

Hu Yuanxiang   Legal  
and Policy Issues  
of the Trade  
and Economic  
Relations  
between China  
and the EEC

A Comparative Study

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**LEGAL AND POLICY ISSUES OF THE  
TRADE AND ECONOMIC RELATIONS  
BETWEEN CHINA AND THE EEC**

## Foreword

This publication analyses in great depth the set of agreements that since 1978 have entered into force between the EEC and China in respect of trade and economic cooperation between the two parties as well as other commercial policy instruments of the EEC *vis-à-vis* China.

At the present time it is probably the most comprehensive study of the subject matter. In point of fact, one can hardly think of any subject of relevance in this respect that is not addressed in this book. It is covering trade, economic and technological cooperation, investments in China and their protection, anti-dumping and other issues that are material in the relationship between the two parties.

I met Dr Hu Yuanxiang in the Spring of 1988 at a seminar on China in Amsterdam. As a result, he joined our firm in September the same year, engaged mainly in advising European companies, doing business in China and vice versa, while completing his doctoral research.

This book is based upon the doctoral thesis of Dr Hu Yuanxiang which he defended at the University of Ghent on March 14, 1990 and which earned him the highest 'summa cum laude' qualification. The author's academic interest and capabilities are beyond doubt and his study has the additional merit that its contents are very useful to practising lawyers too. As far as the value for the legal profession is concerned, the undersigned tends to believe that the author has been inspired by the experience he gained when spending a considerable period of time with our firm where obviously he contributed to the quality of its China practise.

The relationship between China and the EEC shows ups and downs. Political disturbances may sometimes have caused the downs to occur, whereas the economic cooperation accounts for the ups. One may hope and expect that the positive trend in the relationship between the two trading parties will finally and definitely prevail. Publications like the

FOREWORD

present one should help to narrow discrepancies, thereby enhancing the chances of mutual understanding.

J.W. Sodderland  
Nauta Dutilh

Rotterdam, March, 1991

## Preface

In 1978, China concluded the first Trade Agreement with the EEC which marked the beginning of a new period of trade and economic relations between the EEC and China. China was the first so-called State-trading country with which the EEC concluded a trade agreement. For almost a decade until recently this agreement had placed China in a unique position in EEC's external relations with the State-Trading countries. My research into the legal issues of EEC-China trade and economic cooperation dated back to 1983 when I was admitted into the Ghent University Faculty of Law. I witnessed the conclusion of the 1985 Trade and Economic Cooperation Agreement - also the first such agreement the EEC concluded with a State-trading country and other encouraging developments in trade, economic cooperation, investments and political cooperation between the two parties. I had the opportunity to study how EEC's external commercial policy instruments applicable to China were introduced, implemented and developed. These developments encouraged me to start to write my doctoral thesis which constitutes major content of this book several years ago after I had obtained a Special License in European Law. Admittedly, the political events that occurred in China in 1989 affected the well-going EEC-China trade and economic relations on the one hand; and the increasing openness of Eastern Europe and rapprochement between EEC and CMEA has challenged the EEC-China relations on the other. Nevertheless, my research shows that there are simply no reasons to let the EEC-China relations stagnate and leave them overshadowed by the ever-growing EEC-Eastern Europe relations. The new Chinese leadership and its sustained policy of continuing economic reform and opening to the outside world warrants a positive EEC long term policy toward China. The Chinese market and economic potentials for cooperation are irreplaceable not only for EEC but also for all Western developed countries. I am happy that when completing the last editing work of this book, good news came from the European Community Luxembourg Meeting of Council of Ministers that the twelve EEC Member States have decided to lift the sanction measures imposed on China since July 1989 and to normalize their political, economic and

cultural relations with China. This action by the EEC has broken through the stagnation in its relations with China since 1989 and shown the goodwill of both China and the EEC to strive for a new period of political and economic cooperation.

My intention in writing this book is to conduct research into the legal aspects of and policies for the EEC-China trade and economic relations; therefore, analysis has been made of the EEC-China bilateral agreements and EEC's commercial policy instruments as far as China is concerned. The emphasis has been placed on the EEC side as China has no legislative acts or implementation regulations concerning external trade and economic cooperation with foreign countries, including the EEC. China's policy on trade and economic cooperation with the EEC could only be drawn from the bilateral agreements, speeches of the senior Chinese officials published in news papers and practice. Little literature in Chinese has been found on EEC-China relations. It is not surprising that even general policy documents of China are not open to the public. Without these limitations, this book would have further deepened the research of China's policy toward the EEC. On the other hand, the EEC's ever-changing and developing trade policy instruments have compelled me to change time and again many parts of the conclusions of my research whenever the new EEC regulations entered into force. Even so, it is impossible to use most up-to-date sources in all aspects because some official publications and statistics are only available on a very late date. There are also limitations to obtain detailed information in some sectors such as in the field of textiles and European investments in China simply because it is, to certain extent, confidential. Nevertheless, the above-mentioned limitations have been overcome partly by my interviews.

In carrying out the research and preparing my doctoral thesis, I received very helpful guidance from Professor Dr. M. Maresceau who, during the past six years has directed my research and advised me when writing every Chapter. As my supervisor and promotor, I am very grateful for his patience and sense of responsibility. I am deeply indebted to Professor Dr. M. Storme, the former Dean of the Faculty of Law of Ghent University, who invited me to study at the Ghent University Faculty of Law and kindly granted me scholarships for two years. I am very grateful for his guidance and help which gave me many opportunities to learn and to develop myself. I am deeply indebted to Mr. J.W. Sodderland, partner of the well-known international law firm Nauta Dutilh based in the Netherlands, who kindly invited me to serve in this firm as a legal adviser since October 1988. I am very grateful for his guidance for my practice in dealing with practical legal problems of doing business in and with China which has especially filled in a gap of my research. I would like to express my sincere gratitude to Professor Dr. Rui Mu of Peking



University, who has through his letters given me instructions in pursuing my studies. I am very grateful to the Chinese Government, the Chinese Embassy to Belgium and the General Commission For Cultural Exchange of the Flemish Community of Belgium, for their financial support for my doctoral studies. I am very grateful to Professor Bourgeois, Senior Legal Advisor to the Commission responsible for common commercial policy and anti-dumping, for his kind help with my studies of the common commercial policy, especially the EEC anti-dumping law. My thanks are due to Mr. Borrell, EEC Commission official responsible for EEC external relations with China. I greatly benefited from my several interviews with him. I wish to thank Mr. D. O'Sullivan, EEC Commission official responsible for EEC textile trade with China, who kindly offered me interviews with him and provided me with information on EEC-China textile trade. I wish to thank my colleagues C.G. Van de Grampel and B.J.P.M. Zwinkels of Nauta Dutilh, Mr. P. Eeckhout of the European Institute of Faculty of Law of Ghent University, Mr. T. Juris of the Faculty of Law of Vrije Universiteit Brussel, Mr. Chan of the Sinology Institute of Leiden University, Mrs. Verkruijsen of the T.M.C. Asser Institute, Mr. D. de Vriendt and Mr. G.J. Atwater, American attorney at law for their kind help with collecting documents and information and editing the manuscript. Last but not least, I should give my heartily thanks to my wife Jianshuang, without whose encouragement, assistance, and patience my research would not have been finished.

Through this book, I would like to draw people's attention and interest to the issues of law and policy of the trade and economic relations between the EEC and China and to put forward some proposals for improvement in and further development of these relations. At the time when the EEC-China relations saw stagnation, I sincerely hope that this book could help the decision-makers rightly review the past development and assist them in searching for new initiatives.

Hu Yuanxiang  
February, 1991  
Rotterdam  
The Netherlands

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## Abbreviations

A.I.C.	Administration For Industry and Commerce
BISD	Basic Instruments and Selected Documents (GATT)
<i>Bull.</i> EC	Bulletin of the European Communities
C.M.L.Rev.	Common Market Law Review
CMEA	Council for Mutual Economic Assistance
COCOM	Coordinating Committee for Multilateral Export Controls
C.I.C.T.	Consolidated Industrial and Commercial Tax
C.C.T.	Common Customs Tariff
CJVs	Cooperative Joint Ventures
C.L.P.	China Law and Practice
E.A.E.R.	Eastern Asian Executives Reports
E.L.Rep.	European Law Report
E.C.R.	European Court Reports
EEC	European Economic Community
ECSC	European Coal and Steel Community
EAEC	European Atomic Energy Community
EFTA	European Free Trade Association
FWOEs	Foreign Wholly-Owned Enterprises
Fa Xue	Science of Law
Fa Xue Yan Jiu	Studies in Science of Law
Fa Xue Za Zhi	Journal of Science of Law
Fa Xue Ping Lun	Science of Law Review
Fa Xue Ji Kan	Science of Law Quarterly
Guo Wai Fa Xue	Science of Law Abroad
GATT	General Agreement on Tariffs and Trade
GSP	Generalized System of Preferences
Int'l Lawyer	International Lawyer
Int'l Business Lawyer	International Business Lawyer
I.C.L.Q.	International and Comparative Law Quarterly
I.F.L.Rev.	International Financial Law Review
I.L.M.	International Legal Materials

## ABBREVIATIONS

L.P.I.B.	Law and Policy in International Business
L.I.E.I.	Legal Issues of European Integration
Jin Ji Yu Fa Lu	Economy and Law
J.W.T.L.	Journal of World Trade Law
J.C.M.S.	Journal of Common Market Studies
J.D.S.	Journal of Development Studies
JVs	Joint Ventures
MOFERT	Ministry of Foreign Economic Relations and Trade
MFA	Multi-Fibre Arrangement
MFN Treatment	Most-Favored-Nation Treatment
NICs	Newly Industrialized Countries
NIEO	New International Economic Order
NME	Non-Market Economy Country
OJ	Official Journal of the EEC
QRs	Quantitative Restrictions
Renmin Ribao	People's Daily
S.E.W.	Sociaal-Economische Wetgeving
SEZS	Special Economic Zones
S.R.C.L.	Swiss Review of Competition Law
UNCTAD	United Nations Conference on Trade and Development

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