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VICE-CHAIRMAN R. RANDLE EDWARDS  
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## **Delegates' Report**

### **Report of the Delegation of Lawyers from the American Bar Association to the People's Republic of China**

**(October 30, 1978 - November 21, 1978)**

#### **Introduction**

Mr. Henry T. King, Jr. chaired a delegation from the American Bar Association to the People's Republic of China (China) invited by the China International Travel Service (Luxingshe). Mr. R. Randle Edwards acted as Vice-Chairman and M. Sean McMillan acted as Rapporteur. The delegation was composed of twenty-three lawyers and one law student. The members of the delegation met in New York, New York, for a dinner meeting on October 29, 1978. On October 30, 1978, the group was briefed on the political, legal and historical aspects of China together with some practical aspects of travelling in China by the following individuals:

1. R. Randle Edwards—Associate Professor, Columbia Law School;
2. Andrew Nathan—Professor of Government, Columbia University;
3. Carl Riskin—Professor of Economics, Queens College and Adjunct Professor, Columbia University;
4. Norman Getsinger—Director of Exporter Services, National Council for U.S.-China Trade; and
5. Jan Berris—Program Director, National Committee on U.S.-China Relations.

The information contained in this report reflects, for the most part, merely the reporting of information and facts conveyed to the delegation. No opinions are expressed as to the accuracy of such information.

## **Yugoslavia**

The group left New York and arrived at Belgrade, Yugoslavia on October 31, 1978.

### **United States Embassy Briefing**

The individuals from the United States Embassy who briefed the delegation included Harry Dunlop (discussing the political situation), David Evans (discussing the Yugoslavian economic outlook), and Bruce McMullan (who discussed international trade issues).

Yugoslavia is composed of six republics and two autonomous provinces and is governed by President Tito in a fashion to ensure that the League of Communists (the Communist Party) maintains absolute political, economic and social control. Yugoslavia considers itself a market-type country which is an integral part of Western Europe rather than Eastern Europe. A majority of its trade is with the West. Yugoslavia is a member of the General Agreement on Tariffs and Trade (GATT) and the International Monetary Fund (IMF) and had special observer status with the Council for Mutual Economic Assistance (COMECON).

A number of economic factors were noted. Yugoslavia is experiencing a general increase in the Gross National Product (GNP) of approximately 7 percent a year with an industrial sector increase of 9½ percent. The annual inflation rate in Yugoslavia is approximately 15 percent. Unemployment is currently about 12 percent. GNP is between \$45 and \$46 billion. Yugoslavia's major trading partner is Russia followed by West Germany, Italy and the United States. Yugoslavia has been experiencing substantial trade deficits with the West during the past few years although trade between the United States and Yugoslavia is relatively balanced. Yugoslavia enjoys GSP and MFN treatment with the United States. The United States is the largest source of foreign investments in Yugoslavia. United States investment totals approximately \$150 million, or about half the total foreign investment in Yugoslavia.

A new joint venture law was adopted in Yugoslavia in April, 1978. Generally, it reduces restrictions on permitted foreign investment (i.e., permitting a higher percentage of foreign capital), removes many areas of industrial activity previously precluded from foreign participation and increases (by decentralization) the amount of authority granted to the republics and autonomous provinces. It is described more fully below.

The Yugoslavian Socialist Model is characterized by "Workers Self Management" (i.e., Associated Labor is responsible for the operation of each individual enterprise except certain artisan groups and some agricultural enterprises). A parallel Communist structure exists in most enterprises together with the Workers Council. The policies and decisions of the Workers Council do not usually conflict with the policies and decisions of the official Communist Party. The manner by which the Communist Party exercises

operational decisional authority within a business enterprise was not clear to the United States Embassy Staff. With respect to the actual operation of firms, they are "owned by the state" but operated under "Workers Self Management." Foreign investors do not own "property" but otherwise have most of the ownership perquisites (*i.e.*, a bundle of rights relating to a share in profits and some control over the operation). A new technology transfer law (described below) was adopted on July 15, 1978.

### **Institute of Comparative Law**

On November 1, 1978, the group was briefed by the Institute of Comparative Law in Belgrade. A list of those Yugoslavians conducting the briefing is attached hereto as Appendix B. A brief summary of that briefing follows.

*Dr. Vladimir Jovanovic*, director of the Institute, indicated that the State allocates all resources. Yugoslavia had generally followed the Soviet model until 1955 (*i.e.*, administrative management) and then in 1955 adopted the "Workers Self Management" approach. The Law of Associated Labor governs the rights of labor (*i.e.*, determines its relationship to the enterprise). In most cases, assets and income are transferred from the state to the basic economic unit of an enterprise which is usually a production sub-unit of an enterprise. All assets are society owned. An enterprise is generally created by an instrumentality of the government which may be a municipality, a republic, an autonomous province or the federal Yugoslavian government. Typically, a community or a bank will "loan" to an enterprise the necessary assets of production or the money to purchase necessary assets. Yugoslavia also recognizes the "contractual enterprises" (generally small in size) which are formed by a contribution of capital by the workers or a community. No equity rights are given to those contributing the capital, but some perquisites or incentives are provided.

*Dr. Dragoljub Kavran* generally reported on Workers Self Management. Yugoslavia feels that this is the best solution to management-labor problems and that this system protects the workers from abuses of management. The Workers' Council has the right to determine the policy of the enterprise. Managers are designated to implement the policy of the Workers' Council. Attempts are made to reconcile labor disputes by focusing on the mutual interests of labor and the enterprise. Courts of Associated Labor have been established to resolve labor/management disputes and have established some limited grievance procedures. Managers are elected by the workers periodically (usually for four-year terms) and are given the power for planning, coordination of production and the responsibility for the legality of the enterprise and its policies. Managers have the right and the duty to suspend a decision of the Workers' Council if they believe it to be illegal or if it is, in fact, illegal. Any income left after taxation, duties and other costs of production (which may be roughly compared with net income of an enterprise) are shared by the workers. The allocation of the benefit (net profit) of the successful enterprise is generally determined by the workers. There are cer-

tain limitations on the distribution of the income of the enterprise by the Workers' Council; that is, it may not exceed a specified maximum amount.

*Dr. Jelena Vilus* discussed the Yugoslavian legal system. Yugoslavian enterprises have freedom of contract, including the choice of law to be applied. In certain matters however, Yugoslavian law will apply, particularly in the administrative law area. A new law of obligations became effective October 1, 1978, and is patterned after the Swiss law of obligations. The new law of obligations will apply in international trade relations, provided that the parties agree. If the parties have not stipulated as to which substantive law should be applied and the action is brought in Yugoslavia, then the law of obligations will be applied. If necessary, the law of obligations will be used to determine the rights of parties with respect to any matters not covered by contract. International contracts are limited by the Yugoslavian constitution and Yugoslavian laws (e.g., the Law of Associated Labor and the technology transfer law). With respect to foreign trade matters, it is the practice to use standard form contracts, especially involving the sale of goods. The general terms and conditions of contracts utilized by Yugoslavia either follow the European Economic Community (EEC) model (involving trade with the West) or the COMECON model (involving trade with the East). Yugoslavia has not ratified the Hague Convention on the Uniform Sales of Goods. Presently under review are the UNCITRAL rules with respect to arbitration, which are expected to be adopted.

*Dr. Radomir Djurovich* discussed the choice of law issues and arbitration procedures available in Yugoslavia. An enterprise is not obligated to choose any substantive law; but if none is chosen, Yugoslavian courts will look to domestic law. The general practice is to adopt Swiss law as a neutral agreed-upon choice of law provision. Arbitration is generally available for dispute resolution and an open list of arbitrators is available. The arbitration rules are similar to the draft UNCITRAL rules. There is a Foreign Trade Arbitration Association in Belgrade whose decisions are final except for limited appeals such as attacks on jurisdiction. Foreign arbitral awards can be enforced in Yugoslavia if such states have reciprocity (i.e., if they will enforce Yugoslavian arbitral awards).

*Dr. Dobrasav Mitrovic* discussed the legal aspects of foreign trade. Generally speaking, the joint venture law adopted in April, 1978 has the effect of liberalizing some aspects of foreign investment in Yugoslavia. Some new industrial activities were opened to foreign investment and restrictions on delivery of non-financial assets by foreigners were eased. On the other hand, the new provisions limit the decision-making powers as well as the income and profit repatriation rights of foreign investors. Foreign investment is accomplished generally by the establishment of a "contractual enterprise" (i.e., essentially a joint venture in which all rights and duties are defined by contract to the extent they do not violate Yugoslavian law or public policy). Generally, all foreign investment will have the following elements:

1. Foreign investments can only be made in domestic enterprises—foreigners cannot form an enterprise.
2. All foreign investment should be of a long-term nature.
3. It must have a purpose of joint activity and implies the business cooperation of the foreign enterprise.
4. Between the Yugoslavian and foreign investor, there is to be shared risk, a duty to invest capital on a shared basis and a right to share the income.
5. All foreign investment must be approved by responsible Yugoslavian authorities.
6. All contracts between foreign and domestic parties are regulated by Yugoslavian law, are relatively comprehensive, and describe:
  - (a) The investment/financial relationship;
  - (b) Joint performance, goals and expectations such as production quotas;
  - (c) The overall business relationship; and
  - (d) The technical points to be covered including a description of the nature of the investment, the type of assets to be contributed, the allocation of profits and losses, the payment of taxes, the guarantees of both parties, etc.
7. Foreign investment is limited to not more than 49 percent of the total capital.
8. Foreign investors cannot own property.
9. Since all enterprises in Yugoslavia operate pursuant to Workers' Self Management, the foreign investor may not "manage" the firm. However, the contract will specify the manner in which the enterprise is to be governed. The foreigner may have the following rights:
  - (a) The right to influence policy by equal representation on an executive committee; however, the Workers' Council can override decisions of an executive committee. However, the executive committee, as a practical matter, will usually make the business judgments;
  - (b) The right to share in profits;
  - (c) The right to cancel the contract under certain specified circumstances such as a breach of the contract by the Yugoslavian party and the right to have the original investment returned, under certain circumstances, upon the termination of the contract; and
  - (d) The right to require levels of performance from the enterprise.
10. The rights and duties of the foreign investor may be transferred to another party (e.g., can be sold).
11. Foreign arbitration for resolution of disputes arising out of the contractual enterprise is available.

The management of the joint venture is, of course, controlled by the Workers' Council but will be subject to the terms of the contract. There is a general minimum required investment of not less than 10 percent of the capital of the enterprise or 5 million dinar, including bank credit.

*Dr. Bratislav Novakovic* discussed the laws relating to technology. The law of patents (adopted in 1960 and amended in 1962 and 1974) governs rights in Yugoslavia. Yugoslavia is a signatory of the Paris Convention including the 1972 Stockholm protocols. They recognize patents of addition (improvements). The term of a patent is 15 years which is similar to that available in Germany and Austria. Foreign applicants are permitted. The general requirements to obtain a patent include that: the invention be novel, there is no prior use, and it is not in the public domain. The concept of priority is recognized in Yugoslavia. Yugoslavia requires compulsory licensing for certain inventions (usually drugs on a non-exclusive basis).

With respect to the new law governing technology transfer (adopted in July, 1978), an agreement in writing for a fixed period would generally be effective when approved by the appropriate administrative authorities who have wide discretion in approving terms and conditions. The requisite elements for approval of the license agreement generally include:

1. Specific economic goals must be established;
2. Guarantees of technical information from the licensor and adequate support;
3. The right of the licensee to improvements;
4. A source of raw materials or guarantees of supply, if requested;
5. The invention itself must not be hazardous or harmful to persons and the environment (the supplier must indemnify);
6. The invention must perform in the manner claimed;
7. Information disclosed will be treated as a trade secret for a period of three years, even if Yugoslavian approval has not been given for the technology to be licensed;
8. The language of the contract must include one official copy being in one of the Yugoslavian languages plus any other language agreed to by the parties.

The following matters will not be approved in connection with the transfer of technology:

1. Grant-back provisions;
2. A clause agreeing not to contest validity of the invention;
3. Limitations on the continued sale or royalty after the term of the agreement;
4. Any tying agreements; and
5. Limitations on the export of the licensed product by the Yugoslavian enterprise unless the licensor or an exclusive licensee markets exclusively in a territory.

*Dr. Tibor Varadi* supplemented *Dr. Mitrovic's* comments on joint ventures and indicated that guarantees would be required from the licensor

against damages to third parties resulting from use of the technology. Repatriation guarantees are available provided they are first approved by the appropriate republic or province and the central government. Certain foreign exchange problems still exist in Yugoslavia.

## **China**

The group then left Yugoslavia on November 1, 1978 and flew to Peking on China Airlines (CAAC) via Urumchi, Sinkiang Province, arriving in Peking on November 2, 1978.

### **China Council for the Promotion of International Trade (CCPIT)**

Mr. Jen Tsien-hsin, the Director of the Legal Affairs Department of CCPIT, provided a general overview on the status of, and attitudes towards, the Chinese legal system and international trade.

#### *China Legal System*

China is in the process of adopting new laws. He stated that the Chinese Communist Party (CCP) attaches great importance to law. Post-liberation (after 1949) development of the Chinese legal system came in three general stages.

From 1949 to 1953, the Common Program adopted by the Chinese included several hundred laws, regulations and decrees published (*i.e.*, adopted) for the purpose of establishing a socialist economy governed by the central government. Examples included the laws and decrees promulgated during the land reform movement (1949-1951) and the 1952 mass movements against the bourgeoisie. Mr. Jen said that these acts, regulations and rules are available in the United States.

The second stage (from 1954-1963) was marked by the First National Peoples Congress (the first Chinese Constitution was adopted in 1954). Over 1,000 laws, decrees and regulations were promulgated by the central government during this period, and they are probably available in the United States. Mr. Jen observed that Chairman Mao Tse-Tung<sup>1</sup> and Premier Chou En-Lai repeatedly stressed the role of law: that it was imperative to govern the conduct of the people, and that once the law was adopted, it must be observed. (Recently, speeches have been published in the Peoples Daily concerning the role of law in Chinese society.) He also stated that because of Lin Piao and

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<sup>1</sup>The written English transliteration (the "Romanization") of Chinese names and places reflects an attempt to reproduce the phonetic aspects of such names and places; thus, one may see many variations referring to the same person or place. For example, the name Teng Hsiao-Ping (a commonly used transliteration used in the U.S.) is written by the Chinese, using their standard phonetic alphabet, as Deng Xiaoping; similarly, Mao Tse-Tung will be written by the Chinese as Mao Zedong. Also, the Chinese always list the family name first.

the Gang of Four, the rule of law had been substantially damaged and eroded.

The period 1964 to 1976 was marked by a disruption of the legal system caused by the Cultural Revolution and the influence of Lin Piao and the Gang of Four and legal institutions were substantially damaged and eroded during this period.

The third stage began in 1977 at the eleventh session of the Communist Party Congress followed by First Session of the Fifth National Peoples Congress in which a new constitution was adopted. Chairman Hua, in his political report to that body, stressed the rule of law. For the purpose of modifying and codifying the law, legal conferences are being held throughout China. The work of legal reform and codification is under the direction of the Political-Legal Group within the CCP Central Committee. Political groups are being urged to strengthen the role of law. In the area of legal reform, the Chinese are concentrating on two areas. First, they are strengthening existing law; that is, examining and redressing acts of past wrongs that were caused by the Gang of Four and their influence. This is to be accomplished by adjusting existing laws and regulations, abolishing the obsolete and retaining the useful. Secondly, they wish to establish new acts and regulations necessary to accomplish the Four Modernizations<sup>2</sup> of China. Such laws were expected soon, including laws for the protection of the environment. Moreover, the 1963 statute on inventions and innovations is being revised and will be published in the near future. The Chinese are presently working on a new criminal code and efforts were being pursued to adopt an "economic law".

The Chinese have adopted three principles relating to international trade and maritime activities, and their policies with respect to such activities would be governed by these principles. The first principle is that of "independence and initiative" [self-reliance] and has reference to conforming trade activities to Chinese law and policy. The second principle is to implement a policy of equality and mutual benefit with respect to each party. Such policy will be reflected, typically, in the terms and conditions of the contract. The third principle is that the Chinese intend to comply with international practice and to pay due regard to international conventions. China, as a matter of policy and experience, expects that trade disputes can be reasonably resolved by following these principles, and views these principles as a possible means of resolving the choice of law issue. Mr. Jen requested comment from the delegation on whether these three principles would suffice to settle conflicts of law in the future.

### *Transfer of Technology*

With specific reference to patent and technology issues, China recognizes that it must import foreign technology to achieve modernization. As such, China recognizes that it must provide for its protection. China expects after

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<sup>2</sup>One factor underlying almost all discussions in China related to the "Four Modernizations" of China which was generally a catch-phrase to describe the Modernization by the year 2,000 of four elements of Chinese society: science and technology, industry, agriculture and defense.



modernization to be a net exporter of technology. At present, one cannot register patents in China; however, registration of trademarks is possible. Currently, patents are being protected by stipulated contractual clauses in line with international practice (*i.e.*, by maintaining the secrecy of the technology and by permitting limitations on its use). The Chinese government is "actively studying" the protection of patents.<sup>3</sup> This fact was emphasized several times. A policy for the protection of imported technology is expected in the near future, especially since the Secretary of Commerce and the United States Commissioner of Patents visited China in the Spring of 1978. They expect this to be a major issue following normalization with the United States.<sup>4</sup>

The existing [1963] regulations in connection with trade secrets and patents were not repudiated but were not followed by the Gang of Four. The spirit of the existing regulations is being followed today but the regulations are expected to be substantially revised. The new regulations are expected to provide political and economic encouragement (including rewards) to both Chinese and foreign inventors.

#### *Maritime, Admiralty and Navigation Matters*

China does not recognize the Hague rules with respect to bills of lading. The China Shipping Company has its own bill of lading and its own terms and conditions which are applicable to international shipping. While China generally supports politically the attitudes of developing countries, it has not taken a position on the Hamburg Conference and the rules emanating therefrom; China has these matters under study. The adoption of the Hamburg Rules is under study. The settlement of maritime disputes generally falls into three categories and the manner to be chosen depends on the circumstances. One manner of dispute resolution is recourse to a court of law which can be initiated by application of either party; but this method is not favored in China. Another is for the parties to subject themselves to arbitration before the Foreign Maritime Arbitration Commission, and that is accomplished by mutual agreement of the parties. Finally, the parties may permit the Port Authority and/or its administration to resolve the dispute.

With respect to the Foreign Maritime Arbitration Commission (FMAC), the Chinese have unilaterally designated an arbitral panel of 31 Chinese experts in maritime law and disputes arising therefrom. They will act as arbitra-

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<sup>3</sup>The terms "actively studying," "studying or under-study" and "prepared to study" appear to be catch-words indicating the stage of development of a particular policy; *e.g.*, "actively studying" appears to mean near or at completion and near promulgation; "studying" or "under-study" appears to mean that a policy has yet to be firmly established although tentative decisions have been made; and "prepared to study" appears to indicate that no positions have been adopted but the Chinese regard the matter of importance and they will probably address the matter.

<sup>4</sup>Since normalization has occurred, one should be alert for this.

tors in disputes involving salvage, collision, charter and marine insurance. This appears to be the manner most favored by the Chinese. Three arbiters will compose the arbitral panel. Each side will pick one and those individuals will pick the third who will preside. A decision is to be made by a majority of the arbiters. No foreigners are currently on the list of approved arbiters, but the Chinese are prepared to study the issue of adding a foreigner or foreigners to the list.

With respect to limitations on liability resulting from maritime matters, the Chinese are not a member of the Hague or other maritime conventions. China adopted, in 1959, a domestic regulation pertaining to liability limitations. The maximum amount of compensation permitted thereunder is computed based upon a formula taking into account the following factors: the value of the ship at the time it arrives at the first port after accident; the freight (the amount paid by the shipper, luggage, etc.); and the repair cost. Under certain circumstances, there is unlimited liability when the act caused by fault of the shipowner or the injury results from deliberate or intentional acts. With respect to oil pollution, the vessel must report the incident to the Port Authority immediately. Foreign inspection of the ship and the pollution is permitted upon application to the appropriate Chinese authority. China observes the international practice of not punishing shipboard personnel for oil pollution, except in special circumstances in which the ship's master may be held personally responsible. Regulations concerning maritime pollution are expected soon.

With respect generally to the inspection of ships, a government agency was established in 1956 as the Inspection Bureau. Such inspections are to ensure the safety of the personnel, the property and the ship. The head office is in Peking with branch offices in Shanghai, Kwangchow (Canton) and Tientsin. Standards for vessels were issued in 1959 and again in 1976 (English translations are available). Regulations for the inspection of ships have been published but are currently under review for revision.

With respect to general average, the Chinese rule differs somewhat from international rules. The international practice makes an adjustment without regard to the seaworthiness of the vessel. The Chinese practice requires a determination of seaworthiness first followed by a determination whether or not there is fault by either party. If fault exists, there is no adjustment but the Chinese will assist in apportionment but will make no formal adjustment. International practice requires the safe execution of the voyage; however, the Chinese do not explicitly recognize this, but for the time being, they recognize it in practice through their general average formula.

With respect to salvage and collision, they have available two standard forms for arbitration utilizing FMAC. If the collision occurs within the territorial waters of China, generally there will be a request for Chinese jurisdiction. If it occurs upon the high seas, jurisdiction disputes are resolved by agreement between the parties. Third, if there are bilateral agreements concerning salvage or collision within territorial waters, they will apply the law of the local territory. The Chinese propose, moreover, that for incidents occur-

ring on the high seas, the country of the vessel that suffers the greatest damage should exercise jurisdiction. In the event that the vessel suffering the greatest damage cannot be ascertained, the arbitral organs of the two countries should negotiate a solution.

### *Foreign Trade Dispute Resolution*

The New York International Convention on the Enforcement of Foreign Arbitral Awards is now under study in China. Generally, international trade disputes are settled by arbitration but recourse to courts is not objected to by the Chinese. They prefer to settle all matters by conciliation initially and if that fails, then by arbitration. A Foreign Trade Arbitration Commission (FTAC) was established in 1956. The panel is composed of 21 Chinese members and the arbitral panel is formed in the same manner as the FMAC arbitral panels.

With respect to agreed arbitration provisions, the Chinese will generally agree that arbitration is to take place in China or in the defendant's country, and now show a willingness to agree to arbitration in a third neutral country such as Switzerland or more likely Sweden. The Chinese will generally agree to follow the rules of the country of arbitration.<sup>3</sup> With respect to the choice of substantive law, the Chinese arbitration panels will follow the three principles described above relating to "independence and initiative," "equality and mutual benefit" and "due regard for international practice" (see "China Legal System," *supra*). These elements plus the provisions of the Agreement between the parties will be combined "organically to solve problems in a fair and reasonable and truth-seeking way".

The Chinese expect that most cases will be settled by conciliation. They emphasize that the Chinese practice is to investigate the facts and to have open hearings in which evidence would be presented. The facts are investigated for the purpose, among other things, of educating the parties to prevent a recurrence of the matter in dispute. The Chinese are concerned in international trade matters about "great nation chauvinism"; national hegemony is not desired. They believe that all parties should be treated equally before the law.

With respect to other dispute resolution procedures, there have been discussions with the American Arbitration Association regarding joint conciliation methods. Using this approach, the Chinese resolved one dispute and they expect this procedure will be utilized in the future. Disputes resulting from the transfer of technology are expected to be resolved by a joint conciliation committee comprised of representatives of CCPIT and representatives from the country of the other party. The Chinese believe that disputes should be

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<sup>3</sup>In designating a third country the Chinese may explicitly agree to follow the rules of a designated arbitral organization (e.g., Stockholm Chamber of Commerce) and implicitly, the procedural rules of the country of arbitration (e.g., Sweden). We are unaware of any arbitrations outside of China in which the Chinese have participated.

resolved by direct negotiations. If that fails, the parties should assign members to form a joint conciliation commission and fact finding and conciliation should be attempted. Failing that, recourse should be to arbitration or to courts of law.

### *Insurance and Banking*

The Peoples Bank of China functions as China's central bank and operates the domestic banking system within China, including the Peoples Construction Bank which is responsible for providing capital for national construction. The Peoples Bank of China, an autonomous agency which also has the status of a State Ministry, supervises all other Chinese banks. These other banks, with the exception of the Bank of China, have as their customers governmental instrumentalities and state-owned enterprises.<sup>6</sup>

The Bank of China, subordinate to the Peoples Bank of China, is the primary external bank of China. It serves all foreign trade needs of China and is responsible for foreign exchange. Unlike the Peoples Bank of China, which is a government organ, the Bank of China and the other state banks are separately incorporated. The Bank of China has fifty branches in China and foreign branches in Hong Kong, Singapore and London with a branch to be opened in Luxembourg.

In connection with payments involving foreign transactions, they are willing to observe international banking practice provided it does not harm China's interests. In order of preference, the preferred methods of payment for goods obtained by Chinese from foreigners include: deferred payment (*i.e.*, vendor-supplied credit), compensation trade (*i.e.*, a form of barter) and intermediate or long-term credit obtained between banks or between Chinese and foreign corporations. The delegation was advised that the Chinese government was not considering direct loans by foreign governments to China although this issue was expected to be discussed soon. While in Japan, Vice Chairman Teng Hsiao-Ping stated in October, 1978, that foreign loans to the Chinese government were not being considered but would be possible in the future.<sup>7</sup> Under study is the attitude and posture of the Bank of China's relations with U.S. and other foreign banks.<sup>8</sup> Problems related to the foreign claims-frozen assets still prevent Chinese accounts from being directly held in U.S. offices of American banks. With respect to letters of credit and collec-

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<sup>6</sup>We were advised by the vice-manager of the Hong Kong branch of the Bank of China that eight other banks in Hong Kong are jointly owned by the Chinese government (more than 50% and under its control) and by private individuals. The ownership was acquired by additional contributions of capital by the Chinese government to existing banks. They are, in effect, sister banks of the Bank of China and their head offices are in China (Shanghai, Peking or Kwangchow). These banks are under the control of the Peoples Republic of China.

<sup>7</sup>China has recently indicated their willingness to accept government to government loans.

<sup>8</sup>The Chinese recently announced that full banking relationships had been established between the Bank of China and Bank of America, First National Bank of Chicago, Chase Manhattan Bank and First National City Bank.

tion procedures, the Chinese observe international banking practices but do not accept as such the International Chamber of Commerce Rules on documentary credits regarding payments against documents of title; however, the principles incorporated into these rules are followed in practice.

With respect to insurance, the People's Insurance Company, organized in 1949 with its headquarters in Peking with 23 other branches, handles import and export insurance for air and/or maritime shipping matters. The maximum insurance for cargo is \$16 million (United States dollars). It also participates in international reinsurance. Oil pollution liability insurance is available up to a maximum of \$30 million. China is not a party to any international conventions on insurance; however, the 1971 Oil Pollution Convention is under study. With respect to shipowners' liability insurance, it generally follows international practice with two major differences. They do not insure against liability for injury to individuals or for third party liability, and the amount of compensation may not exceed the amount of damage actually suffered. China's attitude toward international conventions in the maritime area include their accession to the 1960 Convention *re* Safety of Life at Sea, the 1960 Convention *re* Load Line, and the 1960 Convention *re* Avoidance of Collisions at Sea. They are actively studying other maritime conventions to meet China's new direction to accomplish modernization.

#### *Delegation Briefing of CCPIT Personnel*

Certain members of the delegation briefed CCPIT officials. Frank O'Brien reported generally on United States law and policy with respect to maritime matters. He discussed, among other matters, the following issues: jurisdiction relating to maritime matters; handling of cargo, collision and salvage cases; statutes of limitation pertaining to various maritime matters such as sales contracts, charter parties, salvage contracts, vessel collisions, etc. He discussed the Hamburg Rules (the United Nations Convention on the Carriage of Goods By Sea Act 1978) which had been adopted by approximately 16 countries (mostly the developing countries). This Convention will come into force on the first day following the expiration of one year from the date of deposit of the 20th instrument of ratification, acceptance, approval or accession. Other countries are expected to accede to the Convention. It has not yet been adopted by the United States primarily because it eliminates the defenses of damage by fire or errors in navigation. Mr. O'Brien believes that countries with substantial maritime (shipping) involvement would want those defenses available. He discussed the issues of stevedore associations and questions of oil pollution. He believes that the 1978 United Nations Convention on the Carriage of Goods by Sea would not be ratified by the United States, at least not in the immediate future. With respect to the 1960 International Convention on Pollution of the Sea and the 1970 International Covenant for the establishment of a fund for the pollution of the sea, it was his belief that the United States did not view these conventions as being as broad or as protective as existing U.S. legislation.

Beverly May Carl discussed various legal matters of general concern, including the federal-state relationship, the Act of State Doctrine, choice of law, venue and the effect of arbitration. James Johnson discussed problems related to international banking and finance and the role of lawyers in facilitating international transactions. Toby Meyerson discussed matters relating to the United States position on anti-dumping. Stephen Guittard discussed United States export controls, and Henry Clay discussed certain matters relating to foreign claims and defaults of securities issued prior to 1949 by instrumentalities of the Chinese government and enterprises whose assets are now owned by China.

### *Response by CCPIT*

Mr. Jen generally responded to the briefing by members of the delegation with the following observations. He did not believe that the United States anti-dumping laws would create problems for China, as they were only exporting small quantities at present. With respect to export controls, he believed that Sino-American trade should not be treated in a discriminatory fashion and that a strong China would be beneficial to the United States. China wished to expand U.S.-China trade. He stated it was very often difficult to resolve the issue of military versus non-military purposes of goods. With respect to the frozen assets, he noted that it was a complicated question that had been pending for many years.

Any requests for trade or for the identification of enterprises within China in connection with trade could be directed to CCPIT which would transmit proposals to the appropriate Chinese enterprises. CCPIT is composed of the following departments:

1. A liaison department to contact foreign trade associations;
2. The Chinese Exhibition Abroad Department;
3. Foreign Exhibitions in China Department (*i.e.*, to assist in their arrangements);
4. A Department of Publicity;
5. A Legal Affairs Department;
6. Arbitration Commissions;
7. A Technical Information Exchange Department whose purpose is to promote trade through the exchange of technology and technical information; and
8. A center for collecting samples and catalogues of foreign enterprises and making those available to Chinese enterprises.

He emphasized that there was no direct link between CCPIT and any of the Chinese trading corporations but that they worked in close collaboration and that the responsible persons (*i.e.*, the leaders) of China's major corporations are members of CCPIT.

## **Peking Law School**

The delegation met with members of the Peking law faculty on November 3, 1978 and a smaller group met with the Peking law faculty on November 6, 1978. Peking University was established in 1898 and, at present, consists of some 21 departments with approximately 2,700 faculty members and 8,500 students. Higher education had been substantially damaged and "sabotaged" by the Gang of Four and the Cultural Revolution. Education is under the control of the Communist Party. Presently, the educational areas that are being emphasized are those that will further Modernization, primarily in the area of science and technology. Peking University is a "key" school which has higher entrance examination requirements than other universities and colleges.

The Peking Law Faculty or Law School was recently reopened. The course of study leading to a degree in law takes four years. At present, students are enrolled only in classes comprising the first three years. There are approximately 300 students in attendance, approximately one-third of whom are women. Another 100 students are expected to be enrolled as first year students the next school year. There are approximately 60 teachers and faculty members, of whom 10 are women.

With respect to students studying law in China, there are charges for tuition and books. Subsidies were available for living expenses for those students in need. Students attend classes between 22 and 24 hours a week, and with outside study, the total work load is approximately twice that amount. Law students have work assignments in the community to maintain "touch with the people". This involves working 10 to 15 days a year in a factory or commune. As part of their studies, students are assigned to work in law related tasks, for example, working in the judicial system. The full-time faculty teaches four hours a week and may occasionally act as a defense lawyer.

Students are all graduates from the middle school and include workers and those from the judicial branch of the government. Graduates are placed in accordance with the needs of the state, although some thought is given to the preference of the student. Most of the students will go to the judicial and procuratorate branches of the government, with a few to newspapers and teaching. The present selection process is by examination. There are four law schools in China.

With respect to the curriculum, the emphasis is, of course, on the socialist theory of law, Marxism and Leninism. The major departments within the Law Faculty include jurisprudence (law and theory), constitutional law, civil law, criminal law, international law, and the history of law. Among the subjects taught are political economy, political philosophy, history of the Communist Party, foreign language, logic, theory of the state, civil law, criminal law, history of the law in China and other countries, procedure, public and

private international law, and criminal investigation. Courses will be added on the new constitution which was adopted in 1978, the organs of government, and the rights of the individual *vis-à-vis* the state. Private international law, before the Cultural Revolution, primarily dealt with conflicts of law, theory of private law, law of obligations, procedure, family law and succession. In addition, they are currently teaching courses in international trade, conflict of law in international trade transactions, sales of goods, shipping and transportation of goods, insurance, patents and licensing, transfer of technology, international payments and arbitration. With respect to future subjects, the Law Faculty currently intends to cover acts and regulations of China governing foreign trade, contracts, legal system of major trading partners, international sales of goods, UCC, maritime law including the Hague Rules, carriage of goods at sea rules, the Hamburg Conventions, letters of credit and drafts, International Chamber of Commerce arbitration rules, and practices of international trade.

With respect to the court system, the lowest court is a district (county) court followed at the intermediate level with a prefecture court, then a provincial (or municipality) court and a supreme court. The trials are open to the public with a right to appeal from an adverse decision. Methods to resolve disputes between Chinese enterprises resulting from their failure to perform their obligations (*e.g.*, the inability to deliver the quality or quantity of goods agreed) are under study. Other matters under study include the possibility of establishing a commercial court or arbitration procedures, or both, to deal with such problems.

Also under study is a complete civil code. The most pressing work in progress concerning the Chinese legal system is the development of codes of criminal law and criminal procedure. One professor expressed the view that he did not expect that China, given its present economic system, would follow the Yugoslavian model of Worker Self Management.

Among the other topics discussed were suggested methods of interchange with United States lawyers including inviting United States lawyers to come to Peking to lecture on United States law and international legal matters. The possibility of sending a group of professors from Columbia Law School was discussed. It was suggested that that be done through Luxingshe. However if the group was willing to limit its activities to Peking, the Peking Law Faculty could extend the invitation. This would not be suitable if the United States professors wished to visit other parts of China.

The Peking Law Faculty is making efforts to study the need for comprehensive social legislation because of the effects of the Gang of Four and the Cultural Revolution on the people. They believe learning from other countries will be helpful in this regard. Because of expected increases in foreign trade, they intend to study the international trade practices of western countries. It is expected that Chinese students would eventually study law in the United States.

The Section of International Law was generally described and it was agreed



that contact between the Peking Law Faculty and the Section should be maintained. The Peking Law Faculty welcomed the friendship of the Section and the offer to confer with their "friends from the United States" on legal issues.

### **National Law Institute**

The delegation was briefed on the work of the National Law Institute by five members of its research staff:

- Hsu Ho-kao, admiralty specialist
- Li Chia-hua, insurance law
- Wai Chia-chu, admiralty and criminal law
- Yao Chuang, private international law
- Shen Hsiao-ming, admiralty

Mr. Hsu presided over the meeting. He said the Law Institute is the only one of its kind in China.<sup>9</sup> It currently has a staff of more than 100 and resumed operation in February 1978 after a 12-year hiatus. Its primary function is to engage in legal research. At the present time, it is playing a principal role in the major codification effort to create a strengthened socialist legal system to promote the "Four Modernizations". It cooperates closely, and holds frequent seminars with the research staff of China's law faculties (such as Peking University and People's University) and government legal specialists (such as the legal department of the CCPIT). Current codification work is directed by the Political-Legal Group of the Party Central Committee. That group is chaired by Vice-Premier Chi Teng-Kuei, with Minister of Public Security, Chao Ts'ang-pi, serving as Vice-Chairman.

The Law Institute is organized along the following divisions: theory of the state and law, constitutional law, legal history, civil law, criminal law, procedural law, public international law, private international law and maritime law. The Institute has just begun studying private international law. It is interested in learning about substantive United States law, the organization of its legal system and the United States legal education process. It is particularly interested in the procedures followed in handling maritime cases as a maritime law is expected to be enacted in China soon. The Institute also sends its researchers into the field in China to study actual practices involving law, particularly civil matters such as inheritance, marriage and family law.

The Law Institute has frequent and close contact with China's foreign trade corporations and assists them in legal research. The anticipated expansion of China's foreign trade will necessitate appropriate legal developments. For example, it is studying international conventions, such as the Hamburg Rules. China's past policy of utilizing the three principles — independence and initiative, mutual benefit, and compliance with international practice — to resolve legal issues has produced a few problems. This policy still continues

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<sup>9</sup>In December 1978, China announced plans to establish a law institute in each province.

but the Chinese recognize that it is not sufficient itself to resolve all legal issues. China is aware that foreigners need laws that are certain and they are sensitive to foreign concern in such matters. The Chinese also recognize their need to learn from other countries.

The briefing confirmed what the delegation had heard from several other sources — the top priority in the current codification program is assigned to codes of criminal law and procedures, because the Chinese believe that they “must have law in order to follow law.” Chinese criminal law differs from place to place. Uniform standards are needed in order to avoid different degrees of punishment for comparable criminal violations. Although China does not have professional legal representatives (*i.e.*, lawyers), as such, to represent foreign businesses in China, CCPIT will provide general assistance in matters of trade.

### Mei Shan Iron Factory *Nanking*

The director of administration of the Mei Shan Iron Factory, located near Nanking, met with the delegation on November 8, 1978. Construction of the factory, utilizing Chinese designed technology, commenced in May, 1959, at the approximate start of the Cultural Revolution. It was finished in July, 1970 as an iron and coke factory and has as its principal product pig iron. It consists of three primary production units—an incendiary plant, with two blast furnaces, a coke plant and an iron smelting plant. It is a self-contained industrial complex that employs approximately 13,000 workers of which 9,000 are directly employed in production of pig iron and its by-products. Women constitute one-third of the work force. Production was affected drastically by the Gang of Four because the cadre refused to follow management direction and there was substantial sabotage and anarchism. Today production has been increased substantially. Major problems existing today result from archaic means of production (*i.e.*, old technology) as compared with the newer iron factories in China and in other foreign countries. An additional 7,000 individuals are working at the iron mine. There are approximately 20,000 additional people living within the industrial complex and under its administrative direction. The complex has available to the persons subject to its administrative control a workers' college, plus other schools including nursery, primary and middle schools. The plant is under the direct control of the provincial government, with the manager appointed at that level.

We visited a nursery school providing children ages 3-5 entertainment-type tasks with educational aspects. The parents pay 1 RMB per month for each child and 10 fen per meal for lunch. Also visited was a primary school (for children ages 6-13 years). Parents pay a fee of 3 RMB per semester for each child in primary school and 4 RMB per semester for each child in middle school. The delegation divided into groups of 6-8 individuals who visited with families at their apartments. With respect to one family visited, the father

was director or supervisor of the mechanical shop of the power plant and the mother was a physician specializing in Ear, Nose and Throat (ENT). The eldest child, a son, worked on the farm, one daughter had just taken the college entrance requirements although she had not yet been accepted, and the youngest daughter was attending middle school. The family earns approximately 200 RMB a month, collectively, and lives in a two-room flat, sharing kitchen and bathroom facilities with two other families. Factory workers generally worked 9 hours a day, 6 days a week. Most worker families' combined income will permit savings (often up to one-third of their monthly income). Generally, there are limited goods available to purchase beyond food, clothing, and shelter. Other goods such as bicycles or sewing machines may be, in effect, rationed.

The delegation visited the coke production unit, the administrative offices, the iron smelter (open hearth method) and a general hospital (360 beds with 113 doctors and 300-plus nurses).

The organization of labor and the wages paid by this plant are typical of many large-scale industrial enterprises in China. Throughout China, there is an eight-grade wage scale, within factory production units, which was established before the Cultural Revolution and is still being maintained. All persons, irrespective of the nature of the job and the required skills, start off at the bottom of the scale. However, individuals from other parts of the country may earn a premium amount above their specific base wage scale because a worker may have come from an area in which wage scales may be higher because of higher costs of living. For example, an individual from Shanghai working in Nanking will earn from 42.5 RMB for the lowest grade to 133 RMB for the highest grade; the pay range for a Nanking resident was 32 RMB to 96 RMB. Thus, an individual transferred from Shanghai will not be penalized for working in Nanking; they will be paid the Shanghai wage scale. Current measures are being taken to narrow the gap between the wages paid for each grade between the varying localities.

After the Gang of Four (that is, in the last year or two), special awards and incentives have been given for individuals involved in hardship-type work; *e.g.*, individuals who work near blast furnaces. The average wage in Nanking was 55 RMB exclusive of special awards [bonuses]. The average work day is eight hours with extra pay [overtime] for holidays and double-time for special holidays. They generally give compensatory time off for days worked in excess of eight hours instead of paying overtime. In addition to regular wages, Mei Shan workers may be entitled to a bonus. The bonus system is three-tiered: the three best workers receive 7 RMB extra a month; most workers will receive 5.5 RMB and the lowest group will receive 4 RMB. No worker will receive a bonus if the workshop to which he belongs does not fulfill its production quota. A bonus may be withheld if a worker is involved in a serious incident.

With respect to the financing of the enterprise, the original capital and the operating capital came from the state and was authorized by the central gov-

ernment. Generally enterprises will operate in a multi-tiered manner by the central government administering or directing the activities of the provincial or municipal departments, who in turn coordinate the activities of the enterprise. At Mei Shan, all profits go to the state, although under study is the possibility that some amounts may be permitted to be retained for its capital needs and/or bonus distribution for the employees.

The amount of funds available for operating capital is determined by all the factors surrounding the enterprise, including the number of employees, size of operation, welfare facilities, etc. The gross income of the enterprise is determined by revenue received from sales by the factory and will be taxed by the state at some rate; for example, receipts for sales of pig iron are taxed at a rate of five percent and there is an eight percent tax on receipts from sales of chemical byproducts.

With respect to management of Mei Shan, they operated for a long period of time without rules and regulations until the Gang of Four were replaced. Now they combine management objectives with rules and regulations promulgated by the state; *i.e.*, planned management. The objectives of management were: increasing the benefit to the enterprise [profit], having satisfactory quality control, meeting production quotas for the quantity, type and kind of goods produced, minimizing production costs, maintaining the investment [*i.e.*, equipment and personnel training] and operating in a manner to protect personnel safety.

The Chinese discussed contracts between entities as though they existed and that the party at fault in a breach of contract must compensate the other party. When we requested to review some of these contracts, they indicated they were not yet in existence but are expected in the near future. Disputes not resolved between a supplier and a customer are now resolved by a "higher authority" and an economic court was expected to be established soon.

The plant operates under a system of director's responsibility under the unified leadership of the factory's Communist Party committee (*i.e.*, a plant manager system has replaced the revolutionary committee). The director is appointed by a project headquarters whose members are, in turn, appointed by the provincial department administratively responsible for the factory.

With respect to employee or labor problems, an employee, deemed to be unsatisfactory by management, would be criticized and reeducated and, in extreme cases, transferred. They do punish workers in a monetary sense and occasionally by warnings and "demerits."

### **Nanking Middle School**

We visited the Number 10 Middle School of Nanking on November 9, 1978. It is a "key" middle school which today connotes special students, training and facilities. In 1889, this campus was organized as the Huei Wen College which was a missionary college and in 1909 became a middle school. It presently has a staff and faculty of 220 people with 2,490 students, 80% of whom will graduate. The number of male and female students is approxi-

mately the same. Most of the students were from worker or peasant families. At present, they enroll students who have outstanding scores in entrance examinations. Students in the junior middle school (*i.e.*, the first three grades) would probably do very well. Students currently enrolled in the senior middle school were admitted under the admission policy of the Gang of Four in which everyone was entitled to attend. This was one effect of the Cultural Revolution and the teachers do not expect those students to do as well as the students enrolled under the current policy.

The school program is composed of nine months of in-class work, two months of vacation (one in the Summer and one in the Winter) and one month set aside to work, in alternating years, in industry and in agricultural enterprises. In this regard, the school has a small electronics factory and metal shop on the premises and a small farm in the outskirts of Nanking. One of the purposes of schooling in China is to cultivate a love for working and the integration of practice and Communist theory. In south China the vacation policy is slightly different because of the climate; that is, instead of a one-month vacation in the summer, they will have 40 days, and the Winter vacation will typically be 20 days instead of 30 days. The average school day commences at 6:30 A.M. and runs until 5:30 P.M. The first 20 minutes is generally allocated as a self-study period, and there are typically six periods of study with 20 minutes for physical exercise.

In general, the educational system in China is organized along the following age groups: nursery school, ages 3-6; primary school, ages 6½-12 (five grades) and middle school, ages 13-18 (five grades). Junior middle school is mandatory in rural areas and the senior middle school (the last two grades) is mandatory in the urban areas. The average tuition in middle school is 5 RMB per semester. Certain schools, both primary and middle schools, are designated as "key" schools and typically pick outstanding students only. Those with lesser demonstrated academic skills will go to other middle schools. Handicapped and retarded children are typically held to the same standards as other children. After middle school, those with a proper political outlook, good grades and high examination scores will go on to the university and the others will go to work in industry or agriculture (a commune). The state encourages those who fail their college entrance examinations to study and sit for the exam again. Between twenty percent and thirty percent of the graduates of this key middle school in Nanking will continue on to higher education. The percentage of graduates of other non-key middle schools continuing on to higher education is apt to be substantially less.

Modernization is affecting schools and their curriculum. The senior middle school is divided between liberal arts (study of Chinese history, politics, geography, foreign languages, physical culture, etc.) and that of science (chemistry, biology, physics and mathematics). This divided system is on a trial basis and is not yet nationwide.

There are two student organizations at the middle school level, one for all students, the Student Union, plus the Communist Youth League, both of

which play an important part in the students' education. These organizations coordinate hiking, swimming and other outside educational and cultural activities.

The Young Pioneers, the counterpart of the Communist Youth League at the primary school level, are identified by a red bandana worn around the neck. Both the Young Pioneers and the Communist Youth League are subordinate organizations but are related to the Communist Party and play a role in the political education of the children. Members of these two groups are selected because they are sound "politically, intellectually and physically" and are the "vanguard of students" (*i.e.*, the leaders) and the link to the Communist Party. Selection for membership in the Communist Youth League is by individual application which is screened by a committee of members of the Communist Youth League. Members of the Young Pioneers and the Communists Youth League engage in special activities which enhance, to the child, the benefits of belonging. Out of the 2,490 students at the key school, between 300 and 400 members were members of the Communist Youth League.

The Student Union is a mass organization which everyone was entitled to join on a voluntary basis. The cadres of that organization were selected on a "democratic" basis. The cadre [the leaders] are the chairman and vice chairman, together with the heads of departments such as studies, propaganda, health, etc. Many extra-curricular activities are organized by the Student Union.

With respect to military service, all citizens are eligible at age 18. Many students wish to join the Peoples Liberation Army and there are rather stringent tests to be passed, both physical and intellectual. Colleges tend to be specialized by vocation such as engineering, medicine, law, etc. and are not the same as the university which has a more general curriculum with specialized faculties. A number of factories will operate factory colleges, called "July 21st Colleges," which were patterned after the Shanghai Factory College. They will train workers for special factory needs. The name "July 21st Colleges" results from a directive of Chairman Mao issued on July 21, 1967 praising the Shanghai factory college and calling for more to be established in this form.

### **Wan Tou Peoples Commune**

The *Wan Tou* Peoples Commune located just outside of Yangchow, is within Han-chiang County. It is a rather large commune with a population of approximately 26,600 people. It is divided into 127 production teams and 13 production brigades. The commune covers approximately 887 hectares of which 870 are under cultivation. The commune was established in 1958; it produces three crops a year, alternating wheat and rice. It also raises approximately 20,000 pigs a year and has about 20,000 square meters of mushrooms under cultivation. There are 25 small agricultural factories producing more than 70 products, including vacuum pumps, threshers, winnowers, tooth-

brushes, wire, etc. A substantial income is received solely as the result of sales from factory operations.

It appeared that the commune was not very mechanized. The total commune had only seven large tractors, 79 walking tractors, seven small harvesters, 227 threshers, 78 pumping stations and 23 rice transplanters. The machinery is jointly shared by the commune, the production brigade and the production teams. Before Liberation (pre-1949), there were five Confucius schools and three private schools. Today, there are 12 primary schools, 11 middle schools, one general hospital and 12 outpatient clinics. Approximately 6,100 students are enrolled in school; prior to Liberation, approximately 300 students were enrolled. Expenses of providing medical facilities are borne by the individuals, the production teams, the production brigades and commune collectively, each contributing some portion of its income to the operation of the facilities. However, doctors in the commune are state cadres so their salary is paid by the state.

All goods are sold according to fixed prices, determined by the central authority in Peking, by category of major product (*e.g.*, grain, rice, etc.). Some prices are affected by local conditions. Goods sold by peasants at local markets are generally higher in price but no sales are permitted to be made to any middleman for resale. It is against the law for a person to buy goods and to resell to another, as this is regarded as the capitalist exploitation of labor. All losses from natural disasters that may occur to a commune or any other industry in China are subsidized by the State.

In determining the relationship within the commune between the Communist Party Committee and the Revolutionary Committee, it was generally indicated that the Party Committee makes the major policy decisions. The Revolutionary Committee is an executive committee charged with the operation and administration of the entire commune and is under the leadership of the Communist Party Committee. Typically, members of the Party Committee will also be members of the 25-member Revolutionary Committee. At the time of our visit, 13 members of the Revolutionary Committee were also members of the Communist Party Committee for that commune. There is no full Communist Party Committee at the brigade level; however, there is a Party branch committee as well as a management committee for the brigade. It was estimated that the number of Party members within the commune was less than 550 members.

The commune is the basic cultural unit in rural China and the basic unit of power. With respect to ownership, the production team is the basic accounting unit and is responsible for the labor force, equipment and productivity in connection with its particular duties. It distributes and accounts for its own income. The commune itself, by decision of the Revolutionary Committee, is responsible for establishing policy and production quotas. Production brigades are the primary administrative organizations into which the production teams are organized. The labor force remains stable and peasants do not generally move from commune to commune or from commune to a factory.

With respect to income distribution within the commune, in 1972 the commune earned approximately 5,500,000 RMB, of which 2,000,000 came from sales of agricultural products, 2,000,000 from side activities of the commune, and 1,500,000 from side activities of the brigades and the teams. They estimated that production costs, taxes and accumulation for reserves and the public welfare fund were approximately 2,000,000 RMB. Approximately 2.1 million RMB was distributed to the peasants. Approximately 1.4 million RMB was used primarily by the commune and brigade for capital improvements. Gross income is taxed at a rate of 3.5 percent. It was noted that a production team receives the income on direct sales to the State or ultimate customer and pays its own costs and taxes and distributes the balance.

In that county, there is a countywide production plan and the leading body of the commune (the Revolutionary Committee) prepares a production plan based upon the national, provincial and county requirements in concert with the ability and needs of the commune. The production plan is then discussed and finalized. The production brigade is then administratively charged with the duty of putting the plan into effect and coordinating the activities of the production teams.

Generally, members of a commune may not leave the commune to work in the city (for example, at a factory). Many members work full-time in brigade and commune enterprises though some may help in the fields at busy times. Most workers in a commune are paid in work points plus some "pocket money" and are paid pursuant to a three grade wage scale. Skilled workers brought in from the outside are paid at their former wage level.

With respect to legal issues, they generally fall into two categories. Marital or family disputes, which, in general, are successfully resolved by a conciliation procedure (*i.e.*, fact finding and education). If that fails, the dispute then goes to a county court for resolution. The commune has established special conciliation committees within the brigade and has designated specific persons to assist in conciliation within each production team. The second major category involving law in a commune is crimes against the commune or another individual. Generally, reeducation is attempted in which the guilty individual will usually express remorse. If a matter involves a crime against another individual and neither party is seriously hurt, conciliation is attempted. If a person injures another seriously, the harming person must compensate the harmed person for expenses and lost income.

The rural court system is established with the county court at the lowest level, followed by an intermediate court, and finally, by a provincial or municipal high court which can impose capital punishment. Sanctions for serious matters in a criminal context are punished usually by labor reform camps.



## **Tung Wu Silk Factory**

### *Soochow*

The Tung Wu Silk Factory was founded in 1921 and employs approximately 2,200 workers (64 percent of whom are women) who produce approximately 6,500,000 meters of silk per year. The factory retains a portion of its income. It, too, has an eight-grade wage system and a bonus system for the workers. The bonus system is based upon production performance measured against production quota. Bonuses are given for individual performance as well as production group performance. These bonuses will be given irrespective of the overall profit of the factory.

Management of the factory is organized primarily to fulfill the following functions: factory planning to fulfill production quotas; improvement of techniques such as silk designs; improved technology and quality control; maintenance of the equipment; procurement of materials and the buildup of inventory; management of labor to fulfill individual quota production; and finally, the financial and accounting needs of the factory. The head of the factory is appointed by the Soochow Communist Party Committee and has a staff responsible for the above areas, each of which is headed by a manager. The factory is further divided into production teams and groups whose leaders are selected directly by the workers. Approximately 10 percent of the factory work force are members of the Communist Party. Currently, workshop leaders are appointed by management of the factory. In the future, workshop leaders are expected to be selected by a national labor union, presumably through its local branch.

The plant Communist Party Committee together with the plant manager make the decisions concerning the factory. The Party Committee is concerned primarily with raising production. The plant manager will be an important part of the factory Party Committee although not necessarily its chairman. Except for the top manager, those persons fulfilling management functions will be entitled to a bonus generally based upon whether the people under their administrative control have fulfilled or exceeded the established quota; their bonuses will not be based upon profit of the enterprise. The amount of the bonus is determined by the group itself in the case of group leaders and ratified by the workshop authorities. At this particular factory there were three grades of bonus: below average, average, and above average. Thus, most employees would get some bonus.

The determination of the type and quality of the article to be produced for export only (70 percent of production) is determined by customer orders. Determination of the type and quality of all other goods would be determined by the responsible production agency at the regional level.

## **Chao Yang Residential Community** *Shanghai*

The autonomous municipality of Shanghai is governed by a Municipal Revolutionary Council which is divided into 10 District Revolutionary Committees and within each district there are approximately 10 Neighborhood Administrative Committee Offices. The Chao Yang residential community was established in 1959 as the first of its kind. It contains approximately 76,000 individuals comprising approximately 19,000 families. Each residential community has its own housing management office but all are under the direction of the District Housing Bureau. The Chao Yang Residential Community is composed of two- to five-story residential buildings, has eight nursery schools, eight kindergarten schools, nine primary schools and eight middle schools. The facilities are what they consider to be average quality. There were two hospitals and 16 outpatient clinics, one cinema, one cultural center, a swimming pool, a park and 60 retail-type establishments including stores, restaurants, banks and a post office. Most of the inhabitants work in nearby factories but some are doctors and office workers. Ninety-six percent of the housewives who do not work in factories, work in processing workshops located within the community. They produce such things as fountain pens, toys, diapers, etc. There are approximately 4,200 retired workers. Generally, men retire at 60 and women doing manual work retire at 50 while those women doing mental work retire at age 55. Retirement at such ages is, in practice, compulsory although not legally required. Retired workers receive 70% of their last wage as retirement pay plus free medical care. In China people are taken care of from "womb to tomb" including funeral expenses.

The administration of the residential area is by a Neighborhood Administration Committee Office which is staffed by government cadres who represent the urban District Revolutionary Committee. The officials of the Neighborhood Administration Committee Office are appointed by the Shanghai Revolutionary Council. The areas of responsibility within the Neighborhood Administration Committee Office are propaganda, organization, personnel, culture, education, health, welfare, collectively owned enterprises, militia as well as general administration. The residents elect the 16 Residential Committees within the Chao Yang residential community. These committees are mass organizations and are not staffed by government paid workers. The interaction between the Neighborhood Administration Committees Office and the Residential Committee is basically one of coordination. The cadre of the Residential Committees carry out or assist in carrying out the policy of the Neighborhood Administration Committee Office.

There is no public security group (police) or mediation group administratively part of the Chao Yang community. However, as a part of the unofficial Residential Committees, there were two subcommittees, one concerned with security defense (informal police) and a mediation committee. Generally, six or seven members will comprise the mediation committee whose primary function is to resolve disputes between neighbors, families, or

spouses. The most frequent are family or neighbor disputes, usually over the use of common facilities. The mediation committee will investigate the facts, attempt to assist in reeducation, and will use criticism to cause an admission of wrong. The leadership of the factory where the disputing parties are employed will be asked to become involved in those cases which cannot be resolved by mediation. The employing factory cadre from the trade union will typically, in such cases, assist in the reeducation process. A representative of the district Peoples Court (a judicial worker) will assist the mediation committee in training and in special cases, to help resolve disputes. The judicial worker is frequently a judge. At Chao Yang, three out of the six members of the mediation committee are members of the Communist Party. Each member of the mediation committee keeps a record of mediation proceedings but these records are not reviewed by a court.

### **Shanghai Municipal Higher Peoples Court**

We were fortunate to be briefed by three members of the Shanghai Municipal Higher Peoples Court, Mr. Hsin, Mr. Li and Mrs. Wang. Shanghai, as a municipality, enjoys the same autonomous status as the Chinese provinces and regions. The Shanghai court system has as its lowest court, a municipal District Peoples Court, followed by an Intermediate Peoples Court; and finally the Shanghai Municipal Higher Peoples Court. In some instances, appeals can be taken to the Supreme Peoples Court located in Peking. In the rural court system, the Peoples County Court functions at the same level as the District Peoples Court. There may be branch courts within the district or in the county court system based upon population and case load needs.

The Chinese judges view their task as falling into three areas. In criminal cases, they believe they should maintain the socialist system (*i.e.*, Communism) and maintain the social order. Secondly, they believe they have a task to resolve contradictions [disputes] between people for the purpose of enhancing unity among the people. Third, they believe they have an administrative function or educational function in the area of propaganda.

The Shanghai Municipal Higher Peoples Court is composed of a president, a vice-president, chief judge and several judges. The president of a court will be elected at the specific level of the Peoples Congress relating to the specific court at that level. For example, at the Shanghai Peoples Congress, the president of the Shanghai Municipal Higher Peoples Court, and similarly, at District Peoples Congresses, the presidents of the District Peoples Courts would be elected. The vice-president and judges of the Shanghai Municipal Higher Peoples Court will be elected (selected) by the Shanghai Revolutionary Committee. The term for a judge on the high court or the intermediate court is five years; the term for a judge at the district or county court level is three years. Judges can be re-elected. The Communist Party Committee at each level is responsible for the court at their respective level.

China is without a comprehensive legal structure; as such, one of the problems is to determine what the law is or should be. If there is a specific written

regulation or law, the court will follow it. If there is general law or regulation which is relevant, the court will follow the principles generally enunciated. If there is no nationally adopted policy, the court will then follow the policy of the Communist Party. The court will render written opinions describing the facts, a discussion of the issues, grounds for the decisions and the decision itself. The advocates before the court will, in most cases, be the parties concerned; in some instances, a relative or an individual within the community may act on behalf of a party. In special cases, an advocate will be appointed by the court who may be an individual who is a part-time lawyer or someone with special talents such as ability to use sign language or someone with special technical know-how. It was also noted that under the new constitution the National Assembly has the power to interpret the laws, the constitution and control the Peoples Supreme Court.

Certain rights are observed in matters involving the courts including:

1. Public hearings (with some special minor exceptions dealing with simple cases), with no juries;
2. The right of defendant to self-advocacy;
3. All persons are to be treated equally before the law; and
4. The cultural minorities (*i.e.*, the minority nationalities in China) may use their own language before the court.

The policy of the law concerning counter-revolutionary and/or criminal activities is affected by the Communist theory and prospective. China is currently in the socialistic stage in which there is still a class struggle in which contradictions result. They recognize that there is some ordinary crime such as murder, arson, rape, swindle, embezzlement and social disturbance that needs to be resolved. The court feels it must carry out the policy and the law of the government to resolve contradictions between the people or contradictions between the people and the enemy.

The courts operate under the general proposition that punishment should be meted out with leniency. Ringleaders should be severely punished and those who acknowledge the error of their ways and who show remorse should be treated leniently. Good deeds and merit should be given credit to ameliorate punishment, and stern punishment should be given to those who show no remorse. The courts try to take into consideration all circumstances surrounding the crime including the defendant's social condition. In terms of punishment, they consider the attitude of the criminal, the public reaction to the crime, and the degree of seriousness of the crime itself. They tend to pay more attention to the facts surrounding the crime rather than to confessions. Determinant ranges of sentencing based upon the nature and gravity of the crime have been adopted. Generally, individuals convicted of minor crimes are given three years or less of supervision (a type of parole with a loss of political rights such as the right to vote). They generally imprison for more serious crimes. Life imprisonment is generally given if murder is involved. The death sentence is given out very infrequently and would generally only occur for murder in which there was some kind of a "bloodbath" and where there is no chance of rehabilitation of the defendant or in instances of a great

public outcry. It is the policy to impose a sentence of other than the death penalty where the circumstances justify. In some instances, the death penalty may be levied but be commuted. Generally imprisonment involves labor reform plus reeducation.

In civil cases, there are typically two assessors of fact and one judge at the first hearing. The first hearing is primarily conciliatory in nature and the decision can be appealed. At the second hearing, the court hearing the matter will be composed of three judges, and a decision rendered after the second hearing is final (with some limited exceptions). Civil cases are being reduced as a result of socialistic reforms adopted in China. The prior civil case load primarily involved actions relating to debts, labor problems and land disputes. The present case load generally relates to marriage and family problems, such as support for parents and children and divorce. Some matters involve housing disputes and inheritance issues. Business disputes are generally not before the court, as they are generally resolved by conciliation or by higher levels of responsible authorities. They noted that currently under study is the formation of an economic court which would be a special court rather than a division of the Peoples Court.

In resolving civil disputes, the precepts of Chairman Mao of unity, criticism and unity are followed. The problem should be analyzed in terms of the principle of unity; it should be resolved by use of criticism; and the solution will resolve itself into unity. Decisions are based and decided to give effect to the policy of the Communist Party.

Most cases or disputes are resolved by mediation and only if mediation is unsuccessful, do they go to court. There are mediation groups in each residential unit and each commune brigade. Generally the residential unit's mediation committee operates under the direction of the Revolutionary Committee and in a rural setting, under the direction of the commune Revolutionary Committee. [This was not true with respect to Chao Yang Residential Unit which had informal mediation committees.] Mediation requires the willingness of the parties to use this form to resolve contradictions. If a party does not agree, he can go directly to the court system. This does not frequently occur.

With respect to economic disputes, there have been no private versus state-owned enterprises disputes since 1956 when the country went completely socialistic. There are some disputes in the economic area between enterprises. A new economic law is currently under study and expected to be promulgated.

In general, both criminal and civil appeals require an appeal within ten days after the decision is rendered in the first hearing. The right to appeal and obtain a second hearing is absolute and a trial *de novo* is held. If not appealed within the ten-day period, one can appeal to the Supreme Peoples Court in Peking which may, under special circumstances, take the case. Approximately 20 percent of the cases are appealed and the appeal court can either retry the case and/or remand it for further trial by the lower court.

In Shanghai, approximately one-third of the judges are women and ap-

proximately one-half of the judges trying civil cases are women. A judge is required to have a certain knowledge of the law and the cultural environment in which he is to make decisions or adjudicate disputes. There are a number of "pre-liberation" judges still on the court. In some cases (primarily the result of the Cultural Revolution), workers or soldiers were appointed as judges and they were given on-the-job training and sent to law schools for a very short training procedure. Today, law graduates who work within the judicial system tend to be appointed as judges.

### **Shanghai Prison**

The Shanghai Prison, which was the sole prison for the Shanghai Municipality (population approximately 15,000,000), was built between 1906 and 1925 by the British. The prison authorities indicated the prison was not usually open to visitors and they had made an exception in our case. This prison had been used by the British, the Japanese and the Kuomintang government when they were in power. It has production facilities for making watches, for small matter printing and for fabricating of clothes and has a gross income of 20,000,000 RMB annually. Both western and Chinese medicine is available and there were approximately 2,400 prisoners convicted of general crimes and approximately 200 prisoners convicted for counter-revolutionary crimes.

According to Chairman Mao, the Chinese philosophy is that jail should be in the nature of a school, factory or farm with its emphasis on reform. The following policies should be adopted with respect to prisons: Reform with productive activity, punishment with leniency, ideological indoctrination with labor reform, and revolutionary humanitarianism.

Prisoners are given the works of Marx and Lenin for self-study and the self-study of the new constitution is encouraged. Radios are available to prisoners. Visitation and correspondence is allowed (usually one letter and one visit per month). They have a strong reward/punishment system, including the right of the jailors to recommend retrial and/or resentencing to reduce or extend a sentence. Punishment is by issuing demerits, withholding privileges and solitary confinement (maximum of one week). There is no corporal punishment of prisoners and no insulting of prisoners by guards is permitted. The prisoners' day includes eight hours of work, two hours of self-study, eight hours of sleep and the balance self-recreation. One to two movies are generally shown each month. The prison is effective in placing ex-inmates on a job usually at the original place of work. The recidivist rate is approximately one percent.

The Shanghai prison is the only prison for the municipality of Shanghai. We were told that these prisoners were all of the individuals imprisoned in Shanghai and that there were no other labor reform camps to which prisoners could have been sent.<sup>10</sup> Most of the prisoners were convicted of criminal

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<sup>10</sup>The rapporteur believes that a total of 2,600 prisoners for a city exceeding 15,000,000 indi-

conduct such as embezzlement, hooliganism, speculation, and a small number of physical crimes such as murder, robbery and the like.

There are less than 200 counter-revolutionaries imprisoned. The first category of counter-revolutionaries were high officers of the Kuomintang, a majority of whom have been released when many war criminals were pardoned in 1975. Some eventually went to Taiwan. The second category is the so-called newborn counter-revolutionaries whose intention is to undermine the new order, and their crimes generally involved disseminating counter-revolutionary slogans and propaganda. The last category of counter-revolutionaries are agents and spies of the Kuomintang or other imperialists, a few of which are foreigners.

The provinces may have labor reform camps instead of prisons. Persons who committed crimes and had psychiatric problems were generally not sent to prison but treated in psychiatric hospitals. Chinese women who were pregnant and/or nursing or those with infants are not sent to prison; women with children are generally given shorter sentences. With respect to youthful offenders, those under the age of 18 who are not serious offenders are generally re-educated and reformed within the community; for more serious crimes, youthful offenders are sent to youth camps.

### **Communist Party**

The organization of the Communist Party differs in the urban setting from its organization in the rural areas. The urban Party organization is structured so that the lowest level is the branch committee, followed by a district committee and then the Municipal or Provincial committee. In the rural areas, it has the following structure: a brigade committee, a branch committee, a prefect (county) committee, a special district committee, and a provincial or municipal committee. There are 29 autonomous provinces, regions or municipalities (30 counting, as the Chinese do, Taiwan), each of which has a Party committee which is under the control of the Party Central Committee. The Central Committee is elected by the National Party Conference. Each National Party Conference, which generally meets every five years or so, will elect a Chairman and Vice Chairman of the Party. The provincial, regional or municipal party congress will meet every three years and have their elections. The 23-member Politburo is elected by the Central Committee.

All major decisions of an organizational unit, whether a production, agricultural or residential unit, will generally be discussed by the respective party committee or branch at that level. The appropriate administrative organ, such as a factory or commune Revolutionary Committee, will carry out the policies. The National Peoples Congress, which for example adopted the new Chinese Constitution, represents the nation, as a whole, and "represents all walks of life." The Politburo has the power to take action and make policy

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viduals demonstrates very little crime handled by the penal system or that there was some miscommunication on this matter.

between meetings of the National Party Conference and the Central Committee. The Politburo is a standing committee whose members work only on Party business. However, members of the Central Committee have jobs in their own geographic area and most are not located in Peking. Approximately 300 members and alternates comprise the Central Committee. The Young Pioneers and the Communist Youth League were established to train children for the Party.

### **Shanghai Shipyard**

It was noted that the Shanghai Shipyard, as a production unit, is administratively subject to both the Shanghai Shipbuilding Bureau (an administrative organ of the Shanghai Revolutionary Committee) and the State Ministry of Transport. The shipyard has no specific management committee, but it does have a worker's congress which is composed of individuals designated to handle the supervision of specific workshops or production groups. There were ten workshops within the shipyard, and each workshop is divided into 10 to 15 production groups, the basic accounting unit of the Shanghai Shipyard. There is a single director who reports to the local Party committee. The worker's congress meets once per year under the direction of the trade union which is the permanent organ responsible for seeing that the shipyard is operating in a proper fashion. The worker's congress is responsible for the management of production techniques, improvement of the welfare of workers and to recommend changes or the removal of the individual supervisors. The director of the shipyard is appointed or nominated by the Ministry of Transport in consultation with the Shanghai Shipbuilding Bureau.

The wage system is the eight-grade scale with salaries ranging from 42 RMB to 124 RMB per month plus bonuses for: fulfilling quota; obtaining an economic savings of materials; developing technical innovation; and the achievement of superior quality. The bonus amount is affected by the profit of the enterprise, and the average bonus was about 21 RMB per month per worker. Similar to other factories, the bonus system was three-tiered — above average, average and below average. However, those persons not fulfilling the quota were not paid a bonus. There are both group and individual bonuses.

In the future, contracts would be entered into between the shipyard and entities for which ships were being built or repaired. Failure to perform in a timely or in an adequate manner would result in an economic penalty to be stipulated in the contract. Further, they contemplated that bonuses would be included for early completion of work, which would also be stipulated in the contract. Contracts and the terms and conditions would be agreed to by consultation and/or negotiation. Quality, however, would be established by a separate bureau according to specifications.

All profits now go to the state, but under study is a reward system permitting the enterprise to retain some of its profits for its own use in future activities.



## Hong Kong Briefing by the United States

The following observations were by China watchers at the United States Consulate together with John Kamm, resident agent in Hong Kong for the National Council For United States-China Trade. Ray Burkhart and John Moderna were from the United States Consul General's office. They observed that the criminal legal system was primarily a tri-party system involving the court which will try the case, the prosecutorial branch ("procuratorates") which will investigate and present the case, and the public security branch which will fulfill the police function and make the arrest. It is primarily designed, among other things, to protect the party and other cadre. During the reign of the Gang of Four, the cadre was left basically protectionless. China is presently in the process of restoring this legal system. Under consideration is a codification of both the criminal and civil law which is drawing a great deal of media attention within China. They expect to see contracts between state entities plus corresponding economic laws in the near future. A recent letter to the editor was published in the People's Daily criticizing the inability of the people to rely on the legal system. Individual rights were not protected under the Gang of Four.

It was noted that Chairman Mao had oriented China's policies to improve the lot of the rural farmers, that investment had been channeled to rural areas and the whole economic model was designed to benefit rural areas. Literacy had been substantially increased in rural areas. There have been no salary increases for factory workers for about 12 years except for bonuses recently instituted. They believe that in 1977, China's production output dropped between 5 percent and 15 percent and there had been no growth since 1975 in agricultural output. China is not keeping pace with the population increases. The population of China was estimated to be over 1 billion as of June or July, 1978.

John Kamm reported on United States-China trade and noted that the recent Fall Canton Trade Fair was the largest to date and China's purchases from the United States exceeded their sales by between \$140 million to \$145 million. The primary purchases were in the areas of chemicals, polyesters, medical equipment, textile equipment and some consumer goods. He noted that the current major transactions involved grain, corn, flour and hotels (Pan American Airways subsidiary). Kellogg and Kaiser Aluminum also had major transactions. Two-way trade involving China is estimated to be in excess of \$1 billion in 1978 which was up from \$300 million to \$400 million in 1977 and double that amount is expected during 1979.<sup>11</sup>

New Chinese attitudes to trade include the possibility of equity joint ventures, counter-trade agreements, and contractual joint ventures similar to the Yugoslavian model. These so-called economic "joint ventures" with China

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<sup>11</sup>United States-Taiwan two-way trade is approximately \$7.3 billion. Also, United States exports to China are not now eligible for credits from the Export-Import Bank.

are generally expected to be in one of the following forms: processing for a fee with materials being supplied by the foreign "partner"; export to China of machines and materials with the payment to the foreign "partner" accomplished by the foreign "partner" purchasing goods at a discount; counter-trade or compensation trade arrangements (including large-scale compensation trade arrangements involving turnkey plants); and there had been some discussion on equity joint ventures although no deals had yet been consummated. Most of the compensation trade arrangements and equity joint ventures were with Hong Kong companies and currently, with the Japanese. The provincial and municipal authorities, on their own initiative, are beginning to contact foreign enterprises instead of contacts being made solely by China's central government authorities or corporations.

China apparently has two views of compensation trade arrangements. In connection with the minerals and metals industries, China views such transactions as merely a means of paying for technology. In other industries, such as textiles, it views such transactions as a means of increasing China's production and exports to obtain more foreign exchange to buy further technology. The Chinese have under study various arrangements to share foreign exchange between government entities such as a central ministry and a municipality in connection with their need for capital to acquire foreign technology and equipment to improve production facilities.

### **Bank of China**

We visited the Hong Kong branch of the Bank of China and were briefed by its manager, Mr. S. K. Fong. China is currently engaged in a process to achieve full modernization by the year 2000 with an interim 10-year plan. Large investments are to be made in industry and agriculture. China is willing to engage in large-scale foreign trade, both importing and exporting. In practice, the Chinese usually insist that payment for Chinese exports be by irrevocable letters of credit, payable to the national corporation. Such letters of credit must be issued by banks of high repute, most of which are sight drafts but some are payable up to 120 days later. Under special circumstances, some exports may be delivered against collection of the letter of credit; delivery of goods against acceptance is very rare. It is not expected that Chinese corporations would sell goods to foreign customers utilizing usual commercial enterprise credit practices; *e.g.*, net, 30 days or open account transactions.

The manner of payment in connection with imports was generally on the basis of letters of credit payable upon actual delivery. In some cases, progress payments will be made. Compensation trade, such as the delivery of finished goods and products at reduced prices in exchange for machinery or technology, is currently being more frequently suggested as the method of payment. The purpose is to save foreign exchange, to generate additional foreign exchange by the sale of the goods at the reduced price, and to build Chinese exports.

The Bank of China handles the Chinese side of all settlements on trade matters. Types of currency to be paid in international trade transactions are subject to negotiation; hedges may be permitted. China wants to utilize standard international business practices so long as they do not infringe upon Chinese sovereignty or offend Chinese policy. The Bank of China may extend credit 30 to 90 days.

The Hong Kong branch of the Bank of China, incorporated in China and licensed as a banking enterprise in Hong Kong, functions as a commercial bank. It is a full service bank, including Eurodollar deposits. It may extend short term credit to its customers, usually 30 to 90 days. This is offered primarily to facilitate minor China import/re-export transactions with Hong Kong enterprises.

Mr. Fong expects that any loans to China would be made by foreign banks (or bank syndications) and not directly by foreign governments. Such loans would be negotiated in Peking rather than by any of the branch offices. However, China's imports need not be externally financed, as China's policy is to rely on its own efforts.<sup>12</sup> Vice Chairman Li Hsien-Nien had stated that China will accept foreign capital and assistance so long as it does not infringe on Chinese sovereignty.

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<sup>12</sup>Recent events seem to indicate a change in this policy, particularly statements by Teng Hsiao-Ping to the Japanese and in the media to the effect that China would have to finance its acquisition of modern technology by obtaining long term credit — either vendor-supplied or otherwise.

## **APPENDIX A**

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