



# Department of Justice

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CLOSING REMARKS

OF

THE HONORABLE EDWIN MEESE III  
ATTORNEY GENERAL OF THE UNITED STATES

U.S. DEPARTMENT

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BEFORE

OF JUSTICE

THE U.S. - CHINA JOINT SESSION  
ON TRADE, INVESTMENT AND ECONOMIC LAW

WEDNESDAY, AUGUST 19, 1987  
GREAT HALL OF THE PEOPLE  
BEIJING, CHINA

Minister Zou, Vice Minister Cai, Ambassador Lord, distinguished guests, and fellow delegates to this great Joint Conference:

The past three days have been an extraordinarily valuable experience for the other American lawyers taking part in this conference and for me. I hope that this time together has been similarly rewarding for our Chinese colleagues.

We have had excellent opportunities to compare notes on our respective legal systems, particularly with regard to their implications for the advancement of trade and investment between our two countries. We have also undertaken candid discussions about the problems that we have heretofore encountered in doing business with each other and, I hope, we have begun concrete explorations that may lead to workable solutions to them.

Perhaps nothing has been more important, however, than the remarkable opportunities that we have had -- through intense discussions leavened by the most cordial Chinese hospitality -- to get to know each other. Minister Zou and I have had extremely productive conversations. I know, too, that our colleagues from the Chinese Ministry of Justice and the United States Department of Justice have been able to build personal bridges between them that will permit better institutional cooperation in the future. I hope that all participants in this conference, Chinese and American alike, have discovered new friends, new knowledge, and new opportunities for business relations and an increasingly satisfying practice of law.

We have seen that the last few years have been a remarkable time of change and development for the Chinese economy. There has been a pronounced movement toward encouraging initiative and adherence to market principals. Newer and more flexible legal rules, organizational structures, management techniques, and capitalization arrangements have been adopted. A substantial body of new laws and accompanying institutions and procedures have been needed in order to provide a legal framework for these new business practices, and we appreciate that the evolution of those normative principles and procedural arrangements continues.

By the standards prevailing in the United States and generally throughout the west, the degree of governmental regulation of the economy and of commercial transactions in China remains relatively high. Nonetheless, it is clearly much easier today for the people of China to embark upon new organizational initiatives, including private enterprises, than it was prior to the commencement of the current era of economic reform in 1978.

The American delegation hopes that we have contributed to an understanding of the United States' legal and economic systems. We hope that our friends and colleagues in the People's Republic of China recognize that in the U.S. the government does not own the means of production and therefore cannot require business to make specific decisions such as specific investments in a particular country. Therefore what China does to provide an

attractive economic climate is the critical factor for future American business decisions.

We have learned from our Chinese colleagues that business evolution in China is proceeding at a rapid pace. Increasing sophistication of business practices is evident. Also evident is the direction of change: decentralization of the economy have grown markedly, and private economic activity, both domestically and in relations with foreign partners, is increasingly independent and increasingly significant for the Chinese economy.

An important concomitant of these trends is the increasing complexity and sophistication of the Chinese legal system. We can already see evidence that China's legal response to new patterns of economic activity is generally in the direction of flexibility and accommodation, rather than toward rigid, stultifying centralism and overregulation.

We have found that flexibility is an important attribute of a legal system seeking to provide structure for a robust and developing economy. The ingenuity and creativity of millions of individual entrepreneurs, small enterprises, and their lawyers contribute to better economic decision making than the centralized planning of government bureaucracies.

Consequently, the hallmark of a sophisticated legal system is its ability to avoid excessive detailed prescription of business norms, instead providing general rules that can be adapted to novel events and transactions as they arise. As

Justice Joseph Story, one of the most distinguished jurists in American history, once observed, "[the law] must forever be in a state of progress, or change, to adapt itself to the exigencies and changes of society." We have seen clear indications that Chinese law has set off on such a perpetual -- and salutary -- state of progress, change, and adaptation.

We have also seen healthy signs that China is moving toward subjecting the regulatory activities of its governmental agencies to increasingly specified, objective standards by which to exercise their powers over economic life. Vigilance in this area is something that is always necessary in our country as well. Regulatory action that results in arbitrary or unpredictable government behavior can seriously impede economic growth.

As we conclude this conference, important matters remain for both Americans and Chinese to address.

First, on the American side:

- o Protectionism must be resisted. Access to foreign markets and technology is crucial to China's development and reform. President Reagan has devoted enormous effort to opposing domestic pressures for protection, as shown last year by his veto of protectionist textile legislation. But vigilance against such detrimental policies must continue.
- o We must continuously monitor our performance on technology transfer. There are, of course, limits set

by national security concerns, and there is some sensitive technology that we do not share even with our military allies. However, we must continue the course of expanded technological exchange and take care that bureaucratic inertia does not impede policy advances in this field.

- o American firms must be prepared to do business effectively in China. It takes a great deal of funding, patience, skill, and knowledge -- especially legal knowledge -- for foreign firms to compete successfully in China's economy. We must make available adequate legal and business counsel to prospective American entrants into Chinese markets. The American lawyers who are here today, and who are availing themselves of the opportunities afforded by this meeting, will serve both their country's national interest and their clients' private interests by developing and sharing sound expertise in Chinese law and practice.

Second, for the Chinese side:

- o China, too, has great need of legal expertise, both foreign and domestic. I hope that we will continue to see an increasing flow of Chinese lawyers, judges, and law students visiting and studying in the United States. I hope, too, that China will continue to

welcome an expanding American legal presence in China. American lawyers, including, no doubt, many in this hall today, will wish to open offices in China to serve both Chinese and western clients. I hope that China's legal authorities see the clear advantage for China in such a presence and will accommodate and encourage it.

- o It is important that the Chinese legal system be applied more equitably to foreign partners, investors, and traders. Some distinctions in treatment between domestic and external firms are inevitable. But, as a general proposition, uniform laws applicable to citizens and foreigners alike promote enterprise, stimulate capital accumulation, and inspire foreign confidence.
- o By the same token, the practical aspects of charging a fair price for housing, office space and personal and business services, and for maintaining reasonable taxation schemes, will build for China a reputation for hospitable treatment of foreign business enterprises which will help China to realize her desire to attract increasing numbers of willing and loyal partners.
- o China, too, must resist domestic protectionist pressures. China's domestic markets must be more open to both goods and services. This is essential for

mutual trade and for China's successful participation in GATT and her integration into the world economy.

- o Protection of intellectual property needs considerable attention. China's new patent and trademark laws are important steps forward. But American firms specializing in technologically sophisticated commodities such as petrochemical and pharmaceutical products, silicon chip patterns, design processes, and other similar materials require adequate protection for the results of their creative research.

I am confident that, in all these areas and more, China will find American lawyers more than willing to give freely of their insights and experience to help advance our common interest in the continuing development of Chinese law.

Minister Zuo, we have made an excellent beginning. We have begun a valuable dialogue. We have found the issues on which we have differences and we have commenced, in great volume, candid discussions aimed at resolving such differences as completely as possible. We have also found the many points on which we agree, and I think that we can all conclude that we find in them a substantial basis for continued collaboration. It is time now to ensure that the joint work of Chinese and American lawyers continue.

Minister Zuo, I hope that you will visit me in Washington next year, letting me return some of your generous hospitality and allowing our useful conversations to continue face to face.

And, ladies and gentlemen, having now seen first-hand the splendid work of the People to People International organization, I urge Tom Stillitano, Norm Swanson, and their colleagues to give serious consideration to the convening next year in the United States of a second U.S./China Joint Session on Trade, Investment and Economic Law. If Minister Zuo is willing, I would be delighted to join with him, once again, in co-chairing that second joint session.

The symbol of this conference, designed so nicely by our Chinese friends, provides the theme for our continued cooperation. In that spirit, let the pathways of the Pacific Ocean be illuminated by the law, and may the lawyers of China and America be the helmsmen who steer the ships of our two great nations to shining seas of prosperity and peace.