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Intellectual Property Protection: *How to get started*

Tony Zeuli and Tong Wu, from the law firm of Merchant & Gould, shared valuable advice on IP protection at last month's UCBC breakfast. They will be regular contributors to UCBC News, covering points of interest regarding this subject. In this article, Tony discusses first steps to find out what kind of protection you can get… more in our November newsletter.

Intellectual property protection is alive and well in China. 350,000 patent applications were filed in China in 2005 – the same number as in the U.S. Trademark enforcement actions in China are up 55% in 2005. But navigating the minefield of issues one encounters in obtaining and enforcing patents, trademarks, copyrights and domain names in China requires help. Also, you cannot leave this matter for later. The window of time is limited and your rights may sunset if you do not take expedient action.

What is the **first step**? Before going into China, sit down with someone who is experienced in intellectual property matters in China. The questions you must ask this person are: how much experience do you have in China? What can you tell me about your cases there and how you handled them? What exactly has your track record of success been? Ask for at least two references that can vouch for this person's ability to help your business in China. Ask tough questions; a good advisor will welcome the opportunity to tell you about his or her successes in China. Ask this person estimate the expense components of IP defense in China.

Here is the **second step:** work together with your advisor to determine whether intellectual property protection is worth the time and expense. Often it is not; or it can be deferred until a later date. Ask whether protection is even available - sometimes it is not or it may be too late. Ask not only what the cost of obtaining the patent or trademark is, but how much it will cost to enforce. Sometimes you may be better off without protection if the enforcement costs are just not worth the business investment. Either way, make an informed decision before spending on IP protection in China or anywhere else.

Once you and your advisor determine that IP protection in China is possible, make a final budget and determine if it is worth your company's investment. This is easy to do as most costs associated with protection in China are flat fees and readily ascertainable. Your advisor should know well what that budget will look like. **The key is to get started –delay is really not a good plan.**

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Tony Zeuli, now a regular contributor to UCBC News

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Chinese names and greetings are a bit different

A topic that often causes confusion for many foreign visitors to China is the order in which Chinese names appear. There, first or given names are placed after the family name. For example, in the name Zhang Jun, Zhang is the family name and Jun is the given name. It is common to address people by their titles and family names when in business situations, like Director Zhang. Although official titles are omitted in long conversations, first names are only used by close friends and family. When addressing deputy managers or others in similar support roles, it is standard practice to pass over words like "deputy", "vice" or "assistant" and simply refer to them as "manager", "chairman", etc. Thus, Deputy Manager Zhang becomes Manager Zhang. When addressing someone without an official title, use their family name, like, Mr. Zhang. In China, a handshake is the standard greeting. Instead of shaking hands very firmly, Chinese people prefer to shake hands lightly and for as long as ten seconds. As not everyone may greet you with a handshake, it may be a good idea to wait for your Chinese counterpart to extend their hand to you as others may use a nod or slight bow to greet you instead. Additionally, you might also see Chinese people lowering their eyes a little when they meet people. This is considered a symbol of respect as staring into the eyes might make some people feel uneasy.

Negotiating in China: cultural aspects of successful deals

When considering negotiating in China, there are stereotypes on both sides which need to be avoided. Regardless of which country you are from, the Chinese approach to negotiation compared to yours may often appear incompatible. For example, Americans often see Chinese negotiators as inefficient, indirect, and even dishonest, while the Chinese see Americans as aggressive, impersonal, and excitable. Some aspects of the Chinese mindset may assist you in understanding your Chinese partner, thereby creating the atmosphere within which a mutually beneficial business relationship can prosper.

Guanxi: (personal connections) is part of the fabric of Chinese society. Personal relationships are central to every aspect of Chinese society, especially business. In the West, relationships grow out of deals. In China, deals grow out of relationships. The cultivation of guanxi is an integral part of doing business.

Interpersonal Harmony (Renqing) The Chinese say: "A man with no smile should not open a shop" and that says it all about the importance of smooth relations between business partners.

Keqi: The Chinese do not consider it polite to be arrogant and boast about one's achievements and connections.

The Intermediary: Business deals for Americans in China have a lower chance without an intermediary. In the United States, we tend to trust others until or unless we're given reason not to. In China, suspicion and distrust characterize all meetings with strangers.

Social Status: American-style, "just call me Mary" casualness does not play well in a country where Confucian values of obedience and deference to one's superiors remain strong. The formality goes deeper yet, however unfathomable Westerners may find it.

Holistic Thinking: The Chinese think in terms of the whole while Americans think individualistically and sequentially, breaking up complex negotiation tasks into smaller issues: quantity, warranty, delivery, price and so forth. Chinese negotiators tend to talk about those issues all at once, skipping among them, and, from the Americans' point of view, seemingly never settling anything.

Thrift: China's long history of economic and political instability has taught its people to save their money. The focus on savings, in business negotiations, results in a lot of bargaining over price, usually through haggling. Chinese negotiators will pad their offers with more room to maneuver than most Americans are used to, and they will make concessions on price with much reluctance and only after much discussion**.**

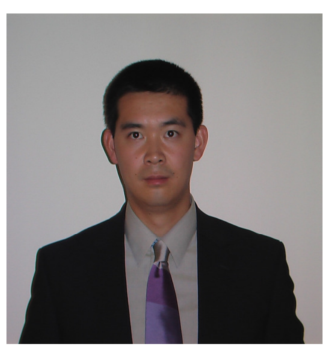
"Face" or Social Capital: In Chinese business culture, a person's reputation and social standing rest on saving face. If Westerners cause the Chinese embarrassment or loss of composure, even unintentionally, it can be disastrous for business negotiations.

Establish common ground: Before you begin, try and approach negotiations with the Chinese with an open mind, as well as a desire to make things work. While one has to be careful about generalizing across cultures, experts agree that a problem-solving approach to cross-cultural negotiations is prudent.

Always look for common interests or approaches upon which you can start to build bridges between the two parties. But in focusing on your potential partner's culture, don't lose sight of him/her as an individual. It's always best to learn as much as you can about his/her personality and communication style. Ultimately, if you can both move culture to the background and establish your own two-party way of achieving business success, then this is beneficial to all.

Hao Peng joins UCBC Board

We are pleased to announce the addition of Hao Peng to UCBC's Board. Born at the tail-end of *China Cultural Revolution*, Hao witnessed the greatest economic development period in China's recent history. He came to the US to complete his BS in Computer Science at University of Wisconsin – Eau Claire and his MBA at the University of Minnesota. He is a founding member and a managing partner of a small start-up company, Triplicity LLC. Its main mission is to provide seamless business process solutions to small or medium size companies located in US, China and India. To fulfill its mission, Triplicity delivers client services through strategic sourcing via a network of qualified businesses. He also works as consulting manager at a local IT & Management consulting firm. He has a strong consulting client portfolio ranging from Fortune 500 corporations to Internet startup companies. Great to have you, Hao!



Think EXPORTS

Exporting has become a lucrative activity for many U.S. companies, but all of them began by making the critical decisions necessary to expand their market outside the USA. Do you wonder if it is time to **"THINK EXPORTS?** Check this site:
https://www.fas.usda.gov/

It will allow you to quickly find the answers and to encourage your company into making those fundamental decisions, or if you are already exporting, to help you identify additional information so you may export more effectively. You may be closer to becoming a successful exporter than you think!

Pricing to make a profit requires upfront work

This article is about **obvious** pricing aspects that can't be ignored if one wishes to make a profit. Surprisingly, some folks in the import-export trade suffer significant margin deterioration from items that were not properly accounted for up front. Once the price is set, it is hard to change it and ill will between buyer and seller will arise. Each step along the market channel has a cost. A product new to the market or with unique features may be priced higher, since it has no competitors. Conversely, if you are trying to gain entry (market share) into a competitive market, you may use marginal cost pricing, where your price in the market is at or just above the point where you would incur a loss. If you do incur a loss, you may be accused of "dumping" which is illegal under WTO rules. Most new traders determine price by taking the domestic factory price plus estimates of freight, packing, insurance and so on. Here is where incorrect estimations may create losses or worse. The table below shows how the most common components of the selling price in one country, then become part of the buying price in the other. Typical commissions are between 7 and 20 percent for an export middleman and between 5 and 20 percent for an import middleman (agent), but there always exceptions to the rule.

Exporter Costs (Country 1)
Costs (manufacturing + SGA) **plus** · Export commission · Freight Forwarder Fee · Freight to Port · Consular Invoice · Export Packing · Foreign distributor/agent Fee . Exporter profit
= Exporter Selling Price
Importer Costs (Country 2)
· Exporter selling price, **plus** · Quality controls . Marine Insurance · Freight Port to Port · Brokerage costs · Duty (Tariff) · Taxes · Freight in (port to receipt) . Banking costs . Waste or damage
= Landed cost, plus
· Warehousing & Repacking expense . General administrative expenses · Sales / marketing expenses . Distributor commission · Freight out · Interest on working capital . Warranty expenses
= Total Importer costs, plus
. Importer profit
= Country 2 Market Sales Price

Time spent in putting together this price estimation worksheet is well worth it. In particular, when export sales are not generating large margins, unexpected costs will produce heartburn, because it is easy to go from a profit to a loss. Also, in the initial steps of an exporting operation into a new market it is important to do research on the pricing of competitive products sold in the new market. A chart like the one shown here should be prepared for each competitive product, with as close an estimate of the cost components as possible. Locally made products will not need so many items, of course. These price maps allow for two things. **First**, an assessment of the possible profitability of the export effort into the new market given all other prices, that is, can we compete and make any money there? **Second,** an understanding of the higher price ranges the new market may bear for the product, given the competitive activity there, that is, how high we can price our product and still achieve make our volume goals. Yes, these are **basic** steps. Unfortunately, exporters and importers get nasty surprises after the fact, when it is too late to retract pricing decisions. It pays to do your homework in advance.

Chinese investors starting to find a magnet in the Midwest

The idea of a Chinese company investing in the Midwest still raises an eyebrow. Not for long. While hardly a flood, the flow has started and it should develop as a serious trend. With one trillion dollars in foreign reserves, the capital is there. For example, last year Beijing-based Longfa Corporation, a furniture maker, set up a furniture and garden store in Naperville, IL. The reason is simple -- it needed an outlet of distribution for its products. It knew how to make them… its sales could grow by reaching the end customer in the USA. This is only one example of the some pioneers. We predict many more will be coming in the next few years. There are a few strategic reasons for the attraction**. First**, now that they are grown-ups in manufacturing, Chinese companies need to grow their sales volume via distribution, sales and marketing resources in the largest market in the world – the USA. **Second**, in the Midwest there is a strong manufacturing culture, a good match if you want to establish a beachhead here with final assembly or full manufacturing close to large retail markets. **Third**, there are distressed assets to buy from companies that have struggled in competition with China. **Finally,** cash rich Chinese companies may not have many alternatives to invest in China, where financial markets do not present many alternatives for investment. Which companies stand to gain? US family-owned enterprises with generational succession issues may find ideal partners, for example. Venture capital and business brokers with a link here and there, companies with strong sales and distribution in the US, who depend on Asian sourcing, are other examples.

And if your own company believes that its US market position is safe because Chinese competition has little direct US presence... just wait, your newest competitor might be a Chinese-owned US company with plants in China.

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For additional information on any of these articles, e-mail questions to:
jfer2000@msn.com

UCBC upcoming breakfasts (7:30 am – 9:00am)

Oct. 4th: ***The Banking System, Currency Controls, Payment Terms and Risk Mitigation in China***
Jane Hay—Vice-President Global Trade Services
US Bank—Minneapolis

Nov. 1st: ***Smart alternatives in setting up a manufacturing operation in China***
Jim Flesch & team at Northport Engineering, Inc.

At the Minneapolis Community & Technical College
1501 Hennepin Avenue, Minneapolis
Call 612-865-6543 to reserve w/free parking

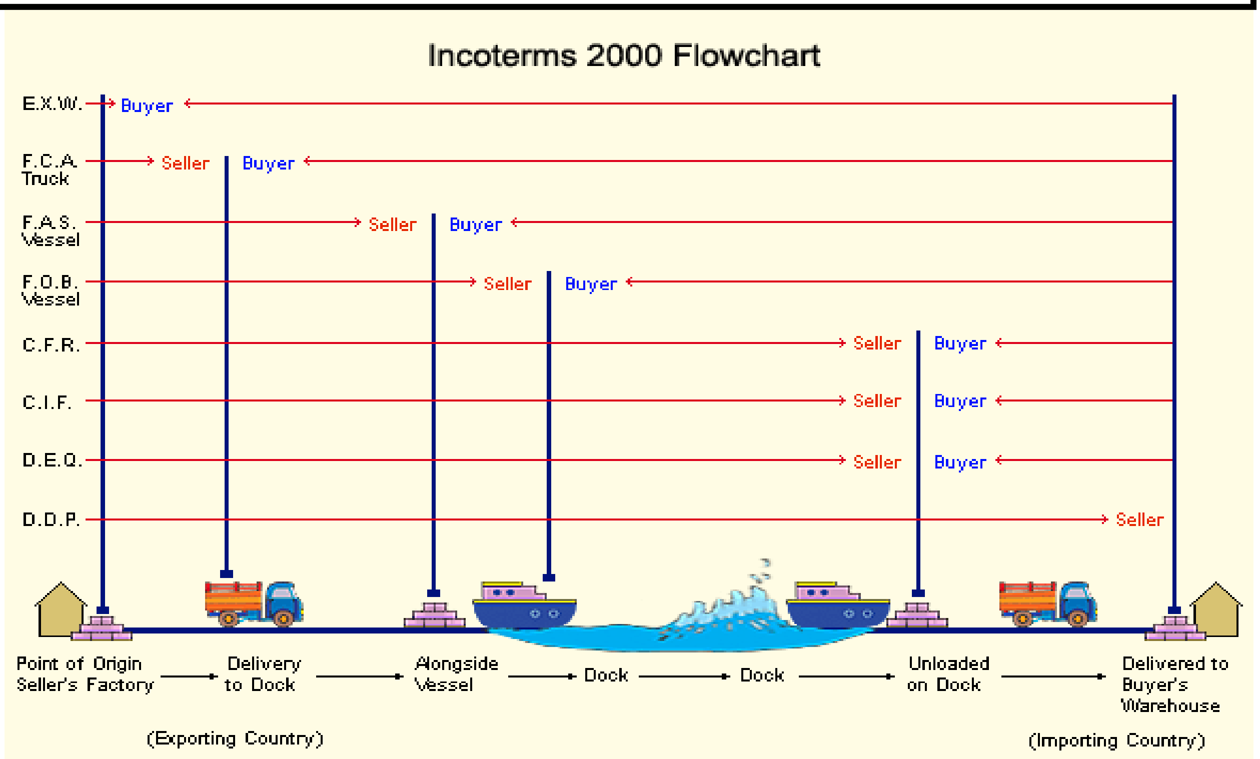
Import – Export: *what do all those terms mean?*

Incoterms are the standard trade definitions commonly used in international sales contracts. Devised and published by the International Chamber of Commerce, they establish the contractual obligations of the seller and the buyer under the price quotation and sales agreement. They distinguish when the responsibility or risk of the shipment transfers from the supplier to the buyer and what obligations each party is responsible for.

Term	Definition	Risk	Cost
EXW Ex Works	**Buyer** arranges for pick up of goods at the seller's location. Seller is responsible for packing, labeling, and preparing goods for shipment on a specified date or time frame.	**Buyer** assumes all risk.	**Buyer** pays all transportation costs.
FCA Free Carrier	**Seller** is responsible for costs until the buyer's named freight carrier takes charge.	**Seller and buyer**	Split evenly
FAS Free Alongside Ship (over water only)	**Buyer** arranges for ocean transport. Seller is responsible for packing, labeling, preparing goods for shipment and delivering the goods to the dock.	**Seller:** until the goods reach the dock. **Buyer:** from dock to destination.	**Buyer pays** all ocean transport costs. **Seller**is responsible for costs associated with transporting the goods to the dock.
FOB Free On Board (over water only)	**Seller** arranges for ocean transport of the goods, preparing goods for shipment, and loading the goods onto the vessel.	**Buyer:** once the items are on board.	**Seller** pays wharf fees (charges to load the goods onto the ship) and freight forwarder fees.
CFR Cost and Freight (over water only)	**Seller** has the same responsibilities as when shipping FOB, but shipping costs are prepaid by the seller.	**Seller** assumes risk until the shipment reaches the overseas dock.	**Seller** pays costs of freight fees up to destination.
CIF Cost, Insurance, and Freight (over water only)	**Seller** has the same responsibilities as when shipping CFR with the addition of including a marine insurance policy.	**Seller** assumes risk until the shipment reaches the overseas dock.	**Seller** pays insurance and freight forwarder fees.

Incoterms make international trade easier and help traders in different countries to understand one another. These standard trade definitions are the most commonly used in international contracts

A useful diagram of flow of goods from seller to buyer



What would you do with a trillion dollars?

If you have little idea, don't feel bad. Folks at the Beijing-based State Administration of Foreign Exchange (SAFE) office managing China's huge foreign reserves probably have the same feeling. SAFE officials report to the Bank of China and, together, they have to make the thorny decisions and avoid losses of value in these reserves --a big source of shame. Normally, these reserves would have raised the value of the renmibi, allowing for stronger US exports but, preferring currency stability, the Chinese government kept its currency artificially low. The US is its accomplice, after all, we love those cheap Chinese imports. The small revaluation of the renmibi so far this year is just that –too small.

To soak up the excess dollars, the banks buy them with renmibi, which later get taken out of circulation by official, low-interest bonds. Chinese banks would like for the interest rates to be higher, but that is not allowed to happen as it would bring in more foreign money in. What to do? One step is to get away from so many dollars and more into euros and gold but that only changes the stripes of the zebra. An alternative is to manage the reserves as a mutual fund, investing in corporate paper. Another is to secure access to scarce commodities and build a strategic reserve of oil, or copper, for example.

What is clear is that at some point in time, the reality check will dictate that the Chinese currency has to go up. At that time, no matter what, the value of those reserves will go down, and the blame game will start.

MCTC Seminar: The China Ready Company

Are you ready for business with China? Steve Ganster, Managing Director of Technomic Asia and author of the terrific book "The China Ready Company" will share a lot of his experience and wisdom as a business consultant about the answers to this question. **Where?** At the "China Ready Company" seminar and roundtable organized by the MCTC (Minneapolis Community & Technical College) on October 5th, from 8:00 to noon. Fee for UCBC members is $99, including a free copy of the book. Don't miss this one! For more information, call **612-659-6500** or visit **www.minneapolis.edu**

Going to the EXPORT COMMODITIES FAIR?

If you are planning to attend the Chinese Export Commodities Fair, you may consider calling Glen Hansen at 612-239-3250. Glen is planning to attend it and is willing to share contacts, ideas, coverage, etc.

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