MULTILATERAL INVESTMENT AGREEMENT AND CHINA'S FOREIGN DIRECT INVESTMENT POLICIES

By

Guo Wei

THESIS

Submitted to
School of Public Policy and Management, KDI
in partial fulfillment of the requirements
for the degree of

MASTER OF STRATEGY AND GLOBAL MANAGEMENT

2000

MULTILATERAL INVESTMENT AGREEMENT
AND CHINA'S FOREIGN DIRECT INVESTMENT POLICIES

By

Guo Wei

THESIS

Submitted to
School of Public Policy and Management, KDI
in partial fulfillment of the requirements
for the degree of

MASTER OF STRATEGY AND GLOBAL MANAGEMENT

2000

Professor Dukgeun Ahn

ABSTRACT

MULTILATERAL INVESTMENT AGREEMENT AND CHINA'S FOREIGN DIRECT INVESTMENT POLICIES

By

Guo Wei

Due to the favorable investment policies offered by the Chinese government since the late 1970's, the utilization of foreign direct investment (FDI) in China has developed rapidly. However, as a measure to facilitate its accession to the World Trade Organization (WTO), there is growing pressure for China to adjust its present foreign investment regime to international rules and practices. With the rapid growth of worldwide FDI inflows, there is also a growing demand for the adoption of multilateral investment agreements. This paper examines China's current FDI policies in the context of the newly established rules on investment under the WTO. A more comprehensive multilateral investment agreement that was prepared under the auspices of the Organization for Economic Cooperation and Development (OECD) is also reviewed to examine the implication for the current China's FDI policies. Some policy suggestions and development strategies are discussed in the conclusion.

ACKNOWLEDGEMENTS

It is a pleasure to acknowledge all the people who have helped me in my preparation of this paper. I am particularly grateful to my thesis supervisor, Professor Dukgeun Ahn, who has given his precious time, excellent comments and generous support to me from the very beginning to the end of the entire process. I also want to express my gratitude to Dean Gill-Chin Lim, Associate Dean Jong-Il You, Professor Seung-Joo Lee, and all the other professors of the School of Public Policy and Management, Korean Development Institute, who have offered me generous help during my study there. Korean International Cooperation Agency (KOICA) provided me with financial support and made necessary arrangements for me during the whole period of my stay in Korea, for which I am very grateful. Finally, I would like to thank all the other friends who have given me encouragement and help during this process.

TABLE OF CONTENTS

LIST OF BOXES

LIST OF ABBREVIATIONS

ADI	Agreement on Direct Investment
APEC	Asia-Pacific Economic Cooperation Council
BCC	Beijing Conciliation Center
BIT	Bilateral Investment Treaty
BOT	Build-Operations-Transfer
CCPIT	China Council for the Promotion of International Trade
CIETAC	China International Economic and Trade Arbitration Commission
COEZ	Coastal Open Economic Zone
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
EU	European Union
ETDZ	Economic and Technological Development Zone
FDI	Foreign Direct Investment
FEIT	Foreign Enterprise Income Tax
FIE	Foreign-Invested Enterprise
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
HKIAC	Hong Kong International Arbitration Center
ICC	International Chamber of Commerce
ICSID	International Center for the Settlement of Investment Disputes
IMF	International Monetary Fund
IPRs	Intellectual Property Rights
LCIA	London Court of International Arbitration
MAI	Multilateral Agreement on Investment
MFN	Most Favored Nation
MOFTEC	Ministry of Foreign Trade and Economic Cooperation
NAFTA	North American Free Trade Agreement
OECD	Organization for Economic Cooperation and Development
SAFE	State Administration of Foreign Exchange
SAIC	State Administration of Industry and Commerce
SCC	Stockholm Chamber of Commerce
SCM	Subsidies and Countervailing Measures
SDPC	State Development and Planning Commission
SEZ	Special Economic Zone
TRIMs	Trade-Related Investment Measures
TRIPs	Trade-Related Aspects of Intellectual Property Rights
UNCTAD	United Nations Conference on Trade and Development
VAT	Value-Added Tax
WTO	World Trade Organization

Chapter I

INTRODUCTION

Foreign direct investment (FDI) is probably the single most important factor contributing to the globalization of the international economy. Flows of FDI are forging increasingly strong economic links between developing and industrialized countries, and also among developing countries. According to the latest World Investment Report, the worldwide FDI inflows in 1998 totaled $644 billion, among which $166 billion went to developing countries.[1]

China is currently considered one of the most attractive locations for FDI in the world. Since it inaugurated reform and opening-up policies in the late 1970s, FDI has made great contributions to this process of advancement. As of the end of July 1999, China has cumulatively approved 334,000 foreign-invested enterprises (FIEs) with a contractual value of $595 billion and the paid-in capital of $289 billion.[2] FDI has played a crucial role in internationalizing China's economy and trade, introducing capital, technology, management and marketing skills, instigating microeconomic change and efficiencies, and accelerating prospective reforms. China's success in attracting FDI inflows into its domestic economy has been closely related to the formation and development of its legal framework and policies for FDI. With the rapid change in world economic environment, however, China's FDI policy is faced with a number of significant challenges. The most prominent one is the growing

[1] UNCTAD, *World Investment Report 1999: Foreign Direct Investment and the Challenge of Development – Overview*, p. xx.

pressure to further liberalize its FDI regime, as a necessary measure facilitating its accession to the World Trade Organization (WTO).[3]

Momentum in the negotiation of treaties for the promotion and protection of investment has built up steadily since the end of the Second World War. Historically, the principal legal means for securing international investment protection has been bilateral investment treaties (BITs).[4] However, at the same time, the need for multilateral investment agreements has also been felt by many governments. Several regional agreements are already found in the context of the North American Free Trade Agreement (NAFTA), the European Union (EU), the Organization for Economic Cooperation and Development (OECD) and the Asia-Pacific Economic Cooperation Council (APEC). After a long debate between the North (capital exporting countries) and the South (largely developing countries), the Agreement on Trade-Related Investment Measures (TRIMs) was included in the final results of the Uruguay Round multilateral trade negotiation of the General Agreement on Tariffs and Trade (GATT).[5] However, the most recent and comprehensive effort to draft a coherent code on foreign investment has been the OECD's Multilateral Agreement on Investment (MAI), which will be discussed in the latter part of this paper. Even though OECD countries failed to materialize the MAI at last, the negotiation itself exerted a strong influence on the demand for a higher standard in international agreement on investment, particularly under the WTO framework. Since 1997, WTO

---

[2] Wu Yi, *Opening Wider to the Outside World, Constantly Strengthening International Investment Cooperation*, speech made at the 3rd China Fair for International Investment and Trade, September 1999, posted at <http://www.chinamarket.com.cn>.

[3] China started to pursue its GATT/WTO membership from as early as 1986, but due to various reasons, it only reached a bilateral agreement with the United States on November 15,1999, thus paving the way for its entry into the world trade governing body.

[4] By the end of 1998, there were 1,726 BITs in existence. UNCTAD, *World Investment Report 1999: Foreign Direct Investment and the Challenge of Development – Overview*, p. xviii.

members have been engaged in analysis and debate about the relationship between international trade and investment, and its implications for economic growth and development. In the Working Group on the Relationship between Trade and Investment established at the Singapore Ministerial Conference in December 1996, WTO members have examined a range of international investment instruments and existing agreements, and have debated the possible pros and cons of negotiating a multilateral framework of investment rules in the WTO. In the preparatory process leading to the Seattle Ministerial Conference held from November 30 to December 3, 1999, eight separate, and very similar, proposals were tabled by 29 WTO members, recommending that a decision be taken by Ministers in Seattle to begin negotiating a WTO agreement on FDI.[6] Even though WTO members failed to make a decision in this regard during the Seattle Ministerial Conference, it is still considered that a key question facing the WTO member countries is whether to negotiate and implement a new Agreement on Direct Investment (ADI) in the coming years.[7]

During the last two decades, the China's attitude towards inward FDI changed from restriction and control to encouragement and regulation. China has achieved substantial progress in its FDI policy reform within a relatively short period. However, comparing its current FDI policies to internationally acknowledged investment rules, there is still a leeway for China to further liberalize its FDI regime in order to attract foreign investors and benefit from FDI in the long run. If China becomes the formal member of the WTO, it has to accept the full package of the final results of the

[5] WTO was established on the basis of GATT system as a result of the Uruguay Round. For more detailed explanation on WTO, refer to John H. Jackson, *The World Trading System*, 2nd, 1997.
[6] The 3rd WTO Ministerial Conference Briefing Note: *Trade and Investment: Negotiate, or Continue to Study*, posted at the WTO's official ministerial website <http://www.wto.org/wto/seattle>.

Uruguay Round, including TRIMs and other investment-related agreements. The purpose of this paper is to compare China's current FDI policies with existing GATT/WTO investment rules as well as the more comprehensive multilateral investment agreement - OECD's MAI, and give some suggestions on possible policy changes. The subsequent parts of the paper are structured as follows: Chapter II introduces the proposed MAI provisions; Chapter III analyzes China's current FDI laws and regulations; Chapter IV examines the existing GATT/WTO investment-related rules and their differences with China's policies. A summary of the recent changes in China's FDI policies is also included in Chapter IV. Chapter V gives some suggestions and concludes the paper.

---

[7] Edward M. Graham, "Direct Investment and the Future Agenda of the World Trade Organization", collected in the book *The World Trading System: Challenges Ahead*, edited by Jeffrey J. Schott, Institute for International Economics, Washington DC, December 1996, p. 205.

Chapter II

MAI AND ITS FAILURE

I. Evolution of MAI

The seeds of the MAI were planted in the OECD in the 1960s, when member countries adopted two binding codes on investment liberalization – the Code of Liberalization of Capital Movements and the Code of Liberalization of Current Invisible Operations. Although all OECD members must follow the codes, they were far narrower in scope than the MAI and the absence of a supranational legal institution within the OECD makes enforcement very difficult. Members have traditionally relied upon "peer pressure" to encourage compliance. The MAI represented an important departure from previous OECD agreements in that it should be enforceable through dispute-resolution mechanisms and open to accession by non-members.

The idea of a free-standing, enforceable multilateral investment agreement emerged during the GATT Uruguay Round negotiations in the mid-1980s. Beginning in the early 1990s, some WTO member countries urged the pursuit of an investment agreement within that body, but WTO members have been unable to agree on terms of reference to initiate negotiations.[8] It was not until May 1995 that formal discussions on the MAI were initiated, using the OECD as a venue.

[8] Third World opposition has been a major roadblock to negotiations within the WTO. There is also speculation that the United Sates preferred the OECD as a forum to the WTO for two reasons: (1) Most developing countries do not have a voice in the OECD, making it an easier forum in which to hammer out an investment agreement fully reflective of the interests of the US and other industrial

Since that time, negotiations took place every six weeks in Paris. By January 1997, consensus had been reached on the basic purpose, structure and provisions of the agreement and a confidential draft of the MAI had been completed. OECD delegates were on a track to complete negotiations by the OECD Ministerial Meeting scheduled for May 26, 1997. In March 1997, however, negotiators announced that they would need more time to iron out specific disagreements. Trade officials soon set a new date – May 1998 – to complete the process. At the Ministerial Meeting of the OECD in April 1998, negotiators decided to suspend further negotiations until the next meeting of the OECD in October 1998. Negotiators from most OECD countries met in Paris on October 20, 1998 to discuss the future of the MAI. The meeting, originally scheduled to last two full days and serve as an official negotiation session, lasted just one day and was instead called a "consultation". The meeting was overshadowed by the announcement on October 15 by French Prime Minister Lionel Jospin that France would not participate in the meeting due to the growing concern from French civil society about the agreement. An informal consultation among representatives of most OECD countries was held in Paris on December 3, 1998 to discuss the status of the MAI. The OECD released a statement after the consultation indicating that "negotiations on the MAI are no longer taking place". At the same time, negotiators "reaffirmed the desirability of international rules for investment".[9]

---

powers and (2) WTO rules do not allow for a key type of enforcement mechanism that the US wants to incorporate in the MAI – so-called "Investor-State dispute resolution", which would allow individual corporations and/or private investors to sue countries for damages when they believe laws are in violation of the MAI. OECD rules do not prohibit this mechanism.

[9] OECD News Release, *Informal Consultations on International Investment*, Paris, December 3, 1998, posted at <http://www.oecd.org>.

II. Purpose of MAI

When negotiations on the MAI was launched in May 1995, OECD Member States aimed to reach an agreement amongst themselves on a comprehensive agreement for international investment that would set high standards in three areas of FDI rule-making: (1) investment protection; (2) investment liberalization; and (3) dispute resolution.[10]

It is envisaged that the MAI will be a free-standing international treaty open for accession not only by all OECD Member States and the European Communities, but also by non-OECD countries willing and able to live by the rules set down therein. The rationale behind the OECD's proposal, according to the policy documents on the subject emanating from that institution, is a desire to pull together under one single instrument the most important disciplines found in BITs, regional arrangements and sectoral agreements. Thus, the MAI aims to (1) strengthen the legal status of existing OECD instruments; (2) introduce new disciplines (e.g., on the movement of key personnel, monopolies, privatization and performance requirements); (3) design a state-of-the-art chapter on investment protection; and (4) add legally binding procedures for the settlement of investment disputes through recourse to international arbitration. The overall objective, therefore, is to create a more favorable investment environment for enterprises confronted with the challenge of globalization. In this way it is hoped that investment flows will be further encouraged.

[10] OECD, *The MAI Negotiating Text (as of 24 April 1998) – General Provisions,* p. 7.

III. Key Provisions of MAI

The MAI working draft was first leaked to the public in February 1997. Two other drafts were publicly released in May 1997 and February 1998, respectively. When it became clear that member governments would not be able to sign a completed MAI as planned at the April 1998 OECD Ministerial Meeting, OECD Ministers agreed to six month additional negotiations and consultations to resolve outstanding issues and to shore up support for the MAI domestically.[11] In a public relations move, another version of the MAI text, dated April 24, 1998, was released at the Ministerial Meeting and posted on the OECD's Web-site. Discussion of this paper will be based on this text.

Box 1. Structure of MAI

The MAI Negotiating Text as of 24 April 1998 was structured as follows:

I. General Provisions
Preamble

II. Scope and Application
Definitions
Geographical Scope of Application
Application to Overseas Territories

III. Treatment of Investors and Investments
National Treatment and Most Favored Nation Treatment
Transparency
Temporary entry, stay and work of Investors and Key Personnel
Nationality Requirements for Executives, Managers and Members of Boards of Directors
Employment Requirements
Performance Requirements

[11] OECD, *Ministerial Statement on the Multilateral Agreement on Investment*, April 28, 1998, posted at <http://www.oecd.org>.

Box 1 (cont'd)

Privatization
Monopolies/State Enterprise/Concessions
Entities with Delegated Governmental Authority
Investment Incentives
Recognition Arrangements
Authorization Procedures
Membership of Self-Regulatory Bodies
Intellectual Property
Public Debt
Corporate Practices
Technology R&D
Not Lowering Standards
Additional Clause on Labor and Environment

IV. Investment Protection
General Treatment
Expropriation and Competition
Protection from Strife
Transfers
Information Transfer and Data Processing
Subrogation
Protecting Existing Investments

V. Dispute Settlement
State-State Procedure
Investor-State Procedures

VI. Exceptions and Safeguards
General Exceptions
Transaction in Pursuit of Monetary and Exchange Rate Policies
Temporary Safeguard

VII. Financial Services
Prudential Measures
Recognition Arrangements
Authorization Procedures
Transparency
Information Transfer and Data Processing
Membership of Self-regulatory Bodies and Associations
Payments and Clearing Systems/Lender of Last Resort
Dispute Settlement
Definition of Financial Services

VIII. Taxation

IX. Country Specific Exceptions
Lodging of Country Specific Exceptions

Box 1 (cont'd)

X. Relationship to Other International Agreements

Obligations under the Articles of Agreement of the International Monetary Fund
The OECD Guidelines for Multinational Enterprises

XI. Implementation and Operation
The Preparatory Group
The Parties Group

XII. Final Provisions
Signature
Acceptance and Entry into Force
Accession
Non-Applicability
Review
Amendment
Revisions to the OECD Guidelines for Multinational Enterprises
Withdrawal
Depositary
Status of Annexes
Authentic Texts
Denial of Benefits

Annex 1 Country Specific Proposals for Draft Texts

Annex 2 Chairman's Proposals on Environment and Related Matters and on Labor

Source: OECD, The MAI Negotiating Text (as of 24 April 1998).

1. Scope and Applications

The MAI seeks as wide a scope and application as possible. By investment, it means "every kind of asset owned or controlled, directly or indirectly, by an investor."[12] This would include both direct and portfolio investment in enterprises, stocks, bonds, rights under contracts, intellectual property, and tangible and intangible property. Moreover, coverage is based on a fundamentally different approach from, for example, that taken in the WTO. In the latter, coverage is based on a “bottom up” approach in which specific products and restrictions are offered for negotiation of rights and obligations. The MAI is “top down” in that all investments are included unless specific exceptions or reservations are submitted.

2. National Treatment

The concept of national treatment is central to any investment agreement. National treatment essentially obliges a government to treat any foreign investor at least as well as any domestic investors. This includes such things as taxation, the setting of rules, administrative procedures and access to courts. The MAI’s national treatment rule enjoins governments to treat foreign investors no less favorably than domestic investors with respect to all phases and aspects of investment, from initial establishment of an investment to subsequent regulation. However, governments may treat foreign investors more favorably than domestic investors.[13]

National treatment, along with the corollary principle of MFN treatment, forms the bedrock principles of economic integration in international law. These mechanisms were adopted from the GATT, and often appear in many BITs. In a stunning departure from most BITs, however, the MAI would require governments to provide national treatment during the market entry phase of foreign investment.[14] Whereas the vast majority of BITs apply national treatment only after an investor has

---

[12] OECD, *The MAI Negotiating Text (as of 24 April 1998) – Chapter II, Definitions 2,* p. 11.

[13] OECD, *The MAI Negotiating Text (as of 24 April 1998) – Chapter III, National Treatment 3*, p. 13.

been granted market access – the right to establish an investment – the MAI confers upon foreign investors a general right of entry in all economic sectors. This feature essentially eliminates the borders of the nation-state for the purposes of investment.

3. Most Favored Nation (MFN)

MFN status is common in trade treaties. It states that if a country offers special treatment or favors to another country, it must then do so to all other countries. The MAI's MFN provisions enjoin MAI signatories to treat all investors the same with regard to right of entry and regulation upon entry.[15] Investors cannot be denied market access or treated differently on the basis of their nationality. Laws prohibited by MFN would include economic sanctions that punish a country for human rights violations by preventing corporations from doing business there.

4. Transparency

Transparency is a very important element of any international investment, as well as trade, treaty. The importance of transparency was recognized in the Uruguay Round and was included in almost every agreement.

The MAI requires each Contracting Party to promptly publish, or otherwise make publicly available its laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as international agreements which

---

[14] OECD, *The MAI Negotiating Text (as of 24 April 1998) – Chapter III, National Treatment 1*, p. 13.

[15] OECD, *The MAI Negotiating Text (as of 24 April 1998) – Chapter III, Most Favored Nation 2*, p. 13.

may affect the operation of the MAI.[16] The MAI provisions also state that nothing in the agreement is to be taken to limit the power of a party to collect information for information or statistical purposes, or to require it to reveal confidential commercial information about foreign investors.[17]

5. Performance Requirements

Performance requirements, or conditions on investment, are routinely used by governments to achieve economic development objectives. Developing countries often require performance requirements such as the mandatory export of the products of foreign investors to protect domestic markets from foreign competition, or conditions on hard currency movements for balance of payments purposes or for other reasons of industrial policy. Also common are rules mandating that foreign investors use domestic suppliers or inputs.

Under the MAI text, the following performance requirements are banned for domestic and foreign investors, even if an investor would satisfy them voluntarily in exchange for an "advantage" (meaning a subsidy or incentive): domestic content requirements, domestic purchasing requirements, balancing of imports and exports, local sales restrictions, and mandatory exporting requirements.[18]

---

[16] OECD, *The MAI Negotiating Text (as of 24 April 1998) – Chapter III, Transparency 1*, p. 13.

[17] OECD, *The MAI Negotiating Text (as of 24 April 1998) – Chapter III, Transparency 3*, p. 13.

[18] OECD, *The MAI Negotiating Text (as of 24 April 1998) – Chapter III, Performance Requirements 1*, p. 19.

An additional group of performance requirements could not be imposed on foreign or domestic investors unless accompanied by an "advantage": research and development requirements, requirements that investors hire a certain number of citizens, mandatory joint ventures with domestic participation, mandatory domestic equity participation, technology transfer requirements, requirements to locate headquarters in the territory, and requirements that an investor supply goods or services.[19]

6. Investment Incentives

The importance of the issue of incentives as a distortion of investment has increased markedly in the last few years. Investment incentives are government policies designed to attract companies to invest. Investment incentives fall into three types: (1) tax incentives: tax holidays, export tax reductions, exemptions from import duties; (2) other financial incentives: grants for investment, loan guarantees; and (3) non-financial incentives: provision of infrastructure, pre-built factory premises, business services.

The OECD member states failed to reach an agreement on this provision. The text says, "Several delegations believe that no additional text is necessary."[20] "Many delegations, however, would favor specific provisions on incentives in the MAI although they hold different views as to their nature and scope."[21]

---

[19] As note 18, above, p. 20-21.

[20] OECD*, The MAI Negotiating Text (as of 24 April 1998) – Chapter III, Investment Incentives*, p. 46.

[21] As note 20, above, p. 46.

7. Mandatory Compensation for Expropriation

This provision gives foreign investors a right to compensation when a government directly or indirectly "expropriates" their investments or profits or takes an action that has the "equivalent effect" of expropriation.

Under the MAI, expropriation or nationalization of investments would not be permitted, except for purposes which are in the public interest, carried out on a non-discriminatory basis, in accordance with due process of law and accompanied by prompt, adequate and effective compensation.[22] Due process in this context means the ability of the investor to obtain judicial review in relation to the value of its investment and the payment of compensation from the relevant authorities of the host state.[23] Compensation must be paid without delay, be equivalent to the fair market value of the expropriated investment and be fully transferable.[24]

8. Repatriation of Profits and Movement of Capital

Transferring funds out of a country is central to the activities of foreign investors. The MAI provisions state that each Contracting Party shall ensure that all payments relating to an investment in its territory of an investor of another Contracting Party may be freely transferred into, and out of, its territory without delay. This includes initial investment amounts, profits, payments under contract, proceeds

[22] OECD, *The MAI Negotiating Text (as of 24 April 1998) – Chapter IV, Expropriation and Compensation 1*, p. 57.
[23] OECD, *The MAI Negotiating Text (as of 24 April 1998) – Chapter IV, Expropriation and Compensation 6*, p. 58.
[24] OECD, *The MAI Negotiating Text (as of 24 April 1998) – Chapter IV, Expropriation and Compensation 2-4*, p. 57.

from sale or liquidation, payments of compensation, payments out of settlement of a dispute, and earnings and other remuneration of personnel engaged from abroad.[25] The text also provides that each Contracting Party shall ensure that such transfers shall be in a freely convertible currency, at the market rate of exchange on date of transfer.[26]

9. Dispute Settlement

The dispute settlement provisions of the MAI set out specific courses of action that may be taken in regard to disputes arising among Contracting Parties (State-State Procedures) and between Contracting Parties and foreign investors (Investor-State Procedures). In essence, the dispute settlement articles are a combination of provisions from the 1965 Convention on Settlement of Investment Disputes between States and Nationals of other States (the ICSID Convention), Articles XXII and XXIII of the GATT 1947, and various parts of the Dispute Settlement Understanding (DSU) under the WTO.

(1) State-State Mechanism

Essentially the State-State dispute settlement mechanism provides for a staged procedure which allows a Contracting Party to initiate consultations with another Contracting Party and if this fails to seek multilateral consultations in the Parties Group. The Parties Group would be made up of all the Contracting Parties and would have power to make recommendations to the Contracting Parties that are in dispute.

[25] OECD, *The MAI Negotiating Text (as of 24 April 1998) – Chapter IV, Transfers 1*, p. 59.
[26] OECD, *The MAI Negotiating Text (as of 24 April 1998) – Chapter IV, Transfers 2-3,* p. 59.

This is substantially the same mechanism provided for in Article XXIII of the GATT 1947, now supplemented by the DSU, and the Parties Group is analogous to the Dispute Settlement Body, which comprises all WTO members.

(2) Investor-State Mechanism

Much of the debate around the MAI's potential impact focuses on the enforcement of its substantial provisions through Investor-State dispute resolution. This rule enables private investors and corporations to sue national governments, and seek monetary compensation, in the event that a law, practice or policy violates investor rights as established in the agreement. International investors would have the option to sue a country before an international tribunal rather than in the country's domestic courts.[27] This Investor-State dispute resolution mechanism is a departure from most previous international economic agreements, including WTO, which allow only governments to bring complaints against other governments.

10. Financial Services

The draft MAI contains some specific provisions relating to investment in the financial service sector, including: (1) an exception from the application of the MAI in respect of prudential measures necessary for investor protection or ensuring the stability of the financial system;[28] and (2) negotiation of agreements or arrangements relating to the mutual recognition of the prudential measures of different countries,

[27] OECD, *The MAI Negotiating Text (as of 24 April 1998) – Chapter V, Investor-State Procedures*, p. 70.
[28] OECD, *The MAI Negotiating Text (as of 24 April 1998) – Chapter VII, Prudential Measures*, p. 81.

and requirements relating to authorization of investors wishing to invest in financial services enterprises.[29]

The inclusion of these provisions is an acknowledgement of the unique nature of the financial system and the need for prudential regulation to ensure its stability.

IV. Why MAI Failed?

When the negotiation of MAI was first started, the negotiators were quite optimistic. They felt sure that they could do for investment what had already been achieved for trade in goods and services – create a set of global rules that would lock in liberalization. They also hoped that an agreement would set the stage for dismantling remaining barriers against foreign investors, just as global talks have gradually lowered trade barriers. But that hope has long since disappeared. What went wrong?

Deciding to travel via the OECD was the first mistake. Certainly, OECD members occupy most of the FDI inflows and outflows, but there were also good reasons not to use the OECD. One is that much of the discussion there is bound to duplicate negotiations at the WTO. Another is the fact that the OECD, whose main job is economic research, has no experience running such a complicated negotiation. While the WTO has a legal apparatus in place to deal with countries that violate their commitments to open trade, the OECD does not. The more significant barriers to

[29] OECD, *The MAI Negotiating Text (as of 24 April 1998) – Chapter VII, Authorization Procedures*, p. 82.

foreign investment lie in developing countries. Although they account for only a small share of foreign investment worldwide now, that share is growing rapidly. Among emerging economies, only Mexico, three central European countries and Korea were able to participate in the MAI talks, since no others are members of the OECD. The drafters' original aim was to craft an agreement that emerging countries would want to join, but few developing countries were prepared to sign something which they did not help to shape at all.

Even the richer countries, as it turned out, were not so enthralled freeing foreign investment either. They advanced several hundred pages of proposed exceptions from the general rules. Another main sticking points were the treatment of labor and the environment. A further, rather big, difficulty was the "free rider" problem: the MFN commitment in the WTO means that any measures on trade and investment negotiated elsewhere, such as the MAI, must be extended to some 135 countries.[30]

Compared with the OECD, the WTO offers several advantages: it has experience in brokering complicated rules; it already has a dispute-settlement system[31]; and it could involve far more countries. Talks under the WTO's auspices might still take several years, but they would be on stronger foundations.

---

[30] As of November 13, 1999.

Chapter III

FDI POLICIES IN CHINA

Since 1979, China has been pursuing the policy of encouraging foreign companies to invest in China. The first Sino-foreign joint venture was established in 1980. Since then, with the steady improvement of the country's investment environment, foreign investment has been on the increase.

I. Forms of Investment and Basic Laws Covering FDI

Foreign investment attracted to China is generally in the form of direct investment. As China continues to open the country wider to the outside world, there has been a gradual increase of other forms of investment in the country, including foreign-funded financial institutions, Build-Operation-Transfer (BOT), compensation trade and international lease. However, the most often adopted is direct investment, which include three basic forms: Sino-foreign joint ventures, Sino-foreign cooperative ventures and wholly foreign-owned enterprises.

1. Sino-Foreign Joint Ventures

Sino-foreign joint ventures also refer to Chinese-foreign equity joint-venture enterprises. Of the various forms of investment, Sino-foreign joint ventures are the

[31] For WTO dispute settlement system, see Ernst-Ulrich Petersmann, *The GATT/WTO Dispute Settlement System*, 1997.

most common. They are regulated by the Law of the People's Republic of China on Chinese-Foreign Joint Ventures, which was first adopted on July 1, 1979 and later amended and readopted on April 4, 1990. Its implementation rules detail the form and organization of equity joint ventures, ways of contributing investment, and rules on the organization of the board of directors and management. Provisions also cover acquisition of technology, the right to use land, taxes, foreign exchange control, financial affairs, and hiring of workers.

2. Sino-Foreign Cooperative Ventures

Sino-foreign cooperative ventures also refer to Chinese-foreign contractual joint ventures. A contractual joint venture is the second most common form of cooperative business arrangements in China. There are a number of differences between contractual joint ventures and the equity joint ventures. One of the reasons many investors in the past have chosen to utilize a cooperative joint venture structure instead of an equity joint venture has been that the investors are able to make their contributions to the joint venture in forms other than those allowed for an equity joint venture. Contractual joint ventures have been used as vehicles for the joint construction and management of hotels, to provide services in the offshore oil industry and for joint development of coal and other mineral resources. The establishment and operation of contractual joint ventures are based principally on the provisions contained in the contract as to such matters as forms of contribution, division of liabilities, risks and losses. The Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures was adopted on April 13, 1988.

3. Wholly Foreign-Owned Enterprises

The third way for foreign companies to invest in China is as wholly foreign-owned enterprises. Wholly foreign-owned enterprises are entities established under the Law of the People's Republic of China on Foreign Capital Enterprises, which was adopted on April 12, 1986, and its detailed implementing rules. Under the Law, wholly foreign-owned enterprises are defined as "enterprises established within the territory of China … the entire capital of which is invested by foreign investors" and are considered to be Chinese "legal persons".[32]

According to the Law of the People's Republic of China on Foreign Capital Enterprises, the establishment of foreign enterprises in China must be conducive to the development of China's national economy, and must meet at least one of the following requirements: that they will apply internationally advanced technology and equipment, and that all or most of their products will be export-oriented.[33]

II. Guidelines on Foreign Investment

In order to guide the direction of foreign investment, to enable the direction of overseas investment to suit the plan for China's national economic and social development and to help protect legitimate rights and interests of overseas investors, the Chinese government, in line with the requirements of the industrial policy, released on June 20, 1995, investment guidelines in the form of two documents – the

[32] The Law of the People's Republic of China on Foreign Capital Enterprises, Article 2.
[33] The Law of the People's Republic of China on Foreign Capital Enterprises, Article 3.

Interim Provisions on Guidance for Foreign Investment and the Catalogue for the Guidance of Foreign Investment Industries. The Catalogue for the Guidance of Foreign Investment Industries serves as the basis for guiding examination and approval of foreign investment projects. Foreign investment projects fall into four categories, namely, “encouraged”, “restricted”, “permitted” and “prohibited” investments. Foreign investment projects under the categories of encouragement, restriction and prohibition are included in the Catalogue. Foreign investment projects other than the three categories fall under the category of permission and they are not included in the Catalogue.

Box 2. Sectoral Restrictions in China’s Foreign Investment Policy

The Interim Provisions on Guidance for Foreign Investment promulgated in June 1995 categorize foreign investments as “encouraged”, “restricted”, “permitted” and “prohibited”.

Encouraged Investments:

- Providing new agricultural technology
- Providing new or advanced technology
- Meeting international market demand
- Involving comprehensive use of renewable resources, new technology and equipment for environmental management.

Restricted Investments:

- Using technology developed in, or introduced into China for which existing production capacity can meet domestic demand
- Joining monopolies or experimental industries allowed to introduce foreign investment
- Exploring for and exploiting rare or valuable mineral resources
- Involving industries subject to state planning and otherwise restricted by state law and regulations

Restricted investments is classified into Category (A) and Category (B) according to state industrial policies and the demand of macroeconomic control.

Prohibited Investments:

- Jeopardizing national security or social and public interest
- Polluting the environment, destroying natural resources or harming public health

Box 2 (cont'd)

- Occupying extensive farmland, acting against protection of land resources, harming security and military effectiveness
- Manufacturing products with Chinese developed and owned know-how or technology
- Other projects prohibited by state laws and regulations.

Source: *Interim Provisions on Guidance for Foreign Investment (1995).*

On December 29, 1997, the Catalogue for the Guidance of Foreign Investment Industries was reissued in revised form and included a number of additions and deletions. Similar to the edition promulgated in 1995, the amended Catalogue lists out areas of foreign investment which are classified as “encouraged”, “restricted” and “prohibited” by the Chinese government. New areas of foreign investments which fall under the encouraged category include construction of development centers for new products and advanced technologies, manufacturing of multi-media data transmission equipment, manufacturing of automobile parts, construction and management of port facilities. New areas for the restricted (B) category include medical association, development of whole lot of land, large-scale tourism, cultural and entertainment parks, automatic data transmission systems, and so on. As for the prohibited category, there has been no change and it still includes radio broadcasting, motion picture, television, journalism, future trading, postal services and telecommunication. Similar to the 1995 edition, the guidelines lays out that in certain industries it is mandatory that the foreign investor have a Chinese partner, or that the Chinese partner hold a majority interest in the FIE, such as shipbuilding industry and complete motor vehicles.

III. Approval Procedure

Potential investment projects usually go through a multi-tiered screen process. The first step is approval of the project proposal. The central government has delegated varying levels of approval authority to local governments. Until a few years ago, only the Special Economic Zones (SEZs)[34] and a few big cities could approve projects valued at up to $30 million. Such approval authority has now been extended to all provincial capitals and a number of other cities throughout China.[35] Projects exceeding this amount are approved by the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and the State Development and Planning Commission (SDPC). If an investment involves $100 million or more, it must also obtain a State Council's approval. The MOFTEC, however, is authorized to review all projects, regardless of their size.

For most investment projects, four steps are required. First, one must submit a project proposal. Only when this proposal is approved can the investors proceed to do the various works centering on the production of the feasibility study report on the project. Second, he must submit the feasibility study report on the project. Only when this report is approved can the investors proceed to sign the contract, charter of incorporation and other legal documents concerning the establishment of the enterprise. Third, he must submit the contract and charter of incorporation concerning the establishment of the enterprise. After these legal documents are reviewed and

[34] SEZs include the following five zones: Shenzhen, Zhuhai, Shantou, Xiamen and Hainan Island.

[35] *Circular of the State Council Concerning the Extension of the Limits of Power Vested with the Inland Provinces, Autonomous Regions, Cities Separately Listed in the State Plan and the Departments Concerned Under the State Council in Examining and Approving Direct Foreign Investment Projects,* promulgated by the China's State Council on August 22, 1996.

approved, a certificate of approval for the FIE will be issued by the reviewing and approving authorities. Lastly, with the certificate of approval, he must apply for a business license from the State Administration of Industry and Commerce (SAIC).

IV. Investment Incentives

China's investment incentives have focused on fiscal measures that are designed to reduce the tax burdens of foreign investors, which include tax holidays, concessional rates, and exemptions from import and/or export duties. In addition to tax incentives, the SEZs, some cities and provinces also offer preferential land-use fees to foreign investors.

At present, there are 13 types of taxes applicable to FIEs and foreign individuals in China. They are value-added tax (VAT), consumption tax, business tax, foreign enterprise income tax, personal income tax, resource tax, land value-added tax, stamp tax, tax on urban real estate, tax on the use of automobile and ship plates, slaughter tax, contract tax and construction fees for cultural undertakings. In 1991, China promulgated the Income Tax Law for Enterprises with Foreign Investment and Foreign Enterprises, as well as its implementing rules. But after the tax reform in 1994, except for enterprise income tax and some local taxes, FIEs and foreign nationals were entitled by the Law of the People's Republic of China on Managing Levy and Collection of Taxes to the same treatment as Chinese enterprises and nationals with all taxes.

1. Foreign Enterprise Income Tax

Income generated by FIEs engaged in production and operations is subject to foreign enterprise income tax (FEIT). The standard FEIT rate is 33%, which is made up of state tax of 30% and local tax of 3%. The local tax of 3% may be waived or reduced by the local governments. The state tax of 30% may be reduced to 15% or 24% depending on location (e.g., if the business is in a specifically designated zone), operation period, amount of total investment and industry.

(1) Reduced Tax Rates in Defined Places

For FIEs located in SECs and production-oriented FIEs located in Economic and Technological Development Zones (ETDZs), the 30% state tax is reduced to 15%. For FIEs located in State Tourist Districts, in Coastal Open Cities and Coastal Open Economic Zones (COEZs), in Open Cities along Yangtze River, in Border Open Cities and in Provincial Capitals, a reduced 24% rate is applicable.

Box 3. Production-Oriented Industries

The Implementation Rules for the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises define production-oriented FIEs to include the following industries:

- Machine-building and electronic industries
- Energy industry (excluding petroleum and natural gas exploitation)
- Metallurgical, chemical and building materials industries
- Light, textile and packaging industries
- Medical apparatus and pharmaceutical industries
- Agriculture, forestry, animal husbandry, fishery and water conservancy
- Construction industry
- Communication and transportation (excluding passenger transport)

Box 3 (cont'd)

- Scientific and technological development, geological surveying, and industries that serve the purpose of production and maintenance services for production equipment and precision instruments

Source: Implementation Rules for the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises.

Box 4. Investment Incentive Zones in China

Special Economic Zones (5 zones)
Shenzhen, Zhuhai, Shantou, Xiamen, Hainan Island

Shanghai Pudong New Area
Shanghai Pudong New Area

Coastal Open Cities (14 cities)
Dalian, Qinhuangdao, Tianjin, Yantai, Qingdao, Lianyungang, Nantong, Shanghai, Ningbo, Wenzhou, Fuzhou, Guangzhou, Zhanjiang, Beihai

Coastal Open Economic Zones (260 cities and towns in 10 provinces)
Guangdong Province (57 cities and towns), Fujian Province (37 cities and towns), Zhejiang Province (34 cities and towns), Jiangsu Province (47 cities and towns), Shanghai (6 towns), Shandong Province (31 cities and towns), Tianjin (5 towns), Hebei Province (14 cities and towns), Liaoning Province (23 cities and towns), Guangxi Province (6 cities and towns)

Provincial Capitals and Open Cities along Yangtze River

Provincial Capitals (18 cities):
Urumchi, Nanning, Kunming, Harbin, Changchun, Huhhot, Shijiazhuang, Taiyuan, Hefei, Nanchang, Zhengzhou, Changsha, Chengdu, Guiyang, Xi'an, Lanzhou, Xining, Yinchuan

Open Cities along Yangtze River (6 cities):
Chongqing, Yueyang, Wuhan, Jiujiang, Wuhu, Huangshi

Beijing:
Beijing

Economic and Technological Development Zones (32 cities)
Dalian, Qinhuangdao, Tianjin, Yantai, Qingdao, Lianyungang, Nantong, Minhang, Hongqiao, Caohejing, Ninbo, Wenzhou, Xiaoshan, Fuzhou, Guangzhou, Nansha,

Box 4 (cont'd)

Daya Bay, Zhanjiang, Kunshan, Yingkou, Weihai, Rongqiao, Dongshan, Shenyang, Harbin, Changchun, Hangzhou, Wuhan, Chongqing, Wuhu, Beijing, Urumchi

High-Technology Industrial Development Zones (52 zones)
Beijing, Wuhan, Nanjing, Shenyang, Tianjin, Xi'an, Chengdu, Weihai, Zhongshan, Changchun, Harbin, Changsha, Fuzhou, Guangzhou, Hefei, Chongqing, Hangzhou, Guilin, Zhengzhou, Lanzhou, Shijiazhuang, Jinan, Shanghai, Caohejing, Dalian, Shenzhen, Xiamen, Hainan, Suzhou, Wuxi, Changzhou, Foshan, Huizhou, Zhuhai, Qingdao, Weifang, Zibo, Kunming, Guiyang, Nanchang, Taiyuan, Nanning, Urumchi, Baotou, Xiangfan, Baoding, Anshan

Border Open Cities (13 cities, towns, or counties)
Heihe, Suifenhe, Hunchun, Manzhouli, Erenhot, Yining, Tacheng, Bodong, Pingxiang, Wanding, Hekou Shi, Ruili Xian, Dongxing Zhen

State Tourist Districts (11 districts)
Jingshitan of Dalian, Shilaoren of Qingdao, Taihu Lake of Jiangsu, Hengsha Island of Shanghai, Zhijiang of Hangzhou, Mount. Wuyishan of Fujian, Meizhou Island of Fujian, Nanhu Lake of Guangzhou, Dianchi Lake of Kunming, Silver Beach of Beihai and Yalong Bay of Sanya in Hainan

Source: State Administration of Taxation, Taxation Law for Foreign Investment (in Chinese), China Tax Affairs Publishing House, 1995.

(2) Reduced Tax Rates for Defined Sectors and Projects

A 15% state tax rate applies to the following: Sino-foreign equity joint ventures engaged in harbor and wharf construction; foreign banks and Sino-foreign joint-venture banks located in SEZs and other areas approved by the State Council, whose amount of capital injected is no less than US$ 10 million and whose period of operation is scheduled to be no less than 10 years; foreign investment exceeding US$30 million with long payback period in CEOZs; and projects of energy, traffic and transportation, harbor and wharf construction.

2. Tax Holidays

Production-oriented FIEs scheduled to operate for no less than 10 years are 100% exempt from FEIT for the first two profit-making years and allowed a 50% tax reduction for the following three years. Further 15-30% tax reduction for another 10 years after the expiry of tax holidays for FIEs engaged in agriculture, forestry, or animal husbandry.

Foreign banks and Sino-foreign joint-venture banks scheduled to operate for no less than 10 years are 100% exempt from FEIT for the first profit-making year and allowed a 50% tax reduction in the second and third years.

For equity joint ventures engaged in harbor and wharf construction and scheduled to operate for no less than 15 years, 100% FEIT are exempted for the first five profit-making years and 50% tax reduction for the following five years.

3. Tax Incentives for Export-oriented and High-tech FIEs

In the wake of the expiration of the legal term for reduction and exemption, export-oriented FIEs, whose export value reaches or surpasses 70% of the total production of a tax year, are allowed a 50% reduction of FEIT. In the case when the tax rate goes below 10% subsequent to the 50% reduction, a 10% will apply. High-tech FIEs can be titled a 50% reduction of FEIT for another three-year period after the expiry of the five-year tax exemption/reduction period. If the tax rate goes below 10% subsequent to the 50% reduction, a 10% rate will apply.

4. Tax Incentives for the Transfer of High Technology

Royalties from the transfer of high technology for use in such areas as agriculture, forestry, animal husbandry, scientific research, energy, communications and transportation, and other key technological fields can enjoy a 10% low withholding income tax. In the case when the technology is advanced and the terms for the transfer of the technology is favorable, the withholding income tax can be exempt. Foreign investors deriving income from profits of the FIE are exempt from income tax.

5. Reinvestment Relief

Reinvestment relief applies to all FIEs. If the foreign investor in an FIE directly reinvests the profits back to such FIE, or to another FIE inside China which has a term of operation of not less than five years, it can apply to local tax authority for a refund of 40% of the enterprise income tax paid. A refund of 100% of tax paid can be made if the investment is made to expand or establish a high-tech or an export-oriented FIE.

6. Value-added Tax (VAT) and Customs Duty

The standard VAT rate is 17% with a lower rate of 13%. Some essential goods are exempted and export goods are zero-rated. In the past, capital equipment imported by FIEs into China was exempted from customs duty and VAT. This exemption was suspended, with certain exceptions which effect from April 1996.

With VAT on import at 17% and variable rates of import duty, the cost of investing into China escalated substantially. As a result, foreign investments into China dwindled in 1997. In January 1998, the State Council announced that the exemption policy on VAT and customs duty would be resumed, but only on the import of capital equipment of those projects identified in either the “encouraged” or “restricted” (B) categories of the Catalogue for the Guidance of Foreign Investment Industries which came into force on January 1, 1998.

7. Land-use Fees

FIEs must pay for the right to use the land it acquires for the establishment of the joint venture. The land-use fee differs according to the type of investment project, as well as the location. Joint ventures in the SEZs and ETDZs of the open cities enjoy some of the land-use incentives and usually pay lower land-use fees compared to other parts of the country. In addition, joint ventures relating to educational, cultural, scientific, technological, medical, health, and public welfare projects pay even lower land-use fees. Export-oriented and high-tech projects can also apply for better terms of land-use fees in various cities and provinces.

V. Conversion and Transfer Policies

All the three basic laws covering FDI stipulate that the State shall protect foreign investors’ profits and they have the right to remit abroad their profits, but they should also follow the State provisions on foreign exchange control.[36]

[36] The Law of the People’s Republic of China on Chinese-Foreign Equity Joint Ventures, Article 10; the Law of the People’s Republic of China on Chinese-Foreign Contractual Joint Ventures,

Currently the Chinese currency – Renminbi is not freely convertible yet. Normally FIEs are required to earn sufficient foreign currency of their own, through exports, in order to cover their foreign currency expenditures. Although the Chinese government in recent years has made moves towards a partially convertible currency – in December 1996, China announced full convertibility in the current account and implemented new, liberal measures which allow foreign investors to freely convert currencies for trade and profit-repatriation transactions – virtually all foreign exchange activities remain subject to government control, which is exercised by the State Administration of Foreign Exchange (SAFE). Nonetheless, converting Renminbi earnings to foreign exchange is becoming less of a practical problem, especially for trade, services, profit repatriation and debt servicing. FIEs, like domestic companies, can now exchange Renminbi for foreign currency at designated banks. In addition, FIEs have access to the foreign currency swap centers.

FIEs can maintain foreign exchange in foreign exchange accounts with designated banks, up to a maximum amount set by the SAFE in the case of current account items. Foreign exchange received by a FIE in excess of the specified maximum amount must be sold to designated foreign exchange banks for Renminbi. FIEs' capital account items must be maintained in foreign currency. Domestic entities (other than banks and financial institutions which are designated to provide banking and financial services) must convert all foreign exchange into Renminbi. All foreign exchange bank accounts, whether offshore or onshore, must be approved by the SAFE.

Article 23; and the Law of the People's Republic of China on Foreign Capital Enterprises, Article 4 and Article 19.

VI. Expropriation and Compensation

There have been no cases of expropriation of foreign investment since China adopted its opening-up policy. Both the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures and the Law of the People's Republic of China on Foreign Capital Enterprises stipulate that the State shall not nationalize, except under "special circumstances",[37] but the "special circumstances" have not been concretely defined yet. Chinese laws also call for compensation of expropriated foreign investments, but do not define the terms of compensation.[38]

China has also entered into BITs with more than 70 countries including Britain, Germany, France, Japan, Australia, Korea and Malaysia. In the BITs signed with those countries, to protect foreign investors' interests, China commits itself not to nationalize investment property of foreign investors. If, under special circumstances, it is necessary to requisition such property in the social and public interests, China will offer fair and reasonable compensation in accordance with applicable domestic legal procedures and on the non-discriminatory basis. The compensatory amount will be paid in a freely convertible currency and is permitted to remit abroad freely.

VII. Dispute Resolution

The primary techniques used in China to resolve disputes include conciliation, arbitration and litigation. However, under the influence of Confucian tradition, in any conflict happened in China, commercial or otherwise, confrontation is generally

[37] The Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures, Article 2; the Law of the People's Republic of China on Foreign Capital Enterprises, Article 5.

avoided in order to maintain an outward appearance of accord. Nearly all of China's trade and investment legislation contain specific articles encouraging or requiring consultations between parties to a dispute before resorting to more formal means of settlement.

Conciliation, or mediation, is the least formal method of dispute resolution. For many years, conciliation services have been provided by the China International Economic and Trade Arbitration Commission (CIETAC). In addition, two different types of mediation services have been developed in recent years to deal specifically with Sino-foreign business disputes. The first is mediation under the auspices of the Beijing Conciliation Center (BCC), which was established in 1987, and provincial-level conciliation centers guided by the BCC. The second type is joint conciliation carried out in accordance with arrangements between Chinese and foreign dispute settlement bodies. At present, joint conciliation agreements exist between the BCC and the American Arbitration Association Conciliation Center in New York, the Beijing-Hamburg Conciliation Center in Hamburg, Germany and the Argentina-China Conciliation Center in Buenos Aires, Argentina.

Arbitration has in recent times been a favored means of resolving disputes in China. International arbitration is conducted by the CIETAC, an institution under the umbrella of the China Council for the Promotion of International Trade (CCPIT). The CIETAC, originally named the Foreign Trade Arbitration Commission, was established in 1956. It has two local sub-commissions: one in Shenzhen, one of the SEZs in China; another in Shanghai. Though Chinese parties prefer arbitration to be

---

[38] As Note 37, above.

conducted in China under the auspices of Chinese arbitration bodies, in recent years international arbitration bodies, including the Stockholm Chamber of Commerce (SCC), the London Court of International Arbitration (LCIA), the International Court of Arbitration of the International Chamber of Commerce (ICC) and the Hong Kong International Arbitration Center (HKIAC), have handled numerous cases involving disputes between Chinese and foreign parties.

The basic framework for civil litigation in China is set forth in the Civil Procedure Law. Though litigation is increasingly being used as a method of resolving disputes, foreign investors still tend to prefer arbitration. One reason for this is that China has treaty arrangements that permit reciprocal enforcement of court judgements with a relatively small number of states, whereas Chinese arbitral awards can be enforced in a very large numbers of states pursuant to the reciprocal enforcement treaty provisions of the New York Convention on the Enforcement of Foreign Arbitral Awards.[39] China is also a member of the International Center for the Settlement of Investment Disputes (ICSID).

[39] China acceded to the New York Convention on April 22, 1987.

Chapter IV

WTO INVESTMENT RULES AND IMPACTS ON CHINA'S POLICIES

I. WTO Investment Rules

Under the existing WTO framework, several multilateral agreements contain investment-related provisions: the Agreement on Trade-Related Investment Measures (TRIMs Agreement), the General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement), the Agreement on Subsidies and Countervailing Measures (SCM Agreement). Foreign investors are also affected by provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

1. TRIMs Agreement

The TRIMs Agreement, as its name suggests, is the closest WTO rule governing investment. It covers what are termed as "performance requirements". The agreement is limited and focused only on those TRIMs that place limits on investment. It ignores those TRIMs that are aimed at promoting investment. The agreement actually outlaws two types of TRIMs, those are inconsistent with national treatment, and those are inconsistent with the elimination of quantitative restrictions (e.g. quotas and other import limits).

The measures deemed to be inconsistent with the principle of national treatment are: (1) local content requirement, that is where a foreign company is forced to use locally produced goods in its production system;[40] (2) import balancing, that is where a company must export goods to the same value as the value of goods they import.[41]

The measures deemed inconsistent with the elimination of quantitative restrictions are: (1) import limitation, that is the tying of imports arranged by a company either to their export level, or to their local production;[42] (2) foreign exchange limitation, that is where the access of a company to foreign exchange is tied to the foreign exchange earned by the company;[43] and (3) export limits, that is where exports of a company are limited on the basis either of their imports or of local production.[44]

2. General Agreement on Trade in Services

The GATS subjects one of the most important and fastest growing components of world trade to multilateral disciplines for the first time. Acknowledging one of the defining characteristics of trade in services, namely the frequent need for proximity between suppliers and consumers, hence for commercial presence, the GATS contains the single largest number of investment-related provisions found in the Final Act of the Uruguay Round.

---

[40] TRIMs Agreement, Annex 1 (a).
[41] TRIMs Agreement, Annex 1 (b).
[42] TRIMs Agreement, Annex 2 (a).
[43] TRIMs Agreement, Annex 2 (b).

The GATS rests on three pillars. The first is a framework of general obligation (e.g. MFN treatment, transparency) applicable to all Members and all service sectors.[45] The second involves national schedules of commitments on market access and national treatment in specific service sectors or sub-sectors, which are the focus of periodic negotiations aimed at their further liberalization.[46] The third consists of a number of annexes addressing sectoral (financial services, telecommunications, air transport) or horizontal (MFN exemptions, movement of service suppliers) specificities.

Unlike the TRIMs or TRIPs Agreements, the GATS allows Members to maintain existing non-conforming measures.[47] In sectors where specific commitments are undertaken, such measures must be inscribed in Members' national schedules.[48]

3. TRIPs Agreement

While the TRIPs Agreement contains no provisions addressing directly the treatment of investment, it is widely regarded as a strong, rules-based, agreement likely to generate positive investment protection externalities. It significantly enhances the protection (including through coverage under the WTO dispute settlement system) afforded to firms investing in, producing and trading research- and intellectual property-intensive goods and services.

---

[44] TRIMs Agreement, Annex 2 (b).
[45] GATS, Part II.
[46] GATS, Part III.
[47] GATS, Annex on Article II Exemptions.

Five core issues are addressed by the TRIPs Agreement: (1) the applicability of GATT principles (e.g. national treatment, MFN treatment) and those of relevant international intellectual property agreements;[49] (2) the provision of intellectual property rights (IPRs) for copyright, trademarks and service marks, geographical indications, industrial designs, patents, layout designs for integrated circuits, trade secrets, as well as consultations between governments concerning anti-competitive practices in contractual license;[50] (3) procedures and remedies under the domestic laws of Members to ensure that IPRs can be effectively enforced by foreign and national right holders;[51] (4) provisions for multilateral dispute settlement under the WTO's integrated consultation and arbitration mechanism;[52] and (5) transitional arrangements to phase in the TRIPs Agreement in accordance with Members' levels of economic development (one year from entry into force of the Agreement Establishing the WTO for developed countries, five years for developing countries and countries in transition, and eleven years for least developed countries).[53]

4. SCM Agreement

The SCM Agreement contains a number of disciplines that can relate to investment incentives. The agreement includes for the first time a comprehensive definition of the term "subsidy", which is defined as "a financial contribution by a government or any public body within the territory of a Member", that confers a

[48] GATS, Part IV: Article XX.
[49] TRIPs Agreement, Part I.
[50] TRIPs Agreement, Part II.
[51] TRIPs Agreement, Part III.
[52] TRIPs Agreement, Part V.
[53] TRIPs Agreement, Part VI.

benefit.[54] Financial contribution can take several forms: direct transfers of funds (e.g., grants, loans, equity infusions), potential direct transfer or funds or liabilities (e.g., loan guarantees); foregone or uncollected government revenues (e.g., tax credits) other than agreed border tax adjustments; provision of goods and services other than general infrastructure on concessional terms; income or price support.

The SCM Agreement distinguishes among three categories of subsidies: subsidies that are prohibited, subsidies that are actionable and subsidies that are non-actionable. Actionable subsidies could include, in principle, most of the FDI incentive types. However, actionable subsidies should be proved that they have “adverse effects” on international trade, either causing injury to the domestic industry of another member country; nullifying or impairing WTO benefits; or causing “serious prejudice” to the interests of another member country.[55]

Two subcategories of subsidies are deemed to be prohibited: non-agricultural subsidies that are contingent upon export performance; and subsidies that are contingent on the use of domestic goods in place of imported goods (local content requirement).[56] The relevance of this category of subsidies to FDI is emphasized by the fact that the granting of FDI incentives has often been conditioned upon certain performance requirements being met, with export performance and local content requirements being the most prevalent among these.

[54] SCM Agreement, Article 1.
[55] SCM Agreement, Article 5.
[56] SCM Agreement, Article 2.

5. *Dispute Settlement Understanding (DSU)*[57]

As with the TRIPs Agreement, the provisions contained in the DSU do not focus specifically on investment-related matters. Rather, it is generic in nature and applied to all areas covered by WTO rules, including all investment-related matters subject to Final Act disciplines.

Among the central innovations made to the WTO's integrated system for consultations and dispute settlement are: (1) the automatic adoption of panel reports (unless there is a consensus to do so, Members cannot block findings against them);[58] (2) the possibility of requesting the review of a panel report by an Appelate Review Body (whose findings are final and binding on Members unless there is a negative consensus);[59] (3) the possibility of cross-sectoral retaliation (e.g., a Member can take action in the goods area for a violation of the GATS);[60] and (4) the requirement for Members to establish what the "reasonable time for implementation" will be, which should result in the prompter implementation of panel recommendations[61].

---

[57] For a detailed account on DSU proceedings, see David Palmeter and Petros C. Mavroidis, *Dispute Settlement in the World Trade Organization: Practice and Procedure* (1999).

[58] DSU, Article 16.

[59] DSU, Article 17.

[60] DSU, Article 22.

[61] DSU, Article 21.

II. Examination of China's Current FDI Policies by WTO Standard

1. National Treatment

National treatment, as a cornerstone of the WTO, requires members to treat products and services supplied by foreign firms no less favorably than domestic goods or services.

Article 6 of the Foreign Trade Law of the People's Republic of China provides for extension of national treatment, on a reciprocal basis, to contracting parties of international treaties to which China is also a party. Article 23 of this law provides for extension of market access and national treatment in services under similar conditions.

In practice, however, the Chinese government continues to maintain certain controls on foreign investment, channeling it toward areas that support development policies of the Chinese government. China encourages foreign investment in priority infrastructure sectors such as energy production, communications, agriculture, forestry, environmental protection and transportation, and restricts or prohibits it in sectors where China's planners have not determined that China has a specific need or where China wants to protect a domestic industry. According to the revised Catalogue for the Guidance of Foreign Investment Industries, effective from January 1, 1998, the Chinese government still prohibits foreign investment for projects with objectives not in line with the State Plan. In addition, there are many areas in which foreign investment is technically allowed but severely restricted. Restricted categories generally reflect: the protection of domestic industries, such as the services sector, in which China fears its domestic market would quickly be dominated by foreign firms; the goal of limiting luxuries or requiring large imports of components or raw materials; and the avoidance of redundancy (i.e. excess capacity).

Examples of investment restrictions are abundant. For example, China bans investment in the management and operation of basic telecommunication, all aspects of value-added telecommunications as well as in the news media, broadcast and television sectors. In addition, China severely restricts investment in such service sectors as distribution, trade, construction, tourism and travel services, shipping, advertising, insurance and education. The restrictions on foreign companies are often in the following forms: territorial restrictions (foreign commercial presence only in economic zones of certain cities), quantitative restrictions (e.g., limited number of wholesalers in selected cities) and qualitative restrictions (e.g., having established representative offices for a number of years; exceptionally high minimum capital requirements; and renewable license requirements).

2. Export Performance

Performance requirements are stipulations to which foreign investors must agree in order to gain approval for establishment. Like most developing countries, China has used them over the reform period. One of the most common performance requirements pertains to exports. While the TRIMs Agreement made progress in proscribing some investment performance requirements, it did not take on the questions of export performance. However, the MAI offered a model for progress by prohibiting preestablishment performance requirements.

Chinese regulations stipulate that wholly foreign-owned enterprises must undertake to export more than 50% of the output value of their products;[62] this is known as the "export ratio". In the 1980s, firms negotiating such ventures often committed to export considerably more than 50% of production in order to secure sole control. However, this conditionality attached to wholly foreign-owned status has softened in practice. Regulations provide official leeway as well. Wholly foreign-owned enterprises producing import-substituting goods, as well those using or producing high-technology goods, may be exempted from export performance requirements.[63]

Sino-foreign joint ventures and Sino-foreign cooperative ventures, on the other hand, are bound by no statutory authority to export, but they often face informal pressure to include export performance targets in the contract. Such pressure can be applied during the examination period of the approval process, when negotiations go back and forth among foreign investor, Chinese joint venture partner, and approval authorities. Sometimes the target is implicit; for instance, the contract may state that the venture will "balance foreign exchange and receipts on its own." In practice, however, failure to meet export targets has often not been treated as a punishable offence, such as withholding the rights to purchase foreign exchange. Chinese officials still examine export performance when reviewing annual certifications. These certifications are necessary for FIEs to obtain foreign exchange at China's banks.

[62] Rules for the Implementation of the Law of the People's Republic of China on Foreign Capital Enterprises, Article 3.

3. Local Content Requirement

Local content requirement, unlike export performance requirement, is on the illustrative list of trade-related investment measures noted in the TRIMs Agreement as inconsistent with WTO policies.

Unlike export performance, local content obligations are not statutorily imposed on wholly foreign-owned enterprises, Sino-foreign joint ventures or Sino-foreign cooperative ventures. Chinese regulations grant FIEs freedom to source inputs both in China and abroad, though priority is given to Chinese products when conditions are equal.[64] Chinese regulations forbid the imposition of "unreasonable" geographical, price, or quantity restrictions on the marketing of a licensed product. The foreign venture, thus, retains the right to purchase equipment, parts, and raw materials from any source.[65]

However, the local content requirement in China functions similarly to that for export performance. Chinese officials strongly encourage localization of production. Investment contracts often call for foreign investors to commit themselves gradually to increase the percentage of local content. Such provisions and plans for sourcing production inputs are factors considered by Chinese officials in the approval process for foreign investment projects. Local content obligations are not a transparent statutory requirement but rather part of internal guidance for achieving a level of local

---

[63] As Note 61, above.

[64] The Law of the People's Republic of China on Chinese-Foreign Equity Joint Venture, Article 9; the Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures, Article 19; and the Law of the People's Republic of China on Foreign Capital Enterprises, Article 15.

[65] Rules for the Implementation of the Law of the People's Republic of China on Foreign Capital Enterprises, Article 44.

sourcing in certain industries, especially so-called pillar industries. One example is China's 1994 automotive industrial policy. This policy, designed to foster development of a modern automobile industry in China, explicitly called for production of domestic automobiles and automobile parts as substitutes for imports, and established local content requirements, which would force the use of domestic products, whether comparable or not in quality or price.

4. Foreign Exchange Balance

Another trade-related investment measure prohibited by the TRIMs Agreement is the restriction on foreign exchange access for import purchases.

The foreign exchange regime is perhaps one of the reform areas where China has made most progress over the past decade. First, the official exchange rate was unified with the prevailing swap market rate in January 1994, and soon afterwards the inter-bank foreign exchange market was established. Second, the current account was made convertible in July 1996. Foreign companies in China are now allowed to convert the Chinese Renminbi into foreign currencies for current account transactions, such as importing materials, paying royalties and license fees and repatriating dividends. Furthermore, with current account convertibility, foreign firms do not need to balance their foreign exchange position as before. Third, at the beginning of December 1996, China formally accepted the terms and conditions specified under the IMF's Article VIII Agreement so that the government can no longer impose trade restrictions for balance of payments reasons nor engage in a discriminatory currency arrangements or multiple currency practices without IMF approval.

However, in China most joint venture contracts still require that FIEs balance their foreign exchange receipts and expenditures. Article 13 of the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures provides that the failure of a party to fulfill the obligations prescribed by the contract is a basis for termination of the joint venture. Therefore, Article 13 can be considered as implicitly providing the legal basis for enforcing foreign exchange balance, even though this requirement is often ignored in practice.

5. Protection of Intellectual Property Rights (IPRs)

The TRIPs Agreement requires WTO members to provide MFN status, national treatment, and high levels of IPRs protection and enforcement for copyrights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and trade secrets.

Along with its progress in reform and opening up, China has made substantial progress in IPRs protection. In accordance with its national conditions, China has formulated and fine-tuned various laws and regulations on IPRs protection. The scope of the IPRs protected in China and the degree of protection afforded have gradually conformed with international practices.

The Trademark Law of the People's Republic of China was first adopted in 1983 and it was revised in 1993 to meet the requirements of China's economic development. All these regulations coincide with the requirements of the TRIPs

Agreement. The Patent Law of the People's Republic of China first came into effect in April 1985 and its amendment was adopted in September 1992 to bring the level of China's patent protection closer to international standards. The Copyright Law of the People's Republic of China and the rules for its implementation explicitly protect the copyright and other legitimate rights and interests of the authors of literary, artistic and scientific work. The law provides that in addition to protecting the copyright of written works, oral works, music, operas, choreography, works of fine arts, photographs, films, TV programmes, video tapes, engineering designs, product designs and their descriptions, maps, sketch maps and other graphic works, China also protects computer software. Relevant treaties to which China is a signatory include the Paris Convention for the Protection of Intellectual Property, the Madrid Agreement on International Trademark Registration, the Berne Convention on Copyright, and the Patent Cooperation Treaty. China has also made a commitment that upon its accession to the WTO, it will immediately implement TRIPs Agreement. It is now revising its copyright, trademark and patent laws, apparently to make them more compatible with TRIPs requirements.[66]

However, currently the most often heard complaints about China's IPRs protection is its enforcement. Awareness of IPRs has undoubtedly improved in recent years. Enforcement of IPRs has become part of China's anti-crime campaign; the Chinese police and court system has also actively involved in combating IPR piracy. But despite this progress, serious violations of foreign and domestic IPRs continue, particularly in the areas of computer products, videotapes, industrial and pharmaceutical trademarks and trade names. Until the Chinese courts begin taking

[66] See East Asian Executive Reports, *Protecting IPR in China: Progress and Problems*, November 15, 1998, p. 9, 12.

more referrals of IPR violations from the private sector, the long-term effectiveness of China's IPR enforcement effort remains open to doubt.

III. Recent Trends and Latest Development

In part to prepare for increased foreign competition which would result from its eventual accession to the WTO, China has been gradually relaxing some restrictions on ownership and establishment. Since 1992, for example, new service sectors, including retailing, foreign trade, insurance, finance and tourism, have been opened and expanded on an experimental basis, with limits on number and location.

China has currently approved 19 retail joint ventures in 11 cities and SEZs – 17 on a single-store basis and two on a chain-store basis. On June 25, 1999, the Chinese government promulgated a new provision on commercial enterprises with foreign investment, which allows foreign majority ownership and expands the permitted geographic scope for retailing.[67] Foreign insurance companies now are allowed to participate in insurance in two cities in China – Shanghai and Guangzhou. But all of the firms are limited in the products they can offer and the customers they can solicit. In 1999, China also announced that foreign travel agencies would be allowed to open joint-venture travel agencies and it would remove geographical restrictions on foreign law firms[68].

[67] Measures Concerning Pilot Projects for Commercial Enterprises with Foreign Investment, promulgated by the MOFTEC and the State Economic and Trade Commission.
[68] U.S. Department of State, *FY 2000 Country Commercial Guide: China*, September 1999, posted at <http://www.state.gov/www/issues/economic/country_reports.html>.

On November 15, 1999, China finally reached a bilateral WTO agreement with the United States, which paves the way for China to join the WTO. Under this agreement, China has made commitments in all major service categories with reasonable transitions to eliminate most foreign equity restrictions.[69]

(1) Distribution

In China today, foreign firms have no right to distribute products other than those they make in China, or to own or manage distribution networks, wholesaling outlets or warehouses. China's commitments address all these issues, including wholesaling, sales away from a fixed location, retailing, maintenance and repair, and transportation. At the same time, China also commits to open services auxiliary to distribution, including rental and leasing, air courier, freight forwarding, storage and warehousing, advertising, technical testing and analysis, and packaging services. All restrictions will be phased out in three to four years.

(2) Telecommunications

China now severely restricts sales of telecommunications services and bars foreign investment. China's commitments mark its first agreement to open its telecommunications sector, both to the scope of services and direct investment in telecommunications business. China will phase out all geographic restrictions for paging and value-added services in two years, mobile/cellular in five years and domestic wire-line services in six years. China's key telecommunications services

[69] A detailed Summary of the U.S.-China Bilateral WTO Agreement can be found in BNA, International Trade Reporter, Washington DC: The Bureau of National Affairs, Inc., Vol. 16, No. 45

corridor in Beijing, Shanghai, and Guangzhou, which represents approximately 75% of all domestic traffic, will open immediately on accession in all telecommunications services. With this agreement, China will allow 49% foreign investment in all services, and will allow 50% foreign ownership for value-added paging services in two years, for mobile services, 49% in five years; and for international and domestic services, 49% in six years.

(3) Insurance

China agreed to allow 50% ownership for life insurance. Life insurers may choose their own joint venture partners. For non-life insurance, China will allow branching or 51% ownership on accession and form wholly owned subsidiaries in two years. Reinsurance is completely open upon accession (100% ownership and no restrictions). Foreign property and casualty firms will be permitted to insure large-scale risks nationwide immediately upon accession, and all geographic limitations will be eliminated within three years. The scope of activities for foreign insurers will also be expanded to include group, health and pension lines of insurance, which represent about 85% of total premiums, phased in over five years.

(4) Banking

(November 17), 1999, pp. 1887-1890.

Currently foreign banks are not permitted to do local currency business with Chinese clients (a few can engage in local currency business with their foreign clients). China also imposes geographic restrictions on the establishment of foreign banks. Under the agreement, China has committed to full market access in five years. Foreign banks will be able to conduct local currency business with Chinese enterprises starting two years after accession. They will be able to conduct local currency business with Chinese individuals from five years after accession. Both geographic and customer restrictions will be removed in five years. Non-bank financial companies can offer auto financing upon accession.

(5) Securities

China will permit minority foreign owned joint ventures to engage in fund management on the same terms as Chinese firms. As the scope of business expands for Chinese firms, foreign joint venture securities companies will enjoy the same expansion in scope of business. Minority joint ventures will be allowed to underwrite domestic securities issues and underwrite and trade in foreign currency denominated securities.

(6) Professional Services

In the professional services, China currently restricts operation of foreign law firms and accounting firms. In the agreement, China has provided a broad range of commitments, including on legal, accountancy, taxation, management consultancy, architecture, engineering, urban planning, medical and dental, and computer and related services. China will permit foreign majority control except for practicing Chinese law (an exception common to many WTO members). For accountancy, China has agreed to eliminate a mandatory localization requirement and will now unrestricted access to lits market to professionals licensed and follow transparent procedures.

(7) Audiovisual

China's commitments cover the right to distribute video and sound recordings and cinema ownership and operation. For video and sound recordings, China will allow 49% foreign participation in joint ventures engaged in the distribution of these products. China has also agreed to import 40 films after accession growing to 50 films in three years, of which 20 films will be revenue sharing in each of the three years.

(8) Travel and Tourism

China will allow unrestricted access to the Chinese market for hotel operators with the ability to set up 100% foreign owned hotels in three years, while majority ownership will be allowed upon accession. For travel agency services, China will allow access to government resorts as well as Beijing, Shanghai, Guangzhou and Xi'an.

Chapter V

CONCLUSION

As analyzed above, due to the favorable investment policies offered by the Chinese government since the late 1970s, the utilization of FDI in China has developed rapidly. However, many of China's FDI regulations, if not explicitly, *de facto* violate provisions of internationally acknowledged investment rules, including the TRIMs Agreement and other investment-related rules in the WTO. After China becomes a formal WTO member, it has to phase out those non-complying regulations. As part of efforts to bring its FDI regime in line with the WTO requirements, China has made various adjustments to its foreign investment policies and made substantial commitments in its bilateral WTO agreement signed with the United States. However, to better improve its FDI policies, China still need to make further efforts on the two fundamental principles of international investment – national treatment and transparency.

In recent years, China has gradually granted national treatment to foreign investors on a par with domestic enterprises. The measures implemented include bringing high fees previously imposed on foreign investors down to the levels of domestic investors, gradually liberalizing the domestic market, and doing away with certain preferential policies. Further efforts are, however, needed to fully comply with the national treatment obligation. First, the difference in fees (including those relating to production, operations and daily life) between FIEs and domestic enterprises should be aligned. Second, an industrial policy must be formulated as soon as possible.

In particular, in key industries, the policy and preferential terms for domestic enterprises and FIEs must be unified. Third, the sectors in which foreign investors are allowed to participate should be further expanded. Fourth, the domestic sales of products produced by foreign investors should be increased.

The WTO's transparency commitments require member countries to publish all regulations and laws, and provide mechanisms for notification of all new laws and regulations before they take effect. Many countries also have adopted the "one-stop" concept, a simplified and transparent process for filing and processing applications for foreign investment approval, to facilitate implementation of investment proposals and reduce foreign investors' administrative costs. China, on the other hand, still has a very opaque system of laws and regulations as well as complex application processes. In many cases, China does not distinguish clearly among formal laws passed by the National People's Congress, regulations originated from central government ministries, commissions, or agencies, and policies issued by local governments. All these need to be simplified and made more transparent through further policy reforms.

REFERENCES

REFERENCES

Attorney General's Department, *Multilateral Agreement on Investment: Submission of the Attorney General's Department to the Parliamentary Joint Standing Committee on Trading*, July 1998. http://law.gov.au/publications/MAI/.

BNA International Trade Reporter, *Summary of the U.S.-China Bilateral WTO Agreement, Prepared by the White House National Economic Council*, Washington DC: The Bureau of National Affairs, Inc., Vol. 16, No. 45 (November 17) 1999, 1887-1890.

Brecher, Richard, and Gelb, Catherine, "Joining the World's Trading Club," *The China Business Review*, Washington: U.S.- China Business Council, Vol. 24 No. 3 (May/June), 1997, 14-21.

China Council for the Promotion of International Trade, *China Business Guide (1998/1999)*. http://www.ccpit.org/.

Chen, Chunlai, "The Evolution and Main Features of China's Foreign Direct Investment Policies", *Chinese Economics Research Center Working Paper No. 97/15*, Adelaide: University of Adelaide, 1997. http://www.adelaide.edu.au/CERU/.

Cheng, Faguang, *Tax Incentives for Foreign Investment*, September 1998.
http://www.chinamarket.com.cn/.

Cho, Stella, and Tung, Samuel, "Investment Incentives Zones and Regional Tax Incentive Policy in the People's Republic of China", Greenvale: *The International Tax Journal*, Vol. 24 No. 4 (Fall), 1998, 81-91.

East Asia Analytical Unit, *China Embraces the Market: Achievements, Constraints and Opportunities*, Barton: Department of Foreign Affairs and Trade, 1997.

East Asian Executive Reports, *Protecting IPR in China: Progress and Problems*, Washington: Vol. 20 No. 11 (November 15), 1998, 9,12.

Evans, Phillip, and Walsh, James, *The EIU Guide to World Trade under the WTO*, London: The Economist Intelligence Unit, 1995.

FitzGerald, E.V.K., Cubero-Brealey, R., and Lehmann, A., The *Development Implications of the Multilateral Agreement on Investment – A Report Commissioned by the Department for International Development*, University of Oxford, 1998. http://www.oecd.org/.

Fukasaku, Kiichiro, Ma, Yu, and Yang, Qiumei, *China's Unfinished Open-Economy Reforms: Liberalization of Services*, Paris: OECD Development Center Technical Papers No. 147, CD/DOC(99)4, April 1999.

Geest, Willem Van Der, "Bring China into the Concert of Nations: An Analysis of its Accession to the WTO", Geneva: *Journal of World Trade*, Vol. 32 No. 3 (June), 1998, 99-114.

Graham, Edward M., "Direct Investment and the Future Agenda of the World Trade Organization", *The World Trading System: Challenges Ahead*, edited by Jeffrey J. Schott, Washington DC: Institute for International Economics, 1996, 205-217.

Grub, Phillip Donald, and Lin, Jianhai, *Foreign Direct Investment in China*, New York: Quorum Books, 1991.

Henley, John, Kirkpatrick, Colin, and Wilde, Georgina, "Foreign Direct Investment in China: Recent Trends and Current Policy Issues," Oxford: *The World Economy*, Vol. 22 No. 2 (March), 1999, 223-243.

Hong Kong Trade Development Council, "China Reviews National Treatment for Foreign Investors," *Business Alert – China*, Issue 2 (February), 1999. http://www.tdc.org.hk/alert/ch9902.htm.

Information Office of the State Council, *Intellectual Property Protection in China*, White Paper of the Government of the People's Republic of China, June 1994.

International Chamber of Commerce, *Business Law in China: Trade, Investment and Finance*, edited by Daniel A. Lapres and Zhang Yuejiao, Paris: ICC Publishing S.A., 1997.

Lauffs, Andreas, and Lin, Stephen, "Commerce Made Easier?" Washington: *The China Business Review*, Vol. 26 No. 6 (November/December), 1999, 50-53.

Leung, Kenneth, "China: Layered Incentives Draw Investors," London: *International Tax Review*, Vol. 9 No. 3 (March), 1998, 17-18.

Moran, Theodore H., *Foreign Direct Investment and Development: the New Policy Agenda for Developing Countries and Economies-in-Transition*, Washington DC: Institute for International Economics, 1998.

OECD, *Investment and the Final Act of the Uruguay Round: A Preliminary Stocktaking*, COM/TD/DAFFE(94)56/REV1, 1994.

OECD, *The MAI Negotiating Text (as of 24 April 1998)*. http://www.oecd.org/.

OECD, *Trade and Investment Interface*, TD/TC/WP(96)32, 1996.

Office of the United States Trade Representative, *National Trade Estimate Report on Foreign Trade Barriers: People's Republic of China*, 1999. http://www.ustr.gov/reports/nte/1999/contents.html.

Potter, Pitman B., and Oksenberg, Michel, "A patchwork of IPR Protection," Washington: *The China Business Review*, Vol. 26 No. 1 (January/February), 1999, 8-11.

Public Citizen Global Trade Watch, *MAI Provisions and Proposals: An Analysis of the April 1998 Text*, July 1998. http://www.citizen.org/pctrade/mai/.

Quaker United Nations Office, *The Multilateral Agreement on Investment: A Preliminary Assessment*. http://www.quaker.org/quno/maiasses.html.

Rosen, Daniel H., *Behind the Open Door: Foreign Enterprises in the Chinese Marketplace*, Washington, DC: Institute for International Economics, January 1999.

Seafront Law Office, *Practical Issues on Investing in China*, December 1998. http://www.seafront.com.cn/publications/.

Simone, Joseph T., "China's IPR Enforcement Mechanisms," Washington: *The China Business Review*, Vol. 26 No. 1 (January/February), 1999, 14-15.

The Economist, *Finance and Economics: The Sinking of the MAI*, London: Vol. 346 No. 8059 (March 14), 1998, 81-82.

The Economist, *Leaders: The talking FDI Blues*, London: Vol. 346 No. 8059 (March 14), 1998, 18-20.

The Preamble Center, *The Multilateral Agreement on Investment: Timeline of Negotiations*, November 6, 1998. http://preamble.org/MAI/maihist.html.

The United States – China Business Council, *China and the WTO: Critical Issues and Objectives*, June 1998. http://uschina.org/press/wto.html.

The White House Office of Public Liaison, *Briefing on the Clinton Administration Agenda for the World Trade Organization Material: Summary of U.S.- China Bilateral WTO Agreement*, November 17, 1999. http://uschina.org/public/991115a.html.

Thomas, Rosalind H., "The Need for a Southern African Development Community Response to Prospects for a Multilateral Agreement on Investment", Geneva: *World Competition*, Vol. 21 No. 4 (June), 1998, 85-106.

UNCTAD, *World Investment Report 1999: Foreign Direct Investment and the Challenge of Development*, New York and Geneva: United Nations publication, 1999.

U.S. Department of State, *FY 2000 Country Commercial Guide: China*, September 1999. http://www.state.gov/www/issues/economic/country_reports.html.

WTO, *The Results of the Uruguay Round of Multilateral Trade Negotiations – The Legal Texts*, Geneva: World Trade Organization, 1995.

Wu, Yi, *Open Wider to the Outside, Constantly Strengthening International Investment Cooperation*, speech made at the 3rd China Fair for International Investment and Trade, September 1999. http://www.chinamarket.com.cn/.