

Law 337D: Seminar on Trade and Investment in the PRC
UBC Law Faculty
Fall 2010
Professor Pitman B. Potter
Syllabus

Class Meets Every Thursday at 9:30am in Room U 173.

This seminar is intended to provide students with an overview of law and policy in the People's Republic of China on trade and investment. The seminar also provides an opportunity for research, analysis, and writing on legal and policy issues of China trade and investment. The seminar will meet on weekly basis (Class Meets Every Thursday at 9:30 am in Room U 173). Each class session will include guided seminar discussion and student-led problem solving. Attendance and participation are mandatory. Students are expected to read and be prepared to discuss all of the required readings for each class.

Each student's grade for this seminar will be determined as follows:

20%: Class Participation (pass-fail).

80%: Research Paper completed by the student on a topic of PRC trade and investment law and/or policy. Student papers should demonstrate (1) understanding of the general legal and/or policy issues relevant to the paper topic; (2) substantial coverage of the secondary literature on the specific topic of the paper; (3) reliance on primary source materials relevant to the topic of the paper; (4) analysis through *inter alia* hypothesis, synthesis, and critique; and (5) appreciation of relevant methodologies for analysis of law and policy issues in China trade and investment.

The paper topic for each student shall be agreed between the student and the Instructor. Each paper shall run approximately 20 letter-sized typed pages (1.5 spaced). The paper length includes footnotes, but not a bibliography (however, a bibliography must be attached to the paper). Paper topics should be finalized by October 7. Preliminary outlines and bibliographies should be submitted in class October 28. Final papers shall be turned in at the last class on December 2.

Reading Materials:

Course Pack Materials at UBC Bookstore and on Law Library Reserve

Day, Kristen A., ed. China's Environment and the Challenge of Sustainable Development (Armonk NY: M.E. Sharpe, 2005).

"Special Issue: China's Legal System: New Developments, New Challenges," The China Quarterly No. 191 (September 2007).

Michael Mosher and Fu Yu, ed., Doing Business in China (looseleaf, hereafter, “Mosher and Yu”), on reserve.

Mertha, Andrew, The Politics of Piracy: Intellectual Property in Contemporary China (Ithaca and London: Cornell University Press, 2005).

United Nations Development Programme, China Human Development Report 2009/10: China and a Sustainable Future: Towards a Low Carbon Economy and Society (Beijing: China Translation and Publishing Corporation, 2010).

WTO Secretariat, “Trade Policy Review: China” (2010).

Zhang Xin, International Trade Regulation in China (Oxford and Portland: Hart Publishing, 2006).

“Interpretation on Several Issues Concerning the Application of the ‘PRC Contract Law’” (2009).

“China: News in Chinese Contract Law” (2009).

“Contract Law Interpretation to Help Foreign Companies” (2009).

“Property Rights Law of the PRC” (2007).

“Several Opinions of the State Council on Further Improving the Work of Using Foreign Investment” (2010).

I. Introduction September 9, 2010

Stanley B. Lubman, “The Environment for Foreign Business in China: Two Decades of Progress, Continuing Uncertainties,” in Mosher and Yu.

Issues

- Prospects and challenges for foreign business in China.
- What kinds of foreign business are most appropriate and why?

II. Contracts and Property September 16, 2010.

“Contract Law of the PRC” (1999), in Materials.

“UN Convention on Contracts for the International Sale of Goods” (1980), in Materials.

Pitman B. Potter, “Contract Law,” (rev. 2008) in Mosher and Yu pp. I-7.2.1 -- I-7.2.49.

“Interpretation on Several Issues Concerning the Application of the ‘PRC Contract Law’” (2009), in Materials.

“China: News in Chinese Contract Law” (2009), in Materials.

“Contract Law Interpretation to Help Foreign Companies” (2009), in Materials.

“Property Rights Law of the PRC” (2007), in Materials.

“最高人民法院¹关于审理物业服务纠纷案件具体应用法律若干问题的解释”

“Interpretation of the Supreme People’s Court on Several Issues Regarding the Specific Application of Laws in Hearing the Property Service Dispute Cases” (2009), in Materials.

Issues

- Parties.
- Formation of contract and property relations (approvals).
- Performance.
- Remedies.
- WTO issues.

III. China and the WTO September 23, 2010.

Guest Presenter: Euan Taylor, head of Davis LLP's Patent Practice Group and an active member of the firm's [China & Southeast Asia](#) Practice Group.

WTO, “Draft Protocol on the Accession of the People’s Republic of China” (2001), in Materials.

Donald C. Clarke, “China and the World Trade Organization,” in Mosher and Yu.

Bjorn Ahl, “Chinese Law and International Treaties” Hong Kong Law Journal (2009), in Materials.

Issues

- Implications for legal and regulatory systems.
- Interpretation and enforcement of shared rules.
- Compliance standards.

IV. Trade September 30, 2010.

Jingzhou Tao, “General Introduction,” in Mosher and Yu.

Xin Zhang, International Trade Regulation in China (Oxford and Portland: Hart Publishing 2006), Parts I - II.

“Foreign Trade Law of the PRC” (1994, rev. 2004), in Materials.

Issues

- Trade regulation.
- MOFCOM and related institutions.
- Import and export licensing.
- GATT issues: subsidies, dumping, discrimination.
- WTO compliance issues.

V. Introduction to Foreign Investment // Foreign Representative Offices October 7, 2010.

NB: Paper topics to be finalized.

“Several Opinions of the State Council on Further Improving the Work of Using Foreign Investment” (2010), in Materials.

“Regulations on Foreign Investment Guidelines” (2002), in Materials.

“Guiding Catalogue of Industries for Foreign Investment” (2007), in Materials.

Sally Harpole, “Representative Offices,” in Mosher and Yu pp. II.1.1 – II.1.27.

Issues

- Characteristics of investment (FDI, portfolio, etc.)
- Formation and business activities of foreign representative offices.
- Policy tensions between host and source countries.
- Regulatory perspectives: inducement and control
- Investment Guidance Policies.
- WTO issues.
- Foreign Representative Offices.

VI. Foreign Investment in Financial Services October 14, 2010.

**Guest Presenter: Martin Donner, Chair of the Asia Practice Group, Borden
Ladner Gervais LLP**

Andrew Godwin, “Foreign Banking in China,” in Mosher and Yu pp. V-12.1 -- V-12.57.

“Law of the PRC on Commercial Banks” (1995, rev. 2003), in Materials.

“Regulations of the PRC on Administration of Foreign-invested Banks” (2006), in Materials.

“Implementation Regulations for the Regulations of the PRC on the Administration of Foreign-funded Banks” (2006), in Materials.

Issues

- Holding Companies.
- Securities.
- Banking.

VII. FIEs: Joint Ventures, Cooperative Enterprises, and WFOEs

October 21, 2010.

Clark T. Randt, “Joint Ventures,” in Mosher and Yu.

Randall Peerenboom, “Wholly Foreign-Owned Enterprises,” in Mosher and Yu pp. II-3.1. – II.3.25.

“Company Law of the PRC” (1994, rev. 2005), in Materials.

“Law on Sino-Foreign Joint Equity Enterprises” (rev. 2001), in Materials.

“Regulations for the Implementation of the Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment” (2001), in Materials.

“Law on Sino-Foreign Cooperative Enterprises” (rev. 2000), in Materials.

“Detailed Implementing Rules on Sino Foreign Cooperative Enterprises” (1995), in Materials.

“Wholly Foreign-Owned Enterprise Law” (rev. 2001), in Materials.

“Implementing Rules for China's Law on Wholly Foreign-Owned Enterprises” (rev. 2001), in Materials.

“Notice of Ministry of Commerce on Further Improving Examination and Approval of Foreign Investments” (2009), in Materials.

“Security Review Further Obstacle to M&As” China Law & Practice (April 2010), in Materials.

Issues

- Company Law.

- Establishment and operation of FIEs
- Management; oversight and control; accounting; regulatory requirements.
- WTO issues // TRIMs.

VIII. Technology Transfer and Intellectual Property Protection

October 28, 2010.

NB: Paper preliminary outlines and bibliographies due.

WTO Working Group on the Relationship between Trade and Investment (WGTI), “Key Issues Concerning Foreign Direct Investment and the Transfer and Diffusion of Technology to Developing Countries,” Note by the WGTI Secretariat (2002), in Materials.

“Administration of Technology Import and Export Regulations of the PRC” (2001), in Materials.

Li Yongfu, “Technology Transfer/Assistance,” in Mosher and Yu.

Laura Wen-yu Young, “Intellectual Property Law,” in Mosher and Yu.

PRC Copyright Law (rev. 2010), in Materials.

Issues

- Form and context for technology transfer.
- Regulatory requirements.
- Intellectual property protection.

IX. Foreign Exchange November 4, 2010.

Tom Jones, “Foreign Exchange Control” in Mosher and Yu.

“Detailed Rules for the Implementation of the Administrative Measure on Security Given to Foreign Parties by Domestic Institutions” (1997), in Materials.

“Foreign Exchange Control Regulations of the PRC (rev. 2008), in Materials.

“Administrative Measures on Security Given to Foreign Parties by Domestic Institutions” (1996), in Materials.

“Circular of the State Administration of Foreign Exchange on Relevant Issues Concerning the Management of Domestic Foreign Exchange Accounts of Overseas Institutions (2009)”, in Materials.

Issues

- Foreign exchange balancing.
- Forex guarantees.
- WTO issues.

X. Taxation November 11, 2010.

Sabina Stricker-Kellerer, “Taxation of Foreign Companies in China,” in Mosher and Yu, pp. III-3.1.1 – III-3.1.37.

“PRC Enterprise Income Tax Law” (2008), in Materials.

“Implementing Regulations for PRC Enterprise Income Tax Law” (2008), in Materials.

“Agreement between the Government of Canada and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income” (1986), in Materials.

“A New Tax Revolution” (2009), in Materials.

“Implementing Rules for the PRC Tentative Regulations on Business Tax (Revised)” (2009), in Materials.

Issues

- Taxation of foreign business enterprises.
- Other taxes.
- Tax treaties.
- WTO issues.

XI. Corporate Social Responsibility November 18, 2010.

International Law Association, “New Delhi Declaration of Principles of International Law Relating to Sustainable Development” (Resolution 3/2002 adopted at the 70th Conference of the International Law Association, April 2-6, 2002), in Materials.

Xu Zhongmin, Guodong Cheng, Dongjin Chen, Paul Hl. Templet, “Economic diversity, developmental capacity, and sustainable development in China,” Ecological Economics vol. 40 (2002), pp. 369-378, in Materials.

“Labor Contract Law of the People’s Republic of China” (2007), in Materials.

“Law of the People’s Republic of China on Mediation and Arbitration of Labor Disputes” (2007), in Materials.

Pitman B. Potter, “Coordinating Corporate Governance and Corporate Social Responsibility” in Hong Kong Law Journal vol. 39 no. 3 (2009).

Issues

- Labor relations
- Corporate Social Responsibility and regulation.

XII. Dispute Resolution November 23, 2010.(NB date change).

Eu Jin Chua and Katherine Sanger, “Arbitration in the PRC,” China Law & Practice vol. 19 no. 4 (May 2005), pp. 19-21, in Materials.

“Civil Procedure Law of the PRC” (rev. 2007), in Materials.

Michael Moser, “Foreign Arbitration,” in Mosher and Yu.

“Arbitration Law of the PRC” (1995), in Materials.

“Interpretation of the Supreme People’s Court on Certain Issues relating to the Application of the ‘Arbitration Law of the PRC’,” in Materials.

“China International Economic and Trade Arbitration Commission Arbitration Rules” (2005), in Materials.

Randall Peerenboom, “Enforcement of Arbitral Awards,” in Mosher and Yu.

Issues

- Forms of dispute resolution.
- Enforcement of judgments and arbitral awards.
- WTO issues.

XIII. China’s Invest Abroad Program November 25, 2010. (NB date change.)

NB: Papers Due.

“Circular of the State Administration of Foreign Exchange on Issuing the Regulations on Foreign Exchange Administration of the Overseas Direct Investment of Domestic Institutions” (2009), in Materials.

“Measures for the Administration of Overseas Investment” (2009), in Materials.

“Measures for Administration of the Qualification for Contracting Overseas Projects” (2009), in Materials.

“Notice of NDRC on Issues Relating to Improving Administration of Overseas Investment Projects” (2009), in Materials.

“Provisions on Foreign Exchange Administration of Outward Direct Investment by Domestic Institutions” (2009), in Materials.

“Notice of SAFE on Certain Issues Relating to Foreign Exchange Administration on Offshore Lending by Domestic Enterprises” (2009), in Materials.

Michael Tan, “Chinese Overseas Investment Summarised,” China Law and Practice (February 2010), in Materials.

“Measures for the Administration of Taxation on Representative Offices of Foreign Enterprises” (2010), in Materials.

Other materials.

Issues

- Mechanisms for China’s investments abroad.
- Issues and approaches.