Transfer of Technology to China

Team effort, strict adherence to certain "rules" can result in agreement; author explains steps

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Licensing into The Peoples' Republic of China is a very time consuming enterprise. In the first instance, it is necessary to establish some link or communication with the authorities in the Peoples' Republic of China. Appreciating that this country is a Socialist State, import and export functions are controlled by the State through a number of Ministries and Trading Corporations.[1] It would be necessary for the organization wishing to license into The Peoples' Republic of China to identify that Trading Corporation responsible for the import and export function of the goods and services to be sold to China.

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The first issue of every licensee is to make the initial link or contact. Four means of achieving this are:

1. Establish a joint venture with an organization which has previously licensed successfully into The Peoples' Republic of China. Certain Japanese Trading Corporations[2] have had extensive experience. The Canadian experience, which has taken place since this diplomatic recognition with China several years ago, now permits access to China with the aid of the Department of Industry, Trade and Commerce (ITC)[3] or experienced Canadian Enterprises. These organizations can thus be used as intermediaries.

2. Define the appropriate Trading Organization responsible for the licensee's goods and services and write a letter to that organization in Peking. In the United States, The Peoples' Republic of China has established a commercial Liaison Office in Washington, D.C. and initial information may be obtained from that office as to the appropriate identity of the Trading Organization. Alternatively, the information may be obtained from the embassy of The Peoples' Republic of China in Ottawa, Canada. For corporations with wholly-owned subsidiaries in Canada, it is more appropriate for the subsidiary to make communication with the Chinese Embassy in Ottawa. While initiating the correspondence to Peking, a carbon copy thereof should be sent as "liaison", to the Trade Consulate or Embassy of the Peoples' Republic of China first communicated with. A period of gestation should be permitted. If no reply is heard within reasonable time, a reminder letter should be sent, including a request for an invitation to the Canton Fair.

3. In some instances, The Peoples' Republic of China have identified their own need and also potential free-world suppliers and will have made direct communication, on their own initiative, to a potential vendor. These initiatives are not common. More likely direct communication would be initiated during a Chinese trading mission to Canada if ITC were aware of one's export desires.

4. One cannot market to China in the usual sense, for all imports are state controlled. Thus, one of the great problems one has is ascertaining the magnitude of the China market for a particular product. There are no published statistics, by industrial sector, available as we know the word "statistic". One is forced to "shadow box". Though the Chinese economy is planned in essentially five-year segments, specific details of the plan are also no help. The published reports deal in generalities and percentages.

CONFIRMING THE LINK AND ESTABLISHING THE DIALOGUE

Once the link is established it is necessary to confirm this link and to establish the dialogue. This will inevitably require personal visits to Peking at some stage in the licensing negotiation. The licensing negotiation will be protracted, in comparison to Western licensing techniques. The licensing organization should establish a permanent team and a budget and also give authority to persons to enter the discussions with the Chinese on its behalf. This licensing team should include a top technical person in the field of technology to be sold, because the Chinese are extremely anxious to deal with qualified technical persons. The team should also include senior or strongly intermediate management technically oriented persons. A lawyer with extensive licensing experience is almost a must and certainly a major asset. The team should include at least two and probably no more than five persons. They should be persons who will be with your organization for some while, because the team should not be broken up during the negotiation period, which will extend over many months.

The Chinese are anxious to insure the integrity of the individuals with whom they deal, because they interpret this as a display of the corporate integrity. In the United States, export restrictions on technology to certain countries prevail, so an application to the State Department for permission to export this technology should be instituted at the time the first letter is remitted to the Chinese The Chinese do not want to enter into discussion with an or-

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ganization if export of the technology may be refused by the government. In Canada, those organizations wishing to license into China should discuss the matter with the ITC in Ottawa so the department can advise the Chinese of the status of the organization and its ability to supply the product and service to the Chinese.

Exchange Visits

In all probability not only will a vist to Peking be required by the team, but the Chinese will want to send a team of experts to the licensor's plant to satisfy themselves of the capacity to fulfill the proposed agreement. These exchange visits normally take place during the process of negotiations and almost always prior to a license or sale agreement being executed.

During these negotiations, the licensing team should have full flexibility to move on three or four days' notice to Peking for discussions, and one should plan to stay in Peking at least 10 days. As such, passports and vaccinations should be completed as soon as the team is designated. For American citizens, it has been necessary to travel to Hong Kong and obtain a visa in Hong Kong for travel in China. For Canadians, visas are obtained prior to departure from Canada through the services of the Department of External Affairs, Ottawa. While in Peking the team may freely cable or telephone home for instructions. All telephone and cable calls are paid cash in China. Therefore, the team should take Traveller's Cheques drawn on any non-U.S. banking organization, either in Canadian or U.S. dollars, Sterling or other hard currency.

THE LICENSE

The Chinese will comply in strict accordance with the licensing or sale terms. Therefore, extreme care and precision should be taken in the formulation of the terms of the license agreement. One must be sure he can meet the terms and conditions in China. Make sure time periods are long enough. Work stoppage clauses due to strikes are not liked by the Chinese. One must be prepared to allow the Chinese to export into world markets products produced under the license.

In our terminology the license agreements are framed essentially as "know-how" agreements and not one based on monopoly positions, such as patents and trademarks. For foreigners, no patents may be obtained in China. "Chinese" patents are only available to Chinese nationals. On the other hand, trademark protection is available for Canadian enterprises in Canada but not American enterprises.[4] (China does pursue an active international trademark policy.)

The Chinese will provide English translators, but it is helpful to have a Chinese-speaking person on the team, because there may be difficulty in translating certain concepts of the license into terminology appropriately understood by the Chinese and defining the rights between the parties. The Chinese will pay in hard currency of any country of the World and deposit the same as the license may require. In most instances, royalty payments, as such, are not desired in the license agreement, but the royalties should be capitalized and converted into capital payments. In a licensing agreement, the Chinese are anxious to also provide for some kind of technological renewal or updating and in fact are desirous of purchasing or acquiring "threshold" technology.

In certain instances under the purchase arrangement, the licensor will be asked for terms. This should be approached delicately for only recently have the Chinese consented to pay interest on the unpaid capital during the payment schedule.

DRESS AND DECORUM

Dress and decorum in China are extremely important. Visitors should be prepared to attend all functions in casual clothes (no suits and ties), as both work and dinner invitations take place in this environment. All restaurants provide Western-style or Chinese-style food, and one is encouraged when eating Chinese food to use chop sticks. This is interpreted as a desire to understand and accomodate to the Chinese way of life while in China. Chinese brews, wines, and distilled beverages are of the highest calibre.

BIBLIOGRAPHY

1. National Organizations of Foreign Trade and Organizations of other Foreign Business of the Peoples' Republic of China; available from the Embassy, Peoples' Republic of China, Ottawa.

2. Case History: Licensing to China, Sherman J. Kemmer, Les Nouvelles, March, 1975, Page 22.

3. Markets for Canadian Exporters: The Peoples' Republic of China, Information Canada, Ottawa, Ontario.

4. Trade Mark Regulations of The Peoples' Republic of China. Industrial Property, January, 1974, WIPO, Geneva, Switzerland.