

10-1968

Communist China's Trade Treaties and Agreements (1949-1964)

Gene T. Hsiao

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vlr>



Part of the [International Trade Law Commons](#)

Recommended Citation

Gene T. Hsiao, *Communist China's Trade Treaties and Agreements (1949-1964)*, 21 *Vanderbilt Law Review* 623 (1968)

Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol21/iss5/1>

This Article is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in *Vanderbilt Law Review* by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

Communist China's Trade
Treaties and Agreements
(1949-1964)

Gene T. Hsiao*

Utilizing material gathered by extensive research, the author examines Communist China's trade treaties and agreements, with some emphasis upon their economic and political implications. Also, he analyzes the Communist Chinese use of establishment provisions and national and most-favored-nation treatment. The author has selected the period from 1949 to 1964 due to the existence of an official collection of treaties compiled by the Peking government for this period. Although the collection has not been available since 1964, the author's examination of secondary official source materials has revealed no significant change in the regime's attitude, and therefore, the materials contained in the official collection are considered representative of the present attitudes of the People's Republic of China.

I. INTRODUCTION

The emergence of the People's Republic of China (PRC) as a socialist power brought with it a system of state monopoly of foreign trade.¹ In place of private import and export business, the Peking

*LL.B., Kwang Hua, 1946; M.A., LL.M., University of California, Berkeley, 1960, 1962. Associate Specialist in the Center for Chinese Studies, University of California, Berkeley; concurrently a member of the University's Project on Comparative Study of Communist Societies. This is the second of a series of articles on the legal aspects of Communist China's foreign trade. The author is grateful to the Chancellor's Program Committee for International Studies, the Institute of International Studies, the Center for Chinese Studies, the Project on Comparative Study of Communist Societies, and the School of Law, University of California, Berkeley, for their support of his undertaking. He is also thankful to all those in Hong Kong and Japan who assisted him in this study.

1. In Soviet Russia, foreign trade was nationalized by a decree on April 22, 1918. MEISEL & KOZERA, MATERIALS FOR THE STUDY OF THE SOVIET SYSTEM 70-72 (1953). The PRC did not take such a measure. Its first constitution, known as the COMMON PROGRAM art. 37 (1949), provides for "the control of foreign trade" by the state. 1 CHUNG-YANG JEN-MIN CHENG-FU FA-LING HUI-PIEN (Compilation of Laws and Decrees of the Central People's Government) 22 (1949-1950) [hereinafter cited as

regime established sixteen national corporations under the Ministry of Foreign Trade to carry out international commerce. The regime also established an extensive network of licensing bureaus, customs offices, commodity inspection administrations, state banks, state insurance companies, and arbitration organs.² Trade treaties and agreements, being a conventional legal medium of international commerce, became at once an important instrument to fulfill the regime's economic and political needs.

Economically, there are five points to be mentioned. First, the PRC's foreign trade is part and parcel of its planned economy.³ The planner, however, cannot make plans on the basis of his imagination; he needs to know the sources of purchase and supply and other related information to compile the foreign trade plan in order to link it with other economic plans, especially with the production plan.⁴ A long-term trade agreement, or even a relatively short-term trade agreement or contract, meets the planning needs.⁵ Secondly, unlike the domestic market, international commerce is not subject to the regime's control. A trade agreement legally assures the regime of the sources of purchase and supply for the fulfillment of plans. Moreover, it provides the regime with an opportunity to negotiate prices that will remain fixed for a period of time to come;⁶ this practice, primarily designed to free the contracting parties from "being influenced by the supply and demand of the capitalist market and its sharp price fluctuations," in turn provides an element of stability for planning.⁷ Thirdly, consummation of a trade agreement can normalize the economic relations of the contracting states and promote their trade. From Peking's point

FLHP]. Its second constitution (1954) does not prescribe the function of the Ministry of Foreign Trade at all. In practice, the state monopoly of foreign trade, like that of domestic commerce, was carried out through a gradual process. For a discussion, see note 2 *infra*.

2. Hsiao, *Communist China's Foreign Trade Organization*, 20 VAND. L. REV. 303 (1967).

3. See *First Five Years Plan for the Development of the National Economy* (1953-1957), 2 CHUNG-HUA JEN-MIN KUNG-HO-KUO FA-KUEI HUI-PIEN (Compilation of the Laws and Regulations of the People's Republic of China) 131, 230-31 (1955) [hereinafter cited as FKHP].

4. Yeh Chi-chuang, Address to the Eighth National Congress of the Chinese Communist Party, 3 MINISTRY OF FOREIGN TRADE, TUI-WAI MAO-I LUN-WEN HSUAN (Selection of Essays on Foreign Trade) 5-9 (1957) [hereinafter cited as ESSAYS].

5. Chao Chi-ch'ang, *Overall Planning of Foreign Trade and Conclusion of Long-Term Trade Agreements*, 2 ESSAYS 151-55 (1956).

6. For references to the regime's policy of international price formation, see Yeh Chi-chuang, address to the Fourth Session of the First National People's Congress, July 11, 1957, in 1958 JEN-MIN SHOU-TS'E (The People's Handbook) 557-59 [hereinafter cited as JMST].

7. See note 6 *supra*; Tsou Szu-I, *The Efforts Made by China in the Execution of the Afro-Asian Conference's Resolution on Economic Cooperation*, 2 ESSAYS 80-85.

of view, such agreements, based on the principle of most-favored-nation treatment, are particularly "necessary" in transactions with capitalist countries, not only for the purposes stated above, but also because they can provide a legal safeguard against discrimination under the conditions of "monopoly capitalism" in international commerce and thereby protect the independence of the socialist economy.⁸ Fourthly, in relations with socialist countries, the trade treaties and agreements concluded under the system of state monopoly of foreign trade are considered a means to coordinate the development of the planned economies on the basis of "equality, mutual benefit, mutual respect for state sovereignty and territorial integrity, and non-intervention in internal affairs."⁹ Finally, in relations with Afro-Asian and Latin American countries, trade agreements are generally accompanied by aid programs to facilitate the achievement of their political independence. Indeed, leaders of the PRC firmly believe that without genuine economic independence, true political independence is impossible.¹⁰

National sovereignty is, of course, a distinctive element of international trade;¹¹ however, Peking's foreign trade policy objective clearly does not limit itself to the protection of the regime's commercial interests at home and abroad. It extends over to the regime's struggle for diplomatic recognition and the expansion of its sphere of political influence overseas. Trade treaties and agreements, in this connection, become a convenient vehicle to promote the regime's diplomatic interests.

Early on September 28, 1953, in an interview with Japanese "peace" promoter Ikuo Oyama, Premier Chou En-lai approved the former's suggestion that the lack of diplomatic relations between Japan and the PRC should not impede the cultural and economic exchange between the two peoples.¹² Later, citing the PRC's 1952 and 1955 trade agreements with Ceylon and Egypt respectively as examples,

8. WANG YAO-T'EN, K'UO-CHI MAO-I T'IAO-YUEH HO HSIEH-TING (International Trade Treaties and Agreements) 114-18 (1958) [hereinafter cited as WANG YAO-T'EN]. This work is an official textbook of the Peking Foreign Trade Institute.

9. Chi Chao-ting, *Two Types of International Economic Relations*, in 2 ESSAYS 29-34; Yeh Chi-chuang, *Our Country's Foreign Trade In the Past Ten Years*, 1960 JMST 91-93.

10. Mao Tse-tung, *On the People's Democratic Dictatorship*, SELECTED WORKS 1473, 1478 (1966); Chou En-lai, Address to the Third Session of the First National People's Congress, June 28, 1956, in 1957 JMST 182, 186; Nan Han-ch'en, *Firmly Carry Out the Struggle Against Imperialism and New Colonialism and Realize the Economic Liberation of the Afro-Asian People*, 1065 JMST 498, 501.

11. R. KRAMER, M. D'ARLEN & F. ROOT, INTERNATIONAL TRADE 11-12 (1959).

12. 2 CHUNG-HUA JEN-MIN KUNG-HO-KUO TUI-WAI KUAN-HSI WEN-CHIEN CHI' (Collection of Documents on the Foreign Relations of the People's Republic of China) 150-52 (1951-1953) [hereinafter cited as TWKH].

Chou reiterated that states without diplomatic relations with each other could still make governmental arrangements.¹³ An historical precedent is seen in Britain's March 16, 1921, trade agreement with Soviet Russia, which preceded the British government's diplomatic recognition of the Soviet regime on February 2, 1924.¹⁴ As to the mode of transactions and contractual terms, Minister of Foreign Trade Yeh Chi-chuang went so far as to declare that "so long as normal international trade can be restored, we are willing to use methods generally applicable to regular world commerce."¹⁵ This announcement, which was made to cope with the shortage of imports resulting from the American embargo, omits any indication of Peking's ideological predilection and political motivation. In reality, as will be seen later, both ideological and political elements are present in most of the PRC's trade agreements; the difference is only a matter of degree and emphasis. It stands to reason that in international trade, law is not an end in itself, but it is a technique to achieve certain goals determined by economics and politics. Consequently, the following legal study of the PRC's foreign trade documents is bound to be relative.

During the fifteen years and three months—October 1, 1949, to December 31, 1964—under review,¹⁶ the PRC concluded 408 bilateral "economic" treaties and agreements with 48 states out of a total number of 762 bilateral treaties and agreements which the PRC reached with 53 states and the United Nations.¹⁷ Although these official figures are incomplete and arbitrary,¹⁸ they do reflect the importance of foreign trade in the PRC's treaty practice. According to Peking's own classification, treaties fall into fourteen major categories.¹⁹ Within the economic category, there are six groups:

13. Chou En-lai, *supra* note 10. Ceylon recognized the PRC on Jan. 6, 1950, but did not exchange diplomatic representatives with Peking until Sept. 14, 1956. See the Joint Communiqué of the Delegates of the PRC and the Ceylon Governments, 1957 JMST 390. The Egypt case will be discussed later.

14. WANG YAO-T'JEN 17.

15. Yeh Chi-chuang, *Working for the Development of Normal International Trade*, 2 ESSAYS 7, 11.

16. Selection of this period is based primarily on the existence of thirteen volumes of the official collection of treaties, CHUNG-HUA JEN-MIN KUNG-HO-KUO T'IAO-YUEH CHI [hereinafter cited as TYC], compiled by the Ministry of Foreign Affairs in Peking.

17. This is based on an actual counting of the documents listed in the official collection, TYC.

18. The incompleteness and arbitrariness chiefly lies in the standard of selection and classification. Since international law fails to provide a unified nomenclature and a stable criterion for the classification of treaties, and since the present study is not a quantitative analysis of the PRC's treaties, it becomes necessary to accept these official figures for the purpose of illustration.

19. These are: political, legal, border problems, frontier problems, economic, cultural, scientific and technological, agricultural and forest, fishing, public health,

(1) commerce and navigation; (2) economic aid, loans and technical cooperation; (3) trade and payments; (4) general conditions of delivery; (5) registration of trademarks; and (6) miscellaneous.²⁰ While all these documents may be included in the category of trade treaties and agreements, as defined in the western world, consideration in the present study is limited to their general principles, the establishment provisions, and the national and most-favored-nation treatment.²¹

II. GENERAL PRINCIPLES

As part of treaty law, the PRC's trade treaties and agreements are closely related to its general treaty theory and practice. Since a study of the latter's technical aspects has already been made elsewhere,²² the following discussion is focused upon treaty definition and designation, form, and language, as used in the PRC's trade treaties and agreements.

A. Treaty Definition and Designation

Borrowing from the writings of F. I. Kozhevnikov, a Soviet jurist, the Peking Foreign Trade Institute defined a treaty as "a document between two or more states concerning the creation, modification, or termination of their sovereign rights and obligations,"²³ and "a typical and most widespread legal form in the realm of political, economic, and other relations between states."²⁴ On the basis of this general

postal service and tele-communications, communications and transport, rules of war, and military. See 11 TYC 227-84 (1962).

20. 11 TYC 237-268 (1962). For some general statistical ideas about the PRC's trade treaty relations with individual states, see tables in appendix, *infra*.

21. The PRC has four agreements on the registration of trademarks: The United Kingdom, April 13 and June 1, 1956, in 5 TYC 68; Switzerland, April 14, 1956 and March 8, 1957, in 6 TYC 178; Sweden, April 6 and 8, 1957, in 6 TYC 180; and Denmark, March 25 and April 12, 1958, in 7 TYC 37. For a brief discussion of this problem, see Hsiao, *supra* note 2, at 317-18. Other problems concerning industrial property do not appear in the PRC's official collection of treaties and consequently require separate treatment. The agreements on economic aid, loans, and technical cooperation are distinctly political. Some of the elements related to trade treaties and agreements will be mentioned at proper places in this article.

22. Chiu, *The Theory and Practice of Communist China With Respect to the Conclusion of Treaties*, 5 COLUM. J. OF TRANSNAT'L. L. 1 (1966).

23. WANG YAO-T'EN 9; Kozhevnikov, *Nekotorye voprosy teorii i praktiki mezhdunarodnogo dogovora*, Sovetskoe gosudarstvo i pravo, No. 2, 1954, at 62-76, *trans. in*, HSIEN-TAI KUO-CHI-FA SHANG TE YUAN-TSE HO WEN-T'I (The Basic Principles and Problems of Modern International Law), 223 (1956).

24. *Id.* at 227. In another source, Kozhevnikov is reported to have defined a treaty as "a typical and most widespread legal form of *struggle* or cooperation in the realm of political, economic, and other relations between states." J. TRISKA & R. SLUSSER, *THE THEORY, LAW, AND POLICY OF SOVIET TREATIES* 38 (1962) (emphasis added). In the Chinese version of the definition quoted above, the word "struggle" is omitted.

definition, a trade treaty or agreement is described as "a written agreement between two or more sovereign states concerning the regulation of the mutual economic and trade relations of natural and juristic persons of the contracting states as well as those relations between the governments of the contracting states themselves."²⁵

From the various treaty designations defined by Soviet jurists,²⁶ the Chinese enumerated and elaborated upon six: (1) treaty (*t'iao-yüeh*), a most important international document regulating the political, economic, or other relations of the contracting states; (2) agreement (*hsieh-ting*), a treaty regulating certain special or temporary problems of the contracting states; (3) convention (*kung-yüeh*) or pact (*chuan-yüeh*), a multilateral agreement concerning certain specific problems; (4) declaration (*hsüan-yen*), a general statement concerning the international relations and the general principles of international law recognized by the interested states, sometimes including concrete obligations, such as the 1856 Paris Declaration on the Abolition of Privateering and the December 1, 1943, Cairo Declaration;²⁷ (5) protocol (*I-ting-shu*), an agreement on individual problems, sometimes amending, interpreting, or supplementing certain provisions of a treaty; and (6) exchange of notes (*huan-wen*), defining certain matters already agreed upon by the parties.²⁸

Whereas the omission of other Soviet treaty designations by Chinese writers does not necessarily mean that the PRC has ignored their existence or usefulness, the PRC generally has confined its trade practice to the use of the six titles mentioned above. Thus, of the 408 economic arrangements, seven assumed the title "treaty of trade and navigation";²⁹ 393 took the titles "agreement," "protocol," and "exchange of notes"; and the remaining eight took miscellaneous designations.³⁰ The use of "general conditions of delivery" as a treaty

25. WANG YAO-T' IEN 15.

26. These are treaty, convention, agreement, covenant or charter, protocol, exchange of notes, declaration, gentlemen's agreement, *modus vivendi*, cartels, concordats, and compromise. J. TRISKA & R. SLUSSER, *supra* note 24, at 39-40.

27. Although the Cairo Declaration is not listed in the Department of State's TREATIES IN FORCE, the PRC has always considered it a treaty. See 3 Kuo-chü T'IAO-YUEH CHI (Collection of International Treaties) 407 (1934-1944). This is compiled by Shih-chieh Chih-shih Ch'u-pan-she in Peking.

28. WANG YAO-T' IEN 12.

29. Albania, Feb. 2, 1961, in 10 TYC 290; the Democratic Republic of Germany, Jan. 18, 1960, in 9 TYC 134; the Democratic People's Republic of Korea, Nov. 5, 1962, in 11 TYC 92; the People's Republic of Mongolia, April 26, 1961, in 10 TYC 361; the Union of the Soviet Socialist Republics (USSR), April 23, 1958, in 7 TYC 42; the Democratic Republic of Vietnam, Dec. 5, 1962, in 11 TYC 100; and Yemen, Jan. 12, 1958, in 7 TYC 28.

30. These are: Correspondence Between China and Japan Concerning the Assistance and Support of the Japanese Government to the Sino-Japanese Trade Agree-

designation was limited to socialist states with the exception of Finland, which had two such arrangements with the PRC.³¹ Furthermore, it should be noted that on most occasions, this particular document was designated as an "annex" of a protocol, and only in a few cases was it treated as a separate agreement.³²

B. *Form and Language*

The PRC's practice suggests that all treaties must be written; treaties in oral form have not been reported. A formal trade treaty usually consists of three parts: the preamble states the names of the contracting parties, the general purpose of the treaty, and the plenipotentiaries empowered to sign the treaty; the main text contains substantive provisions concerning natural and juristic persons, goods, vessels, and arbitration; and the concluding part stipulates ratification, entry into force, duration, and the authenticity of languages. An example of the standard form is the Treaty of Trade and Navigation Between the PRC and the USSR April 23, 1958.³³

A trade agreement with a socialist state, sometimes assuming the form of a protocol, also contains three parts but is less rigid in its external form and more specific in its content. Since such an agreement is usually signed by authorized representatives of the foreign trade organizations of the contracting states, the exchange in the preamble of "full powers" and other formalities is omitted. The main text deals with such problems as goods, price, payment, currency, enforcement, and the manner in which tariff duties are to be paid. The concluding part concerns duration and language. As a matter of practice, the agreement is usually accompanied by two schedules of goods for each party to import and export.³⁴ Following the con-

ment, May 4, 1955, in 4 TYC 262; Joint Statement on the Further Promotion of Sino-Japanese Trade, Oct. 15, 1956, in 5 TYC 404; Official Letters of the Governmental Departments of the PRC and the Federal Republic of Germany Concerning the Realization of Trade Agreements, August 20, 1956 & Sept. 26, 1957, in 6 TYC 325; Joint Statement of China and Japan Concerning the Fourth Trade Agreement, Nov. 1, 1957, in 6 TYC 321; Communiqué of the Trade Meeting Between the PRC and the Republic of Sudan, Dec. 30, 1957, in 6 TYC 72; Communiqué of the Meeting Between the Economic Delegations of the PRC and Nigeria, June 18, 1961, in 10 TYC 248; Memorandum of Liao Ch'eng-chih and Takasaki, Nov. 9, 1962, in 11 TYC 157; Summary of the Meeting Minutes of the Offices of Liao Ch'eng-chih and Takasaki Concerning the Exchange of Representatives and Liaison Offices, April 19, 1964, in 13 TYC 386.

31. 2 TYC 372 (1952-1953); 3 TYC 197 (1964).

32. See, e.g., the General Conditions of Delivery Between the Foreign Trade Organizations of the PRC and Poland for the Year 1951, Feb. 1, 1951, in 1 TYC 64.

33. 7 TYC 42-46 (1958). For the Russian text and its English and French translations, see 313 U.N.T.S. 136 (1958).

34. An example of the standard form for this document is the Trade Agreement with the Government of the USSR, April 19, 1950, in 1 TYC 47-49.

clusion of a trade agreement, a protocol on the general conditions of delivery is also reached, specifying rules for the form of contracts, terms of delivery, quantity and quality of goods, packing and marking, inspection of goods, methods of payment, adjustment of disagreements, penalties, *force majeure*, and arbitration.³⁵ The basic function of the general conditions of delivery is to simplify the procedures for the making of individual contracts; in essence, it is a general contract of the Soviet type. The terms of the general conditions of delivery are binding upon the contracting parties unless otherwise specified in individual contracts.³⁶

So far as language is concerned, the official languages of both contracting parties are equally authentic in the PRC's trade treaties and agreements with the USSR, Outer Mongolia, North Korea, North Vietnam, and Cuba.³⁷ In trade agreements with all Eastern European countries except Yugoslavia, the authentic languages are usually the official languages of the contracting parties and Russian;³⁸ in the case of a dispute arising from the interpretation of the languages, Russian prevails.³⁹ The PRC's first trade agreement with Yugoslavia, dated February 17, 1956, accepted both Chinese and Serbo-Croatian as the authentic language;⁴⁰ no reference was made to any third language. However, in their ten succeeding trade agreements, beginning with the agreement of January 4, 1957,⁴¹ both parties agreed to use English as the prevailing language. Since there is no official

35. An outline of these terms is in WANG YAO-T' IEN 126-32. For reference to actual samples, see: Protocol on the General Conditions of Delivery Between the Foreign Trade Organizations of the PRC and the USSR for the Year 1950, April 19, 1950, in 1 TYC 51-59; and Protocol on the General Conditions of Delivery Between the Foreign Trade Organizations of the PRC and the Democratic Republic of Germany for the Year 1958, May 22, 1958, in 7 TYG 144-61.

36. WANG YAO-T' IEN 127. See also CHIEN-MING TUI-WAI MAO-I Tz'U-TIEN (Concise Dictionary of Foreign Trade) 72-73 (1959).

37. See, e.g., Protocol on the General Conditions of Delivery with the USSR for the Year 1957, April 10, 1957, in 6 TYC 77, 78; Treaty of Trade and Navigation with the USSR, April 23, 1958, in 7 TYC 42, 46; Protocol on the Mutual Supply of Goods with the People's Republic of Mongolia for the Year 1959, January 30, 1959, in 8 TYC 102, 103; Protocol on the Mutual Supply of Goods with the Democratic People's Republic of Korea for the Year 1960, Feb. 29, 1960, in 9 TYC 121, 123; Agreement on the Mutual Supply of Goods and Payments with the Democratic Republic of Vietnam for the Year 1959, Feb. 18, 1959, in 8 TYC 104, 105; Trade and Payments Agreement with Cuba, July 23, 1960, in 10 TYC 238, 243.

38. This practice is limited to trade agreements, protocols, and general conditions of delivery, and does not apply to formal treaties of trade and navigation with socialist countries.

39. See, e.g., Agreement on the Exchange of Goods and Payments with the Republic of Czechoslovakia for the Year 1959, March 12, 1959, in 8 TYC 99, 101.

40. 5 TYC 113, 115.

41. 6 TYC 164, 165.

explanation for the choice, one can only assume that it might be related to politics, or simply for the purpose of convenience.

Outside the socialist camp, the PRC has only one formal treaty of commerce, with Yemen (January 12, 1958).⁴² Thus, in matters concerning commerce and navigation, trade agreements with non-socialist countries have played a role somewhat different from that of a socialist trade agreement. Instead of dealing with specific problems, these non-socialist trade agreements provide such general principles as "equilibrium" in the volume of trade, most-favored-nation treatment, the establishment of trade missions, and methods for the settling of disputes.⁴³ Trade agreements of this type have two categories. One is "governmental," concluded with those states which have diplomatic relations with the PRC. The other is "non-governmental," concluded between private or semi-governmental organizations of foreign countries having no diplomatic relations with Peking, on the one hand, and "non-governmental" associations, such as the China Council for the Promotion of International Trade and state corporations of the PRC, on the other. Politically, this arrangement is a fiction, because, on Peking's part, the system of state monopoly of foreign trade simply does not permit private or non-governmental transactions except in frontier trade. However, the amount involved in frontier trade is extremely small; for example, in each frontier transaction with the North Vietnamese, the amount was limited to ten *yuan*.⁴⁴ The Ministry of Foreign Affairs in Peking included most of the non-governmental agreements in its official treaty collection, thus giving the agreements a treaty character. Legally speaking, however, such inclusion is a unilateral act, since the governments of the PRC's private foreign trade partners are in no way bound by the terms of the agreements. Japan is a case in point. Under the terms of each of the first three Sino-Japanese trade agreements, the total volume of two-way trade provided for sixty million pounds sterling,⁴⁵ but for the first agreement, the actual transactions only amounted to 5.05 per cent of the total sum; for the second, 38.8 per cent; and for the third, 75.12 per cent.⁴⁶ Peking blamed the United States for the Japanese failure to fulfill the trade obligations but had no legal recourse to

42. 7 TYC 28.

43. See, e.g., Trade Agreement with the Government of the Republic of Syria, Nov. 30, 1955, in 4 TYC 118; Trade Agreement with the Government of the Republic of Egypt, August 22, 1955, in 4 TYC 123.

44. Protocol with the Democratic Republic of Vietnam Concerning Small Transactions in the Border Areas of the Two Countries, July 7, 1955, in 5 TYC 154, 155.

45. The first agreement, June 1, 1952, in 2 TYC 367; the second, Oct. 29, 1953, in 2 TYC 369; the third, May 4, 1955, in 4 TYC 258.

46. Ts'ao Chung-shu, *Perspectives of Sino-Japanese Trade*, 3 ESSAYS 94-98.

force the Japanese government to remedy the situation.⁴⁷

In trade agreements with non-socialist states, the official languages of the contracting parties are equally authentic. This is said to be based on the principle of "equality." Sometimes, upon the agreement of the contracting parties, a third language, usually English or French, is also used, either for reference or as the basis of interpretation.⁴⁸ The Treaty of Commerce with Yemen, January 12, 1958, in which Arabic prevails, is an exception and contrasts with the Trade Agreement with Egypt, August 22, 1955, where Arabic, Chinese, and English are all accepted as being equally authentic.⁴⁹

III. ESTABLISHMENT PROVISIONS

The establishment provisions of modern commercial treaties deal with the rights of natural and juristic persons of either contracting state within the boundaries of the other. These include: the right of entry, residence, and travel; the right to engage in business activities; the right to own or lease property; and the right of access to the courts.⁵⁰ Undoubtedly, such provisions are related to two basic elements: the role and status of individuals in the state, and the need for foreign investment.⁵¹

In the PRC, which as a socialist state owns all productive property,⁵² the individuals and corporate bodies carry out business activities on behalf of the state, not on their own. With respect to foreign investment, the regime is mindful of the privileged status of foreign investors and capital in China before 1949 and, therefore, has considered it a form of "exploitation." In the early years, the regime received assistance from the Soviet Union and some other European socialist countries. But except for a few limited cases of government

47. Lei Jen-min, *For An Early Realization of the Normalization of Sino-Japanese Economic and Trade Relations*, 3 *ESSAYS* 87-93.

48. See, e.g., Trade Agreement with the Government of Finland, June 5, 1953, in 2 *TYC* 35, 37; Trade Agreement with the Government of Syria, Nov. 30, 1955, in 4 *TYC* 118, 120.

49. 7 *TYC* 28, 30.

50. E.g., Treaty of Friendship, Commerce and Navigation Between the Republic of China and the United States of America, Nov. 4, 1946, in 25 *U.N.T.S.* 90 (1949).

51. As one writer observed: "[O]ne of the most important functions of establishment provisions is to create conditions favorable to foreign investment, particularly direct private investment." HAWKINS, *COMMERCIAL TREATIES AND AGREEMENTS: PRINCIPLES AND PRACTICE* 19 (1951). For similar observations, see Walker, *Modern Treaties of Friendship, Commerce and Navigation*, 42 *MINN. L. REV.* 805 (1958), reproduced in 1 *S. METZGER, LAW OF INTERNATIONAL TRADE* 24 (1966).

52. For a discussion of the nature of the state and the role of individuals in the PRC, see Mao Tse-tung, *On the Correct Handling of the Contradictions Among the People*, 5 *FKHP* 1 (1957). For reference to the regime's property system, see Hsiao, *The Role of Economic Contracts in Communist China*, 54 *GALIF. L. REV.* 1029, 1036-42 (1965).

stock corporations, this was in the form of "aid and loans," not investment.⁵³ Around 1956, when the socialization of private property reached its climax,⁵⁴ the regime virtually eliminated all alien commercial interests devolving from its predecessor and declared a policy of "self-reliance" in which foreign aid was denoted as a secondary source of support.⁵⁵ In the ensuing years, this policy gained increasing momentum as a result of the regime's controversy with Moscow so that by the spring of 1965 the regime was able to announce that it had paid off all its debts to the Soviet Union in the amount of 1,406,000,000 new rubles, including interest.⁵⁶ Therefore, now that the PRC is a nation without foreign debts, except short-term credits, it operates foreign trade with its own capital and does so on three levels: individual, corporational, and governmental.

A. *Natural and Juristic Persons*

In trade treaties, the term "natural persons" is commonly understood to mean "nationals" or "citizens" of the contracting states. However, since nations often use these words with different meanings,⁵⁷ it is essential to have an adequate understanding of the nationality status of the Chinese as interpreted by the PRC's official literature.⁵⁸

Generally speaking, there are three categories of Chinese: (1) those who live under the direct control of the PRC; (2) those who are under the jurisdiction of the Republic of China in Taiwan; and (3) those who reside in foreign territories. According to the treaty of April 22, 1955, with Indonesia, concerning the problem of dual nationality,⁵⁹ the PRC agreed to offer the Chinese residents in that country a choice of nationality; if one chose to adopt the nationality of Indonesia, he lost the nationality of the PRC, and vice versa.⁶⁰ In

53. "Investment may be summarily defined as the joining of an investor (a person) and capital (property) into a gainful enterprise (a business activity)." Walker, *Treaties for the Encouragement and Protection of Foreign Investment: Present United States Practice*, 5 AM. J. COMP. L. 229 (1956), reproduced in I S. METZGER, *supra* note 51, at 50, 53.

54. HSUEH MU-CHIAO, SU HSING & LIN TSE-LI, *THE SOCIALIST TRANSFORMATION OF THE NATIONAL ECONOMY IN CHINA* (1960).

55. Yeh Chi-chuang, *Our Country's Foreign Trade in the Past Ten Years*, 1960 JMST 91-93.

56. Chou En-lai, *Report on the Work of Government*, in Jen-min Jih-pao (Peking), Dec. 31, 1964, at 1; Nan Han-ch'en, *supra* note 10, at 502.

57. The United States, for one, makes a distinction between its "citizens" and "nationals." See Immigration and Nationality Act tit. III, 8 U.S.C. §1401 (1964).

58. The PRC has not promulgated a nationality law. Consequently, discussion can only be based on the regime's scattered political and legal materials.

59. 8 TYC 12.

60. For a discussion of this matter, see Hsia, *Settlement of Dual Nationality Between Communist China and Other Countries*, *Osteuropa-Recht*, No. 1, March 1965, at 27-38.

view of this, the PRC appears to consider all overseas Chinese its subjects, unless specific agreements have been reached with their host countries. With respect to the Chinese under the jurisdiction of the Republic of China, they are treated as citizens of the Republic of China in countries which either maintain diplomatic relations with Taipei or accept the defacto "two-China" situation, such as the United Kingdom.⁶¹ From Peking's point of view, however, this group of Chinese are also its subjects, and the present situation is essentially political, not legal.

As regards the Chinese living under the direct control of the Peking Regime, they are classified into three categories: people (*jen-min*), nationals (*kuo-min*), and citizens (*kung-min*). The "people" are those who pledge their political allegiance to the regime and whom the regime considers acceptable in terms of their loyalty and social class standing.⁶² Under the COMMON PROGRAM OF 1949, the "people" enjoy certain political and legal rights.⁶³ The "nationals" are those who do not belong to the category of "people;" although, as members of the Chinese nation, these political outcasts are obligated to fulfill those duties required of every Chinese by the state constitution.⁶⁴ In other words, the "people" of the PRC are also nationals of the state, but the "nationals" of the state do not belong to its "people." Consequently, one may call these nationals "pure nationals." The legal difference is that certain rights and privileges accorded to the "people" by the state are not available to the nationals.⁶⁵

Although the term "citizens" was formally introduced into political and legal usage by the 1954 Constitution of the PRC, nowhere in the constitution is it so defined as to make a clear distinction between "citizens," "people," and "nationals." Judging from the various provisions of the Constitution, it appears that "citizens" is a synonym

61. This is based on interviews with overseas Chinese businessmen.

62. Originally, the "people" was defined to mean members of the four social classes: the worker, the peasant, the urban petty bourgeoisie, and the national bourgeoisie. See Mao Tse-tung, *On the People's Democratic Dictatorship*, SELECTED WORKS 1480. Since then, the method of class differentiation has undergone certain changes, with the result that the composition of these classes has also changed. The above is a generalization of the entire concept.

63. 1 FLHP 17 arts. 4 & 5.

64. The COMMON PROGRAM, art. 8 (1949).

65. For a discussion of the distinction between "people" and "nationals," see Phou En-lai, *Report on the Process of Drafting the Common Program of the Chinese People's Political Consultative Conference*, in CHUNG-HUA JEN-MIN KUNG-HO-KUO K'AI-KUO WEN-HSIEN (Documents on the Inauguration of the People's Republic of China) 256-57 (1949). Earlier, in his 1940 essay "On New Democracy," Mao Tse-tung said: "The word 'nationals' may be used; but nationals do not include counterrevolutionaries and Chinese traitors." SELECTED WORKS 669. This view, which seemed to identify "nationals" with "people," is obviously superseded by Chou En-lai's report quoted above.

of "nationals," with a meaning somewhat broader than the latter's. That is to say, all Chinese living within the boundaries of the PRC are its citizens, but the power of the state belongs to the "people," not to the citizenry as a whole. Also, the state has the right to punish "all traitors and counterrevolutionaries" and to deprive "feudal landlords and bureaucrat-capitalists" of their political rights; otherwise, all citizens are equal before the law.⁶⁶

As reflected in the PRC's treaty practice, this domestic class differentiation of the population has obvious significance. In the seventeen political treaties of "friendship and non-aggression" with six socialist states and ten Afro-Asian countries, the term "people" is used consistently as identical with the contracting states,⁶⁷ except for the treaties with Burma, Cambodia, and Indonesia, where the large Chinese population has long been a serious problem for the local governments.⁶⁸ To avoid further complication of the problem, the parties refrained from using any of these terms.⁶⁹

In trade treaties and agreements, the PRC took a flexible approach. The three terms mentioned above are alternatively used in a number of individual documents, depending on the nature of the provisions and the relations of the parties involved. For example, the Trade Agreement with India, October 14, 1954, states that "the existing friendship of the Governments and *peoples*" of the two contracting states is related to the purpose of the agreement.⁷⁰ On the other hand, the Agreement with India on Trade and Intercourse Between Tibet Region of China and India, April 29, 1954, provides detailed rules for the *nationals* of the contracting parties to enter, travel, and carry on trade in the designated areas of either party.⁷¹ Then, in the

66. THE PRC CONST. arts. 2, 19, 85-103 (1954).

67. With the USSR, Feb. 14, 1950, in 1 TYC 1; the Democratic Republic of Germany, Dec. 25, 1955, in 4 TYC 7; the Republic of Czechoslovakia, March 27, 1957, in 6 TYC 40; Yemen, January 12, 1958, in 7 TYC 3; the People's Republic of Hungary, May 6, 1959, in 8 TYC 1; Nepal, April 28, 1960, in 10 TYC 13; the People's Republic of Mongolia, May 31, 1960, in 9 TYC 37; Afghanistan, August 26, 1960, in 9 TYC 12; Guinea, Sept. 13, 1960, in 10 TYC 1; the Democratic People's Republic of Korea, July 11, 1961, in 10 TYC 25; Ghana, August 18, 1961, in 10 TYC 17; Yemen (replacing the Treaty of January 12, 1958), June 9, 1964, in 13 TYC 5; Congo (Brazzaville), October 2, 1964, in 13 TYC 27; Mali, Nov. 3, 1964, in 13 TYC 381.

68. With Burma, January 28, 1960, in 9 TYC 44 (1960); Cambodia, Dec. 19, 1960, in 9 TYC 25; Indonesia, April 1, 1961, in 10 TYC 7.

69. As further evidence of this, the treaty with Indonesia concerning the problem of dual nationality refers to the Chinese residents in that country either as "persons having nationality of the People's Republic of China" or simply as "Chinese persons (*chung-kuo-jen*)." In 8 TYC 12, 14 (1959).

70. 3 TYC 28 (1954) (emphasis added).

71. In 3 TYC 1, 3 (1954) (emphasis added); see Exchange of Notes with India, April 29, 1954, in 3 TYC 4-7. Similar provisions can be found in the Agreement with Nepal on Trade and Intercourse Between Tibet Region of China and Nepal, Sept. 20, 1956, in 5 TYC 4.

Exchange of Notes with Nepal, August 14, 1962, concerning the choice of nationality and other problems, the term "citizens" replaced "nationals."⁷² Whether the Indian and Nepalese governments were aware of the political and legal connotations of those terms is unknown. Aside from this, the PRC and contracting parties have employed a neutral term in their agreements, namely, "natural and juristic persons." A standard clause is found in the 1958 Treaty of Trade and Navigation with the USSR, article 14:

Juristic and natural persons of either Contracting Party shall in all respects enjoy in the territory of the other Party treatment no less favorable than that accorded to juristic and natural persons of any third State.⁷³

Precisely which category of the Chinese belong to "natural persons" is not specified. Other formal treaties of trade and navigation followed suit in this regard,⁷⁴ except the Treaty with the Democratic Republic of Germany, January 18, 1960, in which treatment of natural persons of either contracting state is not even mentioned.⁷⁵ However, viewed from the context of the PRC's foreign trade practice, the omission of natural persons from treaty status is really not surprising. Of the seven treaties cited above, six were concluded with socialist states whose policy is to do business on a governmental basis. The most-favored-nation treatment accorded to natural persons in five of these treaties is at best ceremonial, because in each case, the right of individuals to engage in private business is virtually nil. Thus, in all trade agreements with non-socialist countries, except Yemen and some of the PRC's neighboring states (for example, India and Nepal) where frontier trade is involved, the parties simply ignored any establishment provisions concerning the rights of natural and juristic persons. Instead, they introduced in some instances a formula conforming to each other's foreign trade systems. Article one of the Trade Agreement with Finland, June 5, 1953, states:

72. In 11 TYC 15 (1962).

73. In 7 TYC 42, 46 (1958).

74. With Albania, art. 14, Feb. 2, 1961, in 10 TYC 290, 294; the People's Republic of Mongolia, art. 12, April 26, 1961, in 10 TYC 361, 364; the Democratic People's Republic of Korea, art. 13, Nov. 5, 1962, in 11 TYC 92, 96; the Democratic Republic of Vietnam, art. 13, Dec. 5, 1962, in 11 TYC 100, 104. The Treaty with Yemen, January 12, 1958, art. 7, provides: "Natural and juristic persons of either Contracting Party shall strictly observe in the territory of the other Party the existing local laws and regulations, respect [local] religions, custom, and habits, and shall not interfere with the internal affairs of the country in which they reside." 7 TYC 28, 29.

75. Article 14 of the Treaty provides: "Unless otherwise provided for in other agreements, juristic persons of either Contracting Party shall in accordance with the provisions of this Treaty enjoy in the territory of the other Party the same rights and favors accorded to juristic persons of any third State." 9 TYC 134, 138 (1960).

. . . The Central People's Government of the People's Republic of China shall designate its state enterprise corporations to supply the natural or juristic persons appointed by the Government of the Republic of Finland with goods listed in Schedule A of this Agreement; the natural or juristic persons designated by the Government of the Republic of Finland shall supply the state enterprise corporations appointed by the Government of the People's Republic of China with goods listed in Schedule B of this Agreement. . . .⁷⁶

Another example is the Agreement for the Exchange of Goods and Payments with Afghanistan, July 28, 1957, article four providing:

The exchange of commodities between the two States shall be conducted on the basis of the contracts made between the individual organizations, corporations, and traders formally authorized by the Government of the Kingdom of Afghanistan for this purpose, and the Chinese import and export corporations.⁷⁷

Unlike the nationality of vessels, which in the PRC's practice is generally determined on the basis of "the papers carried by the vessel and issued by the competent authorities in accordance with the laws and regulations of the Contracting Party under whose flag the vessel is sailing,"⁷⁸ the above agreements made no mention of the method by which the nationality of a corporation of either contracting party may be determined. Nor did they specify the status and rights of those natural and juristic persons involved. However, in light of those provisions, it is quite clear that on the Chinese side there is only one kind of corporation—the state corporations of the PRC; on the Finnish and Afghan side, the individuals and corporations are all appointed by their governments and act in their capacity as government agents. In other instances where such provisions were not introduced or were found inadequate to regulate the trade relations of the parties, they agreed to establish "trade missions or delegations (*shang-wu-tai-piao-ch'u*)."

B. Trade Missions

The idea of establishing trade missions abroad (*torgpredstov*) as official representatives of the state originates from Soviet Russia.

76. 2 TYC 35 (1953).

77. 6 TYC 139, 140 (1957). For other similar examples, see Trade Agreement with the Republic of Tunisia, art. 4, Sept. 25, 1958, in 7 TYC 96, 97; Trade and Payments Agreement with the Republic of Ghana, art. 5, August 18, 1961, in 10 TYC 252, 253; Trade and Payments Agreement with Congo (Brazzaville), July 23, 1964, art. 1, in 13 TYC 281.

78. The Treaty of Trade and Navigation with the USSR, April 23, 1958, art. 10, in 7 TYC 45. Similar provisions can be found in other treaties of the same nature with the PRC.

Before 1933, their status was defined in a number of international conventions which the Soviet regime entered into with other countries.⁷⁹ On September 13, 1933, a statute was promulgated authorizing the trade missions to exercise abroad "the rights of the Union of the Soviet Socialist Republics pertaining to the monopoly of foreign trade enjoyed by the Union."⁸⁰ As distinguished from corporate bodies, these trade missions are not legal entities, rather, they are part of the corresponding diplomatic missions of the Soviet Union abroad and enjoy the latter's privileges. In addition to their various functions relating to the operation and regulation of Soviet foreign trade, they are authorized to conclude in the name of the Soviet state all kinds of contracts and legal transactions, and the Treasury of the Soviet state is liable for obligations incurred by the trade missions.⁸¹

Although the PRC has not promulgated such a law, it persistently follows this Soviet principle with some variations. In about a dozen agreements, where a clause for the exchange of trade missions was included, Japan appeared to be the first country in which the PRC expressed this trade mission interest. From 1952 to 1958, Japan entered into four "non-governmental" or "semi-governmental" trade agreements with the China Council for the Promotion of International Trade (CCPIT).⁸² A memorandum attached to the second agreement, October 29, 1953, stated: "The Contracting Parties agreed to exchange trade missions; Japan will establish her permanent trade mission in China when China's permanent trade mission has been established in Japan."⁸³ Following this, the third agreement, May 4, 1955, article 10, specified the locations of the trade missions and provided these missions and their members with "diplomatic treatment and rights."⁸⁴ The agreement did not say how such treatment and rights could be granted in the absence of diplomatic relations between the two countries and a direct and open commitment by their governments. It merely added: "The Contracting Parties agreed to work for the realization [of this provision] as early as possible."⁸⁵ Perhaps the Japanese felt that such a provision was nothing more than a promise on paper. From Peking's point of view, it was not entirely so; the

79. Protocol on the Legal Status of the Trade Representation of the USSR in Lithuania, August 29, 1931, in TARACOUZIO, *THE SOVIET UNION AND INTERNATIONAL LAW* 431 (1935).

80. Statute Concerning Trade Missions and Trade Agencies of the USSR Abroad, Sept. 13, 1933, § 1, 2 GSOVSKI, *SOVIET CIVIL LAW* 347 (1949).

81. *Id.* at 348-52.

82. For a discussion of the organization of the CCPIT, see Hsiao, *supra* note 2, at 313-18.

83. 2 TYC 372 (1953).

84. 4 TYC 258, 260 (1955).

85. *Id.*

agreement was viewed as a steppingstone toward full diplomatic recognition by Japan.

Finally, in contrast to the previous agreements where the status of the trade missions was dealt with only in generalities, the fourth agreement, March 5, 1958, contained details. Defining the trade missions as "private" delegations representing the signatories of the agreement only⁸⁶—instead of being agents of their governments as implied on the two previous occasions—the agreement accorded the trade missions the following reciprocal treatment: (1) security protection of the trade missions and their members; (2) choice of methods to settle legal disputes after agreement between the contracting parties; (3) facilitation of the procedures for the entry and exit of trade mission members and favorable treatment of these members by the customs; (4) the freedom of travel for the purpose of carrying out trade activities; (5) the right to use ciphers for the conduct of business; (6) the right to fly national flags on the buildings of the trade missions; and (7) exemption from fingerprinting of trade mission members and their dependents.⁸⁷

Shortly after the conclusion of the agreement, difficulties arose in fulfillment of those provisions by the Japanese. While recognizing the "necessity" of expanding trade with the PRC, the Kishi government would support the agreement only on three conditions: the PRC must respect the domestic law of Japan, accept the fact of non-recognition between the two governments, and take into account the present international relations (presumably Japan's relations with the Republic of China and the United States).⁸⁸ In reply, the Chinese contended that the Japanese government's refusal to recognize the PRC was an act of "hostility towards the 600 million Chinese people" and that the PRC would respect the domestic law of Japan, provided that this law was applied indiscriminately. As to the present international relations, the PRC contended that the Japanese government should first of all assure the successful implementation of the agreement "in order to pave the way for the restoration of Sino-Japanese diplomatic relations"; otherwise, the Chinese could not execute the

86. On the Chinese side, the two top signatories were Nan Han-ch'en, Chairman of the CCPIT and Director-General of the Chinese People's Bank under the State Council, and Lei Jen-min, First Vice-Chairman of the CCPIT and First Vice-Minister of Foreign Trade. On the Japanese side, the top signatory was Masanosuke Ikeda, Chairman of the League of Japanese Diet Members for the Promotion of Japanese-Chinese Trade. 7 TYC 200 (1958).

87. Sino-Japanese Trade Agreement, March 5, 1958, art. 11, in 7 TYC 197, 199; Memorandum, March 5, 1958, in 7 TYC 201-02.

88. Three Japanese Organizations' Telegram to Nan Han-ch'en, April 9, 1958, in 5 TWKH 271 (1958).

agreement.⁸⁹ Then on May 2, 1958, some Japanese demonstrators insulted a PRC national flag on display at a fair in Nagasaki, and the Sino-Japanese trade broke off for several years.⁹⁰

On August 7, 1960, when Japanese businessman Gazuo Suzuki called on Premier Chou En-lai in an effort to resume trade with the PRC, Chou made it clear that trade was inseparable from politics. Accordingly, he laid down "three trading principles" and "three political principles" as the basis of future Sino-Japanese trade. The former called for conclusion of governmental agreements, private contracts, and individual transactions; the latter required Japan not to adopt any hostile attitude towards the PRC, not to follow the United States in the "conspiracy of creating two Chinas," and not to obstruct the development of normalization of relations between the PRC and Japan.⁹¹ Finally, after a year-long negotiation, Japanese traders, with their government's understanding, accepted these conditions and incorporated them into the Liao Ch'eng-chih and Takasaki Memorandum (better known as "L-T Agreement"), November 9, 1962, which was to last five years.⁹² The agreement does not contain any establishment provisions. Subsequently, however, the two parties exchanged trade representatives and news correspondents. According to this arrangement, either party was to obtain entry permits for the representatives of the other party and to guarantee their safety; news correspondents were entitled to enjoy treatment equal to that accorded to any other foreign correspondents by the receiving state.⁹³

Although the Japan case is unique in some respects, mainly due to Japan's traditional ties with the mainland of China,⁹⁴ it is by no means an isolated phenomenon. Egypt exchanged government trade missions with the PRC while maintaining diplomatic relations with

89. Nan Han-ch'en's Reply to Three Japanese Organizations, April 13, 1958, in 5 TWKH at 267-71.

90. Foreign Minister Ch'en Yi's Interview with Correspondents of the Hsin Hua News Agency, May 9, 1958, in 5 TWKH at 104-06.

91. Chou En-lai, *On the Three Principles of Sino-Japanese Trade*, 1961 JMST 167-68.

92. 11 TYC 157-58 (1962); see Premier Chou En-lai's Address to Japanese Liberal Democrat Kenzo Muramatsu on the Principles of Sino-Japanese Relations, Sept. 19, 1962, in 9 TWKH 357-58. Liao Ch'eng-chih was Chairman of the Commission on Overseas Chinese Affairs and concurrently a member of the Central Committee of the Chinese Communist Party; Tazunosuke Takasaki was ex-Minister of Trade and Commerce. Thus, the agreement assumes a semi-governmental character.

93. Summary of the Meeting Minutes Between the Liao Ch'eng-chih Office and the Takasaki Office for Exchange of Representatives and Liaison Offices, April 19, 1964, in 1964 JMST 454; Summary of the Meeting Minutes Between the Liao Ch'eng-chih Office and the Takasaki Office for Exchange of News Correspondents, April 19, 1964, *id.*

94. For reference, see JAPAN EXTERNAL TRADE ORGANIZATION, NICHU BOEKI NO TEBIKI (Introduction to Japanese-Chinese Trade) (1966).

Taipei.⁹⁵ Nine months later on May 16, 1956, when Egypt finally severed her relations with Taipei and recognized the PRC,⁹⁶ Minister Yeh Chi-chuang hailed it as a success of the regime's foreign trade policy.⁹⁷

Countries maintaining diplomatic relations with Peking and having agreements for the exchange of trade missions include India and the Soviet Union.⁹⁸ According to the Agreement with India on Trade and Intercourse Between Tibet Region of China and India, April 29, 1954, the two parties agreed to exchange "trade agencies (*shang-wu-tai-li-ch'u*)."⁹⁹ The Soviet statute of September 13, 1933, section 12, stipulates that the People's Commissar for Foreign Trade may establish independent trade agencies for the countries in which there are no trade missions of the USSR or for individual districts within the countries in which trade missions are located.¹⁰⁰ The PRC has offered no statutory explanation as to the distinction between these two types of trade delegations. In practice, the said agreement provides the trade agents of both parties with freedom from arrest while exercising their functions and with the right to enjoy freedom from search in respect to themselves, their wives, and dependent children. It also provides the trade agencies of both parties with privileges and immunities for couriers, mail-bags, and communications in code. In addition, the trade agents of both parties may, in accordance with the laws and regulations of the local governments, have access to their nationals involved in civil or criminal cases.¹⁰¹ However, the agreement did not mention the commercial functions of the agencies,

95. Trade Agreement with Egypt, August 22, 1955, art. 6, provides for the exchange of government trade missions with "due respect" for their status and security protection. 4 TYC 123, 124.

96. 1957 JMST 362.

97. See Editorial of Ta-kung Pao, Peking, August 11, 1955, 2 ESSAYS 96-98; Yeh Chi-chuang, *A New Stage in the Development of Economic Relations Between China and Egypt*, 2 ESSAYS at 99-101; *Celebrating the Establishment of Diplomatic Relations Between China and Egypt*, 2 ESSAYS at 102-05.

98. For reference to other countries, see Trade Agreement with Syria, Nov. 30, 1955, in 4 TYC 118; Protocol Modifying the Trade and Payments Agreements with Syria, July 3, 1957, in 6 TYC 161; Trade Agreement with Lebanon, Dec. 31, 1955, in 4 TYC 159; Agreement with Nepal on Trade and Intercourse, Sept. 20, 1956, in 5 TYC 4. In the Exchange of Notes with Government of Sudan Concerning the Trade Problems of the Two Countries, April 12, 1956, it was provided that the contracting states agreed in principle "to encourage the exchange of trade delegates in order to develop the economic and trade relations between the two States." 5 TYC 59.

99. 3 TYC 1.

100. 2 GSOVSKI, *supra* note 80, at 352.

101. Exchange of Notes with India, April 29, 1954, in 3 TYC 4, 5. Similar provisions are to be found in the Agreement with Nepal on Trade and Intercourse, Sept. 20, 1956, and the Exchange of Notes with Nepal on the same date. 5 TYC 4-10.

such as their capacity to conclude transactions;¹⁰² in fact, the Ministry of Foreign Affairs in Peking formally classified the agreement as a political treaty.¹⁰³ Furthermore, the Chinese trade agencies were established in New Delhi, Calcutta, and Kalimpong, whereas the Indian representation was confined to Yatung, Gyantse, and Gartok,¹⁰⁴ thus reducing the Indian agencies to a local status.

In contrast to the agreements with Japan and India, Peking's arrangement with Moscow for exchange of trade missions is consistent with the 1933 Soviet statute. The Annex of the Treaty of Trade and Navigation with the Soviet Union, article 1, stipulates the functions of the trade missions as follows: (1) promoting the development of trade and economic relations between the two states; (2) representing the interests of its own state in the other state in all matters relating to foreign trade; (3) regulating trading transactions with the other state on behalf of its own state; and (4) carrying on trade between the two states.¹⁰⁵ As regards the status of the trade mission, it forms an integral part of the embassy of its own state and thus enjoys certain rights and privileges accorded to a diplomatic mission, including: diplomatic immunity for the trade mission chief and his deputies, extraterritoriality for the premises occupied by the trade mission and its branches, the right to use ciphers, waiver of commercial registration by the trade mission and its branches, and exemption from taxation of its employees who are citizens of the state to which the mission belongs (article 2). Acting in the name of its own government, the trade mission is responsible for foreign commercial contracts concluded or guaranteed on behalf of the trade mission in the receiving state and signed by authorized persons. The names of the persons authorized to take legal action on behalf of the trade mission and information concerning the extent to which each such person is empowered to sign commercial contracts on its behalf are to be published in the government publication of the receiving state (article 3). Finally, the trade mission enjoys all the immunities to which a sovereign state is entitled and which relate also to foreign trade, with the following exceptions:

- (1) Disputes regarding foreign commercial contracts concluded or guaranteed under article 3 by the trade mission in the territory of the receiving

102. The Soviet statute of Sept. 13, 1933, § 14, provides: "The purpose of trade agencies shall consist in performing individual tasks assigned by the present statute to the trade missions. The functions, territorial confines, and method of procedure of trade agencies, shall be determined in each by the People's Commissariat for Foreign Affairs." 2 Gsovskii *supra* note 80, at 352.

103. 3 TYC 1 (1954).

104. Agreement with India, April 29, 1954, art. 1, in 3 TYC 1.

105. 7 TYC 47 (1958).

state shall, in the absence of a reservation regarding arbitration or any other jurisdiction, be subject to the competence of the courts of the said state. No interim court orders for the provision of security may be made; (2) Final judicial decisions against the trade mission in the aforementioned disputes which have become legally valid may be enforced by execution, but such execution may be levied only on the goods and claims outstanding to the credit of the trade mission [article 4].

If the PRC were to continue to follow Soviet legal patterns, the foregoing provisions may eventually become the pattern of its future legislation concerning the functions and status of trade missions. As of 1964, however, the PRC showed little interest in this "legalistic" approach of the Soviet Union; as evidence of this attitude, the PRC's agreement with Nepal for exchange of trade agencies, like that with India, is officially classified as being political rather than commercial.¹⁰⁶ Likewise, the arrangements with Lebanon and Syria accorded the trade missions diplomatic status without specifying their trading functions and legal capacities.¹⁰⁷ More noteworthy is the fact that, aside from the Soviet Union, the PRC made no treaty arrangements with any other socialist state for the exchange of trade missions or agencies. Since the establishment of trade missions is a Soviet invention, related to the state monopoly of foreign trade, one wonders why the PRC's application of this socialist principle is largely limited to Afro-Asian nations, particularly those having no diplomatic relations with Peking and those controversial neighboring countries like India and Nepal. Surmising from the official treaties under review, it seems reasonably clear that Peking's strategy was to make use of the trade missions as originally designed by the Soviet Union, but to expand their political role whenever possible and desirable.

IV. NATIONAL AND MOST-FAVORED-NATION TREATMENT

Although national and most-favored-nation treatment are two different commitments in modern commercial treaties, the distinction is sometimes blurred. For instance, an authoritative British publication suggests that the aim of the most-favored-nation clause:

[H]as been to secure three objects—'national' treatment of British subjects in foreign countries, that is to say, treatment on the same basis as the nationals of the country concerned; similar 'national' treatment of British

106. Agreement with Nepal on Trade and Intercourse Between Tibet Region of China and Nepal, Sept. 20, 1956, in 5 TYC 4.

107. Trade Agreement with Lebanon, Dec. 31, 1955, art. 8, in 4 TYC 159, 160; Trade Agreement with Syria, Nov. 30, 1955, art. 8, in 4 TYC 118, 119; Protocol Modifying Trade and Payments Agreements with Syria, July 3, 1957, art. 1, in 6 TYC 161, 162. It should be noted that Lebanon has not diplomatically recognized the Peking regime.

ships in the question of navigation; and most-favored-nation treatment for British goods in all matters of customs, that is to say, treatment on the same basis as that accorded to the goods of any other foreign power.¹⁰⁸

To be sure, the principles of national and most-favored-nations treatment are sometimes provided side by side in the same treaty,¹⁰⁹ but there is a difference in the choice of the base upon which equality is measured. In the PRC's trade treaty practice, this difference becomes even more conspicuous because of the PRC's political and economic system.

A. National Treatment

Theoretically, the Peking Foreign Trade Institute defines the national-treatment principle as follows:

According to this principle, either contracting state guarantees to the nationals, enterprises, or vessels of the other contracting state in its territory the same treatment as it is accorded to its own nationals, enterprises, and vessels.¹¹⁰

It is also recognized that this principle generally applies to the economic rights of foreign citizens and enterprises, internal taxation, the treatment of vessels, railway transport and transit, and civil suits.¹¹¹ In practice, the PRC has followed the Soviet Union in asserting that extensive application of the national-treatment principle by "powerful imperialist states" in their trade treaties and agreements with small and weak nations constitutes a legal basis for the former to encroach upon the latter's economy.¹¹² Accordingly, the PRC has limited its application to circumstances involving the question of "humanitarianism" only. A standard clause denoting this version of the national-treatment principle is found in the 1958 Treaty of Trade and Navigation with the USSR, article 9:

108. THE ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS, MEMORANDUM ON THE MOST-FAVORED-NATION CLAUSE AS AN INSTRUMENT OF INTERNATIONAL POLICY 1 (1933).

109. *E.g.*, the Treaty of Friendship, Commerce and Navigation Between the United States of America and Japan, April 2, 1953, art. 4, para. 1, provides: "Nationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment with respect to access to the courts of justice and to administrative tribunals and agencies within the territories of the other Party, in all degrees of jurisdiction, both in pursuit and in defense of their rights." 1 METZGER, LAW OF INTERNATIONAL TRADE 1, 3 (1966).

110. WANG YAO-T' IEN 23.

111. *Id.*

112. *Id.*; *cf.* TRISKA & SLUSSER, THE THEORY, LAW, AND POLICY OF SOVIET TREATIES 347.

If a vessel of one Contracting Party is in distress or is wrecked on the coast of the other Contracting Party, such vessel and its cargo shall enjoy the same advantages and immunities as are granted under the laws of the latter State to its own vessels in similar circumstances. The necessary aid and assistance shall be afforded at all times, and in the same measure as in the case of national vessels in the same situation, to the master, crew and passengers, and to the vessel and its cargo. Where there are special agreements on such matters, aid shall likewise be afforded in accordance with such agreements.¹¹³

The above "humanitarian" treatment is, however, limited to socialist countries which have such agreements with the PRC.¹¹⁴ In agreements with non-socialist countries, it has been provided that a vessel of either contracting party in distress or otherwise endangered in the territorial waters of the other party is only to receive "all possible aid and assistance" within the limits of the latter's law.¹¹⁵

Peking's denial of national treatment to foreign citizens in matters concerning trade other than shipwreck does not appear to be so much an expression of nationalistic ideology, as the official Chinese literature tends to suggest, but rather is determined by the very nature of the state and its economy. First of all, under the system of state monopoly of foreign trade, the citizens of the PRC are themselves denied the right to do private business with foreign countries. It is true that in Hong Kong and other neighboring areas there are "private" Chinese corporations importing and exporting goods for the mainland of China. But these so-called private corporations are, in Peking's view, agencies of the state and thus part of the state trading system. Moreover, these corporations are technically under foreign jurisdictions and, therefore, cannot be related to the present discussion. Secondly, as sole owner of all business corporations and productive property, the state simply cannot treat foreign nationals on an equal footing and thereby allow them to share its sovereign rights and privileges. Additionally, as discussed above, the individuals of the PRC are given three different titles: "people," "nationals," and "citizens," and each category is entitled to certain economic and legal rights under the 1949 and 1954 constitutions. Thus, if a foreign treaty partner seeks to secure national treatment from the PRC, the

113. 7 TYC 42, 45 (1958).

114. The Democratic Republic of Germany, January 18, 1960, in 9 TYC 134, 137; Albania, Feb. 2, 1961, in 10 TYC 290, 293; the Democratic Republic of Vietnam, Dec. 5, 1962, in 11 TYC 100, 103; the Democratic People's Republic of Korea, Nov. 5, 1962, in 11 TYC 92, 95.

115. Sea Transport Agreements: with Ceylon, July 25, 1963, art. 5, in 12 TYC 251-52; Ghana, March 26, 1963, art. 5, in 12 TYC 234-35; Congo (Brazzaville), October 2, 1964, art. 5, in 13 TYC 366-67.

question arises as to which category's treatment the foreigners would receive.

As a secondary reference, however, it is interesting to note that Peking has invented a sort of unilateral national treatment for its own citizens overseas. In its aid programs to Afro-Asian countries, the PRC adopted "eight principles," one of which provides:

The experts dispatched by the Chinese Government to help in construction in the recipient countries will have the same standard of living as the experts of the recipient country. The Chinese experts are not allowed to make any special demands or enjoy any special amenities.¹¹⁶

While in reality the principle was enunciated to coordinate with the PRC's diplomatic offensive in Africa, it also appeared in a number of aid agreements and was thus endowed with a legal character comparable to national treatment.¹¹⁷ The difference between this type of national treatment and the normal type is that the former is a self-imposing and unilateral act on the part of the PRC, and its scope of application is basically confined to the question of "living standard" and unspecified "amenities,"¹¹⁸ whereas the latter is primarily concerned with the legal status of the nationals involved in trade and other activities provided for in the treaty.

B. *Most-Favored-Nation Treatment*

In contrast to its attitude toward national treatment, the PRC employed the most-favored-nation clause as a fundamental principle of its trade treaties and agreements. Imitating a classical analysis of the clause presented by Richard Carlton Snyder in his 1948 monograph,¹¹⁹ the Peking Foreign Trade Institute described its basic forms

116. These eight principles originated from Premier Chou En-lai's reply to the Ghana News Agency's questions on January 15, 1964, in 1964 JMST 392-93 (English translation in Joint Communiqué of China and Tanganyika-Zanzibar, June 19, 1964, Peking Review, No. 26, June 26, 1964, pp. 12-13).

117. Agreement with Guinea on Economic and Technical Cooperation, Sept. 13, 1960, in 9 TYC 80; Agreement with Nepal on Economic Aid, March 21, 1960, in 9 TYC 84; Agreement with Indonesia on Economic and Technical Cooperation, October 11, 1961, in 10 TYC 245; Agreement with Ghana on Economic and Technical Cooperation, August 18, 1961, in 10 TYC 250; Agreement with Mali on Economic and Technical Cooperation, Sept. 22, 1961, in 10 TYC 333; Agreement with Burma on Economic and Technical Cooperation, October 1, 1961, in 10 TYC 369; Joint Communiqué of China and Mali, January 21, 1964, in 13 TYC 15.

118. For example, in the agreement with Ghana cited in note 117, it is provided that the Chinese specialists and technicians working in Ghana shall receive their living expenses from the Ghana government; however, their living standard shall not exceed the living standard of their local counterparts. The same agreement did not impose such restrictions on the Ghana personnel studying skills in China.

119. R. C. SNYDER, *THE MOST-FAVORED-NATION CLAUSE* (1948).

in five categories: (1) Conditional or unconditional; the conditional form implies that concessions shall be generalized only upon the reciprocal payment of equivalent compensation, whereas the unconditional form lays down no conditions under which concessions granted by contracting states should be generalized. (2) Unilateral or mutual; the mutual form consists of the reciprocal grant of most-favored-nation treatment, whereas the unilateral form provides one contracting state with most-favored-nation treatment while denying the other the right to enjoy the same. (3) Limited or unlimited; the limited form confines the application of the clause to certain specified objects or territories, whereas the unlimited form imposes no restrictions on the scope of application. (4) Positive or negative; the positive form requires that either contracting state undertakes to grant the other all privileges, favors, and immunities it has granted or may hereafter grant to any other third states, while the negative form stipulates that neither contracting state shall treat the other less favorably than it does any other third states. (5) Simple and complex; the simple form is one which contains a general statement providing most-favored-nation treatment, whereas the complex form defines the clause in greater detail and usually consists of four parts concerning its general purpose, interpretation, limitations, and exceptions.¹²⁰ In practice, the PRC favored the unconditional, mutual, and limited forms and rejected the conditional form as being "out-of-fashion" and the unilateral and unlimited forms as being "unequal."¹²¹ With respect to the forms in the fourth and fifth categories, they are considered a matter of technicality, rather than principle.

Since individuals play an insignificant role in Peking's foreign trade, the scope of application of the clause is basically confined to navigation and commerce proper. It first appeared in the Trade Agreement with Egypt, August 22, 1955, in which both parties agreed to grant most-favored-nation treatment in matters concerning the issuance of import and export licenses and customs duties.¹²² After the agreement with Egypt, the PRC reached similar agreements with no less than ten countries; the scope of application was widened so as to include taxes and other charges imposed on goods, the warehousing of goods, customs regulations and procedures, and navigation.¹²³ But the most

120. WANG YAO-T'EN 28-33; SNYDER, *supra* note 119, at 20-21, 52, 58. Aside from Snyder's work, Wang Yao-t'ien also used as one of his major references, Hornbeck, *The Most-Favored-Nation Clause* (pts. 1 & 2), 3 AM. J. INT. L. 395, 619 (1909).

121. In this connection, Peking exploited China's past to justify its viewpoints. For reference to the role of most-favored-nation treatment in China's past treaties, see SZE, *CHINA AND THE MOST-FAVORED-NATION CLAUSE* (1925).

122. 4 TYC 123 (1955). It is to be remembered that the Egyptian government made this commitment before its recognition of the Peking regime.

123. Syria, Nov. 30, 1955, in 4 TYC 118; Lebanon, Dec. 31, 1955, in 4 TYC 159;

sweeping application of the clause remains to be found in the 1958 Treaty of Trade and Navigation with the USSR. Of the seventeen articles in the treaty, ten deal with most-favored-nation treatment. Beginning with a general statement granting the contracting parties "most-favored-nation treatment in all matters relating to trade, navigation and other economic relations between the two States" (article 2), the treaty proceeds to specify the objects to which the clause applies. These include: all customs matters relating to the importation or exportation of natural and manufactured products of either contracting party (articles 3 and 4); internal taxation or charges (article 6); restrictions on importation or exportation for reasons of national security, public health, etc. (article 7); vessels and their cargoes (article 8); conveyance of goods, passengers and baggage by internal railways, roads or waterways (article 11); goods in transit (article 12); the legal status of natural and juristic persons (article 14); and exceptions of the clause in frontier trade (article 15).¹²⁴

Subsequent to the conclusion of this treaty, six other socialist countries followed suit,¹²⁵ and together with eleven additional non-socialist countries,¹²⁶ the PRC made the most-favored-nation commitment with twenty-nine countries out of a total of forty-eight governmental and non-governmental trade treaty partners. The ones with whom the PRC did not make such a commitment are Bulgaria, Czechoslovakia, Hungary, Poland, and Rumania on the socialist side; Afghanistan, Algeria, Austria, Burma, Cambodia, France, West Germany, India, Japan, Nepal, Nigeria, Singapore-Malaya, Switzerland, and the United Kingdom on the non-socialist side. The absence of the clause in the PRC's trade treaty relations with these countries should not be con-

Yugoslavia, Feb. 17, 1956, in 5 TYC 113; Finland, March 31, 1956, in 5 TYC 61 (1956); Indonesia, Nov. 3, 1956, in 5 TYC 56; Ceylon, Sept. 19, 1957, in 6 TYC 203; Sweden, Nov. 8, 1957, in 6 TYC 181; Denmark, Dec. 1, 1957, in 6 TYC 45; Pakistan, Dec. 24, 1957, in 7 TYC 35; Yemen, January 12, 1958, in 7 TYC 28.

124. 7 TYC 42-46 (1958).

125. The Democratic Republic of Germany, January 18, 1960, in 9 TYC 134; Cuba, July 23, 1960, in 10 TYC 238; Albania, Feb. 2, 1961, in 10 TYC 290; the People's Republic of Mongolia, April 26, 1961, in 10 TYC 361; the Democratic People's Republic of Korea, Nov. 5, 1962, in 11 TYC 92; the Democratic Republic of Vietnam, Dec. 5, 1962, in 11 TYC 100. It should be noted that the agreement with Cuba is rather general, mostly concerned with customs matters and taxation.

126. Norway, June 4, 1958, in 7 TYC 94; Tunis, Sept. 25, 1958, in 7 TYC 96; the United Arab Republic, Dec. 15, 1958, in 7 TYC 57 (this is an enlargement of the earlier agreement, *supra* note 122, at 78); Iraq, January 3, 1959, in 8 TYC 53, Sept. 23, 1964, in 13 TYC 277; Guinea, Sept. 13, 1960, in 9 TYC 82; Mali, Feb. 28, 1961, in 10 TYC 327; Ghana, August 18, 1961, in 10 TYC 252; March 26, 1963, in 12 TYC 234; Sudan, May 23, 1962, in 11 TYC 56; Somali, May 15, 1963, in 12 TYC 178; Congo (Brazzaville), July 23, 1964, in 13 TYC 281, October 2, 1964, in 13 TYC 366; Central Africa, Sept. 29, 1964, in 13 TYC 262; Burundi, October 22, 1964, in 13 TYC 269. The arrangement of the most-favored-nation clause in these agreements varies, but they all deal with navigation and commerce.

strued as a phenomenon of restraint of trade,¹²⁷ rather, it is a question of their individual relations. Since analysis of these relations is beyond the scope of the present discussion, a further inquiry into Peking's general view of the most-favored-nation clause and its real value in trade practice may help to clarify certain points.

Like the socialist theory of law in general, Peking makes a distinction between the "capitalist" and the socialist principles of most-favored-nation treatment. Initially a progressive institution designed to increase free trade, the capitalist principle has now become a tool of monopolistic capital, and of "imperialism" designed to realize its economic expansionism and to enslave small and weak nations.¹²⁸ Citing the Treaty of Friendship, Commerce and Navigation Between the Republic of China and the United States, November 4, 1946, as an example, Peking contended that while Americans were entitled to enjoy most-favored-nation treatment in China, the "anti-Chinese" immigration law of the United States remained applicable to Chinese persons.¹²⁹ As further evidence, the provisions of article 21 of the Treaty were construed as an obligation of the Republic of China to open all coastal ports and inland waters to the United States, whereas article 27 makes the Panama Canal Zone an exception.¹³⁰

127. West Germany and Japan, for example, have been among the PRC's largest trading partners for years. The five socialist states maintained normal trade relations with the PRC, at least before the outbreak of the Sino-Soviet split. For reference to the PRC's foreign trade figures, see ECKSTEIN, *COMMUNIST CHINA'S ECONOMIC GROWTH AND FOREIGN TRADE* (1966).

128. WANG YAO-T'EN 27-28; *cf.* TRISKA & SLUSSER, *supra* note 24, at 334.

129. WANG YAO-T'EN 50. The Treaty, art. 2, provides most-favored-nation treatment for nationals of either contracting party with respect to their rights to reside, travel, and carry on trade in the territories of the other contracting party. Article 2, para. 4, specifies: "Nothing in this Treaty shall be construed to affect existing statutes of either High Contracting Party in relation to immigration or the right of either High Contracting Party to enact statutes relating to immigration; provided, however, that nothing in this paragraph shall prevent the nationals of either High Contracting Party from entering, traveling, and residing in the territories of the other High Contracting Party in order to carry on trade between the Republic of China and the United States of America, or to engage in any commercial activity related thereto or connected therewith, upon terms as favorable as are or may hereafter be accorded to the nationals of any third country . . . ; and provided further that nothing in the provisions of Section 3 of the Immigration Act of the United States of America dated February 5, 1917, which delimit certain geographical zones for the purpose of restricting immigration, shall be construed as preventing admission into the United States of Chinese persons and persons of Chinese descent." 25 U.N.T.S. 90, 92-94. For reference to "exclusion of Chinese" in American immigration law, see Act of Feb. 14, 1903, ch. 552, § 7, 32 Stat. 828.

130. WANG YAO-T'EN 51. The text of art. 21, para. 1, reads as follows: "Between the territories of the High Contracting Parties there shall be freedom of commerce and navigation." Art. 27 provides: "Subject to any limitation or exception provided in this Treaty or hereafter agreed upon between the Governments of the High Contracting Parties, the territories of the High Contracting Parties to which the provisions of this Treaty extend shall be understood to comprise all areas of land and water under the

The socialist principle, on the other hand, serves as an instrument to realize "economic equality, mutual assistance, and friendly cooperation" in relations with socialist states, and as "a powerful weapon" for the development of normal international commerce and against discriminatory policies of non-socialist countries.¹³¹ This twofold nature of the socialist principle is, however, immediately supplemented by a quotation from Lenin: "The essence of the provisions adopted by the contracting parties depends upon the real correlation of forces and the general international situation as of the moment a treaty is concluded."¹³² Thus, under the above rule of most-favored-nation treatment, "reciprocity" is thought of as being only theory, while "equality of treatment" is considered to be actually determined by the nature of the contracting states, the correlation of their economic strength, and the essence of their relations.¹³³ While the concept is consistent with Marx's theory of equality—in the socialist stage every right is equal in its form but unequal in its content,¹³⁴—and is also consistent with Lenin's theory of imperialism, it is not a uniquely Marxist-Leninist interpretation. In his 1954 essay on "The Rule of Reciprocity," Henry Drummond-Wolff said:

The most-favored-nation principle and the rule of non-discrimination provide *equality of opportunity and access* to trade and raw materials as a legal international right but cannot establish *equality of treatment* by the actual exchange of trade on equal terms. The material inequality of nations due to disparity in their human and natural resources and in their consuming, producing and purchasing power, compels them to discriminate in order to obtain reciprocity and establish a balance of payments.

Be that as it may, Peking still rejects the concept of "equal opportunity" as "an imperialist design" of the United States, used to exploit small nations, and insists on the application of the principle of "equilibrium." According to Minister of Foreign Trade Yeh Chi-chuang, "[O]nly by balancing the volume of imports and exports, can the difficulty of payments be avoided."¹³⁵ In some instances, Peking has even preferred barter to other forms of trade.¹³⁶

sovereignty or authority of either High Contracting Party, except the Panama Canal Zone." 25 U.N.T.S. 128, 138.

131. WANG YAO-T' IEN 28.

132. *Id.* at 9; Kozhevnikov, *supra* note 23, at 223; TRISKA & SLUSSER, *supra* note 24, at 284.

133. WANG YAO-T' IEN 27, 31.

134. MARX, CRITIQUE OF THE GOTH A PROGRAMME 9 (1938).

135. Yeh Chi-chuang, *Working for the Development of Normal International Trade*, 2 ESSAYS 7, 10 (1956). See also Lei Jen-min, *New China's Trade with Capitalist Countries*, 1 ESSAYS 63-68 (1955).

136. *E.g.*, Protocol for the Exchange of Chinese Export Commodities with Burmese Rice, Nov. 3, 1954, in 3 TYC 137.

With respect to the expansion of multilateral trade, which is a major function of the most-favored-nation clause, the PRC's attitude is not totally negative. In article six of the Trade Agreement with Indonesia, November 3, 1956, both parties agreed to "adopt all appropriate measures" to expand trade on the multilateral basis.¹³⁷ Later, speaking to the Asian Economic Seminar on June 20, 1964, the PRC's chief delegate Nan Han-ch'en proposed that most-favored-nation treatment or preferential tariffs be employed as an instrument "to create conditions for the gradual development of multilateral trade" among Afro-Asian and Latin American countries.¹³⁸ In practice, however, the PRC had only one triple trade agreement with Finland and the Soviet Union.¹³⁹ All other trade agreements in the period under review were bilateral.

V. CONCLUSION

Before the rise of the state trading system, forms of agreement and rules of commitment were evolved on the assumption that trade would remain in the hands of free-enterprise. However, the introduction of state monopoly of foreign trade by Soviet Russia in 1918 upset the old system.¹⁴⁰ As a result, new problems have arisen. Important among these new problems are: (1) the tendency in the planned-economy countries to regard imports as an accretion to national wealth and prosperity, rather than as a disturbing competitive factor; (2) the desire of the planners to limit their dependence upon foreign trade, because of their concern with stability and their fear of market fluctuations; (3) the difficulty of numerous small traders in free-enterprise countries in competing with the government of the planned economy; and (4) the possibility of state-trading countries' dumping their products on the free-enterprise markets and thereby wrecking prices.¹⁴¹

Although interested parties have searched for ways and means to solve these and related problems, so as to harmonize trade relations between the two different systems, their efforts have been without

137. 5 TYC 56 (1956).

138. 1964 JMST 491-93. The Seminar was attended by representatives from 34 countries. See also the Pyongyang Declaration of the Asian Economic Seminar, June 23, 1964, Peking Review, No. 27, July 3, 1964, pp. 20-22.

139. 2 TYC 174 (1953).

140. For a discussion of the development of the Soviet system, see Pozdniakov, *The State Monopoly of Foreign Trade in the USSR*, trans. from *Sovetskoe gosudarstvo i pravo*, No. 10, 1967, in *Soviet Law and Government*, No. 3, 1967-1968, pp. 33-40; for a general appraisal of this system see HUSZAR, *SOVIET POWER AND POLICY* 335-69 (1955).

141. HAWKINS, *COMMERCIAL TREATIES AND AGREEMENTS: PRINCIPLES AND PRACTICE* 206-08 (1951).

wholly satisfactory results. In 1958, after attending an international conference concerning commercial relations between planned and free economies, Professors John N. Hazard and Martin Domke came to the following conclusion:

The most-favored-nation clause cannot achieve an increase in trade, as it was originally intended to do, nor can the alternative of the commercial-consideration clause be more than a pious expression of intention to avoid discrimination on political grounds. The other alternative of specific commitments to make purchases of an agreed quantity in a given free economy throws international commercial intercourse back to the stage of bilateralism and barter from which the free economies have been seeking to escape through GATT.¹⁴²

The above observations on the question of East-West trade are relevant to the case of the PRC. Although not a member of the Soviet-sponsored Council for Mutual Economic Assistance, and in spite of its growing rift with Moscow since 1956, the PRC has basically followed the Soviet Union in its foreign trade principles and, therefore, has presented similar problems to free-enterprise countries. Haunted by the spectre of China's unhappy commercial relations with foreign powers before 1949, obsessed with the "recurrent crisis" of the capitalist market as preached by Marx, and resolved to modernize the nation through rapid industrialization and collectivization, the PRC has indeed adopted a policy limiting its imports to essentials for the national economy.¹⁴³ Trade treaties and agreements have been used as instruments for planning stability, and agreements have been negotiated and formed solely on the state corporational (or associational) and governmental levels, leaving individuals a place only in minor frontier trade. Furthermore, on occasions, the PRC has sold its products on the markets of less developed nations at low prices in order to win their support.¹⁴⁴ Following Soviet practice, the PRC has also refused to apply the national-treatment principle except in matters concerning shipwreck. At the same time, it has insisted on inserting the most-favored-nation clause in most of its trade treaties and agreements, while in reality strictly adhering to bilateralism and barter, thus undermining the original purpose of the clause.

Given these problems as the common features of the state-trading system, there are other points worth mentioning after reviewing the

142. Hazard and Domke, *State Trading and the Most-Favored-Nation Clause*, 52 AM. J. INT'L. L. 55, 67-68 (1958). "GATT" stands for the General Agreement on Tariffs and Trade; its text is reproduced in 1 METZGER, LAW OF INTERNATIONAL TRADE 528 (1966).

143. Yeh Chi-chuang, Address to the Eighth National Congress of the Chinese Communist Party (1956), 3 ESSAYS 5 (1957).

144. Based on my interviews with overseas Chinese businessmen.

PRC's foreign trade documents. First, the PRC's justification of its trade agreements with Japan on the basis of Britain's 1921 trade agreement with Soviet Russia is both weak and ironical. Such justification is weak because the Anglo-Russian agreement was made at the governmental level, "pending the conclusion of a formal general peace treaty between the Governments of these countries," and on the premise that neither contracting party was to conduct hostile action or propaganda against the institutions of the other.¹⁴⁵ In contrast, the PRC's agreements with Japan are at best "semi-governmental,"—"governmental" on the Chinese side and "non-governmental" on the Japanese side—thus lacking the legal force of the Anglo-Russian agreement. Also, while some of the provisions of the Anglo-Russian agreement—such as the exchange of official agents and the grant of diplomatic immunities—were introduced into the Sino-Japanese agreements, the PRC has never ceased its hostile action and propaganda against Japan. A provision of the PRC's General Conditions of Delivery with Finland, June 5, 1953, expressly forbids any vessel either flying American or Japanese flags or sailing with an American or Japanese master, to carry cargoes to either of the countries under the terms of the agreement.¹⁴⁶ In February, 1967, while signing in Peking a protocol for the promotion of Sino-Japanese trade, the Japanese delegation acknowledged in the agreement that "Mao Tse-tung's thought is the most powerful ideological weapon to overcome American imperialism and Soviet revisionism."¹⁴⁷ On the other hand, the Japanese government has continued to recognize the Government of the Republic of China as sole representative of all China, an extremely hostile action from Peking's point of view. In the Anglo-Russian case, on May 27, 1927, the British government denounced, with immediate effect, the agreement of 1921 on the grounds of "Soviet subversive activities in the United Kingdom."¹⁴⁸ In the Sino-Japanese case, this has not taken place—except for the temporary effect of the Nagasaki flag incident mentioned earlier. Needless to say, the extraordinary complication of trade relations between Peking and Tokyo stems mainly from their political and economic needs and policies. The lesson that can be derived from this experience is certainly useful to those nations which desire to trade with the PRC, while withholding their recognition of the Peking regime. Law can play a positive role only in normal international commercial intercourse, and it is helpless under conditions

145. Trade Agreement Between His Britannic Majesty's Government and the Government of the Russian Socialist Federal Soviet Republic, March 16, 1921, in 4 L.N.T.S. 128 (1921).

146. 2 TYC 372 (1953).

147. Hsin-wan Pao, (The New Evening Post) (Hong Kong), February 28, 1967, p. 2.

148. SLUSSER & TRISKA, A CALENDAR OF SOVIET TREATIES (1917-1957) 20 (1959).

where politics and economics dominate every vital issue.

The second point deserving our attention is the relationship of domestic legislation to trade treaties. Peking recognizes that while a nation's domestic legislation and administrative measures usually serve as the foundation of negotiation for the conclusion of trade treaties and agreements, once a treaty or agreement has been reached, its provisions become binding upon the contracting states.¹⁴⁹ Proceeding from this position, the regime has repeatedly emphasized the importance of treaty observance, and it has denounced Japan and some other unnamed capitalist countries for their failure to fulfill contractual obligations. At the same time, according to a recent study by Dr. Luke T. Lee, the PRC's compliance with international treaties has been basically consistent with its commitments.¹⁵⁰ Nevertheless, when a nation's domestic legislation is unusually inadequate and clumsy, as in the case of the PRC, then the question is how much meaning a lawyer can make out of those general treaty provisions concerning such matters as: the national treatment of vessels, their masters and crew members, cargoes and passengers; the most-favored-nation treatment of natural and juristic persons; the freedom of official trade representatives to travel; and, as a recent example, the impact of the chaotic "cultural revolution" on the rights of foreign traders.¹⁵¹

The third point concerns the application of national and most-favored-nation treatment in the PRC's treaties. As has been indicated earlier, the PRC's refusal to apply national treatment to foreigners, other than in matters of shipwreck, is consistent with its own political and economic system. Since under normal circumstances a nation cannot be expected to treat foreigners more favorably than it does its own citizens, except in the case of colonial and semi-colonial trade, the PRC's practice is also not a violation of the generally accepted rules of international law. What complicates the situation is the PRC's insistence upon the insertion of the most-favored-nation clause into its trade treaties and agreements, especially those with non-socialist countries. The clause is not only different from national treatment but may conflict with it. A quotation from Snyder may suffice to explain the relationship between the two clauses:

149. WANG YAO-T' IEN 16.

150. Lee, *Treaty Relations of the People's Republic of China: A Study of Compliance*, 116 U. PA. L. REV. 244 (1967).

151. During the nearly three-year-old cultural revolution, reports on Chinese Communist Red Guards' assault on foreign embassies, officials, and citizens were numerous. For example, in June, 1967, when two Soviet trade representatives went to Shenyang with officials of a Chinese firm, they were reportedly "seriously injured" by physical violence inflicted upon them by Red Guards. *Washington Post*, June 23, 1967, at A12. In another instance, three British ship officers had to read "Quotations from Chairman Mao Tse-tung," walk up and down a wharf in Shanghai for 90 minutes,

When two states promise each other national treatment and then promise other states most-favored-nation treatment; in such a case, the latter group may legitimately claim that they are also entitled to be treated on a 'national basis,' for otherwise they are not being treated as favorably as the most-favored-nation.¹⁵²

Having said this much about the present and potential problems in trading with the PRC, a word about its prospect is in order. As a nation comprising almost 10 million square kilometers in area and at least 600 million inhabitants with enormous natural resources, the PRC is undoubtedly one of the largest markets in the world. Under normal conditions, it could benefit its own population and provide a dynamic force for the advancement of human well-being through the effective exchange of technological knowledge, natural and manufactured products, and specialized services. Hawkins' observation of the desire of the planned economies to free themselves from dependence upon foreign trade for the sake of planning stability appears to have overlooked the fact that no nation can develop a modern economy without some foreign trade. Marx, for his own reasons, ignored foreign trade in his *Das Kapital* as an important factor of the national economy. Since then, however, all Communist leaders have recognized the necessity to trade with foreign countries, and the PRC is certainly not an exception. If the past is a guide to the future, trade with the PRC will become more and more a matter of hard bargaining, if and when its national economy becomes stronger. This warning came from Minister of Foreign Trade Yeh Chi-chuang as early as 1955, when he said:

As to our trade with the United States, although the American Government is determined to cut off Sino-American trade, the American industrial and commercial communities have constantly kept in touch with our public and private trade institutions. Quite a few American corporations and factories have frequently come to talk with us to buy their automobiles, medicines, electronic equipment, and chemical raw materials. They have enthusiastically expressed their hope to trade with us. On our part, we have supported their wishes. Only if there is such a possibility, we are ready to trade with them . . . Yet, some of the so-called "old hands" in trade with China are still nostalgic of their status as agents of a suzerain, though such status will never return to them, and seeking to enjoy privileges in China's foreign trade. Thus, the decline of their trade [with us] is entirely a problem which they themselves have created; it is by no means due to our discrimination and exclusion.¹⁵³

bow their heads to the masses, and make a "confession" in order to win their release. *Washington Post*, June 19, 1967, at A16.

152. SNYDER, *supra* note 119, at 11-12.

153. Yeh Chi-chuang, *Consolidation and Development of the PRC's Foreign Trade Relations*, 1 *ESSAYS* 15-19 (1955).

In a world where power politics is still important, the possibility of achieving a satisfactory trade relationship with Communist China still seems remote.

Appendix

TABLE I

CLASSIFICATION OF THE PRC'S BILATERAL ECONOMIC TREATIES
AND AGREEMENTS (1949-1964) BY STATE AND SUBJECT #

Sub- ject State	Commerce & Navigation	Economic Aid Loans & Tech. Cooperation	Trade and Payments	General Delivery Conditions	Registration of Trademarks	Others	Total
Afghanistan			1				1
Albania	1	2	7	4			14
Algeria			2				2
Austria			2*				2*
Bulgaria			14	8			22
Burma		1	8				9
Burundi			1				1
Cambodia	1	3	9				13
Ceylon		2	11				13
Central Africa		1	1				2
Congo (Brazza- ville)			1				1
Cuba			1	1		1	3
Czecho- slovakia			14	7		2	23
Denmark	1		1		1	1	4
Finland	1		18	2			21
France			3*				3*
Germany (East)	1		14	14		1	30
Germany (West)			3*			1*	4*
Ghana		1	4				5
Guinea		1	2				3

Sub- ject State	Commerce & Navigation	Economic Aid Loans & Tech. Cooperation	Trade and Payments	General Delivery Conditions	Registration of Trademarks	Others	Total
Hungary			14	12		1	27
India			3			2	5
Indonesia		2	5				7
Iraq			5				5
Japan			11*				11*
Korea (North)	1		7	3			11
Lebanon			1				1
Mali		1	1				2
Mongolia (Outer)	1	2	12	3			18
Nepal		2				1	3
Nigeria						1	1
Norway			1				1
Pakistan	1		1				2
Poland			8	12		1	21
Rumania			13	14			27
Singapore- Malaya			1*				1*
Somali			1				1
Sudan			3			1	4
Sweden			1		1		2
Switzerland					1		1
Syria		1	6				7
Tunis			1				1
United Arab Republic (Egypt)			17				17
United Kingdom			1*		1		2
U.S.S.R.	1	1	7	5		1	15
Vietnam (North)	1		22	3		1	27
Yemen	1						1
Yugoslavia			10			1	11
Total	11	20	269	88	4	16	408

#Sources: the thirteen volumes of the official collection, TYC, covering the period 1949-1964. Since 1962, the agreements with the Soviet Union have not been listed in the collection. Even in the earlier period, the collection's report on agreements with the Soviet Union is incomplete when compared with other sources. See, for example, SLUSSER AND TRISKA, A CALENDAR OF SOVIET TREATIES 1917-1957 (1959). The ones reported by Slusser and Triska but missing from the collection are mostly agreements concerning Soviet aid, the relinquishment of certain Soviet interests in the PRC, and technical cooperation.

*Non-governmental agreements.

TABLE II

ECONOMIC AGREEMENTS AS A PROPORTION OF TOTAL TREATIES
AND AGREEMENTS (1949-1964) BY STATE #

State	Total	Economic	%	State	Total	Economic	%
Afghanistan	11	1	9	Mongolia			
Albania	22	14	64	(Outer)	32	18	56
Algeria	8	2	25	Morocco	1	0	0
Austria	2°	2°	100	Nepal	18	3	17
Bulgaria	30	22	73	Nigeria	1	1	100
Burma	31	9	29	Norway	2	1	50
Burundi	1	1	100	Pakistan	9	2	22
Cambodia	25	13	52	Poland	35	21	60
Ceylon	20	13	65	Rumania	36	27	75
Central Africa	3	2	67	Singapore-			
Congo (B.)	4	1	25	Malaya	1°	1°	100
Cuba	11	3	27	Somali	4	1	25
Czechoslovakia	39	23	59	Sudan	6	4	67
Denmark	4	4	100	Sweden	2	2	100
Ethiopia	2	0	0	Switzerland	1	1	100
Finland	21	21	100	Syria	8	7	88
France	3°	3°	100	Tanganyika-			
Germany				Zanzibar	2	0	0
(East)	48	30	63	Tunis	2	1	50
Germany				United Arab			
(West)	4°	4°	100	Republic			
Ghana	11	5	45	(Egypt)	23	17	74
Guinea	8	3	38	United			
Hungary	40	27	68	Kingdom	2	2	100
India	10	5	50	United			
Indonesia	22	7	32	Nations	1	0	0
Iraq	6	5	83	U.S.A.	1	0	0
Japan	26°	11°	42	U.S.S.R.	40	15	38
Korea (North)	39	11	28	Vietnam			
Laos	7	0	0	(North)	47	27	57
Lebanon	1	1	100	Yemen	7	1	14
Mali	7	2	29	Yugoslavia	15	11	73

#Sources: The thirteen volumes of the official collection, TYC, covering the period 1949-1964. The figures of percentage are approximate, not exact.

°Non-governmental agreements.