more people were accessing the Internet from home in 2005—76 percent, compared to 73 percent in 2003. This corresponds to a slight drop in the percentage of people accessing the Internet from cafés, from 34 percent to 30 percent. Internet users are also spending more time online, recording an average of 3 hours a day, up from 2 hours in 2003. The survey reveals that Chinese surfers go online primarily for entertainment—to read entertainment news, download music, and play online games. Television and newspapers remain the primary sources of domestic and international news, however. As in previous years, the typical Internet user is young, male, well educated, and well paid.

Sales and Investment September 16–November 15, 2005 Compiled by Maria Repnikova

The following tables contain recent press reports of business contracts and negotiations exclusive of those listed in previous issues. For the most part, the accuracy of these reports is not independently confirmed by *CBR*.

Firms whose sales and other business arrangements with China do not normally appear in press reports may have them published in the *CBR* by sending the information to the attention of the editor at publications@uschina.org.

Advertising, Marketing & PR

INVESTMENTS IN CHINA

JCDecaux SA (France)/Beijing Gehua Cultural Development Group

Formed a 30-year outdoor advertising joint venture, Gehua JCDecaux Outdoor Advertising Co. Ltd. in Beijing. (France:50%-PRC:50%). 11/05.

Architecture, Construction & Engineering

INVESTMENTS IN CHINA

Singapore Technologies Kinetics, a unit of Singapore Technologies Engineering Ltd./Guiyang City Industrial Investment Holding Corp. (Guizhou)

Will form joint venture to design, manufacture, and distribute excavators, specialty vehicles, and engineering products for construction, mining, and related industries. $20 million. (Singapore:60%-PRC:40%). 09/05.

OTHER

Modern Engineering Inc. (US)

Opened engineering center in Shanghai. 11/05.

Automotive

INVESTMENTS IN CHINA

Aisin Seiki Co., Toyota Boshoku Corp. (Japan)

Formed joint venture, Tianjin Feng Ai Automobile Seat Parts Co., to produce car seat parts in Tianjin. 11/05.

Cornell Capital Partners LP (US)/Beijing Jinche Yingang Auto Maintenance Center

Formed joint venture, Beijing Sino-US Jinche Yingang Auto Tech Services Ltd., to provide after-sales vehicle servicing. (US:33%-PRC:67%). 11/05.

The Yokohama Rubber (China) Co., a subsidiary of the Yokohoma Rubber Co. Ltd. (Japan)/Shandong Yuema Rubber Belt Co.

Will form joint venture, Shandong Yokohama Rubber Industrial Products Co., Ltd., to manufacture steel cord and fabric conveyor belts in Feifang, Shandong. (Japan:51%-PRC:49%). 11/05.

The Yokohama Rubber Co., Ltd., Toyota Machine Works Ltd., Yamasei Kogyo Ltd. (Japan)

Formed joint venture, Yamasei Automotive (Foshan) Co., Ltd., to manufacture conveyor belts in South China. 11/05.

ZF Friedrichshafen AG (Germany)

Established a WFOE, ZF Drivetech (Hangzhou) Co., to assemble and market transmissions for heavy commercial vehicles in Hangzhou, Zhejiang. 11/05.

ComfortDelgro Co. Ltd. (Singapore)

Bought Liaoning-based Shenyang Passenger Transport Group. $73.2 million. 10/05.

Cooper Tire & Rubber Co. (US)/Shandong Chengshan Tire Co. Ltd.

Will form two joint ventures, Cooper Chengshan (Shandong) Passenger Tire Co. and Cooper Chengshan (Shandong) Truck Tire Co., in Chengshan, Shandong. (US:51%-PRC:49%). $70 million. 10/05.

Denway Motors Ltd. (Hong Kong)

Will buy 49% stake in Guangzhou Automobile Group Component Co. Ltd. 10/05.

Pirelli & C. SpA (Italy)/Shandong Roadone Tyre Co.

Formed joint venture in Shandong to produce high-quality truck tires. (Italy:60%-PRC:40%). 10/05.

Siegel Robert Automotive Co., a division of Siegel-Robert Corp. (US)

Will open a new factory in Suzhou, Jiangsu, to manufacture auto components. 10/05.

Cummins Inc. (US)/Shaanxi Automotive Group Co. Ltd.

Formed joint venture, Xi'an Cummins Engine Co., to produce the Cummins ISM 11-liter, heavy-duty engine in Xi'an, Shaanxi. (US:50%-PRC:50%). $24 million. 09/05.

Abbreviations used throughout text: **ABC**: Agricultural Bank of China; **ADB**: Asian Development Bank; **ASEAN**: Association of Southeast Asian Nations; **AVIC I and II**: China Aviation Industry Corp. I and II; **BOC**: Bank of China; **CAAC**: General Administration of Civil Aviation of China; **CATV**: cable television; **CBRC**: China Banking Regulatory Commision; **CCB**: China Construction Bank; **CCTV**: China Central Television; **CDB**: China Development Bank; **CDMA**: code division multiple access; **CEIEC**: China National Electronics Import and Export Corp.; **China Mobile**: China Mobile Communications Corp.; **China Netcom**: China Netcom Corp. Ltd.; **China Railcom**: China Railway Communications Co., Ltd.; **China Telecom**: China Telecommunications Group Corp.; **China Unicom**: China United Telecommunications Corp.; **CIRC**: China Insurance Regulatory Commission; **CITIC**: China International Trust and Investment Corp.; **CITS**: China International Travel Service; **CNOOC**: China National Offshore Oil Corp.; **CNPC**: China National Petroleum & Gas Corp.; **COFCO**: China National Cereals, Oils, and Foodstuffs Import and Export Corp.; **COSCO**: China Ocean Shipping Co.; **CSRC**: China Securities Regulatory Commission; **DSL**: digital subscriber line; **ETDZ**: economic and technological development zone; **GSM**: global system for mobile communication; **ICBC**: Industrial and Commercial Bank of China; **IT**: information technology; **LNG**: liquified natural gas; **MII**: Ministry of Information Industry; **MOFCOM**: Ministry of Commerce; **MOU**: memorandum of understanding; **NA**: not available; **NDRC**: National Development and Reform Commission; **NORINCO**: China North Industries Corp.; **PAS**: personal access system; **PBOC**: People's Bank of China; **PetroChina**: PetroChina Co., Ltd.; **RMB**: renminbi; **SARFT**: State Administration of Radio, Film, and Television; **SEZ**: special economic zone; **SINOPEC**: China National Petrochemical Corp.; **SINOTRANS**: China National Foreign Trade Transportation Corp.; **UNDP**: United Nations Development Program; **SME**: small and medium-sized enterprise; **WFOE**: wholly foreign-owned enterprise

JL French Automotive Castings Inc./Chongqing Yujiang Die Casting Co. Ltd., Chongqing Liangjiang Machine Manufacture Co. Ltd.

Formed joint venture, Chongqing JL French-Yumei Die Casting Co. Ltd., to produce high-pressure aluminum die-castings and machined and assembled components in Chongqing. 09/05.

OTHER

General Motors Corp. (US)/Shanghai Automotive Industry Corp.

Signed an agreement to jointly pursue development and commercialization of hybrid and fuel-cell vehicles in China. 11/05.

Aviation/Aerospace

CHINA'S EXPORTS

Air China Ltd. (Beijing)

Won a PW4000 thrust reversers maintenance and overhaul contract from Sweden-based SAS AB. 11/05.

CHINA'S IMPORTS

The Boeing Co. (US)

Will provide 150 B737 aircraft to China Aviation Supplies Import & Export Group. $9 billion. 11/05.

ST Aerospace Ltd., a division of ST Engineering Ltd. (Singapore)

Won an aircraft maintenance contract from Beijing-based China United Airlines, a subsidiary of Shanghai Airlines. $9 million. 11/05.

The Boeing Co. (US)

Will provide eight B787 aircraft to Hainan Airlines Co. 09/05.

INVESTMENTS IN CHINA

SR Technics UK Ltd. (UK)/Okay Airways Co. (Tianjin)

Signed an MOU to form a maintenance joint venture in Tianjin. 11/05.

Agusta Westland Co. (Italy)/Jiangxi Changhe Aviation Industrial Co. Ltd.

Will form joint venture to produce A109E helicopters in China. 09/05.

Banking & Finance

INVESTMENTS IN CHINA

ADB

Will invest $75 million in BOC, giving ADB a stake of less than 1%. 10/05.

BNP Paribas (France)

Will buy 20% stake in Nanjing City Commercial Bank. $85 million. 10/05.

Deutsche Bank AG, Sal. Oppenheim jr. & Cie. KgaA (Germany)

Bought 14% stake in Beijing-based Huaxia Bank Co. Ltd. $329 million. 10/05.

General Electric Co. (US)

Will buy 7% stake in Shenzhen Development Bank Co. $100 million. 10/05.

Pangaea Capital Management (Singapore)

Bought 289 million non-traded shares of Beijing-based Huaxia Bank Co., Ltd. $125 million. 09/05.

PSA Peugeot-Citroën (France)/BOC

Formed joint venture to provide auto-financing services in China. 09/05.

Standard & Poor's Corp., a division of the McGraw-Hill Companies, Inc. (US)/CITIC Securities Co. Ltd. (Beijing)

Will form a joint venture to develop and sell stock indexes. $1 million. 09/05.

UBS AG (Switzerland)

Will buy 20% stake in Beijing Securities Co. Ltd. $211 million. 09/05.

OTHER

Bank of East Asia (Hong Kong)

Will sell Beijing-based China Life Insurance Co. Ltd. products through its mainland branches. 11/05.

Barclays Capital, a division of Barclays Bank plc (UK)

Will open a branch in Shanghai. 11/05.

DaimlerChrysler AG (Germany)

Will launch an auto-financing program in China. 11/05.

AIG Private Bank Ltd., a subsidiary of American International Group, Inc. (US)

Opened an office in Shanghai. 10/05.

International Industrial Bank (Russia)

Reached an agreement with Beijing-based Poly Technologies Inc. to service its contracts with Russian defense enterprises. 10/05.

Chemicals, Petrochemicals & Related Equipment

CHINA'S IMPORTS

Linde AG (Germany)

Won a contract from Beijing-based PetroChina Co. Ltd., to build China's largest ethylene plant in Dushanzi, Xinjiang. $140 million. 09/05.

CHINA'S INVESTMENTS ABROAD

China National BlueStar Co., a subsidiary of China National Chemical Corp. (Beijing).

Bought Belgium-based Drakkar Holdings SA from CVC Capital Partners Ltd. 10/05.

China National Chemical Corp. (Beijing)

Will buy Qenos Holdings Pty., a joint venture between Australia-based Orica Ltd. and US-based Exxon Mobil Corp. 10/05.

INVESTMENTS IN CHINA

PPG Industries, Inc. (US)/Sinoma Jinjing Fiber Glass Co. Ltd. (Beijing)

Will form a joint venture, PPG Sinoma Jinjing Fiber Glass Co. Ltd., to manufacture thermosets at Sinoma Jinjing Fiber Glass plant in Zibo, Shandong. (US:50%-PRC:50%). 10/05.

Royal DSM NV (the Netherlands)

Bought Guangdong-based Syntech Co. 10/05.

Royal DSM NV (the Netherlands)/North China Pharmaceutical Group Corp. Ltd. (Hebei)

Will form two joint ventures to develop nutritional and anti-infection products in Shijiazhuang, Hebei. (the Netherlands:49%-PRC:51%). 10/05.

Wacker-Chemie GmbH (Germany)/Dymatic Chemicals Inc. (Hong Kong)

Will form a joint venture, Wacker Dymatic Shunde Co. Ltd., in Shunde, Guangdong, to make silicon products for the textile industry. 10/05.

QIAGEN NV (the Netherlands)
Will will buy 100% of the outstanding shares of Shenzhen-based PG Biotech Co. Ltd. $14.5 million. 09/05.

Electronics, Hardware & Software

CHINA'S IMPORTS

Avanquest Software (France)
Will provide Mobile PhoneTools PC-Cellular convergence software to Shandong-based Haier Telecom Co. Ltd. 10/05.

INVESTMENTS IN CHINA

Chi Mei Optoelectronics Corp. (Taiwan)
Will buy 50% stake in Zhejiang-based Chi Mei Optoelectronics Corp. from Landmark International Ltd. $30 million. 11/05.

MYOB Ltd. (Australia)/Jin Cai Co. (Sichuan)
Formed joint venture, Zhi Guan Technology Co. Ltd. (Australia:95%-PRC:5%). 11/05.

Sharp Corp. (Japan)
Will buy 8.72% stake in Nanjing Sharp Electronics Co., Ltd. from Nanjing Panda Electronics Co. Ltd. $10.1 million. 10/05.

International Finance Corp.
Will invest $15 million in Beijing-based Chinasoft International Ltd. 09/05.

Micron Technology Inc. (US)
Will set up a chip plant in Xi'an, Shaanxi. $250 million. 09/05.

Microsoft Corp. (US)
Invested $20 million in Beijing-based ChinaSoft International Ltd. 09/05.

OTHER

Jurong Technologies Industrial Corp. (Singapore)
Signed MOU with Jiangsu-based China Precision Technology Ltd. to act as each other's preferred sub-contractor and to carry out joint product development. 10/05.

Wyse Technology Inc. (US)
Will open Asia-Pacific headquarters and R&D center in Beijing. 10/05.

Cypress Semiconductor Corp. (US)
Established a regional chip design center in Shanghai. 09/05.

Sequiam Biometrics, Inc., a subsidiary of Sequiam Corp. (US)/Henyue Manufacturing Co. (Guangdong)
Signed manufacturing agreement to facilitate manufacturing duties for Sequiam Biometrics BioVault 2.0. 09/05.

Energy & Electric Power

CHINA'S IMPORTS

Gamesa Technologica SA (Spain)
Won a contract from China Longyuan Electric Power Group Corp., a subsidiary of Beijing-based China Guodian Group, to supply wind-turbine generators. $187 million. 11/05.

Telvent GIT, SA (Spain)
Won a contract from Guangdong Dapeng LNG Co. Ltd., to provide technological solutions for Guangdong Dapeng's liquefied natural gas project. $940,000. 11/05.

Alstom SA (France)
Won a contract from Guangxi Fangyuan Power Co. to supply four 57-MW bulb turbine and generator units for the Qiaogong hydropower station in Guangxi. $61.7 million. 10/05.

Gamesa Technologica SA (Spain)
Won wind turbine contracts from Liaoning Kangping Jinshan Wind Power Co. and Zhangwu Jinshan Wind Power Co. $16.8 million. 09/05.

INVESTMENTS IN CHINA

FutureGen Industrial Alliance (US)/China Huaneng Group (Beijing)
Will jointly build the world's first near-zero emission coal-fired power plant. 10/05.

General Electric Co. (US)/Hangzhou Industrial Assets Administration (Zhejiang)
Formed a joint venture, Asian Hydropower Equipment Co., to manufacture hydro-generators and other hydropower equipment in Hangzhou, Zhejiang, to sell in China and abroad. 10/05.

United Solar Ovonic Corp., a subsidiary of Energy Conversion Devices, Inc. (US)/Tianjin Jineng Investment Co.
Will form a joint venture to establish an amorphous silicon photovoltaic module manufacturing operation in Tianjin. 09/05.

Environmental Equipment & Technology

CHINA'S EXPORTS

Beijing G&M Construction Co.
Won a contract from Nigeria's Ministry of Water Resources to provide 588 water access points across Nigeria. $5.43 million. 10/05.

CHINA'S IMPORTS

Fuel-Tech NV (the Netherlands)
Will install hybrid NOxOUT technology at a China Power Investment Corp. plant in Xuzhou, Jiangsu. $6 million. 11/05.

Veolia Environment SA (France)
Won a 30-year contract to manage a municipal water system in Changzhou, Jiangsu. $954 million. 10/05.

Food & Food Processing

INVESTMENTS IN CHINA

Nisshin Foods Inc., Nisshin Flour Milling Inc., units of Nisshin Seifun Group (Japan)
Will build a facility to manufacture premixed flour products in Qingdao, Shandong. $6 million. 11/05.

Forestry, Timber & Paper

INVESTMENTS IN CHINA

Lesy CR (Czech Republic)
Will form a forestation joint venture in Shizuishan, Ningxia. (Czech Republic:51%-PRC:49%). 11/05.

Healthcare Services & Investment

INVESTMENTS IN CHINA

Chestnut Global Partners LLC, a subsidiary of Chestnut Healthcare Systems, Inc. (US)/Psychcn Technology Development Co., Ltd., Xinyueyinhe Culture Development Co., Ltd. (Beijing)
Formed joint venture, Psychcn-Chestnut Global Partners, Inc., to offer employee assistance services to Chinese nationals at MNCs in Beijing. 09/05.

Infrastructure

CHINA'S IMPORTS

Kone Corp. (Finland)
Will provide about 190 escalators, elevators, and moving walkways for the new Terminal 3 building at Beijing Capital International Airport. $12 million. 10/05.

Ultra Electronics Holdings plc (UK)
Won a contract to provide IT integration services to Shanghai Pudong International Airport. $9 million. 09/05.

INVESTMENTS IN CHINA

MTD Capital Bhd (Malaysia)/Guangxi Zhuang Automonous Region Communication Department
Signed a joint venture framework agreement to construct and maintain the Yangshuo-Luzhai expressway project in Guangxi. 10/05.

OTHER

Tyco International Ltd. (US)
Opened China headquarters in Beijing. 10/05.

Insurance

INVESTMENTS IN CHINA

Lloyd's of London (UK)
Will establish a subsidiary in China. 11/05.

Internet/E-Commerce

INVESTMENTS IN CHINA

CDC Corp. (Hong Kong)
Bought Gametea, a leading online games platform in China. 10/05.

Light Industry & Manufacturing

INVESTMENTS IN CHINA

A.O. Smith Corp. (US)
Will buy Hunan-based Yueyang Zhongmin Special Electrical Machinery Co., Ltd. 11/05.

Unilever plc (UK)
Opened global production center in Hefei, Anhui. $50 million.11/05.

Machinery & Machine Tools

INVESTMENTS IN CHINA

The Carlyle Group (US)
Will buy 85% stake in Shenzhen-based Xugong Group Construction Machinery Co. Ltd. $375 million. 10/05.

Gleason Corp. (US)/Harbin No. 1 Tool Corp. (Heilongjiang)
Will form a joint venture, Gleason Yi Gong (Harbin) Cutting Tools Co., Ltd., to produce precision gear cutting tools in Harbin, Heilongjiang. 10/05.

Media, Publishing & Entertainment

INVESTMENTS IN CHINA

Haw Par Corp. Ltd. (Singapore)/Chengdu Amusement Park (Sichuan)
Formed joint venture to build an aquarium, the Chengdu Amusement Park Oceanarium. 11/05.

The Tussauds Group (UK)
Will open a Madame Tussaud's waxworks museum in Shanghai. 11/05.

The Carlyle Group (US)
Invested $10 million in Beijing-based Zcom.com, a producer and distributor of digital magazines. 09/05.

OTHER

Skype Technologies SA (Luxembourg)/Tom Online Inc. (Beijing)
Entered into agreement to launch instant messaging service. 09/05.

Metals, Minerals & Mining

CHINA'S IMPORTS

The Siemens Industrial Solutions and Services Group, a subsidiary of Siemens AG (Germany)
Won a contract from Wuyang Iron and Steel Co. to equip a new slab-casting plant with electrical systems. $3.6 million. 10/05.

INVESTMENTS IN CHINA

Aluminum Co. of America Inc.(US)/CITIC Group (Beijing)
Formed joint venture, AA Bohai Aluminum Industrial Co., to produce high-grade aluminum plates and strip foil in Qinhuangdao, Hebei. (US:73%-PRC:27%). $231.1 million. 09/05.

OTHER

Mitsubishi Corp. (Japan)/China Minmetals Corp. (Beijing)
Formed a strategic partnership. 11/05.

Jilin Jien Nickel Industry Co. Ltd.
Provided a loan to Canada-based Liberty Mines Inc. to construct infrastructure and purchase concentrating equipment for a new mill at the Redstone mine in Ontario. $4 million. 09/05.

Petroleum, Natural Gas & Related Equipment

CHINA'S IMPORTS

Wärtsilä Corp. (Finland)
Won a contract from Shandong-based Yantai Raffles Shipyard Co. Ltd. to supply main engines, thrusters, and associated ancillary equipment for a new offshore drilling platform. $17.6 million. 11/05.

INVESTMENTS IN CHINA

Total SA (France)/Sinochem International Co. Ltd. (Shanghai)
Will form a joint venture to set up a network of 300 gas stations in eastern China. (France:49%-PRC:51%). 10/05.

Ports & Shipping

INVESTMENTS IN CHINA

Advanced Production and Loading AS (Norway)
Signed contracts with CNOOC to design, engineer, and supply two Single-Point Mooring and Fluid Transfer systems. $60 million. 10/05.

Hanjin Shipping Co. Ltd. (South Korea)/Qingdao Shunhe Shipping Co. (Shandong)
Formed a joint venture to develop a ship repair facility in Qushan Island, Shandong. (South Korea:50%-PRC:50%). $40 million. 10/05.

Macquarie International Infrastructure Fund Ltd. (Singapore)
Bought 38% stake in Jiangsu-based Changshu Xinghua Port. $158 million. 10/05.

OTHER

Advanced Production and Loading AS (Norway)
Opened an office in Shanghai. 10/05.

Rail

CHINA'S IMPORTS

General Electric Co. (US)
Won a contract from the Ministry of Railways to supply 6,000-horsepower locomotives in cooperation with the Qishuyan Locomotive and Rolling Stock Works. $450 million. 11/05.

Siemens AG (Germany)
Will provide 72 new cars to Shanghai Subway Co. 11/05.

Siemens AG (Germany)
Won a contract from the Ministry of Railways to supply 60 high-speed trains through its partnership with Tangshan Locomotive & Rolling Stock Works. $783 million. 11/05.

INVESTMENTS IN CHINA

American New Energy Investment (Hong Kong)/Fuling Foreign Trade and Economic Bureau (Chongqing)
Signed a preliminary agreement to build and operate a railway in Fuling, Chongqing. $260 million. 09/05.

Raw Materials

INVESTMENTS IN CHINA

ThyssenKrupp Minenergy GmbH, a unit of ThyssenKrupp Services AG (Germany)
Bought 25% stake in Beijing-based BCCW Jiahua Coking & Chemical Co. Ltd., to secure a long-term supply of important raw materials. 10/05.

HeidelbergCement AG (Germany)/Tangshan Jidong Cement Co. Ltd. (Hebei)
Formed joint venture to produce and market cement in Shaanxi. 09/05.

Real Estate & Land

INVESTMENTS IN CHINA

Allgreen Properties Ltd. (Singapore), Kerry Properties Ltd. (Hong Kong), Shangri-La Asia Ltd. (Hong Kong)/Shanghai Lujiazui Finance & Trade Zone Development Ltd.
Formed joint venture to acquire and develop a mixed development at the Shanghai New International Expo Center. (Singapore:16%-Hong Kong:64%-PRC:20%). $490 million. 10/05.

Hang Lund Properties Ltd. (Hong Kong)
Bought commercial site in Shenyang, Liaoning. $94 million. 10/05.

Kerry Properties Ltd. (Hong Kong)
Bought property in Hangzhou, Zhejiang, to build a complex of shopping malls and entertainment facilities. $303 million. 10/05.

Sun Hung Kai Properties Ltd. (Hong Kong)/China Resources (Holdings) Co. Ltd. (Beijing)
Will form joint venture to develop a property project in Zhejiang. (Hong Kong:60%-PRC:40%). $90 million. 10/05.

Research & Development

INVESTMENTS IN CHINA

Novartis AG (Switzerland)
Will set up R&D center in China. 11/05.

Intel Corp. (US)
Will establish Asia-Pacific R&D Ltd. in Shanghai. 09/05.

L'Oréal SA (France)
Established an R&D center in Shanghai. 09/05.

Retail/Wholesale

INVESTMENTS IN CHINA

Tecnica SpA (Italy)/Fengtai Group (Beijing)
Formed a joint venture to distribute Tecnica's sporting apparel in Beijing. 10/05.

OTHER

Wal-Mart Stores, Inc. (US)
Will open 12 more stores in China next year. 11/05.

Wal-Mart Stores, Inc. (US)
Opened its first outlet in Jinjiang, Fujian. 11/05.

Telecommunications

CHINA'S EXPORTS

ZTE Corp. (Shenzhen)
Won a contract from Nigerial Telecommunications Ltd. to expand Nigeria's CDMA network. 11/05.

Huawei Technologies Co. Ltd. (Shenzhen)
Won a contract from Telecel-Burundi Co. to expand Telecel's GSM network and build a CDMA network. $2.59 million. 10/05.

CHINA'S IMPORTS

LM Ericsson Ltd. (Sweden)
Won contracts from Guangdong Mobile Communications Corp. and Guangxi Mobile Communications Corp. to expand their GSM networks. $290 million. 10/05.

UTStarcom, Inc. (US)
Won contracts from Beijing-based China Telecom to expand IP-based personal access system networks in Chongqing, Guangdong, Jiangsu, Sichuan, Yunnan, and Zhejiang. $42 million. 10/05.

Catapult Communications Corp. (US)
Will provide simulation and load-testing technology to China Mobile. 09/05.

3Com Corp. (US)
Will increase stake in Zhejiang-based Huawei-3Com Technology Co. Ltd., from 49% to 51%. $28 million. 11/05.

Wiremedia Inc. (US)
Will launch a subsidiary in Shanghai. 11/05.

Benefon Oyj (Finland)/Beijing Capitel Co., Ltd.
Will form joint venture in Beijing to develop and manufacture GPS mobile phones and Mobile Telematics solutions. 10/05.

Nokia Corp. (Finland)/China Putian Corp. (Beijing)
Will form joint venture to offer Nokia products based on Beijing-backed TD-SCDMA standard for third-generation wireless telephony. $111 million. 10/05.

Guangzhou Ariane Telecom Technology Co. Ltd., a unit of ArianeCorp. Ltd. (Singapore)/China Satellite Communications Corp. (Beijing)
Will form joint venture to develop and operate a "push-to-talk" digital trunking mobile communication system. (Singapore:49%-PRC:51%). $6.2 million. 09/05.

OTHER

Oracle Corp. (US)
Opened carrier grade framework competency center in Shenzhen. 10/05.

TechnoConcepts, Inc. (US)
Signed an agreement with China Electronics Corp. to provide technology for use in third-generation mobile phones. 09/05.

Unlike in France and Italy, the purchase of fakes by consumers is still legal in China. Perhaps the time is ripe to amend the law so that the knowing purchase of counterfeit and pirated products constitutes an administrative offense or misdemeanor warranting a hefty fine.

Silk Market Fakes—
Light at the End of the Tunnel?

Continued from page 17

lords to become "partners" in anticounterfeiting efforts by adopting a series of agreed protocols and procedures for dealing with vendors found handling fakes of their brands. If satisfactory cooperation can be achieved in Beijing, the IWG will then roll out similar initiatives in other major cities in China—the next obvious target being Guangzhou, where the bulk of China's counterfeit fashion products are sourced, both for domestic sale and for export.

The Luxury Goods IWG hopes to convince Beijing Haosen and other landlords to insert a "two-strike" rule into their lease agreements with vendors. Under the rule, lessees found selling fakes would be suspended from operating in the market for 30 days following a first offense and terminated following a second offense. The IWG also hopes that, as part of any protocol, landlords will agree to use forfeited security deposits to fund market surveys and other enforcement work. Clearly, government support for these negotiations will be essential.

The Silk Street Market project has naturally attracted the interest of other foreign fashion and apparel companies, many of which are hoping to join forces in a broader enforcement campaign that targets landlords. Brand owners in other industry sectors, including information technology, cosmetics, and sports equipment, are studying the Luxury Goods IWG's progress.

Working together and with local governments

To exploit the landlord liability strategy effectively, companies in any particular sector must consider the benefits of working in coalitions rather than going it alone. Companies that combine their financial and political capital have a much higher chance of enjoying support from municipal and county governments. Most of the retail and wholesale markets in China where counterfeits are traded are owned directly or indirectly by local governments, and thus a quick decision by local government and party organs may be all that is needed to activate effective landlord liability programs.

Brand owners will also need to commit adequate resources to ensure that targeted markets are regularly revisited. Regular monitoring should help to educate landlords that the activities of their lessees are being scrutinized not only by the AICs (whose enthusiasm has a tendency to wane over time) but also by brand owners themselves. With luck, some—if not all—of the costs of market surveys and negotiations with landlords can be paid from the rental deposits that have been forfeited by vendors of fakes that are identified in prior sweeps.

As the *CBR* went to press, the Beijing No. 2 Intermediate People's Court was expected to issue a decision in the pending civil actions brought by the Luxury Goods IWG in late December 2005 or early 2006. The court's decision is likely to attract considerable publicity, which will, one hopes, serve to reinforce the PRC government's commitment to targeting landlords, and not just vendors, in future enforcement work in retail and wholesale markets.

Consumer education

Consumers who buy fake apparel, sports equipment, and fashion accessories are supporting criminal syndicates, undermining market opportunities for smaller legitimate players, and denying the government needed tax revenues. At the same time, however, the purchase of fakes in the Silk Street Market and elsewhere is increasingly regarded as a form of entertainment for the growing flocks of tourists and expatriate residents in China.

Unlike in France and Italy, the purchase of fakes by consumers is still legal in China. Perhaps the time is ripe to amend the law so that the knowing purchase of counterfeit and pirated products constitutes an administrative offense or misdemeanor warranting a hefty fine. Not just in China, but globally.

In the meantime, educational programs are sorely needed in China to convince employees of multinational companies, hotel clients, travel agents and tour operators, and even those working in embassies and visiting government delegations to stay away from markets that thrive mainly through trade in fakes. 完

The Quality Brands Protection Committee

The Quality Brands Protection Committee (QBPC, www.qbpc.org.cn) was formally established in 2000 to work with the central and local governments, industry, and other organizations in China to strengthen anticounterfeiting efforts in China. Its 131 member companies include European, Japanese, and American brand owners, most of which are either household names or otherwise well known for their consumer or industrial products.

Since its founding, QBPC has focused mainly on anticounterfeiting by providing position papers, research support, member surveys, and other information to PRC ministries concerned with the issue. QBPC has also organized or supported a large number of seminars with government enforcers, academics, and other policymakers in China to exchange views on anticounterfeiting reforms, raise the level of awareness of the problem, and exchange best practices. QBPC meets regularly with a range of authorities, including the Market Order Rectification Office (MORO) of the Ministry of Commerce. MORO is the body designated by the State Council to coordinate and lead anticounterfeiting and antipiracy efforts of various PRC ministries and judicial authorities.

Almost all of QBPC's work is handled on a volunteer basis by employees of member companies. The organization has seven committees, which focus on legal affairs, government affairs, enforcement and best practices, communications, membership services, patent, and customs issues. QBPC also has several industry working groups (IWGs), which facilitate cooperation among companies in various sectors, such as pharmaceuticals, fast-moving consumer goods, luxury goods, batteries, automotive equipment, home appliances, power tools, toys, information technology, sporting goods, and food and beverages. The IWG activities range from public awareness to joint enforcement and lobbying.

QBPC has urged the PRC government to increase resources and improve legal provisions to facilitate greater criminal prosecution of counterfeiters. The group has also pushed for more deterrent administrative penalties, including higher fines. QBPC's efforts have been credited with accelerating the PRC government's implementation of reforms, including the issuance of the December 2004 Judicial Interpretation on intellectual property crimes, developed by the Supreme People's Court and Supreme People's Procuratorate.

Moreover, QBPC has also provided a reliable channel for friendly and transparent cooperation and expert exchanges between foreign industry and the PRC government.

Over the last year, QBPC members have begun focusing greater attention on intellectual property issues other than counterfeiting. In 2006, QBPC plans to become more active in the areas of patents and unfair competition, among others.

—*Quality Brands Protection Committee*

Counterfeiting in China: A Blueprint for Change

Continued from page 15

- **Product design**

Products should be designed so that they cannot be copied easily. This can involve introducing parts that are more complex and hard to copy, which can increase production costs—but also increases counterfeiters' costs. To prevent counterfeiting throughout the supply chain, many companies in China are embedding trademarks on all key parts of their products and packaging. Parts suppliers thus may potentially be held liable for counterfeiting.

- **Trademark management**

Effective trademark management is essential to avoid counterfeiting and infringement in China (and worldwide). Given the slowness of China's registration system, it is essential that companies register trademarks well before use, if at all possible. To avoid infringement by Chinese translations of trademarks, companies should register Chinese versions of their trademarks and their variants.

- **Investigations and actions**

The companies with the best anticounterfeiting programs in China have invested heavily in investigations targeted to identify the key players behind counterfeiting activities. Not raiding immediately, even when an investigator discovers that counterfeit products are to be shipped, is key to these investigations. Companies should take action in the context of a strategic plan that should not focus solely on "seizure numbers." Rushing out and raiding a factory because "product is about to be shipped" is not the best way to run an anticounterfeiting program. Investigators often give the impression that if a factory is not raided immediately, all chances of taking action will be lost. This implies that the factory will never be involved in counterfeiting again. Frankly, if a factory is making counterfeits, is about to ship product but is never going to make counterfeits again, then it should not be a target. Instead, a factory found making counterfeits should be investigated to help identify suppliers, sub-contractors, customers, and how products are distributed in China and exported. Sometimes a raid can help to obtain such information, but any action must be taken with this goal in mind.

A rights holder must make internally coordinated efforts to identify major infringers and

Intellectual Property Rights Protection

Area	Recommendations for China
Trademark Prosecution	Reduce delays in examination of trademarks by recruiting more examiners and putting better computer systems in place.
Trademark Oppositions and Cancellations	Reduce delays in determining trademark oppositions and cancellations by increasing the number of examiners and allowing parties to apply to courts for cancellation.
Administrative/Criminal Procedure	Allow administrative bodies to transfer cases directly to the People's Procuratorate for prosecution in addition to transfer to the Public Security Bureau.
Customs Seizures/Criminal Procedure	Require all cases involving the import or export of counterfeit products to be transferred for criminal investigation and possible prosecution.
Criminal Thresholds	Remove all thresholds for criminal prosecution. Treat all cases of manufacturing, wholesaling, exporting, or importing counterfeit products as criminal cases.
Civil Procedure—Injunctions	Provide, in the laws, penalties for breach of an injunction.
Civil Procedure—Burden of Proof	Provide, in the laws, procedures for reversing the burden of proof in intellectual property cases when a prima facie case of infringement or entitlement to damages is brought to court.

Area	Recommendations for Foreign Companies
General	Understand and use the PRC legal system. Register rights for which protection is sought in China. Do not complain if unregistered rights are "infringed."
Intellectual Property (IP) Enforcement	Do not delegate IP enforcement to junior-level paralegals with no support. Invest appropriate resources in anticounterfeiting efforts. Go after main counterfeiters. Budget for investigations. Do not judge anticounterfeiting programs by the number of goods seized.
Litigation	Use the civil litigation system.
Education	Educate employees on the enforcement of IP. Do not tolerate the purchase of counterfeit products, even for personal use.

Source: Douglas Clark

record this intelligence properly. Information should be entered into an internal database, indicating the locality of the infringing product, the identity of the suspected infringer, and the markets supplied. Details of previous actions taken and other relevant information should also be included.

When information is properly analyzed, it often becomes clear that a small number of organized syndicates is involved in the counterfeiting of certain products. For example, in one case, where raids of more than 150 factories had been conducted by a foreign company, analysis of the raid results and other information showed that three main groups were behind the production and sale of counterfeits. Several computer programs are available that analyze intelligence to show links among various factories and counterfeiters and thus identify the mastermind behind counterfeiting activities.

Changes China should make

China's legal system has made great strides in the last decade, but it still has a long way to go to meet international best practices. Below are some improvements the country should make in the IP field that would bring it closer to international norms.

- **Trademark registration, oppositions, and cancellations**

China should immediately reduce delays in the examination of trademark applications and the handling of oppositions and cancellations. As a first step, more examiners should be recruited and better computer systems put in place to facilitate the handling of trademark matters by the Trademark Office.

Another way to speed up the handling of cancellations is to allow parties to apply directly to the courts to cancel trademarks. The courts in Beijing—all trademark review cases are heard in Beijing—hear appeals from the Trademark Review and Adjudication Board (TRAB). Introducing procedures that would allow parties to bypass TRAB and go directly to the Beijing courts would speed up the handling of cases.

> **Infringers are sophisticated enough not to keep records and amounts of infringing products that reach the criminal threshold.**

- **Criminal procedures**

Criminal actions are the most effective means of dealing with counterfeiters—it is difficult to make counterfeits in prison. The imprisonment of counterfeiters also acts as a strong deterrent to others.

What about Patents and Trade Secrets?

Counterfeiting is not the only intellectual property issue for companies in China. The protection of patents and trade secrets is also becoming more important (see the *CBR*, May–June 2005, p.36). Here too, weaknesses in China's legal system and certain company approaches have made enforcement difficult.

First, China lacks an effective trade secrets law. The Anti-Unfair Competition Law and Criminal Law both have sections on trade secrets. Criminal action can be effective, but it is difficult to get the Public Security Bureau to take on such a case. Moreover, the Anti-Unfair Competition Law provides only general guidelines for trade secret actions.

On a potentially encouraging note, a draft interpretation issued in late 2005 by the Supreme People's Court appears to have addressed many of the main problems with the trade secret provisions of the Anti-Unfair Competition Law. This interpretation defines trade secrets, provides for reversal of burden of proof when a prima facie case of misappropriation is shown, and provides methods for calculating damages when a breach is proven. The interpretation also makes clear that injunctions are available for a breach of the trade secret law, although no clear method is yet prescribed for enforcing an injunction if a defendant does not comply with the court's order. How this interpretation will be finalized and applied in practice will be important to encouraging greater investment in high tech industries in China.

Many companies transfer technology to China without taking into account the weaknesses in the legal system. Before transferring technology, companies should

- **Analyze the need to transfer technology** Do not be blinded by partners' demands for technology. Ask whether it is really necessary to transfer this technology.
- **Carefully choose the recipient of the technology** If technology is transferred to a state-owned enterprise, there is a far greater likelihood of leakage than if it were transferred to a private firm.
- **Attempt to break up the technology to be transferred** so that it is harder for others to use, if misappropriated.

Patents

Patent litigation is becoming more common in China. The laws and various opinions governing patent litigation are in line with international practices. Given the technical nature of patents, however, China should consider creating specialized courts nationwide to handle patent cases. A number of countries, such as England and Japan, have already done this, and it has led to greater certainty in decisionmaking and greater trust in the system.

—Douglas Clark

Administrative bodies, such as the State Administration of Industry and Commerce (SAIC) and the Quality and Technical Supervision Bureau (QTSB), carry out the majority of anticounterfeiting raids. Customs also makes a significant number of seizures. China handled about 30,000 administrative IP cases in 2004. For a case handled by SAIC, QTSB, or Customs to be transferred to the Public Security Bureau (PSB) for criminal prosecution, the value of the counterfeit goods must reach certain thresholds, currently ¥30,000 ($3,700) in profits for an individual infringement and ¥90,000 ($11,100) for a company. The same thresholds apply to cases directly handled by the PSB as well. Because of these high thresholds, it is difficult to establish a criminal case in China. As noted, infringers are sophisticated enough not to keep records and amounts of infringing products that reach the criminal threshold.

Foreign firms should register rights for which they seek protection in China. Rights that have not been registered in China cannot be enforced.

Even when the thresholds are met, many cases are not transferred. The administrative bodies will often say that the PSB is not satisfied with their evidence, and the PSB will say that evidence has gone cold after administrative action.

In August 2005, draft regulations relating to the transfer of criminal cases were issued by the Supreme People's Procuratorate. There is no timeline for when these will be finalized and enacted. The proposed guidelines may be useful, however, for improving the current system by requiring better reporting on the transfer of cases.

China should make three relatively simple changes that would substantially improve anticounterfeiting actions.

1. Remove thresholds for criminal prosecution. All cases of manufacturing, wholesaling, exporting, or importing counterfeit products should be treated as criminal cases.
2. Allow administrative bodies to transfer cases directly to the procuratorates for prosecution in addition to transfer to the PSB.
3. Require all cases of the import or export of counterfeit products (other than for personal use) to be transferred for criminal investigation and possible prosecution.

These changes would align PRC law and procedure with international norms and result in a significant increase in criminal prosecutions. In a short time, these changes should lead to a substantial reduction in counterfeiting, as the criminal prosecutions produce a deterrent effect.

- **Civil procedures**

Two serious weaknesses in PRC civil procedure laws make the handling of civil cases difficult. First, though courts can issue both preliminary and final injunctions, the Civil Procedure Law does not spell out the penalty for breach of an injunction. Most countries have procedures for finding defendants in contempt of court if they breach an injunction. This means that the court that issues the injunction can fine or imprison defendants for breach of an injunction without involving other enforcement bodies, such as the police, in investigations. In China, the lack of a procedure for enforcing injunctions seriously weakens the effectiveness of such orders.

Second, Chinese civil procedure does not provide procedures for reversing the burden of proof in general IP cases. (Two exceptions are a provision in the Patent Law that allows for the reversal of the burden of proof in cases regarding the infringement of process patents and a recent interpretation on unfair competition relating to proof of the use of similar tradenames or look of identical products.) Indeed, the Civil Procedure Law specifically states that the burden of proof is on the plaintiff in all aspects of the case.

Because the Civil Procedure Law provides for only limited discovery, it is difficult to prove infringement cases, particularly in relation to damages. For example, during the course of an investigation, a plaintiff may obtain copies of sales documents from the defendant that show model numbers or codes but do not mention the trademark on the products. In China, the plaintiff must prove that the products sold had the trademark on them when sold. This can be difficult in cases where the products have already been shipped and cannot be inspected.

If the law included provisions allowing for the burden of proof to be shifted, provided the plaintiff could show that other shipments with the same model number had borne the trademark, the burden of proof would be shifted to the defendant to show that this shipment did not have the trademark. This is not an onerous requirement on defendants; they should have records to show what they have done. Providing for a reversal of the burden of proof, in appropriate cases, would substantially improve the success rate for plaintiffs in civil cases in China and, in particular, make it easier to recover substantial damages.

Changes foreign companies should make

First, foreign firms should register rights for which they seek protection in China. Rights that have not been registered in China cannot be enforced. Second, they must understand the Chinese legal system. Though not perfect, it does function, and companies can take actions within the system to protect their rights.

IP enforcement

Most international companies' anticounterfeiting strategies have developed on a piecemeal basis with actions principally aimed at cutting off the source of counterfeit products and keeping counterfeiting under control in main markets. Often, different in-house counsel are responsible for actions in different jurisdictions. In some cases, junior employees with little experience are left to handle counterfeiting matters unsupervised. Their only guideline appears to be to maximize seizures and minimize costs, which often results in disjointed and uncoordinated actions. Senior staff with experience should supervise such important work.

In recent years, many companies have focused their efforts on raiding factories that produce counterfeit products in China. This has some effect in reducing the production of counterfeits. Over time, however, the number of products seized falls, and numerous repeat offenders appear. The focus on the volume of seizures can also mean that companies focus on easy targets, such as warehouses, and not factories. Companies should not judge the success or failure of their anticounterfeiting program by the number of goods seized. This is a raw indicator that can be easily manipulated and does not necessarily reflect whether progress is being made in rooting out the key players.

Companies must invest appropriate resources in anticounterfeiting efforts, paying particular attention to the investigation and identification of main players. Companies should also share information obtained from actions in other countries among key staff and analyze how counterfeiters operate worldwide. Given the internationalization of counterfeiting operations in recent years, the more data a company analyzes, the more likely it is to connect the dots that lead to the counterfeiting mastermind.

Litigation

Many foreign companies shy away from civil litigation in China because the system seems too difficult to use. There are certainly difficulties in using the system, some of which have been discussed above, but with a well-prepared case, it is possible to win and add to the counterfeiter's cost of doing business.

Companies must invest appropriate resources in anticounterfeiting efforts, paying particular attention to the investigation and identification of main players.

Practice what you preach

All IP lawyers who practice in China have war stories of clients coming to discuss IP issues in China and, in many cases, becoming quite upset about infringements of their rights. Ironically, the very same people then ask for directions to the Silk Street Market in Beijing or Xiangyang market in Shanghai, both well known for the wide variety of counterfeits for sale.

Employees of a company from top to bottom must appreciate that there is no "good" counterfeiting. Buying counterfeits of any type perpetuates the industry and sends a wrong message to PRC authorities about companies' commitment to fighting counterfeiting. All companies serious about tackling counterfeiting should not tolerate the purchase of counterfeit products, even for personal use.

Room for improvement

The enforcement of IP rights has improved over the years in China, but challenges remain for both the PRC government and for foreign companies seeking to protect their rights. Implementing the changes suggested in this article would improve enforcement of IP rights in China significantly. 完

CRITICAL EYE ON TIANJIN

The port city's development has become a national priority

Rebecca Karnak

Tianjin—one of the four province-level municipalities in China along with Beijing, Chongqing, and Shanghai—is the site of one of the world's largest ports and one of China's leading economic zones. The Port of Tianjin is a gateway to China's Northeast and vast western region and has played an integral role in Tianjin's development as a manufacturing and export center in the Bohai region, which encompasses Hebei and Shandong. The city's special economic zone, the Tianjin Economic-Technological Development Area (TEDA), is one of the leading zones in China, scoring higher than all of China's other economic and technological zones eight years in a row in the Ministry of Commerce's (MOFCOM) annual development evaluation report (see p.54).

As Beijing's urban area spreads steadily outward, Tianjin and China's capital must work together if they are to compete successfully for foreign investment with the Yangzi River Delta region, mitigate energy shortages, and address transportation bottlenecks.

Foreign companies help the economy

Tianjin was one of the first coastal cities to open to foreign investment in the 1980s. Though the city opened relatively early, its reform-era growth has been slower than that of other coastal areas in part because of competition with neighboring Beijing and in part because of its slow reform of inefficient state-owned industries. Nevertheless, Tianjin has come a long way since the early 1980s, when its best-known product was the Flying Pigeon bicycle, manufactured by a local state-owned enterprise. Today, Master Kang instant noodles and assorted beverages, products of a Taiwan-invested company, and Motorola phones are two well-known brands made in Tianjin. (Motorola, Inc., which has several modern production facilities and more than 10,000 employees in TEDA, was the sixth-largest trader in China in 2004.)

Along with the port, TEDA has played a

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Tianjin at a Glance

Tianjin by the Numbers, First Three Quarters 2005

	Value	Increase over 2004 (%)
Economy		
GDP	$30.55 billion	14.8
Fixed-asset investment	$12.89 billion	18.3
Value-added industrial output	$16.01 billion	21.2
Retail sales	$10.89 billion	13.6
Government revenue	$6.70 billion	24.9
Average per capita urban disposable income	$1,121	12.5
Consumer price index	NA	1.5
Foreign Trade		
Total trade	$37.97 billion	25.3
Exports	$19.51 billion	33.3
Imports	$18.45 billion	17.9
Foreign-invested enterprise (FIE) exports	$15.57 billion	30.6
Foreign Direct Investment		
Number of FIEs approved	952	15.3
Amount contracted	$5.37 billion	24.9
Amount utilized	$2.59 billion	27.8

Sources: www.soudi.cn; www.stats-tj.gov.cn

Contacts

Government & Chinese Communist Party Leadership

Party Secretary: Zhang Lichang
Mayor: Dai Xianglong
Vice Mayors: Huang Xingguo, Yang Dongliang, Chen Zhifeng, Zhi Shenghua, Cui Jindu, Zhang Junfang, Sun Hailin

Government Offices

China Council for the Promotion of International Trade—Tianjin Sub-Council
Director: Li Guangda
Address: World Trade Bldg., 84 Jianshe Road, Heping District, Tianjin 300042
Tel: 86-22-2330-1343
Fax: 86-22-2330-1344
www.tianjinccpit.com

Tianjin Commission of Commerce
Director: Li Quanshan
Address: 80 Qufu Road, Heping District, Tianjin 300042
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Fax: 86-22-2331-5231
www.goldentianjin.net.cn

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Tel: 86-22-2445-3803
www.tjhd.net

Tianjin Development and Reform Committee
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Tel: 86-22-2314-2048
Fax: 86-22-2314-2052
www.jtdpc.gov.cn

Tianjin Economic Committee
Director: Wang Zhiping
Address: 8 Tai'an Road, Heping District, Tianjin 300040
Tel: 86-22-2332-5935
Fax: 86-22-2330-1952
www.tjec.net

vital role in Tianjin's economic development. By fall 2005, roughly 4,030 foreign-invested enterprises (FIEs) had set up in TEDA, with investments of about $28 billion. Since opening in 1984, TEDA has added three sub-zones, an export-processing zone, and a microelectronics industry park. TEDA's latest expansion, TEDA West, was approved in 2004 by the central government, even as other economic zone expansion plans were rejected.

Tianjin statistics indicate that 80 percent of its $20 billion in exports in 2004 came from FIEs. About 70 percent of Tianjin's exports were mechanical and electrical products, and more than half came from TEDA. The *Economist* recently reported that TEDA's exports to the United States last year were about the same as Argentina's exports to the United States (roughly $3.7 billion). The United States, South Korea, Japan, and the European Union top the list of Tianjin's trade partners.

Planes, trains, and... the Port of Tianjin

Tianjin has been a port city since the early Ming Dynasty (1368–1644) and was one of the treaty ports ceded to Western countries in the 1860s after the second Opium War. In 1952, the Port of Tianjin, located at the estuary of the Hai River along the western edge of the Bohai Bay, reopened and processed roughly 740,000 tons of cargo. In 2004, the port's handling capacity reached 200 million tons of freight, a little more than half of Shanghai's tonnage. Today the Port of Tianjin operates more than 70 regular shipping routes and has connections with more than 300 international ports.

China has made port development a high priority as part of its efforts to sustain its export growth, and Tianjin's port has benefited. But China is struggling to keep up with the growth of water-borne freight; the need for dependable, well-coordinated intermodal logistics services is crucial to easing transportation bottlenecks. Tianjin's major markets for container transport are Beijing, inland China, and even Mongolia, but little is being transported by rail to these destinations. In 2003, Tianjin transported more than 56 million tons of freight by rail, compared with 200 million tons transported by highway. This means that much of the freight is being moved by road, leading to severe congestion. According to TERA International Group, Inc. President and CEO Asil Gezen, none of the container freight between Beijing and Tianjin was moved by rail in 2003 (see the *CBR* July–August 2005, p.8). By Gezen's estimate, the travel time from Beijing to the outskirts of Tianjin by road is about 90 minutes, and the additional 5 km to the port can take another 90 minutes in heavy traffic. Without proper planning, bottle-

In 2003, Tianjin transported more than 56 million tons of freight by rail, compared with 200 million tons transported by highway.

necks like these will continue to stifle Tianjin's growth and drive shippers to alternative port cities.

China Railway Container Transport Co. (CRCTC, majority owned by the PRC Ministry of Railways) has plans to build a state-of-the-art, intermodal container transport facility in Tianjin, as well as in 17 other cities in China,

To ease the commute between the two cities, a second highway from Beijing to Tianjin is under construction, and plans for a third highway are in the making. A 115-km commuter rail line, scheduled for completion by the 2008 Olympics, is also under construction.

including Beijing. In September 2005, a delegation of officials from CRCTC, the Ministry of Railways, and MOFCOM visited Chicago to consider new terminal equipment, rail cars for container transport, containers, information technology, and other equipment and systems. This upgrade should help ease the transport burden Tianjin faces as its port gears up to go from handling 3.8 million 20-foot equivalent units (TEU) in 2004 to 10 million TEU by 2010.

Because of Tianjin's role as a major trading center, the city depends heavily on airways for freight transport. In August, Tianjin announced an airport renovation and expansion project in an effort to become the air cargo transportation and distribution hub of Northeast Asia. The project has a total investment of about $3.1 billion and is expected to be completed by 2007, in time to serve as an alternative to Beijing Capital International Airport for the 2008 Olympics.

A city in shadow?

Just 140 km southeast of Beijing, Tianjin is in many ways a rival to its larger neighbor. In the past, the two municipalities fought over commercial projects that, in the end, were divided between the two cities to no one's satisfaction. Despite the convenience and capacity of the Port of Tianjin, Beijing invested in its own port, Jingtang, in Hebei, in the 1980s. Most companies, however, continued to use Tianjin's closer and better-developed facilities. Nevertheless, with a population of 10 million to Beijing's 14 million, a 2005 mid-year GDP figure of $19 billion to Beijing's $28 billion, and Beijing's south Sixth Ring Road edging ever closer, Tianjin remains in the shadow of China's capital.

Yet Beijing and Tianjin have not succeeded in matching the growth and output found in the Yangzi River and Pearl River deltas to the south, and northern officials have realized that the two cities would benefit from greater integration and less redundancy. In 2001, the Ministry of Construction approved a "Greater Beijing" plan to help the capital compete with the Yangzi and Pearl River deltas and integrate the economies of Beijing and Tianjin, as well as six major Hebei

Major Development Zones

National-Level Zones

Tianjin Economic-Technological Development Area
www.teda.gov.cn

Tianjin High-Technology Industry Park
www.thip.gov.cn

Wuqing Development Area
www.tjuda.com

Xiqing Economic and Development Area
www.xeda.gov.cn

Tianjin Port Free-Trade Zone and the Airport Industrial Park
www.tjftz.gov.cn

Tanggu Marine High-New Technology Development Area
www.tmht.cn

Municipal-Level Zones

Dongli Economic Development Area
www.tjdeda.com

Ninghe Economic Development Area
www.ninghe.com

Jinghai Economic Development Area
www.tjeda.com

Baodi Development Area
http://ebaodi.com/cn

Dagang Economic Development Area
www.dgnet.gov.cn/kfq/kfq.htm

Useful Websites

The City of Tianjin
www.tianjin.gov.cn

Tianjin Commission of Commerce
www.goldentianjin.net.cn

Tianjin Invest
www.tjinvest.gov.cn

Tianjin Port Authority
www.ptacn.com

Under the leadership of Mayor Dai Xianglong, a former governor of the People's Bank of China, Tianjin could well have the political clout to become a financial center for North China.

cities. Talk of integration has also raised the possibility of bringing Tianjin under the administrative control of the capital, an understandably unpopular idea in Tianjin. The official integration plan has lost momentum, but the inexorable expansion of the two cities makes some sort of integration inevitable.

To ease the commute between the two cities, a second highway from Beijing to Tianjin is under construction, and plans for a third highway are in the making. A 115-km commuter rail line, scheduled for completion by the 2008 Olympics, is also under construction. It will reduce travel time between the two cities to 30 minutes, and in 2008 will help transport international visitors to the Tianjin Stadium, designated one of the primary sites for the Olympic soccer matches.

Once these travel links are put in place, residents tired of high housing costs in Beijing may just decide to take advantage of cheaper real estate prices in Tianjin and commute the half hour each way daily, blurring the lines between the two cities even further.

Looking ahead

● **New Binhai District**

In June 2005 Premier Wen Jiabao, who was born in Tianjin, visited the city and expressed support for the development of Tianjin's New Binhai District, a decade-old industrial park already home to several billion dollars' worth of investment. Tianjin has plans to turn the district into an export-oriented zone for a range of industries. The zone's development has also been taken up in China's latest five-year plan, making the zone not only a local project, but a national priority.

● **Financial services**

Tianjin's financial services sector is underdeveloped, according to one city official. Under the leadership of Mayor Dai Xianglong, a former governor of the People's Bank of China, Tianjin could well have the political clout to become a financial center for North China. Signs that the city is looking in this direction include the recently completed Financial Avenue and the newly established Bohai Bank, not only the first national bank approved since 1996, but also the first PRC bank to include a foreign investor—Standard Chartered plc—as a founding partner.

● **Power**

In summer 2005, Tianjin's power consumption of more than 6 million kilowatts (kW) reached a new high. More than 30,000 industrial enterprises altered their power use schedule, and the city reported only 4 blackout days, down from 10 in 2004. Forecasters predict that Tianjin's peak power consumption will reach 10.5 million kilowatts by 2010. To handle the additional demand, Tianjin will build a third substation and add several million kilowatts of capacity by 2010. 完


Courtesy of TEDA

Li Yong

TEDA Wants You

The Tianjin development area is looking for a few more good foreign companies

Li Yong is chair of the Tianjin Economic-Technological Development Area's (TEDA) Administrative Commission. He recently spoke with Paula M. Miller, CBR assistant editor, in Washington, DC, during a visit to the United States.

CBR: Why should foreign investors choose TEDA over other development zones? What special advantages does TEDA offer these investors?

Li: I am asked that question frequently, and my answer is, "Foreigners should invest in TEDA because TEDA is the best." Seriously, each year the PRC Ministry of Commerce performs an assessment report on China's national-level economic and development zones—one category of the report evaluates the zones' economic strength, and another category assesses the investment environment. In the past few years, TEDA has outperformed all of the other zones in these two categories.

TEDA also differs from other zones in terms of our market coverage. We mainly focus on northern, northeastern, and northwestern China.

TEDA specializes in four key industries: electronics and telecom; machinery manufacturing, including autos; biotech, pharmaceuticals, and chemicals; and food and beverages. These four industries made up more than 90 percent of TEDA's total output in 2004. Though this focus developed naturally, in the future TEDA will build up two sectors: electronics and auto-related industries. Largely because Motorola, Inc.'s China production base is in TEDA, the electronic and technology sectors are strong. Motorola, Samsung Electronics Co., Ltd., and several Japanese companies, such as Matsushita Electric Industrial Co., Ltd. (Panasonic), produced about 50 million phone sets in TEDA in 2004. And because Toyota Motor Corp. located its manufacturing base in TEDA, TEDA already has more than 100 auto-parts suppliers.

TEDA mainly provides investors with three types of assistance. The zone helps companies with market entry and development; it provides a favorable, high-quality, low-cost investment environment; and it can offer companies incentives in addition to the existing customs and tax incentives the government provides to companies that invest here. For example, TEDA has a fund to support research and development and high-tech companies.

CBR: Currently, how many foreign-invested enterprises [FIEs] are in TEDA? How much money have they invested in TEDA?

Li: In November 2005, roughly 4,030 FIEs from 74 countries and regions were registered in TEDA, with total investment of more than $28 billion and contractual overseas investment of about $22 billion. Of these firms, 45 Fortune 500 companies have invested in more than 100 enterprises with a total investment value of $6.37 billion. Foreign investors dominate TEDA's key sectors, most notably Motorola, Samsung, Sanyo Electric Co., Ltd., and Matsushita in electronics and communications; Toyota, SEW Eurodrive Co., Ltd., and Emerson in machinery; GlaxoSmithKline plc and Novo Nordisk A/S in pharmaceuticals; and the Coca-Cola Co. and Nestlé SA in the food and beverage industry. US companies are our largest investors—they account for roughly 25 percent of total investment. US companies such as Honeywell, IBM Corp., PepsiCo, Inc., and Kraft Foods Inc. are also big players.

CBR: What relationship does TEDA have with zones in Beijing? Which areas or zones in China are TEDA's main competitors?

Li: TEDA both cooperates and competes with zones in Beijing. Competition is good because it ultimately improves TEDA. Zones in Beijing are doing well, but they focus more on information technology and computer software, whereas TEDA is more manufacturing-oriented. Beijing has a strong education system so Beijing-based companies can easily acquire talented staff. Tianjin also has a good education system and talented staff—and its labor costs are lower than Beijing's.

The Guangzhou Economic and Technological Development Zone and the industrial parks in Suzhou, Jiangsu, are TEDA's main competitors because they specialize in similar sectors. The China-Singapore Suzhou Industrial Park has become TEDA's main competitor since the Singapore government has invested in it.

CBR: What are the largest challenges to companies in TEDA today and in the future?

Li: Competition is probably the most significant challenge to TEDA. Zones and companies compete for the best investment environment, human resources, and capital. But we consider the challenge a positive one because we must continue to improve ourselves and upgrade the industrial structure. We are now focusing more on the quality, instead of the quantity, of overseas investment in TEDA.

TEDA has been developing for more than 21 years, and instead of slowing down the pace, we see an excellent opportunity to grow even faster. Next year, the PRC central government will announce a new strategic plan to develop northern China—including Tianjin, Beijing, and other major cities near the Bohai Sea—as one of the most dynamic areas in this part of China. TEDA will play an even more influential role, and both TEDA and TEDA's investors will embrace unprecedented business opportunities. 完

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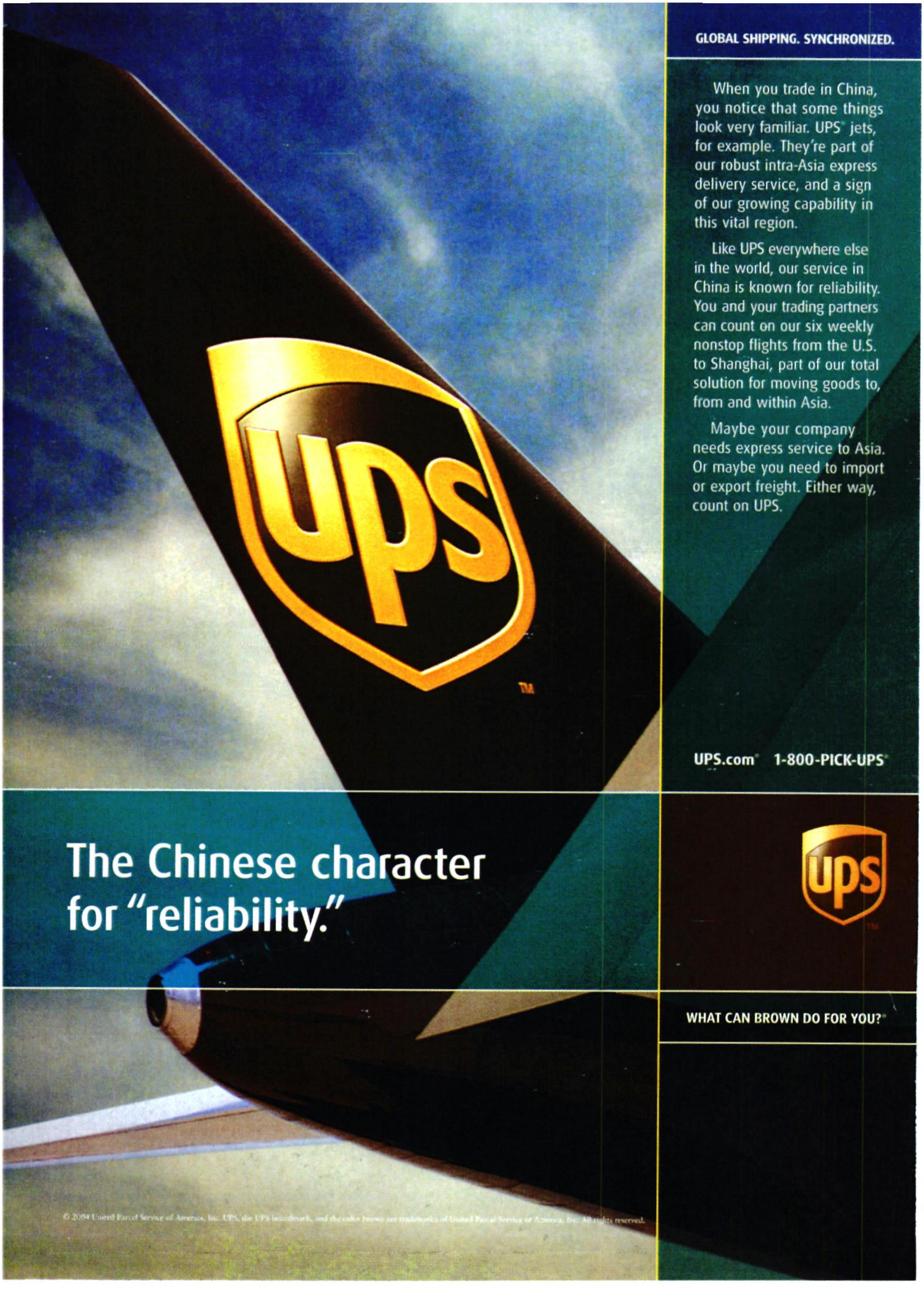

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