# China's IP Culture

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# China's IP Culture

"To get rich is glorious"

"Let some people get rich first"

Q: "Is China is a Communist country?"

A: "Well, It's governed by the Communist Party…"



Deng Xiaoping
1904-1997

# China's IP Culture

向前看 "Look to the Future"

向钱看 "Look for the Money..."



Deng Xiaoping
1904-1997

# Locus of Inward Investment:

## Manufacturing Sector (not services or high-tech)

***CHINESE INWARD FOREIGN DIRECT INVESTMENT - mostly in low-end manufacturing***

| | |
|---|---|
| *1983* | *$ 913 million* |
| *1990* | *$ 3.487 billion* |
| *2002* | *$ 53 billion ** |

** Surpasses U.S. as largest in World in 2004*

*OECD Observer No. 237, May 2003*

# Trade Growth

***CHINESE FOREIGN TRADE***

***1995 $ 289 billion***

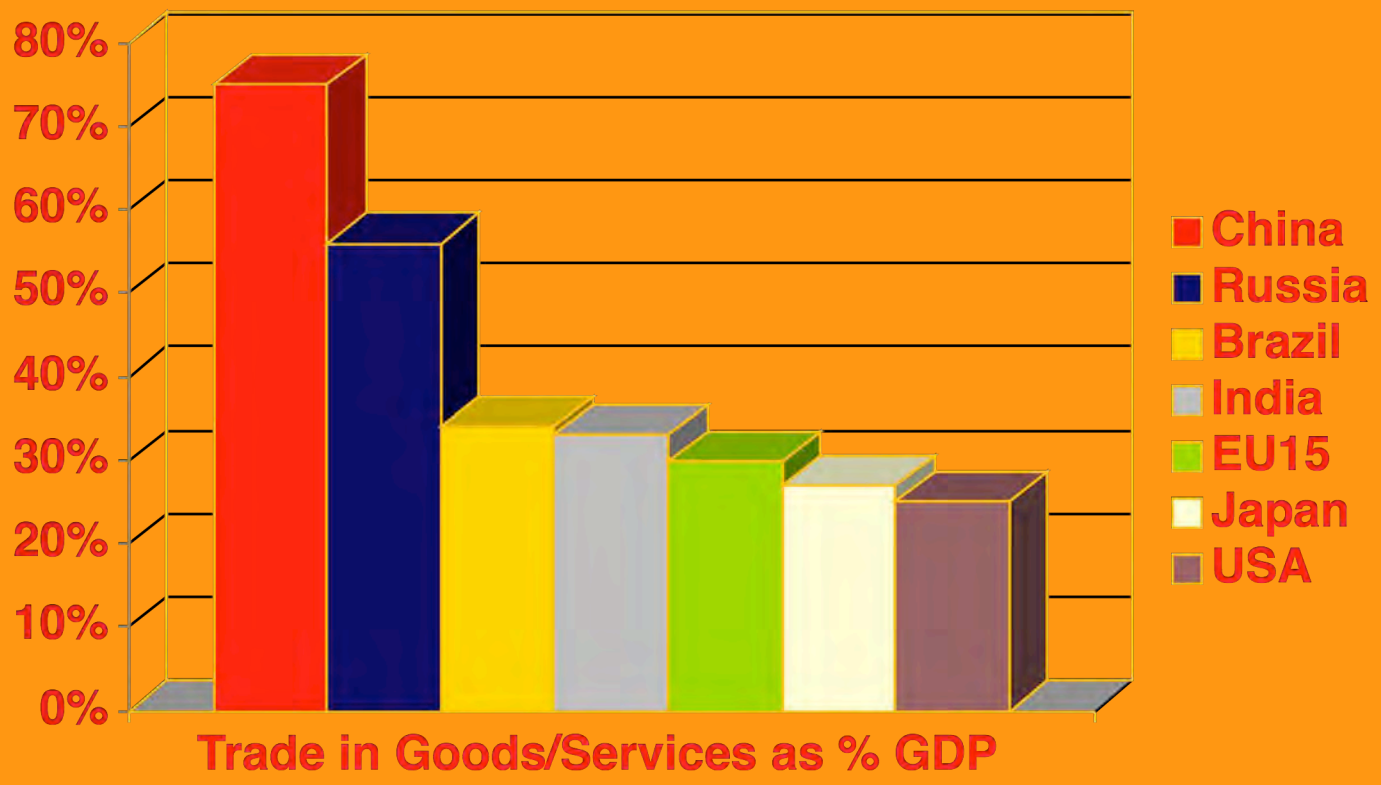
***2005 $ 1.4 trillion****

***500% growth in 10 years***

*** volume 3d in world after US, Germany***

*NYTimes 12 January 2006 p. C1*

# China's Trade Dependent Economy *Economist, 7/30/05*



# US-China Agreement on Trade Relations - 1979

- "Open door policy" Begins PRC intellectual property protection regime. U.S. and China stipulate that each will offer the other reciprocal protection of patents and copyrights.

# US-China Agreement on Trade Relations - 1980

- China accedes to the World Intellectual Property Organization(WIPO)

# Chinese Trademark Law - 1982

- Trademark Law of The People's Republic of China.(Detailed Implementing Regulations in 1983, 1988) Protection for service marks introduced in 1988.

# Chinese Patent Law - 1984

- Patent law passed. Chinese Patent Office established in 1985.

# Paris Convention - 1985

- China accedes to the Paris Convention on Industrial Property in March 1985

# GATT - July 1986

- China first applies for membership in the GATT [General Agreement on Tariffs and Trade]

# US-China Memorandum of Understanding (MOU) - 1989

- US-China Memorandum of Understanding (MOU) on Enactment and Scope of PRC Copyright Law.
  Chinese agree that copyright legislation will include computer programs as a specific category.

# Chinese Accession to Madrid Trademark Agmt - 1990

- China agrees to registration of trademarks through the International Bureau of WIPO.

# Chinese Copyright Law - 1991

- Extends protection to computer software, as well as to literary, artistic, and scientific works.

# US-China Memorandum of Understanding (MOU) - 1992

- China agrees to extend copyright protection to foreign owners of software, books, firms, sound recordings, and other mediums previously unprotected.

# Chinese Copyright Law - 1992

- Accedes to the Berne Convention on the Protection of Literary and Artistic Works

# Chinese Copyright Law - 1993

- China accedes to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (Geneva Convention)

# Chinese Patent Law - 1994

- China accedes to the Patent Cooperation Treaty

# US-China MOU
# February 1995 "Action Plan"

- Special Enforcement Fields

**Audio-visual products;**

**motion pictures;**

**computer software;**

**books, periodicals and other printed works;**

**trademarks**

# Substantive Compliance with Most of Part 2 TRIPS by 1995

- China enters WTO (followed by Taiwan) in 2001. Revises more than 1,000 laws
- Focus shifts to Part III TRIPS "Enforcement of Intellectual Property Rights"
- China still 127th (out of 209) countries in PPP GNP per capita in 2003 (World Bank)

# Part 3, Article 41 TRIPS Enforcement

- 1. Members shall ensure that enforcement procedures as specified in this Part are available under their national laws so as to permit ***effective action against any act of infringement*** of intellectual property rights covered by this Agreement, including ***expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements***. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

# Article 41 TRIPS

- 5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of laws in general, nor does it affect the capacity of Members to enforce their laws in general. ***Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of laws in general.***

# Article 61 TRIPS

- Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy ***on a commercial scale***. Remedies available shall include imprisonment and/or monetary fines ***sufficient to provide a deterrent***, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence.

# US-China Joint Commission on Commerce & Trade - 2004

- USTR Report in 2004 Counterfeiting & Piracy Losses $2.5 billion to $3.8 billion annually

- Am-Cham: 75 % of reporting American businesses in China have IP problems

# JCCT commitments - 2004

- "Significantly reduce" infringement levels
- Criminalize import, export, storage, distribution
- Nationwide enforcement
- Electronic works
- National IPR Education

# Supreme People's Court December 22, 2004

- New "judicial interpretation":
- Lower legal threshold for criminal penalties
- "Eagle Programme" 1-year police campaign focus on food, sanitary products, medicine, and agricultural materials

# CENTER AND PERIPHERY

- Officials in countryside need to promote investment and so ignore IP violations
- Pervasive official belief that China can enforce IP in high-tech and health sectors while ignoring problems with famous and luxury brands or media industries
- Social stability issues
- Affluence exacerbates IP problem

# MEDIA STANDARDS

- Industrial Policies - National Standards, Market Access
- 3G standards - "smartphone" convergence of fixed internet and mobile internet/radio & TV
- Motion picture quotas - Limit Hollywood to 20 pictures/year - Consumers have no access except through pirated copies.

# USTR Response in 2005

- APRIL 2005 - Unilateral - China placed back on "Priority Watch" list in April 2005 for "ineffective IP enforcement"
- OCTOBER 2005 - Multilateral- US invokes TRIPS Article 63.3 in (along with CH & JP) seeking "detailed information" from China on IP enforcement
- DECEMBER 2005 USTR Report to Congress

# Major Problems - Multinational

## International Criminal Activities

Optical Disks, DVDs, CDs, VCDs, Videocasettes, Pornography, Banknotes, Cigarettes, Leather Goods, Designer Clothes, Credit Cards, Wristwatches, Beverages, medicines

Prostitution, Heroin Smuggling, Snakeheads (Human Smuggling) Weapons, Terrorism, China-Taiwan "Counter-Intelligence"

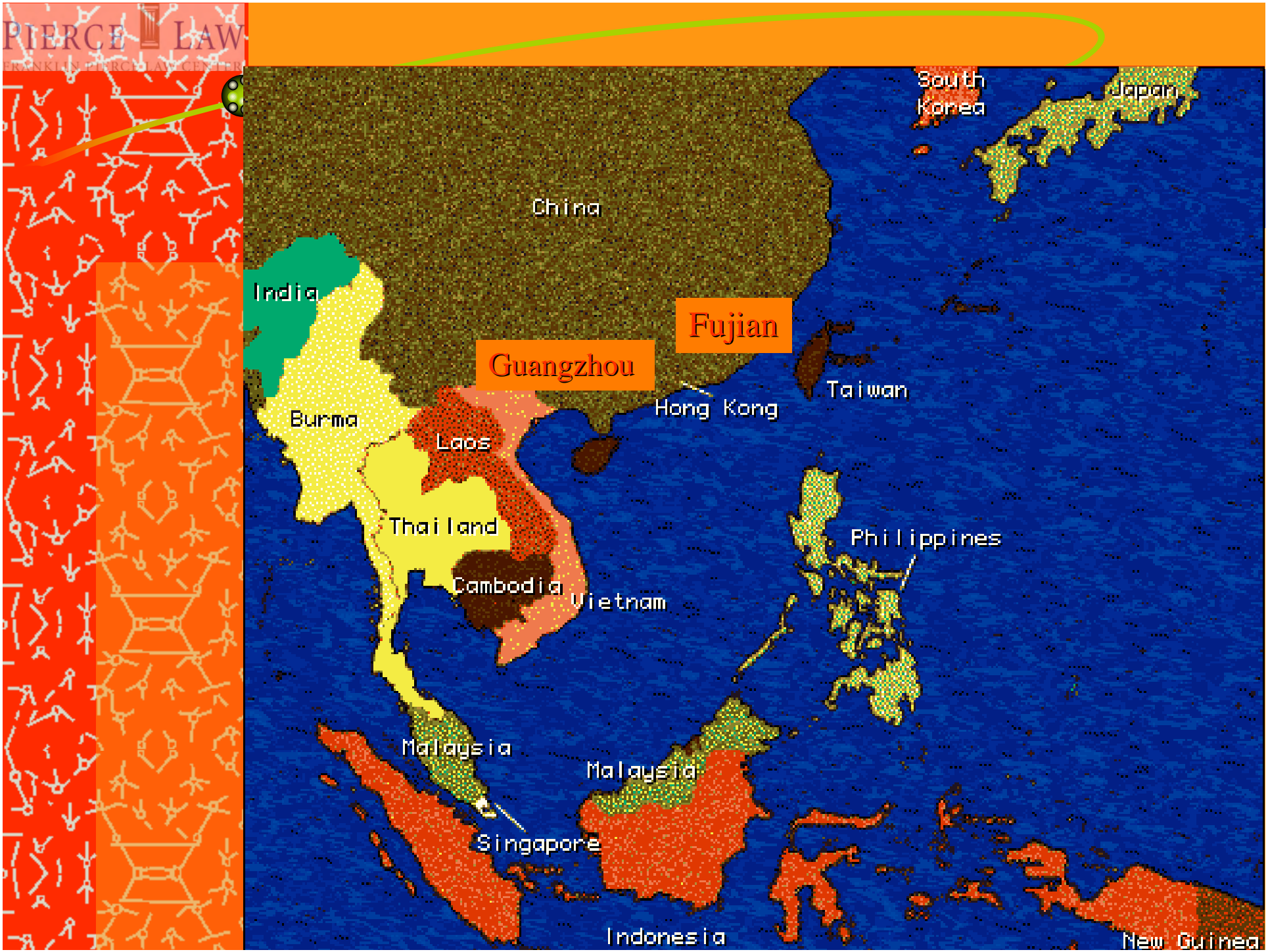
# International Gangs

**"The Big Circle Boys (大环会 *Dai Huen Jai*) are criminals, but they're also the world's greatest capitalists…"**

**Ken Yates,**

**Toronto Police Detective**

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# Guangdong

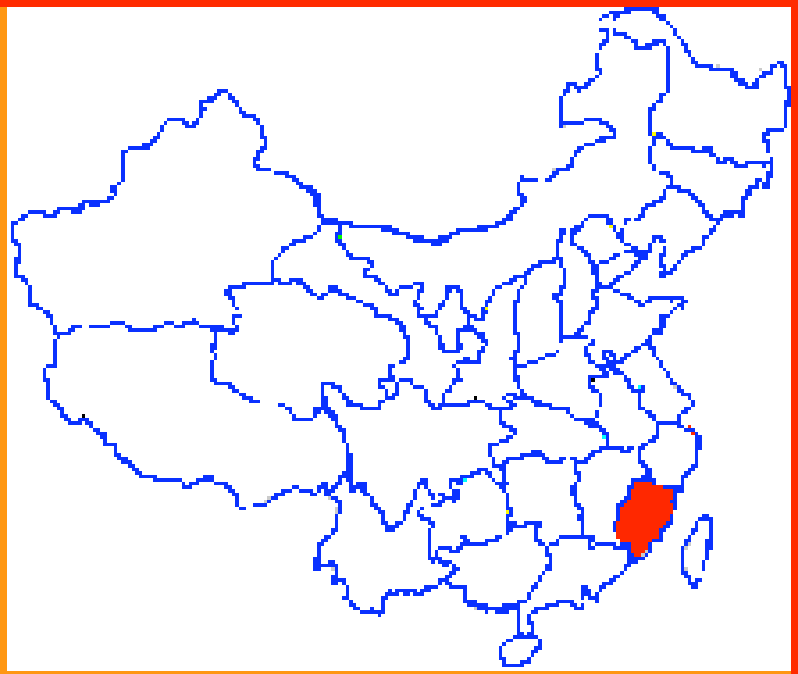



## 天高皇帝远

”The Heavens are High, and the Emperor is Far Away“

Guangdong

# Fujian Province



Fujian

天高皇帝远

”The Heavens are High, and the Emperor is Far Away“

# Chaozhou 潮洲 Imitation is the Sincerest Form of Flattery”



# Chaozhou 潮洲 Imitation is the Sincerest Form of Flattery”

From: Lords of the Rim, Sterling Seagrave, (Putnam 1995)

"The Teochiu people are culturally unique. They operate what many consider to be the richest, more powerful underworld networks on earth, one of the world's first multinational corporations. Tightly organized and intensely loyal, all the Teochieu in the world today are linked by common dialect and common origin to seven village districts around Swatow. This has been one of the great spawning grounds of piracy, smuggling, and black-marketeering."

# TEOCHIU 潮洲 Imitation is the Sincerest Form of Flattery"

Merchants from Jingdezhen, noted for its fine porcelain, travel to Chaozhou, also a center for pottery, to purchase fake Jingdezhen vases at discounts, which they take back to Jingdezhen to sell as genuine products.

reported in People's Daily 11.02



# WTO Dispute Standard?

- ***effective action*** against any act of infringement
- wilful trademark counterfeiting or copyright piracy ***on a commercial scale***.
- Remedies … ***sufficient to provide a deterrent***, consistently with the level of penalties applied for crimes of a corresponding gravity.

# "Chinese Special Characteristics"

- Chinese "special characteristics:"
- small, family-run businesses
- clan-centered organized crime
- interconnected bureaucratic state
- Official corruption
- Non-independent judiciary
- Chinese Diaspora - Jakarta, Bangkok, Toronto, NYC, Manila

# Hopeful signs

- Professionalization of Judiciary, Customs, and Prosecutors
- Emergence of Chinese Owners of IP
- Multinational enforcement efforts
- S. 301 still viable with WTO

# USTR Report December 13, 2005

- "The United States is committed to working constructively with China to significantly reduce PR infringement levels in China and continues to devote estra staff and resources… to address the many aspects of this problem. At the same time, ***[the US] remains prepared to take whatever action is necessary and appropriate to ensure that China develops and implements an effective system of IP rights enforcement, as required by the TRIPS Agreement.***"

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# Thank you !

