EXITING CHINA

STRATEGIES FOR THE AMERICAN EXECUTIVE AND LAWYER TO CONSIDER IN REDEPLOYING ASSETS FROM CHINA TO THE UNITED STATES OR THIRD COUNTRIES

By

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It is a fundamental axiom of business economics that, all other things being equal, producers of finished goods will gravitate to those producing countries with the lowest production costs, which generally means the lowest competitive wage rates.[2] It is equally axiomatic that as any one country develops a reputation for low cost production, the very reputation itself creates the beginning of the end for that country's status as a low-cost producer. The reputation as the low-cost producer creates new potential production customers. The creation of new manufacturing customers creates a demand on an inelastic low-wage workforce. The declining available workforce creates an increase in production wages and, therefore, production costs overall. The increase in the production costs creates a reduction in pricing competitiveness. The reduction in price competitiveness prompts the customer to look for a new, lower-cost production market. And the cycle begins again. This wage-cost economic cycle presented itself to many American businesses entering, then leaving, Japan in the 1960's, South Korea in the 1970's and Mexico in the 1980's. Economists have a term for that moment in the economic cycle at which the subsistence-rate labor force of a lesser-developed country has become so depleted that the only response is a significant increase in labor rates, prompting an increase in pricing and then a lack of competitiveness. It is called the Lewis Turning Point.[3] Many believe that China is approaching or has already reached the Lewis Turning Point.[4] There are now clear indications that producers of goods in China are looking to alternatives in Vietnam, Indonesia and even Africa to reduce the costs of production.[5] Consider the following statistics:

- A recent study by AlixPartners estimates that the cost of outsourcing manufacturing to China will be equal to the cost of manufacturing in the U.S. by 2015;[6]
- Labor costs in Guangdong and Shanghai, China's two largest provincial exporters, rose by 12% and 14% respectively from 2002 to 2009;[7]
- The minimum wage in Guangdong increased by 19% from 2012 to 2013 and a Standard Chartered survey found that wages are set to rise by 9.2% in 2013, up from 7.6% in 2012;[8]
- China's labor cost is approximately 224.8% higher than Cambodia, 182% higher than Bangladesh, 195.3% higher than Vietnam, 138.6% higher than India, and 206.6% higher than Indonesia;[9] and
- In 2012, foreign direct investment in China fell by 3.7% but increased throughout most of Southeast Asia, increasing by 63% in Thailand and 27% in the first three (3) quarters in Indonesia.[10]

Some of America's largest companies have announced that they will terminate certain manufacturing operations in China and return some of that production capacity to the United States.[11] And the American experience is not unusual. Similar decisions are being made concerning Chinese operations in Denmark[12], Japan[13] the Netherlands[14] and elsewhere.

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In simpler times the departure of a company from a foreign production market would be fairly uncomplicated. Bills would be paid; factories would be sold; ex-pats would be called home; employee contracts would be terminated. But in exiting China, executives and their lawyers face a more complicated question than how one legally closes a factory. The question now is "will a company's departure from China be with, or without, its intellectual property?"[15]

A company's intellectual property can be placed at risk in two ways. The first, of course, is the misuse of its trademark or trade name. This risk will arise whether or not the trademark owner has actually produced in China, but trademark theft is obviously easier if the trademark owner has had manufacturing facilities in China, where IP rights enforcement is a developing legal phenomenon.[16] Companies such as Nike, Disney and Louis Vuitton have sophisticated programs to combat both counterfeiting and trademark infringement. But the second, more costly, theft is not the mark itself but the theft of proprietary production processes.[17] It is one thing to prevent the importation or sale of an article with an infringing trademark. But it is far more difficult, for example, for a sports wearing apparel manufacturer who is about to leave China, to prevent the Chinese former employees, trained for years, from manufacturing the very wearing apparel, in the very factory, and on the very equipment, that was previously owned by the departing producer.

This article will present three ideas by which the risk to a company's intellectual property can be minimized.

1. **Control the means of production.**

Several years ago, one of this article's authors represented a U.S. company that had contracted for the production of its goods in China. Largely for reasons related to quality control and product liability protection, the U.S. company insisted that it not only control the manufacture of the dies and molds used to produce the finished goods in China; it insisted on owning them. So the full array of Chinese origin products were produced on machines, the molds for which were owned by the U.S. company, which the U.S. company delivered free of charge to the producer. Several years into production, the U.S. company's relations with the Chinese producer began to deteriorate. Prices increased to reflect the increase in factory wages, described above; rejection rates began to increase, and delivery dates were missed. The U.S. buyer might have endured these growing difficulties as a cost of doing business, but the product was targeted in an antidumping investigation which changed the landed cost of the merchandise radically. The U.S. producer had no other choice but to leave China. In the course of winding up the contract relationship, it retrieved the dies and molds which it had loaned to the Chinese producer. And it was at that point that the U.S. company realized the full benefit of its decision to control the ownership of the dies and molds – it had effectively denied its former contract manufacturer the opportunity to produce a counterfeit.

The lessons learned in that case become fairly clear. If you can possibly control the means of production, do so. If a U.S. company imports wearing apparel, the importer should own the patterns; if a U.S. company contracts to produce a chemical in China, it should limit to the greatest extent possible those who will have knowledge of its formula. If the goods are made from specialized machinery, insist on the right to own the machinery [or the most critical pieces of machinery] and to remove the machinery upon termination of the production agreement. If an article is made from a key raw material, consider purchasing the raw material from a confidential supplier and

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delivering it to your producer free of charge, in exchange, of course for a pro rata reduction in the transfer price of the finished good.[18] To the greatest extent possible, hold on to some critical element of production.

2. **Use the laws that protect you against the unauthorized importation into the U.S. of your trademarked goods.**

Even if a U.S. corporation remains in China, there is a concern that the contract manufacturer will produce goods in excess of the agreed-upon contract, and sell the excess capacity out the producer's back door. A U.S. distributor of sports equipment which terminates a production agreement with a Chinese contract supplier may not be able to prohibit his former contract supplier from manufacturing such sports equipment in the future. But it can prohibit the former contract supplier from producing such product with the distributor's name or logo affixed to it. All good executives will insist that their trademarks be registered with the USPTO, but fewer will register those marks with the U.S. Bureau of Customs and Border Protection, and even fewer still will take the time to educate Customs on the specifics of their product, so that a counterfeit article can be located. Unless a trademark owner **both** registers the mark and formally notifies Customs of its intent to enforce the mark against infringing imports, the owner of the mark has not fully protected itself. Yet, corporations which take the time to understand the laws prohibiting the importation of infringing marks will realize that they have powerful allies in these statutes.

Section 526 of the 1930 Tariff Act,[19] to which there have been significant amendments and additions over the years, not only prohibits the importation of goods infringing on validly registered trademarks, but it authorizes Customs to seize and forfeit the articles bearing such infringing marks.[20] It also authorizes U.S. courts to enjoin future importations of offending marks[21]and it authorizes the payment of money damages for losses incurred by reason of counterfeit sales.[22] Further, for goods imported that bear marks confusingly similar for U.S. registered marks, the law will permit the entry of the goods, but only after the similar marks have been removed.[23] The laws apply equally to trademarked and copyrighted material[24], and in the case of trademarked material it applies not simply to unauthorized or counterfeit goods, but to "parallel imports" often referred to as "gray market" goods, but certain restrictions apply in the case of gray market goods.[25] Importations of articles infringing on U.S. patents may also be excluded from entry, but those protections are administered under a different statutory scheme.[26]

While the laws prohibiting the importation of both counterfeit goods and infringing goods strongly protect the U.S. holder of the trademark and copyright, the enforcement of those rights against infringing importers cannot be asserted unless the holder of the mark or the copyright formally advises the Bureau of Customs and Border Protection that it is the owner of a mark or a copyright and requests that the rights be enforced at the border by Customs. However, the process of formal notification to Customs of the right is now so simple that it can be done online.[27] In addition, as a practical matter, the likelihood that Customs will be able to successfully identify and intercept infringing goods becomes much more difficult if Customs is not specifically trained to distinguish between the genuine article and the counterfeit. Consequently many companies now have programs with Customs by which the companies will train the Customs officers to distinguish between the genuine article and the counterfeit and will share with Customs the real time intelligence that they acquired in identifying sources of shipment; likely ports of entry and likely infringing entities.

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Therefore, any aggressive plan to limit the importation of goods that may be illegally produced in any country in which an intellectual property rights holder exposes his product to copying should take begin with five steps:

A. Register the mark, name, or copyrighted material with the U.S. Patent and Trademark office;

B. Formally notify Customs of the recordation of the mark, name or copyrighted material; and

C. Assist in educating the Customs officers in the United States as to those specific characteristics of your goods by which the counterfeit article can be distinguished from the genuine article; and

D. Furnish as much information as possible to Customs as to:

   a. Likely offenders;

   b. Which of the goods produced are most vulnerable to counterfeit;

   c. Most likely ports of entry.[28]

E. Aggressively follow-up with Customs once a counterfeit article has been reportedly detained.

Similarly, whether or not a U.S. company produces goods in China it should register its trademarks with the Chinese Trademark Office (the "**CTMO**") and notify the Chinese Customs Bureau of that filing. Note that China follows a first-to-file system, and therefore any third party, such as a sub-contractor, supplier, or related company, may register a trademark in China without having to demonstrate prior use.[29] In order to protect itself against such prior registrations, a foreign company should register its trademark in China as soon as it engages in the China market. In China, a trademark is valid for ten (10) years from the date of approval and can be renewed for additional ten (10) year periods indefinitely. There is no requirement that a company be domiciled in China in order to register its trademark in China.

Once a company has registered its trademark with the CTMO, it should notify the Chinese Customs Bureau of the registration to prevent the export of any counterfeit or infringing goods. The Chinese Customs Bureau has the authority to seize any counterfeit or infringing goods.

Note that, as a result of China's first-to-file system, some Chinese companies will register a third party's trademark as soon as they become aware of the mark. In order to acquire use of its trademark, the third party - who may actually be the owner of the trademark in the U.S. - either must "purchase" the rights from the trademark squatter or file an opposition with the CTMO, which can be a very expensive and time-intensive process. Moreover, some squatters are now registering the trademarks with the Chinese Customs Bureau in efforts to block the export of the trademarked goods. The important lesson here is that the registration of the mark in the U.S. may be incomplete legal protection if that mark has been registered in a foreign country by a trademark squatter. The shrewd business executive will register the mark in the country where he or she thinks the mark will be misused, as well as that country in which the company seeks to use the mark.

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Therefore, any company intending to be active in the China market – whether by establishing a subsidiary company for manufacturing products, selling products in the market, or entering into manufacturing/supply agreements with Chinese companies – should take the following steps to protect their intellectual property rights:

A. Register the mark with the CTMO;
B. Formally notify the Chinese Customs Bureau of the recordation of the mark and provide the Chinese Customs and relevant information, including:
    a. Authorized suppliers, manufacturers, or distributors who should be expected to import/export products with the company's marks;
    b. Ports of entry/exit generally used by the authorized Chinese companies; and
    c. Contact details for the primary contact in the event the Chinese Customs discovers any potentially counterfeit and/or infringing products.
C. Implement a company policy to quickly review any potentially counterfeit or infringing products discovered by the Chinese Customs to determine whether these are genuine or counterfeit.

3. **Draft all contracts in China, including contracts with employees, subcontractors and suppliers, with a view toward exiting China.**

As has been demonstrated by the examples above, the most effective and efficient way for a company to ensure that its IP is protected when it exits China is for the company to take these issues into account when it is drafting and negotiating its contracts in China. A company that is proactive about protecting its IP when it enters China will find itself in a much stronger position to protect the IP if and when it decides to exit China.

The first step for protecting IP rights for companies that will have employees in China is the employment agreement. While most employment agreements include provisions to protect a company's IP regardless of the location of employment, there are certain provisions and issues that should be considered for China employment agreements.

While it is possible to enter into a separate non-disclosure agreement with employees, in general, any confidentiality obligations will be included in the employee's employment agreement and/or non-compete agreement. Note that in China, an employer is required to pay compensation to the former employee during the non-compete period. If the employer fails to pay such compensation, then the former employee is no longer bound by the provisions of the non-compete agreement. The maximum non-compete term in China is two (2) years.[30] Furthermore, only senior managers, senior technicians, and other senior personnel may be subject to a non-compete agreement[31] – non-compete agreements purporting to bind other employees are invalid and unenforceable in China. This emphasizes the importance for employers to implement procedures that limit the employees who are exposed to valuable IP data to only those who may be subject to a restrictive covenant to the extent it can be practical.

Additional care should be taken for employees whose role may include the generation and/or creation of IP. In China, any invention/creation that is created in the course of an employee's duties for his employer by using the materials and related technical condition of an employee will be deemed an invention or creation of the

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employer, which shall have the right to apply for a patent for such invention/creation.[32] However, absent an express agreement regarding the ownership, the determination of whether the employer has the right to apply for the patent will depend on the factors under which the invention/creation was created. In order to avoid any dispute regarding this issue, an employer should include a "no ownership" clause which establishes that the company shall have exclusive ownership of any IP created during or in the course of the employee's activities with the company. Similarly, the employer should promptly apply for a patent after the IP is created so as to eliminate the risk of the employee or third party applying for a patent for the same invention/creation.

In addition to employee agreements, including similar provisions in agreements with subcontractors and suppliers can be helpful in protecting a company's IP when it decides to leave and/or terminate its operations in China. One essential clause to include when dealing with any Chinese company is a "mutual protection of confidential information" clause. Although Chinese companies are becoming increasingly aware of the importance of protecting IP rights, many still do not have policies/measures in place to protect their own confidential information. Consequently, any confidential information or similar IP to which a Chinese subcontractor or supplier has access would be similarly at-risk. Including such a clause provides a base-line threshold of protection for a foreign company's IP. These contractual protections should be used along with other practical measures, such as only sending required IP to a Chinese counterpart and keeping the names of key suppliers/customers secret, so as to maximize protection.

Finally, even if a company acts prudently and includes each of the provisions discussed above, there is still a risk that the Chinese subcontractor or supplier will breach the agreements. Therefore, a company should take care to ensure that its choice of law and dispute resolution provisions also take into account issues regarding the enforcement of any contractual provisions that will remain after the company has exited China.

In China, parties are generally free to determine the particular choice of law and jurisdiction provisions for their contracts. Generally, state laws/courts in the U.S. will provide a U.S. company with more protection and/or offer the possibility of a much larger judgment. However, a company should consider the practical issues of enforcing such a judgment in China against a Chinese company. Very few judgments from U.S. courts are recognized and enforced in China, and the timeframe for recognition and enforcement of the judgment may take as long as the time invested to obtain that judgment. If the Chinese company has significant assets in the U.S., it may be practical for the choice of law or forum to be in the U.S. However, if the Chinese company has no assets or subsidiaries in the U.S., then there are advantages to using Chinese law to control the contracts and give Chinese courts or arbitration committees jurisdiction over any disputes arising under those agreements.

Using Chinese laws and dispute resolution forums will generally result in a faster judgment and enforcement of such judgment, which can be instrumental in quickly stopping any infringing activities. Although Chinese courts do not enjoy the best reputation for impartiality, their record has improved, especially in recent years as the courts become more accustomed to hearing cases involving foreign parties and the influence of State-owned entities wanes. Alternatively, the parties could elect to resolve the dispute through one of China's arbitration committees such as the China International Economic and Trade Arbitration Commission ("**CIETAC**"). CIETAC is able to provide an arbitration hearing in English and the parties may select from a diverse panel of arbitrators, about half of which are foreign nationals. Such a diverse panel creates opportunity for both expertise in the issues and neutrality in

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appearance and approach. Additionally, CIETAC awards, like other Chinese arbitration awards, are easy to enforce in China. As such, CIETAC provides foreign companies with a viable forum that enables the quick enforcement of any award in China.

4. Conclusion

No national exit plan can fully address all contingencies or possibilities, and the departure from a national market in which the investor is a non-national is substantially more complicated than the termination of a domestic business. But two lessons emerge. First, the importance of filing for intellectual property protection cannot be underestimated, and that rule applies not only in those countries where one contemplates doing business but in those countries where the IP right might have to be defended. Second, in this area, as in most areas of international business, attention to such issues before a business arrangement is finalized is critical.

(Endnotes)

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[2] Crnic, Kleeman and Seider, Low-cost Country Sourcing Can Benefit A Company's Bottom Line. "Companies can realize significant direct material savings – up to 40 percent or more in purchase price – when they successfully access and rely on low-cost sources in emerging regions. " IBM Global Business Services, 2006 at 3. Citing with approval, Aberdeen Group, Inc. Low-Cost Country Sourcing Success Strategies – Maximizing and Sustaining the Next Big Supply Savings Opportunity, June 2005, available at http://www-935.ibm.com/services/us/gbs/bus/pdf/g510-6415-low-cost-country-sourcing.pdf.

[3] Rishi Shah, The Economic Times, June 30, 2012. What is the 'Lewis turning point' and its importance for China.

What is the Lewis turning point?

It is based on a development model created by Nobel Prize winning economist Arthur Lewis, who looked at the dual aspect of a developing economy.

The first is represented by its agricultural sector, which engages a major part of the labour force, and the second by the modern market-oriented sector which is primarily engaged in industrial production.

The growth of the economy is driven by the modern sector with the support of unlimited supplies of labour, which is mainly drawn from the agricultural sector. This migrant labor force accepts low wages corresponding to the living standards prevalent in farming.

The modern sector (also called the capitalist sector) is able to reap profits and – helped by low labour costs – generate savings. The growing savings finance the capital formation for expansion.

However, a point is reached when no more labour is forthcoming from the underdeveloped, or agricultural sector and wages begin to rise. This is known as the Lewis turning point.

[4] "As one government economist put it…for China, 'a major turning point is at hand.' As Reuters reported… '[t]he current data show China has already crossed the Lewis turning point, and at the same time the window of the demographic dividend will soon close,' Ba Shusong wrote in the Economic Information Daily. The shortages of rural migrant workers since 2004 have been no passing blip, but the signal that a major turning point is at hand – a transformational trend,' Ba wrote." The end of cheap: China's tipping point. Financial Times, May 5, 2011 appearing at http://blogs.ft.com/beyond-brics/2011/05/05/the-end-of-cheap-chinas-tipping-point/#axzz2OIsh8FcP

[5] See, Kutchler, Coach the latest to cut China production, May 13, 2011 Financial Times Tilt "Lew Frankfort, chief executive of Coach, said rapid income increases in China meant the company is beginning to move production to less expensive Asian countries like India, Vietnam and the Philippines. Southeast Asian countries are increasingly used as cheaper alternatives for labour intensive

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manufacturing." Appearing at http://tilt.ft.com/

[6] Phil LeBeau, New Study Finds China Manufacturing Costs Rising to US Level, April 18, 2013, CNBC.com, appearing at: http://www.cnbc.com/id/100651692.

[7] Author, The end of cheap China, March 10th, 2012, The Economist, available at: http://www.economist.com.hk/node/21549956/print.

[8] Tom Orlik, China: The Jobs Report, The Wall Street Journal, available at: http://blogs.wsj.com/chinarealtime/2013/03/15/china-the-jobs-report/.

[9] Bai Ming, Migratory Manufacturers: Foreign Enterprises Relocate to Southeast Asia, February 16, 2013, China Today, available at: http://www.chinatoday.com.cn/english/economy/2013-02/16/content_517788.htm.

[10] Colum Murphy, Mitsuru Obe, Tom Orlik, and Yajun Zhang, China Begins to Lose Edge as World's Factory Floor, January 16, 2013, The Wall Street Journal, available at: http://online.wsj.com/article/SB10001424127887323783704578245241751969774.html.

[11] "Apple CEO Tim Cook says the company will move production of one of its existing lines of Mac computers from China to the United States next year. Industry watchers said the announcement is both a cunning public-relations move and a harbinger of more manufacturing jobs moving back to the U.S. as wages rise in China." Apple to move Mac production facility from China To U.S., India TV, December 7, 2012 available at http://www.indiatvnews.com/business/india/apple-to-move-mac-production-facility-from-china-to-us--3790.html See also, The End of Chinese Manufacturing and the Rebirth of U.S. Industry Forbes, July 23, 2012, noting that Dow Chemical, Caterpillar, Ford Motor Company and General Electric have all terminated some Chinese manufacturing operations and are returning to the United States. Appearing at http://www.forbes.com/sites/singularity/2012/07/23/the-end-of-chinese-manufacturing-and-rebirth-of-u-s-industry/.

[12] Vestas to Close Chinese Manufacturing Plant Due to Uncertain Growth, Power Engineering International, June 25, 2012, appearing in http://www.renewable energyworld.com/rea/news/article/2012/vestas-to-close-chinese-…

[13] Rena Chandran, Goodby Guangdong, Hello Hanoi, Jan. 31, 2011, Financial Times Tilt, noting the movement to Vietnam from China by Japanese companies Mitsubishi Industries Aerospace, Kobe Steel, Canon, and Shiseido. appearing at http://tilt.ft.com

[14] Makia Noordhuis, China No Match for Dutch Plants as Phillips Shavers Come Home. January 19, 2012 Bloomberg.com. Appearing at http://www.blooomberg.com /news/2012-01-19/china-no-match-for-Dutch-plants/as/Phillips…

[15] "But as the Chinese say 'no feast lasts forever.' Various trends coincided to erode their country's competitive advantage…. Second, smaller foreign investors began to pull back as they realized that manufacturing in China substantially increased the risk of loss of their intellectual property. Beijing did little to stop rampant theft. Move Over, Michigan, China Is The World's Next Rust Belt. Forbes, December 9, 2012, appearing in http://forbes .com/sites. gordonchang/2012/12/09/move/over/Michigan/china-is-the….

[16] Wei Shi, Incurable or Remediable? Clues to Undoing the Gordian Knot Tied By Intellectual Property Rights Enforcement In China, 30 U.Pa. J. Int'l L. 541, 544 (2008).

Gregory S. Kolton, Copyright Law and the People's Court in the People's Republic of China: A Review and Critique of China's Intellectual Property Courts, 17 U. Pa. J. Int'l Econ. L. 415, 420 (1996)(explaining that China's current Intellectual Property laws relating to copyright regulations are not on par with the rest of the international community).

Richard J. Ansson, Jr., International Intellectual Property Rights, the United States, and the People's Republic of China, 13 Temp. Int'l & Comp. L.J. 1 (1999)(detailing some of the Intellectual Property-related issues that have plagued China throughout its modern history).

[17] Ted C. Fishman, How to Stop Intellectual Property Theft in China. Inc. Magazine January 1, 2006. "The true harm [in intellectual property theft] comes not from Chinese consumers buying cheap entertainment but from Chinese companies acquiring world-class technology at little or no cost and then, once enriched, going head-to-head with foreign competitors that remain saddled with paying the legitimate cost of technology." Appearing at http://inc.com/magazine/20060601/ip-theft.html.

[18] The ownership by the U.S. importer of the molds or dies creates a minor problem related to the valuation of merchandise for customs purposes, but only a minor one. Assume that the U.S. company insists on the ownership of a critical piece of production equipment valued at $1,000,000., and the equipment has a production life of one million units. Under those circumstances there is now an arguable disparity between the "price" of the goods and the "value" of the goods, because the goods are really one dollar per unit more "valuable" than the transfer price. So the transfer price (known in the law as a "transaction value") must be adjusted for Customs purposes to pick up the pro-rated value of the equipment, known as an "assist." But this circumstance is very common in valuing U.S. goods and such adjustments to value are literally made daily. Customs will allow the importer to declare the value of the assist in one of two ways. The article is either advanced in value on an ongoing basis to recover the cost of the assist (as in this example, one dollar per unit), or Customs will allow for a single payment by applying the rate of duty applicable to the imported article to the value of the assist article. For example, if the imported article, produced from the machinery that was delivered free of charge,

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was dutiable at 4%, and the machinery supplied by the importer to the producer was valued at $1,000,000., the importer would make a single payment of $40,000. and would have no further obligations to Customs.

[19] 19 USC 1526

[20] 19 USC § 1526(b)

[21] 19 USC § 1526 (c)

[22] 15 USC § 1526(f)

[23] 19 USC § 1526(c)

[24] Customs will define "copyrighted material" to include literary, dramatic, musical artistic, pictorial, graphic, and sculptural works, motion pictures, and other audio visual works, sound recordings, and architectural works. (What Every Member of the Trade Community Should Know About CBP Enforcement of Intellectual Property Rights. August, 2012 U.S. Customs and Border Protection, at 7.

[25] In addition to requiring both notification to Customs and the filing with the U.S. Patent and Trademark Office, before gray market goods will be detained, the rights holder must show that the U.S. and foreign marks are not owned by the same corporate person or that the U.S. and foreign trademark owners are not in a parent subsidiary relationship or under common control. (See, CBP enforcement of Intellectual Property Rights, August 2012, at 9).

[26] 19 USC § 1337

[27] The online web address for filing a recorded trademark with Customs is: https://apps.cbp.gov/e-recordations/

[28] The Customs regulations permit the review of vessel inward manifests which, in the past, have been helpful to trademark owners in identifying counterfeiters or trademark violators, especially if the victim has information related to the probable or possible port of entry. However, the regulations also provide that an importer who requests confidential treatment of the information related to his cargo on the vessel manifest may file with Customs an application for confidential treatment, and Customs will exclude from the manifest any such requested data. Data that will be withheld upon importer's request are shipper's name and address and the consignee's name and address. (See, 19 CFR § 103.31).

[29] It is possible to challenge a registration by a third party, but this requires that the challenging party provide evidence to demonstrate prior use in China (i.e. sales, marketing materials, agreements with Chinese entities, etc.) and can be a time-intensive and costly process.

[30] Article 24(3), Labor Contract Law of the People's Republic of China (amended 2007).

[31] Article 24(1), Labor Contract Law of the People's Republic of China (amended 2007).

[32] Article 6, Patent Law of the People's Republic of China (amended 2008).