Behind the China Kaleidoscope

A Guide to China Entry and Operations

based on results of the Swiss China Survey
with expert contributions and
illustrative cases of the following companies

ABB Engineering (Shanghai) Ltd. - Turbocharging Business Unit
Beijing Bien-Air Medical Instrument Technology Services Co., Ltd.
Ciba Specialty Chemicals (China) Ltd.
Dolder Shanghai Trading Co., Ltd.
Gate Gourmet Shanghai
Jesa Shanghai Trading Co., Ltd.
Jura Elektroapparate AG
Kuk (China) Ltd.
Saurer Textile Machinery Co., Ltd.
Schindler (China) Elevator Co., Ltd.
Sulzer Shanghai Ltd. - Chemtech Division

1.2.3 Conclusion

For foreign companies doing business in China, the following points are important regarding the legal system:

- **Know the local laws and policies and do not assume it is the same as other parts of the country**. Be aware of conflicts and overlaps in the numerous laws, regulations, rules, orders issued by various levels of government and different authorities.
- Be aware that local authorities may have different practices and policies and may exercise discretion in different ways.
- Be prepared to challenge the local authority if it is abusing its power or is acting in a manner inconsistent with national laws. For example, if a local authority has no power to approve a project under national laws, companies should demand that approval is obtained from the provincial or Central authorities and should not accept local level approval.
- If litigating in the Courts, local lawyers in that district with familiarity with the relevant Courts and personnel are important. A large Shanghai or Beijing law firm can not always advise or represent a company properly in a court case in, for example, Chongqing in Central China.
- **The importance of "guanxi" (relationship) when doing business is well known**. Local contacts within government are important and useful for conducting business and resolving conflicts and problems. **However changes in personnel in government also occur and companies should not be solely reliant on these "contacts"**.

Contributed by Blake Dawson Waldron
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1.3 Dispute Resolution In China

by Jean-Christophe (John) Liebeskind, Swiss and U.K. attorney-at-law and Vice President of SwissCham Beijing and China

Even though there are obviously local specificities, Chinese-related dispute resolution is not much different than anywhere else in the world insofar as the following basic, universal principle is respected: "prévenir, c'est guérir".

This discussion of Chinese-related dispute resolution is meant for entrepreneurs in China or in business with a Chinese party, not for lawyers. Along with a summary presentation, basic, practical advice will be offered.

We propose to discuss Chinese-related dispute resolution along three alleys and three stages. The three alleys are the three traditional ways of solving disputes: litigation, arbitration, and Alternative Dispute Resolution (ADR). The three stages occur before, during and after the dispute.

1.3.1 Before the Dispute

The first stage dramatically predetermines the fate of the two following. Yet it is systematically overlooked by clients (perhaps a bit less by the Anglo-Saxons, whose business culture is less hostile to legal matters) who consider it as a waste of time and money to consult a lawyer when all parties are eager to conclude a transaction. It is candidly assumed that there will be no dispute, or that disputes will be settled amicably.

As lawyers are well paid to know it however, experience shows that in many instances, there is no way out, and the whole investment or transaction is threatened at a price exceeding by a multiple the cost of an early legal advice.

There are two major points to decide before the dispute, at the time the contract is drafted: the forum and the applicable law.

1.3.1.1 Forum

The forum is the place where the dispute is decided. Without entering into more details, for the purpose of this discussion it really covers two notions: the geographical location of the place where the dispute will be trialed, and the type of institution which will decide it. In China maybe more than in other places, whether the issue will be decided in China or abroad has a particular significance. Therefore we will discuss together the dispute resolution mode and its location.

Chinese law recognizes the principle of contractual freedom also known as party autonomy. One of its consequences is that the parties to a contract are generally free to chose how to settle their disputes. In certain cases, this freedom may be restricted though (e.g., contracts with the state).

If the parties have not inserted a dispute resolution clause in their contract at the time of signing, they still may do so after the dispute has started, before they submit the dispute to the forum they have mutually agreed upon, but such agreement shall obviously be more difficult to reach as the parties are already tense.

a) Litigation

If the parties specify nothing in their contract, the dispute will be decided before a court. If the dispute is Chinese-related but involves a foreign element (for example, a foreign party, or foreign ship), it is possible that a Chinese court will be competent, but in deciding this issue Chinese courts will take into account the foreign element(s) of the dispute for determining whether they are competent or if the courts of another country are. They will do so in accordance to Chinese law and of any international treaty applicable to the case at stake.

The parties can also expressly foresee in their contract that Chinese courts will be competent. This choice can be reasonable provided the competent court is located in Beijing or Shanghai, as courts in other locations in China have been reported as being less experienced with disputes involving a foreign party and to produce uneven results. Indeed this choice must be consistent with Chinese judiciary law which set the rules for the courts' competence. Courts of the busy Southern coast of China (Shenzhen, Gangzhou) seem not to have convinced foreign investors of their efficiency and impartiality yet, therefore caution is needed.

It should be added that in an effort to reduce the workload of courts Chinese law occasionally prescribes compulsory (mediation and) arbitration, whereas the award can be appealed before the court. This is the case, e.g., in certain labor disputes.

b) Arbitration

Generally however, the majority of contracts involving a foreign party will provide for an arbitration clause. **An arbitration tribunal is a tribunal having powers similar to those of a regular, state court, but whose judges, the arbitrators, are selected by the parties**. The arbitration tribunal is in principle exclusively busy with the case at stake, unlike regular courts which are overwhelmed by a backlog of cases (even though prominent arbitrators tend to be as busy as courts).

The parties enjoy ample freedom to decide which rules of procedure (or arbitration rules) will govern the activity of the arbitration tribunal. The language is often a decisive issue in the choice of arbitration, as Chinese courts will exclusively seat in Chinese and offer little room for translation or interpretation.

Arbitration tribunals render their decision in the form of an arbitral award. **An award has the same value than a court judgment and can be enforced like the latter, with the help of a court**.

An arbitration will be agreed upon by the parties at the time of drafting the contract in the form of an arbitration clause. Most arbitrations are administered by a regional arbitration institution, the rules of which the arbitrators generally follow unless the parties decide otherwise. All these institutions propose a standard arbitration clause ready to be inserted in a contract.

Arbitration clauses obey strict legal rules. **Many clients prejudice their interest at the very time of signing a contract by inserting a defective arbitration clause**, the result of which being that the clause ultimately appears as being inoperative, thus adding to the cost and time of the dispute on the merits the costs and time of the dispute related to the clause's validity, whereas the dispute finally ends up before a court, not an arbitration tribunal. A competent lawyer will advise as to an effective arbitration clause.

i) China

Chinese-related arbitrations need not take place before a Chinese arbitration institution or in China. Quite on the contrary, the main characteristic of arbitration is to offer far more flexibility than courts. Because arbitration is designed to provide a neutral forum for the settlement of the dispute, ideally it should not be linked to any of the parties' country.

However, due perhaps to what is regarded by certain as an abuse of their bargaining power or a lack of understanding of international trade customary rules, the majority of Chinese-related arbitrations effectively take place before the Chinese International Economic Trade & Arbitration Commission (CIETAC) in Beijing, thus creating a certain imbalance in favor of the Chinese party.

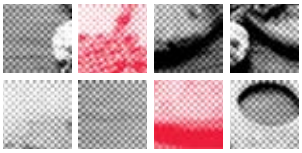
Despite its undisputable success in the recent years as the strong progression of its cases shows, CIETAC has been, and still is sometimes severely criticized for its persistence in not correcting pro-Chinese party biases, even though improvement has occurred. Also, the administrative fees of CIETAC can reach a multiple of those of other international venues when the disputed value exceeds approximately half a million U.S. dollars, a point worth considering in advance.

The Beijing Arbitration Commission (BAC) is practically the only alternative to CIETAC in China. Even though competent for international arbitration, it focuses on domestic disputes. It is a little bit less expensive than CIETAC, but has less exposure to international affairs. There are other local arbitration courts, but their standards are considerably lower and they are not advisable for foreign-related matters. CIETAC has a branch in Shanghai too, but due to its influence Beijing is a preferable location.

ii) Asia

Provided the foreign party convinces the Chinese one to arbitrate in another place than China, **there are valuable, and preferable alternatives**. The first choice on the balance is probably the Hong Kong International Arbitration Centre (HKIAC). Even though Hong Kong is now part of China, thanks to a long standing tradition and the One Country, Two Systems doctrine, the HKIAC managed to maintain an untouched independence. Hong Kong is generally acceptable to those Chinese parties which are reluctant to arbitrate out of China.

Alternatives in the Chinese region include the Singapore International Arbitration Centre (SIAC) and the Kuala Lumpur Regional Centre for Arbitration Centre (KLRCA), both of which offer extensive Chinese language capabilities, an issue difficult to get around. As noted above, the three latter are also less expensive, up to a multiple depending of the amount considered, than CIETAC and BAC for litigations in excess of half a million U.S. dollars approximately. The two latter are generally also considered as less expensive than HKIAC, even though SIAC and KIAC's fees are disputed



value-based whereas HKIAC's are time-based. Indeed the legal market is particularly expensive in Hong Kong, but the most experienced lawyers in the region for Chinese matters are Hong Kong, not Mainland China, based. Ultimately Singapore and Kuala Lumpur are preferable to Hong Kong in the sense that they are not on Chinese territory at all.

iii) Out of Asia

Any venue out of the Chinese region is theoretically suitable since China is member of the New York Convention on the Recognition and the Enforcement of Foreign Arbitral Awards of 1958 ("the New York Convention"), but **practice has proven uncertainty as to which arbitration institution Chinese courts recognize as rendering enforceable awards,** therefore qualified advice is recommended before selecting an unusual forum. Be as it may, whether practically it will suit the Chinese party is also unsure, and probably not a good idea since **language remains an issue in all Chinese-related disputes**.

The Arbitration Court of the Stockholm Chamber of Commerce has traditionally been a venue during the communist era and is still favored to some extent. **The Court of Arbitration of the International Chamber of Commerce (ICC) is represented in China but not authorized to administer arbitrations in China**. Finally it is worth mentioning the new Swiss Rules of Arbitration which apply before the court of arbitration of any chamber of commerce in Switzerland and which have been translated in Chinese.

It is worth stressing at this point that even though the arbitration clause might indicate the seat of the arbitration tribunal, it is still possible that the tribunal will meet at another place (typically, for collecting evidence on site), and render the arbitration award at yet another location. Utmost care is needed there as Chinese practice has been known for being quite restrictive in these and other respects, and related issues of non-enforceable awards have occurred.

iv) Treaty Arbitration

Lastly clients tend to overlook that the fact that no arbitration clause has been inserted in the contract does not necessarily mean that arbitration is excluded, as **certain treaties provide for arbitration when one party is a foreign investor and the other a state or a state-controlled enterprise, even though it has not been expressly foreseen between the parties**. Conceivably this situation occurs frequently in China since a lot of Chinese companies are still state-controlled to various degrees.

Switzerland and China are bound by a Bilateral Investment Treaty (BIT) which contains such solution. In other words, if a Swiss investor faces a dispute in China with a Chinese state-controlled enterprise and that their contract does not contain an arbitration clause, the Swiss investor will still be able to resort to arbitration thanks to the BIT between Switzerland and China. The arbitration is to take place before the Court of Arbitration of the Stockholm Chamber of Commerce.

Alternatively, both Switzerland and China are members of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1966 (also known as the Washington Convention or the ICSID Convention). Therefore in the same situation a Swiss investor could chose instead to arbitrate before the International Centre for Settlement of Investment Disputes (ICSID) in Washington, U.S.A.

Other treaties to which both Switzerland and China are bound, such as for example the World Trade Organization (WTO)'s General Agreement on Trade and Services (GATS), also contain far reaching provisions for the settlement of certain disputes involving a state- or state-controlled party. [1]

c) ADR

The third venue known as Alternative Dispute Resolution or ADR in fact gathers several methods which we are not going to comment in details here but the main of which is mediation (or conciliation).

Mediation is a process by which a neutral mediator interposes him- or herself between the parties and help

them to find an equitable, amicable settlement. Unlike arbitration, the mediation results in non-binding recommendations which do not necessarily reflect the law but rather purports at balancing the interests of the parties.
Mediation has a long history in China and in Asia indeed and is still largely favored, including by Chinese courts. It can be said that there are three types of mediation in China: court or court-assisted mediation, informal (extra-judicial) mediation and formal or institutional (extra-judicial) mediation.

i) Court Mediation

Court mediation takes place when the parties settle their dispute before a Chinese court, and that Chinese law prescribes that, before the court trials the dispute, the parties have to undergo compulsory mediation. Such mediation may be assisted by the court itself, or delegated to an external mediation body.

This situation occurs when the parties have expressly opted for the competence of Chinese courts, or when they have not provided for dispute resolution, in which case Chinese courts would be competent by default.

As noted above, Chinese law occasionally prescribes that unsuccessful mediation shall be followed by compulsory arbitration. In such cases, only then can the arbitration award be appealed at court.

ii) Informal Mediation

The second is **largely favored in disputes between Chinese parties which often call an elder, mutually agreed personality for helping them to sort out their dispute and reach an out-of-court settlement. It does not follow any particular rules**, however, and it therefore often does not satisfy a western party accustomed to a judicial, or formal tradition.

One should insist that **provided the foreign party plays the game, informal mediation can be a considerable asset over traditional, formal western ways of solving disputes. Indeed Chinese, or Asian informalism is double-edged**. It is fair to say that Chinese parties generally feel less bound by a contract than western parties do. There are two sides to each coin however. The good one to this is that it is also easier in China than in the west to reach an agreement which gives full account of new circumstances, that is to say, of circumstances which did not exist at the time of signing the contract. The Chinese party will not mind if the western party changes its view, or even contradicts itself, whereas the formal, rigid western approach would prevent this. Therefore **with some mindset adjustment, what is often seen as a typically Asian flaw can be turned into a great dispute resolution tool and should not be mistrusted or underestimated as a matter of principle**.

iii) Institutional Mediation

The third one is formal or institutional extra-judicial mediation. The largest mediation institution in China is the China Council for the Promotion of Investment & Trade (CCPIT), which is in fact not only the federation of the Chinese chambers of commerce with strong extensions nationwide, but also plays a role to be compared to the Swiss Secretariat of State for the Economy (seco).

Even though CCPIT has rules of mediation, it is important to stress that such rules, or at least **CCPIT's practice, are generally considered to be far apart from the sophisticated, rigorous ethical standards required by Anglo-Saxon mediation** (namely as to the neutrality of the mediator). There have been attempts by the U.S.-based International Institute for Conflicts Prevention & Resolution (CPR) to enter into a cooperation agreement with CCPIT, but even though CPR is represented in China with a U.S.-China Business Mediation Center (also open to non-U.S. parties), it has been reported that **the cultural gap was so wide that such cooperation was hardly implemented**. CPR makes available highly trained mediators selected out of a Panel of Distinguished Neutrals.

One shall therefore remember that **to foresee Anglo-Saxon style mediation in a contract does not mean that at**

the time of a dispute the Chinese party will accept to play the game as a fundamental disagreement may appear only then.

d) Multi-Tier Clauses

It is possible to combine the dispute resolution modes reviewed so far with a so-called multi-tier, or **step-by-step dispute resolution clause**, providing for direct negotiations between the parties, followed by mediation and ultimately by arbitration if none of the two first succeed. If so, **it is vital to built-in (rather short) time-limits**, otherwise each step could last forever and the clause will be inoperative.

Clients however are often reluctant to insert long dispute resolution clauses in their contract (a multi-tier clause would typically be between half and one-and-a-half page long) as it suggests that a dispute is anticipated from the outset. Therefore clients would often favor a short clause like "CIETAC arbitration Beijing", but not always for the better.

1.3.1.2 Applicable Law

The second major point to specify in a dispute resolution clause is the applicable law. Again this element has a decisive influence on the outcome of a dispute but is more than often taken for granted, and wrongly so.

Foreign parties tend to assume that whenever a Chinese party is involved, Chinese law applies. This is simply not true. Chinese law is liberal from this point of view and has not much to envy to the best international practice. Basically, **in Chinese contractual matters, the parties are free to chose the law which best suit them**. There are, in China like anywhere else, exceptions, one remarkable being Sino-foreign Joint-Venture, to which the application of Chinese law is compulsory. Contracts involving the exploitation of natural or energy resources are another example. However, there remains ample room for contractual freedom.

The advantage of a foreign law offering a better, or an impartial protection must be balanced with the inconvenient of hampering a Chinese court not at ease with foreign law. Therefore a foreign law, if appropriate at all, should be reserved to arbitration.

In practice, the Chinese parties are rarely concerned about fairness and often abuse their bargaining power to impose both a Chinese forum and Chinese law. This is not a fatality though, but a matter of negotiation. If both a neutral forum and applicable law cannot be agreed upon, a solution can be to bargain say, a Chinese forum against a foreign law or the other way round.

Switzerland has a good reputation business wise and Swiss law is generally well accepted provided a foreign law is accepted at all. **If neither Chinese nor Swiss law is appropriate because neither is neutral, English, Hong Kong or Singapore law are probably a safe choice, namely in trading**. However, **in all matter where the Chinese element is dominant, in particular for investments with strong local roots (e.g., a factory), Chinese law will practically if not legally prevail**, whereas other crossborder transactions (e.g., a sale) offer more flexibility.

That being said, **Chinese law is generally fairly drafted**, sometimes better than western law; it is constantly improving, and it would be wrong, contrary to a widespread but unfair belief, to consider that is it generally less good than western law. Rather its **application is a matter of concern**, as there still is a considerable lack of well-trained judges, especially for foreign-related cases. The Chinese government is aware of it and is taking steps for improving the situation in line with its WTO commitments, but it will obviously take some time.

1.3.1.3 Making the Right Choice

There is no magic formula for determining which dispute resolution mode is best suited for any particular transaction. **Each contract shall be assessed on a case-by-case basis with the help of a qualified professional. The time and**

cost factor shall be carefully balanced against prospects of success. Basic considerations include the following:

- Dispute resolution should always be agreed upon at the time of entering into the contract, not later.
- Litigation is generally cheaper than arbitration and easier to enforce [2], but generally longer, more vulnerable to bias and less flexible. Arbitration is often protracted too though. A thoughtful choice of an arbitration institution (arbitration fees) and procedure (single arbitrator, fast track, etc.) commensurate to the nature of the transaction helps to control the arbitration costs.
- Successful mediation is less expensive than litigation and arbitration, but a failure will be an additional cost and time to litigation or arbitration with no added value.
- A foreign applicable law may help to maintain the balance of power between the parties, especially in case of Chinese forum. Depending of the nature of the transaction, it may also offer a better protection than Chinese law, but not systematically. It should be in principle reserved to arbitration as it might be counterproductive before Chinese courts.

These hints are by no mean exhaustive and do not replace the advice of a lawyer in each particular case as a multitude of factors shall enter into consideration.

1.3.2 During the Dispute

Should a dispute effectively arise, two points are key to success: take an early start, and getting qualified advice.

Strategy planning in case a dispute ultimately arise should start at the earliest stage and be implemented on an ongoing basis until final settlement of the dispute. Namely, records must be established and kept for evidence purpose.

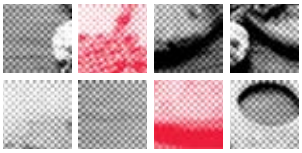
Qualified advice implies both Chinese and western legal counsel. Chinese have often (but not always) limited qualifications in foreign-related dispute management, but generally know the law in more details and have no language issues. Western lawyers are generally more experienced in international dispute resolution and a have better understanding of the foreign client, but less level playing-field knowledge.

As far as litigation is concerned foreign lawyers are barred to appear before Chinese courts anyway, so that a Chinese lawyer is necessary at court whereas the role of the foreign lawyer is limited to litigation supervision. However that may be, that latter role is often necessary in case of Chinese lawyer having limited experience of international disputes.

In practice international arbitration can be managed exclusively by foreign lawyers, but there have been attempts by the Chinese governments to restrict this. Such restrictions are not applied though. There are a lot of Chinese lawyers pretending to be experienced in arbitration, but so far international arbitration still is entirely western dominated. Because of the limited experience of China in this relatively new field in the Mainland, there are no internationally recognized specialists of international arbitration among Chinese lawyers yet.

A lot has been said about the corruption of the courts, which is reported from time to time indeed. However there are no reliable statistics. Be as it may, it is probably fair to say that **the bias of certain courts remains a serious issue in China**. That being said, **the situation is generally acceptable in Beijing and Shanghai, whereas it is mostly unpredictable and uneven in the provinces**. The busy southern coast (Shenzhen, Guangzhou) has been consistently reported as maintaining courts showing little understanding for foreign-related disputes despite being heavily foreign-invested. Therefore it is probably best practice to submit contracts to arbitration.

The latter is not flawless either however. **Issues have been known about the reliability of CIETAC, but generally speaking even though there still are substantial concerns about the ability of CIETAC to meet internationally accepted ethical standards, it remains an acceptable mode of dispute resolution**. As discussed above Singapore



or Kuala Lumpur based arbitrations, if not Hong Kong, are preferable as far as possible.

1.3.3 After the Dispute

Once the court has rendered a judgment, or the arbitral tribunal an award, the third stage is concerned with the execution of the decision. Assuming that the Chinese party lost, and is reluctant to spontaneously pay or do whatever the court or the arbitral tribunal has ordered, it will be necessary to assist the enforcement of such decision.
Court judgments are generally considered to be easier to enforce than arbitral awards, but this is not quite fair.
Doubts have been raised about how far Chinese courts would help to enforce a court judgment rendered against a Chinese party in favor of a foreign party, especially when the court competent for enforcing the decision is not the same than the one which rendered the decision, for example because the assets against which the enforcement is sought are located in another place than where the decision was rendered.

There is one additional, preliminary problem in case of arbitral award, which is that in order to be enforced, the award must beforehand have been recognized by the court of the place of enforcement under a procedure known as exequatur. Even though as noted above China is part of the New York Convention which provides for a flawless recognition and enforcement of international foreign arbitral awards, **the history of such recognitions and enforcements in China has drawn much criticisms until recently**.

Many award were reported not to be recognized and/or enforced because of the ignorance, deliberate or not, of certain judges of the New York Convention and its significance on China's international obligations. It is also fair to say that **improvement has occurred recently** and that Chinese courts now have a better understanding of the New York Convention than in the past.

Criticisms remains however due to the fact that the People's Supreme Court, which is competent among other things for deciding in last resort claims related to New York Convention, **persistently refuses to publish statistics of unsuccessful enforcements, thus fueling doubts as to the cause of such failure**.

Nevertheless **it is possible if not probable that, maybe in the majority of cases, the failure of enforcement is rather due to the insolvency of the debtor** rather than to the refusal of the court to cooperate or its bias.

To conclude, generally speaking, foreign awards are enforced in China, and even though issues have occurred and still do, they are not enough for offsetting overall the advantages of arbitration which remains a valuable option to courts.

1.3.4 Conclusion

Despite the issues recalled above, one should recall that **beyond cultural prejudice, the judicial system is more than often hardly better in certain European countries** where justice is chronically protracted or the independence of judges questionable, **the U.S.** where the costs of access to justice and over-lawyering pose comparable and sometimes bigger problems, **or other Asian countries** where the judicial system including arbitration is simply inoperative. **Arbitration is not yet to the state-of-the-art but it works**, and CIETAC now has one of the biggest case log worldwide. **ADR's weakness is in fact its strength if used with the proper mindset**.

Chinese-related dispute resolution system is not perfect, but none is. The bottom line is that **it works well enough to guarantee a reasonably stable business environment**. To get the best out of it needs **thoughtful adjustment including anticipation and qualified advice**. Those who will ignore it, and there are many, will learn the hard way that "une mauvaise expérience vaut mieux qu'un bon conseil", but those who will recall it will certainly avoid most pitfalls.
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Sources:

1 WTO offers a remedy against barriers to trade and services
2 See below, "After the Dispute".

1.4 The Customs system and bonded areas

by Meng Ling, project manager and head of the legal department, CH-ina

1.4.1 Rights and power in general

As an administration, China's Customs controls all incoming and outgoing transport conveyances, goods, baggage; mail and parcels; collects Customs duty and the various import/export taxes. It also works to combat smuggling; produces Customs Statistics and handles all other Customs affairs, functioning exactly as the Customs operations of other countries.

Yet, in **China, a foreign trade transaction involves not only Customs but also other institutions (banks, foreign exchange administration and so forth). Each authority has its own function but works closely to match records with the others**.

Besides, Customs has a lot of autonomy and is the final approving authority in some crucial cases. For instance, 'encouraged status' - approved by the Foreign Economy and Trade Committee to allow a foreign-owned company to import production equipment free of duty (variable, typically around 8%) and VAT (17%) for its own use - could be rejected by Customs if it deems that the product to be manufactured by the importing company is not encouraged, even though the 'encouraged status' is approved by the Foreign Economy and Trade Committee according to the relevant laws.
The Law of Customs of the PRC stipulates the general outline of Customs functions and power but does not go into any detail with regards to their operation. Customs from time to time makes public announcements — 'gong gao' — to introduce supplementary rules and regulations and usually includes detailed explanations of these rules. www.customs.gov.cn as an internet tool details these laws, regulations and 'gong gao'. But besides this limited information, **much of the bureau's ways and procedures of handling Customs affairs remains inexplicit or unclear, making dealing with Customs particularly difficult for foreign-owned companies with little experience in China**. For instance, Customs checks the prices of import goods during importation to minimize the risk of tax evasion by the importers. Customs has the right to query declared prices and in cases where the importer cannot convincingly justify these prices, Customs will then itself determine the final price and impose taxes (mainly duty and VAT) accordingly. Although the comparatively-detailed principles of determining final import price are stipulated in Customs Law of the PRC and Regulations on Import and Export Duty of the PRC, the detailed price reference for commodities that Customs uses is not publicly known. This ultimately has the effect of forcing the importer to declare the true prices of imported goods, which consequently helps to protect the country's in-flow of tax revenue.

1.4.2 Customs organizational structure

China's Customs is a gigantic organization, with numerous branches throughout the country, in port cities, airports and other areas where Customs functions are required.