Congress of the United States
Washington, DC 20515

November 9, 2004

President George W. Bush
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear Mr. President:

We are writing to request your assistance with the case of Jude Shao, an American Citizen who has been imprisoned in China for over six years. We respectfully request that you raise Mr. Shao's case with Chinese President Hu Jintao during the Asia Pacific Economic (APEC) conference in November and urge the President to do what he can to ensure Mr. Shao's safety, health, and release from prison.

We have been informed that just after his graduation from the Stanford Graduate School of Business in 1993 Mr. Shao started a company to export American medical equipment to China. In July of 1997, we were told that Mr. Shao refused a solicitation for a bribe by a Shanghai Tax Auditor, which started a chain of events that led to Mr. Shao's arrest in April of 1998. It is our understanding that Mr. Shao was held incommunicado without an opportunity to prepare for trial for a total of 26 months before he was finally sentenced to 16 years in prison for tax evasion. We have attached a commentary from the Wall Street Journal that explains the alleged abuses of Chinese law that took place during Mr. Shao's case.

We have been told that friends of Mr. Shao were able to recover Mr. Shao's business records in the United States and identify errors that may seriously call into question the veracity of the case against him. Mr. Shao's friends tell us this evidence was reviewed by six prominent Chinese legal scholars at the Center for Research in Criminal Legal Science at National People's University, including former law professors, members of the Supreme People's Court and members of the Supreme People's Procurator. We were informed that these scholars each concluded that the case needs to be retried. Still, Mr. Shao has received no response to six petitions to present exculpatory evidence to the Shanghai High Court and the Supreme People's Court.

Six years of imprisonment is taking a toll on Mr. Shao's health. We have been informed that Mr. Shao's family has filed an application for medical parole to help with a heart ailment that prison doctors are unable to treat. The U.S. Embassy in Beijing filed a diplomatic note in support of this application, but there has been no response from the Chinese government. It appears that nine more years of a 16-year sentence will be detrimental to Mr. Shao.

We urge you to raise Mr. Shao's case in your November meetings with Chinese President Hu Jintao and advocate for his release. Mr. Shao should be given an opportunity for a fair trial to present evidence that could exculpate him and lead to his release from prison. In the immediate, Mr. Shao should be granted medical parole to ensure that his heart condition is properly treated.

Sincerely,

ZOE LOFGREN, Member of Congress

ANNA ESHOO, Member of Congress

MICHAEL HONDA, Member of Congress

cc: Secretary of State Colin Powell

Lesson for China Investors

By CHUCK HOOVER
Wall Street Journal
December 3, 2003

COMMENTARY

Most discussions of impediments to trading with China focus on things like tariffs and the country's supposedly undervalued currency. Yet there is another impediment that severely impacts foreign business' ability to export to China: the lack of rule of law.

While China has enjoyed Most Favored Nations status with the U.S. since 1980 and has been a member of the World Trade Organization for two years, institutional change has not kept up with private sector growth. The result is not only inconvenience and curtailment of trade, but sometimes personal tragedy. One recent case illustrates the dangers foreign business people face in China.

Jude Shao is a naturalized American citizen who graduated from the Stanford Graduate School of Business in 1993. Mr. Shao then started his own company, China Business Ventures, with the goal of helping both the country of his birth and his adopted country by exporting American medical equipment to China. Four years and lots of hard work later, Mr. Shao's business had grown nicely, with offices in San Francisco and Shanghai and a work force of 15 employees.

In July of 1997 a local Shanghai tax auditor arrived at the CBV offices to conduct a "special tax audit." After Mr. Shao refused a solicitation for a bribe to stop the audit, the auditor confiscated all of CBV's accounting records and eventually froze CBV's bank accounts, effectively killing the business. In April of 1998 the Shanghai police arrested Mr. Shao and told him that they had been asked to "teach him a lesson."

Mr. Shao's family was solicited for a bribe to stop the investigation, which they refused. He was then held incommunicado for the next 26 months. Mr. Shao was put on trial in June of 1999 without being able to review the evidence against him or meet with his attorney prior to the trial. Not surprisingly, in March of 2000 he was convicted of tax evasion and sentenced to 16 years in prison.

In 2001, Mr. Shao finally was able to get a copy of the evidence against him, a judicial accounting audit report prepared by the Shanghai police. With the help of CBV accounting records recovered from the San Francisco office, he was able to identify errors in the report that were so significant that any impartial reading of the evidence would show him to be innocent. Yet the Shanghai High Court twice refused to review this exculpatory evidence, and the Supreme People's Court has not responded to Mr. Shao's petition for review of his case for over one and a half years. Five and half years after his arrest, he sits in a Shanghai prison with deteriorating health.

What does Mr. Shao's case have to do with trade? Well, imprisonment, or the threat of imprisonment by the arbitrary application of law, is the ultimate trade barrier. The case is illustrative because Chinese authorities so flagrantly violated their own laws from the outset, as follows:

* The Shanghai Tax Auditor's solicitation of bribes violated Article 53 of the Law of the Administration of Tax Collection of the P.R.C.

* Mr. Shao's incommunicado detention for 26 months contravened Article 96 of the Chinese Criminal Procedure Law and also violated Article 3 of the U.S.-China Consular Convention.

* The judicial accounting audit report prepared by the Shanghai Police, the basis for Mr. Shao's conviction, exceeded its advisory authority by declaring his guilt rather than reporting facts, thus violating Article 39 of the General Regulation. Article 42 of the same General Regulation provides that audits going beyond the scope of their authority are invalid.

* The failure to provide Mr. Shao an opportunity to review the audit report prior to his trial violated Article 121 of China's Criminal Procedure Law.

* The court found that Mr. Shao confessed to tax evasion. He vehemently denies this, and the police were never able to produce records of his alleged confession. It should be noted that Mr. Shao did sign a total of nine interrogation records all of which stated that he had paid all taxes and had done nothing illegal. The police were not able to produce these records either. The failure of the Shanghai police to transcribe and have Mr. Shao sign a record of the interrogation in which he allegedly confessed to tax evasion is a violation Article 95 of the Criminal Procedure Law.

* The Shanghai High Court's refusal to accept the exculpatory evidence Mr. Shao produced for his appeals in 2000 and 2001 violated Article 204 of the Criminal Procedure Law.

* The failure of the Supreme People's Court to respond in writing to Mr. Shao's petition for over one and a half years violated Article 204 of the Criminal Procedure Law as well as Article 302 of the Judicial Directives for the Implementation of Criminal Procedure Law.

As reported on this newspaper, in April of this year an experts committee, convened by the Center for Research in Criminal Legal Science at the National People's University, reviewed Mr. Shao's case, including the exculpatory evidence presented in his appeals, and concluded that there was insufficient evidence to convict and that "the People's Court should retry the case according to law."

The experts committee is a remarkable and commendable innovation in the Chinese legal system, because it allows courts to draw on scholarly opinion to guide the rapidly developing Chinese legal system while protecting the independence of the judiciary. All civil law systems place great weight on scholarly opinion, so adopting the experts committee's recommendations neither admits error or fault nor signifies that a Chinese court has submitted to outside pressure, but shows that the Chinese legal system seeks to ensure justice in a particular case.

Ultimately the case of Jude Shao provides an opportunity for China. If the government wants to keep the engine of growth running, it needs to demonstrate to outside investors that the institutions for ensuring the rule of law are growing in proportion with the market economy. As WTO Director General Supachai Panitchpakdi said last month, for China "to reach its full potential, growth in the private sector has to be matched by an equal development of a stable, market-oriented legal framework. . . ." After all, if China can abide by the WTO rules, why not abide by its own laws? A re-examination of Jude Shao's case would be a step in the right direction.

Mr. Hoover is an alumnus of the Stanford Graduate School of Business and one of the leaders of the Free Jude Shao Campaign (www.freejudeshao.com2).