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POSSIBILITIES OF IMPARTIAL AND
EFFECTIVE DISPUTE RESOLUTION
IN INTERNATIONAL BUSINESS
TRANSACTIONS WITH CHINA

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1. The problem: Litigation in Chinese or foreign Courts or CIETAC Arbitration do not always provide an impartial and effective mechanism for the resolution of business disputes between Chinese and foreign parties

1.1 Introduction

The dramatic increase in foreign investment and trade with China since the beginning of Deng Xiaoping's groundbreaking economic reforms in 1978, which will experience another strong boost in the years following China's accession to the World Trade Organization (WTO) in September 2001, has resulted and continues to result in a rise in the number of disputes between foreign and Chinese business parties. Given its awareness that in order to promote further trade and to attract more foreign investment, the development of a fair, objective, efficient and predictable dispute resolution system is of crucial importance, the Chinese government has made remarkable efforts to improve the reliability and credibility of China's court system and to promote the rule of law. Furthermore, with the establishment of the new China International Economic and Trade Arbitration Commission (CIETAC) in 1988 (followed by the 1989, later amended CIETAC Arbitration Rules) and the promulgation of its first Arbitration Law on August 31, 1994, China put in place the basic institutions and laws which enable Chinese and foreign parties to have their business disputes resolved in China by alternative dispute resolution mechanisms such as mediation and arbitration.

The Chinese government doubtlessly deserves a great deal of respect and admiration for all these fundamental reforms of China's legal system in a very short period of time, notably in light of the fact that during the entire previous era of Mao Tse-tung from 1949 until 1976, the country had been almost exclusively governed by directives and orders of the Communist Party, rather than by enactments from legislative bodies, and courts would almost blindly follow such orders. But in spite of these hitherto impressive achievements in reforming the

mechanisms of law-making and law-enforcement, China's current dispute resolution systems are still not entirely reliable, especially if they are measured against the standards of Western jurisdictions with a long-established modern legal culture.

This opinion is also shared by the next Director-General of the WTO, Thailand's former Deputy Prime Minister and Minister of Commerce, Dr Supachai Panitchpakdi (Dr Supachai's term will begin on September 1, 2002), who wrote in his recent book *China and the WTO; Changing China, Changing World Trade*: "Genuine economic development cannot occur without a strong legal system. World Bank data shows that countries with good legal institutions are richer, more literate and have dramatically lower rates of infant mortality. [...] The decision to build a stronger legal system isn't just a technical issue. It is, as [World Bank President James] Wolfensohn noted, a profoundly political one. And here it's hard to be optimistic about China. Officials talk too often of rule *by* law. Only the most enlightened talk of the rule *of* law, a system that in the courtroom puts a citizen on equal footing with the government."¹ These present shortcomings in China's dispute settlement system are even confirmed by some members of China's judiciary themselves. Recently, Wu Zaicun, a judge with the Beijing No. 1 Intermediate People's Court was quoted in China's English-language newspaper *China Daily* as follows: "A gap between the actual conditions of judges and expectations of the general public still exists."²

The lack of independence from political bodies, the often questionable impartiality, transparency, efficiency and effectiveness of Chinese courts and arbitration bodies who apply inconsistent and ambiguous laws can severely impair the justified interests of parties to a legal dispute, before all foreign parties doing business with China.

The purpose of this paper is to give an overview of the main shortcomings in the Chinese dispute resolution regime (Chapter 1), especially from the perspective of foreign businesses, and to present some possibilities of

1. Supachai Panitchpakdi and Mark L. Clifford, *China and the WTO; Changing China, Changing World Trade*, Singapore 2002 at p. 147.

2. Dian Tai in *China Daily*, article *Judges told to improve quality*, Vol. 22 of July 6-7, 2002 at p. 2.

