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From the Factory to the Playroom: Mattel, Inc.—Shenzhen Union King Sales Contract Exercise

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Nothing is more important than the safety of our children.¹

INTRODUCTION

The discovery of lead paint on nearly one million toys prompted the world's largest toy company, Mattel, Inc. (“Mattel”) to initiate a massive recall in August 2007.² The initial recall included eighty-three products, which were all manufactured in China for sale in the United States.³ Just two weeks later, Mattel's CEO issued an apology in connection with an additional recall affecting 9.5 million toys in the United States and 11 million in foreign countries—again, all of the toys were manufactured in China.⁴ In a full-page ad placed in the *New York Times*, the *Wall Street Journal*, and *USA Today*, Mattel Chairman and CEO Robert A. Eckert

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¹Mattel Chairman and CEO Robert “Bob” Eckert, full-page ad placed in the *New York Times*, the *Wall Street Journal*, and *USA Today* (Aug. 14, 2007), available at <http://www.nytimes.com/2007/08/14/business/15toys-web.html>.

²Louise Story, *Lead Paint Prompts Mattel to Recall 967,000 Toys*, N.Y. TIMES, Aug. 2, 2007, available at <http://www.nytimes.com/2007/08/02/business/02toy.html>.

³*Id.*

⁴*Mattel CEO: “Rigorous Standards” After Massive Toy Recall*, CNN U.S., Aug. 14, 2007, available at http://articles.cnn.com/2007-08-14/us/recall_1_polly-pocket-mattel-ceo-toys?_s=PM:US.

appealed to parents, stating that “[a]s a father of four, I share your focus on providing what’s best for them.”⁵ The recalled toys fell into two categories: those with impermissible levels of lead paint and those with risks associated with small high-powered magnets.⁶ Mattel’s immediate remedial action underscores its stated commitment to safety, which is prominent on its corporate Web site:

At Mattel, the safety of our toys is our number one priority. We create and produce some of the world’s most beloved toys and brands for children, and we know that with this comes the responsibility to ensure quality and safety. We strive to sustain the trust of consumers by employing strict standards that extend from product design to manufacturing and through distribution.⁷

In addition to the full-page ads, Mattel also distributed a video apology, pledging to increase the frequency of its paint inspections.⁸ Ultimately, Mattel agreed to pay a \$2.3 million civil fine for violating a federal lead paint ban⁹ and agreed to a class action settlement, including nearly \$13 million in plaintiffs’ attorney fees.¹⁰

Mattel’s manufacturing problems in China inspired this fictional contract negotiation exercise, which is designed to facilitate students’ understanding of the complexities of contracts for the sale of goods in the international context.¹¹

⁵Eckert, *supra* note 1. The effects of lead paint on children are “permanent and irreversible.” Joseph D. Pargola, *Childhood Lead Poisoning: Combating a Timeless Silent Killer*, 37 RUTGERS L. REC. 300, 301 (2010).

⁶*Id.* See generally David Barboza & Louise Story, *Mattel Issues New Recall of Toys Made in China*, N.Y. TIMES, Aug. 14, 2007, available at <http://www.nytimes.com/2007/08/14/business/15toys-web.html> (discussing the extent of the recall); Mattel, Consumer Relations Support Center, *Recall Information*, 2010, available at http://service.mattel.com/us/recall/39054_IVR.asp (recalling toys sold in retail stores in the United States since May 1, 2007).

⁷Mattel, Inc. Corporate Responsibility, available at <http://corporate.mattel.com/about-us/corporate-responsibility.aspx> (last visited Jan. 25, 2011).

⁸Nicholas Casey & Nicholas Zamiska, *Mattel Does Damage Control After New Recall*, WALL ST. J. Aug. 15, 2007, available at <http://online.wsj.com/article/SB118709567221897168.html>.

⁹Parija B. Kavilanz, *Mattel Fined \$2.3 Million Over Lead in Toys*, CNNMONEY, June 5, 2009, available at <http://money.cnn.com/2009/06/05/news/companies/cpsc/>.

¹⁰Amanda Bronstad, *Play Time . . . Is OVER! Objectors Fail to Block Mattel Lead Paint Settlement*, NAT’L L. J., Mar. 22, 2010, available at <http://www.law.com/jsp/cc/PubArticleFriendlyCC.jsp?id=1202446523146>.

¹¹For examples of negotiation exercises in the domestic context for the classroom, see Corey A. Ciochetti, *Employment Law, Negotiation and the Business Environment: A Cooperative Collective*

In this exercise, buyers from Mattel design an action figure doll and enter into an agreement with Shenzhen Union King Industrial Co., Inc. (Union King) for the manufacture of the dolls at Union King's facility in Guangdong Province, China.¹² Students are encouraged to consider issues that might arise in all contexts—from the time the toy is manufactured at the factory to the time children are playing with it in the playroom. The exercise provides students with an opportunity to engage with the United Nations Convention on the International Sale of Goods (CISG), which generally applies to sales contracts between companies in any of the seventy-six countries that are signatory to this treaty, including the United States and China.¹³ Given trends toward increasing globalization, the CISG is an important legal studies topic.¹⁴

Part I of this case study consists of the negotiation exercise to be distributed to students. A separate case is provided for the buyers and sellers, containing confidential information for each side. This section also contains the assignment, which should be distributed to all buyers and sellers. Part II is the teaching note, setting forth the learning objectives, information about actual administration of the exercise in the classroom, and suggested methods of evaluation. The contract exercise

Bargaining Negotiation of the National Hockey League Lockout of 2004, 25 J. LEGAL STUD. EDUC. 127 (2008) (student-lead collective bargaining negotiation in the context of the National Hockey League Lockout of 2005–05); and Susan M. Dembo, *Contracts in the Classroom—Providing Undergraduate Business Students with Important “Real Life” Skills*, 22 J. LEGAL STUD. EDUC. 149 (2005) (contract negotiation exercise involving human resource management issues).

¹²Shenzhen Union King Industrial Co., Inc. is an actual company in China that manufactures a range of plastic toys. This company was selected for this exercise because it has a detailed Web site that students can use to learn more about the firm and its manufacturing capabilities. For additional information, see <http://www.unionking.com.cn/>.

¹³United National Convention on the International Sale of Goods (1980), available at <http://www.cisg.law.pace.edu/cisg/text/treaty.html>. The Global Sales Law Project maintained at the University of Basel, Switzerland, provides on-going updated information about CISG cases, commentary and scholarly writing. *Global Sales Law Project*, available at <http://www.globalsalelaw.org/index.cfm?pageID=2>.

¹⁴For a good, general, and practical introduction to the essential aspects on the CISG and how it differs from the UCC, see Michael C. Gibbons & Peter Gojcaj, *Navigating the Legal Waters of International Commerce*, MICH. B. J. 30 (Mar. 2011).

works particularly well at the end of the semester in an International Legal Transactions class; however, the teaching note also sets forth a modified assignment for use in a Legal Environment class. Overall, the exercise is designed to help students identify potential legal liability for both companies as they wrestle with the complexities of international transactions, from product safety liability associated with toys manufactured in China¹⁵ to the resolution of disputes arising from global contracts using the CISG.¹⁶

I. THE NEGOTIATION EXERCISE: INFORMATION FOR STUDENTS

This part contains three documents for use in the negotiation exercise. The first two documents are specific case information, which should be distributed separately to the Buyer (Mattel) and Seller (Union King). The buyers and sellers should be advised to keep the case information confidential. The third document is a copy of the assignment for all students.

¹⁵For information on applicable laws and particular challenges of contracting in China, see generally Russell T. Gips, *From China with Lead: The Hasty Reform of the Consumer Product Safety Commission*, 46 HOUS. L. REV. 545 (2009) (discussing Mattel's 2007 recall and ongoing concerns with the regulatory process); Elizabeth Ann Hunt, *Made in China: Who Bears the Loss and Why?*, 27 PENN. ST. INT'L L. REV. 915 (2010) (considering the complicated issues associated with goods manufactured in China and sold in the United States); Katrina S. Knutson, *Lead in Their Shoes?: The Impact of the Consumer Product Safety Improvement Act on Chinese/American Trade Negotiations*, 31 HAMLINE J. PUB. L. & POL'Y 705 (2010) (considering the Consumer Product Safety Act and its relationship to U.S.-China trade); A. Mitchell Polinsky, *The Uneasy Case for Product Liability*, 123 HARV. L. REV. 1437 (2010) (comparing the benefits of product liability to its costs).

¹⁶See generally Mark R. Shulman & Lachmi Singh, *China's Implementation of the UN Sales Convention Through Arbitral Tribunals*, 48 COLUM. J. TRANSNAT'L L. 242 (2010) (analyzing decisions by the China International Economic and Trade Arbitration Commission (CIETAC) decisions interpreting the CISG). For analysis of CISG case law in various courts, see Larry A. DiMatteo et al., *The Interpretive Turn in International Sales Law: An Analysis of Fifteen Years of CISG Jurisprudence*, 24 NW. J. INT'L L. & BUS. 299 (2004); Marcia J. Staff, *United Nations Convention on Contracts for the International Sale of Goods: Lessons Learned from Five Years of Cases*, 6 S.C. J. INT'L L. & BUS. 1 (2009).

A. Information for the Buyer, Mattel, Inc.

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**INFORMATION FOR BUYER:
MATTEL, INC.**



THE BUYER: MATTEL, INC.

Mattel is the worldwide leader in the design, manufacture and marketing of toys and family products. The Mattel family is comprised of such best-selling brands as Barbie[®], the most popular fashion doll ever introduced, Hot Wheels[®], Matchbox[®], American Girl[®], and Radica[®], as well as Fisher-Price[®] brands, including Little People[®], Power Wheels[®] and a wide array of entertainment-inspired toy lines. Mattel is recognized as one of 2008's 100 Best Companies to Work For by FORTUNE Magazine, among the 100 Most Trustworthy U.S. Companies by Forbes Magazine and is ranked among the 100 Best Corporate Citizens by CRO Magazine. Committed to ethical manufacturing sustainable business practices, Mattel marked a ten-year milestone in 2007 for its Global Manufacturing Principles. With global headquarters in El Segundo, Calif., Mattel employs more than 30,000 people in 43 countries and territories and sells products in more than 150 nations. Mattel's vision is to be the world's premier toy brands—today and tomorrow. (Source: International Center for Corporate Accountability) For additional information, see Mattel's official Web site at <http://mattel.com>.

THE MANUFACTURER/SELLER: SHENZHEN UNION KING INDUSTRIAL CO., LTD.

“Union King” is a plastic toy manufacturer located in Shenzhen (Guangdong Province) China. Founded in 1990, it is located close to Hong Kong, convenient for both transportation and foreign trading. Union King has been known for many years in the plastics development field and has a

good reputation. It is capable in research, development and production of all kinds of plastic toys, electronic toys, vinyl figures, action toys, and promotional toys. The factory has full production lines for injection, rotocasting, painting, and silkscreening. The company adheres to the principle of “credit, efficiency, good quality, and creativity,” to provide the best service to its customers. Union King has established business relationships with customers from all over the world, especially in Japan, Italy, the USA, Korea, Taiwan, Indonesia, and China. Additionally, it claims to have a very good reputation with and full support from the Chinese local government. For more information, see <http://unionking.en.alibaba.com/> or <http://www.unionking.com.cn/>.

KEY INFORMATION ABOUT THE TOYS AND TRANSACTION:

- In 2007, following a series of problems with manufacturers in China, Mattel is very careful about selecting vendors. It currently desires to contract with a new vendor for the manufacture of a new line of toys, which must be in full compliance with Mattel’s Global Manufacturing Principles, which are available at http://www.mattel.com/about_us/Corp_Responsibility/cr_global.asp.
- Mattel is concerned about Union King’s self-characterized “good reputation and full support of the local government” to the extent that this could signal potential problems with bribery of local officials.
- Mattel seeks a vendor to manufacture a series of colorful plastic action figures designed to appeal to girls ages four to eight. Your team should design a prototype of the doll to show Union King to determine if it is feasible to manufacture the design. Ideally, the line of dolls will expand, introducing a new doll every six months for two years. Mattel, however, would prefer not to get locked into a long-term contract with Union King until it feels comfortable with the quality of Union King’s manufacturing.
- The dolls should be similar in size to Mattel’s “Avatar Na’vi Neytiri” action figures and convey a strong role model message for young girls.
- Mattel’s plan is to introduce a million action figures into the marketplace to hype the product for holiday sales, hoping that the figures will be one of the season’s hottest “sought-after” items.
- Estimated retail price for each action figure: \$11.99 (similar to the Avatar figures). Mattel would prefer to keep the retail price under \$12.
- Approximate cost to manufacture the current line of Avatar figures: approximately \$2.50.

- Other cost considerations: shipping & insurance (\$50 to ship a case of 100 dolls), marketing (about 5% of the contract price), wholesale price and profit.
- Also consider: What cultural differences could affect your negotiations?

CONTRACT DRAFTING CHECKLIST:

- ✓ Are all terms sufficiently definite in the contract (description, price, quantity)?
- ✓ What are the packaging details?
- ✓ How will payment be made? What currency will be used? (Check the value of the dollar vs. Yuan and recent trends.) When is payment due?
- ✓ What are the terms of delivery? Who bears the risk of loss?
- ✓ Who is paying for shipping costs?
- ✓ What warranties will be made? Goal: very detailed warranties to avoid previous problems with lead paint and design deficiencies.
- ✓ What law will govern the contract? What forum will hear any disputes?
- ✓ Is intellectual property adequately protected? Is Union King prevented from manufacturing “knock-offs”? Can Mattel limit Union King from manufacturing for competitor companies?
- ✓ Are potential public relations nightmares over recalls, labor issues, etc. avoided?
- ✓ Have you addressed all problems you can envision from the factory to the playroom?

B. Information for the Seller, Shenzhen Union King Industrial Co., Ltd.

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**INFORMATION FOR SELLER/MANUFACTURER:
SHENZHEN UNION KING INDUSTRIAL CO., LTD.**



THE MANUFACTURER/SELLER: SHENZHEN UNION KING INDUSTRIAL CO., LTD.

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known for many years in the plastics development field and has a good reputation. It is capable in research, development and production of all kinds of plastic toys, electronic toys, vinyl figures, action toys, and promotional toys. The factory has full production lines for injection, rotocast, painting, and silkscreen. The company adheres to the principle of “credit, efficiency, good quality, and creativity,” to provide the best service to its customers. Union King has established business relationships with customers from all over the world, especially in Japan, Italy, the USA, Korea, Taiwan, Indonesia, and China. Additionally, it claims to have a very good reputation with and full support from the Chinese local government. For more information, see <http://unionking.en.alibaba.com/> or <http://www.unionking.com.cn/>.

THE BUYER: MATTEL, INC.

Mattel is the worldwide leader in the design, manufacture and marketing of toys and family products. The Mattel family is comprised of such best-selling brands as Barbie[®], the most popular fashion doll ever introduced, Hot Wheels[®], Matchbox[®], American Girl[®], and Radica[®], as well as Fisher-Price[®] brands, including Little People[®], Power Wheels[®] and a wide array of entertainment-inspired toy lines. Mattel is recognized as one of 2008's 100 Best Companies to Work For by FORTUNE Magazine, among the 100 Most Trustworthy U.S. Companies by Forbes Magazine and is ranked among the 100 Best Corporate Citizens by CRO Magazine. Committed to ethical manufacturing and sustainable business practices, Mattel marked a ten-year milestone in 2007 for its Global Manufacturing Principles. With global headquarters in El Segundo, Calif., Mattel employs more than 30,000 people in 43 countries and territories and sells products in more than 150 nations. Mattel's vision is to be the world's premier toy brands—today and tomorrow. (Source: International Center for Corporate Accountability) One source of additional information is Mattel's official Web site: <http://mattel.com>.

KEY INFORMATION ABOUT THE TOYS AND TRANSACTION:

- Mattel seeks a vendor to manufacture a series of colorful plastic action figures designed to appeal to girls ages four to eight. The dolls will be similar in size to Mattel's “Avatar Na'vi Neytiri” action figures, conveying a strong role model message for young girls.
- Union King needs to determine if it will be able to manufacture the dolls sought by Mattel or whether additional capital expenditures would be necessary to fulfill Mattel's orders. (Have fun and use your discretion here.)

- Union King’s facility can manufacture up to 1.5 million action figures in a six-month period. Union King suspects that these action figures will be part of an ongoing series and would like to lock Mattel into a long-term contract for additional dolls.
- Union King estimates that the current cost to manufacture this kind of action figure will be approximately \$2.75 per doll. (This is slightly higher than the costs of similar dolls manufactured even a year ago when the cost was approximately \$1.75 and the cost to buyers was about \$2.50/retail price of approx. \$9.99.) Note also that the All-China Federation of Trade Unions (“ACFTU”) is pressuring Union King to pay higher wages to its workers and to avoid any layoffs in the current rough economic climate, especially on any manufacturing contracts for foreign firms. The current minimum wage in Shenzhen is RMB 1000 per month for full-time employees and RMB 8.8 per hour for part-time workers. Union King estimates that this could result in additional costs of approximately \$.50 per doll.
- It is possible that Union King can further reinforce the local “good will” of union and other government officials if it has some financial flexibility in the deal for “wining and dining.” If possible, Union King seeks to increase the price of the dolls to include money for flexibility when dealing with local suppliers, including one key government-owned vendor. (Note: obviously this could be problematic under US law, but that is up to Mattel, not Union King, to determine.)
- Other cost consideration: shipping & insurance (\$50 to ship a case of 100 dolls).
- Also consider: What cultural differences could affect your negotiations?

CONTRACT DRAFTING CHECKLIST:

- ✓ Are all terms sufficiently definite in the contract (description, price, quantity)?
- ✓ How will payment be made?
- ✓ What currency will be used? (Check the value of the dollar vs. Yuan and recent trends.)
- ✓ When is payment due?
- ✓ What are the terms of delivery?
- ✓ Who is paying for shipping costs?
- ✓ What warranties will be made? Union King wants the bare minimum.
- ✓ Is Union King protected if it needs to pay higher wages during the manufacturing process?

- ✓ Can Union King also manufacture for rival companies? This is important, especially if Mattel wants a short-term contract.
- ✓ Does Union King have any liability if knock-offs appear on the market, including as the result of actions by former employees?
- ✓ What language (Chinese, either Mandarin or Cantonese, or English)?
- ✓ What law will govern the contract?
- ✓ What forum will hear any disputes?
- ✓ Have you addressed all problems you can envision from the factory to the playroom?

C. Assignment

This section consists of the assignment to be distributed to all students, detailing the written end product students are responsible to submit and the overall evaluation criteria.

ASSIGNMENT

- A. Use the worksheet to negotiate a sales contract. Both sides should consider their ideal terms. Mattel should approach Union King, describing its products, manufacturing needs, timetable, etc. to begin the negotiations.
- B. Each group of negotiators should hand in *one collective* report containing the following:
 1. Written contract containing all contract terms as agreed upon by the parties.
Be sure to include and elaborate on all important details.
 2. The completed Peer Dispute Evaluation worksheets.
 3. Mattel's answers to the following questions:
 - a) What issues, if any, affected your negotiations?
 - b) What concerns do you have about the contract?
 - c) What would you do differently next time? Why?
 4. Union King's answers to the following questions:
 - a) What issues, if any, affected your negotiations?
 - b) What concerns do you have about the contract?
 - c) What would you do differently next time? Why?
 5. An overall evaluative statement about the negotiation exercise.
(E.g., what did you learn, what would have made it better, what should be added or deleted?)

EVALUATION

The contracts are given an overall grade as follows:

A = Excellent: Contract covers all key terms listed on the Drafting Checklist (in the assignment), is appropriately detailed and demonstrates a high degree of engagement with the exercise.

B = Good: Contract does a good job regarding above, although there are provisions where the contract needs refinement.

C = Adequate: Contract is missing consideration of key terms on the Drafting Checklist.

F = Fails to meet expectations.

Awards for the most carefully drafted contract and for the best doll design.

II. TEACHING NOTE

This part details learning objectives, provides an overview of the actual administration of the exercise in the classroom, and suggests methods of evaluation. It describes how this contract exercise may be used as a capstone exercise at the end of the semester in an International Legal Transactions class after students have covered a range of relevant topics. It also provides a modified assignment for use in a Legal Environment class, as a way of engaging students to consider a range of legal issues that might arise in an international transaction.

A. Learning Objectives

This case is designed to strengthen students' appreciation for the complicated legal and practical issues that may confront a business involved in purchasing goods from an international vendor. Students have the opportunity to negotiate an agreement that balances the interests of both the buyer and seller. Learning objectives are as follows:

- Challenging students to assimilate information learned throughout the semester into a sales contract negotiation exercise;
- Describing basic negotiation principles and considerations in the international context;
- Encouraging students to consider all of the legal and ethical issues that can arise in international transactions;
- Introducing students to the complexities of careful drafting; and
- Helping students learn about their own negotiating style, strengths, and weaknesses.

B. Administration of the Exercise

Over the course of the semester, the following material is typically covered in an International Legal Transactions class: sales contracts (including the CISG), shipping terms, letters of credit, as well as dispute resolution, political risk, labor and employment, intellectual property, international marketing, and the Foreign Corrupt Practices Act.¹⁷ This exercise draws on all of those topics. Therefore, it is helpful to run the exercise at the end of the term, so that students can synthesize all of the course material into their negotiating considerations.

On the first day of the assignment, the instructor begins by discussing fundamental negotiation ideas and elaborating on issues that can arise in the international context. Inasmuch as many students may be unfamiliar or uncomfortable with the process of negotiation, it is helpful to focus on three preliminary concerns to help them understand their own negotiating style, goals, and the context of negotiating agreements in China. First, the instructor discusses the three basic negotiating styles: (1) adversarial, characterized by a high degree of determination to win a “zero-sum game”; (2) cooperative, characterized by valuing fairness and relationship building through reaching a mutually satisfying goal; and (3) integrative, characterized by exercising problem-solving techniques to satisfy the interests of both parties.¹⁸ As students consider their own style, they should think about the way in which they are inclined to handle conflict:

- Competing—the goal is to win;
- Avoiding—the goal is to delay;
- Compromising—the goal is to find middle ground;
- Collaborating—the goal is to find a mutual gain-gain solution; or
- Accommodating—the goal is to yield.¹⁹

To the extent that students are concerned about their tendency to be overly aggressive or too accommodating, the exercise offers an

¹⁷The text used in the author’s course is RICHARD SCHAFFER ET AL., *INTERNATIONAL BUSINESS LAW AND ITS ENVIRONMENT* (7th ed. 2005).

¹⁸For comprehensive discussion of negotiation tactics and how to teach negotiation theory, see Bill McClendon, Debra D. Burke & Lorrie Willey, *The Art of Negotiation: What the Twenty-First Century Business Student Should Know*, 27 J. LEGAL STUD. EDUC. 277, 280 (2010); Alex J. Hurder, *The Lawyer’s Dilemma: To Be or Not To Be a Problem-Solving Negotiator*, 14 CLINICAL L. REV. 253, 261–66 (2007) (elaborating on the adversarial style of negotiation).

¹⁹ADRIAN MACKAY, *MOTIVATION, ABILITY AND CONFIDENCE BUILDING IN PEOPLE* 268 (2007) (elaborating on work by Kenneth W. Thomas and Ralph W. Kilsman).

opportunity to be aware of the pitfalls of both and to experiment with other styles. Another way of looking at negotiation styles is to consider the difference between “positional negotiation” and “principled negotiation.”²⁰ Positional negotiation is focused on winning, as opposed to principled negotiation, which focuses on “basic interests, mutually satisfying options, and fair standards.”²¹ The overall contract is graded on its comprehensiveness, which is designed to encourage students to work together.

Second, the instructor should encourage students to consider their overall objectives. From their unique position as Mattel or Union King, what would be the best outcome? This requires students to review the drafting checklist in their case to determine their key goals, as opposed to other points that are negotiable. Students are instructed to focus on their overall interests and options for achieving their goals both before and during the negotiations. Ideally, they will work together toward a mutually satisfying goal. Although this is an objective of the assignment, time constraints sometimes cause students to make concessions to complete the assignment on time. Students are prompted to reflect about such occurrences as they are required to respond to the following questions: (1) what issues, if any, affected your negotiations, (2) what concerns do you have about the contract; and (3) what would you do differently next time?

Third, the instructor should discuss issues related to the particular negotiating environment in China. One of the most fundamental points is that doing business in China requires building trust and respect.²² This must be accomplished over a period of time and requires patience. An important aspect of business development is the concept of *guanxi* (pronounced “guan-chee”), or developing useful connections and favors.²³ Gift giving is often a part of such relationship building to demonstrate esteem and to express thanks.²⁴ Care, however, must be exercised to avoid rising to the level of a bribe in violation of Chinese law or the Foreign Corrupt Practices

²⁰ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN 3-15 (Bruce Patton ed., 2011) (1991).

²¹*Id.* at 14.

²²JOHN L. CHAN, CHINA STREETSMART: WHAT YOU MUST KNOW TO BE EFFECTIVE AND PROFITABLE IN CHINA 60 (2003).

²³KEVIN BUCKNALL, CHINESE BUSINESS ETIQUETTE AND CULTURE 16 (2002).

²⁴*Id.* at 137.

Act.²⁵ As such, expensive gifts to individuals or cash payments should be avoided. Finally, the instructor should emphasize that bargaining is an essential aspect of Chinese culture. From the markets to the boardroom, bargaining is expected. It is not unusual for the Chinese side of a negotiation to start at a position that is very favorable for its firm.²⁶ As one businessman summed it up, “Foreign businesspeople who come to China often have too much goodwill, too much trust, and too little patience The concept of ‘win-win’ is new and not widespread, and will have to be constantly reiterated to be successful.”²⁷

After discussing general negotiation issues, the instructor will distribute the case and assignment, explaining in detail the parameters and expectations of the exercise.²⁸ Next, students are assigned to groups of Buyers/Mattel and Sellers/Union King. Each group should generally consist of two (not more than three) students. Initially, Mattel and Union King meet separately to strategize their respective positions. During this time the instructor can circulate, meeting with the groups individually, answering questions and encouraging the groups to think through their positions before they begin negotiating. The Mattel teams should be encouraged to use the Negotiation Worksheet (Appendix A) to make an initial offer/proposal to Union King. The negotiations take place over three seventy-five-minute class sessions. During this time, students are also expected to draft their contract. Depending on the level of understanding or experience of the students, it may be helpful to give them a very general sample contract outline to get started (Appendix B).²⁹ Students may also undertake research and use other form contracts they might locate but must document the source of any other contracts used. During the assignment, it may be interesting to send the class actual “breaking news” that could affect the negotiations. For example, China recently began to lay the groundwork

²⁵F. Joseph Warin et al., *FCPA Compliance in China and the Gifts and Hospitality Challenge*, 5 VA. L. & BUS. REV. 33, 34–35 (2010).

²⁶See generally Chan, *supra* note 22, at 60 (“Often the Chinese side will not initially offer a fair deal; it is up to the foreign side to ensure that the deal is eventually structured as win-win”).

²⁷JAMES MCGREGOR, ONE BILLION CUSTOMERS: LESSONS FROM THE FRONT LINES OF DOING BUSINESS IN CHINA 57 (2005).

²⁸See *supra* Part I.

²⁹Instructors, however, have the benefit of the details in the checklist of material terms in Appendix E, discussed *infra* Part II.D.2.

for a shift in the value of the Yuan.³⁰ This information could be e-mailed to students during their negotiations. Such information could be a significant consideration when the groups are in the process of deciding which currency to use in their transactions. Another example of breaking news is a current recall, which affects Mattel's products.³¹

Full drafts of the contracts are due at the beginning of the fourth session, in which students must deal with "problems" in connection with the transaction in the Peer Dispute Evaluation component of the project. For this part of the exercise, groups exchange contracts and must determine the extent to which the contract addresses the issues presented. This is generally an eye-opening experience for students, as they critique their classmates' work and also consider the extent to which their own contracts could be more detailed. Teams are asked to address typical disputes, including design leaks/knockoff dolls, failure to meet U.S. or EU lead standards, bribery, and damaged manufacturing machinery at Union King as the result of worker unrest (Appendix C). After critiquing the contracts, the groups confer, discussing ways to improve the contracts. Final contracts are due at the next class, as well as each group's statement about the experience (including what they would do differently next time) and feedback about the assignment (*see* the assignment in Part I).

C. Alternative Legal and Regulatory Environment Assignment

This exercise also works well in as a miniversion in a Legal and Regulatory Environment class (See the assignment in Appendix D). This assignment takes place over a single class period with the goal of students brainstorming to create a Material Terms sheet. Also conducted at the end of the term, students are challenged to consider all of the issues they should incorporate in a contract.³² To that end, it is useful to start the exercise by recapping the relevant topics discussed over the semester: sales contracts (including the CISG), shipping terms, letters of credit, as well as dispute resolution, political risk,

³⁰*China's Yuan Surges in Value to 6.5997 per Dollar*, PEOPLE'S DAILY ONLINE, Jan. 13, 2011, <http://english.peopledaily.com.cn/90001/90778/90859/7259604.html>.

³¹*See* Consumer Product Safety Commission, <http://www.cpsc.gov/cpsc/pub/prerel/category/toy.html> (last visited Jan. 24, 2011) (listing all recalls by date); Mattel Consumer Relations Support Center, <http://service.mattel.com/us/recall.asp> (last visited Jan. 24, 2011) (listing all Mattel recalls).

³²The text used by the author is O. LEE REED ET AL., *THE LEGAL AND REGULATORY ENVIRONMENT OF BUSINESS* (15th ed. 2010).

labor and employment, intellectual property, marketing, and the Foreign Corrupt Practices Act.

D. Methods of Evaluation

The goal of the International Legal Transactions class exercise is for students to draft comprehensive agreements, considering as many aspects of the transaction as they can and planning ahead for potential problems. There are two evaluation components and an “awards” presentation.

1. Peer Dispute Evaluation

As described above, after the students prepare full drafts of their contracts, each group is charged with the task of evaluating how well the contract addresses the problems presented. Using the Peer Dispute Evaluation worksheets (Appendix C), students are responsible to analyze the contract language and determine the extent to which the issue is covered or problematic, providing the drafting team with specific narrative feedback as well as an advisory grade for the effort. The advisory grades provide groups with a candid peer assessment and an opportunity to closely read contract provisions for ambiguous language and gaps.

2. Instructor Evaluation

Consistent with the information provided to students in the assignment, the contracts are given an overall grade of Excellent (90–100), Good (80–89), Adequate (70–79), or Fails to meet expectations (69 and lower).³³ This flexibility with the grading allows the instructor discretion to evaluate the contracts as a whole. To facilitate the grading process in both international and legal environment classes, a detailed checklist of considerations for instructors is included in Appendix E. This list contains a range of potential contract provisions addressing a number of potential considerations. The actual contracts and material term sheets produced by students will vary depending on the scope and depth of the material covered that term. Even if students do not cover all of the issues, the list can be used at the end of the exercise for discussion. Inasmuch as the negotiation involves several class sessions, the contract exercise is 15 percent of the overall grade in the international class. In the abbreviated Legal Environment class exercise, students are evaluated

³³See *supra* Part I.C.

based on the comprehensiveness of their Material Terms sheet, and this exercise is 5 percent of the overall grade in the class. If a group member fails to fully participate in either class, he or she may receive a grade different from the group as a whole on the assignment and/or the student's class participation grade may be adversely affected.

3. Awards

A particularly enjoyable aspect of the assignment is presenting awards for the most carefully drafted contract and for the best action figure design. During this final class of the assignment, the instructor might begin by reviewing selected contract provisions that are poorly drafted, because the terms are ambiguous or open to misinterpretation. This is done without identifying any students, but allowing students to discuss the shortcomings they see based on their own experience. Next, the instructor highlights well-crafted provisions and strengths in selected contracts. The contract analysis concludes with a review of the award-winning, most thoroughly drafted contract. Finally, the instructor should show the toy designs, with feedback about their designs from the awards committee. (The author's school-age daughters are often the committee for the design award.) Typical awards include pens, pencils and decals with the business school's logo.

CONCLUSION

This case offers business students a chance to have practical experience synthesizing the information discussed throughout the semester by negotiating contracts. The exercise introduces them to issues that can arise in connection with negotiating an international sales contract and prompts them to understand the difficulty of careful drafting. It also offers them an opportunity to appreciate many of the details that can arise in connection with an international transaction, as well as potential liability for the companies involved. Lastly, throughout the process, students learn about their own negotiating style, strengths and weaknesses.

APPENDIX A: NEGOTIATION WORKSHEET

Buyer/Mattel _____

Seller/Manufacturer Union King _____

<i>Terms</i>	<i>Offer</i>	<i>Counter offer</i>	<i>Negotiations</i>	<i>Acceptance/ Final Terms</i>
The Goods				
Delivery Terms				
Payment terms (method/time frame)				
Warranties				
Choice of law clause				
Forum selection clause				
Shipping Cost				
Other terms/clauses: See assignment checklist!				

APPENDIX B: SAMPLE CONTRACT OUTLINE FOR AN INTERNATIONAL SALE OF GOODS

–Contracts should be very detailed–

Agreement made and entered into this [date], by and between [name of seller], of [address: city, state, country] (herein referred to as “Seller”), and

[name of buyer], of [address: city, state, country] (herein referred to as “Buyer”).

1. Seller hereby agrees to transfer and deliver to buyer the following goods:

add description, quantity & price

2. Seller hereby agrees to deliver the goods [delivery terms, who bears the risk of loss & shipping cost].

3. Buyer hereby agrees to [payment terms; if a letter of credit is used, attach a copy].

4. Seller warrants [list any warranties].

5. Add any agreement re: marketing, including costs, scope of marketing, rights to intellectual property, etc.

6. In the event of a dispute arising out of this agreement, Buyer and Seller agree [forum selection and choice of law].

7. Any other terms of the agreement [*See Sale of Goods* chart, e.g. remedies, excuses for non-performance, etc.–be creative and comprehensive].

This agreement has been executed in duplicate, whereby both Buyer and Seller have retained one copy each, on [date].

Buyer (add name)

Seller (add name)

[type the name of each group member under separate signature lines & all must sign the final contract to receive credit]

APPENDIX C: REVIEW TEAM #1: MATTEL IN-HOUSE IP COUNSEL

MATTEL, INC. v. SHENZHEN UNION KING INDUSTRIAL CO., INC

REVIEWED BY _____

Based on your review, what grade would you give this contract? _____

Contract Team Members:

Mattel:

Union King:

The following event takes place after the Mattel-Union King contract is fully executed.

DESIGN LEAK: TWO WEEKS BEFORE THE SCHEDULED ROLLOUT OF THE NEW DOLLS, HASBRO BEGINS AN INTENSE MARKETING CAMPAIGN OF NEARLY THE SAME PRODUCT. HOW DID THIS HAPPEN? IF MATTEL INTRODUCES THESE NEW DOLLS, IT WILL LOOK LIKE A KNOCK-OFF OF THE HASBRO PRODUCT.

How does the contract address this issue? Does Mattel have any recourse against Union King? What do you envision happening under the provisions of the contract? What kinds of damages are available under the contract? Cite to specific contractual provisions to support your answer. Are they adequate? If not, how could the contract be strengthened?

Comments by Review Team

REVIEW TEAM #2: U.S. CUSTOMS INSPECTORS

MATTEL, INC. v. SHENZHEN UNION KING INDUSTRIAL CO., INC

REVIEWED BY _____

Based on your review, what grade would you give this contract? _____

Contract Team Members:

Mattel:

Union King:

The following event takes place after the Mattel-Union King contract is fully executed.

US REQUIREMENTS: THE US IS INVESTIGATING A COMPLAINT BY A RIVAL TOY MANUFACTURER THAT THE NEW MATTEL DOLLS ARE NOT IN COMPLIANCE WITH U.S. LEAD STANDARDS.

How does the contract address this issue? If there is a problem, does Mattel have any recourse against Union King? What do you envision happening under the provisions of the contract? What kinds of damages are available under the contract? Cite to specific contractual provisions to support your answer. Are they adequate? If not, how could the contract be strengthened?

Comments by Review Team

**REVIEW TEAM #3: U.S. JUSTICE DEPARTMENT
MATEL, INC. v. SHENZHEN UNION KING INDUSTRIAL CO., INC**

REVIEWED BY _____

Based on your review, what grade would you give this contract? _____

Contract Team Members:

Mattel:

Union King:

The following event takes place after the Mattel-Union King contract is fully executed.

FCPA CONCERNS: THE U.S. JUSTICE DEPT IS INVESTIGATING THE CONTRACT TO DETERMINE IF THE PRICE IS INFLATED OR IF THERE ARE PAYMENTS BEING MADE WHICH COULD BE BRIBES.

The Justice Dept is looking for any “red flags.” Basic information given to the government: Mattel has a similar line of products that it purchased from a Chinese vendor for \$2.00 each. Sources indicate that current market conditions would result in the dolls costing \$2.50 each, with the possible issue of increased labor costs of approximately an additional \$.50 per doll.

What is the per doll price under the contract? Who is paying for shipping costs? If it is Mattel (in whole or in part) how much does this add to the price of each doll? Are any other payments being made under the contract? Do there appear to be any red flags?

Comments by Review Team

REVIEW TEAM #4: UNION KING ATTORNEYS**MATTEL, INC. v. SHENZHEN UNION KING INDUSTRIAL CO., INC****REVIEWED BY** _____

Based on your review, what grade would you give this contract? _____

Contract Team Members:

Mattel:

Union King:

The following event takes place after the Mattel-Union King contract is fully executed.

LABOR PROBLEMS AND FACTORY DAMAGE: OVER THE WEEKEND, FIGHTS ERUPTED BETWEEN WORKERS AT THE FACTORY; THE WORKERS THEN TURNED THEIR ANGER AGAINST UNION KING. WORKERS DAMAGED SOME MACHINERY CRUCIAL TO MANUFACTURING THE MATTEL DOLLS AND BURNED WAREHOUSE FACILITIES. IT IS ESTIMATED THAT UNION KING WILL NEED 3 WEEKS TO MAKE THE NECESSARY REPAIRS AND WILL NOT BE ABLE TO MEET MATTEL'S DELIVERY REQUIREMENTS.

How does the contract address this issue? What do you envision happening under the provisions of the contract? What kinds of remedies/damages are available under the contract? Cite to specific contractual provisions to support your answer. Are they adequate? If not, how could the contract be strengthened?

Comments by Review Team

APPENDIX D: FROM THE FACTORY TO THE PLAYROOM: MATTEL—UNION KING SALES CONTRACT NEGOTIATION LEGAL AND REGULATORY ENVIRONMENT ASSIGNMENT

THE BUYER: MATTEL, INC.

Mattel is the worldwide leader in the design, manufacture and marketing of toys and family products. The Mattel family is comprised of such best-selling brands as Barbie[®], the most popular fashion doll ever introduced, Hot Wheels[®], Matchbox[®], American Girl[®], and Radica[®], as well as Fisher-Price[®] brands, including Little People[®], Power Wheels[®] and a wide array of entertainment-inspired toy lines. Mattel is recognized as one of 2008's 100 Best Companies to Work For by FORTUNE Magazine,

among the 100 Most Trustworthy U.S. Companies by Forbes Magazine and is ranked among the 100 Best Corporate Citizens by CRO Magazine. Committed to ethical manufacturing and sustainable business practices, Mattel marked a ten-year milestone in 2007 for its Global Manufacturing Principles. With global headquarters in El Segundo, Calif., Mattel employs more than 30,000 people in 43 countries and territories and sells products in more than 150 nations. Mattel's vision is to be the world's premier toy brands—today and tomorrow. (Source: International Center for Corporate Accountability) For additional information, see Mattel's official Web site: <http://mattel.com> as well as any other material available.

THE MANUFACTURER/SELLER: SHENZHEN UNION KING INDUSTRIAL CO., LTD.

“Union King” is a plastic toy manufacturer located in Shenzhen (Guangdong Province) China. Founded in 1990, it is close to Hong Kong, with convenience for both transportation and foreign trading. Union King has been known for many years in plastics development field with a good reputation. It is capable in research, development and production of all kinds of plastic toys, electronic toys, vinyl figures, action toys, and promotional toys. The factory has full production lines for injection, rotocasting, painting, and silkscreening. The company adheres to the principle of “credit, efficiency, good quality, and creativity,” to provide the best service to its customers. Union King has established business relationships with customers from all over the world, especially in Japan, Italy, the USA, Korea, Taiwan, Indonesia, and China. Additionally, it claims to have a very good reputation with and full support from the Chinese local government. For more information: <http://unionking.en.alibaba.com/> or <http://www.unionking.com.cn/>.

KEY INFORMATION ABOUT THE TOYS AND TRANSACTION:

- In 2007, following a series of problems with manufacturers in China, Mattel is very careful about selecting vendors. It currently desires to contract with a new vendor for the manufacture of a new line of toys, which must be in full compliance with Mattel's Global Manufacturing Principles, *see* http://www.mattel.com/about_us/Corp_Responsibility/cr_global.asp.
- Mattel is concerned about Union King's self-characterized “good reputation and full support of the local government” to the extent that this could signal potential problems with bribery of local officials. It is possible that Union King can further reinforce the local “good will” of union and other government officials if it has some financial flexibility in

the deal for “wining and dining.” If possible, Union King seeks to increase the price of the dolls to include money for flexibility when dealing with local suppliers, including one key government-owned vendor.

- Mattel seeks a vendor to manufacture a series of colorful plastic action figures designed to appeal to girls ages four to eight. Ideally, the line of dolls will expand, introducing a new doll every six months for two years. Mattel, however, would prefer not to get locked into a long-term contract with Union King until it feels comfortable with the quality of Union King’s manufacturing. The dolls should be similar to Mattel’s “Avatar Na’vi Neytiri” action figures, with a strong role model message for young girls. Mattel’s plan is to introduce a million action figures into the marketplace to hype the product for holiday 2010 sales, hoping that the figures will be one of the season’s hottest “sought-after” items.
- Estimated retail price for each action figure: \$11.99 (similar to the Avatar figures). Mattel would prefer to keep the retail price under \$12. Approximate cost to manufacture the current line of Avatar figures: approximately \$2.50, however Union King estimates that the current cost to manufacture this kind of action figure will be approximately \$2.75 per doll.
- Union King is concerned if it will be able to manufacture the dolls sought by Mattel or if additional costs will be associated. For example, the All-China Federation of Trade Unions (“ACFTU”) is pressuring Union King to pay higher wages to its workers and to avoid any layoffs in the current rough economic climate, especially on any manufacturing contracts for foreign firms. The current minimum wage in Shenzhen is RMB 1000 per month for full-time employees and RMB 8.8 per hour for part-time workers. Union King estimates that this could result in additional costs of approximately \$.50 per doll.
- Other cost considerations: shipping & insurance (\$50 to ship a case of 100 dolls), marketing (about 5% of the contract price), wholesale price and profit.
- Union King’s facility can manufacture up to 1.5 million action figures in a six-month period. Union King suspects that these action figures will be part of an ongoing series and would like to lock Mattel into a long-term contract.

ASSIGNMENT: Prior to class, students should read this assignment carefully and consider all of the terms that should be included in a contract between Mattel and Union King. Using the syllabus as your guide, review what you

have learned over the semester and brainstorm about every issue/problem you can envision from the factory to the playroom. In class, students will be divided into Mattel and Union King groups. The goal: to create a list of all of the categories of Material Terms that should be included in a contract to fully protect both Mattel's and Union King's interests. Include as much detail as possible. The Material Terms sheet is due at the end of class.

EVALUATION:

A = Excellent: Material Terms sheet is comprehensive, evidencing careful consideration of all aspects of the transaction and demonstrating a high degree of engagement with the exercise.

B = Good: Material Terms sheet does a good job re: above, although there are important terms missing.

C = Adequate: Material Terms sheet is missing consideration of key terms.

F = Abysmal effort.

APPENDIX E: INSTRUCTOR'S REFERENCE: CHECKLIST OF MATERIAL TERMS

The following is a list of the kinds of issues students should incorporate in their contracts and material terms sheet:

- **Description, price and quantity:** Are the basic terms included: an accurate description of the goods, price, and quantity of action figures ordered adequately specified? What kind of detail is provided to describe the action figures? Does the assignment contain a drawing or other model?
- **Payment:** What is the method (cash, credit, letter of credit) and timing of the payment? E.g. will payment be made before or after receiving the action figures? Will Mattel be able to inspect for quality first?
- **Currency:** What currency will be used? Students should consider the value of the dollar and the Yuan, as well as the likely trend over the course of the contract.
- **Shipping terms:** What are the terms of delivery? Specifically, who bears the risk of loss as the goods are transported from the factory to Mattel's warehouse? For Union King, it is preferable to be released from liability as soon as the goods leave its warehouse. Mattel, on the other hand, would prefer to not bear the risk of loss until it receives the action figures at its warehouse.
- **Shipping and Insurance:** Who is responsible to pay shipping & insurance costs? The parties should consider how shipping costs factor into the

overall cost of the contract. For example, Mattel may be willing to pay slightly more for the action figures if Union King pays all shipping and insurance costs. What happens if shipping costs increase unexpectedly due to increasing gas prices?

- **Exclusivity:** Does Mattel have an exclusive agreement with Union King or can Union King also manufacture for competitors? Union King may perceive Mattel to be a very desirable client and want to lay the groundwork for future additional manufacturing contracts.
- **Warranties:** What kinds of warranties are provided by Union King? Are there any express warranties ensuring that the action figures are fit for use by children? What kind of liability does Union King have if the goods are not up to the standards specified in the contract? In light of Mattel's commitment to the safety of its toys, it should seek detailed provisions.
- **Specific Express Warranties:** Are there any specific requirements about the quality of the action figures, including specific concerns such as lead paint, toxic adhesives and small parts that can cause choking in children? These are the kinds of considerations Mattel may want to explicitly include in express warranties.
- **Product Packaging:** Are there any details included about the packaging for retail sale or shipment of the figures?
- **Labor Costs:** What if Union King experiences losses due to increased labor costs? If so, can it increase the cost of the action figures?
- **Intellectual Property Protection:** Is there adequate protection for Mattel's intellectual property, specifically any trademarks associated with the company name and the new action figure? Is Union King required to keep the contract confidential to prevent competitors from having early access to the information?
- **Advertising:** Did the parties make any agreements related to advertising, such as any responsibility for promotional materials to be manufactured by Union King?
- **Bribery:** Is there any payment that could be used as or construed as a bribe in violation of the Foreign Corrupt Practices Act? (E.g. are there any payments that might raise red flags that are not directly related to the costs of the action figures or are the costs not in line with reasonable costs for similar goods?)
- **Language:** What is the language of the contract (Chinese, either Mandarin or Cantonese, or English)?
- **Choice of Law:** What law governs the contract (i.e., CISG, UCC, or Chinese national law)?

- **Dispute Resolution and Forum Selection:** How will disputes arising under the contract be handled? Did the parties agree to a forum and method for dispute resolution (arbitration, mediation or litigation)? If the parties agree to arbitrate or mediate, how will the arbitrator or mediator be selected? Did the parties consider using the China International Economic and Trade Arbitration Commission (CIETAC) for arbitration?³⁴
- **Damages:** Are there any specific provisions for damages resulting from breach of the contract? For example, if Union King does not deliver the action figures in a timely manner as specified by the contract, are there any liquidated damage provisions?
- **Force Majeure Clause:** Does the contract contain a force majeure clause? Such a clause might read: “Neither party shall be liable in damages or have the right to terminate the agreement for any delay or default in performing if the delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.”

³⁴For more information, see China International Economic and Trade Arbitration Commission, available at <http://www.cietac.org/index.cms> (last visited Jan. 24, 2011).