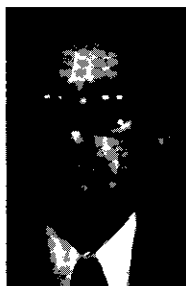


# Insights Into People's Republic of China

*In its own way, the PRC is doing business with outsiders; trade fairs offer entree*

**BY J. R. FROMENT\***

The People's Republic of China's procedures in trade relations reflect the fundamental and political options of the regime.



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The prevailing principle of the PRC in its trade relations aims to prevent any interference in the partners' internal affairs.

As frequently said by the Chinese authorities to foreign visitors, trade exchanges with China have to be based on equality and mutual advantages!

It may be true for the relations between China and developing countries, but it sounds like a platonic statement toward highly industrialized countries.

Owing to its very large population, the People's Republic is often considered as one of the newest and biggest potential markets. Personally, I think this should not be taken as an easy-entering business prospect. It is worth remembering that China, according to Mao's sayings, is still a developing country. Considering the pragmatic aspect of Mao's thought, this statement means that the economic and industrial substructures of the People's Republic are still insufficient to fulfill the essential requirements of the country. Besides, the political principle of self-reliance is an incentive to stimulate the inventive capability of the Chinese masses and to limit the import of equipment and technology only to those China cannot immediately develop by its own means.

During the last decade, the PRC has imported mainly complete plants, rolling stock, sophisticated machinery, and wheat to maintain enough stocks against possible periods of poor crops.

At present, priority is given to the following sectors:

- Tugboats for offshore platforms
- Material for telecommunications
- Equipment for airports and seaports
- Mining equipment
- Chemical, petrochemical, and fertilizer plants
- Special machine tools
- Power stations, gas turbines
- Glass and plastic manufacturing plants
- Synthetic fibers
- Sugar factories

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- Nonferrous metals industries

Generally speaking, the development of agriculture has the top priority, then come the light industries to increase exports of Chinese products, and finally the heavy industry.

Fertilizer requirements are estimated 100 to 200 million tons per year, while the national production was only 25 million in 1973.

The foreign trade organization under the leadership of the Council for State Affairs is based on:

- a state monopolism
- the planning of the entire economy.

## Planning Function

The Ministry for Foreign Trade complies with the program assigned by the State planning. It prepares the budget for income and expenses in foreign currencies which is submitted to the People's Bank of China and then for final approval to the State Council.

Eight National Corporations are in charge of commercial transactions according to instructions received from the Ministry for Foreign Trade.

These are the China National Corporations for import and export of:

- Cereals, oils and foods
- Local products and animal byproducts
- Textiles
- Light industry products
- Machinery
- Chemicals
- Ores and metals
- For import of technologies

Each Corporation is managed by a president and vice-presidents.

The managing staff includes mainly engineers coming from factories and technicians specialized in international trade.

All the National Corporations have their head office in Peking. Some of them have also subsidiaries in Shanghai, Tsing-Tao, Tien-Tsin, Canton, Hong-Kong and Macao.

Each corporation is divided into:

- Operational offices specialized according to types of products
- General services

The Corporation for import of technologies includes specialized departments (for instance: petrochemical industry, metallurgy, electrical industry and electronics).

The Chinese Council for the Progress of International Trade is in charge of:

- establishing business and trade relations with foreign sectorial organizations and the Chambers of Commerce;

- collecting information concerning the foreign markets.

The CCPIT invites representatives of foreign companies, industrial or commercial missions to come to Peking for discussing prospects. It organizes fairs in China and abroad.

### Travel Arrangements

The CCPIT works closely with the China Travel Agency to get up accommodations and inland transport for the foreign delegations visiting China. It introduces representatives of foreign companies to the China National Corporations. It provides interpreters and arranges meetings with the Chinese Authorities and visits of factories.

The welcome received from the CCPIT depends essentially on the rank and qualifications of the visitors.

It is worth pointing out that representatives delegated to China should have at least the rank of director or manager in their companies; moreover, they must be highly qualified in their branch.

The People's Bank of China is represented abroad by the Bank of China representing the National Corporations for their international payments in foreign currencies.

The Bank of China has subsidiaries in Hong-Kong, Singapore, and London.

The PRC does not want to take commitments above its financial resources; the Chinese government takes care to have no debt abroad. This explains certain falling off in imports under the present circumstances, because important orders were placed by China during the late years for very large chemical and fertilizer plants.

230 The monetary unit of the PRC is the "Renminbi" or "money of the People" also called "Yan". The initials RBM stand for Yan RenMinBi.

1 Yan RMB = 10 jiao = 100 fens = 20 BF.

### NATIONAL INDUSTRIAL FAIRS

If you did not succeed in obtaining relations directly with China, the best way to come in contact with the National Corporations is to attend an Industrial Fair organized in Peking by your country.

The Belgian Office for Foreign Trade organized industrial exhibitions in Peking in 1966 and in April 1975.

It was at this last occasion that I spent three weeks in China.

### Other Trade Fairs

Japan, Rumania, and Western Germany will have their own fair before the end of this year. The Belgian Industrial Fair of 1975 was prepared as follows:

- At the beginning of 1974, all Belgian industries were informed either directly by the Belgian Office for Foreign Trade or by their professional federations that the People's Republic of China was inviting Belgium to organize an Industrial Fair in Peking during the Spring in 1975.
- In September 1974, all the Belgian companies who had accepted to attend that fair were requested to forward through the Belgian Embassy in Peking a summary of the conferences they wanted to present concerning their machineries, products, or technologies,

and to introduce a curriculum vitae of the speakers.

- Mid-December 1974, we were informed by the CCPIT that among 102 proposed subjects, 72 had been retained. The speakers were then requested to forward to China before January 15, 1975, 35 copies of the full text, in English, of their conference and one copy of their technical movies and slides.

The booklets of conferences were translated in Chinese by the CCPIT and most probably passed to the censorship before being allowed for communication to specialized technicians.

The Belgian Industrial Fair was held from April 8 to 19 in the Palace of Exhibitions located in the northwestern part of Peking.

Michel Toussaint, Belgian Minister for Foreign Trade, presided at the opening ceremony in the presence of His Royal Highness Prince Albert, brother of our King Baudouin, with the attendance of many Chinese Authorities in charge of foreign trade organizations.

The total surface occupied by the stands of 85 Belgian companies was about 8,000 square meters.

Sixty thousand Chinese visitors came to the Fair. I assume that most of them had received in advance tickets to come to the Fair on predetermined dates.

Admission was free of charge. Each visitor received a catalogue printed in Chinese giving the names and references of the exhibiting companies, as well as short notices concerning the speakers and the technical conferences.

### Many Visitors

As far as my company and its subsidiaries are concerned, we had many visitors to our stand even before the official opening of the fair. Although they did not say their name and they did not disclose the organization they were coming from, our visitors were obviously specialists working in chemical industries or in plastic manufacturing plants.

I was speaker for the companies of the UCB's Group. Eight Chinese technicians attended the conferences I gave during three consecutive days. I realized very quickly there was no need to read the text which had been sent to Peking in January 1975, because my audience was obviously very well aware of its content. I had to answer many, many detailed questions dealing sometimes with secret aspects of our technologies.

The talks were held through an interpreter who was himself a technician specialized in the field.

It was only on the third day of my lectures that I learned the names of the technicians sitting in front of me.

My general impression was that they were eager to obtain detailed information for filling in gaps in their personal professional education. Many of their questions were aimed at getting practical instructions so as to solve operation problems in their factories and learn how their products could be improved.

I was unable to find out whether my audience would recommend acquiring our technology.

Considering the large number of Chinese visitors coming to a foreign exhibition, I would advise to give documentation and pamphlets only to visitors who are obviously specialists. Projection of slides or movies with recorded comments should certainly be recommended.

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boundaries as the most convenient and sensible procedure for this purpose.

Fourth, it can be demonstrated to have played a major role in some industries and a significant role in others, but its potential and actuality has spread right across the manufacturing and commercial spectrum of the developed countries.

Finally, it can truthfully be said to have played an important, special and in some ways, a unique role in the positive economic development of our industries and society today.

## Franchising

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ular Tandy departments offering a limited assortment of Tandy articles to the clients. Tandy has set up one of the world's biggest distribution networks.

### Amusing Franchise

A rather amusing franchise system is being operated in the U.S.A. by a lady named Mrs. Jean Nidetch. It is the "Weight Watchers" franchise which is a method to reduce a person's weight. The franchisees obtain from Mrs. Nidetch, the founder of the system, the know-how to give particular lessons to clients as to how to attain a slim figure through high-protein food diet. The participants in such lectures congregate every week, step on a scales, and note how much weight they gained or lost. Each period of lectures lasts 16 weeks. In eight years, there were more than 3 million participants. The psychological impact of merely by working together to lower a person's weight is astounding. Many people eat very much because they feel lonely. A Weight Watcher Review with the circulation of more than 500,000 copies reinforces the well-organized system which has been exported to other countries.

Speaking of Weight Watchers I would like to revert once more to the much more important problem of the fast-food restaurants. It is significant to note that only Wimpy and a few of the internationally well-known fast-food systems have been successful in West Germany. The famous Wienerwald restaurants are entirely company owned. Only a few weeks ago, the company announced, however, that it is considering granting Wienerwald franchises in smaller towns, following the trend established by Ihr Platz, Tandy, and Ciro. It should also be noted that McDonald's — which along with Kentucky Fried Chicken is the most successful fast-food chain in the U.S.A. — operates a considerable number of restaurants in West Germany without, so far, turning to franchising.

At this point, a few words about the problem of international franchising may appear useful. The exportation of franchises, mainly from the United States and France, is in full swing and other countries have made some progress, too. Careful franchisors, whether foreign or not, will in all cases have to test their systems in their own enterprises or branch offices before looking for franchisees in a certain country. In several instances, franchisors have successfully operated their business at home but failed or suffered considerable foreign setbacks because they did not prepare their franchising operations carefully enough and neglected to test the new market long enough or consult with appropriate marketing and legal experts. Permanent research and innovation is also an inherent obligation of the franchisor, especially if he operates in foreign countries. A distribution system needs constant improve-

ment and the franchisor, as the leader of the system, must always be ahead of the franchisees in knowledge, know-how, and flexibility.

Thanks to the multiple possibilities franchise systems offer, there is little doubt that national and international franchising will develop rather rapidly in Europe in the next few years. It will facilitate international trading and economic interdependence to a considerable extent and often contribute to mutually advantageous business relationships more than direct investments

## Licensing and Smaller Enterprises

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- The smaller company cannot afford to grant licenses into developing countries since, however small he may be, he is considered as the rich partner who must give this know-how away for no money.

- In general the regulations and restrictions concerning licensors have a more stringent effect on the smaller enterprise.

It is therefore a request of the smaller companies:

- To the antitrust authorities to make exemptions reasonable and useful for smaller enterprises and

- To developing countries to make licensing more attractive to smaller companies. Those nations then would have the opportunity to obtain a lot of practical know-how from them.

## Technology & The Developing World

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negotiations provide opportunities to hear the developing countries' views with new understanding, and to tell our point of view, with new conviction, to others who are reader, I think, to hear than before.

If all involved do their work well in the weeks and months ahead, the technological fruits of our capitalistic, pluralistic, creative system will be more a part of the developing countries. Likewise, the markets, products and resources of the developing countries will be more equitably available to the developed countries. This will add to the economic and social progress of both.

It will go slowly, and be painful. But the rewards will be worth the effort.

## Insights Into People's Republic of China

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Because my company's group did not exhibit machines or equipments, we were not faced with the problem of other Belgian firms which wanted to sell their material on the spot so as to avoid an expensive reforwarding to Belgium.

According to information collected after the Fair, 30 per cent in value of all exhibited equipments were purchased by various corporations.

### Appointments

Thanks to the representatives of the Belgian Office for Foreign Trade, appointments with the National Corporations were arranged by the CCPIT. Unfortunately, most of

the time, the Corporations simply referred to the report expected from the technicians who had discussed at the stands or attended to the technical conferences.

I had the privilege to visit several factories in Peking where I could see for myself that some of our technology could meet urgent requirements of the People's Republic. Requested to express frankly my opinion on their processing or manufacturing methods, my fair critic of glaring deficiencies was appreciated by members of the Revolutionary Committee and managing staff of those factories.

No need to say that my remarks were made tactfully in putting forward advices and recommendations fitting with the local conditions.

The final conclusion of our presence in Peking has a double aspect:

- It gave us the opportunity to make ourselves familiar with some Chinese customs; we have now a much better idea about the foreign trade organizations in the PRC and their way of doing business with European countries.
- On the other side, the China National Corporations are now aware of our activities, products and technologies. We hope to be called back some day in Peking to have other meetings with specialists or even to enter into negotiation with the Corporation in charge of import of technology. I should point out that, except for highly sophisticated technologies, the PRC does rarely acquire a particular know-how as a simple transfer of technology. The aim of orders placed by the National Corporations is mainly to purchase machinery or processing and manufacturing equipment, while the disclosure of know-how is rather considered as detailed instructions for the proper operation of the plant under consideration. No need to say that patents are not protected in China.

Keeping in mind that the Chinese like to deal with people they have come to know, we consider that our attendance at the Belgian Fair will make easier our further contacts with the People's Republic.

Belgian professional federations will try to obtain from the PRC an invitation to delegate further missions of specialists to China to follow up relations established in Peking.

## Industrial Property & The EEC Treaty

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"disguised restriction" — all this remains wholly mysterious and can only be explained by the disregard of the clear wording, the intended effect and the true meaning of the Treaty of Rome. The consequences of the Court's practice, which in due course may well reach beyond the scope of "parallel imports", requires urgent review on a Ministerial level. That practice is destined to deprive without compensation the owners of industrial property of large parts of their rights in international trade and unexpectedly to supersede much of the prevailing industrial property law. And if one looks at the facts of the cases it is by no means certain that the change of the law can always be said to be in the interest of probity and merit.

### NOTES

1. It should be made very clear that the present observations do not in any way deal with restrictive agreements relating to industrial prop-

erty rights. They have to be considered in the light of Articles 85 and 86 of the Treaty and therefore give rise to questions which are entirely different from those discussed here. It is for this reason that for present purposes such cases as *Sirena v. Eda* [1971] C.M.L.R. 260 are not in point.

2. See Ipsen, *Europäisches Gemeinschaftsrecht* [1972] p. 589: "Measures of this type are *only* those which stem from *public* law, that is to say, as a rule those which have the character of *general* legislation."

3. Ipsen, *ibid.* at p. 729 correctly summarizes the position when he says that Article 36 leaves to the Member States their jurisdiction in regard to the protection of industrial and commercial property. "By way of example there is thus determined what forms part of the constitutional principles of the Treaty: the recognition of private property as an institution of the law and as a right of the individual."

4. In the first place it is necessary to point to an important discrepancy of translation. No other text contains a reference to "incidents" of property. Thus the French version reads: "Le présent Traité ne préjuge en rien le régime de la propriété dans les Etats membres." Secondly, there is a school of thought according to which Art. 222 allegedly touches only the relations between the Community and Member States and does not confer legal protection upon the individual *vis-à-vis* the Community. In this sense, in particular, Ipsen, *loc. cit.*, p. 725. There is nothing whatever in the text of Art. 222 or in the "general and final provisions of which it forms part that can support so restrictive a view. Art. 222 is general in terms and expresses one of the fundamental rights which do exist within the Community and of which the Court is taking cognizance to an ever increasing extent; see most recently the case of *J. Nold K.G. v. Commission* [1974] C.M.L.R. 338.

Thirdly, Mr. Roemer as Advocate General put forward the view that Art. 222 was solely a general guarantee of the freedom of Member States to organize their respective systems of property, but did not express a guarantee that the Community will not interfere with subjective rights of property. "Any other thesis would involve to a large extent the paralysis of the jurisdiction of the Community," See *Costa sc/iv. Enel* [1964] C.M.L.R. 425 and *Consten & Grundig v. E.E.C. Commission* [1966] C.M.L.R. 418, at p. 44. It is submitted with respect that such a view is clearly wrong. The provisions guaranteeing property which are to be found in numerous Constitutions have not at any time or place paralyzed the jurisdiction of the State. They do make it necessary, however, to distinguish clearly between the permitted exercise of the "police power" defining the content of property rights in general and the deprivation of an individual of his specific property rights. Art. 222 requires a construction and application of the Treaty which does not jeopardize the latter.

5. [1971] C.M.L.R. 631.
6. p. 657.
7. p. 658.
8. [1974] C.M.L.R. 127.
9. pp. 143, 144.
10. [1968] C.M.L.R. 47.
11. It is, however, submitted with respect that in the result Graham J.'s decision in *L'Wenbrau v. Grunhalle Lager International Ltd.* [1974] C.M.L.R. 1 is clearly right, though in some respects the reasoning is, perhaps, not altogether precise.
12. [1971] C.M.L.R. 260, at p. 273.
13. At p. 264.
14. BGHZ 60, 185 or, in English [1974] C.M.L.R. 21. The case is particularly interesting on account of the fact that the separate corporate personality of the subsidiaries was (very rightly) ignored.
15. *Milch-, Fett- und Eirkontor GmbH v. Hauptzollamt Saarbrücken* [1969] C.M.L.R. 400.
16. For instance Ipsen, *loc. cit.*, p. 770.
17. *Cf. Anisminic Ltd. v. Foreign Compensation Commission* [1969] A.C. 147.
18. The Listener, Oct. 31, 1974, p. 560.
19. *Bulmer v. Bollinger* (1974) 2 All E.R. 1226, at p. 1235 *per* Lord Denning, a most welcome decision which, it is hoped, will have great influence on the Continent.
20. Case No. 16/74, not yet reported, decided Oct. 31, 1974.
21. Case No. 15/74, not yet reported, decided Oct. 31, 1974.
22. Feb. 29, 1968, BGHZ 49, 331 at 334.

## After The Technology Transfer Agreement

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approach. We should always take as a guideline the most sophisticated ideal process and work our way back toward