JUDICIAL REVIEW IN THE PEOPLE'S REPUBLIC OF CHINA: SELECTED LEGAL SOURCE MATERIALS FROM 1982 TO 1989 (in two parts: Part 1)

CHARLES COVELL AND SHAHZADI COVELL

Introduction

In the present paper, we are concerned with the era of political and economic reform in the People's Republic of China, or as abbreviated the PRC, that began with the historic 3rd Plenum of the 11th Central Committee of the Communist Party of China, or the CPC, as this was held in Beijing from 18 December to 22 December 1978. The aspect of the reform era in the PRC on which we focus attention is to do with the endeavour of the leadership elites within the CPC and the state government to establish an effective system of law, as the basis for political, social and economic organization. The development of what is referred to as the socialist legal order has since 1978 been pointed to by the Party-State leadership as crucial to the realization of its declared public policy programme of socialist modernization, and, indeed, the socialist legal order has come to stand with the socialist market economic order as ranking among the essential, and inter-connected, component parts of the project that the leadership has set itself of bringing about an authentic socialism with Chinese characteristics. As a reflection of this, the period running from 1978 to the present has witnessed an immense enlargement in the province of law and legislation in the PRC. Thus

it is that there has taken place a continuous elaboration and application of legal forms and legal categories, as under the recognized heads of constitutional law, civil and commercial law, administrative law, economic law, social and welfare law, criminal law and litigation procedure law. Of the different parts of law as here specified, the body of administrative law has been prominent in the promoting of the agenda for political and economic reform in the PRC, and it is the administrative law of the PRC, and particularly the form of adjudication integral to it, that in this paper we pick out for detailed study and examination. In this, the method adopted is that of the critical survey of selected legal source materials, and with this being to the end of bringing out the foundations of the system of administrative law in the PRC and those of its defining form of adjudicative procedure.[1]

In its broadest sense, administrative law is the law that has application to the administrative authorities that belong to the institutional sphere of government in the state, and in this application it is the law which relates to the tasks and functions, and the structure, of the administrative authorities and which serves to regulate the exercise of their powers. As to the first principles of administrative law, the principle that is fundamental is that the acts of the administrative authorities, as involving the exercise of powers, are assumed to require and to presuppose some basis and justification in law. The corollary of this is that, from the standpoint of administrative law, the administrative authorities are to be thought of as being capable of acting, and of exercising their powers, contrary to law and so in the absence of an authentic lawful basis and justification. Hence it follows that the administrative authorities are to be thought of as being properly subject to challenge in the name of law by ordinary citizens, and by such other parties, as claim to be adversely affected, or aggrieved, through the allegedly unlawful acts of the authorities involved. The possibility of there being legal challenges to the administrative authorities, as in regard to their acts

and powers, presupposes the necessity that there be available some official procedure for the presentation and determination of such challenges, and for the provision and enforcement of remedies in the event that the challenges to the administrative authorities are upheld through this procedure. In general terms, the appropriate form of procedure here that has proved to be characteristic of administrative law systems, and that has come to embody the essential element of administrative law as such, is a procedure of adjudication, and one where legal challenges to the acts of the administrative authorities are entertained under the auspices of organs which belong to the judicial branch of government. This, of course, is the procedure known as the judicial review of administrative action, and with this being the procedure that provides for the acts of the administrative authorities to be reviewed, and if necessary negated, by courts which possess institutional independence as in relation to the organs of state government and administration.

The principles of administrative law, and particularly those that structure the procedure for the judicial review of administrative action, are closely bound up with the principles which are contained within the ideal of the rule of law and within the ideal of constitutional government. As to the rule of law, it is to be observed that administrative law is directed towards the control through law of the acts of the administrative authorities. In this as to its underlying purpose, administrative law conforms with and gives effect to some of the core principles given in the rule of law ideal. Among these are the principles that the law is to stand as the basis for government in the state, and that the powers that are exercised by the administrative organs of government are to stand as non-arbitrary powers and hence as powers which remain subject to legal constraints and limitations.

As to the principles of constitutional government, it is to be observed that administrative law presupposes, and is based in, the principle of the formal separation of the legislative, executive and

judicial powers of government that is recognized to be essential to the ideal of constitutionalism. Thus it is that the procedure of judicial review involves the administrative authorities, as bearing the executive powers of government, being rendered subject to the scrutiny and control of independent courts. At the same time, the judicial review procedure is one where the courts in their judicial office apply in respect of the administrative authorities the provisions of laws which, in formal institutional terms as to the mode of their adoption and alteration, fall within the jurisdiction and competence of the legislative power as separate from the judicial and executive powers. Beyond this, there is the consideration that administrative law, as through its relation to the rule of law and constitutional government, bears directly on the ideal of human rights. For the principles of administrative law presuppose that individuals possess lawful rights that are to be asserted and enforced as against the institutions of government to which they as individuals are subject. Here, administrative law is to be taken as providing its confirmation for what is a central claim that is bound up with the human rights ideal. This is the claim to the effect that the powers of government are to be exercised only within the context of some containing legal framework, and one where these powers are recognized to be qualified by the condition that they are to be exercised consistent with the rights which are understood to belong to ordinary citizens.

In the years since 1978, there has come to be established in the PRC what operates, and presents itself for attention, as an effective system of administrative law. The advent of this administrative law system is a most notable feature of the political and economic reform process in the PRC. For it points to a forward development in the PRC running in the direction of the acceptance of the principles of the rule of law and constitutional government, and even the acceptance of the principles of individual human rights. This is so notwithstanding the evident fact of the continuing absence of plural-

party democratic governance, and the evident fact of the continuing domination of the political, social and economic order by the CPC as through the conditions of its monopoly rulership powers. The general significance of the system of administrative law in the PRC is underlined by the pervasiveness of administrative law principles as throughout the whole body of established substantive law. In the classification of the parts of law adopted in the PRC, the sphere of administrative law is identified in terms of the law relating to specific tasks and functions of public administration. Hence administrative law is taken to encompass the law relating to such matters as foreign affairs, public security, civil service personnel, education, public health, urban and rural planning, and the protection of the environment. In the event, however, the system of administrative law in force in the PRC is not to be understood so restrictively, as in terms of the designated administrative tasks and functions. For administrative law is the law applying to the administrative authorities and in respect to the exercise of their powers, and in the PRC the administrative authorities are everywhere engaged, as to the exercise of their powers, in the regulation of all the diverse aspects of political, social and economic order. Thus it is that there is explicit recognition given to the active engagement of the administrative authorities in the various regulatory frameworks that are set in the legislation, and in the other legal norms, that pertain to the tasks and functions which come within the spheres of civil and commercial law, economic law and social and welfare law.

In order to identify the fundamentals of administrative law in the PRC, it is essential to turn away from the substantive law that is directed to particular tasks and functions of public administration. Instead, it is essential to fasten attention on the statutes that serve to describe the general powers of the administrative authorities, but without restriction as to tasks and functions, and that serve to describe the general procedures to which the administrative authorities are understood to be subject in the exercising of their powers.

For it is with these statutes that the component parts of administrative law are presented in an inclusive and consolidated form, and it is through their terms that the component parts of administrative law, as in its character as comprising a unified and self-contained system of law, are fully rendered and brought out for the purposes of analysis and exposition. The statutes at issue here possess the full normative force specific to law, since in all cases the statutes have the standing of laws that have been enacted by the National People's Congress, as the sovereign legislative power in the PRC, or that have been adopted by the Standing Committee of the National People's Congress. Among the relevant statutes, the following are to be considered as crucial and as they are given in the order of their enactment. First and foremost, there is the law that is central to the concerns of this paper. This is the law stating the principles that relate to what is referred to as administrative procedure and to what is, in effect, the procedure for the judicial review of administrative action: the Administrative Procedure Law of the People's Republic of China, or as we abbreviate this the AP Law, which was adopted at the 2nd Session of the 7th National People's Congress on 4 April 1989.[12]

Moving beyond the matter of the law on judicial review, there is, as a second case, the law that sets out the principles relating to the liability of administrative authorities for the payment of compensation in cases involving their violation of the lawful rights of citizens and other parties: the State Compensation Law of the People's Republic of China, as adopted at the 7th Meeting of the Standing Committee of the 8th National People's Congress on 12 May 1994.[13] Third, there is the law that states the principles that govern the application of sanctions and penalties by the administrative authorities, as against citizens and other parties and in respect of their breaches of ordinary laws and administrative regulatory norms: the Administrative Penalties Law of the People's Republic of China, which was adopted at the 4th Session of the 8th National

People's Congress on 17 March 1996.[4] Fourth, there is the law setting out the principles that relate to the activities of the administrative agencies of the state government that exercise supervisory powers over the administrative authorities and their personnel: the Administrative Supervision Law of the People's Republic of China, as adopted at the 25th Meeting of the Standing Committee of the 8th National People's Congress on 9 May 1997.[5] Fifth, there is the law that sets out the principles relating to a procedure that is designated as administrative reconsideration, and with this being the procedure by which the administrative authorities are required to review, or to reconsider, their own acts or, as is more general, the acts of subordinate administrative authorities, as on the application of aggrieved parties: the Administrative Reconsideration Law of the People's Republic of China, as adopted at the 9th Meeting of the Standing Committee of the 9th National People's Congress on 29 April 1999.[6] Sixth, there is the law that sets out the principles relating to the various powers of the administrative authorities in respect of the issuing of licences: the Administrative Licensing Law of the People's Republic of China, as adopted at the 4th Meeting of the Standing Committee of the 10th National People's Congress on 27 August 2003.[7]

The ultimate foundation of the system of administrative law in the PRC lies in the procedure for the judicial review of administrative action, as this is described in the Administrative Procedure Law. The essential principle of the judicial review procedure, as a process of adjudication, is in itself quite simple, and it may be summarized as follows. Thus it is provided that the administrative procedure - that is, the procedure for judicial review - is directed towards the category of so-called administrative cases. The latter cases arise when parties, whether citizens, legal person entities or other such like organizations, are aggrieved as on account of the concrete administrative acts of one or other of the administrative authorities, and being so aggrieved then proceed to make applica-

tion to the people's courts for the judicial review of the administrative acts in question. The jurisdiction in administrative cases belongs to the system of the people's courts, as subject to the legal supervisory powers that are vested in what are known as the procuratorial authorities, and with this jurisdiction being exercised, as in accordance with the nature of particular administrative cases, by the basic people's courts, the intermediate people's courts, the higher people's courts or by the Supreme People's Court.

Of course, the AP Law includes detailed provisions that relate to what are the complex aspects of the judicial review procedure. So it is that there are provisions concerning the substantive grounds for the application for judicial review, the standing of parties to the proceedings, the rules of evidence, and the submission of cases for judicial review and the basis for their acceptance by the people's courts. There are in addition provisions concerning the actual process of adjudication followed under the administrative procedure, and concerning the form of remedies that are available to the courts in the rendering of judgments that are favourable to the interests of the parties which are the applicants for judicial review. All of this notwithstanding and to repeat the point, the essential principle of the judicial review procedure remains simple: and it is the principle to the effect that the procedure forms a judicial or adjudicative procedure, and where the applicant parties as plaintiffs and the administrative authorities as defendants stand subject to the jurisdiction of the people's courts as for the purposes of the resolution of disputes which are centred on the lawfulness of administrative action.

The foundational position of the judicial review procedure provided for in the Administrative Procedure Law, as in relation to the system of administrative law in the PRC, is a status that belongs to it in the respect that the judicial control of administrative action is something that is presupposed in the terms of all the basic component parts of administrative law. So, for example, the powers of the administrative authorities, as with those relating to administrative

sanctions and penalties and administrative licensing, are subject to the provisions the AP Law. In consequence of this, the powers here referred to stand as powers that are to be presupposed as being rendered subject to the form of control exercised by the people's courts. The judicial control of the administration is also presupposed in the law providing for administrative compensation, given that the judicial review of the acts of the administrative authorities, where this is successful as in favour of applicant parties, will itself be the occasion for the submitting of applications for compensation awards.

There is the further presupposing of judicial review under the terms of the procedure that is described in the law which provides for the reconsideration of the acts of administrative authorities. This, in its essentials, is a procedure that is internal to the institutional structure of the administration. For it is a procedure that is conducted by the administrative authorities, rather than one that is conducted through the people's courts as judicial organs of government which stand independent of the administration and its constituent organs. In this respect, the procedure for administrative reconsideration is a procedure that is by definition non-judicial in character. However, the critical factor here is that while the procedure of administrative reconsideration is distinct from the judicial review procedure, it does not in and of itself exempt the administrative authorities to which it is applied from the reach of the procedure of judicial review as in relation to their acts. For the outcomes of administrative reconsideration are in general accepted to be themselves subject to judicial review, and so as permitting aggrieved parties to appeal against unfavourable administrative reconsideration decisions as through the application for judicial review to the people's courts. In this way, there is preserved in the PRC, as in fidelity to the logic and the inner coherence of the administrative law system, the full and complete accountability of the administrative authorities to the control and jurisdiction of the ordinary people's courts as in accordance with the principles of the ad-

ministrative procedure.

The Administrative Procedure Law was formally enacted by the National People's Congress on 4 April 1989, and it became effective in the PRC as from 1 October 1990. However, the procedure of judicial review that is set out in the AP Law was already in place, and fully operational, in the PRC at the time of its enactment, and indeed the provenance of judicial review in the PRC, so far as the body of established law and legislation is concerned, can be traced back well before April 1989 to the years following soon after the beginnings of the reform period in 1978. It is to trace this provenance through the examination of the positive law source materials that is the purpose of this paper. Thus in Part 1 of the paper, we focus on the substance of constitutional law in the PRC, in order to pick out the respects in which the law of the constitution stands as a source for judicial review. Here, it will be explained that while the law of the constitution gives an implicit sanction for the principles of the judicial review of administrative action, there is not in fact any explicit basis for the judicial review procedure given in the specific terms and provisions of the constitutional law. In Part 2, we identify the basis for judicial review (and also for the administrative reconsideration procedure) that is rendered explicit in some of the laws and related administrative legal instruments that belong to the period between 1982 and 1989. Here, we maintain that there is an evident statutory warrant for judicial review that is prior to the AP Law, and that the legal source materials that provide for this are to be counted as establishing an authentic basis in statute law for the judicial review procedure. Finally in Part 3, we expound the terms and provisions of the AP Law itself. The intention, with this, is in part to describe the detailed elements of the judicial review procedure and, in part also, to bring out the respects in which the AP Law serves to consolidate such existing parts of the law of the PRC where there is reference to be found made to the availability of the procedure for the judicial review of the acts of the administra-

tive authorities.

1. The Law of the Constitution

As we have noted, the Party-State leadership in the PRC during the period of reform has viewed the development of the rule of law, as in conformity with the principles of socialist legal order, as being an essential part of the programme of socialist modernization. That this is so is clear from the substance of the deliberations of the Party-State leadership at the 3rd Plenum of the 11th Central Committee of the CPC in December 1978.[8] For on this occasion, marking as it did the start of the reform period, the Party-State leadership addressed itself directly to the question of law and legal system as in relation to the modalities of the prevailing form of democratic centralism followed by the CPC, as where the democratic will of the people was understood to be expressed and given effect to as under the centralized leadership of the CPC. In this connection, the Party-State leadership emphasized the necessity of strengthening the socialist legal order, and with this being to the end that the democratic process, as based in the will of the people, would be systematized as in accordance with the principles of law-structured organization. Thus and in specific terms, the Party-State leadership proposed that it was essential that there were to be laws stipulated for the guidance of the people, that the laws were to be complied with and strictly enforced, and that those individuals who broke the laws were to be sanctioned. Hence the business of legislation was to be assigned an important position among the concerns of the National People's Congress. In addition, the judicial and procuratorial organs of the state were to act to maintain their independence, and with this meaning that they were to abide by the established laws and other legal norms, serve the interests of the people, guarantee equality under the law and deny to all parties the privilege of

standing beyond the reaches of the law.[9]

The espousal of the cause of the socialist form of legal order, as on the part of the Party-State leadership in December 1978, was fundamental as in regard to the direction of political and economic reform in the PRC. As to the particulars of the proposals for the development of the socialist legal order, it is to be observed that there was a clear appeal made to the sort of principles that we have explained as belonging to the concept of administrative law and that of judicial review, as well as a clear appeal to the sort of principles that belong to what we have referred to in connection with administrative law as the ideal of the rule of law and the ideal of constitutional government. So, for example, it was proposed that there was to be the maintaining of judicial independence, and with this implying precisely the accountability of the administrative authorities before the ordinary courts that is the essential element of administrative law. Likewise, it was proposed that there was to be the guarantee of equality under the law and the subjection of all parties to the law, and with the implication in this, as for administrative law, being that the law was to have application to, and to be enforceable against, the administrative authorities. Fully in line with the December 1978 affirmation of the socialist legal order and the principles of the rule of law and constitutional government bound up with it, the early years of the reform period were to witness the decisive event that was the adoption of what still stands as the basic constitutional law of the PRC. This was the State Constitution of the People's Republic of China, as adopted at the 5th Session of the 5th National People's Congress as of 4 December 1982.[10]

The 1982 State Constitution describes the structure of state institutions in the PRC, and in doing this it confirms the separation of the legislative, executive and judicial powers of government that, as we have suggested, stands as the core principle of constitutionalism which ranks as one of the basic presuppositions of administrative law. For the purposes of the present paper, the essential ele-

ments of the structure of the state institutions of the PRC are to be summarized thus. In Chapter 3, Section 1 (Articles 57-78) of the State Constitution, there are set out the provisions relating to the National People's Congress of the PRC. Under the terms of the State Constitution, the National People's Congress is the supreme organ of state power and with its permanent body being the Standing Committee of the National People's Congress (Article 57), and with the National People's Congress and its Standing Committee exercising the legislative power in the state (Article 58). As to the functions and powers of the National People's Congress and the Standing Committee, these include the functions and powers specific to the legislative competence of the state such as those to do with the amendment of the State Constitution, the enactment and amendment of basic laws, and the annulment of administrative norms which contravene the State Constitution and the ordinary laws (Article 62, clauses 1, 3; Article 67, clauses 1-3, 7).

As concerning the executive sphere of government in the PRC, Chapter 3, Section 2 (Articles 79-84) of the State Constitution describes the office of State President and Chapter 3, Section 3 (Articles 85-92) describes the organ of state government which enjoys the title of the State Council of the PRC. The State Council forms the central government of the PRC, and, as such, it stands as the executive body of the National People's Congress, as the highest organ of state power, and the highest organ of state administration (Article 85). In its status as the central organ of government and administration in the PRC, the State Council includes within its organization such senior officials as the Prime Minister, the Vice Premiers and the Ministers who head the ministries and commissions which are constitutive of the State Council administrative structure (Article 86). The functions and powers belonging to the State Council are extensive, and comprise such executive functions and powers as are essential to the conduct of government and administration. These include the following: the enactment of administrative regu-

lations, and the formulation and issuing of such administrative legal norms as rules, regulations, decisions and orders; the formulation of the tasks and duties of the ministries and commissions pertaining to the State Council organization, and the exercising of unified direction of their administrative work; the exercising of unified direction of the work of the organs of state administration at the sub-central levels of jurisdiction (Article 89, clauses 1, 3-4). Other functions and powers of the State Council include the direction of general public policy in such matters as follows: the plan for national economic and social development and the state budget; economic affairs and urban and rural development; education, science, culture, public health, physical culture and family planning; civil affairs, public security and judicial affairs; foreign relations and treaties and agreements with foreign states; national defence (Article 89, clauses 5-10).

The ministries and commissions of the State Council are the principal departments of state in the PRC, and as such these form through their subordinate branch offices a structure of state administration that reaches down from the central government and to the localities. The local levels of jurisdiction in the PRC include provinces, municipalities directly under the central government, counties, cities, municipal districts, townships, nationality townships and towns (in addition to the so-called autonomous regions, autonomous prefectures and autonomous counties), and it is provided in the State Constitution that there are to be local people's congresses and local people's governments established at all of the different levels. The structures and the functions and powers of these local-level institutions of government are described in Chapter 3, Section 5 of the State Constitution. Here, it is provided that the local people's congresses are the local organs of state power (Article 96), and that the local people's governments are the executive bodies for the former and as such the local organs of state administration (Article 105). The local people's governments discharge admin-

istrative functions and powers, and it is to be noted, in connection with the concerns of this paper, that the local people's governments at and above the county level of jurisdiction exercise a wide range of administrative responsibilities, as so, for example, with such matters as economic policy, education, public health, urban and rural development, finance, civil affairs, public security, judicial affairs and family planning (Article 107). It is also to be noted, further to the concerns of the paper, that the system of government in the localities forms part of what is a unified system of national government and administration. Thus the local people's governments at the various levels of jurisdiction are accountable for their work to the organs of state administration at the next higher level, while all the local people's governments, at whatever their level of jurisdiction, are considered to be organs of state administration which come under the centralized leadership of the State Council (Article 110).

The judicial branch of government in the PRC comprises the people's courts and the people's procuratorates, and these institutions of government form the subject-matter of Chapter 3, Section 7 (Articles 123-135) of the State Constitution. As to the people's courts, these stand as the judicial organs of the state (Article 123), and it is provided that the people's courts are to exercise judicial power with independence and in conformity with the terms of the laws and that, in this, they are to be free from interference by administrative authorities, public organizations or individual parties (Article 126). The people's courts form a hierarchic system of judicial organization, where the people's courts are established at the various levels of jurisdiction in the PRC, and with these being subject to the overall supervision of the Supreme People's Court, as the highest judicial organ, and with the Supreme People's Court being accountable to the National People's Congress and its Standing Committee (Articles 127-128). As to the people's procuratorates, these stand as the state organs responsible for matters to do with legal supervision (Article 129), and, as with the people's courts, it is

provided that the people's procuratorates are to exercise the supervisory, or procuratorial, powers specific to themselves independently, in accordance with law and without being subject to external interference (Article 131). The people's procuratorates are established at the different levels of jurisdiction in the PRC, and their work is directed by the Supreme People's Procuratorate, as the highest procuratorial power, and with this body being accountable to the National People's Congress and its Standing Committee (Articles 132-133).

In the matter of the administrative law system in the PRC, as we have explained, the people's courts follow the terms of the administrative procedure in the exercise of judicial review powers, as relating to the acts of the administrative authorities. For the purposes of judicial review, the administrative authorities comprise the various organs of administration that are referred to in the relevant provisions of the State Constitution. These are the ministries and commissions of the State Council, as the leading central-level departments of state government, together with the branch offices of these departments and the administrative departments of the local people's governments that are established at the different jurisdictional levels of government and administration. However, it is to be emphasized that while, as from the administrative law standpoint, the people's courts are held to be competent to exercise judicial review powers in respect of the doings of the administrative authorities, the fact remains that there is no explicit reference made in the State Constitution to the power of judicial review, or indeed to the administrative procedure, either with the provisions concerning the administrative authorities or with the provisions concerning the judicial and procuratorial authorities. The omission of explicit reference to the judicial review of administrative action, as in the constitutional law of the PRC, is all the more notable for the absence of any reference to the matter in the statutes relating to the authorities in question which are supplementary to the State Constitution.

Thus, for example, the judicial review power, as a power to which the administrative authorities are to be considered subject, receives no recognition in the Organic Law of the State Council of the People's Republic of China, as adopted at the 5th Session of the 5th National People's Congress on 10 December 1982.[11] Likewise, there is no recognition for judicial review, as a power belonging to the judicial organs, in the Organic Law of the People's Courts of the People's Republic of China and the Organic Law of the People's Procuratorates of the People's Republic of China, which were adopted at the 2nd Session of the 5th National People's Congress on 1 July 1979 and subsequently adopted in revised form at the 2nd Meeting of the Standing Committee of the 6th National People's Congress on 2 September 1983.[12]

It is not to be concluded from this that the concept of the judicial review of administration action is alien to the spirit of the State Constitution of the PRC. For if there is no explicit reference to judicial review in the parts of the State Constitution relating to the state institutions, the principles of administrative law and judicial review are to be found at least implicit in provisions of the State Constitution that are contained in the parts of it which are concerned with general principles and with the basic rights and duties of citizens. The general principles of the State Constitution are set out in Chapter 1 (Articles 1-32), and these include Article 5 where it is held that the state is to maintain the socialist legal order, and that, in furtherance of this, the public bodies associated with the state structure are to be subject to the law and to the constraints and limitations on their actions which it imposes. Thus and in specific terms, Article 5 provides that the state organs, the armed forces, the political parties, the state industrial enterprises and other like institutions are to act in conformity with the State Constitution and the laws, that acts by such public bodies that are in contravention of the State Constitution and the laws are to be investigated, and that the public bodies are to be denied any privi-

leges which serve to place them beyond the scope of the State Constitution and the laws.

The basic rights and duties of citizens of the PRC are set out in Chapter 2 (Articles 33-56) of the State Constitution, and here Article 41 is of crucial importance as in regard to the principles of administrative law and judicial review. Thus it is provided in Article 41 that citizens have the right to criticize state organs and their official personnel, and to make suggestions to them. In addition to this, citizens are held to have the right to bring complaints and charges against, and to make exposures of, state organs and official personnel where these have violated the laws or have been in dereliction of their duties (albeit that the right is subject to the prohibition on fabrication and distortion of facts resulting in libel or false incrimination). It is provided further that the state organs that are the subject of complaints, charges and exposures on the part of citizens are required to answer to these in a responsible manner and after having established all relevant facts, and that there is to be no suppression of such complaints, charges and exposures and no retaliation against the citizens bringing them. Finally, Article 41 provides that where citizens suffer losses in consequence of the infringement of their civil rights by state organs and official personnel, then the citizens concerned are to have the right to seek proper compensation as allowed for in law.

The terms of Articles 5 and 41 of the State Constitution reflect the very real extent to which the constitutional law in the PRC as of the early 1980s gave expression to the principles of the socialist form of the rule of law whose adoption, as we have noted, had been the express concern of the Party-State leadership in December 1978. In connection with this, it is to be emphasized that the two articles express certain of the principles that, as pertaining to the general rule of law ideal, are contained more precisely within the concept of administrative law and that of the judicial review of administrative action. Thus the articles provide that state organs, as administra-

tive authorities, are subject to law, and through this there is confirmed, among much else, the core administrative law principle to the effect that the administrative authorities require a legal basis and justification for their acts. It is also confirmed, as in line with the administrative law principles, that it is possible that state organs may act in violation of law, and that where such violations occur then it is proper that citizens should proceed against the state organs and official personnel involved and so ensure the proper enforcement of the law in respect of the administrative authorities. Beyond this, it is confirmed, once again as in line with administrative law principles, that it is essential that there be present some form of fair and independent procedure in accordance with which citizens may hold the administrative authorities accountable under the law. Thus Article 5 stipulates that state organs are to be subject to investigation in respect of their unlawful acts, while Article 41 stipulates that state organs are required to respond to proceedings initiated against them by citizens and to do this without prejudice to the person and interests of the citizens involved. Finally, there is the matter of remedies for the unlawful acts of state organs, as so with the provision made in Article 41 that relates to the right of citizens to seek compensation.

There stands out one major problem with Articles 5 and 41 of the State Constitution as in regard to administrative law and judicial review, and so also in this matter with the State Constitution as such. This is that the terms of the articles set out principles that relate to administrative law and judicial review and that, in doing so, provide a basis in constitutional law for administrative law and judicial review, but with the principles as set out in fact falling short of being rendered as principles of administrative law and judicial review that are fully realized in form such that they possess a particularized determination as in relation to other parts of law. The accountability of state organs and their personnel under law and the presence of procedures and remedies for giving effect to this

accountability: these are certainly to be acknowledged as principles essential to administrative law and the judicial review procedure. Even so, they are at the same time principles that underlie the civil law and the criminal law, and the procedures governing them, as in relation to the state organs and their personnel, and yet with there being nothing about the principles that, in and of themselves, serves to identify them as principles specific to administrative law and judicial review as comprising a part of law which is to be differentiated from civil law and criminal law.

This is a crucial consideration in assessing the constitutional law as a basis for administrative law and judicial review. As we shall explain in Part 3, the civil law and the criminal law in the PRC are recognized to have application to state organs and their personnel. Thus it is that state organs are assumed to bear civil liabilities in respect of citizens and other parties, and so in principle to be capable of being proceeded against through the courts in accordance with the civil procedure. Further, the personnel of the state organs are assumed to be capable of involvement in criminal acts, as so with corrupt practices, and thus to be subject to the criminal procedure for the purposes of their investigation and their prosecution and punishment through the courts. As against this, there is the administrative law, which is related to the civil law and the criminal law, but which is nevertheless distinct from them as to the context of its application. For the administrative law is concerned strictly with the proper exercise of powers by the administrative authorities, and with this carrying no necessary implication of civil wrong or criminal misconduct on the part of the authorities or their personnel. As to the judicial review procedure, this is directed, in the matter of form and remedies, to the effecting of alterations at the level of administrative action. To be sure, the procedure, once set in operation, may result in compensation awards that have the aspect of civil damages, as it may result also in the bringing of criminal charges against officials. However, this is not essen-

tial to the procedure as to its objects, or as to its character as an adjudicative procedure. The distinctness of administrative law and its defining judicial review procedure, as involving a quite specific form of legal order and restriction applying to state institutions and state officials, is something that is left inadequately unaccounted for as within the terms of the State Constitution. To understand the distinctness of administrative law and judicial review, as to the period prior to the Administrative Procedure Law of 1989, it is necessary to turn away from the constitutional law and towards the statutes and administrative legal instruments that, as we shall now treat of them, stand as explicit legal source materials for the procedure for the judicial review of administrative action.

2. Laws and Regulations

The legal source materials that we here examine in connection with judicial review include both laws and regulations. The former are the laws that have the status of statutes that are enacted by the National People's Congress and issued through the decree of the State President. The regulations comprise administrative regulatory measures that have authentic legal force and standing although lacking the status of laws proper, and that are created through the acts of the departments of the state government as in accordance with the form and substance of the legislation adopted by the National People's Congress and frequently with a view to giving implemental effect to this. The laws and regulations examined are discussed in chronological sequence, and they are linked together in the following respects: first, they all predate the enactment of the Administrative Procedure Law in April 1989; second, they all provide for the conferring of legal powers on particular administrative authorities; third, they all make explicit provision for the exercise of the specified powers by the administrative authorities concerned to

be made subject to judicial review as in line with what we have described to be the principles of the administrative procedure. As to the form of the presentation of the legal source materials, this in the main involves the following elements: the explanation of the subject-matter of the various laws and regulations; the identification of the particular administrative authorities to which the laws and regulations make reference; the specification of the functions and powers assigned to the administrative authorities and the scope of these functions and powers as in relation to the designated substantive tasks and functions of administration; the detailed rehearsal of those parts of the laws and regulations where there is confirmation of the subjection of the administrative authorities to the judicial review procedure, and so also confirmation of the corresponding right of ordinary citizens and other parties to avail themselves of this procedure. Through this presentation, as it is envisaged, there will be brought out not only the positive legal basis of the judicial review procedure, but in addition to this the full extent of the reach and application of the system of administrative law in the PRC as such.

2(a). Exposition of Selected Legal Source Materials

i. Maritime Traffic Safety Law of the People's Republic of China (2 September 1983)

The Maritime Traffic Safety Law of the People's Republic of China was adopted at the 2nd Meeting of the Standing Committee of the 6th National People's Congress on 2 September 1983.[13] The law comprises 53 articles that are organized in 12 separate chapters, and with Chapter 10 (Articles 44-47) setting out the principles that govern the legal liabilities of the parties concerned under the terms of the law and here providing for the judicial review of the acts of

the designated administrative authorities. The law has as its subject-matter the safety of maritime traffic, and its defining concerns include the control of maritime traffic, the safety of maritime vessels, maritime installations, human life and related property, and the legitimate rights and interests of the state (Article 1). The application of the law extends to all maritime vessels and installations and their personnel, and to the owners and managers of such vessels and installations, as operate within the coastal waters of the PRC (Article 2). As to the administrative authorities that are designated as being responsible for the regulation and supervision of maritime traffic safety in the coastal waters of the PRC, these are the port superintendency bureaux of the PRC (Article 3). The functions and powers assigned to the administrative authorities under the terms of the Maritime Traffic Safety Law are various, and they are exercised in the following contexts as covered under the terms of the law: the inspection and registration of maritime vessels (Chapter 2, Articles 4-5); the personnel of maritime vessels and installations (Chapter 3, Articles 6-9); the navigation, berthing and operations of maritime vessels and installations (Chapter 4, Articles 10-19); the maintenance of general maritime safety protection (Chapter 5, Articles 20-31); the maritime transportation of dangerous goods (Chapter 6, Articles 32-33); the organization of rescues at sea (Chapter 7, Articles 34-39); the salvage and removal of sunken and drifting objects (Chapters 8, Articles 40-41); the investigation of maritime traffic accidents (Chapter 9, Articles 42-43).

To illustrate the range of the functions and powers belonging to the port superintendency bureaux, as the designated administrative authorities, the following examples are set out. As to the navigation, berthing and operations of maritime vessels and installations, it is provided that the administrative authorities have powers to inspect all vessels sailing on international routes which enter and leave the ports of the PRC (Article 12). Similarly, the administrative authorities are empowered to prohibit maritime vessels and installations

from leaving port, and to order the suspension of voyages, the alteration of routes and the cessation of operations, as in cases such as where there is a violation of the laws or administrative rules and regulations of the PRC or where there is a likelihood of the endangering of maritime traffic safety (Article 19). In the matter of the maritime transportation of dangerous goods, it is provided that the vessels involved in this are to operate only subject to the approval of the administrative authorities (Article 33). With maritime rescues, it is provided that the administrative authorities are responsible for organizing rescue operations on their receiving distress calls, and that they have powers of command in respect of all maritime vessels and installations in the vicinity of sea rescue operations (Article 38). As to the salvage and removal of sunken and drifting objects, it is provided that the administrative authorities are to approve the salvage of sunken vessels or sunken objects within the coastal waters of the PRC (Article 41). Finally, there is the matter of the investigation of maritime traffic accidents. Here, it is laid down that the administrative authorities are empowered to investigate maritime traffic accidents, and that they are, for the purposes of their investigations, to be furnished with a full and truthful account of such accidents by the parties to them. In addition, it is laid down that it belongs to the administrative authorities to establish the actual causes of accidents and to apportion blame and responsibility among the parties. (Articles 42-43).

The chapter of the Maritime Traffic Safety Law that sets out the principles of legal liability, as relating to the parties affected by it, makes reference to the administrative sanctions and penalties that are available to the administrative authorities in the enforcing of the provisions of the law. Here and in specific terms, it is stipulated that the administrative authorities are empowered to apply to parties that violate the law the following administrative sanctions and penalties: warnings; the withholding or the revocation of official work certificates; fines (Article 44). The application of the adminis-

trative sanctions and penalties as referred to involves the acts of administrative authorities, and it is these acts that serve to give effect and substance to the various administrative functions and powers that, as with the examples that we have picked out, are essential to the proper regulation and supervision of the maritime traffic safety sphere in all its different aspects. Hence it is of particular consequence that parties are conceded to have the right to appeal to the people's courts in challenge to the application of administrative sanctions and penalties by the administrative authorities. For this means that, for all practical purposes, the different administrative functions and powers that are involved in the business of the regulation of maritime traffic safety are made subject to the control of the people's courts. This control by the people's court has the procedural form of the judicial review of administrative action. Thus as it is stated, the parties that will not accept the withholding or revocation of official work certificates or the imposition of fines, as ordered by the relevant administrative authorities, are permitted to bring proceedings against the authorities in the people's courts as within 15 days of receiving notification of the administrative sanctions and penalties concerned. In addition to this, however, the administrative authorities may apply to the people's court to secure the compulsory enforcement of administrative sanctions and penalties, as in cases where the parties fail either to file suit in the people's courts or to comply with the terms of the sanctions and penalties as ordered. (Article 45).[14]

ii. Pharmaceutical Administration Law of the People's Republic of China (20 September 1984)

The Pharmaceutical Administration Law of the People's Republic of China was adopted at the 7th Meeting of the Standing Committee of the 6th National People's Congress on 20 September 1984.[15] The

law comprises 60 articles, which are organized in the form of eleven separate chapters. The concern of the law is the regulation of the pharmaceutical industry, and with its substantive objectives lying with the supervision and control of pharmaceuticals, the maintenance of their quality and improvement of their curative effects, the securing of general safety with medicines and so the protection of the public health (Article 1). The principal administrative authority designated as being responsible for pharmaceuticals is specified in Article 2 as the Department of Health under the State Council. However, the provisions of the law provide that authority is also to be exercised, as relative to jurisdiction, through the departments of health established at the various sub-central levels of government and administration. The administrative tasks and functions relating to pharmaceuticals confirmed in the law are set out in detail under the following heads: the regulation of the pharmaceutical manufacturing enterprises (Chapter 2, Articles 4-9); the regulation of the pharmaceutical trading enterprises (Chapter 3, Articles 10-15); the regulation of the supply of pharmaceuticals at medical facilities (Chapter 4, Articles 16-20); the general regulation of pharmaceuticals (Chapter 5, Articles 21-35); the regulation of the packaging and repackaging of pharmaceutical products (Chapter 6, Articles 36-38); the regulation of pharmaceuticals that are subject to special strict controls (Chapter 7, Articles 39-40); the regulation of trademarks and advertising in relation to pharmaceutical products (Chapter 8, Articles 41-44); the supervision of pharmaceuticals (Chapter 9, Articles 45-49).

The functions and powers of the administrative authorities designated under the terms of the Pharmaceutical Administration Law include those to do with the issuing of licences. Thus it is provided that the establishing of pharmaceutical manufacturing enterprises requires application for formal approval from the departments of health of the particular provinces, autonomous regions or municipalities directly under the central government in which the appli-

cant enterprises are located. The form of this approval is that of the issuing of pharmaceutical manufacturer licences, and the possession of such licences by pharmaceutical manufacturing enterprises is the condition for their being granted business licences by the departments for industry and commerce which have appropriate jurisdiction. (Article 4). There are similar provisions relating to the issuing of pharmaceutical trading enterprise licences by departments of health to parties applying for establishment as pharmaceutical trading enterprises (Article 10). The departments of health at the different levels of jurisdiction are also responsible for the examination and approval of medical facilities where pharmaceuticals are held and used in medicinal preparations, and for the issuing of dispensing licences to such facilities (Article 17). As a further case, the departments of health at the different levels of jurisdiction are responsible for the issuing of formal documentary approval certification in respect of the clinical testing and verification of new medicines (Article 21), and in respect of the putting into production of new medicines (Article 22). To support the administrative controls over the pharmaceuticals sector that are implicit in the licensing powers as here referred to, it is provided that the departments of health at or above the jurisdictional level of the counties are empowered to establish agencies for the administration and inspection of pharmaceuticals (Article 45). The inspectorates so established are charged with specific responsibilities in the matter of the supervision and quality testing of pharmaceutical products in the manufacturing enterprises, the trading enterprises and the dispensing facilities which pertain to the pharmaceutical sector (Article 47).

The licensing powers belonging to the administrative authorities that regulate the pharmaceutical sector are intended to ensure the maintenance of proper standards with pharmaceutical products, and with their manufacture and distribution. Closely related to the licensing powers are the powers that are assigned to the designated administrative authorities in respect of administrative sanctions

and penalties for breaches of the provisions of the Pharmaceutical Administration Law. These powers are set out in Chapter 10 (Articles 50-56) of the law, where there are detailed the basic principles for legal liabilities to do with the regulation of the pharmaceutical sector. Thus it is provided in Article 50 that parties that manufacture or trade in bogus medicines are to have their products and profits confiscated, and to be subject to fines. In addition, such parties are liable to be ordered to cease their manufacturing and commercial operations pending correction, and to suffer the revocation of their pharmaceutical manufacturer licences, pharmaceutical trading enterprise licences or pharmaceutical dispensing licences as according to the nature of the particular cases at issue. In cases of bogus medicines that endanger public health, the parties responsible are to be subject to criminal investigation and punishment. In Article 51, there are identical administrative sanctions and penalties stipulated as applying to parties that produce or trade in medicines of inferior standard. It is provided further that in cases where parties produce or trade in medicines, or dispense medicinal preparations, but hold no valid licences, then they are to be ordered to cease their various manufacturing, commercial and dispensing operations, to surrender their products and profits and, if appropriate, to pay fines (Article 52). Finally, there is the provision that parties that violate any other parts of the law that relate to the manufacture and trade in pharmaceuticals are to be issued with official warnings, or to have fines imposed on them (Article 53).

In the terms of the Pharmaceutical Administration Law, the decision to impose administrative sanctions and penalties is a matter for the departments of health, as the relevant administrative authorities, at or above the county level jurisdiction (save in exceptional cases, such as those to do with infringements of advertising standards, where decisions are to be made by the departments for industry and commerce). In addition to this, it is stipulated that decisions on administrative sanctions and penalties, as involving the

suspension of manufacturing and trading operations and the revocation of licences, are to be submitted by the relevant departments of health to the local people's government authorities at the corresponding level for final decision. (Article 54). Going beyond the jurisdiction of the local people's government authorities, however, there stand the people's courts. These are recognized, as under the terms of the law, to have powers of judicial review in relation to the imposing of administrative sanctions and penalties, and so it is that, on account of this, the people's courts are understood to exercise jurisdiction over the machinery of administration as it concerns the regulation of the pharmaceutical sector. Thus it is provided that parties that are not prepared to accept the decisions of the administrative authorities on administrative sanctions and penalties are able to challenge these, as through the bringing of a challenge in the people's courts within 15 days following their receiving of notification of the decisions, but with the proviso that the parties are bound to act with immediate effect on such decisions of the administrative authorities as concern the control of pharmaceuticals. As against this, it is also provided that the administrative authorities may apply to the people's courts for the enforcement of administrative sanctions and penalties where these are neither complied with by the parties, nor appealed against by the parties to the jurisdiction of the people's courts. (Article 55).[16]

iii. Regulations of the People's Republic of China on the Control of the Dumping of Wastes at Sea (6 March 1985)

The State Council promulgated the Regulations of the People's Republic of China on the Control of the Dumping of Wastes at Sea on 6 March 1985, [17] and with the intention that the regulations as set out were to give implemental effect to the Marine Environment Protection Law of the People's Republic of China which had been

adopted at the 24th Meeting of the Standing Committee of the 5th National People's Congress on 23 August 1982.[18] The regulations comprise 24 articles, with two annexes specifying the substances whose dumping is to be prohibited or to be made subject to strict controls. The purpose of the regulations lies with the control of the dumping of waste substances in the oceans, and this in order to prevent marine environmental pollution, to preserve the marine ecological balance, to maintain marine resources and to facilitate the development of the marine potential (Article 1). As to the relevant administrative authorities, these are designated to be the National Oceanographic Administration and its subordinate departmental agencies (Article 4). The principal functions and powers of the administrative authorities, and hence also the principal modes for the regulation of waste dumping at sea, concern the processing of applications for permission to dump wastes and the issuing of dumping permits (Articles 6, 10), the verification and supervision of permitted dumping activities (Articles 12-14), and the monitoring of marine environmental pollution, the punishment of the parties causing it, the determining of the due compensations and the supervision of all related cleaning up operations (Articles 17-19).

The administrative authorities responsible for the control of the dumping of wastes at sea are assigned powers to impose administrative sanctions and penalties for the violating of the terms and provisions of the regulations. The administrative sanctions and penalties concerned are detailed in Article 20, where they are set out in accordance with their severity as relative to the seriousness of the offences to which they have application. So, for example, warnings or fines of 2,000 Yuan or less apply to such minor offences as the forging of inspection reports on wastes, whereas fines ranging from 20,000 to 100,000 Yuan are available to be imposed with such major offences as the dumping of wastes at sea without official permission or, where permission is obtained, the failure to dump wastes in conformity with the actual terms of dumping permits and in the actual

dumping areas as specified therein. In addition, parties that in violation of the regulations thereby cause pollution to the marine environment are liable to be warned or fined by the relevant administrative authorities, and in the case of pollution damage resulting in destruction of property, personal injuries or fatalities, then the parties involved are to be subject to criminal investigation and punishment (Article 21). The powers of the administrative authorities to impose administrative sanctions and penalties are significant, here, for the reason that it is recognized in the regulations that affected parties are entitled to challenge the administrative authorities through application to the people's courts for judicial review of the decisions on administrative sanctions and penalties. Thus it is provided that parties that do not accept decisions on administrative sanctions and penalties, as made by the administrative authorities, may bring a challenge in the people's courts within 15 days of their having written notification of the decisions in question. This, however, remains subject to the proviso that the administrative authorities may themselves apply to the people's courts for enforcement of their decisions, as in conditions where the affected parties neither comply nor initiate applications to the people's courts. (Article 22).

iv. Grassland Law of the People's Republic of China (18 June 1985)

The Grassland Law of the People's Republic of China was originally adopted at the 11th Meeting of the Standing Committee of the 6th National People's Congress on 18 June 1985.[19] The law in this its original version has now been superseded by a revised and enlarged version, which was adopted at the 31st Meeting of the Standing Committee of the 9th National People's Congress on 28 December 2002.[20] It is the Grassland Law as in its 1985 form that is of concern to us here, and in this version the law comprised 23 articles

which were not as such arranged in separate chapters. As for the subject-matter of the law, this was stated to lie, of course, with the grasslands in the territory of the PRC, and with its substantive purposes, as stated, including the preservation, management and development of the grasslands, their efficient utilization, the preservation and improvement of the ecological environment, and the modernization of animal husbandry (Article 1). As for the administrative authorities charged with the exercising of powers in respect of the grasslands, these were stated to be the Department of Farming and Animal Husbandry, as coming under the State Council, and the departmental organs of farming and animal husbandry of the local people's governments at and above the county level. The Department of Farming and Animal Husbandry was designated as being responsible for grasslands administration on the national plane, while the local people's government authorities were designated as being responsible for grasslands administration in their respective jurisdictions. (Article 3).

A wide range of administrative functions and powers, as relating to the grasslands, are to be found set out in the provisions of the 1985 Grassland Law, and these are in the main functions and powers that were assigned to the administrative authorities at the relevant levels of the local people's governments. So, for example, it was provided that the local people's government authorities at the county level or above were responsible for the registration of grasslands, and for the issuing of certificates to the appropriate parties for the purposes of establishing the rights of the latter in the ownership and the use of the grasslands so registered (Article 4). Then again, it was provided that the local people's government authorities at the county level or above were to have functions and powers in the resolution of disputes among claimant parties as to the rights of ownership and use in respect of the grasslands (Article 6). Other functions and powers falling to the local people's government authorities included the following: the surveying of grassland re-

sources and the formulating of plans for the development of animal husbandry (Article 8); the enforcement of restrictions on land reclamation and the destruction of grasslands (Article 10); the eradication of grassland pests and mice (Article 13); the prevention and treatment of endemic diseases among livestock and of diseases contracted commonly by humans and by livestock in the grassland areas (Article 14).

The functions and powers of the administrative authorities as designated in the provisions of the 1985 Grassland Law that relate to the matter of judicial review were those which concerned the imposing of administrative sanctions and penalties. Thus it was provided that in conditions where rights of ownership in grasslands or rights in their use were infringed, then the aggrieved parties were able to apply to the people's courts or to make application for remedies to the farming and animal husbandry departments of the relevant local people's governments at the county level or above. The latter administrative authorities were assigned powers to order the parties responsible for the rights violations to desist from this, and to make payment in compensation to the aggrieved parties. (Article 18). It was provided further that the farming and animal husbandry departments of the local people's governments at the county level or above were to act to prevent parties that sought to reclaim grasslands, as contrary to the terms of the law, through exercising the powers to order the malefactors to desist from reclamation and to restore the original state of vegetation, and also, where cases were serious, through the imposition of fines (Article 19). As a final example, it was provided that in the event that grassland vegetation came to be damaged as in contravention of the terms of the law, then either the township-level local people's governments or the farming and animal husbandry departments of the local people's governments at the county level or above, as the relevant administrative authorities, were to have the powers to restrain the offending parties and to compel them to restore the original state of vege-

tation and to make compensation for the losses caused (Article 20).

In qualification to the terms of Articles 18-20, it was expressly provided in Article 21 that the powers relating to the imposition of fines and the ordering of compensation, as belonging to the administrative authorities, were subject to challenge through the people's courts. Thus it was laid down that if parties were unable to accept decisions relating to fines and compensations as issued by the relevant farming and animal husbandry departments of the local people's government authorities, or as issued by the local people's government authorities at the township level, then the parties concerned were to have the right to initiate proceedings in challenge to the decisions through the appropriate people's courts and with the right to be exercised within one month of receiving notification on the fines and compensation orders at issue. At the same time, it was laid down that if parties neither made payment for fines or compensation, nor filed challenges to the decisions on these, then the relevant administrative authorities were themselves able to apply to the people's courts for the enforcement of the fines and compensation orders. As it will be clear, the right granted in the 1985 Grassland Law to parties to apply to the people's courts in challenge to administrative decisions on fines and compensations stood as a right to apply for the judicial review of administrative action, and a right that presupposed, as much as it was understood to occasion when it was exercised, the subjection of the administrative authorities to the jurisdiction of the people's courts.[21]

v. Metrology Law of the People's Republic of China (6 September 1985)

The Metrology Law of the People's Republic of China was adopted at the 12th Meeting of the Standing Committee of the 6th National People's Congress on 6 September 1985.[22] There are 35 articles

making up the law, and these are presented in the form of six separate chapters. The concern of the law lies with the regulation of metrological standards and the maintenance of uniformity in the national system of units of measurement, and this with the purpose of contributing to the general development of production, trade and science and technology as in accordance with the requirements of socialist modernization (Article 1). The responsible administrative authorities that are designated in the law are the Metrological Administrative Department under the State Council, as exercising centralized supervision of metrological work throughout the PRC, and the metrological administrative departments of the local people's government bodies at or above the county level, which are to exercise supervision over metrological work within their various jurisdictions (Article 4). The tasks and functions of the designated administrative authorities, as according to the heads of the relevant chapters of the law, are as follows: the establishment of primary standards of measurement and the verification of public standards of measurement (Chapter 2, Articles 5-11); the regulation of measuring instruments (Chapter 3, Articles 12-18); the general supervision of metrological standards (Chapter 4, Articles 19-22).

The most basic of the powers belonging to the administrative authorities are those to do with primary standards of measurement and metrological verification. Thus the Metrological Administrative Department of the State Council is empowered to establish primary standards of measurement with nationwide application (Article 5). At the same time, the metrological administrative departments of the local people's governments are empowered to establish public standards of measurement, but subject to their confirmation by the administrative authorities at the next superior level of jurisdiction (Article 6). As to metrological verification, the administrative authorities at the level of the local people's governments are responsible for the compulsory verification of measurement standards in use in the different institutional contexts. In this matter, the ad-

ministrative authorities concerned are required to conduct themselves in accordance with the national system of metrological verification, and the regulations relating to the system, as maintained by the Metrological Administrative Department of the State Council. (Articles 9-10). In addition to these powers, there are the powers that the administrative authorities exercise in the regulation of measuring instruments, or, more specifically, the administrative powers that are exercised in relation to the commercial aspects of metrological standards. Here, the administrative authorities at the level of the local people's governments are required to inspect such enterprises and institutions as propose to engage in the manufacture or repair of measuring instruments, and, if satisfied with their inspections, to issue licences for manufacturing measuring instruments or licences for repairing measuring instruments as appropriate. The licences thus issued are essential qualifications for the enterprises and institutions concerned to receive business licences from the relevant administrative departments for industry and commerce. (Article 12). As further cases, the metrological administrative departments of the local people's governments at the provincial level are required to approve all newly manufactured types of measuring instruments before they are put into production (Article 13), while the metrological administrative departments of the local people's governments at or above the county level are required to test the quality of such measuring instruments as are manufactured or repaired by enterprises or institutions (Article 15).

The Metrology Law makes reference to a variety of circumstances in which the designated administrative authorities are required to impose administrative sanctions and penalties, in order to give effect to the regulatory regime for metrological standards which the law describes. These circumstances are described in Chapter 5 (Articles 23-32), where the legal liabilities for the parties subject to the law are stated. So, for example, it is here provided that commercial parties that manufacture or repair measuring in-

struments, but without the requisite licence for manufacturing or repairs, are to be ordered to cease their production or business operations and to suffer the confiscation of profits and the possible imposition of fines (Article 23). The confiscation of profits and the imposition of fines are also prescribed as the administrative sanctions and penalties that are to be applied in respect of parties that manufacture or sell new types of measuring instruments which have not been tested and approved as to quality (Article 24). The same is so in respect of parties that manufacture, repair or sell measuring instruments which are below standard (Article 25), and parties that use sub-standard measuring instruments or impair the accuracy of measuring instruments in conditions which result in financial loss to the state and to consumers (Articles 26-27). The power to impose administrative sanctions and penalties in these and other cases belongs to the metrological administrative departments of the local people's governments at or above the county level (Article 31). It is also provided that in the matter of the application of administrative sanctions and penalties, the administrative authorities remain subject to challenge by the affected parties as through the procedure of judicial review, and with this working to have the effect of preserving the control of the people's courts over the administrative machinery established for the regulation of metrological standards. Thus it is confirmed in Article 32 that parties who are not prepared to accept the decisions of the administrative authorities on the application of administrative sanctions and penalties have the right, as within 15 days of receiving notification of the decisions, to bring proceedings in the people's court in challenge of the decisions.[23]

vi. Law of the People's Republic of China on the Control of the Entry and Exit of Aliens (22 November 1985)

The Law of the People's Republic of China on the Control of the En-

try and Exit of Aliens was adopted at the 13th Meeting of the Standing Committee of the 6th National People's Congress on 22 November 1985.[24] The law comprises 35 articles that are divided into eight separate chapters, and its substantive concern lies with the control and regulation of aliens who are entering, passing through and leaving the territory of the PRC and with those aliens who are resident and travelling therein (Article 1). The administrative authorities that are designated in the law as being responsible for aliens are, for related business overseas, the embassies, consular offices and other such agencies as authorized by the Ministry of Foreign Affairs, and, for related business conducted within the PRC, the Ministry of Foreign Affairs and the Ministry of Public Security together with their subordinate departmental organs at the local levels of government and administration (Chapter 6, Article 25). The essential principle of the law is that aliens require lawful permissions from the appropriate administrative authorities in order to enter, pass through or reside within the PRC. This principle is applied in the contexts referred to in the heads of the chapters of the law as follows: the entry of aliens into the PRC (Chapter 2, Articles 6-12); the residence of aliens in the PRC (Chapter 3, Article 13-19); the travel of aliens within the PRC (Chapter 4, Articles 20-21); the exit of aliens from the PRC (Chapter 5, Articles 22-24).

The permissions extended to aliens by the administrative authorities have the form of official documents, and it is the issuing of such documents that stands as the principal function and power of the administrative authorities in relation to the control of aliens. Thus it is provided that aliens proposing to enter the PRC are required to apply for and to be issued with visas from embassies, consular offices and other overseas agencies of the PRC (Article 6). As for aliens resident in the PRC, these require identification documents and residence permits as issued by the agencies of the Ministry of Foreign Affairs and the Ministry of Public Security as the relevant administrative authorities (Article 13), and with the proper

certification being required also of aliens travelling within the PRC (Article 20) or leaving its territory (Article 22). In addition to this, there are the administrative sanctions and penalties that are the subject-matter of Chapter 7 (Articles 29-30). These are stated in Article 29 to apply to aliens who act in violation of the provisions of the law, as when, for example, aliens by virtue of lacking the valid and proper documentation make illegal entries into the PRC or establish illegal residence therein. The administrative sanctions and penalties concerned are to be applied by the public security departmental organs at or above the county level, and they are to have the form of warnings, fines or detentions for not more than ten days (and with serious cases being referred for criminal investigation). The powers of the public security departmental organs to impose administrative sanctions and penalties are real and effective. However, it is to be emphasized that under the terms of the law it is confirmed that they are to remain subject to the control of the people's courts. Thus it is stipulated in Article 29 that aliens who are issued with fines or detention orders by public security departmental organs have the right to challenge these within 15 days of receipt of notification, either through appeal to higher level public security departmental organs for administrative reconsideration or through a direct application to the people's courts for judicial review of the fines and detention orders in question.

vii. Law of the People's Republic of China on the Control of the Exit and Entry of Citizens (22 November 1985)

As with the law on aliens that we have just examined, the Law of the People's Republic of China on the Control of the Exit and Entry of Citizens was adopted at the 13th Meeting of the Standing Committee of the 6th National People's Congress on 22 November 1985.[25] The law comprises 20 articles organized in the form of six

chapters, and it is directed to the proper regulation of the travel of citizens from and back to the PRC. The administrative authorities that are responsible for the foreign travel arrangements of citizens for official business are the Ministry of Foreign Affairs and its subordinate departmental organs at the local levels of government and administration, while the private foreign travel of citizens is a matter for the Ministry of Public Security and its subordinate departmental organs at the local levels of government and administration (Chapter 4, Article 12).

The essential condition for the travel of citizens of the PRC, for the purposes of the law, is the possession of valid passports and of such certificates of official approval for travel as are subject to issue by the administrative authorities. The different aspects of this condition are set out in the provisions relating to the exit of citizens from the PRC (Chapter 2, Articles 5-9), and in those relating to their entry into the PRC (Chapter 3, Articles 10-11). In addition, it is stipulated that the administrative authorities have the powers to impose administrative sanctions and penalties on parties that violate the provisions of the law (Chapter 5, Articles 14-16). This is so with illegal entries into and departures from the PRC, and with the falsification and alteration of entry and exit documentation. Here, the offending parties are liable to warnings, fines or detentions of not more than ten days to be issued by the relevant public security departmental organs, and with serious cases to be referred for criminal investigation. (Article 14). In this, however, the public security departmental organs remain subject to the control of the people's courts. Thus it is provided that affected parties may challenge detention orders issued by public security departmental organs, as within 15 days of notification, either through seeking administrative reconsideration by a higher level public security departmental organ or through the making of a direct application to the appropriate local people's courts for judicial review (Article 15).[26]

viii. Law of the People's Republic of China on Frontier Health and Quarantine (2 December 1986)

The Law of the People's Republic of China on Frontier Health and Quarantine was adopted at the 18th Meeting of the Standing Committee of the 6th National People's Congress on 2 December 1986.[27] The law is made up of 28 articles which are organized in the form of six chapters. As to the defining purpose of the law, this lies with the supervision of the national territorial frontiers in order to prevent infectious diseases from spreading into or out from the PRC (Article 1). The principal administrative authorities named in the law as being responsible for frontier health and quarantine matters are the Department of Health under the State Council and the departments of health at the local levels of government and administration. As well as these administrative authorities, there are the frontier health and quarantine agencies that are to be established at the main frontier ports, such as the international seaports, airports and entry ports at land frontiers and boundary rivers. The frontier health and quarantine agencies are subject to the direction of the appropriate departments of health, and it is these administrative bodies that exercise the powers relating to what are specified in the law as the basic tasks and functions of administration that are bound up with frontier health and quarantine. These are stated to be as follows, as per the heads of the relevant chapters of the law: quarantine inspection (Chapter 2, Articles 7-14); the monitoring of infectious diseases (Chapter 3, Articles 15-17); and general health supervision (Chapter 4, Articles 18-19).

The powers belonging to the frontier health and quarantine agencies are extensive. This is so most particularly in respect of quarantine inspection. The powers of the administrative authorities, here, include the power to require persons and transport conveyances to submit to quarantine inspection at frontier ports of entry

(Article 7) and frontier ports of departure (Article 8). There are also the powers to confine in isolation persons found to be suffering from infectious diseases subject to quarantine regulations (Article 12), and to sanitize transport conveyances as in cases where they are held to be contaminated with infectious diseases subject to quarantine regulations (Article 13). In addition, the frontier health and quarantine agencies have the power to impose administrative sanctions and penalties on parties that violate the provisions of the law, as is underlined with the statement of the legal liabilities arising from the law (Chapter 5, Articles 20-23). The administrative sanctions and penalties in question have the form of warnings or fines, and they have application to the following acts: the evasion of quarantine inspection, and the withholding of the true facts regarding health conditions in reports to the administrative authorities; the embarkation of persons on or their disembarkation from transport conveyances, or the loading on or unloading from the same of articles such as luggage, at ports of entry and ports of departure without the permission of the relevant frontier health and quarantine agencies and contrary to the clear advice of the official personnel. (Article 20). Even so, the powers of the frontier health and quarantine agencies relating to the administrative sanctions and penalties remain subject to the scrutiny of the people's courts, and hence subject to judicial control as to their exercise. Thus it is provided that affected parties that are not prepared to comply with decisions regarding fines as made by frontier and health inspection agencies are able, as within 15 days of receiving notification of the decisions, to apply for proceedings for the judicial review of the decisions in the people's courts (Article 21).[28]

ix. Postal Law of the People's Republic of China (2 December 1986)

The Postal Law of the People's Republic of China was adopted at the 18th Meeting of the Standing Committee of the 6th National People's Congress on 2 December 1986.[29] The law comprises 44 articles divided into eight separate chapters, and its main purposes are defined as being the protection of the freedom and privacy of postal communications, the facilitating of postal work and the promoting of the development of postal services (Article 1). The principal administrative authority designated in the law is the Department of Postal Services under the State Council, which department is charged with the establishing of postal services departments at the regional level for the administration of the post and postal services throughout the PRC (Article 2). In addition to the regional postal services authorities, there are the postal enterprises that are established under the auspices of the Department of Postal Services under the State Council. The postal enterprises are state enterprises subject to public ownership, and it through these and their branch offices that the operational business of the postal services is to be conducted. (Article 3). According to the terms of the Postal Law, the postal enterprises as established through the Department of Postal Services exercise a monopoly over the postal services in the PRC. Thus it is laid down in Article 8 that the posting and the delivery of mail and materials having the attributes of mail are services that are to be operated by the postal enterprises on a sole and exclusive basis, except in circumstances where it is stipulated otherwise by the State Council. The monopoly belonging to the postal enterprises is unqualified, save that the terms of Article 8 do permit the postal enterprises, where necessity arises, to authorize other bodies and individuals to act as their agents in the running of businesses which belong to the sphere of their exclusive operations.

The substantive subject-matters to do with the postal services as treated of in the Postal Law are as per the heads of those of its chapters as referred to thus: postal enterprises and postal facilities (Chapter 2, Articles 10-11); postal businesses and postal rates (Chapter 3, Articles 12-19); posting and delivery of mail and related materials (Chapter 4, Articles 20-25); transportation, customs inspection and quarantine inspection of mail and related materials (Chapter 5, Articles 26-31); compensation for materials lost through the postal services (Chapter 6, Articles 32-35); sanctions and penalties for breaches of the law (Chapter 7, Articles 36-40). As to the question of the judicial review of administration action as in relation to the Postal Law, it is to be noted that the law provides for judicial review in connection with the application of administrative sanctions and penalties in respect of violations of Article 8. Thus it is provided that parties who, in infringement of the terms of Article 8, engage in the posting and delivery of mail and materials having the attributes of mail are to be ordered to return the mail and other materials and the fees unlawfully collected from senders and to pay fines, and with these administrative sanctions and penalties to be imposed by the departments of industry and commerce at the relevant level of local government and administration. In qualification of this, the affected parties are recognized to have the right to challenge the decisions on administrative sanctions and penalties of the departments of industry and commerce concerned, as within 15 days of receiving notification of the decisions, as through the bringing of proceedings for judicial review before the people's courts. There is provision also that the departments of industry and commerce may themselves apply to the people's courts for enforcement of decisions on administrative sanctions and penalties, as in cases where the affected parties neither comply with the decisions at issue nor apply to the people's courts for judicial review. (Article 40).[30]

x. Rules on the Implementation of Administrative Penalties under the Customs Law of the People's Republic of China (1 July 1987)

The State Council approved the Rules on the Implementation of Administrative Penalties under the Customs Law of the People's Republic of China on 30 June 1987 and with promulgation by the General Customs Administration following on 1 July 1987.[31] The rules as set out were intended to give implemental effect to certain of the provisions relating to legal obligations contained in the Customs Law of the People's Republic of China, which had been adopted at the 19th Meeting of the Standing Committee of the 6th National People's Congress on 22 January 1987.[32] The rules comprise 36 articles, which are formed into five chapters. As to their substantive concerns, the rules relate to the administrative sanctions and penalties that have application to acts which do not constitute actual crimes of smuggling, to acts constituting crimes of smuggling but which are not subject to criminal prosecution and punishment, and to acts which infringe regulations to do with the control and supervision of the customs (Article 2). The administrative authorities whose actions are governed by the rules are the ones as designated in the Customs Law. These are the General Customs Administration of the State Council and, under this body and established by it, the customs offices established at the ports and other locations significant for customs operations at the different levels of government and administration within the PRC. As to the functions and powers of the administrative authorities, these are exercised in the contexts as referred to in the heads of the main chapters of the rules as follows: acts of smuggling and their punishment (Chapter 2, Articles 3-8); acts violating the regulations on customs control and the punishments for these (Chapter 3, Articles 9-18); procedures for official action in cases of smuggling and violations of regulations on cus-

toms control (Chapter 4, Articles 19-31).

As regarding the issue of the judicial review of administrative action, it is the provisions of Chapter 4 of the rules as relating to the administrative sanctions and penalties for smuggling cases and violations of customs control regulations that are worthy of note. It is provided that the administrative sanctions and penalties for such acts are to be decided by the directors of the relevant customs offices (Article 19), and that the administrative sanctions and penalties are to include the impounding of goods and materials and the means of transportation (Articles 20-22), the freezing of funds (Article 23) and the imposition of fines on the responsible officials where the parties with liabilities are industrial enterprises, institutions, state organs or social organizations (Article 24).

The administrative sanctions and penalties as specified above are subject to legal challenge by the affected parties, and the forms of challenge are described in Article 26. These include challenges that are directed towards the securing through the people's courts of judicial review of the actions of the customs offices, as the designated administrative authorities. Thus it is provided in Article 26 that where customs offices decide on the imposition of administrative sanctions and penalties, as relating to smuggling or violations of customs control regulations, then the customs offices are to issue a notification of the decisions concerned to the affected parties. In the event that the parties do not accept the decisions, then the parties are able within 30 days of receipt of notification to appeal for the decisions to be made subject to administrative reconsideration, and with this to be conducted either by the customs offices responsible for the original decisions or by the customs offices at the next superior level of jurisdiction. It is incumbent on the customs offices involved to reach a decision on administrative reconsideration within 90 days of their receiving the appeal, and to send a formal decision on reconsideration to the applicant parties. In cases where the parties subject to administrative sanctions and penalties find

that the decision on administrative reconsideration remains unacceptable to them, then they are at liberty to initiate proceedings for judicial review with the people's courts as within 30 days of their receipt of the notice of the formal administrative reconsideration decision. It is also open to affected parties to apply direct to the people's courts for judicial review, as within 30 days of their receiving notification from the relevant customs offices as to the decision on administrative sanctions and penalties. However, the parties that elect for direct application to the people's courts, in challenge of decisions on administrative sanctions and penalties, are in consequence of this prevented from submitting appeals for administrative reconsideration as within the system of customs offices.[33]

xi. Water Law of the People's Republic of China (21 January 1988)

The Water Law of the People's Republic of China in its original version was adopted at the 24th Meeting of the Standing Committee of the 6th National People's Congress on 21 January 1988.[34] There is now in force a revised and enlarged version of the law, which was adopted at the 29th Meeting of the Standing Committee of the 9th National People's Congress on 28 August 2002.[35] In the version of it from 1988, as we focus on here, the Water Law comprised 53 articles which were divided into seven separate chapters. As to the substantive concerns of the law, these were specified as being the efficient development and utilization of water resources, the protection of water resources, the prevention of water disasters and the control of their effects, and the overall maximization of the benefits of the water resources for the ends of national economic development (Article 1). The administrative authorities designated as being responsible for the management of the water resources, under the terms of the law, were as follows: the Department of Water Administration

under the State Council, as the authority charged with the centralized administration of water resources throughout the PRC and coordinating such activities of the other government departments under the State Council as were directed towards water resources management; the water administration departments and other departmental bodies established within the jurisdictions of the local people's governments at or above the county level. (Article 9). The administrative authorities so named were to exercise functions and powers in respect of water resources management in the contexts referred to in the heads of the chapters of the law as follows: the development and utilization of water resources (Chapter 2, Articles 10-23); the protection of water resources (Chapter 3, Articles 24-29); the management of water resources use (Chapter 4, Articles 30-37); the prevention and containment of floods (Chapter 5, Articles 38-43).

The functions and powers of the administrative authorities for water resources management in the PRC are extensive and wide-ranging, and the provisions of the 1988 Water Law where they are to be found specified are highly detailed. To have a sense of the range of the functions and powers involved, it is here appropriate only to make reference to various selected examples. Thus in relation to development and utilization matters, the administrative authorities were to have functions and powers concerning the surveying and planning of water resources and concerning the approval of plans for water resources development projects (Articles 10-11). In relation to the management of the use of the water resources, the administrative authorities were stated to have functions and powers in regard to the long term planning for the supply and distribution of water relative to demand as throughout the whole territory of the PRC, and as applicable at all the jurisdictional levels of its government and administration (Article 30). The water resources use management functions and powers included further functions and powers in relation to such matters as the licensing of water extraction enterprises (Article 32), and the setting of rules to govern

the collection of water fees and water resources fees (Article 34). In addition to these functions and powers and the ones concerning water resources protection and flood prevention and containment, there were stated to be a large number of powers belonging to the administrative authorities as to the application of administrative sanctions and penalties for violations of the law. It is with these powers that there was provision made for judicial review of administrative action as regarding water resources. The specification of the powers relating to administrative sanctions and penalties comes in the statement of principles on the legal liabilities of parties under the law that was set out in Chapter 6, Articles 44-50.

The acts for which administrative sanctions and penalties were stated to be applicable included the following: the acts, such as the dumping of materials, the planting of trees and the abandoning of sunken vessels, which had the effect of the obstructing of navigation or the flood course of rivers; the erection of buildings in riverbeds or flood lands, and mining in rivers, without official approval; the unlawful reclamation of lakes or rivers for farmland use; the unauthorized construction of water projects or redirection of rivers or navigation routes; the unauthorized increasing of the discharge of flood or drainage of excess water downstream, or the hindering of the same from upstream; the damaging of projects for water resources management and related facilities such as dike systems, and the damaging of flood prevention facilities and such facilities as navigation facilities; the endangering of the safety of projects for water resources management through acts such as blasting with high explosives, and the quarrying of rock and the collecting of earth. In respect of these various acts, it was provided that the water administration departments, or other competent departmental bodies, of the relevant local people's governments at or above the county level were empowered to order the parties performing the acts in question to desist from the same and to undertake appropriate remedial measures within a specified time limit, and to order

the parties to pay fines. In the case of acts involving damage to property, the parties were liable to be ordered to make payment of compensation. In these cases also the parties were liable to be made subject to criminal investigation and punishment. The same held for cases involving the unauthorized construction of water projects or the redirection of rivers and navigation routes, and for cases involving the unauthorized increasing of the discharge of flood or drainage of excess water downstream or the hindering of the same from upstream. (Articles 45-47).

The application of administrative sanctions and penalties as by the administrative authorities was rendered subject to the control of the people's courts as in accordance with the terms of Article 48 of the 1988 Water Law, and with this form of control being that of the judicial review procedure as applying to administrative action. Thus it was provided that parties that were not satisfied with decisions on administrative sanctions and penalties were able, as within 15 days of receiving notification of the decisions, to submit an application for the administrative reconsideration of the decisions to the administrative authorities at the next higher jurisdictional level from the administrative authorities that originally decided on the administrative sanctions and penalties at issue. In the event that the parties were not satisfied with decisions made in the context of administrative reconsideration, then the parties were to be able, as within 15 days of receipt of notification of the decisions on administrative reconsideration, to start proceedings against the administrative authorities concerned in the people's courts for the judicial review of the decisions on administrative sanctions and penalties. It was provided also that parties were to be able, as within 15 days of the receipt of the notification of the decision on administrative sanctions and penalties, to initiate proceedings in the people's courts without making a prior application for administrative reconsideration. In addition to this, it was provided that in circumstances where the affected parties failed to apply either for administrative

reconsideration or for judicial review, as within the specified time limits, and failed to comply with the terms of decisions on administrative sanctions and penalties, then the administrative authorities that issued the decisions were to be able to make application to the people's courts for the compulsory enforcement of the administrative sanctions and penalties as against the parties.[36]

xii. Law of the People's Republic of China on the Industrial State-Owned Enterprises (13 April 1988)

The Law of the People's Republic of China on the Industrial State-Owned Enterprises was adopted at the 1st Session of the 7th National People's Congress on 13 April 1988.[37] The law is made up of 69 articles that are organized in the form of eight separate chapters. In respect of purpose and scope of application, the law serves to govern the affairs of the industrial enterprises that are subject to state ownership, and it is as such concerned with the form of legal personality that attaches to the industrial state-owned enterprises, with their position, attributes and capacities under law, and with the legal stipulations which relate to the form of their internal organizational structure. This is reflected in the substantive subject-matters of the law as these are referred to in the heads of its various chapters as follows: the establishment, modification and termination of the enterprises (Chapter 2, Articles 16-21); the rights and obligations of the enterprises (Chapter 3, Articles 22-43); the enterprise directors (Chapter 4, Articles 44-48); the enterprise workers and the workers' congresses (Chapter 5, Articles 49-54); the relationship between the enterprises and the state government authorities (Chapter 6, Articles 55-58).

The administrative authorities that are designated in the law as having regulatory functions and powers in relation to the industrial state-owned enterprises are the government departments that

are responsible for the specific industrial sectors to which the individual enterprises belong, along with the Department of Industry and Commerce under the State Council and the subordinate departmental branch offices of this authority at the local levels of government and administration. The Department of Industry and Commerce and its subordinate branch offices are of particular significance in relation to administrative law matters. For it is these administrative authorities that act to regulate the establishment, modification and termination of the enterprises. Thus it is stipulated that, for the purposes of establishment, the enterprises are to apply to the relevant government departments for examination and approval, and that the enterprises are to receive the status of legal person entities, as this is defined in the terms of the law, only subject to their being approved by, registered with and issued with business licences through the administrative authorities for industry and commerce (Article 16). It is likewise stipulated that modifications made to the enterprises as arising from mergers between them and alterations to the scope of their operations, and also the termination of enterprises, require the administrative authorities for industry and commerce to give official approval and to make due registration as to details (Article 21).

The terms of the Law on the Industrial State-Owned Enterprises are such that the administrative authorities, as designated, are held to be subject to the control of the people's courts as to the exercise of those of their regulatory functions and powers that involve the application of administrative sanctions and penalties, as these are made reference to in the principles on legal liabilities set out in Chapter 7, Articles 59-64. In the matter of administrative sanctions and penalties, there is explicit recognition given in the law to the judicial review of administrative action. Thus it is provided that where enterprises engage in production and operational activities, but, as in contravention of the stipulations in Article 16, they do this without prior inspection and approval from the relevant

administrative authorities, then the enterprises concerned are to be ordered to suspend all business operations and to suffer the confiscation of all unlawfully earned incomes. It is also provided that established enterprises that are found to have practised fraud in submissions to the administrative authorities as relating to their registration, and so to have concealed from the authorities the true facts as to their situation, are to be issued with warnings or to be punished with fines and, in serious cases, are to suffer the revocation of their business licences. The administrative sanctions and penalties, as laid down, are to be decided on by the administrative authorities for industry and commerce at or above the county level. In the event that the affected parties will not accept decisions on administrative sanctions and penalties, as with fines, suspension of enterprise operations, confiscation of incomes and the revoking of business licences, then it is open to the parties to challenge such decisions, as within 15 days of having notification of these, through the application to the people's courts for judicial review. In turn, however, the administrative authorities may apply to the people's courts for the enforcement of their decisions on administrative sanctions and penalties, as in circumstances where the affected parties neither comply with the terms of the decisions nor make application to the people's courts within the prescribed time period. (Article 59).[38]

xiii. Standardization Law of the People's Republic of China (29 December 1988)

The Standardization Law of the People's Republic of China was adopted at the 5th Meeting of the Standing Committee of the 7th National People's Congress on 29 December 1988.[39] The law contains 26 articles, which are organized in the form of six separate chapters. The concern of the law lies with standards in industrial production and construction work, as in relation to the setting of

technical requirements that are to apply in such subject areas as the following: the category specification, quality and grading of industrial products, together with the safety and sanitary standards prescribed for them; the design, production, testing, packaging, storage and transporting of industrial products, their operational methods, and the safety and sanitary standards that are involved in the production, storage and transportation process; the effects of industrial products for environmental protection; the design, building procedures and safety standards prescribed for construction projects; the adoption and use of technical terminology, codes and symbols and drafting methods in relation to industrial products, construction projects and environmental protection. (Article 2). For the purposes of the law, the essential tasks of standardization are those of the formulation of standards and the supervised implementation of the standards as formulated (Article 3). The administrative authorities responsible for the tasks of standardization are designated as follows: the Department of Standards Administration under the State Council, as the authority responsible for the centralized administration of standardization on a nation-wide basis, and the various departmental organs of the State Council as are concerned with the setting of standards as relative to their respective sector-determined functions and competencies; the standards administration departments established at the different jurisdictional levels of government and administration, together with the departmental organs belonging to the different local people's government authorities that are concerned with standards setting on account of their functions and competencies as according to sectors. (Article 5).

The functions and powers exercised by the administrative authorities responsible for standardization matters are described in the law in the contexts of standards formulation (Chapter 2, Articles 6-13) and standards implementation (Chapter 3, Articles 14-19). As to standards formulation, it is provided that the administrative authorities are to formulate standards for technical requirements

that will have application throughout the PRC or that will have uniform application within particular trades (Article 6). It is further provided that the administrative authorities are to classify such national standards and trade standards according to the categories of compulsory standards and voluntary standards, and with the category of compulsory standards to include the standards relating to human health concerns and to the safety of the person and of property (Article 7). As to standards implementation, it is laid down that compliance with the compulsory standards prescribed by the administrative authorities is mandatory, and with this being such that the manufacture, sale and importation of products falling short of the standards concerned are prohibited (Article 14). Also, the administrative authorities exercise functions and powers in the authentication of industrial products as conforming with the established quality standards. Here, the relevant administrative authorities are to issue authentication certificates in respect of industrial products meeting the quality standards, and with such certification to permit the use of official authentication marks on the industrial products concerned and on their packaging. (Article 15). In addition to this, there are functions and powers to do with the supervision and inspection of the implementation of standards, which functions and powers are stated in the law to belong to the standards administration departments under the local people's governments at or above the county level (Articles 18-19).

Under the Standardization Law, the regime for standards formulation and implementation is supported by administrative sanctions and penalties that, as it is prescribed, are to be applied by the designated administrative authorities in contexts involving violations of the terms of the law. These are detailed in the part of the law where there are set out the legal liabilities arising from standardization in industrial production (Chapter 4, Articles 20-24). Thus it is stated that parties that manufacture, sell or import industrial products that do not conform with compulsory standards

are to be dealt with by the appropriate administrative authorities, as in accordance with the established laws and administrative rules and regulations. In the absence of such legal norms, as it is provided, the parties are to be subject to the confiscation of their industrial products and unlawful incomes, and to the imposition of fines, and with these administrative sanctions and penalties to be applied by the appropriate administrative authorities for industry and commerce. It is also provided that where there occur serious infringements of the law such as constitute crimes, then the parties that are responsible are to be made subject to criminal investigation and punishment. (Article 20).

As a further form of violation of the Standardization Law, it is stated that where industrial products are being prepared for sale and authentication marks are used on them in accordance with duly issued authentication certificates, but that, as a matter of fact, the products fail to conform with the established compulsory national standards and trade standards, then the production enterprises concerned are to be ordered by the relevant standards administration departments to desist from the sale of the products concerned and to pay a fine. In serious circumstances, the offending parties are to suffer the revocation of their authentication certificates through the act of the administrative authorities that originally issued them. (Article 21). The order to desist from sales and the imposing of fines are also to be applied by the standards administration departments to parties that use unauthorized authentication marks on products that are intended for sale (Article 22). The administrative authorities are subject to the control of the people's courts in the application of administrative sanctions and penalties, as through the procedure for the judicial review of administrative action. Thus it is provided that affected parties are able to challenge the decisions of the administrative authorities on confiscations and fines, as within 15 days of receiving notice of these, through application for administrative reconsideration to the administrative authorities at the next

higher levels, and that affected parties may in turn challenge unfavourable administrative reconsideration decisions, as within 15 days of notification, through the application to the people's courts for judicial review. There is also provision made for parties to apply direct to the people's courts in challenge to administrative sanctions and penalties, and without recourse to the procedure for administrative reconsideration. To balance this, however, the administrative authorities are able to apply to the people's courts for the enforcement of decisions on administrative sanctions and penalties, as where the affected parties neither comply with the decisions as made nor seek administrative reconsideration or judicial review of the decisions as within the stipulated time period. (Article 23).[40]

xiv. Law of the People's Republic of China on Import and Export Commodity Inspection (21 February 1989)

The Law of the People's Republic of China on Import and Export Commodity Inspection in its original form was adopted at the 6th Meeting of the Standing Committee of the 7th National People's Congress on 21 February 1989.[41] The form of the law that now applies in the PRC is that of the revised and enlarged version, which was adopted at the 27th Meeting of the 9th National People's Congress on 28 April 2002.[42] We attend here to the law in its 1989 version, and in this form the law contained 32 articles which were divided into six chapters. As it was stated, the purpose of the law lay with the strengthening of the inspection regime for import and export commodities, as in order to maintain the quality of import and export commodities, to secure the lawful rights and interests of the various parties engaged in foreign trade, and to promote the economic and trading relations of the PRC with foreign nations (Article 1). As for the designated administrative authorities, these as stated in the law were to be as follows: the Administration for Import and

Export Commodity Inspection under the State Council, or in short form the State Administration for Commodity Inspection, as the administrative authority responsible for overall import and export commodity inspection in the PRC on the nation-wide level; the subordinate import and export commodity inspection authorities, or in short form the commodity inspection authorities, which were to be established by the State Administration for Commodity Inspection at the different levels of local government and administration. (Article 2).

As to the basic tasks and functions of the administrative authorities, it was provided in the 1989 version of the law that the State Administration for Commodity Inspection was to list the import and export commodities that were to be made subject to inspection. The items included in this the as so termed List of Commodities, together with import and export commodity items that were subject to inspection under other laws and administrative rules and regulations, were all required to be inspected by the commodity inspection authorities or by such inspectorates as were approved by the State Administration for Commodity Inspection and the local commodity inspection authorities. The inspection process, as conducted by the commodity inspection authorities, was to be directed towards the monitoring of such aspects of the import and export commodities as their quality, specifications, quantity, weight, packaging, health and safety standards and conformity with official standards that had compulsory effect. (Articles 4-6).

Under the terms of the law, the powers of the commodity inspection authorities were to be exercised in relation to the inspection of import commodities (Chapter 2, Articles 9-12), the inspection of export commodities (Chapter 3, Article 13-16) and the regulation of import and export commodities through the machinery of general supervision and administration (Chapter 4, Articles 17-25). The essential powers involved were those to do with inspection and certification. Thus in regard to import commodities, it was provided that

the commodity inspection authorities were to inspect listed import commodities, following registration by the importing parties, and then issue the due inspection certificates (Articles 9-10). Likewise as concerning export commodities, there was provision to the effect of requiring the commodity inspection authorities to inspect listed export commodities, and to issue the due inspection certificates as the condition for the commodities in question to be declared for export and then shipped out to their respective countries of destination (Articles 13-14). As to general supervision and administration matters, it was stipulated, among other things, that the commodity inspection authorities were empowered to make random inspection of import and export commodities that fell outside the category of the commodities listed as subject to inspection, and to deny permission for the export of commodities that as so inspected were found to be below standard (Article 17). The commodity inspection authorities were also empowered to entrust the procedures of import and export commodity inspection to what they considered to be competent inspection bodies, in both domestic and overseas contexts, and to exercise supervision over the activities of these bodies (Articles 20-21).

In addition to the powers of inspection and certification, the commodity inspection authorities were to hold and exercise powers to set and impose administrative sanctions and penalties, as in respect of parties who violated the terms of the law. Thus there were administrative sanctions and penalties laid down for parties that knowingly marketed and traded in import commodities that were listed for inspection, or were otherwise subject to inspection, but that had not undergone due inspection. So also were there administrative sanctions and penalties laid down for parties that knowingly exported commodities, as designated for export, that were listed for inspection or otherwise subject to inspection but without having the commodities in question duly inspected. These various parties were to be made liable for the payment of fines by the relevant commod-

ity inspection authorities, and they were to be investigated and punished in accordance with the criminal law in serious circumstances (Article 26). Again, parties that were found to have falsified inspection certificates, or the related documentation for commodity inspection, were to be made subject to fines by the commodity inspection authorities, or, as in the event of serious cases, they were to be subjected to criminal investigation and punishment (Article 27).

In the imposition of administrative sanctions and penalties, the commodity inspection authorities remained subject to the control of the people's courts, and with this control being exercised through the procedure of the judicial review of administrative action. Thus it was provided that parties that were unable to accept the decisions on administrative sanctions and penalties of the relevant commodity inspection authorities had the right to challenge these, as within 30 days of receiving notice of the decisions at issue, through an application for the administrative reconsideration of the decisions concerned. The application for administrative reconsideration was to be addressed either to the administrative authorities imposing the administrative sanctions and penalties being challenged, or to the administrative authorities at the next higher level, or to the State Administration for Commodity Inspection. In the event that the parties were unable to accept the resultant decisions on administrative reconsideration, then they were permitted, as within 30 days of having notice of such decisions, to initiate proceedings in the people's courts with a view to securing judicial review of the administrative sanctions and penalties as imposed. However, it was provided further that the commodity inspection authorities were able to apply to the people's courts for the enforcement of their decisions on administrative sanctions and penalties, as in cases where the parties failed to comply with the terms of the decisions and failed to apply for administrative reconsideration or for judicial review as within the stipulated time period for this. (Article 28).[43]

Notes and References

1. The full Chinese-language texts of the legal source materials to which we refer in this paper are to be found either in *Zhonghua Renmin Gongheguo Fagui Huibian* or in *Zhonghua Renmin Gongheguo Guowuyuan Gongbao*. The first named of these official publications is translated as *The Compilation of the Statutes of the People's Republic of China* and cited hereafter as *Compilation*, while the second named is translated as *The Gazette of the State Council of the People's Republic of China* and cited hereafter as *GSC*. The formal titles of the legal source materials are given first in English and then in Chinese phonetics, and with both the English translations and the Chinese phonetics versions being the authors' own.

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3. Decree No. 23 of the President of the People's Republic of China.
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7. Decree No. 7 of the President of the People's Republic of China.
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Zhonghua Renmin Gongheguo Zhuxi Ling (di 7 hao).
Zhonghua Renmin Gongheguo Xingzheng Xuke Fa.
GSC, 10 October 2003, Issue No. 28, Serial No. 1099, pp. 5-12.

8. For details of the deliberations of the Party-State leadership in the PRC concerning political and economic reform as conducted at the 3rd Plenum of the 11th Central Committee of the CPC, see: Communiqué of the Third Plenary Session of the 11th Central Committee of the Communist Party of China (Adopted on 22 December 1978), *Peking Review*, 52 (29 December 1978), pp. 6-16.

9. As the matter was put, here, by the Party-State leadership: 'In order to safeguard people's democracy, it is imperative to strengthen the socialist legal system so that democracy is systematized and written into law in such a way as to ensure the stability, continuity and full authority of this democratic system and these laws; there must be laws for people to follow, these laws must be observed, their enforcement must be strict and law breakers must be dealt with. From now on, legislative work should have an important place on the agenda of the National People's Congress and its Standing Committee. Procuratorial and judicial organizations must maintain their independence as is appropriate; they must faithfully abide by the laws, rules and regulations, serve the people's interests, keep to the facts; guarantee the equality of all people before the people's laws and deny anyone the privilege of being above the law.' Communiqué of the Third Plenary Session of the 11th Central Committee of the Communist Party of China, p. 14.

10. Constitution of the People's Republic of China.
Zhonghua Renmin Gongheguo Xianfa.
Compilation, January-December 1982, pp. 1-42.

11. Organic Law of the State Council of the People's Republic of China.
Zhonghua Renmin Gongheguo Guowuyuan Zuzhi Fa.
Compilation, January-December 1982, pp. 80-2.

12. Organic Law of the People's Courts of the People's Republic of China.
Zhonghua Renmin Gongheguo Renmin Fayuan Zuzhi Fa (Genju Xiugai Jueding Xinding Ben).
Compilation, January-December 1983, pp. 4-14.

Organic Law of the People's Procuratorates of the People's Republic of China.
Zhonghua Renmin Gongheguo Jianchayuan Zuzhi Fa (Genju Xiugai Jueding Xinding Ben).
Compilation, January-December 1983, pp. 16-23.

13. Decree No. 7 of the President of the People's Republic of China.
Maritime Traffic Safety Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 7 hao).
Zhonghua Renmin Gongheguo Haishang Jiaotong Anquan Fa.
Compilation, January-December 1983, pp. 435-45.

14. It is to be noted that the form of judicial review procedure conceded under the terms of Article 45 of the Maritime Traffic Safety Law involves an appeal to the people's courts as against the acts of the administrative authorities, and that, as such, it is to be distinguished from the form of the recourse to the people's courts that is provided for in Article 46. Under the terms of this article, it is stated that civil disputes resulting from maritime traffic accidents may be resolved through a process of mediation to be conducted by the relevant administrative authorities, but that in the event that the parties are not prepared to have their disputes mediated, or in the event that the mediation fails, then the parties are able to go to the people's courts for adjudication. Here, of course, the disputes at issue are disputes as between the parties to maritime traffic accidents, and not disputes as between the parties and the administrative authorities, while the form of adjudicative procedure that is to be followed is not the administrative procedure but rather the civil procedure.

15. Decree No. 18 of the President of the People's Republic of China.
Pharmaceutical Administration Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 18 hao).
Zhonghua Renmin Gongheguo Yaopin Guanli Fa.
Compilation, January-December 1984, pp. 569-82.

16. Further to the matter of judicial review, there is Article 56 of the Pharmaceutical Administration Law. Here, it is stated that parties that cause poisoning, as through violations of the law, are to be held liable for the payment of compensation to the victims. The latter may request the departments of health of the relevant jurisdiction to make decisions on compensation, but it remains open to the different parties to challenge such decisions on the part of the administrative authorities through application to the people's courts. In addition to this, the victims are able to take their claims for compensation direct to the people's courts.

17. Regulations of the People's Republic of China on the Control of the Dumping of Wastes at Sea.
Zhonghua Renmin Gongheguo Haiyang Qingfei Guanli Tiaoli.
Compilation, January-December 1985, pp. 381-8.

18. For this law in its revised form as adopted at the 13th Meeting of the Standing Committee of the 9th National People's Congress as of 25 December 1999:
Decree No. 26 of the President of the People's Republic of China.
Marine Environment Protection Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 26 hao).
Zhonghua Renmin Gongheguo Haiyang Huanjing Baohu Fa.
GSC, 20 January 2000, Issue No. 2, Serial No. 965, pp. 5-14.

19. Decree No. 26 of the President of the People's Republic of China.
Grassland Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 26 hao).
Zhonghua Remin Gongheguo Caoyuan Fa.
Compilation, January-December 1985, pp. 333-8.

20. For the revised version of the Grassland Law of the PRC from 2002, see:
Decree No. 82 of the President of the People's Republic of China.
Grassland Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 82 hao).
Zhonghua Renmin Gongheguo Caoyuan Fa.
GSC, 20 January 2003, Issue No. 2, Serial No. 1073, pp. 19-25.

21. Regarding the jurisdiction of the people's courts over the administrative authorities, as under the terms of the 1985 Grassland Law, it is to be noted what Article 6 of the law provided as to disputes about rights of ownership and rights of use in grasslands. Thus it was laid down that where the parties would not accept the decisions in such disputes, as these were made by the relevant administrative authorities of the local people's governments, then the parties were to have the right to initiate proceedings with the appropriate people's courts within one month of the decisions being notified to them.

22. Decree No. 28 of the President of the People's Republic of China.
Metrology Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 28 hao).
Zhonghua Renmin Gongheguo Jiliang Fa.
Compilation, January-December 1985, pp. 623-30.

23. It is further confirmed in Article 32 of the Metrology Law that the adminis-

trative authorities may apply to the people's courts to secure the enforcement of administrative sanctions and penalties, as in circumstances where the affected parties will neither comply with the decisions on the administrative sanctions and penalties in question nor initiate proceedings for judicial review with the people's courts.

24. Decree No. 31 of the President of the People's Republic of China.
Law of the People's Republic of China on the Control of the Entry and Exit of Aliens.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 31 hao).
Zhonghua Renmin Gongheguo Waiguoren Rujing Chujing Guanli Fa.
Compilation, January-December 1985, pp. 39-45.

25. Decree No. 32 of the President of the People's Republic of China.
Law of the People's Republic of China on the Control of the Exit and Entry of Citizens.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 32 hao).
Zhonghua Renmin Gongheguo Gongmin Chujing Rujing Guanli Fa.
Compilation, January-December 1985, pp. 46-50.

26. It is laid down in Article 16 of the Law on the Control of the Exit and Entry of Citizens that state officials belonging to the administrative authorities who are found to take advantage of their position, and to abuse their powers, in order to demand and to extort bribes are to be subject to investigation, prosecution and punishment from the standpoint of the criminal law. Needless to say, the proceedings that are initiated against state officials under the criminal law are quite distinct from those that are initiated, as per Article 15, as against the administrative authorities for the purposes of the judicial review of their acts in the imposition of detention orders.

27. Decree No. 46 of the President of the People's Republic of China.
Law of the People's Republic of China on Frontier Health and Quarantine.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 46 hao).
Zhonghua Renmin Gongheguo Guojing Weisheng Jianyi Fa.
Compilation, January-December 1986, pp. 919-25.

28. The liability of parties to administrative sanctions and penalties, as under the terms of Article 21 of the Law on Frontier Health and Quarantine, is distinct from the liability of parties to investigation for criminal responsibility where their violations of the law result in the spreading of infectious diseases as under the terms of Article 22. For the involvement of the people's courts with Article 22 is in respect of the criminal law and the criminal procedure as against the offending parties, whereas the administrative sanctions and penalties ap-

plied to parties, as with Article 21, occasion the involvement of the people's courts only in the context of applications for the judicial review of administrative action. At the same time, the subjection of the administrative authorities to judicial review, as this is conceded in Article 21, is of course to be distinguished from the investigation and punishment of administrative officials for criminal misconduct as is covered in Article 23.

29. Decree No. 47 of the President of the People's Republic of China.
Postal Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 47 hao).
Zhonghua Renmin Gongheguo Youzheng Fa.
Compilation, January-December 1986, pp. 741-50.

30. The sanctions and penalties referred to in Chapter 7 of the Postal Law are, for the most part, sanctions and penalties that are not subject to applications for judicial review by the parties. For these are sanctions and penalties that have application to cases involving criminal wrong-doing by private parties or by the postal services personnel, as with cases to do with the concealment, destruction and illegal opening of mail (Articles 36-37).

31. Rules on the Implementation of Administrative Penalties under the Customs Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Haiguan Fa Xingzheng Chufa Shishi Xize.
Compilation, January-December 1987, pp. 561-70.

32. For the Customs Law of the PRC in its revised form, as adopted at the 16th Meeting of the Standing Committee of the 9th National People's Congress on 8 July 2000, see:
Decree No. 35 of the President of the People's Republic of China.
Decision of the Standing Committee of the National People's Congress on Revising the Customs Law of the People's Republic of China.
Customs Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 35 hao).
Quahguo Renmin Daibiao Dahui Changwu Weiyuanhui Guanyu Xiugai Zhonghua Renmin Gongheguo Haiguan Fa de Jueding.
Zhonghua Renmin Gongheguo Haiguan Fa.
GSC, 10 September 2000, Issue No. 25, Serial No. 988, pp. 12-31.

33. The Rules on the Implementation of Administrative Penalties under the Customs Law provide that it is open to the customs offices to apply to the people's courts for the enforcement of decisions on administrative sanctions and penalties, as in cases where the affected parties neither comply with the decisions nor make applications for administrative reconsideration or judicial review

through the people's courts (Article 30).

34. Decree No. 61 of the President of the People's Republic of China.
Water Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 61 hao).
Zhonghua Renmin Gongheguo Shui Fa.
Compilation, January-December 1988, pp. 583-95.

35. For the revised version of the Water Law of the PRC from 2002, see:
Decree No. 74 of the President of the People's Republic of China.
Water Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 74 hao).
Zhonghua Renmin Gongheguo Shui Fa.
GSC, 10 October 2002, Issue No. 28, Serial No. 1063, pp. 10-17.

36. It is to be noted that the people's courts were involved in relation to the administrative authorities designated in the 1988 Water Law not only in respect of their having powers of judicial review as to administrative sanctions and penalties, but also (and here in accordance with a quite distinct adjudicative procedure) in respect of the prosecution of the officials of water administration departments, or those belonging to related governmental bodies, who were found to be guilty of criminal misconduct (Article 50).

37. Decree No. 3 of the President of the People's Republic of China.
Law of the People's Republic of China on the Industrial State-Owned Enterprises.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 3 hao).
Zhonghua Renmin Gongheguo Quanmin Suoyouzhi Gongye Qiye Fa.
Compilation, January-December 1988, pp. 721-34.

38. The Law on the Industrial State-Owned Enterprises confirms the possession by the industrial state-owned enterprises of a wide range of independent decision-making rights and powers. It is to be noted, as in connection with the matter of administrative law, that the rights and powers of the enterprises are protected as in relation to the state and the organs of state government as through the procedure of administrative reconsideration, albeit that the law does not provide for the administrative reconsideration procedure as in this particular context to be buttressed with the judicial review procedure. As to the independence of the enterprises, it is laid down in Article 58 that the departments of the state government are not to be permitted to impinge on the rights and powers of the enterprises as through interference with their operations and management policies, their internal organization, and the size of their personnel. Further to this, however, it is laid down in Article 61 that in conditions where

government departments through their acts violate the terms of Article 58, then the enterprises as so affected have the right to apply to the administrative authorities concerned for the administrative reconsideration of the acts in question. In the case that no favourable administrative reconsideration decision is forthcoming, then the enterprises have the additional right to apply to the administrative authorities at the next higher level or to some supervisory department of the state government, and with the accepting administrative authorities being required to make a ruling on administrative reconsideration as within 30 days of their receiving the applications for this.

39. Decree No. 11 of the President of the People's Republic of China.
Standardization Law of the People's Republic of China.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 11 hao).
Zhonghua Renmin Gongheguo Biaozhunhua Fa.
Compilation, January-December 1988, pp. 1109-14.

40. The subjection of the administrative authorities to judicial review as to their official actions in respect of administrative sanctions and penalties is, of course, quite distinct from the subjection of administrative officials who break the law, or who engage in corrupt practices, to the criminal procedure, as in accordance with Article 24 of the Standardization Law.

41. Decree No. 14 of the President of the People's Republic of China.
Law of the People's Republic of China on Import and Export Commodity Inspection.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 14 hao).
Zhonghua Renmin Gongheguo Jinchukou Shangpin Jianyuan Fa.
Compilation, January-December 1989, pp. 275-81.

42. For the revised version of the Law of the PRC on Import and Export Commodity Inspection from 2002, see:
Decree No. 67 of the President of the People's Republic of China.
Decision of the Standing Committee of the National People's Congress on Revising the Law of the People's Republic of China on Import and Export Commodity Inspection.
Law of the People's Republic of China on Import and Export Commodity Inspection.
Zhonghua Renmin Gongheguo Zhuxi Ling (di 67 hao).
Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Guanyu Xiugai Zhonghua Renmin Gongheguo Jinchukou Shangpin Jianyuan Fa de Jueding.
Zhonghua Renmin Gongheguo Jinchukou Shangpin Jianyuan Fa.
GSC, 20 June 2002, Issue No. 17, Serial No. 1052, pp. 6-11.

43. The 1989 Law on Import and Export Commodity Inspection provided that the administrative authorities, as responsible for import and export commodity inspection, were subject to the control of the people's courts in a further respect but one as distinct from judicial review. This was that administrative personnel who were found to be involved in abuses of power, corrupt practices or derelictions of duty were, on this account, to be liable for investigation and punishment as in accordance with the ordinary criminal procedure. (Article 29).

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