

Speech by Ren Jianxin, Head of
The PRC Delegation To 3rd Session
of UNCITRAL's Working Group on
International Contract Practices,
New York, 16th to 26th, February,
1982

Mr. Chairman,

The Chinese delegation is very happy to be invited to the 3rd Session of the UNCITRAL's Working Group on International Contract Practices and discuss international commercial arbitration law with friends from various countries. Please allow me in the name of the Chinese delegation to extend our heart-felt thanks to the Secretary-General for the invitation, and to him and to all friends at UNCITRAL who have made the good preparations for the Session.

International commercial arbitration is becoming more and more important as a means adopted by many countries the world over to settle economic and trade disputes. Constantly improving the law on international commercial arbitration in accordance with the principle of equality and mutual benefit is of great significance to the gradual reduction of differences of national legislations on arbitration, the promotion of cooperation between arbitral institutions of various countries, the development of international economic

and trade relations and the establishment of a new order of international economy. The Chinese delegation hopes that this Session will achieve positive results in this regard.

With a view to having fruitful discussions with our colleagues from various countries at this Session on the Report of the Secretary-General entitled "Possible Features of a Model Law on International Commercial Arbitration", the Chinese delegation would like, first of all, to set forth some preliminary views on the following eight issues:

I. The Name of the Model Law on International Commercial Arbitration

In his report, the Secretary General put forward quite a few issues concerning the improvement of laws on international commercial arbitration, which is worth studying. In order to place the model law in question on a more practical basis, so that the national arbitral laws may be unified step by step on a voluntary basis without interfering the national legislation on commercial arbitration, we consider it advisable to change the name of the "model law" into such ones as Common Regulations, General Rules and so on which is recommendable but not compulsory in nature.

II. Arbitral Institutions

Considering the practice of international

commercial arbitration in recent years and the fact that more and more national commercial arbitration institutions have already entered or are entering into bilateral arbitration cooperation agreements with each other, it seems to us that fuller play in international arbitration should be given to the national arbitral bodies of both disputing parties. Therefore, we think that the practice of bilateral cooperation in arbitration should be encouraged. Yet, if the disputing parties agree, on the principle of equality and mutual benefit, to make use of an arbitral body of a third country, it certainly should be supported, too.

III. Appointment of Foreign Arbitrators

According to China's prevailing arbitration rules, arbitrators can be designated only from among the members of the Foreign Economic And Trade Arbitration Commission of the China Council For the Promotion of International Trade (CCPIT). No foreigners can be appointed as arbitrators. Now more and more foreign friends from economic and trade circles have suggested China consider the possible inclusion of one foreign arbitrator in the Arbitration Tribunal of 3 arbitrators, with the presiding arbitrator being appointed from among the Chinese citizens, so as to benefit the expansion of international commercial arbitration. This suggestion is under the study and consideration of the Chinese departments concerned.

IV. Application of Substantive Law

This is a long-standing and tough problem -- the conflict of laws or private international law, which remains unsolved through many years of work in the practice of international economic and trade law. The principle followed by China in recent years in dealing with this problem is: adhere to the principle of independence and initiative, implement the policy of equality and mutual benefit and pay due regard to international practice. In general, no provisions are laid down in the contracts as to which national law should be applied. Experience proves that by so doing, it is more beneficial to the settlement of disputes in a fair and reasonable way. Of course, we have no objection if the disputing parties unanimously agree in the spirit of equality and mutual benefit to specify a certain national law in dealing with their disputes.

V. Court Interference in Arbitration

Foreign economic and trade arbitration as well as maritime arbitration in China are conducted in accordance with the law and policies of China. The arbitration award made by the Foreign Economic and Trade Arbitration Commission and Maritime Arbitration Commission are final, to the exclusion of any court interference. Should either party fail to execute the award the other party may apply for court enforcement according to law. Judging from the

commercial arbitration, it seems more beneficial to the display of the role of international commercial arbitration if the arbitral institutions work on their own.

VI. The Question of Whether State-owned Corporations and Enterprises Should Be Entitled to Sovereign Immunity

In dealing with such a complicated problem involving politics, law and economic benefits, our practice is to make a concrete analysis of the specific conditions and seek truth from facts. It is our view that objective circumstances and conditions should be taken into consideration while due respect is paid to the principle of sovereign immunity. In coping with this problem, we should not be absolute but considerate of the realities and be always fair and reasonable. At the same time we must guard against the tendency of abuse of suing foreign states on the pretext of limitation of sovereign immunity.

VII. Relations between Arbitration and Conciliation

Combination of arbitration with conciliation is a major feature of China's arbitral work. In recent years, conciliation has drawn closer and closer attention from the international arbitration circles in the settlement of international commercial disputes. In addition to its Arbitration Rules, the UNCTRAL has established its Conciliation Rules, to

circles attach importance. Speaking of the method of conciliation, through their practice in recent years, China's arbitral bodies, together with those of some other countries have created the new methods of "Joint Conciliation", "Joint Handling" and so on, which have also aroused the interest of the international economic and trade circles. In this respect, we hope to study and exchange experiences with UNCITRAL.

VIII. Enforcement of Arbitral Awards

China is not a Signatory to the 1958 U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards. She takes the way of concluding bilateral agreements with some other countries for mutual assistance in the enforcement of arbitral awards. Some foreign friends of economic and trade law profession ask us whether China will accede to the 1958 Convention. Yes, China is now considering acceding to the Convention in order to keep pace with the development of China's economic and trade relations with foreign countries and the new situation under which arbitration is being increasingly used with each passing day. The Foreign Economic and Trade Arbitration Commission of the CCPIT is willing to strengthen contacts and cooperation with all the arbitral institutions of other countries in this regard.

Friends, for the purpose of making a beneficial discussion on the legal issues concerning international commercial arbitration with all the friends

present so as to do good to the development of international economic and trade relations, the Chinese delegation is pleased to give its views on the above mentioned eight issues and subjects them to discussions with all friends present here.

Wish the session a success!

Thank you.

"We are here to exchange information and ideas, to learn and perhaps to teach -- but not to negotiate". With those words Donald B. Straus opened the first meeting of a mission to China devoted to discussion of arbitration and other techniques for resolving commercial disputes which may arise in U.S.-China trade. It was the first U.S. mission ever devoted exclusively to that subject.

The delegates from the United States were Mr. Straus, who is President of the American Arbitration Association Research Institute and former AAA President, and Howard M. Holtzmann, Chairman of the AAA's International Arbitration Committee and Past Chairman of its Board of Directors. The AAA is consultant to the National Council for U.S.-China trade which initiated the arrangements for the trip.

The US delegates met in Peking over a two-week period in January with representatives of the China Council for the Promotion of International Trade (CCPIT) and, particularly, with experts active in the work of its Foreign Trade Arbitration Commission (FTAC). The Chinese delegation was headed by Mr. Hsiao Fang-chou, Chairman of the FTAC and Vice Chairman of the CCPIT. Legal and technical discussions were led by Mr. Jen Tsien-hsin, Director of the Legal Affairs Department fo the CCPIT who is also Secretary General of the FTAC. Mr. Tang Hou-chih, who heads the arbitration section of the CCPIT's legal department, and Mr. Shao Shun-yi, who heads its research section, also took part in the discussions along with several other FTAC members and staff experts.

^{first instance}
future, be made available to the Legal Committee of the National Council.

Meanwhile, U.S. corporations which desire information about resolving commercial disputes with Chinese trading companies are invited to contact Mr. Straus at AAA headquarters in New York. He and Mr. Holtzmann will be pleased to share information concerning the use of arbitration in U.S.-China trade.

As is well known, the Chinese believe that it is best to settle disputes through "friendly negotiation". The function of the FTAC in promoting friendly negotiation and the actual practices and specific techniques which are used in such negotiations were explored in detail during the meetings. On the basis of the discussions in Peking, it is understood that the FTAC will, when requested, assist parties in friendly negotiations even if the contract does not provide for arbitration under FTAC rules, and a request to it for such assistance does not constitute submission to FTAC arbitration jurisdiction. The FTAC also indicated that, in the interest of U.S.-China trade, it would welcome the collaboration of the AAA in aiding parties to resolve disputes through friendly negotiation. The AAA is prepared to lend its good offices in such efforts and this may well provide valuable new conciliatory procedures and bridges to understanding in situations in which American corporations have difficulty in settling differences with Chinese trading companies.

of the court. First, at the request of the Chinese hosts, the U.S. representatives provided information concerning both American and international arbitration practices. As background for this presentation, the American representatives had submitted extensive materials in advance of the meeting. The FTAC is conducting research on the subject of international arbitration practices and expressed active interest in the information presented.

Next, the Chinese representatives provided frank and comprehensive information concerning the basic principles which guide the work of the FTAC and also the actual practices which are followed. Answers were given to the questions which had been submitted in advance by the American representatives as well as to those which arose during lively discussions.

During the discussions it was explained that the great majority of cases handled by the FTAC are resolved by friendly negotiation in which the FTAC staff acts as a third-party conciliator. However, it is considered appropriate for a party to resort to formal arbitration when friendly negotiations fail to produce a settlement in a reasonable period of time. In this connection, two recent arbitration cases handled by the FTAC were analyzed in depth. In one of those cases a Chinese trading company was the claimant and in other a foreign corporation was the claimant. In both cases arbitration awards were made after a hearing, the foreign party winning in one of the cases and the Chinese party in the other.

in the course of the discussions it was made clear that there is no Chinese policy which requires Chinese trading corporations to provide in contracts for arbitration only under FTAC rules in Peking. Chinese trading companies and foreign firms may mutually agree upon arbitration outside China and there are a number of such agreements

The Chinese and American representatives agreed at the close of the meetings that the discussions had been mutually beneficial and further meetings are expected to be held.

Following the discussions in Peking, Mr. Straus and Mr. Holtzmann traveled to Shanghai and Kwangchow where they visited with local CCPIT officials.

HmH

MEMORANDUM

Presented to
China Council for Promotion
of International Trade
for
Meetings in Peking
January, 1975

The American Arbitration Association (AAA) has been invited to send a delegation to the People's Republic of China to confer with the China Council for the Promotion of International Trade (CCPIT). This visit is scheduled to begin in Peking on January 16, 1975.

We are presenting this Memorandum in advance of our visit to Peking in the hope that it may be helpful to our Chinese hosts in planning the meetings.

We suggest that a principal purpose of our meetings is so that the CCPIT and the AAA may each gain greater knowledge about the methods for resolving disputes arising from commercial contracts as practiced in our two countries. The National Council for United States-China Trade has requested the assistance and cooperation of the AAA in connection with efforts to arrive at mutually satisfactory dispute resolution procedures for use in trade between China and the United States.

To assist understanding, we will be prepared to present a description of dispute resolution procedures used in the United States and by U.S. corporations in international trade. We will also be prepared to present information concerning the functions

*See Attachment A at the end of this Memorandum.

and activities of the AAA. Although we know that the experts of the CCPIT are already familiar with these matters, we believe that a face-to-face discussion and the opportunity to ask us questions may assist the growth of further understanding.

Similarly, we would be grateful to learn more about dispute resolution procedures practiced in the People's Republic and by Chinese state trading corporations in international trade. We would appreciate the opportunity to discuss these subjects with the experts of the CCPIT.

Following mutual exchanges of information, we suggest that it would be appropriate to discuss future steps which might be taken for further cooperation in the interest of assisting trade between the People's Republic and the United States.

Accordingly, we suggest that our meetings might be organized in three parts:

- Part 1 - Exchange of Information Concerning United States Practices for Resolving Commercial Disputes.
- Part 2 - Exchange of Information Concerning Chinese Practices for Resolving Commercial Disputes.
- Part 3 - Discussion of Future Cooperation For Developing Mutually Satisfactory Dispute Resolution Procedures For Use in Trade Between China and the United States.

Concerning United States Practices for Resolving Commercial Disputes", we are including in this Memorandum an outline of the subjects which we will be prepared to discuss. We are also submitting a separate Volume of Exhibits which contains copies of written materials referred to in the outline and which may be helpful as background for our discussion and for future reference. In addition, we will be pleased to try to answer questions.

In preparation for "Part 2 - Exchange of Information Concerning Chinese Practices for Resolving Commercial Disputes", we are including in this Memorandum a preliminary outline of subjects concerning which we would appreciate the opportunity to learn the Chinese viewpoint. In this connection, we are also including an "Outline for Possible Method for Friendly Resolution of Commercial Disputes". This is not meant as a proposal at this time. Rather, it has been prepared by the AAA in order to stimulate discussion and as a basis for mutual exploration of fundamental principles during our meetings in Peking.

The AAA delegation will consist of Donald B. Straus and Howard M. Holtzmann. Mr. Holtzmann is Chairman of the AAA's International Arbitration Committee and a Past Chairman of its Board of Directors. Mr. Straus is President of the AAA Research Institute and a Past President of the AAA. Biographies of Mr. Straus and Mr. Holtzmann and lists of some of their recent writings on the subject of international commercial arbitration are included

CONTENTS OF
INFORMATION CONCERNING RESOLUTION OF
INTERNATIONAL COMMERCIAL DISPUTES IN THE UNITED STATES

1. Businessmen in the United States usually prefer to resolve international commercial disputes by arbitration instead of by litigation in the courts:

- 001
- Hmk
- (a) Arbitration is more friendly and informal than litigation in courts.
 - (b) Arbitration usually can be completed in less time.
 - (c) Arbitration is less costly.
 - ✓ (d) In arbitration, decisions can be made by persons who are experts in the trade involved in the dispute.
 - (e) Arbitration can be more neutral and truly international. It avoids having to go to courts of foreign nations.

2. The law in the United States favors arbitration:

Hmk

- (a) Federal law

See Exhibit 1* - "United States Arbitration Act".

- (b) State laws

See Exhibit 2 - "Uniform Arbitration Act" which is typical of the laws in many States.

See also Exhibit 3 - "New York Arbitration Law".

* All Exhibits are in the Volume of Exhibits which accompanies this Memorandum.

including awards rendered in foreign countries:

H/MK

- (a) The United States is a signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

See Exhibit 4 - text of U.N. Convention.

- (b) The United States is a signatory to many Treaties of Friendship, Commerce and Navigation which include provisions favoring arbitration.
- (c) Courts in the United States support the enforcement of foreign arbitration awards.

See Exhibit 5, which includes (i) decision of U.S. Supreme Court in Scherk v. Alberto-Culver Company (ii) Statement by AAA to U.S. Supreme Court, and (iii) decision of Federal District Court in Matter of Fotochrome, Inc.

4. The AAA is the principal arbitration institution in the United States.

OS

- (a) AAA is a private, non-profit institution founded in 1926.

See Exhibit 6 - for general description of AAA in (i) "Arbitration in Modern America," a report to the 1974 Annual Meeting, and (ii) "Facts About the AAA."

- (b) AAA is governed by:

- AMK*
 - i. Board of Directors
 - ii. Executive Committee and International Arbitration Committee
 - iii. Officers
 - iv. Professional staff

See Exhibit 7 which includes (i) AAA By-laws and (ii) List of Board of Directors.

- i. Fees for administering cases
- ii. Contributions by members who support AAA work, including corporations, trade unions, lawyers, and trade associations.

(d) AAA facilities:

- i. Headquarters in New York City
- ii. Offices in 21 cities.

(e) AAA employs 325 persons full-time.

(f) AAA administers arbitration proceedings.

- i. Cases are administered under AAA Rules for general commercial cases and under specialized AAA rules for various industries.

See Exhibit 8 - "Commercial Arbitration Rules of the AAA";

See Exhibit 9 - AAA Construction Industry Rules;

See Exhibit 10 - AAA Textile Industry Rules;

See Exhibit 11 - AAA Grain Arbitration Rules

- ii. AAA does not act as an arbitrator. It maintains lists of persons who are experts in some field or profession and who are known for their knowledge and impartiality. AAA submits to parties selected lists from which arbitrators are chosen. AAA provides impartial administration of cases.

processes of dispute settlement.

i. AAA Research Institute

(h) AAA is also an educational institution.

i. Conducts educational programs on many subjects

ii. Publishes several monthly publications containing news about arbitration; quarterly journal containing articles on arbitration; specialized books and pamphlets on arbitration practice and procedure.

See Exhibit 12 which includes a copy of typical recent issues of the monthly "Arbitration News and Views" and the quarterly "Arbitration Journal".

(i) AAA maintains a major library.

i. Library has complete collection of books and other materials on all aspects of arbitration.

ii. AAA Library has prepared a "Dictionary of Arbitration and its Terms." A copy of this Dictionary will be presented as a gift by AAA to CCPIT.

See Exhibit 13 - Pamphlet describing the dictionary.

iii. AAA Library has prepared a catalog containing a selective bibliography and index on the subject of peaceful dispute settlement procedures. A copy of this catalog will be presented as a gift by AAA to CCPIT.

See Exhibit 14 - Pamphlet describing "Union Catalog of Arbitration".

See Exhibit 15 - Bibliography on China.

(j) In addition to the AAA, there are also specialized arbitration organizations in certain trades.

i. The Society of Maritime Arbitrators is an example.

See Exhibit 16 - Description of Society of Maritime Arbitrators.

5. The Functions of the AAA in International Commercial Arbitration.

(a) The AAA performs many different functions.

See Exhibit 17 - Statement by H.M. Holtzmann on "AAA Role in International Commercial Arbitration".

(b) AAA administers cases between U.S. and foreign parties. In such cases, the arbitrators are not from U.S.A.

See Exhibit 18 - Speech by D.B. Straus on "Role of AAA in International Commercial Arbitration".

(c) The United States government relies on the AAA to establish arrangements for international commercial arbitration and to provide information to the business community.

See Exhibit 19, U.S. Department of Commerce pamphlet on "East-West Trade".

(d) Businessmen in the United States rely on the AAA to be the "American Voice" in international commercial arbitration matters.

See Exhibit 17, page 3

See Exhibit 20, List of some corporate members of AAA.

See Exhibit 21, pamphlet describing joint arrangements between AAA and International Chamber of Commerce.

See Exhibit 18, pages 10 and 11 for list of bilateral agreements.

- (f) AAA participates actively in the International Committee for Commercial Arbitration, which is the new worldwide network of arbitration institutions.

See Exhibit 22, article by D. B. Straus on "A Network of Arbitration Associations".

- (g) AAA is participating in the development of new Arbitration Rules being prepared by the United Nations Commission on International Trade Law (UNCITRAL) for use in all types of arbitration throughout the world.

See Exhibit 23 - Preliminary draft of UNCITRAL Arbitration Rules.

- (h) AAA conducts studies of arbitration law and practice in other countries.

See, for example, Exhibit 24, a memorandum describing a current "Study of Swedish Arbitration Law and Practice".

6. Description of a Typical International Arbitration Case Administered By AAA.

- (a) The agreement to arbitrate
- (b) Starting the arbitration
- (c) Selecting the arbitrators
- (d) Presentation of the case
- (e) The arbitrators' award

See Exhibit 25 which includes (i) a pamphlet describing arbitration procedures prepared for use by businessmen (ii) a pamphlet describing arbitration procedures prepared for use by arbitrators (iii) an

(a) AAA sponsors preparation of articles on many aspects of international arbitration in order to improve arbitration processes and educate interested persons in the use of arbitration.

See Exhibit 26 for a selection of recent articles on international commercial arbitration on various subjects:

- D.B. Straus, "The Growing Consensus on International Commercial Arbitration"
- H.M. Holtzmann, "The Settlement of Disputes: The Role of Arbitration in East-West Trade"
- H.M. Holtzmann, "Use of Impartial Technical Experts To Resolve Engineering and Other Disputes Before Arbitration"
- H.M. Holtzmann and G.V. Bernini, "Arbitration in Long-term Business Transactions".

PRELIMINARY OUTLINE OF
SUBJECTS FOR DISCUSSION CONCERNING CHINESE PRACTICES
FOR RESOLVING COMMERCIAL DISPUTES

NOTE

The following preliminary outline indicates a number of subjects concerning which we would appreciate the opportunity to learn the practices and viewpoints in the People's Republic of China. This outline is considered preliminary and we expect that knowledge gained during our discussions in Peking will suggest additional topics for discussion.

We have read of the importance which is given in the People's Republic of China to resolution of commercial disputes through friendly negotiations and think that it would be helpful for us to gain a deeper understanding of that process. We have observed in dealing with other countries that the practices used in resolving disputes in international trade often have their roots in the methods used in settling business disputes which arise in their home countries. Therefore, before discussing the Chinese process of friendly negotiation in international commerce, it may be useful to discuss how friendly negotiation is practiced within China to resolve disputes between people and disputes between organizations. We believe such knowledge will be a valuable background for our discussion of the nature and operation of the process as used in trade between China and the United States.

(A) Friendly negotiation within China of disputes which do not involve international trade.

1. It would be useful to discuss kinds of disputes in which friendly negotiation is used.
2. Is friendly discussion always used?
- ✓ 3. How friendly negotiations are begun?
4. How friendly negotiations are conducted?
5. We have read that third persons are sometimes brought in as mediators. Is this usually done?
6. Are there people's committees which act as mediators?
- ✓ 7. Who are the mediators? How are they chosen? Are mediators expected to be neutral and to have no relationship to the parties and no interest in the outcome of the dispute? Are mediators specially trained in the skills of mediation?

9. How do the mediators go about determining the issues in dispute and finding the facts?
- ✓ 10. After learning the facts, do mediators usually seek to persuade one party that he is wrong, or do the mediators seek to find a half-way point to which both parties can be persuaded to agree?
- ✓ 11. Does the mediator usually make a recommendation to the parties for resolving the dispute? Is the recommendation in writing or oral? Is the proposed settlement ever based on agreement to special arrangements in future business transactions? How does he persuade the parties to accept his recommendation? Does the mediator make his recommendation known to other people and do the opinions of other people have influence on the parties to accept the recommendation? Does the mediator have any power which he can use in persuading the parties to accept his recommendation?
- ✓ 12. What is considered a reasonable period of time in which to resolve a dispute by friendly negotiation?
- ✓ 13. Does friendly negotiation stop when one party believes further negotiation would be useless, or does it continue until both parties agree that further negotiation would be useless? Do parties ever establish time limits within which friendly negotiation should be concluded?

negotiation?

W 15. When parties agree to resolve a dispute through friendly negotiation, do both parties usually agree to give up something and meet halfway? Or are most disputes resolved by one party agreeing that he was wrong?

W 16. If parties fail to resolve their dispute by friendly negotiation, what do they do next?

(B) Friendly negotiation of disputes, which involve international trade.

1. What are the differences in the practices of friendly negotiation of disputes in international trade, as compared with disputes which do not involve international trade?

2. Each of the above questions, (numbers 1 through 16) might be discussed from the viewpoint of Chinese experience with friendly negotiation in international trade.

W 3. What have been the backgrounds and qualifications of persons who have been mediators in disputes in international trade?

W 4. Many Westerners put a high value on being able to resolve disputes promptly with as little delay as possible. They believe that getting rid of the dispute quickly is the best way to restore harmony. They therefore favor dispute resolution procedures which have specific steps which are known in advance and which can be used promptly. What is the Chinese attitude toward these values?

meetings or by correspondence:
Are personal meetings held outside
China? Has there been experience
in using mediators who are not Chinese?

- ✓ 6. Is there any difference between
the practices of friendly negotiation
when the Chinese party is the seller,
as compared to when the Chinese
party is the buyer?

II. Arbitration Provisions in Contracts

We have read about various kinds of arbitration clauses which are provided in Chinese international trade contracts for use when friendly negotiation fails. We believe it would be helpful to discuss current Chinese attitudes and practices toward arbitration clauses.

- ✓ (A) We understand that Chinese trading corporations have been willing in some contracts to agree to arbitration in a third country. Are there any situations in China-US trade in which Chinese parties would not agree to include a provision for arbitration in a third country?
- ✓ (B) We believe it would be helpful to discuss mutually agreeable third countries which could be referred to in contracts in China-US trade.
- ✓ (C) We believe it would be helpful to discuss arbitration rules which might be referred to in contracts in China-US trade. In this connection, it would be appropriate to discuss the new rules being prepared by the United Nations Commission on International Trade Law. (UNCITRAL Rules)

See Exhibit 23 in Volume of Exhibits.

outside of China.

- vvv
- (E) Is it considered appropriate for a Chinese party to commence arbitration, if friendly negotiations fail? Is it considered appropriate for a U.S. party to commence arbitration, if friendly negotiations fail?

IV. Matters Involving the Commodity Inspection and Testing Bureau.

Differences of opinion between buyers and sellers sometimes relate to the functions of the Commodity Inspection and Testing Bureau. It would be helpful to discuss methods of handling disputes which result from the actions of this Bureau. vvv

V. Enforcement of Arbitration Awards

The Decision of the Government Administration Council of the Central People's Government Concerning the Establishment of the Foreign Trade Arbitration Commission, provides in Article 11 that in case an award is not executed, the People's Court "shall, upon request of one of the parties, enforce it in accordance with law."

- vvv
- (A) It would be useful to know whether there have been any cases under Article 11 and the experience in such cases.
- vvv
- (B) What are the applicable provisions of Chinese law in this connection?
- vvv
- (C) Will the People's Courts also enforce an arbitration award issued in an arbitration held outside of China? Can a Chinese party request the People's Court to enforce a foreign award against a U.S. party? Can a U.S. party request the People's Court to enforce a foreign award against a Chinese

Errata

The following paragraph was omitted by mistake and should be inserted on page 17, in Section V - Enforcement of Awards:

- (D) Can a foreign party gain access to

We believe that it would be most useful to discuss the "Outline of Possible Method for Friendly Resolution of Commercial Disputes" which is included in this Memorandum. This outline is not presented as a proposal at this time. Rather, it has been prepared to stimulate discussion and as a basis for mutual exploration of fundamental principles. The "Possible Method" which is described in the Outline adopts the Chinese emphasis on friendly negotiation and attempts to utilize experience in both China and the USA in using mediators. It also takes into consideration the value of establishing prompt and predictable procedures. The Outline also provides that if resort must be made to arbitration, the arrangements for the arbitration will accord with the best and most modern standards of international practice.

FOR FRIENDLY RESOLUTION OF COMMERCIAL DISPUTES

Prepared by AAA for Discussion and as
Basis for Mutual Exploration of
Fundamental Principles at meeting with
CCPIT in Peking, January, 1975.

and arbitration any dispute that may arise in relation to foreign trade between the P.R.C. trading corporations and U.S. corporations, it is proposed that a Joint China-U.S. Dispute Settlement and Arbitration Commission be established.

A. Amicable Negotiations

1. The Commission would develop policies and procedures for rendering assistance in amicable negotiations and for the arbitration of disputes in foreign trade between trading corporations of the P.R.C. and corporations of the U.S.A. in accordance with the relevant contracts, agreements and/or other documents concluded between the disputing parties.
2. The Commission might be composed of eight members: four to be selected and appointed by the CCPIT, and four to be selected and appointed by the AAA.
3. Assistance in the amicable negotiations of disputes could be rendered jointly by the FTAC of the CCPIT and the American Arbitration Association in accordance with the Amicable Negotiation

visional rules of procedure appended to proposal.

B. Arbitration

1. If amicable negotiations fail to produce agreement, the dispute would be referred to arbitration in a country other than the P.R.C. or the U.S.A.
2. The Commission would designate one or more institutions outside of China and the United States to serve as appointing and administering agencies of arbitrations referred to under this decision and the appended rules of procedure.
3. Each such arbitration institution so designated would develop panels of arbitrators subject to approval of the Commission and would agree to appoint arbitrators and administer cases in accordance with the procedures and rules published by the Commission.
4. Arbitration Awards under these procedures would be final and binding.

AMICABLE NEGOTIATIONS

- L. Parties to a dispute under these rules would each agree to seek settlement first through direct negotiation. Assistance in negotiations may be requested and initiated by either party by filing notice with the other party, the FTAC and the AAA.
2. The FTAC of the CCPIT and the AAA would each designate a panel of assistors in amicable negotiations composed of from 15 to 21 nationals of each country..
3. Upon receiving notice that assistance in amicable negotiations has been requested, the FTAC would provide a list of assistors on its Panel to the Chinese trading organization and the AAA would provide a list of assistors on its Panel to the U.S. company.
4. Each party would select an assistor from the lists and so notify the FTAC and AAA of their choice

days following the appointment of the assistors, either party could invoke arbitration in accordance with the provision of the arbitration clause in their contract and these arbitration rules. The 90-day period might be extended for one additional period of 60 days upon agreement of both assistors.

6. No person having served as an assistor would participate in the arbitration of the same dispute, nor would any record of the assisted amicable negotiation proceedings be available to the arbitrators, unless the parties mutually agreed to the contrary.

President

December 4, 1973

Mr. Donald B. Straus
President
Research Institute
American Arbitration Association
140 West 51 Street
New York, New York 10020

Dear ^{Don} Mr. Straus:

This letter follows your meeting in Washington on Wednesday, November 28, with Eugene Theroux, of my staff, and Walter Surrey, a member of our Board of Directors.

As Mr. Theroux and Mr. Surrey discussed with you, the National Council for U.S.-China Trade would very much appreciate the assistance and cooperation of the American Arbitration Association in connection with our efforts, begun recently in Peking, to arrive at mutually satisfactory arbitration and other dispute settlement procedures with the Chinese.

I am enclosing for your information a copy of a statement released in Hong Kong at the conclusion of our visit from which you will see that a significant portion of our meetings with the China Council for the Promotion of International Trade in Peking was devoted to the subject of dispute settlement, including conciliation and arbitration.


I understand from Mr. Theroux and Mr. Surrey that the American Arbitration Association may be willing to assist us in the preparation of papers, including draft recommendations on an arbitration agreement and model arbitration and conciliation contract clauses, and that you may be able to assist us in the work of a committee on this general subject soon to be established by the American Society of International Law in cooperation with the National Council.

In our view, the National Council, the American Arbitration Association can be instrumental in simplifying the dispute settlement procedures which may be followed by American businessmen trading with the People's Republic of China.

As you know, Mr. Theroux will be attending your meeting in New York on December 10, and I have asked him to discuss this further with you at that time.

With warm regards.

Sincerely,


Christopher H. Phillips
President

CHP/11

Enclosure