Journal of International Business and Economy (2017) **18**(1): 70-100

JIBE
Journal of International Business and Economy

M. John Foster and Choo Sin Tseng

CHINA FDI BOOMS BUT PROBLEMS PERSIST FOR FIEs

ABSTRACT

China has become one of the major recipients of foreign direct investment since Chairman Deng determined in 1978 that China's economic door should be opened, for both trade and investment. Despite the fact that there is now over thirty years of accumulated knowledge and experience of this new, open China market on which to draw, there are cases where it has proved difficult to deal with China as partners due to legal and regulatory frameworks operating in China. This is true not only for western-based, non-Chinese firms but also for firms from the Chinese diaspora. We examine a number of such problematic cases, seeking to understand the roots of the problems experienced by the foreign entities and what may be the solutions. All of the case firms experienced difficulties to some degree with the Chinese legal system, the regulatory system, or what might be called tacit regulation, where investing firms have difficulty with other firms such as suppliers who are not part of the legal, or quasi legal system, but have effects on the investors which seem to have the tacit support or approval of government. The experience of these case firms confirms the picture that it is hard for foreign directed entities to win legal or regulatory battles in China.

Key Words: FDI, China, foreign investor problems, partners, regulations, legal issues

M. John Foster
Kingston University, UK

Choo Sin Tseng
Formerly City University of Hong Kong, Hong Kong

Correspondence: M. John Foster
Asia Business Research Centre, Kingston Business School, Kingston Upon Thames, KT2 7LB, UK
E-mail: foster@kingston.ac.uk

https://doi.org/10.51240/jibe.2017.1.4

INTRODUCTION

Inward foreign direct investment (IFDI) to the People's Republic of China (PRC) has grown enormously since Deng Xiaoping's famous declaration of the Open Door policy in 1978, which marked the beginning of the real modernisation and rapid growth of the Chinese economy. Even then, the rapid, sustained period of growth has only been in place for twenty to twenty five years. In the period from 1978 to the early 1990s, a more accurate picture would have been given by the statement proposed by our former colleague H.L. Chan, who died an untimely death some years ago, that "it was more that the door [to China] was no longer closed rather than it being fully open." In terms of FDI, his remark is well illustrated by the data shown in Tables 1 and 2 below. There is the issue of how FDI, necessarily involving foreign invested entities (FIEs), was enacted or implemented. The answer to this lies in the regulatory regime adopted by the PRC. Until China gained WTO access in December 2001, most but not all aspects of FDI required the foreign party to make their investment in the form of a joint venture (JV) with a PRC partner. The granting of access to WTO, brought with it cancellation of the requirement for foreign investors to effect their entry via a JV in most business sectors, although some sensitive sectors are still subject to limitations (e.g., finance and defence) (see Lauffs and Tan, 2002). Some businesses continue to operate voluntarily through JVs with PRC partners for various reasons – mainly to gain access to local market knowledge and access to skills perceived to be required to deal successfully with Chinese government at its various levels. The relationship between levels of control in international JVs (IJVs) of foreign parties and the productivity of those JVs is examined by Li, Zhou, and Zajac (2009). They found, using a large sample, an inverted U-curve relationship between the degree of foreign ownership and IJV productivity.

In the early days of the Open Door period, the business press outside China regularly reported difficulties experienced by foreign firms in their JVs in China, particularly when, in the majority of sectors, FIEs were at that stage required to operate via a JV. However, China is now more than 35 years on from the opening of the door which might lead one to imagine that the pool of accumulated knowledge and experience of the new, "open" China market would mean that such challenging stories would be a thing of the past, or at least fairly uncommon. Not so it transpires, difficulties in dealing with Chinese partners and/or the regulatory framework operated by the PRC government remain all too common. This applies to both Western, non-Chinese firms, and to firms owned by the Chinese diaspora. The purpose of this paper is to examine a number of problematic cases

involving FIEs, seeking to understand the roots of the problems experienced by the foreign entities and hence see if there may be a pattern to the problems experienced. Hence our contribution will be to highlight identified areas that experience continued difficulty for investors in China with special emphasis on the regulatory and legal frameworks; and to alert potential investors to the kind of critical mindset which will be required for success.

This topic is very much a real issue which is somewhat paradoxical because China has recently made public statements of its intention to deliver better facilitation of FDI in order to help keep the Chinese economy booming (e.g., the recent report by Li (2013)). This article reports the updated research on the Chinese government's policies for FDI in China, including improved regulation aimed at enhancing China's FDI sink status. In particular, it reports pledges by the central hierarchy of the Communist Party, in the wake of the 3rd Plenary Session of its 18th Central Committee meeting, to better regulate FDI processes to make it more attractive for potential foreign investors, especially for investment in more specialised units such as R&D centres. Time will determine how well such pledges have been established. A further twist to the paradox is that, precisely at the time of affirmations such as this, foreign companies have been heard to say that things are getting harder for their like and they feel less welcome in China than before (Tobin, 2014).

The paper is organised into three further sections. The first is a short literature review of the FDI picture in China, including: data on its scale; brief details of some of the historic evidence concerning difficulties experienced by FIEs; and the role of WTO in the setting. Then there is a section comprising five mini-cases illustrating situations where foreign companies investing in China have found the going less than simple. The final section is a discussion and conclusion.

The methods used briefly are as follows. The initial patterns of FDI come from published data. The main exploratory tool comprises five, fairly short case studies of foreign firms who invested in China but then experienced difficulties related to their ventures. The case data comes mainly from secondary sources, although in two of them some of the data is from earlier work by one or both of the authors as will made clear in the cases. The analysis takes the form of logical evaluation of the textual data presented, allied to informed suggestions for future approaches for both management of would-be investors and, more speculatively, the Chinese government.

LITERATURE REVIEW

As noted above, the scale of China's inward FDI (IFDI) since Deng declared "the door to be open," in late 1978, has grown enormously with a corresponding but lagged growth in outward FDI (OFDI) as shown in the two tables which follow. Table 1 shows a steady growth from a very low base in 1990 in global terms to ascending to the centre stage of the world picture around 2001 and 2002 and a steady upward trend since then, with only a blip in 2009, as the global economy suffered stress. The other slight hiatus occurred around 1998 as a result of the Asian economic recession at the time. Table 2 shows companion data for OFDI now growing strongly after a slower start. (For a general overview of the pattern of IFDI, its character, and context see Davies (2012) and Fetscherin, Voss, and Gugler (2010)). There are guiding regulations regarding IFDI, issued by the Ministry of Commerce (MOFCOM), over and above the normal commercial laws of China; these are to be found in the *Catalogue for the Guidance of Foreign Investment Industries* (MOFCOM, 2012). At first sight, the story seems to have been one of terrific success but it has not been without its problems from the perspective of foreign investors, see Foster (2014).

Table 1. Inward FDI flows into the world, developing economies, and China (1990-2013) ($bn)

Year	1990	1995	2000	2003	2004	2005	2006
World	207.4	343.5	1413.2	601.2	734.1	989.6	1480.6
Developing Economies	34.8	117.0	264.5	193.8	280.3	334.5	432.1
China	3.5	37.5	40.8	53.5	60.6	72.4	72.7
Year	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**
World	2002.7	1816.4	1216.5	1328.1	1563.8	1402.9	1467.2
Developing Economies	589.4	668.5	530.3	579.7	639.1	639.0	670.8
China	83.5	108.3	95.0	114.7	124.0	121.1	123.9

Source: Summary using data from WIRs, UNCTAD at http://unctadstat.unctad.org/

Table 2. Outward FDI flows from China (1990-2013) ($bn)

Year	1990	1995	2000	2003	2004	2005	2006
China	0.8	2	0.9	2.9	5.5	12.3	21.2
Year	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**
China	26.5	55.9	56.5	68.8	74.7	87.8	101.0

Source: Summary using data from WIRs, UNCTAD at http://unctadstat.unctad.org/

These problems cover a range of issues including culture, HR issues, regulatory, and intellectual property rights (IPR) issues. One of the most commonly noted problems is understanding the culture of the Chinese partner(s) (see Bond, 1991), although sometimes it is suspected that culture is used as a cover for more mundane events such as dishonesty. Gong, Chow, and Ahlstom (2011) made an interesting observation that this issue of cultural understanding is not even standard across the country, because the culture with which one is dealing varies in China's different regions. Importantly, whatever their roots, Li, Lam, and Qian (2001) found that cultural gaps impede delivery of best possible performance. At the cusp of culture and human resource management, there has long been a debate on the important question of whether to have expatriate bosses or local bosses in FIEs – in China or elsewhere in the world (Hutton, 1988). Selmer (2004) argued that it is critical that key managers in China-based FIEs have Chinese experience. In other words, if you make a decision to have expatriate bosses, then it is crucial that they have experience and understanding of the Chinese mind-set. Bearing these facts in mind, design of JV vehicles becomes an important issue with HR facets (Zhang and Li, 2001). Overall, China is far from being a homogenous environment, and this point should be considered when investing. This is particularly true in terms of culture. Institutional diversity across regions is another aspect of non-homogeneity. For example, Qu, Qu, and Wu (2017) referred, inter alia, to the impact of such regional institutional diversity on FDI and innovation.

Turning to the impact of the law on business in China, Shan and Zhang (2011) claimed that what they feel to be a reasonably well-developed, legal framework has helped to attract FDI to the country, although even they admitted that legislation specific to FDI has clear weaknesses. More widely, the flexibility and weakness of Chinese law *as actually operated* has long been a source of concern for foreign investors (see Foster, 1997b; Yang and Yueh, 2009). There have undoubtedly been problems in the area of law concerning IPR, as explained by Dimitrov (2007) and Tian (2007) – abuse of IPRs being the key legal challenge. Hannas, Mulvenon, and Puglisi (2013) explored the issue of industrial espionage, a particular type of law breaking, one facet of which is potentially the theft of intellectual property. Chitakornkijsil (2011) found that one of several impediments to the realisation of what foreign investors perceived to be the huge market potential in a range of sectors, along with IPR and regulatory issues, was corruption.

Then there is the issue of the government itself being the source of problems experienced by FIEs. Perhaps the most chilling item, from a foreign investor perspective,

was the event reported recently in the *Daily Telegraph* by Roland (2013) that an official of the National Development and Reform Commission (NDRC), whose remit covers competition issues, advised foreign companies not to fight allegations if they were to be accused of wrongdoing in their business dealings in China; and, note the choice of words, simply "accused" not "found guilty." The report went on to quote a survey of European firms doing business in China; they feel there are, "significant regulatory challenges and discriminatory regulations that put foreign players at a disadvantage over domestic competitors." Such discrimination, if true, is in direct conflict with the ethos of WTO membership. Lelyveld (2014) meanwhile alleged that the PRC government is using its 2008 Anti-Monopoly Law as a stick with which to beat FIEs unfairly. He stated, "China has mounted a major attack on foreign companies for alleged monopolistic practices, causing many to cut prices and raising suspicions that political forces may be at work."

Other government-related problems may be more benign in nature, unintentional even. For example, problems may simply be a consequence of weakly drafted legislation (see Yang and Yueh, 2009). There may also be a lack of willingness by local courts to rule against local firms and, even if they were minded to so rule, there is the potential difficulty of enforcing judgement. See for example the problems which a Hong Kong firm (disguised as a Macanese firm for reasons of confidentiality) had with a local, building contractor in Guangdong (Foster, 1997a).

Turning back to the formal regulatory picture faced by foreign investors, China's admission to the WTO in December 2001 should be seen as an important part of the context. The admission to the WTO presaged major changes to the regulatory framework dealing specifically with FDI projects. Pre-WTO, there were three major degrees of openness or foreign investment categories; encouraged, allowed, and prohibited. Even where investments were allowed there could still be major restrictions. One of the major restrictions meant that, in a lot of segments, FIEs could only invest via a JV, rather than being allowed the option of having a wholly owned foreign enterprise (WFOE) as the vehicle. As would be expected that changed, with only a limited number of strategic industries – two key ones were defence and finance - able to deny investors the possibility of a WFOE (Lauffs and Tan, 2002). In certain sectors, such as retailing, a phased transition was allowed. The restrictions on ownership and a limitation on the number of outlets allowed by venue of (large) department and chain stores were fully abolished as of December 2004.

The abolition, across many segments, of ownership restrictions would be assumed to be good news for those investors who prefer the WFOE approach, although it could be argued that there were benefits to be derived from staying with the JV form, not least understanding the Chinese mind-set (see Vanhonacker, 1997; Deng, 2001). Post-accession studies provide inconsistent results. For example, Li et al. (2009) reported that, once a foreign partner has a clear majority ownership in a JV, further control does not deliver increasing returns. This might lead one to wonder if going for a WFOE structure is necessary or desirable but, as Duanmu (2011) explains, foreign investors, at least those from jurisdictions where honesty is prized, feel there are good reasons for opting for WFOEs essentially because a degree of corruption is still endemic in China and hence the current Chinese mind-set. The unresolved nature of this debate is reflected in our own case studies in the next section.

In broad terms, the most significant benefit of WTO membership for foreign investors should be the level playing field rule which is supposed to be assured to them relative to domestic investors in member countries. It is suggested by some that the deep understanding of the local canvas and the ability to operate in a highly flexible manner which were definitely necessary to succeed in the pre-WTO phase of China's open-door period (Tseng and Foster, 2006) may no longer be necessary because of the level playing field. Our contention, supported by Ahlstrom, Young, and Nair (2002), is that this is far from true. This will be illustrated further by our case studies.

There is a body of published evidence since WTO accession which suggests that there have been and are still problems, the WTO level playing field and China's undertakings on accession notwithstanding (see Bendini and Barone, 2015; Davis, 2012; Hufbauer and Woollacott, 2012; Morrison, 2011; Voon and Mitchell, 2010). Chow (2013) and Crosby (2008) highlighted very particular issues in the areas of human rights and conflicting interpretations of regulations. Chow (2013) argued that the US charge that China is opposed to there being explicit human rights undertakings and protections within the WTO scheme of things is not quite what it may seem. He does not dispute that there are human rights issues in China but he suggests that the US posture on these issues is being used as a device to mask what is in reality a more basic economic argument.

Crosby (2008) meanwhile suggested that there are contradictory interpretations that China and other WTO members make regarding China's commitments in the banking and finance area. Irritating as this undoubtedly will be for players in the field, we suggest it may be unsurprising given the long standing issue of flexibility of interpretation of China's

domestic laws, to which we referred earlier. Moreover, it may be important to note that problems deriving from this opacity in China's legal system affect Chinese players as well as foreign investors. It is all part of a mind-set particular to the Chinese and one simply has to understand what is happening and do very energetic due diligence around any deals one makes, if one is to succeed in China. Even then problems may occur which a foreign investor believes to be wrong or unfair; our cases studies illustrate this.

Lest it be thought that the picture painted by this selection from the literature is unduly negative, we should observe the following points. First, as already noted, WTO accession necessarily brought benefits to inward investors, as well as to China itself. Most notably there is the principle enshrined in the WTO framework of a level playing field for domestic and foreign investors. That the field may at times be seen to acquire a slope cannot undermine the fact that the picture is more favourable for foreign investors with WTO rules in place, at least in theory, than it was without them. From an empirical perspective, both Bendini and Barone (2015) and Qin (2007) opined that matters are far from wholly negative post China's WTO accession. Bendini and Barone (2015), writing advice for the EU government, stated that economic relations between the EU and China are generally good and the number of disputes is tolerable. For her part, Qin (2007) noted that, "[six years on from the event] China's accession has made its foreign trade and investment regime far more liberalized and less opaque than a decade ago." She further noted that, "More importantly, the accession has institutionalized the process of China's domestic reform externally through the force of WTO obligations…… WTO membership ensures that the course of China's economic development will be charted within the disciplines of the WTO system."

Finally, another issue which has come somewhat to the fore recently (or perhaps resurfaced might be a better description) is that of the negative consequences of resurgent nationalism in China. Pearce (2016) noted particularly the latest Communist Party Congress' branding of President Xi Jinping as the 'core' of the Party, making the strength of his power perhaps more dangerous. Economist (2016) referred in a recent piece to a report produced in China, which made a string of claims about China's role in innovation across many spheres of activity, over many centuries. The underlying subtext seems to be that China was once a great and powerful country and can be again. This is all very well from a domestic perspective but it may pose a threat to foreigners investing in China, providing another risk factor to consider. Vekasi (2014) argued that the risks facing foreign investors, especially Japanese as they are a major focus of his thesis, include

China's political conflicts with neighbours, aggressive nationalism, and authoritarian institutions. That is not to say no foreign firms will invest but such risk factors could be a turn-off for firms who are risk averse. In January 2017, China's top judge publicly dismissed the notion of judicial independence as one of a number of erroneous Western ideas. This uber-nationalist, pro-Party stance was so worrying to some that it provoked open dissent by some senior lawyers and legal scholars in China (Choi, 2017).

FIVE CASES OF PROBLEMS FOR FOREIGN INVESTORS IN CHINA

This section sets out the cases of five firms based outside China who have experienced difficulties in their dealings in China (for this purpose, Hong Kong is properly viewed as external since it has a separate and very different legal framework from that of the PRC). In the first two cases, there are partnership issues, which ended up in court; in the third case, concerning British retailer Tesco, the solution, or so they hope, to problems encountered has been to enter into a minority JV with Chinese giant CRE. The fourth firm is Kingfisher who traded under their B&Q brand in China, up to exiting the market in spring 2016. The final firm is the German, chemicals giant BASF. Four of the five foreign companies are European, albeit from three different countries (France, Britain, and Germany) but in the first case the foreign partners were Hong Kong Chinese.

WangLaoJi – A battle over rights to an Herbal Drinks Brand

Wanglaoji (王老吉) is described by its producers as an herbal-tea drink, a competitor in the canned, soft drinks market. In fact, the herbs are muted and the sugar content is high, so the product sold on supermarket shelves in China is a competitor to Coke and Pepsi - a sweet, non-alcoholic drink, which needs to be chilled to be palatable.

In 1995, Hong Kong firm Hung To Ltd. (or Hung Dao in *pinyin*) acquired a licence from Guangzhou Pharmaceutical Holdings Ltd. (Guangzhou Pharma) to use the Wanglaoji trademark to sell this sweet, herbal-tea product in China. Guangzhou Pharma had sold the product in green cartons but Hung To went for a red can – overt competition to Coke perhaps. Hung To was primarily responsible for the development of the product to become the biggest canned drink brand in China in 2012, ahead even of Coca-Cola, with 13.72 % market share (Song, 2013). This market development worked through Hung To's Chinese subsidiary, Jiaduobao Beverage Co. Ltd.

The licence was apparently renewed in the early 2000s giving Hung To usage rights to the name until 2020. However, drama ensued in 2005; it was discovered that the Guangzhou Pharmaceutical official in charge of renewing Hung To's licence, its Vice Chairman, Li Yimin, had pocketed a HK$3 million (approx. US$386k) payment from Hung To instead of paying it to Guangzhou Pharmaceutical. In 2011, the Chinese firm filed a trademark case for arbitration with the China International Economic and Trade Commission (CIETC), essentially on the grounds that the licence for Hung To had lapsed when the full fee had not been paid to Guangzhou Parma several years earlier. In May 2012, CIETC ruled in favour of the Chinese company, ruling that the monies pocketed by the PRC manager had constituted a bribe (see Song, 2013; You, 2012). An appeal against that ruling filed in the Beijing No. 1 Intermediate People's Court was refused on July 13, 2012.

Hung To for their part felt aggrieved because it was they who had built the brand in China from being a relative non-entity to its position as market leader. What then could they do? Their solution was, from a western vantage point, "a very Chinese solution." In June 2012, Hung To Group began to produce the same drink, still in a red can, but with a new brand name, *Jiaduobao* (加多宝). That is they used their operating subsidiary's name (which translated literally means "eat more treasure") as the brand, with an advertising slogan which stated, "the top selling herbal tea brand has been renamed Jiaduobao." Guangzhou Pharmaceutical responded quickly producing a similar can with the name Wanglaoji (王老吉) on the side.

So now the two red cans were competing in supermarkets across China, but their market shares are far from equal. Jiaduobao rapidly built market position and according to Song (2013) held around 77 % of the herbal tea market in China by the end of 2012, whereas Guangzhou Pharma had a modest 9 %. The battleground then started to move, with the issue becoming the right to use the red can. Both know that's an important part of consumer recognition, as the can has come to be associated with herbal tea, as a soft drink, in China. To a neutral observer logic might suggest that Hung To (Jiaduobao) should win that battle because it was they who started the red can for this fairly generic product, but their opponent is a PRC firm and the battleground is China so heavy bets on the outcome might have been imprudent.

Danone finds partner Wahaha tricky, or something like that?

Groupe Danone's China story began in earnest in 1996 when they entered into a JV with Wahaha Group a Chinese conglomerate directed by Zong Qinghou, one of China's rich men. In fact, the JV had three parties to it. Wahaha Group owned 49% of the shares, while Danone and Bai Fu Qin, a Hong Kong company, together owned the other 51%, and in 1998 Danone bought out Bai Fu Qin's stake. The JV was based in Hangzhou, some 150 miles south of Shanghai in Zhejiang Province. In order to facilitate the building of the JV to become a major player in the China soft-drinks market, Danone is reported to have invested some $45m, with a clause in the JV agreement noting an intention for Wahaha Group to assign the rights to use the Wahaha (娃哈哈) trademark or brand to the JV. The JV developed a range of Wahaha branded products including, distilled water, bottled cold tea, a children's soft drink (the original Wahaha product), a Cola drink, and somewhat differently, a line of children's clothing.

The real root of later problems originated in the refusal by the China Trademark Office (CTMO) to register and grant approval for the assignment of the trademark, as was required in Chinese law for such an assignment to be effective. As Vale, Ying, and McGuire (2010) report, "In May of that year [1998] Danone and Wahaha Group decided to circumvent the need for approval of the trademark assignment by entering into two licence agreements – a long-form trademark licence agreement and a short-form trademark licence agreement. They recorded the short-form agreement with the CTMO, but not the long-form agreement." The reason for doing this was that agreements such as trademark licensing contracts, which fall short of a full assignment, only need to be recorded (*i.e.* no definitive approval by CTMO is needed: crudely, the authorities won't thoroughly examine the detail as long as basic paperwork is submitted). That gave the JV parties some sort of apparently legal agreement with which to operate which was fine as long as they stayed on good terms. While the collaboration worked amicably, with the patched up licence agreement, volumes grew and by 2006 turnover had reached €1bn, or 5 % of Danone's worldwide turnover. These volumes meant that the JV, in which Danone held a 51 % share as noted above, had achieved about 16 % of the Chinese non-alcoholic beverage market.

So far so good, but by 2007, and with its roots certainly rather earlier, open warfare broke out between the two JV partners. Danone claimed, fairly accurately it seemed, that Wahaha Group had set up parallel firms selling supposedly Wahaha-brand goods in direct competition to the JV's products. Wahaha/Mr. Zong for their part counterclaimed some

tricky behaviour by Danone on their part. They had, it was claimed, invested in competitor companies; they had bought stakes in other Chinese companies which sold brands which competed on supermarket shelves with the Wahaha brand. The short version of events is that, in 2007, Danone brought a case to the Stockholm Chamber of Commerce Arbitration Institute, as was provided for if needed in the original JV agreement, claiming material breach of the trademark assignment agreement on which the JV's business was founded. This case took two years to come to a ruling. However, matters did not stop there. Other legal proceedings were filed by both parties in different venues, including an arbitration case before Hangzhou Arbitration Committee (HAC) over the validity of the assignment agreement. In December 2007, HAC decided that the assignment agreement had terminated on December 6, 1999 and that Wahaha Group thus still owned the Wahaha trademark. Danone applied unsuccessfully to the courts to try to get this arbitration decision cancelled. This of course meant that it would be impossible for Danone to prevent Wahaha group from continuing to utilise the Wahaha brand for the products it produced in its parallel firms.

On September 30, 2009, the SCCAI ruled broadly in favour of Danone but at the same time the parties announced that they had reached an agreement whereby Wahaha would buy out Danone's share of the JV for a consideration of €300m; as the headline in *Forbes* magazine put it "Danone gives up China fight" (Kwok, 2009). The consideration paid was a non-trivial sum but it probably means that Danone received an amount equal to only about 6 to 12 years net earnings from the JV, assuming a net profit margin percentage in the range [5, 10]. Of course another issue for Danone is the extent to which their core Danone brand was impugned in the China market with what effect for the future? Could there even be negative spillover effects in a wider business domain?

Given all of the above, the other solution in many circumstances – but perhaps not here because of the key role of the Wahaha brand-name – would be to buy out the Chinese partner and go for a WFOE. That way the firm will certainly have control within the organisation but that leaves the external interface with government, be it national or provincial, to worry about.

In so far as Danone did try at the outset to do things properly and get the Wahaha trademark formerly assigned to the JV they had established with Wahaha Group, the firm could be said to possess the moral high ground. However, Dickinson (2007), a partner in the Shanghai office of an international firm, suggested that Danone had been their own worst enemy. Scrutiny of his argument reveals lines of argument which really boil down to

not expecting a Chinese party to either understand or have appropriate regard for legal dispositions to which they have given their assent. For example, he suggested that Zong, as the CEO of a partner holding 49 % in the JV, could reasonably assume that such a holding gave him control of the JV as the biggest single shareholder, as distinct from holding an overall majority of the shares.

Perhaps one lesson which can be drawn is that it is often hard for foreign parties to get a favourable decision in a Chinese legal forum, even if parallel action in an international forum does go their way. The moral is to try to ensure you have belt, braces, and probably another belt in place before you make significant forward steps in a Chinese JV. Only by doing this can subsequent arguments be avoided. Bu (2011) concluded that, "The feud between Danone and Wahaha will have a far-reaching impact on foreign MNCs' future expectations on the risk of contract repudiation and Chinese entrepreneurs' credibility."

Tesco enters, surges, then stumbles

British retail giant Tesco effectively began its entry into East Asia in the mid-1990s and then on the back of a fair measure of success in Thailand and South Korea made its initial move into China in 2004, effected via purchase of a 50 % stake in hyper or supermarket trader Hymall, for a consideration of £140m, from a Chinese company named Ting Hsin. This stake was raised to 90 % in December 2006. This deal delivered a JV which initially operated 25 hypermarkets in the rich eastern coastal area of China. This strategy may be seen as a classic posture for the western investor into the PRC, via what would have been an initially inevitable JV because of pre-WTO regulations regarding the retail sector (including a transition phase from December 2001 to the end of 2004): an operation capable of delivering some economies of scale in the rich, tier 1 cities of the East, of which the most important are Beijing, Shanghai, and Guangzhou.

Over the next five to six years, things developed quickly, with Tesco adopting a two-prong strategy: development of big stores within even bigger Lifespace shopping malls; and opening Tesco Express stores to complement the hypermarkets. Each mall comprised approximately 500,000 ft^2 of retail space over five floors and included a 100,000 ft^2 Tesco hypermarket. The first three of these developments were located in Fushun (*in Liaoning province*), Qingdao (*in Shandong province*) and Qinhuangdao (*in Hebei province*), with nine more planned to open within a year, Tesco (2010b, p12). The first Tesco Express opened in Cangzhou Road in the Yaan Pu district of Shanghai on April 8, 2008.

By early 2010, the total number of Tesco outlets in the PRC had reached 88, employing over 20,000 staff. Things went smoothly forward or so it seemed at first. Store numbers increased further in the following year and sales volumes grew, as shown in Table 3 below. One notable aspect of the data shown there is that while, up to 2011, we see a positive picture of onward raw growth, productivity in China is not as good as elsewhere in their East Asian operations. For example, revenue per employee in year ending 2011 was less than 60 % of that in Thailand and was only one fifth of that in South Korea.

Table 3. Comparative Tesco activity data for FYs ending 2010 and 2011

Country	Revenue-ex-VAT (£m)		Store numbers		Employees	
	2010	2011	2010	2011	2010	2011
South Korea	4,162	4,984	305	354	22,739	23,131
Thailand	2,344	2,844	663	782	34,775	38,395
China	844	1,141	88	105	22,668	27,096

Country	Revenue/employee (£k)		Percentage Increase
	2010	2011	
South Korea	183.0	215.5	17.76
Thailand	67.4	74.1	9.95
China	37.2	42.1	13.17

Source: Created from data in *Annual Reports* Tesco Plc, 2010 and 2011

In 2012, Tesco's fair weather progress in Asia suffered some setbacks, in both Korea and China for rather different reasons. In China, trading had become more difficult. In July, the *Financial Times* ran a piece under the heading "Tesco scales down ambitions for China" (Rabinovitch and Felsted, 2012), which included a graphic portrait of a semi-deserted store in Qingdao on the coast of Shandong. Despite this, and affirmation by a Tesco spokesman of their commitment to China, the negative rumours persisted leading to the company having to make another denial on September 20th, as also did French retailer Carrefour (Zhang, 2012).

The real question was why was the Qingdao store so empty? Several reasons floated to the surface. First, the location of the supermarket selling space on the first floor rather than the ground floor may well have been a design mistake for the China market as asserted by Rabinovitch and Felsted (2012); this seems very plausible. Their second suggested reason was that local opponent Liqu had a brand recognition/loyalty advantage.

But the real critical factor seemed to be the sparse filling of some shelf space reported to be due to the store experiencing difficulties sourcing supplies (and if that Tesco store had such problems, one then can speculate why not others?). The answer according to a reliable, confidential source from within China was that supplies were being artificially bought up or blocked from Tesco. This causes one to wonder whether there may have been a systematic, and possibly officially approved programme of interference with the supply chain of the foreign retailer. Quite simply, if the alleged reason were true, is it plausible that the authorities didn't know what was going on and if they did why would they not act to stop the blocking unless of course they were in some way sympathetic to the action? Moreover, some analysts suggest (see *Bloomberg News*, 2012) that Tesco and other foreign retailers are simply not as nimble and savvy about operating in local markets as some of their local competitors, although it should be said in Tesco's favour that they had made some serious attempts to localise their offering. Examples included: in less developed areas, with lower levels of car ownership, a free minibus service was provided to bring shoppers to the big stores; fresh vegetables and meat were sold in an environment which was more akin to the local wet markets than the more sanitised interiors found in their European supermarkets; live fish were displayed for sale in water-tanks - even in Hong Kong supermarkets this is not the norm (for further detail see Foster and Noh, 2013).

The question then was which way would Tesco go: would they slog it out on their own, perhaps trying to be more politically attuned; would they give up and go home as some had suggested might happen in 2012; or, was there a surprise in store? The answer when it came in 2013 was that there was indeed something unexpected. An initial statement was released on August 9, 2013 which stated: "Noting recent media speculation, Tesco Plc ("Tesco") and China Resources Enterprise, Limited ("CRE") today announce that they have entered into a Memorandum of Understanding and are in exclusive talks to combine their Chinese retail operations to form the leading multi-format retailer in China." In due course, they agreed to make the JV with CRE, in a deal which would give them a 20 % stake in the merged entity, as detailed in a further press release on October 2 (Tesco, 2013).

The deal was subject to scrutiny by and required the approval of the Anti-Monopoly Bureau of the Chinese Ministry of Commerce (MOFCOM), who approved the deal unconditionally on May 12, 2014. Such approval was announced in a Tesco press release on May 29 (Tesco, 2014). The partners confirmed the 20%/80% holding arrangement,

and noted that the deal would pair Tesco's world class expertise in supply chain systems and retailing with CRE's local knowledge and recognised China Resources Vanguard (CRV) brand. Adding Tesco's 134 Chinese stores and malls with the 2,986 CRV, stores would deliver the biggest food retailer in China. This deal should certainly ensure that Tesco no longer has the type of problems which were hampering its Qingdao store in 2012 but the challenge now will be to understand the mind-set of their partners and work effectively with them. If they can achieve that they may be seen to have won overall. Interestingly, as well as their minority stake in the China venture, Tesco have retained their international sourcing HQ in Hong Kong, where its separate, British-style legal system offers more certainty for foreign players such as Tesco. Their main focus in Asia is now their Thai operation which continues to do well, see Tesco's 3rd Quarter Trading Statement (2016).

Kingfisher grapples with Regulation 17 then withdraws

Kingfisher Plc., a UK retailer, launched their DIY business in China in the mid-1990s using their B&Q brand. The business grew to just over 60 stores in 2007/2008. They adapted the business to the Chinese context in a number of ways including: moving to a Do-It-For-Me (DFM) formula since the Chinese consumer didn't want to do it themselves; tailoring the product range to local taste (no electrical parts, no-one touches the electrics at home); forget the wallpaper, it doesn't sell. There were other difficulties of detail according to Steve Gilman, the Regional Director for Asia up to the end of 2008, but nothing beyond what might be expected in any new venture (Foster and Tseng, 2012). Overall, the venture was a success and had begun to make money until it ran into a major problem concerning its vendor-buyer-agreements with suppliers (VBAs) in 2007. One thing which B&Q (China) did once the law changed as a result of WTO accession was to use a WFOE format for new branch openings post 2004.

The VBA issue related to a government guideline on retailer-supplier contracts in around 2007, in the form of Regulation 17 - an 'Order of the Ministry of Commerce [and other agencies…], Measure for the Administration of Fair Dealing of Retailer and Supplier'- , promulgated on October 18, 2006 (for more detail, see Foster and Tseng, 2012). That regulation was a guideline, not statute law, and Kingfisher had difficulty understanding how they may have been deemed to be operating ultra vires in respect of that regulation, as they were then led to understand was the case. When they sought to inquire through official channels how they had erred/what they needed to do, the advice

was strange to western ears. They were advised that their supplier contracts were not actually legally flawed but they were in some sense "not in the right spirit." B&Q (China) had formally approached MOFCOM in both Shanghai and Beijing.

Kingfisher wondered how the problem might be solved. The advice received from official sources was to employ a learned Professor who would be able to transmit an accurate feel for how the [in fact legal] VBAs should be changed to become *in the right spirit*. This is a prime example of what Tseng and Foster (2006) called their seventh force, the lightning strike from Beijing man. Armed with this advice a learned Professor was duly found enabling Kingfisher to find a formula for revised supplier contracts which was acceptable. But this solution came at a financial cost and other things had changed including the market structure. As a result, Kingfisher's B&Q (China) subsidiary booked losses between 2007/8 and 20012/13. A package of actions was undertaken over a 5 year period. The number of outlets was cut to around 40; the store format was refreshed; and in FY 2013/14 the company reported that it had traded at breakeven in China. At its AGM on June 12, 2014, it was stated that it was now engaged in a search for a strategic, Chinese partner, with whom to take forward and develop the business, in a fashion similar to their successful JV project in Turkey. The Chief Executive at the time of the AGM, Ian Cheshire, commented that for the business to be really successful it needed to become much more Chinese in character (Cheshire left Kingfisher and was replaced as CEO in December 2014 by Véronique Laury). Thus, there is some sense of matters having come full circle, since the regional director, at the launch in the 1990s, had been a big believer in Chinese leadership but after he retired there seemed to be a London led retreat from that view post 2007.

In December 2014, some six months after Cheshire's statement, Kingfisher announced an agreement to sell 70 % of B&Q China to a Chinese retailer Wumei Holdings. The deal was subject to official approval by MOFCOM and that approval was granted in April 2015, allowing the completion of the deal with the payment by Wumei of the £140m consideration, as had been reported would be the case by Kingfisher in a press release on April 30, 2015. Moreover, there was a potential option to sell out the residual stake after a period of time, which could mean a complete withdrawal from direct retailing in China, see (Kingfisher, 2015).

This final bail-out was announced on March 23, 2016 as part of the release of the results for the year ending January 31, 2016. The fixed price consideration for the residual thirty percent stake was Rmb 582m or approximately £63.3m at the rate prevailing on the

day of the announcement. This means that Kingfisher pocketed just over £200m in total for the sale of its Chinese business. Given the tone of the developing narrative over the last 2-3 years of Kingfisher's ownership of B&Q (China) this news came as no surprise to the authors. However, the fact remains that this news came less than four years after the company had stated formally at its 2012 annual meeting that it continued to see a role for B&Q (China) in the group, a position confirmed by one of the non-executive directors in a one to one conversation with one of the authors immediately after that meeting.

Even big MNCs such as German Giant BASF have issues

BASF is a giant German chemicals business and China has long been on their map (BASF, 2014). They began trading there in 1885 and their first direct investment was made in 1986 through a JV named Shanghai Gaoqiao BASF Dispersions Co. Ltd., producing styrene-butadiene dispersions for coating paper and carpets. By 2005, they had operating plants in Shanghai, Shenyang, Jilin, Guangzhou, and Nanjing, with operations scheduled to start by early 2014, at a new plant in Chongqing. The operations in Shanghai and Nanjing are big by any standards, as would be the Chongqing plant, planned to be the largest methylene diphenyl diisocyanate (MDI) plant in the world. All this sounds very positive: major investment in China creating jobs and wealth in China and fuelling the profit and loss account of the parent in Germany.

But Greenpeace (2009) was critical, alleging that the new MDI plant in Chongqing has the potential to unleash very harmful pollution side effects, while neighbours of one of their big Shanghai plants already complain of pollution driven health problems. Greenpeace's view is that the company may make decent efforts to be environmentally prudent on their developed, home turf in Europe, and in the USA, but that they are much less careful in China – the implied statement is that they are engaging in the practice of environmental dumping in a less developed economy, pollution haven behaviour as described by Dean, Lovely, and Wang (2009). They reported finding evidence of such negative behaviour in China by foreign investors, although their data set suggested it was "offshore, Chinese, investment centres," rather than the Western economies which were the main sources of culprits. However, this may in turn be at least partially explained by disguised, or indirect, investments by Western firms through intermediate holding companies which are registered in centres such as Hong Kong.

BASF for their part along with fellow German company Siemens raised concerns about China's treatment of foreign business in a high-level meeting with then Premier

Wen Jiabao and Chancellor Merkel of Germany in July 2010. Jurgen Hambrecht, the chairman of BASF and Peter Loscher, the chief executive of Siemens, told Premier Wen that foreign companies were basically being compelled to transfer valuable intellectual property in order to gain market access, according to people present at the meeting, and they were not happy about it. The nub of the complaints was reported thus by *The Wall Street Journal* (Dean, 2010):

"Mr Hambrecht complained about companies facing the "forced disclosure of know-how" in order to do business in China. "That does not exactly correspond to our views of a partnership," he said, according to a report by Germany's Deutsche Presse-Agentur, whose reporter was at the meeting.

Mr Loscher reiterated widespread foreign complaints about procurement rules that China has drafted, which could give a major advantage to companies with "indigenous innovation" - a policy that foreign companies fear could shut them out of tens of billions of dollars in government contracts."

So even big operators like BASF, who have been successful and, in their own terms, effective in China, feel that the central government in Beijing, together with local business partners, are exerting unfair pressures on foreign companies. The interesting aspect of a cost-benefit analysis (CBA) of the operations of BASF in China would be to try to determine where the balance lies between their negative effects donated to China's people and the penalties they (like other foreign investors) pay in terms of what they see as unfair regulation. However, access to accurate data required to conduct such a CBA is unlikely to be possible for neutral observers such as us.

Are firms like BASF and Siemens being paranoid? The NDRC edict noted earlier taken together with the results of a recent American Chamber (AmCham) of Commerce in China survey suggest not. The AmCham China survey found that 60 % of respondents felt themselves to be less welcome in China (up sharply on a year earlier) and just under 50 % said they believed that they were being targeted for selective and subjective (or unfair] enforcement of anti-monopoly, food safety and other rules or regulations (see Lucy Tobin's report in the *Evening Standard*, 2014).

A particular example of this kind of treatment is noted in a report carried by the online version of *Forbes* (2014). The report states that, "Beijing has ordered state enterprises to cut dealings with US consulting firms (including globally active, US giant McKinsey), accusing them of spying for Washington." This type of action/reaction may have two drivers. On the one hand there have been apparently well documented cases of

Chinese firms and agencies acting less than ethically relative to western companies and countries, so this may be tit-for-tat in Chinese eyes, and then there is the possibility that the PRC government is simply acting as it is because it thinks it can do it and get away with it! As the Forbes piece puts it, "China, when it joined the WTO, confirmed that state enterprises would make purchases based 'solely on commercial considerations, without any governmental influence or application of discriminatory measures.' Furthermore, Beijing, in negotiating its entry into the government procurement agreement, is now arguing that purchases by state enterprises should not be covered by the pact. In short, China's ordering such enterprises to not do business with foreign consulting companies, as reported by the *FT* [*Financial Times*], is a clear violation of its WTO commitments…. Beijing does not seem to care. The central government's order to state enterprises is part of a concerted attack on foreign IT."

Finally, the most recent updates of opinion held by the members of the European and American chambers of commerce in China through their annual surveys record the fact that they continue to feel that, if anything, things are getting harder not easier for foreign firms investing in China, AmCham (2017) and European Chamber (2016). One might highlight two conclusions. First there is a clear perception that foreign firms are discriminated against as compared to domestic firms in a range of regulatory areas. Secondly, given that first point, the PRC government announcement in November 2013 to which we alluded in the Introduction is more posture than reality.

DISCUSSION AND CONCLUSION

The first conclusion is that, just because things seem to have settled nicely after a new FDI venture is launched in China, this does not preclude unexpected issues arising contrary to the apparent successful progress. In the first two cases, the ownership and operation of the Wanglaoji and Wahaha brands were the matters at hand. In the first case the non-PRC partner found it was judged to have lost its trademark licence by virtue of the alleged corrupt actions of a key official of the PRC party, Guangzhou Pharma. In the second case involving Danone and Wahaha, the problem arose for the non-PRC party because they had relied on a working agreement/contract rather than gaining a full licence which was formally approved by the appropriate Chinese legal authority (they had tried to get that but the application had been refused). In both cases, the conclusion would seem to be that as and when the matter goes to a PRC court for resolution, external parties need a rock solid case if they are to have any real prospect of success.

In the Tesco case, the firm began to experience what to them were surprising or unexpected strains on their supply chain when they had begun to gain a good, visible position in the market place. Someone wanted them to have problems, the only blurred question was exactly who and were those parties acting with approval or not. Whatever the true origins of those stresses, they were causing real problems for Tesco and they like other foreign retailers, such as Wal-Mart and Carrefour, found that if they once came into the sights of the local press the coverage could be extremely negative or hostile, damaging even. In this case the issue was not a legal issue being debated in the courts but it seemed clear that their position was within the line of sight of the PRC regulators. Their attempted solution has been to "try to join them if you can't beat them." Namely, they have gone into a big JV with CRE Holdings a major Chinese firm, who hold the bigger share of the venture, and the merged business trades under the Chinese party's Vanguard brand name.

Although different in one sense - the problem is more indirect this time - the recent headline issues around food health safety in companies comprising the local, Chinese supply chain for fast food giants such as McDonald's and KFC have led to public apologies from McDonald's and Yum Brands (KFC's parent) to their Chinese customers, Jourdan and Baertlien (2014). The problem has been caused by the supplier but the local press's trumpeting of their link to the U.S. fast food giants can hardly have helped the end user firms. The question is to what extent Chinese youth's love of western fast food will render this bad publicity, in which it seems that Chinese local officialdom almost revels, unimportant. Perhaps it will transpire that these famous brands have their own inherent strength.

Kingfisher, the UK based DIY ('home improvement' in 'American') retailer had trouble with the regulatory system. Their problem was a kind of paradox: when is an admittedly legal contract not acceptable to the regulator? This leads to two conclusions. First, regulations which are not laws can have just as big an impact in practice as would a law in China. Second, the answer to the paradox may simply be 'when it is a contract let by a foreign party'.

In the fifth case, BASF, who are a big player in China, were complaining that they were, like other foreign investors, being subject to coercion in order to be allowed to develop their operations. The alleged 'price' was release of technical knowhow to PRC parties, and potentially unreasonable procurement regulations.

As a collection of evidence, the common theme is one of problems with legal issues, regulations or unofficial but real indirect pressures, to the disadvantage of foreign investors and with direct consequential benefit to Chinese firms, partners or competitors. It is not always easy to do business in China is the common thread and some of the regulatory problems experienced can be not entirely as expected by the foreign party.

Danone decided the struggle was unequal and cashed in their chips. Tesco, Kingfisher and Hung To decided, at least initially, to keep fighting to operate in China, with the two British firms seeking a strategic PRC partner and Hung To seeking to 'work round the problem' on their own. [As noted in the case text, Kingfisher later decided to sell off their stake in their partnership thereby ending their direct retail activities in the PRC. They continue to source material from China running their operation from their Hong Kong based subsidiary, Kingfisher Asia Limited] At this stage, rather like the ex-pat or local CEO issue, based on the empirical evidence here, there may be no clear 'right answer', only ones which one hopes will be effective in your particular case. However, what is clear is that what commentators have described as weakly drafted legislation and flexible interpretation of laws by Chinese courts (see section 2, the literature review section) suggest that it really is important to avoid getting into a formal legal wrangle in China, whilst ensuring all clearly necessary permissions are definitely in place.

In terms of generally applicable advice for firms, some further insights derived from our data and discussion can be summarised as follow:

- ❖ From a managerial perspective, foreign investors will be well advised to seek to better understand their Chinese partners' expectations beyond the basic fulfilment of contractual terms. This in turn moves the spotlight on to the issue of choice of partner or indeed contractual supplier in China. As a British regional director of a UK MNC told one of us thirty years ago, time spent ensuring one gets the right partners and/or suppliers is indeed time well spent. His point reflected the fact that some outsiders thought his progress with such choice very slow; he simply didn't want to have to repeat the exercise because he had made a mistake at the first attempt.
- ❖ Foreign investors need to spend time and effort making sure that they fully understand the PRC institutional and regulatory environment. Problems may still arise for the sorts of reasons adduced in the cases, especially 'flexible' interpretation of the said frameworks, but initial enquiry and diligence will avoid

pitfalls which could have been observed had the firm but looked carefully. Foreign investors need to understand the Chinese mind-set as well as reading up on the laws and regulations. They should also try to think through where 'flexible interpretations' by Chinese courts or regulators may lead, as well as understanding what the rules should mean. Allied to this is the need to understand that even apparently clear-cut rules of a multinational body such as the WTO may be seen by actors within China to be capable of interpretation to their advantage.

- ❖ On a more political note, a reviewer of an earlier version of this paper, which was presented at a conference, suggested to us that firms might aspire to helping the authorities in China to build fairer and stronger institutions, aimed at delivering consistent application of laws and regulations or the further development of conflict resolution tools such as arbitration. From an extra-China perspective this may sound plausible but the real issue is whether such help and collaboration would be well received by the Chinese authorities. Would Chinese government officials resent being told initially that their regulations or laws needed remedial action, which is what our adviser's suggestion would imply?

Despite the difficulties and unfavourable investment conditions shown in our cases, China is still a top destination for new investment by European multinationals, though its relative importance has diminished somewhat. (Qi and Silk, 2014) The picture is similar for American multinationals. For example, Mark Zuckerberg, CEO of Facebook, recently tried to please, or make nice with, China by showing a copy of Chinese President Xi Jinping's book on his desk when greeting the PRC's Internet Minister Lu Wei (*Bloomberg News*, 2014). The same article records that Minister Lu also met the CEOs of Apple and Amazon suggesting that they too retain a keen interest in the China market.

Elsewhere, Hardingham (2012) reports that western luxury hotel chains continue to make inroads into the China market. The key point here, as compared to many other industries is that much of this particular type of activity is, from the western MNC's perspective, relatively risk free, problems of China's institutional environment notwithstanding. This is because many of these firms operate what Intercontinental Hotels plc, the British owned giant, calls an asset-light business model. They own few if any of the properties involved and run the brands on a franchised or contract

management basis, thereby devolving most risk to the developer-owners of the real estate. It is really only the brand's goodwill which they put at risk.

Perhaps the moral of this continuing high level of interest in investment in China is simply to underscore the importance of the prudent diligence steps recommended in our conclusions. As a Chinese businessman, who is a friend of one of the authors, neatly put it:

> "In the early stages of the rapid growth of China's economy, foreign investors made bold investments lured by the opportunity to make high returns on their investments, albeit with attendant high risks. As the economy has grown and matured, costs (e.g. for raw materials and labour) have risen and hence profit levels are now lower but there are still opportunities for smart investors. Problems related to the law and regulatory frameworks are an important but not an 'absolute' constraining factor."

It is appropriate to highlight the use by our friend of the word 'risk'. As financial speculators in Europe and the US found during the 2007-2009 financial crisis, one ignores risks, dazzled as one may be by the prospect of super-normal profits, at one's own peril.

Our contribution has been to highlight identified areas of continued difficulty for investors into China, with special emphasis on the regulatory and legal frameworks in operation; and to alert potential investors to the kind of critical mindset which will be required for success. We have highlighted the fact that one must understand this mindset and be aware of the flexible way, idiosyncratic even, in which laws and regulations may be interpreted. To understand these factors will, it is argued, offer potential investors a valuable platform from which to push on; they will also be aware of the need to react flexibly themselves, if and when trouble arises.

ACKNOWLEDGEMENTS

An earlier version of this paper was presented to the 2014 AIB South-East Asia Chapter Conference in Macau, on 10th December 2014. We are grateful to the anonymous AIB reviewer, two JIBE referees and the Editor for their helpful comments.

LIST OF ABBREVIATIONS USED

CIETC - China International Economic and Trade Commission

CRE – China Resources Enterprise

FDI – foreign direct investment (O/I prior to FDI connoting outward and inward)

FIE – foreign invested entity

IPR – intellectual property rights

JV – joint venture

MOFCOM – Ministry of Commerce

PRC – People's Republic of China

REFERENCES

Ahlstrom, D., M. N. Young, and A. Nair. 2002. Deceptive managerial practices in China: Strategies for foreign firms. *Business Horizons* Nov/Dec: 49-59.

AmCham. 2017. Press Release. Available at: http://www.amchamchina.org/about/presscenter/amchamstatement/amchamchina-releases-2017-business-climate-survey.

BASF. 2014. History [of BASF in China], item on BASF Corporate website. Available at: http://www.greater-china.basf.com/apex/GChina/en/ content/BASF-China/ 1.1_About_Us/ About_BASF_in_Greater_China/History.

Bendini, R. and B. Barone. 2015. Trade and economic relations with China. Paper for Directorate-General for External Policies, European Parliament, Brussels.

Bloomberg News. 2012. Tesco stumbles with Wal-Mart as China shoppers buy local. October 19. Available at: http://www.bloomberg.com/news/2012-10-18/tesco-stumbles-with-wal-mart-as- china -shoppers-buy-local.htm.

Bloomberg News. 2014. Zuckerberg, Cook meet China's Internet Minister in U.S. December 8. Available at: http://www.bloomberg.com/news/2014-12-8 /zuckerberg-cook-meet-china's-internet-minister-in-u.s. local.htm.

Bond, M. H. 1991. *Beyond the Chinese face: Insights from psychology*. Hong Kong: Oxford University Press.

Bu, Q-X.. 2011. Danone v. Wahaha: Who laughs last? *European Journal of Law Reform* 13 (3-4): 588-602.

Chitakornkijsil, P. 2011. Risks and opportunities for foreign multinational companies in China. *International Journal of Organizational Innovation* Fall: 15-24.

Choi, C-Y. 2017. Lawyers urge China's top judge to quit over controversial comments against 'western' judicial independence. *South China Morning Post*, January 17. Available at: http://www.scmp.com/news/china/policies politics/article/2062829/.

Chow, D. C. K. 2013. Why China opposes human rights in the World Trade Organisation, *Journal of International Law* 35 (1): 61-111.

Crosby, D. C. 2008. Banking on China's WTO commitments: 'Same bed, different dreams' in China's financial services sector. *Journal of International Economic Law* 11 (1): 75-105.

Davis, C. L. 2012. *Why adjudicate? Enforcing trade rules in the WTO*. Princeton, N.J.: Princeton University Press.

Davies, K. 2012. Inward FDI in China and its policy context, *Columbia FDI Profiles,* October 24. Vale Columbia Center: Columbia University. Available at: http://www.vcc.columbia.edu/files/vale/documents/ProfilesChina_IFDI_24_Oct_2012_-_FINAL.pdf.

Dean, J. 2010. Foreign business has it tough in China, BASF and Siemens tell China. *Wall Street Journal*, July 19.

Dean, J. M., M. E. Lovely, and H. Wang. 2009. Are foreign investors attracted to weak environmental regulations? *Journal of Developmental Economics* 90: 1-13.

Deng, P. 2001. WFOEs: The most popular entry mode into China. *Business Horizons* July/Aug: 63-72.

Dickinson, S. M. 2007. Danone v. Wahaha: On the lessons to be learned from the tensions within China's largest beverage joint venture. *China Economic Review*, September 1. Accessible at: http://www.chinaeconomicreview.com/node/24126.

Dimitrov, M. K. 2007. *Piracy and the state: The politics of intellectual property rights in China*. New York: Cambridge University Press.

Duanmu, J-L. 2011. The effect of corruption distance and market orientation on the ownership choice of MNEs: Evidence from China. *Journal of International Management* 17 (2): 162-174.

Economist. 2016. The mother of invention: History. December 24.

European Chamber. 2016. European business in China: business confidence survey. Beijing: European Chamber of Commerce in China. Accessible at: http://www.europeanchamber.com.cn/.

Fetscherin, M., H. Voss, and P. Gugler. 2010. 30 years of foreign direct investment to China: An interdisciplinary literature review. *International Business Review* 19 (3): 235-46.

Forbes. 2014. China cuts off McKinsey, other U.S. consultants to retaliate against cyber indictments. May 25.

Foster, M. J. 1997a. Straight business Chinese style. *Asian Case Research Journal* 1 (1): 43-51.

Foster, M. J. 1997b. South China: Are the rewards still worth the risks? *Long Range Planning* 30 (4): 585-593.

Foster, M. J. and C. S. Tseng. 2012. Kingfisher attacks the China market. *Frontiers of Business Research in China* 6 (1): 156-168.

Foster, M. J. and T-J. Noh. 2013. Tesco strikes out in Asia. *Frontiers of Business Research in China* 7 (2): 289-310.

Foster, J. 2014. Foreign direct investment in China. In T. Wright, editor, *Oxford bibliographies in Chinese studies*. New York: Oxford University Press.

Gong, Y-Y., I. Chow, and D. Ahlstom. 2011. Cultural diversity in China: Dialect, job embeddedness, and turnover. *Asia Pacific Journal of Management* 28 (2): 221-238.

Greenpeace. 2009. BASF: The bad boy in China? Available at: http://www.greenpeace.org/eastasia/news/stories/ toxics/2009/BASF-factory-China/.

Hannas, W. C., J. Mulvenon, and A. B. Puglisi. 2013. *Chinese industrial espionage: Technology acquisition and military modernization*. New York: Routledge.

Hardingham, S. 2012. Why China? A study of why foreign hotel companies are rushing to develop new luxury hotels in China. Available at: http://digitalscholarship.unlv.edu/cgi/viewcontent.cgi?article=2365&context=thesesdissertations.

Hufbauer, G. C. and J. C. Woollacott. 2012. Trade disputes between China and the United States: Growing pains so far, worse ahead? *European Yearbook of International Economic Law* 3: 31-88.

Hutton, J. 1988. *The world of the international manager*. Oxford: Philip Allan.

Jourdan, A. and L. Baertlien. 2014. Yum, McDonald's apologize as new China food scandal hits. *Reuters*, July 21.

Kingfisher. 2015. Kingfisher: Annual report and accounts 2014/15.

Kwok, W-Y. V. 2009. Danone gives up China fight. *Forbes*, Sept 30. Accessible at: http://www.forbes.com/2009/09/30/danone-wahaha-dispute-markets-business-trademark.html.

Lauffs, A. and A. Tan. 2002. China clears path for foreign investors. *International Financial Law Review* 21 (5): 62-63.

Lelyveld, M. 2014. China hits foreign firms with monopoly law, Radio Free Asia. An analysis by Michael Lelyveld, August 18. Available at: http://www.rfa.org/english/commentaries/energy_watch/monopoly-081820141109 13. html.

Li, J., K. Lam, and G-M. Qian. 2001. Does culture affect behaviour and performance of firms? The case of joint ventures in China. *Journal of International Business Studies* 32 (1): 115-131.

Li, J., C-H. Zhou, and E. J. Zajac. 2009. Control, collaboration, and productivity in international joint ventures: Theory and evidence. *Strategic Management Journal* 30: 865–884.

Li, J. 2013. FDI grows steadily amid reform drive. *China Daily*, November 20. Available at: http://usa.chinadaily.com.cn/business/2013-11/20/content_17117148.htm.

Ministry of Commerce, People's Republic of China (MOFCOM). 2012. Catalogue for the guidance of foreign investment industries (amended in 2011). Available at: http://english.mofcom.gov.cn/article/policyrelease/aaa/201203/20120308027837.shtml.

Morrison, W. M. 2011. China-U.S. trade issues. Paper at Cornell University ILR School. Available at: http://digitalcommons.ilr.cornell.edu/key_ workplace.

Pearce, N. 2016. The steady march of nationalism. *New Statesman* 145: 30-31.

Qi, L. and R. Silk. 2014. Foreign direct investment in China declines: Foreign firms worry over arbitrary law enforcement, rising labor costs. *Wall Street Journal*, June 17.

Qin, J. Y. 2007. Trade, investment and beyond: The impact of WTO accession on China's legal system. *China Quarterly* 191: 720-741.

Qu, Y., T. Qu, and Y. Wu. 2017. The role of regional formal institutions and foreign direct investment in innovation in Chinese enterprises. *Asia Pacific Business Review* 23 (1): 27-43.

Rabinovitch, S. and A. Felsted. 2012. Tesco scales down ambitions for China. *Financial Times,* July 20.

Roland, D. 2013. China's anti-monopoly boss warns foreign firms not to fight allegations. *Daily Telegraph*, August 28.

Selmer, J. 2004. Psychological barriers to adjustment of western business expatriates in China: Newcomers vs long-stayers. *International Journal of Human Resource Management* 15 (4/5): 794–813.

Shan, W-H. and S. Zhang. 2011. FDI in China and the role of law: an empirical approach. *Journal of World Investment & Trade* 12 (4): 457-486.

Song, S. X. 2013. Who owns Wanglaoji herbal tea? Two Chinese companies fight over enormously popular canned drink brand'. *International Business Times*, April 22. Accessible at: http://www.ibtimes.com.

Tesco. 2010a. Annual Report Tesco Plc. 2010.

Tesco. 2010b. Annual Review Tesco Plc. 2010.

Tesco. 2011. Annual Report Tesco Plc. 2011.

Tesco. 2013. *Tesco press release.* October 2.

Tesco. 2014. *Tesco press release.* May 29.

Tian, X-W. 2007. *Managing international business in China (Chapter 10).* Cambridge: Cambridge University Press.

Tobin, L. 2014. China action 'unfair' on foreign countries.. *Evening Standard*, September 2, p. 41.

Tseng, C. S. and M. J. Foster. 2006. A flexible response to guo qing: Experience of three MNCs entering restricted sectors of the PRC economy. *Asian Business and Management* 5 (3): 315-332.

Vale, C., Y-H. Ying, and B. McGuire. 2010. Managing the divorce, *World Trademark Review* Feb/March: 23-26. Available at: www.WorldTrademarkReview.com.

Vanhonacker, W. 1997. Entering China: An unconventional approach. *Harvard Business Review* March/April: 130-140.

Vekasi, K. 2014. China's political rise and Japan's economic risk: Multinational corporations and political uncertainty, PhD Thesis, University of Wisconsin at Madison.

Voon, T. and A. Mitchell. 2010. Open for business? China's telecommunications service market and the WTO, Legal Studies Research Paper No. 462, Melbourne Law School, University of Melbourne.

Yang, Y. and L. Yueh. 2009. Law, finance and economic growth in China. *World Development* 37 (4): 753-762.

You, Y-T. 2012. Wanglaoji trademark lawsuit and China trademark license record system. *Bridge IP Law Commentary*, July 20. Available at: http://www.chinaiplawyer.com/.

Zhang, Y. and H. Li. 2001. The control design and performance in international joint ventures: a dynamic evolution perspective. *International Business Review* 10: 341–362.

Zhang, Y. 2012. Retailer Tesco denies rumours of pullout from China. *Global Times*, September 20. Available at: http://www.globaltimes. cn/content/734218.shtml.

APPENDIX

Synopsis of companies' issues

Foreign Firm	Sector/business	Issue/problem	"Solution"
Hung To (HK)	Production/ distribution of 'herbal tea' soft drink	Brand use rights – dispute with Guangzhou Pharma; disputed brand is *Wanglaoji*	Changed their brand to *Jiaduobao* in China
Danone (France)	Production/distribution of bottled water, a cola drink, cold tea and children's clothing under Wahaha brand	Status of licence contract and hence rights to Wahaha Trade Mark	Sold out their stake in JV to Wahaha
Tesco (UK)	Grocery + retailing	After initial success they experienced problems with disruption to their supply chain.	Made 20:80 JV with CRE and agreed to operate all stores under partner, CRE's 'Vanguard' brand
Kingfisher (UK)	DIY retailer	Major issue with supplier – retailer contracts (SRCs) - or VBAs in local parlance - vis à vis Regulation 17	Recast all SRCs, some retrenchment, modification of retail format and then in 2014 decided to seek a "strategic JV" partner; Wumei became the SJV partner and deal completed in 2 stages ending in Spring 2016
BASF (Germany)	Chemicals and Derivatives	Pressure to transfer technology IP to gain market access – Government/local partners: and pollution (CSR) - Greenpeace	Lobbying of PRC government at Ministerial level; on CSR issue, work harder?