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William Morell

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Recommended Citation

William Morell, *Perspectives on Commercial Relations With Taiwan*, 3 Md. J. Int'l L. 122 (1977).

Available at: <http://digitalcommons.law.umaryland.edu/mjil/vol3/iss1/18>

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PERSPECTIVES ON COMMERCIAL RELATIONS WITH TAIWAN

WILLIAM MORELL*

Ladies and gentlemen, it is a real privilege for me to speak with this distinguished group this evening and it is also a great personal pleasure since there are a number of friends here in the audience I have known for some time. It was only six weeks ago that I left government; and this evening I find myself on new turf. I am reminded of a session not long ago with Bill Simon when one of our group in Treasury who was about to leave government, remarked that he was returning to the "real world." Simon having spent some four years in Washington, with all of the usual frustrations, responded a little ironically by saying: You know the great tragedy is that some people think THIS is the real world.

In the Republic of China clearly this distinction between government and private business is more blurred than in the United States. Few would question, however, that the ROC blend of government and private business has had an extremely salutary effect on its international commerce. The government has taken a strong lead in this area and not only has been courageous in setting its economic goals but also has been very practical in helping to ensure that they are carried out. I was once told by a senior ROC official that during a meeting with a number of Cabinet officials there was a discussion of books for recommended reading. I asked which ones were at the top of the list. Two, he said, led all the rest. One was Peter Drucker's *Effective Executive*; and the other was *Jonathan Livingston Seagull*. This blend of the practical and, in a sense, the inspirational, in part, characterizes Taiwan's approach to the development of its economy. The results, needless to say, have been impressive.

As you all know, Taiwan's economy has the great advantage of operating in a basically stable political environment with an essentially market-oriented, mixed economy. This, together with pragmatic economic policies, has enabled Taiwan to achieve one of the soundest international financial positions and one of the most enviable performances in foreign trade in the world. It also has an excellent record of price stability, employment, distribution of income and economic development, and as most of you are aware, few countries have done more to stimulate the expansion of

* Managing Director of United States-Republic of China Economic Council; Special Assistant to the Secretary of the Treasury, U. S. Department of Treasury.

the external sector and to provide incentives for foreign capital in the development of the economy.

How the economy progresses in the future and how our economic ties develop in the coming years will depend to a great extent on those laws, regulations and procedures — in both the ROC and the U.S. — that are so essential to the maintenance of a reasonably predictable and very attractive commercial environment. I personally am confident that these sessions we are all involved in here can usefully contribute to this objective.

I need not remind this group that in addition to understanding the law and learning to work within it, there is also an obligation to contribute to its formulation. My four and a half years on Taiwan convince me that the ROC is almost unique among nations in affording international organizations, foreign governments and foreign businessmen an opportunity to critique its laws and regulations governing international business and banking activities. The ROC is no less proud and protective of its sovereignty than other nations, but it clearly is less defensive and more constructive than most in eliciting assistance which might improve the effectiveness of its economic guidelines and commercial law.

In my opinion, we in the U.S. should take greater advantage of this opportunity. During my stay in Taipei we in the Embassy worked closely with the Taipei-American Chamber of Commerce, for example, in recommending changes in the ROC Statute for Encouragement of Investment. While we lost many battles, a number of our suggestions were accepted, at least in some form, though our proposals often were not as carefully prepared as they might have been. Unfortunately, time did not permit adequate consultation by American business representatives on Taiwan with corporate legal experts in company headquarters.

In the future, American business must be more alert to opportunities to influence legislation of this kind. In many cases, of course, we can make our own opportunities by taking the initiative in proposing changes; but certainly when the Chinese afford us the chance to comment on existing laws and procedures we should try to ensure that we have the lead time necessary to prepare our case carefully and persuasively.

A new opportunity involving these regulations governing investment may be presented again in the not too distant future. The ROC government has recently said it is considering a revision of the statute governing these incentives. As Managing Director of the new US-ROC Economic Council I have already encour-

aged our membership to consider what changes in this statute they feel would be desirable and mutually beneficial. And on my trip to Taiwan in May I will not only be looking for trade, investment and contracting opportunities of interest to our members; I also intend to look into questions put by our membership dealing with current regulations and impending changes.

In addition to laws of broad scope such as the Statute just mentioned, there are of course many laws and regulations dealing with narrow, more specific topics which affect American firms involved in both banking and manufacturing. Here again I believe there are rules impacting on American firms which would warrant a dialog with the ROC government. Some years ago, for example, the withholding tax on interest had been considered inequitable by some U.S. firms, and we in the Embassy working with the U.S. banking representatives on Taiwan discussed our concern with ROC officials and a new formulation was developed. All of this is not to suggest that we can readily achieve changes in directions favorable to us. Quite often the Chinese have found our proposals unacceptable; however, as I have said, opportunities for a hearing of U.S. business and U.S. government views are as favorable on Taiwan as almost anywhere in the world.

In applying the law to particular commercial cases, my experience has been that when disputes arise the Chinese apparently prefer a negotiated solution with consideration to all aspects of the situation rather than focusing merely on the legal and technical virtues of each position. They would prefer to avoid a stand-off confrontation — particularly a confrontation involving litigation. The law and the regulations are always present as a basic framework for discussion, but on many commercial issues other factors are an important part of the negotiation and the bargaining.

This is not to say that matters of principle and law are cast aside. They clearly are the basic reference point of the dialog. It is incumbent then on those representing U.S. interests — be they lawyers, representatives of corporations, Embassy officials, whoever — to make certain that all of the major considerations are properly presented to those they represent and that the key officials in the ROC government most directly concerned with the issue are properly informed. While almost axiomatic, this approach is often not followed in practice.

In one case in the early seventies, for example, a major U.S. firm had spent a considerable sum preparing to invest in a new

facility. The investment application went forward in compliance with the regulations several times and each time was returned with modifications, mostly adverse to the U.S. company's position. Even the Legislative Yuan became involved. The American corporation representative finally concluded that the ROC government did not want his company involved and that his proposal was in effect being rejected. He had about decided to throw in the towel and return home. As a last resort he asked the Embassy's help. After reviewing the case we felt that, while there clearly were misunderstandings on both sides, some of the problems were bureaucratic, much as they are in all governments including our own. The Embassy presented the case to three key officials. The company representative was called in by the Chinese again for negotiation and the issue was quickly resolved. Needless to say, U.S. companies all over the world have such problems even when they adhere to the regulations. On Taiwan the difference is that the chances probably are better that a solution can be worked out provided there is a good case and provided the appropriate officials are brought in and are fully informed.

It is important to understand what is at stake here in our search for improvement in the legal aspects of our trading relations. The story of the dramatic growth in ROC foreign trade has been discussed in this conference at some length. The key question is: Where is this trade heading and what is in it for American business and the U.S. economy?

As a starter we can look at the ROC's own trade projections. But then how good are they? My own experience has been that the ROC has an almost unequalled track record in meeting its foreign trade goals. In fact, I have always suspected that there is a "kuchi" factor (*i.e.*, a modesty discount) injected into most official foreign trade estimates. Therefore, when the ROC announced recently that their foreign trade plans call for an increase in 1977 in two-way trade, worldwide, from \$15.7 billion to \$18.5 billion, I think we are obliged to take this enormous increase seriously and to consider what this might mean for American business.

If the U.S. merely retains its present share of total trade which was about 31% in 1976, our two way trade with Taiwan in 1977 could increase almost \$1 billion to a total of around \$5.5 billion. This would rank the ROC within a few hundred million dollars of our trade with the Netherlands and Italy, who rank ninth and eleventh, respectively, on the spectrum of U.S. trading partners. This trend also suggests that by 1978 our commerce with

the ROC could well approximate our trade with France, which in 1976 ranked eighth among our trading partners. I think it is still very difficult for many westerners to appreciate that Taiwan has already become one of the great trading nations of the world.

For both importers and exporters it is new business opportunities that are a prime consideration. If we talk not in terms of percentages but dollar gains we find that the ROC, with an anticipated surge in trade of almost \$3 billion in 1977, offers perhaps more new business than most of our leading trading partners. Both U.S. exporters and importers will profit substantially from this commerce, to say nothing of the benefits to wages, employment and consumer prices in this country.

Some say that the uncertainties of the next few years raise questions about prospects for further expansion of our trade with the ROC. I can only say that I have heard this for almost ten years and those who have taken counsel of their fears have had to count their losses. Those who have looked at the realities have prospered. There were those, for example, who were nervous after the Shanghai Communique. At that time there was some capital flight, Taiwan currency sold at a discount and some businesses contracted their operations. However, our economic reporting from the Embassy during this period and the advice of many of our bankers on Taiwan took an optimistic and we felt a realistic line. But some in the Embassy and in the State Department felt, to use John Foster Dulles' words, that we were taking on the protective coloration of the local scene. As it turned out, our estimates were somewhat off the mark, but only because they were not optimistic enough. The economy continued to surge ahead; capital returned from abroad; the Taiwan dollar increased in value; and businessmen began to expand their investment.

Again during the world-wide recession of the recent past, there were many fears expressed about the viability of Taiwan's economy with its enormous dependence on foreign trade. Prices of imports were skyrocketing while the ROC's exports were meeting resistance all over the world. Inflation became a serious problem. But again the economy adjusted in a pragmatic way and today Taiwan's price stability is among the best of all nations and exports are booming once again.

Some may ask how recent pressures within the U.S. to restrain the import of certain commodities of importance to Taiwan's trade, such as footwear, might affect the ROC's ability to earn foreign exchange and to support the continued expansion of its two-way trade with the U.S. This is a complex equation and

I have no more ability than anyone else to look at the future as history. But I can draw from the lessons of the past.

I know that the U.S. government since World War II has generally sought to avoid more restraints on trade. In fact, most of our efforts have been in the direction of freer trade. And in those instances when the U.S. government has felt obliged to restrict imports, it has usually not moved precipitously and has sought to balance the political and economic considerations involved.

The "voluntary restraints" imposed on textile imports from the ROC in the early seventies did require substantial adjustment by Taiwan's manufacturers and of course impacted universally on anticipated foreign exchange earnings. But history has shown the ROC economy to be dynamic, inventive and adaptable. It has accommodated extremely well to new situations, ranging from the cutoff in earlier U.S. aid programs to the shock of the Shanghai Communique. Considering the expected levels of U.S. trade restraints, and without commenting on the arguments for and against such restraints, I am confident the ROC will continue to grow in importance as one of our leading trading partners.

A major problem in our trade with Taiwan, however, is the weakness in our exports. There has been a noticeable increase in recent years in the attention paid by American manufacturers, and particularly by our bankers, to the Taiwan market. Major efforts are being made by many American firms to develop this market both for sales and imports. In addition, our Trade Center in Taipei has become one of our two most successful trade centers in the world. In recent years it has held some 170 events and has attracted enormous attention from prospective buyers of U.S. products. But much more needs to be done to promote the sale of U.S. commodities. Our trade deficit with Taiwan in 1976 was more than \$1.3 billion, which in a sense is a measure of the shortcoming of our sales promotion.

The Japanese, of course, are our principal competitors. They have outstripped us in this market with exports of almost \$2.3 billion in 1976 compared to our \$1.6 billion. Japanese businessmen are well aware of the burgeoning Taiwan market and the fact that Taiwan is their second largest export market in the world. They also know that for the remaining five years of the ROC's current six year plan Taiwan represents a market for foreign exporters of approximately \$50 billion. The Japanese are eager to win the lion's share of this market, and their promotion efforts treat it accordingly. Within the ROC the Japanese rely very little on their local officials resident on Taiwan for trade development

support. Essentially they depend on the activities of their individual corporations and the aggressive sales promotion of their various foreign trade associations, with strong support at home from their Ministry of International Trade and Industry and the Japanese banks. They are particularly adept at identifying new opportunities for sales and too frequently seem to be ahead of us in uncovering the many import and contract engineering requirements that fall out of the growing number of new development programs in the ROC's public and private sectors.

In many ways the Japanese linkage between government, business associations and private firms has not been acceptable in our society and does not correspond to many elements of our economic philosophy as reflected in our laws and regulations. But there are lessons to be learned from the Japanese experience and of course many legal questions would be involved if we decided to modify our approach to trade promotion.

On the ROC side there are other questions that should be addressed which affect our competitive position vis-à-vis the Japanese. For example, the ROC tariff is based on CIF which, because of distance, gives Japanese exporters an advantage over our own. This is not a new issue but one that perhaps should be reviewed. And there are other questions of this kind for those of you concerned with the legal aspects of our trade.

In closing let me say that when the subject of these sessions was first announced I was sure there were many questions as to whether the exercise was worth the candle. Yet when we consider that over the next five years the ROC's two-way trade may total roughly \$100 billion; that the ROC could be well inside the top ten among all of our trading partners; and that there has been, perhaps, less thought, discussion and writing by foreigners concerning the laws relating to this trade than for that of most other great trading nations we can readily appreciate the significance of this pioneer meeting. I think we are all indebted to the organizers of this conference for their foresight, and I congratulate them for a superb job.