

Prospects for Business With China

Report on steps the PRC is taking to encourage foreign investment and technology transfer; open policy promoted

BY SHEN YAOZENG*

The acquisition of foreign funds and importation of foreign technology are basic factors in the implementation of the state policy of opening to the outside world in China. These factors are vital for the achievement of economic growth and stability. With China's Patent Law, entering into force on April 1, 1985, and with the increased momentum of strengthening relations with foreign nations, it is expected that the need for foreign funds and the importation of foreign advanced technology will also become greater.

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CURRENT APPLICATION OF FOREIGN FUNDS AND IMPORTATION OF FOREIGN TECHNOLOGY IN CHINA

China is a developing socialist country which has been hampered in its economic development by insufficient funds and levels of technology that lag behind those of other developed nations.

However, in order to accelerate the four modernization programs, especially to ensure quadruple growth in industrial and agricultural production by the year 2000, China must continue to make ever-greater efforts herself and also maintain an adequate supply of foreign funds and technology.

Over the past several years, appropriate measures have been taken by our government to change previous closed-door economic patterns and carry into effect the open policy. The introduction of foreign funds and foreign technology have been encouraged. We have accumulated valuable experience through practical work, and have also enacted various economic laws and regulations in an attempt to restructure our national economic institutions.

The foreign funds being used during the six years up to 1984, following Third Plenary Session of the 11th Chinese Communist Party Central Committee amounted to US \$17.26 billion. Foreign funds have been acquired in two ways: foreign loans are obtained both from foreign government and international financing institution, in addition to export credit funds provided by foreign commercial banks. Another way is the investments directly from

foreign enterprises or trading companies.

The following are the several main types of such investments:

Corporate Management Through Limited Joint Ventures (Equity Joint Venture)

Joint-venture businesses are established in accordance with the "Law of the People's Republic of China on Chinese Joint Ventures" with funds provided by both the Chinese and foreign partners. Because the rights and interests of both parties are determined by the amount invested, the number of these corporations increases rapidly. There were 741 joint ventures registered in 1984, more than the total number of joint ventures registered over the past five years.

Joint Enterprises Involving China and Foreign Investors (Contractual Joint Venture)

These are established by agreement. Such ventures imply that while China provides the necessary land, natural resources, labor, buildings and other facilities, foreign investors provide the funds, technology, capital facilities and materials.

The profit ratio and manufacturing allotment are specifically prescribed by the agreement.

Several methods of management are at present available for these joint enterprises, and there is some flexibility in the way of selecting the form of enterprise. But of prime importance is the requirement that the principal and interest be repaid to foreign investors.

Since 1984, joint enterprises involving China and foreign investors have been developing rapidly. There are at present 1,372 such type of enterprises representing in total US\$3.48 billion in foreign investment.

Corporations With Sole Foreign Capital

This type of corporation is operated solely with funds provided by a foreign company that manages it independently. Those established in the Sheng-Zhen special economic zone can be cited as typical examples. There were 53 such corporations by the end of June 1984, representing US\$0.38 billion in foreign investments.

Compensation Trade

Generally, foreign companies provide machines and equipment and technology themselves or import machine and technology by using foreign export credit loans, while Chinese enterprises operate and manage the actual production process. The compensation principle is that the products manufactured by using the relevant production technology, equipment, and facilities are subsequently sold to the counterpart in the joint enterprise as compensation.

*Deputy Director General, Chinese Patent Office, Beijing; paper presented at LES International Conference, Tokyo, 1985.

When it is not possible to compensate directly with the products produced, compensation could also be made with other products instead. There were 1,137 such compensation trade agreements recorded as of the end of June 1984, and the facilities provided through the use of foreign funds valued at US\$0.87 billion.

In addition, several joint enterprises, including the China and Foreign Firm Sea Bottom Petroleum Resources Joint Development Corporation, have been established based on leaseholds. China has accumulated a number of experiences in this field.

In all instances where foreign funds are used, the problem of importation of foreign technology exists. This means that an individual project includes consultations on items concerning technical implementation. For example, there are technology transfer consultations, licensing trade consultations, and technical service consultations. All of these eventually link the use of foreign funds with the exploitation of foreign technology.

Promote Cooperation

For the smooth implementation of the policy of opening to the outside world, the Chinese Government has strived to enact economic laws that help promote cooperation with foreign nations. Since 1979, more than 40 laws and regulations concerning economic cooperation with foreign nations have been promulgated.

They include those that are related to China in its relation to foreign investors, joint enterprises, the development of petroleum resources, income taxes, labor and wage management, administration and management of industry and commerce, foreign exchange controls, customs, commodity inspection, financing, trademarks, patent protection, special economic zones and economic contracts with foreign investors. These laws and regulations are positive factors in the elimination of anxiety on the part of foreign investors and in the promotion of foreign investment in China.

THE ROLE OF THE PATENT SYSTEM IN ATTRACTING FOREIGN FUNDS AND TECHNOLOGY

The establishment of the patent system in China is an important sign showing our firm determination in the implementation of the policy of opening to the outside world. China recently promulgated the Implementing Regulations of the Patent Law, and on March 19, 1985, it became a member of the Paris Convention for the Protection of Industrial Property.

Since April 1 this year, the Chinese Patent Office has begun to accept patent applications from both domestic and foreign applicants. The new patent administration system has been put on firm foundations, including those relating to enforcement of patent law, technical examination, documentation services, registration of agencies, patent working, training, publication, and so forth.

The following are the brief statistics of the patent applications since the enforcement of the Patent Law on April 1. In the first place, the number of applications received reflects the enthusiastic response both from the country and abroad. The Chinese Patent Office received altogether 3,455 applications for patents on the first day.

Among them, 2,485 were filed by Chinese units as well

as individuals, constituting 71.9% of the total, while 970 were filed by foreign applicants through three designated foreign-related patent agencies that make up 28.1%. By the end of May 18, applications increased to 5,307, in which foreign applications constitute 27.8% of the total.

Of the three subject matters of patents, namely, patent for inventions, utility models and industrial designs, foreign applications for patent for inventions make up 38% of the total. It is worthy of note that the countries in order of their proportion to applications filed, Japan is first, U.S.A. is second, and the third is Federal Republic of Germany.

Examination Procedure

In the second place, examination procedure has been already under way in the Chinese Patent Office. Requests for examination as to substance were made by more than 10% of the applicants who filed applications for patent for inventions. Therefore, the responsible departments of examination are at present not only fully engaged in the examination as to formality but also busy in carrying out examination as to substance. The goal toward which effort is directed by us is that the first batch of the Chinese patents granted including inventions, utility models and industrial designs will be published before the end of this year. This may augur a good start of the implementation of Chinese Patent Law.

China has made strides in enabling its newly established patent system to play an important role in creating a favorable environment for foreign technology holders and investors. First, the patent law defines clearly the rights and obligations of the patent owners. Thus, to make patented technology transfers possible, various basic legal considerations have been established.

As stipulated in Article 11 of the Chinese Patent Law, no entity or individual may, without the authorization of the patentee, exploit the patent; that is make, use or sell the patented product, or use the patented process for production or business purposes.

Also, as stipulated in Article 12 of the Chinese Patent Law, any entity or individual exploiting the patent must conclude with the patentee a written license contract for exploitation, and pay the patentee a fee for the exploitation of the patent. The licensee has no right to authorize any entity or individual, other than that referred to in the contract for exploitation, to exploit the patent. Moreover, the patent law attaches great importance to the protection of patent rights. In the event an infringement of patent rights arises, the patent owners are entitled either to appeal to the administration authority for patent affairs to handle the matter or may directly institute legal proceedings in the people's court.

Expect Growth

We believe that under the patent law sufficient consideration is given to the lawful rights and interests of foreign patent owners. They have nothing to worry about regarding their patented technology and investment. Therefore, we expect that the number of patent applications at our Patent Office and the number of foreign investors will continue to increase and that technical transfers will be further promoted in the days to come.

In addition to these benefits, the protection of patent

rights will stimulate our engineers and technicians to work on new technological developments and expand technological applications. According to law, to obtain patent rights, the contents of a technical invention must be fully disclosed to the public. This may result in introducing from time to time the solutions and achievements in various fields of technology, thus laying a bridge to and from the patent holder for third parties interested in the invention.

In the course of the application of a patent, the patent holder shall also be able to provide important know-how related to the patented item by signing a licensing agreement, which will facilitate the application of the invention.

PROSPECT FOR THE USE OF FOREIGN FUNDS AND TECHNICAL DEVELOPMENTS IN CHINA

Some of our foreign friends fear that China's foreign policy may change sometime because they cannot sufficiently understand the meaning and significance of China's policy of opening to the outside world. We consider such misgivings to be unfounded. The policy of opening to the outside world characterizes China's long-term basic policy. Under the policy, China will ceaselessly make more efforts to use the foreign funds and enlarge the scale of technology transfer with the foreign countries.

China Has Positively Strived to Create an Excellent Investment Environment for Foreign Investors

Through the promulgation of economic laws and regulations, China has carried on all necessary institutional reforms, in order to meet positively its practical needs in modernization. For example, among the important economic legislation is that concerning Chinese and foreign contractual joint ventures, joint-development corporations, Chinese company organization, sole foreign capital enterprises, and technical transferring undertaking. In addition, there are some laws concerning foreign trading and the copyright protection also under drafting. Thus, a foreign-related economic law system with Chinese characteristics has been gradually formulated.

Another practical step to be taken is for China to negotiate agreements with the governments concerned to protect investments and to avoid double taxation. The Chinese Government so far has signed mutual investment agreements with Sweden, Romania, the Federal Republic of Germany, France, Belgium and Luxembourg.

The Chinese Government has also signed an investment and insurance agreement with the United States and Canada, having simultaneously signed an agreement with the United States to avoid double taxation. China is presently negotiating an investment-protection agreement with the United States, Japan and Sweden. These agreements have been designed to provide a sense of security and to strengthen the confidence of the citizens of the nations involved, although their investments, economic cooperation, and profits resulting from different types of economic cooperation are already legally guaranteed. These agreements have had a significant effect on the flow of foreign funds and technology to China.

Furthermore, the Chinese Government has spared no efforts in building up all basic facilities and to provide by all means the necessary materials to attract foreign investors. For example, ports, mail and telegram facilities,

railway transportation, power supply operations, hotels for tourist and residential areas for foreigners have been steadily developed.

Policies Formulated to Attract Foreign Investors

Special economic zones have been established in Sheng-zhen, Zhu-hai, Shantou, Xiamen, all of which are characterized by special economic policies and management systems. Fourteen coastal port cities also were opened to the outside world, including Shanghai, Tien-tsin, Dalian, Chingtao, Chin-huang Island and Hainan Island. It is now possible for foreigners to come to these cities freely with their investment and technology.

While commodities are produced with foreign technical innovations and factories built with foreign finances, it is not necessary that the construction of the factory and the products made be controlled and balanced by the State.

Each city mentioned above was given the freedom by the State to determine the amount of the principal to be repaid and interest to be paid to foreign investors, regardless of what amount of exports were allotted by the government. For example, the city of Shanghai or Tientsin can screen and approve any application for a joint business project of less than US\$30 million, Dalian and Kuangchou of less than US\$10 million, and the rest of the cities throughout the country can independently screen and approve a project application of less than US\$5 million.

For the items unaccompanied by the production of commodities, each city can freely raise funds, mainly by using foreign sources, to obtain the machines and equipment necessary for construction.

For the items that need not be balanced comprehensively by the State, the local governments can screen and approve any application strictly on their own, no matter how much the value of the investment. The projects mentioned above that are to be screened and approved by these cities after agreement has been made with the foreign counterpart concerning the import of the relevant facilities shall all be reported to higher authority and recorded as prescribed.

In addition, the following policy has been implemented with regards to the treatment of foreign investors who invest funds into these cities to run factories.

1. For a technical-knowledge-intensive project or a project with the amount of funds invested by foreigners being less than US\$30 million and for projects related to energy and transportation, the rate of corporate tax is reduced to 15%.

2. The following items are exempted from duties and commercial and industrial standardized taxes on imports: Production and management facilities and construction machines imported by China and limited foreign partnership corporations; China and foreign joint enterprises and corporations funded 100% by foreign capital; transport vehicles and office furnishings for China's use; imported raw materials and spare parts; and also basic materials for production.

3. The following items are exempted from export duties commercial and industrial standardization taxes: Products (excluding commodities restricted by the government) exported by China and foreign limited partnership corporations, by China and foreign joint enterprises, and by corporations funded 100% by foreign capital.

4. The products originated from the advanced produc-

tion technology and techniques provided for by the foreign firms that are part of the China and foreign limited partnership corporations, China and foreign joint enterprises, and corporations funded 100% by foreign capital can be marketed at home with a certain profit margin.

Further, should foreign companies invest in a special economic development zone in any of the 14 coastal port cities noted above to establish a productive enterprise or a scientific research institute, they will enjoy all the benefits under the investment regulations for the economic districts of the old cities, and the corporate tax will be reduced to 15%.

Moreover, income tax will be waived when these corporations attempt to remit legitimate profits income overseas, or corporations will be allowed to reinvest these profits in the economic development zones. For corporations whose restricted periods are not less than five years, the income tax for the reinvested funds will be repaid to the foreign investors.

The number of economic zones opened to foreigners have been steadily increasing, as have their facilities. The Chinese Government soon intends to expand the area

covered by open zones, so as to include all the coastal areas. Furthermore, it plans to gradually extend the economic zones inland. Thus, the prospect for China's use of foreign funds and technology is becoming brighter than ever.

Because China's political situation is stable and its natural resources as well as labor resources are abundant, the country's economy is developing at a good pace. All of these elements have contributed to the development of favorable conditions for foreign investors. In the past several years, especially since the institutional reforms of 1984, China has continued establishing a characteristically Chinese system of socialism. This has taken China beyond the initial efforts made to free the country's economic system from the shackles of the closed state into which the nation had developed.

We hope that not only many more foreign industrialists, companies, and corporations will invest in China and transfer their technological achievements to China, but also that the economic and technical cooperation between China and foreign nations worldwide may develop in greater degree on the basis of equality and mutual benefit.