

• **Training Column** - by AmCham Training Staff.

We also hope to publish a number of new features. They include:

- **Newcomers** - to introduce new AmCham members.
- **Members Forum** - a letters to the editor column.
- **Committee Reports** - items from committee meetings.
- **Embassy Information** - relevant information from the embassy's Commercial, Economic and Citizen Services sections.
- **Calendar Of Events**-- to highlight both AmCham and other business community activities.
- **Looking At Us** - a look at Americans and foreign businesses culled from Chinese newspapers.
- **AmCham Roundup** - information from the AmChams in Hong Kong and Shanghai and the U.S. business association in Guangzhou.
- **The AmCham Pollster** - a list of questions for members to answer and fax back to the AmCham Public Affairs & Public Policy Committee.
- **Classified Advertisements** - at the modest cost of \$5 a line with four standard sizes -- five lines for \$25; ten lines for \$50; 15 lines for \$75; 20 lines for \$100.

A faxed announcement will give more details on the classified advertisements. Any suggestions from members on other ways to improve the newsletter, and offers of assistance, are welcome.

### IPR Agreement Text

AmCham has received a full text of the U. S.-China IPR agreement. Members who would like a copy of the 27-page document may pick one up at the AmCham office.

## 1995 AmCham Training Schedule

AmCham is offering a wide range of training seminars for 1995, so please sign up as soon as possible to allow time to plan additional programs. We have excellent trainers and have received many plaudits on the benefits to students. Please call the AmCham office for details.

### Telephone English

Cost \$300  
March 15 & 17  
April 25 & 27  
June 13 & 15  
December 12 & 14

### Secretarial Seminar

Cost \$500  
March 21, 23, 24, 28, 30  
April 11, 13, 14, 18, 20  
May 9, 11, 12, 16, 18  
May 30, June 1, 2, 6, 8  
September 5, 7, 8, 12, 14  
September 19, 21, 22, 26, 28  
October 10, 12, 13, 17, 19  
October 21, November 2, 3, 7, 9  
Nov. 28, 30, December 1, 5, 7

### Mercer Programs

Cost \$350 (members)

### Effective English Communication

April 12 & 14

### Problem Solving and Decision Making

May 24 & 26

### Sales and Marketing

September 6 & 8

### Presentation Skills

October 11 & 13

### Effective Supervision

November 22 & 24

## Beijing Hotel Room Shortage Alert

From August 30 through September 15, the U.N. World Conference on Women and parallel NGO Forum will be in Beijing. Reports estimate that some 60,000 delegates will participate. To make room for the delegation, Chinese government conference planners have issued a *Hong tou wen jian*, an official order, to all four- and five-star hotels in Beijing, virtually blocking 60 percent of their rooms for conference use from August 27 to September 17.

## 1995 AmCham Board of Governors

### Chairman

William Warwick

### Vice Chairman

Phil Carmichael

### Vice President - Administration

Johnny Chen

### Vice President - Programs & Activities

Dian Terry

### Vice President - Treasurer

Wade Loo

### Board of Governors

Mei Wei Cheng

Charles Hamrick

Diane Holzmann

Darien Hsu

Karen Kiely

John Law

James McGregor

Dave Prindiville

John Sullivan

William Yu

# BEIJING TIMES

American Chamber of Commerce  
People's Republic of China - Beijing

Vol. 3 No. 2  
March 1995

## A View From the Chairman

By William Warwick  
AmCham Chairman

The most significant development over the past month was the Super 301 Intellectual Property Rights agreement reached between China and the U.S. in the early morning hours on Sunday, February 26 and signed late that same evening. By any measure, the agreement is a win for both the U.S. and China. It clearly demonstrates that the two countries can successfully resolve, through negotiations, difficult and complex issues in an atmosphere of mutual respect and equality. This agreement coupled with unconditional renewal of MFN in 1994 provides a foundation for further development of commercial relationships between China and the U.S. A broad, positive engagement across the commercial front helps to create a good climate for U.S. businesses operations in China.

The agreement addresses enforcement of IPR and market access for the film and music industries. It is my understanding that this is the most detailed agreement of any USTR has negotiated regarding IPR protection. Even so, execution requires diligence by both parties.

Negotiators from both nations deserve our congratulations and appreciation for reaching a meaningful and timely agreement. Now, we the members of AmCham can focus on doing our part -- pursuing our individual business opportunities in China in a more positive climate for commercial relationships than would have been the case in the absence of an agreement.

On the AmCham operational side, this issue tested our processes for developing AmCham positions on public policy issues. The learning will be applied to addressing future public policy issues.

*This column reflects the personal view of AmCham's chairman and does not represent AmCham policy.*

## Board Report February 22 Meeting

At its February 22 meeting, the AmCham Board of Governors heard reports from newly formed AmCham Committees for 1995. (More detailed information on various committee activities is reported in separate articles in this issue of the *Beijing Times*.)

The Public Policy & Public Affairs Committee reported the results of its recent poll on IPR protection

issues. (See page 5.) The Committee also described its plans for seeking Am-Cham member input to develop public positions on a number of upcoming issues. Plans include regular member polling through the *Beijing Times*.

The Membership Committee reported that more than 100 members had not yet renewed their memberships for 1995. The Board agreed to assist the committee by personally contacting members who had not responded to previously faxed renewal notices.

The Board approved a proposal by the Editorial Committee to create a classified advertising section as a service to members.

A proposal from the U.S. Embassy to establish an Overseas Security Advisory Counsel (OSAC) Country Counsel in China was tabled by the Board until the next meeting when the new Embassy Security Officer has been invited to discuss the role and function of such a counsel.

## Beijing AreaCode Changes This Month

From March 26, 1995, the Beijing telephone city code will change from "1" to "10." The new Beijing area code will be "8610."

## Legal Briefs

The following brief summaries of new legal developments are abridged from Baker & McKenzie's quarterly publication, *The China Legal Developments Bulletin*.

### New Advertising Law Described

The Advertising Law of the People's Republic of China entered into effect on February 1, 1995. The Law applies to advertisers, advertising businesses and publishers. Some of the general requirements for advertisements under the new law follow.

Advertisements are required to be distinctive and enable consumers to recognize them as advertisements. Tobacco advertisements are prohibited on radio or television, in motion pictures, in newspapers or periodicals, and in cinemas or other public places.

Advertisements may not:

- contain false information or deceive or mislead consumers;
- contain obscene, superstitious, frightening, violent or repulsive contents;
- discriminate by ethnic group, race, religion or sex; and
- depreciate the merchandise or services of other producers and business operators.

Advertisements involving patented products or processes are required to indicate the relevant patent numbers and classifications. Advertisements for pharmaceuticals and medical apparatus may not specify a cure or efficacy rate or contrast the efficacy or safety of competing products.

Medical product advertisements are required to be examined by the authorities in charge prior to being published.

Advertisers may only advertise products or services within their approved scope of business. Advertisers are required to conclude written contracts with advertising businesses and/or publishers. An advertiser must possess a supporting document issued

## Mark Your Calendar

**Ambassador's Briefing**  
Tuesday, March 14  
4 p.m. - U.S. Embassy  
(Bring your Passports)

**Board of Governors Meeting**  
Wednesday, March 15  
4-6 p.m. - Capital Club

**Legal Eagles**  
Update on New Laws  
John Sullivan et al  
Wednesday, March 22  
Luncheon - Location TBD  
(Watch your FAX)

**Undersecretary of Commerce**  
Jeffrey Garten  
Week of March 27  
(Watch your FAX)

### FUTURE 1995 PROGRAMS

**Future Shock**  
Look at what's ahead for China

**Taxing Matters**  
Update on China taxes, customs

**Money, Money, Money**  
Banking Update

by a quality inspection institution for the quality of merchandise advertised. Advertisers bear civil liability towards consumers for false or deceiving advertising. Advertising businesses and publishers bear full civil liability if they cannot provide the real names and addresses of advertisers upon request.

### New IP Developments

Stepping away from the glare of Super 301 issues for a moment, there have recently been several noteworthy innovations to China's intellectual property regime.

### Copyright Registrations

Trial Measures for the Voluntary Registration of Literary and Artistic Works were issued by the State Copyright Bureau on December 12, 1994 and entered into effect on January 1, 1995. The Measures introduce a system whereby copyright owners may register their works and use such registration as evidence of ownership in handling enforcement actions or in other matters.

However, the Measures make very clear that failure to register will not affect the automatic protection of copyrights provided under China's existing copyright laws. The Measures apply to audio and video products by reference, but not to computer software.

The State Copyright Bureau in Beijing will be responsible for the registration of copyrights involving foreign parties and parties from Hong Kong, Taiwan and Macau. Applicants for registration may be authors, other individuals or legal persons holding copyrights, owners of exclusive rights, or their agents. Applicants are required to submit an application form and fee, proof of identifi-

cation, evidence of copyright ownership (such as duplicates of cover pages, copies or photos of original manuscripts, models etc.), and other relevant evidence such as copies of contracts for entrustment or exclusive rights. Registration authorities must decide on an application within one month of submission.

#### ***Customs Cooperation With Infringements***

An urgent notice was dispatched by the General Administration of Customs on December 7, 1994. The notice instructs customs authorities to cooperate with administrative authorities responsible for intellectual property. Specifically, it requires customs offices to promptly inform the relevant intellectual property authorities of the situations of infringing goods bound for entry or exit. Customs is required to carry out the seizure of goods in cases where seizure has been ordered by a People's court. In cases where customs officials are unable to seize goods on the basis of existing customs regulations, they may confer with the relevant intellectual property department to arrange for seizure. Previously, cooperation between customs offices and the intellectual property authorities has been very limited.

#### ***Collective Trademarks and Certification Trademarks***

China will accept applications for the registration of both collective trademarks and certification trademarks for the first time starting on March 1, 1995. In this connection, the Trademark Office of the State Administration for Industry and Commerce recently issued Measures for the Registration and Control of Collective Trademarks and Certification Trademarks.

Parties may register collective and certification trademarks in accordance with the requirements and procedures generally applicable to trademarks as set out in the Trademark Law and its Detailed Implementing Rules. In the case of certification marks, applicants must, in addition to the standard submission documents, also provide an explanation issued by the relevant department in charge confirming the relevant abilities of the applicant to supervise, inspect, monitor appraise etc., goods or services.

Rules for control over the use of collective and certification marks must also be submitted. Rules must include details on:

- purpose for using the mark;
- in the case of collective marks, the members using the mark;
- quality and special characteristics of the relevant goods or services;
- conditions for using the mark;
- formalities for using the mark; and
- rights, obligations and liabilities of users of the mark.

Any amendments to rules for either collective or certification marks must be approved by the Trademark Office and will not take effect until the date of official announcement. Owners of certification marks are required to notify the Trademark Office of details of new users within one month. The Trademark Office in turn will publicize the details of new users.

#### ***Fair Trade Bureau***

China recently established a Fair Trade Bureau (*gongping jiao yi chu*) within the State Administration for Industry and Commerce. The Fair Trade

Bureau has the same level of administrative status within the SAIC as does the Trademark Office. The general mandate of the Bureau is to coordinate unfair competition work, including handling specific matters arising from provisions in the Law of the People's Republic of China Against Unfair Competition (1993). It is expected that the Fair Trade Bureau will eventually establish its own network of local fair trade offices.

#### ***Pilot Arbitration Commissions***

It has been reported that seven cities, with approval from the State Council, are organizing pilot arbitration commissions in accordance with the new requirements of the Arbitration Law of the People's Republic of China (scheduled to enter into effect on September 1, 1995). The seven cities are Beijing, Tianjin, Shanghai, Guangzhou, Shenzhen, Xi'an and Hohhot. The Arbitration Law requires all existing domestic arbitration commissions, presently established within administrations for industry and commerce or under science and technology commissions, to be reorganized within one year into completely independent bodies.

Foreign investment enterprises that elect for arbitration to govern their contracts with other Chinese legal persons are subject to the domestic arbitration regime. The Arbitration Law requires parties to domestic arbitration to specify a commission in their arbitration agreement, although parties may choose a commission in any city. The pilot arbitration commissions will likely play a key role during the interim period of 1995 to 1996, as other domestic arbitration organizations are in the process of restructuring.

## Business & Tax Update

*The following has been adapted from Price Waterhouse's monthly China Newsletter.*

### FIEs in Shanghai, Guangzhou Subject To '94 Tax Examination

The Shanghai Municipal Tax Bureau ("SMTB") issued a notice last year to representative offices of foreign companies and foreign investment enterprises ("FIEs") in its jurisdiction which specified that an examination would be carried out to ensure that sufficient IIT had been withheld from their employees during the period from January to September 1994. The examination was conducted in two stages, the first of which involved the representative offices and FIEs performing a self-examination to determine the amount of IIT that should have been withheld from their employees and to ascertain the amount that had been underwithheld. They were then required to submit a report on their findings to the SMTB by 22 November 1994.

During the second stage, which took place between 20 November and 10 December 1994, the SMTB conducted its own examination of the employers based on the reports filed.

Similarly, the Guangzhou Department of Finance issued a notice on 22 October 1994 to all-foreign representative offices, FIEs and foreign enterprises in its jurisdiction which specified that an examination would be carried out to ensure that all taxes have been paid. Again, the examination by the Guangzhou Tax Bureau. The first stage was

completed by 30 November 1994, and the second stage was completed by 31 December 1994. The scope of the examination was very broad and covered all relevant taxes and compliance with various financial regulations. However, emphasis was placed on specific types of taxpayers, including those with large VAT and consumption tax burdens, enterprises which have incurred substantial losses and enterprises engaged in property development.

We would not be surprised if tax bureaus in other cities and regions carry out similar examinations in the near future.

### VAT Update -- Circular No.205

Foreign investment enterprises ("FIEs") established prior to 1994 are entitled to two transitional reliefs with respect to their VAT liability. First, under (94) *Cai Shui Zi No.19*, issued by the State Administration of Taxation ("SAT") in April 1994, deemed input VAT on the 1994 opening inventory may be recovered (i.e. added to input tax of the enterprise for the year) proportionately when inventory at a quarter-end is reduced below the 1994 opening inventory level. Second, a "grandfather refund" of excess turnover tax suffered each year is available during the period from 1994 to 1998.

(94) *Guo Shui Fa No.105* ("Circular No.205") issued by the SAT in September 1994 clarifies the interplay between the two provisions. Under Circular No.205, the grandfather refund of excess tax must be offset by the unrecovered balance of deemed input VAT on the 1994 opening inventory. This means that, where a potential grandfather refund is available, the FIE would first have to recover its deemed input VAT

(irrespective of the level of the year-end inventory). It is only after the deemed input VAT is fully utilized in this manner than any remaining balance on the excess turnover tax suffered will be refunded.

The following example illustrates the effect of Circular No.205:

☛ 1994 opening inventory (in RMB)	
Deemed input VAT on 1994 opening inventory	14
Deemed net cost of 1994 opening inventory	<u>86</u>
Total:	100
☛ At each quarter-end of 1994, the inventory level is higher than the 1994 opening inventory.	
☛ Output VAT in 1994	340
Input VAT in 1994	204
CICT that would have been payable in 1994 under old regime	106
☛ Potential grandfather refund:	
= Output VAT-input VAT-CICT	
= RMB (340 - 204 - 106)	
= RMB 30	

Since the potential grandfather refund exceeds the deemed input VAT, under Circular No.205 the latter must be recovered in full. This would increase input VAT for the year by RMB 14 and reduce the grandfather refund to RMB 16 [304 - (204 + 14) - 106].

☛ The situations prior to and after Circular No.205 are summarized in the following data:

**Before Circular No.205**

Grandfather Refund (A)	30
Recovery of Input VAT on 1994 Opening Inventory (B)	0
Total Benefit in 1994 (A) + (B)	30
Balance of Input VAT on 1994 Opening Inventory Carried Forward	14

**After Circular No.205**

Grandfather Refund (A)	16
Recovery of Input VAT on 1994 Opening Inventory (B)	14
Total Benefit in 1994 (A) + (B)	30
Balance of Input VAT on 1994 Opening Inventory Carried Forward	0

As can be seen in the above situation, every RMB 1 of refund available under the grandfather provisions results in RMB 1 of deemed input VAT being utilized to reduce VAT payable. To that extent, the FIE is in the same position, whether or not its year-end inventory level falls below that at the beginning of 1994.

**PP & PA Committee Seeks Member Comments, Concerns**

The Public Policy/Public Affairs Committee is developing AmCham positions on issues affecting US businesses in China. The Committee is also responsible for developing and maintaining relations with Chinese and US government officials and entities, as well as Chinese and foreign media. Currently the Committee is gathering information for position statements on the following issues:

MFN, China's re-entry into GATT, and Taiwan. Comments and suggestions should be forwarded to Committee Chairperson Phil Carmichael (fax: 512-4084), or Vice-Chairperson, Darien Hsu (fax: 505-1026).

**IPR Protection: Member Survey Results**

Prior to the last round of successful U.S.-China negotiations regarding IPR protection, the AmCham Public Affairs & Public Policy Committee polled members on their views regarding various issues surrounding the talks. The following brief summary provides highlights of the poll results.

A total of 34 voting members completed the survey, a lower-than-hoped-for number, which was understandable, given the brief turn around time and the fact that many members were out of Beijing during that time.

Should a successful agreement not have been reached, 32.4 percent of respondents would have supported imposing U.S. sanctions against China. 58.8 percent opposed the implementation of sanctions. 8.8 percent were undecided or did not answer this question.

About 15 percent of respondents reported direct or indirect difficulties in doing business with the Chinese as a result of the current negotiations.

The section ranking various issues drew mixed responses. More than 61 percent of respondents viewed "revision of judicial system and amendments to the civil procedure laws which would provide for

easier filing and handling of complaints for copyright infringements" as the most important issue to be addressed. 53 percent viewed "requiring that the Chinese inform the U.S. on IPR protection progress" as least important.

Note: results of future surveys will be reported in the *Beijing Times*.

**Improvements, Changes Coming To Beijing Times**

*By Jim McGregor  
Editorial Committee Chair*

The AmCham Editorial Committee has begun work on improving the *Beijing Times*. Plans are to gradually implement changes over the next couple of months, as time and material permits.

In general, we hope to make it more useful and entertaining for AmCham members. We also want to make it more attractive and easy to read. To start this process, AmCham has purchased Aldus Pagemaker desktop publishing software.

Our goal is to publish the newsletter on the first of every month. This means that all material must be submitted to the AmCham office at least 10 days before the end of a month. Deadlines will be noted in each issue.

The existing columns we seek to retain are:

- **View from the Chair** - by William Warwick, AmCham Chairman.
- **Business & Tax Update** - courtesy of Price Waterhouse.
- **Board Meeting Report** - by Jane Drake.
- **Legal Briefs** - by John Sullivan.