

3-1967

## Communist China's Foreign Trade Organization

Gene T. Hsiao

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



Part of the [Contracts Commons](#), [Government Contracts Commons](#), and the [International Trade Law Commons](#)

---

### Recommended Citation

Gene T. Hsiao, *Communist China's Foreign Trade Organization*, 20 *Vanderbilt Law Review* 303 (1967)  
Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol20/iss2/4>

This Symposium 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](mailto:mark.j.williams@vanderbilt.edu).

# Communist China's Foreign Trade Organization\*

Gene T. Hsiao\*\*

## I. INTRODUCTION

Although as of October 1966 Communist China has been diplomatically recognized by only fifty countries<sup>1</sup> and thus still remains outside the world legal community,<sup>2</sup> it has trade relations with more than 120 countries and regions.<sup>3</sup> The annual volume of Peking's foreign trade has been estimated at 2.96 billion dollars in 1963<sup>4</sup> and 4.5 billion dollars in 1966.<sup>5</sup> The latest Western reports from Peking indicate that foreign buyers and sellers see in "China's 700 million people a market with dazzling prospects and a potential source of supply of goods they can market profitably in their countries."<sup>6</sup> The official organ of the Soviet Government has also hinted that the growing United States export to Hong Kong in 1965 was connected with the increasing purchase of United States goods by Communist China through "go-betweens."<sup>7</sup> Irrespective of the political implications underlying Peking's growing trade with non-socialist countries, for academic interest this state of affairs necessitates an inquiry into the structure of the regime's foreign trade organization and the legal

---

\* This is a product of a study of the legal system of the Chinese People's Republic. The author wishes to thank the Center for Chinese Studies and the Project for Comparative Study of Communist Societies, University of California, Berkeley, for their support of his undertaking.

\*\*LL.B., 1946, Kwang Hua; M.A., 1960, LL.M., 1962, University of California, Berkeley. Associate Specialist, the Center for Chinese Studies, University of California, Berkeley.

1. At the same time, there were sixty countries maintaining diplomatic relations with the Republic of China. The figures quoted here were released by the Consulate General of the Republic of China in San Francisco.

2. Peking's representation in the United Nations is considered an important question under the terms of the Charter which requires a two-third majority vote. In the last session of the U.N. General Assembly, the vote on this issue was 66 in favor with 48 against and seven abstentions. San Francisco Chronicle, Nov. 30, 1966, pp. 1, 22.

3. *China's Foreign Trade in 1965*, Foreign Trade (Chinese People's Republic), Nov. 3, 1966, p. 14.

4. ECKSTEIN, COMMUNIST CHINA'S ECONOMIC GROWTH AND FOREIGN TRADE 95 (1966).

5. Oancia, *China Trade Getting Tougher*, San Francisco Chronicle, Dec. 9, 1966, § F, p. 14.

6. *Ibid.*

7. Quoting the Statistical Abstract of the United States, 1966, Izvestia reported that the 1965 U.S. trade with Hong Kong came to \$534 million, while Communist China's trade with Hong Kong during the same period amounted to \$418 million. In Current Digest of the Soviet Press, No. 45, 1966, p. 10.

mechanism by which the regime has carried out its foreign trade policy and activity.

At the policy level, Peking's foreign trade has a dual character. Its political character is a component of the regime's diplomacy, just as it is everywhere in the world. Its economic character was explained by Peking's Minister of Foreign Trade in the following words:

The purpose of exporting is to insure the importing of complete sets of equipment and various types of important goods necessary to our country's construction projects and, first of all, to the construction of heavy industry.<sup>8</sup>

The legal mechanisms which the regime employs to carry out its foreign trade policy fall into seven categories: treaties, government agreements, pacts, declarations, protocols, notes and contracts. Of these, government agreements, protocols and contracts are the principal instruments and receive most frequent use. Contrary to its attitude toward municipal law,<sup>9</sup> the regime has approached foreign trade law in a businesslike manner. It has observed the generally accepted norms of international trade, and eliminated the Marxist cliché that "law is a weapon of the class struggle" from the official foreign trade literature available to us. This, however, should not be construed to mean that the regime has applied legal norms and methods to all its foreign trade partners without discrimination. As an instrument of foreign policy, the regime's foreign trade law inevitably serves the interests of its philosophical beliefs and its political institutions. On the basis of Marx's general concept of equality and Lenin's theory of imperialism,<sup>10</sup> Mao Tse-tung once said to an unnamed foreign inquirer:

'We want to do business.' [You are] entirely right. Business has to be done. We only oppose domestic and foreign reactionaries who hamper us from doing business, and do not oppose any other people. It should be known that it is no other than imperialists and their lackeys—the Chiang Kai-shek reactionary clique—who hinder our doing business with foreign countries and even hinder our establishing diplomatic relations with foreign countries. Unite all forces at home and abroad to smash the domestic and foreign reactionaries and then there will be business, and the possibility of establishing diplomatic relations with all foreign countries on the basis of equality, mutual benefits, and mutual respect of territorial sovereignty.<sup>11</sup>

8. Yeh Chi-chuang, Address to the Eighth National Congress of the Chinese Communist Party (1956), in 3 *MINISTRY OF FOREIGN TRADE, TUI-WAI MAO-I LUN-WEN HSUAN* (Selection of Essays on Foreign Trade) 5 (1957).

9. For a discussion of Peking's attitude toward municipal law, see Hsiao, *Communist China: Legal Institutions*, Problems of Communism, March-April 1965, pp. 112-21.

10. MARX, *CRITIQUE OF THE GOTH A PROGRAMME* 3-23 (1938); LENIN, *Imperialism, the Highest Stage of Capitalism*, in 1 *SELECTED WORKS* 707-815 (1960).

11. MAO TSE-TUNG, *On the People's Democratic Dictatorship*, in 4 *SELECTED WORKS* 1478 (in Chinese, 1960).

In consequence, the regime has from the outset discerned three different groups of nations with whom it might establish trade partnerships: the socialist group, the colonial or developing nations, and the capitalist countries. In each case, the legal methods used by China are more or less different. In a forthcoming article on Communist China's foreign trade agreements, I shall discuss these matters in greater detail.<sup>12</sup>

For the present discussion, attention is focused on the organizational aspect of Peking's foreign trade. This has priority for the obvious reason that law cannot operate without person, juristic or natural. Since Communist China is a totally organized state which owns all productive property<sup>13</sup> and carries out foreign trade activities through its officially appointed agents, it becomes necessary to know who these agents are and what they do before the operation of foreign trade law can be properly analyzed.

The principal agents are the Ministry of Foreign Trade and the China Council for the Promotion of International Trade. The former is classified as a state agency, the latter as a nongovernmental organization. Politically, such a differentiation is perhaps superfluous because in the last analysis they are both established and controlled by the state and, above all, by the Party. Legally, however, the differentiation makes sense due to their status and their functions. The following discussion is thus arranged according to the division of labor between the two organizations, as well as their respective functions.

## II. THE MINISTRY OF FOREIGN TRADE

Immediately after the founding of the Chinese People's Republic in 1949, the central organization that controlled foreign trade was a division (*szu*) under the Ministry of Trade of the Government Administration Council (renamed State Council in September, 1954) with Yeh Chi-chuang as the Minister.<sup>14</sup> At local levels, a variety of agencies and rules were established by local authorities to deal with foreign trade problems.<sup>15</sup> In September 1952, the division was expanded into a Ministry of Foreign Trade in order to meet the

12. This article is to be published in a future issue of the *Vanderbilt Law Review*.

13. For a discussion of the regime's property system, see Hsiao, *The Role of Economic Contracts in Communist China*, 53 CALIF. L. REV. 1029, 1036-42 (1965).

14. Organic Law of the Central People's Government, art. 18, Sept. 27, 1949, in 1 CHUNG-YANG JEN-MIN CHENG-FU FA-LING HUI-PIEN (Compilation of Laws and Decrees of the Central People's Government) 1, 4 (1949-1950) [hereinafter cited as FLHP]. The division chief was Lin Hai-yun. 1952 JEN-MIN SHOU-TS'É (The People's Handbook) (The Chinese People's Republic) 169.

15. For reference to documents on the local organization and operation of foreign trade in the initial period of the regime, see HSIEN CHUNG-KUO MAO-I CHING-YING CHIH-NAN (Guide to New China's Trade Operation) (1949).

growing need for foreign trade after the International Economic Conference in Moscow.<sup>16</sup> Local counterparts, called Foreign Trade Bureaus,<sup>17</sup> were established in provincial governments, trading ports, and areas producing major export goods.<sup>18</sup>

Externally, the Ministry of Foreign Trade enters into trade agreements with foreign governments on behalf of the Chinese People's Republic and sends trade missions overseas. In the Soviet Union, a statute of September 13, 1933,<sup>19</sup> defined the Soviet trade missions abroad not as legal entities, but as agencies of the Soviet government. A contract thus made with a Soviet trade mission has binding force upon the Soviet state. Although Peking has generally followed this principle,<sup>20</sup> it has not promulgated a law defining the exact legal status of its trade missions abroad. Internally, the Ministry of Foreign Trade exercises direct jurisdiction over its local counterparts, as well as the Customs, the Chief Administration for the Inspection and Testing of Commodities, and the specialized state export and import corporations. Their functions can be discussed in terms of licensing, tariff control, quality control, and trade operation.

#### A. Licensing

For almost a century since the Treaty of Nanking in 1842, eighteen foreign powers traded *in*, rather than *with*, China. By virtue of their extraterritorial rights and other treaty privileges, the nationals of these powers were exempt from Chinese taxation and their imports and exports free of internal levies. Import duties were kept low, and the Customs was administered by foreign staff. In 1931, foreign investment in China was estimated at 2.5 billion dollars (measured

16. As a result of the Conference, Peking entered into \$160,000,000 (United States dollars) worth of trade agreements and contracts with England, France, and other European, Latin American, and Asian countries. 1952 JEN-MIN SHOU-TS'E 293-94; 1953 *id.* at 200-01. For general reports on the Conference, see 4 Current Digest of the Soviet Press, No. 14, 1952, pp. 14-19, 24.

17. In the initial period of the regime, these were called Foreign Trade Control Bureaus.

18. Jen-min Jih-pao (Peking), Sept. 4, 1952, p. 1 [hereinafter cited as JMJP]. The former Minister of Trade, Yeh Chi-chuang, has since become the Minister of Foreign Trade, and at the Eighth National Congress of the Chinese Communist Party in 1956 he was elected member of the CCP's Central Committee. The Ministry of Trade was reorganized into a Ministry of Commerce, and this was followed by a series of reorganizations. See Hsiao, *supra* note 13, at 1050-52. In local areas where foreign trade bureaus were not established, the administration of foreign trade is a duty of the commercial departments and bureaus concerned.

19. Statute cited in 2 GSOVSKI, SOVIET CIVIL LAW 347-52 (1949).

20. For the regime's various trade agreements with foreign governments, see generally CHUNG-HUA JEN-MIN KUNG-HO-KUO T'IAO-YUEH CHI (Collection of the Treaties of the Chinese People's Republic) (13 vols. covering 1949-1964) [hereinafter cited as TYC].

in the dollar value of that year).<sup>21</sup> Renunciation of extraterritorial rights by the United States and Britain in 1943, and by other powers in following years, was not considered by the Communists to have fully restored China to de facto equal status in trade relations and tariff autonomy.<sup>22</sup> Consequently, it was not surprising that the Peking regime adopted a rigorous policy designed to edge out foreign interests and re-organize Chinese firms according to the principles of a planned economy.

One of the important means by which the Chinese leaders sought to achieve this goal was the control of foreign trade operation through licensing. All state and private import and export firms were required to register with local Foreign Trade Bureaus. In the case of foreign firms, such registration was to be recommended by a local Department of Foreign Affairs and approved by the Ministry of Foreign Trade before the firms could operate. In addition, all import and export transactions, including prices, were to be validated by the said bureaus on the basis of state needs. Violation of these and other related provisions was subject to "education," warning, suspension of business operations, and, in serious cases, formal legal punishment through court trials.<sup>23</sup>

Together with other severe measures of "socialist transformation," such as the control of payments, bank credits, sources of supply, and labor, virtually all foreign firms were out of business by 1956. At the same time, their Chinese counterparts were turned into a state-private joint operation—a Chinese form of state capitalism.<sup>24</sup> Licensing has since become a means to regulate state foreign trade and to prevent smuggling.<sup>25</sup>

---

21. EDITORIAL DEPARTMENT OF SHANG-WU YIN-SHU KUAN, CHUNG-KUO KUO-CHI MAO-I SHIH (A History of China's International Trade) 81-148 (1950); LEWIN, THE FOREIGN TRADE OF COMMUNIST CHINA 5-13 (1964).

22. Government Administration Council decision of Jan. 27, 1950, in 2 FLHP 347 (1949-1950).

23. Provisional Regulation for the Control of Foreign Trade, Dec. 8, 1950, in 2 FLHP 337-38 (1949-1950).

24. According to private Western diplomatic sources, a very small number of foreign firms remain in operation in China. However, the nature and legal status of these firms are not known. The process of socializing Chinese import and export firms was similar to that which the domestic firms had gone through. See HSUEH, SU, & LIN, THE SOCIALIST TRANSFORMATION OF THE NATIONAL ECONOMY IN CHINA 168 (1960).

25. Regulation for the Licensing of Imports and Exports, Jan. 23, 1957, in 4 CHUNG-HUA JEN-MIN KUNG-HO-KUO FA-KUEI HUI-PIEN (Compilation of Laws and Regulations of the Chinese People's Republic) 163-65 (1967) [hereinafter cited as FKHP]. Imports exempt from licensing consist of twenty-three categories, such as gifts; and exports exempt from licensing, seventeen categories. *Id.* at 165-68.

### B. *Tariff Control*

As in other countries, Peking exercises its tariff control through the Customs. The regime has emphasized the role of the Customs in foreign trade to a greater extent than usual, however. Prior to 1953, the Customs Administration was an independent unit under the Government Administration Council; there were twenty-six district customs offices (*kuan*), nine branches (*fen-kuan*), and thirty-five subbranches (*chih-kuan*).<sup>26</sup> On January 9 of that year, a Government Administration Council decision not only placed the Customs under the direct jurisdiction of the Ministry of Foreign Trade, but also merged Foreign Trade Bureaus in trading ports with the local Customs offices.<sup>27</sup> Although this practice did not last very long, and the Foreign Trade Bureaus soon resumed their duties,<sup>28</sup> the Customs has since remained a subordinate unit of the Ministry of Foreign Trade. The organizational establishment, alteration, or abolition of its branches and subbranches has remained within the sole jurisdiction of the Ministry, subject only to the advice and consent of the Ministries of Finance and Public Security.<sup>29</sup>

In accordance with the government's established foreign trade control policy, the Customs inspects imports and exports, collects duties, investigates smuggling cases, and handles other Customs affairs. In the performance of these functions, Customs officers are empowered, along with other authorities, to investigate and record all vouchers, bills, books, telegrams, correspondence, and other documents relating to a given foreign trade case and to detain any or all of the documents belonging to an interested party or a suspect in the case. Moreover, the Customs participates in the formation of international treaties and agreements concerning Customs problems, compiles foreign trade statistics, and assists in the enactment of tariff rules.<sup>30</sup> In the last aspect, the regime has followed two general principles: conventional tariff according to treaties or agreements, and statutory tariff.<sup>31</sup> Import and export duties of state enterprises are regulated separately.<sup>32</sup>

26. Experimental Regulation for the Organization of the Chief Administration of the Customs, Dec. 30, 1949, in 2 FLHP 343-46 (1949-1950). Government Administration Council directive of Dec. 14, 1950, *id.* at 350-52.

27. In FLHP 8-9 (1953).

28. State Council notice of Sept. 5, 1955, in 2 FKHP 594-95 (1955).

29. *Ibid.* Provisional Customs Law (March 23, 1951) art. 13, in 1 FLHP 183, 186 (1951).

30. Provisional Customs Law arts. 2, 3, 9, in 1 FLHP 184-86 (1951).

31. Government Administration Council decision of Jan. 27, 1950, in 2 FLHP 349 (1949-1950).

32. Provisional Customs Law art. 104, in 1 FLHP 198 (1951). For a general reference to the work of the Customs see Ch'en T'ieh-pao, *The Chinese Customs' Supervision of Import and Export Goods*, Tui-wai Mao-I (Foreign Trade) (Chinese People's Republic), No. 2, 1963, p. 2.

### C. *Quality Control*

A November 15, 1951, provisional regulation<sup>33</sup> established a number of Bureaus for the Inspection and Testing of Commodities in main trading ports and producing areas. A later regulation extended the organization of these bureaus to key transport centers and inland areas where import and export goods were concentrated and distributed. Within the Ministry of Foreign Trade itself a Chief Administration for the Inspection and Testing of Commodities was also founded.<sup>34</sup> While the earlier regulation required all export and import goods—except those carrying special licenses from the regime—to be inspected and tested in order to determine whether or not they met the specified standards of quality and package, the later regulation provided “statutory inspection and testing” for export and import commodities (1) that are officially listed by the government, (2) that are required to be tested by the foreign trade contracts of state enterprises, (3) that may have contained insect damages or pests, and (4) that may have been falsified.

If the seller, purchaser, or any interested party of a foreign trade deal, disagrees with the result of the inspection, he may apply for reinspection. If after reinspection he still disagrees with the result, he may submit a petition to the local organ which has jurisdiction over the inspecting bureau to review the case. The applicant or petitioner is responsible, however, for all consequences arising from the delay in delivery and all expenses incurred during the reinspection or the review.<sup>35</sup>

Aside from the foregoing, the Bureau for the Inspection and Testing of Commodities handles all notary work relating to a foreign trade deal. Upon receiving an application from a direct or interested party of the transaction, it can certify the actual state of delivery and other related matters. Finally, the Bureau is empowered to discipline its inspectors and notary workers who made mistakes because of negligence, and it can send them to a local judicial organ for prosecution and trial if they are suspected of malfeasance. On the other hand, if a person applying for inspection and testing has altered purchasing or sales documents, changed the inspected goods or the quality or quantity of the inspected goods, intentionally altered, removed, or extinguished the Bureau's stamps, seals, or any other marks on the inspected package or goods, he is subject to a maximum fine of not more than twenty per cent of the total value of the goods recorded in the inspection certificate. The Bureau may request a

33. 2 FLHP 448-49 (1951).

34. Provisional Regulation for the Inspection and Testing of Export and Import Commodities, Dec. 17, 1953, in 1 FLHP 71 (1954).

35. *Id.* at 72.



local judicial organ to handle the case if the delinquent person does not make the payment or refuses to accept the fine.<sup>36</sup>

In all, the Bureau issues four types of documents to assist the operation of foreign trade: Certificate of Origin, Certificate of Inspection and Testing, Survey Report for Weight, and Notary Certificate.

#### D. Trade Operation

During the past seventeen years, there have been many organizational shifts in China. The state corporations are no exception. In 1950, there were six national foreign trade corporations under the Ministry of Trade.<sup>37</sup> In 1966, after constant expansion, merger, and reorganization, there were a total of sixteen, each of them having branches in China as well as agents or representatives overseas.<sup>38</sup>

Unlike other organizations of the Ministry of Foreign Trade mentioned above, the corporation is an actual trade agency responsible for its own business losses and profits according to the system of "economic accountability." As such, it assumes juristic personality and implements the state foreign trade plan through the formation of contracts with both domestic and foreign partners.<sup>39</sup> The basis of these contracts is usually an agreement of the Ministry of Foreign Trade with either the consuming and producing ministries of the State Council or representatives of a foreign government.<sup>40</sup> In the absence of a formal agreement with a foreign government, the corporation may enter into a contract, directly or through its agents, with a foreign partner. In either case, however, the agreement or contract is based upon the foreign trade plan, which constitutes part of the national economic plan. Prior to 1956, the Foreign Trade Planning Bureau of the State Planning Commission was in charge of the final

---

36. *Id.* at 72-73.

37. Government Administration Council decision of March 10, 1950, in 2 FLHP 325-26 (1949-1950).

38. The sixteen national import and export corporations are: Cereals; Oils and Foodstuffs; Tea and Native Produce; Arts and Crafts; Animal By-Products; Textiles; Garments; Light Industrial Products; Chemicals; Machinery; Metals and Minerals; Technical; Complete Plant; Foreign Trade Transportation; Sinofracht Chartering and Ship Broking; Instruments; International Book Store. See Foreign Trade, No. 3, 1966, advertisement on back page.

39. Government Administration Council decision of March 10, 1950, in 2 FLHP 327 (1949-1950). The system of "economic accountability originates from the Soviet Union. See BERMAN, *JUSTICE IN THE U.S.S.R.* 110 (1963). For a discussion of Peking's concept of juristic personality, see CHUNG-HUA JEN-MIN KUNG-HO-KUO MIN-FA CHI-PEN WEN-PI 1 68 (Basic Problems in the Civil Law of the Chinese People's Republic) 1958 [hereinafter cited as CIVIL LAW TEXTBOOK]. It was prepared by the Central Political-Judicial Cadres School in Peking.

40. Government Administration Council decision of March 10, 1950, in 2 FLHP 328 (1949-1950). For examples of trade agreements with foreign countries, see 13 TYG (1964).

formulation of both long-term and short-range plans.<sup>41</sup> Since 1956, the State Economic Commission, which was created in that year, has mapped out annual plans on the basis of long-term plans set by the State Planning Commission.<sup>42</sup>

By the nature of its business, the corporation is not a consuming or producing unit—it is a middleman in the planned economy. Thus, it does not possess such fixed assets as factories and machines. Its civil liability is limited to the working capital appropriated to it by the state.<sup>43</sup> Like all other state enterprises, this working capital is controlled by the Chinese People's Bank of the State Council. But in transactions with other countries the Bank of China serves as the corporation's foreign exchange agency for settlement of international payments. Originally, this was a state-private bank of the Republic of China. In 1950, the Chinese People's Bank took over the state investment in the Bank of China—an investment which accounted for two-thirds of the total share; the original private shareholders were permitted to continue to own the remaining one-third investment. (Those shares belonging to "war criminals" were confiscated.) Nan Han-ch'en, Director-General of the Chinese People's Bank, the late economist Chi Chao-ting, and eleven others were appointed directors of the Bank of China, representing the regime.<sup>44</sup> As a result, there have been two types of Bank of China branches in the world. Those in countries diplomatically recognizing the Republic of China remain under the supervision of the main office in Taipei; those in countries diplomatically recognizing the Chinese People's Republic are foreign exchange agencies of the Chinese People's Bank in Peking.

Although the facade of Peking's Bank of China as a state-private joint enterprise still remains, since 1956 all private shareholders have only received "fixed dividends" at a rate of five per cent on the basis of their original investment.<sup>45</sup> Parallel with the regime's foreign trade

41. Provisional Operational Regulation of the State Planning Commission, Oct. 26, 1955, in 2 FKHP 72, 74 (1955).

42. Proposal of the Premier for Reorganization of the Finance and Economic Departments Under the State Council, May 11, 1956, ratified by a resolution of the Standing Committee of the National People's Congress, May 12, 1956, in 3 FKHP 79-82 (1956).

43. CIVIL LAW TEXTBOOK 138.

44. Government Administration Council order of March 22, 1950, in 1 FLHP 303 (1949-1950). Chi Chao-ting died in Peking on Aug. 9, 1963.

45. State Council Regulation of Feb. 8, 1956, in 3 FKHP 282 (1956); State Council decree of July 28, 1956, in 4 FKHP 355, 358 (1956). At the third session of the Second National People's Congress, payment of such dividends was extended from the period 1956-1962 to 1965. JMJP, April 17, 1962, p. 1. The First Session of the Third National People's Congress (1964) made no mention of either cancelling or continuing the payment. Chou En-lai, *Report on the Work of Government*, JMJP, Dec. 31, 1964, pp. 1-3. More recent reports indicate that the Red Guards were

policy, the operation of the Bank is threefold. In relations with socialist countries, the operation of foreign exchange is centralized in the state bank of each country; all international payments, clearing accounts and exchange quotations are managed according to the agreements between the parties concerned, "in strict observance of the principle of cooperation and common economic upsurge."<sup>46</sup> In relations with the Afro-Asian and Latin American countries, "the policy of equality and mutual benefit is persistently carried out."<sup>47</sup> On the basis of trade agreements, the national currency of the opposite party is used for the purpose of payments and accounting.<sup>48</sup> Finally, in relations with the Western capitalist countries, unless there are trade and payments agreements whereby payments are made through clearing accounts, the currencies which the Chinese have used to settle payments are the pound sterling, the Swiss franc, and the Hong Kong dollar. The Bank's refusal to use United States dollars is said to be due to United States "imperialism" and American "occupation" of Taiwan.<sup>49</sup> In all, Peking's Bank of China had in 1960 kept business connections with 574 foreign banks (not including their branches) in ninety-three countries and regions.<sup>50</sup>

Another important element in Peking's trade operation is the insurance business. In 1949, the regime set up a Chinese People's Insurance Company to cover all policies.<sup>51</sup> Like the Chinese People's Bank which has a Bank of China as its foreign exchange agency, the Chinese People's Insurance Company is also assisted in its foreign operation by two state-private joint establishments: the China Insurance Company, Limited, and the Tai Ping Insurance Company, Limited. Together they maintain an extensive network throughout the world, except North America, and write various types of policies, such as Ocean Marine, Land Transportation, Aviation, Postal Sendings, and Hulls. The scope of coverage consists of "All Risks" (which covers all loss or damage arising from fortuities), "W.A." (under which all particular average losses are recoverable), "F.P.A." (which covers

---

forcing the private shareholders to relinquish their "privilege" to receive the fixed dividends.

46. Chung Yung, *Foreign Exchange Work in China*, Foreign Trade (Chinese People's Republic), No. 2, 1960, p. 10. This does not take into account the effect of Sino-Soviet disputes on trade. On the other hand, as far as the methods of payment are concerned, there seems to be no significant change.

47. *Id.* at 11.

48. *Id.* at 11.

49. The Bank of China, *The Bank of China's Work of International Settlements*, Foreign Trade, No. 1, 1962, pp. 4-5, 22.

50. Chung Yung, *supra* note 46, at 10.

51. Directive of the Commission on Financial and Economic Affairs of the Government Administration Council, Dec. 23, 1949, in 1 FLHP 306 (1949-1950). In the succeeding years, the regime promulgated many insurance regulations. Since the present discussion only concerns foreign trade, analysis of these regulations is omitted.

total loss as well as total or partial loss in consequence of accidents), and various classes of reinsurance. Extraneous risks such as theft, pilferage, and nondelivery may be included according to the nature of commodities. Claims are generally paid at destination in the currency specified in the policy.<sup>52</sup>

### III. THE CHINA COUNCIL FOR THE PROMOTION OF INTERNATIONAL TRADE (CCPIT)

The 1952 International Economic Conference in Moscow brought together 471 participants from forty-nine countries, including the United States, to improve international trade relations.<sup>53</sup> From Peking's point of view, however, the conference was held mainly to deal with the United States embargo and blockade.<sup>54</sup> In direct response to the establishment of a Committee for the Promotion of International Trade under the Conference,<sup>55</sup> Peking founded the CCPIT on May 4, 1952, with a membership of seventeen bankers, economists, and trade unionists.<sup>56</sup> Its Chairman has since been the Director-General of the Chinese People's Bank, Nan Han-ch'en,<sup>57</sup> and its First Vice-Chairman is First Vice-Minister of Foreign Trade, Lei Jen-min.

It becomes obvious that the CCPIT is a component of the regime's foreign trade organization. Officially the CCPIT claims itself to be a permanent nongovernmental institution, however. It (or one of its trade missions) enters into international agreements as an intermediary between the Chinese government and a foreign partner.<sup>58</sup>

52. *The Foreign Insurance Business of the People's Republic of China*, Foreign Trade (Chinese People's Republic), No. 1, 1963, p. 6.

53. Communiqué of the International Economic Conference in Moscow (April 12, 1952), *New Times* (Moscow), No. 16, 1952, p. 3.

54. 1952 JEN-MIN SHOU-TS'Ë 293. Cf. Appeal of the International Economic Conference to the United Nations General Assembly, *New Times*, No. 16, 1952, p. 5.

55. The basic task of the Committee was "to aid in disseminating information about the International Economic Conference and in expanding trade between countries on a basis of equality and with due regard to the needs of the industrialization of underdeveloped countries." It consisted of seventeen members. China was represented by Chi Chao-ting, and the United States by Edmund Von Henke of the American Electric Welding Corporation, Chicago. *Id.* at 6.

56. JMJP, May 15, 1952, p. 1. For reference to a list of the membership, see 1953 JEN-MIN SHOU-TS'Ë 269-70. A branch of the CCPIT was also set up in Shanghai, consisting of seventeen members. Chieh-fang Jih-pao (Shanghai), Nov. 4, 1956 (no page number, in microfilm).

57. A 1965 document indicates that Nan Han-ch'en was no longer the Director-General of the Chinese People's Bank, but remained as Chairman of the CCPIT. 1965 JEN-MIN SHOU-TS'Ë 125, 143.

58. See, e.g., The Chinese-Japanese Trade Agreement, JMJP, May 5, 1955 (no page number, in microfilm). In this agreement, the Chinese trade mission was headed by Lei Jen-min, Vice Chairman of the CCPIT. Agreement of the CCPIT and the Austrian Federal Chamber of Commerce on the Promotion of Economic Relations Between the Two Countries (Dec. 7, 1964), in 13 TYC 387-89 (1964).

Thus, juristically, the CCPIT and its trade missions are neither state agencies nor legal entities. The trade agreement it has concluded with a foreign partner becomes binding upon the Chinese regime or its state corporation only when a contract has been made between the two actual trading parties. Like the regime's united front policy as a whole, the CCPIT is a front organization. It is needed mainly to deal with nonsocialist countries, especially those having no diplomatic relations with Peking.

Aside from this intermediate role, the CCPIT has two other important functions relevant to the present discussion—arbitration and registration of foreign trademarks.<sup>59</sup>

### A. Arbitration Organs

Originally, there was a Department of Arbitration within the CCPIT.<sup>60</sup> Later, in accordance with a Government Administration Council decision of May 6, 1954,<sup>61</sup> the CCPIT replaced the department with a Foreign Trade Arbitration Commission (FTAC) along with the adoption of a rule of arbitral procedures (March 31, 1956).<sup>62</sup> Twenty-one traders, industrialists, transport experts, insurance agents, and lawyers were elected to the FTAC. Economist Chi Chao-ting was named Chairman, and international lawyer Chou Keng-sheng became Vice Chairman.<sup>63</sup>

The FTAC handles three types of cases: (1) disputes arising from foreign trade transactions or contracts, especially those between a foreign and a Chinese firm, corporation, or economic organization; (2) disputes between two foreign trading parties; and (3) disputes arising from a foreign trade contract or transaction between two Chinese parties. The FTAC is competent to adjudicate such disputes on the basis of a written application from a party who has a written

59. The other official functions of the CCPIT included organization of international fairs and reception of foreign trade delegations. See Hsiao Fang-chou, *Ten Years of the China Council for the Promotion of International Trade*, Foreign Trade, (Chinese People's Republic), No. 2, 1962, p. 2.

60. 1953 JEN-MIN SHOU-TS'É 270. An East German report contradicts this by suggesting that the foreign trade arbitration organ in the Chinese People's Republic was not created until after May 6, 1954. See Fellhauer, *Foreign Trade Arbitral Jurisdiction in the People's Republic of China* (1960), English translation in JPRS 8612, p. 1.

61. JMJP, May 13, 1954, p. 1. CHUNG-HUA JEN-MIN KUNG-HO-KUO FA-KUEI HSUAN-CHI (Selection of Laws and Regulations of the Chinese People's Republic) 470-72 (1957).

62. *Id.* at 472-78. JMJP, April 7, 1956, p. 1; Ta-kung Pao (Tientsin), April 7, 1956, p. 1.

63. Two years after Chi's death in 1963, the CCPIT still did not announce his successor. 1965 JEN-MIN SHOU-TS'É 143. For a reference to Chou Keng-sheng's early professional work, see HSIEN-TAI KUO-CHI-FA WEN-T'I (Problems of Modern International Law) (Shanghai, 1932).

arbitration agreement with the other party involved. An arbitration tribunal consists of two arbitrators chosen by the parties from among the FTAC members and an umpire chosen by the arbitrators from among their fellow members. Or, by mutual agreement, the disputing parties may jointly choose, or entrust the FTAC Chairman to appoint, a sole arbitrator, who will himself constitute the tribunal. A disputing party may confer with the FTAC on matters relating to the proceedings either in person or by an "attorney" (*tai-li-jen*)<sup>64</sup> appointed either from among Chinese or foreign citizens. By inference, it appears that the attorney or *tai-li-jen* need not necessarily be a practicing lawyer.<sup>65</sup> But since the regime forbids a certain class of Chinese citizens, namely, those who are considered reactionary and deprived of political rights,<sup>66</sup> to act as "advocate" in the people's court,<sup>67</sup> and since the FTAC has failed to define exactly the qualifications for the "attorney" (Chinese or foreign) in an arbitration proceeding, the matter may well become a point of controversy in actual cases.<sup>68</sup>

The date for the hearing is set by the FTAC Chairman and the umpire or by the single arbitrator, and the arbitration fee is paid by the losing party in an amount not exceeding one per cent of the claim. An award of the tribunal is final, and neither party may appeal to a court of law or any other organization. If one party fails to comply with the decision, however, the other may petition the peo-

---

64. "*Tai-li-jen*" is agent. It may be translated as "attorney" in the most general sense of the word. However, in either case, the meaning of *tai-li-jen* should not be confused with "*li-shih*" or "attorney-at-law," as some writer did in the translation of an article on the FTAC in *Ta-kung Pao* (Hong Kong), Oct. 22, 1956 (no page number, in microfilm).

65. For a discussion of the Chinese people's lawyer, see Leng, *The Lawyer in Communist China*, J. Int'l Comm'n Jurists, No. 1, 1962, pp. 33-49.

66. CHINESE PEOPLE'S REPUBLIC CONST. art. 19 prescribes: "The Chinese People's Republic safeguards the people's democratic system, suppresses all treasonable and counter-revolutionary activities and punishes all traitors and counter-revolutionaries. The state deprives feudal landlords and bureaucrat-capitalists of political rights for a specific period of time according to law; at the same time it provides them with a way to live, in order to enable them to reform through work and become citizens who earn their livelihood by their own labor." In 1953, those who had been deprived of electoral rights were estimated at 1.52% of the population. See Ku Ang-jan, *Expansion of the Quorum of the Third National People's Congress Is A Great Event in Our State's Political Life*, in CHENG-FA YEN-CHIU (Political-Legal Studies) (Chinese People's Republic), No. 1, 1964, p. 10. Those who have been considered reactionary are always estimated at five per cent of the population. See, e.g., JMJP, May 4, 1966, p. 4.

67. Decision of the Standing Committee of the National People's Congress, May 8, 1956, in 3 FKHP 179 (1956).

68. For reference to Peking's general concept of agency, see CIVIL LAW TEXT-BOOK 90.

ple's court to execute it.<sup>69</sup> In practice, the FTAC encourages the parties to achieve a compromise through mediation, instead of submitting themselves to adjudication. Since the arbitral process starts from a voluntary and consensual basis, such encouragement should not be deemed unusual and is indeed within the practice of Chinese tradition.<sup>70</sup>

The FTAC's sister organization is the Maritime Arbitration Commission (MAC), which was created by a State Council decision of November 21, 1958.<sup>71</sup> It handles arbitration of the following: (1) disputes over compensation for the rendering of assistance by seagoing vessels to each other, or by a seagoing vessel to a river craft (or vice versa); (2) disputes arising out of collisions of seagoing vessels, or of seagoing vessels and river craft, or disputes arising from damage caused by seagoing vessels to port structures; (3) disputes growing out of relations of affreightment and agency services of seagoing vessels, maritime shipping, and maritime insurance. The MAC is composed of twenty-one to thirty-one members; Sun Ta-kuang serves as Chairman, and Hsiao Fang-chou as Vice Chairman.<sup>72</sup> Otherwise, the general procedure of the MAC is similar to that of the FTAC,<sup>73</sup> both organizations being an imitation of their counterparts in the U.S.S.R. Chamber of Commerce.<sup>74</sup>

As of 1960, the FTAC was reported to have been called upon "to hand down rulings in sixty-one cases" involving disputes between Chinese enterprises and their capitalist business partners from Britain, Switzerland, Finland, Greece, the United Arab Republic, India, Ceylon, Canada, and Singapore.<sup>75</sup> Since the procedures of arbitration permit the hearing of a case in closed session, and since business interests usually demand privacy, little is known about the nature of these controversies. In maritime affairs, one of the widely publicized cases is *The Bureau of Salvage Works of Shanghai v. Valdemar Skogland A/S of Norway*.<sup>76</sup> It was settled through mediation,

---

69. Shao Hsun-yi, *Foreign Trade Arbitration in China*, Foreign Trade (Chinese People's Republic), No. 3, 1960, p. 21; *Foreign Trade Arbitration Commission*, China Reconstructs (Peking), No. 10, 1956, p. 12.

70. For a discussion of this tradition and the regime's general attitude toward mediation, see Cohen, *Chinese Mediation on the Eve of Modernization*, 54 CALIF. L. REV. 1201 (1966).

71. See Appendix to Tui-wai Mao-I, No. 1, 1959, p. 2.

72. Hsiao Fang-chou is concurrently Vice-Chairman of the CCPIT.

73. Provisional Rules of Procedure of the MAC of the CCPIT, Jan. 8, 1959, in Appendix to Tui-wai Mao-I, No. 1, 1959, pp. 3-5.

74. For reference to Soviet statutes on the Maritime Arbitration Commission and the Foreign Trade Arbitration Commission in the U.S.S.R. Chamber of Commerce, see 2 CSOVSKI, SOVIET CIVIL LAW 641-59 (1949).

75. Fellhauer, *supra* note 60, at 6.

76. See Tui-wai Mao-I, No. 3, 1963, p. 4.

and the success of the MAC's mediation was hailed as a great contribution to the promotion of international trade relations.<sup>77</sup>

### B. Registration of Foreign Trademarks

A provisional regulation for the registration of trademarks was issued by the Government Administration Council as early as July 28, 1950.<sup>78</sup> But it was not until six years later that the CCPIT was appointed as the official agent for registration of trademarks by foreigners.<sup>79</sup> A subsequent regulation of April 10, 1963, modified some of the earlier provisions concerning foreigners.<sup>80</sup>

The registration was required of both Chinese and foreign producers in order to remove "the vestiges of colonialism" and to insure the quality of products. Although trademarks are traditional competitive devices of a capitalist world, the regime still considers them useful to socialism.<sup>81</sup> Thus, as far as foreign trademarks were concerned, the 1950 regulation provided: (1) Merchants of those countries which have established diplomatic relationships and have concluded commercial treaties with China might petition for registration of their trademarks, if they desired to secure the right of exclusive use of such marks, within the limits of those treaties and according to the present regulation. (2) If approved, the right of exclusive use of a trademark was valid for a period of twenty years, and this period could be extended.<sup>82</sup> Disputes arising from the registration of a trademark might be adjudicated by the Central Administration of Private Enterprises, which was later superseded by the Central Administration of Industry and Commerce. If a disputing party disagreed with the Administration's decision, he might appeal to its supervisory organ for review. In case the right of exclusive use of a trademark had been violated, the injured party could institute a lawsuit in the people's court.<sup>83</sup> As of 1959, traders of several foreign countries had made such registration with the Central Administration of Industry and Commerce through the CCPIT.<sup>84</sup>

77. *Strengthening Friendship Through Settling Disputes*, by staff correspondent of Tui-wai Mao-I, *id.* at 4-5.

78. See 2 FLHP 528-31 (1949-1950).

79. Central Administration of Industry and Commerce opinion (no date), approved by the State Council on Jan. 17, 1957, in 5 FKHP 217-20 (1957).

80. In 13 FKHP 162-64 (1962-1963).

81. Central Administration of Industry and Commerce opinion, *supra* note 79, at 219.

82. Provisional Regulation for the Registration of Trademarks arts. 5, 17, in 2 FHLP 529, 530 (1949-1950).

83. *Id.* arts. 25, 27-29, at 531.

84. Tui-wai Mao-I, No. 2, 1959, p. 18. See also, *e.g.*, Exchange of Notes Between China and Britain on the Question of Reciprocity of Registration of Trademarks,



Under the 1963 regulation, diplomatic recognition of the Peking regime and the conclusion of a commercial treaty is no longer a requirement for the registration of foreign trademarks. The new regulation adopted a provision of the Soviet Statute Concerning Trademarks and Trade-Signs of March 7, 1936,<sup>85</sup> by stipulating that a foreign petitioner may apply for registration of a trademark if his country has concluded a reciprocal agreement on the registration of trademarks with the Chinese People's Republic. In addition, the new regulation also repealed the earlier provision which gave exclusive right to the use of a trademark for a twenty-year period and replaced it with another Soviet provision—the trademark whose registration is petitioned for must already be duly registered under the name of the petitioner in his own country, and the duration of the right of exclusive use of the trademark is to be determined by the Central Administration of Industry and Commerce.<sup>86</sup>

#### IV. CONCLUSION

The Peking regime came to power with a background of domination by foreign traders in its foreign trade market. Coupled with its commitment to a Marxist-Leninist philosophy and a program of rapid industrialization, the regime designed a foreign trade organization to protect its national economic interests. Through licensing and other means of regulation, it edged out foreign investment and placed both foreign and Chinese import and export businesses under its firm control. To protect domestic industry and to assure the quality of imports and exports, the Customs and the Chief Administration for the Inspection and Testing of Commodities became an integral part of the foreign trade organization. As of 1966, there were sixteen national state import and export corporations operating under the direction of the Ministry of Foreign Trade. As legal entities, they assume civil liability and make contracts with foreign partners either directly or through the government or the CCPIT. Because of the fact that there are only fifty countries diplomatically recognizing Peking, the regime has maintained a network of front organizations to assist its foreign trade with additional countries. These include the Bank of China, two state-private insurance companies, and the CCPIT. Among other things, the CCPIT enters into nongovernmental trade agreements with foreign partners,

---

April 13 and June 1, 1956, in 5 TYC 68 (1956); Exchange of Notes Between China and Denmark on the Question of Reciprocity of Registration of Trademarks, March 25 and April 12, 1958, in 7 TYC 37-38 (1958).

85. 2 GSOVSKI, SOVIET CIVIL LAW 37, 39 (1949).

86. *Ibid.* *New Regulations for the Registration of Foreign Trademarks in China*, Tui-wai Mao-I, No. 4, 1963, p. 6.

supervises the operation of two arbitration organs concerning foreign trade and maritime affairs, and handles the registration of foreign trademarks.

Study of organization, however, is only the first step on the long road toward an understanding of Peking's complex legal policy and operation in foreign trade. As indicated at the beginning of this discussion, Peking's ambition for rapid economic growth, its deteriorating relations with other socialist countries, and Westerners' increasing interest in Communist China as a profitable market may combine to make the regime's foreign trade a major element of the world economy in the years ahead. Since the development of trade cannot be separated from the operation of legal instruments, study of Peking's foreign trade law is bound to have increasing importance. But the task of such research is immense. Unlike the Soviet Union where codification was completed in the early 1920's, China—being generally classified as a civil law country since the Republican period—remains in the “formative,” if not primitive, stage of legal development according to Western and Soviet standards. An important reason for this seems to lie not in the regime's inability to compile a code of law, but in its desire to keep legal policy and operation as flexible as possible. Outside mainland China, political sensitivity and business interests have constituted a serious barrier to any penetrating inquiry of the subject matter. Access to the information necessary for the accomplishment of such an undertaking is kept to the minimum. Even a sample copy of a contract with the Peking regime is viewed by some Western governments friendly with the United States as “privileged information.”

Under these circumstances, an alternative approach to the legal policy and operation of Peking's foreign trade is to study its published international treaties and agreements. It has long been the official stand of the Soviet Government that the primary sources of international law are treaties and custom. Without exception, Peking has followed this practice. Through the formation of foreign trade agreements, the regime has committed itself to certain principles of law in general and private international law in particular. Hopefully, through an analysis of these principles and certain elements of socialist law on which Peking has insisted, a reasonably clear picture of the regime's foreign trade law may be presented to the public.

