From your national law perspective, would it be proper to include within the notion of "Uniform Law" usages of the trade or "customs", general principles of law, general principles of contract law or of the law of obligations, transnational law, lex mercatoria, general rules of procedure? Uniform Law below shall mean Uniform Law according to the meaning assigned to this expression in your reply to this Question 1.

From a Chinese law perspective, "Uniform Law" is a wide-ranging notion. Scholars often use the notions of "uniform substantive law", "uniform conflict law" and "uniform procedural law". All three are components of "Uniform Law". They include all forms of law rules drafted with the objective of the unification of the national laws or those generally accepted by the national laws.

It is proper that the notion of "Uniform Law" includes usages of trade or "customs", general principles of law, general principles of contract law or of the law of obligations, transnational law, lex mercatoria and general rules of procedure.

Usages of trade or "customs" mean customary practices formed in long-term international trade practice. These customary practices are standardized in writing by international organizations and business or academic groups in some countries, which become the rules of conduct of parties in international business activities. They constitute the biggest part and occupy the most important position in uniform substantive law.

"General principles of law" is a notion in public international law that could be applied by the justices of the International Court and be considered as one of the origins of international law. It refers to those general principles of law accepted by the international community as a whole. This is also why they are considered to be included in the notion of Uniform Law.

General principles of contract law or of the law of obligations often appear in the national laws of contract or of obligations and in the international conventions or model laws of contracts and of obligations. They are normally accepted by most countries.

Transnational law is generally considered as a synonym for international commercial law. As the synthesis of the law rules applied are in the domain of international commerce, it includes usages of the trade, international civil procedural law rules and international commercial arbitration law rules, etc.

Lex mercatoria is spontaneously developed in the process of international trade and embodied in the forms of international trade usages, general principles of law and general conditions of trade. They are considered to be included in the notion of Uniform Law.

General rules of procedure are also the rules accepted by most of the national laws, embodied in the rules of international conventions of civil procedural law and the model laws of procedure such as The Hague Conventions of procedure law and the 1985 UNCITRAL Model Law on International Commercial Arbitration.

To what extent has your country incorporated Uniform Law as national law through treaty ratification, other enactments or court decisions?

China has ratified many international conventions which contain the rules of Uniform Law, such as the United Nations Convention on Contracts for International Sale of Goods (CISG), the 1958 New York Convention on the Recognition and Enforcement of the Foreign Arbitration Awards, etc. National law always stipulates that if the international treaties ratified by China provide differently, the rules in the treaties should be applied. And it is accepted as a general principle that the treaties ratified by China have priority over Chinese national law. In this way, Uniform Law rules in the treaties ratified by China are incorporated as national law. They are applied just like national laws or are more favored than national law. Furthermore, the Chinese Supreme People's Court often draws up special enactments to instruct the lower courts to apply the treaties during the proceedings. For example, it has promulgated a regulation for the execution of the 1968 New York Convention after China ratified this convention.

Additionally, according to the relevant stipulations of laws and regulations in China, international customs, including usages of trade, may be applied if there is corresponding stipulation either in PRC laws or in international treaties to which the PRC is a signatory. The supplemental application of international customs is accepted as a general principle. Hence, international customs are incorporated into national law with their limits being the breach between the national law and the treaties ratified by China.

To what extent should your national law be considered as including Uniform Law when designated as proper law of the contract? Tort Law? When your country is designated as place (seat) of the arbitration?

As we don't have the statistics concerning this issue, we are responding to this question from a personal perspective.

When Chinese law is designated as proper law of the contract, the law applied is normally Chinese contract law. It is rarely considered as including Uniform Law. When China ratified the United Nations Convention on Contracts for the International Sale of Goods (CISG) in 1986, one of its two reservations was directed against Article 1(1)(b), which stipulates that the convention "applies to contracts of sale of goods between parties whose places of business are in different States when the rules of private international law lead to the application of the law of a Contracting State." It means that, if the Chinese law or the law of another signatory country is designated as the law applicable to the contract, it is not accepted in China to consider the application of this convention. From this point of view, we could conclude that China hold a negative position on the application of Uniform Law incorporated in national law designated as proper law of the contract. Therefore, we can give a negative answer to this question and the fourth one.

In spite of this general negative position, it should be mentioned that we have the impression of the supplemental application of the international customs, including usages of trade in this case. As mentioned above, these may be applied if there is corresponding stipulation either in PRC laws or in international treaties to which the PRC is a signatory. It may be considered as the exception to the general negative position to the application of Uniform Law in this situation.

For tort cases, we don't think that there will be any change of the position. In fact, we are even more certain of the negative answer. Firstly, from the perspective of Chinese law, "Uniform Law" is seldom involved in the domain of tort law. The object of the consideration scarcely exists. Secondly, the doctrine of the proper tort law is not accepted in the Chinese legislation of the application of tort law (Art.146 of the "General Principles of the Civil Law"). The principle of the autonomy of the parties does not work in tort disputes. The lex loci delicti is normally applied with the limit of the common national law

of the parties. Therefore, the legislator demonstrates a strong intention of the application of the two national laws.
When China is designated as the place of the arbitration, the case still does not change. We don't think the arbitrators could ignore the reservation of China concerning CISG and Chinese conflict law.

To what extent will legal notions in your country applicable in the process of deciding a dispute by courts or arbitrators (including public policy and international mandatory rules or lois de police (national or foreign)) accept Uniform Law incorporated in the foreign law (substantive or procedural) applicable, as the case may be, to the contract giving rise to the dispute/at the foreign arbitral place or seat?
As we don't have the statistics concerning this issue, we are responding to this question from a personal perspective.
The answer depends on the form of Uniform Law incorporated in the national law. In the case of Uniform Law being directly transformed and published as national law, the answer is positive. For the rest, the answer inclines to be negative.
As mentioned above, from the point of view of the reservation of China against Article 1(1)(b) of CISG, China does not favor the application of the convention if the national law of the signatory country is designated as the applicable law of the contract.
Although we don't have experience at hand, we don't think that Uniform Law incorporated in foreign law could be out of the range of public policy. Art.150 of the 1986 General Principles of the Civil Law of the People's Republic of China stipulates that the application of foreign law or international customs by means of Chinese conflict law rules should not violate the "social public interests" which is generally known as Chinese public policy.

To what extent are arbitral awards officially published or informally disseminated in business and legal circles in your country? Is your country a stare decisis country? If so, to what extent does stare decisis apply to arbitral determinations/awards? To what extent is issue preclusion or collateral estoppel (if accepted in your legal system) applicable in arbitration (from court of law to arbitral tribunal and viceversa / between arbitral tribunals)?

Most of the major arbitration commissions in China publish their arbitral awards, with any necessary technical editions, on a regular basis. For example, China International Economic and Trade Arbitration Commission (CIETAC) has published all its arbitral awards rendered from its founding to 2004, and CIETAC is now scheduling to publish all the arbitral awards from 2004 to 2007. Besides that, from time to time, some awards of key importance were published on the official website of CIETAC, www.cietac.org.

Although China is not a stare decisis country, the leading judgments are playing an increasingly more and more important role in China, especially those made by the Supreme People's Court (SPC) or published in the Gazette of the SPC. It is a natural tendency for the arbitrators to give the same award as the judgments made or published by the SPC where the facts or legal issues are common. Besides that, according to Article 9 of the 2001 Several Provisions of the Supreme People's Court on the Evidence for Civil Actions, the facts established by the judgments or arbitral awards should be followed by the judges or arbitrators sitting in the relevant cases unless enough contrasting evidence is found to overturn them.

Estoppel, a notion developed in the English law of equity, is not a legal concept of universal currency around the world. A legal term like estoppel could not be found in Chinese Law. Moreover, it seems to us that what is suggested by estoppel is no more than that a party must act in good faith. If that is true, the legal idea of estoppel is accepted in Chinese law, including arbitration.. For example, Article 74 of the 2001 Several Provisions of the Supreme People's Court on the Evidence for Civil Actions stipulates that the court should confirm the facts and the evidence which may be unfavorable to the parties if they have admitted and approved them themselves during the procedure, unless the parties have enough contrasting evidence to overturn them.

To what extent are national laws and state courts in your country "arbitration friendly"? Does your answer change depending on whether a state party or a state interest are directly involved in or affected by the resolution of the dispute or the contract may be labeled as "a public" or as an "administrative" contract under your legal system? Whether the arbitration is "international or domestic"? Whether its seat/place is within/outside your country?

China is an arbitration friendly country. It promulgated its Arbitration Law in 1994, which came into force on 1 September 1995. Most of the basic rules of the 1985 UNCITRAL Model Law on International Commercial Arbitration have been introduced into the 1994 Chinese Arbitration Law. Pursuant to a decision passed by the NPC Standing Committee on 2 December 1986, China became a state party to the 1958 New York Convention on 22 April 1987. Alongside this, China has also entered bilateral investment treaties (BITs) with more than 100 foreign states and these treaties have provided arbitration as a dispute resolution mechanism. The pro-arbitration judicial policy has been accepted by the Chinese Courts and recently, SPC is executing a reform scheme to encourage arbitration and mediation in China. Nowadays, there are nearly 200 arbitration commissions in China. Statistics show that 60844 cases were decided by 185 Chinese arbitration commissions, with the disputed amount of RMB 727 billion Yuan in 2006.

According to Article 2 of the 1994 Chinese Arbitration Law, only the contractual and property disputes arising between equal citizens, legal persons and other organizations can be referred to arbitration. Any administrative disputes that must be dealt with by the administrative authority according to the relevant legislation are excluded from arbitration. Therefore, the disputes arising from the "public" or "administrative" contracts cannot be resolved by arbitration. Certainly, a state organ may enter into a contract with citizens or legal persons on an equal footing. For example, a municipal government signed a contract with a company to purchase cars. Generally, such a contract is commercial by nature, not "public" or "administrative", and accordingly, the disputes arising from it can be referred to arbitration. The Chinese laws and People's courts give equal treatment to state parties and non-governmental state parties. Moreover, in the bilateral investment treaties (BITs) that China concluded with foreign states, the arbitration as a dispute resolution mechanism is becoming more and more favored. The arbitration friendly policy of China is not affected when a state party or a state interest is directly involved.

According to the 1994 Chinese Arbitration Law and the SPC's Provisions on arbitration law, foreign-related arbitration or international arbitration generally enjoys more privileges in China than domestic arbitration. Among them, the most important one is the much-limited judicial review of arbitration awards. International arbitration and foreign

arbitration are shoen preference domestic arbitration in China. To some extent, China is more arbitration friendly when the arbitration is international.

The international arbitration or the foreign-related arbitration may also include the arbitration which is in place within China if the case concerns foreign elements. This kind of arbitration is also more favored than the domestic arbitration. Therefore, we could conclude that the place of the arbitration is not an element which influences the arbitration friendly position of China.

To what extent are arbitral awards subject to control on the merits (including from the outlook of private international law or choice-of-law methodologies, rules or principles applicable or accepted in your country) or in respect of procedural notions or matters (e.g., due process) when rendered in your country or (if rendered abroad) when brought for enforcement/recognition in your country?

According to Articles 58 and 63 of the 1994 Chinese Arbitration Law and Article 217 of the 1991 Chinese Civil Procedure Law, the People's court may set aside or refuse to enforce a domestic award if it is found that: (a) the evidence upon which that arbitration award is based is false; (b) the counter-party has concealed evidence so material as to affect the fairness of the award; or (c) the application of law is in error. Under such limited circumstances, it can be understood that the People's court has the power to review the merits of the award when setting aside or enforcing a domestic award.

In the case of a foreign-related award and a foreign award, the court may only review restricted procedural matters corresponding to international standards. Procedural irregularities provided by 1994 Chinese Arbitration Law are as follows: (a) no arbitration agreement has been reached or the arbitration agreement is void or invalid; (b) the subject matter to be arbitrated falls outside the scope of the agreement; (c) the constitution of the arbitration tribunal or the procedures for arbitration violate statutory procedures or the parties' agreement; and (d) the party has not got appropriate opportunity to present its case.

What is the notion of and the role played by public policy in the recognition or enforcement of arbitral awards rendered abroad? Of lack of arbitrability? international mandatory rules or lois de police (national or foreign)? To what extent do any of these reservations/notions

serve the purpose of advancing primarily local or domestic notions regarding both substantive law and procedural law matters?

Public policy, in theory, plays an important role in the recognition or enforcement of arbitral awards rendered abroad. According to the 1958 New York Convention and the 1994 Chinese Arbitration Law, the People's court may refuse to recognize or enforce a foreign award if it is found that the enforcement of the award violates the public policy of China. It should be noted that the 1994 Chinese Arbitration Law gives no definition of the term of public policy, but it is generally accepted that public policy refers to the fundamental and significant principles of Chinese laws and morals. A survey shows that most parties who were unhappy with the arbitral awards rendered abroad put forward the public policy defense before the People's court, but seldom gets support from the People's court.

It is generally accepted in Chinese scholar circles that the international mandatory rules or lois de police is different from public policy, the ambit of public policy is much more limited. However, the arbitral award rendered abroad in violation of international mandatory rules undoubtedly takes the big risk of being refused recognition and enforcement in China. As for the lois de police, Art.126 of the 1999 Chinese Contract Law and Article 8 of the 2007 Several Provisions of the SPC on the Law Application of the Foreign Related Civil and Commercial Contract, which stipulates that Chinese law should be absolutely designated as the applicable law in certain kinds of contracts concerning foreign investment in China, are generally known as one of the most important rules concerning the lois de police or "loi d'application immédiate" in Chinese law. We don't think the arbitral awards rendered abroad in the disputes of these contracts on the basis of foreign law, could be accepted by Chinese courts.

According to Article 5.2.(a) of the 1958 New York Convention, recognition and enforcement of an arbitral award may be refused if the competent authority in the country where recognition and enforcement is sought finds that the subject matter is not capable of settlement by arbitration under the law of that country. China made commercial reservation when acceding to the 1958 New York Convention. In accordance with Article 2 and Article 3 of the 1994 Chinese Arbitration Law, only the commercial disputes arising between equal citizens, legal persons and other organizations can be resolved by arbitration; disputes

arising from marriage, adoption, guardianship, maintenance, succession of property, and any administrative disputes that must be dealt with by the administrative authority are excluded from arbitration. Therefore, the People's court may refuse to recognize or enforce an arbitral award rendered abroad if it finds that the subject matter lacks arbitrability.

Public policy is normally used in China with regards to the negative function of excluding the application of the law designated by conflict law rules. Its positive function of advancing primarily local or domestic notions is seldom brought into play. Although the "loi de police" or "loi d'application immédiate" are used for their positive function, they don't aim to advance local or domestic notions. What they are concerned with are the Chinese social public interests that the legislation should protect.

Bearing in mind your answers to questions 3-8 above, to what extent do arbitral awards or determinations influence, or may be considered as possibly influencing state court decisions or legislative change in your country? To what extent do courts of law in your country defer to determinations made by local or international arbitral institutions in charge of administering arbitrations? If no experience at hand, what would be the prospective answer to these questions? Please differentiate the areas of the law in which this influence exists or may potentially exist in the future.

CIETAC, as the leading arbitration body in China, plays an important role in Chinese legislative change regarding arbitration. It is well known that much reference has been made to CIETAC Arbitration Rules when NPC, the Chinese legislative body, made the 1994 Chinese Arbitration Law.

As to whether arbitral awards or determinations influence or possibly influence state court decisions, we do not have enough experience at present. But under the following circumstances, arbitral determinations may be very likely to influence court decisions. According to Article 20 of the 1994 Chinese Arbitration Law, the arbitration committee is entitled to decide the objection regarding the validity of the arbitration agreement, while the People's court entertains the right to make the final say. The People's court will normally review the decision made by the arbitration committee carefully and the latter may influence the court decisions.

At present and in the future, the areas of law in which the influence is mostly seen would be arbitration law, commercial law including contract law, financial law and investment law, etc.

Bearing in mind your answers to questions 1-9 above, to what extent do arbitral awards rendered in your country, enforced or enforceable in your country or concerning nationals of or residents in your country apply or may be deemed as based on Uniform Law? If no experience at hand, what would be your prospective answer to this question?

Most of the Rules of Chinese arbitration commissions provide that international practices shall be followed by the arbitration tribunals to make the award. For example, Article 43.1 of CIETAC Arbitration Rules stipulates that: "The arbitral tribunal shall independently and impartially make its arbitral award on the basis of the facts, in accordance with the law and the terms of the contracts, with reference to international practices and in compliance with the principle of fairness and reasonableness."

We don't have the relevant statistics, but as a matter of fact, CISG, INCOTERMS 2000 and UCP500 are often used by the arbitral tribunals to make their awards in China, mostly by means of the choice of the parties.

Bearing in mind your answers to questions 1-10 above), what has been the impact of arbitral awards and determinations in introducing, firming up or applying Uniform Law, including through legislative change or the action of the courts, in your country? Of foreign court decisions regarding arbitral awards or determinations referring to or based on Uniform Law? If no experience at hand, what would be the prospective answers to these questions?

No experience at hand.

Personally, we believe that Uniform Law is being increasingly referred to and used as a base in arbitral tribunal or foreign courts and, as such, it will be much easier for Chinese courts and legislative bodies to accept them if such Uniform Law is not contrary to Chinese public policy or Chinese mandatory rules.

Bearing in mind your answers to questions 1-9 above what has been the impact on the fashioning of your national legislation on arbitration – domestic or international – or on arbitral awards rendered in your country or concerning nationals of or residents in your country of: (a) the action and rules of international arbitral institutions (e.g. the International Court of Arbitration of the International Chamber of Commerce (ICC), the American Arbitration Association (AAA) and its International Centre for Dispute Resolution (ICDR), the London Court of International Arbitration (LCIA)); (b) the works of international organizations (e.g., UNCITRAL, UNIDROIT, the European Union, NAFTA, the Organization of American States); and (c) foreign court decisions or legislation reflecting the influence of the action or works of institutions or organizations like the ones mentioned in subparagraphs (a) or (b) above? If no experience at hand, what would be your prospective answers to these questions?

Both the action and rules of the major international arbitration institutions and the works of international organizations, especially UNCITRAL, have impact upon the fashioning of Chinese national legislation on arbitration.

China is a state member of UNCITRAL. Most of the basic principles of the 1985 UNCITRAL Model Law on International Commercial Arbitration have been introduced into the 1994 Chinese Arbitration Law.

Although arbitration rules are not legal by nature, it is true that arbitration rules can influence the drafting of national legislation on arbitration. Chinese arbitration commissions revise their arbitration rules from time to time, and when revising their rules, much reference is naturally made to the action and rules of the major international arbitration institutions, such as ICC, AAA and LCIA. Some rules of the major international arbitration institutions have been introduced into Chinese arbitration commissions' practice. For example, the scrutiny of the award by the arbitration commission, which is one of the salient features of ICC (although with much criticism), has been accepted by CIETAC in the 1990s. Article 45 of CIETAC Arbitration Rules provides that: "The arbitrators shall submit their draft award to the CIETAC for scrutiny before signing the award. The CIETAC may remind the arbitral tribunal of issues in the award on condition that the arbitral tribunal's independence in rendering the award is not affected."

There is no experience at hand regarding the influence of foreign court decisions which reflects the influence of the actions or works of the major international arbitration institutions and the international organizations. Personally, we believe that with more and more actions or works of the major international arbitration institutions and the international organizations being accepted by foreign courts and foreign legislation, it will be much easier for Chinese courts and legislative body to accept them if such works or actions are not contrary to Chinese public policy or Chinese mandatory rules.